2041. BRIBERY OF PUBLIC OFFICIALS

Section 201 of Title 18 is entitled "Bribery of public officials and witnesses." The statute comprises two distinct offenses, however, and in common parlance only the first of these is true "bribery."

The first offense, codified in section 201(b), prohibits the giving or accepting of anything of value to or by a public official, if the thing is given "with intent to influence" an official act, or if it is received by the official "in return for being influenced."

The second offense, codified in section 201(c), concerns what are commonly known as "gratuities," although that word does not appear anywhere in the statute. Section 201(c) prohibits that same public official from accepting the same thing of value, if he does so "for or because of" any official act, and prohibits anyone from giving any such thing to him for such a reason.

The specific subsections of the statute are:

Bribery

1. a. § 201(b)(1): offering a bribe to a public official
   b. § 201(b)(2): acceptance of a bribe by a public official

   Gratuities

   a. § 201(c)(1)(A): offering a gratuity to a public official

   b. § 201(c)(1)(B): acceptance of a gratuity by a public official.

The two offenses differ in several respects. The most important of these differences concerns how close a connection there is between the giving (or receiving) of the thing of value, on the one hand, and the doing of the official act, on the other. If the connection is causally direct - if money was given essentially to purchase or ensure an official act, as a "quid pro quo" then the crime is bribery. If the connection is looser - if money was given after the fact, as "thanks" for an act but not in exchange for it, or if it was given with a nonspecific intent to "curry favor" with the public official to whom it was given -then it is a gratuity. The distinction is sometimes hard to see, but the statute makes it critical: a § 201(b) "bribe" conviction is punishable by up to 15 years in prison, while a § 201(c) "gratuity" conviction permits only a maximum 2-year sentence. In addition, with a "bribe" the payment may go to anyone or to anything and may include campaign contributions, while with a "gratuity" the payment must inure to the personal benefit of the public official and cannot include campaign contributions.

[cited in JM 9-85.101]

‹ 2040. Bank Records And Foreign Transactions -- Financial Crimes Enforcement Network (FinCEN) up 2042. Elements Common To Both Bribery And Gratuity Offenses ›

Updated January 17, 2020

2042. ELEMENTS COMMON TO BOTH BRIBERY AND GRATUITY OFFENSES

The crime of bribery (in violation of § 201(b)) and the crime of accepting a gratuity (in violation of § 201(c)) require proof of the same basic elements: In general terms, these are the following:

1. 1. A public official;
   2. A thing of value;
   3. A request or receipt by the official, or an offer or promise to the official, of that thing of value;
   4. For the benefit of the official or (in the case of section 201(b) bribery) of some other person or entity);
   5. With the requisite connection to an official act;
   6. With the requisite intent.

The differences between the two sections (§ 201(b) and § 201(c)) are found in the details of these common features. For purposes of comparison, the chart Criminal Resource Manual 2043 sets out the elements in parallel form, for the offenses of accepting a bribe and accepting a gratuity. This should be helpful in seeing exactly how the offenses differ and how they are similar. The differences are marked either by brackets (for features that are found in only one of the two sections) or by bold text (to highlight the key distinction in how the sections specify the required connection between the thing of value and the official act). The corresponding offenses of *giving* a bribe and *giving* a gratuity involve the same components, from the opposite perspective.

[updated November 1998] [cited in JM 9-85.101]

‹ 2041. Bribery Of Public Officials up 2043. Comparison Of The Elements Of The Crimes Of Bribery And Gratuities ›

Updated January 17, 2020

2043. COMPARISON OF THE ELEMENTS OF THE CRIMES OF BRIBERY AND GRATUITIES

The differences between the offense of bribery and the offense of accepting a gratuity are marked in the chart below either by brackets (for features that are found in only one of the two sections) or by UPPER CASE TEXT (to highlight the key distinction in how the sections specify the required connection between the thing of value and the official act).

	§ 201(b): *Accepting a Bribe*	§ 201(c): *Accepting a Gratuity*
Status	Whoever, being a public official [ ] or person selected to be a public official	Whoever, being a public a public official, [former public official], or person selected to be a public official
Intent	CORRUPTLY	[ ]
Act	*[ ] * directly or indirectly * demands, seeks, receives, accepts, or agrees to receive or accept	* [otherwise than as provided by law for the proper discharge of offical duty,] * directly or indirectly * demands, seeks, receives, accepts, or agrees to receive or accept
Thing	anything of value	anything of value
For Whom	PERSONALLY [OR FOR ANY OTHER PERSON OR ENTITY]	PERSONALLY [ ]
Purpose	IN RETURN FOR: * being influenced in the performance of any official act; * being influenced to commit or aid in committing any fraud on the U.S.; or * being induced to do or omit to do any act in violation of his or her official duties.	FOR OR BECAUSE OF any official act performed or to be performed by such official or person.

