

BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Forgery Of U.S. Treasury Checks-- Federal Misdemeanor Law Needed

Forging of payee signatures on U.S. Treasury checks is increasing. Under Federal law forgery is a major crime (felony) and is punishable by up to 10 years' imprisonment.

Although offenders include members of organized criminal groups, the majority of Federal forgery cases involve a first-time offender and a small amount of money. For cases involving offenders in the latter category, there is no Federal statute that authorizes the prosecution of a forgery case as a minor offense (misdemeanor) and the felony penalty is often considered too severe. Consequently, some forgery suspects are not prosecuted. Federal prosecutors state that a misdemeanor check forgery statute would provide a realistic alternative to declining to prosecute a minor forgery offense or prosecuting it under a felony statute.

GAO recommends that forgery of a Treasury check under certain circumstances, such as a first-time offender forging a check of nominal value, be subject to prosecution as a misdemeanor.



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COMPTROLLER GENERAL OF THE UNITED STATES
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To the President of the Senate and the
Speaker of the House of Representatives

This report discusses the need for new legislation providing U.S. attorneys with a clear statutory basis for prosecuting the forging of payee signatures on U.S. Treasury checks as misdemeanors. The report also assesses the extent of the Secret Service's referrals of check forgery cases to local authorities for prosecution. Our review was made because of the large number of U.S. Treasury check forgery cases being investigated each year by the Secret Service.

Copies of this report are being sent to the Director, Office of Management and Budget; the Attorney General; the Director, Executive Office for U.S. Attorneys; the Secretary of the Treasury; the Director, U.S. Secret Service; and other interested parties.

Comptroller General
of the United States

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ACQUISITIONS

COMPTROLLER GENERAL'S REPORT
TO THE CONGRESS

FORGERY OF U.S. TREASURY
CHECKS--FEDERAL MISDE-
MEANOR LAW NEEDED

D I G E S T

The forgery of payee signatures on U.S. Treasury checks in fiscal year 1982 increased 46 percent from 1980. Those forging signatures range from organized criminal groups to single, first-time offenders forging signatures on checks involving a small amount of money. Because forgery is a felony under Federal law, often suspects are not prosecuted when, in the view of the U.S. attorney, the felony penalty is too severe for the offense. GAO made this evaluation to determine whether Federal law should be changed so that check forgery can be prosecuted by U.S. attorneys as either a felony or as a misdemeanor, depending upon the gravity of the offense.

TREASURY CHECK FORGERIES
INCREASING BUT MAJORITY
OF CASES INVOLVE FIRST
TIME OFFENDERS AND SMALL
AMOUNTS OF MONEY

The Secret Service investigates thousands of Treasury check forgery cases involving one or more checks each year. In fiscal year 1982, for example, it received 101,291 check cases, an increase of 46 percent from 1980, and it closed almost 83,000 cases involving checks totalling \$26.5 million. Many of these cases were either closed administratively for lack of investigative leads, or declined for prosecution by U.S. attorneys. Prosecuted check forgery cases resulted in 4,652 arrests and 4,228 convictions during that year. (See pp. 3 and 4.)

Treasury check forgery is viewed by investigators and prosecutors as primarily a low-level crime--as a crime of opportunity, not as a premeditated act. Although cases involving multiple offenders with prior criminal records

are increasing, the majority of check forgery cases involve one suspect with no prior record of forgery and one Social Security or Federal income tax refund check amounting to less than \$350. Many forged checks are stolen from the mail.

Treasury has the right to recoup losses due to the forger's crime from the last endorser of the check. However, as a prior GAO report pointed out, problems have existed with Treasury's collection procedures. In recent months Treasury has taken action to correct these problems. Thus, theoretically the Federal Government should not suffer a monetary loss from the forger's crime; neither should the check payee who normally receives a substitute check from the Federal Government. Those affected by the forgery are the businesses that cashed the checks such as banks, liquor stores, and supermarkets. When caught, forgers may make restitution to their victims. In addition to any prosecutive efforts that the Federal or local government may take against the forger, injured private parties may take civil action if restitution is not made.

A FEDERAL MISDEMEANOR FORGERY
STATUTE IS NEEDED

A Treasury check forgery offense is punishable only as a felony, and an offender can be given up to 10 years' imprisonment and/or a \$1,000 fine under the existing Federal statute (18 U.S.C. 495). U.S. attorneys and Secret Service officials maintain, however, that the felony penalty is often too severe. Consequently, some suspects are not prosecuted, while others are prosecuted under non-forgery misdemeanor laws which provide less severe penalties but may not actually address the offense. Prosecuting under nonforgery misdemeanor laws, such as obstruction of mails, is not always a suitable alternative because there may be a problem establishing the necessary factual basis to prosecute. (See pp. 8 to 12.)

In responding to a GAO questionnaire, Secret Service and U.S. Attorneys' Offices throughout the country generally agreed that various

benefits would result if a Federal misdemeanor forgery statute were enacted. Based on responses to GAO's questionnaire, the existence of an appropriate misdemeanor law would

- result in a 17 percent increase in the number of forgery cases accepted for prosecution by U.S. attorneys;¹
- eliminate the need for prosecuting under misdemeanor laws that may not directly address the forgery offense;
- increase plea negotiation flexibility and guilty pleas;
- increase use of the U.S. magistrates² in check forgery cases and reduce the number of felony trials, thereby reducing the burden on the Federal district courts;
- provide more accurate conviction records which may be useful in future prosecutions of repeat offenders; and
- provide a realistic penalty structure.
(See pp. 12, 13, and 14.)

BETTER COORDINATION WITH
LOCAL PROSECUTORS FOR
FORGERY CASES

Forging a Treasury check is an offense that can be prosecuted in either Federal or local court. Initially, the Secret Service decides whether cases will be presented to U.S. attorneys for prosecution. The Secret Service estimated that in fiscal year 1982 at

¹In fiscal year 1982, 8,601 cases were submitted to U.S. attorneys for prosecution and 2,890 cases were accepted for prosecution.

²U.S. magistrates are not empowered to handle felony cases.

least 4,200 cases were not presented to U.S. attorneys because they did not meet the prosecutive guidelines, even though the cases were still suitable for prosecution. Of these, only 12 percent (513) were referred to local prosecutors. (See pp. 19 and 20.)

During GAO's fieldwork, the Secret Service changed its policies for managing check forgery investigations. Prior to October 1982, it did not have a policy concerning the involvement of local prosecutors in forgery cases. In October 1982, field offices were directed by headquarters to determine which cases will likely be prosecuted, based on either Federal or local prosecutive guidelines before opening an investigation. (See p. 21.)

This new policy should increase Secret Service coordination with local authorities, but better implementation is necessary. GAO found that several months after the policy went into effect, 34 of the 62 Secret Service field offices (55 percent) did not know the declination policies and practices of local prosecutors. (See p. 21.)

The Attorney General has instructed each U.S. attorney to establish a Law Enforcement Coordinating Committee which may also help increase check forgery case referrals to local prosecutors, but the committees are still in the developing stage. They are intended to improve cooperation and coordination among Federal, State, and local law enforcement authorities. As part of this effort, each U.S. attorney is to establish a district Federal law enforcement plan, including procedures for referring concurrent jurisdiction cases declined for Federal prosecution to local authorities for their prosecutive consideration. As of February 1983, 57 of the 94 Federal judicial districts had submitted plans to the Department of Justice for approval; however, only 8 of them had been approved. Further, these district plans are primarily concerned with high-priority offenses, such as drug trafficking and violent crimes. (See pp. 22 and 23.)

The Secret Service must take the initiative in seeking local prosecution for those cases with merit that U.S. attorneys cannot handle. There is, of course, no guarantee that local authorities will prosecute. They have their own priorities and workload problems and may be reluctant to accept cases declined by Federal prosecutors. Better coordination and communication between the Secret Service and local prosecutors may help prevent check forgers from inadvertently escaping prosecution. (See pp. 19, 22, and 23.)

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GAO's draft report to the Department proposed that the Secretary of the Treasury direct the Director of the Secret Service to require each field office to fully implement the Service's new policy on the involvement of local authorities, which requires field offices to screen each case in order to determine which cases will likely be prosecuted, either federally or locally, before opening an investigation.

In this regard, GAO suggested that field offices should become knowledgeable of local prosecutive policies and work with local prosecutors, in coordination with U.S. attorneys and their Law Enforcement Coordinating Committees, to ensure that all check forgery cases that have prosecutive merit but are not going to be prosecuted at the Federal level are referred to those local authorities willing to accept the cases. (See pp. 22 to 24.)

On June 30, 1983, the Secret Service notified its field offices to become aware of local prosecutive guidelines regarding forgery of U.S. Treasury checks in compliance with its October 1982 policy letter on this matter. Thus, GAO makes no recommendation to the Secretary of the Treasury on this issue.

RECOMMENDATION TO THE CONGRESS

GAO recommends that the Congress enact legislation which will provide that forgery of a U.S. Treasury check under certain circumstances, such as a first-time offender forging

a check of nominal value, be subject to prosecution as a misdemeanor. Congress presently has before it S. 829--the Comprehensive Crime Control Act of 1983--a section of which would create misdemeanor penalties for U.S. Treasury check forgery offenses. Should this comprehensive bill fail to be enacted, GAO recommends that the current statute (18 U.S.C. 495) be amended to create misdemeanor penalties. (See pp. 15, 16, and app. I.)

AGENCY COMMENTS AND GAO'S EVALUATION

The Department of Justice and the Department of the Treasury commented on GAO's report. (See apps. VI and VII.) Justice said it had no objection to the concept of providing misdemeanor penalties under the Federal check forgery statute 18 U.S.C. 495. Justice stated that S. 829 would address this as well as related problems. Accordingly, GAO revised its recommendation to recognize S. 829. (See pp. 16 and 24.)

Although the Department of the Treasury emphasized its concurrence with the overall findings and conclusions of the report, Treasury objected to classifying the forgery of a Treasury check as typically a minor criminal offense (see app. VII). The final report was modified to explicitly recognize the involvement of organized crime and multiple offenders in check forgery cases. However, GAO did find that the majority of check forgery cases involve a single suspect with no prior forgery record and a small amount of money. (See pp. 16 and 17.)

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ABBREVIATIONS

GAO	General Accounting Office
LECC	Law Enforcement Coordinating Committee

CHAPTER 1

U.S. SECRET SERVICE INVESTIGATIONS

OF TREASURY CHECK FORGERY

Forging a payee's signature on a United States Treasury check is a felony under Federal law, punishable by up to 10 years' imprisonment and/or a \$1,000 fine. The U.S. Secret Service is charged with investigating Treasury check forgery cases.¹ It handles thousands of these cases every year. For example, in fiscal year 1982, the Secret Service closed almost 83,000 check cases, with a total of over \$26.5 million involved. Check forgery cases resulted in 4,652 arrests during that year.

Many check forgeries are considered by prosecutors and investigators to be minor criminal offenses. Although organized criminal groups are involved in forgery, cases frequently involve a first-time offender and a small amount of money. We conducted our review to determine whether the present Federal law should be changed so that check forgery can be prosecuted by U.S. attorneys as either a felony or as a misdemeanor.² In addition, we reviewed the extent of the Secret Service's referrals of Treasury check forgery cases to local authorities for prosecution.

SECRET SERVICE IS THE PRIMARY INVESTIGATIVE AGENCY FOR TREASURY CHECK FORGERY

To combat a rampant currency counterfeiting problem, the Department of the Treasury administratively established the Secret Service Division in 1865 as a permanent force to apprehend counterfeiters. In 1867, the Secret Service's scope was broadened to include detecting persons perpetrating fraud against the Government. These frauds were initially back pay and bounty claims, but within 3 years included investigations of the Ku Klux Klan, nonconforming distillers, smugglers, mail robbers, land fraud, and other violations of Federal laws. The Secret Service authority was again broadened to include check forgery after theft and forgery of Government checks began to

¹The cases involve legitimate Treasury checks illegally endorsed.

²Misdemeanors are defined in 18 U.S.C. 1(3) as any offense for which the maximum prison term that may be imposed does not exceed 1 year regardless of the fine.

flourish around 1910. During this time, the Congress recognized the responsibilities of the Secret Service Division by appropriating funds, through the Treasury Department, to perform these functions.

On July 16, 1951, legislation ³ was enacted to provide specific statutory authority to the Secret Service to perform the duties it had been assigned by the Department and in appropriations laws. The legislation also assigned the Secret Service the responsibility for protecting the President of the United States and other designated persons. Regarding counterfeiting and check forgery, the legislation authorized the Secret Service to:

"* * * detect and arrest any person committing any offense against the laws of the United States relating to coins, obligations, and securities of the United States and of foreign governments."

Secret Service's protection responsibilities are given first priority. Investigations of counterfeiting and check forgery cases are the Secret Service's second and third priorities. Other investigative functions include bond forgery, assault on Secret Service officers, lost weapons of Secret Service employees, and applicant background investigations. The Treasury Department also recently authorized the Secret Service to investigate theft and fraud relating to Treasury electronic fund transfers.

Although the Secret Service is the primary investigative agency for Treasury check forgery cases, the U.S. Postal Service also has investigative jurisdiction when violations of postal laws occur. The two agencies have an informal agreement to coordinate investigations involving both Treasury check forgery and mail theft. Whenever appropriate, such cases are to be investigated jointly.

MANY TREASURY CHECKS ARE FORGED

The Secret Service handles a large number of check forgery cases. It received 101,291 check cases ⁴ in fiscal year 1982, an increase of 46 percent from 1980. In addition, almost 64,000 cases were pending at the beginning of that year. The check

³Public Law 82-79, §4, 65 Stat. 122 (1951)(18 U.S.C. §3056).

