

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

CASE NO. 23-80101-CR-CANNON(s)

UNITED STATES OF AMERICA,

Plaintiff,

v.

**DONALD J. TRUMP,
WALTINE NAUTA, and
CARLOS DE OLIVEIRA,**

Defendants.

**GOVERNMENT’S SUPPLEMENTAL NOTICE OF AUTHORITY IN SUPPORT OF
ITS OPPOSITION TO DONALD J. TRUMP’S MOTION TO DISMISS BASED ON THE
APPOINTMENT AND FUNDING OF THE SPECIAL COUNSEL**

Following the hearing on June 21, 2024, the Court issued an order permitting the parties to file separate notices of supplemental authority not to exceed five double-spaced pages in list or bullet form with citations but with no advocacy. ECF No. 635. This supplemental notice of authority provides additional information in response to two questions the Court posed during the June 21 hearing: (1) whether any statutes in which Congress appears to vest the appointment of officers in “the President alone, in the Courts of law, or in the Heads of Departments,” U.S. Const. art. II, § 2, cl. 2, use the term “officials”; and (2) the names of the individuals appointed as Special Counsel by Attorney General William Barr.¹

¹ Filed as exhibits to this notice are public sources confirming the appointments and explaining that the appointments were not made under the then-operative Ethics in Government Act, 28 U.S.C. §§ 591-599 (expired).

I. Statutes Vesting Appointment Power that Refer to Officials

- 6 U.S.C. § 142(a) (providing for the appointment of a “senior official” in the Department of Homeland Security to serve as a “Privacy officer”)
- 10 U.S.C. § 137a(a) (authorizing the President to appoint, with the advice and consent of the Senate, Deputy Under Secretaries of Defense, who are described as “officials”)
- 10 U.S.C. § 397 (referring to “officials” when providing for the appointment of a Principal Information Operations Advisors within the Department of Defense)
- 10 U.S.C. § 988(c) (“The term ‘covered official of the Department of Defense’ means any of the following: (A) A civilian appointed to a position in the Department of Defense by the President, by and with the advice and consent of the Senate.”)
- 16 U.S.C. § 831e (discussing “appointment of officials” and “selection of employees” for the Tennessee Valley Authority)
- 22 U.S.C. § 285a (“(a) The President shall appoint--(1) a Governor of the Bank and an alternate for the Governor--(A) by and with the advice and consent of the Senate; or (B) from among individuals serving as officials required by law to be appointed by and with the advice and consent of the Senate.”).
- 22 U.S.C. § 290g-1 (“(a) The President shall appoint a Governor, and an Alternate Governor, of the Fund--(1) by and with the advice and consent of the Senate; or (2) from among individuals serving as officials required by law to be appointed by and with the advice and consent of the Senate.”)

- 22 U.S.C. § 2651a(d) (referring to “officials of the Department of State who are otherwise authorized to be appointed by the President, by and with the advice and consent of the Senate”)
- 28 U.S.C. § 561(c) (“The President shall appoint, by and with the advice and consent of the Senate, a United States marshal for each judicial district of the United States Each United States marshal shall be an official of the Service and shall serve under the direction of the Director.”)
- 50 U.S.C. 3369d(c)(1)(A) (“Each head of an agency or department of the Government set out under subparagraph (B) shall appoint one member of the committee established by subsection (b) from among officials of such agency or department who occupy a position that is required to be appointed by the President, with the advice and consent of the Senate.”)
- 50 U.S.C. § 4306 (“The President is authorized to appoint, prescribe the duties of, and fix the salary of an official to be known as the alien property custodian”)²

In addition, the prior version of 6 U.S.C. § 458 (now providing for an Office of Counternarcotics Enforcement in the Department of Homeland Security and amended in 2004) provided:

² See also 44 U.S.C. § 2107 (notes, reflecting Pub. L. 115–426, Jan. 8, 2019, 132 Stat. 5489; as amended by Pub. L. 117–222, § 2, Dec. 5, 2022, 136 Stat. 2279, which provided that “The term ‘Government official’ means any officer or employee of the United States, including elected and appointed officials”); 28 U.S.C. § 1715(a)(1)(A) (“In this section, the term ‘appropriate Federal official’ means--(A) the Attorney General of the United States”); E.O. 12,949, Foreign Intelligence Physical Sciences (Feb. 9, 1995) (listing the Secretary of State, the Secretary of Defense, and other officers, and then stating that “None of the above officials, nor anyone officially acting in that capacity, may exercise the authority to make the above certifications, unless that official has been appointed by the President, by and with the advice and consent of the Senate”).

