

1 GEORGE S. CARDONA
 Acting 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,) GOVERNMENT'S COMBINED SENTENCING
 15) POSITION FOR DEFENDANTS GERALD
 v.) GREEN AND PATRICIA GREEN AND
 16) RESPONSE TO DEFENDANTS' JOINT
 GERALD GREEN and) SENTENCING MEMORANDUM; MEMORANDUM
 17 PATRICIA GREEN,) OF POINTS AND AUTHORITIES;
) DECLARATION OF CARLOS DEVEZA;
 18 Defendants.) EXHIBITS
)
 19) Sent. Date: January 21, 2010
) Sent. Time: 8:00 a.m.
 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 combined position as to the sentencings of both defendant GERALD
 27 GREEN and defendant PATRICIA GREEN ("defendants") and response to
 28 defendants' joint sentencing memorandum filed on January 7, 2010.

TABLE OF CONTENTS

PAGE(S)

1		
2		
3	TABLE OF AUTHORITIES	v
4	I. INTRODUCTION	1
5	II. ADVISORY SENTENCING GUIDELINES CALCULATIONS	5
6	A. PURSUANT TO INTERNATIONAL TREATY, THE SENTENCING	
7	GUIDELINES CORRECTLY APPLY A HIGH BASE OFFENSE LEVEL	
8	AND SPECIFIC ENHANCEMENTS TO THE CORRUPTION OF A	
9	FOREIGN PUBLIC OFFICIAL	6
10	B. USING THE TOTAL BRIBE AMOUNT IN THE GUIDELINES	
11	CALCULATION DOES NOT OVERSTATE THE SERIOUSNESS OF THE	
12	OFFENSE, DESPITE PURPORTED "GAINS" TO THAILAND FROM	
13	DEFENDANTS' SERVICES	8
14	C. BECAUSE DEFENDANT GERALD GREEN LED AND ORGANIZED	
15	"OTHERWISE EXTENSIVE" CRIMINAL ACTIVITY, AN ADDITIONAL	
16	FOUR-LEVEL ENHANCEMENT SHOULD BE IMPOSED UNDER	
17	U.S.S.G. § 3B1.1(a)	12
18	D. DEFENDANT PATRICIA GREEN PROPERLY RECEIVES NO ROLE	
19	ADJUSTMENT, HAVING BEEN LESS CULPABLE THAN DEFENDANT	
20	GERALD GREEN BUT ALSO A KEY PARTICIPANT WHO DIRECTED	
21	OTHERS	13
22	E. BECAUSE DEFENDANT GERALD GREEN PERJURED HIMSELF AT	
23	TRIAL, AN ADDITIONAL TWO-LEVEL ENHANCEMENT SHOULD BE	
24	IMPOSED UNDER U.S.S.G. § 3C1.1(a)	15
25	1. Explanation for Money Flow to Jittisopa	16
26	2. Explanation for Money Flow to Kittti	20
27	F. THE GOVERNMENT'S RECOMMENDED U.S. SENTENCING	
28	GUIDELINES CALCULATIONS FOR DEFENDANTS, AS REVISED	
	TO INCLUDE ADDITIONAL ENHANCEMENTS FOR DEFENDANT	
	GERALD GREEN	22
	III. STATUTORY SENTENCING FACTORS	23
	1. Nature and Circumstances of the Offenses	23
	a. Overview	23
	b. Conduct of defendant Gerald Green	26
	c. Conduct of defendant Patricia Green	27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS (CONTINUED)

PAGE(S)

2.	Need For The Sentence to Reflect the Seriousness of the Offense, to Promote Respect For the Law, and to Provide Just Punishment For the Offense	28
a.	The Foreign Corrupt Practices Act	28
b.	Tax and money laundering	32
3.	Need For the Sentence to Afford Adequate Deterrence	32
4.	History and Characteristics of the Defendants	34
a.	Defendant Gerald Green	35
b.	Defendant Patricia Green	36
5.	Need to Provide Adequate Medical Care	37
6.	Collateral Consequences To Prosecution Are Not Factors	39
7.	Specific Deterrence of Defendants' Future Wrongdoing	42
8.	Need To Avoid "Unwarranted" Sentence Disparities	43
IV.	RESTITUTION	45
V.	RESPONSE TO PROBATION OFFICERS' SENTENCING RECOMMENDATIONS	46
VI.	CONCLUSION	49

TABLE OF AUTHORITIES

FEDERAL CASES:	PAGE(S)
<u>Koon v. United States</u> ,	
518 U.S. 81 (1996)	39
<u>United States v. Bartlett</u> ,	
567 F.3d 901 (7th Cir. 2009)	44
<u>United States v. Bergman</u> ,	
416 F. Supp. 496 (S.D.N.Y. 1976)	41
<u>United States v. Booker</u> ,	
543 U.S. 220 (2005)	5
<u>United States v. Bras</u> ,	
483 F.3d 103 (D.C. Cir. 2007)	44
<u>United States v. Byrd</u> ,	
984 F.2d 251 (8th Cir. 1993)	37
<u>United States v. Cantrell</u> ,	
433 F.3d 1269 (9th Cir. 2006)	5
<u>United States v. Dunnigan</u> ,	
507 U.S. 87 (1993)	6, 16
<u>United States v. Gall</u> ,	
552 U.S. 38 (2007)	43
<u>United States v. Martin</u> ,	
363 F.3d 25 (1st Cir. 2004)	38
<u>United States v. Martinez</u> ,	
922 F.2d 914 (1st Cir. 1991)	16
<u>United States v. Orsburn</u> ,	
525 F.3d 543 (7th Cir. 2008)	43

TABLE OF AUTHORITIES (CONTINUED)

FEDERAL CASES:

PAGE(S)

United States v. Ringgold,

571 F.3d 948 (9th Cir. 2009) 44

United States v. Spoerke,

568 F.3d 1236 (11th Cir. 2009) 44

United States v. Statham,

581 F.3d 548 (7th Cir. 2009) 44

United States v. Tidwell,

191 F.3d 976 (9th Cir. 1999) 16

FEDERAL STATUTES:

15 U.S.C. §§ 78dd-1 through 78dd-3 ("FCPA") passim

18 U.S.C. § 3553(a) passim

18 U.S.C. § 3582(c)(1)(A) 38

18 U.S.C. § 3663 46

FEDERAL SENTENCING GUIDELINES:

U.S.S.G. § 2B1.1 7

U.S.S.G. § 2C1.1 6, 7

U.S.S.G. § 3B1.1 12, 13

U.S.S.G. § 3C1.1 15

U.S.S.G., Appendix A 6

TABLE OF AUTHORITIES (CONTINUED)

FEDERAL SENTENCING GUIDELINES: PAGE(S)

Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary (May 1, 2002) 6

INTERNATIONAL TREATY:

Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, reprinted in 37 I.L.M. 1 (1998) ("OECD Convention") 7, 46

LEGISLATIVE HISTORY:

S. Rep. No. 95-114 (1977), reprinted in 1977 U.S.C.C.A.N. 4098 29

TREATISE:

Stuart H. Deming, The Foreign Corrupt Practices Act and the New International Norms (American Bar Association Section of International Law 2005) 29

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 As shown at trial, defendants GERALD GREEN and PATRICIA
5 GREEN corruptly obtained contracts for a series of projects with
6 the Tourism Authority of Thailand ("TAT") by bribing a senior TAT
7 official who, from 2002 to 2006, allowed them to corner over
8 \$13.5 million of TAT-related business. Beneath the cover of
9 proposals that offered Hollywood-style glamour, defendants and
10 TAT Governor Juthamas Siriwan inflated every budget to siphon a
11 huge sum from Thailand's Treasury to pay the bribes and to line
12 their pockets. In addition, defendant PATRICIA GREEN filed IRS
13 tax returns for defendants' companies taking false deductions of
14 the bribes. The jury saw through defense attempts to impress
15 them with star power and on September 11, 2009, after less than
16 one day of deliberations, convicted defendants of conspiracy,
17 bribery, money laundering, and tax fraud. As Thailand's National
18 Anti-Corruption Commission ("NACC") urges in a letter to the
19 Court (Exhibit A attached hereto), the Court should impose strict
20 sentences that reflect the grave harm caused by defendants'
21 conduct, and that assist the global campaign to stem corruption.

22 Defendants' Pre-Sentence Reports ("PSRs"), the starting
23 point of any sentencing analysis, calculate advisory guidelines
24 ranges with a low end of 235 months for each defendant.¹ The use
25 of the punitive public corruption guideline for the violations of
26 the Foreign Corrupt Practices Act ("FCPA") is mandated by

27
28 ¹ The PSRs calculated the guidelines using the November
1, 2009 United States Sentencing Guidelines Manual ("U.S.S.G.").

1 international treaty obligations. The PSRs' calculations
2 properly take into account the repeated bribery of a high-level
3 public official, the large amount of bribes, and sophisticated
4 money laundering. (Defendant PATRICIA GREEN's tax convictions,
5 while not affecting her sentencing range, alone would merit a
6 guideline of 33 to 41 months.) Furthermore, in accord with a
7 straightforward application of the sentencing guidelines and as
8 noted in the government's objections to defendant GERALD GREEN's
9 PSR, filed on December 14, 2009, defendant GERALD GREEN should
10 also receive enhancements for aggravating role and for
11 obstruction of justice (i.e., perjury at trial), yielding a total
12 guideline range in excess of 360 months.²

13 In seeking sentences of probation, defendants ask this Court
14 to cast aside the Sentencing Guidelines entirely. On the issue
15 of harm/loss, defendants argue that the guideline's use of the
16 amount of bribes paid, \$1.8 million, overstates the seriousness
17 of the offense in that Thailand was not harmed at all by their
18 conduct but rather profited vastly. This contention is legally
19 and factually wrong. Whether services rendered actually provided
20 value is not determinative of the magnitude of defendants'
21 crimes. The self-dealing and elimination of competition at the
22 core of the offense never benefitted Thailand.

23 Aside from the guidelines calculations, the statutory
24 sentencing factors of 18 U.S.C. § 3553(a) prescribe lengthy
25 prison terms for each defendant. The egregiousness of the

26
27 ² While the Court may not be inclined to grant 360-month
28 or 235-month sentences, the government submits that is necessary,
indeed it required by case law, for the Court to have an accurate
advisory guideline range calculation as a starting point.

1 bribery here, in essence, involved the systematic embezzlement of
2 a developing country's public funds -- in addition to depriving
3 other potential bidders of business opportunities. Defendants
4 personally profited well over a million dollars while acting as
5 accomplices in the TAT Governor's theft of \$1.8 million from her
6 agency, and no one, apart from the corrupt official herself, was
7 more directly engaged in these crimes. Defendants' assertion
8 that Thailand does not consider itself victimized by their
9 conduct is based on self-serving speculation about the pace or
10 nature of that country's own inquiry into the TAT Governor's
11 actions. Aside from the conduct the defendants engaged in with
12 respect to the bribery scheme, defendant GERALD GREEN has added
13 to his wrongs by committing perjury at trial.

14 The seriousness of violations of the FCPA, the purposes it
15 serves, and the need to promote respect for the law and for U.S.
16 treaty obligations must be reflected in defendants' sentences.

17 Defendants' sentences should serve to deter U.S. businesses
18 from such corrupt procurement schemes, which are profitable but
19 very hard to detect and to prove against individuals. Deterrence
20 would suffer greatly by establishing that, even where bribery is
21 of such scale, and even in a worse-case scenario of detection,
22 indictment, and conviction at trial, a defendant may still
23 receive only a light sentence. Many would take that bet.

24 Defendants' personal history and characteristics do not
25 support a major variance from the guidelines. They committed
26 crimes of choice, and are unrepentant.³ While defendant GERALD

27 ³ Instead of contrition, defendants cite their mere non-
28 violation of hefty bonds secured by their home and sureties.

1 GREEN is 78 years old, seniority must not be a card that can be
2 played to escape serious prison time. Defendant PATRICIA GREEN
3 (now 55 years old) emphasizes her persona of homemaker, loving
4 wife, and care-giver, but in fact she was the "CEO" of the
5 businesses and a film producer. Defendants' film-industry
6 friends have written letters to vouch for their character, but
7 these connections should not place them in a privileged class
8 relative to others sentenced by this Court for economic crimes.