⁴This number includes approximately 4,600 check cases involving check alteration/mutilation, larceny, and false claims.

forgery workload is by far the greatest of any Secret Service investigative activity. A chart in appendix II compares the number of cases received by the Secret Service in fiscal years 1980 through 1982 for its various types of investigations, except protection.

Of the funds appropriated for the Secret Service (\$194 million in fiscal year 1982), most are directed toward protection duties, but a considerable amount is expended on investigations, including check forgery. As the table below shows, check forgery makes up about 50 percent of the costs of the Secret Service's investigative activities, excluding protection.

<u>Direct Costs of U.S. Secret Service</u>			
<u>Investigative Activities</u>			
<u>Fiscal Years 1980-1982</u>			
	<u>1980</u>	<u>1981</u>	<u>1982</u>
Check forgery	\$11,785,445	\$13,932,883	\$14,950,254
Counterfeiting	6,962,100	9,669,789	10,976,973
Other Criminal/ Noncriminal	3,988,060	3,768,518	4,858,807
Bond forgery	<u>625,263</u>	<u>827,385</u>	<u>686,698</u>
Total	<u>\$23,360,868</u>	<u>\$28,198,575</u>	<u>\$31,472,732</u>

The Secret Service's agents spend approximately 47 percent of their time on protection duties and the remaining time on four investigative activities. Approximately 50 percent of the field agent hours devoted to the four investigative activities during fiscal years 1980 through 1982 was for check forgery cases.

HOW CASES ARE OPENED, INVESTIGATED, AND PROSECUTED

Most check forgery cases are referred to Secret Service headquarters from Treasury's Division of Check Claims. Headquarters, in turn, refers the cases to its field offices. Other cases originate in the field. Once cases are received, Secret Service agents conduct the investigations and present cases to U.S. attorneys or local authorities for prosecution.

Secret Service statistics show that about 83 percent of the 101,291 forgery cases received in 1982 came from the Division of

Check Claims and 17 percent originated in the field.⁵ The Treasury Division's referrals begin when a payee of a Treasury check files a claim for a substitute check. The claim--based on the loss, theft, destruction, or nonreceipt of the original check--is sent to the Division after the agency that authorized the check verifies that the payee was entitled to receive payment. If the Division determines in its claims process that check forgery may have occurred, it refers the case to the Secret Service for investigation.

Field-originated cases begin when an original check is recovered in the field. Checks come to the Secret Service from local law enforcement agencies, the payee, or the victim of a forgery. In addition, field offices sometimes conduct undercover "sting" operations to detect and deter trafficking in stolen Treasury checks.

In fiscal year 1982, the Secret Service closed 82,762 check forgery cases. The value of the checks in these cases was more than \$26.5 million.⁶ Many of these cases were either closed administratively for lack of investigative leads, or declined for prosecution by the U.S. attorneys. Prosecuted check forgery cases resulted in 4,652 arrests and 4,228 convictions during that year.

After a forger is identified, the Secret Service can present the case to either the U.S. attorney or to local authorities for prosecution. The vast majority of cases are presented to U.S. attorneys. Forging a Treasury check is a felony and is punishable under 18 U.S.C. 495 by not more than 10 years' imprisonment and/or a \$1,000 fine.⁷ As discussed in chapter 2, however, not all cases are prosecuted under 18 U.S.C. 495.

⁵These percentages were calculated excluding the 4,600 check cases that involved check alteration/mutilation, larceny, and false claims (see page 2).

⁶Available Secret Service statistics showed the value for only 78,129 forged check cases closed in fiscal year 1982. The remaining cases involved check alteration/mutilation, larceny, and false claims which the Secret Service combines under the category of check forgery.

⁷Any offense which is punishable by imprisonment for a term exceeding 1 year is a felony under 18 U.S.C. 1(1).

CHECK FORGERY IS FREQUENTLY
A LOW-LEVEL CRIME

Treasury check forgery is viewed by investigators and prosecutors as primarily a low level criminal activity--as a crime of opportunity, not as a premeditated act. Although cases involving multiple offenders with prior criminal records are increasing, the majority of check forgery cases involve a small amount of money and a first-time offender who obtains and negotiates a single check by nonviolent means.

Treasury has the right to recoup losses due to the forger's crime from the last endorser of the check. However, as a prior GAO report ⁸ pointed out, problems have existed with Treasury's collection procedures. In recent months Treasury has taken action to correct these problems. Thus, theoretically the Federal Government should not suffer a monetary loss from the forger's crime; neither should the check payee who normally receives a substitute check from the Federal Government. Those affected by the forgery are the businesses that cashed the checks such as banks, liquor stores, and supermarkets. When caught, forgers may make restitution to their victims. In addition to any prosecutive efforts that the Federal or local government may take against the forger, injured private parties may take civil action if restitution is not made.

According to the Secret Service, multiple forgers are involved in a very small percentage of all forgery investigations. A recent Department of Justice commissioned study ⁹ found that 68 percent of the check forgery investigations analyzed involved one check, the average being 1.3 checks. The majority of these investigations involved either Social Security checks (37 percent) or tax refund checks (36 percent). Most of the checks had been stolen from the mail. Closed Secret Service

⁸GAO's report "Millions Paid Out In Duplicate And Forged Government Checks" (AFMD-81-68, October 1, 1981) discusses administrative and legal problems with the Treasury Department's procedures for handling replacement of forged checks and collection of delinquent receivables. The exact amount of monetary loss to the Federal Government due to collection problems was not determinable at that time. Treasury has taken more aggressive follow-up action to improve the collection process; however, an evaluation of actions taken was outside the scope of this review.

⁹"The Investigation and Prosecution of Concurrent Jurisdiction Offenses," Office of Legal Policy, Federal Justice Research Program (FJRP-82/001, January 1982).

forged check cases in fiscal year 1982 averaged less than \$350 per check.

Even though check forgery is often considered as a low-level offense, some law enforcement officials told us prosecution is often necessary to prevent first-time offenders from thinking it is a crime without penalty and to prevent growth in the trafficking of U.S. Treasury checks.

The Department of the Treasury objected to classifying the forgery of a Treasury check as typically a minor criminal offense (see app. VII). Although the majority of check forgery cases involve a single suspect with no prior forgery record and a small amount of money, we modified our final report to recognize Treasury's concerns. (See p. 17.)

OBJECTIVES, SCOPE, AND METHODOLOGY

We conducted our review to determine whether a Federal misdemeanor forgery statute is needed in addition to the existing felony statute. A misdemeanor forgery statute has been introduced previously in the Congress. In addition, we assessed the extent of the Secret Service's referrals of Treasury check forgery cases to local authorities for prosecution.

We reviewed Federal investigative and prosecutive practices and policies, Secret Service case files, and nationwide statistical data relevant to check forgery. We performed work in Chicago, Los Angeles, New York (the three locations accounted for over 18 percent of check forgery cases), Sacramento (a representative medium volume location), and agency headquarters in Washington, D.C. Our work at these locations included

- interviewing officials from the Secret Service, the Department of Justice, U.S. Attorneys' Offices, and various State and local law enforcement agencies;
- analyzing statistical reports concerning check forgery, and reviewing randomly selected check forgery case files closed during fiscal year 1982;
- reviewing written investigative policies of the Secret Service and prosecutive policies of U.S. attorneys; and
- reviewing the district Federal law enforcement plans of U.S. attorneys and the Justice Department's instructions concerning Law Enforcement Coordinating Committees.

In addition to our fieldwork, we sent standardized questionnaires to all 62 Secret Service offices and all 93 ¹⁰ U.S. attorneys throughout the country. We requested

- information on Secret Service investigative policies and practices;
- estimates of the number of check forgery cases presented by the Secret Service to U.S. attorneys and local authorities for prosecution during fiscal year 1982, and of the number accepted and declined;
- information on U.S. attorney and local prosecution policies and practices;
- opinions on the potential effects of enacting a Federal misdemeanor forgery statute; and
- opinions of U.S. Attorneys' Offices on what a Federal misdemeanor forgery law should contain if one were enacted.

All 62 Secret Service offices and 84 of the U.S. Attorneys' Offices responded and answered all or parts of our questionnaires. The response rates were 100 percent and 90 percent, respectively. Secret Service and U.S. attorneys' estimates regarding cases presented for prosecution differ because:

- We requested best estimates where actual figures were unavailable.
- Statistics from some Secret Service offices included declined cases not actually presented to U.S. attorneys (i.e., cases not meeting Federal prosecutive guidelines).
- Not all U.S. attorneys responded.
- Our request asked Secret Service offices to provide case statistics for only the judicial districts in which the offices were located.

We supplemented the work described above with information included in several GAO and Department of Justice reports. The primary reports we relied on are listed in appendix III.

Our review was performed in accordance with generally accepted Government auditing standards.

¹⁰Although there are currently 93 U.S. attorneys, there are 94 U.S. Attorneys' Offices. One U.S. attorney administers the activities performed by the judicial districts in both Guam and the Northern Mariana Islands.

CHAPTER 2

ENACTING A FEDERAL MISDEMEANOR

FORGERY STATUTE--RECOGNIZING REALITY

The Secret Service and U.S. attorneys recognize that prosecution of a Treasury check forgery case as a felony often is not warranted. Consequently, some cases are not prosecuted because there is not a Federal forgery statute which provides for prosecution of such cases as a misdemeanor. Other cases are prosecuted under nonforgery misdemeanor laws. The absence of a Federal misdemeanor forgery statute inhibits prosecution, hampers plea negotiation, creates a need to prosecute under misdemeanor statutes that may not actually address the offense, and produces inaccurate conviction records that are of limited value in future prosecutions of repeat offenders.

In responding to GAO questionnaires, most Secret Service and U.S. Attorneys' Offices favored the enactment of a Federal misdemeanor forgery statute. U.S. attorneys indicated that such a law would provide them a useful and realistic alternative to their present choices--declining a case, prosecuting as a felony, prosecuting under a nonforgery misdemeanor law, or relying on pretrial diversion.¹

U.S. ATTORNEYS OFTEN RELUCTANT TO PROSECUTE FORGERY AS A FELONY-- POLICIES AND PRACTICES VARY

Because Treasury check forgery is often considered by U.S. attorneys as a minor offense, they handle these cases in various ways. For example, some have a policy of blanketly declining to prosecute cases falling below specified dollar amounts while others have no such policy. Some U.S. attorneys use nonforgery misdemeanor statutes for prosecution or use pretrial diversion when they accept a case that they determine does not warrant felony penalties. The lack of a misdemeanor forgery law, as well as overall workloads and priorities, affects the way U.S. attorneys treat forgery cases.

¹Pretrial diversion can be used by U.S. attorneys as an alternative to prosecution. Offenders are diverted from the criminal justice process into programs of supervision or other services.

Many forgery cases declined

Only a small percentage of Treasury check forgery cases investigated by the Secret Service are prosecuted. Some cases are not presented to U.S. attorneys because Secret Service officials know they do not meet prosecutive guidelines, and other cases are presented for prosecution but declined by U.S. attorneys.

Most U.S. attorneys have established written declination policies spelling out the types of check forgery cases that normally will not be accepted for prosecution. These blanket declination policies commonly include checks cashed by a member of the payee's immediate family and checks issued in error to a person with the same, or a similar, name as the payee. Other factors may also be included. For example, some policies specify a minimum dollar amount (e.g., \$400, \$1,000) or a minimum number of checks (e.g., three or more) that must be involved before a case will be accepted.

According to Secret Service personnel, field offices know of the "blanket" declination policies, and they do not present such cases to the U.S. attorneys unless aggravating circumstances exist. In responses to our questionnaires, 60 Secret Service offices estimated that in fiscal year 1982 about 4,200 forgery cases suitable for prosecution were not presented to U.S. attorneys because of blanket declination policies. This estimate includes only cases in the judicial districts where the 60 offices are located.

Of those forgery cases that are presented by the Secret Service to U.S. attorneys for prosecution, only about one-third are accepted. Seventy-six U.S. Attorneys' Offices responding to our questionnaire stated that the Secret Service presented them with an estimated 8,601 check forgery cases for prosecution in fiscal year 1982; they estimated that 2,890 (34 percent) of these were accepted and 5,287 (61 percent) were declined.²

U.S. attorneys decline to prosecute these cases for various reasons, such as the offense does not warrant prosecution as a felony; the case is more appropriate for State or local prosecution; and/or the suspect's circumstances makes prosecution inappropriate.

²Five percent of the cases were still pending a decision on whether to accept or decline.

Nonforgery misdemeanor
laws sometimes used

According to U.S. attorneys, they sometimes accept Treasury check forgery cases for prosecution even though they consider felony penalties too severe. In these cases, either a nonforgery misdemeanor statute is used or the offender is placed in a program of supervision and/or services in lieu of prosecution (pretrial diversion). Nonforgery misdemeanor statutes and pretrial diversion are not always suitable alternatives, however. While a misdemeanor prosecution may be considered most appropriate, the nonforgery statutes may not directly address the forgery offense, and establishing the necessary factual basis to prosecute under them may be a problem.

About two-thirds of the U.S. attorneys at least occasionally use existing misdemeanor laws to prosecute check forgery. According to the Secret Service several U.S. attorneys participate in a plan advocated by the Secret Service whereby a defendant pleads guilty before a U.S. magistrate ³ to a misdemeanor charge. The two most commonly used misdemeanor statutes are 18 U.S.C. 1701 (obstruction of mails) and 18 U.S.C. 641 (embezzlement and theft--public money, property, or records not exceeding \$100). The following table shows the frequency of misdemeanor convictions, felony convictions, and other dispositions of forgery cases accepted and disposed of in fiscal year 1982 as estimated by 77 U.S. Attorneys' Offices.

