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 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,) GOVERNMENT'S REQUEST FOR JUDICIAL
 15) NOTICE OF SENTENCING TRANSCRIPTS
 v.) AND FRESH APPELLATE DECISION IN
 16) OTHER FEDERAL BRIBERY AND BRIBERY-
 GERALD GREEN and) RELATED CASES; EXHIBITS
 17 PATRICIA GREEN,)
) Sent. Date: June 3, 2010
 18 Defendants.) Sent. Time: 9:30 a.m.
)
 19)
)
 20)

21 Plaintiff United States of America, through its counsel of
 22 record, the United States Attorney's Office for the Central
 23 District of California, and the Fraud Section, United States
 24 Department of Justice, Criminal Division, hereby requests that
 25 the Court take judicial notice of certain judicial materials from
 26 other federal bribery and bribery-related cases as part of the
 27 Court's sentencing analysis in this case.

1 First, the government requests judicial notice of the
2 sentencing transcripts in United States v. Young, 07-CR-609 (D.
3 N.J. 2008), and United States v. Head, 06-Cr-1380 (SDCA 2007),
4 which were two of the defendants' "best FCPA cases" proffered in
5 Defendants' Gerald and Patricia Greens' Response To Court's April
6 29, 2010 Inquiry Re Three Citations To Prior FCPA Dispositions,
7 filed on May 6, 2010 (Doc. No. 347). As illustrated by the
8 attached transcripts, the defendants in both of these cases
9 accepted responsibility for their crimes, extensively cooperated
10 with the government, and provided a level of cooperation that
11 directly led to the convictions of other defendants.

12 Second, the government also hereby requests that the Court
13 take judicial notice that just one week ago, in United States v.
14 McNair et al., - F.3d -, 2010 WL 1881884 (C.A.11 (Ala.) May 12,
15 2010), the Eleventh Circuit addressed, expressly and at length,
16 sentencing issues in the context of a significant domestic
17 bribery case where work obtained by bribery was performed in good
18 faith, and where defendants contended there was "no loss" to the
19 government victim.

20 **A. SENTENCING TRANSCRIPTS**

21 1. United States v. Young, 07-CR-609 (D. N.J. 2008)

22 The government would like to draw the Court's attention to
23 particular passages in defendant Young's sentencing transcript,
24 attached hereto as Exhibit 7, that illustrate the level of
25 acceptance, cooperation, and direct benefit to the government as
26 a result of such cooperation.

1 **a. Acceptance**

2 At sentencing, defendant Young stated:

3 I think first and foremost, **I'm standing here and I**
4 **take full responsibility for my actions.** There is no
5 question about that. I think the second point I'd like
6 to bring up is just the fact that **I'm ashamed...**I am
7 ashamed of my self for going through this...its been a
8 long four years since this was first brought out. It
9 was quite stupid in a lot of ways.

10 (Exhibit 7 at 6) (emphasis added).

11 **b. Cooperation**

12 On the subject of cooperation, counsel for defendant stated:

13 My client lived in England...when he became aware of
14 this investigation, he on - at his own expense came to
15 the United States to meet with the government agents to
16 learn about the case and quickly decided to cooperate.

17 (Exhibit 7 at 4).

18 Defendant Young expanded on the subject of his cooperation
19 as follows:

20 I have been cooperating with the Government for the
21 last four years. I understand the investigation maybe
22 ongoing. I'll continue to cooperate and provide
23 whatever resources I can in support of that.

24 (Exhibit 7 at 6).

25 **c. Direct Benefit to Government from Cooperation**

26 Government Counsel stated the following about the direct
27 benefit to the government from the defendant's cooperation:

28 He [Young] has been fully cooperative since he was
29 first approached. It has been extensive cooperation,
30 it has been fulsome cooperation, and it has been
31 significant cooperation. As we spelled out in 5k, we
32 think that it has been valuable to our investigation,
33 that **we would not have secured the indictment against**
34 **Mr. Ott without it.**

35 (Exhibit 7 at 7) (emphasis added).

1 2. United States v. Head, 06-Cr-1380 (S.D. Ca. 2006)

2 Similar to defendant Young, the government would like to
3 draw the Court's attention to particular passages in defendant
4 Head's sentencing transcript, attached hereto as Exhibit 8, that
5 illustrate the level of acceptance, cooperation, and direct
6 benefit to the government as a result of such cooperation.

7 As an initial matter, however, the Court should also
8 understand that defendant Head was not charged with or convicted
9 of the anti-bribery provisions of the FCPA. Rather, defendant
10 Head was charged in an information with, and pleaded guilty to,
11 falsifying the books, records and accounts of a U.S. securities
12 issuer. The information in this case is attached hereto as
13 Exhibit 9.

14 a. Acceptance

15 At sentencing, defendant Head stated:

16 I would simply like to start by fully admitting my current
17 knowledge of the crime that I committed, **and I fully accept**
18 **the guilt for that...**virtually every day of my life I think
19 about the fact by that one act or that series of acts
20 resulting in that one crime that **I have changed my whole**
life from...I would say of a very successful military
career, retiring as a full colonel from the reserves,
serving at a 3-star level, as a defense civilian, being an
honorable member of the community, **to becoming a criminal.**

21 (Exhibit 8 at 20) (emphasis added).

22 b. Cooperation

23 Counsel for defendant Head recounted his client's
24 exceptionally unguarded and groundbreaking cooperation with his
25 company's internal investigation:
26
27
28

1 When Titan conducted its internal investigation, all
2 the other officers were interviewed and when it came
3 around to Mr. Head's turn he did acknowledge that there
4 was this agent in Benin, and payments were made to that
5 Agent. The lawyers who were conducting that interview
6 were very surprised by that because everybody else had
7 just denied that, so without any promises from the
8 government, without anything else, he told the truth.

9 (Exhibit 8 at 18) (emphasis added).

10 Government Counsel characterized the defendant's willingness
11 to cooperate as follows:

12 He [Head] sat down with agents from the FBI and the
13 Defense Department prior to being charged or even
14 receiving a target letter, and without a lawyer, and
15 continued to tell the facts as he knew them.

16 (Exhibit 8 at 18).

17 Notwithstanding these facts, the district court struggled
18 with the need for any sentence to afford adequate deterrence:

19 **There's cooperation that's taken place in this case,**
20 **but a lot of that is self-serving...you've been able to**
21 **essentially get the government to agree to something**
22 **that's a lot less than 34 months, but, really, does**
23 **home detention really act as any type of deterrent?**
24 **Does it really promote respect for the law? Is it**
25 **really going to keep anyone who might take a look at**
26 **this case and say, "well, I better not do this in the**
27 **future because look what might happened to me, I might**
28 **get home detention."**

(Exhibit 8 at 13-14) (emphasis added).

c. Direct Benefit to Government from Cooperation

Government Counsel stated the following about the direct
benefit to the government from the defendant's cooperation:

I think it [cooperation] played a very important
part...and I also don't think this would have been
uncovered, at least what happened in Benin, without Mr.
Head telling the truth, without any promises being made
by anybody."

1 (Exhibit 8 at 18) (emphasis added).

2 The district court considered the fruits of the defendant's
3 cooperation:

4 You've been a law-abiding citizen for many, many years.
5 You've provided a great deal of services to this
6 country previously, and I also take into account that
7 without your cooperation, I suppose the original
8 underlying crime to which Titan pled guilty to might
9 not have been able to be successfully prosecuted....but
I think we do need to at least send a message to - you
know, to other people who might be inclined to do the
same thing to think about it because, even if they
cooperate, they're going to get some time. They may
get even more time than you're getting.

10 (Exhibit 8 at 22-23) (emphasis added).

11 **B. FRESH APPELLATE COURT RULING ON BRIBERY SENTENCING LOSS**

12 An appellate opinion last week speaks to a sentencing issue
13 that this Court has raised, i.e., how to sentence bribery cases
14 where the contractors intend to perform the contracted services,
15 compared to a scenario where bribing contractors intend all along
16 to scam the government victim by "running off" with public funds
17 without performing. The decision in United States v. McNair et
18 al., - F.3d -, 2010 WL 1881884 (C.A.11 (Ala.) May 12, 2010),
19 issued one week ago by the Eleventh Circuit, is another
20 significant data point for this Court on where the "heartland" of
21 bribery cases lies.

22 The McNair case was a consolidated appeal from multiple
23 trials involving multiple contractors' work on the sewer system
24 of Jefferson County, Alabama. The work took place over a number
25 of years between 1999 and 2003, totaled over \$3 billion in costs
26 to the county, and often took the form of "no-bid" contracts

1 awarded without competitive bidding. See 2010 WL 1881884, at *2-
2 *5. Defendants had presented trial testimony that their
3 experience, skills, and business reputation were strong enough
4 that they did not need to resort to bribery to win county
5 contracts. Id. at *9. At sentencing, defendants argued that the
6 government had failed to show the county had suffered any
7 identifiable losses from the bribery.¹ Id. at *46, *48, *61.

8 In imposing sentence on defendant McNair, a county
9 commissioner, the district court calculated his guidelines under
10 U.S.S.G. §2C1.1 by using the amount of the bribes the public
11 official received, \$851,927, resulting in a guidelines range of
12 63-70 months. Id. at *46. The district court imposed a sentence
13 of 60 months imprisonment and \$851,927 in restitution. Id. at
14 *47. On appeal, defendant McNair contested that there were any
15 losses to the County for purposes of restitution. The Eleventh
16 Circuit affirmed the restitution award, upholding the district
17 court's finding that the bribes were a direct cost of business
18 that the contractor paid and made up for at some point by adding
19 back into the contracts or bills that the county had paid. Id.
20 at *46. Moreover, citing the Supreme Court, the Eleventh Circuit
21 reasoned that the government suffers a loss in the amount of the
22

23
24 ¹ There was one instance where a tunnel-boring machine
25 became stuck in the ground because a contractor may have used the
26 wrong machine. As a result, the contractor failed to complete
27 work at the original contract price, the county paid for the
28 machine's removal, and a corrupt public official (defendant
Swann) declined to invoke the contractor's bond -- instead
permitting the contractor to complete the work while being paid
out of a new contract. McNair, 2010 WL 1881884 at *11.

1 ill-gotten benefit to the public official. Id. at *48 & n.109
2 (citing United States v. Carter, 217 U.S. 286, 305-06 (1910)).

3 The district court imposed a 102-month sentence on defendant
4 Swann, director of the county agency overseeing the work. Id. at
5 *50. The district court had calculated a guidelines range of 151
6 to 188 months using the net profits of the contractors, rather
7 than the lesser amount of the bribes paid to defendant Swann,
8 which alternatively would have resulted in a guidelines range of
9 51-63 months. Id. at *52-*53. The district court reasoned that
10 even if it had used the lower amount of the bribes paid, it would
11 have varied upward from the guidelines sentence and still imposed
12 a sentence of 102 months. Id. at *53. The Eleventh Circuit
13 upheld the substantive reasonableness of this sentence under 18
14 U.S.C. § 3553(a), and held that "[t]he district court's
15 consideration of Swann's lack of remorse was not improper,"
16 citing precedent that an upward variance may be necessary to
17 protect society because it was unlikely the defendant would be
18 rehabilitated given his attitude and lack of remorse. Id. at *56
19 (citing United States v. Kapordelis, 569 F.3d 1291, 1318 (11th
20 Cir. 2009)).

21 ///

22 ///

23 ///

1 C. CONCLUSION

2 The government therefore requests that the Court take
3 judicial notice of the foregoing judicial facts about these other
4 federal bribery and bribery-related cases in sentencing
5 defendants GERALD GREEN and PATRICIA GREEN.

