

## How Barr's Quest to Find Flaws in the Russia Inquiry Unraveled

The review by John Durham at one point veered into a criminal investigation related to Donald Trump himself, even as it failed to find wrongdoing in the origins of the Russia inquiry.



By Charlie Savage, Adam Goldman and Katie Benner

Jan. 26, 2023

WASHINGTON — It became a regular litany of grievances from President Donald J. Trump and his supporters: The investigation into his 2016 campaign's ties to Russia was a witch hunt, they maintained, that had been opened without any solid basis, went on too long and found no proof of collusion.

Egged on by Mr. Trump, Attorney General William P. Barr set out in 2019 to dig into their shared theory that the Russia investigation likely stemmed from a conspiracy by intelligence or law enforcement agencies. To lead the inquiry, Mr. Barr turned to a hard-nosed prosecutor named John H. Durham, and later granted him special counsel status to carry on after Mr. Trump left office.

But after almost four years — far longer than the Russia investigation itself — Mr. Durham's work is coming to an end without uncovering anything like the deep state plot alleged by Mr. Trump and suspected by Mr. Barr.

Moreover, a monthslong review by The New York Times found that the main thrust of the Durham inquiry was marked by some of the very same flaws — including a strained justification for opening it and its role in fueling partisan conspiracy theories that would never be charged in court — that Trump allies claim characterized the Russia investigation.

Interviews by The Times with more than a dozen current and former officials have revealed an array of previously unreported episodes that show how the Durham inquiry became roiled by internal dissent and ethical disputes as it went unsuccessfully down one path after another even as Mr. Trump and Mr. Barr promoted a misleading narrative of its progress.

- Mr. Barr and Mr. Durham never disclosed that their inquiry expanded in the fall of 2019, based on a tip from Italian officials, to include a criminal investigation into suspicious financial dealings related to Mr. Trump. The specifics of the tip and how they handled the investigation remain unclear, but Mr. Durham brought no charges over it.
- Mr. Durham used Russian intelligence memos — suspected by other U.S. officials of containing disinformation — to gain access to emails of an aide to George Soros, the financier and philanthropist who is a favorite target of the American right and Russian state media. Mr. Durham used grand jury powers to keep pursuing the emails even after a judge twice rejected his request for access to them. The emails yielded no evidence that Mr. Durham has cited in any case he pursued.
- There were deeper internal fractures on the Durham team than previously known. The publicly unexplained resignation in 2020 of his No. 2 and longtime aide, Nora R. Dannehy, was the culmination of a series of disputes between them over prosecutorial ethics. A year later, two more prosecutors strongly objected to plans to indict a lawyer with ties to Hillary Clinton's 2016 campaign based on evidence they warned was too flimsy, and one left the team in protest of Mr. Durham's decision to proceed anyway. (A jury swiftly acquitted the lawyer.)

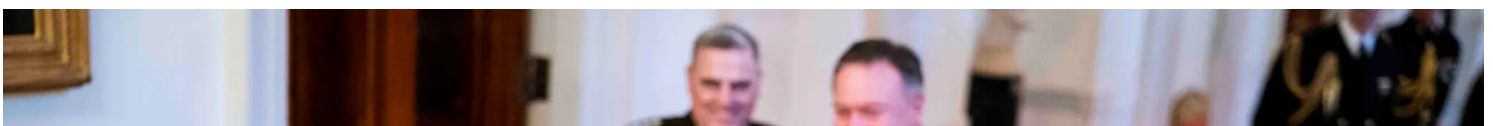
Now, as Mr. Durham works on a final report, the interviews by The Times provide new details of how he and Mr. Barr sought to recast the scrutiny of the 2016 Trump campaign's myriad if murky links to Russia as unjustified and itself a crime.

Mr. Barr, Mr. Durham and Ms. Dannehy declined to comment. The current and former officials who discussed the investigation all spoke on the condition of anonymity because of the legal, political and intelligence sensitivities surrounding the topic.

A year into the Durham inquiry, Mr. Barr declared that the attempt “to get to the bottom of what happened” in 2016 “cannot be, and it will not be, a tit-for-tat exercise. We are not going to lower the standards just to achieve a result.”