³U.S. magistrates are subordinate district court officials empowered to perform many duties previously performed by district judges, including trial jurisdiction over all Federal misdemeanors (with the defendant's consent). U.S. magistrates are not empowered to handle felony cases.

<u>Disposition</u>	<u>Percent of cases (note a)</u>
Felony only (18 U.S.C. 495)	63
Guilty plea to a misdemeanor and dismissal of felony charge	12
Misdemeanor only--no felony charge	8
Pretrial diversion	13
Not guilty/case dismissed	2
Other	1

a/Percentages do not add to 100 percent due to rounding.

According to U.S. Attorneys Offices, the use of nonforgery misdemeanor statutes creates a problem when the statute does not actually address the offense. For example, many forged checks exceed \$100, but 18 U.S.C. 641 applies to thefts not exceeding \$100. Similarly, 18 U.S.C. 1701 (obstruction of mails) is not always suitable because the mail may not have been obstructed, or, sufficient evidence may not exist to prove the charge in court. Some attorneys told us they will not prosecute a case as a misdemeanor unless there is a clear factual basis for the charge. Other attorneys use the existing misdemeanor statutes which may not actually address the offense in instances where they believe that prosecutive action falling between pretrial diversion and felony prosecution is appropriate and the defendant is willing to plead guilty to a misdemeanor. One attorney described his "prosecutive dilemma" in detail.

"In order to more fully appreciate the problems often associated with making a prosecutive decision, the following is a typical check case that would be presented to me by a Secret Service agent.

The defendant, 19 years old, is being investigated for forgery and uttering a Social Security check in the amount of \$200. He has one prior misdemeanor conviction. Because of his prior criminal record, little deterrent value would be gained by placing him in pretrial diversion. The other alternative would be a felony charge under Section 495. To alleviate the consequences often associated with a felony charge, I have, on occasion, attempted to utilize other Code Sections such as a Postal misdemeanor (1701) and

receipt of stolen government property less than \$100 (641); however, I feel that it is inappropriate and often problematic when the defendant is called upon to establish the necessary factual basis if he decides to plead guilty."

Not all forgery prosecutions using existing misdemeanor statutes fail to address the offense actually committed. We do not know the percentage which does. The practice, however, does occur and illustrates the need for U.S. attorneys to have an alternative to prosecute check forgery cases as a misdemeanor when other actions (declining a case, relying on pretrial diversion, or prosecuting as a felony) are not considered suitable.

SECRET SERVICE AND U.S. ATTORNEYS
FAVOR ENACTING A MISDEMEANOR
FORGERY STATUTE--BENEFITS CITED

Most Secret Service and U.S. Attorneys' Offices that responded to our questionnaires favored the enactment of a Federal misdemeanor forgery law. The offices generally agreed that such a law would not only eliminate the need for using nonforgery misdemeanor statutes, it would also produce a variety of other benefits.

Of the 84 U.S. Attorneys' Offices that responded, 74 percent favored having a misdemeanor forgery law. Eighty-seven percent of the 62 Secret Service offices also favored such a law. The table below shows the percentages of the offices responding that agreed and disagreed that certain possible benefits would occur if a misdemeanor forgery statute were enacted. Our questionnaires allowed the respondents to indicate the extent to which they favored or disfavored a misdemeanor law and the extent of their agreement or disagreement about the benefits. Aggregate questionnaire responses are contained in appendix IV (U.S. Attorneys' Offices) and appendix V (Secret Service offices).

<u>Potential consequences</u>	Percent of U.S. Attorneys (note a)		
	<u>Greatly or somewhat agree</u>	<u>Greatly or somewhat disagree</u>	<u>No opinion</u>
1. Change in declination policies allowing acceptance of more cases.	40	40	19
2. Increase in number of prosecutions because more cases accepted.	46	38	16
3. Increase in plea negotiation flexibility and guilty pleas.	71	21	7
4. Eliminate the need for guilty pleas to misdemeanors that cause "legal fictions."	82	10	8
5. Increase in use of magistrates because more cases prosecuted.	60	30	10
6. Reduce felony trials and district court time because some cases brought before magistrates.	63	27	10
7. Provide more appropriate penalties than the present forgery statute for most forgery violations.	68	24	8
8. Create more accurate conviction records that may help in future forgery prosecutions of repeat offenders.	61	19	20

a/Some percentages do not add to 100 percent because of rounding.

As can be seen in the preceding table, some U.S. Attorneys' Offices agreed they would accept (40 percent) and prosecute (46 percent) more check forgery cases if there were a specific misdemeanor statute. The number of increased prosecutions cannot be determined accurately. However, 40 offices approximated that they would have accepted, on the average, 31 percent of the forgery cases they declined in fiscal year 1982. This would have amounted to roughly 956 more cases accepted by those offices, a 73-percent increase. Overall, U.S. attorneys indicated that they would have accepted 17 percent more cases if a specific forgery misdemeanor statute existed.

Eighty-two percent of the U.S. Attorneys' Offices and 80 percent of the Secret Service offices agreed that a misdemeanor forgery law would eliminate the need for prosecuting under non-forgery misdemeanor statutes that may not actually address the forgery offense. This was a primary reason given by numerous Secret Service and U.S. Attorneys' Offices for favoring a new law. The responding U.S. Attorney's Offices that used nonforgery misdemeanor statutes in fiscal year 1982 estimated that an average of 59 percent of these cases would have been more appropriately prosecuted under a misdemeanor forgery statute.

Secret Service and U.S. Attorneys' Offices responded that other benefits would also occur if check forgery could be prosecuted as a misdemeanor. They said that plea negotiation⁴ flexibility would increase resulting in more guilty pleas. Properly employed, plea negotiation can result in the disposition of a case without an expensive and time-consuming trial. Most offices also said that greater use would be made of the U.S. magistrates, thereby easing the burden somewhat on the district court system. The position of U.S. magistrate was created to relieve district judges of many judicial duties. In 1979, the Congress expanded the magistrates' jurisdiction in criminal matters to include all Federal misdemeanors (with the defendant's consent). GAO has previously recommended that the district courts take full advantage of the availability of magistrates.

Another benefit would be that the relevant criminal background of defendants charged with forgery could be considered properly in court. Several Federal prosecutors we talked with said that a prior forgery misdemeanor conviction would more

⁴U.S. attorneys have authority to enter into plea agreements with defendants, whereby charges are dropped or reduced in exchange for a guilty plea to a lesser offense (e.g., plead guilty to a misdemeanor in lieu of being charged with a felony).

accurately reflect a repeat forger's prior criminal conduct than a nonforgery misdemeanor conviction and could help in prosecution. Sixty-one percent of the U.S. Attorneys' Offices responding to our questionnaires agreed that a misdemeanor forgery law would create more accurate conviction records that may help in prosecuting repeat offenders.

In addition to asking the Secret Service and U.S. Attorneys' Offices whether they agree or disagree that certain potential benefits would occur if a forgery misdemeanor law was enacted, we asked them to state in their own words why they favor (or disfavor) such a law. We received a wide variety of responses, but one theme prevailed--a forgery misdemeanor statute would provide for many cases a realistic charge that would accurately reflect the nature of the crime committed. It would give prosecutors a useful alternative to prosecution on felony charges, use of nonforgery misdemeanor laws, reliance on pre-trial diversion, and declination of a case.

CONCLUSIONS

The crime of forging a U.S. Treasury check is often not serious enough to warrant prosecution on felony charges, and most Secret Service and U.S. Attorneys' offices favor enactment of a Federal misdemeanor forgery statute. These offices largely agree that in addition to eliminating the need for prosecuting under nonforgery misdemeanor laws which may not directly address the offense, a misdemeanor forgery statute would

- increase plea negotiation flexibility and guilty pleas;
- increase use of the U.S. magistrates in check forgery cases and reduce the number of felony trials, thereby reducing the burden on the district courts;
- create more accurate conviction records which may be useful in future prosecutions of repeat offenders; and
- provide a more realistic and appropriate penalty structure than the present forgery statute allows.

Responses to our questionnaires also indicate that more check forgery cases would be accepted and prosecuted by U.S. attorneys if a misdemeanor forgery law existed. However, the number of additional forgers that would be prosecuted cannot readily or accurately be determined.

RECOMMENDATION TO THE CONGRESS

We recommend that the Congress enact legislation which will provide that forgery of a U.S. Treasury check under certain circumstances, such as a first-time offender forging a check of nominal value, be subject to prosecution as a misdemeanor. Congress presently has before it S.829--the Comprehensive Crime Control Act of 1983--a section of which would create misdemeanor penalties for U.S. Treasury check forgery offenses. Should this comprehensive bill fail to be enacted, we recommend that the current statute (18 U.S.C. 495) be amended to create misdemeanor penalties for check forgeries. (See app. I.)

AGENCY COMMENTS AND OUR EVALUATION

The Department of Justice, in its comments on our draft report, did not object to the concept of providing misdemeanor penalties under 18 U.S.C. §495 and suggested some modified language which we incorporated in our legislative proposal. The Department pointed out that the Administration's proposed crime bill, the Comprehensive Crime Control Act of 1983, S.829, would create a new provision in Title 18 that would include both misdemeanor and felony penalties for forgery of U.S. Treasury checks as well as for certain other related conduct involving obligations of the United States. The Department was concerned that our legislative proposal addressed only 18 U.S.C. §495 and did not proscribe related conduct not covered by this statute. We have revised our recommendation to reflect the status of S.829.

Our review was made to determine whether Federal law should be revised to provide that forgery of a U.S. Treasury check, under certain circumstances, be prosecuted as a misdemeanor. Justice's proposed statutory language covers criminal conduct outside the scope of our review. The coverage of our recommendation--a forgery misdemeanor offense--corresponds to the scope of our review. The Administration's proposal calls for one specific section under which both forgery and other crimes involving United States obligations could be prosecuted. We wish to make clear in this regard that the forgery focus of our review should not be construed as minimizing the importance of the Administration's more comprehensive legislative initiatives in this area.

The Department of the Treasury concurred with our overall findings and conclusions. The Department particularly supported our recommendation to the Congress that legislation be enacted to provide that Treasury check forgery under certain circumstances be subject to prosecution as a misdemeanor. The Department

said it had forwarded, on several occasions, similar proposed legislation to the Congress. The Department also said it hopes and believes that the enactment of a misdemeanor forgery statute will alleviate most, if not all, of the need to prosecute cases through local jurisdictions, and that most first time offenders would plead guilty to a forgery misdemeanor that could be handled in magistrates courts without burdening the district courts.

The Department of the Treasury objected to classifying the forgery of a Treasury check as typically a minor criminal offense (see app. VII). Treasury said that an increasing number of cases investigated by the Secret Service involve multiple offenders with prior criminal records who use a premeditated approach to perpetrate their forgery of U.S. Treasury checks. Treasury suggested that our report reflect that organized criminal activity is seen in numerous check forgery operations.

We modified the final report to explicitly recognize the involvement of organized crime in check forgeries as well as the fact that multiple offender cases are on the increase. The report does note, however, that the majority of check forgery cases involve a single suspect with no prior forgery record and a small amount of money.

CHAPTER 3

THE SECRET SERVICE CAN DO MORE TO ENCOURAGE PROSECUTION OF CHECK FORGERS AT THE LOCAL LEVEL

Forging a Treasury check is an offense that can be prosecuted in either Federal or local court. Referring forgery cases to local prosecutors could reduce the number of forgers who escape prosecution. However, we found that the Secret Service had used this approach sparingly. Although a new Secret Service policy now requires each field office to determine whether a forgery case meets either Federal or local prosecutive criteria, most offices were still not aware of local prosecution policies at the time of our fieldwork.

Law Enforcement Coordinating Committees (LECC) may help achieve better Federal and local coordination regarding Treasury check forgery cases, but they are still in the developing stages. The Attorney General has instructed each U.S. attorney to establish an LECC and a district Federal law enforcement plan that will address the issue of referring crimes that violate both Federal and State laws to local authorities. The district plans are to contain procedures for referring to local authorities all Federal cases which are declined for prosecution but which have prosecutive merit or potential. Only eight U.S. attorneys' district plans had been approved at the time of our evaluation. In addition, most of these plans emphasize more serious crimes and do not specifically mention check forgery prosecution. Clearly, the Secret Service must take the initiative in referring check forgery cases to local authorities so that violators will not inadvertently escape prosecution.

FORGERY OF TREASURY CHECKS IS AN OFFENSE WHICH CAN BE PROSECUTED FEDERALLY OR LOCALLY

The forgery of a U.S. Treasury check is a violation of both Federal and State laws. Forgery cases can be prosecuted by U.S. attorneys or local prosecutors. The same holds true for other crimes (e.g., bank robbery, drug violations). They are called "concurrent" or "dual" jurisdiction offenses.

The Department of Justice has advocated that concurrent jurisdiction cases declined for Federal prosecution be referred to local authorities for prosecutive consideration. U.S. attorneys often decline cases because of heavy workloads, insufficient staff, and/or because the offense does not meet their

guidelines for Federal prosecution. Seventy percent of 83 U.S. Attorneys' Offices responding to our questionnaires said that, at least sometimes, they declined to prosecute forgery cases because local prosecution was more appropriate. Of the 70 percent, 34 percent said they either frequently or almost always declined for this reason. Secret Service offices can refer a forgery case to local authorities after first presenting the case to a U.S. attorney for prosecution and being declined, or they can refer cases directly to local prosecutors (either by direct contact or through a local police agency) because of U.S. attorneys' blanket declination policies.