6 DATED: May 19, 2010

Respectfully submitted,

7 ANDRÉ BIROTTE JR.
United States Attorney

8 CHRISTINE C. EWELL
9 Assistant United States Attorney
Chief, Criminal Division

10
11 /s/
12 BRUCE H. SEARBY
Assistant United States Attorney
13 JONATHAN E. LOPEZ
Senior Trial Attorney
14 United States Department
of Justice, Fraud Section

15 Attorneys for Plaintiff
UNITED STATES OF AMERICA

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA .	Case No. 07-CR-609(GEB)
.
.	402 East State Street
v.	Trenton, NJ 08608
.
ROGER MICHAEL YOUNG,
.
Defendant.
.	September 2, 2008
.	1:02 p.m.

TRANSCRIPT OF SENTENCING HEARING
BEFORE HONORABLE GARRETT E. BROWN, JR.
UNITED STATES DISTRICT COURT CHIEF JUDGE

APPEARANCES:

For the Government:	Office of the U.S. Attorney By: KATHLEEN HAMMOND, ESQ. PAUL MAYDA, ESQ.
For the Defendant:	Mallon & McCool By: STEVEN McCOOL, ESQ. Mallon & McCool, LLC 1776 K Street, N.W., Suite 200 Washington, DC 20006
Audio Operator:	Kim Korchick

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

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1 THE COURT: Are we ready in United States versus
2 Young? Are both sides here?

3 UNIDENTIFIED SPEAKER: Yes, Your Honor.

4 THE COURT: All right, we'll proceed.

5 (Unrelated matters discussed at this time)

6 THE COURT: So, let's move onto United States versus
7 Young. Appearing for the United States?

8 MS. HAMMOND: Kathleen Hammond and Paul Mayda, Your
9 Honor.

10 THE COURT: Very well. For the defense?

11 MR. McCOOL: Steven McCool on behalf of Michael
12 Young, who is present before the Court, Your Honor, good
13 afternoon.

14 THE COURT: Very well. You and your client have read
15 the presentence report?

16 MR. McCOOL: Yes, sir.

17 THE COURT: Are there any additions or corrections?

18 MR. McCOOL: No, sir.

19 THE COURT: The Government has a motion for downward
20 departure under 5K1.1, correct?

21 MS. HAMMOND: That's correct, Your Honor.

22 THE COURT: Motion is granted. All right, counsel,
23 do you and your client wish to be heard before I impose
24 sentence?

25 MR. McCOOL: Yes, sir.

1 THE COURT: Proceed.

2 MR. McCOOL: Your Honor, we had submitted a
3 memorandum in aid of sentencing, which I had overnighted to
4 your chambers last week.

5 THE COURT: Very well.

6 MR. McCOOL: It's not my intention to stand before
7 the Court and parrot what I've already submitted to Your Honor
8 in writing, but there are a couple of points that I would like
9 to emphasize before I have my client address the Court. Your
10 Honor, having granted the Government's motion for a downward
11 departure, following Third Circuit precedent we think it's
12 appropriate to look at that what now -- what the guideline
13 range should be or what reduction should be granted given Mr.
14 Young's cooperation. We would submit, Your Honor, that a
15 downward departure to a sentence of probation would be
16 appropriate in this sentence.

17 Mr. Young's cooperation with the Government, Your
18 Honor, is both qualitatively and quantitatively superior than
19 the efforts provided by Mr. Ott, Mr. Young's supervisor. My
20 client has met with the Government for over 100 hours on this
21 matter. He's provided over 1,500 pages of notes and personal
22 calendars that allowed the Government to fully understand the
23 breadth and depth of not only my client's culpability in this
24 case but the culpability of others. My client's cooperation
25 led directly to the plea of Mr. Ott. Now, as Your Honor well

1 knows, Mr. Ott appeared before Your Honor for sentencing a
2 short time ago and he received a sentence of five years
3 probation with the special condition that he serve six months
4 in a halfway house and then six months in home confinement.
5 And given the differences, Your Honor, or the efforts -- the
6 different efforts of cooperation by my client and Mr. Ott, we
7 think a sentence of probation would be appropriate just under
8 the guidelines analysis.

9 Moving onto a Booker analysis, Your Honor, we also
10 submit that the Court should grant a variance and impose
11 probation separate and apart from a downward departure for a
12 number of reasons, others that we've set forth in our written
13 submission, Your Honor. But, I wanted to point out under the
14 (a)(1) factors, Your Honor, my client lived in England. He's
15 an American citizen but he lived in London when he was working
16 for ITXC. And when he became aware of this investigation, he
17 on -- at his own expense came to the United States to meet with
18 the Government agents to learn about the case and quickly
19 decided to cooperate. And once this investigation gained
20 traction, my client and his wife, who is present in court
21 today, decided to move their family, their three small
22 children, here to the United States to Washington, D.C. near
23 his parents and far away from my client's wife's family who
24 reside in Poland so that they could cooperate with the
25 Government. So, Your Honor, we would ask Your Honor to take

1 that into consideration as well in terms of a Booker analysis.

2 But, what I'd like to focus on, Your Honor, if I may
3 before I conclude is the (a)(6) factor, the disparity -- the
4 sentence disparity that would result if my client was sentenced
5 to anything other than probation. Again, Mr. Ott received a
6 sentence of home confinement in a halfway house. His
7 culpability, Your Honor, in this case is far greater than my
8 client's. As I said, he was an officer and director of ITXC.
9 My client was not. He designed this scheme. And, again, my
10 client admits his culpability. You will not hear excuses, Your
11 Honor, from my client nor will you hear excuses from me. My
12 client implemented this scheme. He's culpable. He's admitted
13 his culpability. But, his culpability, nonetheless, is not as
14 great as Mr. Ott's. So, given that, he also should be given
15 credit under an (a)(6) analysis, Your Honor.

16 And I would like to point out before I conclude, Your
17 Honor, that the SEC, not only has the Government moved for a
18 downward departure, but the SEC has filed a letter in support
19 of my client. And Anthony Petrilla, who is the SEC senior
20 counsel handling this case, was kind enough to travel to
21 Washington to here today for this sentencing hearing. But, I
22 would submit, Your Honor, that at least in my experience, it is
23 highly unusual for the SEC to write a letter in support of a
24 criminal defendant and I'd ask Your Honor to take that into
25 consideration as well. Given that, Your Honor, we would ask

1 that the Court -- respectfully ask the Court to impose a
2 sentence of probation in this matter. Thank you.

3 THE COURT: Very well. Mr. Young, do you wish to be
4 heard?

5 MR. YOUNG: Your Honor, if I could maybe say a few
6 brief words. I think first and foremost, I'm standing here and
7 I take full responsibility for my actions. There is no
8 question about that. I think the second point I'd like to
9 bring up is just the fact that I'm ashamed. I'm really deeply
10 ashamed to be standing here in front of you going through this.
11 I'm ashamed for my family and what I put my wife and especially
12 my children through. And I'm ashamed of myself for going
13 through this. It's been tough. It's been emotional. It's
14 been a long four years since this was first brought out. It
15 was quite stupid in a lot of ways.

16 But, here I am. I'm having to deal with this. I've
17 been cooperating with the Government for the last four years.
18 I understand the investigation maybe ongoing. I'll continue to
19 cooperate and provide whatever resources I can in support of
20 that. Maybe just to finish off, I think sometimes in life the
21 hardest lessons you learn, you know, come from your mistakes
22 and I think this is one of those situations for me. And I'll
23 be living with this for a long time, the rest of my days, and I
24 don't think you'll ever see me back in this situation ever
25 again.

1 THE COURT: Thank you, Mr. Young. Counsel for the
2 United States?

3 MS. HAMMOND: We have nothing to add.

4 THE COURT: Pardon me?

5 MS. HAMMOND: We have nothing to add.

6 THE COURT: Well, you were the one that wrote the 5K
7 on Ott and the 5K on Young. How do you compare the two?

8 MS. HAMMOND: I would say Mr. Young spent more
9 extensive amounts of time with us, Your Honor. Mr. Young's
10 cooperation assisted us in securing a plea from Mr. Ott, Your
11 Honor. He has been fully cooperative since he was first
12 approached. It has been extensive cooperation, it has been
13 fulsome cooperation, and it has been significant cooperation.
14 As was spelled out in our 5K, we think that it has been
15 valuable to our investigation, that we would not have secured
16 the indictment against Mr. Ott without it. And as was noted,
17 the investigation is ongoing, Your Honor, at this time and Mr.
18 Young has continued to cooperate and said he will testify in
19 grand jury or otherwise as needed should the Government so
20 request of him.

21 THE COURT: Very well. Thank you very much.

22 MS. HAMMOND: Thank you, Your Honor.

23 THE COURT: I had initially thought that Mr. Young
24 and Mr. Ott were similarly situated, but counsel and the
25 Government have persuaded me that Mr. Young's cooperation was

1 more significant than Mr. Ott's. Therefore, I will depart
2 downward from the range set forth in the presentence report and
3 I will impose a sentence of probation for a term of five years.
4 While on probation, you'll comply with the standard conditions
5 adopted by this Court. Based on the information presented, the
6 defendant is excused from the mandatory drug testing provision
7 and will be requested to submit to drug testing during
8 probation if determines a risk of substance abuse by probation.
9 I will impose rather than six months home confinement and six
10 months community correction, three months home confinement and
11 three months community correction.

12 So, it's a condition of probation that he pay any
13 fine, assessment, cost or restitution, comply with special
14 conditions, confined to his residence for a period of three
15 months commencing at direction of probation, required to be at
16 this residence at all times except for approved absences for
17 gainful employment, community service, religious services,
18 medical care, educational or training program, such other times
19 as maybe specifically authorized by the probation office, wear
20 an electronic monitoring device at all times, maintain a
21 telephone at the residence without any custom services or
22 portable cordless equipment, comply with any other special
23 conditions of home confinement as probation requires, pay the
24 cost of electronic monitoring, \$3.18 per day, reside for a
25 period of three months in a community corrections center,

1 halfway house or similar residential facility, abide by all the
2 rules of that facility, eligible for weekend privileges, pay
3 assistance as required by the program, contribute 200 hours of
4 community service over a period of two years or less from the
5 date probation commences without compensation with specific
6 work placement approved by probation, provide probation with
7 full disclosure of financial records, including yearly income
8 tax returns, upon request of probation, cooperate with
9 probation in investigating his financial dealings, provide
10 truthful monthly statements of his income, is prohibited from
11 incurring any new credit charges or opening additional lines of
12 credit without approval of probation unless in compliance with
13 the payment schedule for any fine obligation herein imposed,
14 not to encumber or liquidate interest in any assets unless in
15 direct service of the fine obligation or otherwise express
16 approval of the Court, cooperate in collection of DNA.

17 The standard conditions of probation are imposed. A
18 fine is imposed in the amount of \$7,000 due immediately payable
19 in full within 30 days of sentencing without interest. The
20 defendant is advised of his right to appeal this sentence. If
21 he's not able to pay, he may request the Clerk of the Court to
22 file a notice of appeal on his behalf. Special assessment of
23 \$100 due immediately is hereby imposed. Anything further by
24 United States?

25 MS. HAMMOND: No, Your Honor.

1 THE COURT: Defense?

2 MR. McCOOL: Yes, Your Honor. With respect to the
3 confinement aspect of the sentence, could that be satisfied
4 near his home and could probation be transferred near his home
5 in Washington, DC?

6 THE COURT: Yes, yes, probation will take care of
7 that. Thank you. Anything further?

8 MR. McCOOL: No, sir.

9 THE COURT: All right.

10 * * * * *

11

12 C E R T I F I C A T I O N

13 I, CARLA M. OAKLEY, court approved transcriber,
14 certify that the foregoing is a correct transcript from the
15 official electronic sound recording of the proceedings in the
16 above-entitled matter, and to the best of my ability.

