

1 ANDRÉ BIROTTE JR.
 United States Attorney
 2 CHRISTINE C. EWELL
 Assistant United States Attorney
 3 Chief, Criminal Division
 BRUCE H. SEARBY (SBN 183267)
 4 Assistant United States Attorney
 Major Frauds Section
 5 JONATHAN E. LOPEZ (SBN 210513)
 Senior Trial Attorney, Fraud Section
 6 United States Department of Justice
 1100 United States Courthouse
 7 312 North Spring Street
 Los Angeles, California 90012
 8 Telephone: (213) 894-5423
 Facsimile: (213) 894-6269
 9 bruce.searby@usdoj.gov

10 Attorneys for Plaintiff
 UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,) CR No. 08-59(B)-GW
14)
Plaintiff,) <u>GOVERNMENT'S SUPPLEMENTAL</u>
15) <u>SENTENCING MEMORANDUM FOR</u>
v.) <u>DEFENDANTS GERALD GREEN AND</u>
16) <u>PATRICIA GREEN; APPENDICES OF</u>
GERALD GREEN and) <u>CASES; DECLARATION OF BRUCE H.</u>
17 PATRICIA GREEN,) <u>SEARBY; EXHIBITS</u>
)
18 Defendants.) Sent. Date: April 1, 2010
) Sent. Time: 8:30 a.m.
19)
20)
21)

22 Plaintiff United States of America, through its counsel of
 23 record, the United States Attorney's Office for the Central
 24 District of California, and the Fraud Section, United States
 25 Department of Justice, Criminal Division, hereby submits its
 26 **supplemental** memorandum and attached exhibits as to the
 27 sentencings of both defendant GERALD GREEN and defendant PATRICIA
 28 GREEN ("defendants"), in response to the Court's order for such

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 At the sentencing hearing in this case on January 21, 2010,
5 this Court ordered supplemental submissions on the harm caused by
6 defendants' conspiracy to violate the Foreign Corrupt Practices
7 Act ("FCPA"), defendant GERALD GREEN's health, comparable
8 sentencings, and the status of the Thai government investigation
9 of the corrupt official. The points set forth below further
10 demonstrate the egregious extent of the scheme here, the harm to
11 Thailand and to fair competition, and the need for sentences of a
12 significant number of years in prison for each defendant.

13 First, there is no legal support for defendants' argument
14 that purported "profits" from the business activities which they
15 agreed to perform for the Tourism Authority of Thailand ("TAT")
16 should result in a lenient sentence. Courts have rejected such
17 "no-loss" mitigation arguments by bribery defendants. At best,
18 defendants' contractual performance amounts to the absence of an
19 aggravating factor. Even greater punishment would have been
20 warranted had defendants committed not only bribery to get the
21 contracts, but also fraud to deprive the TAT of the contracts'
22 deliverables. But the distinct nature of the crime of bribery,
23 i.e., its systemic harm to the integrity of the Thai government,
24 alone warrants a very punitive sentence. In addition, the Thai
25 treasury funds that defendants diverted to Governor Juthamas
26 Siriwan were a loss to Thailand of funds intended for its growth.

27 Second, even assuming the relevance of defendants' claims to
28 having bestowed great profit upon Thailand, these claims unravel

1 factually under examination. For a variety of reasons detailed
2 below, the Court should find against both defendants' credit-
3 taking for the economic activity they reference, and the accuracy
4 and reliability of their "profit" numbers.

5 Third, this brief attaches a formal diplomatic note from the
6 Kingdom of Thailand's Ministry of Foreign Affairs, which in turn
7 attaches a letter to this Court from the National Anti-Corruption
8 Commission ("NACC"), the Thai government body constitutionally
9 empowered to investigate and initiate prosecution of bribery.

10 (Exhibit E attached hereto.) The NACC states that it has now
11 collected sufficient evidence of bribery, and indicates that
12 formal charges against the Governor are imminent. However, out
13 of scrupulous adherence to procedure, the NACC limits itself to a
14 hypothetical discussion of the harm to Thailand in this case, and
15 to a past example of the severe sentences that can be imposed on
16 defendants in Thai bribery cases. Further summary of these two
17 letters, which can speak for themselves, is unnecessary herein.

18 Fourth, defendants are wrong in claiming that there were no
19 competitors harmed by the bribery. In addition to some who did
20 actively want the contracts at issue, defendants had a myriad of
21 potential competitors in each of the industries in which the TAT
22 let the contracts to defendants. However, the corrupt Governor
23 herself initiated and approved noncompetitive proceedings that
24 allowed defendants' businesses to shut out potential rivals from
25 learning about and competing fairly for these contracts. This
26 tactic is well-known here in cases of contracts awarded corruptly
27 under "no-bid" or "sole-source" procedures, and is treated no
28 less seriously than rigging competitive bids.

1 Fifth, comparable cases of bribery have resulted in
2 significant prison sentences for similarly-situated defendants.
3 The government will set forth summaries of sentencings in bribery
4 cases brought under the FCPA, as well as in domestic bribery
5 cases, and the Court should consider both types to fulfill the
6 U.S. treaty obligation to equivalent sentencing. While the
7 government does not expect the Court to impose sentences within
8 the guidelines, comparable bribery cases indicate that probation
9 or a few months in prison would be substantively unreasonable.

10 Therefore, this Court should impose upon each defendant
11 imprisonment for a significant number of years.

12 II.

13 DISCUSSION

14 A. THE SERIOUSNESS OF THE OFFENSE OF BRIBERY, UNLIKE THE
15 OFFENSE OF FRAUD, IS NOT MITIGATED BY THE ABSENCE OF AN
ACTUAL LOSS TO THE GOVERNMENT VICTIM

16 The government agrees with the Court's observation at the
17 last sentencing hearing that a bribery case where the defendant
18 intended to do "good work" would be very different from a bribery
19 case where the defendant intended to "run off" with the contract
20 proceeds without delivering. The difference is that the former
21 is a standard case of bribery and the latter is an unusual case
22 of bribery that adds an aggravating layer (or additional charges)
23 of pure fraud. Consistent with the United States Sentencing
24 Guidelines, courts have refused to extend lenience at sentencing
25 to bribery defendants for having done the job they secured
26 through bribery, or where economic loss is otherwise not subject
27 to estimation. Defendants have not cited a single precedent or
28 even an unreported case where such lenient treatment occurred.

1 In bribery cases, the Sentencing Guidelines expressly
2 measure harm by the amount of the bribe, or the benefit conferred
3 on the briber, in the event either of those amounts exceed loss
4 to the government. See U.S.S.G. §2C1.1(b)(2); United States v.
5 Harvey, 532 F.3d 326, 338-39 (4th Cir. 2008) (rejecting argument
6 at sentencing that there was no loss from bribery because the
7 company had adequately performed its obligations to the defense
8 agency under the contract, and applying the amount of the benefit
9 conferred on defendant under §2C1.1). The Commission's use of
10 the amount of the bribe if it is greater than an alternative
11 measure is "for deterrence purposes." See Background Notes to
12 §2C1.1; cf United States v. Fitzhugh, 78 F.3d 1326, 1331 (8th
13 Cir. 1996) (in commercial bribery case, reasoning that the
14 "victim's loss is the proper focus for fraud offenses The
15 severity of a bribery offense, on the other hand, is measured by
16 the amount of the improper benefit conferred in return for the
17 bribe (or by the amount of the bribe, if greater).").

18 Even if there is no loss because the offense was not
19 completed before being reported or was committed in an undercover
20 operation, the defendant's culpability is not lessened. Id.

21 In instances where the bribe payment "was to facilitate
22 another criminal offense," such as fraud, "the guideline
23 applicable to a conspiracy to commit that other offense will
24 apply if the result is greater than that determined above." See
25 Background Notes to §2C1.1. Thus, in the Court's hypothetical,
26 where a defendant intended to run off with the contract proceeds
27 obtained through bribery, it would often result in a sentence
28 higher than that resulting merely from the bribery guideline.

1 Accordingly, courts have considered and rejected downward
2 departures under the Guidelines based on arguments that the
3 bribery caused no calculable loss to the government.¹ See United
4 States v. DeVegter, 439 F.3d 1299, 1307-08 (11th Cir. 2006);
5 United States v. Keene, 375 F.Supp.2d 473, 477 (W.D.Va. 2005);
6 United States v. Jackson, 876 F.Supp. 1208, 1220 (D.Kan. 1994)).

7 In DeVegter, the Eleventh Circuit rejected on policy grounds
8 the downward departure argument that the county government would
9 have accepted defendant's proposal anyway in the bribe's absence,
10 and therefore suffered no financial loss. The Court reasoned
11 that granting such departures would weaken incentives against
12 bribery and unjustly favor a calculating class of criminals who
13 would engage in bribery where it is not likely to cause a
14 financial loss to the government. DeVegter, 439 F.3d at 1307-08.

15 In Keene, another government procurement bribery case, the
16 district court observed:

17 [T]he loss to the government in this wide-ranging
18 scheme cannot practically be determined. The bribery
19 of those who authorized the work permitted the cost of
20 the work to be essentially economically unregulated.
21 Because of the nature of most of the work, it is now
22 impractical, if not impossible, to determine in
23 hindsight what the work would have cost the government
24 had the illegal and fraudulent bids not been accepted.

25 Keene, 375 F.Supp.2d at 477.

26 One kickback case brought under the wire and mail fraud
27 statutes is particularly instructive here. In United States v.
28 Serpico, 320 F.3d 691 (7th Cir. 2003), defendant claimed that the

¹ The government is not aware of an opinion where the
district court discussed the issue of "no loss" or "profit" to
the victim from the corrupt contract as an argument for a below-
guidelines sentence under the factors of 18 U.S.C. § 3553(a).

1 union entities he represented suffered no loss from a \$6.5
2 million loan he corruptly caused the union to extend because the
3 loan was repaid. The Seventh Circuit rejected this argument and
4 found defendant responsible for the amount of the kickback:

5 Serpico's theory fails to consider the fact that,
6 although none of the \$6.5 million was lost, more money
7 could have been earned. Obviously, the 51 Associates
8 partnership was willing to pay (and did pay) an extra
9 \$333,850 in order to secure the loan. That money
10 could have gone to the union entities instead of
11 Cataldo if Serpico had been acting in the entities'
12 best interests instead of his own.

13 Serpico, 320 F.3d at 696-97 (citing United States v. Briscoe, 65
14 F.3d 576, 589 (7th Cir. 1995) (kickbacks "represent money that
15 should have gone to the Union" and, as such, were properly
16 included in the loss calculation).

17 An unpublished district court opinion considered an argument
18 similar to defendants' here, both as a ground for a downward
19 departure under the newly advisory guidelines and as a mitigating
20 factor under 18 U.S.C. § 3553(a). In United States v. Ganim,
21 2006 WL 1210984 (D. Conn. 2006), the defendant argued that his
22 record of success as a mayor merited a below-guidelines sentence
23 in his bribery case. However, the district court reaffirmed the
24 defendant's 9-year sentence for taking over \$800,000 in bribes.
25 The court in Ganim rejected that argument, with reasoning that is
26 both eloquent and apt here:

27 The Court considered Ganim's evidence and argument,
28 including numerous letters from members of the
community extolling his success in public office. . . .
The Court agreed with the defendant that "[t]he record
that's been developed . . . is one of a defendant with
energy, charisma, vision, communication and leadership
skills that he put to use to move Bridgeport from the
brink of bankruptcy into a forward motion." . . .

1 However, the Court concluded: "[W]hat Joseph Ganim did
2 for the good of Bridgeport really is not to be
3 considered as a factor in the sentencing of a
4 corruption case because that's what a good mayor does."

5 This reasoning still stands after Booker. While [the
6 defendant] may take credit for at least a portion of
7 Bridgeport's economic turnaround while he was its chief
8 executive, even more money and opportunity potentially
9 would have been available for the public's benefit had
10 the defendant not been getting kickbacks from city
11 contractors and had he not awarded the contracts to and
12 through his co-conspirators rather than permitting a
13 genuine competitive bidding process. Ganim used his
14 power as mayor both for city improvements and for
15 racketeering, extortion and fraud, and positive results
16 do not counterbalance his crimes. As the Court stated
17 at the sentencing hearing, "we cannot have a sliding
18 scale that punishes those who are good but corrupt less
19 than those that are not as successful and equally
20 corrupt." In the sentencing equation, he is
21 entitled to no special credit for his work on behalf of
22 the city, because that is what he was elected and paid
23 to do.

24 2006 WL 1210984, at *3-*4.

25 As in Ganim, defendants' claims to have succeeded in
26 promoting Thailand's economic interests, even if taken at face
27 value, were simply what they agreed to do, and thus do not
28 mitigate their corruption of the integrity of the TAT procurement
29 process. Similar to the facts of both Serpico and Ganim, in the
30 case at bar, Thailand losses could be said to include all the
31 economic benefits that TAT could have generated by spending on
32 tourism projects the \$1.8 million in bribe money diverted by
33 defendants and the Governor into the overseas accounts.

34 Therefore, the Court should reject as a matter of policy
35 defendants' argument that economic benefits to Thailand from
36 their performance of their contracts negated any loss or harm
37 from their bribery and thus require below-guidelines sentences.

1 B. DEFENDANTS' CLAIMS TO HAVE MADE THAILAND HUNDREDS OF
2 MILLIONS OF DOLLARS IN PERFORMING THE CORRUPT CONTRACTS ARE
3 FACTUALLY UNSUPPORTED

4 Even assuming that defendants' successful performance of
5 their contracts is a factor in mitigation of culpability, the
6 government disputes their factual claims to have "made" Thailand
7 \$140 million from the Bangkok International Film Festival
8 ("BKKIFF") and "hundreds of millions of dollars" from their
9 various TAT projects overall. (Defendants' Joint Sentencing
10 Memorandum ("Def. Sent. Mem."), filed January 7, 2010, at 2;
11 Defendant Patricia Green's Response to Government's Sentencing
12 Position ("PG Resp. Sent. Mem."), filed January 19, 2010, at 5.)

13 **1. The Bangkok International Film Festival**

14 Further examination of the claim that defendants earned \$140
15 million for Thailand from the BKKIFF reveals that it consists of
16 series of faulty conclusions based on information that is vague
17 and unreliable at best. Defendants' sources for the \$140 million
18 claim, Exhibit A to Defs. Sent. Mem., are documents captioned as
19 "summaries" of Thai-language marketing reports on the BKKIFF from
20 2003 to 2006 prepared by outside firms for the TAT.²

21 The figures extracted by the defense from the studies were
22 yearly totals of BKKIFF-related "money flows" the vast majority
23 of which were attributed to the following three items: (a) the
24 amounts of film distribution transactions facilitated at the
25 Bangkok Film Market ("BFM") that the TAT hosted as part of the

26 ² These studies were "summarized" for defendants in this
27 case by a person who does not appear to be a professional
28 translator. (Def. Exh. A, at 39.) Furthermore, notations
indicate that the summaries' author did not necessarily portray
the original studies' contents completely or in sequence.

1 BKKIFF; (b) spending in Thailand by foreign film producers
2 shooting on location; and (c) spending in Thailand by foreign
3 visitors. These and other, smaller sources of direct money flow
4 (such as actual box office ticket sales at the BKKIFF) were then
5 compounded by "indirect" money flow in Thailand's economy.
6 (Def's. Exh. A, at 6, 9, 10, 17, 21.) As discussed below,
7 defendants' claim to have created profit to Thailand for these
8 items in these amounts cannot withstand serious scrutiny.

9 a. Film Distribution Transactions at the BFM

10 The amounts of film distribution sales facilitated at the
11 BFM appear from the "summaries" to have ranged between a quarter
12 and two-thirds of all the "direct" money flow found by the
13 studies. However, there are three problems with concluding that
14 these amounts were profits defendants made for Thailand.

15 First, the operators of any market do not create the value
16 of the goods sold at that market, nor do they have to account for
17 the costs of the goods sold there. Moreover, if trades are not
18 made at a particular market, the buyers and sellers may (or will)
19 conduct the trades elsewhere. As an illustration, the President
20 of the New York Stock Exchange cannot claim to have made for the
21 economy of the United States the dollar value of the trades
22 there. Defendants unreasonably claim credit for the hard work,
23 financial investment, creativity, and risks taken by the sellers
24 and buyers who did business in the forum they managed.

25 Second, the studies apparently establish no foundation as to
26 whether, or to what extent, the sales amounts taking place on
27 paper between an international group of film buyers and sellers
28 would in reality touch the Thai economic system in the form of

1 fund transfers or taxable income in the country.