9 Defendant GERALD GREEN should not receive a lighter sentence
10 because of his chronic illnesses. The attached declaration by a
11 health services administrator of the Bureau of Prisons ("BOP")
12 shows that he will be designated to an institution that is fully
13 equipped to treat his common ailments.

14 Defendants argue that they have already been sufficiently
15 punished financially and emotionally from their investigation and
16 prosecution. However, they should not get preferred treatment
17 for having lost status and wealth they maintained and enjoyed for
18 years through this corrupt scheme. And much of the suffering
19 they describe was brought upon themselves by fighting this case.

20 Finally, defendants contend that probation is appropriate to
21 avoid disparities with other FCPA sentences. They append a
22 digest of cases, but the other sentences they cite do not involve
23 "similarly-situated" defendants. Defendants failed to note that,
24 with rare exception, the defendants in their case digest pled
25 guilty and cooperated with the government. (Nor do these cases
26 include comparable defendants sentenced under domestic bribery
27 statutes, let alone tax fraud and money laundering laws.) The
28 FCPA cases defendants cite should only remind this Court that

1 defendants here are unrepentant and guilty of particularly
2 egregious violations of the statute.

3 Restitution to Thailand of bribe amounts is discretionary
4 under federal statute, but is necessary to comply with U.S.
5 treaty obligations and to serve the ends of justice.

6 Therefore, based on the guidelines, statutory factors, and
7 treaty, this Court should impose upon each defendant imprisonment
8 for a significant number of years and full restitution.⁴

9 II.

10 ADVISORY SENTENCING GUIDELINES CALCULATIONS

11 The law provides that sentencing courts must start with the
12 sentence advised by the Sentencing Guidelines. United States v.
13 Booker, 543 U.S. 220, 264 (2005) ("The district courts, while not
14 bound to apply the Guidelines, must consult those Guidelines and
15 take them into account when sentencing."); United States v.
16 Cantrell, 433 F.3d 1269, 1279 (9th Cir. 2006) (stressing that
17 "district courts still must consult the Guidelines and take them
18 into account when sentencing, even though they now have the
19 discretion to impose non-Guidelines sentences").

20 As set forth below, in accord with Cantrell and Booker, the
21 correct "starting points" for sentencing, obtained through the
22 application of the Sentencing Guidelines manual, are Guideline
23 ranges of 235-293 months in prison for defendant PATRICIA GREEN
24 and in excess of 360 months in prison for defendant GERALD GREEN.
25 The calculations supporting these ranges, which are different for
26 defendant GERALD GREEN than those set forth in his PSR, are

27
28 ⁴ The government addresses the probation officers' recommendation letters at the end of this memorandum.

1 explained below. While the Court may decide to depart from the
2 guidelines, it is necessary in the first instance to establish
3 the correct advisory ranges so that the Court can properly
4 consider the true extent of any such possible departure.

5 A. PURSUANT TO INTERNATIONAL TREATY, THE SENTENCING GUIDELINES
6 CORRECTLY APPLY A HIGH BASE OFFENSE LEVEL AND SPECIFIC
7 ENHANCEMENTS TO THE CORRUPTION OF A FOREIGN PUBLIC OFFICIAL

8 Pursuant to international treaty, the United States must
9 impose comparable sentences in both domestic and foreign bribery
10 cases. In 2002, the Sentencing Commission amended the statutory
11 index of offenses located at U.S.S.G. Appendix A to specifically
12 key FCPA's anti-bribery violations to U.S.S.G. § 2C1.1, the same
13 guideline used for domestic bribery offenses. The Sentencing
14 Commission stated that such amendment was necessary

15 to comply with the mandate of a multilateral treaty
16 entered into by the United States, the Convention on
17 Combating Bribery of Foreign Public Officials in
18 International Business Transactions. In part this
19 Convention requires signatory countries to impose
20 comparable sentences in both domestic and foreign
21 bribery cases. Domestic public bribery cases are
22 referenced to § 2C1.1. To comply with the treaty,
23 offenses committed in violation of 15 U.S.C. §§ 78dd-1
24 through 78dd-3 are now similarly referenced to § 2C1.1.

25 Amendments to the Sentencing Guidelines, Policy Statements, and
26 Official Commentary (May 1, 2002), at p. 3 (emphasis added).

27 As indicated by the Sentencing Commission, the "Sanctions"
28 section of the multilateral treaty sponsored by the Organization
for Economic Cooperation and Development, provides in part:

The bribery of a foreign public official shall be
punishable by effective, proportionate and dissuasive
criminal penalties. The range of penalties shall be
comparable to that applicable to the bribery of the
Party's own public officials

1 Convention on Combating Bribery of Foreign Public Officials in
2 International Business Transactions ("OECD Convention"), Art. 3,
3 § 1, reprinted in 37 I.L.M. 1 (1998).

4 Accordingly, the PSRs correctly apply a base offense level
5 of 12 (U.S.S.G. § 2C1.1(a)(2)), and enhancements of two levels
6 for two or more bribes (§ 2C1.1(b)(1)), four levels for a "high-
7 level" official (§ 2C1.1(a)(2)), and 16 levels for bribes of at
8 least \$1 million (§§ 2C1.1(b)(2), 2B1.1(b)(1)(I)). (Gerald Green
9 PSR ¶ 35; Patricia Green PSR ¶ 36). The latter enhancement
10 applies based on the following provision:

11 If the value of the payment, the benefit received or to
12 be received in return for the payment, the value of
13 anything obtained or to be obtained by a public
14 official or others acting with a public official, or
15 the loss to the government from the offense, whichever
is greatest, exceeded \$5,000, increase by the number of
16 levels from the table in §2B1.1 (Theft, Property
Destruction, and Fraud) corresponding to that amount.

16 § 2C1.1(b)(2) (emphasis added).

17 Defendants do not dispute the PSRs' findings as to number or
18 amount of bribes.⁵ Indeed, based on the evidence and verdicts,
19 the offense involved multiple bribes totaling roughly \$1.8
20 million, in exchange for awarding not only the annual Bangkok
21 International Film Festival ("BKKIFF") but also numerous other
22 lucrative TAT-related contracts. (Trial Exhibit 1238).⁶

23 Defendants also do not dispute in their sentencing filing
24 that the offense involved a "high-level" official. The evidence
25

26 ⁵ The government addresses below defendants' claim that
27 this measure overstates the seriousness of the offense.

28 ⁶ The government is concurrently filing a collection of
the trial exhibits referenced in this memorandum.

1 at trial showed that the bribed TAT Governor, Juthamas Siriwan,
2 negotiated the contracts directly with defendant GERALD GREEN,
3 signed the contracts and related procurement memos as Governor,
4 and was the highest-ranking official at the TAT. Juthamas
5 Siriwan had "control" of the procurement committees that formally
6 presented her the proposals -- as defendant GERALD GREEN
7 explained to defendant PATRICIA GREEN.⁷ (Trial Exhibit 1349).

8 Therefore, the PSRs correctly found that the subtotal for
9 the bribery guideline for each defendant is 34 offense levels.

10 B. USING THE TOTAL BRIBE AMOUNT IN THE GUIDELINES CALCULATION
11 DOES NOT OVERSTATE THE SERIOUSNESS OF THE OFFENSE, DESPITE
12 PURPORTED "GAINS" TO THAILAND FROM DEFENDANTS' SERVICES

12 Defendants argue that the guidelines enhancement of 16
13 offense levels for the \$1.8 million in bribes defendants paid
14 overstates the seriousness of the offense. Defendants, instead,
15 try to convince this Court that this was a "case where not only
16 was there no loss, but Thailand made vast profit The
17 [TAT's] own records show that Thailand profited \$140 million"
18 from the BKKIFF. (Def. Sent. Mem., at 6). "Even if the \$1.8
19 million is subtracted from the \$140.1 million profit, the net
20 gain to Thailand is \$139 million." (*Id.* at 8). This argument
21 fails legally and factually.

22 The legal reasoning behind the claim that there was no harm
23 or victim from the bribery in this case has no support in
24 precedent, entirely misstates and misunderstands the nature of
25

26 ⁷ At the time of the pre-sentence investigation,
27 defendants argued that since a TAT committee including lower-
28 level officials approved the contracts, the high-level official
enhancement is incorrect. (Patricia Green PSR ¶ 36(d) n.2).
Defendants appear to have abandoned that argument.

1 the offense of which defendants have been convicted, and would
2 undermine the goals of sentencing. Defendants' arguments turns
3 the FCPA, indeed all anti-corruption laws, including domestic
4 corruption laws, on their head.

5 Predictably, defendants' arguments cite no authority for
6 giving zero weight to the calculation required by U.S.S.G.
7 § 2C1.1(b)(2) based on "whichever is greatest" of payments to the
8 official or the loss to the government. The guideline as applied
9 appropriately punishes defendants for the extent of improper
10 inducement to the official for influencing his or her official
11 action to award business. In this case, this measure also
12 reflects the amount of money lost from Thailand's treasury by
13 inflating the project budgets to include the bribe amounts.

14 Defendants' theory of harm in a bribery or kickback case,
15 i.e., that the amount of payments to an official should be offset
16 by the amount of overall gain to the victim-state on the project,
17 does not make any sense, nor does it have any support in case
18 law, statute, or common sense. Defendants' revolutionary theory
19 of loss calculation, rather than discouraging bribery, would
20 actually condone it by reducing it to a cost of doing business.
21 If one is to follow the defendants' logic, bribery is just fine
22 so long as the country in which the bribes are taking place
23 ultimately makes money. This result is absurd. Defendants are
24 not being prosecuted or punished for a poor outcome to the
25 BKKIFF, and so their entire discussion of profit is beside the
26 point.

27 In any event, defendants' reliance on TAT-commissioned
28 marketing studies of the BKKIFF (Exhibit A to Defs. Sent. Mem.)

1 to show that they were responsible for a profit to Thailand of
2 \$140 million (or \$139 million net of the bribes) is factually
3 misplaced. First, the studies do not even purport to address to
4 what extent the reported results could have been achieved under
5 defendants' management alone, and not the many other film
6 festival promoters in business internationally. Second, these
7 studies do not purport to study "profit" from defendants'
8 services, but rather gross "money flow" directly and indirectly
9 in the cycle of Thailand's economy from all BKKIFF operations, of
10 which (trial testimony showed) the TAT payments to defendants
11 funded only certain parts. Third, the studies do not measure
12 what additional economic activity in Thailand could have been
13 generated had not the bribery diverted a large percentage of the
14 TAT payments to the overseas accounts for the Governor's benefit.

15 Defendants tout how "big" the festival became under their
16 management, as if the increases in the BKKIFF's operations and
17 public funding were reliable measures of defendants' achievement
18 with the festival. Not at all. With the TAT Governor taking a
19 percentage of every dollar paid to defendants, she had her own
20 reasons to increase the BKKIFF's budget to lavish heights and to
21 exaggerate its benefits to Thailand.

22 It is also pure speculation to claim that defendants still
23 would have obtained these contracts had the procurement process
24 been open to all and based only on merit, and that they had no
25 competitors willing or able to perform the same services. (Def's.
26 Sent. Mem., at 8-9). The point of anti-bribery laws is that
27 these judgments can only be made by honest, unbiased procurement
28 officials at the time -- not by busy law courts years later.

1 Prominent among defendants' self-aggrandizing claims is that
2 they put Thailand "on the map" for foreign film-makers as a place
3 to shoot movies. (Defs. Sent. Mem., at 10). They assert that
4 as a result of their management of the BKKIFF, Thailand "received
5 world recognition as a country for filming." (Gerald Green PSR
6 ¶ 23). But the attached compilation of news stories published
7 throughout 2002, before defendants had helped to put on the 2003
8 BKKIFF, shows that foreign film-making was already thriving in
9 Thailand with hundreds of productions every year. A concerted
10 government program of tax incentives, faster permitting, founding
11 of a national film commission, organizing trade shows, and
12 joining international film associations was already in swing to
13 increase the activity. (Exhibit B attached hereto). Defendants'
14 claim to have been the cause of new foreign film productions and
15 all its associated economic growth is thus exaggerated at best.

