

TF 37 Bill Barr's Justice

Jennie Josephson [00:00:00] Producer Jennie here. Talking Feds is now six months old and we have big plans for this show which obviously includes more Feds eating tacos. But to make those plans possible we need to understand a little bit more about what you like and what you'd like us to improve about Talking Feds. So head over to our website Talking Feds dot com and participate in our listener survey. It only takes a few minutes and you can complete the survey anonymously. Thanks.

Matt Miller [00:00:37] Hello and welcome to a special edition of Talking Feds. Special for two reasons. First, I'm obviously not your usual host Harry Litman. This is Matt Miller filling in for Harry today. And second, for today's episode I'm the only former Fed in the room. Instead, we're going to do something new and talk to three of the most well sourced reporters covering the Justice Department and try to find out just what is going on over there right now. I served as the chief spokesman for DOJ during the Obama administration and the DOJ press corps used to beat me up regularly with tough questions. Today, I finally get to turn the tables. Our guests for this episode are Evan Perez CNN senior Justice Department correspondent. Evan has been on the DOJ beat for more than 10 years covering the administrations of both parties. Devlin Barrett DOJ reporter for The Washington Post. Like Evan, Devlin has been covering DOJ for more than 10 years and has seen just about everything under the sun. Though I think a few new things in the past couple of years. And finally--

Devlin Barret [00:01:33] It's gotten weird.

Matt Miller [00:01:35] And finally, Katie Benner who covers the Justice Department for the New York Times. Katie is a relative newbie to this beat having joined it last year. But you wouldn't know it from her reporting. She has turned out scoop after scoop after scoop since joining the beat. And in fact if you've been paying attention to the news the last week you know that all three of our guests have been breaking major stories but they've agreed to a one hour cease fire to be with us here today. Thank you all for joining. So lets kick it off with what, to me, is one of the hardest questions for undersanding the Justice Department today and what's going on there and that is: Does Bill Barr really believe the FBI and the Intelligence Community were enaged in a giant conspiracy to keep Trump from being elected or has he launched this investigation into the Russia investigation to try to make Trump happy or is there some other reason that is not apparent to those of us on the outside.

Evan Perez [00:01:59] Look I think before he became attorney general Bill Barr already had some pretty skeptical views of the rush investigation. We know that because you know he wrote memos we wrote he wrote memos that he helpfully sent to the Justice Department expressing some of his cup skepticism about investigating the president. But we also know that you know he is you know he's a voracious consumer of conservative media. So he reads a lot of this stuff. So I think he does believe that something smells about the way this began. Now the Justice Department is very careful to say that nobody there including the Attorney General is questioning the central thesis that Russia interfered with the 2016 election. They're not adopting what President Trump says about the Russian investigation that the whole thing was a hoax and all this stuff. That is not where Barr is, but Barr is definitely skeptical about you know some of the things that were done. He thinks that something doesn't smell right. And so that's what he's doing. And what's so

unusual, obviously, is the personal attention he's giving to this as far as I can tell this is the closest management of any case I've seen by an Attorney General in forever. I can't imagine you know anybody from Alberto Gonzalez to Eric Holder to Michael Mukasey, anybody engaging in this in something like this you know where they're flying overseas to help introduce the prosecutor who's running the case John Durham. You know I've never seen anything like that. So you know I think that's where this sort of departs from what is normal.

Katie Benner [00:04:22] And I think it says something about Barr too. He's a well-known micromanager from his first go at Attorney General in the 90s. He's known to have paid very close attention to everything that is happening and even now he wants to be read into pretty much everything. I guess a positive reading or an optimistic reading of what you're saying is that he understands this is such a politically sensitive investigation that having his imprimatur on every single step will help protect Durham should Durham turn in a report that says nothing bad happened. You know it helps legitimize that in the eyes of the conservatives who are hoping that he does find something and of the president who hopes that he does find something. I think that's a very optimistic read. It's one way to look at it. And I think another is just that as you say his personal interest in this is such that he wants to know everything.

Matt Miller [00:05:08] Devlin, what's your take?

Devlin Barret [00:05:10] I would actually go further. I think there is no question that Barr believes there's something there to find and he believes that at a minimum mistakes were made in the course of the Russian investigation. And there's a couple of ways to think about that. One, I think for those who suggest that Barr is trying to mollify or please the president, I think that's a fundamental misreading of the situation and you know I think they they are essentially, they may think the problem exists in different places among different people but I think they both believe there is a problem and that it will eventually come to light what the problem is.

Matt Miller [00:05:49] So I guess the thing I don't understand is what is it to him that doesn't smell right? Because the thing you usually see are questions about the FISA application for Carter Page but that is already under investigation by the Inspector General. It's been under investigation for a long time. I don't know why he would need to have this second investigation. So what is the thing that he thinks?

Evan Perez [00:06:10] Well I mean I think that's a great point because he clearly you know look he is the boss of the FBI so he could get a lot of the answers that he is seeking.

Matt Miller [00:06:20] And he's going outside the FBI, right? He has the authority to look all over the government.