- The Secretary shall appoint a senior official in the Department to assume primary responsibility for coordinating policy and operations within the Department and between the Department and other Federal departments and agencies with respect to interdicting the entry of illegal drugs into the United States, and tracking and severing connections between illegal drug trafficking and terrorism.

II. Special Counsel Appointments by Attorney General Barr in 1991 and 1992

As noted at the hearing, William Barr appointed three attorneys as Special Counsel during his first term as the Attorney General. Those appointments included:

- Nicolas Bua (appointed in November 1991 to investigate the Inslaw matter)³
- Malcolm Wilkey (appointed in March 1992 to investigate the House banking matter)⁴
- Frederick Lacey (appointed in October 1992 to investigate the “Iraqgate” matter)⁵

Respectfully submitted,

JACK SMITH
Special Counsel
N.Y. Bar No. 2678084

³ See Exhibit 1 (Introduction from Special Counsel Bua Report); Exhibit 2 (Media Advisory from Senate Republican Leader Bob Dole).

⁴ See Exhibit 2 (Media Advisory from Senate Republican Leader Bob Dole); Exhibit 3 (Washington Post article).

⁵ See Exhibit 2 (Media Advisory from Senate Republican Leader Bob Dole); Exhibit 4 (Washington Post Article); Exhibit 5 (UPI Article).

By: /s/ Jay I. Bratt
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June 23, 2024

CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2024, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, which in turn serves counsel of record via transmission of Notices of Electronic Filing.

/s/ Jay I. Bratt
Jay I. Bratt

Exhibit 1

REPORT OF SPECIAL COUNSEL
NICHOLAS J. BUA
TO
THE ATTORNEY GENERAL
OF THE UNITED STATES
REGARDING THE ALLEGATIONS OF INSLAW, INC.

NICHOLAS J. BUA
HELENE B. GREENWALD
JOSEPH H. HARTZLER
CHARLES D. KNIGHT
DEAN J. POLALES
DAVID S. ROSENBLOOM

March 1993

THIS DOCUMENT HAS BEEN REVISED
IN ORDER TO DELETE MATERIAL
THE DISCLOSURE OF WHICH IS
PROHIBITED PURSUANT TO
RULE 6(e) OF THE FEDERAL
RULES OF CRIMINAL PROCEDURE

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I. INTRODUCTION

On November 7, 1991, Attorney General William Barr appointed me to serve as a Special Counsel for the purpose of investigating all allegations of wrongdoing in connection with what has come to be known as the Inslaw matter. The Attorney General requested that I conduct a complete and thorough investigation, and determine whether there had been any misconduct by any individuals, either inside or outside the Department of Justice. The Attorney General told me that my investigation should be completely independent, and assured me that he would demand complete cooperation with my investigation by all Department of Justice employees.

I selected six Assistant United States Attorneys, all with significant criminal prosecution experience, and one of my law partners, to assist me in my investigation.¹ Together, my assistants and I selected two seasoned and highly regarded Special Agents from the FBI to work as our investigators. For purposes of this investigation, the Assistant U.S. Attorneys and the FBI agents reported solely to me, and to nobody else within the Department of Justice ("DOJ").

During the past year we have devoted considerable resources to investigating the myriad allegations that have been made about the conduct of DOJ employees, and others, in connection with the

¹One of the Assistant United States Attorneys I originally selected resigned from my staff after he was appointed Chief of the Public Integrity Section of the Criminal Division of the Department of Justice. We agreed that resignation was appropriate in order to maintain the independence of this investigation. In addition, Thomas M. Durkin, the former First Assistant United States Attorney for the Northern District of Illinois resigned from my staff when he entered private practice in February 1993.

administration of a contract between DOJ and Inslaw. At times, this has been a daunting task. The allegations in this case seem to know no bounds. They literally range from charges of murder and international espionage to claims of simple incompetence. In investigating these allegations, we necessarily had to assign priorities to our tasks. We have for the most part completed our investigation regarding what we consider be the most serious allegations. As is described more specifically elsewhere in this report, there remain a few areas where we have not completed our investigation. Our preliminary review of these remaining areas, however, leads us to believe that it is unlikely that we will find evidence that would affect the tentative conclusions set out in this report. We are forwarding our conclusions to you now in order to allow you to determine how you wish to proceed in this matter.²

²During our investigation we subpoenaed several third party witnesses to appear before a grand jury in the Northern District of Illinois. Matters occurring before the grand jury are described in several places in this report. Pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure, those matters cannot be disclosed without leave of the Chief Judge of the district court. Consequently, unless and until that authorization is obtained, we will be taking the customary precautions to preserve the confidentiality of this report and the matters discussed herein.