[updated November 1998] [cited in Criminal Resource Manual 2042; Criminal Resource Manual 2045; JM 9-85.101]

‹ 2042. Elements Common To Both Bribery And Gratuity Offenses up 2044. Particular Elements ›

Updated January 17, 2020

2044. PARTICULAR ELEMENTS

- *"Public Official"*

The terms "public official" and "person who has been selected to be a public official" are defined in section 201(a). "Public official" includes any garden-variety Federal employee, regardless of the branch of government involved, employees of the District of Columbia, Members of Congress, and Federal jurors. The breadth of the definition should be noted, for it includes any "person acting for or on behalf of the United States, or any department, agency, or branch of government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of government." 18 U.S.C. § 201(a)(1). The Supreme Court has liberally interpreted this language to include persons who are not Federal employees, but who have the power to allocate and expend Federal monies under grant programs. *Dixson v. United States*, 465 U.S. 482 (1984).

PRACTICE TIP: Even if the broad definition of "public official" under § 201 cannot be met, a charge under 18 U.S.C. § 666 may nonetheless be appropriate if the solicitor or intended recipient of the bribe is a person who acts as an agent of an organization that receives in one year $10,000 or more in Federal grant, loan, contract, or insurance funds.

- *"Thing of Value"*

The term "thing of value" is used throughout Title 18, and includes intangible as well as tangible things. *See United States v. Girard*, 601 F.2d 69, 71 (2d Cir.), *cert. denied*, 444 U.S. 871 (1979). It has been broadly construed to focus on the worth attached to the bribe by the defendant, rather than its commercial value. *United States v. Williams*, 704 F.2d 603, 622-23 (2d Cir.), *cert. denied*, 464 U.S. 1007 (1983).

- *"Official Act"*

"Official act" for the purposes of Section 201(b) and (c) is defined to mean:

> "Any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity, or in such official's place of trust or profit."

18 U.S.C. § 201(a)(3). In order for an act to fall within this definition, it need not be specified by statute, rule, or regulation; established practice within the department is sufficient to prove official action. *United States v. Birdsall*, 233 U.S. 223 (1914).

- *Authority or Power to Do the Official Act*

It is not essential to a bribery charge against a public official that he or she have the authority to make a final decision on an official matter. When the advice and recommendation of the public official would be influential, a violation of Section 201(b) may be established. *United States v. Heffler*, 402 F.2d 924 (3d Cir. 1968), *cert. denied*, 394 U.S. 946 (1969); *Wilson v. United States*, 230 F.2d 521 (4th Cir.), *cert. denied*, 351 U.S. 931 (1956); *Krogmann v. United States*, 225 F.2d 220 (6th Cir. 1955).

It is also possible in some circuits to convict either the giver or the taker of a bribe (or both) even if the public official does not have the power to bring about the result that prompted the bribe. It is sufficient as to a charge against the public official that the public official represented that the official act in question was within his or her power, *United States v. Arroyo*, 581 F.2d 649 (7th Cir. 1978), *cert. denied*, 439 U.S. 1069 (1979); or as to the giver of the bribe that the giver believed the recipient had the power to bring about the desired result. *United States v. Hsieh Hui Mei Chen*, 754 F.2d 817 (9th Cir.), *cert. denied*, 471 U.S. 1139 (1985); *United States v. Gjieli*, 717 F.2d 968 (6th Cir. 1983), *cert. denied*, 465 U.S. 1101 (1984). If, however, the public official has no authority at all to act in the matter and his or her acts in response to the payment of a bribe are unauthorized and illegal, it has been held that the "official act" component is lacking. *Blunden v. United States*, 169 F.2d 991 (6th Cir. 1948). Such a case could nonetheless be charged as an effort to induce a public official to commit a fraud on the United States or to do an act in violation of official duty. *United States v. Gjieli*, *supra*.