Evan Perez [00:06:23] Yeah, that's the thing. I mean this is you know this is this this thing that he's spearheading doesn't really exist if it wasn't something outside of the FBI that he's after. And so I think that's one of the reasons why he got the president to give him this authority to be able to get and declassify information from the intelligence agencies. He is I think going to be essentially taking stuff from the CIA and all the other intelligence agencies that provided information. And I think he's particularly, as you can see from his recent activities, you can see that he's particularly focused on on what information was being gotten from foreign partners, from from U.S. allies that saw something and said

something, right? That's usually the way we work with the intelligence agency, the FBI they impress upon our foreign partners to turn over information if they see something that they think is worth noting. And so that's usually what happens. And so what he thinks appears to be wrong here is that something was done between the U.S. intelligence agencies and the foreign intelligence agencies to perhaps look at Americans. There's something that he believes happened here that did not happen the right way. And look I don't know what the whole of his of his thesis is, but those are the hints we're getting from watching his activities.

Katie Benner [00:07:56] Yeah and if he sees this global conspiracy that would go beyond what the DOJ Inspector General you know go beyond the purview of the DOJ Inspector General. But I think that the weird thing is that he picked John Durham to do the review because Durham is not known to be very partisan. He's not known to be sloppy. He's extremely careful. And he was asked to review the CIA's use of torture and he found no--.

Matt Miller [00:08:21] By Eric Holder. By Democrat.

Katie Benner [00:08:23] By Eric Holder. And he found no wrongdoing in that program where people were possibly being tortured. So it's hard for me to see a world in which John Durham really finds wrongdoing and people running down a tip. So, he's a strange choice--

Evan Perez [00:08:34] Yeah I mean he's of the institution, right? He is--

Matt Miller [00:08:37] Well yes, although, I would say, you know the bar is much lower for him in this report. In the CIA probe it was a criminal investigation, so he had to find wrongdoing that he could prove in court. He had to be able to prosecute a case. This doesn't look like a criminal investigation at least not yet or if it is we don't know that yet. It hasn't been reported yet.

Katie Benner [00:08:54] It's not.

Devlin Barret [00:08:54] It's a strange animal, right? That the selection of Durham to look at activity just to see if something inappropriate happened is strange, except when you think about who Durham is and what Durham has done. I think you know Barr's thinking in part because Durham's there to be able to investigate the CIA. As Katie was saying, the Justice Department Inspector General cannot go down that road. But Durham can and I think what Barr envisions by Durham being in charge of this is they're gonna be able to look at the entire universe of collection of intelligence overseas including what the agency did and come up with, whether there are no warts in this process or something worse, you know a review not just of what the bureau did but what the CIA did. And so I think Durham's place in this makes a lot of sense and it tells you a lot about what Barr thinks he's going to find or at least is looking for. But again, it becomes a circular argument because you come back to, "OK but what is the thing." And no one has really been able to articulate yet of the folks who think this is this is a very valid exercise. No one has really been able articulate yet what is the piece of--what is the thing that smells what is the thing that may not have been done badly?

Katie Benner [00:10:13] I think we're going to wait for a while too because it's hard for me to envision a world where Durham's review would come out before the Inspector General report. So we have to wait for the IG report--.

Matt Miller [00:10:21] And that's soon right next. Next couple months. right?

Katie Benner [00:10:24] Hopefully.

Matt Miller [00:10:24] The IG report for listeners into the the FISA application into Carter Page and some other internal DOJ matters.

Katie Benner [00:10:31] And then depending on what the A.G. finds about the behavior of the FBI, I would think that that would influence Durham's work.

Evan Perez [00:10:41] Yeah, I mean at a minimum I think the expectation in the building is that Durham is continuing his work into well into next year. So here we go back into an election year with something hanging over everything--

Katie Benner [00:10:55] And can he come up with results before the election? Can he say what he has found before the election without influencing the outcome of the election?

Matt Miller [00:11:03] Of course he can. Well one thing one thing I know about John Durham from being in the Obama administration when he was appointed look at torture is he is slow. It took him three years to do that investigation. So it makes sense to me that it would come out sometime next year. And that goes to when you ask what it is that that DOJ is trying to do here. Some former CIA people and a lot of a former Obama administration officials think that there are two goals. One, is to smear John Brennan. That the IG at DOJ has already taken a whack at Jim Comey and taken some nicks out of him. But no one has hit Brennan yet. And this is the way to get Brennan. That's obviously a view that, you know, Trump obviously wants to retaliate against all of his political opponents and Bill Barr is doing it here. The other idea is to produce something that discredits the idea of Russian interference even if it doesn't discredit the underlying premise that the Russians did it, but cast some some, kick some dirt up around the 2016 narrative just in time for 2020. I wonder if you guys pick up anything in your reporting that obviously DOJ is not going to come out and say that but--

Evan Perez [00:12:05] But look I think the obvious animus towards John Brennan is out there for everyone to see.

Katie Benner [00:12:13] In the tweets? [LAUGHTER]

Devlin Barret [00:12:16] And it's mutual right? Like you know every time one takes a whack the other one comes back pretty quick.

