

# BNL Report Gives an Inside Look

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The report last week by a retired federal judge who commended the Justice Department's handling of a banking case involving fraudulent loans to Iraq constituted an extraordinary unveiling of the inner workings of a major prosecution.

Rarely is the public privy to the details of how prosecutors decide who should be charged and with what crime, especially when the key defendant is still facing trial and might benefit greatly from such insights. Only intense pressure from Democratic legislators and others for an outside investigation pushed Attorney General William P. Barr to order the report on how prosecutors arrived at the indictment, which charged the Atlanta branch manager of Italy's Banca Nazionale del Lavoro (BNL) with masterminding the loan scheme.

In the Justice Department, officials viewed the investigation by former judge Frederick B. Lacey as a sign of how widespread distrust of public officials has infinitely complicated their work, transforming them from supervisors of investigations into targets of them. Even

so, a memo written by a senior Justice Department official shortly before the indictment was filed in early 1991 showed that the prosecutors themselves expected the "highest degree of scrutiny" if the case were brought at a time the United States was at war with Iraq over its invasion of Kuwait.

In his 190-page report, Lacey rejected allegations that the Justice Department deliberately mishandled the BNL case and wrongly limited the indictment to officers at BNL's Atlanta branch. The report dealt in considerable detail with the actions of prosecutors, although it addressed only in passing other controversial aspects of the affair and U.S. policy toward Iraq, including why the CIA was so slow to turn over information to the Justice Department relevant to the BNL case and whether the Commerce Department illegally altered documents sent to Congress on exports to Iraq. Democratic legislators have reaffirmed their intention to pursue these matters next year.

The BNL case centers on loans from BNL's Atlanta branch that helped Iraqi President Saddam Hussein build up his country's military strength before Iraq invaded Kuwait in August 1990.

The investigation caused anxiety at the departments of Agriculture and State because it revealed that the Iraqis had abused a U.S. program that provided federal guarantees for BNL loans to companies that exported food to Iraq. Congressional Democrats claimed that the Justice Department tried to cover up the role in the fraudulent loans of BNL's Rome headquarters, either to protect the Italian government, which owns BNL, or out of fear of embarrassing disclosures about the food credit program or U.S. support for Iraq.

Lacey concluded otherwise, saying senior Justice Department officials had in fact been quite determined to explore any complicity by BNL-Rome. While finding some fault with how CIA and Justice Department officials handled classified information on BNL, Lacey strongly defended the department's decision to treat BNL itself as a victim of the fraud and blame the scheme on the Atlanta branch manager, Christopher Drogoul.

Lacey's report provided an unusual inside look at how Justice Department officials in Washington and federal attorneys in Atlanta debated how to frame the case. For a

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full year before Drogoul and several Iraqis were indicted in February 1991, prosecutors agonized over the issue of whether BNL-Rome had known of the more than \$4 billion in illegal loans, according to the report. Gale McKenzie, the lead attorney on the case in Atlanta, was convinced early on that the Rome bank was innocent, but Laurence A. Urgenson and Peter Clark, attorneys in the Justice Department's fraud section, were highly skeptical.

McKenzie made the following arguments to her associates: Drogoul had never claimed that his Rome superiors knew of the loans, although he wondered in one interview how they "could not have known"; he took many steps to conceal the loans over a four-year period, including creating a separate set of records; and he and another branch official collected about \$2 million in bribes for the loans.

Drogoul was so generous toward Iraq in the low interest and fees he charged and the little, if any, collateral he demanded that no prudent bank would have approved the loans, McKenzie contended. By using international money brokers, Drogoul was able to raise the funds for the loans without alerting Rome headquarters.

But Urgenson and Clark still found it hard to believe that a tiny bank branch with 19 employees could conceal from its home office billions of dollars in loans. Urgenson thought Drogoul's defense attorneys might claim that the Italian government had designed the loans to maintain economic relations with Iraq.

According to internal memos and interviews recounted in Lacey's report, Clark was disturbed that the Atlanta prosecutors had failed to put many witnesses before the grand jury and had not interviewed any of BNL's internal auditors. He wanted to know why BNL-Rome had not followed up on audit reports that noted a "serious lack of controls" at the Atlanta branch.

Clark argued that some of Drogoul's early loans to Iraq were potentially quite profitable to the bank. He and Urgenson were both worried that the Atlanta prosecutors were relying too heavily on the professed cooperation of BNL-Rome officials, and not probing hard enough.

The debate between the Justice Department officials and the Atlanta prosecutors came to a head in January 1991, about 17 months after FBI agents had raided the At-

lanta branch. At Urgenson's insistence, the Atlanta prosecutors called 11 high-ranking BNL officials to testify before the grand jury. Clark sat in the grand jury room and reported to Urgenson that the prosecutors had "locked in" the officials' testimony that they did not authorize Drogoul's loans.

Clark's concerns were further allayed by BNL's explanation of its auditing controls, Lacey's report said.

A month later, in February 1991, Drogoul and four other BNL-Atlanta officers were indicted, along with a Turkish company, an Iraqi bank and four Iraqi government officials.