NLWJC - Kagan

DPC - Box 011 - Folder 023

Crime - McDade

Crime - McDade

Jose Cerda III 02/22/99 01:29:34 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Leanne A. Shimabukuro/OPD/EOP, Laura Emmett/WHO/EOP
Subject: McDade Amendment

EK/BR:

Dennis and some of the DOJ folks are coming over to meet w/Leg. Affairs on what's happening with the McDade Amendment (applying state ethics requirements to federal prosecutors). As you know, DOJ remains pretty exercised about this, and it is sure to play into the crime bill/appropriations deliberations. I plan on going, but thought, EK, you may be interested. Also, what was the final resolution on this w/Podesta during last year's budget negotiations...I forget what, if any, commitments were made to the AG, members, etc.

We can catch up on this tomorrow.

Jose'

Crime - McDade

MEMORANDUM

TO: Democratic Caucus
FR: Senator Leahy
RE: ‘McDade’ Fix
DA: February 18, 1999

Sen. Hatch introduced, on January 19, 1999, the ‘Federal Prosecutor Ethics Act,’ S.250, with Senators DeWine and Nickles. This bill would modify the ‘Citizens Protection Act,’ championed by former Rep. Joseph McDade and passed as part of last year's Omnibus Appropriations law. The Justice Department supports the bill and is urging its speedy consideration by the Judiciary Committee. This bill has serious substantive problems (detailed below) that should be addressed before this bill is considered by the Senate. My Judiciary Committee staff is preparing an alternative that avoids these problems.

BACKGROUND: Rep. McDade retired last year after serving 18 House terms and after being acquitted in 1996 on federal bribery charges. In what has been termed a ‘final dig against DOJ,’ he fought hard for passage of the ‘Citizens Protection Act.’ Universal concern over the aggressive tactics of Independent Counsel Kenneth Starr also fueled support for limiting the powers of Federal prosecutors.

Last year, there was bipartisan Senate opposition to the McDade provision. I joined on a bipartisan July 21, 1998 letter to Senators Stevens, Byrd, Gregg and Hollings urging them to strike the McDade amendment, which had been slipped into the House Commerce-State-Justice appropriations bill for FY 1999 without any hearing.

Despite the bipartisan effort last year, Republicans moved forward on a partisan basis during the impeachment trial with their bill to ‘fix’ the McDade law.

The Washington Post concurs with both the substantive and procedural concerns I have identified with the Hatch bill, stating in a January 25, 1999 editorial:

> ‘A simple bill is a far better approach. Mr. Hatch also has, so far, garnered only Republican senators as cosponsors (although the proposal has the support of the Justice Department). This is unfortunate. Last year, he and ranking member Patrick Leahy argued jointly against the McDade provision. A broad bipartisan approach to its repeal is the right approach now as well.’

McDADE LAW: This new law subjects government attorneys to the ‘State laws and rules, and local Federal court rules, governing attorneys in each State where such attorney engages in that attorney's duties, to the same extent and in the same manner as other attorneys in that State.’

The effective date of the McDade provision was delayed until April 19, 1999. Repealing, or ‘fixing,’ this law is a high priority of the Justice Department and U.S. Attorneys.

SUPPORT FOR McDADE: The ABA supports the McDade provision, arguing that it simply ‘confirms’ existing law, and will oppose any bill that exempts Federal attorneys from the State supreme courts' supervision. Most Federal and State judges also support the new law.

OPPOSITION TO McDADE: Law enforcement opposes the McDade provision because some State ethics rules interfere with authorized practices for Federal prosecutors, primarily by (1) prohibiting prosecutors from communicating with represented persons without the knowledge or consent of their attorneys, and (2) requiring prosecutors to obtain judicial approval before subpoenaing an attorney to appear before a grand jury. DOJ also claims that the McDade provision would complicate multi-state investigations by subjecting Federal prosecutors to the ethics rules of multiple jurisdictions, *i.e.*, wherever the prosecutor is practicing rather than just where the prosecutor is admitted to practice.

Since Attorney General Thornburgh issued his controversial memorandum of June 8, 1989, DOJ has maintained that at least some State ethics rules are not binding on Federal prosecutors. The Thornburgh memo stated that contact with a represented person in ‘the course of authorized law enforcement activity’ is not a violation of any State's ethics rules; it concluded that DOJ would ‘resist, on Supremacy Clause grounds, local attempts to curb legitimate federal law enforcement techniques.’ DOJ has litigated whether the Thornburgh memo and subsequent DOJ regulations are properly authorized, with limited success. The McDade provision would end such litigation and force Federal prosecutors' compliance with all State ethics rules and laws.

