

**THE INTELLIGENCE COMMUNITY'S INVOLVEMENT
IN THE BANCA NAZIONALE DEL LAVORO (BNL) AFFAIR**

**A REPORT PREPARED BY THE STAFF
OF THE
SELECT COMMITTEE ON INTELLIGENCE
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PART I. SUMMARY OF THE STAFF INVESTIGATION

WHAT PROMPTED THE INVESTIGATION

On June 2, 1992, Christopher P. Drogoul, manager of the Atlanta branch of Banca Nazionale del Lavoro (BNL), pled guilty to 60 counts of a 347-count federal indictment in Atlanta charging him with an elaborate scheme to defraud the parent bank and the U.S. Government by arranging for over \$4 billion in unauthorized loans to individuals and entities in Iraq, including \$1.6 billion in U.S.-guaranteed loans.

Reacting to the Drogoul plea, as well as to press reports and suggestions by Congressman Henry Gonzalez, Chairman of the House Banking Committee, that the U.S. Government may have known of, or been involved in, the illicit activities of Drogoul and his collaborators, the Senate Select Committee on Intelligence (the "SSCI") wrote to the Director of Central Intelligence (DCI) on June 3, 1992, to request that "an all-source chronology" be prepared recounting the Intelligence Community's reporting on BNL from 1983 to 1992, with particular emphasis on BNL's dealings with Iraq, to include any indication of illegal conduct in connection with the U.S.-guaranteed loans.

On July 23, 1992, the SSCI received the requested chronology, which included, among other things, references to several intelligence reports, dating from the fall of 1989 until the present, which related to the BNL-Atlanta scandal. The Central Intelligence Agency (CIA) advised that staff members of the SSCI could review these intelligence reports upon request. This review took place on August 5 at CIA, and the staff made notes which were returned for storage at the Committee.

On August 31, 1992, a William Safire column in the New York Times contained new allegations of intelligence agency knowledge of the activities at BNL-Atlanta ("Justice Corrupts Justice," New York Times, August 31, 1992). This column prompted another SSCI letter to the CIA on September 9 asking for a response to these and other allegations.

When the sentencing hearing for Drogoul began on September 14 in Atlanta, Drogoul's attorneys made additional allegations regarding CIA involvement with a U.S. firm involved in trading with Iraq. These allegations were widely circulated in the press, and prompted additional letters from the Committee to the CIA on September 17 and 18.

Earlier that week, on the day the sentencing hearing opened, Congressman Gonzalez issued a press release citing a

summary of four CIA reports which he said CIA had assessed as "confirming press allegations that more senior officials in Rome had been witting of BNL-Atlanta's activities." This assessment appeared to conflict with the theory of the prosecution, which held that Drogoul and his collaborators at BNL-Atlanta had carried out the scheme without the knowledge of their superiors at BNL-Rome.

The Gonzalez statement drew the attention of the SSCI staff who had earlier reviewed the intelligence reports underlying the "all-source chronology." They became increasingly concerned either that these reports had not been provided the prosecutors by the CIA, or, alternatively, that the prosecutors had not made such information available to the court.

This concern grew over the weekend of September 19-20, when an unclassified letter of September 17, 1992, from David Holmes, the Acting CIA General Counsel to Gerrilyn Brill, the Acting U.S. Attorney assigned to the Drogoul case, was reported in the press. Among other things, in response to "question 8" asking whether CIA had "any information that BNL-Rome was aware of the illegal activities engaged in by Atlanta," the CIA letter provided: "CIA has publicly available information acquired in the December, 1989 - January, 1990 time frame that BNL-Rome was aware of the illegal activities engaged in by BNL-Atlanta."

The wording of this answer on its face appeared incomplete in view of the intelligence reports the SSCI staff had reviewed. At least four of these contained "non-public" information, some obtained before December, 1989, which suggested BNL-Rome may have been aware of the illegal activities at Atlanta. Since it was apparent that the disclosure of the intelligence would also threaten the Justice Department's theory of the case, i.e. that BNL-Rome was an unwitting victim of the fraud, the September 17th CIA letter raised an issue of whether CIA and/or the Justice Department had deliberately provided inaccurate or misleading information to the court. It also appeared to the Committee that such information could mitigate against the sentence being considered by the court for defendant Drogoul.

On September 28, CIA representatives were requested to appear at a briefing for the SSCI staff to explain the circumstances surrounding the September 17th letter. At this briefing, CIA representatives maintained that the answer to question 8 was "accurate" and constituted "a narrow response to a narrow question." However, they could not say whether all of the underlying intelligence reports reviewed by the SSCI staff indicating that "BNL-Rome knew" had been provided to the court.

Since the briefing failed to resolve the Committee's

concerns, the Chairman and Vice-Chairman sent a letter the following day to DCI Robert M. Gates, urging that the underlying intelligence reports be provided immediately to the trial judge and that a public clarification to the September 17th letter be made.

On September 30, the following day, the Committee was advised by CIA that in the course of a search conducted in response to a Committee request, three new classified documents pertinent to the issue of BNL-Rome's relationship with BNL-Atlanta had been discovered in the Directorate of Operations. None had previously been provided to the Justice Department or the court. On the morning of October 1st, SSCI staff was briefed at CIA on the newly-discovered documents and was told that arrangements were being made to take them to Atlanta to show the court.

Later the same morning, the Committee was advised that the Government had withdrawn its opposition to Drogoul's motion to withdraw his guilty plea and that plans to go to Atlanta were being held in abeyance.

On Monday, October 5, the presiding judge in the case, the Honorable Marvin H. Shoob, granted Drogoul's motion to withdraw the plea, and, in doing so, issued a statement critical of the Government's handling of the case in general, and of the CIA's responsiveness in particular:

"There are grave questions as to how the prosecutors made their decisions in this case -- both as to the nature of the charges and whom to prosecute. It is apparent that decisions were made at the top levels of the United States Justice Department, State Department, and within the intelligence community to shape this case and that information may have been withheld from local prosecutors seeking to investigate the case or used to steer the prosecution...

"[I]t is likely that the United States intelligence agencies were aware of BNL-Atlanta's relationship with Iraq...The CIA did not respond to repeated requests from the Court concerning CIA knowledge of and involvement in the activities of the Atlanta branch. The agency's [September 17] response to the carefully crafted [Justice Department questions] was evasive and concerned only knowledge of and involvement in unauthorized funding. The CIA continues to be uncooperative in attempts to discover information about its knowledge of or involvement in the funding of Iraq by BNL-Atlanta." (United States v. Drogoul, slip op., Criminal Action 1:91-cr-078-MHS, N.D. Ga., Oct. 5, 1992)

Although it was in the last week of the 102d Congress, the Committee held two hearings during the week following

Judge Shoob's statement in an effort to investigate the basis for his charges as well as to determine whether there had been any deliberate effort to mislead or deny information to the court.

On October 8, 1992, the Committee heard from CIA witnesses who conceded that the answer to question 8 contained in its September 17th letter had been incomplete and misleading but denied there had been any effort to deliberately provide misleading information. CIA witnesses noted that although they had had some misgivings with respect to their answer to question 8, a Justice official had "strongly advised" them not to change their response, which was repeated verbatim from a similar classified letter CIA had sent to Justice on September 4, 1992. CIA witnesses also notified the Committee that yet another intelligence report which mentioned BNL had been discovered and had been forwarded to Justice.

On October 9, 1992, the SSCI held a second hearing which included testimony from the Justice Department official who had reportedly "strongly advised" against changing the answer to question 8. The official conceded that he had given CIA such advice, but denied any effort to pressure the CIA to give an incomplete or misleading answer. CIA officials, testifying later the same day, took responsibility for the answer to question 8 and denied being improperly pressured. At the same time, it was disclosed that at the time the September 17th letter was being prepared, CIA had drafted a proposed public statement which would have acknowledged that CIA information "did not permit a definitive conclusion" in terms of whether "BNL-Rome knew" and which stated that CIA intended to make all relevant documents available to the court. The Committee was advised, however, that Justice officials had rejected the proposed public statement which appeared to mitigate the misleading impression created by the answer to question 8.

At the conclusion of this hearing, the Committee unanimously voted to have the staff conduct an investigation of the matter and report back its findings to the Committee when it returned following adjournment sine die.

NATURE OF THE INVESTIGATION

A small working group was formed and began work immediately by reviewing all of the public record materials relating to the case, to include the Attorney General's August 10, 1992 report to the House Judiciary Committee, declining to seek appointment of an Independent Counsel, as well as the court transcript of the Drogoul proceedings.

In the week which followed there were repeated calls for

the Attorney General to appoint an Independent Counsel to investigate these events, coming from both Judiciary Committees, Congressman Gonzalez, and Senators Boren and Metzenbaum. On Friday, October 16, one week after the Committee's hearings, the Attorney General responded to these requests by appointing retired federal judge Frederick B. Lacey as an "independent counsel" pursuant to regulations of the Department of Justice, rather than under the provisions of the Independent Counsel statute (28 U.S.C. 591 et. seq.). Under this regime, Judge Lacey was to (1) advise the Attorney General whether to conduct a formal preliminary investigation pursuant to the Independent Counsel statute; and (2) conduct such an investigation, if warranted, and advise the Attorney General whether to seek appointment of an Independent Counsel under the statute.

At the outset, Judge Lacey made it clear in a letter to Senator Boren that his investigation should not interfere in any way with the investigation of the Committee, and that he had no objection to the Committee's talking to whomever it wished.

The staff investigation began with an interview of Judge Shoob, who reviewed in detail his concerns about the Government's handling of the Drogoul case.

The investigation then turned to the CIA. In all, 24 on-the-record depositions were taken of CIA employees during the course of the investigation. There was no case in which a CIA employee refused to be deposed. The staff also made requests for numerous documents. These included information on CIA's knowledge of individuals and companies mentioned in the course of the Drogoul case as having possible connections to the U.S. intelligence community. The requests also included all correspondence and records of communications with the Department of Justice concerning the BNL case. In all, the staff examined over several thousand pages of CIA documents. In some cases, the inquiry was supplemented by briefings on technical aspects of the case.

The staff also extensively examined the question of whether persons and companies involved in the Iraqi procurement network, or who were mentioned in the course of the Drogoul criminal proceedings, might have had relationships with the CIA that could have affected CIA's willingness to provide information to the Justice Department or to the court.

A special request was made of the CIA for any documents concerning its knowledge of the British firm Matrix Churchill or its U.S. subsidiary located in Ohio. Since it was confirmed in a recent criminal proceeding in England that two employees of Matrix Churchill had been sources for British intelligence during the period in which dual-use equipment

had allegedly been sold to Iraq, it was important for the Committee to know whether CIA had been aware of this activity or had any role in it.

The Committee staff also made requests to officials at Main Justice and in the U.S. Attorney's Office in Atlanta to conduct depositions and made requests to Justice for relevant documentation. In coordination with the Senate Committee on the Judiciary, it was agreed that a representative from Judiciary would participate in all depositions involving Justice witnesses and that the SSCI would share access to documentary evidence it might receive from Justice.

In this area, the investigation ran into practical difficulties. Each of the prosecutors in Atlanta and one of the Justice officials whom the staff sought to depose requested personal counsel, who had to receive security clearances before they could advise their clients. Other Justice officials who did not seek personal counsel were preparing for their depositions with Judge Lacey at approximately the same time the Committee was seeking their testimony. Document production from Justice was also delayed due to the priority that was being placed on responding to the requests from Judge Lacey.

Despite these difficulties, the Committee took on-the-record depositions from five key officials, including three at Main Justice and two who were involved in the U.S. Attorney's Office in Atlanta. Justice also furnished copies of documents which had been furnished to other Committees on the BNL matter, and later provided the documents specifically requested by the Committee.

On October 26, Judge Lacey advised the Attorney General that a preliminary investigation was warranted, and he proceeded to conduct such an investigation. On December 9, 1992, Judge Lacey submitted his report of the investigation to the Attorney General. The Committee was given a copy of the 138-page classified portion of Lacey's report, as well as all of the 30 sworn depositions and several thousand pages of documentary evidence which had formed the basis for the classified report.

This material has all been read by the staff working group and assimilated into this report.

In light of time constraints, the working group concluded that further depositions of those at Justice and in Atlanta would have been of marginal value and would not have changed the findings of the working group. The working group believed that the sworn depositions taken by the Lacey investigators essentially covered the remaining issues of concern.

SCOPE OF THE INVESTIGATION

Under Senate Resolution 400, the SSCI has primary jurisdiction over the CIA and the intelligence activities of the U.S. Government. Primary jurisdiction over the Department of Justice and the administration of the criminal justice system rests with the Committee on the Judiciary. Other aspects of the case fall within the jurisdiction of other Senate committees. For example, the administration of the Commodity Credit Corporation loan-guarantee program falls with the jurisdiction of the Committee on Agriculture, Nutrition and Forestry, and the administration of most export controls is within the purview of the Committee on Banking, Housing and Urban Affairs. While, in the end, these overlapping and potentially competing jurisdictional arrangements did not preclude the SSCI from following the investigation where it led, they did influence the scope of the inquiry.

In general, the inquiry focussed on whether CIA or any element of the Intelligence Community had deliberately misled, or had deliberately withheld relevant information from, the Department of Justice or the presiding judge in the BNL case.

While the events of September, 1992 (described above) appeared the most problematic in this regard, the staff determined that its inquiry necessarily had to include consideration of the entire interaction between the Justice Department and the Intelligence Community during the case to determine if there were other indications of improper conduct. Indeed, it was believed necessary to ascertain the full extent of the knowledge of the Intelligence Community regarding persons or entities involved in the BNL scandal prior to the FBI raid on BNL-Atlanta on August 4, 1989, in order to know if such knowledge might have colored or tainted the community's cooperation with the Department of Justice or the court.

In looking at the interaction between the Intelligence Community and the Justice Department over the course of the BNL case, the staff also believed it imperative to look for evidence of political pressure, of any efforts to "shape the case" for political reasons, which Judge Shoob alluded to in his October 5th order.

Clearly, what was known about the history of the BNL case, when considered in light of contemporaneous political developments, seemed to suggest a possible link between what was happening on the political stage and what was happening in Atlanta. For example, in the fall of 1989, shortly after the FBI raid on BNL-Atlanta, the Bush Administration adopted National Security Directive 26, which sought to use political

and economic incentives to bring Iraq into the "family of nations." In November, 1989, the Administration approved new agricultural loan guarantees for Iraq, notwithstanding the ongoing investigation of Iraqi complicity in the bank fraud in Atlanta. At the same time, the Italian Government was conveying to the U.S. Ambassador in Rome that indicting BNL-Rome would damage the bilateral relationship. The first draft indictment prepared by the U.S. Attorney's Office in Atlanta in January, 1990, included neither Iraqis nor Italians as indictees. Indeed, it was not until August, 1990, after Iraq invaded Kuwait, that the first inquiries were made to the Intelligence Community asking for information on possible Iraqi defendants. As for the culpability of Italian participants, the prosecutors concluded that BNL-Rome was the unwitting victim rather than a collaborator in Drogoul's \$4 billion fraud. This, on its face, seemed implausible. Subsequently, because the prosecutors were able to negotiate guilty pleas with Drogoul and the other BNL defendants, the opportunity for evidence of possible U.S. Government knowledge or complicity in the scheme to surface publicly had thereby apparently been foreclosed.

It is not uncommon for criminal prosecutions of foreign individuals or foreign entities by the U.S. Government to have political repercussions with respect to those countries whose nationals or companies are involved, or, indeed, to have such concerns brought to the attention of U.S. officials by the foreign governments involved. There may also be circumstances in which it would be appropriate to forego a prosecution of a foreign entity for practical reasons, e.g. to prevent retaliatory actions against U.S. entities abroad. (This is essentially what occurred in the BNL case when the Government decided against indicting the Central Bank of Iraq.) However, it would be inappropriate, if not an unlawful obstruction of justice, for U.S. officials at any level of government to influence, or attempt to influence, the conduct of a criminal investigation or the handling of a criminal prosecution for political reasons unrelated to the facts of the case.

While this is an area of inquiry within the primary jurisdiction of the Committee on the Judiciary, the staff believed the SSCI was obliged to pursue such lines of inquiry in the course of investigating the intelligence aspects of the BNL matter, and, did so, in coordination with the staff of the Judiciary Committee.

It is also important to recognize, however, the limited extent of the SSCI inquiry into this aspect of the BNL matter. The staff looked for evidence of improper political pressure within the context of its investigation of the involvement of intelligence agencies and their interaction with the Department of Justice, but did not go beyond it

in reviewing documents or in deposing witnesses. To exhaustively investigate the question of improper political influence would, at a minimum, require reviewing documents and deposing witnesses at the White House, the Departments of State, Agriculture and Commerce, and the Federal Reserve. Such an inquiry would exceed the capability and jurisdiction of the SSCI, however, and was not done here.

The staff inquiry was limited to Justice Department and intelligence agency records and officials. Moreover, while the documentary review of Justice and CIA records was comprehensive insofar as the records pertaining to the intelligence-related issues were concerned, the staff inquiry did not include a review of all Justice Department records in Washington or Atlanta which pertained to the BNL case. Nor did it include sworn depositions of all Justice Department officials who had some degree of involvement in the case. The working group does believe, however, that it has reviewed the pertinent documentation at CIA and at Justice with respect to the intelligence issues under investigation, and that the Committee has sworn testimony from all of the key participants in the events under investigation, either through depositions taken by the Committee or through those furnished by Judge Lacey.

Much of the staff investigation involved information that was classified. In order to produce a report that could be released to the public, the working group requested that security experts from CIA, the National Security Agency (NSA) and the Defense Intelligence Agency (DIA) review the report in draft to identify any information that should remain classified. On the basis of this review, the working group made specific adjustments to the text of the report to satisfy the security concerns. In the view of the staff, these changes did not substantively alter any aspect of the report.

Finally, it is important to recognize that there are significant aspects of the so-called "Iraqgate" affair that were not touched at all by this investigation. For example, the SSCI investigation did not address --

- o whether there were improprieties in the administration of the Commodity Credit Corporation loan guarantee program;

- o whether there were improprieties in the administration of U.S. export controls with respect to the approval of export licenses to Iraq prior to the invasion of Kuwait;

- o whether there were improprieties in the administration of U.S. banking regulations;

- o whether documents provided by the Department of

Commerce to the Congress were deliberately altered; or

o whether documents were improperly withheld from the Congress by the Bush Administration.

Resolution of these matters will depend upon the inquiries conducted by other committees of the Congress or by the incoming Administration.

SYNOPSIS OF WHAT THE INVESTIGATION REVEALED

What follows is a synopsis of what the staff's investigation revealed. It is, in effect, a summary of the far more detailed, annotated recapitulation of the evidence contained in Part II of this report. The synopsis is written in narrative form, without footnotes, and is organized to conform to the organization used in Part II.

SECTION 1. INTELLIGENCE COMMUNITY INVOLVEMENT WITH MATTERS RELATED TO BNL PRIOR TO THE AUGUST 4, 1989 RAID

The Banca Nazionale del Lavoro (BNL), headquartered in Rome, is one of the largest banks in Italy. Over 95% of the bank's stock is owned by the Italian Government. In 1981, BNL opened a branch office in Atlanta, and from 1985 until 1989, the Atlanta office did extensive business with Iraq. This included allegedly unauthorized loans to Iraq for the purchase of U.S. agricultural commodities under the U.S. Department of Agriculture's Commodity Credit Corporation (CCC) loan-guarantee program, as well as other loans and extensions of credit allegedly unauthorized by the parent bank in Rome. These transactions began in 1985 with an allegedly unauthorized assumption by BNL-Atlanta of a \$13 million unsecured Iraqi loan. They also included the allegedly unauthorized financing of \$556 million in Iraqi purchases under the Fiscal Year 1986 CCC program and, subsequently, \$619 million and \$665 million in CCC-backed loans for Fiscal Years 1987 and 1988, respectively. Almost \$1.9 billion in unauthorized loans were made by BNL-Atlanta under the CCC program. Beginning in 1988, the Iraqis decided against continuing to use BNL-Atlanta to finance CCC-backed loans, but over the next two years, allegedly obtained unauthorized extensions of credit from the BNL-Atlanta totalling an additional \$2.155 billion.

In all, over \$4 billion in unauthorized loans and extensions of credit by BNL-Atlanta to Iraq have been alleged by the United States.

In July 1989, two BNL-Atlanta employees went to federal authorities and reported the unauthorized Iraqi loans. On August 4, 1989, FBI agents raided BNL-Atlanta and seized records.

Intelligence Community Reporting and Analysis: 1983-1989

The staff's review of pertinent intelligence community intelligence reports from 1983 until the raid on BNL-Atlanta on August 4, 1989, found only nine that appeared to pertain to BNL's relationship with the Government of Iraq. None of these contained information that suggested intelligence

community knowledge of the allegedly illegal activities which were ongoing during the period at BNL-Atlanta.

There was only one finished intelligence assessment produced during the period which concerned the Iraqi procurement network, and this was a Defense Intelligence Agency report produced in June, 1989. While it contained a description of the financial structure for these Iraqi activities, the report did not mention Iraqi links with BNL-Atlanta.

CIA economic analysts who were interviewed could recall knowing of no unusual relationship between BNL and Iraq generally, nor knowing anything of the Iraqi links with BNL-Atlanta, in particular, prior to the August 4, 1989 raid.

Operational Activity: 1983-1989

The Committee undertook an extensive examination into whether CIA had had any operational involvement with the BNL-Atlanta scheme or with any aspect of the Iraqi procurement network prior to the August, 1989 raid in Atlanta. This inquiry produced no evidence of CIA complicity in, or knowledge of, the illegal activities which allegedly took place at BNL-Atlanta prior to August, 1989. The inquiry also produced no evidence that CIA had been operationally involved in assisting the Iraqi procurement network or had any involvement in the financial arrangements to support military or civil projects in Iraq.

Matrix-Churchill

Matrix-Churchill was a British manufacturing firm, acquired by the Iraqi-controlled company "TDG" in the fall of 1987. The firm was a large manufacturer of computer-controlled machine tools, some of which could be used for weapons manufacture. Soon afterwards, TDG established a subsidiary called Matrix-Churchill Corporation near Cleveland, Ohio, to act as a consultant or broker for finding U.S. contractors to construct facilities in Iraq.

The CIA became aware in December, 1987 that Matrix-Churchill had been bought by the Iraqi-controlled TDG and was acting as "an Iraqi front company." Further fragmentary reporting on Matrix Churchill's activities during 1988 also was available to the CIA, but none indicated a relationship with BNL-Atlanta.

Following the end of the Iran-Iraq war in August, 1988, the CIA produced a series of intelligence assessments examining the political and economic trends in both countries. The Iraqi procurement network became a subject of intense intelligence interest in late 1988 and early 1989.

In June, 1989, DIA produced the first detailed report on the Iraqi procurement network, which specifically identified Matrix Churchill as a key participant. No mention was made of BNL-Atlanta, however. CIA produced a similar finished analysis in September, 1989, but it, too, made no mention of an Iraqi connection with BNL-Atlanta. Later in the same month, however, CIA had obtained information linking BNL-Atlanta to the Iraqi procurement network and included this in a subsequent analysis.

In November, 1992, in a criminal proceeding in Great Britain, it was confirmed that two employees of Matrix Churchill had been sources for British intelligence. It was asserted in the media that the British government had thus condoned the alleged violations of British export control laws with which they were charged. The charges were subsequently dropped and Prime Minister Major ordered an official investigation of the matter. This investigation is currently ongoing.

While the Committee had no desire to interfere with or pre-empt the British investigation, the staff believed it important, as part of its own inquiry, to look in particular at what CIA may have known about Matrix-Churchill, and to determine whether CIA had had any operational involvement either with the British firm or its Ohio associate. Based upon the information provided by CIA, the inquiry reached the following conclusions:

- o CIA was never advised of sources within the British firm, Matrix-Churchill;
- o CIA was never asked and did not provide any assistance to support collection activities within Matrix Churchill;
- o CIA itself had no operational sources within Matrix-Churchill, either in the United Kingdom or in Ohio;
- o CIA did receive raw intelligence reports, beginning in March, 1989 and lasting until August, 1991 which covered events from March 1988 to January 1991, and described the activities of Matrix-Churchill as part of the Iraqi worldwide procurement network. The sources of the information contained in the reports were not identified; and
- o CIA disseminated intelligence reports from a variety of other sources on Matrix-Churchill from December, 1987 to April, 1992. On one occasion in June, 1989, CIA attempted to elicit information concerning certain foreign individuals associated with Matrix-Churchill Cleveland. The attempt was not

successful.

SECTION 2. INTELLIGENCE COMMUNITY INVOLVEMENT WITH BNL AFTER THE AUGUST 4, 1989 RAID BUT BEFORE AUGUST 3, 1990

The first Justice Department request to the Intelligence Community asking for information relating to the BNL-Atlanta criminal investigation did not go out until August 3, 1990, almost a year to the day after the raid on BNL-Atlanta.

In the interim period, however, the case generated a degree of operational and analytical interest among intelligence agencies.

Operational and Analytical Activity

While CIA obtained information on the BNL scandal from various sources, it received no direction from the FBI or the task force investigating the case in Atlanta to task its sources for relevant information, nor were CIA or other elements of the Intelligence Community advised of the nature of the criminal investigation.

The record shows, in fact, that from the date of the raid (August, 1989) until the return of the indictment (February, 1991), CIA and other intelligence agencies continued to receive information, albeit sporadically, pertaining to the BNL matter. Some of these reports received wide dissemination within the Executive branch; others received no dissemination outside the Agency for a variety of reasons. Among the reports relating to BNL which were disseminated, the staff identified at least six which suggested, or contained speculation suggesting, that "BNL-Rome knew" of the illicit activities at BNL-Atlanta. There were three additional CIA reports among those which were not disseminated which contained similar suggestions.

While all but one of the reports which were disseminated went to the Department of Justice and/or the FBI, neither the attorneys at Main Justice who were involved in the case, nor the local prosecutors in Atlanta, could recall having received such reporting as a result of the "normal" distribution of intelligence within the Department of Justice.

CIA analysts were also following developments in the case for signs of impact on the U.S. relationship with Italy and Iraq.

While a number of finished analyses were completed on Iraq during the fall of 1989, the first and most

comprehensive analysis of the BNL scandal was contained in a November 6, 1989, CIA report, entitled "Iraq-Italy: Repercussions of the BNL-Atlanta Scandal." It discussed the likely impact on the governments of both countries and noted that officials in both governments and at BNL-Rome were publicly denying complicity in the scheme.

Although the report was widely disseminated in the Executive branch, it was not initially sent to the Department of Agriculture. When Agriculture became aware of the report and later requested that a copy be provided, CIA sent a copy with a transmittal letter dated January 31, 1990, which included a new assessment not in the underlying report that "[m]anagers at BNL headquarters in Rome were involved in the scandal." A CIA analyst on Iraqi economic matters based this conclusion primarily on a December 15, 1989, article in the Financial Times of London that quoted the Italian Treasury Minister as saying that some officials at BNL-Rome were aware of the illegal activities at the Atlanta branch.

Justice was not informed of the conclusion stated in this letter and, indeed, remained unaware of it until October, 1992. Unknown to the CIA analysts responsible for the conclusion, the criminal investigation at Atlanta was reaching precisely the opposite conclusion.

The Early Debate at Justice over BNL-Rome's Involvement

By January 1990, the U.S. Attorney's office in Atlanta, based upon its initial investigation, appears to have concluded that BNL-Rome had been the unwitting victim of a massive fraud perpetrated by employees at BNL-Atlanta, rather than a knowing participant. The first draft indictment that was submitted to Main Justice included only employees at BNL-Atlanta, and no official from BNL-Rome. It also included no Iraqi officials, although it noted that at least four such officials "may have knowingly participated in the scheme." According to the testimony of Justice officials, the sole purpose of the January 1990 indictment was to have something in hand if any of the BNL-Atlanta employees implicated made an effort to leave the country. The draft indictment was not regarded as a final decision on Iraqi culpability.

In late January, 1990, attorneys at Main Justice began to question the conclusion that BNL-Rome had been the victim of the fraud. These attorneys visited Atlanta in January and March, came away dissatisfied with the thoroughness of the investigation to date, and questioned whether, at the very least, the parent bank's audit procedures had been so ineffective as to constitute "willful blindness" with respect to the activities at BNL-Atlanta.

The local prosecutors in Atlanta continued to maintain that their conclusion was correct, however, citing the

extensive efforts of BNL-Atlanta employees to conceal their illegal activities and their failure to provide information implicating BNL management that could be substantiated. The prosecutors also noted that BNL stood to suffer considerably as a result of the fraudulent activities, and had cooperated completely with the Atlanta investigation.

The debate continued throughout the spring of 1990 and, indeed, until the decision to indict was made in early 1991, as described below.

Issues involving Iraq

While the Justice Department debate concerning BNL-Rome intensified in the spring of 1990, separate problems confronted the prosecutors with regard to Iraq.

In November 1989, the Administration had approved \$1 billion in new CCC loan guarantees for Iraq to purchase agricultural commodities within the United States. The loan guarantees were to become available in two \$500 million tranches, with the first becoming available immediately and the second after the Department of Agriculture had investigated Iraqi compliance with the CCC program and had reported on developments in the criminal investigation in Atlanta.

In February 1990, Agriculture proposed that the State Department approach the Iraqi government about a proposed trip to Baghdad by investigators from both Agriculture and Justice to question Iraqi officials about the CCC program, and the BNL-Atlanta investigation, respectively. Atlanta balked at State's proposal to submit questions to the Iraqis in advance, however, and, in the end, decided not to make the trip, believing they were unlikely to obtain truthful testimony from the Iraqis involved.

Agriculture officials did make the trip in April 1990 and returned to write a report that found only minor Iraqi violations of the CCC program and stated that there was insufficient evidence of Iraqi complicity in the criminal activities at BNL-Atlanta. The prosecutors in Atlanta immediately challenged that statement.

In any event, the Iraqi government, after the Agriculture Department visit, gave the United States until the end of May to make the second \$500 million tranche available or otherwise they would buy their agricultural commodities elsewhere.

This led to a National Security Council (NSC) "Deputies Committee" meeting on May 29, 1990, to resolve the issue of the second tranche. Prosecutors and investigators were brought from Atlanta to provide the NSC staff and other

Administration officials with a status report on the prosecution. The officials were advised that indictments were planned for six Iraqi officials, all of whom were alleged to be involved in serious crimes.

At the deputies meeting held later in the day, with then-Deputy National Security Advisor Robert M. Gates in the chair, a decision was reached not to go forward with the second \$500 million tranche until the BNL-Atlanta investigation was completed, and the Iraqi Government was so advised.

Discussions at Justice Concerning Consultations with Intelligence Agencies

While it is clear that Justice made no formal request for information of the Intelligence Community until August 1990, it appears that the subject was discussed at Justice on various occasions in the preceding months.

On December 7, 1989, the lead prosecutor in Atlanta sent a memo to Main Justice asking that the State Department and "other appropriate departments and agencies" be advised that four Iraqi nationals were being targeted by the Atlanta investigation. It does not appear that any action was taken as a result of this request.

The head of the investigative task force in Atlanta recalled that one of the FBI agents assigned to the task force had made a request of the CIA in the December, 1989-January, 1990 time period and that the task force had received a memo in return without any identifying header. But CIA had no record of this memo.

One Justice attorney recalled having urged a meeting with the Intelligence Community in February 1990 but said that his supervisor held him off. Another Justice attorney recalled being told that the U.S. Attorney's office was taking care of the Intelligence Community contacts. The U.S. Attorney's office, on the other hand, clearly believed that Main Justice was making these contacts.

By July 3, 1990, it was clear to all that no one had made any contacts, when the U.S. Attorney's office officially complained by letter that nothing had been done to resolve the potential intelligence issues involved in the case.

This letter ultimately led Main Justice, in consultation with Atlanta, to develop a document request which was sent to the CIA on August 3, 1990.

SECTION 3. INTELLIGENCE COMMUNITY INVOLVEMENT IN THE BNL LITIGATION FROM AUGUST 3, 1990 UNTIL AUGUST 31, 1992

The Document Requests

The first document request did not go to any intelligence agency other than the CIA, and asked for information concerning a list of 25 individuals who were being considered for indictment. The request also asked whether CIA had a relationship with any of the individuals identified, and whether there was any reason not to proceed with indictment of the named individuals. The request did not specifically ask for information relating to the issue of "whether BNL-Rome knew," although a Justice attorney recalled having made this clear over the telephone. The CIA General Counsel's Office "farmed out" the written request to CIA components without elaboration.

CIA responded officially to the request by providing classified reports and four press reports concerning the BNL case to Justice on October 2, 1990.

On October 8, 1990, Justice sent out a second request to CIA, DIA, State and the NSC. The same request was sent on October 12 to NSA. This request contained an expanded list of names of individuals and companies (including the same names provided to CIA in August), and specifically asked for any information indicating that BNL funds were used to purchase "implements of war."

On November 23, 1990, DIA responded by providing three intelligence reports.

On December 18, 1990, CIA provided additional public source reports, a classified summary of intelligence reports, and additional classified reports. CIA also advised that they had found no record of any relationship with any of the individuals or companies shown on the list.

NSA did not provide a written response to Justice, but offered to have Justice attorneys involved in the case come to NSA to review the material which had been identified as potentially responsive to the request. On December 27, 1990, two attorneys from Justice went to NSA to review the reports, but due to an unexpected snowfall, the review was terminated before completion. There was no subsequent follow-up or perusal of the NSA materials.

On January 18, 1991, the Justice attorneys who were reviewing the reports met with a representative of DIA to follow up on one of the reports which had been provided by DIA in November. As a result of the meeting, the Justice attorneys concluded that further investigative effort was unnecessary.

On February 8, 1991, as the prosecutors in Atlanta were in the final stages of preparing the indictment, Justice sent

out a third request to the CIA, asking for a final check on the names of the individuals and entities who were expected to be indicted.

CIA responded to this request on February 12, saying that its "preliminary assessment" was that there would be no significant problem with the prosecution from its standpoint.

Justice Handling of the Intelligence Documents

While it appears that attorneys at Main Justice read most of the intelligence documents provided, it does not appear that a written analysis was ever made of them. Nor does it appear that, apart from the one meeting concerning the DIA report, there was any follow-up or investigative action taken with regard to any of the information in these reports.

One of the attorneys involved at Main Justice regarded analysis and follow-up of the intelligence materials (other than those at NSA) to have been the responsibility of the prosecutors and/or investigators in Atlanta. Atlanta, on the other hand, was clearly relying on the attorneys at Justice to perform this function. On several occasions, Main Justice attorneys conveyed the impression to Atlanta that there was nothing in the intelligence that "made much of a difference." Since this opinion was voiced by the attorneys who were the most skeptical of the local prosecutor's theory that BNL-Atlanta acted alone, Atlanta assumed that the intelligence contained no hint to the contrary.

The Committee's investigation also disclosed that, in fact, some of the information contained in the intelligence reports had been independently known to Atlanta, and had been tracked down and resolved to the satisfaction of the prosecutors.

Continued Focus at Justice on Whether BNL-Rome Knew

The record shows that during the entire period prior to the indictment, while document requests were being sent to the intelligence agencies, the issue of whether Rome knew continued to "bubble" at Justice.

As a result of a visit by a Justice attorney to the Federal Reserve Bank in New York during November, new doubts were cast upon the adequacy of the Atlanta investigation, and Justice attorneys travelled again to Atlanta for a first hand assessment.

At a subsequent meeting at Justice on January 11, 1991, a list was prepared of BNL-Rome officials to be brought before the grand jury in order to lock in their testimony on the issue. This occurred during the last week of January

and, on the basis of this testimony, Main Justice finally relented and agreed (not without continued misgivings) to an indictment which did not include BNL employees outside Atlanta.

CIA Interaction with Congress Following the Indictment

Once the indictment was returned on February 28, 1991, the record reflects only minimal contacts between CIA and the Justice Department prior to the summer of 1992. There were, however, contacts between CIA and the Congress involving BNL.

One such contact resulted from an August 20, 1991, request from the House Banking Committee to the State Department for information on BNL. In response to the request, State identified nine CIA reports which appeared responsive to the inquiry, and advised the CIA. CIA, in turn, advised that they would respond to the Committee. In October, 1991, CIA made available to staff of the Committee a classified summary of several intelligence reports which related to the BNL case. Included in the summary were two "analytical comments" by a DI analyst regarding certain of the intelligence reports. One of these comments stated that two of the CIA reports "confirmed press allegations that more senior BNL officials in Rome had been witting of BNL-Atlanta's activities." A staff member from the House Committee was permitted to read the summary and take notes.

Neither the summary nor the comments were provided to the Department of Justice at the time, nor was Justice informed of the "analytical comment" noted above. Indeed, the record is unclear whether the CIA's Office of General Counsel, which would ordinarily be responsible for contacts with the Justice Department, was itself advised of the analytical comments which accompanied the summary.

Post-Indictment Activities Involving Intelligence

Once the indictment had been returned, the role of Main Justice began to diminish. Although the intelligence reporting never became a matter of serious concern, Atlanta increasingly became the focal point for dealing with it.

In September 1991, two investigators from the Atlanta task force responsible for the criminal investigation reviewed the intelligence at Justice for the first time, but it apparently provided no surprises and caused no concern.

In April 1992, a press interview given by Christopher Drogoul, the BNL-Atlanta branch manager, who had been indicted in the case, to an Italian newspaper suggested that he might raise an "intelligence agency defense" at his trial, and this prompted prosecutors from Atlanta also to arrange for a review of the intelligence in Washington on April 30,

1992. Again, this review prompted no concern.

Once a guilty plea had been negotiated with Drogoul on June 2, 1992, and a trial was no longer contemplated, prosecutors initially believed the intelligence would have no further bearing on the case. Over the summer, however, during the course of numerous debriefings undertaken as part of the plea agreement, Drogoul identified several individuals who had had associations with BNL-Atlanta whom he believed worked for U.S. intelligence agencies. This renewed concerns among the prosecutors that the intelligence could be a factor in the sentencing hearing scheduled for September.

On August 14, 1992, in response to a request from the Department of Agriculture General Counsel, CIA declassified and sent to Agriculture a copy of the January 31, 1990, cover letter that included the conclusion that BNL-Rome officials were involved in the scandal. The CIA transmittal letter, signed by the General Counsel, contained a statement which explained that this conclusion "has been sourced to various newspaper reports." This statement was apparently intended to suggest that there were press reports upon which the conclusion was based. It failed to acknowledge, however, that CIA had, in addition to newspaper reports, classified intelligence reports upon which the conclusion might also be based.

SECTION 4. INTERACTION BETWEEN JUSTICE AND THE INTELLIGENCE COMMUNITY FROM AUGUST 31-SEPTEMBER 11, 1992

Origins of the September 1 Justice Letter

On August 31, 1992, a William Safire column appeared in the New York Times accusing Attorney General Barr and Assistant Attorney General Robert S. Mueller, head of the Criminal Division, of taking part in a "cover-up" of the "crimes of Iraqgate." The article also alleged that U.S. intelligence agencies were monitoring the activities of BNL-Atlanta and that this was known to unnamed Iraqis.

The same morning, the Acting U.S. Attorney in Atlanta, Gerrilyn Brill, met with Mueller to discuss the sentencing hearing for Drogoul (scheduled to begin on September 14th) and what was left to be accomplished. The Safire allegations reinforced the need to contact the intelligence agencies, both to address these allegations and to do traces on five individuals whom Drogoul had identified earlier in the summer as having relations with BNL-Atlanta and associations with the Intelligence Community.

To assist with the task, Mueller assigned an attorney from the Fraud Section, Ellen Meltzer, who had little familiarity with the case in Atlanta or the intelligence

reports which had been provided to the Justice Department.

In consultation with the chief prosecutor in Atlanta and after limited discussion at Main Justice, Meltzer prepared letters to be sent to CIA, NSA and DIA. The letters to CIA and DIA included ten questions, basically calling for the intelligence agencies to characterize the nature of their involvement in, or awareness of, the activities which had taken place at BNL-Atlanta, and asked for name checks to be run on the five individuals named by Drogoul as allegedly having relations with the Intelligence Community. The letter to NSA included the ten questions but did not ask for name checks.

Question 8 of the letter, which apparently was suggested in part by another Fraud Section attorney, Nancy Brinkac, asked:

"Does the [agency] have any information that BNL-Rome was aware of the illegal activities engaged in by BNL-Atlanta? If so, where did the [agency] acquire such knowledge?"

Calls were made to CIA on August 31, and to DIA and NSA on September 1, alerting them that the letter was coming. It was faxed to each agency on September 1, and Justice asked for a reply by September 4.

The CIA Response of September 4

Responsibility for preparing CIA's response to the Justice letter was assigned to Bruce Cooper, a staff attorney in the General Counsel's office, who had prepared the August 14 transmittal letter to the Department of Agriculture.

Cooper testified that in developing the response he reviewed the intelligence reports previously provided to Justice, checked on what had previously been provided to the House Banking Committee, and consulted with personnel in the Directorate of Operations and the Directorate of Intelligence in terms of whether they had information pertaining to the ten questions. He also testified that he spoke several times during the week with Meltzer at Justice, who at various times provided him guidance on how to answer the questions. Meltzer, however, denied having provided Cooper any guidance at all, and CIA officials with whom Cooper says he consulted generally recalled very cursory discussions with Cooper regarding the ten questions.

