

BARR'S MICRO-MANAGEMENT OF THE DURHAM INVESTIGATION MAY DEMOLISH THE PREMISE OF FLYNN MOTION TO DISMISS

American Oversight FOIAed records of contacts between Bill Barr and John Durham, whom Barr has ordered to conduct an investigation to undermine the Russian investigation. While there's no evidence that all of these meetings pertained to the investigation Barr ordered up, they span the period (but start earlier than) when Barr said he was communicating to Durham about the investigation.

People from Barr's office met with Durham 18 times between March 25 and October 17, 2019. That doesn't include the trip to Rome Durham and Barr took together last fall.

That is an astounding level of micro-management from an Attorney General.

That – plus records of a meeting on April 12, 2019 where Barr's aide Seth DuCharme described for DOJ Inspector General Michael Horowitz what he and Durham were working on – may well demolish the premise of DOJ's Motion to Dismiss the Flynn prosecution.

As I have noted, DOJ adopted a radically different view on both the legitimacy of the investigation into Flynn and the materiality of his lies in submissions filed under Bill Barr last fall and this January than what DOJ argued in the Motion to Dismiss. The only excuse provided – without any kind of declaration to substantiate the claim – was that DOJ had discovered “new” information that made it

rethink its past position.

That claim was always sketchy, not least because Judge Emmet Sullivan had actually reviewed some of the most important documents released with the motion. Moreover, FBI already issued a public statement making it clear those documents were not new. In fact, the Bureau had already shared them with both Horowitz's and Durham's investigations.

With regard to certain documents in the Michael Flynn matter from the 2016-2017 time period that are now the subject of reporting by the press, the FBI previously produced those materials to the Inspector General and U.S. Attorney Durham," the FBI said.

If Sullivan and his newly appointed amicus, John Gleeson, acquire information that proves, definitively, that this information was not new to the Flynn prosecution supervisors, up to and including Barr, it may mean DOJ is estopped from adopting its current position because, effectively, having had those documents already, DOJ already committed to the opposite position.

These records provide Gleeson a road map to discover precisely who in the Office of Attorney General was micro-managing Durham's investigation, including his receipt of documents that Barr's office now claims (almost certainly falsely) were new to them.

That is, this FOIA response provides the skeleton of the kind of proof that Gleeson can use to argue that DOJ is prohibited from adopting its current stance, because they have no excuse for flip-flopping on a position already adopted in this case.