

Prosecutors Surmised Early That BNL Case

By R. Jeffrey Smith
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Federal prosecutors in Atlanta realized fairly rapidly in late 1989 that their investigation of illicit loans to Iraq by the local branch of an Italian-owned bank was much more than a routine criminal prosecution.

The tip-off came from the intense, sudden interest that senior Washington officials expressed in the probe of Banca Nazionale del Lavoro (BNL) within two months after a federal raid of BNL's Atlanta branch that August.

"We knew it had policy implications," said Assistant U.S. Attorney Gerrilyn Brill, who helped field phone calls and visits from Washington bureaucrats while overseeing the government's ensuing, 18-month investigation.

Officials at the State, Treasury and Justice departments telephoned to express keen interest in who might be indicted. A White House attorney called with concern about the "embarrassment level" the inquiry might cause in light of President Bush's policy of assisting Iraqi President Saddam Hussein.

The case attracted such high-level interest because it raised politically sensitive questions about U.S. ties to Iraq and about the extent of Iraqi and possibly Italian involvement in a scheme that lent Baghdad more than \$4 billion from 1985 to 1989, a time when Iraq was a poor credit risk.

Some of the funds—to this day, no one knows exactly how much—were used by Iraq to help create the military arsenal that U.S. and allied soldiers eventually faced in the 1991 Persian Gulf War. Because roughly \$1 billion of the BNL loans were backed by the U.S. Agriculture Department, and Iraq later defaulted on payments, U.S. taxpayers will likely be picking up the tab.

Those early anxieties that the BNL case might grow into a public relations nightmare for the administration now seem prescient. Caught in a swirl of allegations by Democratic lawmakers that political con-

siderations tainted the government's probe of the scandal, Attorney General William P. Barr last week reluctantly appointed a retired federal judge to review the actions of the Justice Department and the CIA.

The new probe by retired Judge Frederick B. Lacey parallels inquiries already underway by the CIA and the Senate Select Committee on Intelligence, both initiated earlier this month after the CIA issued what its officials later admitted was a misleading and incomplete account of what it had known about the BNL loans to Iraq.

The admission led to a round of finger-pointing between senior CIA and Justice Department officials over who was to blame for having kept relevant classified reports away from the prosecutors and the federal judge in the BNL case. The reports suggested involvement in the scandal by senior BNL officials in Rome.

The probes were provoked largely by a growing sense on Capitol Hill, and even among some administration officials, that the prosecutors wrongly blamed most of the scandal on the 43-year-old manager of BNL's Atlanta branch, Christopher P. Drogoul, and unjustly let more powerful and influential collaborators in Italy, Iraq and Jordan off the hook.

Democratic lawmakers have offered at least three theories to explain this alleged miscarriage of justice:

- U.S. officials wanted to do a political favor for the Italian government, which owns BNL. Italian officials feared that indictment of the bank for collusion in the illegal loans would lead to a seizure of its assets under U.S. racketeering laws. Rome worried this could in turn destabilize the government of Prime Minister Giulio Andreotti and unseat party leaders.

This theory is based partly on evidence in U.S. and Italian documents that Italian Ambassador Rinaldo Petrignani, working with BNL officials and American attorneys, learned of the Justice Department's interest in such an indictment in the spring of 1990

and mounted an aggressive lobbying campaign to fend it off.

"We understand that the Italian ambassador has recently called on Attorney General [Dick] Thornburgh to discuss BNL," said an internal State Department memorandum on May 29, 1990, one of the many formerly secret administration documents related to BNL to come to light in recent months. The memo did not provide details on what was said at the meeting, and a spokesman for Thornburgh said the former attorney general does not recall the meeting.

But a senior BNL executive, writing in his diary after a series of meetings with Justice Department officials, said he felt that "taking advantage of access to the political level appears more promising" than cooperating with the investigation. The Justice Department so far has declined to release internal documents related to meetings between the Italians and senior officials in the department.

- The Bush administration wanted to keep the BNL probe from tainting an Agriculture Department program that was providing Iraq with an additional \$1 billion in loan guarantees to buy U.S. food in 1989 and 1990. The decision to extend the new guarantees was strongly backed by Secretary of State James A. Baker III and other top administration officials.

BNL, as the principal financier of U.S. exports to Iraq, became the chief recipient of the loan guarantees that the Agriculture Department granted to Iraq before 1988. When the BNL scandal erupted in the summer of 1989, some U.S. officials wanted to halt the program because of evidence implicating senior Iraqi officials in wrongdoing.

But Baker and others insisted in November 1989 that Iraq be granted \$1 billion in additional loan guarantees on foreign policy grounds. Once this decision was made, the Democrats allege, administration officials tried to make it look

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more reasonable by hindering the BNL investigation.