Evan Perez [00:12:20] I think it's you know Brennan is outspokenness that really got to them and I think it irritated a lot of them including including Barr. I think Barr has taken a dim view of some of the things that Brennan has said and that has given rise to a lot of conspiracies, some of them from members of Congress who say that they've seen documents that give them reason to believe that John Brennan ordered things that cut corners, that went around the U.S. laws that restrict what the CIA is able to do. So again that's some of the things, those are the things that Bill Barr has been reading. And so I don't know if he believes them but those are the things that I think have helped fuel some of the things against especially the John Brennan part of this. Now for the rest of it, the undermining of the investigation I think that's true. I think that's very much the the view of

Barr and a lot of people is that you know this this investigation should not have happened certainly should not have happened the way it did. And so it was a much much overblown thing is what they think.

Devlin Barret [00:13:31] Yeah and I think there's also like there's a feedback loop problem, like a political feedback loop problem when it comes to these agencies. So for example you talk to plenty of folks in the FBI who aren't that jazzed that people like Comey and other formers are in the public space regularly taking very hard shots at the administration. Because whether they have earned that cynicism and distrust I think is a completely valid argument for them to make, but I got to say if you are if you're a Republican and you're on the other side of that and the former leaders of these agencies spend most of their public life trashing the administration. I think it's a legitimate thing for Republicans say, "Wait a minute. Maybe you guys do hate Trump. And maybe you guys started hating Trump." I mean one of the problems becomes well when did you first realize you hated Trump. And if you are overseeing the investigation of Trump maybe you're giving them at least four Republicans and remember part of this is about each side playing to its own base. Right? So as long as as long as the former officials are so strident in their criticism again maybe maybe justified maybe not as long as are so strident in their criticism. I think that actually helps Republicans stay on side with the president and with his supporters.

Matt Miller [00:14:41] Even though that's not typically a predicate for launching an investigation.

Devlin Barret [00:14:45] No, no, no, no--

Matt Miller [00:14:45] I see your point. I certainly see your point. One of the questions I have about this, Katie you alluded to this a little bit earlier is why Barr is so personally involved in this. I mean the point typically, if you were inside an administration and you were about to launch a very politically sensitive review, if you're at the Justice Department, you appoint an independent prosecutor like Mueller or a special counsel or you appoint someone like John Durham to get you kind of give him special jurisdiction to remove the political taint, especially if you're Bill Barr and the way the Russia investigation--there are so many questions--right or wrong-- I think right. He would say wrong--but there are questions and criticism about the way you handled it. You appoint someone like Durham who's independently respected to give you some distance from it. Obviously that's not how Barr is looking at it because Barr is jumping into the middle of this.

Devlin Barret [00:15:30] Yeah, we're not doing distance.

Katie Benner [00:15:32] So it's interesting, Barr has compared what happened to the Trump campaign in 2016 to COINTELPRO which is this really dark moment in law enforcement history. This horrible horrible thing where we were surveilling you know African-American leaders and were simply you know Vietnam War protesters and law enforcement got out of hand. And to compare an investigation into whether or not a foreign power interfered in an election and the decision to see if there was a campaign that was working with that foreign power to this really dark moment would imply that Bill Barr who, as far as I can tell, doesn't say things he doesn't mean, that he truly believes that what happened was extremely terrible. And if you're somebody who wants to preserve presidential power who believes in executive power who believes in sort of the sanctity of the executive branch and and who the president should be and how the person should be

treated, this would probably be extremely personally galling as well as professionally galling. So it doesn't shock me that he has taken this sort of interest and is micromanaging in this way because of who he is. It is shocking of course that it's happening, but given how he's spoken about the decision to launch the CIA investigation and the Trump campaign, it's not a huge surprise that he is heavily involved.

Evan Perez [00:16:50] What's amazing to me is the reaction, certainly from Democrats, at Bill Barr because it's almost like they're shocked at who he is.

Katie Benner [00:17:01] It's like they've never read anything he's written or--

Evan Perez [00:17:04] Did you not know that he was--

Matt Miller [00:17:04] Did you not read the memo he wrote about the Mueller investigation before he was--

Katie Benner [00:17:07] Or the e-mail to Peter Baker where he said there's more predicate to investigate Uranium One than there is to investigate--

Matt Miller [00:17:13] I think that is the most telling quote that has ever come out of bill bars Barr's mouth because that told me not just that he's very conservative because you can be very conservative and be committed to the rule of law--.

Evan Perez [00:17:23] But I think he's more conservative than even a lot of people in the building and people know who know him really thought.

Matt Miller [00:17:29] Not just more conservative but that in his time outside government spent a lot of time immersed in conservative media and right wing media and FOX News and has internalized some of the conspiracy theories you hear on those because no matter what you think about what the--how the Justice Department has been run, what you think about Bob Mueller, it's hard to say with a straight face that there was more of a reason to investigate Uranium One than the Russian interference in the election. That is a Sean Hannity type talking point.