17

18 /s/ Carla M. Oakley

19 CARLA M. OAKLEY

20 J&J COURT TRANSCRIBERS, INC.

DATE: September 7, 2008

21

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1 THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

3 HONORABLE ROGER T. BENITEZ
4 UNITED STATES DISTRICT JUDGE PRESIDING

5 -----
6 UNITED STATES OF AMERICA,)
7)
8 PLAINTIFF,)
9)
10 VS.) NO. 06-CR-1380-BEN
11)
12 STEVEN LYNWOOD HEAD,)
13)
14 DEFENDANT.)
15 -----

16 SENTENCING
17 -----

18 REPORTER'S TRANSCRIPT OF PROCEEDINGS
19 SEPTEMBER 28, 2007
20 SAN DIEGO, CALIFORNIA

21
22 GAYLE WAKEFIELD, RPR, CRR
23 OFFICIAL COURT REPORTER
24 UNITED STATES COURTHOUSE
25 940 FRONT STREET, ROOM 3142
SAN DIEGO, CALIFORNIA 92101-8900
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APPEARANCES :

FOR THE PLAINTIFF: STEVEN E. STONE
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LAW OFFICES OF MICHAEL J. MCCABE
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SAN DIEGO, CA 92101

1 SEPTEMBER 28, 2007

2 MORNING SESSION

3 THE CLERK: ONE ON CALENDAR, 06-CR-1380, USA VS. STEVEN
4 LYNWOOD HEAD, FOR ACCEPTANCE OF PLEA AND SENTENCING WITH
5 PROBATION OFFICER'S REPORT.

6 MR. STONE: GOOD MORNING, YOUR HONOR, STEVEN STONE AND
7 ERIC BESTE ON BEHALF OF THE UNITED STATES.

8 MR. BIEGEL: GOOD MORNING, YOUR HONOR, LAWRENCE BIEGEL
9 AND MICHAEL MCCABE REPRESENTING MR. HEAD, WHO IS PERSONALLY
10 PRESENT.

11 THE COURT: I BELIEVE I HAD ACCEPTED THIS PLEA
12 PREVIOUSLY, DID I NOT?

13 THE CLERK: NO, YOUR HONOR.

14 THE COURT: I HAVE NOT.

15 THE CLERK: NO.

16 THE COURT: OKAY. ALL RIGHT, WELL, LET ME INDICATE FOR
17 THE RECORD THAT I HAVE REVIEWED THE PLEA AGREEMENT IN THIS
18 CASE. I HAVE REVIEWED THE PRESENTENCE REPORT. I HAVE REVIEWED
19 THE FILINGS BY THE GOVERNMENT, INCLUDING A 5K LETTER. I HAVE
20 REVIEWED FILINGS BY MR. MCCABE.

21 IT APPEARS THAT THE DEFENDANT DID KNOWINGLY,
22 INTELLIGENTLY, VOLUNTARILY AND EXPRESSLY ENTER A GUILTY PLEA.
23 HE UNDERSTOOD THE NATURE OF THE CHARGES. HE UNDERSTOOD THE
24 CONSEQUENCES OF ENTERING THE PLEA. HE UNDERSTOOD HIS RIGHTS,
25 HE WAIVED HIS RIGHTS. IT APPEARS THERE'S A FACTUAL BASIS FOR

1 THE ENTRY OF THE PLEA, THEREFORE, THE PLEA WILL BE ACCEPTED,
2 AND I AM PREPARED TO GO FORWARD WITH SENTENCING.

3 LET'S SEE, I BELIEVE, MR. MCCABE, IN YOUR LAST FILING
4 YOU INDICATED THAT YOU THOUGHT THAT NO CUSTODY TIME SHOULD BE
5 IMPOSED IN THIS CASE. I BELIEVE THAT THE GOVERNMENT HAD
6 RECOMMENDED THAT I IMPOSE SIX MONTHS IN CUSTODY, IF I'M NOT
7 MISTAKEN.

8 MR. MCCABE: YES, YOUR HONOR. IF THE COURT PLEASE, MR.
9 BIEGEL WOULD LIKE TO ADDRESS THAT.

10 THE COURT: OKAY.

11 MR. BIEGEL: YOUR HONOR, GOOD MORNING, AGAIN. PLEASURE
12 TO COME TO SAN DIEGO. MONTEREY'S A NICE PLACE, BUT SAN DIEGO'S
13 VERY NICE AT THIS TIME OF YEAR.

14 I WOULD LIKE TO TALK TO YOU THIS MORNING JUST BRIEFLY
15 ABOUT GUIDELINES, AND MR. MCCABE IS GOING TO TALK ABOUT THE
16 OTHER ASPECT OF THE CASE, NON-GUIDELINES, LOOKING AT HOW TO
17 BEST, IN YOUR WISDOM, IMPOSE THE PROPER SENTENCE IN THIS CASE.

18 I WOULD LIKE TO JUST GO OVER A LITTLE BIT OF HISTORY TO
19 MAKE THIS AS PERSONAL AS POSSIBLE, AND I TALKED TO MR. HEAD
20 ABOUT THE WAIVER OF THE ATTORNEY/CLIENT PRIVILEGE. WE'RE SO
21 FAR DOWN THE LINE IN THIS CASE THAT THAT'S NOT A PROBLEM. I
22 SAY THAT BECAUSE I WANT TO TELL YOU HOW I FIRST GOT INVOLVED IN
23 THIS.

24 I GOT A PHONE CALL FROM A FRIEND WHO SAID HE HAD A
25 CLIENT WHO NEEDED SOME HELP, AND IT WAS A FEDERAL MATTER, AND

1 CERTAINLY THAT'S THE SORT OF THING I DO. I SAID, "WELL, LET ME
2 CONNECT UP WITH HIM." THE NEXT THING I DID IS GOT A CALL FROM
3 STEVE HEAD. I THOUGHT IT WAS COMING FROM CARMEL. HE WAS
4 LIVING IN PARIS AT THE TIME, AND HE EXPLAINED, GENERALLY, THE
5 NATURE OF THE PROBLEM. I MET HIM AND HE TOLD ME HE DIDN'T
6 THINK HE WAS IN ANY TROUBLE.

7 HE HAD BEEN VERY FORTHRIGHT WITH THE GOVERNMENT,
8 ANYBODY ASKED HIM A QUESTION HE ANSWERED, AND HE WASN'T SURE
9 WHAT IT WAS ALL ABOUT, BUT HE WAS COMING TO ME BECAUSE HE GOT A
10 LETTER FROM MESSRS. BESTE AND STONE, DATED MARCH 23RD, 2006,
11 WHICH SAID HE WAS THE TARGET OF A GRAND JURY INVESTIGATION AND
12 DID HE WANT TO VOLUNTARILY COOPERATE OR NOT.

13 I DIDN'T KNOW WHAT IT WAS ALL ABOUT. I CALLED MY
14 FRIEND, MR. MCCABE, IN SAN DIEGO AND SAID, "CAN YOU HELP ME AND
15 TRY TO FIGURE OUT WHAT THIS WAS ABOUT," AND I FOUND OUT IT WAS
16 SOMETHING CALLED THE FCPA, WHICH HONESTLY, YOUR HONOR, I HAD
17 NEVER HEARD. I DIDN'T KNOW THE DIFFERENCE BETWEEN THAT AND THE
18 SPCA, SO I LEARNED QUICKLY.

19 THEN I MADE CONTACT WITH THE GENTLEMEN TO MY LEFT AND
20 THEY INVITED US TO A MEETING IN SAN DIEGO. MR. MCCABE AND I
21 WENT TO THAT MEETING, AND, AS I RECALL, MR. BESTE HAD A SLIDE
22 SHOW OR A POWER POINT PRESENTATION AND HE MADE IT VERY CLEAR TO
23 US EXACTLY WHAT FCPA WAS, WHAT IT MEANT, AND HOW IT APPLIED TO
24 MR. HEAD'S CONDUCT.

25 I WENT BACK TO MY OFFICE IN MONTEREY AND I SAT MR. HEAD

1 DOWN AND, TO BE QUITE HONEST WITH YOU, IT WAS LIKE WATCHING
2 SOMEBODY JUST DISSOLVE. HE HAD NO REAL SENSE, I DON'T THINK,
3 OF THE -- OF REALLY WHAT HE HAD DONE, IN THE BROADEST SENSE.

4 I'VE ASKED HIM ABOUT THAT A COUPLE OF TIMES, WHY DID HE
5 NOT REALLY PICK UP ON THE FACT THAT WHAT HE WAS DOING WAS SO
6 WRONG, WAS IN VIOLATION OF FEDERAL LAW. HE TELLS ME A STORY
7 THAT IN 1979 HE WAS ON A TRIP TO SAUDI ARABIA WITH DR. RAY,
8 THEY WERE IN PURSUIT OF A CONTRACT FOR SAIC, SOME TYPE OF --
9 SOMETHING THAT WOULD BE HELP TO SAIC, AND IN THAT TRIP HE
10 WATCHED AND WAS TOLD THAT YOU NEED A GOVERNMENT AGENT WHEN
11 YOU'RE DEALING WITH A FOREIGN GOVERNMENT, AND HE THOUGHT, WELL,
12 THAT'S THE GENESIS OF THAT IDEA.

13 HE NOW KNOWS, AND AS CLEAR AS COULD POSSIBLY BE, THAT
14 THAT SORT OF BEHAVIOR IS NOT APPROPRIATE, AND I DON'T SAY THAT
15 -- AGAIN, I SAID TO YOU IN OUR MOST RECENT SUBMISSION THAT WHEN
16 YOU'RE WORKING FOR THE DEFENSE DEPARTMENT, AS HE DID FOR THOSE
17 NINE YEARS IN THE '90S, THOSE RULES ARE A LITTLE DIFFERENT.
18 WHEN YOU'RE OUT IN THE PRIVATE SECTOR, THEY'RE SUBSTANTIALLY
19 DIFFERENT.

20 HE SHOULD HAVE KNOWN BETTER. I TELL YOU THAT, AND I
21 THINK THE GOVERNMENT WILL AGREE WITH THIS, THERE HASN'T BEEN
22 ONE DAY THAT WE'VE MET WITH THE GOVERNMENT, IN ALL OF THESE
23 DEBRIEFING SESSIONS, THAT STEVE HEAD HAS NOT TAKEN FULL
24 RESPONSIBILITY FOR HIS ACTIONS. HE MAY NOT HAVE APPRECIATED IT
25 IN THE BEGINNING, BUT HE CERTAINLY APPRECIATES IT NOW.

1 IN DOING THAT, I WANT TO STRESS, SO YOU'RE AWARE OF THE
2 FACT, THAT FROM THAT FIRST MEETING IN SAN DIEGO THAT MR. MCCABE
3 AND I ATTENDED THERE WERE SUBSEQUENT MEETINGS WHERE MR. HEAD
4 VOLUNTARILY AND ON HIS OWN EXPENSE COOPERATED, COOPERATED,
5 COOPERATED, DID EVERYTHING THAT -- ANSWERED ANY QUESTION,
6 LOOKED AT EVERY DOCUMENT.

7 I KNOW IN MONTEREY, JUST AN ANECDOTE HERE, SOME OF THE
8 DOCUMENTS HE HAD THE GOVERNMENT DIDN'T HAVE. THOSE DOCUMENTS
9 WERE ACTUALLY LOCATED IN HIS FORMER RESIDENCE IN VIRGINIA. HE
10 WAS GOING THROUGH A DIVORCE WITH HIS WIFE, AND SHE WAS NOT
11 PARTICULARLY HAPPY WITH HIM, AND THERE WERE SOME OTHER
12 CONTENTIONS GOING ON, SO WE KIND OF HAD TO PRY THOSE DOCUMENTS
13 LOOSE FROM HER. SHE ULTIMATELY SENT THEM TO US. WE SENT THEM
14 TO THE GOVERNMENT. WE Poured OVER THOSE, AND THE GOVERNMENT
15 POURED OVER THOSE, AND I THINK THEY WERE VERY HELPFUL TO GET AT
16 LEAST THE GOVERNMENT WITH AS MUCH KNOWLEDGE AS THEY COULD HAVE
17 ABOUT WHAT WAS GOING ON BY THE TITAN CORPORATION, BY MR. HEAD,
18 BY HIS ASSOCIATES IN BENIN.

