The first part of the proposed legislation embodies the traditional understanding that when lawyers handle cases before a federal court, they should be subject to the federal court's rules of professional responsibility, and not to the possibly inconsistent rules of other jurisdictions. By incorporating this ordinary choice-of-law principle, the proposed legislation would preserve the federal courts' traditional authority to oversee the professional conduct of federal trial lawyers, including federal prosecutors. It would thereby avoid the uncertainties presented by the McDade law, which subjects federal prosecutors to state laws, rules of criminal procedure, and judicial decisions which differ from existing federal law.

The second part of the proposed legislation addresses the most pressing contemporary question of government attorney ethics—namely, the question of which rule should govern government attorneys' communications with represented persons. It asks the Judicial Conference of the United States to submit to the Supreme Court a proposed uniform national rule to govern this area of professional conduct, and to study the need for additional national rules to govern other areas in which the proliferation of local rules may interfere with effective federal law enforcement. The Rules Enabling Act process is the ideal one for developing such rules, both because the federal judiciary traditionally is responsible for overseeing the conduct of lawyers in federal court proceedings, and because this process would best provide the Supreme Court an opportunity fully to consider and objectively to weigh all relevant considerations.

2. SHORT TITLE

Section one is the short title of the bill.

3. AMENDMENTS TO 28 U.S.C. 530B

Section two supersedes the McDade law with a new 28 U.S.C. 530B, consisting of four subsections.

Subsection (a) codifies the definition of ''attorney for the Government'' in the current Department of Justice regulations, and also includes in the definition any outside special counsel, or employee of such counsel, as may be appointed by the Attorney General under 28 CFR 600.1 or any other provision of law.

Subsection (b) establishes a clear choice-of-law rule for government attorneys with respect to standards of professional responsibility, modeled on Rule 8.5(b) of the ABA's Model Rules of Professional Conduct. An attorney who is handling a case in court would be subject to the professional standards established by the rules and decisions of that court. An attorney who is conducting a grand jury investigation would be subject to the professional standards of the court under whose authority the grand jury was impanelled. In other circumstances, where no court has clear supervisory authority over particular conduct, an attorney would be subject to the professional standards established by rules and decisions of the United States district court for the judicial district in which the attorney principally performs his official duties, except that the Act does not apply to government attorney conduct that is unrelated to the attorney's work for the government.

Thus, for example, an Assistant United States Attorney for the Eastern District of New York would ordinarily be subject to the attorney conduct rules prescribed by the E.D.N.Y. courts, as interpreted and applied by those courts. If the attorney handled a government appeal in the United States Court of Appeals for the Second Circuit, the attorney's conduct in connection with the appeal would be subject to the local rules and interpretive decisions of the Second Circuit. If cross-designated to handle a prosecution in another judicial district, e.g., the District of New Jersey, the attorney's conduct with respect to that prosecution would be subject to the local federal district court rules. Similarly, if the attorney were to handle a matter for the government before a New York State court, the attorney would be subject to the professional standards established by the rules and decisions of that court, in the same manner and to the same extent as other New York State practitioners.

This provision anticipates that the Supreme Court might promulgate one or more uniform national rules governing the professional conduct of government attorneys practicing before the federal courts. In this event, the terms of the uniform national rule would apply.

Subsection (c) codifies the predominant practice with respect to state disciplinary proceedings against government attorneys. A government attorney whose conduct is subject to the professional standards of a federal court may be disciplined by state authorities only if referred to state authorities by a federal court. No referral is needed when the applicable professional standards are those of a state court (which may occur, under subsection (b), if the attorney is handling a matter before a state court). This gatekeeping provision ensures that federal courts will have the first opportunity to interpret and apply federal court rules to government attorneys, while leaving substantial enforcement authority with state disciplinary bodies. This provision also specifically promotes federal uniformity in the application of professional standards to government attorneys.

Subsection (d) clarifies the law regarding the licensing of government attorneys, an issue that is currently addressed through the appropriations process. Since 1979, appropriations bills for the Department of Justice have incorporated by reference section 3(a) of Pub. L. 96–132, which states: ''None of the sums authorized to be appropriated by this Act may be used to pay the compensation of any person employed after the date of the enactment of this Act as an attorney (except foreign counsel employed in special cases) unless such person shall be duly licensed and authorized to practice as an attorney under the laws of a State, territory, or the District of Columbia.''

Subsection (d) codifies this longstanding requirement, and also makes clear that government attorneys need not be licensed under the laws of any state in particular. The clarification is necessary to ensure that local rules regarding state licensure are not applied to federal prosecutors. Cf. *United States* v. *Straub*, No. 5:99 Cr. 10 (N.D. W. Va. June 14, 1999) (granting defense motion to disqualify the Assistant United States Attorney because he was not licensed to practice in West Virginia).