Of course, there is no guarantee that local prosecutors will accept the cases referred by the Secret Service. Of the 82 U.S. Attorneys' Offices that responded to our questionnaire concerning whether or not State/local prosecutors have a specific state misdemeanor statute to prosecute check forgery cases, 59 percent said they did, 29 percent said they did not, and 12 percent did not know. Whether or not local authorities prosecute referred cases under whatever statute is available to them depends on their own priorities, workload, and resource pressures. In addition, once a case is declined by a U.S. attorney, it may become "tainted" in the eyes of a local prosecutor who is reluctant to accept a case that does not warrant Federal prosecution. The January 1982 study sponsored by the Justice Department found that concurrent jurisdiction cases appear to have been most successfully referred to local prosecutors when Federal investigators, aware of a likely declination by a U.S. attorney, take the case directly to the local prosecutors.

ONLY A SMALL PORTION OF
CASES ARE REFERRED
TO LOCAL PROSECUTORS

The Secret Service has not referred many check forgery cases to local authorities for prosecution. Of those cases referred, some were referred directly and others were first presented to U.S. attorneys but declined.

In responses to our questionnaires, Secret Service field offices estimated that they referred 1,367 forgery cases to local prosecutors in fiscal year 1982. By comparison, the offices estimated that U.S. attorneys declined to prosecute 9,494 cases presented for prosecution.¹ In addition, the

¹Secret Service estimates are significantly larger than U.S. attorneys' estimates on page 9. Some Secret Service field offices gave us statistics that included both cases blanketly declined without referral and those cases actually presented to U.S. attorneys and then declined. Cases declined in either fashion can be referred to local prosecutors.

Secret Service offices estimated that about 4,200 cases suitable for prosecution were not presented to U.S. attorneys because of U.S. attorney blanket declination policies. Of these, only 513 were referred to local prosecutors. ²

The study ³ sponsored by the Department of Justice also demonstrated that the Secret Service referred a small portion of cases to local prosecutors. As part of the study, fiscal year 1979 forgery cases in 14 Federal judicial districts were analyzed. Of 4,704 cases presented by the Secret Service for prosecution, 91 percent were presented to U.S. attorneys and 9 percent were referred directly to local prosecutors. The U.S. attorneys declined 52 percent of the cases presented to them. Only 4 percent of these declined cases were referred to local prosecutors; the remaining cases were closed with no further action.

The study compared the handling of the Secret Service's check forgery cases with mail theft cases investigated by the Postal Inspection Service. The overall acceptance rates by Federal and local prosecutors were 47 percent for check forgery and 91 percent for mail theft cases. ⁴ While the acceptance rates by Federal prosecutors were similar, the local prosecutors acceptance rates differed dramatically--10 percent for forgery and 52 percent for mail theft.

The Justice Department study found that the differences in acceptance rates appeared to result from the direct referral process of the investigators. According to the study, the high acceptance rate for mail theft cases can be attributed to the postal inspectors' tenacity in pursuing non-Federal prosecutions. The study concluded that an understanding by investigators of both Federal and local prosecution policies and procedures can lead to effective and efficient handling of cases.

²The figures cited in this paragraph are totals of estimates provided by the 62 Secret Service field offices for cases in the judicial districts where the offices are located. Some offices did not give an estimate for every item.

³See footnote 8 on page 5.

⁴The acceptance rates do not include 8 percent of the forgery cases and 4 percent of the mail theft cases accepted by U.S. attorneys for deferred prosecution. Deferred prosecution usually results in 1 year of unsupervised probation in lieu of prosecution.

NEW SECRET SERVICE POLICY

Secret Service procedures for managing check forgery investigations were revised during our fieldwork. Prior to October 1982, the Secret Service did not have a policy regarding the involvement of local prosecutors. In October 1982, field offices were directed by headquarters to determine whether a case is likely to be prosecuted based on either Federal or local prosecutive guidelines before opening an investigation. This requirement is a major step toward making more use of local prosecutors. However, several months after the new procedures became effective, staff in most Secret Service offices still did not know the declination policies and practices of local prosecutors.

Secret Service field offices are required to screen each case received from Treasury's Division of Check Claims and determine whether an investigation is warranted.⁵ A case is to be "administratively closed" if, after examining all aspects, the office determines it would not be prosecuted by either Federal or local authorities regardless of the outcome of an investigation. For example, a case may be closed if the check did not meet a certain dollar value. This policy became effective on October 1, 1982.

Effective implementation of this policy requires that each Secret Service field office become thoroughly familiar with both Federal and local prosecution policies. Responses to our questionnaires disclosed, however, that 3 to 4 months after the policy became effective, 34 of the 62 Secret Service field offices (55 percent) said they did not know the declination policies of the local prosecutors.

Estimates by 33 of the 34 offices showed that 64 percent of the check forgery cases they presented to U.S. attorneys for prosecution in 1982 had been declined. In addition, 32 of the 34 offices estimated that while they had a total of 1,266 cases suitable for prosecution that were not presented to U.S. attorneys because of blanket declination policies, they referred only 119 of these cases to local prosecutors.

⁵Cases referred from Treasury's Division of Check Claims made up about 83 percent of the forgery cases received by the Secret Service in fiscal year 1982. In about 15 percent of the Division cases referred, the Secret Service was required to provide a settlement report to the Division regarding the validity of the payee's claim for a substitute check. These cases do not go through the described screening process but are opened for investigation regardless of prosecution potential.

We believe coordination between the Secret Service and local prosecutors may help prevent check forgers from inadvertently escaping prosecution. Undoubtedly U.S. attorneys will never be able to handle all of the Secret Service's forgery cases--resources are limited. For those cases that have prosecutive merit but are nevertheless declined by U.S. attorneys, blanketly or otherwise, the option of local prosecution must be fully explored.

LAW ENFORCEMENT COORDINATING
COMMITTEES MAY PROVIDE LIMITED
IMMEDIATE HELP

The Federal district Law Enforcement Coordinating Committees may contribute to increased Federal and local coordination in prosecuting Treasury check forgery. But as of February 1983, only 8 of 94 districts had law enforcement plans approved by the Department of Justice.⁶ Thus, these committees provide little immediate help in fostering local prosecution of check forgery cases. Also, these approved district plans place little emphasis on check forgery. Only one of the eight plans specifically mention referring check forgery cases to local prosecutors.

The Department of Justice directed each U.S. attorney to establish an LECC to improve cooperation and coordination among Federal, State, and local law enforcement agencies. The need for improved coordination was emphasized in the report of the Attorney General's Task Force on Violent Crime. The Task Force found that cooperation among Federal, State, and local law enforcement officials was at an unsatisfactory level in some jurisdictions, ranging from very good to nonexistent throughout the country. The Task Force concluded that the response to crime by all levels of Government was less effective than it could be with a coordinated system, and in June 1981 it recommended that a coordinating committee be established in each Federal judicial district. Subsequently, on July 21, 1981, the Attorney General issued an order directing each U.S. attorney to establish an LECC. The LECCs are to consist of representatives from Federal, State, and local law enforcement agencies.

According to instructions issued on January 6, 1982, by the Associate Attorney General, the LECCs will address the referral of concurrent jurisdiction cases. Each LECC is required to establish interagency operational agreements governing case referrals from one level of government to another and dividing responsibilities for investigating and prosecuting concurrent jurisdiction cases. The instructions note that particular attention should be given to violent crime offenses.

⁶As of June 1983, Justice said that 12 districts had approved plans.

Justice's instructions also provide that each U.S. attorney is to draft a district Federal law enforcement plan and submit it for the approval of the Associate Attorney General. Among other items, the district plans are to contain provisions for developing or clarifying procedures for referring all Federal cases which are declined by U.S. attorneys, but have prosecutive merit or potential, to State or local prosecutors or investigators for their consideration for prosecution or further investigation. The plans are also to address the policies and practices of Federal investigative agencies regarding the direct referral to State or local prosecutors of cases that have prosecutive merit but will not be accepted by U.S. attorneys.

As of February 1983, 57 districts had submitted plans, but only a few plans had been approved. An official of the Executive Office for U.S. Attorneys said that due to a shortage of staff in the Executive Office, where an initial review occurs, a backlog developed. Consequently, only eight plans had been approved by the Associate Attorney General. According to the official, the staffing problem was being resolved.

The approved district plans make little mention of referring Treasury check forgery cases for prosecution. Our review of the eight approved plans revealed that concurrent jurisdiction crimes often mentioned included violent crimes, illegal drugs, bank robbery, and white collar crimes. Only one plan specifically mentioned Treasury check forgery prosecution, stating that the Secret Service may present these cases to both local and Federal prosecutors.

CONCLUSIONS

Forgery of a U.S. Treasury check can be prosecuted federally or locally. Even though U.S. attorneys decline to prosecute a high percentage of forgery cases, the Secret Service referred only a small portion of cases to local prosecutors.

The new Secret Service policy should increase the referrals to local authorities. Field offices must now determine whether either Federal or local prosecution is likely before starting a check forgery investigation. Better implementation of the policy is needed, however. Several months after the new policy became effective, most field offices still did not know the local prosecution policies.

Some limited help might result from LECCs. However, as of February 1983, only eight of the U.S. attorneys had approved district Federal law enforcement plans which include procedures for referring cases to local authorities. Also, the approved plans are concerned mostly with more serious crimes--only one plan specifically mentions Treasury check forgery prosecution.

Thus, it is up to the Secret Service to do what it can so that local prosecution of Treasury check forgery offenses can take place. Secret Service field offices must actively seek such prosecution for those cases with merit which the U.S. attorneys will not accept. This requires knowledge of local prosecution policies.

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In our draft report we proposed that Secret Service require each field office to fully implement the Service's new policy on the involvement of local authorities, which requires field offices to screen each case in order to determine which cases will likely be prosecuted, based on either federally or locally prosecutive guidelines, before opening an investigation.

In this regard, we suggested that field offices should become knowledgeable of local prosecutive policies and work with local prosecutors, in coordination with U.S. attorneys and their Law Enforcement Coordinating Committees, to ensure that all check forgery cases that have prosecutive merit but are not going to be prosecuted at the Federal level are referred to those local authorities willing to accept the cases.

AGENCY COMMENTS AND OUR EVALUATION

In commenting on our report (see app. VII), the Department of the Treasury stated that it was in agreement with the general proposition that the Secret Service fully implement its own policy with respect to the prosecution of U.S. Treasury check forgeries by local authorities. The Department stated that the Secret Service had recently directed all of its field offices to become aware of local prosecutive policies with regard to the forgery of U.S. Treasury checks and to fully implement the Secret Service policy of October 1982 on this matter. On June 30, 1983, the Secret Service notified its field offices to become aware of local prosecutive guidelines regarding forgery of U.S. Treasury checks in compliance with its October 1982 policy letter on this matter.

The Department of Justice commented on the status of the Law Enforcement Coordinating Committees (see app. VI). The Department stated that high-priority offenses such as drug trafficking and violent crimes are not emphasized to the exclusion of all others in the district plans. In addition, the Department said as of June 1983, 90 jurisdictions had operating LECCs, 12 had approved plans, and that virtually all plans are expected to be submitted and approved by mid-August 1983.

LEGISLATIVE PROPOSAL TO PROVIDE THAT
FORGERY OF A U.S. TREASURY CHECK
CAN BE PROSECUTED AS A MISDEMEANOR

In the questionnaire we sent to 93 U.S. Attorneys' Offices, we included several questions asking what provisions a Federal misdemeanor law covering Treasury check forgery should contain if one was enacted. Forty-two offices said the law should be included in 18 U.S.C. 495 (contracts, deeds, and powers of attorney) which now provides felony penalties for Treasury check forgery, and 24 offices said a new separate misdemeanor statute should be enacted. Although most offices favor using the dollar amount of forged checks as a means of separating felony and misdemeanor offenses, 54 of 77 offices (70 percent) said that this should not be the only distinguishing factor. Below are the major factors that the responding offices favor to distinguish between felony and misdemeanor penalties if (1) 18 U.S.C. 495 was amended or (2) a new separate statute was enacted. We asked the offices to indicate the factors for both types of misdemeanor laws, regardless of which type they favored.

<u>Type of misdemeanor law</u>	<u>Percent that favor:</u>			<u>Number of offices responding</u>
	<u>Dollar amount</u>	<u>Multiple checks</u>	<u>Repeat offender</u>	
Amend existing law (18 U.S.C. 495)	85	64	67	81 <u>a/</u>
Enact new law	80	47	61	66

a/Eighty-two offices responded regarding dollar amount as a distinguishing factor.

Seventy-nine U.S. Attorneys' Offices provided a dollar amount that they believe should be used to distinguish between felony and misdemeanor offenses. The amounts ranged from \$100 to \$1,000, with \$500 cited more than any other figure (39 percent of the offices).

