

leave key sites in their capital in shambles. No, the people living under the last dictator of Europe met this weekend's parliamentary elections with silence. Opposition parties rallied the people to boycott, and what they didn't say at the polls, the international community said for them.

The U.S. State Department declared the results "not free, fair, or transparent" and replete with "gross abuses" by President Alexander Lukashenko's regime. The Organization for Security and Cooperation in Europe (OSCE), the Council of Europe, the European parliament and the European Union said the same. The dictator's allies got most of the 43 seats in districts where the winner received a majority of the vote. Where no candidate received a majority of the vote, run-offs will occur Oct. 26, another opportunity for the dictator to demonstrate his unique election methods. However, a record-low turnout in many towns, claimed as a victory by the opposition, will force new elections in three months.

What will it take for the people to push Mr. Lukashenko to follow Yugoslav leader Slobodan Milosevic into political oblivion in next year's presidential election? Nothing short of war, if one asks the international coordinator for Charter '97, Andrei Sannikov. "I don't know how the country survives. [Approximately] 48.5 percent live below the poverty level," Mr. Sannikov told reporters and editors of *The Washington Times*. "That increases to 60 percent in rural areas. It would provoke an extreme reaction anywhere else. Here, they won't act as long as there is no war".

But the people of Belarus are getting restless. Out of the 50 percent of the people who don't know who they support, 90 percent are not satisfied with Mr. Lukashenko and with their lives in Belarus, Mr. Sannikov said. The dictator's behavior before last weekend's elections didn't help any. In his statement three days before the elections, Rep. Chris Smith, chairman of the OSCE, listed just a few reasons why the people should take to the streets: "Since August 30, the Lukashenko regime has denied registration to many opposition candidates on highly questionable grounds, detained, fined or beaten over 100 individuals advocating a boycott of the elections, burglarized the headquarters of an opposition party, and confiscated 100,000 copies of an independent newspaper."

Mr. Sannikov, a former deputy foreign minister, was himself a victim last year when he was beaten unconscious, and three ribs and his nose were broken, in what he said was a government-planned attack. He and the rest of the opposition don't want to be victims in next year's elections. If the opposition can rally behind one formidable leader, war won't have to precede change—nor will Mr. Lukashenko once again make democracy a fatality.

CONTINUING PROBLEMS FOR FEDERAL LAW ENFORCEMENT DUE TO THE MCDADDE LAW

Mr. LEAHY. Mr. President, I have spoken several times this year about the so-called McDade law, which was slipped into the omnibus appropriations bill at the end of the last Congress, without the benefit of any hearings or debate in the Senate. I have described the devastating effects that this ill-considered law is having on

Federal law enforcement efforts across the country. Recent articles in the *Washington Post*, the *Washington Times* and *U.S. News & World Report* also describe how the McDade law has impeded Federal criminal investigations.

For over a year, I have been proposing legislation to address the problems caused by the McDade law. My corrective legislation would preserve the traditional role of the State courts in regulating the conduct of attorneys licensed to practice before them, while ensuring that Federal prosecutors and law enforcement agents will be able to use traditional Federal investigative techniques. Although the bill does not go as far as the Justice Department would like—it does not establish a Federal code of ethics for government attorneys, nor does it authorize the Justice Department to write its own ethics rules—nevertheless, the Justice Department has supported the bill as a reasonable, measured alternative to the McDade law.

Congress's failure to act on this or any other corrective legislation this year means more confusion and uncertainty, more stalled investigations, and less effective enforcement of the Federal criminal laws. I regret that we have not made more progress, and hope that we can work together in the next Congress, on a bipartisan and bicameral basis, to resolve the situation.

