Tanya Domi: Hi, this is Tanya Domi. Welcome to the Thought Project recorded at The Graduate Center of The City University of New York, fostering groundbreaking research and scholarship in the arts, social sciences and sciences. In this space we talk with faculty and doctoral students about the big thinking and big ideas, generating, cutting-edge research, informing New Yorkers and the world.

This week's guest is Heath Brown, an associate professor of public policy at The Graduate Center and John Jay College of Criminal Justice at CUNY. He obtained his PhD in public administration and public policy at the George Washington University and a master's degree at the Elliott School of International Affairs, also at GW. He is author of four books, three of which include Immigrants and Electoral Politics: Nonprofit Organizing in a Time of Demographic Change, Pay-to-Play Politics: How Money Defines American Democracy, and the Tea Party Divided: the Hidden Diversity of a Maturing Movement. Welcome back to the Thought Project, Heath Brown.

Heath Brown: It's great to be here.

Tanya Domi: So we are coming together after a week of a daily events happening since the Mueller Report was delivered to the attorney general last Friday afternoon. 48 hours later, Barr, the attorney general, issued a four-page letter to Congress indicating that Mr. Mueller had not found that Trump campaign had taken part in a conspiracy with Russia to undermine the 2016 election. Barr also cleared the president of the United States of obstruction, matter in which Mueller left undetermined.

This is now a matter of intense debate and assertions have been made by the Obama former acting solicitor general Neal Katyal, who actually authored those regulations, and has since stated that General Barr has overstepped his authority. What are we dealing with here?

Heath Brown: Oh, we're dealing with a lot. The first thing is how fast this memo came. It takes me months to write a four-page memo. It takes me even longer to get it out and reviewed and edited. The attorney general, we suspect, had some of this in mind already. He may have only received the Mueller full report last Friday, but you have the feeling, based on the quick turnaround, that much of the the machinations and some of the planning had already started. The final outcome of this, which according to the president, exonerates him fully for doing anything is one side of this. It seems like a great exaggeration to say that this was an exoneration because the actual words used in the memo don't say that at all.

They seem to suggest that the claims of a conspiracy with Russia, with foreign agents and then candidate Donald Trump and his senior leadership was not the case. That's a legal argument that based on the evidence they collected over those past two years, on a pretty narrow legal question. And so we're now left to consider the answer to that narrow legal question, but in addition, all of the
other questions that remained at the Mueller investigation didn't approach really at all.

Tanya Domi: Yes. And we have this overall demand by Democrats to release the full report to Congress and the public. And just today, the New York Times has reported that the report is more than 300 pages long, according to the attorney general, with some now questioning that a four-page summary letter was really insufficient as to what he may have even left out. If you're talking about over 300 pages.

Heath Brown: Yeah, if this is just 300 pages, I would be shocked. If you ever read a law review article, they are not 300 pages, but somewhat close to that. The length of this is, I think, a indication of the thoroughness of the Mueller team interviewing hundreds of people and looking at, I'm not sure how many documents, but a massive amount of work went into this. Whether we ultimately see all or some or very little of this report, I think is going to play out as a political rather than a legal question. There is polling to suggest that most Americans, Democrats and Republicans, believe that they have a right to see the report with the redactions that are needed to to protect the sensitive material.

I suspect that that we will, and I suspect it's not going to be that long before we do get the report. I think there are political reasons why the attorney general ultimately doesn't want this to drag out. I think there's also clear reasons why Democrats don't want this to drag out. So I would suspect that within the next couple of weeks, we will see the vast majority of the report, 300 pages, 400 pages, who knows how long. It's going to be a long read and it's going to tell us a lot about the way in which the Mueller team looked at the evidence, some of the evidence, that they gathered and why they reached the decision that they reached.

Tanya Domi: Yeah, I think that, in democracy 101 principles, I just want to share this with our audience is like, given that I've worked on democracy development around the world, one of the main principles it's emphasized is full transparency, full transparency. And there's no way the American public will ever know and have full confidence in the government without this report being put into, not only the congressional record, but shared.