We propose the following legislation which will provide that forgery of a U.S. Treasury check can be prosecuted as a misdemeanor. This provision would be in addition to existing legislation which establishes forgery as a felony offense. We suggest that 18 U.S.C. 495 be amended as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that section 495 of title 18, United States Code, is amended to read as follows:

"§ 495. Contracts, deeds, and powers of attorney

"Whoever falsely makes, alters, forges, or counterfeits any deed, power of attorney, order, certificate, receipt, contract, or other writing, for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive from the United States or any officers or agents thereof, any sum of money; or

"Whoever utters or publishes as true any such false, forged, altered, or counterfeited writing, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited; or

"Whoever transmits to, or presents at any office or officer of the United States, any such writing in support of, or in relation to, any account or claim, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited--

"Shall be fined not more than \$250,000¹ or imprisoned not more than ten years, or both; Provided, however, that if the value received or sought from such writing, or the aggregate value if more than one writing, does not exceed \$500 in any of the above offenses, the penalty shall be a fine of not more than \$1,000 or imprisonment for

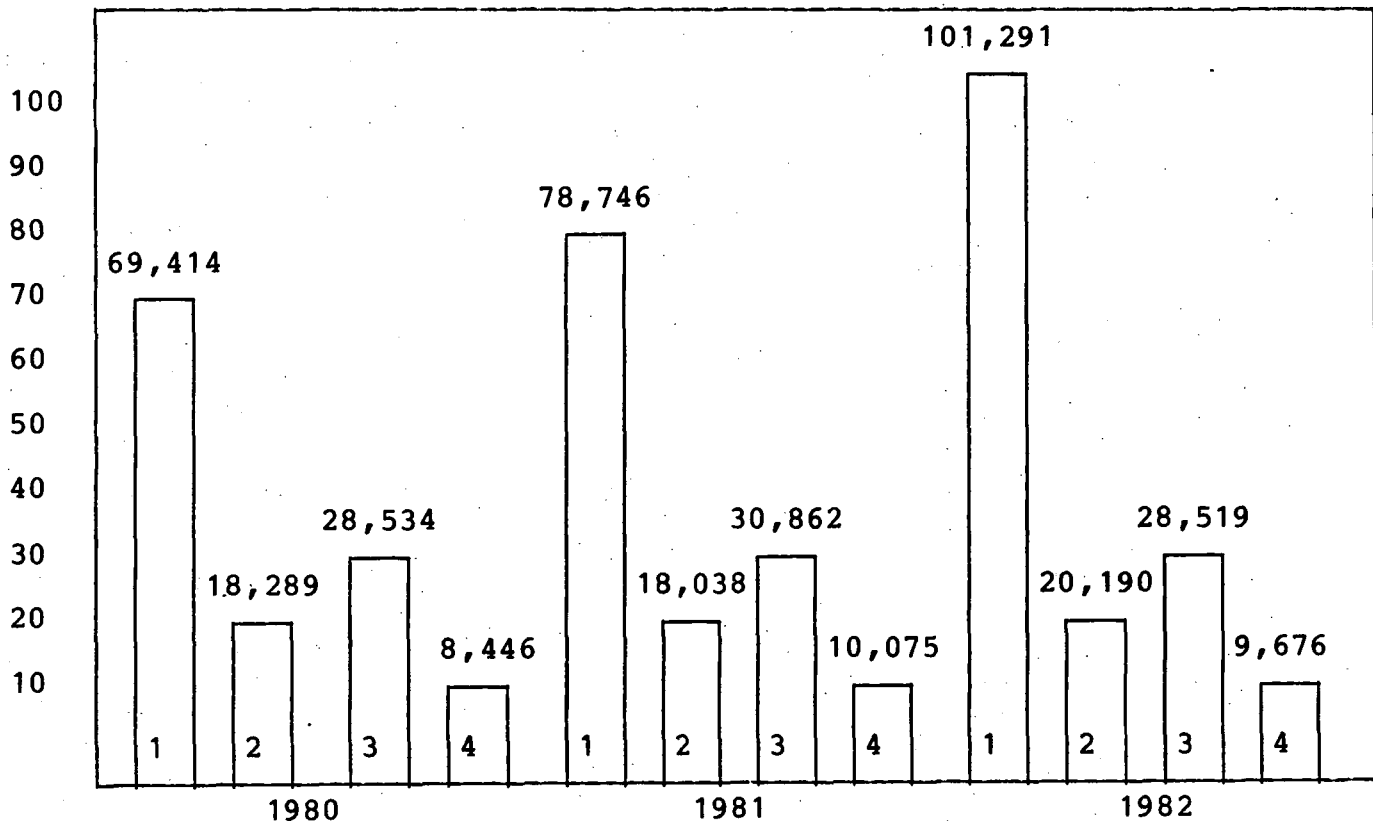
¹The increase in the fine for a felony conviction from \$1,000 to \$250,000 is contained in section 1505(a) of S. 829. This bill, entitled the Comprehensive Crime Control Act of 1983, was introduced on March 16, 1983, by Senator Thurmond on behalf of the Administration. The purpose of including this increase in the proposed legislation is illustrative.

not more than one year, or both, for a person having no prior convictions under this section; and a fine of not more than \$25,000 or imprisonment for not more than one year, or both, for a person having one prior conviction under this section."²

²The \$500 threshold for distinguishing between the applicability of the felony and misdemeanor penalties is contained in S. 829 and is included for illustration. The penalty scheme included in our proposed legislation differs from that in S. 829 in that the Senate bill does not provide for different treatment for repeat offenders; it relies solely on the dollar amount of the forged writing(s).

U.S. Secret Service Check Forgery,
Counterfeiting, Bond Forgery, and Other
Criminal/Noncriminal Cases Received
Fiscal Years 1980 through 1982

Number of
cases received
(thousands)



- 1 Check forgery cases
- 2 Counterfeiting cases
- 3 Other criminal/noncriminal cases
- 4 Bond forgery cases

LIST OF REPORTS
RELATED TO INVESTIGATING AND PROSECUTING
THE FORGERY OF U.S. TREASURY CHECKS

GAO

Comptroller General's Report to the Honorable Max Baucus, United States Senate, "Greater Oversight And Uniformity Needed In U.S. Attorneys' Prosecutive Policies" (GGD-83-11, October 27, 1982).

Comptroller General's Report to the Congress, "Millions Paid Out in Duplicate And Forged Government Checks" (AFMD-81-68, October 1, 1981).

Comptroller General's Report to the Congress, "U.S. Attorneys Do Not Prosecute Many Suspected Violators of Federal Laws" (GGD-77-86, February 27, 1978).

Department of Justice

"The Investigation and Prosecution of Concurrent Jurisdiction Offenses," Office of Legal Policy, Federal Justice Research Program (FJRP-82/001, January 1982).

"United States Attorneys' Written Guidelines for the Declination of Alleged Violations of Federal Criminal Laws", Report to the United States Congress, November 1979.

Prosecution of U.S. Treasury Check Forgery CasesINTRODUCTION

The purpose of this questionnaire is to obtain your office's views concerning the prosecution of U.S. Treasury check forgery cases. Our objective is to determine whether a legislative change should be made so that check forgery can be prosecuted by U.S. Attorneys as either a felony or as a misdemeanor.

The questionnaire can be completed in about half an hour. Most of the questions can be easily answered either by checking boxes or filling in blanks. A few questions may require a short written answer. The back of the questionnaire or additional pages can be used for these answers. Where records or figures are not readily available, we would like to have your best estimate. The questionnaire is meant to be answered by an official familiar with your office's policies and practices in accepting and prosecuting U.S. Treasury check forgery cases. Also, we are assessing the extent of state/local involvement in U.S. Treasury check forgery cases.

Any information provided by your office will be held strictly confidential. Please return the completed questionnaire in the enclosed self-addressed envelope within 10 days, if possible. If you have any questions, please contact either Ron Viereck or Dean Kauffman at (FTS) 798-4066 or Lucy Hall at (FTS) 633-1559. Thank you for your participation and cooperation.

PLEASE READ THE ENTIRE QUESTIONNAIRE BEFORE PROVIDING ANSWERS. THIS WILL ENABLE YOU TO MORE ACCURATELY COMPLETE THE QUESTIONNAIRE. THANK YOU.

I. PROSECUTION POLICIES

ID001 (1-3)
CARD 1 (4)

1. A declination policy regarding prosecution of U.S. Treasury check forgery cases may consider the following: The amount of the check, the number of checks, checks received in error/similar names, suspect characteristics (age, physical condition, relationship to payee, prior criminal record). Which of the following best describes your office's declination policy? (CHECK ONE BOX.)

(84)

1. ☒ [55] Written policy....PLEASE ENCLOSE A COPY
2. ☐ [12] Unwritten policy/practice....PLEASE DESCRIBE ON THE BACK OF THIS PAGE (INCLUDE SUCH FACTORS AS THOSE LISTED IN QUESTION 1)
3. ☐ [14] Both a written and unwritten policy/practice....PLEASE ENCLOSE A COPY OF THE WRITTEN POLICY AND DESCRIBE THE UNWRITTEN POLICY/PRACTICE ON THE BACK OF THIS PAGE
4. ☐ [3] No policy

(10)

2. Has your office's declination policy been given to the Secret Service field office in your district? (CHECK ONE BOX.)

(83)

1. ☒ [66] Yes, written policy was given
2. ☐ [13] Yes, unwritten (oral) policy was given
3. ☐ [2] No policy was given
4. ☐ [2] Both policies were given

(11)

NOTE: The number of valid responses is in parentheses in the left-hand margin. Questionnaires were sent to all 93 U.S. attorneys.

3. To what extent has the declination policy/practice of your office changed during the past 5 years? (CHECK ONE BOX.)

(84)

1. [52] Little or no change...SKIP TO QUESTION 5
2. [10] Somewhat changed
3. [11] Moderately changed
4. [4] Greatly changed
5. [2] Very greatly changed
6. [5] Do not know

(12)

4. In what ways has the declination policy/practice of your office changed?

(13)

5. Consider the period October 1, 1981 to September 30, 1982 (fiscal year 1982) and only those U.S. Treasury check forgery cases presented by the Secret Service to your office for prosecution. How many cases fall into each of the following categories? (PLEASE BE AS ACCURATE AS POSSIBLE IN PROVIDING THESE STATISTICS. GIVE YOUR BEST ESTIMATE.)

(76)

- | | | |
|--------------------------------|-------|---------|
| 1. Cases presented | 8,601 | (14-17) |
| 2. Cases accepted (prosecuted) | 2,890 | (18-21) |
| 3. Cases declined | 5,287 | (22-25) |
| 4. Cases pending decision | 413 | (26-29) |
| 5. Cases with unknown status | 21 | (30-33) |

6. In your opinion to what extent has your office used the following reasons for declining prosecutions of U.S. Treasury check forgery cases referred by the Secret Service? (FOR EACH REASON CHECK ONE LINE.)

REASONS	ALMOST ALWAYS	FREQUENTLY	SOMETIMES	SELDOM	NEVER	
	1	2	3	4	5	
(82) 1. The crime involved was not serious enough to warrant felony prosecution	4	22	32	19	5	(34)
(83) 2. The case did not warrant Federal prosecution and was more appropriate for state/local prosecution	2	26	30	15	10	(35)
(82) 3. Suspect characteristics and/or circumstances makes prosecution inappropriate (in the interest of justice, humanitarian reasons, etc.)	1	24	43	14	8	(36)
(78) 4. Insufficient evidence	4	14	39	17	4	(37)
(20) 5. Other (SPECIFY)	8	4	12	2	2	(38)

7. Does your office refer U.S. Treasury check forgery cases to state/local prosecutors? (CHECK ONE BOX.)
- (80) 1. ☒ [25] Yes.....CONTINUE TO QUESTION 8 (39)
2. ☒ [55] No.....SKIP TO QUESTION 9
8. How many of the U.S. Treasury cases declined in fiscal year 1982 did your office refer to state/local prosecutors? (PLEASE BE AS ACCURATE AS POSSIBLE IN PROVIDING THESE STATISTICS. GIVE YOUR BEST ESTIMATE.)
- | | | |
|--|------------|---------|
| (22) 1. Total number of cases referred to state/local prosecutors | <u>474</u> | (40-42) |
| (19) 2. Number of cases referred and state/local authorities prosecuted | <u>336</u> | (43-45) |
| (18) 3. Number of cases referred and state/local authorities did <u>not</u> prosecute | <u>33</u> | (46-48) |
| (23) 4. Number of cases referred and do not know if state/local authorities prosecuted | <u>89</u> | (49-51) |
9. Do any agreements exist between your office and state/local prosecutors regarding who prosecutes U.S. Treasury check forgery cases? (CHECK ONE BOX.)
- (82) 1. ☒ [1] Yes, only written agreement exists.....PLEASE ENCLOSE A COPY
2. ☒ [9] Yes, only unwritten agreement exists.....PLEASE DESCRIBE ON THE BACK OF THIS PAGE
3. ☒ [8] Yes, both written and unwritten agreements exist.....PLEASE ENCLOSE A COPY OF THE WRITTEN AGREEMENT AND DESCRIBE THE UNWRITTEN AGREEMENT ON THE BACK OF THIS PAGE (52)
4. ☒ [71] No agreement exists.....SKIP TO QUESTION 11
5. ☒ [1] Do not know.....SKIP TO QUESTION 11
10. Has the agreement between your office and state/local prosecutors been given to the Secret Service? (CHECK ONE BOX.)
- (10) 1. ☒ [9] Yes 2. ☒ [8] No 3. ☒ [1] Do not know (53)
11. Do state/local prosecutors have a specific state misdemeanor statute to prosecute check forgery cases? (CHECK ONE BOX.)
- (82) 1. ☒ [48] Yes 2. ☒ [24] No 3. ☒ [10] Do not know (54)
12. Currently, which of the following best describes the Law Enforcement Coordinating Committee (LECC) located in your Federal district? (CHECK ONE BOX.)
- N/A
1. ☐ LECC does not exist
2. ☐ LECC exists but district plan is not designed
3. ☐ LECC exists and covers U.S. Treasury check forgery cases....ENCLOSE A COPY OF THE PLAN (55)
4. ☐ LECC exists but does not cover U.S. Treasury check forgery cases....ENCLOSE A COPY OF THE PLAN, IF POSSIBLE EXPLAIN ON THE BACK OF THIS PAGE WHY THE LECC DOES NOT COVER FORGERY CASES

13. During fiscal year 1982, how many (if any) U.S. Treasury check forgery cases in your district were prosecuted by authorities (other than the U.S. Attorney) located on the following Federal lands? (PLEASE BE AS ACCURATE AS POSSIBLE IN PROVIDING THESE STATISTICS. GIVE YOUR BEST ESTIMATE.)