HATCH BILL, S.250: This bill repeals the McDade provision and substitutes a more limited measure designed to accommodate Justice Department concerns. First, while the McDade provision applies to all government attorneys, including those in independent Federal agencies, S.250 applies only to Federal prosecutors employed by the Justice Department, including prosecutors in U.S. Attorney's Offices. Second, while McDade subjects government attorneys to the rules of every State in which they carry out their duties, S.250 subjects Federal prosecutors only to the rules of the States in which they are licensed. Third and most significantly for law enforcement, S.250 carves out an exception: Federal prosecutors are not subject to any State ethics rule ‘to the extent that [it] is inconsistent with Federal law or interferes with the effectuation of Federal law or policy, including the investigation of violations of federal law.’ S.250 gives the Attorney General

authority to issue regulations to ▒carry out▒ the new exception.

Beyond this reformulation of the McDade provision, S.250 does three additional things:
(1) S.250 enumerates nine categories of ▒prohibited conduct▒ by DOJ employees (e.g., failing to disclose exculpatory evidence, offering evidence known to be false, and breaching the grand jury secrecy rules). For violation of these nine ▒commandments,▒ the Attorney General is required to establish penalties ranging from reprimand, dismissal, suspension or referral to State bar associations or to a grand jury.
(2) S.250 requires annual reports on investigations by the Office of Professional Responsibility (OPR) into willful ethics violations.
(3) S.250 establishes a Commission composed of seven judges appointed by the Chief Justice to study whether there are specific Federal prosecutorial duties that are ▒incompatible▒ with State ethics rules. The Commission must submit its report and recommendations to the Attorney General within one year.

PROBLEMS WITH S.250: While the bill would address some problems, it would create the following:

O Vague Exception Will Generate Litigation. At the heart of S.250 is its exception -- a Federal prosecutor is exempt from a State ethics rule to the extent that it is ▒inconsistent with▒ or ▒interferes with Federal law or policy.▒ The ambiguity of this exception will generate substantial litigation over whether a particular regulation was ▒authorized.▒ For example, is a State rule requiring prosecutors to disclose exculpatory information to the grand jury ▒inconsistent with▒ Federal law, which permits but does not require prosecutors to make such disclosures? More generally, must there be an actual conflict between the State rule and Federal law/policy? Can the Attorney General create conflicts through declarations and clarifications of ▒Federal policy▒? Does a State rule ▒interfere with▒ the ▒investigation of violations of Federal law▒ merely by restricting what Federal prosecutors may say or do, or is more required?

Moreover, while the bill states that the nine ▒commandments▒ do not establish any new substantive rights and may not be a basis for dismissal of an charge or exclusion of any evidence, this limitation does not apply to any regulations issued by the Attorney General under the new grant of authority. Thus, in addition to challenges concerning whether an Attorney General regulation was actually authorized, violations of the regulations would invite litigation over whether the remedy is dismissal of the indictment, exclusion of evidence or some other remedy.

O Vague Delegation of Rulemaking Authority. S.250 directs the Attorney General to promulgate ▒such regulations as may be necessary to carry out▒ its exemption for Federal prosecutors. At a minimum, this would give the Attorney General authority to identify State

rules that Federal prosecutors may ignore. It may also be read to give the Attorney General affirmative authority to regulate the ethics standards for Federal prosecutors in areas where, because of a conflict, they are not covered by State rules. In other words, it could provide stronger statutory authority for re-issuance of the Thornburgh memo and subsequent ethics regulations than the general ‘housekeeping’ statute, which the Eighth Circuit and other Circuits have rejected as authority for such regulations. Congress should be clear about the scope of any rulemaking authority it delegates in this sensitive area, lest it give DOJ carte blanche for self-regulation.

O Status of Other Federal Attorneys. As previously noted, while the McDade provision applies to all government attorneys, S.250 applies only to Federal prosecutors employed by DOJ. Thus, if S.250 is enacted, it will be unclear whether and to what extent Congress intended government attorneys other than ‘Federal prosecutors’ to be subject to State ethics rules. In the face of this uncertainty, S.250 may prompt federal agencies with investigative attorneys to circumvent State ethics rules by ‘detailing’ those non-DOJ government attorneys to DOJ.

