U.S. Department of Homeland Security
UNITED STATES SECRET SERVICE

Washington, D.C. 20223

DIRECTOR

March 25, 2009

The Honorable Ricardo H. Hinojosa
Acting Chair
United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Dear Judge Hinojosa:

On behalf of the United States Secret Service, I want to express my earnest support for the recently proposed amendments to the United States Sentencing Guidelines (USSG) pertaining to counterfeiting offenses committed with bleached genuine U.S. currency paper and the application of USSG § 2B5.1, Counterfeit Bearer Obligations of the United States.

The removal of printed ink from genuine U.S. currency, commonly referred to as "bleaching," is not a new method of producing counterfeit. For centuries, currency counterfeiters have sought after the unique features of genuine U.S. currency paper to create quality counterfeits. Unfortunately, counterfeiters have adapted their manufacturing methods to combine digital computer technology and bleached currency to perfect their craft. The resulting product is a highly deceptive hybrid counterfeit bill that blends the unique feel and features of a genuine note with a counterfeit image.

The amendments proposed to the Commission are solely intended to target counterfeiting offenses involving "bleached" currency for definition and inclusion in the Sentencing Guidelines at §2B5.1. The Secret Service is not recommending any other changes regarding the application of this provision to other types of fraud.

The Federal Defenders have indicated the "proposed 'clarification' is no clarification at all, but a sea change in how the guidelines define what is and is not a 'counterfeiting' offense."[1] The Secret Service respectfully disagrees with this position. We believe the amendments are a pinpoint fix to § 2B5.1 which would guide the sentencing courts to consider defendants convicted of any currency counterfeiting offenses, including those involving "bleached" U.S. currency paper, as serious criminals and subject to the more punitive sentencing guidelines found at § 2B5.1. Rather than a

[1] Written Statement of Jon Sands, Chair, Federal Defender Sentencing Guidelines Committee Public Hearing on Proposed Amendments for 2009, March 17-18, 2009,Re: Counterfeiting and "Bleached Notes", at page 1.

"sea change," the proposed amendments serve only to clarify that counterfeiting activity, whether it occurs on a bleached genuine note or on imitation paper, is still counterfeiting.

We would note that, in the *Background* section of § 2B5.1, the Commission asserts the U.S. Government has a "public policy interest in protecting the integrity of government obligations." The Secret Service wholeheartedly agrees with the Commission. We have seen time and time again that the introduction of counterfeit currency by criminals into our local communities has an immediate impact on the integrity of the paper currency in circulation.

It has also been raised that printing illegal images of Federal Reserve Notes on genuine paper should be regarded in the Sentencing Guidelines as forgery rather than counterfeiting, pursuant to the definitions set forth in 18 U.S.C. § 513.[2] The position of the Secret Service is that 18 U.S.C. § 513, by its very title, pertains to offenses involving "Securities of the States and private entities" and not obligations of the United States such as Federal Reserve Notes. Section 513 contains a laundry list of items that are deemed "securities" for purposes of that section but does not reference Federal Reserve Notes or currency. Currency offenses are treated separately, *see* 18 U.S.C. § 470, et seq., and are subject to higher statutory maximum penalties. It is the position of the Secret Service that these distinctions reflect the unique functions and importance of our national currency. Securities such as stock certificates or state-issued bonds are simply not the same as Federal Reserve Notes, and the guidelines for counterfeit U.S. currency need not mirror the statutory language associated with state or private securities.

We consider all currency not produced by or with the permission of the Treasury Department to be counterfeit. Moreover, defendants who "bleach" genuine U.S. currency paper typically manufacture a highly deceptive counterfeit note which is easier to pass to unsuspecting victims. These counterfeiters rely on the "distinctive counterfeit deterrents" and unique feel of genuine currency paper to create counterfeit currency that is often difficult to detect or identify. As such, "bleached note" counterfeiters should be sentenced accordingly under §2B5.1.

Moreover, we would note that the provisions of 18 U.S.C. § 471 and § 472 do not distinguish differences between defendants who produce or possess any U.S. "obligation" that is forged, counterfeited or altered. There appears to be no statutory language or legislative instruction to allow for a reduction in the term of imprisonment that is contingent on the method employed for the criminal production of U.S. currency. The salient point is that the offense involves counterfeit Federal Reserve Notes, not the method of counterfeiting.

With respect to the issue of what might constitute "materials used for counterfeiting" in §2B5.1(b)(2)(A), the Secret Service believes that including the language as proposed in (b)(2)(B)(ii) will provide sentencing courts with a clear statement that possession of bleached paper should be subject to an enhancement. As the Counterfeiting Policy Development Team noted, the Commission has not been made

[2] See Written Statement of Jon Sands at 2.

aware of any application issues with the current subsection (b)(2)(B) since it was implemented in 2001, and the Probation Officers Advisory Group does not anticipate any application problems with the newly-proposed subsection (b)(2)(B)(ii).

However, it has been suggested that the Commission consider forgoing the proposed (b)(2)(B)(ii) language due to potential application issues related to the lack of empirical data regarding this conduct. Should the Commission conclude that the proposed language might prove a source of confusion given the "materials used for counterfeiting" provision in (b)(2)(A), we would suggest the addition of an *Application Note* related to (b)(2)(A) as follows:

> *"Genuine United States currency paper from which the ink or other distinctive counterfeit deterrent has been completely or partially removed should be considered material used for counterfeiting in the application of (b)(2)(A)."*

Further, the Secret Service would note that mere possession of "bleached" paper does not currently merit a counterfeiting charge. In order for the proposed (b)(2)(B)(ii) or the draft note regarding (b)(2)(A) above to apply, a defendant must first be charged and convicted of a federal counterfeiting offense. This means the U.S. Attorney's Office must affirmatively charge the defendant under one of the applicable currency counterfeiting statutes, and all the elements of such a charge must be met. It would be an extremely rare case that a defendant would be subject to §2B5.1 for simple possession of the "bleached" paper unless the defendant was involved in a conspiracy to manufacture counterfeit.

I understand the Commission has undertaken a comprehensive analysis of this issue and has received much input throughout the amendment process. The Secret Service supports the proposed amendments as written and believes that all individuals who produce counterfeit currency should be subject to §2B5.1 regardless of the base paper they choose. Finally, should the Commission consider forgoing the addition of the proposed §2B5.1(b)(2)(B)(ii), we are hopeful that you will agree to add language to recognize that bleached currency paper is to be considered a "material used for counterfeiting."

I am extremely grateful that the Secret Service was afforded the unique opportunity to present our position to the Commission. I reiterate my full support of the proposed changes to §2B5.1 of the sentencing guidelines.

Sincerely,

Mark Sullivan

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