Devlin Barret [00:18:00] So I'm going to be a little contrarian. I think the best way to understand Barr is to just read his oral history interview in 2001 at UVA. That is an amazing document, mostly because he clearly never thought he would be back in government. So he's just letting it fly. And I will say for anyone who's like a big nerd and is curious like how the Attorney General thinks, that one document is the best source in my mind of understanding who Bill Barr is and how he thinks. And two things come flying off the page when he talks in that thing. One, is he's a very conservative guy who has very strong views about executive power and two, he thinks he is much much smarter than almost everyone he comes into contact with and he may be right about that. I'm not making a judgment call on, you know, I don't do IQ tests but I think those two factors you see playing out almost every day in the current Justice Department and I think it's--I take Evan's point that you know there is a conservative media ecosphere now that didn't exist then and that may be influencing his thinking. I don't know that it needed much influencing. I think he is a a conservative guy who really wants to get his hands on the wheel at all times and and make the cargo exactly where he wants it to go.

Katie Benner [00:19:23] I mean when he built us house isn't it famous that he really did all of-- you know he'd designed his library. He measured the room down to the last inch. He is the person who chose all of the decor. He plans all of his parties and he's not, it's not just in this one area of his professional life where he takes a heavy hand.

Matt Miller [00:19:43] You alluded to maybe the best case defense for the investigation earlier for his involvement, his personal involvement in the investigation which is that if it eventually produces no evidence of wrongdoing Bill Barr can say I was involved in this and defend it to kind of the president into the conservative world who would be skeptical of that conclusion otherwise. I have a related question which is beyond the conservative media world. His involvement now looks like him pushing for an outcome that fits with his preordained conclusion. Does he care about what the broader world thinks about him as Attorney General.

Katie Benner [00:20:21] All shaking our heads no.

Devlin Barret [00:20:24] That's not a big concern.

Evan Perez [00:20:24] Yeah, he does not really, he doesn't care. And to be honest, I think, you know, I think one of the things that that happened very quickly with Barr was his willingness to say stuff. And, you know-

Katie Benner [00:20:38] Spying?

Evan Perez [00:20:38] Right. I mean use words and it was the use of rhetoric in a way that usually attorneys general don't do because you want to try to rise above and sort of be able to say that you're not playing politics and so but he doesn't care.

Katie Benner [00:20:52] It's also deliberate. That Senate testimony, the congressional testimony money where he said spying, the first day of his testimon, if you look at the transcript he said "unlawful surveillance" and nobody noticed and didn't say anything about it and it didn't really make any headlines. So the next day when he took the microphone he said spying. And it got the reaction he wanted.

Matt Miller [00:21:10] Oh that's interesting.

Evan Perez [00:21:11] No it's very deliberate. Actually I do think he's very very careful about what he does. And I think you know his use of rhetoric you know is one of those things that he does. He likes to pepper--

Devlin Barret [00:21:25] But remember too like how he became the Attorney General. In his confirmation hearing his pitch to the Democrats was, "Look man, I've done this job before. I don't care what the president wants. I'm not looking to satisfy anybody or get a new job." He said, "This is my last job. I don't care." And that was his best selling point to Democrats. What I think the Democrats failed to anticipate or predict and you know no one sees the future, is that he just honestly believes a lot of this stuff. And so he doesn't need the president. You know it's not like the Jeff Sessions relationship with the president's constantly beating down on the guy's head. Do this, do this, do this. This is actually there are plenty of pieces of information to suggest this is actually at least as much Barr pushing up going like, "I'm doing this, I'm doing this, I'm going to go get it." .

Evan Perez [00:22:11] You know what's what's interesting about him is that he's a bit of a grenade thrower right? He sometimes will just throw things and just to see what the effect is in the room and look that's great at a dinner party. And you know from all reports Bill Barr is a great dinner party guest because he's gonna be entertaining, he's gonna be the center of attention, he knows how to tell good stories. He's a good time Charlie, right? But, you know, when you're Attorney General it's normally what we expect of Attorney General is that you know you're a little more careful about wording in certain ways in order to to appear that you're nonpartisan. He doesn't care about that so much. And so he's willing to to stir the pot.

Matt Miller [00:22:51] And look there is an argument to be made to always do what you think is right. Don't worry about what the public is going to say, don't worry about criticism do what you think is right. And that is true to some extent. But at the same token there is a cost to the Justice Department when your actions cause the public or at least cause one party, cause a significant percentage of the party to lose faith in the independence of the Justice Department and the credibility of its investigations. And your point is he doesn't care but I think that's right he doesn't care about the criticism. What I worry about is that criticism accrues to what people think the Justice Department's doing and that's damaging long term.

Devlin Barret [00:23:29] It is, but I think part of it depends on what do you think is the future of the Justice Department and FBI is going to be? So because we're all like sort of trapped in this, sort of, 2016 cycle that never ends. Like do you believe that the DOJ is going to get back to a place where the public generally believes them to be, an impartial and fair, even handed part of the government overseeing investigations? Or do you believe that given what happened in 2016 we are going to be on a treadmill for a very long time in which there is basically a Republican view of the Justice Department and a Democratic view of the Justice Department right down to specific investigations, and that dynamic will not go away and therefore you have to fight on the battlefield that you're presented with politically and that's that everything is politics?

