

Report in BNL Inquiry Is Due Today

Ex-Judge May Urge Barr to Seek Independent Counsel on 'Iraqgate'

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A critical chapter in the "Iraqgate" controversy comes to a climax today when a former federal judge issues his report on the Justice Department's handling of the Banca Nazionale del Lavoro (BNL) case.

If Frederick B. Lacey recommends an independent counsel be named to probe possible criminal wrongdoing by administration officials, Attorney General William P. Barr will be hard-pressed not to seek the appointment, no matter how much he hates the idea. That will keep alive the whole issue of the Bush administration's support for Iraq before the Persian Gulf War.

If Lacey says no independent criminal inquiry is warranted, Barr can argue with renewed vigor that allegations of a coverup by his department are nothing more than "a conspiracy in search of some facts," as he once called them.

A new attorney general could reverse course, but because the statute that authorizes independent counsels expires next week, Congress would have to revive the law first.

Lacey is the first outsider to conduct a comprehensive review of how the Justice Department handled its fraud prosecution against the Italian-owned bank's Atlanta branch. A previous internal review by the department found no impropriety; inquiries by five congressional committees are still ongoing, with varying degrees of intensity.

BNL's Atlanta branch is accused of funneling \$4 billion in unauthorized loans to Iraq that helped President Saddam Hussein arm his country when he was preparing to invade Kuwait and could not obtain

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credit anywhere else. Federal investigators also uncovered evidence that the Iraqis had abused a U.S. food export program that formed a cornerstone of U.S. policy toward Iraq before the 1991 Persian Gulf War.

Congressional critics alleged that the Justice Department prosecutors wrongly pinned responsibility for the unauthorized loans on Atlanta branch manager Christopher P. Drogoul—possibly to shield the Italian government, which owns the bank. Drogoul pleaded guilty to fraud charges in connection with the loans, but later withdrew his plea, contending that higher-ranking bank officials in Italy knew of them. Barr and other top Justice officials contend that prosecutors searched for evidence implicating higher-ups but did not find it.

A number of Justice Department and FBI officials said Lacey seemed determined to conduct a thorough review. "He drove us crazy. He wanted everything checked out," said one senior FBI official.

But Rep. Henry B. Gonzalez (D-Tex.) and other congressional Dem-

ocrats have said that Lacey cannot be truly objective because he reports to Barr, who appointed him.

Some Justice Department officials questioned whether Lacey had enough time and used the right people. A former prosecutor known for his aggressive pursuit of organized crime, Lacey created a staff of 20 lawyers from his New Jersey law firm of LeBoeuf, Lamb, Leiby & MacRae. Many lacked prosecutorial experience. Sources said they needed explanations on issues such as how much supervision the Justice Department exercises over local U.S. attorneys.

Some department officials were taken aback when Lacey asked them to collaborate with one another in preparing summaries or chronologies of their actions, instead of preparing them individually. One source said department officials persuaded Lacey to drop that tack; another said some group summaries were prepared.

In seven weeks, Lacey's staff interviewed roughly 50 people involved in the case, conducting some sessions in one of the department's secure conference rooms.

Paralegals indexed thousands of pages of government documents. Investigators studied transcripts of

BNL grand jury proceedings and 33 interviews of Drogoul conducted by federal prosecutors, sources said.

Lacey met briefly in Atlanta with U.S. District Judge Marvin H. Shoob, who presided over the Drogoul case and repeatedly suggested that prosecutors had "sanitized" the evidence. He also went to Rome to interview officials at BNL headquarters, bank regulators and the Italian magistrate who directed an official probe of the scandal.

While Lacey twice briefed Barr on his progress, the attorney general refrained from asking Lacey any questions so that he did not appear to be trying to steer the investigation, a Justice Department official said. Lacey, too, bristled at the notion that Barr controlled his inquiry. "By this time I think I know at least as much as anyone in the United States about how to conduct an investigation," he said in a recent interview.

Aides to Barr said Lacey did not give the attorney general an ad-

vance copy of his report, expected to run as long as 500 pages, and that Barr will not know until this morning what Lacey recommends. Nonetheless, Barr hopes to react to Lacey's report today so his action will be reported at the same time as Lacey's recommendation, department officials said.

Since Barr opposes the whole principle of independent prosecutors, he may find it painful to ask a special three-judge panel to appoint one six weeks before he leaves office, aides said. But Barr left himself few outs in mid-October when, under intense pressure from critics, he appointed Lacey and suggested he would abide by his advice.

Gonzalez and other congressional critics will not be satisfied with anything less than an independent prosecutor, congressional aides said. But in letting the independent counsel statute expire Dec. 15, Congress ensured that the critics will have to wait to make any new request.