

WJP

Judge in Iraq Loan Case Criticizes Attorney General

Barr's Letter Rejecting Call for Independent Counsel Is Said to Contain 'Untrue' Assertions

By R. Jeffrey Smith
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The federal judge who presided over a case involving illicit bank loans to Iraq criticized Attorney General William P. Barr yesterday for deciding not to seek an independent investigation of how the Bush administration handled the case.

Judge Marvin H. Shoob said Barr's letter to Congress on Monday rejecting a request for an independent counsel contained several "totally untrue" assertions about the Atlanta-based court proceedings. Shoob said only appointment of an independent counsel could set the record straight.

In 45 years practicing law, "I have never seen anything that has so many unanswered questions," Shoob said in a telephone interview.

Elaborating on concerns he first raised in June, Shoob said he is perplexed by indications that officials in Washington interfered with the prosecution of the case and worked out a last-minute deal which, he said, avoided a public statement by a key defendant whose attorneys

had threatened to implicate government officials in the illicit loans.

The case involved an estimated \$5 billion in unauthorized loans to Iraq by the Atlanta branch of the Italian-owned Banca Nazionale del Lavoro (BNL), of which \$1.25 billion were guaranteed by the Bush administration as part of a high-level effort to bolster U.S.-Iraqi relations. The case was concluded in June when the U.S. Attorney's office, acting with advice from the Justice Department, accepted a guilty plea by BNL branch manager Christopher Drogoul to 60 of the 347 initial counts of conspiracy and fraud.

It is considered unusual for a federal judge to express such vigorous criticism of the government's handling of a case over which the judge retains jurisdiction. Justice Department officials say that if any others are charged in the case, they may be brought before Shoob.

Democrats on the House Judiciary Committee, relying in part on Shoob's criticism of the plea bargain, petitioned Barr to appoint someone who could independently examine "irregularities" and possi-

ble criminal violations by U.S. officials. But Barr, in denying the request, wrote to the committee that "almost without exception . . . the 'facts' cited by Judge Shoob to explain his conclusion have been shown to be incorrect."

Barr specifically challenged Shoob's account of the negotiations leading to Drogoul's plea bargain and denounced as "completely unfounded" Shoob's allegation that the Justice Department somehow tried to silence Drogoul by dismissing most of the charges against him. "It simply is not a crime for the department's headquarters to assist in and review investigations and prosecutions being conducted by U.S. attorney's offices," Barr said.

Shoob, a 69-year-old former business litigator appointed to the bench in 1979 by President Jimmy Carter, said he is a Democrat. "But I'm not active politically at all" and not motivated by politics in this case, he said.

He responded yesterday that Barr "is right that I don't understand the case."

He said he did not, for example, understand why the U.S. attorney's

office waited until February 1991 to empanel a grand jury in the BNL case, more than a year after Gayle McKenzie, the chief prosecutor in the case, had drafted an indictment and faxed it to Washington.

Democratic legislators have said recently that the delay was prompted by Washington's desire to avoid disrupting U.S.-Iraqi relations before Iraq's invasion of Kuwait in August 1990. But the Justice Department, in a lengthy report given to Congress in support of Barr's letter and released yesterday, said the delay was due partly to McKenzie's workload and partly to uncertainties about the culpability of officers at BNL's headquarters in Rome.

Shoob said he does not understand "why the White House would call the assistant U.S. attorney [McKenzie] on at least two occasions" to discuss the case in 1989. While some legislators have suggested that the calls may have amounted to political interference, the Justice Department report states that the official involved was "only seeking information" and not

See JUDGE, A7, Col. 1

Judge Assails Handling Of Iraqi Bank-Loan Case

JUDGE, From A6

acting at the behest of other White House officials.

Shoob said he also questions why the government did not move more swiftly to investigate U.S. companies that supplied goods to Iraq with loans from BNL; why certain BNL officials were not included in the eventual indictment of Drogoul and various Iraqis; and why it required his prompting to make the government revoke Drogoul's bond, requiring Drogoul's continued confinement before sentencing. Shoob said he had to point out that Drogoul had "substantial sums on deposit in Europe" and might flee.

A Justice Department official declined comment on these criticisms last night, and neither McKenzie nor her supervisor in the U.S. attorney's office returned phone calls.

Shoob's principal concern, he said, remains the plea bargain offered to Drogoul on May 29, which Drogoul accepted several days later.

It was this agreement, Shoob said, that produced an "arrangement" in my opinion, that Drogoul would make no statement about the case in open court. The plea agreement instead required that Drogoul submit to daily questioning about BNL's activities by the U.S. attorney's office, which Shoob said is now underway.

But Shoob said the agreement was not as favorable to the government as a proposal several days earlier by Drogoul's attorney, Sheila Tyler, that called for Drogoul to plead guilty to all 347 counts and "make a full disclosure" to the court in a public statement about the case expected to last five to six hours.

While Justice Department offi-

cial maintain that they secured Drogoul's assistance in their continuing investigation of potential wrongdoing only by dropping most of the counts against Drogoul, Shoob said it is his understanding that the arrangement put forward by Drogoul's attorney—and not accepted by the government—also would have entailed Drogoul's "full cooperation."

On several points, Shoob's account of the negotiations leading up to the deal with Drogoul is at odds with the version set out in Barr's letter and the detailed Justice Department report. The differences could not be resolved yesterday because Drogoul could not be reached and Tyler, who works at the federal public defender's office in Atlanta, did not return a phone call.

Shoob said that McKenzie's deputy, Randy Chartash, offered Drogoul the plea bargain on a day when McKenzie was out of town. In a June letter to the House Judiciary Committee, he attached additional importance to the apparent fact that Chartash had "joined the case only in February . . . and [had] recently arrived from the Department of Justice in Washington."

Shoob acknowledged yesterday that he was wrong about Chartash's career path. Chartash worked for the Justice Department from 1981 to 1986 and joined McKenzie's office in 1991. But Shoob maintained that "it is highly unusual for an assistant to give away a plea bargain" and said McKenzie told him in chambers that she was not aware of Chartash's proposal until three days later, "after the bargain was made."

Justice Department officials in Washington said last night the deal offered by Chartash was identical to one that McKenzie had proposed on May 16.