It appears that the written replies to the ten questions prepared by Cooper were never formally coordinated with anyone in CIA, and were submitted for signature to the Acting General Counsel at CIA, David Holmes, late in the day on September 4, without having been reviewed by any senior

attorney familiar with the case. (One senior attorney may have had a general discussion with Cooper regarding the questions but was not shown the draft letter.)

Given the urgency attached to obtaining a response, the fact that it was for Justice' internal use and the knowledge that Justice had the underlying CIA intelligence reports, Cooper believed the staffing of the letter was adequate.

CIA's response to question 8 of the September 1 letter, regarding its awareness of BNL-Rome knowledge, was as follows:

"CIA has publicly available information acquired in the December, 1989 - January, 1990 time frame, that BNL-Rome was aware of the illegal activities engaged in by BNL-Atlanta."

This answer did not acknowledge the classified intelligence reports that CIA possessed which suggested, or contained speculation suggesting, that "BNL-Rome knew." Most of these reports had been provided previously to Justice.

DIA submitted a negative response to all ten questions on September 4. NSA also submitted a negative response, but provided elaboration with respect to several questions and explained the operational limitations governing its collection against U.S. citizens and entities and the fact that it had searched only its finished reports and not all raw traffic. NSA's response was not sent until September 9th.

Reaction by Justice

Although Meltzer had not carefully reviewed the intelligence materials previously provided Justice, she did review on September 3rd the "all-source chronology" prepared by the CIA for the SSCI which included references to CIA reports bearing on BNL-Rome's knowledge.

Late in the day on September 4, after the CIA letter was received, Meltzer sent an E-mail message to Nancy Brinkac, which reflects that she had spoken to her supervisor, Laurence Urgenson, about CIA's answer to question 8. Meltzer told Brinkac that she needed to follow this up with CIA to make sure that they had nothing more than press reports bearing upon the question. It appears, however, that no such follow-up was made.

Indeed, it appears that no effort was ever made to check the CIA (and other intelligence agency) responses against the intelligence reports previously provided to Justice, nor to consult with the two Justice attorneys who were most familiar with these materials.

Meltzer left for Atlanta on September 6 to assist the U.S. Attorney's Office in preparing a sentencing memorandum to be filed with the court, and took the CIA and DIA letters with her. In fact, she used them in preparing a portion of the sentencing memorandum pertaining to the intelligence issues, the pertinent part of which read: "no credible evidence has been uncovered that supports the defendant's suspicion that other officers at BNL or public officials within the United States government knew of his illegal activities."

The sentencing memorandum was filed with the court on September 11, three days before the Drogoul sentencing hearing was to begin.

SECTION 5. EVENTS OF THE WEEK OF SEPTEMBER 14-18, 1992

The Drogoul sentencing hearing opened in Atlanta on September 14th with defense counsel, Bobby Lee Cook, contending that Drogoul had been a pawn in a larger scheme.

The same day Congressman Gonzalez delivered a statement on the House floor which attacked the Government's theory that Drogoul had acted alone. Gonzalez quoted liberally from the summary of CIA cables which CIA had prepared and shown to his staff in October, 1991, and emphasized the "analytical comment" accompanying the summary which said that two of the CIA reports "confirmed press allegations that more senior BNL officials in Rome had been witting of BNL-Atlanta's activities."

In the Atlanta courtroom the following day, Cook provided copies of the Gonzalez statement to the court and to the local prosecutors, and announced his intention to probe the subject of CIA knowledge during the course of the proceedings.

These events spurred intense media interest. "60 Minutes" was preparing a segment on the case, and Brill was to be interviewed on September 16. The print media was filled with reports of the developments in the courtroom, and reporters were insisting on interviews.

Reactions at Justice and CIA

The Gonzalez statement threw the prosecutors in Atlanta and attorneys at Main Justice into a state of turmoil. None of them had been aware that CIA had prepared a summary of intelligence reports for Gonzalez or that the summary had contained an assessment that the reports confirmed knowledge of Drogoul's scheme on the part of BNL-Rome. They were not certain whether the reports summarized for Gonzalez were

reports CIA had previously provided. Their first reaction, accordingly, was to request copies of the summary prepared for Gonzalez and the underlying intelligence reports.

Having received these from CIA, they concluded that Justice had been provided at least three of the four reports earlier, and that the analytical comment which provided that the reports confirmed press reports that "BNL-Rome knew" was clearly not supported by the underlying CIA reports.

A series of calls went from Justice officials to persons at CIA on September 15 and 16, expressing displeasure at not having been aware of the Gonzalez summary and asking that CIA take certain actions to help with the problem faced by Atlanta. CIA was variously asked: (1) to declassify the Gonzalez summary and the underlying intelligence reports; (2) to prepare a public statement providing a point-by-point rebuttal of the Gonzalez press statement; (3) to prepare a public statement which retracted or clarified the analytical comment that "BNL-Rome knew;" and (4) to prepare an unclassified version of the September 4, 1992, letter which could be used by the prosecutors in responding to questions.

CIA officials, who were also thrown into turmoil by the Gonzalez statement, immediately attempted to reconstruct what had taken place. At the same time, they attempted to deal with the various demands being placed upon them by Justice.

Deputy DCI Admiral William O. Studeman received a call from Mueller on September 15th advising that DCI Gates could expect a call from the Attorney General regarding the matter. (The latter call never came, and Mueller testified he never raised the matter with the Attorney General.) Studeman, in turn, advised Gates of the call from Mueller but received no guidance in terms of dealing with the situation.

At a breakfast meeting at CIA on the morning of September 16th, however, the situation was briefly discussed by the senior CIA leadership, and participants recall that despite reservations about CIA becoming publicly involved or issuing its own press statement, the consensus was "to help Justice to the extent we can."

This did not prove to be an easy task. Those who were attempting to declassify the summary and underlying intelligence reports ran into immediate difficulties and soon abandoned the effort. The attempt to draft a point-by-point rebuttal of the Gonzalez statement similarly "died." The attempt to draft a public statement also proved difficult, first being expanded and then going through a number of progressively less fulsome drafts as the week wore on.

The CIA Letter of September 17

On September 16, Justice requested that CIA prepare an unclassified version of the September 4th letter, providing answers to the ten questions, but omitting the responses to the name traces.

The request came in a telephone call from Laurence Urgenson, Acting Deputy Assistant Attorney General for the Criminal Division, to George Jameson, a senior attorney in the CIA Office of General Counsel.

Jameson expressed some misgivings about the completeness of CIA's answer to question 8, but Urgenson "strongly advised" him not to change it, saying that if the earlier letter were changed, CIA would have to explain to the court why it was changed. Urgenson later testified that, to counter the "analytical comment" that "BNL-Rome knew," contained in the Gonzalez summary, he was concerned that prosecutors have a letter which pre-dated the Gonzalez statement which reached a different conclusion with respect to what CIA information showed about BNL-Rome knowledge. Since, according to Urgenson, the intelligence reports underlying the Gonzalez summary were going to be made available to the court in any event, he did not think leaving the answer to question 8 alone could be considered misleading. Indeed, he regarded the "analytical comment" in the Gonzalez summary, which was already before the court, to be an incorrect characterization of what the CIA report reflected.

Both Jameson and Urgenson testified that they did not regard this conversation as "pressure" and that CIA was left to answer the question as it saw fit. Clearly, however, it was a significant factor in the decision to release the letter without any alteration or elaboration of the answer to question 8.

Jameson testified that after the conversation with Urgenson, he had discussions with representatives of the General Counsel's office, the Office of Congressional Affairs, and ultimately with Acting CIA General Counsel David Holmes, who made the decision to release the letter without change. (It is unclear that the discussions with the Office of Congressional Affairs actually occurred before the letter was sent.) As a result of these discussions, Jameson testified that "we persuaded ourselves" that the answer to question 8 was sufficient. The question asked for information CIA may have showing BNL-Rome's knowledge of "illegal" activities at BNL-Atlanta. Jameson explained that what CIA had (apart from press reports) was largely speculation, providing no hard evidence of BNL-Rome knowledge of "illegal" activities. Jameson testified that he also believed at the time that all of the underlying intelligence would be presented to the court, and knew that CIA was working on a public statement which he thought would clarify

their position with respect to what their classified reporting showed.

Holmes and Jameson testified that, at the time they approved the September 17 letter, they were unaware of specific information contained in one of the CIA reports available to the General Counsel's office. Holmes testified that had he been aware of this information, it would have called into question the response to question 8. While Cooper testified that he had reviewed this cable in preparing the answer to the September 4 letter, he concluded that it was not responsive to question 8. (CIA had, in fact, provided this cable to Justice in October 1990, and the information in question had been noted specifically by at least one Justice official.)

Thus, despite earlier misgivings, the decision was made by the CIA Office of General Counsel to send an unclassified version of the September 4th letter, including the answer to question 8, to the Department of Justice. It was faxed to Atlanta at 8:55 on the morning of September 17 over the Acting General Counsel's signature without prior notice to DCI Gates or DDCI Studeman.

Later the same day, Urgenson, Mueller and other Justice officials decided to release the CIA letter publicly. Mueller called John Rizzo, the CIA Deputy General Counsel for Operations, to advise that the letter had been released in Atlanta and that Justice wanted to release it in Washington as well. Learning for the first time that an unclassified letter had been prepared, Rizzo agreed, and the letter was subsequently distributed by the Justice Department. Rizzo advised Holmes, who sent a copy to the CIA public affairs office for use in the event of a press inquiry.

The Public Statement

At the same time the discussions on the September 17 letter were occurring, parallel, sometimes interacting, discussions were taking place on the draft public statement requested by Justice.

Based upon the testimony of Justice witnesses, it is clear that Justice was expecting a public statement by CIA which dealt specifically with the "analytical comment" to the Gonzalez summary. They had wanted a statement to use with the press which said, in essence, "we have reassessed the intelligence reports referred to by Congressman Gonzalez and do not believe they provide a reasonable basis for concluding that BNL-Rome knew of the activities at BNL-Atlanta."

Those at CIA who were attempting to draft the statement, however, were proceeding on a different track. Given their reluctance to become involved publicly, the decision was made

to draft a statement for Justice to use, rather than one to be issued by the CIA. This decision does not appear to have been definitively communicated to Justice until the final statement was sent.

Getting agreement on the text of the proposed statement also proved difficult. As many as 9 or 10 separate versions appear to have been prepared during the week. A variety of meetings and consultations occurred at the staff level with respect to the statement.

These discussions culminated in a draft statement being submitted late on the afternoon of September 18 to DCI Gates, who, after making his own modifications, approved the following statement to be sent to Justice:

The Department has reviewed the CIA summary provided to Congressman Gonzalez, as well as the underlying intelligence reports. The Department believes that neither the summary nor the reports permit a definitive conclusion that BNL-Rome was aware that BNL-Atlanta was engaged in illegal activities and further believes that the CIA information does not conflict with the prosecution's theory of the case. Both the Department of Justice and the CIA are prepared to have Judge Shoob review the relevant materials, which we believe will speak for themselves.

The statement was faxed to Justice that evening. Mueller and Urgenson were dismayed, having expected the statement to have been CIA's, rather than the Department's, assessment and that the assessment would state more forcefully that CIA's information clearly did not support the analytical comment contained in the Gonzalez summary. Mueller reached Acting General Counsel Holmes at his residence and angrily told him the drafted statement was "laughable."

Later that evening, however, Justice did issue its own press statement saying that the Gonzalez summary and underlying intelligence reports would be made available to Judge Shoob.

SECTION 6. THE EVENTS OF SEPTEMBER 21 - OCTOBER 1, 1992

Meeting at Justice on September 21

The failure of CIA to produce a public statement which clearly rejected the analytical comment in the Gonzalez summary prompted Urgenson to call Jameson the following Monday morning, and ask for a meeting with CIA representatives to determine whether, in fact, CIA had a different view of the intelligence reporting.

The meeting took place the same afternoon at Main Justice. Among the participants was the CIA analyst who had drafted the analytical comments for the Gonzalez summary, who was asked to explain her reasoning. She recalled that she explained: "In retrospect, perhaps, I should have said this [the intelligence reporting] 'apparently confirms' or 'appears to confirm' or 'corroborates.' But we in the Intelligence Community regularly use the word 'confirm' to mean...corroborate." She did not regard her explanation as a retraction of her original analytical conclusion.

The Justice representatives at the meeting were clearly unsatisfied with this explanation but realized they were unlikely to make further headway.

At the conclusion of this discussion, the participants had a speakerphone conversation with the Atlanta prosecutors. Brill read a statement she intended to make and asked the group whether they saw any problems with it:

I have reviewed the CIA report referenced in Chairman Gonzalez's September 14, 1992, press release, as well as the cables supporting the report. Mr. Gonzalez's statements in the press release are not supported by any of these documents. There is no evidence contained in either the report or the cables that BNL officials outside Atlanta or the U.S. government had contemporaneous knowledge of Mr. Drogoul's criminal activity.

As the group began considering the statement, it became apparent from Brill's comments that she had, in fact, already released the statement to the press. After some discussion, the group appears to have concluded the statement was acceptable. Justice officials clearly thought the CIA representatives had "approved" the statement, while CIA representatives thought they had only represented that they found no basis for contradicting Brill's conclusion.

At the end of the meeting, it appears that Jameson offered to come down to Atlanta to show the relevant materials to the court and defense counsel under secure conditions. There was apparently general receptiveness to the offer, but no decision was reached.

Subsequent Interactions between Justice and the CIA

Returning to the office from the meeting, Jameson had further discussions with Holmes about the desirability of sending CIA attorneys to Atlanta. It was decided that since this action would run the risk of CIA information or personnel being suddenly drawn into the court proceeding, it would be preferable to have the U.S. Attorney offer the CIA documents to Judge Shoob and offer to come down to resolve

any questions he may have. Jameson communicated this to Brill the following day.

When the sentencing hearing resumed on September 22, Judge Shoob was advised the CIA reports underlying the Gonzalez summary would be shown to him. But Shoob was not satisfied, wanting to know why all of the CIA's information showing knowledge of BNL-Atlanta's activities could not be provided to him, and asked whether CIA had information regarding dealings between BNL-Atlanta and Iraq, whether authorized or unauthorized.

On September 23, Shoob opened the sentencing hearing by asking to see the intelligence underlying the Gonzalez summary. Brill offered to discuss them with him ex parte, but Shoob declined, requesting instead that Brill bring the documents to his chambers at the end of the day. Shoob took them to his home intending to read them, but managed to read only one that evening. He concluded that this one report, in fact, did not support the analytical comment in the Gonzalez summary.

On September 24, later in the day's proceedings, Shoob commented that he did not think the intelligence report he had read supported the analytical conclusion, and inquired of Brill whether it was necessary to continue reading the reports which he found "unintelligible." Brill replied that the reports "had no evidentiary value."

At the end of the proceedings on September 25, Shoob asked Brill about his request for additional information from the CIA, made several days earlier. Brill responded that she had not made the request, but would do so that day. In fact, Brill faxed a letter to CIA Acting General Counsel Holmes late in the day conveying Shoob's requests and asking for a response "as soon as possible."

When the sentencing hearing reconvened on September 29, Shoob asked again for the CIA responses to his queries, and was told by Brill that she had received no response as yet. Shoob then stated that he had had the opportunity to review all of the intelligence reports underlying the Gonzalez summary and concluded that "three definitely support the defendant's position that BNL-Rome was aware of what he was doing." Brill replied that the reports were both irrelevant and unreliable, and that the court should consider the evidence to be presented by witnesses, not speculation that had been passed to the CIA.

At the conclusion of the day, Brill sent another memo to Holmes saying that it would be "helpful" if the classified materials could be explained to Judge Shoob with defense counsel present, and that if CIA could provide a complete explanation to Shoob "of everything that was known to CIA

about BNL-Atlanta."

When CIA lawyers received this memo, they finally realized they needed to deal directly with the court, and made plans to do so. Brill was advised by telephone and by letter on September 30 that CIA officials would come to Atlanta the following day.

The trip did not take place, however, because on the morning of October 1, the prosecutors withdrew their opposition to Drogoul's motion withdrawing his guilty plea, and it was granted by the court.

The Newly-Discovered CIA Reports

On September 29, 1992, on the basis of an employee's particular recollection (triggered by a question posed by the SSCI), CIA located three reports in the Directorate of Operations which pertained to the BNL case but had never been provided to the Justice Department. It was explained that these reports had not been disseminated outside CIA, and had not been marked for entry into the Directorate's data base. Thus, they had not been found in the earlier searches done for the Justice Department. The realization that additional documents might exist prompted a manual search of files in the Directorate of Operations.

CIA advised Main Justice on September 30 of the discovery and provided the newly-found reports later in the week. Jameson also advised Brill by telephone on October 1, but at this point it was clear the sentencing hearing would shortly terminate.

The congressional oversight committees were verbally advised on September 30, and were given copies of the reports the following day.

On October 8, at a hearing of the SSCI, the Committee was advised that a fourth report related to BNL had been found. A week later, the Committee was advised that another set of reports had been located.

Some of the newly-discovered reports, which dated from 1989 and 1990, reflected consultations among CIA Directorate of Operations officials as to whether certain reports on BNL should be disseminated. The documents indicated that in 1989 and again in 1990, CIA was cautioned by an FBI official that if its reports were formally disseminated outside the CIA, they could be "discoverable" and might jeopardize any subsequent criminal prosecution. The FBI official involved now takes issue with this characterization of his advice, but the warnings were a factor in the CIA's ultimate decision not to disseminate the reports, although a more important reason was the conclusion that there was little or no new

information in the reports.

The investigation produced no evidence to indicate that the failure to identify these reports earlier had been a deliberate act on the part of CIA.

CONCLUSIONS AND RECOMMENDATIONS

The conclusions and accompanying recommendations of the staff working group arising from the BNL investigation are set forth below. They are grouped under topical headings where possible, and these topics are organized in rough chronological order rather than in terms of how the working group assessed their relative importance.

Relating Intelligence to Law Enforcement, Generally

Since its creation in 1947, CIA has been denied by statute "law enforcement powers," clearly indicating Congress' intent that CIA not become a law enforcement agency embroiled in domestic investigations. Similar restrictions have been applied to other intelligence agencies pursuant to Executive order. Nevertheless, CIA and other intelligence agencies frequently acquire information as a by-product of their foreign intelligence gathering which bears upon a criminal matter being investigated within the United States.

Where the information concerned relates to a "United States person," intelligence agencies are permitted by Executive order 12333 to collect, store, and disseminate only "incidentally-acquired" information to law enforcement authorities. In other words, intelligence agencies are precluded from targetting "U.S. persons" for law enforcement purposes.

Where the information concerned relates to "other than United States persons," e.g. foreign citizens or foreign companies, the Executive order is far less explicit. While intelligence agencies are specifically authorized to participate in counterintelligence, international terrorist or narcotics investigations, the Executive order also provides they may "render any other assistance and cooperation to law enforcement authorities that is not precluded by applicable law."

The only such limitation which exists in statute is the provision in the National Security Act of 1947, as amended, which provides that the CIA "shall have no police, subpoena, law-enforcement powers or internal security functions."

Indeed, intelligence agencies like the CIA frequently are in a position to provide information relating to foreign individuals, companies, or activities, if asked to do so by the law enforcement community. Historically, however, the

law enforcement community has not asked, nor have intelligence agencies generally been inclined, to direct their sources or use their technical capabilities to collect information for law enforcement purposes for fear that their "sources or methods" may ultimately be revealed in a public prosecution. Thus, while intelligence agencies are not precluded from collecting information abroad on foreign persons or entities for law enforcement purposes, or from putting such sources in touch with U.S. law enforcement authorities, they have generally refrained from doing so. There are, however, procedures established by law (the Classified Information Procedures Act, P.L. 96-456) to protect classified information which may become involved in criminal prosecutions.

In the BNL case, it appears that the possible use of U.S. intelligence agencies to collect information on foreign persons or entities related to the case, or to make their sources available to the investigative task force, was given no serious consideration despite the fact that U.S. intelligence agencies may have been in a position to provide such information.

During the fall of 1989 and sporadically thereafter, CIA and other intelligence agencies received information concerning the BNL scandal and its repercussions. Some of these reports had implications for the criminal investigation. While the FBI appears to have been aware of at least some of these reports and was presumably aware of intelligence agency capabilities, it does not appear that those directly involved in the criminal investigation were ever made aware. No guidance was provided to intelligence agencies regarding the handling of this information, except for warnings in 1989 and 1990 that certain CIA reports, if disseminated, could be discoverable and jeopardize any subsequent criminal prosecutions. The record shows that the warning was a factor, albeit a minor one, in CIA's decision not to disseminate the reports. The staff could find no legal support for this guidance i.e., that a CIA report would not be subject to discovery in a criminal case unless it had been formally disseminated outside CIA. CIA Office of General Counsel attorneys disavowed this theory when asked about it at their depositions.

In recent months, additional efforts were made on the intelligence agencies' own initiative to confirm or clarify previously-provided information on the BNL case. None of this was done in coordination with the criminal investigation of BNL-Atlanta, although clearly such collection could have had a bearing on the case.

Recommendation 1: The fundamental policy governing the relationship between law enforcement and intelligence needs to be addressed by the Attorney General and the DCI, in

conjunction with the congressional oversight committees. Confusion is apparent on both sides as to what the proper role (and authority) of intelligence agencies is in circumstances like those presented by the BNL case. Indeed, as the conclusions set forth below indicate, there are numerous and significant "disconnects" between the two functional areas.

In particular, where there is a significant criminal investigation involving foreign elements or conduct abroad, the responsibility and authority of intelligence agencies to collect information in support of the criminal investigation needs to be clarified and better understood. The wisdom of continuing the de facto practice of the past when it comes to collection on foreign individuals or entities, (i.e. incidental collection is appropriate, but not directed collection) should be thoroughly assessed.

In addition, the obligation of intelligence agencies to report criminal conduct and the procedures for implementing these requirements should be included in this policy review. While the staff notes, in this regard, that a recent task force instituted by DCI Gates addressed this problem from the standpoint of what further actions were desirable at the CIA, a more comprehensive review of the basic policy, and of its implementation by the Intelligence Community as a whole, is called for.

At the conclusion of this process, appropriate steps should be taken -- to include recommendations for statutory change if needed -- to ensure the new policy is placed into implementing regulations that are understood by law enforcement and intelligence operatives alike.

Recommendation 2: The policy review called for in Recommendation 1 ought also to address the coordination of any collection activity that is undertaken by intelligence agencies to gather information that relates to an ongoing criminal investigation to ensure that the needs of the investigation are met; to ensure that the results are disseminated to the appropriate parties; and to avoid conflicts with the ongoing criminal investigation.

Recommendation 3: The policy review called for in Recommendation 1 should also address the desirability of new mechanisms at both the Justice Department and at intelligence agencies to ensure that appropriate coordination actually takes place.

Recommendation 4: Based upon the episode regarding the purported advice provided by an FBI official on "discoverability," it appears that both intelligence and law enforcement officials at the operational level need training and guidance with respect to the Government's obligations to

disclose documents in legal proceedings.

Relating Intelligence Analysis to Criminal Investigations

During the period in which the criminal investigation of BNL-Atlanta was ongoing, CIA produced occasional intelligence analyses whose conclusions were squarely at odds with the evidence being developed by the criminal investigation. This occurred in January 1990 when CIA analysts concluded that "managers at BNL headquarters in Rome were involved in the scandal," and again in November, 1991 when CIA analysts concluded that CIA intelligence reports "confirmed press allegations that more senior BNL officials in Rome had been witting of BNL-Atlanta's activities." Although these analyses were disseminated to some elements of the Government and, on occasion, to the Congress, they were not disseminated to the Department of Justice or to the persons working on the criminal investigation. In fact, the Committee's investigation showed that the CIA analysts concerned were largely oblivious to the evidence being developed by the criminal investigation and of the Government's theory of the case. Certainly at the time the November 1991 "analytical comments" were drafted, CIA was in possession of the Drogoul indictment which reached totally different conclusions than those reflected in the analyst's comments.

The lack of any consultation essentially resulted in intelligence analysis which was largely uninformed as well as subsequent consternation for the prosecution when the competing intelligence analysis was unexpectedly cited by defense counsel to challenge the Government's theory of the case, as it was by Drogoul's counsel.

Clearly there are legal limits to what criminal investigators can provide to persons unconnected with the investigation. Moreover, it would be undesirable to foreclose CIA analysts from reaching a conclusion based upon intelligence reporting that was different from that reached by the prosecutors.

Recommendation 5: Nonetheless, where CIA or other intelligence agencies decide to produce analyses which reach judgments with respect to elements of ongoing federal criminal investigations and prosecutions (regardless of their ultimate conclusions), the intelligence agency concerned should develop procedures to ensure that analysts faced with such situations are at least provided the publicly available information regarding the case. Whatever mechanisms might be utilized in this regard, care must be taken that they are used to educate the analyst rather than steer him or her to a particular substantive conclusion.

In the view of the staff, this issue should be included in the policy review called for in Recommendation 1.

Use of Intelligence Reporting by the Department of Justice

The staff investigation revealed that intelligence reporting which is routinely received by the Department of Justice often is never identified as relating to ongoing investigations and is never routed to those involved in such investigations. None of the employees at Main Justice who were involved in supervising or assisting the case in Atlanta could recall ever having seen any intelligence report bearing on the BNL case through "normal distribution." Similarly, none of the members of the investigative task force in Atlanta received such reporting in "normal" channels. If, indeed, those responsible for ongoing criminal cases do not see intelligence reporting which relates to these cases, the staff wonders what purpose is served by providing such reports to the Department of Justice.

Recommendation 6: The Department of Justice should conduct a review of the use made of intelligence it receives on a routine basis from the Intelligence Community to ensure that reporting which may bear upon ongoing criminal cases is identified and reaches those who are responsible for supervising or investigating such cases. (The staff recognizes in this regard that the procedures may be different for the dissemination of information bearing upon counterintelligence cases than for foreign intelligence which bears upon ongoing criminal cases.)

Responsibility within Justice for Coordinating Intelligence Matters

The investigation revealed considerable confusion within the Department of Justice with respect to who had responsibility to coordinate matters involved in the BNL prosecution with the Intelligence Community. One official at Main Justice assumed that this was the responsibility of the U.S. Attorney's Office (USAO) in Atlanta. The USAO and others at Main Justice, on the other hand, clearly believed this responsibility rested with Main Justice. It does appear that the investigative task force in Atlanta may have made at least one inquiry of the CIA by working through the FBI, rather than Main Justice.

The failure to fix this responsibility contributed to the delay of almost a year before communications were established with the Intelligence Community. Had the indictment been brought in the fall of 1990 as once anticipated, this would not have allowed sufficient time for the intelligence agencies to do a thorough search for relevant information prior to indictment.

In sum, there was no clear understanding and no clear policy at the Department of Justice as to where this responsibility rested. The differing views were largely a product of various perceptions of "what had been the practice."

Recommendation 7: The Department of Justice should, as a matter of policy, place responsibility with Main Justice for contacts with the intelligence agencies. While there may be a need for direct contacts between intelligence agencies and local U.S. Attorney's offices where intelligence information enters into a particular case, the responsibility for arranging initial consultations with intelligence agencies, for explaining the Government's case to intelligence agencies, and for making requests for intelligence agencies, ought to rest with Main Justice, which has greater expertise in dealing with such matters and possesses the requisite storage and communications capabilities.

Insulating Prosecutors from Political Pressure

While the attorneys assigned to the BNL case in the U.S. Attorney's Office in Atlanta, as well as the interagency task force which conducted the criminal investigation, strongly denied they had been subjected to any political pressure to shape the investigation or prosecution of the case (and the internal Justice documents examined by the staff did not contain evidence of such pressure), it is nonetheless apparent, particularly during the fall of 1989 and early 1990, that prosecutors and investigators assigned to the case were placed in contact with persons who were concerned about the case on a political level.

In the fall of 1989, there were a number of contacts between the prosecutors and federal agencies (including the White House) involved in the decision to approve new agricultural loan guarantees for the Government of Iraq. Atlanta prosecutors and investigators met directly with representatives of the Agriculture Department about the case. There were at least two telephone calls from a junior attorney in the White House Counsel's office to the chief prosecutor in Atlanta in November, 1989, asking for information concerning the case in connection with the decision to approve loan guarantees.

In the spring of 1990, prosecutors and investigators were invited to Washington on at least one occasion to discuss the case with National Security Council staff and other Administration officials who were concerned about whether to approve the second \$500 million tranche of loan guarantees to Iraq. Later, in September, 1990, the chief

prosecutor and chief investigator on the case were part of a Justice delegation which met with the Italian ambassador to the United States, who argued that BNL-Rome had been a victim of a "terrible fraud."

While prosecutors and investigators vehemently deny that they were pressured in any way during this period, and, indeed, assert they took no actions regarding the case except as dictated by the facts, they were clearly exposed as a result of these contacts to political points of view regarding the case, the effects of which are impossible to measure. These meetings also clearly created a perception of improper political interference.

Recommendation 8: The Attorney General should adopt new policies and procedures to insulate prosecutors and investigators from the political process. Main Justice should take the responsibility for dealing with political officials or representing the Department with respect to political decisions rather than exposing those who are making decisions regarding the investigation and prosecution of the case to such discussions. Prosecutors and investigators should be instructed to refer unsolicited contacts to Main Justice rather than attempting to deal themselves with political issues related to a criminal case.

Document Requests to the Intelligence Agencies

The document requests made by Justice to the intelligence agencies in connection with the BNL-Atlanta case left much to be desired.

The first such request, made on August 3, 1990, went only to the CIA and not to other elements of the Intelligence Community. The second request, made on October 8, 1990, did go to other intelligence agencies, as well as the CIA, but the request to CIA duplicated much of the information that had been requested in August, to which CIA had already responded.

In essence, the requests asked for information with respect to persons or entities who were being considered for possible indictment in the case, and for information which linked these persons or entities to the Iraqi procurement network or BNL-Atlanta. The requests also did not specifically ask for information on what was a principal issue involved in the case, i.e. "whether BNL-Rome knew." While the drafters of the request believed the request "covered everything they have," it did not alert the recipients to look for information bearing on that important issue.

As far as the investigation was able to determine, there

was no particular guidance for the drafters to follow in making such requests, apart from their sense of what had taken place in the past.

Recommendation 9: The Justice Department should issue written guidance for staff attorneys involved in making document requests of the Intelligence Community to ensure proper coverage and content, rather than simply leaving this to the acuity of the staff concerned. Such guidelines should also require contemporaneous consultations with the intelligence agencies to advise them of the issues posed by the investigation and/or prosecution, consistent with the Federal Rules of Criminal Procedure and other applicable law.

Justice Handling of the Intelligence Received and the Brady Rule

Justice's handling of the intelligence provided in response to its document requests was shoddy and haphazard, particularly in light of the prosecutor's responsibility to disclose exculpatory evidence to the defense.

While attorneys at Main Justice read most of the documents, there was no written analysis ever made of them in terms of their significance to the case. While some of the reporting clearly related to the issue of "whether BNL-Rome knew," there was no effort to make a systematic analysis of their relevance to the issue, or to relate the reports to what was otherwise being done in the ongoing criminal investigation. The attorneys involved appear simply to have done a cursory review of the materials and concluded that they added very little to the picture.

It also appears that only a portion of the documents produced by NSA were ever read by anyone from Justice.

There was confusion in terms of whose responsibility it was to make an assessment of the intelligence material in the first place. The attorneys at Main Justice who reviewed the intelligence thought that only Atlanta could make a proper analysis. Atlanta, on the other hand, clearly was relying on the review by Main Justice. Indeed, no one from Atlanta, either prosecutor or investigator, read any of the intelligence reporting prior to the indictment.

Insofar as any followup is concerned, there appears to have been only one intelligence report which received any followup, this involving a report provided by the Defense Intelligence Agency. No inquiry at all was made of CIA with respect to the reporting which indicated that "BNL-Rome may have known."

In the case of Brady v. Maryland, 373 U.S. 83 (1963),

the Supreme Court held that it is a violation of a defendant's due process rights if the prosecution fails to disclose in advance of trial evidence that is favorable to the defendant and which is "material" to the guilt or punishment of the defendant.

After Drogoul pled guilty, the Committee became concerned that the intelligence reports which tended to show that "BNL-Rome knew" might be considered within the scope of the Brady rule since, if the defendant's superiors knew of or approved what he had admitted to doing, such knowledge or approval might mitigate against the sentence handed down by the court. Indeed, in his interview with the Committee staff as well as in the sentencing proceeding itself, the presiding judge expressed the belief that the intelligence reports constituted material the Government was obligated to provide.

It does not appear, however, that any legal analysis was ever prepared for purposes of a trial or the sentencing hearing to assess the intelligence reports provided to Justice within the context of the Brady rule. While attorneys who read the intelligence materials testified that they were sensitive to the Brady requirement as part of their review of the intelligence materials, they did not regard these materials as falling under the rule.

In addition, the Main Justice attorneys involved in the case insisted that Brady obligations were the responsibility of the Atlanta prosecutors, even though the Atlanta prosecutors had not reviewed all of the relevant intelligence reports and clearly lacked the expertise in evaluating such reports possessed by Main Justice.

While the staff does not attempt to analyze here the applicability of Brady to this situation, it does believe that such an analysis of the intelligence materials should have been made by the Department of Justice in preparation for trial, and, ultimately, the sentencing hearing. Again, as noted earlier, had any written analysis of the intelligence materials been prepared, the Brady issue might well have been addressed.

Recommendation 10: The Attorney General should promulgate policy and procedures to govern the evaluation and followup of intelligence material furnished in connection with a criminal investigation. These procedures should require appropriate followup with the intelligence agency which produced the report where leads are indicated which have not been resolved by the ongoing criminal investigation. The Justice Department policy ought to include a specific requirement for an evaluation of such materials under the so-called Brady rule, prior to the case going to trial or a plea hearing.

Coordinating Matters Related to the Prosecution with Justice

In the fall of 1991, some months after producing documents to the Justice Department in support of the prosecution, CIA and other government agencies were asked to provide briefings, documents, and other information to the Congress relating to the BNL case, at times in response to subpoenas.

While the record shows that some agencies, such as the Federal Reserve, coordinated their proposed responses with Justice, it appears that CIA did not do so. In October, 1991, CIA briefed the House Permanent Select Committee on Intelligence regarding its support to the case, and, in November, 1991, provided information on the BNL-case to the House Banking Committee in response to a subpoena. CIA also permitted a staff member of that Committee to read summaries of certain intelligence reports relating to the BNL case, as well as analytical comments on these reports which were at odds with the indictment. None of this was known to, or coordinated with, the Department of Justice though it related to an ongoing criminal prosecution which CIA had previously supported.

The investigation found that the failure to coordinate with Justice was largely due to the fact that one office in CIA (the General Counsel) handled the support to the prosecution, and another office in CIA (Congressional Affairs) handled responses to the Congress.

When the information provided by CIA to the House Banking Committee unexpectedly surfaced a year later on the opening day of the Drogoul sentencing hearing, the results of such lack of prior coordination were evident.

Recommendation 11: There should be a written requirement at all intelligence agencies to ensure that the Department of Justice is informed of any briefings, documents, or information provided to the Congress or to any entity outside the Executive branch, which relate to an ongoing criminal prosecution. Staff responsibility for such reporting should be clear and guarantee that matters do not "fall through the cracks." Justice should itself make this requirement clear in any communications it may have with intelligence agencies.

Justice Staffing of the September 1 Letter and the Resulting Replies from the Intelligence Agencies

On September 1, 1992, two weeks before the sentencing hearing in Atlanta was scheduled to begin, the Justice

Department sent a letter to CIA, NSA, and DIA, with a deadline of September 4 for a reply, asking each agency to make name checks on five individuals whose names had been mentioned by Drogoul during his debriefings in June and July. The letter also posed 10 questions essentially to elicit conclusory statements from the intelligence agencies characterizing the nature of the information in their possession, information that ostensibly had previously been provided the Department of Justice.

The letter was drafted by an attorney newly-assigned to a different aspect of the case who had not read the underlying intelligence materials. This attorney did not consult with either of the two attorneys at Justice who had read the materials in drafting the letter. While the investigation reflected that the attorney concerned made a good faith effort under trying circumstances to respond to the pressing needs expressed by the USAO in Atlanta, the request posed difficulties for the agencies concerned, both in terms of timing and in terms of what they were being asked to do, and, to some degree, contributed to the mistakes that were made.

The investigation also revealed that when the intelligence agency responses to the September 1st letter were received by Justice, apparently no one checked them against the intelligence materials that had been previously provided Justice. The evidence suggests that CIA's answer to question 8 did evoke concern as to its completeness in the mind of the attorney who drafted the letter, but no one followed this up with the CIA before the letter was made public, apparently due to the press of the litigation in Atlanta.

Clearly this process would have achieved better results if the request had permitted more time and consultation. The request for the name checks could have been accomplished earlier because the USAO had Drogoul's allegations several weeks before. Moreover, if the Justice Department itself had earlier analyzed the intelligence materials, perhaps the 10 questions themselves would have been unnecessary. It is a very difficult thing to ask intelligence agencies to characterize what their intelligence says, unless there is a "bright line" of demarcation provided by the question. Several of the ten questions, including question 8, contained no such "bright line," asking instead, in effect, for analytical or legal conclusions by the agencies concerned.

CIA Staffing of the September 4 Response

In testimony before the Committee on October 8, CIA witnesses conceded that that the answer to question 8 of the Justice letter of September 1 had been misleading in that it

had not fully reflected the classified intelligence reports in the possession of the Agency at the time. These suggested that BNL-Rome may have been aware of the illegal activities at BNL-Atlanta.

The evidence does not show that this failure was a deliberate attempt to withhold information from the Department of Justice. In fact, Justice had already been provided the intelligence reports in question. Nor does it suggest a deliberate effort to mislead the court. The letter was classified, and, at the time it was prepared, there was no indication that the letter itself would be made public or provided the court.

While there is a conflict in the evidence in terms of the extent to which CIA may have relied upon guidance provided by the Department of Justice in preparing the response to question 8, the evidence nonetheless establishes that the staffing of the letter at CIA was less than careful or thorough. The letter also did not receive adequate supervisory review, at least in part because of the ambiguous supervisory relationships which appear to exist in the Office of General Counsel.

While the pressure to respond within a short period also contributed to this result, it cannot excuse it. The purpose of the letter was to explain what CIA knew of the facts surrounding pending litigation. The Agency had no way of knowing what use might be made of the letter. In fact, the letter was ultimately used to prepare a portion of the sentencing memorandum filed with the court, and was used by the Acting U.S. Attorney in Atlanta in responding to inquiries made in court by the presiding judge. Accordingly, the CIA letter of September 4 clearly deserved more care and attention than it received from the attorney who drafted it and the attorney who signed it.

Dealing with Classified Information at the Sentencing Hearing

At the beginning of the September 15th session of the Drogoul sentencing hearing, Drogoul's defense counsel provided copies of the statement made by Congressman Gonzalez the preceding day to the court and the Government. The following day he used the statement to question the chief Government witness, acknowledging that the statement was based upon classified documents provided to Gonzalez.

Prosecutors in Atlanta had not previously seen the summary provided Gonzalez, nor were they aware of any CIA intelligence reports which would have reasonably permitted the conclusion that "BNL-Rome knew." Thus, they were justifiably upset and mystified by the Gonzalez statement.

Frantic calls went out from Atlanta to Main Justice on September 15, asking for help. At least four separate Justice officials called their CIA counterparts to complain and to demand help in straightening out the situation that had unexpectedly developed in Atlanta. In fact, four separate, at times competing, demands were placed upon the Agency by various Justice officials: to declassify the Gonzalez summary and the underlying intelligence reports; to provide a public, point-by-point rebuttal of the Gonzalez press release; to provide a public statement in essence retracting or "clarifying" the analytical comment which accompanied the summary; and to declassify and release the text of the CIA letter of September 4, answering the 10 questions. CIA was placed on the defensive and set about doing what it could, but the guidance was confusing, and its obligations never clear.

This was hardly a rational process.

Moreover, even after classified information was sent to Atlanta (the summary of CIA reports prepared for Gonzalez and four of the underlying intelligence reports), these documents were simply handed over in chambers to the presiding judge, who had rejected the prosecution's offer to discuss them ex parte. Subsequently, in open court, the import of the documents was discussed, but in a setting where a full and orderly assessment of their significance to the case could not be undertaken.

From the beginning, surprisingly little attention seems to have been paid, particularly by the Justice Department, to dealing with this situation under the Classified Information Procedures Act (CIPA). Although the CIPA does not expressly apply to sentencing hearings, it does provide an orderly process for the use of classified information in federal criminal proceedings. Under the CIPA, the Government may object to the use of classified information where the defendant has not previously notified the court that he intends to use it. An in camera proceeding may then be requested by the Government where the use, relevance, and admissibility of the classified information may be weighed by the court, and, if necessary, methods of limiting the disclosure of classified information may be considered. It is a process which intelligence agencies have generally come to understand and work within.

It does not appear that the Justice Department, in fact, gave serious attention to invoking a CIPA process in Atlanta, but rather appeared to grope for ad hoc solutions to take care of the problem faced by the prosecutors. While this may be understandable in view of the unexpected use of classified information and, indeed, the initial uncertainty at Justice with respect to precisely what Gonzalez had been provided, it soon became clear that classified information was, in fact,

at issue in the proceeding. In the view of the staff, invoking the CIPA process at the outset would have saved time and effort, and might have avoided some of the mistakes that were made.