And as a matter of fact, someone made a point today on Twitter that the Kenneth Starr Report on Bill Clinton is actually available on Amazon. You can buy it. I think until that report is made public, it will actually raise questions about the motives of the attorney general himself, and more broadly the administration and what it did or did not do.

Heath Brown: Right, and I think one of the things that we've learned over the period of time that this has happened is that transparency is not the main principle that the Trump administration makes policy and implements policy and does their work as the head of the executive branch. There are countless examples where the practices of transparency that were such a norm of previous administrations are
simply not a part of the way of working of this administration. And I think that's part of the frustration a lot of people have with the Mueller report.

And ultimately what's what's happened is even though the final decision appears to be that there was no conspiracy that was determined, all of the obfuscation, the sort of consistent lack of transparency at so many different stages of this, leaves many to believe, why? Why be so non-transparent? Why obfuscate if there was no conspiracy that happened, if there was no collusion? Why all of the changing of statements? Why all of the backtracking?

Why all the retelling of story? Why all the apparent obstruction that appears to have gone on? Why if there wasn't some something going on? So I think that's the question that remains in most Americans, Democrats and Republicans. Why hasn't this been more transparent?

Tanya Domi: Well, I mean, certainly a lot of people are going to jail for lying about their meetings with Russians, a lot of people.

Heath Brown: Absolutely, and this is why the report that came out of the Mueller team, and it's the memo that we have now read about it, really only covers one question. There were countless other questions that have been answered over the last two years, and those involve whether some of the people who were running the campaign, including Paul Manafort and Rick Gates, were committing crimes, and it appears as though they had committed crimes and continued to commit crimes as the campaign went.

That only covers the legal issues. There are even greater ethical questions that those working in the campaign have never really answered for. It's those ethical questions that I think raise so many political questions moving ahead. Can we have campaigns? Can we transition between administrations with such lax ethical behavior on the part of some of the most significant people in the country? That we haven't really had an answer for.

Tanya Domi: Yes. Well, I think that one Twitter, a really well-known lawyer, Seth Abramson, who's on Twitter, just tweeted out I think 48 hours ago, that there are 20 federal and state jurisdictions where the Trump businesses or the Trump campaign is involved in investigations, Grand Juries and trials. 20.

Heath Brown: Absolutely. I mean, when the final report not authored by Robert Mueller, but offered by someone else actually writes the history of this administration, that's going to make up a large portion of it. The legacy of the Trump campaign and the Trump administration is going to be as much those cases as it will be this four-page memo. When the history is written, someone is going to have to answer for the fact that that all of these campaign officials, and not just campaign officials, also officials that were appointed once the president took office, have so often skirted the rules, raising so many questions of conflict of interest, raising so many questions about influence peddling.
If nothing else, this administration has proven that we have a system of government with a need for a lot of reform on those very questions. Does money buy influence? The answer to that question for the Trump administration has been quite clearly yes. Has it done so always in a legal way? Probably not. And that's because the rules that we have set up allow for that to happen.

Tanya Domi: Yes, and I think that probably the most egregious to date finding that's been offered, rendered, has been in the southern district of New York with regard to Mr. Trump's former private attorney, Michael Cohen, who pled guilty to participating in essence and denying information to the public by paying off two women on behalf of Mr. Trump, who allegedly had affairs with these two women. And this is where Mr. Trump could have his greatest exposure, legal exposure, because that issue has not been completely addressed.

Heath Brown: I think that's right. This is also something that took place before the president took office. It seems that it is highly unlikely that the president will be charged with anything prior to his leaving office. What happens in two years from now or six years from now? We really don't know. But these are cases that will not simply end because the current attorney general issued a four page memo exonerating the president of a certain narrow set of things.