Exhibit 2

Bob Dole



NEWS

U.S. SENATOR FOR KANSAS

FROM:

SENATE REPUBLICAN LEADER

FOR IMMEDIATE RELEASE
Friday, January 7, 1994

Contact: Clarkson Hine
(202) 224-5358

****MEDIA ADVISORY****

**THE FACTS ABOUT SPECIAL COUNSELS
& THE AUTHORITY OF THE ATTORNEY GENERAL**

There has been a great deal of confusion about the issue of special counsels and the authority of the Attorney General to name special counsels.

The following is provided to help clear up this confusion:

Notwithstanding the expiration of the Independent Counsel Act, the Attorney General currently has the statutory authority to appoint a "special counsel" as well as the regulatory authority to appoint an "independent counsel."

1. Special Counsel Authority

a. 28 U.S.C. 515(a)

"The Attorney General or any other officer of the Department of Justice, or any attorney specially appointed by the Attorney General under law, may, when specifically directed by the Attorney General, conduct any kind of legal proceeding, civil or criminal, including grand jury proceedings and proceedings before committing magistrates, which United States attorneys are authorized by law to conduct, whether or not he is a resident of the district in which the proceeding is brought."

During the Carter Administration, former U.S. Attorney Paul Curran was appointed a special counsel by then Attorney General Griffin Bell pursuant to 28 U.S.C. 515(a).

b. 28 U.S.C. 533

"The Attorney General may appoint officials--

- (1) to detect and prosecute crimes against the United States;*
- (2) to assist in the protection of the person of President; and*
- (3) to conduct such other investigations regarding official matters under the control of the Department of Justice and the Department of State as may be directed by the Attorney General.*

This section does not limit the authority of departments and agencies to investigate crimes against the United States when investigative jurisdiction has been assigned by law to such departments and agencies."

During the Bush Administration, it is our understanding that Judge Malcolm Wilkey (House Bank scandal) and Judge Nicholas Bua (the Inslaw matter) were appointed special counsels by then Attorney General William Barr pursuant to 28 U.S.C. 533.

(more)

2. "Regulatory" Independent Counsel Authority

The Attorney General has authority under Justice Department regulations (28 CFR Part 600) to appoint an independent counsel. In fact, the only substantive difference between a "regulatory" independent counsel and the "statutory" one envisioned by the Independent Counsel Act is that the Attorney General appoints the regulatory independent counsel, whereas the Attorney General applies to the Special Division of the Court of Appeals to appoint the statutory one.

Like the Independent Counsel Act, the regulations provide that:

- the Independent Counsel "shall have, with respect to all matters in his prosecutorial jurisdiction...full power and independent authority to exercise all investigative and prosecutorial functions and powers of the Department of Justice, the Attorney General, and any other officer or employee of the Department of Justice...." 28 CFR 600.1(a) (compare 28 U.S.C. 594(a)).
- the Independent Counsel "may be removed from office, other than by impeachment and conviction, only by the personal action of the Attorney General and only for good cause, physical disability, mental incapacity, or any other condition that substantially impairs the performance of the Independent Counsel's duties." 28 CFR 600.3(a)(1) (compare 28 U.S.C. 596(a)(1)).
- if the Attorney General exercises such removal authority he or she shall provide a "report specifying the facts found and the ultimate grounds for such removal" to the Senate and House Judiciary Committees and that the Independent Counsel may seek judicial review of such removal. 28 CFR 600.3(a)(2),(3) (compare 28 U.S.C. 596(a)(2),(3)).
- the Independent Counsel "may make public from time to time, and shall send to the Congress statements or reports on the activities of the Independent Counsel." 28 CFR 600.2(a) (compare 28 U.S.C. 595(a)(2)).