But Robert Luskin, a criminal defense lawyer and former Justice Department prosecutor who represented two witnesses Mr. Durham interviewed, said that he had a hard time squaring Mr. Durham's prior reputation as an independent-minded straight shooter with his end-of-career conduct as Mr. Barr's special counsel.

“This stuff has my head spinning,” Mr. Luskin said. “When did these guys drink the Kool-Aid, and who served it to them?”





Attorney General William P. Barr took office in 2019 with suspicions about the origins of the Russia investigation. Doug Mills/The New York Times

## An Odd Couple

A month after Mr. Barr was confirmed as attorney general in February 2019, the special counsel Robert S. Mueller III ended the Russia investigation and turned in his report without charging any Trump associates with engaging in a criminal conspiracy with Moscow over its covert operation to help Mr. Trump win the 2016 election.

Mr. Trump would repeatedly portray the Mueller report as having found “no collusion with Russia.” The reality was more complex. In fact, the report detailed “numerous links between the Russian government and the Trump campaign,” and it established both how Moscow had worked to help Mr. Trump win and how his campaign had expected to benefit from the foreign interference.

That spring, Mr. Barr assigned Mr. Durham to scour the origins of the Russia investigation for wrongdoing, telling Fox News that he wanted to know if “officials abused their power and put their thumb on the scale” in deciding to pursue the investigation. “A lot of the answers have been inadequate, and some of the explanations I’ve gotten don’t hang together,” he added.

While attorneys general overseeing politically sensitive inquiries tend to keep their distance from the investigators, Mr. Durham visited Mr. Barr in his office for at times weekly updates and consultations about his day-to-day work. They also sometimes dined and sipped Scotch together, people familiar with their work said.

In some ways, they were an odd match. Taciturn and media-averse, the goateed Mr. Durham had spent more than three decades as a prosecutor before Mr. Trump appointed him the U.S. attorney for Connecticut. Administrations of both parties had assigned him to investigate potential official wrongdoing, like allegations of corrupt ties between mafia informants and F.B.I. agents, and the C.I.A.’s torture of terrorism detainees and destruction of evidence.

By contrast, the vocal and domineering Mr. Barr has never prosecuted a case and is known for using his law enforcement platform to opine on culture-war issues and politics. He had effectively auditioned to be Mr. Trump’s attorney general by asserting to a New York Times reporter that there was more basis to investigate Mrs. Clinton than Mr. Trump’s “so-called ‘collusion’” with Russia, and by writing a memo suggesting a way to shield Mr. Trump from scrutiny for obstruction of justice.

But the two shared a worldview: They are both Catholic conservatives and Republicans, born two months apart in 1950. As a career federal prosecutor, Mr. Durham already revered the office of the attorney general, people who know him say. And as he was drawn into Mr. Barr’s personal orbit, Mr. Durham came to embrace that particular attorney general’s intense feelings about the Russia investigation.





President Donald J. Trump openly suggested that Mr. Durham should charge his adversaries with crimes. Doug Mills/The New York Times

## ‘The Thinnest of Suspicions’

At the time Mr. Barr was confirmed, he told aides that he already suspected that intelligence abuses played a role in igniting the Russia investigation — and that unearthing any wrongdoing would be a priority.

In May 2019, soon after giving Mr. Durham his assignment, Mr. Barr summoned the head of the National Security Agency, Paul M. Nakasone, to his office. In front of several aides, Mr. Barr demanded that the N.S.A. cooperate with the Durham inquiry.

Referring to the C.I.A. and British spies, Mr. Barr also said he suspected that the N.S.A.’s “friends” had helped instigate the Russia investigation by targeting the Trump campaign, aides briefed on the meeting said. And repeating a sexual vulgarity, he warned that if the N.S.A. wronged him by not doing all it could to help Mr. Durham, Mr. Barr would do the same to the agency.

Mr. Barr’s insistence about what he had surmised bewildered intelligence officials. But Mr. Durham spent his first months looking for any evidence that the origin of the Russia investigation involved an intelligence operation targeting the Trump campaign.

Mr. Durham’s team spent long hours combing the C.I.A.’s files but found no way to support the allegation. Mr. Barr and Mr. Durham traveled abroad together to press British and Italian officials to reveal everything their agencies had gleaned about the Trump campaign and relayed to the United States, but both allied governments denied they had done any such thing. Top British intelligence officials expressed indignation to their U.S. counterparts about the accusation, three former U.S. officials said.