2 Third, the studies' methodologies for calculating the amount
3 of film distribution transactions attributable to the work of the
4 BFM is dubious. The study of the 2004 BKKIFF cites as a source a
5 "TAT evaluated result from Film Trading industry during in [sic]
6 the BKKIFF." (Defs. Exh. A, at 6.) Elsewhere, defendants cite a
7 news report of statements by their own subordinate and defense
8 witness at trial, Christine Rush, estimating the results of film
9 deals "begun or concluded" at the BFM during the 2005 BKKIFF.
10 (Defs. Exh. F, at 114.) It is unknown to what extent the studies
11 reflect reliable analysis on this topic, versus reporting the
12 biased estimates of the TAT and defendants' own subordinates.

13 b. Foreign film production shoots in Thailand

14 The amounts of money spent locally by foreign film producers
15 who decided to shoot in Thailand purportedly as a result of
16 experiencing the BKKIFF and the BFM were the other large
17 components of the "direct" money flow found in the studies.
18 These figures are particularly untrustworthy.

19 First, it is unknown what methodology the studies used to
20 arrive at their totals, such as the estimated 1 billion baht
21 spent in 2005. (Defs. Exh. A, at 9.) Such estimates would
22 require reliable sources of information regarding both why
23 particular foreign film productions were shot in Thailand and how
24 much money the film crews spent, none of which is apparent here.
25 Defendants repeatedly assert in their sentencing briefs that the
26 film productions of Oliver Stone's "Alexander" and Werner
27 Herzog's "Rescue Dawn" (in which defendant GERALD GREEN was an
28 executive producer) came to Thailand because of defendant GERALD

1 GREEN's "influence" and work on the BKKIFF. (Defs. Sent. Mem.,
2 at 10-11; PG Resp. Sent. Mem., at 3 n.1). These assertions are
3 unsupported by the evidence defendants cite, as neither of the
4 cited MSNBC and NBC television broadcasts contain any reference
5 to what reasons prompted the makers of these films to decide to
6 shoot them in Thailand. (Declaration of Bruce H. Searby ("Searby
7 Decl."), at ¶ 2; Defs. Trial Exhs. 2018, 2020.)

8 Second, and as previously shown by the 2002 news reports
9 attached to the government's initial sentencing memorandum
10 (Exhibit B to Gov. Sent. Mem., filed January 14, 2010), there
11 were a host of other factors and government policies predating
12 defendants' contracts that were responsible for drawing foreign
13 film-makers to Thailand. On September 16, 2003, five months
14 before the first BFM in February 2004, the following story
15 (mentioning Oliver Stone) ran in The Hollywood Reporter:

16 Thailand will top \$35 million (1.5 billion baht) in
17 earnings from foreign film, television and advertising
18 shoots this year as a streamlined bureaucracy and
19 improved international networking attract more
20 productions from abroad, according to Film Office
21 director Sidhichai Jayant.

22 * * *

23 Oliver Stone, who shot "Heaven & Earth" here in 1992,
24 is scheduled to return later this year or in early 2004
25 to film scenes for his historical epic "Alexander" . . .

26 (Exhibit F, attached hereto, at 1-2.)

27 c. Foreign visitors to Thailand

28 The study of the 2004 BKKIFF apparently says that foreign
visitors to Thailand spent 350 million baht -- more than a third
of the supposed "profit" from the BKKIFF. (Defs. Exh. A, at 6.).
However, it is not apparent how the study arrived at findings of

1 how many persons traveled to Thailand on account of the BKKIFF
2 (versus attending while already in Thailand) and spent this much.

3 d. Indirect money flow

4 Compounding the studies' apparent exaggeration of the
5 economic effect of the BKKIFF is the economic-cycle multiplier
6 applied -- which is also explained inadequately or not at all.
7 One study that makes reference to the multiplier used indicates
8 that the multiplier came from a 10-year old analysis by the
9 "Office of the National Economic and Social Development Board.
10 (Def's. Exh. A, at 13.) In another study, there are unsupported
11 claims regarding the far greater economic impact of monies
12 invested in the BKKIFF versus other "production investments."
13 (Id. at 7.) In the end, it is impossible to see how defendants
14 can reasonably claim credit for all this economic activity.

15 e. Omissions in the "summaries"

16 Another serious problem with the "summaries" of marketing
17 reports in defendants' Exhibit A is what information they
18 selectively omitted that was in the original Thai-language
19 studies -- presumably because it is unhelpful to defendants'
20 sentencing position asserting phenomenal success with the BKKIFF
21 and the BFM. For example, according to an FBI linguist who
22 reviewed the original, the 2005 BKKIFF study includes the
23 following items that are omitted from the defense "summary":

- 24 • Forty-eight percent of survey respondents said there
25 was "nothing to like" about the 2005 BKKIFF.
26 • Most participants in the BFM thought film festivals
27 were better managed elsewhere, including Asian
28 international film festivals in Tokyo (Japan) and in
Pusan (South Korea).

- 1 • Only 37% of participants in the BFM indicated that they
2 would participate next year if they had to pay their
own expenses; 63% percent said they would not.
- 3 • Most participants in the BFM were not buyers or
4 sellers, so film buyers and distributors missed an
opportunity to meet with their target groups.
- 5 • The BKKIFF could not compete with Tokyo, Pusan and
6 Shanghai (China) film festivals.
- 7 • The Thai press reported criticisms of the 2005 BKKIFF,
8 including that the TAT exaggerates its successes and
that the BKKIFF had failed to deliver many well-known
foreign stars.

9 (Searby Decl., at ¶ 3.)

10 The government does not contend that defendants failed at
11 running the BKKIFF, let alone that their punishment should be
12 greater because of any perceived defects in its management.
13 However, by the same token, the Court should be aware of their
14 attempts to airbrush these marketing studies into a misleading
15 picture of stellar success that (they argue) mitigates their
16 culpability for bribery.³

17 2. Other Profits from Defendants' TAT-Related Projects

18 Defendants' remarkable claim that their overall contribution
19 to the Thai economy from all their TAT-related projects reached
20 into the "hundreds of millions of dollars" is completely
21 unsupported. For this proposition, defendants cite a chart of
22 the growth of tourism in Thailand covering the relevant time
23

24 ³ Defendants cite the BKKIFF's supposed "rise" under
25 their management on the international film festival circuit based
26 on some unexplained ranking system. As mentioned above, TAT
27 apparently paid for the expenses of participants to attend the
28 BFM. Under those circumstances, it is particularly unconvincing
for defendants to claim personal credit for the amounts of any
transactions conducted at the BFM. (Defs. Exh. D, at 2.) The
BKKIFF undoubtedly benefitted from the TAT pouring money into it
while the Governor took her cut of money paid to defendants.

1 period. (PG Resp. Sent. Mem., at 4; Defs. Exh. L.) But this is
2 circular reasoning to assume that, because Thailand's tourism
3 grew, defendants must have caused it.

4 C. DEFENDANTS' CORRUPT SCHEME EMPLOYED NONCOMPETITIVE
5 PROCEDURES THAT EXCLUDED OTHER EXPERIENCED PROFESSIONALS
6 FROM BIDDING ON TAT-RELATED CONTRACTS

7 The government disputes defendants' assertions that there
8 were no competitors for their contracts who were harmed by the
9 charged scheme. This claim ignores both actual and potential
10 rivals for the specific contracts they secured with TAT. Both
11 types of competitors' interests are at stake in the enforcement
12 of anti-bribery laws.

13 1. **Bribery Cases Where Potential Competitors Are Avoided**

14 The government is aware of no case, reported or unreported,
15 drawing a distinction in seriousness between schemes where the
16 briber prevailed over others in competitive bidding and those
17 where potential competition was avoided entirely. Many domestic
18 bribery prosecutions have involved what are termed "no-bid" or
19 "sole-source" procurement procedures that, while appropriate in
20 many situations, were manipulatively chosen by corrupt officials
21 so that no others would compete for the contract. See United
22 States v. Harvey, 532 F.3d 326, 331 (4th Cir. 2008); United
23 States v. Matzkin, 14 F.3d 1014, 1016 (4th Cir. 1994); United
24 States v. Perholtz, 842 F.2d 343, 347-48 (D.C. Cir. 1988); United
25 States v. Kenny, 645 F.2d 1323, 1329 (9th Cir. 1981); United
26 States v. Ediger, 2006 WL 328010, *1 (6th Cir. 2006). For
27 instance, in Kenny, the corrupt official was able to obtain the
28 Navy's approval of a sole-source contract by misrepresenting that
the contract was of extremely high priority calling for "Quick

1 Reaction Capability." Kenny, 645 F.2d at 1329.

2 The unpublished district court opinion in the case of Ganim
3 against the Connecticut mayor, quoted above, is also instructive
4 as to how bribery causes harm to competition and to the
5 democratic process. In reaffirming under the new advisory
6 guidelines regime a 9-year sentence for the defendant who took
7 over \$800,000 in bribes, the district judge stated:

8 [C]orruption such as Ganim's causes indirect economic
9 harm by alienating businesses that desire to bid on
10 city contracts but refuse to "pay to play," thereby
11 potentially diminishing the quality and range of
12 facilities and services available to Bridgeport
13 citizens. Corruption sets a tone that discourages
14 competition and transparency in business, and
15 encourages graft and back-room dealing. The result is
16 that the public's interest in the economic benefits of
17 competitive bidding and honestly-awarded city contracts
18 takes a back seat or no seat at all. Most importantly,
19 Ganim's sentence reflected the extraordinary harm done
20 to the political system of the City of Bridgeport and
21 beyond. Government corruption breeds cynicism and
22 mistrust of elected officials. It causes the public to
23 disengage from the democratic process because, as the
24 Court stated at sentencing, the public begins to think
25 of politics as "only for the insiders."

18 Ganim, 2006 WL 1210984, at *5.

19 In the case at bar, trial testimony too voluminous to
20 recount here showed defendants' and the Governor's successful
21 efforts to avoid a competitive and fair selection process in the
22 many contracts in which defendants paid bribes. For example, in
23 great detail, the trial testimony of the first BKKIFF director
24 Patrick Debokay and TAT-Los Angeles staffer Sobhana Sucharitakul,
25 aka "Tippi," established the time-line and secretive manner in
26 which the Governor awarded defendants the first BKKIFF contract.
27 The Governor awarded the contract without any competition, but
28 the procurement paperwork falsely indicated that TAT-LA was

1 proposing defendants' hiring in this manner. In later BKKIFF
2 years, the Governor also caused the TAT to hire defendants' other
3 companies without consideration of any other vendors. The
4 evidence showed a pattern of the Governor routinely engineering
5 no-bid contracts to defendants -- or to prime contractors whom
6 defendants selected in order to mask their involvement.

7 Defendants claim to have won a TAT contract for global
8 public-relations services by quoting \$5 million less than another
9 proposal by McCann Erickson. (PG Resp. Sent. Mem., at 4.) A
10 professional translation the government has prepared of Thai-
11 language meeting minutes supplied to the government by defense
12 counsel in support of this assertion revealed no events on July
13 23, 2003 as stated in the defense brief. (Searby Decl. ¶ 4;
14 Exhibit G attached hereto.) Instead, there are very similar
15 references in the February 5, 2004 minutes of a Thai Privilege
16 Card LTD ("TPC LTD") board meeting. At that meeting, TAT
17 Governor Juthamas Siriwan served as a Director and explained to
18 the board that McCann World Group had submitted a more expensive
19 proposal for a different scope of services than the proposal of
20 SASO Entertainment, defendants' company. Although initially
21 favored, the McCann proposal was outside the available budget,
22 and so TPC LTD proceeded with SASO. (Searby Decl. ¶ 4; Exhibit H
23 attached hereto.) The Court cannot conclude based on this
24 evidence that SASO won this business based on a fair, head-to-
25 head competition of proposals, when the corrupt official
26 apparently oversaw the selection and did not solicit a proposal
27 from defendants' competitor for the same scope of services.

28

1 2. Defendants' actual and potential competitors

2 a. Film festival organizers

3 Defendants had both actual and potential competitors whom
4 defendants and the Governor prevented from competing fairly to
5 receive the contracts to organize the BKKIFF.

6 First, Bangkok's Nationmultimedia Group ("Nationmultimedia")
7 previously had the BKKIFF contract. (Exh. E, NACC letter at 3.)
8 Defendants' stock line is that their predecessors lacked the
9 connections to Hollywood stars, directors, and producers that
10 defendants brought to the job. However, there is no reason to
11 believe that, at the TAT's direction and expense,
12 Nationmultimedia could not have hired agents with as good
13 Hollywood connections to meet such a perceived need.

14 Second, there was a truly global industry of international
15 film festivals with many hundreds of festival directors from
16 which the TAT could have recruited a suitable, new organizer of
17 the BKKIFF. The Executive Director of the 2003 BKKIFF, Patrick
18 Debokay, testified at trial that there were 3,500 film festivals
19 around the world, specifically mentioning Cannes, Tribeca,
20 Sundance, Miami, Venice, and Pusan (in Asia) as among the most
21 well-known. (Reporter's Transcript 8/26/09, at 8.) Prior to
22 working with defendants, Debokay had worked for Filmfestivals.com
23 managing communications between many of the worlds' film
24 festivals. (Id. at 7.) Within a short drive of TAT's office in
25 Los Angeles, top-notch film festivals could be found including
26 the American Film Institute's Los Angeles International Film
27 Festival, the Santa Barbara International Film Festival, and
28 others. The deep bench of film festival professionals and

1 resources that existed by the time defendants corruptly secured
2 their deal was laid out in a 405-page, color, glossy guidebook to
3 international film festivals that was already in its third
4 edition by 2000: International Film Festival Guide: Over 500
5 Film Festivals . . . In Depth & Worldwide, edited by Shael Stolberg
6 (Festival Products, 3d ed. 2000).⁴ (Exhibit I attached hereto.)

7 Third, defendants kept the BKKIFF contracts even though the
8 first festival director they put in charge of the 2003 BKKIFF
9 attempted to win the next contract for himself. As Patrick
10 Debokay testified at trial, he had difficulties with defendant
11 GERALD GREEN's attempts from his perspective as a producer to
12 "try to save money," versus Debokay's attempts as a marketer "to
13 make sure things are done properly and well done because if you
14 don't have results, you don't have a festival." (Reporter's
15 Transcript 8/26/09, at 41-42.) Debokay believed that defendant
16 GERALD GREEN was not "worried too much about the results." (Id.
17 at 43.) After the 2003 BKKIFF, Debokay made an overture to the
18 Governor to run the next BKKIFF from Thailand and without the
19 involvement of defendant GERALD GREEN (id. at 43-44), but instead
20 defendant GERALD GREEN cut Debokay from the BKKIFF. (Id. at 45.)

21 Despite this wealth of potential suitors, the trial exhibits
22 and testimony established that the TAT did not seek out any of
23 them or disseminate any request for bids. Indeed, the testimony
24 at trial of TAT-LA's Tippi on this subject is illuminating:

25
26 ⁴ Published in association with Kodak, International
27 Film Festival Guide (excerpts of which are exhibited hereto)
28 catalogued over 200 festivals in the United States and over 500
worldwide, chronicled the surge in number of international film
festivals, and listed the contact numbers of festival managers.

1 Q. Did you meet with any other companies, U.S. companies,
2 that year -

3 A. No, I didn't.

4 Q. - to interview them for running a film festival?

5 A. No, I didn't.

6 (Reporter's Transcript 8/31/09, at 19.)

7 Q. - did you, as part of TAT L.A., participate in any
8 interview with any other companies for the 2004 film
9 festival?

10 A. No, we didn't.

11 (Reporter's Transcript, 8/31/09, at 54-55.)

12 Q. Did you look at any other companies as part of - for
13 the 2005 film festival year other than Film Festival
14 Management or other related companies?

15 A. No, I didn't.

16 (Reporter's Transcript 8/31/09, at 59).

17 It is clear from the evidence that the committee Tippi
18 worked on, tasked with selecting a film festival company, was a
19 rubber stamp; the selection of defendants' companies was pre-
20 determined.