16 Lastly, defendants focus on the BKKIFF and barely address
17 their other TAT-related bribery. Business records and Susan
18 Shore's testimony established that \$750,000+ of the bribes paid
19 were for the projects unrelated to the BKKIFF. (Trial Exhibit
20 1238). After the deal for the 2003 BKKIFF, defendants went on a
21 spree of bribery in a variety of TAT projects. Defendants do not
22 even attempt to show that these other, unrelated contracts made
23 good economic sense or had a measurable benefit for Thailand.

24 Thus, the Court should reject defendants' argument that they
25 committed, at worst, a victimless, "technical" law violation.⁸

27 ⁸ The jury instructions for all statutes of conviction
28 required willfulness, and for the FCPA, also "corrupt" intent.
These are not "technical" statutes that enmesh the unwitting.

1 C. BECAUSE DEFENDANT GERALD GREEN LED AND ORGANIZED "OTHERWISE
2 EXTENSIVE" CRIMINAL ACTIVITY, AN ADDITIONAL FOUR-LEVEL
3 ENHANCEMENT SHOULD BE IMPOSED UNDER U.S.S.G. § 3B1.1(a)

4 In addition to the enhancements currently set forth in the
5 PSR, the government contends that a four-level aggravating role
6 adjustment is appropriate for defendant GERALD GREEN. The
7 government objects to the PSR's finding that defendant GERALD
8 GREEN was no more culpable than any other participant, and thus
9 does not merit an aggravating role. (Gerald Green PSR ¶ 39).

10 A four-level enhancement applies for being "an organizer or
11 leader of criminal activity that involved five or more
12 participants or was otherwise extensive." U.S.S.G. § 3B1.1(a)
13 (emphasis added). This "otherwise extensive" ground for an
14 aggravating role adjustment is applicable to defendant GERALD
15 GREEN because of the large amount of loss, the extensive duration
16 of the bribery scheme, its international scope, the number of
17 witting and unwitting participants, and defendant GERALD GREEN's
18 role in directing defendant PATRICIA GREEN and others employed at
19 defendants' several companies (including Susan Shore) and the
20 other various prime contractors and subcontractors in executing
21 the details of the scheme. Most important, the testimony of
22 Shore established that defendant GERALD GREEN met and conversed
23 with the Governor to negotiate the amounts of the contracts and
24 the Governor's "commissions." While other trial testimony
25 supporting the conclusion that he organized the scheme is too
26 voluminous to discuss, certain trial exhibits amply demonstrate
27 defendant GERALD GREEN's role in directing the inflation of the
28 budgets to include so-called "commissions" and profit (Trial
Exhibits 1309, 1313, 1350), instructing Susan Shore and defendant

1 PATRICIA GREEN to notify "you know who" (referring to the
2 Governor, according to Shore) of the accomplished wire payments
3 (Trial Exhibit 1323), and directing their businesses' use of
4 fictitious addresses with the TAT. (Trial Exhibit 443).

5 The PSR's discussion of role only analyzes § 3B1.1(c), which
6 only counts the criminally-culpable participants a defendant
7 managed or supervised, and does not consider the "otherwise
8 extensive" prong of § 3B1.1(a). In the context of § 3B1.1(c)
9 analysis, the PSR found that the offense "involved essentially
10 three people: Gerald and Patricia Green and Siriwan." (Gerald
11 Green PSR ¶ 39). The government does not seek to apply this
12 prong of the subsection, and the PSR's focus on it is misplaced.

13 Therefore, the Court should increase defendant GERALD
14 GREEN's offense level by four levels for his aggravating role.

15 D. DEFENDANT PATRICIA GREEN PROPERLY RECEIVES NO ROLE
16 ADJUSTMENT, HAVING BEEN LESS CULPABLE THAN DEFENDANT GERALD
GREEN BUT ALSO A KEY PARTICIPANT WHO DIRECTED OTHERS

17 The PSR for defendant PATRICIA GREEN correctly includes no
18 upward or downward role adjustment.⁹ (Patricia Green PSR ¶ 45).

19 Besides defendant GERALD GREEN, no one who helped make the
20 bribe payments to the Governor had a more crucial role, or
21 benefitted more, than defendant PATRICIA GREEN. Defendant
22 PATRICIA GREEN was an instrumental part of the bribery scheme
23 from the very beginning. Indeed, PATRICIA GREEN was responsible
24 for sending the very first wire transfer to the overseas account
25 in the name of the Governor's Daughter on November 12, 2002

26
27 ⁹ Defendant PATRICIA GREEN indicated to the probation
28 office that she would seek a role reduction. (Patricia Green PSR
¶ 45 n.4). Because she did not object to the PSR's role finding,
she may have abandoned this argument.

1 (Trial Exhibit 1369B). This was not an isolated incident,
2 defendant PATRICIA GREEN went personally to the bank time and
3 time again initiating the scores of corrupt payments in this case
4 over a five year period -- including the huge cashier's checks to
5 the Governor's Friend. (Trial Exhibit 1201, Tab 24). Defendant
6 PATRICIA GREEN also took part in the following aspects of the
7 corrupt scheme: (1) inflating the project budgets to include
8 bribes and profits (Trial Exhibits 1313, 1326A, and 1350); (2)
9 instructing Shore how to fund bribe payments (Trial Exhibit
10 1334); (3) advising the Governor when bribe payments had been
11 made (Trial Exhibit 1323); (4) maintaining a file folder in her
12 own office tracking the balance of bribe payments (Trial Exhibit
13 1226); (5) signing to execute contracts with prime contractors
14 who would secretly subcontract to defendants' businesses (Trial
15 Exhibit 702), which would in turn pay the Governor; (6) issuing
16 phony invoices to Edelman PR describing work her company did not
17 perform, for the purpose of innocently explaining the large
18 payments her company was billing Edelman PR as a subcontractor
19 under its TAT public relations contract (Trial Exhibit 912); (7)
20 arranging details of phony company addresses for use in TAT
21 documentation (Trial Exhibit 443); (8) making arrangements for
22 secret payments of amounts allegedly owing to them from the TAT
23 for the 2007 BKKIFF through a pass-through company, Creative
24 Juice (Trial Exhibit 1340); (9) signing false company tax returns
25 in her own name and the nominee Eli Boyer's name as alleged in
26 the tax fraud counts; and (10) deceiving the outside CPA during
27 an IRS audit of SASO about the true nature of the so-called
28 "commission" payments deducted on the returns.

1 Defendant PATRICIA GREEN herself exercised leadership at
2 times over Susan Shore and others in executing the scheme.
3 Defendant PATRICIA GREEN's outside CPA Don Garrett testified at
4 trial that defendant PATRICIA GREEN was the "CEO" of the
5 companies. Besides defendants, the other key participant in the
6 payments within the companies, Susan Shore, reported to defendant
7 PATRICIA GREEN and was a part-time employee who came into the
8 office two days a week; they were not equals. Shore did not make
9 the bribe payments herself, or sign the tax returns, or sign
10 contracts with prime contractors that contained FCPA language
11 advising her of the illegality of the bribes -- defendant
12 PATRICIA GREEN did.

13 While defendant PATRICIA GREEN was less culpable than her
14 husband, neither was her role minor or minimal thus meriting a
15 downward adjustment. Therefore, the Court should adopt the PSR's
16 finding that defendant PATRICIA GREEN merits no role adjustment.

17 E. BECAUSE DEFENDANT GERALD GREEN PERJURED HIMSELF AT TRIAL, AN
18 ADDITIONAL TWO-LEVEL ENHANCEMENT SHOULD BE IMPOSED UNDER
U.S.S.G. § 3C1.1(a)

19 The government submits that applying a two-level enhancement
20 for obstruction of justice to defendant GERALD GREEN is
21 appropriate because he blatantly perjured himself at trial.

22 Under U.S.S.G. § 3C1.1, the situations where a two-level
23 increase in offense level for obstruction of justice is available
24 include, among others, where a defendant committed perjury. See
25 U.S.S.G. § 3C1.1 comment (n. 4). If a defendant objects to a
26 sentence enhancement resulting from his or her allegedly perjured
27 trial testimony, a district court must review the evidence and
28 make findings necessary to establish an act of perjury under the

1 appropriate legal definition, i.e., false testimony concerning a
2 material matter with the willful intent to provide false
3 testimony. See United States v. Dunnigan, 507 U.S. 87, 94-95
4 (1993). For purposes of a sentencing enhancement, obstruction
5 must be shown by a preponderance of the evidence. United States
6 v. Tidwell, 191 F.3d 976, 982 (9th Cir. 1999).

7 Not only did defendant GERALD GREEN deny in his testimony
8 the allegations of bribery against him, but also he fabricated
9 elaborate explanations for the payments he directed defendant
10 PATRICIA GREEN and Susan Shore to make to accounts held in the
11 name of the Governor's Daughter, Jittisopa Siriwan, and the
12 Governor's Friend, Kitti Chambundabongse.¹⁰ These explanations
13 contradicted the extensive evidence (including both witness
14 testimony and documentary evidence) in the government's case in
15 chief, were incoherent and incredible on their face, and were
16 further discredited upon defendant GERALD GREEN's cross-
17 examination. As shown by the guilty verdicts against him, the
18 jury disbelieved and flatly rejected his explanations.

19 **1. Explanation for Money Flow to Jittisopa**

20 Regarding the \$1.4 million referred to as "commissions" that
21 his businesses transferred to accounts in the name of the
22 Daughter, Jittisopa Siriwan, defendant GERALD GREEN testified on
23 direct examination that these payments resulted from an
24 arrangement with Jittisopa to invest in a new company that at
25 some point came to be called ConsultAsia. He testified:

26 _____
27 ¹⁰ A defendant's simple denial of the charges, without
28 more, may be insufficient to apply the obstruction enhancement.
See United States v. Martinez, 922 F.2d 914 (1st Cir. 1991).

1 Q. So how was - - how did you understand this new
2 company [of Jittisopa's] was going to be funded
and financed?

3 A. I knew that they had - - she had different investors
4 lined up for this company. I knew that Mr. Na was
5 going to be investing in the company and - - but I also
6 knew that what we could invest was our knowledge in
7 marketing and my contacts outside the country,
8 particularly in the financial world because of my
connections in the movie industry. And I had dealt
with a number of banks so I felt and I told them - -
9 this was an open discussion. Im trying to simplify the
10 conversations. I put it to her that I could do that
11 sort of - - that would be my contribution.

12 Q. Did she think you should also put money into the
13 company?

14 A. We spoke about that, but I knew that the scale of what
15 she was talking about was out of our depth financially.

16 Q. And did you come to a compromise as to how you
17 would provide money for the company?

18 A. Yes.

19 Q. Or for her?

20 A. Yes. I said: Listen. I tell you what. Any work that
21 I do, that our companies do in Thailand, I will invest
22 in you. I will pay you a percentage of whatever we
23 earn. I will not pay one penny for any costs within
24 the costs of ConsultAsia but --

25 Q. Was it called "ConsultAsia" at that point.

26 A. No. The new company. But you will have to cover those
27 costs and take care of the operation of the company and
28 the rest of it.

(Trial Transcript 9/9/09, at 24-25).

29 This story was incoherent, preposterous on its face, and
30 contradicted by the documentary evidence as well as by the
31 government witnesses. First and foremost, the payments made were
32 always termed "commissions," not investments. Not one witness or
33 document at trial ever referred to the payments as investments
34 and defendant GERALD GREEN's classification of them at trial as

1 such is pure fiction. Secondly, the so-called contract defendant
2 GERALD GREEN executed with Jittisopa that -- per defendant GERALD
3 GREEN -- memorialized this purported agreement, totally
4 contradicted the arrangement described in the testimony above.
5 Rather, the document explicitly based any payments to Jittisopa
6 on revenue from projects that Jittisopa had been responsible for
7 "securing and managing." (Trial Exhibit 2088). Defendant GERALD
8 GREEN, who even himself conceded that Jittisopa had nothing to do
9 with generating any of the TAT revenues from which "commission"
10 payments were actually calculated and funded, became flustered
11 and confounded on cross-examination when asked to read the actual
12 language contained in the "contract" (Trial Exhibit 2088):

13 Q. Mr. Green, what's the term No. 1? What are the
14 services to be provided?

15 A. "As a consultant in order to assist us, advise,
16 develop, introduce, and identify new business
opportunities in Thailand."