Mr. Durham and Mr. Barr had not yet given up when a new problem arose: In early December, the Justice Department’s independent inspector general, Michael E. Horowitz, completed his own report on the origins of the Russia investigation.

The inspector general revealed errors and omissions in wiretap applications targeting a former Trump campaign adviser and determined that an F.B.I. lawyer had doctored an email in a way that kept one of those problems from coming to light. (Mr. Durham's team later negotiated a guilty plea by that lawyer.)

But the broader findings contradicted Mr. Trump's accusations and the rationale for Mr. Durham's inquiry. Mr. Horowitz found no evidence that F.B.I. actions were politically motivated. And he concluded that the investigation's basis — an Australian diplomat's tip that a Trump campaign adviser had seemed to disclose advance knowledge that Russia would release hacked Democratic emails — had been sufficient to lawfully open it.



Michael Horowitz, the Justice Department's inspector general, found no evidence that the F.B.I.'s actions in opening the investigation into the Trump campaign's ties to Russia were politically motivated. Anna Moneymaker/The New York Times

The week before Mr. Horowitz released the report, he and aides came to Mr. Durham's offices — nondescript suites on two floors of a building in northeast Washington — to go over it.

Mr. Durham lobbied Mr. Horowitz to drop his finding that the diplomat's tip had been sufficient for the F.B.I. to open its "full" counterintelligence investigation, arguing that it was enough at most for a "preliminary" inquiry, according to officials. But Mr. Horowitz did not change his mind.

That weekend, Mr. Barr and Mr. Durham decided to weigh in publicly to shape the narrative on their terms.

Minutes before the inspector general's report went online, Mr. Barr issued a statement contradicting Mr. Horowitz's major finding, declaring that the F.B.I. opened the investigation "on the thinnest of suspicions that, in my view, were insufficient." He would later tell Fox News that the investigation began "without any basis," as if the diplomat's tip never happened.

Mr. Trump also weighed in, telling reporters that the details of the inspector general's report were "far worse than anything I would have even imagined," adding: "I look forward to the Durham report, which is coming out in the not-too-distant future. It's got its own information, which is this information plus, plus, plus."

And the Justice Department sent reporters a statement from Mr. Durham that clashed with both Justice Department principles about not discussing ongoing investigations and his personal reputation as particularly tight-lipped. He said he disagreed with Mr. Horowitz's conclusions about the Russia investigation's origins, citing his own access to more information and "evidence collected to date."



But as Mr. Durham's inquiry proceeded, he never presented any evidence contradicting Mr. Horowitz's factual findings about the basis on which F.B.I. officials opened the investigation.

By summer 2020, it was clear that the hunt for evidence supporting Mr. Barr's hunch about intelligence abuses had failed. But he waited until after the 2020 election to publicly concede that there had turned out to be no sign of "foreign government activity" and that the C.I.A. had "stayed in its lane" after all.



Mr. Barr later wrote that his relationship with Mr. Trump eroded because his "failure to deliver scalps in time for the election." Anna Moneymaker for The New York Times

## An Awkward Tip

On one of Mr. Barr and Mr. Durham's trips to Europe, according to people familiar with the matter, Italian officials — while denying any role in setting off the Russia investigation — unexpectedly offered a potentially explosive tip linking Mr. Trump to certain suspected financial crimes.

Mr. Barr and Mr. Durham decided that the tip was too serious and credible to ignore. But rather than assign it to another prosecutor, Mr. Barr had Mr. Durham investigate the matter himself — giving him criminal prosecution powers for the first time — even though the possible wrongdoing by Mr. Trump did not fall squarely within Mr. Durham's assignment to scrutinize the origins of the Russia inquiry, the people said.

Mr. Durham never filed charges, and it remains unclear what level of an investigation it was, what steps he took, what he learned and whether anyone at the White House ever found out. The extraordinary fact that Mr. Durham opened a criminal investigation that included scrutinizing Mr. Trump has remained secret.

But in October 2019, a garbled echo became public. The Times reported that Mr. Durham's administrative review of the Russia inquiry had evolved to include a criminal investigation, while saying it was not clear what the suspected crime was. Citing their own sources, many other news outlets confirmed the development.