Recommendation 12: Main Justice should undertake a more active role in educating local U.S. Attorneys to the procedures set forth in the CIPA, and, where appropriate, provide experts to assist local prosecutors in invoking the CIPA in cases where there is a likelihood that classified information will be involved. Such assistance should include providing for the proper handling of classified information introduced into a court proceeding.

Release of the CIA Letter of September 17th

The decision to release the main text of the letter of September 4, 1992, (including the answer to question 8) in a new, unclassified letter on September 17th resulted in a misleading answer being provided to the public as well as the court in Atlanta.

Both the CIA and the Justice Department bear responsibility for this action. While the investigation produced no direct documentary or testimonial evidence which showed an intentional effort to mislead the public or the court, it did show that attorneys at Justice and the CIA participated in a questionable decision to release a letter to the public and to the court which contained a response which they suspected might not be complete and did not make a reasonable effort to ascertain whether it was in fact complete prior to release of the letter.

The Justice official involved had requested that CIA declassify the answers to the 10 questions contained in the CIA letter of September 4, 1992. Obviously, the answer to question 8 (which implied that CIA had only public information regarding BNL-Rome's knowledge of the illegal activities at BNL-Atlanta) would have belied the analytical comment in the Gonzalez summary that reports obtained by CIA had "confirmed" such knowledge, which the prosecutors were concerned about. Although the Justice official did not recall the conversation, a contemporaneous "e-mail" showed that he had spoken with a subordinate on September 4, who had questioned the completeness of the CIA response to question 8. But when a CIA attorney later expressed discomfort at leaving the answer to question 8 the way it was, the Justice official "strongly advised" him to leave it alone or else be prepared to explain to the court why the change was made. Both officials testified that they did not regard this conversation as "pressure" and that CIA was essentially left to answer the question in any way it saw fit.

Whether "pressure" or not, the Justice official's "strong advice" was an important factor weighing in the CIA's decision to release the letter without change. While the record is unclear whether the Justice official concerned had actually read the CIA intelligence reports previously provided Justice, he was aware of the Gonzalez summary and the analytical comments which accompanied it when he spoke with CIA. He regarded the conclusion in the comment that "BNL-Rome knew" as clearly wrong, and saw the answers in the September 4th letter, which predated the disclosure of the Gonzalez summary, as one means of undermining or casting doubt upon the analytical comment as representing the view of the CIA. His intent thus does not appear to have been to prevent CIA classified information from coming to the attention of the court (which he assumed would happen in any event), but rather to provide an argument for the prosecutors that the offensive analytical comment did not represent the views of the CIA on the issue. In the view of the staff, his desire to preserve an argument for the prosecutors did not justify his urging CIA to stay with an answer with which it was clearly uncomfortable.

Nonetheless, it was CIA itself which ultimately made the decision to release the text of the September 4th letter without change, notwithstanding its misgivings about the answer to question 8.

In general, Main Justice and USAO attorneys took the position that the CIA reporting suggesting BNL-Rome's knowledge was based on speculation, lacking substantiation, not clearly focused on direct knowledge of "illegality," and outweighed by more readily admissible and more reliable evidence to the contrary. The CIA attorney who prepared the September 4 letter and the two CIA attorneys who decided to transmit the September 17 letter appeared to follow a similar analysis in omitting any reference to classified information in the answer to question eight. Whether or not that analysis was valid, it did not provide justification for the CIA's answer to question eight, which asked whether CIA had "any information" (not "reliable information" or "admissible evidence") "that," (not "proving that") BNL-Rome knew of BNL-Atlanta's illegal activities (emphasis added).

Nor is it a sufficient response to suggest that key reports were ignored in the answer to question eight because it was not certain from the face of the reports that the activities described were "illegal." Justice did not explain within question eight itself what it meant by "illegal." A responsible public answer from CIA would have erred on the side of inclusiveness, making reference to those CIA reports, coming in the wake of the September 1989 Atlanta raid, that suggested BNL-Rome's awareness of BNL-Atlanta's Iraqi loans, and allowing Justice and the District Court to decide for themselves whether the activities described were relevant.

There were many factors which appear to have contributed to the CIA decision to repeat verbatim the answer to question eight: the urgency of the situation, the defensive posture in which CIA found itself, the fact that the response had previously been staffed and transmitted, and the conclusion of CIA attorneys that question 8 could be narrowly interpreted. In the final analysis, however, none of these factors can justify a decision to release to the public and to the court information that the CIA knew or suspected may be incomplete or could be seen as misleading. This was a document that was to become part of a significant criminal proceeding. It involved a highly controversial matter that other CIA offices were contemporaneously attempting to deal with. Yet the public release of the letter received virtually no coordination outside the CIA General Counsel's Office. The fact that the Agency was at the time contemplating the release of a public statement which might mitigate the effects of the letter, or intended to make classified documents available to the court at some later date, cannot excuse the fact that CIA officials suspected the letter might be misleading, and yet released it anyway without making a further effort to adduce the facts or to obtain a broader review by other offices at the CIA.

The CIA Draft Public Statement

At the Committee's hearing on October 9, 1992, testimony from CIA witnesses left the impression that during the week of September 14-18, CIA had drafted a public statement for Justice to issue which would have helped to correct any misleading impression created by the release of the letter of September 17th, but that Justice officials had blocked release of the statement. In essence, the statement would have said that the intelligence reports held by the CIA did not permit a "definitive conclusion" with respect to "whether BNL-Rome knew," and that Justice planned to make all the the relevant intelligence materials available for review by the court.

Subsequent investigation showed that the Committee's initial impression was inaccurate in several respects. First, the public statement was not CIA's idea, but rather was requested by the Justice Department, and was intended to address the analytical comment which accompanied the summary of intelligence reports provided Congressman Gonzalez. It was never intended to correct any misleading impression that might be created by the September 17th letter. Indeed, the public statement was requested before the request for the September 17th letter was made. While Justice officials did reject the draft that was prepared by the CIA, it was because the statement did not do what Justice had asked for -- take a firm position on the issue of what "BNL-Rome knew" --

and was drafted for the Justice Department to issue, rather than coming from the CIA. The investigation developed no evidence to indicate that Justice officials were, by rejecting the draft statement, attempting to preclude the CIA from correcting any misleading impression left by the letter of September 17.

Indeed, Justice itself released a public statement on the evening of September 18, subsequent to rejecting the CIA draft, which stated that all of the relevant intelligence reports would be made available to the court to determine for itself what weight to be accorded them.

Having said this, the staff (as indicated above) questions the effort made by Justice to have CIA issue a public statement -- outside the context of the proceeding in Atlanta -- which was intended essentially to retract or clarify a conclusion reached in an intelligence document which had been introduced into the court proceeding. Indeed, a significant factor motivating the request for a public statement appears to have been not the judicial proceeding, but rather the "60 Minutes" interview and other press interviews that USAO officials were giving outside the courtroom. The staff believes that for the U.S. attorneys in this case to give interviews regarding matters at issue in the ongoing proceedings was ill-advised, and contributed to the impression that the handling of the case was politically motivated.

DIA Letter of September 17th

Although it was not released to the public and apparently had no impact on the court proceedings in Atlanta, the DIA letter of September 17th to the Acting U.S. Attorney in Atlanta suffered from the same defect that characterized CIA's response to question 8. While technically accurate, the answer did not reflect and, indeed, was carefully crafted to exclude, a September 15, 1989, DIA intelligence report which suggested knowledge of Drogoul's scheme by Italian government officials (presumably including BNL-Rome).

The DIA lawyer principally concerned stated that DIA wanted the letter to be accurate, and, since it was to be unclassified, they could not reference a classified report. Like the CIA's answer to question 8, however, the DIA response created a misleading impression. In preparing documents for public release, it is essential that they not only be technically correct, but also do not convey misleading impressions. If this cannot be done consistent with security constraints, then it is preferable to provide nothing at all.

Communications between Intelligence Agencies and the Court

Although it was clear on September 15th that CIA information was involved in the sentencing hearing in Atlanta, and, indeed, that it was a matter of serious dispute, CIA never sent its own personnel to deal with the situation. While this course of action was discussed at CIA on several occasions, it was not until September 30 that a decision was made to deal with the situation directly. (On October 1, the Government moved to permit the defendant to withdraw his guilty plea, and the CIA trip to Atlanta was cancelled.)

CIA lawyers were concerned about being drawn into a public court proceeding and with being forced to reveal classified information over their objection. The decision was thus made to rely on the local prosecutors to deal in their behalf. In retrospect, this was a serious mistake. On September 22, the presiding judge began to ask the prosecutors for information from the CIA, elaborating on its responses to the 10 questions. It was clear on September 24 that the court was having difficulty making sense of the CIA materials it had already been provided. On September 25, the court repeated its request for the CIA information. Although the CIA received a written request from the Atlanta prosecutors late in the day on September 25, CIA never appreciated the urgency attached to this request. By the time memos were prepared and sent between the local prosecutors and the CIA, and responses had been prepared and staffed by the CIA, the court had concluded CIA was "uncooperative."

Recommendation 13: In any significant litigation where intelligence information is involved and might be at issue, the intelligence agency concerned should ensure that knowledgeable officers are physically present to provide guidance and assistance to the local prosecutors, and, with Department of Justice concurrence, to the court. Failure to do so leaves the interests of the intelligence agency exposed to a far greater degree than does the possibility that its personnel or information might be drawn into the proceeding.

Failure to Retrieve and Provide CIA Intelligence Reports

On September 30, 1992, the Committee was advised that CIA had discovered three intelligence reports bearing on the BNL case that had not been previously provided to the Department of Justice. During October, still more documents were found by CIA that had not been located in the earlier searches. As a result of CIA's failure to provide this information previously, the criminal investigation was deprived of important information that potentially could have materially affected the BNL case.

The investigation produced no direct evidence that these reports had been deliberately withheld by the CIA during the earlier searches. It did show, however, that CIA's ability to retrieve information from certain of its files -- primarily in the Directorate of Operations -- is poor. Reports that are not disseminated outside the CIA (e.g. because they do not add to public information, or are not reliable, or are in the nature of operational interchange) are not entered into the Agency-wide system unless specially designated for this purpose. The intelligence reports which were located in the fall of 1992 fall essentially into this category. CIA conceded in testimony before the House Permanent Select Committee on Intelligence that the only reason these reports finally came to light was not because of the Justice Department requests but because the SSCI had made a specific query regarding BNL that finally "asked the right question," triggering the recollection of a CIA employee about the existence of the reports.

The investigation also showed that in its responses to Justice, CIA never specifically advised of the shortcomings of the retrieval process in the Directorate of Operations, and that CIA never advised Justice that, because of these shortcomings, CIA had failed to search many potentially relevant records. (By contrast, National Security Agency attorneys did explicitly advise Justice, in responding to the September 1, 1992, letter, that NSA's responses for legal reasons were based only on a search of finished intelligence reports and not on raw transcriptions.) (There was some indication that CIA had advised Justice officials of such shortcomings in connection with previous requests.) Unfortunately, the weaknesses of the retrieval system and CIA's failure to alert Justice to these weaknesses had the effect of transforming the flawed legal advice provided the CIA -- that nondisseminated reports were not subject to discovery in a criminal case -- into a practical reality.

Recommendation 14: The Director of Central Intelligence, in conjunction with the Attorney General, should institute a review of the files and retrieval systems at CIA, including the Directorate of Operations, to determine what improvements or upgrades are necessary to meet the future requirements of the criminal justice system. Once these needs have been identified, CIA should present to the oversight committees a plan for establishing the requisite capability.

In the meantime, CIA should ensure that appropriate officials of the Justice Department are made aware of any limitations which may exist in terms of its ability to conduct records searches in response to document requests levied by the Department.

CIA Failure to Adequately Respond to a Request for
Information from a Congressional Oversight Committee

While CIA has provided voluminous amounts of documentary evidence to the SSCI in the course of this investigation, the staff notes that the CIA's handling of the Committee's initial June 2, 1992, request for an "all-source chronology" of intelligence reporting on BNL, suffered from some of the same problems evidenced in the handling of Justice Department requests. First, although the SSCI asked for "all Intelligence Community reporting" on BNL from 1983-1992, apparently no effort was made to search files outside of the central data base of disseminated reports, and the SSCI was not advised that the search had been so limited. Second, a particular CIA report on BNL that had been disseminated to other agencies and was directly relevant to the SSCI request -- a report that had been provided to the Justice Department in 1990, had been summarized for Congressman Gonzalez's staff in October 1991, and remained in the Office of Congressional Affairs in June 1992 -- was not included in the chronology prepared for the SSCI. As a result, the Committee was not informed of significant reports that were clearly within the scope of its request.

PART II. DETAILED NARRATIVE SUMMARY OF THE EVIDENCE
DEVELOPED BY THE INVESTIGATION

SECTION 1. INTELLIGENCE COMMUNITY INVOLVEMENT WITH MATTERS
RELATED TO THE BNL CASE
PRIOR TO THE AUGUST 4, 1989 RAID ON BNL-ATLANTA

The Banca Nazionale del Lavoro (BNL) is one of the largest banks in Italy. Headquartered in Rome, over 95% of the bank's stock is owned by the Italian Government. In 1981, BNL opened a branch office in Atlanta, and from 1985 until 1989, the Atlanta office did extensive business with Iraq. This included loans to Iraq for the purchase of U.S. agricultural commodities under the U.S. Department of Agriculture's Commodity Credit Corporation (CCC) loan-guarantee program, as well as other loans and extensions of credit, which allegedly were not authorized by the parent bank in Rome. These transactions began in 1985 with an allegedly unauthorized assumption by BNL-Atlanta of a \$13 million unsecured Iraqi loan. They also included the allegedly unauthorized financing of \$556 million in Iraqi purchases under the Fiscal Year 1986 CCC program, and, subsequently, \$619 million and \$665 million in CCC-backed loans for Fiscal Years 1987 and 1988, respectively. Almost \$1.9 billion in unauthorized loans were made by BNL-Atlanta under the CCC program. Beginning in 1988, the Iraqis decided against continuing to use BNL-Atlanta to finance CCC-backed loans, but over the next two years, allegedly obtained unauthorized extensions of credit from the BNL-Atlanta totalling an additional \$2.155 billion.

In all, over \$4 billion in unauthorized loans and extensions of credit by BNL-Atlanta to Iraq have been alleged by the United States.

In July 1989, two BNL-Atlanta employees went to federal authorities and reported the unauthorized Iraqi loans. On August 4, 1989, FBI agents raided BNL-Atlanta and seized records.

(For a general description of the criminal activities which allegedly took place at the BNL-Atlanta bank from 1985 until August, 1989, see pp. 17-35 of Part I of the Report of the Independent Counsel, December 8, 1992.)

A. Intelligence Community Reporting Prior to the August, 1989
Raid on BNL-Atlanta

In June, 1992, the Senate Select Committee on Intelligence (SSCI) requested from the Director of Central Intelligence (DCI) a chronology of all of the reporting by the Intelligence Community "on all branches of the Banca Nazionale del Lavoro, with particular emphasis on that bank's relations with Iraq or with any third party that engaged in arms transfers or defense cooperation with Iraq," beginning

in January, 1983, when Iraq was removed from the list of countries supporting terrorism and U.S. export restrictions were lifted. This chronology was provided on July 23, 1992, and, subsequently, staff reviewed all of the reports identified.

There were only nine intelligence reports produced during the period January, 1983 until August 1989 which were pertinent. None mentions BNL-Atlanta by name. Most are concerned with Iraqi purchases of goods and services from other countries, to include the financing of such purchases. In one of the reports, it is noted that an Iraqi government entity had opened a line of credit at a "BNL branch in the United States...to finance heavy equipment purchases from U.S. firms," but the branch is not specifically named. Another report described a series of meetings in the spring of 1989 between senior Iraqi officials which, among other things, included a discussion of increasing the Iraqi line of credit with the BNL. Noting that Iraq's credit lines "at a U.S. branch of the BNL had been exhausted," the report reflected that such credits "at the U.S. branch are solely for foodstuffs." Again, the U.S. branch of BNL is not identified.

The staff's review of the finished intelligence estimate of assessments (as opposed to intelligence reports) produced by the Central Intelligence Agency (CIA) or the Defense Intelligence Agency (DIA) prior to the August 1989, raid revealed none which mentioned the Banca Nazionale del Lavoro, either in Rome or Atlanta.

CIA economic analysts testified that they were unaware of any unusual relationship between BNL and Iraq prior to the August 4, 1989 FBI raid:

"I was not aware that Iraq and BNL had an unusual relationship or an extensive relationship [prior to August, 1989]. In fact, it wasn't a bank that I kind of keep close in my mind as one of the ones that Iraq had a lot of contact with. In fact the name of the bank did not even sound familiar to me when the scandal broke. And when it did, I went back and did some searches of our electronic files and found a few [reports] where BNL was mentioned and examined those but did not find anything about them that would have -- that appeared unusual or extraordinary or would have tipped us off that this scandal was imminent." (Analyst #1, deposition taken by SSCI staff (hereinafter "deposition"), 10/30/92, p. 6.)

"There were reports early on, earlier, before the FBI raid in August, about BNL being one of the banks that was arranging financing for some Iraqi frigates that an Italian government shipbuilder was constructing

... But BNL was an incidental part of that activity. It was an Italian government policy to sell arms to many countries around the world [including] Iraq... the activities of one bank, even the largest bank in Italy, just fell below my normal attention." (Analyst #2, deposition, 10/30/92, pp. 25-26)

B. Operational Activities involving the Intelligence Community Prior to the August, 1989 Raid on BNL-Atlanta

The staff made an extensive inquiry with respect to whether CIA may have become aware, as a result of its operational activities, of the illegal activities alleged to have taken place at BNL-Atlanta prior to the FBI raid in August, 1989, or had otherwise become involved in any aspect of the Iraqi worldwide procurement network, that might have caused the Agency to withhold information concerning the BNL case from the Department of Justice.

While security considerations preclude a detailed description of this phase of the staff inquiry, suffice it to say that based upon the information given the Committee--

o there was no evidence that CIA, as a result of its operational activities, had learned of the allegedly fraudulent activities which took place at BNL-Atlanta prior to the August, 1989 raid; and

o there was no evidence that the operational activities of the CIA involved support to any element of the Iraqi worldwide procurement network, or to any entity, including financial institutions, which may have been involved in funding or otherwise facilitating the activities of the Iraqi network, either before the August, 1989 raid or thereafter.

C. Matrix-Churchill

Matrix-Churchill was a British manufacturing firm, acquired by the Iraqi-controlled company, TDG, in the fall of 1987. The firm was a large manufacturer of computer-controlled machine tools, some of which could be used for weapons manufacture. Soon thereafter, TDG established a subsidiary called Matrix-Churchill Corporation near Cleveland, Ohio, to act as a consultant or broker for finding U.S. contractors to construct facilities in Iraq.

The CIA became aware in December, 1987, that Matrix-Churchill had been bought by the Iraqi-controlled TDG and was acting as "an Iraqi front company." Further fragmentary reporting on Matrix-Churchill's activities during 1988 also was available to the CIA, but none indicated a relationship with BNL-Atlanta.

Following the end of the Iran-Iraq war in August, 1988, the CIA produced a series of intelligence assessments examining the political and economic trends in both countries. The Iraqi procurement network became a subject of intense intelligence interest in late 1988 and early 1989.

In June, 1989, DIA produced the first detailed report on the Iraqi procurement network, which specifically identified Matrix Churchill as a key participant. No mention was made of BNL-Atlanta, however. CIA produced a similar finished analysis in September 1989, but it, too, made no mention of an Iraqi connection with BNL-Atlanta. Later in the same month, however, CIA had obtained information linking BNL-Atlanta to the Iraqi procurement network and included this in a subsequent analysis.

In November 1992, in a criminal proceeding in Great Britain, it was confirmed that two employees of Matrix Churchill had been sources for British intelligence. It was asserted in the media that the British government had thus condoned the alleged violations of British export control laws with which they were charged. The charges were subsequently dropped, and Prime Minister Major ordered an official investigation of the matter which is currently ongoing.

While the Committee had no desire to interfere with or pre-empt the British investigation, the staff believed it important, as part of its own inquiry, to look in particular at what CIA may have known about Matrix-Churchill, and to determine whether CIA had had any operational involvement either with the British firm or its Ohio associate. Based upon the information provided by CIA, the inquiry reached the following conclusions:

- o CIA was never advised of sources within the British firm, Matrix-Churchill;
- o CIA was never asked and did not provide any assistance to support collection activities within Matrix-Churchill;
- o CIA itself had no operational sources within Matrix-Churchill, either in the United Kingdom or in Ohio;
- o CIA did receive raw intelligence reports, beginning in March 1989 and lasting until August, 1991, which covered events from March, 1988 to January 1991, and described the activities of Matrix Churchill as part of the Iraqi worldwide procurement network, but the sources of the information contained in the reports were not identified; and

o CIA disseminated intelligence reports from a variety of other sources on Matrix-Churchill from December, 1987, to April, 1992. On one occasion in June, 1989, CIA attempted to elicit information concerning certain foreign individuals associated with Matrix-Churchill Cleveland. The attempt was not successful.

SECTION 2. INTELLIGENCE COMMUNITY INVOLVEMENT WITH THE BNL CASE AFTER THE AUGUST, 1989 RAID BUT PRIOR TO AUGUST 3, 1990

The first official communication which took place between the Justice Department and the Intelligence Community did not take place until August 3, 1990, almost a year after the raid on Atlanta.

In the interim, the BNL scandal generated a degree of operational and analytical interest among intelligence agencies.

Reporting pertaining to the BNL Case

CIA obtained information on the BNL scandal from various sources, including reported information in foreign publications concerning the scandal. It also received reports concerning the case from other agencies. The staff investigation showed, however, that neither the FBI nor the interagency task force investigating the case in Atlanta ever directed the CIA to seek information on BNL-Rome which might be relevant to the criminal investigation. Nor was CIA advised of the nature of the ongoing investigation or the nature of the evidence being developed. Thus, while CIA received information on the BNL scandal, it did so in a relative vacuum, without knowing how its information related to that which was being developed by the broader criminal investigation.

From the date of the raid in Atlanta until the indictment (February, 1991), information concerning the BNL scandal sporadically arrived at CIA headquarters. At least six reports based on this information were disseminated outside the CIA and suggested, or contained speculation suggesting, that BNL-Rome had known about, or had been involved in, the scheme carried out at BNL-Atlanta--

- o A September 15, 1989, DIA report which contained speculation that the "BNL mechanism" was but a part of a larger NATO strategy to ensure an Iraqi victory in its war with Iran.

- o An October 1989 report reflecting that BNL-Rome had directed a foreign company to BNL-Atlanta to do business in Iraq. The source of this information concluded that BNL-Rome "must have known."

- o An October 1989 report, containing a statement that "many international bankers familiar with the BNL situation strongly believe" that BNL-Rome was aware.

- o A December 1989 report, citing press articles

that the Italian Treasury Minister had confirmed in testimony that "several employees...including one high-level official" knew of BNL-Atlanta's unauthorized activities.

o A January 1990 report which called into question public allegations by the Italian Treasury Minister that many high-level BNL employees were involved in the scandal, but alleged information strongly implying that one particular BNL-Rome official knew of Drogoul's illegal activities.

o A February 1991 report reflecting that Iraqi officials had sought and obtained signatures of BNL-Rome officials for certain loans originally approved by BNL-Atlanta.

There were at least three other intelligence reports received by CIA during this period which also suggested BNL-Rome knowledge, but these were not disseminated outside the CIA either because they were regarded as containing mere opinion, or as not adding appreciably to publicly available information, or as simply too unreliable to warrant further dissemination.

Of the six described above which were disseminated outside the CIA during this period, all but the September 15, 1989 DIA report were disseminated to either the Department of Justice or the FBI. None, however, appears to have reached the prosecutors in Atlanta or the attorneys at Main Justice who were involved in the BNL case as a result of the "normal" distribution of intelligence reporting within the Department of Justice. The prosecutors in Atlanta did not obtain security clearances until April, 1991 (McKenzie, deposition taken by Office of Independent Counsel Frederick B. Lacey (hereinafter "transcript"), p. 56), and attorneys in the Fraud section assigned to BNL recalled receiving no intelligence reporting through "normal" channels regarding the case. (Clark, transcript, p. 48). Mark Richard, Deputy Assistant Attorney General in the Criminal Division, testified that he would have referred any intelligence reports he saw on BNL to the Fraud Section but did not recall having seen any such reports. (Richard, transcript, p. 25)

Analysis involving the BNL Case

As reporting on the BNL scandal came in, CIA analysts were also following developments for signs of impact on the U.S. relationship with Italy and Iraq.

A number of finished intelligence reports on Iraq were prepared in the fall of 1989, including a National Intelligence Estimate (NIE) on Iraqi foreign policy, but relatively little attention was paid to the BNL scandal. For

example, in the 25-page NIE, there was a single reference to the effect of the BNL case on Iraqi credit-worthiness. (NIE, November 1, 1989, on file with the Committee) The Intelligence Community informed policymakers of the link between BNL-Atlanta and Iraq's European procurement network in an article in the National Intelligence Daily (NID) on September 19, 1989. This was followed by a NID "Special Analysis" on October 5, 1989, that examined the Iraqi procurement network but did not mention its links to BNL-Atlanta.

The most comprehensive effort to analyze the BNL case was made in a November 6, 1989, "typescript" analysis prepared by the CIA Directorate of Intelligence, entitled "Iraq-Italy: Repercussions of the BNL-Atlanta Scandal." The six-page report contained an analysis of the effects of the scandal on Iraqi procurement efforts, including Iraqi commercial ties in the U.S., and its political impact on the Andreotti government of Italy. Commenting specifically upon the knowledge of BNL-Rome and Iraqi officials of the alleged wrongdoing at BNL-Atlanta, the report concluded:

"BNL's North American headquarters in New York and the BNL directors in Rome publicly denied knowing about the letters of credit, although a BNL official in Chicago claims he notified New York and Rome several times about the unusual activity in Atlanta, according to press reports. Press reports also indicate that a BNL branch in Udine, Italy referred customers exporting to Iraq to the Atlanta branch. Iraqi officials have generally denied knowledge of any wrongdoing, arguing that Baghdad is a victim in the scandal."
(p. 2)

The report received wide dissemination within the CIA and Executive branch. It was not, however, disseminated to the Department of Agriculture, despite the fact that the Department was heavily involved at the time in the decision of the Administration to approve an additional \$1 billion in CCC loan guarantees to Iraq. The branch chief concerned with Iran/Iraq developments in the Directorate of Intelligence at the time, testified that the omission was not deliberate, but rather occurred because Agriculture was not on the normal distribution for Near East intelligence. (DI Branch Chief #1, deposition, 11/13/92, p. 32)

On November 8, 1989, an interagency meeting was held at the Department of Treasury to consider whether to approve an additional \$1 billion in CCC-backed loans to Iraq to purchase U.S. agricultural commodities. The minutes of the meeting reflect considerable concern with the outcome of the criminal investigation in Atlanta, but that Agriculture noted that at that point the investigation "had, thus far, resulted only in allegations of wrongdoing [involving Iraqi officials]...and

many of the alleged violations were internal BNL bank matters not associated with the [CCC] program for Iraq." (Minutes of National Advisory Council Deputies Meeting, November 8, 1989, on file with the Committee) The decision was made to approve \$1 billion in new loan guarantees for Iraq, but provide them in two \$500 million tranches, with the first tranche becoming available immediately, and the second to be conditioned in part upon the results of the BNL-Atlanta criminal investigation and the evidence of Iraqi complicity. There was no intelligence agency involvement in this meeting, nor was the Department of Justice represented.

In any case, in early January, 1990, two months after the CCC loan-guarantee decision, a CIA analyst (hereafter referred to as Analyst #1) who had worked on the November 6, 1989 typescript, had a telephone conversation with David Kunkel, an official at the Agriculture Department involved in the CCC program, and mentioned the existence of the earlier typescript, and Kunkel asked for a copy. (Analyst #1, deposition, 11/13/92, pp. 5-6) The branch chief of Analyst #1 testified that the question then arose whether the typescript was still accurate because of the amount of time that had passed. They concluded that it was, but some things had changed, and he asked the analyst to cover them in a transmittal letter. (DI branch chief #1, deposition, 11/13/92, p. 5) Insofar as BNL-Rome's knowledge was concerned, the transmittal letter prepared by Analyst #1 provided without qualification: "Managers at BNL headquarters in Rome were involved in the scandal." (Letter of DI branch chief #1, dated 31 January 1990, on file with the Committee)

Analyst #1 later conceded that the statement in the transmittal letter was "far more definite" than the statements in the original typescript, but she recalled having received new information in the interim. While she could not recall precisely the sources she reviewed, she thought she had relied upon a news story in the Financial Times which quoted the Italian Treasury Minister as having concluded the BNL Rome was involved. She also believed she had had at least one classified report which supported this conclusion. (Analyst #1, deposition, 11/13/92, pp. 9-10) The branch chief recalled that the quote from the Italian Treasury Minister cited two separate banking departments being aware of BNL-Rome's involvement, thus giving the quote more weight. He also recalled various classified reports supporting the statement. (DI branch chief #1, deposition, 11/13/92, p. 21)

There was no effort made to consult with or alert the Department of Justice regarding the statement in the transmittal letter. Indeed, the CIA analysts were largely oblivious to the elements of the criminal case, or that the question of BNL-Rome's knowledge of and involvement in the

activities at Atlanta was a matter at issue among the prosecutors.

On January 31, 1990, CIA sent a copy of the 6 November 1989 typescript to Kunkel at the Department of Agriculture. The branch chief's transmittal letter, however, was not made available either to the recipients of the original typescript, or to the Department of Justice. (Analyst #1, deposition, 11/13/92, p. 40)

Additional intelligence analyses on Iraq were prepared in 1990 and in ensuing years, with several referencing the BNL situation:

- o One noted that the Iraqi failure to gain approval of the second tranche of CCC loan-guarantees could result in its suspending payments of other U.S. loans. (DI report, April 12, 1990, on file with the Committee)

- o A second analysis linked the Space Research Corporation to the Iraqi procurement network through its dealings with BNL-Atlanta. The report also stated that the Atlanta branch made loans without the authorization from its main office in Rome. (DI report, May 4, 1990, on file with the Committee)

- o In July 1990, BNL-Atlanta is mentioned in an intelligence assessment as a "critical" conduit for financing the Iraqi procurement network, including of Matrix-Churchill Ltd. (DI Assessment, July 1990, on file with the Committee)

- o In December of 1990 a DI analysis stated that senior officials of BNL have been indicted for their involvement in financing possible arms sales to Iran and Iraq. (DI Research Paper, December, 1990, on file with the Committee)

- o A final citation of BNL-Atlanta occurred in an intelligence analysis in February, 1992. Intelligence from multiple sources was cited for the judgment that BNL-Atlanta acted "without authorization from the bank's senior officials." (DI Assessment, February, 1992, on file with the Committee)

C. The Early Debate at Justice over BNL-Rome Involvement

Unbeknownst to CIA analysts, by the date of the CIA transmittal letter to the Department of Agriculture, described above, the U.S. Attorney's Office in Atlanta (USAO) had come to precisely the opposite conclusion, i.e., that BNL-Rome did not know of the fraud. Based upon its initial investigation, the USAO appears to have concluded that

BNL-Rome was the unknowing victim of a fraud perpetrated by employees at BNL-Atlanta, rather than being part of the illegal scheme. Its initial memorandum on the case to Main Justice, including a "bare bones indictment," was sent on January 26, 1990. It summarized the investigation and the status of plea negotiations with the subjects of the case, but included no BNL officials outside Atlanta. The memo also stated that while four Iraqi government officials "may have knowingly participated in the scheme to defraud BNL-Rome...no indictment of Iraqi nationals is currently contemplated. Results of further investigation will be provided, however, and the matter discussed as facts develop." (Memorandum from McKenzie to Richard, 1/26/90, on file with the Committee) According to Justice officials, the sole purpose of the draft indictment was to have something available in the event Christopher Drogoul, the BNL-Atlanta branch manager, or other potential defendants suddenly sought to leave the country. (Clark, transcript, p. 21)

In January, attorneys at Main Justice began to question Atlanta's conclusion that BNL-Rome had been the victim of the fraud. On January 31, 1990, Peter Clark, an attorney in the Fraud Section in the Criminal Division, travelled to Atlanta to review the status of the prosecution case. He reported back to his supervisor, Theodore Greenberg, that he had "serious reservations over charging the defendants with fraud against BNL." He noted that charging that BNL-Rome had been defrauded might preclude civil actions by the U.S. in the event Iraq defaulted on the CCC-backed loans, and he recommended additional investigation before coming to this decision. He found the USAO "reluctant to charge BNL, primarily because the bank has cooperated fully in the investigation, and [the USAO] has questioned the theory under which the Department could charge BNL for the unauthorized acts of its officers and employees." (Memorandum from Clark to Greenberg, February 12, 1990, on file with the Committee)

According to Greenberg, "[b]asically, he (Clark) indicated to me and to Larry [Urgenson, another Fraud Section supervisor] that he thought the thing looked like a mess. They (the USAO) didn't know where they were going...they hadn't completed their investigation. What they had done he thought was inadequate, and, you know, he foresaw problems." (Greenberg, transcript, pp. 12-13)

McKenzie defended her conclusion in a February 23, 1990 memorandum to her superior in Atlanta, Rimantas Rukstele, (OIC Ex. 204) and treated the issue at greater length in an April 23, 1990, prosecution memorandum summarizing the case. Among other things, the memo --

o detailed extensive efforts made at BNL-Atlanta to conceal unauthorized activities from BNL-Rome and BNL-New York, including false information provided to BNL auditors;

o explained how the perpetrators in Atlanta had personally benefitted while their actions had been "directly contrary to the interests of their corporate employer";

o cited BNL-Rome's cooperation as well as its acknowledgement that its internal controls had failed; and

o noted evidence that Drogoul had planned to leave BNL-Atlanta and begin working for the Iraqi procurement network. (Memorandum from Rukstele/McKenzie to Urgenson, April 23, 1990, on file with the Committee)

McKenzie also noted in her deposition that Drogoul himself had told Atlanta in August 1989 that no one else in BNL "had authorized or directed or had actual knowledge of what Atlanta was doing." Refusing to accept this at face value, the prosecutors insisted that Drogoul provide a list of all other BNL offices which would have seen any aspect of his "off-book" transactions. Drogoul provided such a list, according to McKenzie, in September 1989, and the Atlanta Task Force thereafter investigated each such transaction at the BNL office concerned, reviewing all of the documentation that touched any part of Drogoul's off-book or unauthorized transaction, and found nothing to indicate complicity by other BNL offices. (McKenzie, transcript, pp. 51-53)

But the attorneys at Main Justice still questioned whether it was possible at this stage to conclude that BNL management had no knowledge of Atlanta's activities or whether BNL internal audit policies were so deficient as to constitute "willful blindness" on the part of BNL-Rome. In March, 1990, Clark recalled that he, Greenberg, and Urgenson had made a trip to Atlanta where they reviewed the Federal Reserve audit report on BNL-Atlanta done prior to the August, 1989 raid. "The report indicated that if they had a worse rating for BNL, they would have assigned it...their internal controls were abysmal. And that increased our concern with respect to the thoroughness of the investigation." (Clark, transcript, p. 43)

In a May 9, 1990, memo to Urgenson, Clark criticized McKenzie's April 23, 1990, memorandum, noting that USAO had not yet completed its questioning of BNL auditors and that the Federal Reserve in Atlanta as well as the Central Bank of Italy had concluded that the bank's auditing procedures were inadequate, with the latter finding BNL accounting procedures with correspondent banks so poor that it permitted the improprieties to go undetected. (Memo from Clark to Urgenson, 5/9/90, on file with the Committee)

This debate continued until the decision to indict, which occurred in February, 1991, as described below.

Issues involving Iraq

While the dispute over BNL-Rome's knowledge or involvement exacerbated in early 1990, issues relating to Iraq proved troublesome as well.

The first "bare bones indictment" sent to Justice on January 29, 1990, did not name any Iraqis. Greenberg recalled one meeting during this period where the issue of indicting Iraqi officials had been raised. According to Greenberg, at a meeting, chaired by Deputy Assistant Attorney General Mark Richard, McKenzie began by saying she assumed that Iraqi officials could not be indicted because they are foreign government officials, and was told by Richard that she was "not to assume anything of that nature. If you think you have evidence sufficient to prosecute an Iraqi official...put it in the indictment and we'll review it." (Greenberg, transcript, p. 87)

At the time, the Administration was in the throes of evaluating Iraqi compliance with the CCC loan guarantee program. The additional CCC loan guarantees for Iraq, which had been approved in November, 1989, were to become available in two \$500 million tranches. The first was to become available immediately; the second, after the Department of Agriculture had done an investigation of Iraqi compliance with the CCC program requirements, and had filed a written report which set forth the developments with regard to the criminal investigation in Atlanta. (Minutes of National Advisory Council Deputies Meeting, November 8, 1989, on file with the Committee)

Rukstele recalled a meeting which took place in February 1990 at the Department of Agriculture where Atlanta representatives went over suspected Iraqi complicity in the scheme with the Agriculture General Counsel, Alan Raul, and the matter of interviewing Iraqi officials was discussed. According to Rukstele, the meeting ended with a consensus that the Department of State would be asked to invite Iraqi officials to come to the United States for questioning by both Agriculture and Justice. (Rukstele, deposition, 11/23/92, pp. 12-15)

The official request to the State Department, however, asked State to approach the Government of Iraq to make arrangements to permit U.S. investigators to go to Baghdad to question Iraqi officials. Originally, it was envisioned that the trip would include Agriculture investigators, conducting their administrative investigation of the CCC program, as well as criminal investigators from the Atlanta task force. The Atlanta prosecutors balked, however, at State's suggestion that they submit any questions they may have in advance to the Iraqi officials concerned. Atlanta was also concerned that the Iraqis involved would deny any complicity

in the scheme and then assert they had "cooperated with the investigation," demanding the second \$500 million tranche be made available. (See Part I of the Lacey Report, p. 136; Rukstele, deposition, 11/23/92, pp. 12-15)

In April 1990, Department of Agriculture officials did, in fact, travel to Baghdad, but without criminal investigators from the Atlanta task force. Upon their return, these officials wrote a draft report which found minor Iraqi violations in the CCC program and stated that there was insufficient evidence of Iraqi complicity in unauthorized loans made by BNL-Atlanta. This prompted McKenzie to send a memo to Urgenson on May 7, 1990, urging him to notify the Agriculture Department in writing "of Iraqi complicity in criminal violations." At that point, six Iraqis were included as defendants in the draft indictment prepared on the case. (See Part I of the Lacey report, pp. 102, 136)

Once the Agriculture officials had returned to the United States in mid-April, the Government of Iraq gave the United States until the end of May to release the second \$500 million tranche or else Iraq would buy its agricultural products elsewhere.

A meeting of the "Deputies Committee" of the National Security Council (NSC) was scheduled for May 29, 1990, to resolve the issue. In preparation for the meeting, McKenzie, Wade, and other representatives of the U.S. Attorney's office came to Washington to brief Nicholas Rostow, Legal Advisor to the NSC, and other Administration officials on the status of the investigation. The briefing was held at the State Department on the morning of May 29 for the purpose of discussing Iraqi complicity in the BNL scheme. (McKenzie, transcript, p. 26) According to Wade, there was no effort at the meeting to pressure the direction or scope of the investigation. Nor did he recall any representatives from intelligence agencies at the meeting. (Wade, transcript, 12/1/92, pp. 25, 27)

Rostow's memorandum of the meeting recounts that he was advised that the U.S. Attorney presently planned to indict six Iraqi officials for complicity in crimes carried out by BNL-Atlanta, and that, "whether or not Iraqi officials are defendants, [the prosecution] would generate embarrassing information about the CCC program and Iraq's involvement in bank fraud, misrepresentations to U.S. Government agencies, and corruption (bid-rigging, kickbacks, after-sales service demands, violations of the Foreign Corrupt Practices Act.)" (Memorandum from Rostow to Robert M. Gates, May 29, 1990, on file with the Committee)

Gates, who was Deputy Assistant to President for National Security Affairs at the time, chaired the Deputies

Committee meeting later the same day. According to minutes of the meeting, Attorney General Barr and Mark Richard were in attendance, as was Richard Kerr, Deputy Director of the CIA at the time. Kerr provided an update on the situation in Iraq, but offered no information directly bearing on the CCC decision. Barr and Richard opposed going forward with the second tranche, citing the prosecutor's intent to indict Iraqi officials who were involved in "significant criminal violations." While some consideration was given to imposing additional conditions, a consensus emerged (which included Gates) that the Iraqi government simply be advised that the U.S would not go forward with the second tranche until the investigation in Atlanta was completed. (Minutes/Summary of Conclusion of the NSC Deputies Meeting on Iraq, Tuesday, May 29, 1990, 4:30-5:30 p.m., on file with the Committee)

Discussion at Justice of Consultations with Intelligence Agencies

On December 7, 1989, McKenzie sent a memorandum to Molly Worlow, a senior attorney in the Justice Department's Office of International Affairs, noting that four Iraqi nationals were being targetted by the investigation, and stated "I understand that you will advise State and any other appropriate departments and agencies." (Memo, McKenzie to Worlow, dated 12/7/89, on file with the Committee) While McKenzie recalled that she had been told at the time the memo had been sent to Deputy Assistant Attorney General Mark Richard and "was being handled," there is no indication that any contact was made with U.S. intelligence agencies with respect to the December 1989 memo. (McKenzie, transcript, p. 8)

Arthur Wade, the head of the investigative task force in Atlanta, recalled that one of the FBI agents assigned to the task force had made an inquiry of CIA, through FBI channels, concerning "certain Iraqis, and, I believe, Jordanians and others" during the December 1989-January 1990 period. He also recalled that there had been an unclassified document produced in response to the request but that the document did not have a "header," and thus it was impossible to say who had prepared it. (Wade, transcript, p. 15-16)

Greenberg recalled that the first discussion at Justice with respect to the need to consult with intelligence agencies took place in February 1990. In a meeting with Urgenson, Greenberg advised that "we need to get the intelligence community together...to explain in detail what it was we were going to be prosecuting...We've got to search all of the files. We've got to find out what they know and and whether or not we've got any problems with respect to a potential indictment...While we can't task the intelligence community to collect information for...a criminal

investigation, if they happen to find information that might be useful to us...that information can be made available." Greenberg recalled that while Urgenson appeared to accept the need to begin a dialogue, "his basic response was I'll let you know what I want you to do when I want you to do it." (Greenberg, transcript, pp. 20-29)

The record does not reflect any action was taken by Urgenson at this point to follow up on Greenberg's recommendations.

