

Fresh Questions on Iraqgate

By David L. Boren
and Dennis DeConcini

Two well-connected arms merchants have a long lunch in a foreign capital. As they wait for the check, Merchant X turns to Merchant Y and says, "I'm confident that the Banca Nazionale del Lavoro in Rome knew about the illegal loans to Iraq from its Atlanta branch."

Merchant Y smiles and responds, "Really?"

Merchant X's comment eventually reaches a U.S. intelligence agency. The agency, however, never distributes the report, because it is suggested that Merchant X had too much wine at lunch and that his statement was speculative.

A year later, the Justice Department is preparing a criminal case against Christopher P. Drogoul, manager of B.N.L.'s Atlanta branch, for bank fraud. Mr. Drogoul is accused of making the illegal loans to Iraq in exchange for bribes. The Justice Department wants to determine whether Mr. Drogoul acted alone or with the consent of superiors in Rome.

The Justice Department requests all information from U.S. intelligence relating to B.N.L., information that goes beyond Merchant X's comment and extends to several reports gathered from more than one source. Should this evidence reach the Justice Department, the trial judge and the defense? Should the Justice Department have made a more serious effort to follow these leads by sending investigators to Rome?

These are among the many questions raised by a staff report to be released today by the Senate Intelligence Committee. The report uses B.N.L. as a case study of fundamental problems in the relationship between intelligence and law enforcement.

The committee inquiry on B.N.L. began last fall when it appeared that the C.I.A., acting under pressure from the Justice Department, might have withheld information from Marvin Shoob, the Federal judge in Atlanta

who presided over the B.N.L. case. Judge Shoob, who granted Mr. Drogoul's motion to set aside his guilty plea, concluded that Bush Adminis-

David L. Boren, Democrat of Oklahoma, is former chairman of the Senate Intelligence Committee. Dennis DeConcini, Democrat of Arizona, is the current chairman.

tration officials had "shaped" the Drogoul case and that the C.I.A. had not cooperated with requests for information.

While the Senate staff investigation did not produce direct evidence of intent to mislead, it did reveal a disconnect between law enforcement and intelligence, combined in some instances with serious errors in judgment. All this resulted in erratic intelligence reporting; failure to provide relevant documents to prosecutors and the court in a timely fashion; mishandling of classified information in court, and, ultimately, the release of a highly misleading document to the public and the court.

The document, a letter sent on Sept. 17, 1992 from the C.I.A. to Federal prosecutors in Atlanta, suggested that the agency was aware only of "publicly available information" indicating B.N.L.-Rome's knowledge of illegal activities. In fact, the C.I.A. had other reports of Rome's knowledge that it kept secret.

Criminal activity in the U.S. in-

creasingly has foreign links. Consequently, more and more information gathered by U.S. intelligence services, whose activities are supposed to stop at our borders, relates to domestic prosecutions. We need to look at

A case study
in how not
to conduct
an investigation.

whether the C.I.A. and other intelligence agencies should be expressly directed to gather evidence abroad for U.S. trials. Another international bank scandal, B.C.C.I., showed that our intelligence agents also need better training in recognizing evidence of a crime when they see it.

Similarly, agents need to understand better how their information can be used in court. Based on advice from an F.B.I. agent, C.I.A. officials reviewing B.N.L. reports came to believe that such information could be given to the defense only if it had been formally distributed outside the agency. This conclusion influenced the C.I.A.'s decision not to send out the reports.