■ Washington was aware of the BNL loans, or even initiated them, and U.S. officials wanted to conceal that fact. The Italians, under this highly speculative theory, were merely doing Washington's bidding through BNL at a time when the United States was constrained from doing more to help Iraq counterbalance Iran, a U.S. enemy.

None of these three scenarios has been proven, and all have been vigorously denied by officials at the State and Justice departments. But the notion that some deeper motive must explain the government's treatment of the BNL case was boosted by U.S. District Judge Marvin Shoob, who presided over an aborted sentencing hearing for Drogoul. Summing up his suspicions, Shoob charged on Oct. 5 that the administration had mishandled the case "to avoid embarrassing a foreign government or to contain criticism of a failed foreign policy."

So far, there is no proof of a connection between the Bush administration's alleged mishandling of the BNL case and the spectrum of official actions undertaken by the United States to help Saddam in the years before the gulf war, including the sharing of intelligence, the sale of high-tech U.S. equipment and the promotion of economic ties—all now popularly known as "Iraqgate."

Drogoul, who probably knows more about the scheme than anyone else, has given conflicting answers to the central question of who else participated. Last summer, he pleaded guilty to 60 counts of the government's indictment, including some related to defrauding BNL and misleading federal regulators by keeping everyone outside of Atlanta in the dark about the loans.

But last month, after finding a new attorney, Drogoul testified in court that senior executives at BNL's headquarters in Rome were aware of what he had done. If

proven, his claim would sharply reduce the maximum 390-year prison term he faces for all counts in the government's indictment.

As Brill said in court, "There was nothing inherently illegal about lending to Iraq"—only about concealing it from BNL headquarters and U.S. banking regulators. She accused Drogoul of obtaining kickbacks and other benefits in the scheme worth \$2.5 million, and said he was motivated "as far as we can tell [by] old-fashioned greed," not foreign policy concerns.

In the absence of any "smoking guns," such as memos confirming a government conspiracy, Democratic lawmakers have pushed the BNL scandal into the public eye largely by constructing an elaborate foundation of circumstantial evidence suggesting the case was manipulated by Bush administration officials for political reasons.

They have been helped enormously by the CIA's and Justice Department's fumbled handling of classified information about the possible involvement of BNL officials in Rome. They also have been helped by the prosecution team's admission that it did not pursue certain obvious leads in the scandal and based many of its conclusions on information provided by BNL officials from Rome who flew to Atlanta shortly after the federal raid.

The question is whether these lapses were due to incompetence or to some plot.

None of the prosecutors ever traveled to Rome, for example, even though chief prosecutor Gale McKenzie said in a January 1990 memo to the Justice Department that "a Rome setting is required for immediate access to all relevant records." They also never reviewed the minutes of BNL-Rome board meetings. Instead, they relied on assurances by bank officials, backed by the Italian government, that all relevant documents had been uncovered and passed along.

The prosecutors also failed to interview

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a man who told congressional investigators that he was a key intermediary in BNL's dealings with Iraq—a wealthy Jordanian named Wafai Dajani. Some members of the prosecution team asserted that Dajani was implicated in wrongdoing by BNL cables to his firm in Aqaba, but he eventually was dropped from a draft indictment sent by Atlanta to Washington, and was named instead as an unindicted co-conspirator.

Officials say that decision was made after the Justice Department received a State Department memo in February 1991 pointing out that Dajani's brother is a former head of Jordanian intelligence and a close adviser to King Hussein. While supposedly expressing "no opinion" on Dajani's indictment, the memo noted pointedly that charging him "would be seen as a further attempt to punish Jor-

dan" for supporting Iraq after its invasion of Kuwait.

The Atlanta prosecutors also failed to interview any of the 17 senior Iraqi officials they depicted in 1990 memos to the Justice Department as possibly having knowledge of the BNL loans, including some of the best and brightest men in Saddam Hussein's worldwide arms-buying network. Brill and others on the BNL prosecution team explain this apparent lapse by asserting that none of the officials would have confessed during interviews, even if they were guilty.

Four Iraqi officials eventually were included in the government's indictment, but Washington decided at the last minute to spare another alleged Iraqi collaborator: the Central Bank of Iraq. Justice Department officials acknowledge making that decision over prosecutors' objections, after other federal agencies warned in a memo

that indicting the Iraqi bank could invite legal retaliation against the Federal Reserve Bank and make it "very difficult for the [U.S. government] to work with the [Iraqi central] bank."

The Justice Department prepared a series of draft press releases about the indictment in February 1991 that illustrate the government's deep anxieties and last-minute confusion about the case. The first describes a 516-count indictment against 12 defendants, while a second one, written 10 days later, describes a 425-count indictment of 11 defendants. Three days after that, the department finally announced a 347-count indictment of 10 defendants.

The public announcement omitted an earlier draft's reference to the defendants having "picked the pockets of . . . American taxpayers." It charged instead that the victim of the fraud was BNL.