The news reports, however, were all framed around the erroneous assumption that the criminal investigation must mean Mr. Durham had found evidence of potential crimes by officials involved in the Russia inquiry. Mr. Barr, who weighed in publicly about the Durham inquiry at regular intervals in ways that advanced a pro-Trump narrative, chose in this instance not to clarify what was really happening.

By the spring and summer of 2020, with Mr. Trump's re-election campaign in full swing, the Durham investigation's "failure to deliver scalps in time for the election" began to erode Mr. Barr's relationship with Mr. Trump, Mr. Barr wrote in his memoir.

Mr. Trump was stoking a belief among his supporters that Mr. Durham might charge former President Barack Obama and former Vice President Joseph R. Biden Jr. That proved too much for Mr. Barr, who in May 2020 clarified that "our concern of potential criminality is focused on others."

Even so, in August, Mr. Trump lashed out in a Fox interview, asserting that Mr. Obama and Mr. Biden, along with top F.B.I. and intelligence officials, had been caught in "the single biggest political crime in the history of our country" and the only thing stopping charges would be if Mr. Barr and Mr. Durham wanted to be "politically correct."

Against that backdrop, Mr. Barr and Mr. Durham did not shut down their inquiry when the search for intelligence abuses hit a dead end. With the inspector general's inquiry complete, they turned to a new rationale: a hunt for a basis to accuse the Clinton campaign of conspiring to defraud the government by manufacturing the suspicions that the Trump campaign had colluded with Russia, along with scrutinizing what the F.B.I. and intelligence officials knew about the Clinton campaign's actions.

Mr. Durham also developed an indirect method to impute political bias to law enforcement officials: comparing the Justice Department's aggressive response to suspicions of links between Mr. Trump and Russia with its more cautious and skeptical reaction to various Clinton-related suspicions.

He examined an investigation into the Clinton Foundation's finances in which the F.B.I.'s repeated requests for a subpoena were denied. He also scrutinized how the F.B.I. gave Mrs. Clinton a "defensive briefing" about suspicions that a foreign government might be trying to influence her campaign through donations, but did not inform Mr. Trump about suspicions that Russia might be conspiring with people associated with his campaign.



The Durham inquiry looked for evidence that Hillary Clinton's 2016 presidential campaign had conspired to frame Donald J. Trump. Doug Mills/The New York Times

## Dubious Intelligence

During the Russia investigation, the F.B.I. used claims from what turned out to be a dubious source, the Steele dossier — opposition research indirectly funded by the Clinton campaign — in its botched applications to wiretap a former Trump campaign aide.



The Durham investigation did something with parallels to that incident.

In Mr. Durham's case, the dubious sources were memos, whose credibility the intelligence community doubted, written by Russian intelligence analysts and discussing purported conversations involving American victims of Russian hacking, according to people familiar with the matter.

The memos were part of a trove provided to the C.I.A. by a Dutch spy agency, which had infiltrated the servers of its Russian counterpart. The memos were said to make demonstrably inconsistent, inaccurate or exaggerated claims, and some U.S. analysts believed Russia may have deliberately seeded them with disinformation.

Mr. Durham wanted to use the memos, which included descriptions of Americans discussing a purported plan by Mrs. Clinton to attack Mr. Trump by linking him to Russia's hacking and releasing in 2016 of Democratic emails, to pursue the theory that the Clinton campaign conspired to frame Mr. Trump. And in doing so, Mr. Durham sought to use the memos as justification to get access to the private communications of an American citizen.

One purported hacking victim identified in the memos was Leonard Benardo, the executive vice president of the Open Society Foundations, a pro-democracy organization whose Hungarian-born founder, Mr. Soros, has been vilified by the far right.

In 2017, The Washington Post reported that the Russian memos included a claim that Mr. Benardo and a Democratic member of Congress, Representative Debbie Wasserman Schultz of Florida, had discussed how Loretta E. Lynch, the Obama-era attorney general, had supposedly promised to keep the investigation into Mrs. Clinton's emails from going too far.

But Mr. Benardo and Ms. Wasserman Schultz said they had never even met, let alone communicated about Mrs. Clinton's emails.

Mr. Durham set out to prove that the memos described real conversations, according to people familiar with the matter. He sent a prosecutor on his team, Andrew DeFilippis, to ask Judge Beryl A. Howell, the chief judge of the Federal District Court in Washington, for an order allowing them to seize information about Mr. Benardo's emails.