O Superfluous "Commandments". DOJ originally proposed the nine ‘commandments’ last year as a substitute for McDade's ten commandments, which were extremely problematic and, in the end, not enacted. With that fight already won, there is no useful purpose to be served by singling out a handful of ‘commandments’ for special treatment, and it may just create confusion. For example, one of the commandments prohibits DOJ employees from ‘offer[ing] or provid[ing] sexual activities to any government witness or potential witness in exchange for or on account of his testimony.’ Does this mean that it is okay for DOJ employees to provide sex for other reasons, say, in exchange for assistance on an investigation?

o "Commandments" Could Be Used to Harass Prosecutors. S.250 requires the Attorney General to establish a range of penalties for violating the commandments. Thus, although the bill states that the nine ‘commandments’ do not establish any substantive right for defendants and may not be the basis for dismissing any charge or excluding evidence, it would invite defense referrals to the Attorney General and OPR to punish violations of discovery obligations and other ‘commandments’, no matter how minimal. In other words, these ‘commandments’ and any regulations issued thereunder could provide a forum other than the court for a defendant to assert violations, particularly should defense arguments fail in court. This could be vexatious and harassing for federal prosecutors. The workload could also be overwhelming for OPR, since these sorts of issues arise in virtually every criminal case.

O Problematic "Commandments". Two of the nine commandments are particularly problematic because they undermine the Tenth

Circuit's recent en banc decision in Singleton that the Federal bribery/gratuity statute, 18 U.S.C. §201(c), does not apply to a Federal prosecutor functioning within the official scope of his office. The court based its decision on the proposition that the word ▒whoever▒ in §201(c) *["Whoever ... gives, offers, or promises anything of value to any person, for or because of [his] testimony" shall be guilty of a crime]* does not include the government. S.250 prohibits DOJ employees from altering evidence or attempting to corruptly influence a witness's testimony ▒in violation of [18 U.S.C. §§1503 or 1512]▒-- the obstruction of justices and witness tampering statutes. These statutes use the same ▒Whoever ...▒ formulation as §201(c). By providing that government attorneys are subject to §§1503 and 1512, the bill casts doubt on the Tenth Circuit's reasoning and may lead other courts to conclude that §201(c) does apply to Federal prosecutors and that cooperation agreements are illegal.

o Superfluous Judicial Commission. The new Commission's report is not due until nine months after the Attorney General is required to issue regulations. Thus, to the extent that the Commission is intended to provide legitimacy to, or ▒cover▒ for, the Attorney General's regulations exempting federal prosecutors from certain State ethics rules, its purpose is defeated due to the timing of its report. In addition, the Commission's report must be submitted only to the Attorney General, who is under no obligation to adopt or even consider its recommendations in formulating her regulations.

Crime - McDade

Handcuffing Federal Prosecutors:
The McDade Amendment's Damage to Law Enforcement

The McDade Amendment (28 U.S.C. § 530B) imposes on Department of Justice attorneys, and federal law enforcement agents supervised by them, "state laws and rules and local federal court rules" in each state where the Department attorney "engages in that attorney's duties." This will subject federal prosecutors and lawyers to rules devised by state bar associations, which are dominated by criminal defense attorneys, that will handcuff federal prosecutors and significantly restrict the ability of federal law enforcement to investigate and prosecute criminals.

Prohibiting Undercover Investigations of Organized Crime and Drug Traffickers. Some state bar interpretations of the American Bar Association's (ABA) Model Rule on communications with parties represented by counsel will discourage or prohibit undercover operations that are necessary to infiltrate the worst of criminal organizations.

- Minnesota court found that state ethics rules do not permit undercover contacts, pre-indictment. In that case, the court found a violation of ethical rules when a prosecutor, investigating the alleged murder of a one-year old, taped a conversation between the mother of the child and the child's daycare provider, who was the subject of the investigation. State v. Roers, 520 N.W.2d 752 (Minn. Ct. App. 1994). If this interpretation were adopted in other states, the Department attorneys could not use undercover agents to investigate drug lords and mobsters who were represented by counsel.