	NUMBER OF CASES	
(69) 1. Military installation	<u>39</u>	(56-58)
(69) 2. Indian reservation	<u>8</u>	(59-61)
(57) 3. Other (SPECIFY) _____	<u>5</u>	(62-64)

14. Consider the U.S. Treasury check forgery cases your office accepted during fiscal year 1982. What was the total number of cases which were disposed? (PLEASE BE AS ACCURATE AS POSSIBLE IN PROVIDING THESE STATISTICS. GIVE YOUR BEST ESTIMATE.)

(71) Total number of cases disposed 2,440 (65-68)

15. Consider the U.S. Treasury check forgery cases your office accepted during fiscal year 1982. What percentage of these cases resulted in the following final dispositions? (FOR ANY OTHER DISPOSITIONS PLEASE SPECIFY THE PERCENT OF CASES INVOLVED.)

DISPOSITIONS	PERCENT OF CASES	ID002 (1-3) CARD 2 (4)
(77) 1. 18 USC 495 (Felony)	<u>63%</u>	(10-12)
2. 18 USC 495 and a misdemeanor (guilty plea to misdemeanor and dismissal of 495)	<u>12%</u>	(13-15)
3. Misdemeanor only (no felony charge)	<u>8%</u>	(16-18)
4. Pre-trial diversion	<u>13%</u>	(19-21)
5. Not guilty/case dismissed	<u>2%</u>	(22-24)
6. Other (SPECIFY) _____	<u>1%</u>	(25-27)

(averages)

16. Does your office prosecute U.S. Treasury check forgery cases using existing misdemeanor statutes? (CHECK ONE BOX.)

(84) 1. [57] Yes.....CONTINUE TO QUESTION 17 (28)

2. [27] No.....SKIP TO QUESTION 18

17. Consider the U.S. Treasury check forgery cases your office prosecuted using existing misdemeanor statutes during fiscal year 1982. What percentage of these cases were prosecuted using the following misdemeanor statutes? (PLEASE BE AS ACCURATE AS POSSIBLE IN PROVIDING THESE STATISTICS. GIVE YOUR BEST ESTIMATE.)

MISDEMEANOR STATUTES	PERCENT OF CASES	
(49) 1. 18 USC 641	<u>25%</u>	(29-31)
2. 18 USC 1701	<u>65%</u>	(32-34)
3. Other (SPECIFY) _____	<u>8%</u>	(35-37)

(averages)

II. EFFECT OF ENACTING A FEDERAL MISDEMEANOR FORGERY STATUTE

(84) 18. To what extent would your office favor or disfavor a Federal misdemeanor forgery statute? (CHECK ONE BOX.)

1. ☒ [29] Very greatly favor

2. ☒ [13] Greatly favor

3. ☒ [20] Somewhat favor

(38)

4. ☐ [5] Neither favor nor disfavor

5. ☐ [6] Somewhat disfavor

6. ☐ [3] Greatly disfavor

7. ☐ [8] Very greatly disfavor

19. Why do you favor or not favor the enactment of a Federal misdemeanor forgery statute? (IF MORE SPACE IS NEEDED USE THE BACK OF THIS PAGE.)

(39)

(81) 20. Which of the following best describes how a Federal misdemeanor forgery statute should be enacted? (CHECK ONE BOX.)

1. ☒ [42] Lesser included offense (18 USC 495)

2. ☒ [24] New separate offense

(40)

3. ☐ [15] Do not agree that there should be a Federal misdemanor forgery statute

21. Consider an amendment to 18 USC 495 to include misdemeanor penalties for U.S. Treasury check forgery cases. For each of the following factors, to what extent would your office favor or disfavor including the factor to distinguish between a felony and misdemeanor charge? (FOR EACH FACTOR CHECK ONE LINE.)

FACTORS	GREATLY FAVOR	SOMEWHAT FAVOR	NEITHER FAVOR NOR DISFAVOR	SOMEWHAT DISFAVOR	GREATLY DISFAVOR	
	1	2	3	4	5	
(82) 1. Dollar amount	47	23	2	6	4	(41)
(81) 2. Multiple checks involved	30	22	9	4	16	(42)
(81) 3. Suspect is a repeat offender	42	12	6	8	13	(43)
(81) 4. Restitution made	6	11	20	17	27	(44)
(81) 5. Relationship to payee	8	18	18	13	24	(45)
(6) 6. Other (SPECIFY)	2	2	8	8	2	(46)

22. If a dollar amount was one of the factors used to distinguish between a felony and a misdemeanor U.S. Treasury check forgery charge, what dollar amount should be used?
- (79) \$ Range - \$100 to \$1,000; \$500 cited by 39% of offices; average - \$380 (47-51)

23. Should a dollar amount be the only factor used to distinguish between a felony and misdemeanor U.S. Treasury forgery charge? (CHECK ONE BOX.)

(77) 1. ☒ [23] Yes 2. ☐ [54] No (52)

24. If a new separate misdemeanor offense for U.S. Treasury check forgery cases was enacted, what factors should be included in the statute?

_____ (53)

25. Consider your workload, staffing, and prosecution practices, to what extent would you agree or disagree that the existence of a Federal misdemeanor forgery statute would: (FOR EACH CONSEQUENCE CHECK ONE LINE.)

CONSEQUENCES	NEITHER AGREE NOR DISAGREE				
	GREATLY AGREE 1	SOMEWHAT AGREE 2	3	SOMEWHAT DISAGREE 4	GREATLY DISAGREE 5
(84) 1. Cause declination policies to be changed allowing acceptance of more cases	11	23	16	16	18 (54)
(84) 2. Increase prosecutions because more cases would be accepted	12	27	13	13	19 (55)
(84) 3. Increase prosecutions because more guilty pleas would be obtained	12	26	13	15	18 (56)
(84) 4. Increase plea bargaining flexibility resulting in more guilty pleas	26	34	6	9	9 (57)
(83) 5. Eliminate the need for obtaining guilty pleas to misdemeanors such as 18 USC 641 or 1701 whereby a "legal fiction" is created (that is, the misdemeanor used is not entirely appropriate for the offense)	45	23	7	3	5 (58)
(84) 6. Eliminate suspects' misunderstandings that may result from using non-forgery misdemeanors which cause legal fictions	24	28	14	9	9 (59)
(84) 7. Increase use of the magistrates because more forgery cases will be accepted and prosecuted	22	28	9	9	16 (60)
(84) 8. Reduce the number of felony trials and district court time because some cases will be brought before the magistrates	14	39	8	14	9 (61)
(84) 9. Provide more appropriate penalties than the present forgery statute (18 USC 495) allows for most forgery violations	28	29	7	11	9 (62)
(84) 10. Increase restitution	11	14	24	19	16 (63)
(84) 11. Create more accurate conviction records that may help in prosecuting future U.S. Treasury check forgery cases involving repeat offenders	21	30	17	7	9 (64)
(83) 12. Increase victims' understanding of investigation/prosecution procedures	6	18	31	15	13 (65)
(84) 13. Increase deterrent effect for forgery crimes	6	23	24	14	17 (66)

26. Thinking only about the U.S. Treasury check forgery cases which were presented and then declined during fiscal year 1982 and to the best of your knowledge were not prosecuted by state/local authorities, please answer the following question. In your opinion given current staffing levels, what percentage of these cases would have been accepted had a specific forgery misdemeanor statute existed? (PLEASE BE AS ACCURATE AS POSSIBLE IN PROVIDING THESE STATISTICS. GIVE YOUR BEST ESTIMATE.)

(74) Percent of cases 17% (average)

(67-69)

27. What is your reason for the percentage you gave in question 26 above?

(70)

28. Thinking only about the U.S. Treasury check forgery cases which were prosecuted in fiscal 1982 using existing misdemeanor statutes. In your opinion, what percentage of these cases would have been more appropriately prosecuted under a forgery misdemeanor statute? (PLEASE BE AS ACCURATE AS POSSIBLE IN PROVIDING THESE STATISTICS. GIVE YOUR BEST ESTIMATE.)

(53) Percent of cases 59% (average)

(71-73)

29. Other than U.S. Treasury check forgeries, do you believe there are other Federal criminal offenses for which only a felony provision currently exists where there also should be a misdemeanor statute (for example, counterfitting, assault against a Federal official). If yes, please describe these offenses, include the U.S. Code.

(74)

IN THE EVENT THAT WE NEED TO CLARIFY ANY OF YOUR RESPONSES, WE WOULD APPRECIATE IT IF YOU WOULD PROVIDE THE FOLLOWING INFORMATION.

NAME OF PERSON COMPLETING THIS QUESTIONNAIRE _____
TELEPHONE NUMBER _____

THANK YOU FOR YOUR COOPERATION

Prosecution of U.S. Treasury Check Forgery CasesINTRODUCTION

The purpose of this questionnaire is to obtain information from your field office concerning the investigation and prosecution of U.S. Treasury check forgery cases. Our objective is to determine whether a legislative change should be made so that check forgery can be prosecuted by U.S. Attorneys as either a felony or a misdemeanor.

The questionnaire can be completed in about 30 minutes. Most of the questions can be easily answered either by checking boxes or filling in blanks. A few questions may require a short written answer. The back of the questionnaire or additional pages can be used for these answers. Where records or figures are not readily available, we would like to have your best estimate. The questionnaire is meant to be answered by an official(s) familiar with your check forgery investigations. If your office refers cases to more than one U.S. Attorney's Office for prosecution, the answers should only pertain to the federal judicial district where your office is actually located. Do not answer for any resident agencies that report to your field office. Also, we are assessing the extent of state/local involvement in U.S. Treasury check forgery cases.

Any information provided by your office will be held strictly confidential. Please return the completed questionnaire in the enclosed self-addressed envelope within 10 days, if possible. If you have any questions, please contact either Ron Viereck or Dean Kauffman at (FTS) 798-4066 or Lucy Hall at (FTS) 633-1559. Thank you for your participation and cooperation.

PLEASE READ THE ENTIRE QUESTIONNAIRE BEFORE PROVIDING ANSWERS. THIS WILL ENABLE YOU TO MORE ACCURATELY COMPLETE THE QUESTIONNAIRE. THANK YOU.

I. PRESENTATION AND REFERRAL INFORMATION

ID001 (1-3)

CARD1 (4)

1. Consider the U.S. Treasury check forgery cases presented to the U.S. Attorney (located in your geographic district) for prosecution during October 1, 1981 to September 30, 1982 (fiscal year 1982). How many cases fall into each of the following categories? (PLEASE BE AS ACCURATE AS POSSIBLE IN PROVIDING THESE STATISTICS. GIVE YOUR BEST ESTIMATE.)

(60) 1. Cases presented	13,205	(10-13)
(61) 2. Cases accepted (prosecuted)	3,464	(14-17)
(61) 3. Cases declined	9,494	(18-21)
(61) 4. Cases pending decision	340	(22-25)
(59) 5. Cases with unknown status	9	(26-29)

2. Does your Secret Service office present U.S. Treasury check forgery cases to state/local prosecutors?

(62) 1. ☒ Yes 2. ☒ No (30)

3. Does your office always first present U.S. Treasury check forgery cases to the U.S. Attorney before presenting them to the state/local prosecutors?

(57) 1. ☒ Yes 2. ☒ No (31)

NOTE: The number of valid responses is in parentheses in the left-hand margin. Questionnaires were sent to 62 Secret Service field offices (all except Paris).

4. Consider U.S. Treasury check forgery cases presented to state/local prosecutors during fiscal year 1982, and which were not presented to the U.S. Attorney's Office. How many cases fall into each of the following categories? (PLEASE BE AS ACCURATE AS POSSIBLE IN PROVIDING THESE STATISTICS. GIVE YOUR BEST ESTIMATE.)

(29) 1. Cases presented	557	(32-34)
(29) 2. Cases accepted (prosecuted)	495	(35-37)
(29) 3. Cases declined	39	(38-40)
(29) 4. Cases pending decision	23	(41-43)
(29) 5. Cases with unknown status	0	(44-46)

5. Consider U.S. Treasury check forgery cases presented to state/local prosecutors during fiscal year 1982, and which were first presented to the U.S. Attorney's Office. How many cases fall into each of the following categories? (PLEASE BE AS ACCURATE AS POSSIBLE IN PROVIDING THESE STATISTICS. GIVE YOUR BEST ESTIMATE.)

(39) 1. Cases presented	810	(47-49)
(39) 2. Cases accepted (prosecuted)	510	(50-52)
(39) 3. Cases declined	247	(53-55)
(39) 4. Cases pending decision	36	(56-58)
(39) 5. Cases with unknown status	0	(59-61)

II. PROSECUTION POLICIES

6. A declination policy regarding prosecution of U.S. Treasury check forgery cases may consider the following: The amount of the check, the number of checks, checks received in error/similar names, suspect characteristics (age, physical condition, relationship to payee, prior criminal record). Which of the following best describes the U.S. Attorney's declination policy in your district? (CHECK ONE BOX.)

- (61)
1. ☒ Written policy.....PLEASE ENCLOSE A COPY
 2. ☐ Unwritten policy/practice....PLEASE DESCRIBE ON THE BACK OF THIS PAGE (INCLUDE SUCH FACTORS AS THOSE LISTED IN QUESTION 6) (62)
 3. ☐ Both a written and unwritten policy/practice....PLEASE ENCLOSE A COPY OF THE WRITTEN POLICY AND DESCRIBE THE UNWRITTEN POLICY/PRACTICE ON THE BACK OF THIS PAGE
 4. ☐ No policy

7. In your opinion how willing is the U.S. Attorney to accept U.S. Treasury check forgery cases referred by your local office which do not fall within the U.S. Attorney's blanket declination policy (if there is one)? (CHECK ONE BOX.)