But Judge Howell decided that the Russian memo was too weak a basis to intrude on Mr. Benardo's privacy, they said. Mr. Durham then personally appeared before her and urged her to reconsider, but she again ruled against him.

Rather than dropping the idea, Mr. Durham sidestepped Judge Howell's ruling by invoking grand-jury power to demand documents and testimony directly from Mr. Soros's foundation and Mr. Benardo about his emails, the people said. (It is unclear whether Mr. Durham served them with a subpoena or instead threatened to do so if they did not cooperate.)

Rather than fighting in court, the foundation and Mr. Benardo quietly complied, according to people familiar with the matter. But for Mr. Durham, the result appears to have been another dead end.

In a statement provided to The Times by Mr. Soros's foundation, Mr. Benardo reiterated that he never met or corresponded with Ms. Wasserman Schultz, and said that "if such documentation exists, it's of course made up."



Nora R. Dannehy in 2009. A longtime aide to Mr. Durham, Ms. Dannehy resigned from his team in 2020 after disputes with him over prosecutorial ethics. Mark Wilson/Getty Images

## Internal Strife

As the focus of the Durham investigation shifted, cracks formed inside the team. Mr. Durham's deputy, Ms. Dannehy, a longtime close colleague, increasingly argued with him in front of other prosecutors and F.B.I. agents about legal ethics.

Ms. Dannehy had independent standing as a respected prosecutor. In 2008, Attorney General Michael B. Mukasey assigned her to investigate whether to charge senior Bush administration officials with crimes related to a scandal over the firing of U.S. attorneys; she decided in 2010 that no charges were warranted.

Now, Ms. Dannehy complained to Mr. Durham about how Mr. Barr kept hinting darkly in public about the direction of their investigation. In April 2020, for example, he suggested to Fox News that officials could be prosecuted, saying that "the evidence shows that we are not dealing with just mistakes or sloppiness. There is something far more troubling here."

Ms. Dannehy urged Mr. Durham to ask the attorney general to adhere to Justice Department policy and not discuss the investigation publicly. But Mr. Durham proved unwilling to challenge him.

The strains grew when Mr. Durham used grand jury powers to go after Mr. Benardo's emails. Ms. Dannehy opposed that tactic and told colleagues that Mr. Durham had taken that step without telling her.

By summer 2020, with Election Day approaching, Mr. Barr pressed Mr. Durham to draft a potential interim report centered on the Clinton campaign and F.B.I. gullibility or willful blindness.

On Sept. 10, 2020, Ms. Dannehy discovered that other members of the team had written a draft report that Mr. Durham had not told her about, according to people briefed on their ensuing argument.

Ms. Dannehy erupted, according to people familiar with the matter. She told Mr. Durham that no report should be issued before the investigation was complete and especially not just before an election — and denounced the draft for taking disputed information at face value. She sent colleagues a memo detailing those concerns and resigned.



Cracks formed in Mr. Durham's team as the scope of his investigation shifted. Manuel Balce Ceneta/Associated Press

Two people close to Mr. Barr said he had pressed for the draft to evaluate what a report on preliminary findings would look like and what evidence would need to be declassified. But they insisted that he intended any release to come during the summer or after the Nov. 3 election — not soon before Election Day.

In any case, in late September 2020, about two weeks after Ms. Dannehy quit, someone leaked to a Fox Business personality that Mr. Durham would not issue any interim report, disappointing Trump supporters hoping for a pre-Election Day bombshell.

Stymied by the decision not to issue an interim Durham report, John Ratcliffe, Mr. Trump's national intelligence director, tried another way to inject some of the same information into the campaign.

Over the objections of Gina Haspel, the C.I.A. director, Mr. Ratcliffe declassified nearly 1,000 pages of intelligence material before the election for Mr. Durham to use. Notably, in that fight, Mr. Barr sided with Ms. Haspel on one matter that is said to be particularly sensitive and that remained classified, according to two people familiar with the dispute.

Mr. Ratcliffe also disclosed in a letter to a senator that "Russian intelligence analysis" claimed that on July 26, 2016, Mrs. Clinton had approved a campaign plan to stir up a scandal tying Mr. Trump to Russia.