- The Oregon state bar has interpreted its bar rules to prohibit sting operations, including those conducted by government agents supervised by attorneys. Under this rule, the Department would not be able to conduct its civil rights testing program and would not be able to do "buy-bust" drug operations.

Dismissing Whistleblowers. Federal investigators in some states will be prohibited from talking to employees who – on their own – come to prosecutors with evidence of corporate fraud because corporate counsel may be deemed, under those states' interpretation of their bar rules, to represent virtually all employees of the company.

- Corporate counsel regularly claim to represent all employees of a corporation, even if the employees do not want to be represented by corporate counsel and volunteer to provide information to the government. A district court in California recently held that a government attorney violated California's bar rules by speaking with an employee who did not want to be represented by the corporation's counsel and who initially approached the government. United States v. Talao, No. CR-97-0217-VRW, Slip. Op. (N. D. Cal. Aug. 14, 1998).

- State ethics rules are often so vague it is nearly impossible to determine which employees of a company may be contacted by prosecutors or agents supervised by them. For example, in one case involving alleged violations of the Clean Water

Act, prosecutors determined that the prevailing state ethics rules might not permit them to question essential low level employees who had critical information about the source and size of the company's discharges. As a result, that case was closed.

Limiting the Use of Cooperating Witnesses to Crime. Criminal defense counsel are already arguing that the McDade Amendment, in combination with the state bar rule (adopted in more than 30 states) that prohibits offering an inducement to a witness that is prohibited by law, prevents the government from using the testimony of cooperating witnesses who truthfully provide evidence in exchange for leniency. This law enforcement technique is the cornerstone of the effort to bring down drug trafficking rings and other criminal organizations.

- If cooperating witness testimony were not permitted, the conviction in the Oklahoma City bombing as well as those in other significant cases might not survive.

Impeding Multi-state Investigations. The ability to conduct multi-state investigations will be harmed because federal prosecutors, even within a single case, will be forced to reconcile inconsistent rules in different states and courts.

- The federal prosecutors who were immediately dispatched to locations around the country in the Oklahoma City bombing investigation would have been severely impeded if they had to identify and comply with different rules in every state where the investigations occurred.

- Investigations of corporate misconduct extend across many states, and it is often unclear which state's rules apply. Given that each state has different rules for what current and former employees of a represented corporation that a government attorney may contacts, this could seriously impeded such investigations.

Nullifying Federal Laws and Subverting the Will of Congress. Although the Department believes such arguments are incorrect, defense counsel in pending cases have already argued that the McDade amendment authorizes state bars and federal courts to nullify federal law, and we anticipate arguments that Section 530B prohibits the use of wiretaps and other means of gathering evidence permissible under federal law, but not under some state laws.

The McDade Amendment gives state bars a blank check, at the behest of criminal defense lawyers, to design and rules that, in effect, will transfer the power over federal law enforcement from Congress to state bars.

The McDade Amendment – 28 U.S.C. § 530B

Overview

- Section 530B, commonly known as the McDade Amendment, will require Department attorneys to comply with "state laws and rules and local federal court rules" in each state where the Department attorney "engages in that attorney's duties." **This will significantly interfere with federal law enforcement.**

  - Properly construed, the enactment will require Department attorneys to adhere to state bar rules that, in many cases, were drafted without input from federal prosecutors and that may fail to account for the legitimate and lawful practices of government attorneys and investigators who are charged with enforcing federal law.

  - In addition, Section 530B is extremely vague, leaving federal prosecutors vulnerable to broad interpretations argued by defense counsel. This will slow investigations as Department attorneys are forced to litigate these questions. Moreover, if criminal defense counsel prevail in arguing that state bar rules, after passage of Section 530B, nullify federal law, such as that permitting wiretaps, legitimate investigations will be stymied.

- **Department attorneys already comply with several sets of ethics rules, including the rules of the court where they are litigating and the rules of their state of licensure, to the extent that those rules are not inconsistent with the enforcement of federal law.** Section 530B thus does nothing to make federal prosecutors more ethical.