19 WELL, WE GET TODAY TO SENTENCING. AS I SAID, I WAS
20 GOING TO SPEAK JUST GENERALLY ABOUT THE GUIDELINES, AND MR.
21 MCCABE IS GOING TO TALK ABOUT 3553 AND HOW THAT MAY RELATE.
22 BUT IT OCCURS TO ME, YOUR HONOR, THAT WHILE THE GUIDELINES ARE
23 VERY HELPFUL AND INSTRUCTIVE, THEY CAN BE A LITTLE BIT
24 DECEIVING SOMETIMES.

25 FOR EXAMPLE, ONE OF THE BIGGEST ADDITIVE FACTORS IN

1 MAKING A GUIDELINES DECISION IN THIS CASE IS THE AMOUNT OF
2 MONEY THAT WAS INVOLVED, THE 1.9 MILLION, BUT YET, YOU KNOW, IT
3 WOULD BE THE SAME GUIDELINE, I THINK -- 2F1.1(M),
4 2F1.1(B)(12)(F), WHERE SOMEBODY WAS INVOLVED IN SOME TYPE OF
5 FRAUDULENT INVESTMENT SCHEME -- A CASE I'VE JUST DONE IN
6 MONTEREY COUNTY -- AND STOLE MONEY FROM PEOPLE. THE ADDITIVE
7 FACTOR OF THAT WOULD GO RIGHT INTO THAT CATEGORY, I BELIEVE,
8 AND THAT'S NOT, OF COURSE, WHAT HAPPENED HERE.

9 AGAIN, I'M NOT SAYING THAT 1.9 MILLION WAS NOT
10 SIGNIFICANT, BUT IN A WAY IT'S NOT LIKE YOU'RE ADDING UP MONEY
11 THAT SOMEBODY TOOK IN A ROBBERY OR A BURGLARY. IT'S A
12 DIFFERENT KIND OF VIOLATION OF THE LAW. I THINK THAT IN AND OF
13 ITSELF WOULD ALLOW YOU TO LOOK AT THE GUIDELINES AND SAY THEY
14 MAY NOT BE REFLECTIVE -- THOSE NUMBERS THEMSELVES MAY NOT BE
15 REFLECTIVE OF MR. HEAD'S CULPABILITY IN THIS CASE.

16 I THINK, OF COURSE, *BOOKER* GIVES YOU THAT OPPORTUNITY,
17 AND I THINK THAT'S VERY -- CERTAINLY HELPFUL.

18 OBVIOUSLY, MR. MCCABE AND I BELIEVE, IF YOU ARE LOOKING
19 AT THE GUIDELINES, THIS IS A ZONE A CASE -- THAT'S WHAT WE'VE
20 TRIED TO SUGGEST TO YOU -- WHERE YOU HAVE SOME FLEXIBILITY IN
21 WHAT YOU CAN DO -- WHAT YOU CAN ORDER MR. HEAD TO DO,
22 OBVIOUSLY, SHORT OF ACTUAL INCARCERATION OR OTHER FORMS OF
23 INCARCERATION.

24 I URGE YOU TO DO THAT FOR A COUPLE OF REASONS. MOST
25 PRINCIPALLY IS THE FACT THAT WHEN THIS ISSUE CAME UP ABOUT

1 WHETHER OR NOT TITAN'S BOOKS WERE ACCURATE WHEN LOCKHEED WAS
2 LOOKING AT TITAN, AND, OF COURSE, THAT WAS A MULTI-MILLION
3 DOLLAR PROPOSITION, IF NOT BILLION-DOLLAR PROPOSITION, AND THE
4 ISSUE CAME UP ABOUT WHETHER THERE WAS INTEGRITY IN THOSE
5 DOCUMENTS FROM THE BENIN PROJECT. EVERY SINGLE ONE OF THE
6 TITAN EXECUTIVES, NOT ONE EXCEPTION, WHEN QUESTIONED BY THE
7 LITIGATORS FOR LOCKHEED AND TITAN, SAID, "NO" TO THE QUESTION,
8 "DID YOU HAVE AGENTS -- PAID AGENTS IN BENIN?" EVERY SINGLE
9 ONE SAID, "NO." THEY THEN GOT TO MR. HEAD AND, AMAZINGLY, MR.
10 HEAD WAS THE ONE PERSON IN THAT ENTIRE GROUP THAT SAID, "YES,
11 WE DID. OF COURSE," AND WENT ON TO EXPLAIN IT.

12 NOW, AGAIN, I THINK THAT TELLS YOU SOMETHING ABOUT HIS
13 STATE OF MIND. HE NEVER SOUGHT COUNSEL. HE NEVER SAID, "STOP,
14 I NEED TO THINK ABOUT THIS." HE TALKED TO THEM AND TALKED TO
15 THEM AS MUCH AS THEY WANTED TO SPEAK TO HIM. MR. CROSBY IS
16 HERE, FROM THE DEPARTMENT OF DEFENSE, HE WAS ONE OF THOSE
17 PEOPLE WHO WAS INTERESTED IN THIS. MS. MASTERSON IS HERE FROM
18 THE FBI, ANOTHER ONE OF PEOPLE -- OR HER ORGANIZATION THAT WAS
19 INTERESTED IN WHAT HE HAD TO SAY, AND HE TALKED TO THEM AS MUCH
20 AS THEY WANTED TO SPEAK TO HIM.

21 AS A RESULT OF THAT, TITAN APPEARED IN YOUR COURT ON
22 MARCH 1ST, 2005, AND YOU YOURSELF HANDED OUT WHAT I UNDERSTAND
23 TO BE, IN COMBINATION OF WHAT WENT ON IN THE SEC LATER THAT
24 MONTH, THE LARGEST FINE AND SENTENCE EVER HANDED OUT FOR AN
25 FCPA VIOLATION, AND I THINK I CAN SAY THAT MR. HEAD CERTAINLY

1 -- I'M PRIDEFUL OF THE FACT THAT HE PARTICIPATED IN THAT TO THE
2 EXTENT THAT HE DID, AND AT THE TIME THAT HE DID IT NO PROMISES
3 WERE MADE TO HIM. HE DIDN'T HAVE AN ATTORNEY. HE WAS DOING
4 WHAT HE THOUGHT WAS RIGHT, AND I CERTAINLY THINK -- I WANT TO
5 STAND NEXT TO HIM AND BE PRIDEFUL OF THAT FACT.

6 ANOTHER THING THAT, HISTORICALLY, I THINK IS AWFULLY
7 IMPORTANT, YOUR HONOR, IS THE SEC DECREE THAT I BROUGHT TO YOUR
8 ATTENTION, AND I DON'T KNOW WHETHER YOU HAD SEEN IT BEFORE, BUT
9 I THINK THAT DOCUMENT IS VERY, VERY DISCLOSIVE IN THE BREADTH
10 OF SOME OF THE DECEPTION THAT HAD GONE ON IN THE TITAN
11 CORPORATION, AND ALL SORTS OF OTHER PLACES, AND WE CERTAINLY
12 KNOW THAT MR. HEAD WASN'T INVOLVED IN ANY OF THAT.

13 SO I THINK YOU'RE SEEING MAYBE AN EXTENSION OF WHAT DR.
14 RAY HAD SAID IN 1979, THAT WAS THE CULTURE OR THE WAY THEY RAN
15 SOME OF THEIR FOREIGN ENTERPRISES. THEY HAD AGENTS AND THOSE
16 AGENTS DID WHATEVER THEY DID TO "MAKE SURE THAT THE GOVERNMENT
17 -- OR HELP WITH THE GOVERNMENT'S APPROVAL OF THESE VARIOUS
18 CONTRACTS," BECAUSE THAT WAS THE BUSINESS THAT THEY WERE IN.

19 I DON'T NECESSARILY BELIEVE THAT STEVE HEAD, YOUR
20 HONOR, WAS A WHISTLEBLOWER, BUT HE IS CERTAINLY PRETTY CLOSE TO
21 THAT IN THIS CASE, AND I THINK -- WE'RE NOT GOING TO BUILD A
22 STATUE TO HIM, BUT I THINK IT'S IMPORTANT IN YOUR THINKING, I
23 WOULD BE HOPEFUL TO THINK, THAT THAT SORT OF -- EVEN THOUGH IT
24 WAS BELATED, THERE'S INTEGRITY THERE.

25 THIS IS A MAN WHO HAD A LIFETIME OF SERVICE, BOTH IN

1 THE AIR FORCE AND AT THE HIGHEST LEVELS OF THE DEPARTMENT OF
2 DEFENSE, AND OBVIOUSLY STANDING, AT AGE 60, IN FRONT OF THIS
3 COURT IS NOT WHERE HE EVER PRESUMED THAT HE WOULD WIND UP. HE
4 IS A STAND-UP GUY. HE DID WHAT HE THOUGHT WAS RIGHT, WHEN
5 CONFRONTED, AND I THINK THOSE ARE THINGS THAT NEED TO BE
6 CONSIDERED THAT MAKE THE GUIDELINE NUMBERS NOT NECESSARILY
7 INDICATIVE OF THE WAY THE COURT'S ULTIMATE SENTENCE SHOULD BE
8 HANDED OUT.

9 I HAVE TO SAY THAT I'VE BEEN DOING -- BEEN PRACTICING
10 LAW FOR A LONG TIME. I DON'T KNOW THAT I'VE EVER BEEN IN A
11 SITUATION LIKE THIS WHERE I HAD A CLIENT WHERE I THOUGHT "YOU
12 REALLY DID SOMETHING WRONG. I'VE SEEN YOU INCORPORATE THAT IN
13 YOURSELF," BUT I'M PROUD OF THE WAY HE'S ACTED IN THIS CASE AND
14 I'M HOPEFUL THE COURT WILL TAKE THAT -- GIVE THAT THE HIGHEST
15 CONSIDERATION. I'M SURE IT WILL.

16 MR. MCCABE: IF I MAY, YOUR HONOR, I WOULD JUST LIKE TO
17 COMMENT BRIEFLY UPON THE CURRENT STATE OF THE LAW THAT IS, IN
18 OUR POINT OF VIEW, *UNITED STATES VS. RITA*, AND THE PROPER ROLE
19 OF THE GUIDELINES. I THINK THAT THE CASES OFTEN CONFUSE, AND
20 IT'S DIFFICULT TO FOLLOW, BECAUSE IT'S THE PLURALITY KIND OF
21 DECISION. YOU DON'T HAVE A CLEAR MAJORITY, BUT I THINK IT'S
22 FREQUENTLY MIS-CITED FOR THE PROPOSITION THAT THE GUIDELINE
23 SENTENCE IS PRESUMPTIVELY THE CORRECT SENTENCE, AND I THINK
24 THAT A CLOSE EXAMINATION OF THE VARIOUS OPINIONS IN THAT CASE
25 REVEALS THAT THAT IS NOT WHAT *RITA* STANDS FOR AT ALL.

1 WHAT RITA ACTUALLY DECIDED ON PLURALITY IS IT IS PROPER
2 FOR A COURT OF APPEALS TO UTILIZE THE GUIDELINE SENTENCE -- THE
3 GUIDELINE RANGE, THAT IS, TO ASSESS THE REASONABLENESS OF A
4 DISTRICT COURT'S DECISION IN IMPOSING A SENTENCE AND THAT IT IS
5 PROPER FOR A COURT OF APPEALS TO APPROVE SUCH A SENTENCE IF IT
6 IS WITHIN THE GUIDELINE RANGE, AND SO THE PRESUMPTIVELY VALID
7 ISSUE COMES WITH THE JUDICIAL REVIEW OF A SENTENCE IMPOSED BY
8 THE TRIAL COURT IN THE FIRST INSTANCE.