The regulations do not require an Independent Counsel to report to the Attorney General before taking any action during the course of an investigation.

During the Bush Administration, then Attorney General William Barr exercised his authority under 28 CFR 600 to appoint Judge Frederick Lacey to investigate the Banca Nazionale de Lavoro matter.

###

Exhibit 3

🕒 This article was published more than **32 years ago**

Democracy Dies in Darkness

EX-JUDGE TO HEAD HOUSE BANK PROBE

FOLEY PROPOSES TO END SOME PERKS

By Kenneth J. Cooper and Dana Priest

March 20, 1992 at 7:00 p.m. EST

Attorney General William P. Barr yesterday appointed a retired federal judge as special counsel to head an inquiry into possible criminal violations by members of Congress and congressional employees who abused their House Bank privileges.

Retired federal judge Malcolm R. Wilkey, a Nixon administration appointee and chairman of President Bush's ethics reform commission, replaces U.S. Attorney Jay B. Stephens as head of an effort to determine whether a formal investigation is warranted.

An administration source said Barr asked Wilkey to replace Stephens, a Reagan administration appointee, because Wilkey is "above political reproach. You free yourself up from political considerations."

On Capitol Hill yesterday, House Speaker Thomas S. Foley (D-Wash.) proposed an end to free prescription drugs for House members and an unspecified increase in dues for their private gymnasium as first steps in a review prompted by the bank scandal of congressional perquisites.

"I am determined to see to it that the management of the House is . . . without unfair criticism in terms of its efficiencies and operations and integrity, and I am going to do whatever is necessary so that would happen," Foley said at a news conference.

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The House Bank has become the source of a major political heartache for members already trying to explain to constituents why the deficit is so large, national economic growth is so small and why they, as elected officials, deserve special treatment.

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The broad review of House operations, Foley said, was in response to "the current focus on so-called perquisites of office." The speaker said he wanted to "ensure there are no provisions that are not justified by {the} work responsibility" of members.

Other members yesterday joined the perk reform movement.

Rep. Gene Taylor (D-Miss.) said he would propose, independently of the Democratic leadership, taking away the right to a driver and limousine from the whips elected by both parties, an idea specifically targeted at Minority Whip Newt Gingrich (R-Ga.).

Rep. Dave McCurdy (D-Okla.) urged the House to go further on Foley's proposal and to pass a bill introduced in November that would require members of Congress to pay for all medical services from the attending physician, who has a \$1.5 million budget.

Missi Tessier, spokeswoman for Minority Leader Robert H. Michel (R-Ill.), said he concurred with the speaker's proposals.

"But he does not want it to detract from the movement to a legitimate and thorough overhaul of the way the House of Representatives does its business," she said.

Foley described free prescriptions dispensed by the attending physician, Robert C.J. Krasner, as a throwback to an era when health insurance was less commonplace. For the last 70 years, Foley said, the Navy has provided free drugs, which line shelves of a private pharmacy on the first floor of the Capitol, to members of the House, Senate and Supreme Court.

Senate Majority Leader George J. Mitchell (D-Maine) said he is continuing to review Senate perks, and a Supreme Court spokeswoman said the free drugs for the nine serving and four retired justices have not been an issue.

Foley said the prescription service would end in 30 days to give members time to readjust their health insurance coverage.

Foley also said he asked a committee of members that oversees the House gym to "assess new charges" for use of the facility in the sub-basement of the Rayburn House Office Building.

Dues are now \$100 a year for members and \$250 for former members, several hundred dollars below fees for private health clubs. The gym offers basketball and paddle ball courts, swimming pool, exercise bicycles, treadmills and a stair-climbing machine.

The House Democratic leadership aide said the gym and free prescriptions were singled out because they were frequently mentioned in news accounts. He said Foley also plans to review the stationery store, where some gift items are stocked.

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The Standards of Official Conduct Committee yesterday decided that the list of 24 top "abusers" of the House Bank would not be released Monday, 10 days after the resolution was passed, because a subcommittee needed more time to hear appeals from those members.

The Justice Department is looking into such things as whether any criminal laws were violated when 355 current and former House members wrote checks with insufficient funds in their House Bank accounts and whether any federal mail or wire fraud laws were violated by House Bank employees aware of the overdrafts.

The appointment of Wilkey, who as a special counsel will report to the attorney general, "does not reflect any escalation of the Justice Department's effort or any change in the nature of the inquiry," Barr said.

