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Mr. Seldin

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

B-194919

November 26, 1980

Mr. Paul H. Taylor
Fiscal Assistant Secretary
Department of the Treasury
Washington, D.C. 20220

[Request for Relief From Liability]

Dear Mr. Taylor:

This responds to your request for relief of Internal Revenue Service (IRS) Special Agent James Mason and Imprest Fund Cashiers Fred J. Cannon and James L. Moody from liability for monies taken from Agent Mason during a robbery. The request seeks relief in the amounts of \$2,881 for Mr. Mason, \$2,280 for Mr. Cannon, and \$601 for Mr. Moody. For the reasons given below, we agree that relief should be granted to the named individuals in the amounts indicated.

The IRS investigative reports show that Mr. Mason had been working as an undercover agent in a wagering investigation for approximately six months prior to the robbery. Pursuant to his work, Mr. Mason was sent by the IRS Phoenix Office to Las Vegas, during the week of September 17, 1978, to reestablish contact with two individuals involved in gambling in Phoenix. The Phoenix cashier, Mr. Cannon, advanced him approximately \$2,280, in order to help him create the impression that he had a lot of money. The IRS Las Vegas Criminal Investigation Division (CID) also had requested his assistance in making contact with gambling figures in Las Vegas and the Las Vegas cashier, Mr. Moody, advanced him \$601 for the same purpose.

Early on the evening of September 19, Mason went to the Dunes Casino, where he lost \$140 and repeatedly exposed the roll of money. He then went to Gal Gusso's Cocktail Lounge and Restaurant, whose owner was suspected of bookmaking at his bar. While in Gal Gusso's, Mason paid for drinks from money in his wallet rather than from his roll; however, the size of the roll apparently caused a bulge in his pants pocket. Mason remained in the lounge approximately two hours. As he approached his car after leaving, an object, which he thought to be a gun, was pushed against his back and he was told: "Don't move -- or I'll blow your head off (or possibly ... blow you away)." The assailant then demanded the roll in Mason's front pants pocket and also took his wallet and watch. Mason did not see the person who robbed him and could only describe him as someone approximately the same height as himself, whose voice seemed like that of a white man who did not have an accent associated with the Eastern or Mid-western parts of the United States. The roll of cash taken totalled some \$3,500; approximately \$2,280 from the Phoenix CID; \$601 from the Las Vegas CID; and the rest in personal funds. The wallet contained approximately \$35 and various personal items.

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After the robbery, Mason immediately contacted Anders Flodin, Group Manager of the Las Vegas CID. Mr. Flodin advised him not to report the robbery to local law enforcement agencies, since such a disclosure could have had a serious impact on investigations then being conducted in Las Vegas and Phoenix. The following morning, Mason returned to the scene of the robbery and searched the area with no success. After reviewing the circumstances of the robbery, Mr. Flodin concluded that all of Mr. Mason's activities on the evening of the robbery were consistent with his assignment. Although Mr. Mason was questioned by an FBI agent investigating the robbery, the FBI made no local inquiries nor does it intend to make further inquiries, due to the nature of Mr. Mason's assignment.

Based on the above, you have determined that the individuals for whom relief is requested were acting in their official capacities and were not negligent. Mr. David C. Arnell, Chief of the Phoenix District, CID, and Mr. Michael Herbert, IRS Regional Fiscal Management Officer, also stated that no negligence was involved.

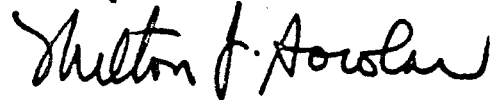
Physical losses such as the one in question are covered by 31 U.S.C. § 82a-1. That statute authorizes this Office to relieve an accountable officer from liability if we concur with a determination by the agency head that the loss occurred (1) while the accountable officer was acting in the discharge of his or her official duties and (2) without fault or negligence of the accountable officer. If relief is granted, the law also authorizes adjusting the account by charging the appropriation or fund available for the disbursing function at the time the adjustment is effected, absent another appropriation specifically provided therefor.

We concur with your determination that the individuals for whom relief is requested were acting in their official capacities and that the robbery occurred without their fault or negligence. Relief is granted to Agent Mason for \$2,881, the full amount taken from him, since he was in no way responsible for the robbery of the funds in his custody. The facts show that Agent Mason was working as an undercover agent in Las Vegas for the purpose of investigating gambling operations in Las Vegas and Phoenix. Part of his job was to show that he was a gambler and a big spender. The flashing of the roll of \$100 bills, which under other circumstances might well be considered negligent, also was consistent with his investigative responsibilities. There is no indication that Mr. Mason was involved in the robbery.

The facts submitted also indicate that the monies taken from Agent Mason were properly given to him for his undercover work by Imprest Fund Cashiers Cannon and Moody. Since there was no impropriety on the part of the two cashiers and since they did not have physical custody of the funds at the time of the robbery, we think that they should not be regarded as the officers accountable for the loss. It is our view that their responsibilities ended

when the monies were properly disbursed to Agent Mason, who then became accountable for them. However, in order to clear their accounts as required by agency procedures, we grant them relief as well for the amounts given to Agent Mason, respectively by each cashier; that is, \$2,280 for Cashier Cannon and \$601 for Cashier Moody.

Sincerely yours,

A handwritten signature in cursive script, reading "Milton J. Socolar".

Milton J. Socolar
General Counsel