Katie Benner [00:24:16] Yeah. The Justice Department isn't exempt from this huge change that's taking place in D.C. over the last few decades of hyper partisanship you know. So post-Watergate you could have this cleansing moment where people get swept out of the department and everybody vows to do better. And the American public is hopeful for it. And you know Congress has passed all these laws to make sure a Watergate never happens again. We will not see that with Donald Trump whether or not he is impeached. Congress does not behave this way anymore and the Justice Department cannot escape Washington.

Matt Miller [00:24:46] However I think the Justice Department if a Democrat is elected in 2020 or 2024, you will see most likely I could be wrong but I think you will see a Justice Department under a Democratic administration returned to the kind of traditional norms--because Democrats at this point th.at Bill Barr doesn't worry about criticism from the mainstream, Democrats very much do. Democrats would look at the John Durham thing and say I'm not going to touch this because I don't want my integrity to be questioned so I do think the big question--you're right. One question is will DOJ just flip flop back and forth and keep investigating the other party? But the other question is are Republicans going to run just the Justice Department one way and Democrats the other? And obviously I know that some that's through the eyes of the beholder.

Devlin Barret [00:25:31] Spoken like a Democrat [LAUGHTER].

Katie Benner [00:25:35] And also, Trump is an unusual Republican. I think you could make the argument that if it were a Jeb Bush or if it were Mitt Romney that we wouldn't see the Justice Department used as a cudgel to go after people's political enemies.

Matt Miller [00:25:46] Yeah. I agree. That's right.

Evan Perez [00:25:46] OK. Let's pause here for one quick second and talk a little bit about the way Republicans looked at the beginnings of the Obama administration. Look I'm not I'm not going to equate the two things but when Eric Holder asked and ordered a review and an investigation of some of the practices, the post 9/11 practices we're talking about the torture. We're talking about some of the releases of documents. We're talking about the look at CIA black site prisons. There was a lot of criticism from Republicans because they viewed it as a partisan thing. They viewed it as a cudgel being exacted upon the previous administration. Some of it because the incoming president had been a critic of Bush. Right? And so if you listen to Republicans, what you're hearing from them is that you have "but Democrats did the same thing" and they bring that particular thing up. And so I just think it helps to just stand back a little bit and just think about what how each party has behaved in the last couple of administrations, I'm not saying the same thing but that's how they see it.

Katie Benner [00:26:59] The difference being that Obama never said publicly or previous to that Bush never said publicly I'm going to ask the Justice Department to go after somebody I dislike. And I think that the rhetoric coming from the White House is a key difference that that Trump would say, "I want my Attorney General to protect me. I want my Attorney General to go after my enemies and destroy them."

Devlin Barret [00:27:17] That's true. But I feel like the dynamic is different in one key way and that's that, you know, Evan and I are old farts. So we went through the joy that was Fast and Furious and and sort of that era of you know Justice Department internal investigation scandals for lack of a better term. Those stories by and large were what you would think of as middle of the book or back of the book stories meaning they were not the front page stories. They did not dominate the airwaves. I think part of what's so crazy about what we're all covering now is that this crap is on the front page every day and this crap is the central conversation in politics most days. And I do think that is a different position for DOJ to be in and that's why I'm sort of skeptical and cynical about the notion that, "Oh you know when the dust settles we'll all go back to sitting quietly in our chairs." I do think like that the fundamental difference between now and then is like this is the centrepiece of the whole deal in D.C. and that's not, I would argue, that's probably an unhealthy place for both DOJ and the Bureau to be.

Matt Miller [00:28:20] I agree. So let's that's a great transition. Let's talk about the other center piece investigation going on right now especially since you've brought up Fast and Furious and the torture investigation and you're gonna drag me down a rabbit hole where I'm arguing with you about the same things I've been arguing about for 10 years.

Devlin Barret [00:28:34] Oooohh, listeners are gonna love this.

Matt Miller [00:28:34] Not you, Katie. Devlin and Evan.

Evan Perez [00:28:35] Nation of cowards.

Matt Miller [00:28:39] Yes, nation of cowards if we want to bring out all the old Holder hits. Let's talk about DOJ's role not in the investigation into the past investigation of the president but let's talk about the new investigation into the president and DOJ's role. Because they have been kind of up to their eyeballs in it. As I understand it, the department's role in the Ukraine story is the Whistleblower initially goes to the CIA general counsel who goes to the White House and then to the Justice Department. They start looking at it in August. The Whistleblower gets more concerned, then files a formal complaint with the Director of National Intelligence Inspector General who refers it to DOJ as a possible criminal matter. DOJ then does a couple things. One, they look at this very narrow question of whether the president violated campaign finance law and decide there's not enough to open a full investigation and two, when the Inspector General for for the Intelligence Committee wants to send the complaint up to Congress, the Office of Legal Counsel writes an opinion saying that that it should basically stay in the executive branch. Since then, all of this gets out in dribs and drabs. The Attorney General is personally named in the Whistleblower complaint, seen a lot of noise out of that department the last week or two: He had nothing to do with this! He didn't know about it. He's angry about the president referring to him. What is going on at DOJ as this scandal which now has led to impeachment inquiry into the president is kind of engulfing the White House engulfing the State Department hitting on DOJ. What's the mood like there?