21 b. Other professional services providers

22 It cannot be reasonably disputed that many professionals and
23 firms in Los Angeles and elsewhere had the skills to perform the
24 more commonplace services for which defendants contracted in
25 their other TAT-related projects -- designing books and
26 calendars, marketing, public relations services, and website
27 management. For example, defendants employed a graphic designer
28 named Leonard Cachola who testified at trial that, just in Los

1 Angeles, there were "hundreds" of firms that offered graphic
2 design services, and thousands more freelancers. (Reporter's
3 Transcript 8/27/09, at 6.) Some of the most well-known were
4 advertising firms with their own in-house graphics designers,
5 like Ogilvy & Mather, Saatchi & Saatchi, and Deutsch. (Id. at 6-
6 7.) According to his own testimony at trial, defendant GERALD
7 GREEN had only held contracts in Thailand since approximately the
8 year 2000, so he cannot seriously claim to have a rare degree of
9 experience and expertise in that market. What he had, and touted
10 to his associates, was his "relationship" with the Governor.

11 Therefore, the Court should find that defendants' bribery
12 inflicted serious harm upon the forces of fair and free
13 competition for TAT contracts.

14 D. AN ANALYSIS OF COMPARABLE SENTENCINGS IN FOREIGN BRIBERY
15 CASES, ALTHOUGH CHALLENGING BECAUSE OF THEIR SCARCITY, CAN
16 ONLY SUPPORT IMPOSITION OF SIGNIFICANT PRISON TERMS

17 This Court asked the government to provide examples of
18 sentences handed out in other similar foreign bribery cases. At
19 the outset, and as set forth in government's initial sentencing
20 memorandum, the government notes that due to the limited
21 landscape of FCPA sentences from which to draw upon, it is
22 challenging to find similarly-situated defendants to point out to
23 the Court. (Gov. Sent. Mem., at 44). Nevertheless, and as set
24 forth below, there are cases, both in the trial and plea setting,
25 that the government can direct the Court to for guidance in this
26 area. The government submits that a review of these cases, when
27 contrasted to the defendants' conduct and procedural posture in
28 the instant matter, demonstrates that a sentence that includes a
term of imprisonment for a number of years should be imposed on

1 each defendant to reflect the seriousness of the offenses and to
2 avoid unwarranted disparities in sentencing.

3 **1. The Limited FCPA Sentencing Landscape Currently**

4 Since 2000, as of the date of this filing, approximately 23
5 individuals have been sentenced for FCPA violations, of which,
6 only five were sentenced as a result of going to trial.⁵
7 Indeed, as set forth in Appendix A attached hereto, there have
8 been only six other FCPA trials in the last twenty years that
9 have resulted in guilty verdicts. Moreover, as set forth in
10 Appendix B attached hereto, there have been only 19⁶ people
11 sentenced as a result of guilty pleas.

12 While it is difficult to compare apples to apples with such
13 a small sample size, in a review of the sentences imposed several
14 points consistently shine through. First, in every case where a
15 defendant has been convicted at trial, each defendant has been
16 sentenced to a term of imprisonment, most of which are to a term
17 of a significant number of years. Second, with an occasional
18 exception, those defendants that pled guilty instead of going to
19 trial (most of whom cooperated with the government) similarly
20 received terms of imprisonment -- notwithstanding their
21

22 ⁵ This landscape is expected to expand dramatically in the
23 near future. As of the date of this filing, approximately 15
24 additional defendants in FCPA cases are awaiting sentencing as a
25 result of guilty pleas. In addition, there are over 35
26 individuals indicted under the FCPA and currently awaiting trial.

27 ⁶ Please note, that the 19 defendants include defendant
28 Albert Jackson "Jack" Stanley, United States v. Stanley, 08-CR-
597 (S.D. Tex. 2008). While Mr. Stanley has not yet been
sentenced, he pled guilty under Rule 11(c)(1)(C) wherein the
parties agreed to a sentence of 84 months. Given the nature of
the plea, the United States has included this defendant in
Appendix B.

1 cooperation.⁷ In addition, most of these sentences, in both the
2 plea and the trial setting, were meted out when the guidelines
3 analysis was much more lenient.⁸ Given that those who pled
4 guilty and cooperated still consistently receive terms of
5 imprisonment, defendants' requests for probation in this instance
6 fly in the face of the need to impose sentences that consider
7 "the need to avoid unwarranted sentence disparities among
8 defendants with similar records who have been found guilty of
9 similar conduct." 18 U.S.C. § 3553(a)(6).⁹

10 2. Comparable FCPA Cases Imposing Significant Prison Terms

11 Against this backdrop, the government will focus the Court
12 on several cases it believes to be most comparable and helpful to
13 the Court in fashioning a sentence commensurate with the
14 defendants' conduct.

15
16

17 ⁷ Defendants contend that past FCPA dispositions demonstrate
18 that "probation and far below guidelines sentences are the norm."
19 Defs. Sent. Mem. at 22. In presenting this incorrect theory,
20 defendants rely on corporate dispositions (which necessarily do
not involve a term of imprisonment), SEC dispositions, and other
dispositions well over ten years old. The government submits
that the only comparable analysis is analysis of the sentences of
individuals in a criminal setting.

21 ⁸ In 2002, the Sentencing Commission amended the statutory
22 index of offense located as U.S.S.G. Appendix A to specifically
23 key FCPA's anti-bribery violations from U.S.S.G. Section 2B4.1 to
24 U.S.S.G. Section 2C1.1, the same guideline used for domestic
25 bribery offenses, in accordance with its international treaty
obligations. Accordingly, the base level for an FCPA offense
went from 8, to 12. Enhancements and other adjustments are
similarly higher based on the new applicable guidelines section.

26 ⁹ There would be considerably less cooperation-and thus more
27 crime-if those who assist prosecutors could not receive lower
28 sentences compared to those who fight to the last. United States
v. Bartlett, 567 F.3d 901, 907 (7th Cir. 2009) (disparity was
justified by material differences in offenders' conduct and
acceptance of responsibility).

1 a. United States v. Kay, et al.

2 The government submits that the case of United States v.
3 Kay, et al., 01-CR-914 (S.D. Tex. 2002), is the most comparable
4 to the case at bar as it is a case that went to trial, involved
5 high-level executives, lasted a span of several years, and,
6 similar to the defendants in this case, the defendants in Kay
7 proffered that the host country greatly benefitted from their
8 services, and had not filed its own charges against them.
9 Defendants omit any discussion or reference to the Kay case in
10 their sentencing papers.

11 David Kay was the Vice President for Caribbean Operations of
12 American Rice, Inc. ("ARI"), a company headquartered in Houston,
13 Texas, that exported rice to Haiti (and other parts of the
14 world), in the 1990s, through one of its subsidiaries. Kay's co-
15 defendant, Douglas Murphy, was ARI's President. In essence, Kay
16 and Murphy were charged with, and convicted at trial of, paying
17 bribes to Haitian officials in order to lower customs duties on
18 the rice ARI was selling to Haiti -- thereby allowing ARI to sell
19 rice at a price below its competitors'. The scheme lasted from
20 1991 through 1999, during which time defendants Kay and Murphy
21 paid approximately \$528,000 in bribes. According to Kay's
22 filings at sentencing, Kay had advised Murphy that the company
23 should not be paying these bribes, and further disclosed the
24 payments to ARI's internal counsel once Murphy had left the
25 company and cooperated in its internal investigation. ARI then
26 self-reported to both the Department of Justice and the
27 Securities and Exchange Commission. (Exhibit J attached hereto,
28 at 2.) Both defendants proceeded to trial and were convicted.

1 Murphy received a term of 63 months' imprisonment, and Kay
2 received a term of 37 months' imprisonment. These sentences were
3 given based off the previous more lenient U.S.S.G. § 2B4.1, which
4 had a base offense level of 8, as opposed to a base offense level
5 of 12. Thus, Murphy's and Kay's sentencing guidelines range, and
6 likely their sentences, would be much higher if calculated today.

7 In Murphy's sentencing papers, he made arguments similar to
8 those of the defendants in this case. For example, in his
9 sentencing memorandum, defendant Murphy asked the Court to

10 [consider] the dire state of affairs in Haiti (both at
11 the time of the offense and since), the defendants
12 documented efforts to build infrastructure and a rice
13 farming program for the benefit of Haitians, and ARI's
overall efforts to provide reasonable priced rice to
the people of Haiti.

14 (Exh. K, at 2.)

15 The sentencing memorandum of Murphy further argued for
16 lenience because "the evidence showed that the company had a
17 significant presence in the country, offering infrastructure
18 improvements, farming programs, and employment for many
19 Haitians." (Exhibit K attached hereto, at 4-5.)

20 While the government maintains that potential benefits
21 resulting from the business obtained by bribery should not be a
22 mitigating factor at sentencing, the factors set forth in the Kay
23 case warrant far more consideration than the defendants' claims
24 of giving benefit in the instant case. Kay and Murphy claim to
25 have fed a starving nation; defendants GERALD GREEN and PATRICIA
26 GREEN serviced film festivals and other tourism projects.

27 Setting aside arguments of relative benefit, the defendants
28 in the Kay case paid far less in bribes (approximately 1/3), and,

1 paid them out of their own profits. Defendants GERALD GREEN and
2 PATRICIA GREEN, on the other hand, paid over \$1.8 million dollars
3 in bribe money, and orchestrated a scheme whereby that hefty sum
4 was paid for by the Thai citizens. Defendants' actions pale in
5 comparison to the facts of the Kay case. Defendants should be
6 sentenced to terms of imprisonment that reflect the seriousness
7 of their crimes and do not diminish the debt to society that Kay
8 and Murphy have paid.

9 b. Other FCPA Trials

10 Other sentences resulting from FCPA trials similarly support
11 a sentence with a high term of imprisonment for each of the
12 defendants in this case. In United States v. King, 01-CR-190,
13 2003 WL 22938694 (8th Cir. 2003), a case involving the offer of a
14 payment of payment of at least \$1,000,000 in bribes to obtain a
15 land concession in Costa Rica, the defendant was an investor and
16 employee of the company -- not an officer (or as compared to
17 defendant GERALD GREEN, a chief executive officer).
18 Notwithstanding his lesser role in the company, King received 30
19 months' imprisonment.

20 In United States v. Jefferson, 07-CR-209 (E.D. Va. 2007)
21 Jefferson, then a U.S. Congressman, was convicted of conspiracy,
22 one object of which was to violate the FCPA, in connection with
23 paying approximately of \$500,000 and shares of business, as part
24 of the bribery scheme. Jefferson was sentenced to 13 years
25 imprisonment. Again, the amount of bribery money was far less
26 than the instant case.

27 Defendants may point to the case of United States v. Bourke,
28 05-CR-518 (S.D.N.Y. 2004), where the defendant received a

1 sentence of imprisonment of a year and a day as a representative
2 example of how this Court should rule. Any reliance on Bourke
3 would be misplaced. Bourke was a passive investor that did not
4 personally participate in the bribing of officials. The Bourke
5 case essentially centered around willful blindness, not the
6 defendant's active orchestration of a sophisticated bribery
7 scheme similar to the one that the defendants here implemented.

8 c. Guilty Pleas

9 Significant sentences have also been given to defendants
10 that have pled guilty. In United States v. Shu Quan-Sheng, 08-
11 CR-00194 (E.D. Va. 2008), Shu, who was President, Secretary, and
12 Treasurer of a Virginia-based company, offered approximately
13 \$189,000 in bribes to Chinese government officials to induce the
14 award of a hydrogen liquefier project. Shu pled guilty to his
15 role in the offense and was sentenced to a term of 51 months'
16 imprisonment. Shu received this sentence despite being 69 years
17 old and presenting a host of serious medical issues in his
18 sentencing memorandum. (Exhibit L attached hereto, at 5.)

19 In the instant case, defendants GERALD GREEN and PATRICIA
20 GREEN paid approximately nine times more in bribes, and, unlike
21 Shu, did not (and still do not) accept any responsibility for
22 their actions. In order to ensure any semblance of fairness in
23 sentencing, the defendants in this case should be sentenced to
24 terms of imprisonment greater than Shu. Defendants omit any
25 discussion or reference to the Shu case in their sentencing
26 papers.

27 There are numerous other examples of significant sentences
28 notwithstanding a plea of guilt, and more importantly,

1 significant cooperation. For example, in United States v.
2 Christian Sapsizian, 06-CR-20797 (S.D. Fla. 2006), the defendant
3 arranged for bribes in the amount of approximately \$2.56 million
4 to a telecommunications company in Costa Rica. Sapsizian pled
5 guilty to two counts of violating the FCPA and cooperated
6 extensively with the government. The court was so impressed with
7 the level of Sapsizian's cooperation that it remarked at the
8 sentencing hearing:

9 I believe that it is a truly genuine change of heart.
10 That I have been able to see in the extraordinary
11 cooperation. I will celebrate my tenth anniversary in
12 November on the bench. And in over that course of
13 time, I have sentenced close to 15,000 people, that is
14 a lot of life stories. I think that I can safely say
15 that the extent of the cooperation in this case is
16 greater than the cooperation that I have seen in any
17 other case.

18 (Exhibit M attached hereto, at 37). Despite the government's
19 filing of a motion for downward departure and the court's
20 acknowledgment of the extensive cooperation, Sapsizian was
21 sentenced to 30 months' imprisonment.

22 Examples of strong sentences in the face of extensive
23 cooperation and acceptance of responsibility continue. In United
24 States v. Hioki, 08-CR-795 (S.D. Tex. 2008), the defendant, a
25 general manager at subsidiary of Bridgestone, paid \$1 million in
26 bribes to secure sales of rubber products in Latin America; Hioki
27 was the first to plead guilty in the FCPA conspiracy (pleading to
28 an information), cooperated with the government, and was
29 sentenced to 24 months' imprisonment. In United States v. Yaw
30 Osei Amoako, 05-CR-609 (D. N.J. 2007), the defendant and other
31 executives of a telecommunications company seeking business in
32 several African nations arranged bribes of \$270,000 to obtain

1 contracts worth \$11.5 million. Amoako pled guilty, cooperated
2 with the government's case, and was sentenced to 18 months'
3 imprisonment. In United States v. Faheem Mousa Salam, 06-
4 CR000157 (D.D.C. 2006), the defendant, who was working as an
5 interpreter for an American contractor in Iraq, paid bribes of
6 \$60,000 to an Iraqi police official to get contracts worth
7 approximately \$1 million. Salam pled to an information,
8 cooperated with the government, and was sentenced to 36 months'
9 imprisonment.¹⁰

10 Defendants who refuse to accept responsibility and choose to
11 put the government to its burden should be sentenced differently
12 than those that accept responsibility for their actions and
13 cooperate with the government. Thus, any sentence below the
14 above mentioned individuals that actually accepted responsibility
15 for their actions, and in many cases were not anywhere near as
16 extensively involved in the bribery scheme as the defendants,
17 would run contrary to "the need to avoid unwarranted sentence
18 disparities among defendants with similar records who have been
19 found guilty of similar conduct." 18 U.S.C. § 3553(a)(6).

20 E. THE COURT SHOULD ALSO AVOID UNWARRANTED DISPARITIES WITH
21 SENTENCES IN COMPARABLE DOMESTIC BRIBERY CASES, WHICH HAVE
IMPOSED IMPRISONMENT FOR A SIGNIFICANT NUMBER OF YEARS

22 Because the sentencing of domestic and foreign bribery cases
23 should be equivalent pursuant to the OECD Convention (Gov. Sent.
24 Mem., at 46), this Court should consider published opinions in
25 two comparable cases of domestic bribery, as well as one case
26 where a below-guidelines sentence of probation based on arguments

27
28 ¹⁰ Defendants similarly omitted any discussion or reference
of the Salam case in their sentencing papers.

1 similar to defendants' was held to be unreasonable.¹¹

2 In United States v. Anderson, 517 F.3d 953 (7th Cir. 2008),
3 the Seventh Circuit affirmed the reasonableness under 18 U.S.C.
4 § 3553(a) of a sentence of 72 months for a developer caught
5 offering a \$10,000 bribe to influence a city official's decision
6 as to his compliance with a local ordinance. The evidence
7 supported a determination that the "benefit received" from
8 defendants' overall bribery and honest services fraud scheme was
9 more than \$400,000 but less than \$1,000,000. Id. at 964-667.
10 The district court imposed a sentence within a guidelines
11 sentencing range of 63 to 78 months, stressing the corrosive
12 effect that corruption has on the public trust and expressing his
13 belief that public corruption scandals in Illinois and elsewhere
14 would not end unless severe sentences were imposed. Id. at 966.
15 The district court appropriately considered the defendant's
16 advanced age of 73 years old and his suffering from a serious
17 kidney disease, and thus refused to give a sentence in the higher
18 end of the Guidelines range. Id. at 966-67. In this case,
19 defendants GERALD GREEN and PATRICIA were convicted at trial of
20 paying the official far more in bribes than Anderson. Similarly,

21
22 ¹¹ In Southern California, district courts applying the
23 advisory guidelines to domestic bribery and honest services fraud
24 cases involving comparable conduct, and similar mitigation
25 arguments, have imposed sentences of even 10, 12, or 16 years.
26 These cases include: United States v. Richards, et al., CR No.
27 04-1416(B)-RGK (C.D. Cal.) (city contractors and mayor in
28 Lynwood, California convicted at trial); United States v. Robles,
et al., CR No. 04-1594(A)-SVW (C.D. Cal.) (contractor and city
treasurer convicted at trial); United States v. Wilkes, No. 07-
CR-329-LAB (S.D. Cal.) (defense contractor receiving "earmarks"
through U.S. Congressman convicted at trial). The government
will address these unpublished cases in detail if the Court
wishes to include them in its analysis.