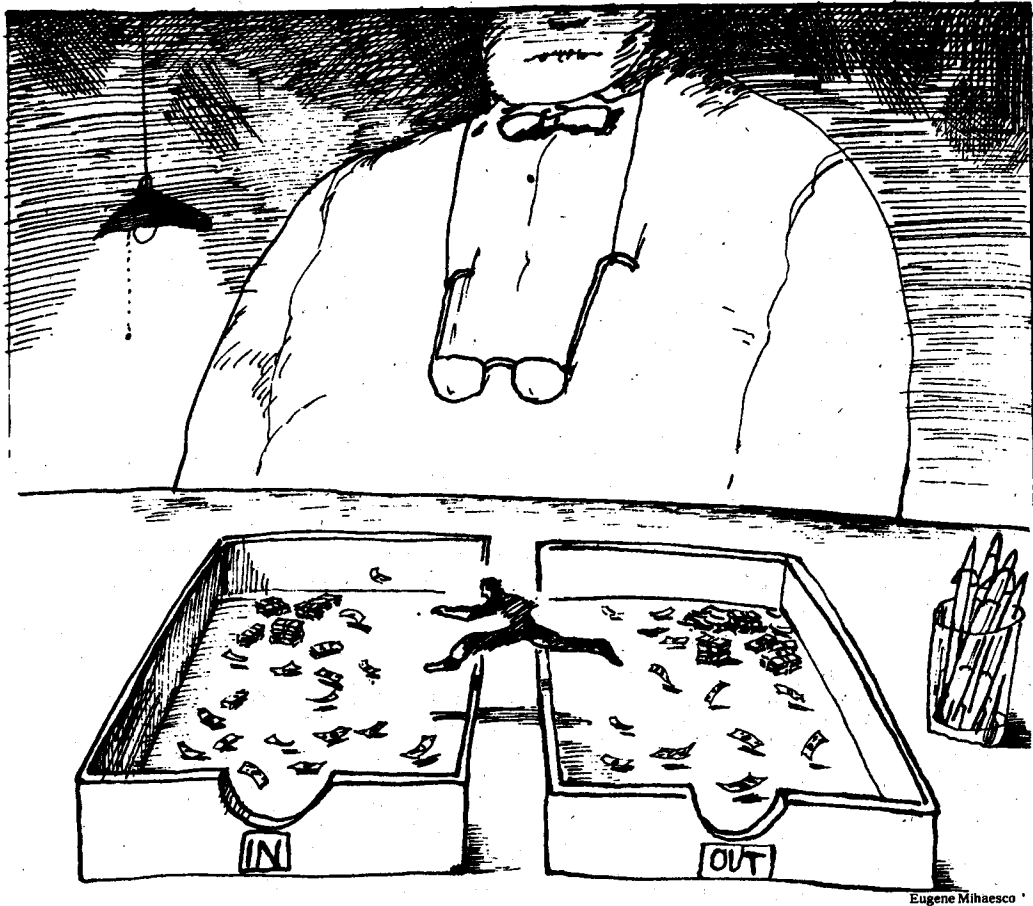
Even first-year law students know that the Supreme Court, in *Brady v. Maryland*, held that prosecutors are compelled by the Constitution to disclose all evidence in the Government's possession that is favorable to the defendant. This principle applies whether or not the information has been sent by one agency to another.

Worse, this legal error was mirrored by the C.I.A.'s file retrieval process. The agency keeps non-disseminated reports out of its main files. When the Justice Department asked for all intelligence reports on B.N.L., only the main files were searched. Reports that hadn't been

distributed did not surface until the committee probe.

Meanwhile, the Justice Department failed to undertake a serious review of the intelligence it received. Lawyers for the department in Washington assumed that Atlanta prosecutors were determining whether the Government had information helpful to the defense. Prosecutors in Atlanta thought the Washington lawyers were in charge of reviewing the intelligence reports.

Uninformed C.I.A. analysis and haphazard coordination of materials created additional problems. Analysts for the C.I.A. twice concluded in writing that senior



bank officials in Rome knew of Mr. Drogoul's activities, despite the fact that the prosecution in Atlanta was proceeding on precisely the opposite conclusion. Though the C.I.A. conclusions were sent out — on one occasion to Representative Henry Gonzalez, Democrat of Texas — they were not offered to the Justice Department. When they surfaced in the midst of the Drogoul sentencing hearings in September, department officials were thrown into a panic.

Institutional breakdowns, however, cannot fully explain the Sept. 17 C.I.A. letter. Agency officials, following Justice Department advice, released the letter even though they had serious concerns about its potential for misleading the public. This incident reflects poorly on the C.I.A. and the Justice Department.

The Clinton Administration will likely revisit accusations of criminal conduct in the Iraq affair. Whether or not it does, the Administration should not overlook the compelling need to clarify the relationship between the intelligence and law enforcement agencies. Only then can we hope to avoid the pitfalls demonstrated by the B.N.L. case. □