17 Q. Okay. So she's supposed to help bring in new business?

18 A. Yes.

19 Q. And No. 2.

20 A. "Compensation paid to JS shall be incurred by" - -

21 Q. Sir, if you could actually start at 2.1.

22 A. I'm having a problem reading this stuff. Could you
read it?

23 Q. Sure. "2.1 JS shall be entitled to receive up to 20
24 percent of the gross amount of any assignment secured
by and managed by JS. . ."

25 * * *

26 Q. Now, under the compensation section, it says that "JS
27 shall be entitled to receive up to 20 percent of any
assignment secured and managed by JS"?

28 A. Yes.

1 Q. It never here discusses consideration for ConsultAsia.
2 You had previously mentioned that this contract was in
3 lieu of you investing in ConsultAsia. This was your
4 consideration because you didn't have the wherewithal
5 for your business investing in ConsultAsia.

6 A. Okay.

7 Q. It never mentions ConsultAsia anywhere in this
8 agreement?

9 A. ConsultAsia didn't exist at that stage as a name.

10 Q. It never mentions any company to be formed by you.

11 A. Well, this was what I call a deal memo . . .

12 * * *

13 Q. Sir, does it say anywhere on here in consideration for
14 any sort of company to be formed by you?

15 A. No. It's the intention. It may not say it, but it was
16 obviously the intention.

17 Q. Sir, does it say it?

18 A. No. I'm telling you it doesn't say it.

19 Q. And it doesn't say on there anywhere: Any work I get in
20 Thailand, I will invest or pay as part of an
21 arrangement I have with you to invest in your company
22 to be formed?

23 A. No, it doesn't.

24 Q. In fact, it doesn't really talk about any work other
25 than work that's derived from Jittisopa Siriwan?

26 A. Well, this agreement was made by me. I'm not a lawyer
27 and the intention of what the content was based upon
28 our agreement - - part of the agreement was even me
being - - if we got the work, big jobs in, and we made
a profit, I would recoup my investment. As lot of
things are not here.

Q. Sir, it doesn't say anywhere in here that you will
invest a percentage of other work you get in Thailand?

A. Whatever it says, the intention is what I told you.

Q. Well, in fact, it says specifically that JS is entitled
to 20 receive up to 20 percent of the amount that she
herself brings in.

1 * * *

2 A. This money was to pay for my participation in the
3 company. The payments to be made to her pure and
simple.

4 (Trial Transcript 9/9/09, at 131-34).

5 In any event, no experienced businessman would enter into
6 such a one-sided arrangement to pay over a percentage of hard-
7 earned gross revenue to a third party in order to secure an
8 undefined stake in a future business -- let alone do so with a
9 young foreigner whom he had just barely met a few months earlier,
10 and who about to spend the next year studying in England. The
11 fact that defendant's story was so reckless and doomed to failure
12 hardly negates his obstructive intent.

13 **2. Explanation for Money Flow to Kittti**

14 Similarly, defendant GERALD GREEN's story for the roughly
15 \$400,000 his companies paid into an account in Singapore in
16 Kittti's name, and for why at one point Kittti transferred all of
17 the money he had received in that account to a different account
18 in Singapore in Jittisopa's name (aka "Jib"), was patently false.

19 Defendant GERALD GREEN testified in rich detail that, after
20 Kittti decided in 2003 to leave his Thai advertising agency,
21 defendant GERALD GREEN offered to help Kittti start a new
22 "boutique agency" in Thailand and delivered cashier's checks and
23 wired funds to Kittti for this purpose. (Trial Transcript, at 80-
24 82). Defendant GERALD GREEN claims, however, that Kittti changed
25 his mind and decided to stay, at which point this investment fell
26 through and defendant GERALD GREEN made arrangements for the
27 unspent funds as follows:

1 Q. And at some point in time, did you have the
2 understanding, did you give directions to Kitti as to
3 what you wanted him to do with the - - do you know
approximately how much money you transferred to him at
that point?

4 A. I believe it was about \$400,000 or \$300,000. I don't
5 remember the exact amount.

6 * * *

7 Q. Did you direct Kitti to do something with that money?

8 A. Yes, I did.

9 Q. Did you direct Kitti to transfer that money anywhere?

10 A. Yes, I did.

11 Q. Where did you direct him to transfer it?

12 A. I told him to send it over to Jib.

13 Q. And why were you transferring it to Jib?

14 A. Because I was building a house in Thailand and I was
15 intending to spend - - because of my health - - the
16 winters in Thailand. About a year later, I was
intending to retire and I would spend four, maybe five
months a year in Thailand; and I was looking to build
an income, start putting some income into Thailand.

17 Q. Did you intend that money to be Jib's money or your
18 money?

19 A. My money.

20 Q. Did you ever open an account to transfer that money to?

21 A. No.

22 (Trial Transcript 9/9/09, at 83-84).

23 This story, too, was unbelievable when told for many
24 reasons, including that the payments to Kitti were without
25 exception denominated on company records as "commissions" in
26 connection with TAT projects (not investments) and had been
27 calculated and grouped together with other "commission" payments
28 made to Jittisopa. In addition, defendant GERALD GREEN's

1 assertion that he asked Kittti to refund him the money for use in
2 his retirement by transferring it to Jittisopa because he did not
3 want to open a personal bank account in Thailand was demonstrably
4 false. On cross-examination, defendant GERALD GREEN, when
5 presented with Thai bank account statements in his name, had to
6 acknowledge that he had an active personal bank account in
7 Thailand the entire time. (Trial Transcript 9/9/09, at 147-49).

8 Defendant GERALD GREEN's testimony, woven with such detail,
9 is precisely the type of perjury that goes far beyond mere denial
10 of the charges and merits the obstruction of justice enhancement.

11 F. THE GOVERNMENT'S RECOMMENDED U.S. SENTENCING GUIDELINES
12 CALCULATIONS FOR DEFENDANTS, AS REVISED TO INCLUDE
13 ADDITIONAL ENHANCEMENTS FOR DEFENDANT GERALD GREEN

14 The PSRs calculate both defendants' Total Offense Level as
15 38, Criminal History Category as I, and sentencing range as 235-
16 293 months. (Gerald Green PSR ¶ 117; Patricia Green PSR ¶ 124).
17 This is based on the public corruption guidelines and four levels
18 in enhancements for sophisticated money laundering. (Gerald
19 Green PSR ¶¶ 36-37; Patricia Green PSR ¶¶ 37-38).¹¹

20 Including the additional role and obstruction enhancements,
21 defendant GERALD GREEN's Total Offense Level would be 44 and his
22 sentencing range would be in excess of 360 months.

23 The government submits that these calculations are the
24 appropriate "starting point" under the Sentencing Guidelines for
25 the Court to use in its sentencing determination.

26 ¹¹ Defendant PATRICIA GREEN's PSR also calculates the tax
27 fraud guidelines resulting in an Adjusted Offense Level of 20 and
28 a sentencing range of 33 to 41 months. (Patricia Green PSR ¶¶ 43-
47). However, because of the great differential with the bribery
guidelines, this tax fraud calculation does not enhance the
overall guidelines total. (Id. at ¶¶ 48-54).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
III.

STATUTORY SENTENCING FACTORS

After considering the Sentencing Guidelines and pertinent policy statements of the Sentencing Commission, pursuant to 18 U.S.C. § 3553(a), the Court should "impose a sentence sufficient, but not greater than necessary," to comply with the enumerated purposes of sentencing, including "the nature and circumstances of the offense," "the history and characteristics of the defendant," and the need for the sentence imposed -

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

18 U.S.C. § 3553(a)(2).

The government submits that incarceration of each defendant for a substantial number of years is required to satisfy the goals of sentencing set forth in 18 U.S.C. § 3553(a), especially the need for the sentence to reflect the nature and circumstances of the offenses, the need to reflect the seriousness of defendants' crimes, to promote respect for the law, and to provide just punishment, and the need for general deterrence.

1. Nature and Circumstances of the Offenses

a. Overview

The nature and circumstances of this bribery offense are egregious. This is not a case of an isolated incident. This is not a case of providing officials with gift baskets or entertainment that crossed some fine line. This case falls in

1 the FCPA's heartland: a foreign official caused her government
2 to massively overpay in a series of multi-million dollar public
3 contracts in order to fund her corrupt payments, effectively
4 locking out any other would-be competitors for defendants in the
5 United States, Thailand, and elsewhere. The approximately \$1.8
6 million in bribes paid for the Governor came out of the Thai
7 Treasury and were transferred, by the Greens, to bank accounts in
8 other countries in the names of her nominees. Pure and simple
9 theft. That defendants provided -- more often than not -- real
10 goods and services as part of their participation in this scheme
11 to line their own pockets and steal from the Thai treasury is
12 completely and totally irrelevant.

13 Defendants' knowledge of the wrongfulness of their conduct
14 also contributes to the serious nature of their crimes.
15 Defendants and the Governor took elaborate steps to conceal the
16 payments for the Governor, including: (1) payments into overseas
17 accounts in the Daughter's and Kitti's names, and a few instances
18 of cash payments to the Governor directly; (2) use of an array of
19 companies, some with phony addresses, to create the appearance
20 that the companies were not commonly owned and operated, thus
21 evading Thai auditors' efforts to enforce limits to the
22 Governor's spending authority; (3) use of prime contractors such
23 as Edelman PR and the Ocean Group to mask entirely defendants'
24 role in certain contracts; (4) attributing the award of the
25 contracts to a TAT committee "controlled" by the Governor to hide
26 her hand in decisions; and (5) mischaracterizing the bribe
27 payments as "sales commissions," or "commissions."
28

1 As married co-owners of the companies that received the
2 corrupt TAT contracts, defendants personally profited in the low
3 seven figures from the scheme -- and not considerably less than
4 the Governor.¹² As Susan Shore testified, the Greens' businesses
5 had no other source of revenue from the time they became involved
6 with the BKKIFF in 2002 through 2006, with the exception of some
7 revenue from one film in 2005. Defendants attempt to shift the
8 focus away from their illicit conduct by pointing to the numerous
9 other non-TAT related projects they were pursuing in Thailand,
10 but defendants failed to make money from them. From 2002 through
11 2006, projects in Thailand not involving the abuse of the
12 Governor's official position did not make any money, save Rescue
13 Dawn. The simple facts are that the defendants needed the
14 Governor to get them a steady stream of business and they
15 personally profited hundreds of thousands of dollars a year from
16 those corrupt TAT contracts.

17 Moreover, there were seemingly no limits to the depths
18 defendants would sink to in order to take from this corrupt well-
19 spring of guaranteed cash. Perhaps the best snapshot of this
20 unbounded greed comes from the TAT's Adaman Sea Website project.
21 The Governor conceived this big-budget project to help revive
22 tourism in the aftermath of the December 2004 Tsunami, images of
23 which gripped the world. Defendants saw that in the death of
24 several thousand Thais and the injury and displacement of

25
26 ¹² The parties are negotiating details of a money judgment
27 to resolve forfeiture of illegal proceeds received by defendants.
28 As stated by defendants, that figure is expected to exceed a
million dollars. (Def. Sent. Mem., at 13). It is comprised of
salary, bonus, contributions to a company Defined Benefit Plan,
and payments for a BMW.

1 thousands more, there was a silver lining -- for them. In a
2 draft budget summary for the project, they planned \$400,000 in
3 "commissions" for the Governor and \$692,000 in "potential profit"
4 for their company.¹³ (Trial Exhibit 1313).

5 **b. Conduct of defendant Gerald Green**

6 Viewed individually, defendant GERALD GREEN's offense
7 conduct was especially serious.¹⁴

8 As detailed above in the government's discussion of role
9 under the sentencing guidelines, defendant GERALD GREEN led and
10 organized the scheme to bribe the TAT Governor, by negotiating
11 the contracts and bribes with her, instructing defendant PATRICIA
12 GREEN and Susan Shore on the necessary budgeting and bribe
13 arrangements, and directing the use of prime contractors, shell
14 companies, and phony addresses to mask the scheme.