Evan Perez [00:30:23] What's amazing to me, the most amazing thing to me about this is that the Justice Department people thought that, you know the release of the transcript and they did a backgrounder and gave us some information, gave us a little bit of a timeline. They really thought this was going to tie this up in a neat bow and then everybody would just go away and say OK we're moving on.

Katie Benner [00:30:47] And we didn't yet have the timeline that they knew in mid-August.

Evan Perez [00:30:51] Right. So they adjusted the timeline. That was a big--it's always a big mistake when you release a timeline and then you "oops", forgot some parts of the timeline and you have to change it. That's always bad [LAUGHTER].

Matt Miller [00:31:00] Especially when those parts implicate you having knowledge about the scandal much much earlier.

Evan Perez [00:31:05] And so that's one of the things that to me that I just I'm still like surprised. We were all sitting there last week and thinking you guys really think this is going to go away. This doesn't go away because there are some very big questions. I mean you rephrase one of the big ones which was: Why did they limit themselves to just the narrow thing of campaign finance? And one of the things that they've said is, "Well this is what the ICIG told us to do. This is what the Inspector General was asking.

Katie Benner [00:31:27] Right, if we get a referral we investigate the referral. We don't go beyond that.

Evan Perez [00:31:31] And that's that's just crap. That's not true. I mean that's not Justice Department policy. If you read the criminal code it says that the Attorney General has the ability and the Justice Department or the FBI can look into whatever they want. Any other possible crimes, not just the one. So that's not, that's not true. So the question remains

you know why did you limit yourself to that? And look, I mean I think we all kind of know what the answer is. I mean, nobody really at the Justice Department or the FBI really wants to spend another couple of years investigating the president.

Katie Benner [00:32:09] Knowing what the outcome has to be which is you can't indict a president so--

Evan Perez [00:32:14] They're scarred.

Devlin Barret [00:32:14] I mean, I will express some sympathy for DOJ in this sense. None of these laws, none of these criminal statutes were written to ever contemplate the notion that a president of the country would suggest to the president of another country, "Hey can you investigate this other guy who may run against me?" Like there are things that the criminal laws can do. And there are things that criminalize probably can't do and this may just be one of them.

Katie Benner [00:32:40] We've seen through this whole process that it's very very difficult for the executive branch to investigate itself. That's not what it's set up for either explicitly or implicitly. The entire Executive Branch is created to protect the president if not because he's constantly getting information from all these cabinet heads. So when McGuire testified he we all felt bad for him because he said there could have been a privilege issue because it was the president. So I then have to actually deal with the White House that is just how things work. My only legal counsel is the Justice Department. So then I had to go to them what else was I supposed to do now? All of these are avenues by which information can get back to the president. So to have the Executive Branch investigate itself is an almost impossible thing anyway.

Matt Miller [00:33:22] And you see that with the trap DOJ set up where they said, "This shouldn't go to Congress because this is a matter for the Justice Department to investigate. Oh by the way, we're not going to investigate this. Oh by the way even if we did investigate him, well we can't indict the president any way." So there's this massive catch 22 where under the Executive Branch's view of at least this scandal and probably others, there's really no way for anyone to look at the president's actions.

Katie Benner [00:33:46] Which is why whistleblowers go to Congress. Usually.

Matt Miller [00:33:50] If they're allowed to.

Evan Perez [00:33:51] Right exactly. And again you know the issue here you know for the Justice Department is that you know they they've gone through this just the last couple of years and so and usually I mean to be fair, if you're going to look at a campaign finance issue, normally things like this would get kicked over to the FEC, to the election lawyers and they can do a civil thing. Right? So you know usually you don't bring a criminal case and something like this especially where you know someone is incoherently speaking and not really being clear about what they are asking to do. Right? So you can empathize with the people who are having to review this. And by the way, Justice Department says that Barr was minimally involved.

Matt Miller [00:34:37] That is the big question I have. So we have already established in this podcast that Barr is a micromanager [LAUGHTER] That he cares very much about about the big things at the department and he cares about the little things like--.

Evan Perez [00:34:46] Except this.

Matt Miller [00:34:47] --the decoration of the decoration of his library. Who's calling the shots on this investigation? We've seen the finger pointed at the head of the Criminal Division division--apparently made the call on his own about about whether to open a full investigation. The head of Office of Legal Legal Counsel wrote this opinion and Barr wasn't really involved.

Katie Benner [00:35:06] Well there is a world in which if you look at the timeline John Demers the head of the National Security Division goes to the White House to read this reconstructed transcript on August 15th. He sees his own boss's name in it. If you are Bill Barr and you are hopefully surrounded by smart people and John Demers comes back to the building and has to notify somebody in OIG somebody ODAG, that the smart people around the Attorney General would immediately move to remove the attorney general from the process if he's not going to recuse. I'm not saying that happened but if you are surrounded by people who are minimally competent, they will do everything they can to at least be able to plausibly say that Barr wasn't involved.