Subsection (e), like the McDade law, authorizes the Attorney General to make and amend rules to assure compliance with section 530B.

4. JUDICIAL CONFERENCE REPORTS AND RECOMMENDATIONS

Section three directs the Judicial Conference of the United States to prepare two reports regarding the regulation of government attorney conduct. Both reports would contain recommendations with respect to the advisability of uniform national rules.

The first report would address the issue of contacts with represented persons, which has generated the most serious controversy regarding the professional conduct of government attorneys. See, e.g., *State* v. *Miller*, 600 N.W.2d 457 (Minn. 1999); *United States* v. *McDonnell Douglas Corp.*, 132 F.3d 1252 (8th Cir. 1998); *United States* v. *Lopez*, 4 F.3d 1455 (9th Cir. 1993); *United States* v. *Hammad*, 858 F.2d 834 (2d Cir. 1988).

Rule 4.2 of the ABA's Model Rules of Professional Conduct and analogous rules adopted by state courts and bar associations place strict limits on when a lawyer may communicate with a person he knows to be represented by another lawyer. These ''no contact'' rules preserve fairness in the adversarial system and the integrity of the attorney-client relationship by protecting parties, potential parties and witnesses from lawyers who would exploit the disparity in legal skill between attorneys and lay people and damage the position of the represented person. Courts have given a wide variety of interpretations to these rules, however, creating uncertainty and confusion as to how they apply in criminal cases and to government attorneys. For example, courts have disagreed about whether these rules apply to federal prosecutor contacts with represented persons in non-custodial pre-indictment situations, in custodial pre-indictment situations, and in post-indictment situations involving the same or different matters underlying the charges.

Lawyers who practice in federal court—and federal prosecutors in particular—have a legitimate interest in being governed by a single set of professional standards relating to frequently recurring questions of professional conduct. Further, any rule governing federal prosecutors' communications with represented persons should be respectful of legitimate law enforcement interest as well as the legitimate interests of the represented individuals. Absent clear authority to engage in communications with represented persons—when necessary and under limited circumstances carefully circumscribed by law—the government is significantly hampered in its ability to detect and prosecute federal offenses.

The proposed legislation charges the Judicial Conference with developing a uniform national rule governing government attorney contacts with represented persons. Given the advanced stage of dialogue among the interested parties—the Department of Justice, the ABA, the federal and state courts, and others—the Committee is confident that a satisfactory rule can be developed within the one-year time frame established by the bill.

While the ''no contact'' rule poses the most serious challenge to effective law enforcement, other rules of professional responsibility may also threaten to interfere with legitimate investigations. The proposed legislation therefore directs the Judicial Conference to prepare a second report addressing broader questions regarding the regulation of government attorney conduct. This report, to be completed within two years, would review any areas of conflict or potential conflict between federal law enforcement techniques and existing standards of professional responsibility, and make recommendations concerning the need for additional national rules.

HISPANIC HERITAGE MONTH

Mr. KERRY. Mr. President, I would like to take this opportunity to commemorate the 30-day period from September 15 through October 15, which was designated by the President as Hispanic Heritage Month. Hispanic Heritage Month was first initiated by Congress in 1968 to celebrate the diverse cultures, traditions, and valuable contributions of Hispanic people in the United States.

We are living through the longest and strongest economic boom in American history. Since 1992, our economy has created 22 million new jobs—and Hispanics in Massachusetts and around the country are sharing in our national prosperity and contributing to this marvelous growth. Since 1993, Hispanic employment has increased by nearly one-third nationwide, and median weekly wages for Hispanics have risen more than 16 percent. The unemployment rate for Hispanics is the lowest since we began tracking it, and the median income for Hispanic households has risen 15.9 percent over the last three years.

But for all our progress, we know that many challenges remain. The dropout rate for Hispanic youth is astonishingly high. There are far too many young people with nothing to do after school, and the unemployment rate is still too high in many predominately-Hispanic communities. We cannot ignore or turn our backs on these young people, because they are truly the future of this nation. And prosperity that is not broadly shared is not true prosperity.

In February of 1994, President Clinton signed Executive order 12900, ''Educational Excellence for Hispanic Americans,'' specifically, ''To advance the development of human potential, to strengthen the Nation's capacity to provide high-quality education, and to increase opportunities for Hispanic Americans to participate in and benefit from Federal education programs.'' I am proud to tell you about an initiative in my state, the Massachusetts Education Initiative for Latino Students (MEILS), which was created to implement the White House Initiative on Educational Excellence for Hispanic Americans in Massachusetts. MEILS created a Steering Committee responsible for developing and implementing a comprehensive approach for dealing with Latino educational issues statewide. MEILS has formulated a partnership between the state, federal, and local government to ensure high-level educational achievements for Latino students, from preschoolers to lifelong learners. MEILS has already established working groups in 13 of the communities with the highest percentages of Hispanic populations in the state of Massachusetts. Last Fall, MEILS held a conference in Worcester, Massachusetts, expecting approximately 300–400 participants, but ultimately drawing 700. They are currently planning their second conference, anticipating over 1,000 participants.