15 Defendant GERALD GREEN knew from the outset of the bribery
16 scheme that the conduct was illegal and intolerable, and if found
17 out would be punished. During his cross-examination, defendant
18 GERALD GREEN admitted that he clipped news reporting in 2002
19 about the previous TAT governor's suspension and investigation
20 for a conflict of interest and other corruption. (Trial
21 Transcript 9/9/09, at 166-70; Exhibit 1810). As evidenced by the
22

23 ¹³ The government is nor arguing that people should not be
24 allowed to make a profit. The government is arguing, in
25 accordance with the law both in the United States and Thailand,
26 that profits should not be obtained through bribery -- especially
27 through exploiting a national disaster. The "Governor's
28 commissions" could have been used by Thailand to help rebuild or
assist victims; instead, with defendants' help, money for the
Governor was taken out of circulation and into overseas accounts.

¹⁴ Defendants' sentencing brief ignores the subject of
each defendant's own role and offense conduct as proven at trial.

1 deceptions and devices employed in their corrupt scheme, Governor
2 Siriwan and defendant GERALD GREEN were determined to cover their
3 tracks and avoid being similarly found out. Evidence of this
4 deceptive intent includes (in addition to the facts already set
5 forth in this memorandum): (1) defendant GERALD GREEN's admitted
6 obliteration of "KHUN JUTHAMAS" from the fax containing wire
7 instructions for the account of Jittisopa Siriwan. (Trial
8 Exhibits 1308 and 1369B); his use of coded language such as "X"
9 and "you know who" to describe the Governor in his written
10 communications with defendant PATRICIA GREEN and Susan Shore
11 about the bribes; and (3) his instructions to Shore to not to
12 include a line item for the "commissions" in budgets prepared for
13 TAT personnel. While it would be in the interest of any honest
14 film festival promoter to publicize his involvement in the event,
15 defendant GERALD GREEN put his festival management company in the
16 name of his confidant Eli Boyer, told Shore he wanted to stay in
17 the background at the BKKIFF, and kept his name off of brochures.

18 **c. Conduct of defendant Patricia Green**

19 Defendant PATRICIA GREEN's offense conduct, while clearly
20 following her husband's lead, was otherwise just as serious.

21 As discussed in detail above in the government's guidelines
22 discussion, defendant PATRICIA GREEN personally handled making
23 all the bribe payments to the overseas accounts in the names of
24 the Governor's conduits, was involved in preparation of inflated
25 budgets, instructed Shore how to fund payments, tracked the bribe
26 payments and balance due, faked invoices to "paper" payments
27 received from prime contractors, arranged the details of phony
28 company addresses, signed subcontracts used to funnel funds to

1 the Governor, signed false tax returns that resulted in a
2 significant tax loss of \$470,076 taking into account of all
3 defendants' businesses, forged the nominee owner's name on a tax
4 return, and handled secretive collections transactions.

5 As the jury found, defendant PATRICIA GREEN well knew of the
6 illegality of her conduct. In addition to the secretive and
7 deceptive conduct discussed above that are evidence of a guilty
8 conscience, she reviewed and signed several contracts containing
9 express representations that defendants would not violate the
10 FCPA. She also lied to conceal the nature of the bribe payments
11 during an IRS audit, thus frustrating detection of the tax fraud.

12 2. Need For The Sentence to Reflect the Seriousness of the
13 Offense, to Promote Respect For the Law, and to Provide
Just Punishment For the Offense

14 The government submits that a significant number of years
15 imprisonment for each defendant is required to reflect the
16 seriousness of defendants' crimes, to promote respect for the
17 law, and to provide just punishment.

18 a. **The Foreign Corrupt Practices Act**

19 The FCPA was enacted by Congress in 1977 (and amended in
20 1988) to combat corruption harmful to foreign economies and
21 governments, to enhance the United States' public image
22 worldwide, and to allow legitimate businesses to compete against
23 corrupt businesses. Revelations of bribery by American
24 businesses, the Senate's investigation determined, had produced
25 severe adverse effects. Foreign governments friendly to
26 the United States in Japan, Italy, and the Netherlands
27 have come under intense pressure from their own people.
28 The image of American democracy abroad has been
tarnished.... Corporate bribery is bad business. In our
free market system it is basic that the sale of
products should take place on the basis of price,

1 quality, and service. Corporate bribery is
2 fundamentally destructive of this basic tenet.
3 Corporate bribery of foreign officials takes place
4 primarily to assist corporations in gaining business.
5 Thus foreign corporate bribery affects the very
6 stability of overseas business. Foreign corporate
7 bribes also affect our domestic competitive climate
8 when domestic firms engage in such practices as a
9 substitute for healthy competition for foreign
10 business. Managements which resort to corporate bribery
11 and the falsification of records to enhance their
12 business reveal a lack of confidence about themselves.
13 Secretary of the Treasury Blumenthal, in appearing
14 before the committee in support of the criminalization
15 of foreign corporate bribery testified that: 'paying
bribes-- apart from being morally repugnant and illegal
in most countries-- is simply not necessary for the
successful conduct of business here or overseas.' The
committee concurs in Secretary Blumenthal's judgment.
Many U.S. firms have taken a strong stand against
paying foreign bribes and are still able to compete in
international trade. Unfortunately, the reputation and
image of all U.S. businessmen has been tarnished by the
activities of a sizable number, but by no means a
majority of American firms. A strong antibribery law is
urgently needed to bring these corrupt practices to a
halt and to restore public confidence in the integrity
of the American business system.

16 S. Rep. No. 95-114 (1977) at 3-4, reprinted in 1977 U.S.C.C.A.N.
17 4098 (emphasis added).

18 Since its passage, the FCPA has been at the forefront of a
19 spreading international norm that has now been adopted in most
20 developed countries. Prohibitions against bribery of foreign
21 officials in international business transactions have been made
22 binding through international conventions sponsored by the United
23 Nations, the Council of Europe, the Organization for Economic
24 Cooperation and Development, and the Organization of American
25 States, and through the policies of other multilateral
26 institutions like the World Bank and the International Chamber of
27 Commerce. See Stuart H. Deming, The Foreign Corrupt Practices
28 Act and the New International Norms (American Bar Association

1 Section of International Law 2005), at 93-94. As discussed
2 above, the Sentencing Commission's 2002 change in treatment of
3 the FCPA to the punitive public corruption guideline implemented
4 the mandate of one such international treaty to which the United
5 States is party to provide serious punishment equivalent to
6 sentences in domestic bribery cases.

7 Those who would excuse a business committing bribery of a
8 foreign official as simply adhering to a developing country's
9 "local business custom" are fundamentally wrong. Such a statement
10 not only shows a lack of respect for U.S. and international law,
11 but also expresses a cultural condescension toward foreign
12 nationalities. Most important, the assertion is false --
13 contradicted by the anti-bribery laws on foreign countries'
14 books, by their public institutions specifically organized to
15 combat corruption, by the public protests of their citizens
16 against official corruption, and by the interference of scandal
17 with the growth of democratic institutions.

18 Such is the case in Thailand. The Court took judicial
19 notice of several applicable provisions of Thai criminal law and
20 regulations during trial. The Court can also take notice of many
21 news articles reporting the political instability and mass street
22 protests that have shook Thailand within the past two years
23 revolving around the issue of corruption by high officials. See,
24 e.g., Bertil Lintner, "The Battle for Thailand: Can Democracy
25 Survive?" in Foreign Affairs Vol. 88, No. 4 (August 2009), at 88,
26 et seq. (Exhibit C attached hereto). Citizen outrage at Thai
27 officials self-dealing is understandable where a typical worker
28 in a decent job, such as two former TAT employees who were

1 witnesses in this case, may earn a few hundred dollars a month.
2 Justice in the Thai court system is far from assured as powerful
3 politicians maneuver to protect their own from prosecution for
4 corruption. See Associated Press, Thai PM Vows to Amend
5 Constitution Despite Protests From Political Opponents (July 13,
6 2008), at 1 (Exhibit D attached hereto).

7 The unfortunate fact that violations of law are rampant does
8 not diminish the seriousness and harmfulness of the offense. The
9 citizens of South Los Angeles would be insulted to read that
10 narcotics trafficking, robbery and extortion, and gang violence
11 are simply "business-as-usual" in their areas not warranting
12 serious criminal penalties; neither should the people of Thailand
13 read that embezzlement of their public funds is treated as a
14 matter of lesser concern at sentencing in any U.S. federal court.

15 Defendants note correctly that there have been no public
16 charges filed by the government of Thailand arising from the
17 revelations in this case. (Defendants assert without any factual
18 basis that the Thais have had an investigation open on the matter
19 since 2006, and that a TAT committee took action clearing their
20 former colleague, Juthamas Siriwan, of wrongdoing.) Defendants
21 ask this Court to read the tea leaves available regarding the
22 Thai government's investigation, and to infer that defendants'
23 and Juthamas Siriwan's conduct has essentially been tolerated if
24 not cleared. However, their assurance that there will never be
25 any Thai prosecution of Juthamas Siriwan amounts to pure
26 speculation and is irrelevant anyway. This Court should not
27 attempt to guess at what investigative, legal, bureaucratic, or
28 political issues account for the public status of the case there.

1 **b. Tax and money laundering**

2 While the FCPA violations are at the root of all the
3 charges, the Court's sentences also must promote respect for the
4 tax fraud and money laundering laws also at issue in this case.

5 3. Need For the Sentence to Afford Adequate Deterrence

6 The need for there to be serious prison sentences imposed in
7 this case to afford general deterrence is strong. Many cannot
8 restrain themselves merely knowing that the illegal nature of
9 their actions carries some vague risk of prosecution. Defendants
10 responded to this knowledge not with obedience to the law but by
11 adopting methods to avoid detection. But word that violation of
12 the FCPA carries serious prison time may discourage some of those
13 who do not respect the law, or those who by nature or
14 circumstance are strongly tempted by profit.

15 Unlike many cases where a deterrent effect of a sentence is
16 more theoretical, this case has appropriately garnered the
17 attention of many in Thailand and the U.S. corporate and legal
18 communities who will now see how defendants are actually punished
19 after conviction of virtually all charges. Deterrence is the
20 focus of the letter to the Court by Commissioner Medhi Krongkaew,
21 Ph.D. of Thailand's National Anti-Corruption Commission ("NACC"):

22 As you are about to decide on the sentence of the two
23 guilty defendants of this case on the US side, I would
24 like to use this opportunity to express our sincere
25 gratitude and appreciation of the US legal system for
its leadership and fortitudinous adoption and strict
enforcement of the Foreign Corrupt Practices Act.

26 Like many developing countries in Asia and other parts
27 of the world, Thailand is suffering from serious
28 problems of corruption in the public sector. This is
partly because many of our public officials are often
prone to corruption temptations from within the system.
But, increasingly, the advent of globalisation has

1 brought about corruption temptations from outside,
2 especially from richer and more developed countries,
3 like the bribes and kickbacks in the Bangkok Film
4 Festival case. In my opinion, the bribery crime
5 committed in this case has gravely harmed the integrity
6 of our public service system even further. We at the
7 National Anti-Corruption Commission are very concerned
8 about this growing trend, and are trying our best to
9 stem this tide and remove it.

10 Your strict sentencing in this case not only will send
11 a correct and strong signal to the people of Thailand
12 who are following the trial in your court with keenest
13 interest that this kind of behavior is wrong and
14 totally unacceptable, but it will also tell the world
15 that the US is serious about punishing its people for
16 corruption inside as well as outside America, and to
17 set example that may help towards stamping out, or at
18 least lessening corruption throughout the world.

19 (Exhibit A.)

20 The NACC's concern about seizing this opportunity for
21 deterrence is correct since detection of these crimes is
22 difficult and prosecutions are therefore rare.¹⁵ Where
23 punishment is far from certain, deterrence can only be achieved
24 through relatively punitive sentences. To the extent that
25 conduct such as defendants' is in fact not unique in the U.S.
26 business community, it will hardly be deterred by sending the
27 message that the consequence of such conduct is at worst several
28 months imprisonment.¹⁶

22 ¹⁵ Defendants present themselves as martyrs for the
23 entertainment industry by claiming that the government selected
24 them for prosecution in the first place just to send a message to
25 Hollywood. To the contrary, this case began when a confidential
26 informant came forward to the FBI with allegations that defendant
27 GERALD GREEN had corruptly obtained the BKKIFF contracts.
28 (Complaint Affidavit, filed December 7, 2007, at ¶ 7). Only
after confirming the allegations about the BKKIFF through further
investigation did the government file public charges.