After Stephens's office announced the inquiry Monday, some House Democrats, including Rep. John Lewis (D-Ga.), suggested Stephens had political motives for launching the investigation.

In his statement yesterday, Barr praised Stephens for initiating the inquiry and expressed confidence in him. "However, given the unique circumstance and sensitivities of this matter, I have concluded that the public interest will be served by appointing" Wilkey, Barr said.

Stephens released a statement saying "a thorough and fair review of the allegations . . . is important to maintain the trust of the American people I am confident Judge Wilkey will continue the work initiated by this Office "

Although much of the inquiry involves reading bank records, Wilkey does have the power to subpoena individuals and could convene a grand jury if he deemed it necessary, a Justice Department official said.

Wilkey, 73, was chairman of the President's Commission on Reform of Federal Ethics Laws, which met in 1989. From 1970 to 1984, he was a U.S. Circuit Court judge here and was ambassador to Uruguay 1985 to 1990.

In 1981, Wilkey caused a stir in the legal community after it was reported that he and his wife visited Namibia, a country the U.S. government did not recognize, at the invitation and expense of the South African government.

The House Bank, a check-cashing facility, operated casually for more than 150 years and routinely covered the overdrafts of members whose checks were deposited there. The House voted to close it last fall.

Yesterday's perk-bashing was not without interparty political punches.

Taylor's proposal to take away limousine service and police amounted to an assault on Gingrich because Majority Whip David E. Bonior (D-Mich.) has already forgone that privilege.

Taylor said Gingrich had self-righteously accused members, during last week's debate on disclosing the House Bank overdrafts, of "being so overwhelmed by the arrogance of power."

"It just irks me," Taylor said, "that a guy who has a \$60,000 driver, riding around in a \$50,000 car, gets up on the floor every day talking about perks."

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Tony Blankley, a spokesman for Gingrich, said former sergeant-at-arms Jack Russ had assigned a Capitol Police officer to the whips for security reasons.

"It's not a chauffeuring responsibility, it's a security responsibility," Blankley said. "Certainly, for someone as visible and controversial as he is, it's not a de minimus concern."

Exhibit 4

🕒 This article was published more than **31 years ago**

Democracy Dies in Darkness

EX-JUDGE TO PROBE HANDLING OF BNL

BARR STOPS SHORT OF SPECIAL COUNSEL

By Sharon LaFraniere and R. Jeffrey Smith

October 16, 1992 at 8:00 p.m. EDT

Attorney General William P. Barr yesterday appointed a retired federal judge to investigate CIA and Justice Department actions in an international bank fraud case. But he stopped short of naming the type of independent counsel urged by congressional Democrats and the judge who presided over the case.

Barr said a "climate of distrust" has made it impossible for the department to put to rest allegations that it mishandled a criminal inquiry into the Atlanta branch of the Italian-owned Banca Nazionale del Lavoro (BNL). The branch gave Iraq more than \$4 billion in loans and loan guarantees for weapons and food that helped strengthen Saddam Hussein's regime before Iraq's 1990 invasion of Kuwait.

Critics have suggested administration officials held back investigators either to protect the Italians or to avoid potentially embarrassing revelations about the Bush administration's overtures to Iraq before the Persian Gulf War. In recent days, the CIA has acknowledged that it failed to give prosecutors some documents suggesting Italian complicity in the case.

Barr said he believes prosecutors acted properly in the BNL case, but that the combination of election-year politics and "media sensationalism" convinced him that an internal review would not convince anyone. Within the Justice Department, prosecutors complain their reputations are being smeared by Democrats who want to exploit a campaign issue.

Congressional Democrats had formally requested that Barr invoke the independent counsel statute, which requires a panel of judges to appoint the special investigator. Instead, Barr turned to obscure federal regulations allowing him to pick someone he wanted, a 72-year-old Republican named Frederick B. Lacey. Barr can fire him, but only for good cause.

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In another significant move, Barr announced he is revamping the Atlanta-based prosecution team that handled the BNL case for the past three years and forming a new task force, to be led by a different U.S. attorney. He said Lacey, as part of a broad charter, would keep him informed on the task force's efforts.

