

Controversy still swirls around McDade-Murtha bill to curb DOJ abuse

by Edward Spannaus

The controversy around the “Citizens Protection Act of 1998,” popularly known as the McDade-Murtha bill, has not at all diminished with the ending of the current session of Congress — as was recently shown by a contentious debate on the bill held in Washington, D.C.

Title I of the McDade bill, which declares that Federal prosecutors shall be subject to the same state laws and ethical rules of conduct as any other lawyer, was enacted into law at the end of the session as a provision of the omnibus appropriations bill. The U.S. Justice Department has vowed to kill that provision, and to prevent the rest of the bill from being enacted next year.

The section which became law is entitled “Ethical Standards for Federal Prosecutors.” It sounds innocuous enough, but the reality is that, since the infamous 1989 “Thornburgh Memorandum,” the Justice Department has arrogantly asserted that its prosecutors are not bound by the same standards and rules as are state prosecutors and other attorneys.

The day that the omnibus appropriations bill was passed, Oct. 21, the Justice Department planted a story on CNN, in which they called the new provisions “McDade’s revenge” — referring to Rep. Joseph McDade (R-Pa.), one of the bill’s original co-sponsors along with Rep. John Murtha (D-Pa.). CNN’s correspondent said, “McDade’s bill passed in part because of his popularity and because many of his colleagues are concerned about out-of-control prosecutions.” CNN concluded: “But the fight moves on. Justice officials persuaded lawmakers to delay implementation for six months. They hope that will be enough time to kill the provisions that may shackle their investigations.”

Asked by *EIR* about the CNN report, Justice Department spokesman Gregory King said that to have to follow the rules of the states, would impose an enormous burden on prosecutors in multi-state investigations. “We’re concerned that Congress may not have fully appreciated how damaging this provision can be,” King said. “The hope is that we will have an opportunity to fix it,” and that this would take place “within the first six months of next year.”

The same point was made by former Justice Department official Michael Shaheen at a forum on prosecutorial misconduct, held at the Federalist Society’s National Lawyers Convention in Washington on Nov. 12. “The Department of Jus-

tice takes it very seriously,” Shaheen said. “I know there is an army of lawyers trying to analyze in detail the profound effect this legislation will have on Federal enforcement efforts, both national and international.”

The fight next year

But, while the Justice Department and its allies are hoping to kill the Citizens Protection Act altogether, its proponents are intending to fight for passage of the full bill in the next session of Congress. According to Capitol Hill sources, proponents of the bill have been assured that the Misconduct Review Board provision, which was taken out during the Senate-House conference, will be reintroduced next year.

According to these sources, one reason that proponents of the bill agreed to drop the Review Board provisions for this session, was that it became unworkable when it was tagged onto the Justice Department appropriations bill. The original strategy was for McDade-Murtha to be enacted as a stand-alone measure, with its own funding. If the funding for the Review Board were to come from the Justice Department budget, it would lose its independence — which would defeat the purpose of ensuring real oversight over the Department. Therefore, part of the compromise this session was to drop the Review Board, in return for assurances that the provision will be brought back next year as a stand-alone measure with hearings on it guaranteed. Although McDade will not be in Congress in the next session, it is expected that he will testify at such hearings.

Representative McDade spoke at the Nov. 12 Federalist Society panel, and he reaffirmed that the full Citizens Protection Act will be back in the next session of Congress. McDade, who himself was the target of a prolonged Justice Department prosecution — he was ultimately acquitted — said that he wants to be sure that what happened to him, does not happen to other citizens. “It [persecution] happens because the Constitution gets torn up,” he said.

McDade told the audience that a reporter had recently said to him, that since he is retiring from Congress after 36 years, “that’s the end of your efforts, isn’t it?” McDade answered, “No.” The reporter asked, “Why not?”

“Because *ideas* are what move people in Washington,” McDade explained — in a refreshing contrast to the usual cyn-

icism about politics and Congress. "And once an idea takes hold, it tends to keep going."

"I believe it'll be back in the next session," McDade told the audience. "It's an issue you need to address very passionately, and I hope we'll be able to put it on the books as United States law."

The view from Justice

McDade was followed on the panel by Michael Shaheen, who headed the Justice Department's impotent Office of Professional Responsibility from 1975 until late last year. (Shaheen is now conducting an investigation of the witness-tampering allegations surrounding independent counsel Kenneth Starr's key Whitewater witness, David Hale, in Arkansas; that assignment was not discussed at the Nov. 12 forum.)