1 while the Court may consider defendant GERALD GREEN's health as a
2 mitigating factor at sentencing, but should not do so to the
3 completely unreasonable extent that defendants suggest.

4 In United States v. Harvey, 532 F.3d 326 (4th Cir. 2008),
5 the Fourth Circuit affirmed sentences of incarceration of 72
6 months on Harvey, a civilian defense employee, and 70 months on
7 Kronstein, a defense contractor, in a bribery and honest services
8 fraud scheme to engineer the award of noncompetitive,
9 "sole-source" contracts that earned Kronstein's company revenues
10 of \$4.8 million and a 8% profit margin of \$383,621, in exchange
11 for at least \$43,000 in payments to a business set up by Harvey.
12 Id. at 331-32. The Fourth Circuit rejected the defendants'
13 sentencing argument that there was no loss from bribery because
14 Kronstein's company had adequately performed its obligations to
15 the defense agency under the contracts. Id. at 338-39. Again,
16 the bribery in the case at bar was at least three times as
17 extensive as in Harvey. Furthermore, just as Kronstein's
18 services helped protect the country's defense but did not merit
19 him lenience at sentencing, neither should defendants GERALD
20 GREEN's and PATRICIA GREEN's claim to have generated "profits" to
21 Thailand result in below-guidelines sentences here.

22 While the above cases establish that a sentence of several
23 years imprisonment is reasonable in similar cases, another recent
24 case establishes that a sentence of probation in a serious
25 corruption case may be substantively unreasonable. See United
26 States v. Pool, 474 F.3d 1127, 1129-30 (8th Cir. 2007). In Pool,
27 the guidelines sentencing range was 33 to 41 months imprisonment,
28 but the district court imposed a sentence of probation with a

1 year of home confinement based on factors it found relevant under
2 18 U.S.C. § 3553(a), namely, to preserve Pool's business and the
3 jobs of his employees, because of the need for Pool to continue
4 his charitable activities, and because of Pool's medical
5 problems. Id. The court also received approximately 46
6 character letters on Pool's behalf, describing his activities in
7 the community and many examples of his generous spirit. Id. at
8 1128. The Eighth Circuit reversed the sentence as "unreasonably
9 lenient," reasoning that such considerations, while notable, "do
10 not justify a variance of this magnitude" from the guidelines,
11 and "there was insufficient weight given to the other section
12 3553(a) factors, for example, the statutory objective of avoiding
13 unwarranted sentence disparities. Id. at 1129. Here, defendants
14 GERALD GREEN and PATRICIA GREEN have supplied similar rationales
15 for a variance several magnitudes larger than the variance Pool
16 overturned as unreasonably lenient.

17 Similarly, the Court here should not give defendants'
18 mitigation arguments undue weight compared to the consideration
19 of the grave nature of this offense and the need for deterrence,
20 as reflected in comparable sentencings addressed above.

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1 III.

2 CONCLUSION

3 For the foregoing reasons, the Court should sentence each
4 defendant to a significant number of years in prison.

5 The government respectfully requests leave to supplement its
6 sentencing position as necessary, and at the time for hearing.

7 DATED: March 12, 2010

Respectfully submitted,

8
9 ANDRÉ BIROTTE JR.
United States Attorney

10 CHRISTINE C. EWELL
11 Assistant United States Attorney
12 Chief, Criminal Division

13 _____
/s/
14 BRUCE H. SEARBY
Assistant United States Attorney
15 JONATHAN E. LOPEZ
Senior Trial Attorney
16 United States Department
of Justice, Fraud Section

17 Attorneys for Plaintiff
18 UNITED STATES OF AMERICA
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APPENDIX A
SENTENCES OF PERSONS CONVICTED AT TRIAL OF FCPA VIOLATIONS

	DEFENDANT	CASE NUMBER	AMOUNT OF BRIBES	SENTENCE (excluding monetary penalties)
1	William Jefferson (Congressperson)	<u>United States v. Jefferson</u> , 07-CR-209 (E.D. Va. 2007)	~ 500K + Equities	13 years' imprisonment
2	Frederick Bourke, Jr. (Investor)	<u>United States v. Kozeny, et al</u> , 05-CR-518 (S.D.N.Y. 2005)	~ Millions	1 year and 1 day's imprisonment
3	David Kay ¹ (Vice President)	<u>United States v. Kay, et al</u> , 01-CR-914 (S.D. Tex. 2002)	~ 528K	37 months' imprisonment
4	Douglas Murphy ¹ (President)	<u>United States v. Kay, et al</u> , 01-CR-914 (S.D. Tex. 2002)	~ 528K	63 months' imprisonment
5	Robert R. King ¹ (Employee)	<u>United States v. King, et al</u> , 01-CR-190 (W.D. Mo. 2001)	~ 1.5M ²	30 months' imprisonment
6	David H. Mead ^{1,2} (President, CEO, and Executive Vice President)	<u>United States v. Mead, et al</u> , 98-Cr-240 (D. N.J. 1998)	~ 50K	4 months' imprisonment; 4 months' home detention
7	Richard H. Liebo ¹ (Vice President)	<u>United States v. Liebo</u> , 89-CR-076 (D. Minn. 1989)	~ 131K	18 months' imprisonment (suspended); 60 days' home detention

¹ United States Sentencing Guidelines Section 2B4.1, with a base offense level of 8, was the applicable U.S.S.G. Section at this time. After 2002, Section 2C1.1, with a base offense level of 12, became the applicable U.S.S.G. Section in accordance with international treaty obligations.

² In addition, corporate guilty pleas to FCPA violations resulted in over \$2.2 million in fines.

APPENDIX B
SENTENCES OF PERSONS WHO PLED GUILTY TO FCPA VIOLATIONS SINCE 2000

	DEFENDANT	CASE NUMBER	5K DOWNWARD DEPARTURE BASED ON SUBSTANTIAL ASSISTANCE	AMOUNT OF BRIBES	SENTENCE (excluding monetary penalties)
1	Misao Hioki (General Manager)	<u>United States v. Hioki</u> 08-CR-795 (S.D. Tex. 2008)	YES	~ 1M	24 months' imprisonment
2	Shu Quan-Sheng (President, Secretary, and Treasurer)	<u>United States v. Quan-Sheng</u> , 08-CR-194 (E.D. Va. 2008)	NO	~ 189K	51 months' imprisonment
3	Martin Eric Self (CEO)	<u>United States v. Self</u> , 08-CR-110 (C.D. Cal. 2008)	NO	~ 70K	2 years' probation
4	Jason Edward Steph (General Manager)	<u>United States v. Steph</u> , 07-CR-307 (S.D. Tex. 2007)	YES	~ 6M	15 months' imprisonment
5	Jim Bob Brown (Managing Director)	<u>United States v. Brown</u> , 06-CR-316 (S.D. Tex. 2006)	YES	~ 6M	1 year and 1 day's imprisonment
6	Steven J. Ott (Executive Vice President)	<u>United States v. Ott</u> , 07-CR-608 (D. N.J. 2007)	YES	~ 267K	6 months' home confinement; 5 years' probation
7	Yaw Osei Amoako (Regional Director)	<u>United States v. Amoako</u> , 06-CR-702 (D. N.J. 2006)	YES	~ 267K	18 months' imprisonment
8	Roger Michael Young (Managing Director)	<u>United States v. Young</u> , 07-CR-609 (D. N.J. 2007)	YES	~ 267K	3 months' home confinement; 5 years' probation
9	Christian Sapsizian (Vice President)	<u>United States v. Sapsizian, et al</u> , 06-CR-20797 (S.D. Fla. 2006)	YES	~ 2.4M	30 months' imprisonment
10	Steven Lynwood Head ¹ (Program Manager)	<u>United States v. Head</u> , 06-CR-1380 (S.D. Cal. 2006)	YES	~ 2M	6 months' imprisonment
11	Richard John Novak (Employee)	<u>United States v. Randock, et al</u> , 05-CR-180 (E.D. Wash. 2005)	YES	~ 30K-70K	3 years' probation

¹ Pled to falsification of books and records portion of the FCPA; not anti-bribery.

APPENDIX B
SENTENCES OF PERSONS WHO PLED GUILTY TO FCPA VIOLATIONS SINCE 2000

	DEFENDANT	CASE NUMBER	5K DOWNWARD DEPARTURE BASED ON SUBSTANTIAL ASSISTANCE	AMOUNT OF BRIBES	SENTENCE (excluding monetary penalties)
12	Faheem Mousa Salam (Translator/Contractor)	<u>United States v. Salam,</u> 06-CR-157 (D.D.C. 2006)	YES	~ 60K	36 months' imprisonment
13	Richard G. Pitchford ² (Vice President; Country Manager)	<u>United States v. Pitchford,</u> 02-CR-365 (D.D.C. 2002)	YES	~ 400K	1 year and 1 day's imprisonment
14	Gautam Sengupta ² (Task Manager)	<u>United States v. Sengupta,</u> 02-CR-040 (D.D.C. 2002)	YES	~ 127K	6 months' imprisonment; 4 months' home confinement
15	Ramendra Basu ² (Trust Funds Manager)	<u>United States v. Basu,</u> 02-CR-475 (D.D.C. 2002)	NO	~ 127K	15 months' imprisonment
16	Richard K. Halford ² (CFO)	<u>United States v. Halford,</u> 01-CR-221 (W.D. Mo. 2001)	YES	~ 1.5M	5 years' probation
17	Albert Reitz ² (Vice President and Secretary)	<u>United States v. Reitz,</u> 01-CR-222 (W.D. Mo. 2001)	YES	~ 1.5M	6 months' home confinement; 5 years' probation
18	Daniel Ray Rothrock ² (Vice President)	<u>United States v. Rothrock,</u> 01-CR-343 (W.D. Tex. 2001)	-- ³	~ 300K	1 year's probation
19	Albert Jackson "Jack" Stanley ⁴ (Officer/Director)	<u>United States v. Stanley,</u> 08-CR-597 (S.D. Tex. 2008)	--	~ 10.8M	84 months' imprisonment; Rule 11(c)(1)(C)

² United States Sentencing Guidelines Section 2B4.1, with a base offense level of 8, was the applicable U.S.S.G. Section at this time. After November 2002, Section 2C1.1, with a base offense level of 12, became the applicable U.S.S.G. Section in accordance with international treaty obligations.

³ No indication on docket.

⁴ Not yet sentenced; however, included in this chart since plea was pursuant to Rule 11(c)(1)(C) with an agreed upon sentence of 84 months. Plea agreement provides for the possibility of a sentence reduction below 84 months.

DECLARATION OF BRUCE H. SEARBY

I, Bruce H. Searby, declare as follows:

1. I am an Assistant United States Attorney ("AUSA") in the United States Attorney's Office for the Central District of California ("USAO"). I am one of the prosecutors who represent the government in this case. This declaration is filed in support of the GOVERNMENT'S SUPPLEMENTAL SENTENCING MEMORANDUM FOR DEFENDANTS GERALD GREEN AND PATRICIA GREEN. I am personally knowledgeable about the facts set forth below, and if called to testify about them, I could do so competently.

2. Defendants repeatedly assert in their sentencing briefs that the film productions of Oliver Stone's "Alexander" and Werner Herzog's "Rescue Dawn" (in which defendant GERALD GREEN was an executive producer) came to Thailand because of defendant GERALD GREEN's "influence" and work on the BKKIFF. (Defs. Sent. Mem., at 10-11; PG Resp. Sent. Mem., at 3 n.1). I have watched the recordings on the copies of Defendants' Trial Exhibits 2018 and 2020, cited for these propositions (N.B.: Defendants' brief had a citation error to Defendants' Trial Exhibit 2108). Neither of the cited MSNBC and NBC television broadcasts contain any reference to the reasons the makers of these films decided to shoot them in Thailand.

3. I recently obtained from defense counsel copies of the Thai-language marketing studies that were "summarized" in Exhibit A attached to Defs. Sent. Mem. I asked an FBI linguist fluent in Thai, Eric Watcharoporn ("LA Watcharoporn"), to review the 2005 BKKIFF study. LA Watcharoporn told me over the phone that this

1 study includes the following items that I have found were omitted
2 from the defense "summary":

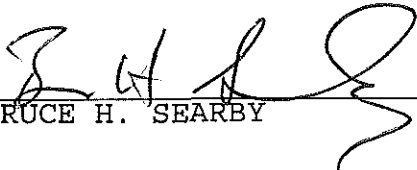
- 3 • Forty-eight percent of survey respondents said there
4 was "nothing to like" about the 2005 BKKIFF.
- 5 • Most participants in the BFM thought film festivals
6 were better managed elsewhere, including Asian
7 international film festivals in Tokyo (Japan) and in
8 Pusan (South Korea).
- 9 • Only thirty-seven percent of participants in the BFM
10 indicated that they would participate next year if they
11 had to pay their own expenses; sixty-three percent said
12 they would not.
- 13 • Most participants in the BFM were not buyers or
14 sellers, so film buyers and distributors missed an
15 opportunity to meet with their target groups.
- 16 • The BKKIFF could not compete with Tokyo, Pusan and
17 Shanghai (China) film festivals.
- 18 • The Thai press reported criticisms of the 2005 BKKIFF,
19 including that the TAT exaggerates its successes and
20 that the BKKIFF had failed to deliver many well-known
21 foreign stars.

22 4. Defendants claim to have won a TAT contract for global
23 public-relations services by quoting \$5 million less than another
24 proposal by McCann Erickson. (PG Resp. Sent. Mem., at 4.) I
25 asked defense counsel for a copy of the original Thai minutes
26 supporting this assertion. The government then received (from
27 contract translator Supachai Prasertphong) a translation of the
28 Thai-language meeting minutes supplied to the government by

1 defense counsel, which revealed no events on July 23, 2003 as
2 stated in the defense brief. (Exhibit G attached hereto.)
3 Instead, there are very similar references in the February 5,
4 2004 minutes of a Thai Privilege Card LTD ("TPC LTD") board
5 meeting. At that meeting, TAT Governor Juthamas Siriwan served
6 as a Director and explained to the board that McCann World Group
7 had submitted a more expensive proposal for a different scope of
8 services than did defendants' company, SASO Entertainment. The
9 McCann proposal was outside the available budget, and so TPC LTD
10 proceeded with SASO. (Exhibit H attached hereto.)

11 I declare under penalty of perjury that the foregoing is
12 true and correct to the best of my knowledge and belief.

13 DATED: March 11, 2010

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15 
16 BRUCE H. SEARBY

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EXHIBIT E

IMMEDIATE



No. 0805/228

The Ministry of Foreign Affairs presents its compliments to the Embassy of the United States of America and has the honour to refer to the latter's Note No. 649 dated 19 February 2010 requesting additional information concerning the case of United States vs Gerald Green and Patricia Green that Judge George H. Wu wished to receive before deciding what sentences to impose on Mr. Gerald Green and Mrs. Patricia Green.

The Ministry has further the honour to transmit herewith the President of the National Anti-Corruption Commission of Thailand (NACC)'s Note No. NACC 0021/0039 dated 10 March 2010, addressed to Judge Wu, which contains relevant information sought by the Judge. The Ministry would therefore appreciate it very much if the said Note could be transmitted further to its destination.

It should be noted here that the NACC is a constitutional independent organization established by the provisions of the Constitution of Thailand B.E. 2540 (1997) and the Organic Law on the Prevention and Suppression of Corruption B.E. 2542 (1999). Moreover, the NACC is the key organization vested with the power to investigate state corruption cases, and as an independent agency, the NACC has the power to investigate any corruption allegations against all state officials of the Kingdom of Thailand.