Clark, in fact, clearly recalled that the USAO, rather than Main Justice, had taken the lead for handling the intelligence issue by working through the FBI. "I am certain that I, at least, was told by Gale McKenzie originally that she had taken care of that [making inquiries to the intelligence community]...It was nothing we had to be concerned about because they were taking care of it...through the Bureau." (Clark, transcript, pp. 46-48, 58)

The USAO, on the other hand, clearly believed that Main Justice had responsibility for dealings with the Intelligence Community since it normally carried out this function. (McKenzie, transcript, pp. 15-16, 40; Wade, transcript, p. 20; Rukstele, transcript, p. 43) Indeed, until April, 1991, no one at the USAO had a security clearance, and thus, could not have gained access to classified intelligence information. (McKenzie, transcript, p. 56)

Rukstele also recalled, in particular, an April 1990, meeting at Main Justice where he raised with Urgenson the matter of who was handling the contacts with the Intelligence Community. "Larry said, Ted, you can take care of that. It's either 'you can take care of that' or 'you will take care of that'. But it was clear in my mind that this was a supervisor telling one of his employees to do something. Peter Clark was there as well, and he may have tasked both of them to take care of it." (Rukstele, deposition, 11/23/92, p. 43) McKenzie also recalled that Rukstele had raised the issue of what the intelligence agencies may know several times at meetings with Justice in early 1990. (McKenzie, transcript, p. 14)

Greenberg confirmed at least one such meeting where McKenzie had specifically asked Main Justice to handle the inquiries with the Intelligence Community. (Greenberg, transcript, p. 46) Indeed, Greenberg testified that he continued to tell Urgenson that "we really need to do this [make the inquiries to the intelligence community]." Greenberg said that he was aware that Urgenson was having discussions with State and with the White House during the early spring of 1990, and believed he may have been conducting the inquiries to the intelligence agencies separately. (Ibid, pp. 47-49)

In any event, Rukstele sent a letter to Main Justice on July 3, 1990, advising of the status of the BNL case, and asking for certain things to be done. The letter noted as a "potential stumbling block for the investigation...what knowledge and role, if any, the Central Intelligence Agency had or or played in BNL dealings with foreign governments in general and Iraq more specifically." Rukstele concluded: "I cannot over emphasize to you the importance of the answers to these questions to our overall investigation. As you well know, experience has demonstrated that CIA knowledge and participation can seriously impact a decision to prosecute...We will be delighted to assist you in any way, to include going to Langley to assist in any document review or analysis." (Letter from Rukstele to Urgenson, July 3, 1990, on file with the Committee)

McKenzie recalled that at the time the Rukstele letter was drafted it was contemplated that there would be an indictment in the early fall, and this was an area that had to be covered prior to indictment. (McKenzie, transcript, p. 29)

Urgenson asked Greenberg and Clark to comment on the letter he received from Rukstele.

Greenberg responded by recalling he had recommended at his first discussion of the case with Urgenson that they convene a meeting of the intelligence agencies "to ascertain whether they had any equities and/or information that would be of assistance to Atlanta." He recommended to Urgenson that at this point Atlanta should deal directly with Deputy Assistant Attorney General Mark Richard on intelligence matters rather than through the Fraud Section. (Memorandum from Greenberg to Urgenson, July 12, 1990, on file with the Committee)

Clark responded that he thought Atlanta was dealing with the intelligence agencies through the FBI, and that he did not think the Criminal Division should become involved:

"We have asked on repeated occasions -- first on my initial trip to Atlanta and most recently at the meeting at the Command Center [in March] -- what efforts had been made to ascertain what relevant records existed at CIA or at other intelligence agencies. We were repeatedly told by AUSA MacKenzie (sic) that this had been taken care of 'through the FBI...'

"The only 'allegations' that I have seen in the media concerning the CIA and BNL have centered upon the suspicion that CIA -- or some other agency, such as the NSA -- were probably aware of the magnitude of BNL's lending to Iraq. I specifically asked MacKenzie (sic)

during our first meeting whether Drogoul, his counsel, or anyone else had ever intimated that BNL Atlanta's lending was caused or promoted by the U.S. government -- i.e. a potential greymail defense --and was told 'no.'

"If we were handling the case, we would have made the intelligence agency inquiries at a far earlier stage. It appears that the USAO is now requesting that the Criminal Division assume responsibility for this inquiry. I am concerned that if we do so, we will -- in effect -- become involved in, and responsible for, a critical aspect of the investigation without authority over the handling of this case." (Memorandum from Clark to Urgenson, July 12, 1990, on file with the Committee)

Greenberg also noted that part of the reason why inquiries had not been made earlier was Atlanta's own reluctance to share information about the case: "Just to go to CIA and say, tell us about BNL doesn't really get it...What is it you want them to look for? Who is it you want to indict? Who is going to be your witnesses and what allegations do you want to pursue?...And Atlanta took the position that every document in the case was grand jury information...even though they had taken no witnesses into the grand jury, so there were concerns about what could be disclosed." (Greenberg, transcript, pp. 81-82)

In any event, it appears that Urgenson had Greenberg begin contacting the intelligence agencies directly for information relating to the BNL case. According to Greenberg, he began by asking Atlanta to "write up your case...and give us a list of what you want to go to the Intelligence Community." (Ibid., p. 82)

SECTION 3. INTELLIGENCE COMMUNITY INVOLVEMENT IN THE BNL-ATLANTA
LITIGATION FROM AUGUST 3, 1990, UNTIL AUGUST 31, 1992

Document Requests from Justice

The Intelligence Community did not become directly involved in the BNL criminal investigation until August 3, 1990, almost a year to the day after the FBI raid, when Main Justice sent its first document request to the CIA. The request contained a list of 25 individuals, including 16 Iraqi nationals, who were being considered for indictment. CIA was asked to provide any information it had relating to the individuals, and to advise Justice of any reason why indictment of the named individuals could not proceed. (Letter of August 3, 1990, from Ted Greenberg, Department of Justice to Steve Hermes, CIA Office of General Counsel, on file with the Committee.)

While Greenberg testified that the issue of "whether Rome knew" was not the "focus" of Atlanta at the time, he recalled that in separate conversations with Hermes and Jameson in the CIA General Counsel's Office he had "articulated the concern that we needed to know what the culpability of BNL-Rome was." (Greenberg, transcript, pp. 91, 114) Clark similarly testified such information would have been within the purview of the Justice request. (Clark, transcript, p. 66). This requirement was not expressly mentioned in the Justice letter, however, nor was it made clear in the instructions to CIA components which were tasked to provide input. Indeed, CIA records reflect that the Justice request was "farmed out" by the CIA Office of General Counsel without comment or elaboration to pertinent components who were asked to respond promptly.

On August 24, 1990, CIA sent an interim response to the Justice Department noting information on some individuals and not others. A full response was promised in early September. (Letter of George Jameson to Theodore J. Greenberg, dated August 24, 1990, on file with the Committee.)

On October 2, 1990, CIA officially responded to the Justice request by providing 21 classified reports and four press reports concerning the BNL case. (Letter of Jameson to Greenberg, dated October 2, 1990, on file with the Committee) CIA records also reflect that records originated by State, DIA, and the National Security Agency (NSA) were transmitted without comment to those agencies for forwarding to Justice.

Greenberg and Clark generally recalled reviewing the intelligence reports transmitted by the CIA, but could not remember specifically which reports they had seen nor what actions they had taken with respect to them. (Greenberg, transcript, pp. 120-145; Clark, transcript, pp. 76-85, 95-106) Typewritten notes, apparently prepared by Urgenson on October 2, suggest that Greenberg briefed him on at least four of the reports on the day

they were received. These included three of the reports which suggested officials at BNL-Rome may have had contemporaneous knowledge of the unauthorized loans by BNL-Atlanta. (Unsigned memo, dated October 2, 1990, on file with the Committee) The reports noted in the memo were reports noted above dated September 1989, October 1989, and January 1990, and an April 1990, report concerning likely Italian reaction to the possibility that senior BNL officials would be indicted in the United States.

On October 8, 1990, Justice sent a followup document request to CIA which included the names of the individuals identified in the earlier request, plus the names of additional individuals and entities. This letter also requested information CIA might have dating from March 1986, that "BNL funds were used directly or indirectly for the purchase of implements of war or dual use items which can be used in the manufacture of implements of war." (Letter from Theodore J. Greenberg to George Jameson, dated October 8, 1990, on file with the Committee) Similar requests were sent to DIA, State, and the NSC on the same date, and to NSA on October 12, 1990.

The October 8 letter also forwarded a copy of a memorandum prepared for Justice by the prosecutors in Atlanta providing a summary of the ongoing investigation. Part of the prosecutors' memorandum cited lingering concerns about intelligence issues:

"Unanswered questions exist about the size, sophistication and activities of the Iraqi procurement network discovered during the investigation. Concern centers on what knowledge, if any, the U.S. intelligence and counter-intelligence agencies possessed and any assistance provided to the Iraqi network by the U.S." (Memorandum from Rukstele to Assistant Attorney General Robert Mueller, October 1, 1990, on file with the Committee)

The October 8th Justice letter did not, however, specifically ask CIA for information on this point.

CIA records reflect that the expanded document request was also "farmed out" without comment to appropriate CIA components for response.

On October 15, 1990, McKenzie forwarded to Urgenson a copy of the draft indictment on BNL, and noted: "We are awaiting written responses from the various intelligence and counterintelligence organizations which could impact the final scheme draft." (Letter from McKenzie to Urgenson, October 15, 1990, on file with the Committee)

On November 15, 1990, the FBI sent a message to CIA asking for name checks on certain individuals, some of whom were on the list previously provided by the Justice Department. (FBI message, November 15, 1990, on file with the Committee) CIA responded to this request on December 13, 1990, by providing identifying data

on some of the named individuals. (CIA message, December 13, 1990, on file with the Committee).

On November 23, 1990, DIA provided an interim response to the Justice Department request of October 8 by transmitting three intelligence reports that it considered responsive. (Letter from Terry E. Bathen, Assistant General Counsel, November 23, 1990, on file with the Committee)

On December 18, 1990, CIA responded to the Justice Department request of October 8 by providing 11 open source reports, a classified summary of three reports and 8 separate classified reports, relating to the individuals and entities named in the October 8 request. The letter also stated that there appeared to be no obstacles to proceeding with the indictment.

The CIA letter of December 18, 1990, also reflected that documents originated by NSA and DIA which were identified in the CIA files were being sent to the originating agencies for reply to Justice.

NSA attorney Lionel Kennedy advised Greenberg sometime in December that NSA had identified many documents that might possibly be responsive to the Justice request, but said that NSA preferred to maintain custody of these documents and have Justice representatives review them at NSA headquarters to determine what may be relevant. No written response was prepared by NSA to the Justice letter. On December 27, 1990, Greenberg and Clark drove to NSA to review the documents, but, due to an unexpected snowfall, the review was terminated without being completed, and Justice representatives never returned to complete their review. (Kennedy, deposition, 12/2/92, pp. 9-11)

Greenberg testified that the NSA documents were "several inches thick" and contained information which was impossible to relate to BNL without a knowledge of specific transactions of interest to the prosecutors. Thus, it was decided that further inquiry by Clark was needed. He had "no idea," however, whether Clark or the Atlanta prosecutors ever conducted the follow-up review. (Greenberg, transcript, pp. 183-185) In fact, no such follow-up ever took place. (Kennedy, deposition, 12/2/92, p. 12)

On January 2, 1991, DIA provided a supplemental response to its earlier letter, transmitting six additional classified reports that it considered responsive. On January 18, 1991, Greenberg met with DIA officials regarding one of the intelligence reports previously submitted. This was the September 15, 1989, report which contained speculation that the use of BNL-Atlanta to finance Iraqi arms transactions may have been part of a larger NATO strategy to tilt towards Iraq in its war with Iraq. Greenberg had asked to interview the author of the cable to determine the nature of the source and how the information was gathered. According to DIA Deputy General Counsel Robert H. Berry, Jr. Justice officials

concluded from the conversation that "there was really no substance here...that it was mainly cafe conversation and speculation about material appearing in the newspaper." Justice asked that DIA attempt to locate any further reporting on this subject, none was located, and no further action ensued. (Berry, deposition, 11/18/92, p. 21)

On January 28, 1991, Urgenson sent a long memorandum to the head of the Criminal Division, Assistant Attorney General Robert Mueller, providing a status report on the BNL prosecution. Among other things, the memo noted that requests had been sent to the intelligence agencies, and that all had responded by providing documents to Justice or by making them available for review. "The materials reviewed do not indicate any authorization, involvement, or awareness by the U.S. government of the true nature or purpose of the BNL-Atlanta financing prior to August 4, 1989...However, we have made a final check with each agency before the final decision to go to the grand jury is made. We recommend that you chair an interagency meeting with representatives of affected agencies to ensure there are no national considerations which mitigate against bringing the proposed indictment." (Memorandum from Urgenson to Mueller, January 28, 1991, on file with the Committee)

While there is no record of such an interagency meeting having occurred, it does appear that Justice did go back out to the intelligence agencies for a "final check" shortly after Mueller was advised. On February 8, 1991, Justice transmitted a new "prosecutive memorandum" on the BNL case to the CIA, asking for a final name check to be done on Iraqi and Turkish individuals and entities proposed to be indicted in Atlanta. In a cover note sent to CIA staff, Jameson asked for an expedited response. (Memorandum from Urgenson to Mueller, Department of Justice, February 7, 1991, on file with the Committee.)

CIA records contain a note to Jameson, dated February 11, 1991, advising that the State Department would object to the indictment of certain Iraqi governmental entities on grounds of sovereign immunity, and the fear of retaliation against U.S. Government entities. (Note to Jameson, 2/11/91, on file with the Committee.)

On February 12, 1991, CIA responded to the Justice request for a name trace of the potential indictees. The letter reflects that in addition to its earlier written request, Justice had made a verbal request on February 11 for updated checks on an individual and the Iraqi Ministry of War Production and Industry. The CIA response provided information on the results of its search, concluding that while additional processing was still going on, "there should be no problems that arise in this case that cannot be addressed under normal CIPA procedures." (Letter from Jameson to Mark Richard, Department of Justice, 2/12/91, on file with the Committee)

CIA records also contain a February 15, 1991, memo to the

Deputy CIA General Counsel, David Holmes, who apparently requested an update on the BNL investigation. Written by CIA staff attorney Cindy Ellis, the memo reflects that CIA had agreed with the State position not to indict the Iraqi Ministry. (Ellis to Holmes, February 15, 1991, on file with the Committee)

On February 29, 1991, a federal grand jury in Atlanta returned a 347-count indictment against BNL-Atlanta's manager, Christopher Drogoul, charging him with, among other things, defrauding BNL-Rome, defrauding the Department of Agriculture, making false statements, obstructing a General Accounting Office investigation, laundering money, making unauthorized loans, and evading income taxes.

On March 5, 1991, CIA provided the official results of its name search done in response to the February 8 request. Four open source reports were provided, as well as 10 classified intelligence reports. The letter also states: "As we have indicated to you before, we defer to you to determine whether CIA information reflects that BNL funds were used directly or indirectly for the purchase of implements of war or dual use items which can be used in the manufacture of implements of war." (Letter of Cindy A. Ellis to Peter Clark, dated March 5, 1991, on file with the Committee).

On March 11, 1991, Ellis forwarded to Clark a copy of the CIA 6 November 1989 typescript on the BNL case which had not previously been provided to Justice, explaining that the office which had prepared the report "inadvertently failed to reference it in the indices maintained by the Directorate of Intelligence." The subsequent cover letter forwarding the typescript to the Agriculture Department was not included in the transmittal to Clark.

On May 2, 1991, Justice forwarded to CIA a copy of the February 28, 1991, indictment in the Drogoul case, as well as related indictments. (Letter from Peter Clark to Martha Lutz, dated May 2, 1991, on file with the Committee)

Justice Department Handling of the Intelligence Data Prior to the Indictment

While it appears that Greenberg and Clark reviewed most of the intelligence information made available to Justice (the exception being a portion of the NSA materials which were not reviewed at all), it does not appear that either made a systematic written analysis of the materials for their superiors at Main Justice or for the USAO in Atlanta prior to the indictment. (McKenzie, transcript, p. 57) Greenberg attributed the failure in part to the need to wait until all the information was in, as well as to the impression being conveyed in the various Agency responses that there was no significant impediment to pursuing the prosecution. (Greenberg, transcript, pp. 151-153)

It is also evident there was no systematic effort to follow up leads from the intelligence reporting. Indeed, Clark confirmed that the only such followup was the meeting between Greenberg and DIA officials concerning a DIA intelligence report, described above. (Clark, transcript, p. 126) While Greenberg recalled expressing to Urgenson the need for systematic follow-up of the intelligence materials, he could recall no such follow-up being made. (Greenberg, transcript, p. 146)

Clark stated that he had probably advised the USAO in Atlanta that in his opinion the intelligence reporting was mostly speculative and did not establish "contemporaneous knowledge" by BNL-Rome, but that he regarded it as the responsibility of the USAO to review the material themselves and do their own analysis and follow-up. Clark testified that while he and Greenberg had conveyed to the USAO their impressions of the NSA materials (which were not readily available to Atlanta), they had specifically refrained from characterizing the other intelligence materials that were available to the prosecutors. Clark was under the impression that McKenzie had reviewed the intelligence materials herself "on several occasions." (Clark, transcript, pp. 122-126, 129-130, 138-139, 152)

McKenzie, Rukstele and Wade each recalled that Clark had told Atlanta that he and Greenberg had reviewed the intelligence material and determined that it would not affect or influence the proposed indictment. (McKenzie, transcript, pp. 57-60; Wade, transcript, p. 35; Rukstele, transcript, p. 49) Wade also recalled that Clark had told him that review by the prosecutors was "unnecessary" and could complicate matters later during discovery or trial. (Wade, transcript, pp. 35, 37) McKenzie testified that if the intelligence material required any followup, she assumed Clark and Greenberg were "doing what it took." (McKenzie, transcript, p. 58)

The USAO's reliance on Main Justice for handling intelligence matters is borne out by several written documents prepared in the fall of 1990 as the interaction with the intelligence agencies was taking place. McKenzie wrote a memorandum to Greenberg on October 9, 1990, and a letter to Urgenson, dated October 15, 1990 (both are on file with the Committee), seeking general intelligence information on BNL that she believed "could impact the final scheme draft [of the indictment]". Another letter went from McKenzie to Urgenson on December 10, 1990, similarly asking whether the Intelligence Community had any involvement in, or "knowledge of, the illegal activities at BNL-Atlanta prior to August 4, 1989." (Letter from McKenzie to Urgenson, December 10, 1990, on file with the Committee)

In fact, it does not appear that anyone from the USAO or from the Task Force investigating the case saw any of the intelligence information prior to the indictment. Although a December 6, 1990, memorandum from Clark to McKenzie reflects that Clark had advised "some of the CIA materials are here and can be reviewed by you at

any time," it was not until April 1991, that McKenzie or her colleagues in the USAO had a security clearance. (Memo from Clark to McKenzie, December 6, 1990, on file with the Committee) Wade, who did have a security clearance at the time, testified he was never aware of Clark's letter, which he regards as a "reversal" of Clark's earlier position. (Wade, transcript, p.41)

Justice records also reflect that the USAO continued to rely upon Clark for the language pertaining to intelligence information in the January 28 prosecution memorandum prepared shortly before the indictment was issued. The language suggested by Clark included the statement: "The materials reviewed do not indicate any authorization, involvement, or awareness by the U.S. government of the true nature or purpose of the BNL-Atlanta financings prior to August 4, 1989." (Memorandum from Clark to Taylor, January 28, 1991, on file with the Committee)

Clark was nonetheless under the impression that the Task Force in Atlanta, whether or not it had actually reviewed the intelligence reports, had resolved the substance of many of the leads which were contained in them. (Clark, transcript, 11/12/92, pp. 90-94; 100-106)

McKenzie, in fact, recalled several instances where the information which she later saw in intelligence reports, suggesting knowledge or involvement by BNL-Rome, had been earlier made known to the prosecutors and had been investigated and resolved by the Atlanta Task Force. In particular, she cited the information regarding the BNL-Rome official. (See the January 1990 intelligence report described in Section 2) McKenzie explained that she learned of this allegation in September 1989, and that the Task Force had investigated and determined that it was not true. She also stated that the information contained in the intelligence report dated October 1989, (described in Section 2) had been investigated and resolved by the Task Force in 1989. (McKenzie, transcript, pp. 45-46, 51-53; Brill, transcript, pp. 144-149)

In any event, Clark did not believe that any of the intelligence was "probative of BNL-Rome or New York management authorization or direction. At the end of the day, I don't believe it [the intelligence] made much of a difference." (Clark, transcript, p. 152)

Since Clark was the person at Main Justice who was the most skeptical that BNL-Atlanta had acted alone, McKenzie felt comfortable with his assessment that the intelligence had little bearing on the case: "Had Peter Clark found anything that was contrary to the theory of the prosecution, we would have heard about it loud and clear...it [Clark's skepticism] gave you certainly confidence that if there was the least hint that there was anything contrary to our theory in the intelligence community that that would be brought to our attention." (McKenzie, transcript, pp. 49-50) Urgenson similarly testified that he

thought he could rely on Clark to "red-flag instantly anything he saw in the [intelligence reports] that...showed BNL [Rome] was involved." (Urgenson, transcript, p. 82)

Continued Focus at Justice on Whether BNL-Rome Knew

The record reflects, in fact, that while the Intelligence Community was responding to the Justice Department's various requests for documents, the issue of "whether BNL-Rome knew" continued to be a subject of dispute between Main Justice and the USAO in Atlanta during the fall and winter of 1990-1991.

Although the USAO had sent Main Justice a prosecution memorandum on October 25, 1990, which continued to find that the fraudulent activity perpetrated by BNL-Atlanta "was done without the knowledge or required authority" of BNL-Rome, Clark and Urgenson were not convinced. (Memorandum from McKenzie to Urgenson, October 25, 1990, on file with the Committee)

In November 1990, at Urgenson's direction, Clark met with Federal Reserve Bank officials in New York to discuss the case and review documents that the bank had identified as responsive to a subpoena it had received from the House Banking Committee. (The bank had asked Justice to review the documents prior to their being furnished to the House Committee.) Clark reported to Urgenson on November 13, 1990, that he had found several documents "which contained information of which we were previously unaware or disclose leads which, to my knowledge have not been pursued in the course of the Atlanta investigation." These included several documents which suggested that "BNL-Rome knew" and several which suggested that the Atlanta investigation had not been as thorough as Justice had believed. (Memorandum from Clark to Urgenson, November 13, 1990, on file with the Committee)

Clark's memo prompted Urgenson to write a strongly-worded, six-page memo to Atlanta again raising the question of what BNL outside Atlanta may have known. Citing the pertinent Federal Reserve Bank documents reviewed by Clark, Urgenson posed a lengthy series of questions to determine whether the Atlanta prosecutors were aware of the information contained in the Federal Reserve documents, and, if so, what steps had been taken by Atlanta to resolve the issues raised. (Memorandum from Urgenson to Rukstele, November 15, 1990, on file with the Committee) A November 19, 1990, Justice memo reflects that McKenzie was provided a full set of the Federal Reserve documents the previous week. (Memorandum from Urgenson to Maloney, 11/19/90, on file with the Committee)

Urgenson wrote a memo on November 30, 1990, to Robert Mueller stating:

"I am not yet convinced that the principal prosecutive theory articulated by the U.S. Attorney's Office -- that BNL was the unwitting victim, and that there was no involvement, authorization or condonation of the illicit activity by any

BNL personnel outside the Atlanta agency -- is sufficiently well-founded...Before signing off on Atlanta's prosecutive theory, I wish to be completely assured that each investigative lead pointing to any involvement of BNL management outside Atlanta has been pursued. Part of the difficulty we are experiencing in this regard is the apparent absence of any hard probing of BNL New York or Rome personnel --an unfortunate consequence of relying so heavily upon BNL for assistance." (Memorandum from Urgenson to Mueller, November 30, 1990, on file with the Committee)

Urgenson advised Mueller that he was sending Clark and trial attorney Ronald Scott Taylor to Atlanta to review all interviews and documentary evidence that the U.S. Attorney planned to use as well as to develop a list of U.S. and Italian officials who needed to be called before the grand jury. The memo notes "to our knowledge, no substantive grand jury proceedings have yet occurred." (Ibid.)

On January 11, 1991, Urgenson, Clark and Taylor met in Washington with the prosecutors and with members of the Task Force to discuss the status of the case. At the meeting it was agreed that the USAO would bring all of the major BNL-Rome witnesses before the grand jury in order to lock in their testimony concerning knowledge outside Atlanta, and, where necessary, take sworn depositions in Italy. (Memorandum for files, prepared by Ronald Scott Taylor, January 11, 1991, on file with the Committee)

Clark and Taylor spent a week in Atlanta between January 25 and 31, assisting the USAO with the grand jury interrogations of BNL witnesses. (Clark Tr. 141)

At the conclusion of this process, Clark reported to Urgenson that "generally, the [grand jury] interviews were productive and the primary objective of locking in Drogoul's superiors -- through their testimony that they did not authorize, know or condone Drogoul's transactions with Iraq -- was achieved. Our concerns with the adequacy of BNL's management and accounting controls -- while not eliminated -- appear from the testimony to be explained sufficiently to preclude criminal culpability on the part of Drogoul's superiors..." (Memo from Clark to Urgenson, January 31, 1991, on file with the Committee)

On February 1, 1991, Urgenson wrote to Mueller that on the basis of the grand jury testimony and their review of documents supported the USAO's recommendation "that we treat BNL as a victim of a scheme to defraud." (Memo from Urgenson to Mueller, February 1, 1991, on file with the Committee)

The record reflects that at least Clark and Greenberg continued to have doubts regarding BNL-Rome's awareness of Atlanta's activities. Clark wrote a memorandum to the file on February 1, 1991, concerning a 1988 article which had appeared in the Middle East Economic Digest which recited BNL's financing of

Iraqi activities, and concluded that BNL was "highly exposed to Iraqi risk." Clark noted that it would stand to reason that BNL management would have been made aware of this article, but that it was unclear whether the Atlanta prosecutors had pursued this area of inquiry. (Memorandum for the File, prepared by Clark, February 1, 1991, on file with the Committee) Greenberg testified that, even after the indictment was brought, he, Urgenson, and Clark "were never completely satisfied." (Greenberg, transcript, p. 202)

The indictment, returned on February 28, 1991, treated BNL-Rome as the unwitting victim of a scheme by Drogoul and others to defraud the bank.

CIA Interaction with the Congress Regarding BNL Following the Indictment

Following the indictment in February, 1991, the record reflects minimal contact between Justice and the Intelligence Community on BNL until the summer of 1992, after defendant Drogoul had pled guilty on June 2, 1992 to 60 counts of the 347-count indictment, and had agreed to submit to a lengthy debriefing by the government.

During this interim period, however, there were interactions between CIA and the Congress pertaining to BNL.

On August 20, 1991, Congressman Henry Gonzalez, Chairman of the House Banking Committee, wrote to CIA asking for information on certain individuals and entities associated with BNL and Iraq. Many of those identified were the same individuals and entities that CIA had traced months earlier in response to Justice requests. (Letter of Gonzalez to the DCI, dated August 20, 1991, on file with the Committee.)

CIA records reflect that on September 11, 1991, an attorney from the CIA General Counsel's Office, Bruce Cooper, briefed the staff of the House Permanent Select Committee on Intelligence, which also had requested information regarding the individuals or entities involved in the BNL case. (Cooper memo, dated September 11, 1991, on file with the Committee)

There is no indication that the Department of Justice was ever advised of this briefing.

During October, there were additional dealings with the Gonzalez committee relating to BNL. In addition to his earlier letter, Gonzalez had asked CIA to provide copies of certain reports which had been identified by serial number to Gonzalez by the State Department. CIA refused to produce the reports themselves, but permitted a staff member of the Gonzalez committee to read and take notes on a summary of ten reports prepared by the Directorate of Operations (DO). The summary also contained two "Analytical Comments" prepared by a DI analyst (Analyst #1).

Analytical comment (B) provided in part that: "Items F and J [two of the reports for which summaries were provided] confirmed press allegations that more senior BNL officials in Rome had been witting of BNL-Atlanta's activities." The staff member from the Gonzalez committee apparently copied these comments verbatim.

The analyst said that she had been asked to prepare comments regarding the DO reporting to evaluate "how good it was, how useful it was." She was not clear what use was to be made of her work. She said that while she thought she had had access to the "raw" reports underlying the summary at the time she drafted her comments, she did not recall looking at other materials. She said she regarded the DO reports as providing "additional and firmer" information than what had appeared in press reports she had read earlier. By saying that they "confirmed" press reporting, she meant they "corroborated" such reporting, but she did not regard them as strong enough to constitute "evidence" for purposes of a court proceeding. She had attached no particular significance to this work, and, indeed, was surprised to find a year later that they had become the subject of controversy. (Analyst #1, transcript, pp. 55-74)

Neither the DO summary of the ten reports nor the analytical comments prepared by the analyst was provided to the Justice Department (although Justice had been provided with the underlying reports). While a routing slip found at the CIA indicates that the DO summary went to several individuals at CIA, and included a "check mark" beside the name of CIA attorney Cooper, Cooper did not see the document; his name had been checked by an employee of the DO who did not believe he needed to see the document. (Cooper, deposition, 12/11/92, pp. 9-10)

On November 12, 1991, CIA responded officially to the Gonzalez document request of 20 August for information on certain named individuals and entities. (Letter of Stanley M. Moskowitz to Gonzalez, November 12, 1991, on file with the Committee) Again, there is no record that Justice was advised of the letter.

Atlanta's Post-Indictment Activities involving Intelligence

The documentary record suggests that the involvement of Main Justice in the BNL case diminished considerably after the indictment was returned by the grand jury. Gerrilyn Brill, who became the Acting U.S. Attorney assigned to the case when Rukstele was reassigned in mid-February, 1991, recalled that Main Justice continued to be involved in the approval of plea agreements being negotiated by Atlanta with defendants in the BNL case (other than Drogoul), and occasionally consulted Atlanta on congressional requests which came in during 1991 and 1992. For the most part, however, the remaining investigative work was left to Atlanta. (Brill, transcript, pp. 43, 45)

This work included an assessment of the intelligence materials provided Justice some months before. Indeed, it appears

that the first time anyone from Atlanta reviewed these materials occurred on September 13, 1991, when Art Wade, who headed the investigative Task Force, and Richard Horton, a Customs agent assigned to the Task Force, reviewed CIA, State, and DIA reports at the Justice Department. Wade recalled that the review was conducted because Atlanta believed they were getting close to a trial date, and this was "one of the things left undone." Wade stated that the review took about two hours, and he subsequently reported to McKenzie that "this stuff was interesting, and, if she got up there, [she should] take a look at it." But Wade said he thought only one of the intelligence reports, the September 15, 1989, DIA report might require followup, and he was assured by Clark that this had already been done. (Wade, transcript, pp. 57-60)

McKenzie testified that she did not recall anything more than a general comment from Wade subsequently that they had seen nothing different from what Justice had reported. Moreover, "there was never, ever any apprehension that there was anything in those documents that Justice had concealed from us or didn't analyze correctly. And Wade and Horton's review certainly confirmed that." (McKenzie, transcript, pp. 82-84)

McKenzie stated that she had no particular reason to review these documents until April, 1992, when the defendant Drogoul gave a press interview suggesting for the first time that he might attempt an "intelligence community defense" at his trial. In an interview with Il Manifesto, an Italian Communist newspaper, Drogoul had surmised:

"The National Security Agency, the American governmental agency in charge of communications security, was usually intercepting all telexes from abroad and a good portion of communications via satellite. In our case, telexes from or to Iraq numbered in the thousands, and therefore I must presume that the government not only knew what we were doing, but it also approved it." (Drogoul, Il Manifesto interview, undated, p. 3, on file with the Committee)

This interview appears to have prompted a letter dated April 29, 1992, from the prosecutors in Atlanta to Sheila Tyler, Drogoul's defense counsel at the time, reminding her of her obligation under the Classified Information Procedures Act (CIPA) to notify the government if she planned to use classified information at trial. (Letter from Brill, Chartash and McKenzie to Tyler, April 29, 1992, on file with the Committee)

On May 1, 1992, Tyler did, in fact, advise the prosecutors that she planned to use classified information at trial, and Atlanta responded with a motion to exclude the classified information based upon the lack of specificity and relevance of the information concerned rather than asking the court to hold a hearing pursuant to the CIPA. (These events are described in a memorandum from Nancy Brinkac, Department of Justice, to Robert

Mueller, dated May 13, 1992, on file with the Committee)

On May 6, 1992, Nancy Brinkac, an attorney in the Fraud Section at Main Justice, called CIA attorney Cooper to advise that defense counsel Tyler had indicated that she planned to introduce classified information at the trial, but that the USAO had objected to use of such information. According to Brinkac's E-mail noting the call, Cooper responded that if CIA were asked they would respond that "they have assisted our investigation in every way possible, but that they are not going to specifically state they gave us classified info." (Brinkac, E-mail, May 6, 1992, on file with the Committee)

According to Randy Chartash, an Assistant U.S. Attorney assigned to the case, after several conferences with Judge Shoob on the issue, the question of the defense counsel's use of classified information at trial was "not resolved in any definitive manner." Chartash testified that Judge Shoob seemed to prefer waiting until they were closer to trial before ruling on the issue, and that Tyler, for her part, had agreed to get together with the prosecutors to define the areas more narrowly. (Chartash, deposition, 12/7/92, p. 40)

The possibility that Drogoul might be planning to use classified information at trial also prompted McKenzie, Chartash, and Wade, at the end of a day's meetings in Washington on April 30, 1992, to arrange to review the intelligence materials held at Justice. In all, they reviewed four or five folders of documents including reports from CIA, DIA, and State. (McKenzie, transcript, p. 77; Chartash, deposition, 12/7/92, p. 42) Wade recalled that Brinkac, who had control of the documents, said there were other additional documents classified at the "codeword" level which were not being made available, but she assured them that they contained "nothing impacting the case." (Wade, transcript, p. 74) Chartash testified that since it was late in the day, "there was no way we could have even come close to reviewing them. We thumbed through them, browsed through them to see what was there...There were several with 'post-it' notes...and we looked at those more closely but in any comprehensive way -- no." (Chartash, deposition, 12/7/92, pp. 42-43) According to Brinkac, the review lasted about three hours and apparently did not result in any problems surfacing. (Brinkac, transcript, pp. 26-27)

Apparently in anticipation of the review by the USAO, Clark had asked Brinkac to prepare an index of the intelligence materials held at Justice. This was the first time that such an index had been prepared, and a copy was given to the Atlanta prosecutors at the time they conducted the document review. (Brinkac, transcript, pp. 7-8, 20; Wade, transcript, p. 71)

Also in April, 1992, an article appeared in the Los Angeles Times alleging that U.S. intelligence agencies had knowledge that agricultural products diverted to Yugoslavia and Bulgaria for barter with Soviets for military equipment. The USAO attempted to

track down the source of this information through the reporter who had written the story, but ultimately failed to reach the source. This led Atlanta to ask Justice to make inquiries of the intelligence agencies for information regarding the allegation. (Letter of McKenzie to Brinkac, April 30, 1992, on file with the Committee) Due to bureaucratic delays, however, the letter did not go out until June 26, 1992, to CIA, DIA, and NSA. (McKenzie, transcript, pp. 85-87; see Letter of Mark Richard, dated June 26, 1992, on file with the Committee)

McKenzie also recalled another newspaper article having appeared in June, which referred to a November 6, 1989, CIA "typescript" analysis and suggested that it contradicted the findings of the investigation that "BNL-Rome did not know." McKenzie said the document had been provided Justice earlier and had been reviewed by the Task Force investigators in September, 1991; however, since it had been logged in at Justice with the date of the transmittal letter from CIA (i.e. March 11, 1991) rather than the date of the report itself, it initially appeared to be a new document. The report contained a statement that "a BNL official in Chicago claims he notified New York and Rome several times about the unusual activity in Atlanta." McKenzie testified that the Task Force had previously interviewed the BNL official in Chicago, but on the basis of the new press allegation, he was reinterviewed, and Drogoul was questioned about the allegation in his debriefings. Atlanta concluded "this was much ado about nothing." (McKenzie, transcript, pp.71-76)

On June 2, 1992, defendant Drogoul pled guilty to 60 counts of the government's 347-count indictment and agreed to cooperate with the Government by submitting to a lengthy debriefing. A sentencing hearing was scheduled for September after the debriefing.

On June 3, 1992, the SSCI sent a letter to the DCI requesting the preparation of an all-source chronology of the Intelligence Community's reporting on, or involvement in, the BNL matter.

In the course of the 33 debriefings conducted of Drogoul during June and July of 1992, Drogoul provided certain information which required follow-up with the Intelligence Community. In particular, he identified five individuals who had dealings with BNL-Atlanta whom he thought may have had a connection with U.S. intelligence agencies.

On July 22, 1992, CIA responded to the Justice request regarding the alleged diversion of agricultural products, saying they have found nothing, but were still looking. (Letter of George Jameson, dated July 22, 1992, on file with the Committee)

Clark recalled that NSA responded that it had located approximately 3,000 documents, "none which could they say was specifically responsive to our request. Further analysis was required, according to Clark, to determine whether the documents

were pertinent. Clark suggested that the Atlanta Task Force put together a team to do a systematic analysis of the NSA data, but given its volume and the proximity of the sentencing hearing, no action was taken. (Clark, transcript, pp. 162-167; see also Clark, E-mail, 8/4/92, on file with the Committee)

On July 14, 1992, reacting to a public statement by Congressman Gonzalez on July 7th that "the lack of CIA assistance with the prosecutors in Atlanta was a calculated Administration effort to conceal the true nature of the BNL scandal and to hide the level of Iraqi Government complicity in the scandal," Cooper in the CIA General Counsel's Office called McKenzie to ask about the allegation. According to Cooper's memo of the call:

"McKenzie noted that she 'only has good things to say about CIA,' and that she has had no contact with Gonzalez and does not know the basis for his statements. McKenzie did note, however, that she is unhappy with the cooperation that she has received from the DOJ and believes that they have stalled the investigation. She noted that her first theory of the prosecution, drafted in November/December, 1989, listed only Iraqis as potential defendants due to her belief that the BNL/Atlanta employees had been pawns of the Iraqis. While DOJ did not favor this theory and the eventual list of indictees included American citizens, various corporate entities, and Iraqis, DOJ did tell the prosecutor that they would check out the names of the various potential defendants to see if any concerns were raised by other branches of government. McKenzie assumed that the December 1989 response that there were no prohibitions against indicting anyone on the list, meant that the names had been checked with CIA and the CIA was uninvolved and unconcerned. She was quite surprised, therefore, to eventually learn that the first DOJ trace request to CIA was not December 1989 but was much later, in August, 1990." (Cooper, Memorandum for Record, July 23, 1992, on file with the Committee)

McKenzie recalled the conversation with Cooper but said:

"There was never any criticism in this conversation, or I certainly never intended any, that Justice had delayed purposefully...The only talk of time lapse was when Justice was reviewing the theory [of the prosecutors that BNL-Rome was a victim]. It wasn't in terms of when Justice made the queries to the intelligence community. I had thought that they had made queries back in December of 1989, and Mr. Cooper advised me that they had not." (McKenzie, transcript, pp. 34-35)

McKenzie also testified that Cooper told her that the CIA was putting together a report for Congress that would cover "everything they [CIA] ever knew about BNL," presumably referring to the all-source chronology being prepared for the SSCI, and McKenzie later asked Brinkac at Main Justice to provide her a copy

when it was available. (Ibid., p. 97)

On July 24, 1992, DCI Gates wrote to Congressman Gonzalez, among other things taking strong exception to Gonzalez' statement of July 7, alleging that CIA had failed to cooperate with the Atlanta prosecutors. Citing the previous document requests and "special briefings of senior DoJ attorneys," Gates stated that CIA had "cooperated completely" with the prosecution. (Gates letter to Gonzalez, dated July 24, 1992, on file with the Committee.)