- (62)
1. ☒ Very willing
 2. ☐ Somewhat willing
 3. ☐ Neither willing nor unwilling (63)
 4. ☐ Somewhat unwilling
 5. ☐ Very unwilling

8. To what extent has the declination policy/practice of the U.S. Attorney in your district changed during the past 5 years? (CHECK ONE BOX.)

(62)

1. ☒ Little or no change.....SKIP TO QUESTION 10
2. ☐ Somewhat changed
3. ☐ Moderately changed
4. ☐ Greatly changed
5. ☐ Very greatly changed
6. ☐ Do not know.....SKIP TO QUESTION 10

(64)

9. In what ways has the declination policy/practice of the U.S. Attorney in your district changed?

(65)

10. For fiscal year 1982 consider all U.S. Treasury check forgery cases which you believe were suitable for prosecution. How many of these cases were not presented to the U.S. Attorney because a U.S. Attorney blanket declination policy existed? (PLEASE BE AS ACCURATE AS POSSIBLE IN PROVIDING THESE STATISTICS. GIVE YOUR BEST ESTIMATE.)

(60)

Number of cases 4,203

(66-68)

11. For fiscal year 1982 consider all U.S. Treasury check forgery cases which you believe were suitable for prosecution. Excluding the blanket declination policy, are there any other U.S. Attorney policies/practices which result in not presenting these U.S. Treasury check forgery cases for prosecution?

(62)

1. ☒ Yes.....CONTINUE TO QUESTION 12
2. ☐ No.....SKIP TO QUESTION 14

(69)

12. How many U.S. Treasury check forgery cases were not presented because of these other U.S. Attorney policies/practices? (PLEASE BE AS ACCURATE AS POSSIBLE IN PROVIDING THESE STATISTICS. GIVE YOUR BEST ESTIMATE.)

(6)

Number of cases 106

(70-72)

13. Please describe these U.S. Attorney policies/practices.

(73)

14. During fiscal year 1982, how many (if any) U.S. Treasury check forgery cases in your district were prosecuted by authorities (other than the U.S. Attorney) located on the following Federal lands? (PLEASE BE AS ACCURATE AS POSSIBLE IN PROVIDING THESE STATISTICS. GIVE YOUR BEST ESTIMATE.)

ID002 (1-3)
CARD2 (4)

	NUMBER OF CASES	
(60) 1. Military installation	<u>174</u>	(10-12)
2. Indian reservation	<u>8</u>	(13-15)
3. Other (SPECIFY) _____	<u>8</u>	(16-18)

15. In your opinion how willing are the state/local prosecutors, and the state/local police to accept U.S. Treasury check forgery cases referred by your local office which do not fall within the U.S. Attorney's blanket declination policy (if there is one)? (CHECK ONE LINE FOR STATE/LOCAL PROSECUTORS AND ONE LINE FOR STATE/LOCAL POLICE.)

	VERY WILLING	SOMEWHAT WILLING	NEITHER WILLING NOR UNWILLING	SOMEWHAT UNWILLING	VERY UNWILLING	THESE TYPES OF CASES NOT REFERRED TO STATE/LOCAL AUTHORITIES	
	1	2	3	4	5	6	
(61) 1. State/Local Prosecutors	<u>11</u>	<u>19</u>	<u>6</u>	<u>9</u>	<u>5</u>	<u>11</u>	(19)
(61) 2. State/Local Police	<u>12</u>	<u>19</u>	<u>4</u>	<u>7</u>	<u>4</u>	<u>15</u>	(20)

16. How many U.S. Treasury check forgery cases were referred in fiscal year 1982 to state/local prosecutors because a U.S. Attorney blanket declination policy existed? (PLEASE BE AS ACCURATE AS POSSIBLE IN PROVIDING THESE STATISTICS. GIVE YOUR BEST ESTIMATE.)

(59) Number of cases 513 Do not refer U.S. Treasury check forgery cases to state/local prosecutors 21 offices (21-23)

17. If known, please describe the declination policies/practices of the state/local prosecutors for U.S. Treasury check forgery cases referred by either the Secret Service or the U.S. Attorney. (IF MORE SPACE IS NEEDED USE THE BACK OF THIS PAGE.)

(62) 1. [34] Policies/practices are unknown

2. Policies/practices are: 28 offices mentioned State/local policies. (24)

18. Do any agreements exist between the U.S. Attorney and state/local prosecutors regarding who prosecutes U.S. Treasury check forgery cases? (CHECK ONE BOX.)

(62) 1. [8] Yes, only written agreement exists.....PLEASE ENCLOSE A COPY

2. [8] Yes, only unwritten agreement exists.....PLEASE DESCRIBE ON THE BACK OF THIS PAGE (25)

3. [8] Yes, both written and unwritten agreements exist.....PLEASE ENCLOSE A COPY OF THE WRITTEN AGREEMENTS AND DESCRIBE THE UNWRITTEN AGREEMENTS ON THE BACK OF THIS PAGE

4. [58] No agreement exists

5. [4] Do not know

19. Do state/local prosecutors have a specific state misdemeanor statute to prosecute check forgery cases? (CHECK ONE BOX.)

(62) 1. [35] Yes 2. [22] No 3. [5] Do not know (26)

20. Currently which of the following best describes the Law Enforcement Coordinating Committee (LECC) located in your Federal district? (CHECK ONE BOX.)

(61) 1. [3] LECC does not exist
 2. [28] LECC exists but district plan is not designed
 3. [11] LECC exists and covers U.S. Treasury check forgery cases....ENCLOSE A COPY OF THE PLAN (27)
 4. [19] LECC exists but does not cover U.S. Treasury check forgery cases...ENCLOSE A COPY OF THE PLAN, IF POSSIBLE EXPLAIN ON THE BACK OF THIS PAGE WHY THE LECC DOES NOT COVER FORGERY CASES
 5. [8] Do not know if LECC exists or if LECC covers forgery cases

III. IMPACT OF PROSECUTION POLICIES/EXISTING FORGERY STATUTE

21. Consider those U.S. Treasury check forgery cases in fiscal 1982 which were presented to the U.S. Attorney for prosecution and declined. In your opinion, about what percentage of these cases could have been prosecuted had there been a forgery misdemeanor statute? (PLEASE BE AS ACCURATE AS POSSIBLE IN PROVIDING THESE STATISTICS. GIVE YOUR BEST ESTIMATE.)

(57) Percent of cases 45% (average) (28-30)

22. Does the U.S. Attorney in your district prosecute U.S. Treasury check forgery cases using existing misdemeanor statutes (for example, 18 USC Sections 641 and/or 1701)?

(62) 1. [44] Yes.....CONTINUE TO QUESTION 23 (31)
 2. [18] No.....SKIP TO QUESTION 24

23. Consider those U.S. Treasury check forgery cases in fiscal 1982 which were prosecuted by the U.S. Attorney using existing misdemeanor statutes. In your opinion, what percentage of these cases would have been more appropriately prosecuted under a forgery misdemeanor statute had one been enacted? (PLEASE BE AS ACCURATE AS POSSIBLE IN PROVIDING THESE STATISTICS. GIVE YOUR BEST ESTIMATE.)

(44) Percent of cases 78% (average); 21 offices estimated 100% (32-34)

24. In your opinion to what extent has the U.S. Attorney used the following reasons for not prosecuting U.S. Treasury check forgery cases as a felony? (FOR EACH REASON CHECK ONE LINE.)

REASONS	ALMOST ALWAYS	FREQUENTLY	SOMETIMES	SELDOM	NEVER	
	1	2	3	4	5	
(59) 1. The crime involved was <u>not</u> serious enough to warrant felony prosecution	9	25	9	11	5	(35)
(59) 2. The case did <u>not</u> warrant Federal prosecution and was more appropriate for state/local prosecution	4	6	13	17	19	(36)
(59) 3. Suspect characteristics and/or circumstances makes prosecution inappropriate (in the interest of justice, humanitarian reasons, etc.)	7	16	24	11	1	(37)
(58) 4. Insufficient evidence	8	2	15	28	13	(38)
(12) 5. Other (SPECIFY) _____	2	5	3	8	2	(39)

25. Please describe any problems your office or agents have encountered due to forgery being only a felony offense and not also a misdemeanor under Federal law. (IF MORE SPACE IS NEEDED USE THE BACK OF THIS PAGE.)

 _____ (40)

26. Presently, does your office prioritize forgery investigations based on the prosecution policies of the U.S. Attorney or the state/local prosecutors? (CHECK ONE LINE FOR U.S. ATTORNEY AND ONE LINE FOR STATE/LOCAL PROSECUTORS.)

	YES	NO	NO CASES REFERRED TO STATE/LOCAL PROSECUTORS	
	1	2	3	
(60) 1. U.S. Attorney	35	25		(41)
(56) 2. State/Local prosecutors	14	31	11	(42)

27. Briefly describe how U.S. Attorney, state or local prosecutive policies/practices affect: (1) The way you handle U.S. Treasury check forgery cases--open, administer, investigate, and close; (2) U.S. Treasury check forgery case referrals to state/local prosecutors. (IF MORE SPACE IS NEEDED USE THE BACK OF THIS PAGE.)

 _____ (43)

28. Briefly describe in what ways (if at all) the October 1, 1982 Secret Service memorandum concerning new procedures for managing U.S. Treasury check forgery investigations has changed the operating procedures of your office. (IF MORE SPACE IS NEEDED USE THE BACK OF THIS PAGE.)

(44)

29. Consider the check forgery cases presented to your office by the U.S. Treasury Check Claims Division during fiscal year 1982. What percentage of these cases required a settlement report? (PLEASE BE AS ACCURATE AS POSSIBLE IN PROVIDING THESE STATISTICS. GIVE YOUR BEST ESTIMATE.)

(60) Percent of cases 15% (average)

(45-47)

30. Does your office ever refer U.S. Treasury check forgery cases to state/local police for investigation?

(61)

1. [11] Yes.....CONTINUE TO QUESTION 31

(48)

2. [50] No.....SKIP TO QUESTION 32

31. Under what circumstances and for about how many cases does your office refer U.S. Treasury check forgery cases to state/local police for investigation. (IF MORE SPACE IS NEEDED USE THE BACK OF THIS PAGE.)

(49)

IV. EFFECT OF ENACTING A FEDERAL MISDEMEANOR FORGERY STATUTE

32. To what extent would your local office favor or disfavor a Federal misdemeanor forgery statute?

(62)

1. [36] Very greatly favor

2. [13] Greatly favor

3. [5] Somewhat favor

4. [3] Neither favor nor disfavor

(50)

5. [2] Somewhat disfavor

6. [2] Greatly disfavor

7. [1] Very greatly disfavor

33. Why do you favor or not favor the enactment of a Federal misdemeanor forgery statute? (IF MORE SPACE IS NEEDED USE THE BACK OF THIS PAGE.)

(51)

34. To what extent would you agree or disagree that the existence of a Federal misdemeanor forgery statute would: (FOR EACH CONSEQUENCE CHECK ONE LINE.)

CONSEQUENCES	NEITHER AGREE NOR DISAGREE				
	GREATLY AGREE 1	SOMEWHAT AGREE 2	3	SOMEWHAT DISAGREE 4	GREATLY DISAGREE 5
(60) 1. Cause U.S. Attorney declination policies to be changed allowing acceptance of more cases	17	21	8	6	8
(60) 2. Increase U.S. Attorney prosecutions because more cases would be accepted	24	15	7	6	8
(60) 3. Increase U.S. Attorney prosecutions because more guilty pleas would be obtained	21	21	7	4	7
(60) 4. Increase U.S. Attorney plea bargaining flexibility resulting in more guilty pleas	22	21	4	9	4
(59) 5. Eliminate the need for obtaining guilty pleas to misdemeanors such as 18 USC 641 or 1701 whereby a "legal fiction" is created (that is, the misdemeanor used is not entirely appropriate for the offense)	38	9	6	3	3
(58) 6. Eliminate suspects' misunderstandings that may result from using non-forgery misdemeanors which cause legal fictions	25	14	9	3	7
(59) 7. Increase use of the magistrates because more forgery cases will be accepted and prosecuted	30	12	7	6	4
(60) 8. Reduce the number of felony trials and district court time because some cases will be brought before the magistrates	24	22	2	11	1
(60) 9. Provide more appropriate penalties than the present forgery statute (18 USC 495) allows for most forgery violations	23	16	10	8	3
(59) 10. Increase restitution	14	19	11	6	9
(60) 11. Create more accurate conviction records that may help in prosecuting future U.S. Treasury check forgery cases involving repeat offenders	33	12	2	6	7
(60) 12. Increase victims' understanding of investigation/prosecution procedures	14	18	13	6	9
(59) 13. Increase deterrent effect for forgery crimes	16	17	10	8	8

35. In your opinion, what effects (if any) would the enactment of a Federal misdemeanor forgery statute have on your investigations? (FOR EACH EFFECT CHECK ONE LINE.)