Shaheen began by saying that he'd had a long-standing interest in issues of prosecutorial misconduct, and he acknowledged that McDade has made some good points. But he quickly got to the subject of the McDade legislation, declaring that what was enacted this last term, even with Provisions II and III stricken from it, "will have a paralyzing effect on a whole host of cases . . . of increasing significance."

Shaheen went through the usual Justice Department litany about how the McDade legislation will paralyze law enforcement efforts involving "transnational threats," international terrorism, organized crime, and so on, and he commented that "to parochialize Federal law enforcement by subjecting Federal prosecutors to the laws and ethical provisions of 50 separate jurisdictions is not being terribly forward looking."

Shaheen suggested the following scenario: "The next time an international terrorist act happens, and you want action yesterday, and the Attorney General appears on television and says, 'We'll get back to you in a week or two'—don't blame the Attorney General, don't blame the Federal prosecutors: Blame the proponents of the McDade legislation."

When he had a chance to respond to this and other charges and warnings about the dire effects of his legislation, McDade characterized them as "hogwash."

"The Constitution is being torn up," McDade said. He described how the proponents of the bill had offered, during the negotiations over the legislation, a provision for a uniform standard of ethics for all the 50 states—to overcome the objections that there could be conflicting laws and rules between different states. McDade said he also offered to incorporate the American Bar Association's model code of conduct. Both offers were rejected.

"You heard them attack me as somebody who wants to let a bomber loose," McDade said. "Or a terrorist. Usually, you heard a child pornographer, too. That's usually in there."

Also on the panel was a top Senate aide, Stewart Verdery, who was working for Sen. Orrin Hatch (R-Utah), the chairman of the Senate Judiciary Committee, when the McDade legislation was passed by the House. As soon this happened,

Verdery said, "Hatch had me working the phones to prevent a similar effort in the Senate." He described how they rallied 13 out of 18 members of the Senate Judiciary Committee to oppose it, and he cited the range of opponents of the bill, from the current and former Attorneys General, to the head of the FBI, to "our friends, the *Washington Post*."

Verdery said that during the House-Senate conference negotiations over the bill, it became clear that some part of the bill was going to have to be included in the final appropriations bill. Verdery indicated that they were especially concerned to delete the provision for the Misconduct Review Board. In this respect, Verdery cited as this authority the *Washington Post*, which had said that the Review Board would be an administrative nightmare for the Department of Justice, and that it could too easily become a roving, unaccountable body, meddling in sensitive law enforcement matters. "So we were very happy to see that that provision was deleted as we reached the final negotiations," Verdery said.

One of those in the audience who attacked the McDade bill was former Federal prosecutor Barbara Olson—the wife of Kenneth Starr's close friend and associate Theodore Olson. Mrs. Olson accused McDade of wanting "to attack all prosecutors," and to hamper Federal prosecutions.

McDade retorted that it is not an attack on all prosecutors "to put a requirement that they observe state ethics laws," noting that prosecutors had always been required to do that. Earlier, McDade had pointed out that it was only in the past ten years that the Justice Department took the position that Federal prosecutors were exempt from state ethics laws and rules of conduct.

Hearings needed on DOJ abuse

The passage of the McDade-Murtha bill was the result of an unprecedented popular mobilization, which was spearheaded by friends and associates of Lyndon LaRouche over the spring and summer of this year. At the time of the bill's passage in the House, it had more than 200 co-sponsors—despite the opposition of House Speaker Newt Gingrich (R-Ga.) and an intense mobilization by the Justice Department, Federal prosecutors, FBI agents, and others. It passed the House on Aug. 5 by a vote of 345-82. Attorney General Janet Reno had said that she would ask the President to veto the bill—which the President did not do.

The mobilization by the LaRouche forces around the McDade-Murtha bill included a demand for full, comprehensive hearings on prosecutorial misconduct, which would feature the LaRouche case, the systematic targeting of African-American elected officials by the Justice Department, and other egregious cases of Justice Department tyranny and abuse. The fight for these hearings will be resumed next year, and Capitol Hill sources have said that hearings on Department of Justice misconduct are planned for the upcoming session of Congress.