9 I THINK IF YOU READ THE DECISION CLOSELY, IT ACTUALLY
10 GRANTS MORE DISCRETION TO THE TRIAL COURTS IN FOLLOWING -- IN
11 FASHIONING, THAT IS, THE APPROPRIATE SENTENCE IN A PARTICULAR
12 CASE, AS LONG AS THE GUIDELINES ARE CONSIDERED, AND IN
13 CONJUNCTION WITH THE 3553(A) FACTORS, IN ARRIVING AT WHAT IS A
14 REASONABLE SENTENCE, AND THAT IS THE OVERARCHING STANDARD, WHAT
15 IS REASONABLE UNDER THE CIRCUMSTANCES. I THINK RITA MAKES
16 CLEAR THAT THAT TYPE OF A SENTENCE IS GOING TO BE UPHELD ON
17 APPEAL.

18 I DON'T THINK THAT IN THIS PARTICULAR CASE THAT WE'RE
19 FACING THAT KIND OF A SITUATION, BUT YOU NEVER KNOW. I WOULD
20 LIKE THE COURT TO BEAR IN MIND THOSE PARTICULAR FACTORS AND THE
21 PRINCIPLES TO BE GLEANED FROM THAT IN FASHIONING THE
22 APPROPRIATE SENTENCE HERE, WHICH WE, OF COURSE, BELIEVE IS A
23 SENTENCE WHICH DOES NOT CALL FOR STANDARD INCARCERATION. WE'RE
24 ASKING, OF COURSE, FOR THE COURT TO CONSIDER AND TO IMPOSE
25 ALTERNATIVES TO INCARCERATION, AS WE HAVE PROPOSED IN OUR

1 PLEADINGS, AND WE DO BELIEVE THAT THE 3553(A) FACTORS PERMIT,
2 AS WELL AS INDICATE, THAT THE APPROPRIATE SENTENCE HERE IS THAT
3 WHICH WE ARE ASKING FOR.

4 THE COURT: WELL, MR. MCCABE, LET ME ASK YOU A
5 QUESTION; 3553(A) CONTAINS AS ONE OF THE FACTORS THE IDEA THAT
6 WHATEVER SENTENCE I IMPOSE SHOULD ACT AS A DETERRENT TO THIS
7 TYPE OF CONDUCT IN THE FUTURE. NOW, DO YOU REALLY, REALLY
8 BELIEVE THAT IF I IMPOSED SIMPLY SOME HOUSE ARREST OR PROBATION
9 OR SOMETHING IN THIS CASE THAT REALLY WOULD IN ANY WAY, SHAPE
10 OR FORM ACT AS A DETERRENT IN THE FUTURE?

11 MR. MCCABE: WELL, I THINK THAT IF ANYONE CLOSELY LOOKS
12 AT WHAT OCCURRED HERE AND THE CONSEQUENCES WHICH HAVE BEEN
13 SUFFERED BY MR. HEAD AS A RESULT OF HIS CONDUCT IN THIS CASE --

14 THE COURT: BUT THAT'S NOT THE -- THAT'S NOT REALLY THE
15 STANDARD OR THE ISSUE. THE QUESTION IS WOULD THIS HAVE ANY
16 KIND OF A DETERRING EFFECT IF I WERE TO SIMPLY SAY, "WELL, YOU
17 KNOW, WE'RE GOING TO PLACE YOU ON HOME DETENTION" OR SOMETHING
18 TO THAT EFFECT.

19 LET'S FACE IT, THERE'S COOPERATION THAT'S TAKEN PLACE
20 IN THIS CASE, BUT A LOT OF THAT IS SELF-SERVING, ISN'T IT?
21 IT'S NOT -- THE POINT OF THE COOPERATION, AT LEAST IN PART,
22 OBVIOUSLY, IS TO GET HIM OFF THE HOOK, AND YOU'VE DONE AN
23 EXCELLENT JOB, I MUST SAY, IN NEGOTIATING THE AGREEMENT WITH
24 THE GOVERNMENT.

25 I NOTE THAT THE PSR RECOMMENDS 34 MONTHS IN THIS CASE,

1 AS I RECALL, AND SO YOU'VE BEEN ABLE TO ESSENTIALLY GET THE
2 GOVERNMENT TO AGREE TO SOMETHING THAT'S A LOT LESS THAN 34
3 MONTHS, BUT, REALLY, DOES HOME DETENTION REALLY ACT AS ANY TYPE
4 OF DETERRENT? DOES IT REALLY PROMOTE RESPECT FOR THE LAW? IS
5 IT REALLY GOING TO KEEP ANYONE WHO MIGHT TAKE A LOOK AT THIS
6 CASE AND SAY, "WELL, I BETTER NOT DO THIS IN THE FUTURE BECAUSE
7 LOOK WHAT MIGHT HAPPEN TO ME, I MIGHT GET HOME DETENTION."

8 MR. BIEGEL: CAN I BRIEFLY RESPOND, YOUR HONOR.

9 THE COURT: YEAH, SURE.

10 MR. BIEGEL: MOST OF THE COOPERATION POINTS, SO TO
11 SPEAK, IN TERMS OF THE GOVERNMENT'S 5K1 MOTION, AS YOU RECALL,
12 DEALS WITH HIS COOPERATION AT A TIME WHEN HE WAS NOT CHARGED
13 WITH ANYTHING, AND I REPRESENT TO YOU HE DIDN'T THINK HE WAS
14 EVER GOING TO BE CHARGED WITH ANYTHING BECAUSE HE HADN'T HAD
15 THIS KIND OF "COME TO JESUS," IF YOU WILL, CONVERSATION WITH
16 ME.

17 THE COURT: COUNSEL, THAT'S ALL WELL AND GOOD, BUT I
18 ASSUME MR. HEAD WAS SMART ENOUGH, AND HIS RECORD REVEALS THAT
19 HE PROBABLY WAS SMART ENOUGH, TO REALIZE THAT HE WAS A
20 POTENTIAL TARGET AND THAT HE SHOULD START COOPERATING.

21 YOU KNOW, I UNDERSTAND YOUR ADVOCATE'S POSITION IN THAT
22 REGARD, BUT, I'M SORRY, I JUST DON'T BUY THAT.

23 MR. BIEGEL: I CAN ONLY TELL YOU THIS, YOUR HONOR,
24 WE'VE KIDDED A LITTLE BIT BECAUSE I'M A UCLA GUY AND HE'S A
25 STANFORD GUY. I SAID, "FOR A SMART GUY, YOU WERE PRETTY

1 NAIVE." AT LEAST THAT'S WHAT I WAS SEEING IN TERMS OF NAIVETY
2 WHEN I FIRST STARTED TALKING TO HIM.

3 THE COURT: OF COURSE, IF YOU HAD SEEN THE OPPOSITE,
4 YOU WOULD TELL ME THAT, RIGHT? IF HE KNEW THAT -- YOU'D STAND
5 RIGHT UP THERE AND YOU WOULD SAY TO ME, "YOUR HONOR, I THINK
6 THAT MR. HEAD SHOULD GO TO PRISON FOR 34 MONTHS --

7 MR. BIEGEL: I WOULDN'T SAY THAT, OUT OF FEAR THAT MY
8 BAR CARD MIGHT BE TAKEN AWAY IMMEDIATELY, BUT WHAT I'M TELLING
9 YOU, BECAUSE IT'S TRUE, IS THE WAY IT HAPPENED.

10 THE OTHER THING IS THAT IN TERMS OF DETERRENCE, WHICH
11 IS, OF COURSE, A 3553 FACTOR, AS YOU POINTED OUT, ONE OF THE
12 THINGS THAT WE'VE SUGGESTED -- AND IT'S NOT, I DON'T THINK --
13 WHAT WE HOPE YOU DON'T TAKE LIGHTLY IS THE FACT THAT HE HAS THE
14 CAPABILITY, BOTH THE INTELLIGENCE AND THE ARTICULATION -- THE
15 ABILITY TO ARTICULATE, TO GO AROUND -- AND HE'S WILLING TO DO
16 IT AT HIS OWN EXPENSE -- TO EXPLAIN TO PEOPLE WHAT THIS IS ALL
17 ABOUT AND HOW YOU CAN, BY SIMPLY NOT BEING INFORMED OR TAKING
18 SOMEONE ELSE'S WORD, BEING TASKED TO DO SOMETHING OR FOLLOWING
19 ALONG, YOU CAN ABSOLUTELY, GRAVELY VIOLATE A VERY IMPORTANT LAW
20 THAT MOST PEOPLE DON'T UNDERSTAND.

21 YOU KNOW THE HISTORY OF THIS CASE, AND THE TITAN PLEA
22 AGREEMENT, SHOWS THAT TITAN HAD NO FCPA TRAINING, AND I'M
23 CERTAIN THAT ONE OF THE THINGS THAT THEY AGREED TO DO, AND YOU
24 PUT THEM ON PROBATION TO DO SO, WAS THAT THEY HAD TO INSTITUTE
25 THAT SORT OF TRAINING. THAT ALSO CAME OUT OF THE SEC DECREE.

1 I THINK THAT THERE'S AT LEAST A REASON TO BELIEVE, AS MR.
2 MCCABE SAID, THAT IF YOU CRAFT A SENTENCE, WHICH WE'VE
3 SUGGESTED THERE ARE ALL SORTS OF WAYS THAT YOU CAN DO SO, WHICH
4 POINTS OUT TO PEOPLE, "HEY, WHEN THE GOVERNMENT COMES -- OR
5 ANYBODY COMES AND ASKS YOU A QUESTION, IT IS REALLY TO YOUR
6 BENEFIT AND TO THE GOVERNMENT'S BENEFIT AND OUR SOCIETY'S
7 BENEFIT TO BE TRUTHFUL WITH THEM," WHICH IS WHAT HE DID.

8 SECONDLY, I THINK THAT HE DOES HAVE THIS ABILITY AND --
9 A UNIQUE ABILITY BECAUSE IT'S VERY PAINFUL TO HIM, VERY
10 PUBLICLY TO GO OUT AND SAY, "I'M STEVE HEAD. THIS IS WHAT I
11 DID. I HELD ALL THESE POSITIONS, AND NOW LOOK AT ME."

12 THE COURT: OKAY. GREAT. WHAT'S THE GOVERNMENT'S
13 POSITION?

14 MR. STONE: YOUR HONOR, THE GOVERNMENT HAS FULLY
15 BRIEFED THIS IN ALL OFF OUR PAPERS SO I DON'T THINK THERE'S A
16 LOT MORE I CAN ADD, UNLESS YOU WANT ME TO ANSWER SOME
17 QUESTIONS.

18 THERE ARE A COUPLE OF THINGS THAT I WOULD LIKE TO POINT
19 OUT THOUGH. ONE IS WE DO AGREE WITH DEFENSE COUNSEL, THE
20 DEFENDANT HAS FULLY ACCEPTED RESPONSIBILITY FOR HIS ACTIONS.
21 THERE'S NEVER BEEN A QUESTION OF THAT. WE'RE RECOMMENDING FIVE
22 LEVELS FOR HIS COOPERATION, WHICH WE'VE DOCUMENTED TO YOUR
23 HONOR IN TWO SEPARATE DOCUMENTS. WE BELIEVE THAT'S WARRANTED.