Lacey said he would quit before he would allow any administration official to interfere with his task. He also promised to publicly release his report on the BNL controversy and inform Congress about his conclusions. Stressing his reputation as a tough-minded prosecutor and judge who battled organized crime in New Jersey, he expressed confidence he could "get even the reluctant to cooperate."

Justice Department officials are hoping Barr's moves will muffle the drumbeat of criticism over the BNL case, but Lacey's appointment did not satisfy either the federal judge in Atlanta who oversaw the BNL case or Democrats who have led congressional probes into the matter.

Sen. David L. Boren (D-Okla.), chairman of the Select Committee on Intelligence, said the Justice Department should not "be in a position of appointing its own investigator."

Rep. Henry B. Gonzalez (D-Tex.), said Barr "has taken a sidestep -- better than nothing but not nearly enough."

U.S. District Judge Marvin H. Shoob, who until recently presided over the BNL case, said he was disappointed Barr did not invoke the independent counsel statute. Lacey's appointment "might have been the right decision months ago. But at this late stage, it is certainly not the answer," he said.

Barr's news conference, the first in months, follows a nasty round of finger-pointing between the CIA and the Justice Department over which agency was responsible for giving Shoob a misleading and incomplete report in September about what the CIA knew. The department's relations with the FBI are also tense because department officials are investigating possible ethical and criminal violations by FBI Director William S. Sessions and trying to fire a top Sessions aide.

Lacey, who knows Sessions, said he would look into whether the Sessions inquiry was leaked to the news media to divert attention from the BNL controversy, but he said Barr has assured him "there was absolutely no truth to this."

Barr said he has told Lacey to investigate the department's "entire handling of the BNL matter . . . from day one," including disclosures that the CIA failed to turn over relevant information to prosecutors. Lacey said he has the power to use a federal grand jury to subpoena witnesses and documents and to seek indictments.

Whether Lacey would keep his appointment if President Bush is defeated is unclear. Presumably, that decision would be up to the new attorney general.

Barr's refusal to use the independent counsel statute is not surprising, given his oft-stated belief that the Justice Department can almost always investigate itself.

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Since he became attorney general a year ago, he has denied many requests that he invoke the statute. Barr has complained about both the provision mandating selection by a panel of judges and the fact the independent counsel is not subject to supervision by the Justice Department.

He said he informed White House Counsel C. Boyden Gray of his decision to appoint Lacey Thursday night. As a federal prosecutor in New Jersey, Lacey won recognition for fighting organized crime and political corruption. He served as a federal judge in that state from 1971 to 1986, then joined a law firm.

Since 1989, he has been a court-appointed administrator of the International Brotherhood of Teamsters. He forced several senior union officials to resign because he determined they had links to organized crime.

The new prosecution task force will take control of not only the BNL investigation, but other inquiries related to U.S. policy toward Iraq, including whether the Commerce Department altered documents on exports to Iraq before giving them to Congress in 1990, Barr said.

Barr said the group will be composed of Justice Department officials and prosecutors drawn from around the country, and will be supervised by a U.S. attorney who he will pick with Lacey's advice.

Barr said that while he believes the Atlanta-based prosecution team has done nothing wrong, the new team may not include all members of the old one. He said Lacey may help decide the new team members as the special investigator "starts framing his views" about alleged mistakes or improprieties.

In a bow to critics, Barr said the task force will reexamine some of the Atlanta prosecutors' most-contested conclusions about how BNL officials made the off-the-book loans to Iraq.

A key issue is whether Christopher Drogoul, who ran BNL's tiny Atlanta branch, arranged the loans to Iraq on his own or had the approval of bank higher-ups in Rome. The prosecution of Drogoul has been based on the theory he was the most-senior official involved, but Barr insisted yesterday: "We have never closed the door to the possibility of complicity . . . by individuals in Rome. . . . Indeed, the prosecution of Drogoul is the logical step in the normal course of moving up the chain of a potential conspiracy."

Boren has said classified CIA documents, some of which were only recently provided to the Justice Department, suggest Drogoul acted not on his own but with the approval from BNL's Rome headquarters.

In a September letter to prosecutors in Atlanta, the CIA said it had only public information suggesting any complicity by BNL-Rome. The prosecutors presented that letter to a skeptical Shoob to try to convince him they had pursued every lead.

In fact, the CIA had at least three classified documents, according to Boren and Sen. Frank Murkowski (R-Alaska), who rebuked CIA Director Robert M. Gates for allowing the agency to give an inaccurate account.