Tanya Domi: There are dozens, as you allude to, dozens of unanswered legal questions that remain and I'm sure that if people keep looking, there will be lots more. The president has not had a track record of running a clean business that has always adhered to the letter of the law. I think there are lots of investigations to come.

Heath Brown: Yeah, so I think I want to make one more point about the Mueller report before we talk about general politics, but that is ... there's been contrasts pointed out between the standards for a crime and the standards for what you would call high crimes and misdemeanors under the auspices of the office of the president. So it appears that Mr. Mueller making the decisions that he made was striving for a clear indication of a crime that could withstand jury review and could deliver a conviction.

And he was unable to do that. And it seems like that comes also from a counter intelligence investigation by the FBI, which is different from a criminal investigation. They have different standards about what looks bad, what could be bad, and what is actually a crime.

I think a lot of people have been talking about this, particularly on television. They've been talking about the difference between the standards for conviction of a crime versus what is discovered through a counter intelligence investigation. And secondly, a lot of people are seeing pundits and people who are lawyers that comment on TV that there's more than enough information available right now that could be used in impeachment if there was political will to do so.
Heath Brown: Yeah, I mean, this is one of those times, and it happens just about every day, that I'm glad I didn't go to law school because I don't have to comment on this because these are deeply legal questions. But the end of your question, I think is the one that we're at right now, which is ultimately the process of impeachment is a political process involving a very different and almost undefined process to weigh evidence. This is not the process one would see in a typical court. The standards of evidence, the burden of proof, is not what would be typically all upheld in a federal courthouse.

For that reason, there are huge risks and huge uncertainties connected to the possibility of impeachment. I think it's one of the reasons why the House Democrats and speaker Pelosi have had such ... so little interest in even having a conversation about that because I think their strong impression is that unless the case is so convincing that not just in a legal sense, but in a political sense, all sides of the political spectrum would come to agreement. Unless that's the case, it's just not something ... a road they're willing to go down. I think it's because the processes are so very different that a speaker Pelosi has expressed so little interest in it.

Tanya Domi: Yes. I mean, and some people are now saying, because she made this announcement, really, she said she called it news. Listen up. A lot of people are saying now, "Well, she was really pressing it. She was really pressing it." It seems though that she's definitely given cover to her chairs and there are six committees in the House that are investigating the administration, but is this not going to become a balancing act for the Democrats as we get closer and closer to the beginning of the primary's next year?

Heath Brown: Well, I guess it depends on which balancing act you're talking about. I assume that all of the relevant congressional committees are going to do the work of investigating the issues under their jurisdiction.

Tanya Domi: And carrying out oversight as stipulated to by the US constitution.

Heath Brown: This is what Congress does. Whether there is pressure placed on those committee chairs by candidates running for office, seems to me at this point, something that is inevitable. How that pressure comes down is what is unclear. If the main thrust of the primary debates and primary conversation is about whether or not impeachment should be the direction forward, I think that these committee chairs will be put in a really tough position.

I suspect that's not going to be the case. I don't suspect that any of the presidential candidates, that is the Democratic presidential candidates, have a lot to gain from that conversation and from that debate. I don't see how that plays out for any individual candidate. And I also don't see how that's a particular win for the Democrats.
My gut tells me that they're going to steer far from that and focus on the much more mundane potential crimes that have been committed, both of the ethical, but also of the legal variety by members of the administration, cabinet officials whose behaviors have, if they haven't crossed the line, certainly raised some of the suspicions about corruption.

I suspect that that's going to be the direction that most of them take because that fits much more into the kind of conventional jurisdiction that Congress maintained. Whether or not an interior agency has violated ethical rules or others is going to make up much more of their agenda than an ongoing conversation about whether impeachment is a good or bad idea.

Tanya Domi: No, I agree with that. I'm suggesting also that the Democrats in the house have about 15-20 seats that were picked up by moderate Democrats. They won in Trump districts and they have to have something to deliver to their constituencies as they approach reelection. I think, I'm not suggesting that they're not going to continue to investigate and carry out their oversight, but they have to be conscious, it would seem, about wanting to deliver something. "Look, this is what we did. This is what we did for our constituents."

