

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.
March 5, 1998

SECRETARY OF THE TREASURY

The Honorable Richard P. Conaboy, Chairman
United States Sentencing Commission
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E.
Washington, D.C. 20002-8002

Dear Chairman Conaboy:

I write on behalf of the Department of the Treasury about an issue that is of great concern to us -- computer-generated counterfeit U.S. currency produced by inkjet printers and color copiers. By this letter, we hope to focus your attention on this growing problem and to explain why the existing Sentencing Guidelines do not adequately address the significant threat it poses to our law enforcement interests as well as to the integrity of U.S. currency worldwide.

Advances in computer technology have dramatically changed the nature of production used in counterfeiting. Operations have evolved from using the traditional method of offset printing to using personal computers connected to scanners or digital input devices, together with inkjet printers and full color copiers. Inkjet printers and copiers are relatively inexpensive, readily available, easily transportable and user-friendly. When using the technology currently available, these devices are capable of producing high-quality counterfeit currency. Paramount to the process, once the image of a currency note is scanned or digitally captured, a personal computer may be used to enhance its quality. The image can then be transmitted electronically -- computer-to-computer over the Internet -- and printed by individuals who lack any specialized computer or graphics knowledge. As a result, today's counterfeiter is able to produce counterfeit currency using a high-quality inkjet printer that can cost as little as \$300.

Statistics show a dramatic increase in the incidence of computer-generated counterfeiting during the past three years. This trend creates serious enforcement problems. In contrast to offenders using offset presses, computer counterfeiters can easily develop or obtain counterfeit images, print them without specialized equipment in batches of any size, and transmit the images to anyone instantaneously. Traditional law enforcement methods, as well as the Sentencing Guidelines, must be adapted to meet the challenges created by this ever-changing technology.

The increase in computer-generated counterfeiting cases represents not only a threat to our law enforcement interests, but also seriously threatens the integrity of our U.S. currency. Maintaining the stability and integrity of U.S. currency is essential to preserving the benefits derived from the dollar's status as a world currency. U.S. bearer obligations serve as a stable and accepted medium of exchange and store of value that is often preferred to local currencies worldwide, particularly in the former Soviet Union, Eastern Europe and Latin America. In addition to the investment and trade benefits associated with the dollar's position as a reserve currency, the

demand for U.S. paper currency provides direct economic benefits for the U.S. government.

According to the Federal Reserve's estimates, approximately \$270 to \$300 billion in U.S. currency is circulating overseas. Applying the 5.7 percent average interest rate on the Federal Reserve's portfolio of government securities during 1996, overseas currency holdings of this magnitude will generate about \$16 billion in interest earnings per year. A 10 percent reduction in overseas holdings of U.S. currency arising, for example, from concern over counterfeiting, would decrease interest earnings and raise the budget deficit (and therefore Treasury's borrowing requirement) by about \$1.6 billion per year for as long as the reduction in holdings persisted.

Any perceived toleration of counterfeiting seriously undermines the broad government interest in maintaining the integrity of U.S. currency. To ensure that integrity, we have undertaken a number of initiatives. For example, we have redesigned certain currency with the intent of re-designing successive denominations and will continue our efforts to educate the public on the security features of each of these new bills. Additionally, the Secret Service has adopted a "zero tolerance" policy for counterfeiting crimes; every case is investigated and pursued. Finally, the Attorney General has joined us in encouraging U.S. Attorneys nationwide to give heightened priority to the prosecution of computer-generated counterfeiting cases. We now hope to work with you to ensure that the Sentencing Guidelines adequately punish criminals who engage in counterfeiting, particularly those who exploit the new computer and printer technologies referenced above.

* * *

As currently written and applied, the Sentencing Guidelines do not adequately address the seriousness of counterfeiting cases, especially those involving computer-generated counterfeit notes. As you know, the current guideline applicable to offenses involving counterfeit U.S. currency, U.S.S.G. § 2B5.1, begins with a Base Offense Level of 9 and provides for incremental increases in offense level in accordance with the fraud monetary loss table in § 2F1.1. Thus, a defendant's guideline range in counterfeiting cases depends largely on the amount of counterfeit inventory seized when the operation is shut down. A low seizure amount results in little if any increase to the base offense level, which in turn yields a minimal sentence. For instance, if the amount of seized counterfeit currency is less than \$5,000 and a defendant accepts responsibility for his actions, under the current guidelines he may be eligible for a sentence of straight probation.