¹⁶ The government addresses below defendants' claim that
the loss of their reputations, wealth, and business opportunities
has already accomplished the purposes of punishment in this case.

1 Therefore, to have any deterrent value, the sentences
2 imposed must be for a significant number of years in prison.

3 4. History and Characteristics of the Defendants

4 The history and characteristics of defendants do not weigh
5 substantially in favor of lenience.

6 The PSRs make clear that both defendants had the benefit of
7 financial advantages and opportunities that are unavailable to
8 the great majority of defendants before this Court. It is clear
9 that defendants' crimes arose not from need or desperation, but
10 from rational deliberation and calculated choice. In 2002,
11 defendants had experienced a dip in their income below six
12 figures (Exhibit C to Defs. Sent. Mem.), but rather than await
13 honest opportunities or modify the lifestyle to which they were
14 accustomed, they chose to engage in corrupt behavior. Their
15 income soon rebounded, but as established by the testimony of
16 Susan Shore, their revenue came almost exclusively from the TAT
17 contracts obtained through bribery.

18 In addition, both defendants are unrepentant. Defendants
19 rejected numerous opportunities that they were offered in this
20 matter to cooperate with the investigation. While defendants
21 should not be penalized for choosing to exercise their right to a
22 public trial, neither should they receive a sentencing benefit
23 for it. Even after the jury's verdict, defendants refuse to
24 accept responsibility or express any regret for their actions.
25 Although the probation officers received dozens of letters of
26 support for defendants, noticeably absent is any letter or
27 statement of remorse from defendants themselves as often merits
28 favorable consideration.

1 The PSRs descriptions of both defendants' history and
2 characteristics dwell extensively on their media-industry careers
3 and friendships. However glamorous these associations, they do
4 not count in mitigation of punishment. Defendants have filed
5 numerous letters whose authors include friends and business
6 associates, some of whom were involved in and benefitted
7 substantially from the corrupt TAT contracts at issue in this
8 case.¹⁷ The letters lack credibility in that they paint pictures
9 of far different behavior than what is before this Court. The
10 government submits that the letters, which deny or fail to
11 address the offense conduct, cannot be squared with the morally
12 bankrupt nature of defendants' conduct, and thus are entitled to
13 little, if any, weight. The government submits that their
14 offense conduct cannot rationally be viewed as an aberrant and
15 isolated departure from otherwise law-abiding lives.¹⁸

16 a. Defendant Gerald Green

17 The personal history and characteristics of defendant GERALD
18 GREEN do not weigh in favor of a major departure from the
19 sentencing guidelines. (His medical condition is addressed

20
21 ¹⁷ Letter-writers Scott Kelly, Gary Dartnall, Rod Dyer,
22 Jennifer Stark, and Tatiana Detlofson received income from the
23 corrupt TAT business. Marc Diericks and Patrik Southard allowed
defendants to use their home address as a phony company address
for Flying Pen, Inc. documentation submitted to TAT.

24 ¹⁸ In the investigation of this case, the government
25 interviewed various witnesses who held negative views of
26 defendants' moral conduct and/or reputation in the film industry,
27 and notes that several civil complaints filed in California
28 courts name defendant GERALD GREEN as an individual defendant.
The government does not believe that it would be productive to
launch a series of mini-trials on all these episodes, but does
refer the Court to contemporaneous observations by one of
defendants' own employees on defendants' character and reputation
from 2004 to 2007. (Trial Exhibit 1363).

1 separately below).

2 Defendant GERALD GREEN is 78 years of age and was born in
3 South Africa. (Gerald Green PSR ¶ 55). However, old age should
4 not become an invitation to commit crimes with the expectation
5 that sympathy will greatly minimize one's punishment. Nor should
6 older defendants be given a reason not to settle their cases with
7 an expectation that, even if they are convicted at trial, they
8 will still receive light sentences. Defendant was also old two
9 years ago when the original indictment was returned. He could
10 have settled these charges then in a favorable plea bargain
11 giving him a stronger chance of spending his final years in
12 freedom; instead he has fought a long and pointless battle.

13 Indeed, defendant GERALD GREEN's perjury at trial, as
14 discussed above, must count as an aggravating factor in this
15 analysis. No Court should treat with much lenience a convicted
16 defendant who has fought charges with perjury.

17 The PSR references many letters submitted on defendant
18 GERALD GREEN's behalf describing his high moral and ethical
19 character. These opinions, often cursory in nature, cannot be
20 reconciled with his thorough deviousness in plotting the offense
21 conduct or with his perjured trial testimony.

22 **b. Defendant Patricia Green**

23 Neither do defendant PATRICIA GREEN's personal history and
24 characteristics weigh in favor of a major departure from the
25 sentencing guidelines. She is 55 years of age, and was born in
26 Mexico. (Patricia Green ¶¶ 68, 70).

27 The PSR refers to several letters citing defendant PATRICIA
28 GREEN's charitable, family-oriented, sociable, and moral

1 qualities. (PSR ¶ 80). While the government approves especially
2 of her charitable activities, such facts do little to distinguish
3 her from many white-collar defendants from wealthy social strata
4 and do not mitigate or excuse the systematic dishonesty in which
5 she participated in this case, which warrants severe punishment.

6 5. Need to Provide Adequate Medical Care

7 No reduction in defendant GERALD GREEN's sentence of
8 imprisonment is necessary to accommodate his treatment and
9 medication for emphysema and other illness described in the PSR.

10 The statutory sentencing factors provide that the sentence
11 should consider the need to provide a defendant with appropriate
12 medical care. 18 U.S.C. § 3553(a)(2)(D). Incarceration of a
13 defendant with serious medical problems is appropriate and
14 consistent with this sentencing factor where the government's
15 prison designation process takes into account a defendant's need
16 for continued medical treatment. See United States v. Byrd, 984
17 F.2d 251, 251-52 (8th Cir. 1993) (affirming prison sentence over
18 defendant's claim that medical conditions required probation).

19 As demonstrated in the attached nine-page Declaration of
20 Carlos Deveza ("Deveza Decl."), the Health Services Administrator
21 of the Metropolitan Detention Center in Los Angeles ("MDCLA")
22 since 2002, the Bureau of Prisons ("BOP") can provide defendant
23 GERALD GREEN with appropriate care and treatment for the medical
24 conditions including emphysema described in the PSR. (Deveza
25 Decl. ¶ 6). Upon his imprisonment, he would likely be designated
26 to a Care Level II facility for inmates with chronic but stable
27 medical conditions. (Id.). There, he would receive close
28 monitoring. (Id. at ¶ 7). Should defendant GERALD GREEN's

1 condition worsen, he could be placed into a higher-level care
2 institution. (Id. at ¶ 10).

3 These BOP facilities are equipped to permit defendant GERALD
4 GREEN's current treatments and medications to continue. (Deveza
5 Decl. ¶¶ 14-17, 21-22). MDCLA itself currently houses several
6 inmates with his very described conditions. (Id. at ¶ 12). The
7 correctional setting also lends itself to a quick response to any
8 need for immediate emergency care or urgent care. (Id. at ¶ 19).
9 In short, Mr. Deveza states,

10 the correctional setting facilitates, rather than
11 interferes with, the immediacy of care that an
12 individual like defendant may require, because there is
constant monitoring and more help available more
quickly than in the outside community.

13 (Id. at ¶ 20).

14 This is not an extraordinary case where a sentence reduction
15 is appropriate because of a lack of confidence that BOP can
16 adequately provide for the defendant's medical needs during an
17 extended prison term. and where it has been proven that BOP would
18 not provide the defendant with the only effective medicine,
19 causing a "high probability that lengthy incarceration will
20 shorten" the defendant's life span. See United States v. Martin,
21 363 F.3d 25, 49-50 & n.39 (1st Cir. 2004).

22 Should some truly "extraordinary and compelling" health
23 situation arise, "compassionate release" is available under 18
24 U.S.C. § 3582(c)(1)(A), which vests discretion in the Director of
25 the Bureau of Prisons to seek the early release of an inmate.

26 Finally, the Court should reject defendant PATRICIA GREEN's
27 boot-strapping argument that, as "primary caretaker" of her
28 husband, she also should not go to prison. (Defs. Sent. Mem., at

1 15). There is simply no support for the contention that
2 defendant PATRICIA GREEN is "essential" to her husband's medical
3 care. Defendants have two daughters, a supportive social circle,
4 and public resources to provide for any necessary home care.

5 6. Collateral Consequences To Prosecution Are Not Factors

6 Defendants, who were released on bond and chose to pursue a
7 two-year legal struggle to fight these charges, now contend that
8 they have already suffered enough by way of "collateral
9 consequences" to prosecution and conviction, and therefore
10 require no incarceration to serve the purposes of punishment.
11 (Defs. Sent. Mem., at 13-15). However, nothing defendants
12 reference is of an unusual or unexpected nature that would be a
13 basis for departure from the sentencing guidelines, or that
14 should be a basis for lenience under 18 U.S.C. § 3553(a).

15 Defendants cite Koon v. United States, 518 U.S. 81 (1996), a
16 case decided under the previous regime of mandatory sentencing
17 guidelines, for the proposition that collateral consequences are
18 an appropriate mitigating factor under § 3553. There, the
19 Supreme Court stated that employment or career loss could not be
20 categorically excluded as a ground for departure. 518 U.S. at
21 109. Nonetheless, Koon held that the district court had erred by
22 considering employment consequences in that case because the
23 employment consequences for the convicted police officer were
24 "expected" and "not unusual." Id. at 83, 109-10.

25 Here, defendants claim that they have had business
26 opportunities disappear since this investigation began, sustained
27 damage to their reputations, gone deeply into debt to pay counsel
28 to dispute the charges, had property seized for forfeiture, been

1 restricted by electronic monitoring and curfew, and generally
2 suffered emotional humiliation and stress. In what defendants
3 may imagine carries great poignance and weight, they tell the
4 Court that their "international traveling life, and careers in
5 the film business have been dramatically altered."

6 Financial and emotional problems cascading from one's
7 prosecution and conviction crime distinguishes these defendants
8 from few others, and despite their creative, Hollywood status,
9 this should not be relevant to the Court. In essence, defendants
10 argue that being jet-set film-business people entitles them to
11 more sympathy and lenience than the average person.

12 Defendants' sense of entitlement and exceptionalism that
13 underlies their plea for a sentence below the advisory guideline
14 range should be disregarded; they are simply white-collar
15 criminals. Their wounds are self-inflicted. In 2002, defendants
16 became dependent for revenue on the corrupt relationship with the
17 Governor. Since defendants were financing many non-TAT ventures
18 with the proceeds of their corrupt TAT contracts, their financial
19 struggles were to be wholly expected upon the loss of that
20 business, which began when Juthamas Siriwan ended her term as TAT
21 Governor in September 2006 and before the FBI's investigation
22 began. After defendants' arrest in this case, possible partners,
23 especially Asian governments, would understandably seek to avoid
24 entanglement with an allegedly corrupt businessman. Defendants
25 have now been proven corrupt, and so there is nothing unduly
26 harsh or unnatural about their concomitant business setbacks.