In their defense, senior CIA officials told Boren's committee in closed-door testimony that they had wanted to correct the misleading letter but ran into resistance from the Justice Department. Justice Department officials have countered that they did not try to prevent the CIA from correcting the letter.

Barr said the task force will also look into whether Iraq was able to manipulate BNL loans guaranteed by the U.S. Agriculture Department to buy weapons instead of food.

U.S. officials initially suspected such a diversion in 1989, when the Bush administration was considering whether to give Iraq another \$1 billion in loan guarantees for food purchases. But administration officials have since claimed there is no proof of any such diversion.

Exhibit 5



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UPI ARCHIVES OCT. 16, 1992

Barr names special counsel in BNL case, his resignation still demanded

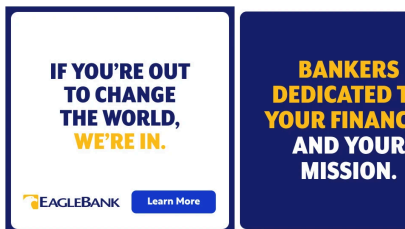


WASHINGTON -- Attorney General William Barr, reversing himself in the face of allegations that the CIA and the Justice Department blunted an investigation of an Atlanta bank that loaned billions of dollars to Iraq, announced appointment Friday of a special department counsel to investigate the case.

Barr said he has no reason to believe any Justice Department official acted improperly in the affair of the Banca Nazionale del Lavoro (BNL) case, but the chairman of the House Banking Committee said the attorney general himself is tainted and should resign.

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Barr appointed retired U.S. District Judge Frederick Lacey of New Jersey as an independent counsel under Justice Department regulations, not under the independent counsel statute demanded by Rep. Henry Gonzalez, D-Texas.

The independent counsel statute would give Lacey unqualified independence from the attorney general, who can dismiss him



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'This committee has spent countless hours dismantling the Justice Department's stonewalling of the BNL investigation,' Gonzalez said. 'Now at long last, Mr. Barr has his back up against the wall. The evidence that the department has delayed the investigation of the BNL- Iraq case is so overwhelming that Mr. Barr no longer has anywhere to hide.'

'I wish Judge Lacey well, but a truly independent counsel would not have to report to the agency he is investigating,' Gonzalez said. 'Attorney General Barr clearly wants to control the investigation. But clearly there is a question of possible widespread criminal conduct within the Justice Department.'

'True to form, Attorney General Barr is still hiding behind the same old stonewall. He should appoint a genuinely independent counsel and take the honorable step of resigning.'

Sen. David Boren, D-Okla., head of the Senate Intelligence Committee, Gonzalez and other congressional Democrats have demanded that an independent counsel investigate the billions in illicit loans that BNL's branch in Atlanta made to arm Iraq's war machine.

The headquarters of BNL, almost totally owned by the Italian government, is located in Rome. The Justice Department contends that the CIA failed to provide key documents about the investigation of BNL. Boren says the FBI, which is part of the Justice Department, was aware of virtually all of its key classified reports on the matter.

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The CIA has acknowledged it gave misleading information to U.S. District Judge Marvin Shoob, handling the BNL case in Atlanta, about its knowledge of BNL, and it is alleged that Justice Department officials encouraged a lack of cooperation. Shoob says that information regarding BNL loans to Iraq may have been withheld from local prosecutors.

Barr said in August, however, that there was not a shred of evidence that any Justice Department employee acted improperly in the investigation of BNL. But he reversed himself after learning that the CIA had knowledge of the case that was not disclosed to Shoob.

'In the current politically charged environment, nothing could be worse than to have this matter tried in the press based on allegation, rumor, and leaks,' Barr said.

'I think it is a climate of distrust, but also a climate of unusual political charges because it's an election year, and a climate of media sensationalism.

'We are prepared to let the chips fall where they may.'

Lacey, 72, has been praised for his record in fighting corruption in the Teamsters, and served as a court-appointed trustee of the union after leaving the bench. He said he would be independent, and follow the investigation wherever it takes him.

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'I will have access to every file and document and access to every individual who worked on the matter or has knowledge about it,' he said.

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If there is any stonewall, Lacey said it will fall or he will leave.

'I can submit my resignation,' he said. 'With the press out there, it will be enough of a threat to get what I need.'

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