On July 31, 1992, Justice sent an additional document request to CIA, asking for intelligence reports and/or finished intelligence on a number of individuals and companies on which CIA had previously run traces. The letter asked for information on the relationship of the named individuals and companies to the Iraqi procurement network regardless of whether such information bears on the BNL case. The letter also asked for a copy of the chronology given to SSCI. (Clark letter to Jameson, dated July 31, 1992, on file with the Committee)

Cooper at CIA responded to this request on August 20, 1992, by calling Brinkac to say that CIA had 5 or 6 reports pertaining to the Iraqi procurement network which had been given to the Congress, and that the prosecutors in Atlanta were welcome to review them at CIA headquarters if they wished to do so. (Brinkac E-mail, August 20, 1992, on file with the Committee)

The Transmittal Letter to Agriculture Resurfaces

On August 6, 1992, Department of Agriculture General Counsel Alan Raul sent a letter to CIA General Counsel Elizabeth Rindskopf, asking CIA to declassify expeditiously the cover letter of January 31, 1990. While the letter did not specifically ask for the sources of the new analytical comments, it did note that the letter referred to information not reflected in the 6 Nov 89 memorandum, and "this additional information is highly relevant to the current inquiries into the BNL-Iraq matter." (Letter of Alan Raul, dated August 6, 1992, on file with the Committee)

The request was sent to CIA staff attorney Cooper to prepare a response. Cooper testified that he called Raul to find out specifically what he was interested in, and Raul confirmed that it was the sentence used in the transmittal letter that "managers at BNL headquarters in Rome were involved in the scandal." Cooper said that he then called the analyst who signed the letter to ask where he had gotten this information, and the analyst told him that "it came from the press." Cooper said he was unaware at the time, nor did anyone he spoke to suggest, that there might also be classified CIA reporting which supported the conclusion. (Cooper, deposition, 12/11/92, pp. 26-27, 30)

On the basis of this representation, Cooper testified that he proceeded to prepare a transmittal letter for Rindskopf's signature, the second paragraph of which read:

"In your letter, you expressed particular interest in certain additional information provided within the cover letter that is not reflected in the 6 November 1989 CIA memorandum. You should be aware that the additional information has been sourced to various newspaper reports." (Rindskopf letter, dated August 14, 1992, on file with the Committee)

Cooper testified that he read this paragraph to Raul over the telephone before submitting it to Rindskopf for signature, and that Raul expressed annoyance that the CIA would base its conclusions on newspaper reports. (Cooper, deposition, 12/11/92, p. 27)

While Cooper was preparing the transmittal letter, the DI analyst (Analyst #1) was asked by her division chief to declassify the cover letter. According to the analyst, she was unaware where the request came from or what the purpose was. She said she looked for unclassified sources for the comment that "managers at BNL headquarters in Rome were involved in the scandal." While she was aware that classified reports might exist which supported the statement, she was searching for open sources upon which she could base a recommendation to declassify this conclusion, and she found them in a series of Financial Times articles. In fact, she annotated her copy of the letter in the margins with the notation "FT" to indicate the source. Having found open sources to support the comment, she told her division chief that as far as she was concerned, the letter could be declassified. She was never asked to ascertain what classified reporting may have borne on this conclusion. (Analyst #1, deposition, 11/13/92, pp. 17-18)

In any event, once Cooper received a redacted version of the cover letter from the Directorate of Intelligence, he "married it" with the transmittal letter to Raul, and took it to Rindskopf for signature. Cooper distinctly remembers calling Rindskopf's attention to the statement regarding the sourcing issue at the time the letter was signed, but Rindskopf did not recall "having focused on it." (Cooper, deposition, 12/11/92, p. 30; Rindskopf, deposition, 12/1/92, p. 20) In any event, Rindskopf signed the transmittal letter to Raul on August 14, 1992, conveying the now declassified cover letter.

Neither the analyst nor her branch chief saw the Rindskopf letter, nor were they aware that the letter sourced the additional comments to newspaper reports. The analyst speculated that the drafter of the letter may have concluded from the notations in the margin of her memo that the statement was sourced only to the Financial Times articles. (Analyst #1, deposition, 11/13/92, p. 18)

Gonzalez Subpoena Arrives

On August 11, 1992, CIA received a subpoena from the House

Banking Committee asking for all information relating to possible BNL funding of the activities of Carlos Cardoen and Gerald Bull and individuals and companies associated with them. (Subpoena on file with the Committee)

Cooper and other CIA staff involved in satisfying requests related to the BNL case gave priority attention to this request in the ensuing weeks.

SECTION 4. INTERACTION BETWEEN JUSTICE AND THE INTELLIGENCE
COMMUNITY FROM AUGUST 31 - SEPTEMBER 11, 1992

Origins of the September 1 Letter

On August 31, 1992, in a New York Times column entitled "Justice Corrupts Justice," William Safire accused Attorney General William Barr of taking "personal charge of the cover-up" of the "crimes of Iraggate," and wrote that Barr and Assistant Attorney General Mueller, "could face prosecution if it turns out that high Bush officials knew about Saddam Hussein's perversion of our Agriculture export guarantees to finance his war machine, and delayed the inquiry into the Atlanta Lavoro bank scandal." (NYT, 8/31/92)

In the same column, Safire related Drogoul's allegation that two intelligence agencies, the CIA and the National Security Agency, "had been in the Atlanta bank to monitor its financing of Iraq's huge commodity credits." Safire wrote that when Drogoul reported this to an Iraqi, "Saddam's agent," the Iraqi replied: "Don't worry about that -- we know all about it; we're working together." (Ibid.)

On the same morning, Mueller met with Gerrilyn Brill the Acting U.S. Attorney in Atlanta to discuss the Drogoul sentencing hearing which was scheduled to begin on September 14th. According to Brill, Mueller was particularly concerned about the preparation of the sentencing memorandum to be filed with the court and offered Justice' assistance in this regard. Part of this discussion focused upon the transcript of a hearing which had taken place on July 7 before Judge Shoob where Drogoul had made certain allegations regarding a number of prominent U.S. officials. Shoob had ordered the transcript sealed pending an investigation of the allegations. According to Brill, Mueller instructed her to "push to have the July 7th transcript unsealed" and, once unsealed, to deal with it in the sentencing memorandum. (Brill, transcript, pp. 79-80; Mueller, transcript, pp. 36-57)

Brill recalled that in addition to Mueller, Paul McNulty, the chief public spokesman for the Attorney General, and Ira Raphaelson, a Special Counsel in the Office of the Deputy Attorney General, participated in the meeting at various times. Brill assumed that McNulty was present because she had the previously suggested to an representative of the Attorney General in Atlanta that "it would be helpful if Main Justice took a more active role in dealing with the media. I was suggesting...immediate responses to newspaper articles or unfavorable editorials." Brill noted that the Safire column may have come up in the discussion, but that her suggestion was actually based upon a long history of

reporting "that reflected poorly on the Department of Justice." Brill said she was not sure whether McNulty agreed with her suggestion, but said that "Main Justice and his office would try to help in any way they could in dealing with the media." (Brill, transcript, pp. 69-71)

Raphaelson suggested to Brill that she become "more personally involved in the case...be more upfront as the spokesperson for the case...He felt that it was a case of such significance and of so much publicity that it required the personal attention of the U.S. Attorney." (Ibid., pp. 75-76)

Brill also recalled a discussion of the allegation in the Safire column that CIA and NSA had investigators monitoring the activities at BNL-Atlanta. While Brill did not regard the allegation as accurate, it did reinforce the need for a quick check with the Intelligence Community with respect to five persons who had been identified by Drogoul during the debriefings as allegedly having connections with intelligence agencies. (Brill, transcript, pp. 72-74; Mueller, transcript, pp. 48-50)

To assist with the task, Mueller called Ellen Meltzer, an attorney in the Fraud Section, who had been assigned two weeks earlier to coordinate the Justice Department response to the subpoena from the House Banking Committee asking for information on Cardoen and Bull. Although Meltzer had relatively little familiarity with the case or the Intelligence Community, Mueller knew her to be diligent, an excellent writer, and someone whom he thought would get along well with McKenzie, the lead prosecutor. Mueller testified he was also aware at this point that a personality conflict existed between McKenzie and Clark, and was not aware at the time of the extent to which Clark had been involved in previous inquiries to the intelligence agencies. (Mueller, transcript, p. 69; Mueller, deposition, 12/3/92, pp. 69 - 70)

Meltzer recalled receiving a call from Mueller asking her to "handle the intelligence issues for Atlanta...to do what was necessary in order to assist the Atlanta prosecutors." According to Meltzer, Mueller did not mention the Safire article. (Meltzer, deposition, 11/20/92, p. 7)

Mueller explained that Brill was in his office and asked Meltzer to come meet with them. Meltzer recalled that Mueller stayed only a few minutes and then left for another meeting. Brill told her that the Atlanta prosecutors suspected that Drogoul's defense counsel, Bobby Lee Cook (who had replaced Sheila Tyler), would be raising various intelligence issues at the upcoming sentencing proceeding. She said that Drogoul, in the course of his debriefings, "had stated that various customers or prospective customers of BNL-Atlanta had ties to the intelligence community." (Ibid.,

p. 8)

Meltzer said the concern of the prosecutors was both that they needed assurance that intelligence ties were not going to be a problem for the case and that they wanted to be prepared for any ploy made by Drogoul's attorney. (Ibid., p. 10)

Meltzer said that while they were in Mueller's office, she and Brill made a telephone call to McKenzie to "get a better idea of what would be necessary and what kinds of confirmations were needed from the intelligence agencies, which intelligence agencies I needed to contact, and who specifically these individuals were that Mr. Drogoul had referred to in the course of his debriefings." (Ibid., pp. 8-9)

Meltzer said they took note of the allegation in the Safire column that CIA and NSA had been monitoring accounts in the bank, and McKenzie advised her that Drogoul had said that one of the customers at the bank had an affiliation with DIA. It was thus decided that they needed to contact those three agencies, and Meltzer said it was her idea to do so by formal letter. (Ibid., p. 9)

Meltzer testified that based upon general guidance given by McKenzie on the questions which they needed to ask, she began drafting the letter in the afternoon. Early in the evening, Meltzer called McKenzie and read the draft questions to her over the telephone. According to Meltzer, McKenzie suggested adding one or two questions, and commented on others. (Ibid., p. 11) Neither McKenzie nor Brill recalled making any specific comments regarding the letter, however. (McKenzie, transcript, p. 106; Brill, transcript, pp. 87-88)

Nancy Brinkac testified that she was also asked to review Meltzer's draft, and that she, in fact, had added Question #8 which asked:

"Does the [agency] have any information that BNL-Rome was aware of the illegal activities engaged in by BNL-Atlanta? If so, where did the [agency] acquire such knowledge?"

In a subsequent deposition, however, Brinkac recalled that she had used the word "fraud" instead of "illegal activities" in the language she suggested to Meltzer, and could shed no light on how the wording had changed. She stated that it had not been her intent to illicit a narrow response from CIA. (Brinkac, transcript, pp. 34-44; additional transcript, pp. 6-7)

Meltzer also sent the draft letter to Dennis Saylor, Special Assistant and Chief of Staff for Mueller, but Saylor

did not recall suggesting any changes to it. The letter was then signed by Gerald E. McDowell, Acting Deputy Assistant Attorney General and Chief of the Fraud Section, who had little familiarity with the BNL case at the time. (See E-mail from Meltzer to Saylor, September 1, 1991, on file with the Committee. (Saylor, transcript, p. 27; Urgenson, transcript, p. 184))

In any case, Meltzer testified: "I was seeking the information that the Department needed according to the Atlanta U.S. Attorney's office. I wasn't intentionally framing anything narrowly." (Meltzer, deposition, 11/20/92, p. 12)

Although not personally involved in the preparation of the letter, Brill testified that it was, in fact, important for question 8 to distinguish between "legal" and "illegal" activities since it was clear that BNL-Rome had been aware of and, indeed, had previously authorized, CCC-guaranteed loans to Iraq. (Brill, transcript, pp. 145-147, 158)

Meltzer Call to the CIA

During the course of the day, Meltzer called Bruce Cooper, in the CIA Office of General Counsel to advise of the forthcoming letter, which had a deadline of September 4 for response. According to Cooper, Meltzer referred to the Safire article and told him that Justice was going out to all intelligence agencies with a series of questions "on the order of did you use the [BNL Atlanta] bank for any purpose, what did you know about the bank, things like that." (Cooper, SSCI hearing, 10/9/92, p. 6)

Cooper testified that he interpreted the request only as satisfying the needs of Justice and not to provide something for use in court: "[T]hey [Justice] ...were about to go to the sentencing hearing, which would have been, I guess, the week after, and they just wanted to see if there is anything else out there...sort of a gut check to say that they've done it. I also felt a little panicked after that [Safire] article in the New York Times, that specifically named Mueller and Barr as being criminally liable, or that they should be held criminally liable for Iraqgate. So I felt there was a lot of just scrambling at Justice to...get their ducks in a row." (Cooper, deposition, 10/16/92, p. 6) At the same time, Cooper testified, while he knew "the Safire column was sort of driving it," there was no mention in the discussion with Meltzer of refuting the allegations in the Safire column, nor was there any discussion of the case in Atlanta. (Cooper, deposition, 10/16/92, p. 7)

Meltzer did not recall referring to the Safire column in her conversation with Cooper, but conceded she may have done so. She was adamant, however, that "I was never told that

the purpose of my contacting the agencies was to respond to press criticism. Absolutely not. It was solely for the purposes of the [sentencing] proceeding in Atlanta...If I had mentioned the column to Mr. Cooper, it would have been in the context of the issues...now being raised...and we need to know whether or not it's true. Not in order to respond to the New York Times." (Meltzer, deposition, 11/20/92, p. 13)

The records reflect that Meltzer faxed to Cooper during the day the names of the five individuals identified by Drogoul in order that he could begin the name checks at the CIA. (Fax from Meltzer to Cooper, 8/31/92, on file with the Committee)

The letter that was sent the following day by Justice to CIA noted that Drogoul during his debriefings over the summer had made certain allegations about the involvement of intelligence agencies and their knowledge of illegal conduct at BNL and noted "similar charges in the media." The letter stated that in anticipation of these issues being raised by the defendant at the upcoming sentencing hearing, the Department was seeking responses to the ten questions set forth in the letter, as well as information on five individuals who were identified. (Letter of Gerald E. McDowell, Acting Deputy Assistant Attorney General, September 1, 1992, on file with the Committee.)

Meltzer also provided a copy of the letter to Mueller on September 1 with the comment "I hope this is what you wanted." (Note from Meltzer to Mueller, September 1, 1992, on file with the Committee)

Justice Communications with DIA and NSA

Similar letters were sent on September 1 to the Defense Intelligence Agency and the National Security Agency.

The letter to DIA was preceded by a telephone call from Meltzer to DIA Deputy General Counsel Robert H. Berry, Jr. Berry recalled only that Meltzer had asked DIA to check on the names of five individuals who had been mentioned in the course of the Drogoul debriefings in Atlanta, and that she had failed to mention over the telephone the ten questions posed by the letter. He testified that he was "surprised" when he received them but did not request elaboration from Justice in terms of what they were for, or how to answer them. Berry said he regarded these questions as written "to give Justice a warm feeling...this was just periphery stuff that Justice was kind of cleaning up on the fringes." He explained that they were answered by reviewing their files on the case. (Berry, deposition, 11/18/92, pp. 10-11)

The letter which went to NSA was preceded by a telephone call on September 1st from Brinkac to Lionel Kennedy, an

attorney in the NSA General Counsel's office, who had been responsible for handling the previous document searches. Kennedy recalled Brinkac advising that Justice needed answers to certain questions to prepare for the Drogoul sentencing hearing, and, in particular, to respond to the allegations made in the Safire column or "make sure that they weren't correct." But she gave him no guidance in terms of how to answer the questions. (Kennedy, deposition, 12/2/92, pp. 15, 18)

Development of A Response within the CIA

On September 1, Cooper received a facsimile from W. Lee Rawls, the Assistant Attorney General from the Office of Legislative Affairs, referencing his conversation with Meltzer, and conveying ten questions to CIA for response, as well as a request for a name trace on five individuals who had been identified by Drogoul as having intelligence connections. (Cooper, SSCI hearing, 10/9/92, pp. 6-7) Question 8 of the Justice letter asked:

"Does the CIA have any information that BNL-Rome was aware of the illegal activities engaged in by BNL-Atlanta? If so, when did the CIA acquire such knowledge?" (Letter of McDowell to Holmes, 9/1/92, on file with the Committee, p. 2)

Holmes also received a copy of the Justice fax, and noted on it that Cooper was handling it. (Holmes, deposition, 11/2/92, p. 4)

Asked whether CIA viewed the request as unusual, Cooper said: "When I got it I brought it to...John Rizzo [the CIA Deputy General Counsel for Operations] and a couple of other people saw it. And it was, go answer it. There wasn't any discussion at that point that we shouldn't answer it, that we were being used by Justice for any of their purposes..." (Cooper, deposition, 10/16/92, p. 8)

Asked why Justice would couch question 8 in narrow terms if the purpose of the letter was to make sure that there were no surprises left among the intelligence agencies, CIA Deputy General Counsel David Holmes replied, "I can't answer that." (Holmes, SSCI hearing, 10/8/92, p. 55)

Cooper sent the request for the name checks to the Directorate of Operations for handling. With respect to the 10 questions, he sent a copy of the Justice letter to a contract annuitant in the Office of Congressional Affairs at CIA, who was at the time putting together CIA's response to the subpoena from House Banking. (Cooper, SSCI hearing, 10/9/92, p. 7; Gonzales subpoena on file with the Committee) Cooper said he asked the contract annuitant in particular about what might have been provided to Gonzales previously in

terms of the subject of Question 8. (Cooper, deposition, 10/16/92, p. 9) Cooper testified he also consulted with DI and DO officials regarding the questions.

Cooper said that during this period he also reviewed what CIA had previously provided to Justice. Cooper said the first document request had been received by CIA on August 3, 1990, and that CIA had come up with only one report referring to Drogoul. (Cooper, SSCI hearing, 10/9/92, p. 9) Subsequent submissions to Justice occurred in October, 1990, and in February, 1991, all before Cooper was assigned to the case. In all, Cooper said CIA had come up with 16 or 17 intelligence reports and about the same number of analyses prepared by the DI concerning the period from 1984 until February, 1992. Of these, Cooper stated, only "four or five discussed BNL." (Cooper, SSCI hearing, 10/9/92, p. 9)

Cooper acknowledged that in attempting to formulate a response to question 8, he in fact became aware that certain of the reports contained "speculation" that BNL-Rome must have known about the loans to Iraq by BNL-Atlanta, but that none appeared to provide "evidence of illegal activity" as called for by the question. (Cooper, SSCI hearing, 10/9/92, p. 13). Cooper stated that he discussed this matter with "people in the DI and the DO" but could not remember specifically with whom he spoke. (Cooper, SSCI hearing, 10/9/92, p. 14) Officers in the DO advised him that there must be "some sort of connection" between the information imparted by a source, and the source comment that BNL-Rome must have been aware of the activities at BNL-Atlanta, in order to conclude that the intelligence report "is evidence of Rome knowing." (Cooper, deposition, 10/16/92, p. 19)

Cooper also testified that he read his proposed answers to the 10 questions over the telephone to the people he had been dealing with earlier. The OCA contract annuitant expressed no concern, telling Cooper that he had seen nothing to indicate that BNL-Rome had knowledge of "illegal" activities in Atlanta. (Contract annuitant, deposition, p. 13) A DO officer told Cooper he was not really sure of what the intelligence said about BNL-Rome's knowledge. The DI branch chief who had signed the cover letter to Agriculture gave Cooper the information about public-source information relating to Rome's knowledge of illegal activities at Atlanta. (Cooper, deposition, 10/16/92, p. 12)

The DI branch chief involved had no specific recollection himself of a conversation with Cooper during this time frame, although he did recall a discussion of the public source information later in October. He had no understanding that Cooper was drafting a letter to the Justice Department. (DI branch chief #1, deposition, 11/13/92, p. 27)

Analyst #1 testified that she was in the office of her Deputy Division Chief on September 4th when Cooper called to ask whether they had any intelligence that BNL-Rome knew of BNL-Atlanta's activities. She recalls that Cooper mentioned having spoken with DI branch chief #1. (Analyst #1, deposition, 11/13/92, p. 29) "I recall saying that for sure I knew I had seen it in the press. I couldn't recall if I'd seen it in intelligence sources also, but that I could check. But I was not asked to check." The analyst stated she did not recall at the time whether such intelligence existed, nor was she aware that the request was being made to formulate a reply to the Department of Justice. (Analyst #1, deposition, 10/30/92, pp. 15-17) "I don't know if he [Cooper] said I don't need those or something, but something along those lines..." (Analyst #1, deposition, 11/13/92, p. 30)

The analyst also acknowledged that having had to declassify the letter of January 31, 1990, several weeks before, in response to the Department of Agriculture request, helped her recall that the DI had press reports regarding BNL-Rome's knowledge. (Analyst #1, deposition, 11/13/92, p. 32)

Cooper recalled that during his conversation with the analyst and deputy division chief on September 4, he advised them that he had already reviewed the DI reports on BNL. He said "the most recent that I was aware of was the intelligence analysis done on the 2nd of February in '92 which...said that BNL officials in Rome were unaware of what was going on." (Cooper, deposition, 12/11/92, p. 12)

Cooper denied having told the analyst not to bother checking for additional classified sources: "The whole reason I called her was [to ask about] classified information." (Ibid., p. 11)

In fact, a February, 1992 assessment had been prepared by the DI which stated in part:

"At least one set of willing collaborators in the international banking community provided financing for Iraq's military modernization program during the presanctions period. According to [intelligence reports], the Atlanta, Georgia branch of the Banca Nazionale del Lavoro (BNL) loaned several million dollars to Iraq without authorization from the bank's senior officials. The loans covered machine tools, materials, and other goods for [an industrial complex in Iraq]...Press reports indicate that the relationship developed out of a chance meeting in New York in 1984 between the head of BNL's Atlanta branch and the head of Iraq's central bank." ("Iraq: Procurement Network Supports Reconstruction of Weapons Program, February, 1992, p. 24, on file with the Committee)

In a written statement which Cooper submitted to the CIA Inspector General on December 30, 1992, a copy of which Cooper provided the SSCI, he elaborated, "This assessment, is, as far as I am aware, the most recent conclusion by the Agency on BNL...it was a significant piece in the puzzle in constructing a response for DOJ to question 8." (Cooper, statement to the CIA Inspector General, 12/30/92, on file with the Committee)

Cooper also testified that as part of his preparation of the answer to question 8, he had reviewed the January 1990 report regarding the BNL-Rome official. But he said his understanding of what Justice was looking for was "institutional involvement" on the part of BNL-Rome rather than that of a particular individual, unless such individual occupied a sufficiently high position in the organization. He does not recall discussing the handling of this report with either Justice or his supervisors at CIA. (Cooper, deposition, 10/16/92, pp. 14-15, 20-21) (See also the detailed discussion of the discovery of this report in Part 6 below.)

Guidance from Justice

Cooper also testified that he had discussed the answer to question 8 with Meltzer at Justice: "I discussed with the Department of Justice sort of what we had and what we didn't. I said, look, most all we have that distinctly says illegal activities are public statements." When asked whom you had these discussions with, Cooper answered "[I]t would have been Ellen Meltzer." (Cooper, hearing, 10/9/92, pp. 15-16)

Cooper reiterated that Meltzer was focusing only on "illegal activities" -- "she said it and that's what the question asked." When asked whether he ever mentioned the existence of any of CIA's classified reports to Meltzer and whether they should be referenced in his response to question 8, Cooper testified "I'm sure I probably did, but I can't tell you what day I did it." (Cooper, SSCI hearing, 10/9/92, p. 20)

At his first deposition, Cooper was asked again about any additional guidance he had received from the Justice Department in preparation for the CIA response to the Sept. 1 letter: "It was...my understanding from my discussions with Justice that they were interested in institutional knowledge [on the part of BNL-Rome]." When asked what other guidance Justice provided, Cooper also said "we had a lot of discussion of contemporaneous knowledge. Even though the word 'contemporaneous' was not [in the question]." (Cooper, deposition, 10/16/92, p. 15)

In an addendum subsequently submitted, Cooper added:

"From my discussions with DoJ with regard to question 8, I understood that DoJ wanted information conclusive on its face as to whether BNL-Rome, as an entity, was aware of illegal activities engaged in by BNL-Atlanta...I believe now that the 4 September 1992 letter should have been expanded but I also believe that the letter, as it was written on 4 September and based on my discussions with Ellen Meltzer prior to 4 September, was correct." (Cooper, deposition, 10/16/92, addendum, p. 8)

Meltzer, on the other hand, was adamant that she had provided no guidance whatsoever to Cooper with respect to the answer to question 8: "I didn't elaborate on what the questions meant at all." (Meltzer, SSCI hearing, 10/9/92, p. 20) "I had no conversations with Mr. Cooper in terms of clarifying anything. He never asked for any guidance or ever asked me what any of the words in the questions meant. I was in constant contact with Mr. Cooper that week, however, concerning the Gonzalez subpoena. And he mentioned several times during the course of that week that they were working on the letter." (Meltzer, deposition, 11/20/92, pp. 16-17).

When it was suggested that she might simply have forgotten the conversation with Cooper, Meltzer replied: "It didn't happen...I keep a lot of records. I do not have records of that telephone conversation. But I remember an awful lot about the activities of those few days. This was an unusual assignment for me. I didn't want to have to deal with the CIA...I was very, very alert to what was going on. And paying very close attention, as I always do when anything is said to me by individuals at the CIA...I know that conversation did not occur." (Meltzer, deposition, 11/20/92, pp. 72-73)

Holmes testified it was his understanding that the Justice Department "made no recommendation to us about what to put in the 4 September letter..." (Holmes, SSCI hearing, 10/8/92, p. 39)

Cooper noted that at the time the answer to question 8 was written, he did not contemplate that it would ever become public. He believed he was writing solely to respond to the Justice request about information it had in its own files, and that "had I been aware I was writing for a general audience, I would have included references ...to every [classified report] I have ever read on the subject." (Cooper, SSCI hearing, 10/9/92, p. 21)

Asked whether Justice reviewed his proposed response before he sent it forward, Cooper responded that he may have read the answers over the phone to Meltzer but he could not be certain. (Cooper, deposition, 10/16/92, p. 17)

Approval of CIA Response

In any event, Cooper prepared a response to question 8 that avoided mention of non-public reports containing the "speculation" about BNL-Rome's knowledge of the activities at BNL-Atlanta, alluding instead only to press reports:

"CIA has publicly available information acquired in the December, 1989 - January, 1990 time-frame, that BNL-Rome was aware of the illegal activities engaged in by BNL-Atlanta." (Letter dated 9/4/92, from David P. Holmes, Acting General Counsel, to Gerald E. McDowell, Acting Deputy Assistant Attorney General, p. 2)

At the time, supervisory responsibility for BNL appears to have been divided in the CIA General Counsel's office. Supervision over CIA's support to the prosecution in Atlanta appears to have been the responsibility of George Jameson, Chief of the Litigation Division. Responsibility for CIA's responses to congressional requests on BNL appears to have rested with John Rizzo, Deputy General Counsel for Operations. Cooper, for his part, chaired an internal CIA task force on BNL, which coordinated CIA responses for purposes of both the litigation and the Congress. (Rizzo, deposition, 12/17/92, pp. 3 - 6)

When Cooper was advised of the Justice request and received the September 1 letter, Jameson was on leave. He returned to the office on September 2. In his absence, Cooper notified Rizzo that the request was coming and showed Rizzo the letter once it had arrived. Rizzo did not, however, review the answers prepared by Cooper. Indeed, Rizzo left on vacation himself on the morning of September 4, prior to the CIA response being put in final form by Cooper. (Rizzo, deposition, 10/16/92, p. 3; Rizzo, deposition, 12/17/92, pp. 14, 18)

Jameson testified that he came back from leave on September 2 and became aware that Cooper was working on the answers to 10 questions from Justice, but never saw them prior to signature. Jameson stated that he asked Cooper late in the day of September 4 where the answers were. Cooper replied that he had sent the letter to Justice to Rizzo and Holmes for review. Jameson replied that he thought he had told Cooper he wanted to see the letter before it went to Rizzo and Holmes. Jameson recalls that Cooper gave "no particular answer," and since the others were now looking at it, he asked Cooper to provide him with a copy once signed. (Jameson deposition, 10/16/92, pp. 3-4)

At his deposition, Cooper acknowledged that Rizzo may have left for the day when he brought the draft letter around for his approval. (Cooper, deposition, 10/16/92, p. 21)

Holmes testified that "the letter was brought to me at

the end of the day and I asked a couple of questions about whether it had been coordinated and checked. I was told that is was urgent that we get it to the Justice Department. I signed the letter and I accept responsibility for the content of the letter." (Holmes, SSCI hearing, 10/8/92, p. 43) Holmes also testified that he had not reviewed any of the intelligence reports underlying the letter at the time he signed it, nor had he any previous familiarity with the BNL matter. (Holmes, SSCI hearing, 10/8/92, pp. 44-45)

At a subsequent deposition, Holmes elaborated: "I had up until this time not been in the chain that was supervising this case. Mr. Rizzo had been sort of the senior supervisor, and then Elizabeth Rindskopf was following it. They were both away...I was concerned about the fact that it [the letter] had been properly staffed in our office, and that I wasn't seeing this letter without Mr. Jameson having seen it because I had no knowledge of the case at this point -- or almost none...Mr. Cooper brought it in to me--my recollection is late in the day--and stood there and asked me to sign the letter and I asked him a couple of questions: have you coordinated this? has Jameson seen it? And he answered both in the affirmative, and I signed it." (Holmes, deposition, 11/2/92, pp. 14-17)

In his subsequent deposition before Judge Lacey, Holmes was less clear in terms of his having asked whether Jameson had reviewed the letter: "I may have said in an earlier interview that I asked him [Cooper] whether Jameson had seen it; but I don't recall for sure...I don't know at this point." (Holmes, transcript, p. 43)

Holmes acknowledged that ordinarily he would have checked the cover sheet to see if the appropriate people in CIA had signed off. In this instance, due to the urgency of getting something back to Justice before the Labor Day weekend began, he relied on Cooper's representations that the appropriate people had been consulted, without asking specifically whom he consulted. Holmes also noted that the CIA response was drafted without including within the text of the response the questions posed by Justice. Holmes said this violated normal practice within the Office of General Counsel and made it more difficult for him to assess the proposed CIA response. (Holmes, deposition, 11/2/92, pp. 15-18, 58)

Cooper testified that "[w]e went into [Holmes'] office, sat down at the table, and I said this is all the information we have on illegal activities. The focus was on illegal activities." Cooper could not remember whether Holmes had raised a question about the response to question 8. (Cooper, deposition, 10/16/92, pp. 22-23)

The letter was transmitted the same day to the

Department of Justice.

DCI Robert M. Gates testified he did not see the September 4th letter prior to its being sent. (Gates, deposition, 10/30/92, p. 8)

Reaction of Justice Officials to CIA Letter

Meltzer's notes reflect that on September 3, 1992, a copy of the CIA all-source chronology prepared earlier in the summer for the Senate Select Committee on Intelligence was brought to her by an employee of the CIA Office of Congressional Affairs. The record reflects she took sketchy notes regarding a few of the items that appeared in the chronology, including seven classified intelligence reports, and that the notes were later typed. (Notes of Meltzer, undated, Subject: BNL, Iraq and Arms Transfers All Source Reporting Chronology 1983-1992, on file with the Committee) Meltzer, in a letter to the Committee, explained that she had reviewed the chronology at the request of McKenzie and not specifically to enable her to evaluate the responses she received to the September 1 letter to the intelligence agencies. She did, however, look for indications of "contemporaneous knowledge by the intelligence agencies of illegal activities at BNL-Atlanta and information that BNL-Rome was aware of the illegal conduct at BNL-Atlanta." She spent 1 1/2 hours reviewing the material. (Letter of Meltzer, dated 1/14/93, on file with the Committee)

In any event, it does appear that CIA's answer to question 8 caused Meltzer to hesitate. An E-mail dated September 4 from Meltzer to Brinkac, reflects:

"I spoke with Larry [Urgenson] re: CIA's response to question 8. We (i.e. you) need to follow up with CIA and just make sure that what they are referring to is nothing more than press reports, etc. and what they specifically concerned." (E-mail, Meltzer, "Things to Do", September 4, 1992 6:57 p.m., on file with Committee)

Meltzer subsequently explained: "I was concerned generally about the CIA's response to question 8. I was not concerned that the CIA might possess classified information...that was also responsive to question 8, however, since I took the CIA's response at face value. My concern arose because I did not know what the answer meant, since at the time I received the response I was unaware of any press reports stating or suggesting that BNL-Rome was aware of the illegal conduct that had occurred in Atlanta." (Letter of Meltzer, dated 1/14/93, on file with the Committee)

Urgenson testified that he had no specific recollection of the conversation with Meltzer, but presumed the E-Mail accurately reflected that such a conversation had taken place, and that he had apparently told Meltzer to check with CIA to "be sure" that the response to question 8 was complete. At the time, however, Urgenson testified he had been taken off the BNL case for several weeks and was consumed by the preparation for another trial, and that such an inquiry from Meltzer would not have made much of an impression:

"There was nothing relevant in the CIA materials that had been brought to my attention in all the years that I had...been involved in the case...It [the CIA's response to question 8] wouldn't mean anything to me other than, frankly, they don't have any evidence of criminal activity that Rome is involved. What's new about that? That would be my reaction to it. Now I've got 80 witnesses to interview and 40 motions to answer. That would have been my reaction to it." (Urgenson, transcript, pp. 189-193)

Brinkac recalled the E-mail from Meltzer when it was shown to her, but could not recall following up with CIA or any further discussion of the matter with Meltzer. (Brinkac, transcript, pp. 3-6)

Asked at the SSCI hearing of October 9th why they had not viewed the CIA response to question #8 as inaccurate, in view of the intelligence reports CIA had previously provided to Justice, neither Urgenson nor Meltzer specifically recalled having had any concern about question 8, responding instead:

"Candidly, I'll tell you exactly what happened...I sent the [intelligence reports] to a deputy in the [Fraud] section. I asked them is there anything in the [intelligence reports] that is material to the case. And the analysis that I was given was 'no.' And I never read the [intelligence reports] because I was told they were not relevant. That's the truth; that's the facts." (Urgenson, SSCI hearing, 10/9/92, p. 30)

"First of all, at that point in time I had examined very few of the [intelligence reports] personally. I had asked somebody else in the office to do it for me. Not with the view toward question 8, but with the view towards did the CIA have any contemporaneous knowledge...(Meltzer, SSCI hearing, 10/9/92, pp. 30-31)

At her subsequent deposition, Meltzer explained that after she had received the response from CIA, "I asked Nancy Brinkac [an attorney in the Fraud Section] to please check all of the [reports] contained in the Fraud Section for any

contemporaneous knowledge by the CIA of the illegal activities in Atlanta...She reported back to me that there was nothing there but mention of newspaper articles." (Meltzer, deposition, 11/20/92, p. 18)

Clark and Greenberg, who had previously handled intelligence matters related to the BNL case, were not consulted at all on the CIA response. (Clark, transcript, pp. 167-69, 176; Greenberg, transcript, p. 201)

Responses of DIA and NSA

The Deputy General Counsel of DIA, Robert H. Berry, responded to Justice on September 4, replying summarily: "Our file search with regard to the ten questions...has been negative. DIA has had no involvement whatsoever with BNL." (Letter of Robert H. Berry, September 4, 1992, on file with the Committee.)

DIA had, however, previously identified to Justice a September 15, 1989 intelligence report containing speculation that the BNL financing of Iraqi loans was part of a larger, cooperative strategy among NATO countries to support Iraq in its conflict with Iran. (See Section 2 above)

Asked whether DIA had specifically considered and determined not to mention this report in formulating its negative response to question 8, Berry responded "not specifically at that time." (Berry, deposition, 11/18/92, p. 12) (DIA did consider this report when it furnished an unclassified version of its September 4 letter on September 17th. See part 5, below.)

With respect to the name traces requested by Justice, the DIA letter acknowledged that while contacts had been made with two of the five people identified in the Justice letter, neither "relate in any way to BNL or to an activity that could have involved an association with BNL." (Letter of Robert H. Berry, September 4, 1992, on file with the Committee.)

At NSA, the General Counsel's office responded to the Justice letter by convening a meeting of the representatives of the various offices which had contributed to the earlier document searches to discuss the responses to the ten questions. A draft letter was then put together by the Office of General Counsel which incorporated the results of these discussions. (Kennedy, deposition, 12/2/92, p. 19)

NSA answered all but three questions with a "no" and provided limited additional elaboration on remaining three. It was also careful to point out that the agency was not a law enforcement agency and did not intentionally collect information on U.S. citizens or companies without a court

order or the approval of the Attorney General. The letter pointed out that, as a matter of policy, the names of U.S. persons which may be incidentally collected were ordinarily not used in the reports that NSA prepares, and that NSA did not go beyond the finished reports in conducting its searches. (Letter from NSA General Counsel Stewart Baker to McDowell, 9/9/92, on file with the Committee)

NSA's response was not sent until September 9th, several days after it had been originally requested.

Justice Use of the Intelligence Agency Classified Responses

On Sunday, September 6, Meltzer flew to Atlanta to help the USAO prepare a sentencing memorandum to be filed with the court prior to the hearing scheduled to begin on September 14. Meltzer took with her the CIA and DIA classified responses to the September 1 letter. NSA's response was not received at Main Justice until September 9, and was classified at a level which exceeded the clearance levels of the USAO. Meltzer testified that she called Brinkac after drafting the portion of the sentencing memorandum dealing with intelligence issues, and confirmed that there was nothing in the NSA response to contradict what she had written. (Meltzer, deposition, 11/20/92, p. 21)

Meltzer also recalled "I telephoned Mr. Cooper on September 8 or 9 [from Atlanta] in response to a voice mail from him, and questioned him at that time about the CIA's response to question 8. Mr. Cooper told me that the CIA response referred to certain newspaper articles from the relevant time period." (Letter of Meltzer, dated 1/14/93, on file with the Committee)

McKenzie, who read the letters Meltzer brought with her, did not recall Meltzer expressing any reservations about the CIA response to question 8, nor did she have any reservations: "When I saw question number eight, I read it in terms of the whole letter...it didn't raise any problems in my mind...[A]dmittedly, I had not analyzed the documents and don't purport to have done so. It seemed like everything had been rehashed in the press. No matter where else it might appear, it had certainly been in the public source." (McKenzie, transcript, pp. 110-111)

On September 8, McKenzie received a letter from Drogoul's counsel, Bobby Lee Cook, among other things requesting any information "that would show knowledge on the part of the government in BNL-Atlanta's illegal dealings with the Iraqis." Cook went on to ask, "can you specifically and truthfully represent to the Court that no intelligence agency of the U.S. Government was aware of the wrongdoing at BNL-Atlanta prior to [their being reported by the BNL employees]?" While Cook concluded his letter by referring to

the "party line" that "no one in BNL-Rome or BNL-NY knew of the wrongdoing," he did not specifically ask for information the Government might have on this subject. (Letter from Cook to McKenzie, September 8, 1992, on file with the Committee)

Brill faxed the letter and a draft response to Clark at Main Justice, which replied the same day. With regard to the information concerning the knowledge of intelligence agencies, Clark suggested that Brill reply: "The Government is aware of no document or physical evidence evidencing Government knowledge -- including knowledge on the part of the U.S. intelligence agencies -- of the illegality of BNL-Atlanta's activities prior to the time they were reported...NB: If 'activities' is intended to include knowledge that a wire transfer was made on a particular date, there are instances in which such transactions were 'known.' But this does not mean that, for example, an intelligence agency knew why the transaction was being effected, or that it was pursuant to a scheme to defraud BNL." (Memorandum from Clark to Brill, September 8, 1992, on file with the Committee)

Clark testified that he was unaware of the intelligence agency responses to the September 1 letter at the time he prepared his memo. He also explained that the latter part of his memorandum was to suggest to Brill that an intelligence agency "might have a particular document that evidenced a letter of credit transaction [to a foreign bank], so in a technical sense that is U.S. intelligence agency knowledge of an activity of BNL. It is not necessarily knowledge of the illegality or the scheme that this letter of credit is part of, but it is in a technical sense knowledge of a transaction." (Clark, transcript, pp. 190-191, 194)

Based upon suggested language provided by Clark, Brill responded to Cook on September 10 that "[t]he government is aware of no document or physical evidence that would show [contemporaneous] knowledge on the part of the government of BNL-Atlanta's illegal activities...The Intelligence Agencies of the United States Government have advised us that they were not aware of the wrongdoing at BNL-Atlanta prior to the time that [the crimes were reported to the U.S. Government]" The letter did not mention the caveat noted by Clark. (Letter from Brill to Cook, September 10, 1992, on file with the Committee)

During the same week, the sentencing memorandum was being prepared. Page 34 of the memorandum filed with the court stated that "no credible evidence has been uncovered that supports the defendant's suspicion that other officers at BNL or public officials within the United States government knew of his illegal activities." (United States v. Drogoul, Government's Sentencing Memorandum, Criminal Action 1:91-CR-078-MHS, N.D. Ga., September 15, 1992, p. 34, on file

with the Committee)

Meltzer drafted this language relying upon the letters of the intelligence agencies which she brought with her. (Meltzer, deposition 11/20/92, p. 21) McKenzie recalled that Meltzer had consulted "Justice" on the language but did not know whom she had consulted. (McKenzie, transcript, p. 114) Clark testified that he had not been consulted by Meltzer. (Clark, transcript, p. 197)

Brill testified that at the time she signed the reply to Cook on September 10, she was aware of the language in the draft sentencing memorandum, which she had discussed with Meltzer, although she had never seen the responses Justice had received to the September 1 letter. (Brill, transcript, pp. 108, 111)

The USAO filed the sentencing memorandum with the court on September 11, three days before the sentencing hearing was scheduled to begin.