I ask unanimous consent that these articles be included in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the *Washington Post*, Oct. 19, 2000]

REPEAL THE MCDADDE LAW

Two years ago, Congress approved a seemingly innocuous requirement that federal prosecutors observe the ethical standards of the state bars that gave them their law licenses. Members probably didn't think that, in supporting the proposal, they would be harming important federal investigations. They thought rather to stand against prosecutorial excess and show support for retiring Rep. Joseph McDade, who had once been prosecuted unsuccessfully by the Justice Department. Yet even as Congress was moving ahead with the bill, many people—including in the Justice Department and on the Senate Judiciary Committee—warned of unintended consequences. Now the warnings are coming true. The so-called McDade law has compromised Justice Department investigations on matters ranging from airline safety to child pornography.

State bar rules are generally not written with investigative concerns in mind—and are sometimes written to hamper prosecutors. Lawyers, for example, are generally forbidden from contacting directly people whom they know to be represented by counsel. The rule makes sense as a general matter, but figuring out how it should apply to investigative work is exceptionally difficult. A prosecutor investigating a corporation who wants to talk with company employees could be read to violate this ethical stricture if the corporation's lawyers are not present. Such a rule would make federal investigations of

corporations dependent on the corporation's consent. According to a Justice Department report, this precise issue hampered an investigation of an airline—which press reports identify as Alaska Airlines—for allegedly falsifying maintenance reports. Unable to have agents interview key witnesses, the department had to bring them before a grand jury—a process that involved lengthy delays. "When the witnesses finally appeared before the grand jury, they had trouble remembering anything significant to the investigation," the report notes. "After about a year of investigation, one of the airline's planes crashed."

In Oregon, the U.S. Attorney's Office recently notified the FBI that it would not participate further in an undercover program that targets child pornography. The Oregon Supreme Court has interpreted state ethics rule to prohibit dishonesty or deceit in investigations—with no exception for law enforcement. That makes undercover work of any kind the stuff of potential bar discipline for lawyers who get involved. In a letter to the FBI field office, Portland's U.S. attorney announced that, under the rule, "the attorneys in our Criminal Division cannot approve or authorize any undercover operations or consensual monitoring" at all. Such an outcome has nothing to do with prosecutorial ethics but will harm law enforcement.

The McDade problem needs to be fixed, and Sen. Patrick Leahy is pushing a bill that would do that. Federal prosecutions and investigations cannot be held hostage to whatever rules 50 state bars choose to pass.

[From the *Washington Times*, Oct. 10, 2000]
FEDERAL PROSECUTORS HOSTAGE TO STATE
CODES

(By Bruce Fein)

If you think United States Secret Service protection of the president should be held hostage to state law, then you should love the 1-year-old "McDade" statute. Ditto if you think FBI attempts to thwart or investigate presidential assassinations or corruption of Members of Congress also should be held hostage. But you might think the McDade law reflects federalism run riot, and thus champion its overhaul, like Sen. Patrick J. Leahy, Vermont Democrat, and Sen. Orrin G. Hatch, Utah Republican and chairman of the Senate Judiciary Committee.

Without hearings, the law was tucked into an appropriations bill in a fit of congressional disenchantment with aggressive investigative tactics symbolized (rightly or wrongly) by Independent Counsel Kenneth Starr. It subjects all federal government attorneys in conducting federal criminal or civil investigations to state professional disciplinary rules in the state in which they operate. On its face, the McDade law seems unalarming. Why shouldn't federal attorneys conform to the same ethical standards required of their professional colleagues whether in private practice of state government?

The answer is that the parochial perspectives of states may discount or overlook broader and compelling federal law enforcement interests. The state of Oregon sports a typical disciplinary rule prohibiting attorney dishonesty, deceit or misrepresentation. It has been interpreted to prohibit federal prosecutors from either authorizing or supervising undercover operations of the FBI or consensual monitoring of conversations by informants. Under the McDade law, for instance, suppose the United States Attorney in Oregon and the FBI suspect an attempted

assassination of President Clinton during a fund-raising visit to Portland by extremists. A plan is devised to infiltrate an informant into the suspected circle of conspirators with an electronic recording device to forestall the villainy. It would be frustrated by Oregon's disciplinary code coupled with the McDade law.