The Ministry of Foreign Affairs avails itself of this opportunity to renew to the Embassy of the United States of America the assurances of its highest consideration.

Ministry of Foreign Affairs,
Bangkok,
1 March B.E. 2553 (2010)



Embassy of the United States of America,
BANGKOK.

No. NACC 0021/0039



Office of the National
Anti-Corruption Commission,
Phitsanuloke Road,
Bangkok 10300
Tel. 662 2807934
Fax. 662 2807934

10 March B.E. 2553 (2010)

Judge George H. Wu
Los Angeles Central District Court, Western Division
312 N. Spring Street
Los Angeles, CA 90012
U. S. A.

Dear Honourable Judge Wu,

As President of the National Anti-Corruption Commission of Thailand (NACC), I send my warm greetings from my office in Bangkok, Thailand.

I write this letter to you upon the request of Mr. Bruce Searby representing Mr. George S. Cardona, Acting United States Attorney, and Ms. Christine C. Ewell, Assistant United States Attorney, Chief, Criminal Division. Mr. Searby has informed me that you had raised a number of questions in your court on January 21, 2010 concerning the role of the NACC in the so-called Bangkok Film Festival case that might have some bearing on the sentencing of the defendants on the same case in your court. The following four questions or issues have been listed for me to address.

- (a) The nature of the NACC own independent status within the Thai government;
- (b) The status of the NACC's investigation of Juthamas Siriwan and other Thai nationals in connection with the bribery charges in the US Court;
- (c) The NACC's findings to date on the harm suffered from the bribery at issue in this case; and
- (d) What sentences have been imposed on comparable defendants in Thai corruption cases.

I will address each of the four issues in turn.

(a) On the Nature and Function of the NACC

The National Anti-Corruption Commission (NACC) is a constitutional independent organization (CIO) established by the Constitution of Thailand B.E. 2540 (A.D. 1997), and the Organic Law on the Prevention and Suppression of Corruption B.E. 2542 (A.D. 1999). In addition to the NACC, the 1997 Constitution also established other independent agencies to ensure transparent and corrupt-free government, including among others the Office of the Ombudsmen, the Constitutional Court, the Election Commission, and the Human Rights Commission.

- 2 -

The NACC comprises of nine Commissioners (President and eight other Commissioners) who are appointed by the Senate with a tenure of 9 years or until they reach the age of 70 whichever comes first. These nine Commissioners are served by the Office of the NACC whose head assumes the post of Secretary General with a full-time staff of about 700.

The key role of NACC is to investigate state corruption cases, administer important functions in national anti-corruption policy, policy monitoring and assessment malfeasance in judicial cases and observation of the ethics of persons holding political positions. As an agency independent of the government, NACC commissioners have power to investigate any corruption allegations against all state officials in the country, and to submit prima facie cases to the Attorney General or to the Special Supreme Court for Political Office Holders for prosecution. Having been provided with the authority to overrule the Attorney General, the Commission is in a position to independently initiate prosecution as well in case disagreements occurred between the Attorney General and the NACC, and the former refuses to prosecute on the latter's behalf.

In addition to this investigative and prosecutorial power, the NACC is vested with a power to examine the assets of politicians or high-ranking state officials for any causes of unexplained or suspicion of unusual wealth. It also has the power to initiate corruption-prevention measures and other advice to the cabinet and other government agencies to improve the transparency and integrity of government activities. According to the present 2007 Constitution, the NACC has been given an additional duty of monitoring the ethics and integrity of political office holders.

(b) On the NACC's Present Investigation of Juthamas Siriwan and Other Thai Nationals

As regards the present investigation of Ms. Juthamas Siriwan, former Governor of the Tourism Authority of Thailand (TAT) and her associates, the complaints against her and her associates were first made by a number of people with the Department of Special Investigation (DSI) in the Ministry of Justice and with the NACC. The DSI had a head start in conducting some preliminary investigations on the case and sent its report to the NACC in early 2008. At the NACC, after existing documents were examined, the NACC Board agreed to set up an Enquiry Subcommittee to investigate this case with Professor Medhi Krongkaew, one of the Commissioners, appointed as Chair of the Subcommittee. The case against Ms. Juthamas was not only about the bribery charge but also misconduct in office concerning the appointment of her successor and TAT, and the hiring of herself as Special Advisor of the TAT after her retirement.

At the time when the NACC Enquiry Subcommittee was set up, we knew it already that the US Department of Justice was conducting its own investigation of the so-called Bangkok Film Festival case, especially on the transfer of funds across countries. We then began the process of asking for assistance from the US Department of Justice through the Mutual Legal Assistance Treaty (MLAT) signed between Thailand and the US. As of March 2010, we believe we had sufficient evidence to file formal charges against Ms. Juthamas and her associates. Once we have done this, the alleged culprits will have 15 days to submit their defence or explanations in writing, in persons, or both, to the Subcommittee. After the deliberation and consideration by this Subcommittee (whether to indict or dismiss the case), the report of the result will be submitted to the NACC Board for final decision. In case of

- 3 -

indictment, the NACC Report will be sent to the Attorney General Office to carry out the prosecution on behalf of the state.

(c) On the Damage from Bribery in the Public Sector

Strictly speaking, it has not been established yet that the alleged culprits have committed criminal offences. Therefore, it is difficult to say definitively how much damage, if at all, the culprits have caused the country or economy. However, there are technical or hypothetical ways to assess the damage from bribery in the public sector. One way is to compare the situation where the total cost of the freely-competitive project that does not include bribe as a form of economic rent to a state official who has discretionary power over the granting or approval of the said project, and the project that incorporates such economic rent. The difference between the two would represent the transfer of resources from the public sector to private beneficiaries.

In the Bangkok Film Festival case, the TAT had allocated a budget of over 200 million baht each year between 2003 to 2006 for the organization of the Festival. Prior to 2003, a smaller budget (about 30 million baht) was allocated to a local organizer (the Nationmultimedia Group, publisher of an English daily newspaper in Bangkok) to organize the same film festival, and even lower budget (about 10 million baht) for the same event in 2009. One can measure the resource-transfer damage by looking at appropriate differences between these two organizers. It is fair to say, however, that the scope of work by the local Nationmultimedia Group is smaller than that of the American Film Festival Management Company. And the selection of the American company over the Thai company in the bidding process by the TAT Governor was said to be based on reasons of international experience and expertise.

The other way to assess the damage of a bribery case is to bring in its effects on the perception of corruption (or lack of integrity and transparency) in the country. This aspect of damage (which can be called systemic damage to the society) is even more difficult to measure than the physical or tangible effects of resource transfer. The fact that Thailand consistently scores very low in the Transparency International's Corruption Perception Index (CPI) (the CPI Score in 2009 was 3.4 between the index of 10 which represents the least corrupt system, and 0 which shows the most corrupt system) could be seen as an indication that these corruption problems have often been neglected in the past, something which the present NACC has a strong intention to rectify.

To emphasise the seriousness of our intention to fight corruption especially bribery in the public sector, I would like to bring your attention to the existing legal provisions in the Thai laws that are used to deal with bribery and bribery-like corruptions. The first is our own (NACC) law, that is, the Organic Law on the Prevention and Suppression of Corruption B.E. 2542 (A.D. 1999) (or the NACC Anti-Corruption Law, for short), which prohibits any public official to receive anything from anyone beyond his or her own salary. This provision is stated in the first clause of Section 103 which reads:

"...Any state official shall not receive property or any other benefit from any person other than the legitimate property or benefit derived under the law, rules or regulations issues by virtue of the provisions of law, with the exception of the acceptance of the property or any other benefit of the ethical basis in accordance with the rules and in such amount as prescribed by the NACC.

- 4 -

What this means is that a state official is not allowed to receive any payment from anyone other than his or her own ordinary compensations (such as salary) and other benefits that come with the job (such as medical, housing, or travel subsidies), and the amount that such an official can receive as a gift on certain occasions (such as birthday gift, or wedding present, or gifts for other customary occasions) is specified by the NACC as not exceeding 3,000 baht (less than 100 US dollars in the current exchange rate). The penalty of violating this provision (as specified in Section 122) is an imprisonment for a term not exceeding three years or a fine not exceeding sixty thousand baht or both.

If the seriousness and complexities of this offence are raised to the level of bribe or bribe-like payment, there are other legal provisions that can be used to deal with it. For example, Section 12 of the Act on Offences Relating to the Submission of Bids to State Agencies, B.E. 2542 (A.D. 1999) states that:

“Section 12: Any official of a state agency who commits an offence under this Act, or commits any acts by favouring any bidder as the person entitled to enter into a contract with a state agency, shall have committed the offence of misfeasance in office and shall be liable to imprisonment for a term from five years to twenty years or life imprisonment and a fine from one hundred thousand baht to four hundred thousand baht.”

Finally, the most direct and toughest of all legal provisions for bribery offences is found in Section 149 of the Penal Code of Thailand which stipulates that:

“Section 149: Whoever, being a public official, member of the State Legislative Assembly, member of the Provincial Assembly, or member of the Municipal Assembly, wrongfully demands, accepts, or agrees to accept for himself or others a property or any other benefits for exercising or not exercising any of his functions, whether such exercise or non-exercise of his function is wrongful or not, shall be punished with imprisonment of five to twenty years, or imprisonment of life, and fined of two thousand to forty thousand baht, or death.”

(d) On Comparable Sentences on Bribery Case in Thailand

In the past 10 years, the NACC has indicted many state officials on charges of bribery and procurement violations, but most of these cases involved low-ranking officials in various local governments. Probably the most well known bribery case ever handled by the NACC is the case involving Mr. Rakkiat Sukthana, a former Minister of Public Health in the Thai government. Mr. Rakkiat used his ministerial power to cancel the enforcement of price ceilings on the purchase of basic drugs by all public hospitals in the country in 1998. He reasoned that the economic crisis of 1997 had hurt all private drug companies, and the help from the government in the form of lifting all price controls was needed to help these private drug companies remain in business. The fact was, however, that Mr. Rakkiat through his personal assistant had made several deals with many private drug companies to receive payments in exchange for the lifting of basic drug price ceilings which yielded enormous profits for these private drug companies. The checking of Mr. Rakkiat's financial records had shown that his income and assets had increased enormously during the time he was in power, on which he had difficulties explaining their sources (He claimed that he won large windfalls from several gambling trips to Australia, the claim which was not substantiated by

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the casinos involved). The one single most damning evidence against Mr. Rakkiat was a cheque of 5 million baht (about 125,000 US dollars at the exchange rate in 1998) issued by the owner of a drug company to Mr. Rakkiat's assistant (who eventually confessed that it was a bribe intended for Mr. Rakkiat). On the force of this single evidence alone, the Special Supreme Court for Political Office Holders found Mr. Rakkiat guilty of bribery corruption according to Section 149 of the Penal Code of Thailand and sentenced him to 15 years in jail. The same court, in a separate trial, also ordered the confiscation of all his assets of more than 200 million baht (about 5 million US dollars).

In all it may be seen that we at the National Anti-Corruption Commission have given our strong emphasis on combating all forms of corruptions by investigating all alleged accusations with fairness, as well as by working closely with our international anti-corruption counterparts including the US law enforcement agencies in their efforts to combat corruption.

Please be assured of our full cooperation.

Yours sincerely,



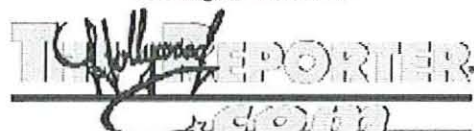
(Panthep Klanarongran)

President of the National Anti-Corruption Commission
Bangkok, Thailand

EXHIBIT F



591 of 737 DOCUMENTS

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The Hollywood Reporter

September 16, 2003 Tuesday

LENGTH: 821 words**HEADLINE:** Thai location shooting on the rise**SOURCE:** Online**BYLINE:** Mick Elmore**BODY:**

Thailand will top \$35 million (1.5 billion baht) in earnings from foreign film, television and advertising shoots this year as a streamlined bureaucracy and improved international networking attract more productions from abroad, according to Film Office director Sidhichai Jayant. But in order for the industry to truly grow, Sidhichai says the government needs to do more, including creating a one-stop film agency to further minimize the red tape.

As it stands, the Film Office looks after foreign productions in Thailand, the Board of Investment offers tax incentives, and the Department of Labor approves the work permits for crews, which in turn pay taxes to the Revenue Department. "Each government agency has its own interests to protect," says Sidhichai.

The potential benefits for Thailand are huge. With the right infrastructure, the country could become a regional center for film production. In addition to cutting down on bureaucracy, the Film Office has taken steps to improve international networking by becoming a member of the Association of Film Commissioners International Services (AFCI).

"Now we have a sign saying, 'Here we are,'" continues Sidhichai. "Now everybody knows what to expect from us. They know that if we are a member of AFCI, what services they can get from us."

During a recent visit to Thailand, AFCI president Pat Swinney Kausman said one of the country's lures is its ability to double for almost anywhere in Southeast Asia and the fact that it has a strong head start in the industry. But she also added there are a lot of beautiful places in the world and the industry needs special care to be attractive to foreign productions.

"The industry is becoming globalized, and studios will go where they think they can get the best deals, but also where they think they can get the best support and follow-up," she said.

Chris Lowenstein, president of local coordinating company Living Films, says Thailand has the professional craftspeople and technicians but comes up short when it comes to promoting itself. "The crews are professional on an international standard; they've done lots and lots of Hollywood films," he says, adding "and they're really cheap."

Thai location shooting on the rise The Hollywood Reporter September 16, 2003 Tuesday

Lowenstein's Living Films recently worked on the Jackie Chan starrer "The Medallion," 80% of which was shot in Thailand. The Chiang Mai (northern Thailand)-based company helped turn the Thai locations around Bangkok into a believable double for Ireland, including the construction of an elaborate castle in an air-conditioned exhibition hall.

"Thailand has a base of equipment and sites and the industry here that is ready to take international films on. They come here because the equipment is cheaper, the labor is cheaper and getting good deals is easier."

Despite the uptick in foreign location shooting, observers stress that future government involvement is needed to avoid the pitfalls that have plagued the industry in the past. Thailand's reputation with the global film sector suffered a setback when the Leonardo DiCaprio starrer "The Beach" was disrupted by a series of protests from environmentalists over trees being planted on a national park beach to "improve" the location.

"On 'The Beach' we had a lot of problems and we had no government support whatsoever," says Santa Pestonji, president of local coordinating company Santa International Film Prods.

About the same time, 20th Century Fox was also forced to film "Anna and the King" in neighboring Malaysia because the Thai Censorship Board ruled that the script was not historically accurate in its portrayal of King Rama IV.

As a result, Thailand's appeal as a destination for high-profile Hollywood productions was seriously damaged. "They (Hollywood producers) complained bitterly," says Santa. "They said Thailand is not interested in catering to foreign films."

He adds, however, that the current government seems more interested in supporting the industry and centralizing operations with the Film Board.

It appears to be working. Oliver Stone, who shot "Heaven & Earth" here in 1992, is scheduled to return later this year or in early 2004 to film scenes for his historical epic "Alexander"; Angelina Jolie had great things to say about the location last year after filming part of "Beyond Borders" in Thailand's mountainous north, and the sequel to "Bridget Jones's Diary" is expected to shoot some scenes in December on Koh Samui, a southern tropical island in the Gulf of Thailand.

While some filmmakers have pointed out there are a limited number of experienced crews and that more training will be needed if a true production boom arrives, Sidhichai maintains the training will come as long as the work is steady. The real challenge, he says, is for the industry to convince the government to end its bureaucratic ways. "Right now the biggest headache is getting higher-ups to understand what we are doing," he says.