- *Intent*

Under section 201(b), the offender must have acted "corruptly." This is, properly speaking, the intent element of the offense. The word "corruptly" simply means "with a bad or evil purpose." It is also frequently defined to mean the same thing as "willfully," and thus to connote "specific intent." *See, e.g.*, 1 Devitt & Blackmar, Federal Jury Practice and Instructions, §§ 14.03, 14.06, 34.08. A number of cases speak of section 201(b) as a specific intent crime; however, this reference is sometimes not to "intent" in the strict sense of criminal intent or mens rea, but to the purpose or reason for the act - namely, intent to influence or be influenced. The statute is a little confusing in this respect, since it does speak of the briber-giver acting "with intent to influence." That phrase refers, however, to what the briber expects to accomplish, not to his level of "criminal intent." Accordingly, take care to specify this clearly when communicating with a court about "intent" in bribery/gratuity cases.

Section 201(c) lacks the word "corruptly" and has no corresponding specification of a particular level of criminal intent. Some courts seem to have taken the phrase "otherwise than as provided by law for the proper discharge of official duties" to be parallel to section 201(b)'s "corruptly," and therefore to be an intent provision. The Public Integrity Section does not believe this to be correct. The "otherwise than as provided by . . ." phrase simply ensures that authorized payments will be construed as illegal gratuities. Rather the intent requirement for section 201(c), lacking any other specification, is simply that the defendant acted "knowingly and purposefully" and not by mistake or inadvertence, as opposed to "corruptly" or willfully." *United States v. Evans*, 572 F.2d 455, 480-81 (5th Cir.), *cert. denied*, 439 U.S. 870 (1978).

- *Purpose: Causal Connection Between Payment and Act*

Section 201(b) requires that the offender have acted with the intent (as to the giver of a bribe) to influence or (as to the taker of a bribe) to be influenced. Thus, the bribery statute requires proof of an actual or intended quid pro quo: one thing given in exchange for another. It specifies a bargained-for exchange, like a contract. *E.g.*, *United States v. Strand*, 574 F.2d 993 (9th Cir. 1978); *United States v. Brewster*, 506 F.2d 62 (D.C. Cir. 1974). This requirement can be met by proof of a pattern of payments and official acts flowing between the giver and the taker of bribes. *See United States v. Campbell*, 684 F.2d 141 (D.C. Cir. 1982).

This direct exchange of "quid pro quo" requirement is the factor that chiefly distinguishes bribery from the lesser offense, a gratuity violation. *E.g.*, *United States v. Hsieh Hui Mei Chen*, *supra*. Under section 201(c), the thing of value must be given or received "for or because of any official act performed or to be performed" by the public official. This requirement under the gratuity statute has been interpreted not to require proof of a quid pro quo as for the bribery statute, but rather of a lesser connection between the payment and an official act. *United States v. Niederberger*, 580 F.2d 63 (3d Cir.), *cert. denied*, 439 U.S. 980 (1978); *United States v. Alessio*, 528 F.2d 1079 (9th Cir.), *cert. denied*, 426 U.S. 948 (1976); *United States v. Brewster*, 506 F.2d 62 (D.C. Cir. 1974). Indeed, under the most liberal interpretation of the gratuity statute, the link is really between the payment and the official position of the recipient. *United States v. Evans*, 572 F.2d 455 (5th Cir.), *cert. denied*, 439 U.S. 870 (1978). Under this interpretation, it is unnecessary to show that the payments were "earmarked for a particular matter then pending" before the public official and over which the public official had authority. *Id*. at 481. Thus, if the motivating factor for the payment is even "to keep [the public official] 'happy,'" *id*., or to "create a better working atmosphere" with a

public official, the payment can form the basis of a gratuity charge. *United States v. Standefer*, 452 F. Supp. 1178, 1183 (W.D. Pa. 1978), *aff'd*, 610 F.2d 1076 (3d Cir. 1979), *aff'd*, 447 U.S. 10 (1980); *United States v. Niederberger*; *United States v. Barash*, 412 F.2d 26 (2d Cir.), *cert. denied*, 396 U.S. 832 (1969).

PRACTICE TIP: There must be some connection between the receipt of the thing of value and the *official* position of the public official. In *United States v. Muntain*, 610 F.2d 964 (D.C. Cir. 1979), the court held the proof insufficient to establish a gratuity charge when the defendant public official accepted commissions from a private company to steer business to that company. The official's efforts to profit from his contacts as a government official with potential customers of the company were held not to constitute a gratuity violation because these acts were "totally unrelated to his official duties." 610 F.2d at 970.