This is exactly the scenario most often encountered in counterfeiting cases involving computer-generated notes and inkjet printers. As reflected in the investigative files of the Secret Service, these cases rarely involve seized currency in excess of \$2,000, much less \$5,000. A counterfeiter using an inkjet printer to produce computer-generated notes can run off currency on an as-needed basis and does not need to maintain a large inventory of counterfeit currency. This differs markedly from the more traditional offset printing method, where the cost of a single production "run" and other factors caused defendants to create large inventories of counterfeit currency at one time. Therefore, computer generated counterfeiting cases usually result in minimal inventory

seizures, and consequently, minimal prison terms under the existing Sentencing Guidelines -- despite the law enforcement and financial risks presented by the criminal activity.¹

The proposed amendments to the fraud, theft, and tax guidelines for the 1997-98 amendment cycle, now published in the Federal Register for public comment, do not address this problem. The amendment options for §2B5.1 call for the elimination of the fraud monetary table in §2F1.1 and the substitution of a new Reference Monetary Table in U.S.S.G. §2X6.1. While these options raise penalties for economic offenses that have medium to high dollar losses, they leave virtually unchanged the penalties applicable to cases involving lower dollar amounts. This simply fails to confront the very real and growing threat presented by computer-generated counterfeit. The penalty for such offenses remains dependent on the amount of counterfeit currency seized. Indeed, one of the amendment options (Option 1) appears to take a step backward by raising the "cutting point" for the initial offense level increase from \$2,000 to \$5,000. We, of course, do not favor this option, and instead would argue for any combination of options in §2B5.1 and §2X6.1 that provide for the greatest penalty increase at the lowest monetary threshold.

In our view, the necessary remedy must go beyond the amendment options that are currently being considered by the Sentencing Commission. First, we believe that the base offense level in §2B5.1 should be increased by two levels in order to adequately address the harm counterfeiting offenses cause to the integrity of the U.S. currency both domestically and abroad. Further, we ask the Commission to consider adding a specific offense characteristic that would increase the adjusted offense level an additional two levels in all cases involving counterfeit notes produced on printers and full color copiers.² This latter amendment would prevent, at least in part, the sentencing windfall defendants currently enjoy through the use of new counterfeiting technology in place of the traditional offset printing method.

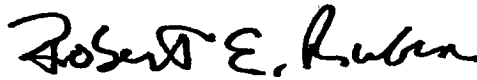
In order to further explain the need for these guideline changes, the Secret Service would welcome the opportunity to make a special presentation to you and the rest of the Commission, or your staffs, on the capabilities of new counterfeiting technology and its rapid increase over the past few years. A non-public setting is more appropriate for this type of presentation because of the nature of the information discussed. Additionally, we look forward to presenting more general testimony at the public hearing on March 12, 1998.

¹ Admittedly, offenses involving the manufacturing of counterfeit currency or the possession of counterfeiting devices and materials prescribe a higher guideline range, see U.S.S.G. §2B5.1(b)(2), but even in those cases a defendant who accepts responsibility may be eligible for a minimum imprisonment term of only one year.

² For cases involving the simple possession or passing of counterfeit notes, this would increase the offense level to 13, assuming the base offense level were increased to 11 as we recommend. For cases involving manufacturing or possession of counterfeiting devices, this would raise the adjusted offense level from 15 to 17.

We hope you will support our efforts to achieve this needed sentencing reform, and we look forward to working with you and the entire Commission on this issue.

Sincerely,

A handwritten signature in black ink, reading "Robert E. Rubin". The signature is written in a cursive, flowing style with a large initial "R".

Robert E. Rubin

cc: Attorney General Janet Reno
Michael Corlander, U.S. Sentencing Commission