24 ONE THING WE DISAGREE WITH THOUGH IS THIS EXPLANATION
25 FROM DEFENSE COUNSEL ABOUT THE KNOWLEDGE OF THIS BEING A CRIME

1 OR NOT A CRIME. IF YOU LOOK AT WHAT THE ACTUAL GUILTY PLEA IS
2 TO, IT'S TO THE FALSIFICATION OF THE BOOKS OR RECORDS OF A
3 PUBLIC COMPANY. CLEARLY, FABRICATING THE INVOICE OF SOMEBODY
4 THAT -- ANYBODY WOULD KNOW IS WRONG, WORKING IN A MAJOR
5 CORPORATION, SO THE GOVERNMENT JUST DOESN'T AGREE WITH THAT
6 ARGUMENT THAT THE DEFENSE IS MAKING. NEVERTHELESS, WE DON'T
7 KNOW HOW THAT WOULD REALLY IMPACT THE SENTENCE.

8 WE BELIEVE A GUIDELINE SENTENCE IS APPROPRIATE HERE.
9 UNDER WHAT THE GOVERNMENT RECOMMENDED, IF YOUR HONOR IS
10 CONSIDERING ALTERNATIVE FORMS TO CUSTODY, ALTERNATIVE FORMS OF
11 PUNISHMENT, THAT ARE AVAILABLE TO YOUR HONOR, AS YOU POINTED
12 OUT, HOME DETENTION OR HALFWAY HOUSE, IF YOUR HONOR IS GOING
13 THAT DIRECTION.

14 SO TO ARGUE THAT THE GUIDELINES DON'T APPLY HERE WE
15 DISAGREE WITH. THE GUIDELINES SHOULD APPLY. WE SET FORTH OUR
16 CALCULATION. WHAT YOUR HONOR DOES AT THAT POINT, LOOKING AT
17 ALL THE EQUITIES OF THE CASE, WE BELIEVE IT WOULD BE
18 APPROPRIATE TO DO UNDER THE GUIDELINES.

19 SO UNLESS YOU HAVE ANY QUESTIONS, YOUR HONOR, I THINK
20 WE'VE BRIEFED THIS ISSUE, THE EQUITIES IN THE DEFENDANT'S
21 FAVOR, THE SERIOUSNESS OF THE CRIME, AND THE REASON FOR THE
22 SENTENCE WE'RE RECOMMENDING, BUT OTHERWISE WE'LL SUBMIT ON OUR
23 PAPERS, YOUR HONOR.

24 MR. BIEGEL: YOUR HONOR, CAN MR. HEAD ADDRESS THE
25 COURT?

1 THE COURT: JUST A SECOND, I HAVE A COUPLE OF
2 QUESTIONS.

3 MR. BIEGEL: SURE.

4 THE COURT: LET ME ASK THE GOVERNMENT THE FOLLOWING
5 QUESTION; DO YOU THINK THAT A SIX-MONTH SENTENCE IN THIS CASE
6 PROMOTES RESPECT FOR THE LAW OR WOULD SERVE TO ACT AS A
7 DETERRENT?

8 MR. STONE: YOUR HONOR, I BELIEVE IT WOULD. THIS CASE
9 IS UNIQUE, AND THE REASON I SEE IT AS BEING UNIQUE, AS MR.
10 BIEGEL POINTED OUT, WHEN TITAN CONDUCTED ITS INTERNAL
11 INVESTIGATION, ALL THE OTHER OFFICERS WERE INTERVIEWED AND WHEN
12 IT CAME AROUND TO MR. HEAD'S TURN HE DID ACKNOWLEDGE THAT THERE
13 WAS THIS AGENT IN BENIN, AND PAYMENTS WERE MADE TO THAT AGENT.
14 THE LAWYERS WHO WERE CONDUCTING THAT INTERVIEW WERE VERY
15 SURPRISED BY THAT BECAUSE EVERYBODY ELSE HAD JUST DENIED THAT,
16 SO WITHOUT ANY PROMISES FROM THE GOVERNMENT, WITHOUT ANYTHING
17 ELSE, HE TOLD THE TRUTH, AND I THINK THAT'S A VERY IMPORTANT
18 FACT TO PEOPLE IN THE INTERNAL INVESTIGATIONS.

19 THE COURT: I THINK YOU REPRESENTED THAT WITHOUT MR.
20 HEAD'S COOPERATION, TITAN'S CONVICTION WOULD NOT HAVE OCCURRED;
21 IS THAT CORRECT?

22 MR. STONE: I THINK IT PLAYED A VERY IMPORTANT PART,
23 YOUR HONOR. AND ALSO I DON'T THINK THIS WOULD HAVE BEEN
24 UNCOVERED, AT LEAST WHAT HAPPENED IN BENIN, WITHOUT MR. HEAD
25 TELLING THE TRUTH, WITHOUT ANY PROMISES BEING MADE BY ANYBODY.

1 HE JUST SAT DOWN, WITHOUT COUNSEL, WAS INTERVIEWED BY LAWYERS,
2 AND ANSWERED THE QUESTIONS. SO I THINK IT'S IMPORTANT, IF A
3 MESSAGE IS BEING SENT, THAT PEOPLE TELL THE TRUTH.

4 HERE MR. HEAD IS BEING CONVICTED OF THE CRIME, BUT THE
5 GOVERNMENT HAS GIVEN HIM A VERY GOOD DEAL HERE, AND THAT'S ONE
6 OF THE REASONS -- ONE OF THE REASONS IS BECAUSE HE TOLD THE
7 TRUTH, AND HE CONTINUED TO TELL THE TRUTH AFTERWARDS. HE SAT
8 DOWN WITH AGENTS FROM THE FBI AND THE DEFENSE DEPARTMENT PRIOR
9 TO BEING CHARGED OR EVEN RECEIVING A TARGET LETTER, AND WITHOUT
10 A LAWYER, AND CONTINUED TO TELL THE FACTS AS HE KNEW THEM.

11 SO IF HE'S GOING TO GET A SIX-MONTH SENTENCE, I THINK
12 THE MESSAGE IS STILL THERE, "LOOK, YOU'RE LOOKING AT JAIL TIME
13 IF YOU COMMIT THIS OFFENSE. YOU MIGHT GET A BETTER SENTENCE IF
14 YOU COOPERATE AND DO THE RIGHT THING." I DON'T THINK THAT'S
15 NECESSARILY A BAD MESSAGE, SO I THINK SIX MONTHS IS
16 APPROPRIATE. I DON'T HAVE ANY PROBLEM WITH THAT, YOUR HONOR.

17 THE COURT: ALL RIGHT, THAT MAKES SENSE, OKAY.
18 PROBATION HAVE ANYTHING?

19 THE PROBATION OFFICER: MARVIN ENGLISH FROM PROBATION.
20 I DON'T HAVE ANYTHING TO ADD. THANK YOU.

21 THE COURT: MR. HEAD, I UNDERSTAND THAT YOU WISH TO
22 ADDRESS THE COURT. YOU HAVE A RIGHT TO DO SO. IF YOU WISH TO
23 DO SO, NOW IS THE TIME TO DO IT.

24 THE DEFENDANT: THANK YOU, YOUR HONOR. YES, I DO
25 APPRECIATE THE OPPORTUNITY, AND I WILL BE BRIEF.

1 I WOULD SIMPLY LIKE TO START BY FULLY ADMITTING MY
2 CURRENT KNOWLEDGE OF THE CRIME THAT I COMMITTED, AND I FULLY
3 ACCEPT THE GUILT FOR THAT. I WAKE UP JUST ABOUT EVERY DAY OF
4 MY LIFE AND -- VIRTUALLY EVERY DAY OF MY LIFE I THINK ABOUT THE
5 FACT THAT BY THAT ONE ACT OR THAT SERIES OF ACTS RESULTING IN
6 THAT ONE CRIME THAT I HAVE CHANGED MY WHOLE LIFE FROM ONE OF,
7 IN ALL MODESTY, I WOULD SAY OF A VERY SUCCESSFUL MILITARY
8 CAREER, RETIRING AS A FULL COLONEL FROM THE RESERVES, SERVING
9 AT A 3-STAR LEVEL, AS A DEFENSE CIVILIAN, BEING AN HONORABLE
10 MEMBER OF THE COMMUNITY, TO BECOMING A CRIMINAL.

11 I THINK THAT -- I APPRECIATE YOUR QUESTION ABOUT
12 DETERRENCE, HOW WOULD A SIX-MONTH HOME CONFINEMENT OR SOME
13 OTHER PUNISHMENT SERVE AS A DETERRENT FOR WHAT I HAVE DONE TO
14 ANYONE IN THE FUTURE, AND I WILL NOT GO THROUGH THE OTHER
15 POINTS THAT I MIGHT HAVE MADE ABOUT MY LACK OF INFORMATION AND
16 SO ON. I THINK MY COUNSEL HAS DONE THAT RATHER WELL. HOWEVER,
17 I WOULD NOT LIKE FOR ANYONE ELSE, WHO MIGHT HAVE HAD THE SORT
18 OF CAREER THAT I HAD FOR THE FIRST 35 YEARS OF MY LIFE, TO MAKE
19 THE SAME MISTAKES THAT I'VE DONE FOR LACK OF INFORMATION.

20 I HAVE VOLUNTEERED TO THE GOVERNMENT TO DO COMMUNITY
21 SERVICE BY PREPARING A SPOKEN AND VISUAL PRESENTATION THAT I
22 WOULD OFFER TO PRESENT TO CORPORATIONS DOING BUSINESS OUTSIDE
23 THE U.S., WHICH WOULD FORCE ME TO ADMIT MY GUILT IN FRONT OF
24 PEOPLE THAT HAD BEEN MY PEERS, WHO ARE NOT AT THAT POINT
25 CRIMINALS, IN THE HOPES THAT MY INFORMATION AND MY FURTHER

1 ADMISSION OF GUILT WOULD ITSELF DETER THEM FROM PUTTING
2 THEMSELVES OR THEIR CORPORATIONS OR THEIR SHAREHOLDERS IN THE
3 SAME POSITION.

4 SO I REPEAT THE OFFER TODAY, ALTHOUGH THE GOVERNMENT --
5 IN ADDITION TO THE SIX-MONTH PENALTY, IF THE GOVERNMENT HAS
6 IMPOSED COMMUNITY SERVICE TIME OF A DIFFERENT FORM, EDUCATIONAL
7 FORM, ABOUT BENIN AND ABOUT FRENCH LANGUAGE CUSTOMS AND THE
8 COUNTRY OF BENIN, I WOULD BE HAPPY TO DO THAT.

9 IN ADDITION, I REPEAT THE OFFER TO DO AS MANY HOURS AS
10 THE COURT WOULD SEE FIT OF COMMUNICATING INFORMATION ABOUT THE
11 FCPA LAWS, SUBJECT TO GOVERNMENT REVIEW OF THAT INFORMATION,
12 THAT WOULD DETER OTHER INDIVIDUALS FROM COMMITTING SUCH A
13 CRIME. THANK YOU, YOUR HONOR.

14 THE COURT: ALL RIGHT. THANK YOU.

15 WELL, LET ME NOTE FOR THE RECORD THAT I UNDERSTAND THAT
16 UNDER *BOOKER* THE SENTENCING GUIDELINES ARE ADVISORY ONLY. I
17 UNDERSTAND THAT MY SENTENCE IS TO BE IMPOSED BASED ON 3553(A)
18 FACTORS.

19 THIS CASE PRESENTS SOME RATHER INTERESTING ISSUES. IF
20 I FOLLOW THE GUIDELINES STRICTLY, WITHOUT REGARDS TO 5K FACTORS
21 IN THIS CASE, I THINK I WOULD BE LOOKING AT A SENTENCE OF
22 SOMEWHERE IN THE 34 MONTHS -- RANGE OF 18 TO 24 MONTHS. IF I
23 CONSIDER THE GOVERNMENT'S RECOMMENDATION FOR 5K DEPARTURES, I
24 BELIEVE THAT THE SENTENCE -- THE GUIDELINE RANGE GOES DOWN TO
25 SIX MONTHS.