And also the reporting indicates that most of the candidates running in the Democratic Party for president, and there's a lot of them, most of them are not talking about the Mueller investigation. This is not something that they're focusing on. They're talking about healthcare, they're talking about employment, they're talking about the increase in good wages for workers. They're talking about the bread and butter issues that confront Americans every day.

Heath Brown: Well, yeah, I think this is right. I mean, 40% of the country doesn't even know who Robert Mueller is. If 40% of the country doesn't know who Robert Mueller is, the chance that they are deeply, deeply connected to the obscure way in which conspiracy does or does not happen, the way in which collusion may or may not have happened, I think seems like an unlikely prospect. Now, as you move from the primaries to the general election, I think this is likely to change.

Tanya Domi: It's going to shift back.

Heath Brown: Yeah, and I think that-

Tanya Domi: A bit.

Heath Brown: When this becomes a partisan debate between the president and the eventual Democratic candidate, that's going to change a lot. And at that point, all of this will come rushing back. But I think until you get that point, and we're still a long ways away from that, until you get to that point, I don't think that the field of Democrats has a whole lot to gain for debating each other about who is the most interested in prosecuting the president for something that the attorney
general has essentially forgiven him for. And so that doesn't seem like the path that any of these candidates have a lot to gain from. That is the major candidates, the candidates who have a legitimate chance to actually get the nomination.

Tanya Domi: Sure. And one of the things that happened in the past few days was that the White House press office sent around a memo, I don't know if you heard about this, Heath, but they've sent around a memo to all the bookers for television and said, "These people accused the president of being a trader and you should not put them on your program." And among those was Richard Blumenthal, US senator from Connecticut. Another one was Adam Schiff, who's the house intelligence committee chair, among others. And it's really ... that's quite a contrast to the Nixon list of enemies, which was a secret, locked up in a safe in the White House. And in today's immediate age, the White House sent out the list of the enemies. What do you make of that?

Heath Brown: I guess I take them as seriously as sometimes they appear to take themselves. I think that this kind of game playing is really what's going on in the White House press office, and they recognize that these are people who are clearly opposed to their White House, opposed their agenda, and they have no expectation that anything's going to be done with this memo other than circulating it through social media and having outlets talk about it and it's a conversation I think they would be more than glad to have.

I think they would love to have a debate about whether or not the statements made over the last 18 months from a handful of member of Congress look good or bad now, given the evidence that we have now at least partially seen. I think that's a debate that they would like to have. And for that reason, they don't have an expectation that NBC or CBS or any of the other networks is going to change their booking. And also, I think that they would be perfectly comfortable with claiming that they were taken seriously maybe when they weren't taken seriously.

And if one of these people is not put on the air, they probably will take some credit for that. I don't suspect that this is anything that they are taking all that seriously and I think they probably have enjoyed the press that they've already gotten out of simply sending out that memo. That's why they did it publicly rather than did it through the typical channels that you would, which is in a secretive way.

Tanya Domi: This is a continuation of Mr. Trump's reality TV, I guess, right?

Heath Brown: I think that that's right.

Tanya Domi: Interesting. So there was a couple of days where the word exoneration was being thrown around. The president himself said he was completely exonerated, which is not true. Even Barr alludes to the fact that Mueller did not exonerate
him with regard to obstruction. So you have this victory ... more or less you have a political victory for the president. It gives him ... There is no alleged collusion, which is actually conspiracy legally. I just want to make that point. He pivots off of that victory into going after the Obamacare, and the Justice Department has announced that they will no longer defend the law in court.

And just for our audience to know, it's a standard procedure that successive governments defend laws, even though they may disagree with them. That is the practice of the Department of Justice. So not only are they not going to defend it, but there actually ... there is a case making its way to an appeals court and we could have a decision fairly soon about whether or not this appeals court affirms the Supreme Court decision of just a few years ago or not. People who have preexisting conditions are living on the edge of tremendous fear that they could lose their healthcare.