- In fact, Section 530B does the following:

  - It gives state bars, which are generally dominated by the criminal defense bar, a blank check to create local rules that will have the effect of interfering with law enforcement. There is no reason that Congress should cede this authority to state bars.
  - It allows criminal defense counsel to stymie federal investigations of serious misconduct by using existing bar rules that, among other things, prohibit sting or undercover operations, restrict conversations with whistleblowers, and give attorneys more protection than ordinary citizens from government subpoenas.
  - It creates confusion and uncertainty for Department attorneys, who will be forced to comply with multiple, sometimes inconsistent, sets of rules in a simple investigation that crosses state lines. By requiring Department attorneys to comply with a hodgepodge of different rules in each state, Section 530B will have the greatest impact on complex cases that require a rapid response, such as the investigation of the Oklahoma City bombing, and widespread investigations that involve all fifty states, such as the Unabom case.

Effect of Section 530B

- **Even interpreted narrowly (i.e., to apply only to state ethical and professional conduct rules),** Section 530B will interfere with significant federal law enforcement efforts, including investigations of large criminal conspiracies, such as organized crime and drug cartels, and of corporate misconduct, such as health care fraud, environmental crimes, and fraud by defense contractors.

  Undercover Investigations of Organized Crime and Drug Conspiracies

  - Section 530B will prohibit undercover and sting operations in some states and will discourage them in others.
    - At least one state, Minnesota, has interpreted its rules to prohibit undercover contacts, pre-indictment.
    - In Oregon, state bar rules have been interpreted to prohibit government attorneys from being involved in activities, including "sting" operations, that involve "dishonesty, fraud, deceit or misrepresentation."
    - Two other jurisdictions – Florida and Puerto Rico – have eliminated the language in the ABA's Model Rule that traditionally permits undercover operations.

  - Section 530B may also chill investigations of ongoing or additional criminal conduct because state bar rules often do not make clear that government attorneys and agents (including undercover agents) can communicate with persons who are represented with respect to prior acts of criminal conduct that may in some way be related to the ongoing or additional conduct.
    - The government regularly seeks to investigate the continuing criminal activities of, for example, a drug courier, who has been released on bail. State bar rules are vague and thus it is often difficult to know whether undercover agents could contact the courier to investigate allegations that he is still selling drugs.
    - Several states have informed the Department that such contacts would probably be prohibited under their bar rules. In one case, a United States Attorney's office was told by an informant that an indicted defendant was seeking to murder a witness against him and a law enforcement officer involved in the investigation. The office sought authorization for an undercover contact by the informant. The office consulted state bar counsel, which said that this contact would violate the state's ethics rules.

Whistleblowers and Corporate Misconduct

- The Department's ability to investigate corporate misconduct will be compromised because many states have bar rules that significantly restrict the ability of prosecutors to speak with low-level corporate employees who are witnesses to misconduct, but are held to be "represented" by the corporation's lawyer.

  - Most state ethics rules are so vague that is difficult, if not impossible, to tell if it is permissible to speak with a corporate employee, including a former employee; numerous courts have criticized the vague test in the ABA's Model Rule.
  - Corporate counsel regularly seek to use state bar rules to block interviews with corporate employees by claiming that they represent all employees, thus delaying investigations and making it more difficult to investigate corporate misconduct.
  - Bar rules in several states limit government attorney's ability to talk to even former corporate employees and similar rules in other states have been interpreted to prohibit government attorneys from talking to virtually any current employees of a corporation represented by counsel.

- Section 530B could chill the government's efforts to talk to whistleblowers and low-level conspirators, who voluntarily seek to disclose to prosecutors otherwise undetected evidence of wrongdoing.

  - The current rule in effect in many states does not permit government attorneys to speak with represented witnesses who voluntarily approach the government to provide evidence. This includes whistleblowers, who may be represented by the corporation's counsel, or indicted, low-level conspirators, who may be represented by mob counsel.
  - Numerous courts (including the 4th and 10th Circuits) and ethics authorities have interpreted state bar rules to prohibit such contacts.

Plea Bargaining and Use of Testimony from Cooperating Witnesses

- Section 530B could interfere with the government's ability to build criminal cases through the testimony of cooperating witnesses. Criminal defense counsel have already begun to argue that any plea bargain offering consideration to witnesses in exchange for cooperation and testimony violates state bar rules.

  - Thirty-three (33) states have adopted the version of the Model Rule which prohibits the offer of an inducement to a witness that is

prohibited by law. Based on an interpretation of federal law, a panel of the 10th Circuit (since reversed in an en banc opinion) construed this rule in United States v. Singleton as prohibiting the use of testimony of cooperating witnesses. Although the Singleton decision was reversed, defense counsel are still arguing that courts should follow it.