By 2050, one-quarter of all Americans will be Hispanic. In Massachusetts, Hispanics comprise 6% of the population and have made significant contributions to our communities, to our workplaces, to our public schools, and to academe. One of those contributors, Juan Maldacena, an Associate Professor of Physics at Harvard University, recently secured a MacArthur Foundation ''genius'' grant for his work on ''string theory,'' a method for describing gravity in the same terms as other forces in the universe. A colleague of Mr. Maldacena's from the University of Chicago was so taken by this theory that he penned a new version of the ''Macarena'' called the ''Maldacena.''

We know that the key to growing and staying strong is making sure that every American participates in our nation's prosperity. I will continue, and I hope the Congress will continue, to work closely with the Hispanic community because, together, we bring Massachusetts and America closer to the vision of a nation where all citizens are free to reach their potential.

THE PREVENTION OF CIRCUMVENTION OF SUGAR TARIFF RATE QUOTAS

Mr. DORGAN. Mr. President, I rise in support as a cosponsor of S. 3116. The purpose of this legislation is to prevent molasses stuffed with sugar from being allowed into this country.

As others have stated, the molasses in question is stuffed with South American sugar in Canada, and then transported into the United States. The sugar is then spun out of this concoction and sold in this country while the molasses is sent right back across the border to be stuffed with more sugar—and the smuggling cycle starts over again.

This practice is a blatant circumvention of our tariff quota. The sole purpose of this process is to smuggle excess sugar into the United States, and I urge my colleagues to support this legislation, which will put an end to this loophole.

ENERGY POLICY

Mrs. BOXER. Mr. President, yesterday, the Senator from Alaska, Senator MURKOWSKI, made a reference to me which I would like to respond to and set the RECORD straight.

The Senator from Alaska said that H.R. 2884, which would reauthorize the Strategic Petroleum Reserve, is being held up by a senator from the Democratic side of the aisle who is objecting to the reauthorization of the Energy Policy and Conservation Act.

I support H.R. 2884, but I oppose Senator MURKOWSKI's substitute amendment that undermines the new oil valuation rule for royalty payments on oil produced on Federal lands. This rule took over three years to finally implement. Senator MURKOWSKI's amendment would do great damage to the rule, which just took effect a few months ago and taxpayers would be hurt.

In conclusion, I support the House bill, which sets up a heating oil reserve for the northeastern states and reauthorizes the Strategic Petroleum Reserve, but I object to the royalty provision in the substitute amendment.

I call on the Senator from Alaska to let H.R. 2884 move forward as it was passed by the other body—without the royalty language.

VICTIMS OF GUN VIOLENCE

Mr. AKAKA. 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.

Since Columbine, thousands of Americans have been killed by gunfire. Until we act, Democrats in the Senate will read the names of some of those who have lost their lives to gun violence in the past year, and we will continue to do so every day that the Senate is in session.

In the name of those who died, we will continue this fight. Following are the names of some of the people who were killed by gunfire one year ago today.

September 27, 1999: Jermaine Allen, 26, Baltimore, MD; John Arcady, 49, Cincinnati, OH; Nathaniel Ball, 61, Tulsa, OK; Patrick Penson, 18, Fort Worth, TX; Eric Shine, 29, Charlotte, NC; Kevin Woods, 37, St. Louis, MO.

We cannot sit back and allow such senseless gun violence to continue. The deaths of these people are a reminder to all of us that we need to enact sensible gun legislation now.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Tuesday, September 26, 2000, the Federal debt stood at $5,648,781,388,359.77, five trillion, six hundred forty-eight billion, seven hundred eighty-one million, three hundred eighty-eight thousand, three hundred fifty-nine dollars and seventy-seven cents.

Five years ago, September 26, 1995, the Federal debt stood at $4,953,251,000,000, four trillion, nine hundred fifty-three billion, two hundred fifty-one million.

Ten years ago, September 26, 1990, the Federal debt stood at $3,214,541,000,000, three trillion, two hundred fourteen billion, five hundred forty-one million.

Fifteen years ago, September 26, 1985, the Federal debt stood at $1,823,103,000,000, one trillion, eight hundred twenty-three billion, one hundred three million.

Twenty-five years ago, September 26, 1975, the Federal debt stood at $552,848,000,000, five hundred fifty-two billion, eight hundred forty-eight million, which reflects a debt increase of more than $5 trillion—$5,095,933,388,359.77, five trillion, ninety-five billion, nine hundred thirty-three million, three hundred eighty-eight thousand, three hundred fifty-nine dollars and seventy-seven cents, during the past 25 years.