An aphorism sometimes used to sum up the distinction between a bribe and a gratuity is that a bribe says "please" and a gratuity says "thank you." Remember, though, that a gratuity can precede the official action that prompted it, as the "to be performed" language in the statute attests. Such pre-act "gratuities" are customarily made for a generalized purpose to "curry official favor" with the recipient. Another way of looking at it is that a bribe purchases a service (or at least is intended to do so) and is therefore bargained-for; a gratuity is more in the nature of a tip (hence the name) because it is not bargained-for.

This is easy to say, but not so easy to see. Suppose, for example, there is a contract proposal pending before a Government contracting officer, and the prospective contractor takes the contracting officer on an all-expense paid cruise the week before the contract is to be awarded. Assuming that the prospective contractor and the contracting officer do not otherwise know each other, this looks suspiciously like a bribe or a gratuity. But which? Absent direct evidence of an agreement between the prospective contractor and the contracting officer, the answer will probably depend on such factual circumstances as the following:

- Did the prospective contractor get the contract?
    - Did the contracting officer have the power to decide who received the contract? If not, what role did the contracting officer play in making the decision?
    - What is the value of the cruise?
    - How much competition did the prospective contractor have?
    - How qualified was the prospective contractor to get the contract? How did the contractor rank in relation to the competitors?
    - How important financially or otherwise was the contract to the prospective contractor?
    - How important was the cruise to the contracting officer?
    - Are there contemporaneous admissions from either the contracting officer or the prospective contractor or both regarding the purpose of the cruise?

Absent good proof of incriminating admissions, or the lack of qualifications of the prospective contractor, or the essential nature of the contract to the business of the prospective contractor, this scenario will likely end up charged as a gratuity. However, the addition of one or more of the above facts may convince a jury that the intent of the donor was to influence official action, or that the intent of the donee was to be influenced, and thus sustain a bribery charge.

[cited in JM 9-85.101]

‹ 2043. Comparison Of The Elements Of The Crimes Of Bribery And Gratuities up 2045. U.S. V. Brewster ›

Updated January 17, 2020

2045. U.S. V. BREWSTER

COMMENT: The Federal offenses of "bribery" and "gratuities" described in 18 U.S.C. § 201, and the differences between them, were first--and perhaps best--described in the landmark case of *United States v. Brewster*, 506 F.2d. 62 (D.C. Cir. 1974). This comment will discuss this significant decision.

Brewster concerned payments made by a lobbyist to a United States Senator for the alleged purpose of corruptly influencing the performance of the Senator's official duties. The payments in question were made to the Senator in the form of "political contributions" to a political committee that allegedly had been established to support the Senator's re-election. The prosecution's position was that this committee was a sham, and that the payments were either "bribes," or illegal corrupt personal gifts to the Senator--i.e., "gratuities."

The district judge had attempted to instruct the jury on the elements of the two related Federal crimes of receiving "bribes" and receiving illegal "gratuities." The district judge also attempted to instruct the jury on the difference between these two crimes and the receipt of legal "political contributions." The jury then convicted the Senator of receiving "illegal gratuities."

However, the district judge's instructions were not very precise. This required the D.C. Circuit Court of Appeals to define the three critical concepts of illegal "bribery," receiving illegal "gratuities," and receiving legal "political contributions." The Court of Appeals then had to determine whether the district judge's jury instructions had adequately incorporated these distinctions.

The D.C. Circuit Court's decision held that the Federal crime of *bribery* requires that there have been an express corrupt understanding between the private donor and the public officer donee that the donee will perform specific official acts in exchange for the payment (called a *quid pro quo*). If that condition is present, the crime of "bribery" is complete regardless of whether the corpus of the payment went directly to the donee, or whether the corpus went instead to a "third party" such as a *bona fide* political committee.

The Court then held that the less serious Federal crime of receiving "illegal gratuities," which is also addressed by 18 U.S.C. § 201, does not require proof that a specific understanding existed between the public and the private parties concerning the corrupt "sale" of an official act (i.e., a *quid pro quo*). Rather, the Court held that this lesser offense is complete if the prosecution proved that the following three factors were present: 1. the public officer was not entitled to receive the gift by virtue of the office (s)he held; 2. the motive for the gift was either to thank the official for a past act, or to curry general favor with the public officer in the expectation that the public officer will be better disposed to performing official acts favorable to the donor in the future; and 3. the public officer was aware of this motive when (s)he accepted the gift. However, for such gifts to be "gratuity" crimes under § 201, the Court held that there must be proof that the corpus of the gift inured to the *personal benefit* of the public officer donee.