- Florida prohibits the use of any inducement offered to witnesses. On its face, this could be argued to prohibit any plea bargain in exchange for testimony.

Attorney Subpoenas

- Section 530B could empower defense counsel, through the passage of bar rules, to avoid complying with valid federal grand jury and trial subpoenas seeking relevant information and evidence.

  - At least 8 state bars have enacted "ethics" rules that make it more difficult to subpoena an attorney than anyone else. Even the ABA has said that these rules go beyond the regulation of ethics into the realm of modifying substantive law.

- **If construed broadly to require federal prosecutors to abide by substantive state laws (including, for example, provisions constraining the use of lawful federal wiretaps and altering grand jury practices),** Section 530B will severely erode the government's ability to enforce federal law and investigate federal offenses nationwide. While the Department contests this construction of Section 530B, defendants undoubtedly will advance this interpretation and the outcome remains uncertain.

  - Eleven (11) states limit or prohibit the use of wiretaps by prosecutors. If applied to the federal government under Section 530B, these state laws will trump federal law concerning wiretaps and interfere with federal investigations.
  - Many states impose regulations on grand jury practice that differ significantly from federal law. For example, at least twelve (12) states require the prosecution to present exculpatory evidence. At least eleven (11) states prohibit the use of hearsay evidence before the grand jury. At least seventeen (17) states permit defense counsel to be present in the grand jury under certain circumstances,

- **The litany of issues and claims likely to be advanced by defense counsel as a result of Section 530B will divert scarce government resources from the pursuit of justice and embroil prosecutors in endless satellite litigation.** Indeed, defense counsel already have advanced broad interpretations of Section 530B that

would allow state bar rules to trump federal statutes and shut down ongoing government investigations.

- Criminal defense counsel in pending cases have already argued that Section 530B: (a) authorizes state bars and federal courts to nullify federal law in their states as described above; (b) prohibits Department attorneys and investigators from talking to any corporate employees; and (c) prohibits the use of testimony from cooperating witnesses. In that Section 530B has yet to take effect -- the effective date is April 19, 1999 -- these claims undoubtedly are simply the tip of the iceberg.

- **Section 530B will interfere with the federal government's partnership with state and local law enforcement.** Often, state and local authorities seek assistance from federal prosecutors with complex or high profile cases or with cases that cross state lines. In addition, state and local prosecutors work with Department attorneys on joint task forces. Section 530B would discourage these critically important efforts because it will restrict federal prosecutors, as described above, as well as the activities of those supervised by federal prosecutors.

  - The provision will apply to, and thus limit, the activities of state and local prosecutors who are cross-designated as Special Assistant United States Attorneys.
  - State and local authorities who are acting under the supervision of a Department attorney in a joint task force may be limited by the most restrictive set of ethics rules that the attorney might have to follow. Thus, Atlanta police being supervised by an AUSA licensed in Florida may have to comply with Florida's more restrictive bar rules.

- **Section 530B will impede large multi-state investigations and result in destructive confusion by subjecting government lawyers to different rules in different states and courts.** Prosecutors could be exposed to discipline in multiple states applying conflicting rules to identical conduct. Reconciling and applying these often inconsistent provisions will severely hamper efforts to provide uniform guidance and achieve uniform federal investigatory practices in multi-state investigations.

  - Because the bar rules differ in every state, the enforcement of federal law will not be uniform from state to state -- even within one case, interviews with witnesses could be subject to different rules.
  - Section 530B is vague, leaving Department attorneys at risk even when they attempt to comply with relevant ethics rules. Because Section 530B requires Department attorneys to comply with ethics rules in every state where such attorney "engages in that attorney's duties," Department attorneys may have to consider the bar rules of the state where they are licensed, of the court before which a matter is pending, and of every state in which they may be

supervising an investigator. If this language is interpreted broadly (incorrectly, we believe), government attorneys will face a greater burden than any private attorney.

- Department attorneys practice nationwide. If Section 530B is read (incorrectly, we believe) to require Department lawyers to be licensed in every jurisdiction in which they engage in their duties, the statute will create an enormous practical burden on the Department and its attorneys

- **Section 530B gives state bars a blank check to design rules, at the behest of criminal defense attorneys, that will have the effect of interfering with federal investigations, thereby transferring power over the enforcement of federal law from Congress to state bars.**