Devlin Barret [00:35:48] I think it's fair to say we don't actually know enough to make a judgment call as to what Barr knew and/or did in that time period. I also think it's fair, to Katie's point precisely, I don't think it's fair to question like, "Would the people in the fourth and the fifth floor of the Justice Department have been smart enough to be like, "You know what, boss, we're not really going to keep you up to speed on on some of this stuff. We're gonna do our jobs and we'll let you know if there is an issue that needs to come to you." Now, the bottom line is we don't actually know for certain what happened.

Evan Perez [00:36:18] We also we still don't even know when Barr finds out about this. Right? Because that's a question that the department has not been willing to answer. When exactly did he find out that his name is mentioned on this call? Is it when Demers comes back after the 15th of August, after this becomes an official formal complaint. We don't know.

Matt Miller [00:36:39] I'm very skeptical about, obviously don't know either, I'm very skeptical about the scenario that Devlin described where they just kind of keep it away from him. Because two things: First of all, if you really want to protect the Attorney General and look when you're in a like when you're on the job I used to have it you run the Office of Public Affairs your prime directive is protect the Attorney General if you're the AG's chief of staff-

Devlin Barret [00:37:00] Could you repeat that again, please?

Matt Miller [00:37:01] Protect the Attorney General.

Devlin Barret [00:37:02] OK. Thank you. I'll need that for later.

Matt Miller [00:37:05] Exactly. The way you protect the Attorney General in this instance is you tell him to recuse himself. And a smart Attorney General would say from the beginning, "I'm named in this complaint." The minute you find that out, I'm going to recuse--.

Katie Benner [00:37:16] Well, we're in a new world where recusing oneself means that the president thinks you're his enemy.

Matt Miller [00:37:21] I know. But here's the thing--

Devlin Barret [00:37:22] You trying to get the guy fired?

Matt Miller [00:37:24] Right. But you don't recuse yourself if you want to stay involved. And to me if you have a Deputy Attorney General like we have now, who has never worked at the Justice Department before, never been a prosecutor, doesn't know how the building works and he's working for an AG like Bill Barr who's a mike micromanager, my suspicion of how this goes is the head of the Criminal Division is doing his thing. The head of Office of Legal Counsel is doing his thing. They're reporting in to Rosen, who is the Deputy Attorney General. And Rosen is making sure Bill Barr knows what he's doing. And because Barr is not recused, if he ever doesn't like the direction things are going, if people start to look like, You know what. We're gonna make this decision at the White House doesn't like." Barr is there to step in and reverse it.

Evan Perez [00:38:07] Look I think I can understand your skepticism. Because of the way how we've seen things generally work in the last in last year or so, but I mean to Katie's point, Barr really was in a place where you know I mean we know the answer right which is that you know there's no way Barr and recuse himself and not suffer the consequences that--

Matt Miller [00:38:28] Jeff Sessions suffered.

Matt Miller [00:38:31] But Barr told the Senate I heard him say, "I don't care if the president gets mad at me and fires me." Maybe that wasn't wholly accurate. [LAUGHTER]

Evan Perez [00:38:40] Well things change.

Matt Miller [00:38:41] Evan you said something to me early in the days when I was at the Justice Department. You covered the Justice Department during the last two years of the Bush administration when the place basically imploded in scandal. There was a scandal around hiring and firing of people, of U.S. attorneys, of other career officials and you told me that for a long time the department, like any institution, its hard--you go around knocking on a lot of doors and people kind of stick together. Don't return your calls, they're not ready to talk. And when scandal starts to break open, that's when everyone starts to think more about their own reputation than the institutions and they start protecting themselves. With this Ukraine scandal touching so many people in the administration, are we at that point yet where the Justice Department is starting to break down and the Deputy Attorneys General office is pointing fingers at the AG, it's a usual thing that happens there--

Evan Perez [00:39:36] What's interesting about this one is so we've gone through cycles, right? Right at the beginning of the administration when Trump is really mad at Sessions and Sessions is taking all the incoming and there's some certainly some tension between the fourth and fifth floor. Rod Rosenstein has appointed a special counsel. Sessions is very surprised to learn this because he's at the White House when he finds this out [LAUGHTER] and gets a phone call and is told that you know Bob Muller is coming on board. So all of these things--.

Matt Miller [00:40:06] That was a particularly cruel thing to do. So if you're going to do it don't do it while he's in the Oval Office right.

Evan Perez [00:40:11] It's a very ruell thing. But Rod Rosenstein does this and it leads to a very long period of tension between the fourth and fifth floors of the department. And so one of the things that did happen was you know you did get a little a lot more whispers and a lot more people coming out. It doesn't seem to be happening right now. I mean, people right now everybody is cowering behind every piece of furniture it seems like.

Matt Miller [00:40:35] The wagons are still circled.

Evan Perez [00:40:36] Well I think, I don't know if it's the wagons necessarily. It's more that I think everybody just waiting for the next--

Katie Benner [00:40:43] Also it hasn't hit the building yet. Sate Department is under the gun. DOJ is still--it's interesting you know if Nancy Pelosi wants to do this impeachment in four to six weeks, if that's really her timeline, she has to be so singularly focused on the phone call. She has to be so singularly focused on the people who are coming to her who are from the State Department. She may not ever get a chance in four weeks to delve deeper into what Bill Barr has been up to or what Ed O'Callahan has been up to. And if she doesn't then DOJ will not feel the heat.