Finally, the *Brewster* Court differentiated both of these crimes from the act of receiving lawful political contributions. It held that genuine political contributions made to *bona fide* political committees representing elected Federal public officers do not violate either the "bribery" or the "graft" offenses described in § 201. This is because such contributions are not made as part of a *quid pro quo* agreement with the public officer, and because a *bona fide* political committee--rather than the public officer--is the true beneficial recipient of the gift.

The *Brewster* case had a companion: *United States v. Anderson*, 509 F.2d 312 (D.C. Cir. 1974). *Anderson* involved the prosecution of the lobbyist who had sought to corrupt Senator Brewster. In *Anderson*, the jury had convicted the lobbyist of bribery, finding that he had expected a specific act in exchange for the money he had given to the Senator's campaign committee. The D.C.Circuit upheld this verdict, notwithstanding that the jury in *Brewster* had convicted the Senator only of the less serious offense of receiving a gratuity. This companion case highlights the fact that the offense of gratuities can be--and often is--a lesser included offense within the offense of bribery, and that the two parties to a corrupt transaction may act with differing levels of corrupt intent, allowing properly instructed juries to convict one party to a corrupt transaction of the crime of bribery, while convicting the other party of the lesser offense of gratuities.

AUSAs are encouraged to read and familiarize themselves with these two critically important companion cases before initiating a bribery or a gratuities case under 18 U.S.C. § 201.

PRACTICE TIP: As explained in *Brewster* and *Anderson*, and as demonstrated in the chart in this Manual at 2043, the offense of soliciting, giving, accepting and receiving a gratuity is a lesser included offense within the greater crime of soliciting, giving, accepting or receiving a bribe.

[cited in JM 9-85.101]

‹ 2044. Particular Elements up 2046. Other Issues ›

Updated January 17, 2020

2046. OTHER ISSUES

- *Bribery and Conspiracy*

Wharton's Rule does not preclude a charge under 18 U.S.C. § 371 of conspiring to commit bribery. For one thing, the agreement may involve more participants than were necessary for the commission of the substantive offense. *See, e.g.*, *United States v. Benter*, 457 F.2d 1174 (2d Cir.), *cert. denied*, 407 U.S. 842 (1972). Moreover, the Rule has been held not to apply in any event because the gratuity provision (in this particular case, but the observation is also true of the bribery provisions) does not require the culpable participation of two persons. *United States v. Previte*, 648 F.2d 73 (1st Cir. 1981).

- *Coercion*

Economic coercion is a factor that bears on the existence of specific intent under the bribery provisions. *United States v. Barash*, 365 F.2d 395 (2d Cir. 1966). It is irrelevant to a gratuity charge. *United States v. Barash*, 412 F.2d 26 (2d Cir.), *cert. denied*, 396 U.S. 832 (1969).

- *Knowledge of Federal Status*

It is not necessary to prove that the offender knew he was paying a Federal official. Although the Government must prove that the payee was a Federal official and that the offender believed the person he attempted to bribe had official authority to act in a particular matter, it is not necessary to prove that the offender believed the official was exercising *Federal* authority. *United States v. Jennings*, 471 F.2d 1310 (2d Cir.), *cert. denied*, 411 U.S. 935 (1973) (FBI agents posing as local police officers bribed by defendant, who did not know they were Federal officials).

- *Campaign Contributions*

A bribery charge can be premised on a campaign contribution. *But be careful*. It is problematical that a gratuity charge under 201(c) can rest on a *bona fide* campaign contribution, unless the contribution was a ruse that masqueraded for a gift to the personal benefit of the public officer as was the case in *Brewster*, *supra*. This is because campaign contributions represent a necessary feature of the American political process, they normally inure to the benefit of a campaign committee rather than directly to the personal benefit of a public officer, and they are almost always given and received with a generalized expectation of currying favor with the candidate benefitting therefrom. For these reasons, recent Federal jurisprudence on the subject suggests substantial judicial reluctance to extend the Federal crime of gratuities under section 201(c) to *bona fide* campaign donations.

PRACTICE TIP: Where the transaction represents a *bona fide* campaign contribution, prosecutors must normally be prepared to prove that it involved a *quid pro quo* understanding and thereby constituted a "bribe" offense actionable under section 201(b).