1 FRANKLY, I'M SOMEWHAT TORN BECAUSE I KEEP TRYING TO ASK
2 MYSELF IF SIX MONTHS REALLY ACTS AS A DETERRENT TO SOMEONE
3 WHO'S INCLINED TO VIOLATE THE LAW AS MR. HEAD IS ALLEGED TO
4 HAVE DONE. FRANKLY, I DON'T KNOW THAT IT REALLY WOULD.

5 LIKewise, I DON'T KNOW THAT SIX MONTHS OF COMMUNITY
6 SERVICE OR HOME CONFINEMENT, EVEN WITH YOUR KIND OFFER TO SPEAK
7 TO OTHER FOLKS ABOUT YOUR TRAVAILS, MR. HEAD, I'M NOT SURE HOW
8 THAT COULD BE DRAFTED -- OR CRAFTED IN A WAY THAT I COULD
9 REALLY ENFORCE IT IN ANY MEANINGFUL WAY. I DON'T KNOW THAT
10 THERE'S REALLY ANY WAY THAT I COULD ASSURE THAT THAT IS GOING
11 TO BE CARRIED OUT AND THAT IT'S GOING TO HAVE THE EFFECT THAT
12 IT SEEMS TO ME A SENTENCE IN THIS CASE SHOULD HAVE.

13 SO I WILL SAY THAT I'M NOT SURE THAT SIX MONTHS OF
14 CUSTODY TIME IS REALLY AN APPROPRIATE SENTENCE, EXCEPT FOR THE
15 FACT THAT I TAKE NOTE OF YOUR PAST HISTORY, WHICH IS SOMETHING
16 THAT 3553(A) ALLOWS ME TO TAKE INTO ACCOUNT. YOU'VE BEEN A
17 LAW-ABIDING CITIZEN FOR MANY, MANY YEARS. YOU'VE PROVIDED A
18 GREAT DEAL OF SERVICE TO THIS COUNTRY PREVIOUSLY, AND I ALSO
19 TAKE INTO ACCOUNT THAT WITHOUT YOUR COOPERATION, I SUPPOSE THAT
20 THE ORIGINAL UNDERLYING CRIME TO WHICH TITAN PLED GUILTY TO
21 MIGHT NOT HAVE BEEN ABLE TO BE SUCCESSFULLY PROSECUTED.

22 IN THE BALANCE, I THINK YOUR ATTORNEYS HAVE DONE AN
23 EXCELLENT JOB OF NEGOTIATING A DISPOSITION FOR YOU. I THINK
24 THAT ALTHOUGH UNDER -- PERHAPS UNDER CERTAIN CIRCUMSTANCES I
25 WOULD IMPOSE A SENTENCE THAT'S MUCH HIGHER THAN THE SENTENCE

1 I'M ABOUT TO IMPOSE. I THINK IN THIS CASE THE NEGOTIATED
2 DISPOSITION OF SIX MONTHS IN CUSTODY IS, IN FACT, A REASONABLE
3 DISPOSITION, AND I KNOW THIS WILL BE JUST ONE MORE SHOCK TO
4 YOU, I SUPPOSE, TO ACTUALLY BE INCARCERATED, BUT I THINK WE DO
5 NEED TO AT LEAST SEND A MESSAGE TO -- YOU KNOW, TO OTHER PEOPLE
6 WHO MIGHT BE INCLINED TO DO THE SAME THING TO THINK ABOUT IT
7 BECAUSE, EVEN IF THEY COOPERATE, THEY'RE GOING TO GET SOME
8 TIME. THEY MAY GET EVEN MORE TIME THAN YOU'RE GETTING.

9 I'M PRETTY WELL SATISFIED THAT SIX MONTHS IS A
10 REASONABLE SENTENCE UNDER THE CIRCUMSTANCES, AND SO I AM GOING
11 TO REMAND MR. HEAD TO THE CUSTODY OF THE BUREAU OF PRISONS FOR
12 A PERIOD OF SIX MONTHS.

13 LET'S SEE, WHAT'S THE MAXIMUM PERIOD OF SUPERVISED
14 RELEASE IN THIS CASE?

15 THE PROBATION OFFICER: THREE YEARS, YOUR HONOR.

16 THE COURT: I WILL PLACE MR. HEAD ON SUPERVISED RELEASE
17 FOR A PERIOD OF THREE YEARS.

18 AS A CONDITION OF SUPERVISED RELEASE, HE WILL NOT
19 POSSESS ANY FIREARMS, EXPLOSIVE DEVICES OR OTHER DANGEROUS
20 WEAPONS.

21 HE WILL BE PROHIBITED FROM OPENING CHECKING ACCOUNTS OR
22 INCURRING NEW CREDIT CHARGES OR OPENING ADDITIONAL LINES OF
23 CREDIT WITHOUT APPROVAL OF THE PROBATION OFFICER.

24 HE WILL PROVIDE COMPLETE DISCLOSURE OF BUSINESS
25 FINANCIAL RECORDS TO THE PROBATION OFFICER, AS REQUESTED.

1 I'LL ORDER THAT HE NOTIFY THE COLLECTIONS UNIT OF THE
2 UNITED STATES ATTORNEY'S OFFICE, AND THE U.S. PROBATION OFFICE,
3 OF ANY INTEREST IN PROPERTY OBTAINED, DIRECTLY OR INDIRECTLY,
4 INCLUDING ANY INTEREST OBTAINED UNDER ANY OTHER NAME, OR
5 ENTITY, INCLUDING A TRUST, PARTNERSHIP OR CORPORATION, UNTIL
6 ANY FINE OR RESTITUTION ORDER IS PAID IN FULL.

7 THAT YOU SUBMIT TO A SEARCH OF YOUR PERSON, PROPERTY,
8 RESIDENCE, ABODE OR VEHICLE, IN A REASONABLE TIME AND IN A
9 REASONABLE MANNER, BY THE PROBATION OFFICER.

10 THAT HE REPORT ALL VEHICLES OWNED OR OPERATED OR IN
11 WHICH YOU HAVE AN INTEREST TO THE PROBATION OFFICER.

12 I UNDERSTAND YOU'RE CURRENTLY LIVING IN FRANCE; IS THAT
13 CORRECT?

14 THE DEFENDANT: NO, YOUR HONOR, I'M RESIDING IN CARMEL,
15 CALIFORNIA. I HAVE A SON AND A FIANCEE IN PARIS. MY SON IS 24
16 MONTHS.

17 THE COURT: I WILL ORDER THAT YOU NOT TRAVEL OUTSIDE
18 THE UNITED STATES WITHOUT PERMISSION OF THE PROBATION OFFICER.
19 IT'S BEEN MY EXPERIENCE THAT, GENERALLY, PROBATION IS VERY
20 COOPERATIVE IN THAT REGARD AND THEY HAVE CERTAIN RULES AND
21 GUIDELINES THAT WILL ALLOW YOU TO TRAVEL OUTSIDE OF THE UNITED
22 STATES, PROVIDED YOU INDICATE TO THEM WHERE YOU'RE GOING, WHEN
23 YOU'RE GOING, WHY YOU'RE GOING, AND WHEN YOU'RE COMING BACK.

24 IF, OBVIOUSLY, THIS PROVISION WERE TO BECOME A PROBLEM,
25 MR. MCCABE WOULD BE MORE THAN HAPPY TO ENTERTAIN A MODIFICATION

1 OF SUPERVISED RELEASE CONDITIONS, OKAY?

2 MR. MCCABE: THANK YOU, YOUR HONOR.

3 THE COURT: I'LL FURTHER ORDER THAT THE MANDATED DRUG
4 TESTING CONDITIONS BE SUSPENDED. THERE DOES NOT APPEAR TO BE
5 ANY -- YOU MAY SIT, MR. HEAD, MAKE YOURSELF COMFORTABLE.

6 I DON'T THINK THERE'S ANY INDICATION THAT MR. HEAD HAS
7 ANY DRUG PROBLEMS OR ANYTHING OF THAT SORT, SO I DON'T THINK
8 THAT'S APPROPRIATE.

9 NOW, THE PRESENTENCE REPORT RECOMMENDS A FINE OF
10 \$6,000. I DON'T RECALL IF IN THE PLEA AGREEMENT THERE WAS ANY
11 AGREEMENT AS TO THE FINE, AND I DON'T KNOW WHAT THE
12 GOVERNMENT'S RECOMMENDATION IN THAT REGARD MIGHT BE.

13 MR. STONE: YOUR HONOR, THE PLEA AGREEMENT RECOMMENDS
14 THE LOW END OF THE GUIDELINE RANGE FOR THE FINE, WHICH I
15 BELIEVE IS \$2,000.

16 THE COURT: ALL RIGHT. IS THERE A PAYMENT STIPULATION?

17 MR. STONE: I DON'T BELIEVE SO, YOUR HONOR.

18 THE COURT: WHAT'S THE HIGH END OF THE FINE?

19 MR. STONE: ONE SECOND, YOUR HONOR. YOUR HONOR, IT'S
20 \$2,000 TO \$20,000, AS SET FORTH IN OUR SENTENCING PAPERS.

21 THE COURT: ALL RIGHT. WELL, USING MY BEST
22 SOLOMON-LIKE WISDOM, I THINK THAT \$2,000 FINE IS PROBABLY TOO
23 LOW. I THINK \$20,000 IS PROBABLY TOO HIGH. I'M GOING TO ORDER
24 MR. HEAD TO PAY A \$5,000 FINE. THAT FINE WILL BE PAID -- WILL
25 BE ALL DUE AND PAYABLE WITHIN 24 MONTHS OF HIS RELEASE FROM

1 CUSTODY. I'LL ORDER THAT HE PAY AT LEAST, AFTER BEING
2 DISCHARGED FROM CUSTODY, \$200 PER MONTH TOWARDS THE PAYMENT OF
3 THAT FINE, WITH THE BALANCE TO BE PAID AT THE CONCLUSION OF 24
4 MONTHS.

5 NOW, FOR THE RECORD, I GUESS I SHOULD INDICATE THAT THE
6 GUIDELINE CALCULATIONS IN THIS CASE ARE AS FOLLOWS:

7 THIS APPEARS TO BE A BASE OFFENSE LEVEL 6, ENHANCED BY
8 12 UNDER 2F1.1(B)(1)(M), AND, FRANKLY, I DO AGREE, COUNSEL,
9 THAT THIS IS ONE OF THOSE AREAS WHERE THE GUIDELINES ARE NOT
10 VERY HELPFUL, VERY SPECIFIC, FOR THE REASONS POINTED OUT BY
11 COUNSEL, BUT, NEVERTHELESS, I THINK IT IS APPLICABLE IN THIS
12 CASE.

13 THE GOVERNMENT HAS MOVED FOR AND THE COURT WILL AGREE
14 TO A 3-LEVEL ADJUSTMENT FOR ACCEPTANCE OF RESPONSIBILITY. THE
15 GOVERNMENT HAS FURTHER REQUESTED A 5-LEVEL DEPARTURE FOR
16 SUBSTANTIAL ASSISTANCE.

17 THE DEFENDANT APPEARS TO HAVE A CRIMINAL HISTORY SCORE
18 OF 0, CRIMINAL HISTORY CATEGORY 1, RESULTS IN A GUIDELINE RANGE
19 OF 10 -- OFFENSE LEVEL 10, WITH A GUIDELINE RANGE OF 6 TO 12
20 MONTHS.

21 FOR THE REASONS I'VE PREVIOUSLY INDICATED, I BELIEVE
22 THAT SIX MONTHS IS REASONABLE, GIVEN THE AMOUNT OF COOPERATION
23 THAT MR. HEAD PROVIDED TO THE GOVERNMENT, AS WELL AS HIS PAST
24 HISTORY.