LOAD-DATE: January 16, 2004

EXHIBIT G

(Copy)

Meeting of the TAT Committee

Wednesday July 23, 2003

At Conference Room 2, 10th floor, TAT Head Office Building, New Phetchaburi Road

Persons Attending:

1. Mr. Sonthaya Khunpluem
Minister of Tourism and Sports Committee Chairman
2. Lieutenant Commander Itthi Dithabanjong
Deputy Director of Department of Information
Representative of the Deputy Ministry of Foreign Affairs Committee Member
3. Miss Puongpech Sarakun
Deputy Secretary General to the Council of State
Representative of Secretary General to the Council of State Committee Member
4. Mrs. Wanee Sampantharuk
Secretary General to the Office of Natural Resources
and Environmental Policy and Planning Committee Member
5. Mr. Vichit Na Ranong Committee Member
6. Mr. Jadet Insawang Committee Member
7. Mr. Mingkwan Saengsuwan Committee Member
8. Mrs. Juthamas Siriwan
Governor of Tourism Authority of Thailand Committee Member and Secretary
9. Miss Pensuda Priaram
Deputy Governor for Administration Assistant Secretary
10. Mrs. Nongnart Watanachat
Director of General Administration Assistant Secretary

Persons Not Attending:

1. Mr. Jaruek Anupong
Deputy Permanent Secretary for Ministry of Transport
Representative of Permanent Secretary, Ministry of Transport Engaged in another meeting.
2. Mr. Tirawat Kulavanich
Deputy Permanent Secretary, Ministry of Interior
Representative of Permanent Secretary, Ministry of Interior Engaged in another meeting.

3. Mr. Komol Chobcheunchom
Deputy Secretary General to the National Economic
and Social Development Board
Representative of Secretary General, National Economic
and Social Development Board Engaged in another
meeting.

Persons participating in the meeting:

1. Mr. Somkid Jatusripitak
Deputy Prime Minister
2. Mr. Uttama Savanayon
Deputy Minister Attached to the Office of the Prime Minister
3. Mr. Krirkkrai Jeerapath
Deputy Minister, Ministry of Tourism and Sports of Thailand
4. Mr. Voravuth Silpa-archa
Secretary to the Minister of Tourism and Sports of Thailand
5. Mr. Vivat Vinichaikul
Director of the Office of Small and Medium Enterprise Development
6. Mrs. Pornsiri Manoharn
Deputy Governor for International Marketing
7. Mr. Surapol Sawetseranee
Deputy Governor for the Office of Public Relations
8. Mr. Pipat Lertkittisuk
Advisor to the Minister of Tourism and Sports of Thailand
9. Mr. Satit Nillwongse
Executive Director of International Marketing Development
10. Mrs. Thongtip Suthanmanuwat
Director of the General Affairs Division
11. Mr. Chumpol Pachusanon
Legal Councilor to TAT

The meeting started at 1:25 p.m.

2nd item: The Thailand Privilege Card Program

The committee has considered the matter and resolves as follows:

1. To approve the Thailand Privilege Card Program in accordance with the proposed details.
2. To approve TAT investment establishing a limited company, of which TAT is the sole share holder, with registered capital of one billion baht. TAT is to invest the funds allocated for the purpose of establishing the Thailand Privilege Card Company in that company immediately.
3. To approve the Governor of TAT as the temporary Executive Managing Director of the company, with authority to establish the company and manage the company's affairs in accordance with the Cabinet Resolution, and to be able to officially debut the program in the early part of September 2003. In the initial period, coordination will be conducted with the Ministry of Foreign Affairs for Pre-Sale during the APEC summit.
4. To assign TAT to review the observations by TAT committee on the following issues:
 - 4.1 This program will emphasize full and special services to the members as first priority. TAT is to give special consideration to this matter by holding meetings with the private sector participants in this program so everyone will have the same understanding.
 - 4.2 Consideration of methods to reinvest the proceeds from this program.
 - 4.3 Setting membership fees, considering whether different types of membership should pay the same membership fees, and how [fees should differ.]
 - 4.4 Transferring of membership rights of different types of members. How much the transfer fees should be.

Meeting adjourned at 3:05 p.m.

[Illegible]

(Mrs. Pornpan Sa-ngapong)

Conference Work Section, General Affairs Division

Took the minutes of the meeting

EXHIBIT H

Minutes of the Thailand Privilege Card Company, Ltd., Directors Meeting

Number: 2/2547 (2004)

Thursday, February 5, 2004

At Conference Room 1, Thailand Privilege Card Company, Ltd., Sathon Road, Bangkok

.....

Directors Attending:

- | | | |
|----|--|----------|
| 1. | Mr. Somjainuek Hengtrakul | Chairman |
| 2. | Mr. Jadej Insawang | Director |
| 3. | Mrs. Juthamas Siriwan | Director |
| 4. | Mr. Boonsak Jiampreecha | Director |
| 5. | Mrs. Tanya Surasawadee | Director |
| 6. | Mr. Uttama Savanayon | Director |
| 7. | Mr. Wachara Panchet | Director |
| 8. | Mr. Sihasak Puangketkaew | Director |
| | Director Department of General Information
(Representating Mr. Tej Bunnag, Deputy Minister of Foreign Affairs) | |
| 9. | Mr. Kawin Asawachatroj | Director |
| | Senior Director of Marketing Development and Support
(Representating Mr. Kanok Apiradee, Managing Director,
Thai Airways Company,Ltd. (Public) | |

Directors Not Attending:

- | | | |
|----|-------------------------|----------------------------|
| 1. | Mr. Mingkwan Saengsuwan | Engaged in another meeting |
|----|-------------------------|----------------------------|

Other Persons Participating:

- | | | |
|----|----------------------------|--------------------------------------|
| 1. | Mr. Prasan Wangratanaprane | Deputy Managing Director |
| 2. | Mr. Suwan Asdanukul | Director of Office of Administration |

Meeting started at 2:00 p.m.

Item 1 Information Presented by Chairman

1.1 Regarding Board of Directors Decision No. 1/2547, dated January 21, 2004, Item 4.6, approving the right of Thailand Elite card members to take possession of real property: The Board of Directors of the Tourism Authority of Thailand has considered amendments to The Tourism Authority of Thailand Act of 1979, and has reported progress toward resolving problems with the proposed amendments to his Excellency, the Prime Minister. The amendments would allow members the right to hold title to real property not exceeding 1 rai used as a residence in areas declared as tourist industry of Thailand. Value of the property could not be less than 10 million baht per 100 square wa, or 40 million baht per rai, and could not be sold or transferred within 5 years, except among members. This will avoid any criticism regarding allowing foreigners take possession of real property. Discussion of long-term leases of 90 years (30+30+30 years) will be included in the next agenda item.

1.2 Report on progress in selling membership cards through distributors: Agreements to appoint distributors (the agreement is being reviewed by the Office of the Attorney General) will be signed as follows: In the first year, there will be 7,000 clients in Indonesia, 5,000 clients in Singapore and Malaysia, 20,000 clients in China, Taiwan, Macao, and Hong Kong, all together no less than 30,000 clients in the first year. As for other countries, we may have to ask the Ministry of Foreign Affairs to assist in contacting potential agents.

Mr. Sihasak Puangketkaew, representative of the committee, inquired about the role of embassies in selecting potential groups of people in different countries to become distributors. What criteria do we use in order avoid accusations of bias? Directors Mr. Jadej Insawang and Mr. Boonsak JiamPreecha agreed to set clear and precise guidelines for appointing distributors.

The Chairman stated that in considering distributor appointments, we should primarily consider whether the applicant has a network among people who are ready to apply for Thailand Elite Card membership, the feasibility of the applicant's marketing plan, the readiness of accommodations, target population numbers in each market. If embassies in different countries are requested to contact potential agents, then the company will go there to conduct the negotiations. In case the embassies make sales directly, the company will send a sales team to support the agent or assist in advising potential customers of the card's benefits.

Director Jadej Insawang added that appointment of distributors should be publicized through the different media, or on web sites, so the news would be spread worldwide. This way we can obtain experienced distributors with international marketing capability, avoid any accusations of favoritism, and gain a means to advertise the Thailand Elite Card program.

The chairman explained that since this is the initial phase of the operation, not all the rights and privileges are in place yet, such as the right to take title to real property which still is not supported by law, and there are still not enough customer accommodations such as club houses, golf courses, spas, and hotels. The company is required to get everything ready before making any commitment to the body of distributors. For the present, the company is proceeding with internal selection of distributors. For this reason, we request the assistant of the embassies in different countries in seeking out potential agents. In any event, should any appointed agent be unable to meet sales goals, or act in violation of the agreement, the agreement can be cancelled immediately and another potential agent will be appointed.

2nd Item: Verification of the minutes of the board meeting number 1/2547 (2004).

The Department of Secretary presented the minutes of board meeting number 1/2547 (2004), dated January 21, 2004 for the board's verification.

Mr Jadej Insawang, a Director, inquired about agenda item 4.1, regarding contracting for preparation of the marketing plan and advertisement in foreign countries to be performed by SASO PR Company, Ltd., for the period 2003-200 [last digit illegible]. He asked whether the decision was to proceed with the contract or simply an acknowledgment of the company's marketing proposal without actually authorizing the contract. If authorization had been granted, would there be competitive bidding and preparation of a TOR in order to avoid the accusations of bias.

Director Mrs. Juthamas Siriwan explained that according to the Cabinet Resolution of July 29, 2003, authorized the Tourism Authority of Thailand to establish the Thailand Privilege Card Company, Limited, with management able to act as a mechanism to stimulate movement of foreign currency into Thailand. The company is to be ready for operation by September 15, 2003, so there is a need to expedite the marketing plan and make determinations on marketing operations, both domestically and abroad, so that all facets of management are consistent with reaching that goal within the time allowed. To this end, the consulting firm (Extreme Mission Company, Limited) has selected a company that has direct experience and the capability of handling foreign marketing and public relations. The procurement regulations of the Tourism Authority of Thailand were used in making the selection because at that time, the company had just initiated the program and had no regulations of its own to follow. There are 2 companies that submitted proposals; McCann World Group company proposed to conduct foreign public relations by emphasis on writing articles to be published in the print media and placement of advertisement in various media around the world. The budget for t expenses is about 324 million baht. SASO PR Company proposed a strategy for marketing

and public relations campaign in different formats, including participation in a promotion campaign for sales abroad, support of international functions such as the Unicef Gala Dinner, direct marketing to the target group including direct sales, for a total amount of 112 million baht. At first it seemed that the proposal from McCann Company was more appropriate, but the cost was higher than the budget received. Therefore, we turned to the proposal from SASO PR, which focuses on marketing in 6 main countries; The United States, England, Germany, China, Hong Kong, and Taiwan.

Board Resolution: Verify the minutes of the meeting. Request amendment of Agenda Item 4.1 regarding contracting for marketing planning and public relations overseas by SASO PR Company, as follows: The Board has resolves to acknowledge the marketing and public relations plan as initially proposed, with the additional proviso that the plans must to be consistent with the marketing capabilities and the objectives of the sales agents. The plan is to be presented to the Board of Directors for consideration in detail, along with consideration of the price.

3rd Item: Matters for Information

Matter Number 3.1; A means to grant the right to possession of real property to Thailand Elite members.

Mr. Prasan Wangratanapranee, Deputy Managing Director, proposed a method of allowing Thailand Elite members to take possession of real property, whereby members can invest in real property (house and land) with an area no larger than 10 rai. An affiliate company of TPC would hold title to the property, and would grant a long term lease of 90 years (30 + 30 + 30) with the condition that transfer of the lease is forbidden within 3 years from the date that the lease was initiated. The lease would immediately be cancelled once membership expired. The matter of taxes must also be considered, and there will be the matter of taxes involved, such as the 30% income tax on juristic persons and the 12.5% property tax.

Board Resolution: To acknowledge the approach to grant the right to possess real property to Thailand Elite members in the form of a long term lease (Long Lease) while awaiting amendment of the Tourism Authority of Thailand Act of 1979 pertaining to the rights to title to land in tourist industry areas.

4th tem: Matters for Consideration

Matter Number 4.1: Appointment of Managing Directors to Fill Vacant Positions

Mrs. Juthamas Siriwan, Director and Chairperson of the Board of Directors, stated that 2 Directors had resigned so that only the Executive Director and Mr. Uttama Savanayon remain. Therefore, to

EXHIBIT I



INTERNATIONAL FILM FESTIVAL GUIDE

— 3rd edition —

This one has everything in it!

Over 500 Film Festivals
...in depth & worldwide

Edited by Shael Stolberg



Taos Talking
Picture Festival



Produced in association with
the Kodak Emerging Filmmaker Program

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festivalinfo@festivalproducts.com
www.festivalproducts.com

**INTERNATIONAL
FILM FESTIVAL
GUIDE**

– 3rd edition –

**Edited by
Shael Stolberg**

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MARCH

• Santa Barbara International Film Festival (SBIFF)

SBIFF is a 11 day annual event which has taken place in Santa Barbara since its inception in 1986. Throughout those years it has grown in size and stature and has received worldwide recognition for its diverse programming. A focus of the festival is the discovery of new independent films, documentaries, shorts and video's. They also have expanded their panels and seminars. In 1999, they were the first to screen "Bobby G. Can't Swim" (in video format) as well as "Table for One" and "Suckerfish".

FESTIVAL DATES

March 2-12, 2000

SUBMISSION DATES

December 1, 1999

ADDRESS

1216 State Street, Suite 710
Santa Barbara, CA 93101-2623
USA

TEL: 805-963 0023
FAX: 805-962 2524
E-MAIL: sbiff@west.net
WEB SITE: <http://sbfilmfestival.com>
ENTRIES: 125 screened
ATTENDEES: 37,000
CONTACT: Renee Missel

FILM TYPE

All

COMPETITIVE

Yes

LANGUAGE

Any (English Subtitles)

COUNTRY

Any

ENTRY FEES

\$40US; \$45 international

AWARDS

A jury of motion picture related professionals select winners in 9 categories including Best US Feature, Best Foreign Feature, Best Director, Best Documentary Feature and Short, Best Live Action Short, Award for Artistic Excellence, Best Santa Barbara Filmmaker and an Audience Choice Award.

• Cartagena Film Festival

Cartagena Film Festival is competitive for Ibero-Latin-American films and will be celebrating its 40th anniversary in the year 2000. The festival's programs include international films, premieres, special tributes, a short film competition, meetings, forums and workshops. During the festival, regional television channels broadcast news about the films as well as interviews with directors, actors, actresses etc. Its focus is "to promote the exchange, purchase and sale of films and television programs" as well as "the best and most recent Colombian, Latin American and international films".

FESTIVAL DATES

March 3-10, 2000

SUBMISSION DATES

January 15, 2000

ADDRESS

Calle San Juan de Dios,
Baluarte San Francisco Javier A.A.
1834 Cartagena de Indias
Colombia

TEL: 57-5-660 0966/664 2345
FAX: 57-5-660 0970/660 1037
E-MAIL: festicine@telecartagena.com
WEB SITE: www.escape.com/~spyder/CART.HTML
ENTRIES: 60+
ATTENDEES: 100,000
CONTACT: Victor Nieto

FILM TYPE

All

COMPETITIVE

Yes

LANGUAGE

Any

COUNTRY

Any

APRIL

• Los Angeles Independent Film Festival (LAIFF)

The LAIFF has become a great place to premiere an independent film and seek distribution. One of the goals of the LAIFF is "to showcase and celebrate the diversity of American independent film, giving filmgoers a place to discover and support emerging talent". Past films have included "The Cruise", "Broken Vessels", "The Blackout", "Chutney Popcorn", and "Coming Soon". The festival also schedules many helpful seminars for filmmakers that have focused on digital filmmaking, Distribution, acting, writing as well as directing. In the past, award winning films have had the opportunity to be screened at LAIFF-Japan at the end of the summer.

FESTIVAL DATES

April 13-18, 2000

SUBMISSION DATES

January, 1999 (latest)

ADDRESS

5455 Wilshire Blvd., Suite 1500
Los Angeles, CA 90036
USA

TEL: 323 937 9155**FAX:** 323 937-7770**E-MAIL:** info@laiff.com**WEB SITE:** www.laiff.com**ENTRIES:** 1300

(25 features & 55-60 shorts screened)

CONTACT: Richard Raddon**FILM TYPE**

All

COMPETITIVE

Yes

LANGUAGE

Any (English subtitles)

COUNTRY

US

ENTRY FEES

\$25-45US

AWARDS

Special Audience Awards with valued prize packages are given for Best Feature, director, writer and short.

• Taos Talking Pictures

The Taos Talking Picture Festival is a multi-cultural celebration of cinema artists, their art, and its audience. This festival presents a friendly atmosphere that is inclusive rather than exclusive, allowing festival-goers easy access to filmmakers and films. The highlights include tributes, retrospectives, new independent films, a showcase of Native American film and video, the Open Street Screening and a salute to Latino cinema.

