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Post 10/17/92

BNL: The Justice Department Replies

John W. Anderson of The Post's editorial page staff purported to present "A BNL Primer: This is What It's About" [op-ed, Oct. 13]. Unfortunately, the "primer" is woefully inaccurate throughout.

Here's what really happened:

From the outset of its involvement, the Justice Department, its prosecutors in Atlanta and the law enforcement officials investigating the case have had one goal—investigate and bring to justice any person or entity involved in criminal wrongdoing. The central theme of the "primer" seems to be that prosecution of Christopher Drogoul is a subterfuge to avoid prosecution of an Italian government-owned bank, the Banca Nazionale del Lavoro, at its home office in Rome. Nothing could be further from the truth. Prosecution of Drogoul, BNL's Atlanta branch manager, does not preclude prosecution of co-conspirators within or without BNL-Rome—or even the bank itself.

The Drogoul prosecution was a responsible investigative step in continuing probe of wrongdoing. It was an ordinary, professional prosecutive technique. It is not a political cover-up, as the primer implies. The primer also ignores the following facts, which are all in the public record:

After the FBI raid in August 1989, prosecutors in Atlanta developed a prosecutive theory that *criminal* acts by Drogoul were carried on without the knowledge or approval of his superiors in Rome.

Career professionals within the Justice Department's Criminal Division fraud section in Washington, working with the career professionals handling the case in Atlanta, encouraged a complete investigation of BNL-Rome and Iraqi involvement. The result was a more comprehensive indictment of Drogoul and others, including Iraqis, involved in the crimes. Ironically, when the conspiracy theorists first started talking about BNL, Justice officials in Washington were criticized for the "delay" occasioned by this more complete investigation aimed at the very targets Mr. Anderson and others now suggest the Justice Department was shielding.

Taking Exception

The career professional prosecutors in Atlanta determined to proceed with the prosecution of Drogoul (and others) on their original theory in early 1991. The career professional prosecutors in Washington, who had pressed to substantiate that theory through additional investigation, found no reason to question that determination. Moreover, the department has consistently stated that if future investigation discloses that others also participated in the scheme, they would also be prosecuted.

Drogoul was indicted. Drogoul confessed, repeatedly and unequivocally, to those crimes, pled guilty under oath to those crimes, and despite extensive debriefings, never offered evidence to contradict that Atlanta prosecutive theory until his fourth lawyer advanced a contrary theory at his sentencing hearing. Until that point, the Atlanta prosecutors responsibly and professionally pressed Drogoul for his cooperation against those who might have conspired with him at BNL-Rome or elsewhere, and he offered none.

It is illogical to suggest, as the Anderson primer does, that Justice was covering up Drogoul's co-conspirator in Rome from Drogoul. It is an indication of the absurdity of the criticism of the Justice Department that it was first criticized for entering the plea agreement with Drogoul, allegedly to silence him, and was then criticized for withdrawing from the plea agreement with Drogoul, again allegedly to silence him.

Yet, at the point that Drogoul's new theory was advanced, the Atlanta prosecutors made the decision to allow Drogoul to withdraw his guilty plea and to test his theory of defense in a court of law during a *public* trial. This decision was not to conceal anyone's involvement. It was a principled decision based on the prosecutor's refusal to participate in the sentencing of a defendant who had, despite a plea of guilty and multiple confessions, changed his story completely and declared his innocence. Moreover, participation by BNL-Rome officials in the scheme would not make Drogoul an innocent man being sent to jail. It would merely mean that there were additional appropriate targets for prosecution. Drogoul's guilt or innocence will be determined by a jury resolving the facts relating to his involvement. Participation by co-schemers is not a legal bar or defense to the charges, however.

The primer's "chronology" also errs in suggesting that Attorney General William P. Barr refused to appoint a statutory independent counsel in response to the majority request by the House Judiciary Committee, on the "grounds that there was no evidence of a crime by any official." In fact, Barr's decision not to seek an independent counsel was based on the absence of any specific information from a credible source that any high-ranking U.S. government official covered by the independent counsel statute had committed a crime. Allegations against non-covered persons inside or outside the U.S. government were and continue to be vigorously investigated by career prosecutors. To this date, the Justice Department could and would indict BNL-Rome or any of its officials should it develop evidence of criminal wrongdoing by them.

The primer's sequence on the CIA, too, is in error. From the outset of the probe, the Justice Department asked the CIA for all relevant material in the CIA's files. As the sentencing hearing date for Drogoul drew near, the Justice Department requested and received a letter from the CIA setting out the CIA's position on a number of sentencing related issues, including the CIA's assessment of the evidence against BNL-Rome. That letter of Sept. 4, 1992, contained information that the CIA had classified. On Sept. 17, 1992, the CIA provided an unclassified version of that letter. That letter, *along with* a classified analytical report that CIA had provided to Rep. Henry Gonzalez in 1991, the intelligence cables that CIA stated supported the analytical report, and an offer to have the government explain the apparent inconsistency between the letter and the analytical report, were all made available to Judge Marvin H. Shoob. The Sept. 17 letter was an accurate reflection of the positions taken by the CIA in the CIA's Sept. 4 letter. There was no effort to mislead Judge Shoob by the prosecutors in Atlanta or in Washington as they turned over what the CIA provided to them. Nor was this action "sudden," as the Primer suggests.

Subsequently, the CIA apparently did provide additional documents to the Senate Intelligence Committee and eventually to the Justice Department. These additional documents were not provided to Judge Shoob before the Oct. 1, 1992, withdrawal of Drogoul's plea because they not been provided to Justice at that time. Indeed, many of those documents were not provided by the CIA to Justice until the following week.

Insofar as the primer states that Justice officials flatly deny the "charge" that the CIA wanted to change its letter and was persuaded not to by the Justice Department, the primer is correct—it didn't happen. What the primer omits is that the CIA also says it didn't happen. On Oct. 10, 1992, the CIA

stated, "CIA officials who testified [before the Senate Intelligence Committee] said that there was no pressure from Justice to mislead anyone, and no intent on the part of the CIA to mislead or provide incorrect information. They stand by those statements . . . . CIA's testimony and the statements by CIA's general counsel about the import of newly located documents have been mischaracterized in recent press reports."

The primer includes a quote from Judge Shoob to the effect that "it is apparent that decisions were made at the top levels of the United States Justice Department, State Department, Agriculture Department and within the intelligence community to shape this case and that information may have been withheld from local prosecutors seeking to investigate the case or used to steer the prosecution."

Not a shred of evidence is cited to support this accusation. The career prosecutors in Atlanta and Washington who handled the case have denied any political influence or effort to shape the Atlanta case improperly. The career prosecutors from Washington sought to look at BNL-Rome and Iraq—not to shield them. Whatever problems may exist with the CIA's record retrieval and information sharing apparatus, there is no basis to suggest improper motives on the part of Justice and its career employees. Perhaps most important, what the "chronology" omits is the requirement under our system of justice that prosecutors possess evidence before they can act or accuse. Justice now has the CIA's "new" information, and if evidence is developed against BNL-Rome or anyone else, the Justice Department is ready and more than willing to prosecute.

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