Federal terrorism investigations or prosecutions are likewise jeopardized in Oregon. Suppose a terrorist suspect pleads guilty to a federal conspiracy offense and agrees to cooperate in the apprehension and trial of co-conspirators in exchange for a lenient sentence. The United States Attorney contemplates the terrorist-informant's use of an electronic recording or transmitting device to prove the guilt of the conspirators from their own words. The U.S. Supreme Court held in *United States vs. White* (1971) that such investigatory deceit is no affront to the Constitution, and added: "An electronic recording will many times produce a more reliable rendition of what a defendant has said than will the unaided memory of a police agent. It may also be that with the recording in existence it is less likely that the informant will change his mind, less chance that threat or injury will suppress unfavorable evidence, and less chance that cross-examination will confound the testimony."

Under the McDade law in Oregon, however, the United States Attorney would be required to forgo his impeccable plan for electronic monitoring to ensnare a nest of terrorists.

Its mischief is not confined to these troublesome hypotheticals, but handcuffs the investigation of every federal crime and has thrown a spanner in real cases. The FBI initiated an "Innocent Images" investigation in Portland spurred the burgeoning problem of child pornography and exploitation in Oregon. The United States Attorney shut down the operation because fearful that the involvement of undercover agents and the monitoring of telephone calls with the consent of but one party could be deemed deceitful by the State Bar.

During a recent Oregon drug trafficking investigation, the FBI located a cooperating witness willing to use an electronic monitoring device to record the conversations of drug trafficking suspects. The United States Attorney nixed the idea because of the McDade law.

In 1980, the FBI's Abscam investigation employed undercover agents to implicate six House members and one senator in corruption. One videotape captured Rep. John W. Jenrette Jr., South Carolina Democrat, confessing to an agent, "I've got larceny in my blood." Abscam would have been problematic if the McDade law had then been in effect.

A recurring impediment in all states are codes that prohibit federal attorneys and their agents from contacting and interviewing corporate employees without the consent and presence of corporate counsel. In California, the FBI's investigation of Alaska Airlines maintenance records through separate interviews of employees was thwarted by a company attorney's claiming to represent all. After a Jan. 31, 2000, crash of an Alaska Airlines jet killing everyone on board, FBI agents were blocked from questioning ground mechanics for the same reason. Sen. Leahy, a former seasoned prosecutor, lamented: "[T]hose interviews that are most successful simultaneous interviews of numerous employees could not be conducted simply because fear that a [state] ethical rule . . . might result in proceedings against the prosecutor."

The Supremacy Clause of Article VI of the Constitution that when legitimate federal interests are at stake, state law should bow. It was underscored by the Supreme Court's ruling in *In re Neagle* (1890), which denied California authority to prosecute a federal deputy marshal for killing an attacker in the course of defending Supreme Court Justice Stephen J. Field.

An ethics code to ensure that federal government attorneys turn square corners is admittedly necessary. But shouldn't it be drafted by federal authorities sensitive to federal needs rather than consigned to the whims of 50 different states?

[From U.S. News & World Report, Oct. 16, 2000]

FEDERALLY SPEAKING, A FINE KETTLE OF FISH

(By Chitra Ragavan)

Two Octobers ago, Congress passed a funny little law. It was named after its sponsor, Pennsylvania Republican Joseph McDade, but for the congressman, there was nothing funny about it. The Justice Department had spent eight years investigating McDade on racketeering charges. He was finally acquitted by a jury in 1996, but by then McDade's health and spirits were broken. The McDade bill was his payback to Justice. It simply requires federal prosecutors to comply with state ethics laws.