SECTION 5. EVENTS OF THE WEEK OF SEPTEMBER 14-18

Public Actions -- September 14-15

The Drogoul sentencing hearing began on Monday, September 14, 1992. Drogoul's attorney, Bobby Lee Cook, began to develop allegations that his client's actions were condoned or approved by higher-ups in BNL's Rome headquarters and by U.S. Government officials, particularly Intelligence Community officials. Cook contended that Drogoul was a pawn in a larger scheme and claimed that the CIA was involved in assisting Iraq.

On the afternoon of September 14, Congressman Gonzalez went to the House floor to deliver the latest in a series of floor statements he had been making since February 1991 on the Bush Administration's pre-Gulf War policy toward Iraq. Gonzalez's September 14 floor statement attacked the prosecution's theory that BNL-Atlanta's illicit Iraqi loans were made without the complicity of BNL-Rome. In the statement, he quoted liberally from the analytical summary that CIA had prepared for him in October 1991. The summary cited several of the key CIA reports on BNL. Gonzalez described the substance of the February 1991, CIA report, indicating that, at the request of Iraqi officials, BNL-Rome officials had signed loans originally signed and issued to Iraq by BNL-Atlanta. Gonzalez disclosed that the CIA summary contained an analytical conclusion that the CIA reports cited therein provided "confirmation of press allegations that more senior BNL officials in Rome had been witting of BNL-Atlanta's activities." Gonzalez concluded that "the CIA report, which contradicts the rogue operation theory, raises many critical questions: When did the CIA obtain this information and who at the CIA was aware of it? Was the information forwarded to the Justice Department and the U.S. Attorney's office in Atlanta? If the answer is yes, has the information been thoroughly investigated?" (Cong. Record, 9/14/92, H 8349, 8351)

On September 15, Cook introduced the Gonzalez statement into evidence in court.

Justice Department Reactions -- September 14-15

Justice officials were concerned -- and surprised -- by the Gonzalez statement. According to Urgenson, Justice had not known of the existence of the CIA analytical summary prepared for Gonzalez and of its conclusion regarding BNL-Rome's knowledge. Urgenson testified that that this conclusion contradicted prior CIA assurances to Justice regarding CIA's knowledge of BNL-Rome's awareness of Drogoul's scheme. (Urgenson, SSCI hearing, 10/9/92, p. 13.)

Urgenson's surprise is reflected in an e-mail message at 8:46 am on Tuesday, September 15, in which he asks: "What CIA document was Gonzalez referring to in his speech yesterday?" At 12:24 that

afternoon, Peter Clark replied that Ellen Meltzer had, in his view, identified the document as one the CIA had given Justice in the fall of 1990. Clark noted that he disagreed with the analytical conclusion of the Gonzalez summary and suggested that the analyst explain his or her position to the Court. Clark also criticized the prosecution's strategy and tactics in Atlanta and suggested that Brill be put in contact with the Office of Intelligence Policy and Review at Main Justice to discuss how intelligence information should be handled. (Clark E-mail, on file with the Committee)

The Gonzalez statement, according to Urgenson, "threw us in somewhat of a state of turmoil and very much upset the prosecutors in Atlanta who had this kind of bombshell dropped in Congress." (Urgenson, SSCI hearing, 10/9/92, p. 13.) Urgenson testified that the prosecutors thought that clarification was "urgent"; they saw "their case falling apart because of these leaks of information." (Urgenson, SSCI hearing, 10/9/92, p. 16.) Meltzer noted that she was concerned because the Gonzalez statement "contradicted the response to question 8" in the CIA's September 4 letter and was "in direct contradiction to the position we had taken in court". (Meltzer, SSCI deposition, 11/20/92, pp. 24, 29.)

Justice determined that it needed to collect all of the intelligence reports underlying the summary prepared for Gonzalez and compare them to the conclusion in that summary as well as the September 4 CIA letter. (Urgenson, SSCI hearing, 10/9/92, p. 14.)

At 1:06 on the afternoon of September 15, Cooper faxed Meltzer a copy of the analytical summary prepared for Gonzalez. (Cooper, SSCI deposition, 10/16/92; Holmes, transcript, 11/17/92, p. 68; fax, on file with the Committee) At that time or later in the day, CIA sent Justice copies of the October 1989 report (foreign company referred to BNL-Atlanta for project in Iraq as well as three intelligence reports summarized for Gonzalez -- October 1989 (international bankers strongly believe BNL-Rome knew); February 1991 (Rome signed Atlanta loans at Iraqi request); and a September 1989, report describing BNL-Atlanta financing of an Iraqi military project. Meltzer faxed the summary and the intelligence reports to the prosecutors in Atlanta that day. (Document, on file with the Committee; Brill, transcript, p. 126.)

Deputy Director of Central Intelligence William O. Studeman testified that at 5:30 or 6:00 p.m. on September 15, he had a two- to three-minute conversation with Assistant Attorney General Mueller. The "stimulus" for Mueller's call was a press article about the Gonzalez statement. "The gist of the -- the purpose of Mueller's call to me was to basically to give me a heads up. To say that Barr might be calling the DCI. And the gist of why Barr would be calling the DCI was to essentially to try to enjoin us at the leadership at CIA to ensure that Justice Department was getting all the relevant material that they needed. It wasn't any more complicated than that. He did make reference ... to the recent press article as if it was sort of a form of more pressure

being put on the system. We didn't talk much about the substance of the matter. In fact, I don't remember us talking at all about the substance of the matter except in the context as follows. I asked him if the Justice Department had all the [intelligence reports] that were at issue at that time. My recollection is that Mueller said they had three out of the four -- they found three out of the four [intelligence reports] and they were looking for the fourth.... I remember also asking him whether he had -- what the gist of the [intelligence reports] collectively, what did they say to him? Of the three of the four that they had. And at that point in time he said that he in fact hadn't read them.... [T]here was also an inference that we should leave no stone unturned to ensure that whatever other material might reside in the CIA morass here, if you will, were also being searched for." Mueller also asked whether the Gonzalez summary was classified, and Studeman said he would have Holmes provide an answer. Studeman testified that he has had no "discussions with any senior Justice Department officials on this topic since." (Studeman, SSCI deposition, 10/19/92, pp. 4-7.)

Mueller recalls that he called Studeman because Mark Richard told him "he was having trouble getting his calls answered from CIA" and suggested that Mueller call DCI Gates. (Mueller, deposition, 12/3/92, p. 75.) He testified that he "may have" told Studeman that Gates could expect a call from Barr. (Mueller, deposition, 12/3/92, p. 76.)

After receiving Mueller's call, Studeman immediately called Holmes to discuss it, and Holmes said he was in contact on this matter with Mark Richard. Studeman asked Holmes to give him the "essence" of the four reports and "I tried to get him to ensure that he was working with all the parts of the Agency to get the material over." Holmes, according to Studeman, "said his impression was that...there was no smoking gun in the classic sense that the officials in Rome had essentially participated in the illegal activities in the bank in Atlanta. So I said 'thank you very much'." (Studeman, SSCI deposition, 10/19/92, pp. 8-9.)

After speaking to Holmes, Studeman went to DCI Gates "to give the Director a heads up that Barr might be calling him, number one, that this would be the question that Barr would be asking, again leaving no stone unturned to provide documents and support to Justice, and then relayed the gist of my conversation with both Mueller and Holmes. And at that point in time I ended my -- that event, and the DCI accepted what I had to say for information and that was it." (Studeman, SSCI deposition, 10/19/92, p. 9.) Studeman further testified that he was not aware of any subsequent conversation between Gates and Barr. (Studeman, SSCI deposition, 10/19/92, p. 11.)

Gates testified: "The only part that I remember is that [Studeman] told me he had received a call from Mueller, that there was some issue over four documents that the Agency had, that Justice thought that they had three of the documents but not the

fourth. And I think I told him not to take any chances, that if Justice was missing the fourth that we should just send it over to them rather than wait for them to find it or try and find it.

"He then mentioned that he talked to David Holmes in the Office of General Counsel about this and that he had asked Holmes if there was a bottom line to all of this reporting. And that Holmes has told him ... that there was no smoking gun in terms of their having known about the criminal activity." (Gates, SSCI deposition, 10/30/92, p. 3.)

Gates says his recollection and his notes indicate that neither the Attorney General nor anyone else from Justice ever called him on this matter. (Gates, SSCI deposition, 10/30/92, p. 4.) Mueller testified that Barr never called Gates. (Mueller, deposition, 12/3/92, p. 76.)

At 10:49 on the night of September 15, Ellen Meltzer e-mailed Urgenson that she had left copies of the 4 underlying intelligence reports for him, Mark Richard and Robert Mueller. She added that Bruce Cooper had told her that there was other material that CIA had provided to Rep. Gonzalez that DoJ still did not have. Meltzer, who had told Cooper that Justice wanted all this material, characterized the situation as "ridiculous" and recommended that Urgenson or Richard call David Holmes to emphasize the need for Justice to be given all such documents immediately. (E-mail, on file with the Committee; Meltzer, SSCI deposition, 11/20/92, p. 83.)

Mueller recalls personally reviewing the four intelligence reports and concluding that they did not support the analytical conclusion in the Gonzalez summary. (Mueller, deposition, 12/3/92, p. 87.) He noted that they "could be read conceivably to [mean that] BNL-Rome was witting of what might be BNL-Atlanta's legal activities. It was unclear." (Mueller, deposition, 12/3/92, p. 88.) Urgenson, too, read the intelligence reports and "didn't recall seeing them before" although he had read some of the intelligence reports on BNL in the past. (Urgenson, transcript, p. 207.) Urgenson, like Mueller, concluded that the reports did not support the analytical conclusion in the Gonzalez summary. He recalls that Peter Clark and the Atlanta prosecutors agreed. (Urgenson, transcript, p. 211.) Meltzer also concluded that the intelligence reports did not support the analytical conclusion. (Meltzer, deposition, 11/20/92, p. 29.) McKenzie recalls that it was "a comfort" to receive the four reports, because all dealt with matters with which she was familiar and which she believed tended to show that Drogoul was guilty. (McKenzie, transcript, p. 125.) McKenzie said she did not recall having seen any of the reports before when she reviewed them on September 15. (Ibid.)

Urgenson and Mueller believed that one means of addressing the problem was to get the September 4 CIA letter declassified. (Urgenson, SSCI hearing, 10/9/92, p. 14; Mueller, deposition, 12/3/92, p. 88.) At 6:14 p.m. on September 14, Meltzer faxed to

Mark Richard a copy of the September 4 CIA letter with the classified portion deleted. (Fax copy on file with Committee.) Urgenson recalls that Richard showed Mueller a copy of the September 4 letter "and there was some discussion between them as to -- that the content of this letter was good." (Urgenson, transcript, p. 215.) Mueller recalls that he probably looked at the September 4 letter (and perhaps the corresponding questions from the September 1 Justice letter) "quickly" and "said, okay, that's the CIA's most recent statement. It's publicly available information. We ought to have this declassified, so it can be presented in court." However, Mueller clarified that declassifying the letter was not his proposal but arose in a conversation with Urgenson or Richard. (Mueller, transcript pp. 139-40.) Richard testified that he did not recall suggesting that the letter be declassified. (Richard, transcript, p. 16.)

Urgenson testified that Justice officials decided the appropriate course was to present Judge Shoob with both the September 4 letter's account and the Gonzalez analytical summary's account of CIA information and allow Shoob to "see everything, and in addition to that, bring the CIA into chambers with Judge Shoob along with the prosecutors, and let it all hang out. Just tell him, look, we know there is an inconsistency here. We know there is a difficulty. I don't know that, you know, we were going to resolve it, but at least no one could contend that we had not given the Judge both the analytic report, the underlying [intelligence reports] and the letter that came from the CIA, so he had all the evidence to look at." (Urgenson, SSCI hearing, 10/9/92, p. 16.)

At that point, Justice's effort to rebut the Gonzalez allegations and to alert Shoob to Intelligence Community information on BNL-Rome's knowledge appears to have encompassed only the three relevant CIA reports cited in the Gonzalez analytical summary plus the intelligence report of October 5, 1989; only those documents were in fact delivered to Shoob in the wake of the September 14 Gonzalez speech, although other relevant documents, such as the January 1990 report concerning the BNL-Rome official and the September 15, 1989, DIA report, were already in the possession of the Justice Department. (Meltzer, SSCI hearing, 10/9/92, pp. 22-24; Clark, transcript, p. 207.)

According to Meltzer, she "had not personally reviewed every [intelligence report] within the possession of the Justice Department"; instead, she "had asked somebody else to help me out and do that," and she did not know if she had personally read the January 1990 report. (Meltzer, SSCI hearing, 10/9/92, p. 23.) Urgenson testified that he did not recall seeing the January 1990 report "until recently." (Urgenson, SSCI hearing, 10/9/92, p. 24.) When asked why the January report was not one of those Justice planned to offer to Shoob, Urgenson explained, "I think that the issues as to...what evidence should appropriately be provided to the Judge in Atlanta was made by the Atlanta prosecutors under whatever the discovery and Brady obligations and other

determinations are that apply to that case." According to Urgenson, the Atlanta prosecutors "reviewed all the [intelligence reports] at various times in Washington." However, he stated, "I cannot testify that they saw a particular [report]." (Urgenson, SSCI hearing, 10/9/92, pp. 24-26.)

CIA Reactions -- September 14-15

Cooper testified that he did not know of the existence of the analytical comments prepared for Gonzalez until Gonzalez made his floor statement. (Cooper, SSCI hearing, 10/9/92, p. 10.) Neither did Jameson. (Jameson, transcript, p. 65.)

Holmes testified, "At the point that this matter became a major issue -- and I would put that date at the 14th of September, which I think was a Monday, as I recall, the day the sentencing hearing started and the day a statement was made that what we had said was inconsistent with that information had been provided to Gonzalez, I decided that it was essential that I find out all of the facts in the case. And so I made it a point to look at the [intelligence reports], ask a lot of questions of the people working on the case so that I would understand it better." (Holmes, SSCI hearing, 10/8/92, p. 46.) Holmes testified that he spoke with Jameson, Cooper and Rizzo in an effort to determine whether there was "anything to the allegation or the assertion that we are reading in the paper that information we have in our file is inconsistent with what was provided to Representative Gonzalez, or is there anything to Representative Gonzalez's statements that we need to be concerned about and we need to look into.... I began to ask specifically what documents we had, what they said, and whether these documents were available already to the Justice Department." (Holmes, SSCI hearing, 10/8/92, pp. 47-48.)

Jameson agreed that an effort to examine this matter was triggered by the Gonzalez disclosures on September 14. (Jameson, SSCI hearing, 10/8/92, p. 50.) Rizzo also testified regarding the underlying documentation: "I didn't really become familiar with it I believe until the day that Gonzalez issued the statement. Prior to that time, I had not read any of the underlying documents." (Rizzo, SSCI deposition, 10/16/92, p. 7.) Holmes later said that "sometime during this period...I became frustrated...in that I didn't feel like I was getting answers to questions on a fast moving thing...." (Holmes, transcript, p. 58; see also pp. 79-80 and 125-126.)

In his deposition, Holmes stated, "I'm trying to remember ... exactly when I started looking at the documents. I think it may have been later. But I am not sure about that.... I am sorry if I gave you the impression that I reviewed [them] before the September 17 letter. I don't think I did.... I just don't think I had had the time. I'll try and figure that out." (Holmes, SSCI deposition, 10/16/92, pp. 23, 25.) Holmes's calendar shows a 15-minute meeting "about the Gonzalez matter" at 10:30 on Tuesday,

September 15, with OGC and OCA personnel, but Holmes does not remember what was discussed. (Holmes, transcript, p. 51.) He had no other meetings on this subject until 8:00 am on Thursday the 17th, with George Jameson. (Ibid., p. 53.)

Justice Calls CIA and Other Agencies

During the early part of the week, various Justice Department officials initiated calls to CIA to request that CIA make a public pronouncement regarding its information on the BNL matter to rebut the statement by Congressman Gonzalez. This request ultimately focused on two possible means of making such a pronouncement: a declassified version of the September 4 letter and a press release/public statement.

Holmes recalls two telephone calls from Deputy Assistant Attorney General Mark Richard. Richard described the situation as a "firestorm." Richard also told Holmes that he would be out of the office for a day and that CIA should deal with Lawrence Urgenson, an Acting Deputy Assistant Attorney General. (Holmes, SSCI deposition, 10/16/92, p. 9.)

Jameson recalls that on September 16 Holmes told him that he had spoken to Mark Richard, that Jameson should expect a call from Urgenson "seeking information" in response to the Gonzalez charges, and that Justice was seeking some sort of public statement. (Jameson, SSCI deposition, 10/16/92, p. 7.)

Jameson also recalled that on September 16, either Urgenson or Clark called him and requested that CIA declassify the September 4 letter. According to Jameson, Justice "said can you declassify the letter of September 4, or barring that, can you simply take the ten questions and answers, put them into an unclassified form so that the prosecutor can respond in open court to questions that the judge was asking." (Jameson, SSCI hearing, 10/8/92, p. 50). Jameson testified that Peter Clark probably placed the first call to him, followed by Urgenson later the same day. (Jameson, transcript, p. 79 and 137-138.)

Jameson said that Justice favored a new letter so as not to drag Acting Deputy Assistant Attorney General McDowell -- the addressee of the September 4 letter -- into a case about which he knew very little. (Jameson, transcript, 11/17/92, pp. 79 and 137-138.) Urgenson, too, testified that Justice wanted a new letter because it was advisable to remove McDowell's name and substitute Brill's as the recipient. Urgenson added that CIA wanted in the unclassified letter a recitation of the ten questions, which was not included in the September 4 letter (Urgenson, deposition, 11/24/92, pp. 100-01). Urgenson offered an additional rationale for providing a new letter: The name trace responses in the September 4 letter were classified, while the answers to the ten questions were not, and if Justice had released a redacted version of the September 4 letter "it would raise an issue that we are hiding the classified portion of it." (Urgenson,

transcript, p. 215.)

At the same time, Meltzer called DIA Deputy General Counsel Berry to ask that DIA send Justice an unclassified letter confirming its earlier response to Justice's September 1 letter. Meltzer explained that the letter "would be used by the U.S. Attorney prosecuting the case in her presentation or presentations that she was making to the Judge." (Berry, deposition, 11/18/92, p. 13.)

On September 17, Meltzer called Lionel Kennedy of NSA's Office of General Counsel to ask for a short unclassified letter from NSA saying that NSA's answer to all of the September 1 questions was "no." (Baker/Kennedy, deposition, 12/2/92, pp.20-21.) Meltzer testified that she delayed making the call "because I knew [NSA's] response would be negative." (Meltzer, deposition, 11/20/92, p. 32.)

NSA's Response

Kennedy immediately told Meltzer that NSA responses generally were not unclassified. He said that he would pursue the matter, but that she might consider a higher-level approach if the Justice Department considered this request really important. There was no higher-level approach to NSA. (Baker/Kennedy, deposition, 12/2/92, pp. 21-22.)

NSA's Office of General Counsel made a few efforts over the weekend to draft an unclassified version of the September 9 classified letter, but was unable to come up with an unclassified summary that was faithful to the earlier letter. After General Counsel Stewart Baker rejected their last effort, the September 9 letter was sent to NSA's declassification office for review. Meltzer was informed of this on or about September 21. No declassified or unclassified letter was ever sent. (Baker/Kennedy, deposition, 12/2/92, pp. 26-29.)

DIA's Letter

DIA's September 4 letter to Justice had responded to Question 8 by saying that "[o]ur file search with regard to the ten questions posed by Mr. McDowell's letter has been negative. DIA has had no involvement whatsoever with BNL." The unclassified September 17 version read as follows:

"This letter confirms previous correspondence from the Defense Intelligence Agency (DIA) to the Department of Justice (DoJ) wherein we advised that DIA, based on a search of its files, had no record of any DIA dealings with the Banca Nazionale [sic] del Lavoro (BNL).

"Specifically, in response to the 1 September 1992 DoJ letter to DIA, DIA had no information in its files concerning the ten questions, other than comments on and

repetition of publicly available information dating from after September 1989 concerning BNL-Rome and its relationship with BNL-Atlanta."

Deputy General Counsel Berry stated that DIA lawyers had discussed the matter of the September 15, 1989, DIA report, which they knew the Justice Department had seen (since Ted Greenberg of Justice had later interviewed the author of the report), but did not know whether the prosecutors had seen. "So we wanted to make sure that we were telling them exactly what information we had. And we have no information concerning Rome's knowledge of its relationship with Atlanta. And basically the way this was phrased was to put things into context after the indictment, that we had no information after the indictment concerning this. Of course, we had no information before the indictment either. But that's why it was phrased that way, is after the indictment." (Berry, SSCI deposition, 11/18/92, p. 15.)

When staff noted that Drogoul was not indicted until 1991, Berry responded, "Well, maybe not the indictment, but after the -- I suppose it was the raid on the bank." (Ibid.) (The raid occurred in early August of 1989.)

Berry recalls faxing some drafts of the letter to Ellen Meltzer and says that the changes he made in the drafts "were not that significant." (Ibid., p. 16.) Meltzer confirms this, noting that she had Berry take out a reference to Mr. McDowell, who had signed the September 1 letter to DIA but was not really involved in the case. (Meltzer, deposition, 11/20/92, p. 77.) Berry did not consult with any other offices in DIA, but did contact NSA and CIA to discuss who should sign the letters. (Ibid., p. 17.)

Preparing the September 17 CIA Letter

Bruce Cooper the author of the September 4 CIA letter, was also involved in coordinating the new, unclassified letter. (Cooper, SSCI hearing, 10/9/92, p. 19.) Although he had drafted the earlier letter, Cooper testified that he believed that the answer to question number eight in the September 4 letter was "incomplete" as a response that would be provided to the public, because the public had not seen the underlying intelligence reports and that he discussed the matter with George Jameson. According to Cooper, Jameson said he agreed that the response was "incomplete." (Cooper, deposition, 10/16/92, p. 33.) Cooper characterized his discussions with Jameson as follows: "My impression from George at that point -- and again, I was not involved in releasing the September 17 letter -- was that there was a concern not that it was incorrect, but that as a public statement to someone who does not have the context, who does not have all the information, who does not -- who is not able to review it, I believe as a public statement it is a lousy public statement and it's misleading." (Cooper, SSCI hearing, 10/9/92, p. 18.) Jameson's testimony was similar: "[W]e began to look back at what had been done earlier, and realized that there was some need

for clarification of the earlier -- the September 4 letter.... [I]t seemed to me that our answer was incomplete and wouldn't it be a good idea to respond a bit more fully than we had the first time in light of what we now knew." (Jameson, SSCI hearing, 10/8/92, pp. 50-51.)

Holmes testified that CIA officials "discussed that back and forth about whether we should change the answer to make it more complete.... [I]n general terms the discussion was, shouldn't we amplify the answer to question 8. Shouldn't we make it more complete." (Holmes, SSCI hearing, pp. 33, 40.)

The matter appears to have been brought to a head late in the day on September 16. An E-mail from Meltzer to Urgenson at 6:00 p.m. reflects that Jameson had not returned Meltzer's call, and Meltzer was having difficulty getting a satisfactory response from the CIA. She suggested "someone higher than me needs to do something." (Meltzer, E-mail, 9/16/92, 6:00 p.m., on file with the Committee)

It appears that Urgenson placed a call to Jameson in response to Meltzer's request, where the matter of releasing an unclassified version of the September 4th letter was discussed.

Jameson Recollections

Jameson testified that he raised with Urgenson during this conversation whether the earlier CIA letter should be clarified: "I asked [Urgenson] if it would be a good idea in his point of view to clarify the answer. It seemed to me that we had some other information and that I was concerned that we not leave the impression that the only thing we have was publicly available information." (Jameson, SSCI hearing, 10/9/92, p. 25.) Jameson later testified, however, that this was "not an especially serious concern" on his part (Jameson, transcript, p. 132).

Jameson testified that in the course of the conversation he and Urgenson discussed the content of specific CIA documents, i.e., the three key reports cited in the Gonzalez summary and the report of October 5, 1989. Urgenson opined that the four reports did not support the analytical comment in the Gonzalez summary and wanted to know CIA's view. According to Jameson, "We discussed the fact that the information fell into a couple of different categories...Our people can't tell looking at what is being reported whether it is legal or illegal." (Jameson, SSCI deposition, 10/16/92, pp. 21-22.)

Jameson explained Urgenson's response in the following terms: "I don't want you to get the wrong impression. Justice did not say don't do it -- it was clear that they preferred -- perhaps strongly advised is the words I've used to Mr. Holmes in the past -- they strongly advised that we not make any changes for what I understood to be two reasons. First, they thought it would be possible at some later point in time to get caught up and confused

by having two different letters answering the same question. But the major reason was Justice felt comfortable with the response. They, as I understood it, had been seeking in the September 4 time frame to know do you have proof. Do you have rock solid proof that the people in Rome were aware of illegalities in Atlanta being engaged in by Drogoul and others. And the Justice Department felt comfortable, I believe, that the Agency information did not provide such rock solid proof. Therefore, after some discussion with Mr. Urgenson and further discussion within the Agency, both within the Office of General Counsel and with people in at least one other component -- our Office of Congressional Affairs -- the decision was made to just simply go with the previous response." (Jameson, SSCI hearing, 10/8/92, pp. 51-52.) Jameson further testified: "I didn't feel that the Justice Department was dictating to us whether we should change it or not. I am not exactly sure what Mr. Urgenson said. My impression was that the preference from the Justice Department was that we just leave it alone, but I didn't interpret that in any way as a mandate." (Jameson, SSCI hearing, 10/9/92, p. 36.)

Jameson explained how he concluded that the answer to question eight was appropriate:

I became persuaded, after getting some briefings and discussions about what went into the 4 September letter, what was in the record before us, what were the documents being discussed, what was the DO view or at least what had been the DO view and the DI view, and the Congressional Affairs Office view in putting together the 4 September letter, about what was available. I became convinced -- oh, and finally, what Justice was asking. I became convinced that the answer was sufficient. And all of the discussions I had at that time were that the question was seeking CIA information on knowledge that Rome knew that -- what the Agency had was speculation...that those activities were illegal.

We had the CIA summary and documents, and the summary -- some of the summary was on the public record and we were working on a public statement and we were trying to get to the Judge in camera to say, look, we have public information, and of course that talks about the investigations and that shows something about BNL-Rome's knowledge. And we have all this classified reporting that doesn't show that Rome knew. If anything, it shows that Rome didn't know. But the better reading is it is inconclusive, we can't really tell, Judge -- you decide.

So it was in the context of our information being at best inconclusive, but in all probability from what we saw and what we were hearing from the Justice Department in light of all kinds of information they apparently had that we didn't have -- and this is what we were hearing from Justice: "We can explain all of that. This does

not talk about illegal activities." Within the building we persuaded ourselves or agreed that the answer was correct and any confusion would best be sorted out in a different way rather than revising the letter. Finally because of the need to get this thing out of the building quickly, and it was evident that we were having trouble getting an unclassified statement coordinated in the building that would have been a more expansive statement. So we sent out the letter in unclassified form and continued to work on a statement. (Jameson, deposition, 10/16/92, pp. 16-17; see also deposition, 11/2/92, pp. 11-15.)

Jameson later noted a concern that if the letter's text had been changed, "we would get into the problems and coordination problems that inevitably would have come about because of the classification, and that that would slow the process down." (Jameson, transcript, 11/17/92, pp. 80-81.)

Jameson elaborated on Urgenson's claim that Justice had independent information undercutting Gonzalez's charges: "[I]t is a sense and I am not absolutely certain of this, but my sense was that Justice was comfortable that this was not information that was referring to knowledge on the part of Rome of illegal activities, that there were a lot of lawful banking activities and they could address the CIA information down in Atlanta; that they had a lot more information available within the Justice Department and that includes Atlanta, than we had at our disposal, but that they couldn't address the Justice Department information at the sentencing hearing in order to respond to the CIA information without being able to address the CIA information specifically, which is why they were saying, look, we really have to be able to get some view on a declassification of your materials or at least a statement so we can try to say publicly why we think it is wrong, or why we think Gonzalez is wrong." Urgenson gave Jameson the impression that, after grand jury proceedings, after having "interviewed an awful lot of people," after having talked to Italian investigators, "they simply had uncovered nothing that showed that BNL-Rome was aware of or had approved the illegal activities of BNL-Atlanta." (Jameson, deposition, 10/16/92, pp. 22-23.)

Jameson also considered the posture of the Drogoul case: "[T]here were some discussions, why would this information make a difference? He has already pled guilty and I didn't fully understand because I hadn't seen the indictment at that point.... And we just weren't thinking in terms of mitigation, because here we were in a sentencing hearing with a guy who had already pled guilty and didn't understand how, looking at the information we had, this was going to help Drogoul at all. The information we had was public speculation, source speculation based on who knows what, not proof, which is the way we understood the question and other information which didn't seem to say anything." (*Ibid.*, pp.

26-27.) Jameson believes that Cooper told him that Justice was looking for "evidence or proof or hard data" as opposed to "speculation." (Jameson, deposition, 11/2/92, pp. 34-35.)

Urgenson Recollections

Urgenson also testified to these discussions with Jameson: "There was a specific discussion of some concerns with question number eight. And I was not certain, frankly as to what the CIA's position was then. If they believed that that answer was inaccurate then they should not have issued it and General Counsel should not have signed it.... There was a concern expressed by Mr. Jameson about answer number eight. And the comment I made to him was -- the Department of Justice is not going to tell the CIA how to answer a question. It would be improper for us to advise you on what an answer should be. What I will tell you is that if answers are changed, one of the things we are going to have to do is explain why it is that you changed your answer in that space of time. That was the entirety of the conversation." (Urgenson, SSCI hearing, 10/9/92, p. 36-38.) He continued, "[T]he CIA never said to me that it was inaccurate and misleading. If they had said it was inaccurate and misleading, there's no way we would have sent the letter and I respectfully submit there's no way the CIA would have signed it. As far as I understand, it may not have been complete, but it was still a fair representation of what their position was. In any event, it was up to the CIA to draft their letter, and they had complete understanding that the purpose of drafting this was to make a more complete public record and a more complete record before Judge Shoob as to what had happened." (Urgenson, SSCI hearing, 10/9/92, p. 40.) He further continued, "Certainly Mr. Jameson mentioned a concern with the letter. I told him, listen, I can't tell you, I'm not going to tell you, it is inappropriate for me to tell you how to draft answers. However, one thing that you should have in mind is that we will be called upon to explain why we changed it. That's it." (Ibid., 10/9/92, p. 50.)

Urgenson subsequently explained to Judge Lacey's investigators that he was concerned that any change from the text of the September 4 letter would give rise to an inference that documents had been altered, that Justice had "doctored the evidence ... decided after the fact to deceive the public and the court with a new answer." (Urgenson, transcript, p. 230.) "I was not interested in getting on the phone and now retrospectively making his answers more accurate and presenting those as the answers that originally had been given. I wanted to present the answers as they had been." (Ibid., pp. 223-24.) The value of the September 4 letter, Urgenson explained, was that it was "the only accurate statement, completely accurate statement, of what the CIA told the Department of Justice. Because the issue -- the relevant issue, as I understood it in this process, was what did the Department of Justice know and when did they know it." (Ibid., p. 218.)

Urgenson also stressed that he had in mind at the time that documents other than the CIA letter would be available to Judge Shoob: "[W]e were sending two documents to the Judge. One is the analytical report which says X, the other is a letter which says Y. The inconsistency screams out from the paper. You would have to be deaf, dumb, blind, and stupid not to appreciate that there was an inconsistency in what the CIA had said to us and what they said to Congressman Gonzalez.... If they were uncomfortable with the letter, they should have changed it. They knew it was going to be publicly released. That's what they were providing it for." (Urgenson, SSCI hearing, 10/9/92, p. 51.)

Mueller testified that he "did not believe" he had been aware of concerns regarding the accuracy of the answer to question eight prior to the matter being raised at the SSCI hearing on October 9. (Mueller, deposition, 12/3/92, p. 90.) According to Mueller, he was not aware of the Urgenson-Jameson conversation about changing the answer to question eight "until much later." (Mueller, transcript, p. 152.)

Approval of the Unclassified CIA Letter

It appears that after his conversation with Urgenson on the evening of September 16th, Jameson decided to send the unclassified letter responding to the 10 questions to Brill in Atlanta. An E-mail from Meltzer to Urgenson at 7:49 p.m. on September 16 notes that Jameson, after failing to reach Urgenson, telephoned Meltzer and said that he "is going to fax Gerrilyn [Brill] the 10 answers first thing in the morning -- there's no one around to sign it tonight." (Meltzer, E-mail, 9/16/92, 7:49 p.m., on file with the Committee)

Jameson met with Holmes at 8:00 a.m. the following morning, where, according to Jameson, "we discussed the pros and cons" of changing the response to question eight (Jameson, SSCI hearing, 10/9/92, p. 26). Holmes may also have discussed question eight with OCA, but he did not discuss it with DCI Gates or DDCI Studeman. (Holmes, SSCI hearing, 10/9/92, p. 27.) Holmes says that when Jameson came to him, "he was comfortable with the response we had given on September 4 to question eight," as was Urgenson. (Holmes, deposition, 11/2/92, pp. 11 and 34.) Holmes then decided the form of the September 17 letter: the Justice Department August 31 questions plus the CIA September 4 answers, with the CIA name trace responses omitted. Holmes added a sentence in the first paragraph, however, that read, "The answers provided herein are taken verbatim from our previous response." According to Holmes, "I said if we're going to stick with that, then let's at least make that clear." (Holmes, deposition, 11/2/92, p. 34.)

Cooper says that he "was floating in and out of meetings in David Holmes's office" in which Holmes and Jameson wrestled with their sense that the answer to question 8 "was incomplete for a non-DOJ recipient." (Cooper, addendum to first deposition and

deposition, 12/11/92, pp. 80-82.)

Holmes testified that the possible public release of the letter was "certainly implicit in the fact that you're sending an unclassified letter," but that the only purpose explicitly stated to him by Justice was "to Ms. Brill for her use in court." (Holmes, deposition, 11/2/92, pp. 9-10.)

In approving the letter, Holmes says, he "stood on the recommendation of the Department of Justice that we remain consistent." (Holmes, SSCI hearing, 10/8/92, p. 45.) According to Holmes, "I think George [Jameson] felt that this was a collegially arrived at decision as between he and Urgenson as opposed to them telling us what to say.... I certainly don't think they leaned on us to go in any particular direction. I think we may have asked their advice, but it never felt forced. I just thought that was a recommendation and we followed it." However, Holmes acknowledged that the Justice position was a factor in CIA's decision. (Holmes, deposition, 10/16/92, p. 21-22.)

Holmes says that the Brady implications of the intelligence reports were not explicitly considered; he was more sensitive to the fact that Christopher Drogoul was alleging CIA knowledge of BNL-Atlanta's activities, which he viewed as a common strategy attempted by criminal defendants. (Holmes, deposition, 11/2/92, pp. 30-31 and 35.) Jameson says that there was discussion of the fact that Drogoul was in a sentencing hearing, as opposed to a trial, and that "I understood that the judge wanted to see the information." But there was no explicit discussion of the Brady rule or of a CIA obligation to produce relevant material." (Jameson, deposition, 11/2/92, pp. 38-41.) Neither Holmes nor Jameson was aware of the Peter Clark's September 8 memorandum advising Ms. Brill to state that the Government had no evidence "of the illegality of BNL-Atlanta's activities" before July 1989, or of Ms. Brill's adoption of that language in a September 10 letter to Mr. Drogoul's attorneys. (Holmes, deposition, 11/2/92, pp. 39-40; Jameson, deposition, 11/2/92, pp. 17-18 and 38.)

According to Holmes, the decision to sign off on the September 17 letter was not cleared outside of OGC: "I don't remember any conversations on -- with any senior officials on whether we should change the answer to question 8 to put it in the September 17th letter. I think I will take the responsibility for the decision not to change the answer based on my discussion with Mr. Jameson. I did not take that question elsewhere." (Holmes, SSCI hearing, 10/9/92, p. 28; Holmes, deposition, 10/16/92, p. 22-23.) General Counsel Rindskopf, who was traveling abroad, was also not consulted, even though she did receive a cable from CIA that day on an unrelated issue. (Rindskopf, deposition, 12/1/92, p. 31.)

Holmes viewed the September 17 letter as a continuation of OGC's legal work: "And we, as a matter of practice, don't deal with the DCI on legal questions." (Holmes, deposition, 11/2/92,

p. 22; see also p. 8.) Holmes felt that declassification of the questions and answers from the classified September 1 letter required no approvals outside the office, since that portion had been unclassified in the earlier letter. (Ibid., p. 28.)

Jameson testified, however, that officials outside OGC may have discussed the answer to question eight with him, "in the context of preparing a public statement...." One was Page Moffett, CIA Deputy Director of Congressional Affairs: "I don't specifically recall whether in talking with Mr. Moffett he said he thought the answer was inadequate or misleading or incomplete ... or incorrect, but I do recall that we did have a discussion about the need for greater clarity in the public statement to make sure that we were being as accurate as we possibly could." But Jameson notes that he went away with the sense that although Moffett considered the September 4 answer to question #8 "too cute," he agreed it was "not incorrect.... So, I took that into account and felt comfortable that it was a correct answer...." (Jameson, transcript, p. 140.) Jameson believes that Holmes and he discussed Mr. Moffett's concerns on September 17, but says, "I have a sense that Mr. Holmes was prepared to dismiss Mr. Moffett's concerns at that time" (Jameson, deposition, 11/2/92, p. 20.)

Jameson also recalled the letter had been discussed with a DO official who "expressed a concern that the [September 4 letter] had not been fully coordinated within the DO by the Office of General Counsel. And that if it had been properly been and fully coordinated, the answer might not have been the same. It might have been more complete. At the time that the 4 September letter was written." (Jameson, deposition, 10/16/92, pp. 64-65.)

Holmes testified that, at the time he approved the September 17 letter, "I was not sure that we were going to be able to get anything out in terms of a public statement" because of some in CIA were strongly opposed to it, although Holmes felt personally that it might be appropriate under the circumstances. (Holmes, deposition, 10/16/92, pp. 24-25.) Holmes recalled that "Mr. Gates did not favor a broad public statement for public statements' sake either. He told me that he didn't want to do a public statement on this case just as a press release. He thought that anything in that regard should be done by the Department of Justice." Holmes believes that this exchange "must have occurred at the [CIA] executive breakfast on the 16th...." (Holmes, deposition, 11/2/92, p. 22.) Gates also expressed a wish to help the Justice Department if they could, but Holmes says that that did not influence his decision on the September 17 letter: "I think that what I was thinking about in connection with the Director's statement had only to do with the press statement, not with this letter." (Ibid., p. 68.) Thus Holmes declined to state that the reason he accepted the answer to question eight was because another public statement was forthcoming. (Holmes, deposition, 10/16/92, p. 24.)

Jameson, however, stated that the "fact that we were going to put up a public statement" and otherwise provide information to Judge Shoob did have "some influence" on the decision to repeat verbatim the answer to question eight; "We -- I felt satisfied that the -- whatever clarifications would be made, would in fact ... -- whatever might need to be made or arguably should be made, would in fact be made if not that same day, the next day, very contemporaneously. So that it seemed like no harm." (Jameson, deposition, 10/16/92, p. 19; see also deposition, 11/2/92, p. 23.)

At 8:55 on the morning of September 17, Cooper faxed to Urgenson the signed letter.

Moffett and Stanley Moskowitz, the CIA Director of Congressional Affairs, testified that they did not know about the release of the September 17 letter until September 21. (Moffett, deposition, 10/19/92, p. 14; Moskowitz, deposition, 10/19/92, p. 3.) Nor does it appear that other CIA offices were consulted.

DCI Gates testified, "I don't remember seeing the letter of the 17th before it was sent, and neither does anyone in my office.... Dave Holmes did call me, I think in the early evening of the 17th, to tell me that there was this letter. I think it had already gone, but in essence just advising me that it was being sent. I regarded -- even though there had been a lot in the newspapers and so on -- I regarded a communication between OGC and the Justice Department in terms of Agency support for ongoing litigation frankly to be a not extraordinary thing." (Gates, deposition, 10/30/92, p. 7.) Holmes does not recall making such a phone call. (Holmes, deposition, 11/2/92, p. 47.) Gates also testified that he has never seen the September 4 letter on which the September 17 letter was based. (Gates, deposition, 10/30/92, p. 8.)

John Rizzo of OGC recalls that Mueller called him "the evening of Thursday, September 17th to advise me that the 17 September letter had been introduced in court in Atlanta. Press was being given access to it there and ... Washington Justice wanted to release it locally." He adds: "That was the first time I knew that there was a 17 September letter." Rizzo gave Mueller the go-ahead for Justice to release the letter in Washington. (Rizzo, deposition, 12/17/92, pp. 19 and 31-32.)

Holmes recalled that John Rizzo had subsequently advised him of the conversation with Mueller and of Justice's intention to make the letter public. So Holmes gave the CIA Public Affairs Office a copy of the letter for their use in the event of press inquiries. (Holmes, deposition, 11/2/92, pp. 57-58.)

Brill told the OIC that she thought that the September 17 letter "was released from Washington" and that the Atlanta prosecutors learned of its release "from reading about it in the newspaper." She said it was possible that someone in her office was consulted prior to the letter's public release but that she

did not recall being consulted. (Brill, transcript, p. 155.)

On the evening of September 18, Justice provided the letter to the news media. The decision to make the letter public was described by Urgenson as follows: "It was a decision which I certainly agreed with, and I made it in consultation with the Assistant Attorney General, Mr. Mueller, who was advised as to what it was we intended to do." (Urgenson, SSCI hearing, 10/9/92, p. 44.) Mueller testified that he did not think he had participated in discussions "probably between Urgenson and others" as to whether the letter would go to the media. However, Mueller testified that either he or Urgenson gave the letter to the Justice Department press office; Mueller did not recall doing so but "might have." (Mueller, deposition, 12/3/92, p. 103-04.)

Public Actions -- September 16-17

At the sentencing hearing on September 16, Brill made a continuing objection, on relevance grounds, to evidence that BNL-Rome knew about the illegal loans, in light of the fact that Drogoul had pled guilty. Shoob responded that he considered such evidence relevant to the sentence. (Transcript, United States v. Drogoul (N.D. Ga.) (hereinafter "court transcript"), pp. 366-67) Gale McKenzie argued to the court that intelligence reports, even if discussed by Gonzalez and in the press, could not be discussed in court unless declassified. (Ibid., 386.)

Arthur Wade, in his third day of testimony, stated, under questioning by Judge Shoob, that the intelligence information he had reviewed "confirmed" the Government's theory that no one in BNL-Rome knew of the illegal actions. Pressed by Judge Shoob as to whether any of the intelligence reports indicated otherwise, however, Wade stated, "There were suppositions and speculations in some [reports]" similar to allegations made in the press. Wade testified that these allegations "were pursued." Wade also assured the court that the Intelligence Community had been questioned and that the Community did not approve or know of the illegal activities at BNL-Atlanta. (Ibid., 384-91.)

In court on September 17, Cook sought to establish that a supplier of machine tools for Iraq, RD&D Corporation of Vienna, Virginia, was a CIA front company and that the company head, Dale Toler, was formerly with NSA. Wade denied that RD&D was a CIA front. When Cook asked if Toler was with NSA, McKenzie objected, stating, "It's against the law to answer questions of that nature." She further argued that whether an individual is a "CIA agent" could not be disclosed without using CIPA. (Ibid., 543.)

Toward the end of the proceedings on September 17, Drogoul moved to withdraw his guilty plea. The prosecutors stated that they were likely to oppose the motion, and Judge Shoob said that it was unlikely that he would grant it and that he would continue the sentencing proceedings while the motion was pending. Shoob

gave the prosecutors until Monday, September 21, to file a brief in opposition to Drogoul's motion. (Ibid., 601-612.)

Meanwhile, the CBS television program "60 Minutes" was preparing a piece on the Drogoul case and seeking to interview Justice officials. On September 15 Brill had been asked by Main Justice to submit to an on-camera interview with "60 Minutes," and she did so on September 17. (Brill, transcript, p. 133.) According to Mueller, the decision that Brill would appear on "60 Minutes" was made by Paul McNulty, Director of the Justice Department Office of Policy and Communications "in consultation with others in the AG's office." (Mueller, deposition, 12/3/92, p. 87.)

Urgenson recalled that Brill prepared for her discussion with "60 Minutes," and particularly what she would say about the CIA information issue, by consulting with him and perhaps Mark Richard and "the CIPA people": "The issue was, can you say that the content of [intelligence reports] is inconsistent with something without improperly commenting on [their] content. And I think the advice she got was you can do that." Brill's "final consultation," according to Urgenson, was with Mueller. (Urgenson, deposition, p. 126.) Brill testified that Urgenson provided her with a few questions and answers and that a Main Justice public affairs official came to Atlanta to prepare her "but his help was not really substantive, since he didn't know anything about the case. It was more on matters of style." (Brill, transcript, p. 162.)

(When the "60 Minutes" piece aired on Sunday, September 20, it included Brill stating, "The intelligence agencies have advised me that they did not know contemporaneously that Christopher Drogoul was making unauthorized loans to Iraq." ("60 Minutes" transcript, on file with Committee.) Although it was not used in the piece, Brill also recalls telling the interviewer that "higher-ups at BNL -- people higher up than Christopher Drogoul were not criminally involved." (Brill, transcript, p. 160.))

The Decision to Draft a Public Statement

At the same time that discussions on the September 17 CIA letter were occurring, a parallel, sometimes interacting, series of discussions were taking place concerning a request by Justice that CIA make a public statement separate from the September 17 letter but dealing with essentially the same matters.

On September 15, Mueller called Holmes requesting that CIA provide a public statement or press release addressing public allegations raised by Gonzalez and expected to be raised by the upcoming "60 Minutes" report. Holmes testified that Justice officials "were feeling themselves under an enormous amount of pressure and wanted help in resolving it." (Holmes, SSCI hearing, 10/9/92, p. 34.) "And I remember Bob Mueller saying -- he was in

a very angry tone, that we needed them to help. He had interviews -- and I remember he ticked them off; he said I have got 60 Minutes, I have got Time Magazine, and I have got the Washington Post asking me a lot of questions and you have got to help us with a press statement." (Holmes, deposition, 10/16/92, p. 9.)

Mueller testified that, despite the anticipated release -- and later the actual release -- of an unclassified letter, Justice still sought a separate public statement to address more directly the inconsistency raised by the analytical comment in the Gonzalez summary. (Mueller, transcript, p. 148.)

Brill testified that she did not recall the Atlanta prosecutors ever asking Main Justice for such a public statement from CIA. (Brill, transcript, p. 164.)

On September 16, there was a regularly-scheduled executive breakfast for top CIA officials. Studeman raised the BNL matter, recounting his conversation with Mueller and asking Holmes to "validate" for those present Studeman's understanding of what was contained in the four reports. Justice's request for a public statement was also discussed. (Studeman, deposition, 10/19/92, pp. 12-13.) Studeman could not recall whether those at the table spoke negatively about the idea of a public statement. (Ibid.) But Moskowitz testified that "the reaction around the table was that we did not want to put out a public statement." (Moskowitz, SSCI deposition, 10/19/92, pp. 4-5.)

CIA Deputy Director for Intelligence John Helgerson recalls, however, that the conclusion was "we ought to continue to talk with Justice to see if there was something that we should or could reasonably do to help keep the overall record set straight on this BNL issue which was coming to bedevil us at least in a public relations respect in a number of ways." (Helgerson, deposition, 10/30/92, p. 20.)

Holmes's recollection was that at the breakfast DCI Gates expressed the view that CIA should assist Justice, but that any public statement should be issued by Justice, not CIA. (Holmes, deposition, 11/2/92, pp. 22, 25, 68.) Gates did not recall having discussed this matter at the breakfast. (Gates, deposition, 10/30/92, p. 15.)

Jameson recalls that "I turned to Bruce Cooper" to get the material underlying the Gonzalez statement. (Jameson, OIC deposition, 11/17/92, pp. 113 and 115.) Jameson also recalls coming to the general, although not firm, conclusion that the analyst's comment in the 1991 summary was not supported by the underlying intelligence reports -- but then deciding that maybe it did somehow support Gonzalez's point about BNL-Rome knowledge. (Jameson, transcript, pp. 116-118 and 120-122.)

The efforts to declassify documents, which apparently were undertaken in response to calls from Meltzer at Justice to Jameson

at OGC, failed after Jameson brought them to the DO, which opposed such efforts, and they "died." (Meltzer, deposition, 11/20/92, p. 30; Cooper, deposition, 10/16/92, p. 26.)

At 6:00 p.m. on September 16, Meltzer sent Urgenson an e-mail reporting that Jameson had called her about 3:00 p.m. and "said that the declassification issue had been bucked to the Director. He wasn't especially hopeful, and said it hadn't been declassified for [Gonzalez]." Meltzer told Urgenson, "Someone higher than me needs to do something." (Meltzer e-mail, 9/16/92, 6:00 p.m. on file with Committee.) In a 7:49 p.m. E-mail message to Urgenson, Meltzer reported that Jameson said the chances of declassifying the key paragraphs of the Gonzalez report were "dismal" and that Jameson would have a final answer by 10:00 a.m. the next day. (Meltzer e-mail, 9/16/92, 7:49 p.m. on file with Committee.)

On September 16 or 17, Jameson proposed to Urgenson that Justice draft its own statement and send it to CIA for approval, because CIA was having difficulty drafting a statement and determining from the reports "what is legal or illegal." Urgenson responded that Justice wanted the CIA's own judgment as to the meaning of its information. (Jameson, deposition, 10/16/92, p. 36.)

CIA Staffing of the Draft Public Statement

Over the course of September 16-18, CIA staff labored intensely, albeit chaotically, to produce the public statement requested by Justice. It appears that at least nine or ten versions of such a statement were prepared and circulated during this three-day period, not always by the same office.

Cooper of OGC and an OCA contract annuitant worked together on several efforts in response to Justice's request: "[We] worked on declassifying the summaries. We also worked on the possibility of declassifying the underlying [intelligence reports] for the summaries. We worked on probably nine or ten different public statements. None of which went anywhere. We started off with very long public statements and ended up with I think eight or nine line statement, that was eventually given to Justice." (Cooper, deposition, 10/16/92, p. 24.) These tasks were assigned, according to Cooper, by Holmes or "someone in my chain of command." (Ibid., p. 25.)

One version of a statement rebutting Gonzalez's claims "died," although Cooper did not know whether it was Jameson or the DO that killed it. (Ibid., p. 27-28.) At some point, according to Cooper, some officials were suggesting using in the public statement the language used in the answer to question eight from the September 4 (and September 17) letter; Page Moffett, according to Cooper, objected. (Ibid., p. 29.) Cooper recalled: "But there were a lot of different public statements floating around. And I think everybody basically was writing one: And I would write one and send it out. And they send it back and make it longer, make it

shorter. We want this, we want that. So I had my file here has about nine or ten different versions." (Ibid., p. 29.)

Rizzo remembers that Cooper's first draft essentially used the question eight answer. Rizzo, whom Cooper had given the analytical summary and underlying intelligence reports, felt that "we should...clarify and not merely repeat the previous response," and gave either Holmes or Jameson his edits of Cooper's draft. (Rizzo, deposition, 12/17/92, pp. 20-21) Jameson reacted similarly and made his own, more substantial edits.

Moffett produced from his files a draft public statement that "appeared on [his] desk" on either September 16 or 17. (Moffett, SSCI deposition, 10/19/92, p. 6.) The statement offered the following general conclusion: "Despite Congressman Gonzalez' remark that CIA's summary is in 'direct conflict' with the Department of Justice's prosecutorial theory of BNL/Atlanta as a rogue operation, there is no such conflict." It then sought to rebut Gonzalez's specific conclusions one-by-one. One of the proposed responses provided:

"CIA has no intelligence information indicating the specific nature of these activities and no intelligence information that BNL-Rome officials were aware of illegal activities of BNL-Atlanta."

Moffett testified that he was concerned with this particular response, considering it "misleading." Moffett testified that he walked into Moskowitz's office and said "this answer is misleading and there's no way we can put this out to the public. And he looked at it and agreed that it was." (Moffett, deposition, 10/19/92, pp. 11-12.) Moskowitz's account of these events is similar. (Moskowitz, deposition, 10/19/92, p. 11-12.)

Moffett called Cooper and objected both to the idea of putting out a public statement and to the misleading nature of the draft. Cooper replied that the underlying documents did not reflect that BNL-Rome knew that the loans were illegal. Moffett replied that he understood the distinction but that the distinction was too technical and the public would not understand it. Moffett then raised the same concerns with Rizzo, and then again at OGC with Jameson and Cooper. According to Moffett, Jameson agreed that the text relating to BNL-Rome's knowledge was "too cute by half." Although Cooper continued to argue that the text was responsive to Justice's request, Moffett left the meeting "thinking that matter had been settled." (Moffett, deposition, 10/19/92, p. 13-17.) David Holmes recalls that he was made aware of both Moffett's and Moskowitz's concerns. (Holmes, deposition, 11/2/92, p. 6.)

Holmes, Rizzo and Jameson ultimately produced, on September 16 or 17, an OGC draft that Cooper was told to coordinate with other offices. Meltzer says that as of the night of September 16, Jameson told her that he envisioned the public statement to be

something akin to an apology, what she described in an e-mail to Urgenson that evening as "a mea culpa statement." (Meltzer, deposition, 11/20/92, p. 36; Meltzer e-mail, 9/16/92, 7:49 p.m., on file with Committee.)

A division chief in the DI recalled that on the 16th or 17th Bruce Cooper invited him and others to a meeting to discuss the OGC draft. Once he saw the Gonzalez statement and the underlying DI summary of DO reports, he argued, "why should we leap into the middle of this?" His sense was that OGC simply wanted to be helpful to their fellow lawyers at Justice. (DI division chief, deposition, 10/30/92, pp. 16-17.) The division chief briefed his immediate superior on the meeting, and then Helgerson, who told him that if a statement became unavoidable, he should make sure it was "accurate and sensible." (DI division chief, deposition, 10/30/92, p. 18.)

Helgerson says that he spoke directly with Holmes to ask whether a joint statement was "foreordained," and was told that it was not, but that OGC and the Justice Department both believed it would be useful if one could be drafted. Helgerson had already ascertained that the DO had reservations about a joint statement, but he agreed to a good faith effort to craft one. (Helgerson, deposition, 10/30/92, p. 6.)

The DI division chief later received various drafts of the statement. He remembers opposing one that "attacked the veracity of Congressman Gonzalez's statement" as not making sense. After phone conversations on other drafts, "finally I went over to George Jameson's office, and Bruce [Cooper] was in there, and we came up with another draft." The division chief also pressed OGC to consult with DO, since the intelligence reports underlying the summary for Gonzalez were DO products. (DI division chief, deposition, 10/30/92, p. 19.)

A DO officer involved in this process recalled: "There were a whole series of drafts that would be run up the flagpole, so to speak, and it was a very, very contentious issue." (DO officer, deposition, 10/19/92, p. 10.) He recalled that OGC argued that CIA was obligated to assist Justice, while the DO was concerned that CIA avoid putting a "spin" on its information, rather than simply providing it "in an unbiased way." (DO officer, deposition, 10/19/92, p. 11.)

Holmes recalled that he had told Mueller probably on September 16 that CIA would not issue a public statement or press release on its own letterhead, on the ground that it was not "normal" for CIA to comment on pending litigation. Holmes conveyed to Mueller that CIA could assist Justice with information for the litigation "but we cannot help you with your public relations." Mueller, according to Holmes, "was not happy with that answer." (Holmes, deposition, 10/16/92, p. 9.) According to Holmes, "what I told Mr. Mueller on a couple of occasions which

also was not happily received, was that we thought our job was to help them in any way we could with the case, but not with a public relations campaign." (Holmes, SSCI hearing, 10/9/92, p. 30.)

On the evening of September 17, Mueller called CIA OGC again. On this occasion, Holmes was out of the office, and Mueller spoke to John Rizzo. He asked if CIA was planning to issue a press release, and Rizzo indicated that CIA was not: "What apparently he did not know until I told him that we never intended ourselves to issue this public statement, that this was something we would prepare with language we could live with and provide to Justice so that they could issue it." Mueller, according to Rizzo, became "irate." Mueller told Rizzo that "his department had been taking a tremendous beating on this issue and that -- and that we bore some responsibility for that, and that we needed to -- that he wanted us to support them.... he wanted the agency to demonstrate a public ... showing of support of -- for the Department, and also to help knock down the Gonzalez charges." Mueller "wanted CIA to strongly deny the allegations that Gonzalez had made in his September 14th press release and support the Justice Department prosecutorial theory of the case.... I believe the thrust of the Gonzalez statement was that CIA had information that contradicted the Justice Department prosecutorial theory of the case that BNL-Atlanta was a rogue operation. That is essentially what he wanted us to deny." (Rizzo, SSCI hearing, 10/9/92, pp. 43-44; Rizzo, deposition, 10/16/92, p. 5-8; 12/17/92, pp. 23-24.)

In the conversation, Rizzo did not discuss specifically any of the relevant intelligence reports: "It was a brief conversation and dominated by [Mueller]. He essentially was very adamant that he wanted us to issue a public statement to accompany the release of the letter. He also asked strongly that we ourselves also release the Justice Department letter from our public affairs office. And I declined to do that as well." (Rizzo, deposition, 10/16/92, p. 8.) In opposing a public statement, Rizzo "was primarily concerned with the principle of the thing, the whole concept of us getting this -- interjecting ourselves so aggressively in a matter of this kind." (Ibid.)

Notwithstanding the angry reaction at Justice to learning that CIA did not intend to issue a public statement of its own, CIA continued its efforts the following day to produce a public statement which could be issued by the Department of Justice.

In the morning of September 18, DI analyst #1, who had drafted the analytical comments accompanying the Gonzalez summary, and her division chief, met with OGC attorneys Cooper and Jameson to discuss the latest OGC draft. (Analyst #1, deposition, 10/30/92, p. 22) Jameson recalled that during this meeting, the analyst acknowledged that she should have written her 1991 analytic comment more clearly and that she should not have attempted to distinguish between legal and illegal activities. (Jameson, transcript. 11/17/92, pp. 122-123, 125-126)

In the afternoon of September 18, the DI division chief took the latest draft of the statement which had been worked out in the morning meeting to Helgerson. Helgerson recalled that he had been concerned with a portion of the draft statement which said: "the [Justice] Department believes that neither the summary nor the reports conclude whether BNL-Rome was aware that BNL-Atlanta was engaged in illegal activities and that the CIA information does not conflict with the prosecutions theory of the case." Helgerson said he felt the second part of the statement was beyond CIA's purview, and that the first half "could be misconstrued and even if not misconstrued was misleading as stated..." Helgerson noted that although the intelligence reporting probably could not demonstrate knowledge of illegal activities, "it clearly left the analysts in the DI with rather little doubt that BNL-Rome indeed did know a lot or a fair amount, or exactly how much we didn't know." So Helgerson indicated his disapproval of this draft and suggested deleting the words "conclude whether" and replace them with the phrase "permit the definitive conclusion that..." (Helgerson, deposition, 10/30/92, pp. 9-11)

Helgerson said that after the meeting, he called Holmes to emphasize the need to have the DCI approve any statement. (Ibid., p. 7) Holmes recalled receiving a call from Helgerson in which Helgerson advised him of the change he had suggested. Holmes said he agreed with the change. (Holmes, deposition, 10/16/92, pp. 13-14)

His meeting with Helgerson completed, the DI division chief recalled that he was leaving Helgerson's office, when he bumped into Cooper who was taking copies of the latest OGC draft to the DO and to Gates' Special Assistant. He gave Cooper a copy of the new version with Helgerson's change. (DI division chief, deposition, 10/30/92, pp. 19-20)

Holmes and Rizzo waited in the OGC offices for word that DCI Gates was available to discuss the statement. Meanwhile, Gates was discussing with the Associate Deputy Director for Operations (ADDO) the draft statement, which, at this point reflected Helgerson's changes. Following the meeting, the DCI's Special Assistant called OGC and, according to Holmes, "said, well, they've discussed it and this is what we can say. This is as much as the Director will allow us to say, or give to Justice to say is the most accurate way to put it." (Holmes, deposition, 10/16/92, pp. 14-15 and 43; transcript, pp. 121-123; Rizzo, deposition, 12/17/92, pp. 26-27.)

DCI Gates placed his meeting with the ADDO at around 6:00 or 6:30 on the 18th. "I told them that we would not issue a press statement; that on a matter under litigation, we had not issued press statements and weren't going to start." Gates recalled that he "took out a paragraph that characterized something on the Hill and I think I took out a sentence that characterized our relationship with Justice, and said essentially that if Justice wanted to issue a statement, that was their business, but for what

it was worth that I thought it ought to focus on the facts and simply draw people back to the documents without trying to characterize things." He added that Justice's strong desire for a CIA statement was noted to him, but that he replied that "we are not going to do it and if they don't like that answer they can have Barr give me a call. And I never got that call." (Gates, deposition, 10/30/92, pp. 5-6.)

The final version of the public statement, dated 18 September 1992, read as follows:

The Department has reviewed the CIA summary provided to Congressman Gonzalez, as well as the underlying intelligence reports. The Department believes that neither the summary nor the reports permit the definitive conclusion that BNL-Rome was aware that BNL-Atlanta was engaged in illegal activities and further believes that the CIA information does not conflict with the prosecution's theory of the case. Both the Justice Department and the CIA are prepared to have Judge Shoob review the relevant materials, which we believe will speak for themselves. (Statement on file with the Committee)

Reaction by Justice

With Rizzo in the room, Holmes informed Mueller by telephone that CIA had prepared a draft public statement that would describe CIA information but would be issued not by CIA but by the Justice Department. (Holmes, SSCI deposition, 10/16/92, pp. 44-45.) Mueller "was very brusque and said, send it over." Rizzo said Mueller had been "calling regularly and saying 'where the hell is it,' or words to that effect. And it was hard to believe, I think, for him, that it would take us three days to get two paragraphs coordinated in our building." (Holmes, deposition, 10/16/92, pp. 9-10.)

Mueller and Urgenson received the statement and felt "disappointed." Mueller believed the statement failed to resolve the contradiction between the Gonzalez analytical conclusion and other statements made by CIA on the issue of BNL-Rome's knowledge. Moreover, Mueller felt that the sentence using the phrase "definitive conclusion" seemed to "present the picture of CIA having significant information that BNL-Rome was aware of BNL-Atlanta, and I did not see it in the [intelligence reports] that they had presented in support of that analytical conclusion." (Mueller, deposition, 12/3/92, pp. 94-95.)

According to Holmes, when he arrived home there was a message from Mueller. Holmes immediately returned the call, and Mueller described the proposed statement as "laughable." (Holmes, SSCI hearing, 10/9/92, p. 33; Holmes, deposition, 10/16/92, p. 16.) Holmes elaborated: "I think that he was frustrated that after two or three days of waiting for a statement, he got such a short one.

I think that was probably his point." (Holmes, SSCI hearing, 10/9/92, pp. 34-35.) Mueller "was still very angry." (Holmes, deposition, 10/16/92, p. 29.)

Holmes also recalled that at some point Mueller told him that DCI Gates might get a call on this matter, and Holmes responded that "this is the Director's view, and so he's aware of it. And then I never heard any more about anybody trumping us by calling the Director." (Holmes, deposition, 10/9/92, p. 49.)

Mueller recalled that Holmes was "very apologetic" and suggested to Mueller that the statement was the best he could obtain. According to Mueller, Holmes also mentioned that the statement had been cleared by Gates. (Mueller, deposition, 12/3/92, p. 96.)

Jameson had spoken on September 16 with Meltzer and perhaps Urgenson about the need to introduce CIPA procedures in the Atlanta proceedings. He told Fraud Section personnel to speak with the Internal Security Section, and he himself spoke with security personnel at Main Justice regarding the Atlanta situation. (Jameson, transcript, pp. 141-143.) On the 18th CIA/OGC again conveyed an offer to Justice to meet with Judge Shoob in camera "and let the documents speak for themselves." (Jameson, SSCI hearing, 10/8/92, p. 57.)

SECTION 6. EVENTS OF SEPTEMBER 21-OCTOBER 1, 1992

Meeting at Justice on September 21

Prompted by a call from Mueller on Saturday, September 19, 1992, Urgenson called Jameson the following Monday to discuss the situation as it had been left the previous week. (Urgenson, deposition, 11/24/92, p. 124)

According to Jameson, Urgenson told him that Justice had, in fact, released a public statement over the weekend with the first and last sentences of the public statement proposed by CIA the previous Friday, but had not released the second sentence which provided that Justice "believes that neither the summary nor the reports permit a definitive conclusion that BNL-Rome was aware that BNL-Atlanta was engaged in illegal activities, and further believes that the CIA information does not conflict with the prosecution's theory of the case." (Jameson, deposition, 10/16/92, p. 34)

Jameson said that "I believe he [Urgenson] indicated to me that it was very important for the Justice Department to know whether CIA's position [on this point] was in conflict. And at one point I said to him, why don't you just draft your own statement and we will take a look at it and see if we can go along with it...And he said, well...my sense was, we want your independent judgment on what does your information show, what is your position, and it is very important we know if there really is a conflict." (Jameson, deposition, 10/16/92, pp. 35-36)

To resolve the matter, Urgenson requested a meeting with CIA representatives at 2:00 p.m. on Monday afternoon. (Urgenson, deposition, 11/24/92, p. 124) In attendance from Justice were Urgenson, Clark and Meltzer; from CIA, Jameson, Cooper, the OCA contract annuitant, two DO officers, the DI division chief, and DI analysts #1 and #2. (CIA Memo for Record, 23 September 1992, on file with the Committee) According to Jameson, Urgenson, who chaired the meeting, was "calm and low-key throughout." (Jameson, deposition, 10/16/92, p. 35) Cooper testified that the Justice representatives "were a little annoyed, but it wasn't obvious hostility." (Cooper, deposition, 10/16/92, p. 41)

The meeting apparently had two principal purposes. The first was to ascertain whether Gonzalez had had access to CIA information which had not been made available to Justice, and, if so, to make arrangements for sharing this information with Justice. The contract annuitant recalled that the meeting began by Justice representatives saying "they were not pleased that the Banking Committee had information that Justice didn't have. And at that point everyone turned to Bruce Cooper [who had served as point of contact with

Justice] and said, I thought they had it. And he said, he thought they had it, too, but he wasn't sure." (OCA contract annuitant, deposition, 10/19/92, p. 30) Cooper then explained that Gonzalez' staff had been permitted to take notes on certain DI material that had not been made available to Justice. Arrangements were then made to have DoJ staff briefed on these reports. (CIA Memo for Record, 23 September 1992, on file with the Committee; OCA contract annuitant deposition, 10/19/92, pp. 30-35; Analyst #2 deposition, 10/30/92, p. 18)

The second purpose (identified in a CIA memo of the meeting as the "principal" purpose) was to "seek a more definitive statement by CIA than that authorized by the DCI on 18 September." (CIA Memo for Record, 23 September 1992, on file with the Committee) In this regard, two matters appear to have been addressed at the meeting.

The Analytical Comment on the Summaries Furnished Gonzalez

Urgenson focused first upon the wording of the analytical comment at the end of the summary prepared in October, 1991, for Congressman Gonzalez. Jameson explained that "Justice was uncomfortable with the language that it had received only late in the day or evening of the 18th that said [Justice believes] CIA information does not permit a definitive conclusion...They had been hoping for a much stronger statement that says 'there is nothing in the files that can be read in any way'...they wanted to pursue with the analyst...how to characterize [CIA's information]." Jameson went on to explain that the reason Justice wanted to have this discussion was "in prepping for an approach to the Judge" later in the week. (Jameson, deposition, 10/16/92, pp. 29-30)

At the meeting itself, according to one of the DO representatives, Urgenson stated that "he had the summary [given to Gonzalez] but also the intelligence reports that contributed to it. And, as we read the individual intelligence reports...we are not sure that they form the basis for the analytical comment." (DO officer, deposition, 10/19/92, p. 21; Analyst #1, deposition, 10/30/92, p. 25)

Analyst #1, who had written the analytical comment, said she explained, "What I meant was these sources [the DO intelligence reports] were additional information that indicated that they [BNL-Rome] knew...In retrospect, perhaps I should have said, this 'apparently confirms' or 'appears to confirm' or 'corroborates'. But we in the Intelligence Community regularly use the word 'confirm' to mean...corroborate." She acknowledged at the meeting that if she had had to do it over again, she would have "softened" her comment, "but not changed it." (Analyst #1, deposition, 10/30/92, pp. 12, 25)

According to the DO officer's memo of the meeting, the analyst stated that in retrospect she had "used imprecise wording and that the reports in question do not impute Rome knowledge of Atlanta's activities at a specific time." (CIA Memo for Record, 23 September 1992, on file with the Committee; see also DO officer, deposition, 10/19/92, p. 22)

Meltzer testified that the analyst "basically ... couldn't explain why" she had reached her analytical conclusion. According to Meltzer, the analyst said that "'confirmed' only means 'lends credence to' and nothing more than that." (Meltzer, deposition, 11/20/92, p. 42.) Notes taken by Jameson at the meeting indicate that the analyst said she "meant [the CIA reporting] 'lends credence to' [the] public reports." (Notes of Jameson, 9/21/92, on file with the Committee)

According to Meltzer, no one at the meeting was "trying to get the CIA to change their analysis. We were trying to understand it." (Meltzer, deposition, 11/20/92, p. 45.) Urgenson concluded that the CIA analysts "evaded the problem by torturing the language." (Urgenson, transcript, p. 250.)

The DO officer recalled that the analyst's boss commented at this point that "it was a very hectic period and that perhaps insufficient attention was paid to the analytical comment when it was drafted." (DO officer, deposition, 10/19/91, p. 22)

In any case, according to the DO officer's memo of the meeting, "Jameson said OK, the [DI division chief] concurred, and the retraction satisfied Justice." (CIA Memo for Record, 23 September 1992, on file with the Committee) The analyst herself did not regard her comments as a "retraction": "I want to stress that the way I left the meeting that I did not back away from what I had said. My recollection was I had said, yeah, maybe in retrospect, I should have said 'appears to corroborate,' but did not at all retract what I said." (Analyst #1, deposition, 10/30/92, p. 28)

According to analyst #2, the Justice representatives "were not happy with what they heard, but they did not pursue the point. They had just unhappy expressions on their faces." (Analyst #2, deposition, 10/30/92, p. 21)

According to Meltzer, "There was certainly a consensus at the meeting from my point of view that the Gonzalez statement went further than it should have; that there were conclusions in there that went further than the underlying [intelligence reports]. The issue of what can we do about it, what is the CIA going to do about it, should the CIA put out a statement, what should happen, was not resolved." (Meltzer, deposition, 11/20/92, pp. 43-44.)

According to Jameson, Brill did not raise the matter of the September 17th CIA letter, which had been sent to her the previous week, or, in particular, the answer to question 8. (Jameson, deposition, 10/16/92, p. 39) Others at the meeting also recalled no discussion of the September 17 letter. (DI division chief, deposition, 10/30/92, p. 33) Urgenson noted that no one at the meeting from CIA voiced any misgivings about the September 17 letter: "[W]hen we met with them on Monday, after this had been released and in the newspapers, Jameson was there, the CIA analysts were there, there were people from the General Counsel's office. There were eight people from the CIA. Nobody said, Larry, anything was wrong, they had any problem, or there was another document required to be put out to correct anything. Nobody was comfortable with anything that was said until Congress began to ask them questions." (Urgenson, OIC transcript, p. 235.)

Notwithstanding this testimony, Meltzer's notes of the meeting contained a line which read "Q8 is inconsistent w/ CIA summary." (Meltzer notes, 9/21/92, p. 2, on file with the Committee) It is impossible to ascertain whether this notation reflected her thoughts at the time or a discussion among the participants at the meeting.

In any event, several of the participants at the meeting recalled discussions of the intelligence reports at issue.

Peter Clark recalled that he "spent most of the meeting" studying "the reports underlying the Gonzalez summary, and, in particular, the February 1991 report that Iraqi officials had sought and obtained signatures of BNL-Rome officials approving loans made by BNL-Atlanta because the Iraqis wanted approval from more senior BNL officials." According to Clark, he, Brill and McKenzie were the only ones at the meeting who "understood" that this report "was post-search [i.e. described actions which took place after the August 1989 FBI raid], so it wasn't an item of great significance." (Clark, transcript, p. 86.) Clark's view was that the report referred to a January 1990 Geneva agreement by which BNL-Rome ratified with Iraq the unauthorized loans made by BNL-Atlanta. (Clark, transcript, p. 93.) Urgenson recalled that the CIA representatives at the meeting said they had no information as to when the transactions described in the February 1991, report occurred, whereas "Atlanta is telling me that they know and that they are post-scheme." Relying on Atlanta's position, according to Urgenson, "I expressed our understanding that this is post-scheme." (Urgenson, deposition, p. 64.)

Clark also testified he did not think that he had actually seen the February 1991 report until after CIA transmitted it on September 15. (Clark, transcript, pp.

90-91.) According to Urgenson, this report had been "delivered to the Criminal Division, but it didn't get to the fraud section. We didn't see it, but I don't want to say it didn't get to the Division." (Urgenson, deposition, 11/24/92, p. 137.)

One of the DO representatives at the meeting had a separate recollection that "Urgenson was asked whether a [intelligence report] that had been faxed or sent over to them bothered him, but he said no, no that doesn't change anything. And it was an intelligence report but I don't know which one...I know that it was a fresh find, if you will, a [Report] that had not surfaced in the past...I want to say it's that [the January 1990, report concerning the BNL-Rome official] because I think the interpretation was...simply because one [official was involved] did not necessarily mean that the banking management was aware...I remember that George [Jameson] said to Urgenson that morning something to the effect that, well, what about ...this report, does that change anything? And Urgenson said, no, it doesn't. And I think it was that [report] but I'm not positive." (DO officer, deposition, 10/19/92, p. 30)

Jameson had no recollection of the January 1990 report being discussed, nor did other participants at the meeting. Analyst #1 did testify, however, that she had had a copy of the report at the meeting which she had shown to her division chief while other discussions were taking place. (Jameson, deposition, 11/2/92, pp. 5-6; Analyst #1, deposition, 10/30/92, p. 34; Analyst #2, deposition, 10/30/92, p. 22; Meltzer, deposition, 11/20/92, p. 48)

(Note: The January 1990 report was not "fresh find." The CIA had provided it to Justice on October 2, 1990, and, according to unsigned notes located at Justice, it was reviewed by someone at Justice on October 4, 1990. According to Judge Lacey's report, these notes had been prepared by Urgenson. (Notes on file with the Committee; Office of the Independent Counsel Report, Part II, p. 116). Urgenson, however, testified on two separate occasions that he had not recalled this report "until recently." (Urgenson, SSCI hearing, 10/8/92, p. 24; deposition, 11/24/92, p. 52.))

Meltzer recalls that "[t]here was also discussion with Mr. Jameson where he agreed that there was no time frame stated in the reports, and he told us that the CIA didn't know when many of the [events] referred to in the reports occurred, and that one couldn't tell from the [reports] whether or not the [activities] were legal or illegal. The analysts and Mr. Jameson said that the CIA did not mean to address whether the activities were legal or illegal in the Gonzalez summary. Basically nothing was resolved at the meeting. It was very frustrating, I think, for us." (Meltzer, deposition, 11/20/92, p. 43.)

Jameson testified that he understood that Justice had far more information concerning BNL-Rome's knowledge or involvement in Drogoul's criminal activities than CIA was privy to, and did not regard what was in the CIA reports as evidence of such knowledge or involvement. Thus, "if the Justice Department was saying that our information did not reflect illegal activities or contemporaneous knowledge of illegal activities, we had no basis to say anything different." (Jameson, deposition, 11/2/92, pp. 6-8, 16)

Urgenson recalled that at the meeting he "may have" mentioned that Justice had evidence that contradicted the analytical comment's statement that BNL-Rome knew of Drogoul's scheme: "My people say -- we are familiar with these transactions, we know them, we've checked them, they don't mean what you think they mean.... They had just little blips of intelligence, and they just tried to fit it together. I thought we would know better..." (Urgenson, deposition, 11/24/92, pp. 116-18.)

The DI division chief recalled asking one of the lawyers during this conversation what difference it made to the "483-count indictment that there was knowledge [on the part of BNL-Rome]. And they said relatively unimportant...that foreknowledge affects some of the counts but many of the things he [Drogoul] did were illegal on their face." He said he never heard anyone discuss BNL-Rome's knowledge in terms of affecting the length of the sentence imposed on the defendant. (DI division chief, deposition, 10/30/92, pp. 35-36)

Speakerphone Conversation with Atlanta

What followed at 3:00 p.m. was a prearranged speakerphone conversation with Brill, McKenzie and Chartash from the USAO in Atlanta.

Jameson testified that the conversation began by their recounting to Brill the results of the foregoing discussion. According to Jameson, the gist of what was relayed to her was that "Main Justice was satisfied that it understood CIA's position... that is, the position of the analyst...that the analytic comment [at the end of the summaries given to Gonzalez] didn't quite track the underlying material." (Jameson, deposition, 10/16/92, p. 44; see also, Analyst #2, deposition, 10/30/92, p. 22)

Brill then asked the group to review a public statement she had prepared based upon her reading of the CIA documents (presumably the intelligence reports underlying the Gonzalez statement which had been faxed to her on September 17). Brill read the following statement:

"I have reviewed the CIA report referenced in Chairman Gonzalez's September 14, 1992, press release, as well as the cables supporting the report. Mr. Gonzalez's statements in the press release are not supported by any of these documents. There is no evidence contained in either the report or the cables that BNL officials outside of Atlanta or the U.S. government had contemporaneous knowledge of Mr. Drogoul's criminal activity." (Statement on file with the Committee, McKenzie, transcript, p. 173.)

There ensued a discussion of the statement by the participants.

According to the DI division chief, Brill read the statement twice: "At first, my first listening of it, and I remember this being a common feeling around the table, was that that [statement]...simply was not correct. And, you know, we kind of went, 'oh, God, how could she do this. And we asked her to read it back...When she read it back slowly and we looked at it...it was not literally wrong. And so we said well I guess you can say that." (DI division chief, deposition, 10/30/92, pp. 30-31)

CIA participants at the meeting recall that in the course of the group's "wordsmithing" the statement, it became apparent that Brill had already made the statement in a press interview, and was merely seeking confirmation. Cooper recalled, "I think we discussed a little bit about Gerrilyn's [Brill] appearance on 60 Minutes the day before. And she was asking us for some sort of statement she could issue. And then we were throwing around phrases and then she said why don't I use the statement that I just used with the New York Times and Atlanta Constitution or some other paper. So she read it to us. And we said, oh, sure, fine. Since she had already used it." (Cooper, deposition, 10/16/92, p. 39)

(The "60 Minutes" segment alluded to by Cooper included Brill stating on camera: "The intelligence agencies have advised me that they did not know contemporaneously that Christopher Drogoul was making unauthorized loans to Iraq." ("60 Minutes" transcript, 9/20/92) Brill was similarly quoted in a Wall Street Journal article of September 21 as saying "the department believes the agency's files will support the prosecution's long-standing contention that the CIA had 'no contemporaneous knowledge' about the fraud at BNL's Atlanta branch." (Wall Street Journal, 9/21/92, p. A3))

Brill recalled that her press statement was "probably in response to some of the allegations that Mr. Cook was making in the press, or some of the questions that the reporters were asking." (Brill, transcript, p. 173.) She recalls

discussing the issue of making such a statement with Bob Mueller, who said he would support her in making a statement that "the conclusion in the [Gonzalez] summary was not supported by the [intelligence reports]." She sought Main Justice's approval for the statement because she was concerned about disclosure of classified information and because "I felt that we were working as a team with Main Justice...." (Brill, transcript, p. 174.)

Urgenson recalled that when Brill said she had already made the statement, he thought "Jameson was going to faint," but after Brill read it, CIA "said that's okay." (Urgenson, deposition, 11/24/93, p. 120.)

Meltzer recalled that "everybody present in the room, including everybody from the CIA" agreed with the statement. (Meltzer, deposition, 11/20/92, p. 46.) McKenzie recalled that CIA "approved" the statement and said it was "accurate." (McKenzie, transcript, p. 152.)

The DO representative's memo of the meeting simply reflects that Urgenson asked whether CIA could support Brill's statement, Jameson said "yes" and the DI division chief concurred. (CIA Memo for Record, 23 September 1992, on file with the Committee.)

Jameson, on the other hand, did not regard his acquiescence as "approval," but rather as signifying that CIA had no basis for contradicting the conclusion reached by Brill in the statement. (Jameson, deposition, 11/2/92, p. 8) The DI division chief also did not regard his actions as constituting "approval" of the proposed statement since the statement had already been issued by Brill: "It was water over the dam." He found the statement "literally true" and did not think it was misleading. (DI division chief, deposition, 10/30/92, pp. 31-32.)

At the end of the meeting, the pending litigation was discussed with Brill as well as how best to approach the judge. According to Jameson, he made the offer to Brill to come to Atlanta, show all of the relevant materials to the judge and to defense counsel under secure conditions, and Brill seemed "receptive." (Jameson, deposition, 10/16/92, p. 39; CIA Memo for Record, 10/23/92, on file with Committee)

Randy Chartash, who was participating in the conference call from Atlanta, recalls that "[t]here may have been a discussion of ... whether we should send somebody down from the CIA to the Court at this point...." (Chartash, transcript, p. 150.) Meltzer, however, recalls that CIA's offer to come to Atlanta did not occur at that meeting but sometime thereafter; instead, it was understood that the prosecutors would show the Gonzalez summary and the underlying intelligence reports to Judge Shoob "as soon as

possible." (Meltzer, deposition, 11/20/92, p. 49.)

According to Cooper, after he returned to the office following the meeting, he told Holmes that CIA should really go down to Atlanta because it was apparent to him that the prosecutors had no understanding of the CIA reports they had, and that if they were unable to explain them to the judge, there were going to be problems. (Cooper, deposition, 10/16/92, pp. 39-40.)

Internal CIA Concern over the Sept. 17th Letter: Sept. 21-24

Page Moffett, Deputy Director in the Office of Congressional Affairs at CIA, testified that, while he had been involved the previous week in CIA's efforts to develop a public statement, it was not until the next Monday, September 21, that he became aware that CIA had sent a letter to Justice on September 17th which raised the same concern he had previously expressed with the draft public statement: "I saw the letter and I saw the answer [to question 8] which wasn't identical to [the draft press statement], in fact, it was even more limited because it talked about January/December time frames, something like that...and I went, what...is going on here? I walked the letter into Stan [Moskowitz, the Director of Congressional Affairs] and I said, Stan, have you seen this letter? And Stan read the letter...and I said, did you know anything about this? And he goes, no, I didn't...A few minutes later, I remember Mr. [George] Tenet [staff director of the Senate Select Committee on Intelligence] called Stan...Stan puts down the phone and calls me, and says, George just called me and guess what? He's seen the answer. And I went, Oh me..." (Moffett, deposition, 10/19/92, pp. 21-22)

Moskowitz also recalled being surprised to learn that the letter of September 17th had been sent: "I remember wondering [upon seeing the letter] what happened, how could it be that that wrong answer got out and ...while I was thinking about that, the phone rang and it was either George Tenet or Jack Keliher [staff director of the House Permanent Select Committee on Intelligence]...I think it may have been Mr. Tenet that said...he wanted to know how could we have put out that kind of answer, and I said, I know, George, it was wrong. I have no idea what had happened. I got a similar call from Keliher and said the same thing." (Moskowitz, deposition, 10/19/92, p. 14)

Moskowitz testified that Holmes told him later the same day that Tenet had also called him to complain about the letter. Moskowitz said he told Holmes that Tenet "was very adamant that the record needed to be corrected." Holmes responded that they were thinking of a letter to Judge Shoob or possibly a trip to Atlanta for that purpose. (Moskowitz, deposition, 10/19/92, pp. 22-23)

The telephone records of Tenet and Holmes showed these calls took place on Wednesday, September 23, rather than on September 21 as recalled by Moffett.

Moffett testified that subsequently (Jameson's notes confirm the day was Thursday, September 24), Moskowitz convened a meeting in his office to discuss the matter with the "approximately 20" people involved. (Moffett, deposition, 10/16/92, p. 23, 26)

By the time of the meeting CIA had also received a September 22 letter from Congressman Gonzalez to DCI Gates. The letter called the answer to question eight in the September 17 CIA letter "misleading in several respects" in light of the summary that CIA had prepared for him.

Describing the meeting as "quite volatile," Moffett testified: "Stan was very angry.... I didn't have to get angry because Stan was carrying the water.... He was basically saying how this letter had occurred and had anybody shown it to the Director, and, that, you know, we had told them about our objections to this question [the answer to question 8], and how could this letter go out, and who had they talked with, and matters along those lines." (Moffett, deposition, 10/19/92, pp. 26-27)

Moskowitz recalled: "I did convene a meeting with the lawyers and the DO folks to find out what this was all about...I guess my question was put in a fairly aggressive way which was how in the hell could we have sent out a wrong answer. And their response was, I didn't understand; that the answer was not wrong, it was technically correct, and took me through the nuances...And I said I could read nuances as well as anybody else, and I also know that an answer that is either wrong or misleading...[It was] one of the few times where I genuinely lost my temper. And I just could not seem to communicate to them that this was the wrong thing to do. As a clinching argument, I said I will tell you that I would never release such a letter to Congress...because I thought it was too clever by half, at least." (Moskowitz, deposition, 10/19/92, pp. 15-16)

Moffett also stated that "Cooper and David Holmes were still contending, arguing, that the letter was technically accurate or that the answer to that question [question 8] was technically accurate because the documents had not revealed any illegality...the documents did not in fact make it explicit that BNL-Rome knew that the loans were illegal and they kept saying...Justice has all the documents. We were...tendering them to Judge Shoob to review in camera, and he can make his own decision with respect to that." Moffett did not recall Jameson talking specifically about the letter "vis-a-vis the press statement" at the meeting. (Moffett,

deposition, 10/19/92, pp. 27-28)

Moskowitz, on the other hand, when asked which of the lawyers was arguing that the answer to question 8 was technically accurate, recalled that Holmes had come late to the meeting and: "This may not be fair, but I have more of a memory of Jameson. And I would not characterize [it] as arguing the hardest...I was not in a friendly mood...They were trying to explain why I was overreacting to this answer or not understanding it, and George Jameson was trying to explain to me the fact that this was, if you read the words carefully, you could see that it was responsive." (Moskowitz, deposition, 10/19/92, p. 17)

Asked whether the OGC representatives had defended their answer by saying that Justice had forced them to answer in the manner they did, Moffett testified: "I don't think I was ever aware or ever understood that the Justice Department was directing that we answer that question [question 8] in that fashion. The impression I had was that OGC determined to answer the question in that fashion and truly believed that the question was, 'were they aware of illegalities?,' and if the documents did not say the loans were illegal, that they were not responsive to that particular question. In fact, I know that I never heard that Justice said you must phrase the question like this." (Moffett, deposition, 10/19/92, pp. 28-29)

Moskowitz also had no clear recollection of the OGC representatives mentioning pressure from Justice during the course of this meeting, but he said: "It's possible they did...During a number of conversations I made clear my belief that Justice was trying to do a number on us. That may be unfair to Justice, but I felt they were trying to get us out in front of the press. But I really literally don't remember that coming up [in the meeting on the 24th]." (Moskowitz, deposition, 10/19/92, p. 18)

Holmes recalled the meeting and "Stan [Moskowitz] being very concerned about this letter...saying that he thought it was misleading...I was trying to explain to him why we did what we did, and I remember he was not taken with my explanation at all...I don't recall that we described what we did in terms of [Justice] pressure. I think we may have said that Justice Department suggested that we stay consistent. I don't remember exactly how it was characterized." (Holmes, deposition, 11/2/92, pp. 42-43)

Jameson recalls Moskowitz using "very strong language" to say the letter of September 17th should have included a statement in the answer to question 8 that there is other (non-public) information. Jameson recalled a discussion explaining the background of the two previous letters, as well as a discussion of the need to clear up the confusion

both with respect to Congressman Gonzalez and the Department of Justice. (Jameson, deposition, 11/2/92, p. 29)

Moffett testified that everyone left the meeting "very upset," but that the OGC representatives said, "it's our call. Let's present the documents to Judge Shoob. He will make his own decision." (Moffett, deposition, 10/19/92, p. 30)

The DI division chief also recalled having raised the September 17 letter with Bruce Cooper during the week of September 21st, and telling him "I didn't think that that [the answer to question 8] was right." (DI division chief, deposition, 10/30/92, p. 34.)

Moskowitz recalled that sometime during this week he was riding back to CIA with DCI Gates from "one of our sojourns on the Hill," when he asked Gates whether he had seen the September 17th letter: "Frankly I thought he had been badly advised, because I was sure he had no sense of the details of any of this. And he said he didn't remember, he wasn't sure he had seen it. And I told him I find that totally remarkable." (Moskowitz, deposition, 10/19/92, pp. 18-19)

Subsequent CIA Communications with Justice

Jameson testified that late in the day on September 21st, CIA officials began to have misgivings about approaching the trial judge themselves: "[w]e began to have some concerns that if we show up on the judge's doorstep unannounced, given the way the judge had, a kind of odd way, of dealing with these things, it could go out of control and we could be thrust in the limelight prematurely and our documents could be taken and disclosed and people could be thrown on the witness stand. So we got a little nervous about whether or not the judge fully appreciated how this process ought to work..." (Jameson, deposition, 10/16/92, p. 40)

According to Jameson, on the night of the 21st, a meeting was held in the General Counsel's office where the matter was discussed, and it was decided the prosecutor should make the approach to the trial judge rather than having a CIA attorney do it, give the judge the documents, and tell him that the CIA is prepared to come to Atlanta to answer his questions. Jameson communicated this decision to Ms. Brill the following day. (Jameson, deposition, 10/16/92, p. 41)

On September 22, the sentencing proceeding resumed in Atlanta. Cook, in cross-examining Agriculture Department investigator Arthur Wade, the head of the investigative task force, raised the issue of the answer to question eight from

the September 17 letter, which Cook had entered into evidence. (Court transcript, p. 652.) After this exchange, Judge Shoob questioned the prosecution about intelligence information, with reference to a New York Times article:

Ms. McKenzie: We have requested that the documents underlying the summary report [for Gonzalez] as they relate to BNL be made available to the Court also.

The Court: Well, why should the documents furnished to the Court be limited to that narrow area? Why shouldn't you furnish me all the documents that concern information which involves the bank fraud case as stated in the article?

Ms. McKenzie: For one thing, there is already a response from the intelligence and counterintelligence agencies stating that they had no contemporaneous knowledge, and that has been made available --

The Court: Are you speaking of the September 17 letter that Mr. Cook has been discussing with the witness?

Ms. McKenzie: No, your honor. I'm speaking of the responses that we have been authorized to advise the Court, and we have done so in our sentencing memorandum, the inquiries that were made prior to indictment and again during Mr. Drogoul's debriefing and the responses from the Intelligence Community that they had no contemporaneous knowledge and that they had no information that BNL had any contemporaneous knowledge." (Ibid., pp. 654-55.)

In addition to asking for a wider range of documents than simply those underlying the Gonzalez summary, Shoob, referring to the September 17 letter, asked whether CIA had been asked if they were aware or involved in any use of BNL-Atlanta to fund Iraq, not just if they were aware of unauthorized funding. McKenzie eventually replied that CIA was "certainly ... not aware of any unauthorized off-book activities." (Ibid., pp. 656-58)

Shoob opened the sentencing proceeding on September 23 by asking to see the intelligence reports underlying the Gonzalez summary. Brill offered to discuss them with the Judge ex parte, but the Judge declined. Instead he requested that Brill simply deliver them to chambers at the end of the day, and Brill did so. (Ibid., pp. 852, 1020-22, 1057.)

Jameson recalled that the prosecutors advised CIA on

September 23 that "the judge rejected the offer to meet in camera...the judge essentially said...let me see the documents, and then decided he would hold onto the documents, review them, and at that point declined, at least for the time being, any CIA presence." (Jameson, SSCI hearing, 10/8/92, p. 65) Subsequently, at his deposition, Jameson expressed uncertainty whether Brill had advised him that the judge had rejected the offer to see CIA, but rather recalled Brill advised him that the Judge had not yet responded to the offer to hear from CIA. (Jameson, deposition, 10/16/92, p. 45)

Judge Shoob did not recall any offer by the prosecutors for CIA to meet with him in camera. He did recall an offer made by the prosecutor to meet with him in camera to discuss the CIA materials, but in view of defense counsel's objections to an ex parte meeting, he declined the offer. He stated that he personally would have welcomed such a meeting. (Shoob interview, 10/22/92, on file with the Committee.)

In any event, on the evening of Sept. 23, Judge Shoob took the CIA reports home with him to read. Due to distractions, he managed to read only one of the reports that evening. (Shoob interview, 10/21/92, on file with the Committee.)

In open court the following day, Cook contended that the answer to question eight was false. (Court transcript, pp. 1063-64). Brill countered by contending that BNL-Rome's knowledge was irrelevant because Drogoul had pled guilty, but Judge Shoob responded that he would consider granting Drogoul's motion to withdraw his plea if evidence of such knowledge emerged. (Ibid., p. 1067.) Brill responded by characterizing the CIA information: "The CIA is reporting in this instance what other people reported to us, what is contained in newspaper articles, what its sources said. That is not, regardless of what it says, and I'm not saying it says anything contradictory to our theory, but that is not direct evidence." (Ibid., p. 1067.) Shoob responded that rules of evidence are less restrictive in sentencing proceedings and he asked the prosecution to see if there was a CIA document that contradicted the answer to question eight. (Ibid., pp. 1067-69.)

Later in the proceeding, Shoob commented that while Congressman Gonzalez had quoted accurately from the analytical comment in the CIA report, Shoob said "if you read the report in its entirety, I'm not sure that's a correct analysis." (Ibid., p. 1154.) Shoob subsequently told the Committee that he was making this assessment only on the basis of the one report he had read the previous evening, and not on the basis of his review of all the CIA reports. (Shoob interview, 10/21/92, on file with the Committee.)

Shoob asked Brill, "[I]s there any reason why I should keep reading these reports? Because they don't make a lot of sense. Many of the dates are hard to read or unintelligible." Brill responded, "We don't think that they have any evidentiary value at all to this case." (Court transcript, pp. 1155-56.)

In any case, it was clear that Shoob's reaction, as reported in the press, heartened those involved at the CIA who interpreted his remarks as approving of the prosecution's assessment of the CIA materials. (See depositions of Holmes p. 37; Cooper, p. 42; Moffett, p. 31).

Their relief was short-lived, however. On September 25, at the end of another day of testimony, Shoob asked Brill about his request for a CIA response to the questions of whether the CIA was involved in funding, authorized or unauthorized, to Iraq and whether the CIA knew contemporaneously of BNL-Atlanta's loans, authorized or unauthorized, to Iraq. Brill said she had not made such an inquiry, that she thought the Judge's concern was limited to question eight, and that she would inquire of CIA that afternoon. (Court transcript, pp. 1486-87; Shoob interview, 10/22/92, on file with the Committee)

Brill communicated the trial judge's requests the same day in a letter to Holmes. The letter asked for answers "as soon as possible" to Judge Shoob's queries, including the question of whether CIA had any information that contradicted the September 17 letter's answer to question eight. (CIA BNL litigation file, document 95, on file with Committee.) A copy of the letter arrived on Urgenson's fax machine, but Ellen Meltzer was not aware that anyone from Main Justice was involved in shaping or facilitating this request from the Atlanta U.S. Attorney's Office to the CIA. (Meltzer, deposition, 11/20/92, p. 52.) According to Meltzer, she "was not present at any discussions concerning any obligation of the Department" to provide Judge Shoob with the intelligence reports. (Meltzer, deposition, 11/20/92, p. 54.)

Asked if Brady v. Maryland obligations were implicated by this request and previously in the case, Meltzer testified, "Brady matters were being handled out of the U.S. Attorney's office in Atlanta and not out of Main Justice. It was their case, their prosecution. We don't normally input on matters like these." (Meltzer, deposition 11/20/92, p. 54.) Urgenson also testified that Brady decisions were the responsibility of the prosecutor handling the case. (Urgenson, deposition, 11/24/92, pp. 132-33.) Clark stated that he understood that responsibility for reviewing and analyzing the intelligence information belonged to the Atlanta prosecutors, not Main Justice, with the exception of the NSA materials, which only Clark and Greenberg had had an opportunity to review; his understanding was that all of the

CIA material available to him had also been made shown to the Atlanta prosecutors on trips to Washington. (Clark, transcript, pp. 129-31, 138-39.)

Brill testified that while she appreciated the obligations of the Government under Brady, she did not view them as requiring an analysis of the intelligence materials: "Certainly, if I was aware there was any Brady material...I was cognizant of our obligations under Brady, but short of being aware of any Brady material, no, I didn't think it necessary to go back and look at everything that had been done with respect to the intelligence community." (Brill, transcript, p. 153)

Jameson testified that CIA officials immediately began drafting a response to Judge Shoob's questions. However, in doing so, they faced the same problem they had initially, namely, how to communicate the classified information at issue. (Jameson, deposition, 10/16/92, p. 47)

Cooper testified he had several telephone exchanges with Meltzer and one with Art Wade, in Atlanta, in an attempt to find out what was going on in the court. (Cooper, deposition, 10/16/92, p. 42)

Also on September 25, Urgenson and Clark went to CIA to receive a briefing and review CIA reports, gathered by Cooper, on the Iraqi military procurement network. (Cooper, transcript, pp. 68, 71.) (Clark recalls that this visit probably occurred after October 7, but was not sure. (Clark, transcript, p. 225.)) According to Clark, the purpose was to develop information regarding Drogoul's motivation, "not BNL-Rome knowledge or anything like that." (Clark, transcript, p. 225.) Clark recalls that he did not finish reviewing these materials. (Clark, transcript, p. 225.)

Analyst #1 recalled the Justice officials wanted to know if CIA knew "anything unusual about BNL-Atlanta before the scandal broke in the papers, and if not, why not." She recalled her division chief responded by noting that CIA was prohibited from engaging in domestic law enforcement. Near the very end of the meeting, recalled the analyst, Clark and Urgenson "were kind of letting their hair down a little bit, and they said, you know, tell us -- we've sensed a lot of reluctance on the Agency's part to sign onto the public statements and the whole idea of Rome not being witting or involved in Atlanta's activities. Why is that?" According to the analyst, her division chief responded that he thought most, if not all, of the relevant analysts at CIA "would say in their analytical opinion they believed that BNL-Rome at least knew that something funny was going on in Atlanta." According to the analyst Clark and Urgenson "seemed not surprised. They seemed to accept that." (Analyst #1, transcript, pp. 109-110.)

When the sentencing proceeding resumed on September 29, Shoob again asked at the outset whether CIA had responded to his queries. Brill replied that she had relayed them on the 25th but had not yet received a response. (Court transcript, p. 1492.) Shoob then stated that he had now carefully reviewed the CIA raw reports and his review "indicate[d] that they support the defendant's position -- three definitely support the defendant's position that BNL-Rome was aware of what he was doing, and they also undermine the Government's position that this was a 'lone-wolf'-type operation. Now, what do I do with these reports?" (Ibid.)

Brill replied, "Well, the reports were given to you under the condition that they remain secret, so I don't think you can do anything with the reports." Brill added that the reports were "wrong." Shoob responded that both sides should be able to test the CIA conclusions, and asked whether they could be declassified. Brill again stated that Shoob should disregard the CIA information because it is "totally irrelevant to these proceedings. We have the evidence, not reports of what sources told the CIA. The evidence is what the witnesses with knowledge have to say, not CIA reports." Shoob said that the CIA considered some of the sources to be reliable, so why shouldn't the Court? McKenzie responded that on their face the reports are not reliable and that they are revealed to be inaccurate when compared to the evidence. Shoob asked the prosecutors for "Washington's" response with respect to these reports. (Ibid., pp. 1492-97.)

Reflecting on these events, Shoob told the SSCI staff that CIA's failure to provide promptly the answers he requested was the basis for his statement on Oct. 5 that CIA had been uncooperative. (Shoob interview, 10/22/92, on file with the Committee)

Later on the 29th, Holmes received another letter from Brill that noted that Shoob now believed that that the underlying reports and summary "prove that BNL-Rome knew what Drogoul was doing in Atlanta" and asked where CIA's response was to Shoob's questions of Sept. 25th. Brill also stated, "It would be helpful to the government if we could provide to Judge Shoob an explanation of the classified materials in a sealed record with defense counsel present. It would also be helpful if the CIA could provide Judge Shoob with a complete explanation of everything that was known to the CIA about BNL-Atlanta." (CIA BNL Litigation file, item 100, on file with Committee.)

According to Jameson, at this point, CIA had become very frustrated at what they perceived to be the inability of the U.S. Attorney to communicate their views to the trial judge. On Sept. 30, CIA sent an interim response to the U.S. Attorney saying that they thought it best to come to Atlanta

and respond to the judge directly. (CIA BNL Litigation file, item 103, on file with Committee.) Arrangements were made for a CIA team to go to Atlanta the following day. (Jameson, deposition, 10/16/92, p. 48; Holmes, deposition, 11/2/92, p. 54) When Elizabeth Rindskopf returned from abroad on the afternoon of the 30th, she was told by Holmes that he was preparing to leave the next day with Jameson and representatives of the DI and DO "to talk directly with the Assistant U.S. Attorney and possibly the Judge as well...." (Rindskopf, deposition, 12/1/92, p. 32.)

Urgenson perceived that Judge Shoob "was taking over the CIA issue at this point. At that point, the judge had the information and he was telling us what he wanted. And our task became responding to him and he was being demanding. He wanted this -- he wanted to know everything. And the CIA was flying down to tell him everything and lay it all out" in a proceeding pursuant to the Classified Information Procedures Act (CIPA). However, Shoob "did not know that the CIPA proceeding was in the works. Gerrilyn Brill did not want it disclosed. Gerrilyn has misgivings. Gerrilyn's misgivings were that Judge Shoob, in her judgment, had received the CIA materials and misinterpreted them, and she was fearful of providing him more material.... she felt that, having given the reports to the judge, he will now have a factual basis to make negative findings. He will go against us." (Urgenson, transcript, pp. 240-41.) According to Urgenson, Judge Shoob's impatience regarding the CIA information may have stemmed from the fact that Brill had decided to delay telling Shoob about the CIPA proceeding. Urgenson did not feel "it was DoJ's position" to tell Shoob about the CIPA plans. (Ibid., p. 242.)

In court on September 30, Drogoul, in his second day of direct examination by Cook, appeared to broaden somewhat the prior suggestions he had made in testimony and interviews that BNL-Rome officials and persons with U.S. intelligence community connections were aware of his illegal operations. (Court transcript, pp. 1711-1821.)

On the evening of September 30, lawyers in the CIA General Counsel's Office were reviewing CIA reports in preparation for their trip to Atlanta the following day. Jameson came across the January 1990 report implicating a BNL-Rome official. Although the report had been provided to the Justice Department in October 1990, Jameson recalled "it was really a surprise to me." (Jameson, deposition, 11/2/92, p. 6)

Holmes was also surprised and dismayed: "I was distressed when I saw that [report] because...the others you could slice...thin, and, say, well, they were asking contemporaneous knowledge, and...information that showed on its face that we knew about an illegality. But there was no

getting around this one. I mean, there was just no way."
(Holmes, deposition, 10/16/92, p. 40)

(Holmes later testified that, had he known about the existence of this report at the time the September 4 and 17th letters to Justice were presented to him for signature, it would have clearly called into question the response to question 8. "I am terribly sorry that that [the January 1990 report] was not included in the answer [to question 8]. It should have been. That makes the answer absolutely incorrect..." (Holmes, SSCI hearing, 10/8/92, p. 42))

The testimony is ambiguous with respect to what followed Jameson's discovery of the report. Holmes testified that Jameson advised him of the report and told him that he (Jameson) had asked Cooper and why this did not relate to the answer to question 8. According to Holmes, Jameson reported "he was just met with silence. I think Bruce felt terrible about it. I think he just felt awful that he missed it...He wasn't defensive or anything. I think he just felt terrible...Bruce had it in his file and just hadn't noticed it when he wrote the answer [to question 8] apparently."
(Holmes, deposition, 10/16/92, pp. 40-41)

In his first deposition, however, Cooper stated that he had not "missed" the January 1990 report but rather had read the report and had not viewed it as responsive to question 8: "My understanding of what Justice was looking for was institutional involvement...institutional knowledge...involving more than just one person, unless that person was a senior official." (Cooper, deposition, 10/16/92, p. 15) He did not recall having discussed this paragraph per se with the Justice Department or with any of his supervisors in the Office of General Counsel. (Cooper, deposition, 10/16/92, pp. 20-21) At his second deposition, Cooper recalled that initially he did tell Jameson that he did not remember reviewing the report. Subsequently, however, he recalled seeing it and so advised Jameson. (Cooper, deposition, 12/11/92, pp. 46, 106.)

Jameson stated that he may have heard this rationale from Cooper on the evening of September 30th, but thought it more likely he had heard it subsequently. (Jameson, deposition, 11/2/92, p. 4) However, he told Judge Lacey that Cooper had offered this rationale on the evening of the 30th. (Jameson, transcript, p. 109)

In any case, Holmes stated "the only comfort I took in the whole thing was that it [the January 1990 report] had been provided to the Justice Department...It had gone down in the October 2, 1990 dump, and I thought, well, at least, it's not something that they don't know about." (Holmes, deposition, 10/16/92, p. 44)

There ensued a series of calls to Justice officials concerning the January 1990 report. Cooper called Brill in Atlanta either the same evening or the following day. According to Holmes, Cooper told him that Brill had replied that Atlanta had independently been made aware of the information contained in the report and had investigated it thoroughly. (Holmes, deposition, 10/16/92, p. 27; see Cooper, deposition, 10/16/92, p. 44-45) Cooper also recalled having a discussion about the January 1990 report with Meltzer on October 1 and that she instantly recalled the report and stated that it was unimportant in light of other evidence. (Cooper, deposition, 12/11/92, pp. 42, 98.) Finally, Jameson called Urgenson on October 1 and called his attention to the January 1990 report. Urgenson asked Meltzer and Clark to review the report, and he subsequently discussed it with them. Urgenson felt it "was more significant than the others but it does not show that BNL-Rome is involved." Urgenson also checked the prosecutive memorandum for the case to confirm that the allegation contained in the report had been investigated by Atlanta. (Urgenson, dep., pp. 53, 134.)

On October 1, the day following the OGC's "discovery" of the January 1990 report, Brill announced that, in light of Drogoul's testimony of the previous day, the Government was withdrawing its opposition to Drogoul's motion to withdraw his guilty plea, which Judge Shoob had previously denied. Cook renewed the motion on behalf of Drogoul, and Shoob granted it. (Court transcript, pp. 1827-37.)

Once the government moved to allow the withdrawal of the guilty plea on October 1, Ms. Brill advised CIA that an answer to Shoob's questions was no longer required, and CIA canceled its plans to send a team of lawyers and security officers to Atlanta. (Holmes, SSCI hearing, 10/8/92, p. 63)

Prior to learning of the developments in Atlanta, doubts were raised by both DO and DI officials about whether they should meet with Judge Shoob, and OGC, according to Jameson, concluded that it might be best to send a CIA lawyer first, to be followed by additional personnel if necessary. (Jameson, transcript, p. 171.) Rindskopf recalls that on the morning of October 1 she had "a conversation with a couple of senior agency officials as to the advisability and appropriateness of taking or sending the DI analyst and the DO representative." However, this concern was mooted when the trip was canceled. (Rindskopf, deposition, 12/1/92, pp. 32-33.)

Despite Brill's withdrawal of her request for a CIA written response to Judge Shoob, CIA, between September 30 and October 8, proceeded to prepare a series of draft responses that expanded on the answer to question eight. Jameson felt "uncomfortable about not answering a judge" and thought it might be worthwhile to send the response to

Justice and tell Justice "you just do with it what you want." (Jameson, transcript, p. 173; draft letters on file with the Committee) No such response was ever sent. (Jameson, transcript, p. 175.)

On October 5, Judge Shoob, in a written opinion, memorialized his decision to allow withdrawal of the plea, granted the Government's motion that he recuse himself from the case and renewed his call for an independent prosecutor. Shoob concluded that he had reached "certain preliminary conclusions" regarding the case and the prosecution of the case that might create an inference of lack of impartiality. Among other things, he concluded (1) that decisions had been made at the "top levels" of Government and within the Intelligence Community to "shape" the case; (2) that information may have been withheld from the Atlanta prosecutors "by agencies with political agendas"; (3) that prosecutors failed to investigate seriously the issue of BNL-Rome's knowledge or to bring in knowledgeable BNL-Rome officials for the sentencing proceeding; (4) that meetings between high-level State and Justice officials and the Italian Ambassador to the United States "appeared to help steer the case and gave support to BNL-Rome's view that it was a victim"; (5) that the Government had failed to provide an adequate explanation for its failure to indict key figures in the case; (6) that CIA had not been responsive to the judge's requests for information about its knowledge; and (7) that the September 17 CIA letter showed that CIA "was not forthcoming with information it may have about the transactions at issue in this case." (United States v. Drogoul, slip op., Criminal Action 1:91-cr-078-MHS, N.D. Ga., October 5, 1992)

DCI Gates has informed SSCI that he personally spoke to Judge Shoob on November 13, 1992, "promised that we would answer any questions he had regarding the BNL matter," and pledged full CIA cooperation on matters before Shoob. (Letter from DCI Robert Gates to Senator Boren, 11/23/92, on file with Committee.)

Dealings with the SSCI: Sept. 24-29

On Thursday, September 24, the SSCI asked CIA for a meeting to explain the Agency's response to question 8 in view of the intelligence reports previously reviewed by the Committee. A meeting with the SSCI staff was scheduled for Monday, September 28.

The following day, September 25, the SSCI staff director received a call from a CIA congressional affairs official, Rudy Rousseau, asking whether the meeting was still necessary in light of events in Atlanta. Rousseau testified he made the call because he wondered whether SSCI might no longer

need the meeting in light of Judge Shoob's apparent conclusion in court on September 24 that the underlying intelligence reports did not support the analytical conclusion in the Gonzalez summary. (Rousseau, deposition, 12/11/92, p. 14.) The SSCI staff director insisted that the meeting was necessary.

Holmes could recall no discussion at CIA of any effort to put off the meeting on September 28, although he recalled wondering to himself whether the staff briefing was a good idea while the case was pending. (Holmes, deposition, 11/2/92, p. 62)

CIA sent Holmes and Rizzo from the Office of General Counsel, as well as three officials from the Office of Congressional Affairs, to the meeting. Holmes continued to defend the CIA's response to question 8, and none of the other CIA officials attending disputed this view or mentioned any disagreement on this matter within CIA. Holmes recalls that he remained "comfortable" with the answer, although he "knew it was a less than perfect response...but we were talking or writing to people that already had the information that we had.... [W]hat I was really doing [at the briefing] was defending the answer that Mr. Cooper had written, that I had signed up to, because I thought that he had a rational basis for doing it the way he did it.... Seeing the [reports], having talked to Bruce, and having him tell me about his discussions with Justice as to what they were looking for and what they already had, I thought it was a defensible answer." (Holmes, deposition, 11/2/92, pp. 64-65)

Rousseau testified that he believed prior to the meeting that the substance of the response to question eight was misleading. He testified that it "may be" that he did not express this view at the meeting. (Rousseau, deposition, 12/11/92, p. 10.)

Holmes recalled that following the meeting he began to question his response, because although he still maintained that the letter was "technically correct," he realized it could have been misleading to the public. (Holmes, transcript, pp. 95-96, 108, 116-17, 135-37.)

On September 29, Senators Boren and Murkowski, the SSCI Chairman and Vice Chairman, sent a letter to the DCI calling the September 17 letter "misleading" and saying it was "imperative" that CIA provide the relevant CIA reports to the trial judge as soon as possible and to make a public clarification.

DCI Gates testified that he received a copy of this letter when it arrived at CIA, and this was the first he knew of the controversy surrounding the letter of September 17th. (Gates, deposition, 10/30/92, p. 13.) When asked what he did

in response to the letter, Gates testified, "I would have left that to the regular staffing process." (Ibid., p. 15) CIA made no public statement regarding the September 17 letter until October 6, when Rindskopf gave a telephone interview to a New York Times reporter who had obtained a copy of the Boren-Murkowski letter. (New York Times, October 7, 1992, p. A12.) The following day, October 7, the Times published a story on the matter, and Director Gates ordered the CIA Inspector General to conduct an investigation.

Newly Discovered DO Reports

On Wednesday, September 30, the SSCI was advised by telephone that the CIA Directorate of Operations had discovered the previous day three new intelligence reports relevant to the BNL case which had not previously been provided the Department of Justice or SSCI. The following morning, staff from the two intelligence committees attended a briefing at CIA where the reports were reviewed and an explanation of why they were never disseminated was provided. (See SSCI Memo for Record, October 1, 1992, on file with the Committee.)

The three reports shown to SSCI at the October 1 briefing concerned the BNL-Atlanta loans and reactions to the scandal abroad.

At the October 8 SSCI hearing, CIA witnesses provided additional background on the discovery of the reports. In the course of the review of BNL materials, a CIA officer who had recently returned from abroad had inquired whether CIA had focused on particular reporting which she knew to have occurred in the fall of 1989. This inquiry led to the discovery of the three new intelligence reports. (Twetten, SSCI hearing, 10/8/92, p. 21.)

According to CIA witnesses, all three reports were coordinated with the FBI, but CIA's understanding was that the reports had not been communicated to FBI headquarters or to the investigative task force in Atlanta. (Ibid., p. 77)

DCI Gates recalled being advised of the discovery of the new reports, and held a meeting in his office to discuss what to do with them: "I told our people that Holmes or somebody should go to Atlanta and brief the judge. Take the documents and say here is why we couldn't find them...But here they are and they are available to you...When the meeting broke up...my clear impression was that somebody was headed for Atlanta." (Gates, deposition, 10/30/92, p. 10)

Urgenson testified that he learned that CIA had discovered new reports as a result of a telephone call from Jameson on Sept. 29th or 30th, but that his recollection "is that the information was not startling or new or upsetting

the view that we had of the case." (Urgenson, SSCI hearing, 10/9/92, p. 61.) He asked Jameson to have the reports delivered so he could read them, and this occurred on Friday, October 2. (Urgenson, SSCI hearing, 10/9/92, p. 59; Jameson, SSCI hearing, 10/8/92, p. 81)

Holmes testified that he advised Mueller on either September 30 or October 1 of the newly-discovered reports. (Holmes, SSCI hearing, 10/8/92, p. 79)

Jameson testified that he spoke with Brill early on the morning of October 1st, and conveyed the substance of the newly-discovered reports. He stated that Brill advised him of the likelihood that the defendant would be permitted to withdraw his plea and that Brill did not seem upset by the newly-discovered reports. (Jameson, SSCI hearing, 10/8/92, p. 86)

At the SSCI hearing on October 8, CIA provided a fourth newly-discovered report, dated September 1989. This report discussed one individual's belief that BNL-Atlanta could not have made the illegal Iraqi loans without the knowledge of BNL-Rome. A fifth report, dated December 1990, surfaced the following week and was provided by CIA to SSCI on October 16, 1992. This cable contained an allegation that U.S., Italian and Iraqi officials had engaged in unlawful conduct in connection with the BNL-Atlanta Iraqi loans. The context in which this allegation was made, however, suggested that it might not be reliable.

The CIA Deputy Director for Operations testified that the reports had not been identified in earlier searches made for Justice or the SSCI because of human error in affixing a particular marking to an internal document which would have made it electronically retrieveable. (Twetten, SSCI hearing, 10/8/92, p. 87)

Indeed, the staff investigation established that searches done within the DO for the Justice Department were ordinarily limited to the agency-wide computerized system and did not include a search of other records systems in the Directorate of Operations. Inquiries to the participants during the course of the SSCI investigation produced no information to suggest a willful or deliberate attempt by the CIA to withhold these documents from the Justice Department or the Committee.

The "Discoverability" Issue

In addition to the five substantive reports described above, which were located in October, CIA produced a series of internal communications in the 1989-1990 time period discussing whether the substantive reports should be disseminated. Among the matters discussed in these internal

communications was whether their dissemination outside the CIA would make them "discoverable" in the criminal case in Atlanta.

A November 17, 1989, message stated that a CIA official had been advised by an FBI representative that one of the substantive reports --

"...contains information that could be used as evidence in the expected trial in Atlanta. FBI cautioned that [the] information is 'discoverable'...The defense attorneys may well request CIA files on the BNL affair and claim that CIA had prior knowledge of the financing to Iraq. Especially because the U.S. Attorney in Atlanta is a former CIA officer.... Since the case is under judicial review, these FBI comments cannot be included in [the substantive report]. Would appreciate headquarters commenting on whether [the report's] information is, in fact, 'discoverable'...Please advise."

CIA responded on December 14, 1989, that the report in question would not be disseminated. One reason cited for the nondissemination was that similar information had appeared in press reports. Another reason was explained as follows:

"On advice of CIA legal experts, we are very sensitive to disseminating any information which may be construed as interfering with the ongoing FBI investigation and outside our purview of collection...Legal experts assured us that it is highly unlikely [that the] information would be revealed in court...Although defendants regularly allege CIA involvement in their activities in hopes of derailing the prosecution, we have devised ways to protect our information and sources against discovery by the defendant or exposure in an open court proceeding."

(CIA officials informed the SSCI staff that the last sentence of this message was "an inartful reference" to legal procedures which the Government may invoke pursuant to the Classified Information Procedures Act. (Staff MFR of October 1, on file with Committee.))

A similar concern was noted in a December 1990 message which addressed the issue of whether to disseminate the CIA report containing the allegation of illegal activities on the part of U.S., Italian and Iraqi officials. The message indicated that a U.S. Government official had raised questions about the reliability of the source of this report. In addition, according to the message, an FBI representative had recommended against submission of the report "noting that every paragraph contains damaging information which is clearly discoverable. He added that

[State Department] holdings on the affair had recently been summoned and that our holdings could very well be next in line for requisitioning."

These two internal messages seemed to suggest that CIA had been advised, or was acting in the belief, that its intelligence reports would not be subject to discovery in a criminal trial unless they had been disseminated outside the CIA.

In separate testimony, the FBI officials involved disputed that this had been their advice.

One official testified: "The CIA was uncomfortable with just what would be discoverable and what wouldn't. So, they asked if they could discuss some of the information they were sending back with [the FBI] before they sent it...we had a dialogue with the CIA because ... some of the information that we were aware that they were reporting we felt that there should be caution used because it hadn't been proven. It was lunch table conversations that, you know, you can have a few glasses of wine and it sounds very good, and they would report it. You have to be careful about what you report, because there has to be some sort of credibility attached to it. And there wasn't always credibility attached one way or the other as to many of these reports. So, what we were attempting to do here was educate CIA relative to the fact that this is a criminal investigation. And, as a criminal investigation, most of the reporting that came and went...was discoverable." (FBI official #1, transcript, p. 13.)

The second FBI official was emphatic that he had warned CIA that everything it placed in its reports was discoverable whether it had been disseminated outside the CIA or not:

"Every [report] I saw, I said this information is discoverable;...Some of it was exculpatory. This is exculpatory. The judge will have to get this.

"And they came back and told me, well, it's classified. And I said, it doesn't matter if it's classified.... If the judge in Atlanta orders you to bring it in, you're going to have to bring it in. And I told them, go back to your own legal people and ask them. Don't count on me....

"It's totally discoverable...

"Now, if they took that to mean, don't disseminate it, that's not what I meant. What I meant is, it's discoverable, period." (FBI official #2, transcript, p. 32-33)

Although this FBI official insisted that he "never

advised anyone not to disseminate any [reports]," even when asked about the December 1990 operational report, he said he did advise that sourcing be precise and that the report's drafter (as opposed to the source) omit "personal opinions." (Ibid., p. 27.)

The CIA official who handled the 1989 reports on BNL confirmed that the FBI representative had advised her that some information in the reports was not "absolutely accurate" and that it would be possible that the information would be "discoverable" in a criminal case. (CIA field reports officer, transcript, p. 10; 54-56.) However, she said the FBI representative never recommended that a report not be disseminated because "[t]hat really wasn't his place." (Ibid., p. 11.)

The CIA reports officer who drafted the headquarters' responses on the BNL reporting testified that she discussed the reports with an individual assigned to the DO staff, who was also an attorney, to ensure compliance with regulations forbidding CIA reporting on United States persons and to consider the issue of "discoverability". It was this DO officer who provided the language, "we have devised ways to protect our information and sources against discovery by the defendant," and who was the "legal expert[s]" referred to in the headquarters cable cited above. (CIA reports officer, deposition conducted by the House Permanent Select Committee on Intelligence staff, 11/21/92, pp. 10-13, 33)

The decision not to disseminate the November 1989 report was made by the supervisor of the CIA reports officer who drafted the reply. The supervisor testified that she had been aware that her subordinate had consulted "the legal office" in preparing the reply, and they had advised that there was "a procedure" (presumably the CIPA) to protect their information. She testified that she made the decision not to disseminate the report because she felt the information did not add anything new but "we also thought, well, it's just as well to have fewer reports that are going to wind up in court -- especially, if they are not worthwhile reports. So, you know, that remotely did enter our thoughts." (CIA supervisor, transcript, pp. 23-24.) She denied that anyone at headquarters or in the field attempted to suppress the reporting on the grounds that it was politically sensitive or potentially damaging to a criminal case. (Ibid., p. 24, 31-32.)

In testimony, Twetten stated that the supervisor who made the decision should have gone to "a fairly high level in OGC" with respect to the decision not to disseminate the report. (Twetten, hearing before the House Permanent Select Committee on Intelligence, 10/2/92, p. 35; Twetten, SSCI hearing, 10/8/92, p. 75.)

Attorneys in the CIA General Counsel's Office do not appear to have been consulted regarding the "discoverability" issue, but, expressed to the staff the view that any report created by the CIA would be "discoverable" in a criminal proceeding, regardless of whether it had been disseminated outside the CIA.