27 Were these factors to constitute mitigating "collateral
28 consequences," film-industry impresarios never go to prison (or

1 would, at a minimum, always serve reduced sentences). All
2 gainfully employed criminals lose their ability to work while
3 incarcerated, and many lose licenses and are permanently barred
4 from their chosen professions Nor should "the humiliation of a
5 public trial" be any more of a mitigating factor for this
6 defendant than for an illegal reentry defendant, a drug
7 defendant, or any other individual who comes before the Court.¹⁹
8 In this regard, the government asks the Court to consider the
9 following cogent analysis of another district court that
10 sentenced a 64-year-old rabbi to prison for tax evasion,
11 rejecting his claim that he should not be incarcerated because he
12 had been "punished enough":

13 If punishment were wholly or mainly retributive,
14 [public humiliation] might be a weighty factor. In the
15 end, however, it must be a matter of little or no
16 force. Defendant's notoriety should not in the last
17 analysis serve to lighten, any more than it may be
18 permitted to aggravate, his sentence. The fact that he
19 has been pilloried by journalists is essentially a
20 consequence of the prestige and privileges he enjoyed
21 before he was exposed as a wrongdoer. The long fall
22 from grace was possible only because of the height he
23 had reached. The suffering from loss of public esteem
24 reflects a body of opinion that the esteem had been, in
25 at least some measure, wrongly bestowed and enjoyed.
26 It is not possible to justify the notion that this mode
27 of nonjudicial punishment should be an occasion for
28 lenience not given to a defendant who never basked in
such an admiring light at all. The quest for both the
appearance and the substance of equal justice prompts
the court to discount the thought that the public
humiliation serves the function of imprisonment.

24 United States v. Bergman, 416 F. Supp. 496, 502-03 (S.D.N.Y.

26 ¹⁹ Defendants could have avoided "the humiliation of a
27 public trial" by admitting their conduct and entering guilty
28 pleas. As noted previously, while defendants should not be
penalized for choosing to exercise their right to a public trial,
neither should they receive a sentencing benefit for it.

1 1976).

2 The government strongly disputes that defendants should
3 receive a benefit over other citizens simply by virtue of the
4 fact that they led lives of privilege.

5 7. Specific Deterrence of Defendants' Future Wrongdoing

6 The degree of need for the sentence to protect the public
7 from future crimes by defendants is, on balance, not significant
8 for or against defendants. Defendants naturally contend that
9 they pose no risk of future harm to anyone, especially on account
10 of their financial and reputational ruin. Admittedly, they
11 committed this crime with an person who left high public office
12 over three years ago, and defendants' own notoriety could present
13 obstacles to corruption that were not present before this
14 prosecution. Nonetheless, there are some reasons to fear that
15 defendants could re-offend absent serious terms of incarceration.

16 First, defendants have remained loyal to Juthamas Siriwan,
17 and should the shifting political landscape of Thailand permit,
18 Siriwan could resume exerting influence in government and be in a
19 position to include defendants in new corrupt transactions.
20 Defendants could mask their role by their modus operandi of
21 routing government contracts and/or payments through shell
22 companies and third parties.²⁰ Especially because of their
23 unrepentance, they remain a cause for concern.

24
25 ²⁰ Susan Shore's testimony established that when a Thai
26 parliamentary investigation in 2005 raised questions about SASO,
27 defendants dropped the company from the BKKIFF in favor of an
28 entity they borrowed from the festival director. When defendants
could not collect for the 2007 BKKIFF directly and in a
straightforward manner, they set up a secret conduit arrangement
with a Thai company, Creative Juice.

1 Second, defendants' capacity to re-offend is not limited to
2 the same type of bribery scheme for which they were convicted.
3 Both defendants' fraudulent behavior and defendant PATRICIA
4 GREEN's willingness to falsify tax returns and to mislead an
5 outside CPA during an IRS audit raise legitimate concerns that
6 defendants could engage in other types of financial crimes with
7 other victims -- domestic and foreign, private and public.²¹

8 Therefore, this Court has no basis to believe that
9 defendants are, as claimed, harmless.

10 8. Need To Avoid "Unwarranted" Sentence Disparities

11 The Court's imposition of sentence should consider "the need
12 to avoid unwarranted sentence disparities among defendants with
13 similar records who have been found guilty of similar conduct."
14 18 U.S.C. § 3553(a)(6). This factor does not cut in favor of
15 below-guidelines sentences in this case, let alone probation.

16 Where the Court correctly calculates and carefully reviewed
17 the Guidelines range, it necessarily gives significant weight and
18 consideration to the need to avoid unwarranted disparities.

19 United States v. Gall, 552 U.S. 38, 54 (2007). The analysis need
20 not end there, but the "best way to treat similar situations
21 alike, and thus to avoid unwarranted disparities in sentencing,
22 is to start with the right Sentencing Guideline and then make
23 adjustments at the margin." United States v. Orsburn. 525 F.3d
24 543, 547 (7th Cir. 2008).

25
26 ²¹ The contemporaneous account of defendants' character
27 and reputation by an employee, noted above in reference to
28 defendants' personal characteristics, also suggest that they are
not harmless apart from the bribery alleged in this case. (Trial
Exhibit 1363).

1 Because the crux of the analysis is whether different
2 defendants who have been found guilty are "similarly situated,"
3 appropriate disparities may arise because certain defendants have
4 entered plea agreements and cooperated in the investigation.
5 United States v. Statham, 581 F.3d 548, 556 (7th Cir. 2009).
6 There would be considerably less cooperation-and thus more crime-
7 if those who assist prosecutors could not receive lower sentences
8 compared to those who fight to the last. United States v.
9 Bartlett, 567 F.3d 901, 907 (7th Cir. 2009) (disparity was
10 justified by material differences in offenders' conduct and
11 acceptance of responsibility). Moreover, differences in
12 sentences may also be justified by differences in conduct and
13 role. See United States v. Bras, 483 F.3d 103, 114 (D.C. Cir.
14 2007) (coconspirators did not hold comparable positions to
15 defendant in either the conspiracy or their workplaces, and
16 unlike defendant, coconspirators provided substantial assistance
17 to the government in its investigation.).

18 Because the goal of this factor is uniformity in approaches
19 to federal sentences, the analysis does not require comparisons
20 between federal sentences and those of another sovereign, such as
21 a state, with different sentencing philosophies. See United
22 States v. Ringgold, 571 F.3d 948, 951-52 (9th Cir. 2009).

23 A defendant cannot frame an unwarranted sentence disparity
24 argument by comparing his case to a cohort who was "never
25 convicted of any conduct and was never sentenced." United States
26 v. Spoerke, 568 F.3d 1236, 1252 (11th Cir. 2009).

27 This sentencing disparity factor is difficult to assess, but
28 certainly defendants have shown no grounds based on it for a

1 major departure from the sentencing guidelines ranges. The
2 sentences cited in the Appendix to the defendants' sentencing
3 brief did not involve other defendants found guilty of FCPA
4 violations who were truly "similarly situated" to either
5 defendant now before this Court. Rather, they either pled
6 guilty, cooperated, had far less direct roles in the offense
7 conduct, took part in less severe offense conduct, or some
8 combination of the above. Although defendants select several
9 probationary FCPA sentences as appropriate data points (Defs.
10 Sent. Mem., at 22), they should not be allowed to reap the
11 benefits that other defendants received on account of contrition,
12 cooperation, or other mitigating factors that they have not
13 demonstrated.²² Indeed, the universe of sentences to which
14 defendants' should be conformed ought to include similarly-
15 situated defendants in domestic bribery cases, to effectuate the
16 United States' treaty obligations under the OECD Convention.

17 Furthermore, there is no other sentenced defendant in this
18 particular case with whom it is possible to compare these
19 defendants and to assess their proper sentence.

20 Because the sentencing guidelines calculations that the
21 Court is required to consider are the typical manner in which to
22 minimize sentencing disparities between defendants generally who
23 commit the same type of offense, the Court should not impose a
24 sentence far below the low end of their guidelines range.

25
26 ²² The government does not believe that defendants'
27 comparative analysis or appendix of FCPA sentences in last week's
28 filing is entirely accurate and complete. The government
respectfully requests leave to address any interest by the Court
in this subject at a later date.

IV.

RESTITUTION

1
2
3 The PSRs determined that restitution to the Kingdom of
4 Thailand in the amount of \$1,822,494 for the bribes paid from TAT
5 funds was applicable to both defendants, but discretionary under
6 18 U.S.C. § 3663. (Gerald Green PSR ¶¶ 142-44; Patricia Green
7 PSR ¶¶ 135-37). This Court should exercise its discretion to
8 enter an order in that amount against defendants.²²

9 Pursuant to the international treaty to which it is a party,
10 the United States

11 shall take such measures as may be necessary to provide
12 that the bribe and the proceeds of the bribery of a
13 foreign public official, or property the value of which
14 corresponds to that of such proceeds, are subject to
seizure and confiscation or that monetary sanctions of
comparable effect are applicable.

15 OECD Convention, Art. 3, § 3 (emphasis added). In this case,
16 ordering restitution by defendants of the bribe amounts would
17 have an effect comparable to seizure and confiscation. The
18 restitution order should provide that, to the extent there are
19 bribe funds seized from overseas accounts and returned to
20 Thailand, those amounts would be credited against defendants'
21 restitution order.

22 This Court should order restitution, and set a nominal
23 payment schedule at the outset.

24
25
26 ²² Defendant PATRICIA GREEN also caused a tax loss to the
27 IRS of \$470,046. (Patricia Green PSR ¶ 43). However, the
28 government does not believe that it is necessary to seek both
restitution to Thailand as to the bribes paid and restitution to
the IRS for tax loss derived from the same amounts.

1 v.

2 RESPONSE TO PROBATION OFFICERS' SENTENCING RECOMMENDATIONS

3 The probation officers have recommended sentences for both
4 defendants of 12 months and a day -- a 98% departure from the
5 advisory sentencing ranges calculated in the PSRs of 235 to 293
6 months, and for defendant GERALD GREEN an even greater departure
7 from what the government calculates are his guidelines. These
8 recommendations are exceedingly lenient, and the reasoning behind
9 them is not only faulty but also at times inappropriate to see
10 coming from an arm of the Court.

11 Most of the mitigating grounds the probation officers relied
12 upon for these recommendations are uncritical adoptions of
13 defense positions regarding health issues, collateral
14 consequences, and the alleged benefit to Thailand from the
15 BKKIFF. The government has already addressed these issues above.

16 But while conceding that defendants and the Governor
17 "essentially stole \$1,822,494 from the Kingdom of Thailand," the
18 probation officer for defendant GERALD GREEN comments that "the
19 Kingdom of Thailand probably gained from the Greens' offense by
20 international goodwill generated from the festival, employment
21 opportunities for its citizens, and increased tourism."

22 (Probation Officer Letter for Defendant Gerald Green, at 6.) The
23 probation officer appears, remarkably, to assume that the offense
24 of bribery was necessary to the success of the film festival and
25 other TAT projects and thus to condone bribery so long as the
26 business obtained thereby produces a profit for the host country.

27 Further, while admitting a lack of knowledge of Thai culture
28 or politics, the probation officer nonetheless speculates that

1 "it does not appear that the Thai government is in any hurry to
2 prosecute Siriwan or to make an example out of her to ensure the
3 honesty of its own government officials," that "the lack of swift
4 action could suggest that perhaps Siriwan's actions were standard
5 practice in practicality, if not on paper," and that defendant
6 GERALD GREEN "was following local business practice of the elite
7 in a foreign country." (Id.) The probation officer's commentary
8 overlooks the epic struggle now being waged in Thailand by anti-
9 corruption authorities and protestors, and underestimates the
10 challenges to law enforcement everywhere in conducting
11 international corruption investigations.

12 The probation officer's preface that such commentary "does
13 not attempt to minimize the serious nature of the instance
14 offense" (id.) does nothing to ease the government's concern.
15 The commentary is completely unacceptable in light of the spirit
16 and letter of the FCPA, the United States' international treaty
17 obligations, and the Thai laws at issue in this case, and can
18 only serve to encourage defendants and others to violate those
19 laws. This Court should expressly reject such reasoning.

20 So much do the probation officers in fact minimize the
21 seriousness of the offense that they do not recommend
22 discretionary restitution of the amounts defendants helped the
23 Governor steal from Thailand. Although defendants appear to be
24 insolvent now, imposing no restitution could prevent Thailand
25 from being made whole even if defendants had money in the future.

26 The government also finds astonishing that the probation
27 officers' recommendations ignore the plentiful evidence of both
28 defendants' willfulness, concealment, deception, and greed in

1 committing the crimes of conviction,²³ and choose instead to
2 dwell for pages in an unquestioning manner on character reference
3 letters without even attempting to reconcile them with
4 defendants' offense conduct. As to actor and producer Kirk
5 Douglas's letter, one PSR stated: "Mr. Douglas described the
6 Greens as extremely honest and fair in all their business
7 dealings with him. And most importantly, he considers the Greens
8 friends." Defendant Gerald Green PSR ¶ 80(g) (emphasis added).
9 The words "most importantly" are the probation office's, not Mr.
10 Douglas's. Thus, celebrity friendships appear to receive
11 disproportionate weight in the probation office's analysis.