Heath Brown: That's that's absolutely right. I think that the administration has viewed healthcare in the same partisan polarized lens that they are viewing just about everything. The practices of, and precedent of previous administrations, is not the basis on which many of their decisions are made. Our government is large and complex and there are any number of parts of government that are continuing the practices of previous administrations, but on highly salient issues like healthcare right now.

There are lots of ways that it makes complete sense for them to depart from precedent and to make the decisions about not defending a federal law in the way that previous administrations would have. I think that that's a very risky game to play, not just for the reasons that you raised, but also for the longer term political consequences when it actually would play out, who would lose coverage and where those people would lose coverage.

And for how uninterested, I think, your average American is in the Mueller report and Robert Mueller himself, you have an equally and inversely interest in healthcare. I think you mess with healthcare at your own risk and it's a risk this administration is willing to take. It's one that I don't think most people would advise.

Tanya Domi: Yes. Well, apparently the vice-president certainly didn't advise it according to reporting today that he strongly advised that they not push for striking the ACA without a replacement. And it's very clear the Republicans have not had a replacement of the ACA and there's probably no intention of creating one.

Heath Brown: Yeah. I think the vice-president is a smart politician and knows that with a strong economy and an incumbent president, you don't need much more to win reelection than that. Decades of social science research on what hold it predicts presidential outcome suggests that the state of the economy and incumbency are two of the biggest predictors of winning-
Tanya Domi: Reelection.

Heath Brown: Reelection, and I think the vice-president understands that there's no evidence that taking on people's health care is a basis on which to win a reelection. And I think he recognizes that they could sail into reelection on the basis of a exoneration, a strong economy, and the power of incumbency. And his campaign managers don't need much more than that to win reelection. Everything else is a potential risk for the president. Now, the president seems willing to take those risks and I think he's probably alone in that within the advising and advice that he's getting.

Tanya Domi: Do you think, back to the Mueller Report just for one ticket, I mean, these political risks, he really rolls the dice. I mean, the Democrats took the house back on healthcare. They took the house back with the biggest win since Watergate, since 74, over 9 million ... I don't know how many million votes were cast, but it was the largest majority of people to participate in a midterm election ever. It's just incredible. Will the Democrats issue subpoenas for the Mueller Report?

Heath Brown: I don't know that, that's a legal question that I don't know.

Tanya Domi: I see, okay. What about from a political-

Heath Brown: I don't think they're going to have to. I mean, that would suggest that they wouldn't get it. I think they're going to-

Tanya Domi: You think it'll be issued.

Heath Brown: Oh, I think almost-

Tanya Domi: Certainly?

Heath Brown: Yeah. I think that the questions about what's redacted and what's not included are going to be the basis of the debate. But I don't think you issue subpoenas for pages, 100 through 200, when you get another couple of hundred already delivered. I think that they're going to get exactly what they're asking for, which is the report.

They're not going to get some of the information included that they want included and they're going to raise some hay over that. But the need to subpoena a report that they're very, very likely to get, I think will never actually confront that because it just is going to already be in their hands.

Tanya Domi: Okay, Heath Brown. You said it. We will have you back when 2020 really heats up. I mean, we're getting closer and we can talk about who actually has a
chance in the democratic side of the house. I want to thank you for being with us today.

Heath Brown: Tanya, it’s a real pleasure. I hope I get to come back before we get to 2020, but if we have to wait until then, I can wait.

Tanya Domi: No, we can do it in the fall.

Heath Brown: That sounds great.

Tanya Domi: We can come back. That sounds great. Thank you. Thanks for tuning into the Thought Project and thanks to today’s guest, Professor Heath Brown.

The Thought Project is brought to you with production, engineering and technical assistance by Sarah Fishman. I'm Tanya Domi, tune in next week.