No big deal? Not quite. In August, the Oregon Supreme Court forbade all lawyers in the state to lie, or encourage others to lie, cheat, or misrepresent themselves. Under McDade, the ruling now applies to Oregon's federal prosecutors. "We've handcuffed the agents," says senior FBI official David Knowlton, "not the criminals." The U.S. attorney for the Oregon district, Kristine Olson, has informed the FBI and other federal investigative agencies that she cannot OK agents or informants to assume false identities, wear body wires, or engage in undercover activities. "In effect," says David Szady, special agent in charge of the FBI's Portland office, "we now have to go to a drug dealer and say, 'FBI! Would you sell us some drugs, please?'" The FBI, Szady says, has had to suspend 50 investigations, including probes of Internet child pornographers, a Russian organized-crime group, and a massive check-fraud ring.

Federal prosecutors despise the McDade law. David Margolis, a senior Justice Department official and a veteran organized-crime prosecutor, says McDade has had a major chilling effect. "Even I wouldn't go out on a limb," he says. Justice officials are trying to gut the law before Congress goes out of session this week. The department warned lawmakers in 1998 that prosecutors would be lost in a morass of quirky state ethics laws—especially during complicated multistate investigations. But defense lawyers won the day. "Why should prosecutors be exempt from rules that apply to all other lawyers in that state?" says Mark Holscher, lawyer for former Los Alamos scientist Wen Ho Lee. So far, no court has dismissed a case or excluded evidence on the basis of McDade. "These are crocodile tears," says veteran defense lawyer Irv Nathan.

Major headache. The biggest headache for prosecutors is the American Bar Association's controversial Model Rule 4.2, adopted by many states. It prohibits prosecutors from contacting people represented by lawyers without first talking to the attorneys. Remember when Kenneth Starr's prosecutors ignored Monica Lewinsky's tearful entreaties to call her lawyer? They got away

with it because, since 1989, Justice had defied Rule 4.2.

No more. Prosecutors now say adhering to 4.2 has hurt white-collar probes, where securing the cooperation of informers is often vital. In an investigation of Alaska Airlines last year, company lawyers barred federal agents from questioning employees. Sen. Patrick Leahy of Vermont says, "The pendulum has swung too far in the other direction." But House Judiciary Committee Chairman Henry Hyde of Illinois says he's not inclined to repeal McDade. "That doesn't mean I'm for crooks," Hyde says. "I'm for ethical behavior both by law enforcement and by defense counsel." Watching the fight from the sidelines in Joe McDade, now 69. "I didn't read about it. I lived it," he says, of prosecutorial zealotry. "The effort is not justice. The effort is to break a citizen."

STUDENT PLEDGE AGAINST GUN VIOLENCE

Mr. LEVIN. Mr. President, on Tuesday, thousands of young people observed the Fifth Annual Day of National Concern About Young People and Gun Violence. Students across the country who participated in the day's activities were given the chance to make a strong statement renouncing the violent use of guns by signing a voluntary pledge.

In my own State of Michigan, high school senior Vince Villegas of Lansing worked to ensure that the anti-gun violence pledges were distributed to students in his own school district. Vince is the co-founder and current president of Students Against Firearm Endangerment, SAFE, USA, an organization whose mission is to reduce the number of gun casualties by increasing gun education in America's schools. With help from students like Vince, more than one million young people have signed the Student Pledge Against Gun Violence during this year alone.

Here is what that pledge says: "I will never bring a gun to school; I will never use a gun to settle a dispute; I will use my influence with my friends to keep them from using guns to settle disputes. My individual choices and actions, when multiplied by those of young people throughout the country, will make a difference. Together, by honoring this pledge, we can reverse the violence and grow up in safety."

Vince and students like him around the country have pledged to do what they can to reduce the toll of gun violence in their lives. Now it's up to Congress to learn from our young people and pledge to combat the gun violence that plagues the Nation's schools and communities.

VICTIMS OF GUN VIOLENCE

Ms. MIKULSKI. Mr. President, it has been more than a year since the Columbine tragedy, but still this Republican Congress refuses to act on sensible gun legislation.