12 In the end, the probation officers' recommendations send a
13 truly disturbing message: that if defendants are well-connected
14 enough to get film legends to write letters on their behalf, they
15 can serve out their "punishment" with family, while the ordinary
16 defendant who commits the same crime but lacks the same status in
17 society (however ill-gotten) gets sent to federal prison.

18 The probation officers' recommendations are completely
19 inappropriate to the facts of this case.

20 ///

21 ///

22 ///

23
24
25
26 ²³ The PSRs' entire description of defendants' offense
27 conduct, as brought out in a three-week trial, consists of a few
28 paragraphs. In contrast, the sections on defendants' personal
and family data, health, and employment run for pages and include
verified references to small biographical details.

1 VI.

2 CONCLUSION

3 For the foregoing reasons, the Court should calculate
4 defendant GERALD GREEN's Total Offense Level as 44, Criminal
5 History Category as I, and sentencing range as in excess of 360
6 months in prison, and defendant PATRICIA GREEN's Total Offense
7 Level as 38, Criminal History Category as I, and sentencing range
8 as 235-293 months in prison. The Court should sentence each
9 defendant to a significant number of years in prison, and impose
10 restitution to Thailand of \$1,822,494 on defendants jointly and
11 severally.

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

14 DATED: January 14, 2010

Respectfully submitted,

15 GEORGE S. CARDONA
16 Acting United States Attorney

17 CHRISTINE C. EWELL
18 Assistant United States Attorney
Chief, Criminal Division

19 _____ /s/
20 BRUCE H. SEARBY
Assistant United States Attorney
21 JONATHAN E. LOPEZ
Senior Trial Attorney
22 United States Department
of Justice, Fraud Section

23 Attorneys for Plaintiff
24 UNITED STATES OF AMERICA

DECLARATION OF CARLOS DEVEZA

I, CARLOS DEVEZA, declare:

1. I am employed by the United States Department of Justice, Federal Bureau of Prisons ("BOP"), as the Health Services Administrator of the Metropolitan Detention Center in Los Angeles, California ("MDCLA"). I have been employed in this position since January 2002. I have been employed by the BOP for approximately 15 years. As the Health Services Administrator, I provide administrative supervision and direction to all Health Services staff, except the Clinical Director. I graduated with a degree of Doctor of Medicine from the University of the East Ramon Magsaysay Memorial Medical Center in Philippines in 1983. I have been employed by the BOP since 1992 as a Physician Assistant practicing under the license of the Clinical Director. If called upon, I could competently testify as set forth below.

2. As part of my duties, I am thoroughly familiar with the health care and treatment available at MDCLA and, more specifically, with the care and treatment that is available for inmates with different types of chronic medical conditions throughout the Federal Bureau of Prisons. In addition, as part of my duties as Health Services Administrator, I have access to BOP logs and records concerning inmates incarcerated within the federal correctional system. More specifically, I have access to the BOP electronic database known as SENTRY. SENTRY is capable of generating reports regarding current and former federal inmates, including information about their location, sentence computations and disciplinary history. SENTRY can generate a report titled "Public Information Inmate Data" which provides a

1 synopsis of all information about a current or former federal
2 inmate that can be released to the public. A true and correct
3 copy of petitioner's Public Information Inmate Data report, dated
4 December 29, 2009, is attached to this declaration as Exhibit A.
5 This document shows that Mr. Green was housed at MDCLA for a
6 little over twenty-eight (28) hours, from approximately 3:45 p.m.
7 on December 18, 2007 until approximately 8:00 p.m. on December
8 19, 2007.

9 3. I have prepared this declaration in response to a
10 request by the Office of the United States Attorney regarding the
11 medical condition and care for Gerald Green, a defendant in
12 United States v. Gerald Green, 08-CR-00059-GW.

13 4. My opinion is necessarily limited by the fact that I
14 have not been provided with any of Mr. Green's current medical
15 records. Furthermore, the information I do have is limited to a
16 description of Mr. Green's current medical conditions and a list
17 of all of his current medications as provided to me by Assistant
18 United States Attorney Bruce Hamilton Searby. Thus, I must
19 caution that my declaration is necessarily limited by the
20 relative paucity of information available to me.

21 5. However, assuming that the information provided to me is
22 accurate, it is my understanding that Mr. Green suffers from the
23 following conditions: (1) severe emphysema, with frequent
24 infections of bronchitis and pneumonia; (2) an enlarged prostate;
25 and (3) high cholesterol. I am further informed that Mr. Green is
26 taking the following medications for these conditions: Ventolin
27 spray, Spiriva, Advair, Advorart, Flomax, and Lipitor. I have
28 not been advised of the dosages prescribed for any of these

1 medications. I am also informed that Mr. Green uses an oxygen
2 concentrator machine (Inogen) and has steam treatments at his
3 local gym. I am informed that Mr. Green has expressed a concern
4 about the BOP's ability to treat these conditions based on his
5 belief that at the time of his arrest, he was examined by a
6 doctor employed by the BOP who did not know the purpose of some
7 of his medications. Finally, I understand that Mr. Green doesn't
8 believe that the BOP can supply him with his medications.

9 6. It is my understanding that Mr. Green may be facing a
10 term of incarceration. Based on the information provided to me,
11 I would opine that the BOP can provide appropriate care and
12 treatment for Mr. Green's medical conditions and that Mr. Green
13 will likely be designated to a Care Level II facility.

14 A. BOP Institution Classification System and Resources to
15 Manage Inmates with Serious Medical Conditions

16 7. The BOP classifies its institutions' medical resources
17 on a one to four (I - IV) scale. Care Level I institutions house
18 essentially healthy inmates. Care Level II institutions accept
19 inmates with chronic, but stable medical conditions. Care Level
20 III institutions manage inmates with potentially unstable medical
21 problems. Inmates assigned to a Care Level III facility are
22 considered medically complex outpatients who require at least
23 monthly clinician evaluations, close monitoring (such as
24 dialysis) and may have limitations in their ability to perform
25 activities of daily living, but do not require daily nursing
26 care. The BOP has six Federal Medical Centers ("FMC") that are
27 all classified as Care Level IV institutions. FMCs provide
28 inpatient and outpatient medical, surgical, and psychiatric and

1 organ transplant services to inmates commensurate with services
2 provided in the community by hospitals and skilled nursing
3 facilities. Inmates assigned to Care Level IV institutions
4 suffer from conditions that require daily nursing care.

5 Approximately 1% of the over 200,000 BOP inmates are designated
6 to an FMC for their medical conditions.

7 B. Inmate Placement Process

8 8. If Mr. Green is sentenced to a term of imprisonment, BOP
9 staff will evaluate his status so as to designate an appropriate
10 institution for service of his sentence. In addition, the BOP's
11 Office of Medical Designations and Transportation ("OMDT") will
12 separately evaluate Mr. Green's medical status and current course
13 of treatment. This medical evaluation can be greatly assisted if
14 Mr. Green or his counsel provides the BOP with a complete copy of
15 his current medical records.

16 9. Based on the information provided to me regarding Mr.
17 Green's medical condition and my experience as a Health Services
18 Administrator with knowledge of BOP medical facilities, it is my
19 opinion that the BOP will likely assign Mr. Green to a Care Level
20 II facility. Mr. Green medical care and management that can be
21 accommodated at a Care Level II facility. In essence, he needs
22 to continue taking his medications, undergo appropriate medical
23 tests, use his oxygen concentrator and have access to hospital
24 facilities in the event his condition worsens. These needs can
25 be accommodated each of the BOP's Care Level II correctional
26 institutions.

27 10. If Mr. Green is designated to a Care Level II facility,
28 and if at any time, including upon admission, the facility's

1 medical staff determine that Mr. Green's medical condition
2 requires a higher level of care, the institution's Clinical
3 Director will contact the OMDT to request that he be re-
4 designated to a facility with a higher Care Level.

5 11. Because the exact designation decision takes into
6 account the defendant's security classification, space
7 availability and other correctional factors in addition to his
8 medical condition, I cannot precisely predict the specific
9 institution to which Mr. Green will ultimately be designated.
10 However, again, based on the information I have been provided, it
11 is my opinion that he will likely be assigned to a Care Level II
12 facility if his current medical condition is as depicted.

13 C. Appropriate Monitoring of Defendant's Medical Status and
14 Dietary Needs & Emergency Treatment

15 12. It is also my opinion that the BOP's facilities can
16 provide the medical procedures and treatment and follow-up
17 necessary for Mr. Green. Indeed, MDCLA currently houses four
18 inmates who have severe emphysema and many inmates with Benign
19 Prostatic Hyperplasia (BPH), an enlargement of the prostate and
20 prostatic cancer.

21 13. As stated above, I am informed that Mr. Green suffers
22 from severe emphysema, a condition which is often associated with
23 lung infections such as bronchitis and pneumonia. Medical staff
24 at his designated institution would treat Mr. Green's emphysema
25 with bronchodilators, medications which expand lung volume, and,
26 when necessary, antibiotics to combat associated infections.
27 Also, if needed, inhalation treatment is readily available at any
28

1 BOP institution.

2 14. Mr. Green is currently using a Ventolin inhaler, Advair
3 and Spiriva to treat his emphysema. The Ventolin inhaler is on
4 the BOP's formulary and is thus available at any BOP facility.
5 The Advair is not on the BOP's formulary and medical staff at his
6 designated institution would substitute a comparable steroid
7 inhaler for that medication, likely Azmacort. Similarly, the
8 Spiriva is also non-formulary, but medical staff would provide
9 Mr. Green with a substitute Ipatropium Inhaler.

10 15. Mr. Green is also using an oxygen concentrator. Use of
11 this device is also permitted at all BOP institutions. If Mr.
12 Green has his own oxygen concentrator that he would like to
13 continue using during his incarceration, he can bring that
14 equipment with him to his designated institution and will be have
15 immediate access to the device. If Mr. Green does not own an
16 oxygen concentrator that he'd like to use while incarcerated,
17 then the institution to which he is designated for service of his
18 sentence can be notified ahead of time of his need for this
19 equipment so that it can be purchased and made ready for his use
20 prior to his arrival.

21 16. I have not been provided with an exact diagnosis of Mr.
22 Green's prostate problem. However, based on the medication he is
23 taking, Mr. Green most likely suffers from a condition known as
24 Benign Prostatic Hyperplasia (BPH) which is an enlargement of the
25 Prostate. He is currently taking Flomax, a non-formulary
26 medication for this condition. BOP physicians will likely
27 substitute this medication with Cardura, an alpha blocker with
28

1 similiar pharmatherapeutic actions.

2 17. Finally, I understand that Mr. Green has high
3 cholesterol. This condition is managed with diet, exercise and
4 medication. Mr. Green is currently taking Lipitor, a non-
5 formulary medication for this condition. BOP physicians would
6 likely substitute Simvastatin, also a cholesterol lowering
7 agent/drug, for the Lipitor.

8 18. Due to these conditions, Mr. Green will be enrolled in
9 appropriate chronic care clinics and followed up as needed.
10 These follow-ups will including laboratory and x-ray studies as
11 clinically indicated. Thus, Mr. Green will be provided with all
12 appropriate routine medical evaluation and treatment.

13 19. As for immediate medical emergencies or urgent acute
14 medical complaints that may arise, it is my experience that the
15 correctional setting is one that lends itself to quick response
16 time. A BOP inmate is virtually never alone or unsupervised, as
17 he might be were he living in the outside community.
18 Correctional staff routinely refer any medical and psychological
19 complaints to clinical staff enabling a clinical determination as
20 to the urgency of the complaint.

21 20. In short, the correctional setting facilitates, rather
22 than interferes with, the immediacy of care an individual like
23 defendant may require, because there is constant monitoring and
24 more help available more quickly than in the outside community.

25 D. Availability of Medications

26 21. It is my opinion that, if incarcerated, Mr. