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From: Strzok, Peter P. (CD) (FBI)
Sent: Tuesday, June 21, 2016 12:19 PM
To: Page, Lisa C. (OGC) (FBI)
Subject: McDade-Murtha

This was written by CRS in 2001. See my bolded section, below.

McDade-Murtha Amendment: Ethical Standards for
Justice Department Attorneys

Summary

The McDade-Murtha Amendment, 28 U.S.C. 530B, requires federal prosecutors to follow state and federal rules of professional responsibility in effect in the states where they conduct their activities. It also continues in place the sixty year old directive that federal prosecutors follow the ethics rules promulgated by the states in which they are licensed to practice. Proponents claim the change will confirm that federal prosecutors must follow the same ethical rules as other lawyers and will enhance the prospect of some protection against wayward federal prosecutors. Opponents charge that it will implicitly undermine the Attorney General's authority to preempt state laws that conflict with federal law enforcement interests and that in doing so it will jeopardize the use of undercover techniques against terrorists, drug kingpins and child predators because of possible interpretations of the so-called no contact rule.

Under the no contact rule, accepted in virtually every American jurisdiction, a lawyer in representing a client may "not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so." The rule was designed to prevent lawyers from taking unfair advantage of their untutored opponents.

The Justice Department is troubled by judicial interpretations of the rule that indicate that it may apply: (1) in criminal cases prior to arrest or indictment; (2) to federal prosecutors whose only contact is through informants, cooperative witnesses, undercover agents, or federal investigators; (3) even though the represented client initiated the contact; or (4) to contacts with the employees or agents of an organizational target of a federal administrative and civil investigation. The courts have thus far repudiated the efforts of the Department to craft an exception for federal prosecutors administratively.

Similar concerns stimulated by rules covering the disclosure of exculpatory evidence to the grand jury and the use of grand jury subpoenas against attorneys seem to have been eased by internal guidelines and more favorable jurisprudence. At its heart, the debate involves defining the ethical bounds within which Department of Justice attorneys must operate and deciding to whom that task should be assigned.

Full report at:

<http://congressionalresearch.com/RL30060/document.php?study=McDade-Murtha+Amendment+Ethical+Standards+for+Justice+Department+Attorneys>