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AN INDEPENDENT NEWSPAPER

Justice and BNL

WE PUBLISH on the opposite page today a reply from the Justice Department to a recent article on the BNL case. But this reply seems to us to step delicately around the central issue—that the Justice Department was prosecuting a man for fraud when some Justice officials evidently knew the charge was false.

BNL—the Banca Nazionale del Lavoro—is the Italian bank whose Atlanta office was lending billions to Iraq until the FBI intervened. Federal prosecutors in Atlanta charged the branch manager with fraud of the parent bank, asserting that the bank's headquarters had no knowledge of the loans. But at least some people at Justice had apparently seen CIA reports saying just the opposite—that the Rome headquarters of BNL knew what the branch manager was doing and had authorized it. That, in our judgment, is the point to which the department needs to reply.

The branch manager, who pleaded guilty last spring, would have gone to prison long since had not a federal judge in Atlanta sensed something fishy and pressed the government hard in a process that, last month, led the CIA to disgorge the reports. It was only after those documents appeared that the government let the branch manager withdraw his guilty plea.

The Justice Department now says that the CIA's famous letter of Sept. 17 was not an attempt to mislead the court. That's the letter in which the agency seemed to say that it had no information on the case that was not available to the public. But the CIA has already acknowledged to Sen. David Boren, chairman of the Senate Intelligence Committee, that it was misleading. The CIA says that the Justice Department strongly advised it to keep the letter that way. That's what the quarrel between the CIA and Justice is about.

The Justice Department suggests in today's reply that the fault may lie with the CIA's record retrieval process—that is, that the CIA may have lost its BNL reports and that they are only now

coming to light within the government. But Sen. Boren says that the FBI—which, he points out, is part of the department—"received or was knowledgeable of nearly all of the key classified reports at the time they were originally issued."

It is possible that some part of this confusion can be straightened out by the "independent counsel," operating within the Justice Department, whom Attorney General William Barr appointed on Friday to examine Justice's overall BNL role. The appointee, retired federal judge Frederick Lacey, is to report not just to the attorney general but to Congress and the public. Nevertheless, the public's confidence in the proceedings would have been better served if Mr. Barr had accepted congressional and other urgings to name a court-appointed independent counsel.

Other ramifications of the American involvement with Iraq remain to be explored. In a second piece on the opposite page today, Rep. Sam Gejdenson (D-Conn.), a House Foreign Affairs subcommittee chairman, challenges the account of U.S. policy before the gulf war that national security adviser Brent Scowcroft presented on the op-ed page on Oct. 10. To establish the Bush administration's purpose of offering Iraq incentives to "moderate its behavior," Mr. Gejdenson quotes from NSD 26; this is the basic policy directive of October 1989, whose text, notwithstanding our mistaken assertion to the contrary in an editorial of Oct. 10—for which we apologize—has in fact been provided to Congress. He catalogues efforts by Iraq—some known by American officials, and some known by them to be successful—to obtain American high-tech exports related to nuclear, chemical and missile programs.

It is chastening to think that the United States may have contributed to Saddam Hussein's military capacity and to his launching of a cruel war. The answer about what happened must be pursued.