FESTIVAL DATES

April 13-16, 2000

SUBMISSION DATES

January 15, 2000

ADDRESS

7217 NDCBU
Taos, NM 87571
USA

TEL: 505-751 0637**FAX:** 505-751 7385**E-MAIL:** ttpix@taosnet.com**WEB SITE:** www.taosnet.com/ttpix/**ENTRIES:** 150 screened**ATTENDEES:** 10,000+**CONTACT:** Kelly Clement**FILM TYPE**

All

COMPETITIVE

Yes/No

LANGUAGE

Any

COUNTRY

Any

ENTRY FEES

\$25-\$35

AWARDS

The Innovation Award, given out at Taos Talking Pictures, is probably the most unique prize awarded by any festival. The creator(s) of the award winning feature receive 5 acres of land in Taos, New Mexico. The George Melies award (\$5,000 of film-stock as well as some services) is also presented to the best short/video.

• AFI Los Angeles International Film Festival

AFI tries to find ways to put on acceptable, professionally curated shows that exhibit lower-cost production forms, directly, both domestically and internationally. It offers a diverse range of programs; Official Competition, New Directions, European Showcase, World Cinema, Documentaries and Shorts. The festival is a place for filmmakers and industry professionals to meet. AFI is host to prominent, creative individuals who share their experiences and industry knowledge; the Screenwriter's Weekend and Guest Speakers symposiums are impressive offerings. AFI usually runs during the last two weeks of October. In 1999, they had a digital component and the independent feature "Bobby G. Can't Swim" by John Luke Montais won both the Best Director, and Best Film awards, respectively.

FESTIVAL DATES	October 21-29, 1999 October, 2000	FILM TYPE	All
SUBMISSION DATES	June (early); August 2 (late), 1999	COMPETITIVE	Yes
ADDRESS	2021 N. Western Avenue Los Angeles, CA 90027 USA	LANGUAGE	Any
TEL:	213-856 7707	COUNTRY	Any
FAX:	213-462 4049	ENTRY FEES	\$40 shorts, \$50 features
E-MAIL:	afifest@afionline.org		
WEBSITE:	www.afifest.com		
ENTRIES:	400-700 (60 screened)		
ATTENDEES:	40,000		
CONTACT:	Nancy Collet		

• International Student Animation Festival of Ottawa (SAFO)

In 1997, the first International Student Animation Festival, a biennial event, will be held in Ottawa. Aside from film screening, the festival's programmes will include: an official competition, school retrospectives and tribute screenings, professional development workshops and panels, an animarket trade fair, Chez-Ani (the animator's rendez-vous and informal screening room), special events, and opening and closing ceremonies.

FESTIVAL DATES	October 21-28, 1999 October 21-24, 2000	FILM TYPE	Student animation
SUBMISSION DATES	July, 1999 July 15, 1999	COMPETITIVE	Yes
ADDRESS	2 Daly Ave., Suite 120 Ottawa, Ontario K1N 6E2 Canada	LANGUAGE	Any (English & French official languages)
TEL:	613 232 8769	COUNTRY	Any
FAX:	613 232 6315	AWARDS	Festival Grand Prize Category Prizes Craft Prizes Technical Prizes
E-MAIL:	oiaf@ottawa.com		
WEBSITE:	http://oiaf.ottawa.com		
CONTACT:	Chris Robinson		

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EXHIBIT J

United States Courts
Southern District of Texas
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JUN 24 2005

Michael N. Milby, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA

V.

NUMBER 4:01CR00914

DAVID KAY

MEMORANDUM REGARDING SENTENCING

TO THE HONORABLE DAVID HITTNER, JUDGE, UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF TEXAS:

David Kay, through his counsel of record, submits this memorandum regarding sentencing and urges the Court to grant him probation without any term of confinement.

In support of this plea, Mr. Kay would show the following:

FACTS RELEVANT TO SENTENCING

This case was tried before a jury and this Honorable Court; the Court heard all the testimony, including that of David Kay himself. Therefore, no detailed recitation of the facts need be repeated in this memo, but facts that are especially important to the exercise of the Court's discretion in assessing an appropriate punishment will be treated here.

David Kay voiced opposition to succumbing to the extortionate demands of the Haitian customs officers to pay bribes in order to relieve the pressure of delays, unreasonable demands, and false assessments of Haitian Customs occurring on each

shipment of rice into the Haiti plant owned by American Rice Incorporated (ARI). His advice was followed for some time. At one point, he was ordered to begin making payments as demanded by Haitian Customs and, over his objection, he saw to it that the payments were made, believing that such payments did not constitute a violation of United States law. Mr. Kay continued from time to time to advise Mr. Murphy, then president of ARI, that the company should not be making the payments. It became clear to David Kay that continued argument of the point would likely result in his termination so he did not continue to resist. However, he testified the he never would have agreed to the payments had he believed they were a transgression of the law of the United States.

It is also quite relevant to the issue of sentencing that Mr. Kay voluntarily revealed the existence of these payments to counsel for ARI after Mr. Murphy left the company. This revelation resulted directly in a report to the Securities and Exchange Commission and the United States Department of Justice. His own report of the facts resulted in his prosecution. Had he not been honest and forthcoming, he likely would never have been charged in this case. Further, after his report, he cooperated, through his own counsel, in the company's internal investigation of the conduct he reported.

PERSONAL HISTORY OF THE DEFENDANT

David Kay is a 53 year-old man who outlined his social and work history to the Court while testifying, which history was verified and reported by the Probation Officer

in the Pre-Sentence Report. This case is Mr. Kay's first encounter with any phase of the criminal justice system. He has lived his life in such a way as to cause those who know him best to admire his character, integrity, his devotion to his family, and his work ethic. (See attached letters from family, business associates, and friends. These letters are from different individuals from those who testified as character witnesses at trial.) The verdict has not undermined the faith in the basic goodness of David Kay that all of these people possess. Mr. Kay's history is that of a contributor. He has contributed, of course, to the maintenance and support of his family, to the community through taxes and public service, and to his friends and neighbors through his loyalty and example. There is not one indicator in his history that David Kay could ever be a danger to his community.

SUGGESTION AS TO DISPOSITION

WITH ARGUMENT AND AUTHORITIES

David Kay respectfully suggests to this Court that it is in the best interests of the United States, the community in which he lives, and the defendant himself to place him on probation without confinement with terms and conditions that insure his compliance but that allow him to maintain continuity of employment and perform community service in a manner consistent with his skills and experience.

The function of a sentencing court is to impose a sentence upon each offender that is appropriate to the offense and the offender.¹ Sentencing courts should be

authorized to exercise substantial discretion to determine sentences, taking into account facts and circumstances concerning the offense and the individual offender that constitute aggravating or mitigating factors.² Courts sentencing individual offenders should be authorized [and federal courts are now authorized, United States v. Booker, 543 U.S. (2005)] to consider their physical, mental, social, and economic characteristics, even though not material to their culpability, in determining the appropriate sanctions.³ Thus, the sentencing court may tailor a punishment that will effect the purposes of punishment: deterrence, prevention of recurrent criminal behavior, reflect seriousness of the offense, and to provide just punishment for the conduct.⁴ It is said that all forms of punishment have little or only moderate deterrent effect, but community based alternatives have the greatest rehabilitative effect.⁵ So, community supervision under a sentence of probation is likely to accomplish the stated purposes of the penal law.

If it is true that any form of punishment would have at best only moderate deterrent effect (that is, punishment of whatever form in one case is not expected to make others refrain from similar conduct), then attention should be given to the other goals to be accomplished by the sentence. Release under supervision, with a requirement of community service, is most likely to have the greatest rehabilitative effect, that is to say, prevent recurrent criminal behavior. The consequences of a federal felony conviction, along with a community service requirement, would

adequately reflect the seriousness of this offense and provide just punishment. As to seriousness of the offense, it must be said that this case is at the less severe end of the spectrum of criminal conduct. There was no violence; there was no harm to any individual; there is no identifiable victim; the conviction is based on a statute that is, at best, unclear. A sentence structured to allow the offender to maintain a contributing place in society and benefit the community by his free labors certainly would be a just punishment in this situation.

As to the issue of fine, there is a basis upon which the Court could conclude that justice would be served by not requiring Mr. Kay to pay a fine. Title 18 USC §3572 sets forth the factors that a sentencing court should consider when deciding whether to impose a fine and, if so, the amount. Section 3572(a) tells us that the Court shall consider: 1) financial resources of the defendant, 2) burden on any dependents, 3) pecuniary loss on others, 4) necessity of restitution, 5) need to deprive defendant of illegal gain, 5) costs to the government of the sentence.

While Mr. Kay is by no means destitute, his resources are limited to the production of income by his own labors. His wife does not now work outside the home. Mr. Kay's salary was greatly reduced by his company after the verdict in this case. He reported that the equity in his home in Arkansas was about \$90,000 (see PSR, p. 13). That estimate proved to be overly optimistic in that he realized only about \$75,000 upon the sale of that house. Thus his Net Worth must be reduced to \$404,307, an

amount less than the family's one major asset, the retirement fund. Because of the reduction of his salary, Mr. and Mrs. Kay come up short each month by approximately \$1,700. All of the assets (i.e. the retirement fund) are community property and the obligations are community liabilities, thus, the imposition of fine on Mr. Kay equally punishes his wife, an innocent party. His financial resources do not support a fine, especially in light of the facts of this case.

There were no gains to Mr. Kay as a result of this offense behavior, so there is no need to deprive him of illegally obtained money or property. If the Court were to order community service, the value of that service to the public would outweigh any costs of supervision.

CONCLUSION

It seems that the Court is dealing with a fact situation involving the following:

1. One aberrant episode of misconduct;
2. Non-violent conduct with no victim;
3. An offense based on a statute which could not be said to be clearly applicable to the conduct proved when viewed by a person to whom it has been applied;
4. A genuinely remorseful offender who makes no excuses for his conduct, but leaves to his lawyers to argue whether that conduct was a violation of United States law;
5. An offender with a history of contribution who has talent, desire, opportunity,

and ability to continue a life-long contribution to this society;

6. An offender who can make an immediate, substantial, and significant impact through community service;

7. An offender with a loving, disciplined support system that will insure compliance with whatever terms are imposed by the Court;

8. An offender who is neither a danger to the community, nor a risk to abscond;
and

9. An offender who is being daily punished by the shame and guilt feelings that come from a federal felony conviction.

With these circumstances, it is respectfully suggested to the Court that this situation presents a textbook case for probation. While strict application of the United States Sentencing Guidelines calls for confinement, this case demonstrates the wisdom of giving sentencing courts discretion to fashion a sentence that is fair and fits the specific facts of a case and the circumstances of a particular human being before the court. A sentence of probation allows the immediate contribution of community service, allows Mr. Kay to maintain his employment (thus insuring servicing of existing debt, payment of taxes, and meeting of other obligations), gives the Court absolute control over the defendant's life, avoids a further financial burden on the United States, and meets purposes of the penal law as expressed by Congress.

Therefore, David Kay prays this court to grant him probation without

confinement, and to assess no fine or, at most, a minimal fine.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert C. Bennett", with a long horizontal flourish extending to the right.

Robert C. Bennett
SBT# 02157000
Bennett and Secret, L.L.P.
808 Travis Street, 24th Floor
Houston, Texas 77002
713/757-0679

EXHIBIT K

UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
FILED

UNITED STATES DISTRICT COURT JUN 10 2005
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MICHAEL N. MILBY, CLERK OF COURT

UNITED STATES OF AMERICA §
§
VS. § CRIMINAL NO. H-01-914-S
§
DAVID KAY and §
DOUGLAS MURPHY §

DEFENDANT MURPHY'S SENTENCING MEMORANDUM

TO THE HONORABLE DAVID HITTNER, UNITED STATES DISTRICT
JUDGE: COMES NOW, DOUGLAS MURPHY, Defendant herein, who, through
undersigned counsel, respectfully files this Sentencing Memorandum:

I.

A CHANCE FOR A FAIR SENTENCE

This is a new era in criminal sentencing and it presents a great opportunity to this Court to sentence the person and not the offense; to review and apply important factors that previously were not to be considered under the Guidelines.

The Court may also take into account the vagaries of the FCPA proscriptions. This Court recognized early that the facts of this case may not have risen to a cause of action under the FCPA. The same reservations that led to the original dismissal are now fair factors to consider when contemplating the sentence of the Defendant.

With the Guidelines serving only in an advisory role since *Booker*¹, this Court can take into account that this application of the FCPA to facts such as these is an vast new broadening of the scope of this criminal law. It is clear from the testimony that there was a genuine question in the minds of the Defendants as to whether these payments were violations of Federal law.

There are other issues that were formerly not applicable under the guidelines scheme that can and should now be considered, including the dire state of affairs in Haiti (both at the time of the offense and since), the Defendants documented efforts to build infrastructure and a rice farming program for the benefit of Haitians, and ARI's overall efforts to provide reasonably priced rice to the people of Haiti. All of these positive factors can be considered in determining an appropriate sentence even though they are not contemplated by the Guidelines scheme.

The Court may also consider other aspects of Douglas Murphy's personal history, including his early academic success, his compassionate and dedicated business leadership in agribusiness spanning two decades, his reputation in the Houston community, and his irreplaceable role in the lives of all of his family and friends. Much of this background is detailed in the PSR, the letters attached to this memo, and in the testimony at trial.

¹ 543 U.S. _____, 2005 WL 50108 (U.S. 2005).

It is now clear that the Guidelines are not to be applied uncritically and they are only one of a number of sentencing factors to be considered in sentencing.²

In *United States v. Ranum*, the sentencing court notes that listed in Section 3553(a) of the Sentencing Reform Act³ are other equally important sentencing factors to be considered by the court along with the guidelines range, including (among others): (1) the nature and circumstance of the offense; (2) the history and characteristics of the Defendant; (3) the kinds of sentences available; (4) the need to avoid sentencing disparities; and (5) the need to provide restitution by the defendant.

Booker rejects mandatory guideline sentences based on judicial fact-finding, and holds that there should be no de facto continuation of mandatory guidelines by simply using new terminology to avoid consideration of other relevant sentencing factors beyond the guideline calculations. The Guidelines are no longer binding and the courts do not need to justify a sentence outside of the Guidelines with any specific reasoning, use of “departures”, or any other explanation.

Some appellate courts have also expressly stated that these other non-guideline factors *must be considered* prior to sentencing. In *United States v. Hughes*, Case No. 03-4174, at 23-24 (4th Cir. 2005), the court wrote that the

² See *United States v. Ranum*, Case No. 04-CR-31, Memorandum, Page 2 (E.D. WI, 2005).

³ 18 USC , Sec. 3553.

sentencing court “shall consider [...] other relevant factors” before imposing a sentence. *Id* at 24.

Finally, it is worth noting that the original stated purpose of the Sentencing Guidelines was to promote respect for the law and provide “just punishment” (Sec. 3553 (a)(2)). The true purpose of the Sentencing Guidelines therefor should not dissuade the review of any possible sentencing factor, but rather, encourages a review of *all applicable sentencing factors* to provide a “just punishment” for the Defendant. See *Ranum* at 4.

II.

OTHER SENTENCING FACTORS TO BE CONSIDERED IN THE DEFENDANT’S CASE

A. NATURE AND CIRCUMSTANCE OF THE OFFENSE

The details of the offenses in question are documented in detail in the PSI Report, and the Defendant has specific objections were detailed in his filed objections to the PSI Report.

The evidence at trial and the letters attached to this memo attest to the work done in the Haitian market under Douglas Murphy’s tenure at ARI. The evidence at trial included witness testimony, memoranda, and video that all showed the efforts made by the company to assure a quality product was delivered to the Haitian market. The evidence also showed that the company had a significant

presence in the country, offering infrastructure improvements, farming programs, and employment for many Haitians. While the Government contends that the company failed to pay its full share of tax, ARI did pay significant taxes during its time in Haiti and foreign tax documents establish that all tax issues were settled to the satisfaction of the Haitian government. This is amplified by the fact that not one Haitian government official was produced by the Government to document any loss, or for that matter, provide any testimony of any kind.

B. THE HISTORY AND CHARACTERISTICS OF THE DEFENDANT

Douglas Murphy has been well respected corporate executive for over twenty years. He has balanced the responsibility of being a senior executive in the agricultural industry and an attentive and loving father and husband. Doug graduated from Harvard with a bachelors degree in psychology in 1978 and then went on to complete his Masters of Business Administration at Harvard in 1982.

While he had many opportunities, Doug decided to enter into the agriculture industry, following in his father's footsteps. In 1982 Doug Murphy joined Comet Rice, Inc (later to become American Rice, Inc.) as director of sales and marketing. Doug went on to hold several executive positions within ERLY Industries (American Rice's parent company) and American Rice, Inc. itself, culminating in his holding the position of CEO and President of American Rice from 1993-1999.