Evan Perez [00:41:13] By the way there's so much--I mean we know that one of the things that John Demers did when it comes from the White House after reviewing the transcript is he starts memorizing everything. And we know that one of the great things about the Justice Department is that everyone writes emails and memos and they memo everything.

Katie Benner [00:41:29] Woooo. Paper over it.

Evan Perez [00:41:30] So there is paper, there is a paper trail that I think we all would love to see because it is fascinating. It will be fascinating to see how they were handling those key, the 10, 12 days, the scramble that was going on behind the scenes there in the building. You know supposedly it's a quiet time in Washington. Right? They're all on vacation but all hell was breaking loose in that building. And we don't know to what extent, you know, anything was done wrong or right. I mean, we simply don't know.

Devlin Barret [00:42:02] Yeah I mean I think to Katie's point, I think State is still at the center of this hurricane and I think the time crunch may keep it at State. And to your question, to me in recent history the toughest internal time was what I think of as the Matt Whitacre era and how the fourth and the fifth floor of DOJ on some days that were just like, "Man, I'm not going to say it on a live mic." But that was a tense time internally with camps within the building and people you know they're doing the bureaucratic version of shiving each other. I don't see much of that yet, but I also wouldn't try to predict like so where we're going to go from here where we're gonna go from there? I do think it's there's more that that type of tension seems to exist more at state right now when people are are being forced to take sides right now because subpoenas are flying.

Matt Miller [00:42:54] Matt Whitaker is a great segway to my last question which is I'm not going where you think that we spent a lot of time talking about the political leadership of the department, basically this whole podcast. The department over the three years of this

administration I think has been more of a public political football than probably any time in its history and there are a lot of career officials there, investigators at the FBI, lawyers at the department who have seen the president attack their integrity. You know besmirch the department, run its reputation through the mud over and over again. How's morale for those people right now? Three years into the Trump presidency.

Evan Perez [00:43:38] People are exhausted. I mean that's the sense that people are tired of this. They're tired of being in the center of all of this stuff. Well I'll tell you this. There's a difference also though between--Devlin and I commiserate about this all the time--about the you know covering the department and covering the FBI. The FBI is a different animal and they are just, it's just decimated the morale. You know people are afraid of everything. I mean you know, if a cloud comes up over the building, they're immediately looking for incoming, right? They just don't know where this is going to go next. And you can tell in everything. They're not able to tell their story. You know the FBI might do something good but they're afraid to talk about it because you know they're going to get questions about other things, right? And so that's one of the things that I've never I never thought I'd see. You know during the Bush administration during the Obama administration. The presidents themselves were a little fearful of the FBI. They were like, "Well, we can't touch that thing because if we do the FBI is going to leak against us and we will we will suffer the consequences." I've never seen, I never thought I'd see the day that you know the FBI is essentially been cowering and been brought to heel and it's been done by this president. This president has basically just made sure that you know they are afraid of doing anything and saying anything and you could see it in just their behavior in handling this thing.

Devlin Barret [00:45:02] So I think everything Evan is saying is right, .but I think that reflects that the dynamic at headquarters and in the Justice Department. So FBI headquarters and main DOJ I think that is absolutely true. I think one of the ways that this has affected the institutions that I don't think we fully understand the implications of is that I don't think a lot of the stuff actually matters to the field offices or the U.S. attorney's offices that are doing the work. You know you don't pick up much in terms of folks out in different states you know any state or around the country saying you know like man I went to see a witness and he just harangued me for 20 minutes about the Carter Page FISA. Anecdotaly speaking, you don't hear much of that and I do wonder like is one of the sort the weird side effects of this process is that headquarters and the field are just going to be further apart for a while and that the fields are just going to do their own thing and try to just not interact with it with headquarters at all because if you think back to sort of the history of those institutions, you know 9/11 was a big impetus for headquarters taking more and more control over everything the fields do. And I think now because of all this political stuff you're seeing the fields actually getting a little more breathing room and a little more hands off because headquarters just has too many problems to deal with.

Matt Miller [00:46:22] Kate do you have any final thoughts?

Katie Benner [00:46:25] No sounds good.

Matt Miller [00:46:26] Great. I think that's a great place to close. Thank you Katie, Evan, and Devlin for joining us. And thank you listeners for tuning in to Talking Feds. If you like what you've heard, please tell a friend to subscribe to us on Apple podcast or wherever they get their podcasts and please take a moment to rate and review this podcast. You can follow us on Twitter at Talking Feds pod to find out about future episodes and other Feds related content. And you can also check us out on the Web at Talking Feds dot com

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Jennie Josephson [00:47:09] Thanks to Matt Miller for guest hosting this illuminating episode Talking Feds is produced by me Jennie Josephson, Dave Moldovan, Anthony Lemos, and Rebecca Lopatin. David Lieberman is our contributing writer. Thanks to Courtney Columbus for recording this episode and Allison Wilson for editing. And thanks to the incredible Philip Glass who graciously lets us use his music Talking Feds is a production of Dalito, LLC. Harry will be back next week...Or sooner.