

Memorandum



Exec AD Inv. _____
Exec AD Adm. _____
Exec AD LES _____
Asst. Dir.: _____
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
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Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

To : Director

Date 2/3/82

From : Legal Counsel *Jan*

Subject : ABSCAM

PURPOSE: To provide the opinion of Legal Counsel Division (LCD) on the question of whether a Congressman who turns down a bribe offer violates any law by failing to report the offer.

RECOMMENDATION: None, for information only.

APPROVED: <i>Jan</i>	Adm. Servs. _____	Laboratory _____
	Crim. Inv. <i>CM</i>	Legal Coun. <i>Jan</i>
Director _____		Off. of Cong. & Public Affs. _____
Exec. AD-Adm. _____	Ident. _____	Rec. Mgnt. _____
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SYNOPSIS AND DETAILS: On January 27, 1982, Assistant Director Monroe, Criminal Investigative Division (CID), telephonically advised Assistant Director Mintz, LCD, that the Director requested an opinion on whether there is any law that requires any of the Congressmen who were offered, and refused to accept, bribes during ABSCAM to have reported such offers to the FBI or Department of Justice. Based upon the facts and law outlined below, LCD concludes that the simple failure to report the offer of a bribe violates no law. *(b6) (b7C)*

On January 29, 1982, this matter was discussed with SA [redacted] CID, who provided the following factual background. During the ABSCAM investigation, six Congressmen were contacted by intermediaries and were proffered money in return for the use of their influence to obtain quick entry into the United States for certain foreign nationals. None of the six accepted the bribe offers, but the manner of the refusals varied slightly. When interviewed, none of the Congressmen attempted to deny the fact that a bribe offer had been made. The Congressmen involved are:

1 - Mr. Monroe
1 - Mr. [redacted]

LWM: *dpk*

1 - Mr. Andrews
1 - Mr. [redacted]
1 - LRU

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1. Representative Edward J. Patten of New Jersey. Rep. Patten was offered a bribe on one occasion, but Rep. Patten made no response to the offer and never directly indicated that he perceived that a bribe offer was being made. Rep. Patten is no longer in Congress.

2. Representative John P. Murtha of Pennsylvania. Rep. Murtha, a member of the Committee on Standards of Official Conduct, was contacted on several occasions. In response to the bribe offer, Rep. Murtha stated he would get back in touch with the offeror. Rep. Murtha never recontacted the offeror, and later testified for the Government at the trial of Rep. Thompson and Rep. Murphy.

3. Senator Larry Pressler of South Dakota. Sen. Pressler was contacted on one occasion. Sen. Pressler is the only Congressman who flatly declined to accept the offer.

4. Representative Peter W. Rodino of New Jersey. Rep. Rodino himself was never personally contacted by FBI representatives, but on several occasions offers for Rep. Rodino's assistance were made to his [redacted] and others. Rep. Rodino later disclaimed all knowledge of any offers being made, and at this point the Government cannot prove the offers were communicated to him. b6 b7C

5. Representative Raphael Musto of Pennsylvania. Rep. Musto was offered a bribe on one occasion and did not accept.

6. Representative James Mattox of Texas. Rep. Mattox did not accept the offer and later testified as a defense character witness at the trial of Reps. Thompson and Murphy. Rep. Mattox testified that he knew he had been offered a bribe.

A review of applicable statutes and regulations reveals that none of them require the offeree of a bribe to take any steps toward reporting the offer. Title 18, United States Code (U.S.C.), Section 201, the general bribery statute, and Section 203, the section covering compensation

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to Members of Congress, are silent on any such duty. Both sections target the transfer or agreement to transfer something of value. The Ethics in Government Act of 1978, Pub. L. No. 95-521, 92 Stat. 1824, imposes a duty to report certain financial activities, but its focus is upon income which is actually realized. In any event, its reporting requirements are not directed toward reporting to a law enforcement agency. Similarly, the rules of ethics for both the House of Representatives and the Senate only prohibit the receipt of unauthorized income and impose no duty to report improper offers. Rules of the House of Representatives, Sections 939 and 940, H.R. Doc. No. 95-403, 95th Cong., 2d Sess. 631-652 (1978); Senate Manual, Standing Rules of the Senate, Sections 42, 43, and 45, S. Doc. No. 95-1, 95th Cong., 1st Sess. 68-93, 96-101, (1977).

As a general rule, persons are not required to report offenses they may know about, and mere failure to notify an officer is no crime. R. Perkins, Criminal Law 517 (2d ed. 1969). Punishment under modern criminal law for mere nondisclosure of knowledge of a crime is considered to be wholly inconsistent with American law and procedure. Id., 516. A rule to the contrary would allow law enforcement to target and prosecute individuals almost regardless of what action they took. If a Congressman accepted a bribe offered by an undercover officer, then he could be prosecuted for bribery. If, however, he did not accept it, a contrary rule would allow prosecution if he took no action at all. Apparently only one jurisdiction has made it a criminal offense to fail to report an offer of a bribe. See, Perkins, supra, 480. The federal Misprison of Felony statute, Title 18, U.S.C., Section 4, comes closest to the facts at hand here, but still does not apply. That section requires not only failure to disclose knowledge of a federal felony, but also some affirmative act of concealment beyond mere failure to report the felony. U.S. v. Johnson, 546 F.2d 1225 (5th Cir. 1977); U.S. v. Daddano, 432 F.2d 1119, 1124 (7th Cir. 1970), cert. denied, 402 U.S. 905, 91 S.Ct. 1366, 28 L.Ed. 2d 645 (1971). Under the facts in the above-described situations, no affirmative act of concealment is present, and therefore one element of the offense is lacking.