Doug also has served as a director on the board of American Rice, Inc., ERLY Industries, Inc., and Compass Bank.

Throughout his business career Douglas Murphy has been a respected member of the Houston business community, a fact that is reflected in the many letters of support that are attached to this motion.

Also included in many of these letters, and the testimony at trial (even from Lawrence Theriot himself), was the concern and interest Doug Murphy and American Rice, Inc. had for the Haitian people and their plight. This concern was probably best highlighted by the Haitian rice growing program instituted under Doug Murphy and the investment made overall in the Haitian market.

Besides the allegations in the present case, including those extraneous acts supported only by the testimony of the Government's witness Lawrence Theriot, Doug Murphy has had an exemplary career and has done much to benefit this community and other communities through his leadership of various agribusiness entities. The attached letters and background information in the PSR show a history of service through business and civic action both before and after the acts alleged in the indictment.

At home, Doug Murphy is the father to three well-adjusted and happy children and husband to his wife of twenty three years. Their letters are also attached and attest to Doug's important place in all of their lives.

When the Court reviews the history of Douglas Murphy, as a family man, a businessman, and a citizen it is clear that he has led an exemplary life with the exception of the charges that bring him now in front of the Court for sentencing. The fact that he has been blameless in his behavior, and has in fact been a positive contributor to the Houston community and his family, should be considered in accessing his punishment.

C. THE KINDS OF SENTENCES AVAILABLE

The Defendant urges the court to consider a probationary or a "merged sentence" or some other form of substituted sentence for confinement and to consider a range of punishment that will allow the Defendant to continue to work as much as practically possible to pay his fine and restitution obligations and meet his family responsibilities.

Given the Defendant's background, his acceptance of responsibility, and his ongoing responsibilities, we ask the Court to access punishment on the lowest end of the spectrum.

EXHIBIT L

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

UNITED STATES OF AMERICA,

v.

Criminal No.: 2:08cr194

SHU-QUAN-SHENG,

Defendant.

POSITION PAPER ON SENTENCING

This case, like any other sentencing in the United States District Court, is governed by the mandates of 18 U.S.C. § 3553(A). The defendant, by and through counsel, will attempt to examine each factor specified by Congress and set forth facts and circumstances relevant to the Court's consideration and determination of the appropriate sentence to impose on this defendant.

I. The history and characteristics of the defendant.

Quan-Sheng Shu (hereinafter "DR. SHU"), is a citizen and resident of the United States, born in Shanghai, China on May 21, 1940. SHU received his bachelor's degree from the China University of Science and Technology, Beijing, China, in July, 1963, and earned his PhD in Physics from the Institute of Low Temperature, Hangzhou, China, in September, 1970. DR. SHU remained at the Institute of Low Temperature until September 1977 when he became an Associate Professor of Physics at Zhejiang University, Hangzhou, China and remained in that position until February 1983. In 1985, SHU obtained a full professorship at Zhejiang University while working at the U. S. Department of Energy's Fermi National Accelerator Laboratory.

DR. SHU first entered the United States in March of 1983 to pursue his "American Dream" to conduct research in ultra-low temperature physics at the University of Washington, Seattle, Washington. DR. SHU became a naturalized U. S. Citizen on May 13, 1998.

DR. SHU is widely recognized throughout the world as one of the leading experts in applied superconductivity and cryogenic technology. He has received numerous commendations and awards. He has been honored by many prestigious institutes and professional associations. Just in the United States he has completed seven important research and development projects for the U. S. Department of Energy, one magnetic levitation project for NASA, and has been granted two patents. Attached hereto as Exhibit "A" is a list of Department of Energy and NASA grants to AMAC and DR. SHU in the last 10 years. He has published six technical books and more than 100 technical papers. He has been invited to give talks and colloquies more than sixty times in fourteen countries in the U. S., Europe, and Asia. Attached hereto as Exhibit "B" is a list of DR. SHU'S selected papers that have been published.

He has received the following awards and sat on the following Boards:

Board Member, International Institute of Refrigeration (Ultra-low Temperature Physics and Cryogenics Committee (1999 - present)

Board Member of Directors for Cryogenic Engineering Conference (1999-2003)

Chief Editor: Advances of Cryogenic Engineering Vol. 45, New York, Boston, Dordrecht, London and Moscow, 2001

Program Chairman of Large Scale Applications for Applied Superconductivity Conference 2000

An Outstanding Scientist of 21st Century in Superconductivity and Cryogenics. Signed & Sealed by the International Biographical Center, Cambridge England

2002

Outstanding Achievement Award for success in "High Power RF Window and its Input Coupler Technology" by Commonwealth of Virginia 2001

Outstanding Achievement Award for success in "Energy Efficient Cryogenic Transfer Line with Magnetic Suspension" by Commonwealth of Virginia 2002

Outstanding Achievement Award for success "Novel Reliable, Cost Effective Input Coupler for High RF power" by Commonwealth of Virginia 2002

Received a China National Important Scientific Award for Developing a New Cryogenic Neuron-surgery Instrument of Extracting Brain Tumors, 1979

In addition to his vast and extraordinary knowledge and achievements in his field, DR. SHU has formed close personal and professional relationships with many of his colleagues. Attached hereto as Exhibit "C" are the letters attesting to DR. SHU'S character and professional reputation. The letters are from the following people:

Mr. James R. Fesmire, Sr. Principal Investigator, NASA KSF Center
Professor Carlo Pagani, University of Milano, Italy
Professor Kenji Saito, High Energy Accelerator Research Organization, Japan
Dr. Waldemar Singer, Deutsches Elektronen-Synchrotron Lab, Germany
Ms. Zhan McAdams, Dr. Shu's daughter, MBA and CPA
Mr. Joseph Susta, Sr. Principal Engineer, AMAC Technical Director
Mr. Michael Coffey, President, Cryomagnetics, Inc.
Dr. Lixin Yin, Chief Mechanical Engineer and Division Head in SSRF, China
Dr. Jonathan A. Demko, Sr. Development Engineer, Oak Ridge National Lab
Dr. Peter Kneisel, Sr. Scientist, DOE Jefferson National Laboratory

Combined with his academic and research endeavors, DR. SHU also launched a commercial enterprise, a trading group, AMAC International Inc., located in Newport News. He incorporated AMAC INTERNATIONAL, INC. (AMAC) in the Commonwealth of Virginia on October 14, 1998. DR. SHU served as the President, Secretary and Treasurer of AMAC. It was the first American cryogenic group ever to be launched in China. It included leading U. S. Companies in the cryogenic field, attached hereto as Exhibit "D" is the

introductory letter from the American Cryogenic Group to Chinese customers.

AMAC and DR. SHU became quite successful in marketing both U. S. and international manufacturers. All told, AMAC represented 17 companies as an agent in their attempts to enter the Chinese market. Attached hereto as Exhibit "E" is a list of those manufacturers.

As a result of those efforts, AMAC has a customer base totaling more than 100. The contracts begin in 2002 and continue onto 2007. Attached hereto as Exhibit "F" is the list of international customers.

The point of including those lists is to demonstrate the extent of AMAC and DR. SHU'S business relationships that did conform to the requirements of the law. Proper export licenses, if necessary, were obtained and proper documentation was filed. AMAC and DR. SHU operated a reputable and legal business advancing the field of applied superconductivity and cryogenics, and opening the door to the new Chinese marketplace for American companies. But for the series of events at issue here, DR. SHU has led an exemplary life, conducting himself in accordance with the requirements of the law and the highest standards of his profession.

DR. SHU now asks the Court to take into consideration his entire life and to recognize these events as an aberration in an otherwise exemplary career. While he understands and accepts the need for punishment, he would ask the Court to balance this offense against the achievements, awards, and accomplishments which mark his life, and which best represent his history of significant contributions to his country and society and his honorable character.

DR. SHU would also ask the Court to consider his age as a factor in imposing a

sentence. He is 69 years old and has the usual physical ailments associated with one of that age. Any incarceration imposed on a defendant of that age would be more difficult than for a man one-half his age. DR. SHU had gallbladder surgery in 1994 while living in Dallas, Texas. In 2002, DR. SHU had a MRI conducted at Riverside Regional Medical Center, located in Newport News, Virginia, relative to a lower back pain. DR. SHU has hearing aids in both ears and suffers from hypertension and osteoporosis. DR. SHU is an active patient of Dr. Putland, and is currently prescribed Fosamax 35 mg tablets; Lodine 400 mg tablets for pain/inflammation; and Zestril 5 mg tablets for hypertension. Additionally, DR. SHU has been seen for leukopenia, tremor, BPH with obstruction, osteopenia, keratosis, seborrheic and voiding hesitancy; headache/tension; chest pain; decreased hearing; and malignant neoplasm-prostate; rotator cuff syndrome, HTN, and stasis dermatitis; eczema and groin pain. He also has continuing shoulder problems and is in need of arthoscopic surgery.

Put simply, any period of imprisonment will take a much harsher toll on DR. SHU, then it would a younger man. He asks the Court to take this into consideration.

II. The nature and circumstances of this offense.

DR. SHU pled guilty to a three-count criminal information charging him with two violations of 22 U.S.C. § 2778, exporting defense service and articles without a license, and one count of 15 U.S.C. § 78dd-1 and 78dd-2, bribery of a foreign official.

(A) Counts One and Two

Count One charges DR. SHU with exporting a defense service, namely the assistance in the design and development of a cryogenic fueling system. Primarily this count relies on DR. SHU'S negotiation with the Beijing Special Engineering Design and

EXHIBIT M

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UNITED STATES DISTRICT Court
SOUTHERN DISTRICT OF FLORIDA

Case No. 06-20797-CR-SEITZ

UNITED STATES of
AMERICA,

Plaintiff,

v.

CHRISTIAN SAPSIZIAN,

Defendant.

_____ /

ORDER RESETTING HEARING

The above-entitled cause came on for hearing
before the HONORABLE PATRICIA A. SEITZ, United States
District Judge, at the Wilkie D. Ferguson Building, 400
Northeast Miami Avenue, Room 11-4, Miami, Florida, 33125
on the 23rd day of September, 2008, scheduled for
8:30 a.m. commencing at 8:37 a.m. to 10:01 a.m.

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APPEARANCES:

On behalf of the Plaintiff:
CHARLES E. DUROSS

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U.S. DEPARTMENT OF JUSTICE
CRIMINAL DIVISION, FRAUD SECTION
1400 New York Avenue, N.W.
Bond Building, Third Floor
Washington, DC 20005
(202) 353-7691

ANDREW GENTIN
U.S. DEPARTMENT OF JUSTICE
CRIMINAL DIVISION, FRAUD SECTION
1400 New York Avenue, N. W.
Bond Building, Third Floor
Washington, DC 20005
(202) 353-7691

On behalf of the Defendant
ROY JEFFREY KAHN
799 Brickell Plaza
Miami, Florida 33131-5198
(305) 358-7400

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(Thereupon the following proceedings were had:)

THE CLERK: The United States District Court is
now in session, the Honorable Patricia A. Seitz
presiding. Case number 06-20797-Criminal United States
of America versus Christian Sapaizian. Counsels please
state your appearances.

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3 MR. PALACIOS: Good morning, Your Honor.

4 THE COURT: Good morning. Thank you for being
5 here.

6 MR. DUROSS: They spent many of those hundred
7 of hours with Mr. Sapsizian along with the us.

8 THE COURT: Mr. Sapsizian --

9 THE WITNESS: Yes, Your Honor.

10 THE COURT: To the extent that I can on the
11 behalf of the citizens of this country, you are forgiven.

12 THE WITNESS: Thank you very much, Your Honor.

13 THE COURT: I accept your statement of remorse
14 and over the period of time I have seen this case and I
15 believe that it is a truly genuine change of heart. That
16 I have been able to see in the extraordinary cooperation.
17 I will celebrate my tenth anniversary in November on the
18 bench. And in over that course of time, I have sentenced
19 close to 15,000 people, that is a lot of life stories. I
20 think that I can safely say that the extent of the
21 cooperation in this case is greater than the cooperation
22 that I have seen in any other case.

23 It has on going for two years. It has been a -- I know
24 of only one other case, probably that I have seen the
25 level of acceptance of responsibility and assistance to

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1 bringing justice as I have in this particular case. I
2 going grant the government 5K 1.1 motion, I also am
3 required to fashion a sentence though under 3553 (a) 1
4 through 7 and that requires me to take a look at all of
5 the sentencing factors that congress has prescribed and
6 that includes of the natures of the offense and as you
7 yourself has said and has been recounted to the extent of

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8 the offense is significant. We would -- to ignore it or
9 put it under the rug particularly considering the Court
10 role that you played for the extent of time would be
11 hypocritical and disserve justice. On the other hand, I
12 also look at the nature of your background and that
13 provides an individual on one hand who by the description
14 of your wife, the letters from the friends and family,
15 all branch of individuals is someone who has been a man
16 of honor, except for this stigma.

17 And you are right, you have deserved your courageous
18 grandparents and that is what we are talking about. It's
19 so easy in this culture today where a man's worth is
20 measured by how many toys they have how much money they
21 have, and how much access to power they have, that we all
22 go along, to get along as oppose to stand up and do the
23 populace thing, because it is the right thing. But you
24 did to the right thing in stepping up accepting your
25 responsibilities and as I look at the other factors that

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1 I need to take into consideration fashioning the fair and
2 just sentence, I take into consideration that you have
3 been on electronic monitoring for almost two years,
4 Mr. Garcia?

5 PROBATION: Yes, Your Honor, that is correct.

6 THE COURT: And during that time, you have been
7 saving the tax payers of the United States, \$25,000 a
8 year for incarceration, because you have been paying your
9 own incarceration, so to speak. You have been away from
10 your family again, which one of the aspects of
11 imprisonment. And your health has suffered greatly and,

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12 again, you have been with the help of probation, you have
13 been mainly providing for that. I am particularly
14 concerned about the recent events of this last summer and
15 the information that shows that the health is become a
16 little more precarious. I look at the two of the us,
17 Mr. Sapsizian, we are born the same year and somehow I
18 feel that the stress you have been under has probably
19 taken a greater toll and it reminds me of how blessed I
20 am, that I am not going to through that.

21 Having said that, it was a choice that you made and
22 there are consequences to that choice. But in fashioning
23 the sentence particularly taking into consideration the
24 Court, in addition to granting the 5K which the
25 government has requested would take us down from a 87

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1 month imprisonment to the low end of a 61 month term of
2 imprisonment. We are roughly down from a level 29 to a
3 level 25. The Court also believes that I should take at
4 this time recognition of the two years in jail or the
5 form of jail and the medical condition that you are and
6 to fashion a sentence that is a reasonable sentence of
7 under booker. I impose a sentence of 30 months. And I
8 presume since there is a desire for continuing
9 cooperation that I suspend the sentencing date, I mean,
10 the surrender date.

11 MR. DUROSS: The is correct, Your Honor.

12 THE COURT: Court has considered the statements
13 of all of the parties in the presentence report which
14 contains the advisory guidelines and the statutory
15 factors. It is the finding of the Court that the
16 defendant is not able to pay a fine. It is the judgment

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17 of the court that the defendant, Christian Sapsizian is
18 committed to the bureau of prison to be imprisoned of a
19 term of 30 months as to counts one and 27 months as to
20 count two both terms to run concurrently. Upon release
21 of imprisonment Mr. Sapsizian will be placed on
22 supervised release for current terms of three years as to
23 counts one and two. In 72 hours of release from the
24 custody from the bureau of prison, Mr. Sapsizian you must
25 report in person to the probation office in the district

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1 in which you are released. Once you are on supervisory
2 release you shall not commit any crimes, you are
3 prohibited from possessing a firearm or other
4 dangerous -- and you shall not possess a controlled
5 substance and you should comply with the standard
6 condition of the supervised release and it can be the
7 following special conditions: The mental health and
8 treatment is set forth in part G of the presentence
9 investigation report. Mr. Sapsizian, you have been
10 performing community service which I have included in
11 fashioning that sentencing that I have fashioned, but I
12 might as well give you credit for it, so as you good
13 forward let me include a requirement as part of the
14 presentence in the supervise release. To a certain
15 extent, I don't want to put a number. I understand that
16 you are spending about five a six hours a day working
17 there, and I would like for you to continue to doing
18 that, so I would like for you to keep track of your
19 hours, but I'm not going impose a particular number.
20 Again, because I think that you have demonstrated that as