



COUNTY OF COOK
OFFICE OF THE STATE'S ATTORNEY

RICHARD A. DEVINE
STATE'S ATTORNEY

October 10, 2001

RICHARD J. DALEY CENTER
CHICAGO, ILLINOIS 60602
(312) 803-5440

Superintendent Terry Hillard
Chicago Police Department
3510 S. Michigan Avenue
Chicago, Illinois 60653

Dear Superintendent Hillard:

Nearly two years ago, the Illinois Supreme Court announced new rules governing what prosecutors could say to the media. As you know, we contested these rules and ultimately filed a federal lawsuit challenging their constitutionality. Late last year, Judge John Grady dismissed our suit but gave us some guidance on how he expected the rules would be applied. While the judge's comments do not provide a detailed road map as to what can be said about a case, they give us some direction.

As you may recall, one of our initial concerns with the rules was that they appeared to make prosecutors responsible for statements made by any police officer about a case. Judge Grady limits that responsibility to the "prosecution team." Coupled with comments from the staff of the Attorney Registration and Disciplinary Commission (ARDC), it now appears that the rule will be used only against prosecutors who reach out to non-attorneys working on a case and ask them to make a public statement that the prosecutors know they could not themselves make under the rules. We believe this is a reasonable application of the rules and have no objection to accepting that responsibility.

Attached you will find a memo I have recently sent to all of our Assistant State's Attorneys giving them guidance on what they can and cannot say to the media. It may be of assistance to you and your staff in your own dealings with the media. We are all committed to striking the right balance between informing the public about the key elements of a case and protecting a defendant's right to a fair trial.

Thank you for your continued cooperation. If you have any questions on these matters, please contact John Gorman or me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Richard A. Devine".

Richard A. Devine
State's Attorney

RAD:jk




OFFICE OF THE STATE'S ATTORNEY
COOK COUNTY, ILLINOIS

RICHARD A. DEVINE
STATE'S ATTORNEY

47 W. Washington St.
Suite 3200
Chicago, Illinois 60602
(312) 603-1845

MEMORANDUM

To: All Supervisors
From: RAD 
Date: Oct. 9
Subject: Supreme Court Rules

In March, 2000, new Illinois Supreme Court rules went into effect governing what prosecutors can say to the press. The rules caused much confusion and consternation in both camps. Prosecutors started worrying about losing their licenses, and the press worried about its right to get information from a vital source.

Last year, we were the lead agency in suing the Attorney Registration and Disciplinary Commission in federal court. Late last year, U.S. District Court Judge John Grady dismissed our suit but gave us some valuable legal guidance in how to navigate this tricky terrain. Most of the concerns centered on how the rules allowed prosecutors to outline details of a case and a defendant's past in court, but required us to be silent on those same matters out of court. The rules also appeared to say that we could be held accountable for remarks made by those outside of our control, especially police. In effect, Judge Grady's opinion goes a long way to putting us back where we were before the new rules were enacted.

He essentially restored the "safe harbor" (Rule 3.6[c]) that the rules seemingly destroyed or at least called into serious question. In his opinion, Judge Grady stated that we can tell reporters outside of court what we said in court because it is "information contained in a public record," and thus part of the safe harbor section.

We can provide the following information:

- The charge and the name of the defendant;
- That an investigation is in progress (except for grand jury matters);
- The scheduling or result of any event in court;
- The residence, occupation, and family status of the defendant;
- The time, place and fact of the arrest;
- The agency involved in the investigation and the length of the investigation;
- The next court date;
- What class felony the crime is and what penalty it carries.

Assistant State's Attorneys should not:

- State what the policy of the office is;
- Discuss how often we charge a particular offense or in what circumstances;
- Identify witnesses;
- Predict what a witness will say;
- Predict that the defendant will plead guilty;
- Say the defendant refused to make a statement;
- Offer any information that is likely to be inadmissible.

With regard to a prosecutor's responsibility for the actions of others, Judge Grady's opinion places a common sense limitation on the scope of our burden. He recognizes that we do not control the police and cannot be responsible for the statements they make. At the same time, no prosecutor should ever affirmatively ask the police to release information that the prosecutor would be barred from giving to the public.

When in doubt, talk to your supervisor or call the Press office and speak to John Gorman, communications director at 312 603 3423.

In the first year and half of the new rules, no prosecutor in the state has had an ARDC complaint lodged against him or her for violating the rules, according to the ARDC.