25 I BELIEVE THAT THE PLEA AGREEMENT PROVIDES FOR A WAIVER

1 OF APPEAL AND COLLATERAL ATTACK, IF I'M NOT MISTAKEN.

2 MR. MCCABE, DO YOU ACKNOWLEDGE THAT MR. HEAD HAS WAIVED
3 AND GIVEN UP ALL RIGHT TO APPEAL AND TO COLLATERALLY ATTACK HIS
4 PLEA, HIS CONVICTION AND HIS SENTENCE?

5 MR. MCCABE: YES, YOUR HONOR.

6 THE COURT: MR. HEAD, DO YOU ACKNOWLEDGE THAT YOU'VE
7 WAIVED AND GIVEN UP ALL RIGHT TO APPEAL AND TO COLLATERALLY
8 ATTACK YOUR PLEA, YOUR CONVICTION AND YOUR SENTENCE?

9 THE DEFENDANT: YES, YOUR HONOR.

10 THE COURT: ALL RIGHT, MR. MCCABE, IF YOU WILL PLEASE
11 COME FORWARD AND PICK UP A COPY OF THE SUPERVISED RELEASE
12 CONDITIONS AND HAND THEM TO MR. HEAD, I WOULD APPRECIATE IT.

13 MR. MCCABE: CERTAINLY.

14 THE PROBATION OFFICER: YOUR HONOR, THE SPECIAL
15 ASSESSMENT, YOUR HONOR.

16 THE COURT: OH, YES, I'M SORRY. I ASSUME IT'S \$100,
17 RIGHT?

18 THE PROBATION OFFICER: YES, YOUR HONOR.

19 THE COURT: I'LL ORDER MR. HEAD TO PAY A SPECIAL
20 ASSESSMENT OF \$100.

21 ALL RIGHT, MR. HEAD, YOU HAVE NOW IN YOUR HAND A COPY
22 OF THE SUPERVISED RELEASE CONDITIONS. PLEASE KEEP IN MIND IF
23 YOU VIOLATE THOSE CONDITIONS, YOU CAN BE PLACED INTO CUSTODY
24 FOR UP TO AN ADDITIONAL THREE YEARS. I HAVE A FEELING WE'RE
25 NOT GOING TO HAVE TO WORRY ABOUT THAT WITH YOU, BUT PLEASE KEEP

1 IT IN MIND.

2 THE DEFENDANT: YES, YOUR HONOR.

3 THE COURT: IS THERE ANYTHING ELSE I SHOULD ADDRESS?

4 MR. MCCABE: WOULD YOUR HONOR PERMIT MR. HEAD TO
5 SELF-SURRENDER TO THE DESIGNATED INSTITUTION? COULD WE HAVE 60
6 DAYS.

7 MR. STONE: NO OBJECTION.

8 THE COURT: GIVEN HIS PAST COOPERATIVE NATURE, I DON'T
9 THINK THAT'S GOING TO BE A PROBLEM. WHY DON'T WE SET THIS
10 MATTER FOR STATUS, ORDER HIM TO REPORT TO THE DESIGNATED AGENCY
11 OR INSTITUTION, AND THEN SET IT FOR STATUS, JUST IN CASE, ABOUT
12 60 DAYS OUT.

13 THE CLERK: SELF-SURRENDER TO THE DESIGNATED
14 INSTITUTION BY 9:00 A.M., DECEMBER 3RD, 2007.
15 SELF-SURRENDER/BOND EXONERATION HEARING 9:00 A.M., DECEMBER
16 3RD, 9:00 A.M.

17 THE COURT: WILL THAT WORK?

18 MR. BIEGEL: THAT'S FINE.

19 MR. MCCABE: YES.

20 MR. STONE: YOUR HONOR, I JUST HAVE ONE OTHER
21 HOUSEKEEPING MATTER.

22 THE COURT: WHAT'S THAT?

23 MR. STONE: AS YOU KNOW, WE PUBLICLY FILE OUR 5K
24 MOTIONS. WE HAD PREVIOUSLY PROVIDED THE COURT WITH AN ORIGINAL
25 MOTION, WHICH WE ASK BE SEALED. I DON'T KNOW IF THE COURT'S

1 GOING TO RULE ON THAT OR NOT.

2 THE COURT: I'LL ORDER THAT TO BE SEALED. I THINK WITH
3 WHAT'S PUBLICLY FILED IS PROBABLY SUFFICIENT IN THIS CASE IN
4 ORDER TO GRANT THE PUBLIC THE INFORMATION THAT THEY NEED.

5 MR. STONE: THANK YOU, YOUR HONOR.

6 MR. BIEGEL: THANK YOU, YOUR HONOR.

7 THE COURT: ALL RIGHT, THANK YOU.

8 MR. STONE: THANK YOU.

9 (THE HEARING CONCLUDED.)

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C E R T I F I C A T E

I, GAYLE WAKEFIELD, CERTIFY THAT I AM A DULY
QUALIFIED AND ACTING OFFICIAL COURT REPORTER FOR THE UNITED
STATES DISTRICT COURT, THAT THE FOREGOING IS A TRUE AND
ACCURATE TRANSCRIPT OF THE PROCEEDINGS AS TAKEN BY ME IN THE
ABOVE-ENTITLED MATTER ON SEPTEMBER 28, 2007; AND THAT THE
FORMAT USED COMPLIES WITH THE RULES AND REQUIREMENTS OF THE
UNITED STATES JUDICIAL CONFERENCE.

DATED: _____

/S/ GAYLE WAKEFIELD
GAYLE WAKEFIELD, RPR, CRR
OFFICIAL COURT REPORTER

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FILED

JUN 23 2006

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY LMF DEPUTY

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) Case No. 06CR1380-BEN
)
Plaintiff,) I N F O R M A T I O N
)
v.) Title 15, United States Code,
) Sections 78m(b)(2)(A),
STEVEN LYNWOOD HEAD,) 78m(b)(5), and 78ff --
) Falsifying the Books, Records
Defendant.) and Accounts of an Issuer of
) Securities

The United States Attorney charges, at all times relevant to
this information:

COUNT ONE

(15 U.S.C. §§ 78m(b)(2)(A), 78m(b)(5), and 78ff

FALSIFICATION OF BOOKS, RECORDS AND ACCOUNTS OF AN ISSUER)

1. Titan Corporation was a publicly traded corporation
headquartered in San Diego, California. Titan Corporation and
certain of its subsidiaries, including Titan Wireless, Inc., Titan
Africa, Inc., and Titan Africa, S.A. (hereinafter collectively
referred to as "TITAN"), were engaged in, among other things, the
business of developing and constructing wireless telephone systems
for certain developing nations. Titan Wireless, Titan Africa,
Inc., and Titan Africa, S.A., although separately

/ X

1 incorporated, shared employees, officers, and personnel with Titan
2 Corporation.

3 2. Titan Corporation was an "issuer" of securities within
4 the meaning of the Securities and Exchange Act of 1934, and, as
5 such, was subject to the provisions of the Foreign Corrupt
6 Practices Act of 1977, 15 U.S.C. §§ 78dd-1 et seq., including its
7 accounting provisions, 15 U.S.C. § 78m(b).

8 3. From 1998 to 2002, Defendant STEVEN LYNWOOD HEAD
9 ("Defendant") was employed by TITAN as an Assistant to the CEO of
10 Titan Corporation and, later, as President and CEO of Titan Africa,
11 Inc. Beginning in late 1999, Defendant acted as the program
12 manager of TITAN's business activities in Benin.

13 4. In 1998, TITAN embarked on a project to develop a
14 telephone system in the African nation of the Republic of Benin and
15 to generate revenue from operating the system for a number of
16 years.

17 5. In 1998, Defendant and other TITAN personnel traveled to
18 Benin and discussed the project with the Benin Minister of
19 Telecommunications and the Director General of the Postal and
20 Telecommunications Office of the Republic of Benin ("OPT"), an
21 office under the Benin Ministry of Telecommunications. During this
22 visit Defendant was introduced to a Beninese national ("The Benin
23 Agent") who could act as a sales agent for TITAN and who had a
24 substantial relationship with the President of Benin.

25 6. In 1999, TITAN entered into a Consulting Agreement with
26 the Benin Agent making him TITAN's agent in Benin. Prior to
27 TITAN's engagement of the Benin Agent, Defendant was aware that the
28

1 Benin Agent had a substantial relationship with the Benin Head of
2 State.

3 7. In 1999, with the consent of the OPT, TITAN acquired the
4 rights to develop and operate, among other things, a wireless
5 telephone system in Benin. TITAN also entered into an agreement
6 with the OPT, known as the "BCT Contract," under which TITAN would
7 build, among other things, a wireless telephone network that would
8 be transferred to the OPT after TITAN was paid in full for
9 equipment and services provided by TITAN. Under the BCT contract,
10 the OPT had to obtain sites for telecommunications facilities, to
11 secure authorization for use of specific wireless frequencies, and
12 to assist in obtaining an exoneration of all customs, duties and
13 taxes on equipment and products which TITAN imported into Benin for
14 the BCT project.

15 8. The BCT Contract required that a supervisory group known
16 as the BCT Steering Committee be established to supervise the
17 project. This Committee consisted of Defendant, several senior
18 officers of TITAN, the Benin Agent, and the Director General of the
19 OPT. The Steering Committee met either in the United States or in
20 Paris, France, approximately one time every three months between
21 February 2000 and March 2001.

22 9. TITAN's agreements with the OPT required that TITAN pay
23 "part of its profits as subsidies for development" of certain
24 "sectors" in Benin, such as health, education, and agriculture.
25 TITAN was to determine the practical methods of carrying out these
26 subsidies in consultation with the Benin cabinet departments
27 responsible for those sectors. These subsidies were referred to
28

1 as "social payments." As of December 2000, the BCT Contract had
2 not generated profits for TITAN.

3 10. In or about December 2000, the Benin Agent and the
4 Director General of the OPT solicited money from TITAN under the
5 guise of "advanced social payments," and stated that the money had
6 to be paid before the next presidential election in Benin, set for
7 March 2001. At the time of this solicitation, Defendant and other
8 TITAN employees knew that the social payments were not yet due
9 under the terms of TITAN's agreements with the OPT, nor had there
10 been any coordination or consultation with Benin cabinet
11 departments, as required under TITAN's contracts. Defendant also
12 believed that the so-called "social payments" solicited by the
13 Benin Agent and the Director General of OPT would not be used in
14 their entirety for the purposes identified in TITAN's agreements
15 with the OPT. Nevertheless, Defendant at the direction of a senior
16 officer of TITAN caused the requested payments to be made to the
17 Benin Agent by means of a false invoice.

18 11. On or about January 22, 2001, within the Southern
19 District of California, Defendant STEVEN LYNWOOD HEAD knowingly and
20 willfully falsified a book, record and account of an "issuer" under
21 the federal securities laws, that is, Defendant caused the
22 submission to TITAN of an invoice on the Benin Agent's letterhead
23 totaling \$1,980,450, which did not mention "social payments" or
24 "subsidies," but instead, as Defendant knew, falsely stated that
25 TITAN owed monies to the Benin Agent for consulting services
26 allegedly performed.

27 ///


28 ///

1 All in violation of Title 15, United States Code, Sections
2 78m(b) (2) (A), 78m(b) (5) and 78ff.

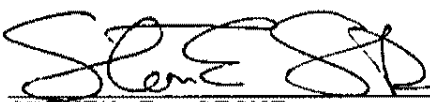
3 Dated: 6/22/06
4

5 CAROL C. LAM
6 United States Attorney

PAUL PELLETIER
Acting Chief, Fraud Section

7 
8 ERIC J. BESTE
9 Assistant United States
10 Attorney


MARK F. MENDELSON
Deputy Chief

11 
12 STEVEN E. STONE
13 Assistant United States
14 Attorney

U.S. Department of Justice
Fraud Section, Criminal
Division

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