COMMENT: This same distinction between bribes, gratuities and lawful campaign contributions has recently been applied to some of the Federal prosecutive theories that are currently used to address bribery and corruption by state and local public officials. For example, in *McCormick v. United States*, 500 U.S. 257 (1991) the Supreme Court held that the Hobbs Act (18 U.S.C. § 1951) did not apply to a series of campaign contributions that were made with a general intent to curry favor with a state senator and to thank him for his support. Noting that campaign

contributions are a necessary part of the American political process, the Court held that when an allegedly corrupt payment represents a *bona fide* campaign contribution, the prosecution must prove the existence of a *quid pro quo*. This principle was thereafter affirmed shortly thereafter in *Evans v. United States*, 504 U.S. 255 (1992).

- *The Speech and Debate Clause*

The Federal offenses of bribery and gratuities apply to payments made in consideration for, or to thank or curry favor with, Members of Congress and their legislative staffs. However, where an official of the Legislative Branch is the intended recipient, the task of proving the "official act" element can present prosecutors with unique challenges rooted in the Speech and Debate Clause of the U.S..Constitution. U.S. Constit. Art I, sec 6, cl 1.

The Speech and Debate Clause provides the "legislative acts" of a Senator or a Representative "shall not be questioned in any place." It applies in criminal as well as civil litigation involving the Senator or Representative, and provides absolute immunity to United States Senators and Representatives while they are engaged in legislative acts. *United States v. Brewster*, 408 U.S. 501 (1972); *United States v. Helstoski*, 442 U.S. 477 (1976). Its purpose is to assure the Congress a wide and unfettered latitude of freedom of speech in the deliberative process surrounding enacting legislation, and to shield that process from potential intimidation from the Executive and Judicial Branches. *Gravel v. United States*, 408 U.S. 606 (1972); *Powell v. McCormick*, 395 U.S. 486 (1969).

While the Speech and Debate Clause has been expressly held not to shield Senators or Representatives against bribery charges, *Johnson v. United States*, 383 U.S. 169 (1964), it does impose significant limits on the type of evidence that can be used to prove such an offense. The Clause broadly protects members of Congress "against inquiry into acts that occur in the regular course of the legislative process and into the motivation for those acts," *United States v. Brewster*, 408 U.S. 501, 525 (1972), and "precludes any showing of how [a member of Congress], acted, voted, or decided." Id. at 527. The Supreme Court has declared that "past legislative acts of a Member cannot be admitted without undermining the values protected by the Clause," including speeches in committee as well as those on the Floor of the Chamber, the Senator or Representative's votes, and his or her explanations for them. A somewhat wider latitude has been allowed insofar as the admissibility of activities that took place occurred prior to a legislative act. *United States v. Helstoski*, 442 U.S. 477, 489 (1979). However, the parameters of what constitutes a "legislative act" are quite broad, and can severely impair the ability of prosecutors to prove bribery and gratuity cases where the recipient is an elected Member of the Legislative Branch.

When evidence embraced by this privilege is introduced--either in trial or in grand jury proceedings--the effect can be as troubling to the prosecution as introducing the fruits of an illegal search. *See United States v. Durenburger*, 1993 WL 738477 (D.Minn 1993); *Helstoski*, *supra*; *compare Johnson*.

In addition, both the House and the Senate consider that the Speech and Debate Clause gives them an institutional right to refuse requests for information that originate in the Executive or the Judicial Branches that concern the legislative process. Thus, most requests for information and testimony dealing with the legislative process must be presented to the Chamber affected, and that Chamber permitted to vote on whether or not to produce the information sought. This applies to grand jury subpoenas, and to requests that seek testimony as well as documents. The customary practice when seeking information from the Legislative Branch which is not voluntarily forthcoming from a Senator or Member is to route the request through the Clerk of the House or the Secretary of the Senate. This process can be time-consuming. However, *bona fide* requests for information bearing on ongoing criminal inquiries have been rarely refused.

PRACTICE TIP: The Public Integrity Section of Criminal Division has significant expertise in addressing and overcoming Speech and Debate issues. Prosecutors are encouraged to contact Public Integrity when the official acts of an elected Member of the Legislative Branch become the focus of a criminal inquiry. Public Integrity can be reached at (202) 514-1412 (phone) or (202) 514-3003 (fax).

- *Included offenses*

The offense of soliciting, giving, accepting and receiving a gratuity is a lesser included offense within the greater crime of soliciting, giving, accepting or receiving a bribe. *See United States v. Brewster*, 506 F.2d 62 (D.C. Cir.

1974); and *United States v. Anderson*, 509 F.2d 312 (D.C. Cir. 1974).

[cited in JM 9-85.101]

‹ 2045. U.S. V. Brewster up 2047. Sample Charging Language ›

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