The letter acknowledged that officials did “not know the accuracy of this allegation or the extent to which the Russian intelligence analysis may reflect exaggeration or fabrication.” But it did not mention that there were many reasons that suspicions about the Trump campaign were arising in that period — like the diplomat’s tip, Mr. Trump’s flattery of President Vladimir V. Putin, his hiring of advisers with links to Russia, his financial ties to Russia and his call for Russia to hack Mrs. Clinton.

The disclosure infuriated Dutch intelligence officials, who had provided the memos under strictest confidence.



Mr. Durham accused Michael Sussmann of lying in a meeting with an F.B.I. official. He was acquitted. Samuel Corum for The New York Times

## ‘Fanning the Flames’

Late in the summer of 2021, Mr. Durham prepared to indict Michael Sussmann, a cybersecurity lawyer who had represented Democrats in their dealings with the F.B.I. about Russia’s hacking of their emails. Two prosecutors on Mr. Durham’s team — Anthony Scarpelli and Neeraj N. Patel — objected, according to people familiar with the matter.

Five years earlier, Mr. Sussmann had relayed a tip to the bureau about odd internet data that a group of data scientists contended could reflect hidden communications between the Trump Organization and Alfa Bank of Russia. The F.B.I., which by then had already launched its Russia investigation, briefly looked at the allegation but dismissed it.

Mr. Durham accused Mr. Sussmann of lying to an F.B.I. official by saying he was not conveying the tip for a client; the prosecutor maintained Mr. Sussmann was there in part for the Clinton campaign.

Mr. Scarpelli and Mr. Patel argued to Mr. Durham that the evidence was too thin to charge Mr. Sussmann and that such a case would not normally be prosecuted, people familiar with the matter said. Given the intense scrutiny it would receive, they also warned that an acquittal would undermine public faith in their investigation and federal law enforcement.

When Mr. Durham did not change course, Mr. Scarpelli quit in protest, people familiar with the matter said. Mr. Patel left soon after to take a different job. Both declined to comment.

The charge against Mr. Sussmann was narrow, but the Durham team used it to make public large amounts of information insinuating what Mr. Durham never charged: that Clinton campaign associates conspired to gin up an F.B.I. investigation into Mr. Trump based on a knowingly false allegation.

Trial testimony, however, showed that while Mrs. Clinton and her campaign manager hoped Mr. Sussmann would persuade reporters to write articles about Alfa Bank, they did not want him to take the information to the F.B.I. And prosecutors presented no evidence that he or campaign officials had believed the data scientists' complex theory was false.

After Mr. Sussmann's acquittal, Mr. Barr, by then out of office for more than a year, suggested that using the courts to advance a politically charged narrative was a goal in itself. Mr. Durham "accomplished something far more important" than a conviction, Mr. Barr told Fox News, asserting that the case had "crystallized the central role played by the Hillary campaign in launching as a dirty trick the whole Russiagate collusion narrative and fanning the flames of it."

And he predicted that a subsequent trial, concerning a Russia analyst who was a researcher for the Steele dossier, would also "get the story out" and "further amplify these themes and the role the F.B.I. leadership played in this, which is increasingly looking fishy and inexplicable."



Mr. Durham's prosecution of Igor Danchenko, a Russia analyst who was a researcher for the Steele dossier, ended in acquittal. Chip Somodevilla/Getty Images

That case involved Igor Danchenko, who had told the F.B.I. that the dossier exaggerated the credibility of gossip and speculation. Mr. Durham charged him with lying about two sources. He was acquitted, too.

The two failed cases are likely to be Mr. Durham's last courtroom acts as a prosecutor. Bringing demonstrably weak cases stood in contrast to how he once talked about his prosecutorial philosophy.

James Farmer, a retired prosecutor who worked with Mr. Durham on several major investigations, recalled him as a neutral actor who said that if there were nothing to charge, they would not strain to prosecute. "That's what I heard, time and again," Mr. Farmer said.

Delivering the closing arguments in the Danchenko trial, Mr. Durham defended his investigation to the jury, denying that his appointment by Mr. Barr had been tainted by politics.

He asserted that Mr. Mueller had concluded "there's no evidence of collusion here or conspiracy" — a formulation that echoed Mr. Trump's distortion of the Russia investigation's complex findings — and added: "Is it the wrong question to ask, well, then how did this get started? Respectfully, that's not the case."

The judge interrupted him: "You should finish up, Mr. Durham."