/ EFFECTS	GREATLY INCREASE	SOMEWHAT INCREASE	NO EFFECT	SOMEWHAT DECREASE	GREATLY DECREASE	
	1	2	3	4	5	
(61) 1. Investigative time	1	21	36	3	0	(65)
(61) 2. Administrative time of special agents	3	24	25	9	0	(66)
(61) 3. Administrative time of clerical/support staff	1	28	26	5	1	(67)
(58) 4. Referrals of cases to local authorities for investigation	0	0	49	7	2	(68)
(60) 5. Referrals of completed cases to state/local authorities for prosecution	0	1	37	17	5	(69)
(61) 6. Cases declined for prosecution	1	2	17	26	15	(70)
(61) 7. Secret Service agent morale	25	19	11	3	3	(71)
(4) 8. Other (SPECIFY)	2	1	0	0	1	(72)

THANK YOU FOR YOUR COOPERATION

IN THE EVENT THAT WE NEED TO CLARIFY ANY OF YOUR RESPONSES, WE WOULD APPRECIATE
IF YOU WOULD PROVIDE THE FOLLOWING INFORMATION.

NAME OF PERSON COMPLETING THIS QUESTIONNAIRE _____

TELEPHONE NUMBER _____



U.S. Department of Justice

June 17, 1983

Washington, D.C. 20530

Mr. William J. Anderson
Director
General Government Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:

This letter is in response to your request to the Attorney General for the comments of the Department of Justice (Department) on your draft report entitled "Forgery of U.S. Treasury Checks--A Federal Misdemeanor Law and Increased Local Prosecution Needed."

For purposes of providing the Department's comments, the report can be divided into three sections: (1) GAO's discussion of the need for a forgery misdemeanor provision, (2) a draft amendment of 18 U.S.C. § 495 providing forgery misdemeanor penalties, and (3) a recommendation that the United States Secret Service seek local prosecution of forgers when federal prosecution is declined. Since the portion of the report recommending that the Secret Service seek local prosecution of forgers is directed to the Secret Service, and since that recommendation becomes effective only after U.S. attorneys decline prosecution (either directly or through a blanket declination policy), we defer to the Secret Service on this recommendation. The Department's comments concern the report's discussion of the need for a misdemeanor provision and the proposed amendment of federal law.

GAO'S Discussion of the Need for a Forgery Misdemeanor Provision

The draft report expresses the view that a federal misdemeanor statute is needed for cases involving forgery of U.S. Treasury checks since felony prosecutions are not always warranted. One aspect of the report's discussion in this regard is of particular concern to us. The report concludes that U.S. attorneys sometimes engage in "legal fictions" when they either prosecute or accept pleas under existing misdemeanor statutes in cases involving forgery of U.S. Treasury checks. Specifically, the report states on page 11:

According to U.S. Attorneys Offices, the use of nonforgery misdemeanor statutes creates a "legal fiction" when the statute does not actually address the offense. For example, many forged checks exceed \$100, but 18 U.S.C. 641 applies to thefts not exceeding \$100. Similarly, 18 U.S.C. 1701 (obstruction of mails) is not always suitable because the mail may not have been obstructed, or, sufficient evidence may not exist to prove the charge in court. . . . [Some] attorneys use the existing misdemeanor statutes despite a possible "legal fiction" in instances where they believe that prosecutive action falling between pretrial diversion and felony prosecution is appropriate and the defendant is willing to plead guilty to a misdemeanor.

Our concern is that GAO's "legal fiction" language, if published, will be cited against the United States in the future whenever it brings misdemeanor charges under 18 U.S.C. §§ 641 and 1701. 1/

We have not seen the information which GAO uses as a basis for its assertion concerning the inappropriateness of some charges under 18 U.S.C. § 1701. If U.S. attorneys use the statute when there is no obstruction of the mail or when sufficient evidence of the obstruction does not exist, they may indeed be engaging in "legal fictions." However, we object to the GAO report's conclusion that a "legal fiction" results from charging a misdemeanor theft-of-government-property violation of 18 U.S.C. § 641 when the face value of the forged government check exceeds \$100. Our reading of the case law indicates that a misdemeanor theft of government property is necessarily included in a felony theft. If the government charges, but nevertheless fails to prove, that the property which was the subject of the theft was valued in excess of \$100, the defendant can still be convicted of a misdemeanor. See United States v. DiGilio, 538 F.2d 972, 981 (3rd Cir. 1976), cert. denied, 429 U.S. 1038 (1977); United States v. Horning, 409 F.2d 424, 426 (4th Cir. 1969); United States v. Ciongoli, 358 F.2d 439, 441 (3rd Cir. 1966). Consequently, we see no "legal fiction" if the government agrees to a misdemeanor plea even if the property is valued at greater than \$100.

With respect to the prosecution of check forgery cases, the report states that Law Enforcement Coordinating Committees (LECC) provide limited immediate help because they are still in the developing stage. We would like to update as well as correct some of the information contained in the report as to the current status of these committees. Ninety jurisdictions currently have operating LECCs and by July, all U.S. attorneys will have fully operational programs. The report states that as of February 1983, 50 of the 94 federal judicial districts had submitted plans to the Department for approval. This figure is incorrect; as of February 1983, 57 judicial districts had submitted plans. In addition, although only 8 U.S. attorneys' district plans had been approved at the time the report was compiled, as of this date 12 plans have been approved, and virtually all of the plans are expected to be submitted, reviewed, and approved by mid-August. The draft report also states that the district plans are primarily concerned with high priority offenses, such as drug trafficking and violent crimes; these areas, however, are not emphasized to the exclusion of all others.

GAO's Draft Amendment of 18 U.S.C. § 495

Included with the GAO draft report is a draft bill which would delete the present penalty provision in 18 U.S.C. § 495 and insert the following:

[A violator shall] be fined not more than \$250,000 or imprisoned not more than ten years, or both; Provided, however, that if the value received or to be received from such writing, or the aggregate value if more than one writing, does not exceed \$500 in any of the above offenses, the penalty shall be a fine of not more than \$1,000 or imprisonment for not more than one year, or both, for a person having no prior convictions under this section; and a fine of not more than \$25,000 or imprisonment for not more than one year, or both, for a person having one prior conviction under this section.

(The underlined portion is the proposed amendment).

1/Due to the Department's concern, GAO deleted the term "legal fiction" except where we attribute it to U.S. Attorneys and where it is included in questionnaires to which U.S. Attorney and Secret Service offices responded.

Although we do not object to the concept of providing misdemeanor penalties under 18 U.S.C. § 495, we have two concerns. First, the proposed language "value received or to be received" may create some potential prosecution problems. For example, if a person forges an endorsement on a \$1,000 government check and presents it for payment to a bank teller who becomes suspicious and calls the police, it may be argued that no value has been "received" or is "to be received." The argument would follow that the violation is only a misdemeanor since the value received or to be received is less than \$500. While the drafters may have intended such conduct to be a felony, the statute could be interpreted to indicate otherwise. The problem cannot be solved by redrafting the statute so that a \$500 "face value" divides the misdemeanors from the felonies since a false writing might be totally devoid of a face value but, nevertheless, enable someone to receive thousands of dollars. We would suggest deleting the words "to be received" from the draft bill and inserting in their place the word "sought."

Our second concern with GAO's draft bill is that it only addresses the need for misdemeanor penalties for conduct prohibited by 18 U.S.C. § 495. The bill does not proscribe related conduct not covered by section 495 or other provisions of title 18, United States Code, involving United States obligations. For example, it is currently possible for a person to steal a U.S. Treasury check endorsed by a payee, endorse his own name, obtain the proceeds, and not violate section 495. In addition, it is possible for someone to steal one or more government checks or bonds from a rightful owner and sell or exchange them to a middle man and not violate section 495. In some cases no other federal statute would cover acts of this kind. The need for legislation to proscribe conduct of this nature in our view is of greater significance than the need to establish misdemeanor penalties under 18 U.S.C. § 495.

The Administration's crime bill, the Comprehensive Crime Control Act of 1983, S. 829, would create a new provision in title 18, United States Code, concerning forgery of endorsements or signatures on securities of the United States that would address the above problems, among others. Under new section 511 of title 18, United States Code (included in section 1505 of S. 829), it would be unlawful: (1) to forge an endorsement or signature on a Treasury check, bond, or other security of the United States with intent to defraud; (2) to pass or attempt to pass such a security of the United States with intent to defraud; or (3) to exchange or receive, with knowledge of its false character, an obligation of the United States that has been stolen or that bears a forged endorsement or signature. The penalty would be a fine of not more than \$250,000 or imprisonment for not more than 10 years, or both. However, if the amount of the obligation involved did not exceed \$500, the penalty would be a fine of not more than \$1,000 or imprisonment not to exceed one year, or both. (If Title II of S. 829 were enacted, the penalties provided there would apply to the extent applicable.) Since new section 511 of title 18 would not cover all conduct prohibited by section 495, the Administration's bill would leave section 495 in effect.

The new title 18 provision in the Administration's bill recognizes that 18 U.S.C. § 495 was not drafted to deal specifically with government obligations, but instead expressly covers deeds, powers of attorney, and contracts. The basis for using section 495 to prosecute violations involving government obligations is the provision therein which penalizes the forgery or altering of "other

writings." Similarly, although sections 471 and 472 of title 18 are concerned with forgery and uttering forged obligations or securities of the United States, these sections apply to forgery of the security, not forgery of endorsements.

The Administration's proposal would make it possible to prosecute both forgeries of endorsement and certain related crimes involving obligations of the United States under one section. As discussed above, it would establish misdemeanor penalties. Finally, it would greatly assist the Secret Service, which has the primary jurisdiction to investigate crimes involving obligations and securities of the United States and which would have jurisdiction with regard to new section 511 by virtue of the amendment of 18 U.S.C. § 3056(a).

We appreciate the opportunity to comment on this draft report. Should you desire to discuss these matters further, please feel free to contact me.

Sincerely,

A handwritten signature in dark ink, appearing to read "Kevin D. Rooney". The signature is fluid and cursive, with the first name "Kevin" and last name "Rooney" clearly distinguishable.

Kevin D. Rooney
Assistant Attorney General
for Administration



DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

June 3, 1983

Dear Mr. Anderson:

I am writing in response to your letter dated May 17, 1983, to Secretary Donald T. Regan, forwarding copies of your draft proposed report entitled "Forgery of U.S. Treasury Checks -- A Federal Misdemeanor Law and Increased Local Prosecution Needed."

Overall, we support the conclusions and findings made in your report; they are generally helpful and confirm positions and practices which the U.S. Secret Service and the Treasury Department have held for some period of time. We particularly appreciate the report's recommendations to the Congress that legislation be enacted which will provide that forgery of a U.S. Treasury check, under certain circumstances, should be subject to prosecution as a misdemeanor. The Secret Service has made similar recommendations for at least the last 6 years. The Treasury Department has concurred in this position and on several occasions has forwarded proposed legislation to the Congress that would accomplish this goal. Copies of the Treasury Department's most recent referrals to the Congress on this issue are enclosed.

I would like to comment on the first sentence of the opening paragraph of the cover sheet that precedes the "digest" section of the report. This sentence is quoted as follows: "Forgery of a U.S. Treasury check is viewed by prosecutors and investigators as typically a minor criminal offense, involving a first-time offender and a small amount of money." The theme of this sentence is repeated on several occasions throughout the report. While this thought may be the perception of some prosecutors and investigators, it is submitted that a more careful review of the check forgery situation could lead to a conclusion that the concept is inaccurate.

An increasing number of cases investigated by the Secret Service involve multiple offenders with prior criminal records who use a premeditated approach to perpetrate their criminal activity with respect to forged U.S. Treasury checks. Undercover operations, sting operations and investigations of international scope conducted in recent times bear out these

findings. Situations such as mail truck robberies, large scale thefts from postal facilities, and checks issued as the result of false information fed into government computers are occurring with increased frequency. While some forgery cases certainly are minor criminal offenses involving first-time offenders and small amounts of money, they are not in a broad sense typical. It is suggested that your final report reflect the organized criminal activity which is seen in numerous check forgery operations.


We are in agreement with the general proposition that the Secret Service should fully implement its own policy with respect to the prosecution of U.S. Treasury check forgeries by local authorities. We agree that Secret Service field offices should be knowledgeable of local prosecution policies and work with local prosecutors to insure that all check forgery cases that have prosecutive merit, but are not going to be prosecuted at the Federal level, are referred to those local authorities willing to accept the cases.

In this connection, you should be aware that the Secret Service has recently directed all of its field offices to become aware of local prosecutive policies with regard to the forgery of U.S. Treasury checks and to fully implement the Secret Service directive on this matter which was originally issued in October, 1982. In view of this fact, I do not believe that it is necessary for the Secretary to direct the Secret Service to require each field office to fully implement its October, 1982 policy. I am satisfied that this has, in fact, already been accomplished.

I would like to suggest that Secret Service field offices were probably more aware of general local prosecutive guidelines than the answers to Question #17 on page 41 of the draft report indicate. My basis for this conclusion comes from the response to Question #2 on page 38 of the report which indicates that 43 Secret Service offices out of 62, present U.S. Treasury check forgery cases to state and local prosecutors. It is submitted that these 43 offices have to have knowledge of state and local prosecutive policies in order to be able to present cases for prosecution. The Secret Service believes that the response to Question #17 on page 41 of the draft report does not accurately reflect Secret Service field office knowledge of local declination policies because some of the offices interpreted the question as referring to a written policy.

In conclusion, I would again like to emphasize our concurrence with the overall findings and conclusions of the draft report. It is our hope and belief that the enactment of a misdemeanor forgery statute will alleviate most if not all of the need to prosecute cases through local jurisdictions. Most first offenders would plead guilty to a forgery misdemeanor as they now do to obstruction of mail violations. These cases could be handled in Magistrates Courts without burdening the U.S. District Courts.

Sincerely,


John M. Walker, Jr.
Assistant Secretary
(Enforcement & Operations)

Mr. William J. Anderson
Director
General Government Division
U.S. General Accounting Office
Washington, D.C. 20548

Enclosures *

*We did not reproduce the enclosures.

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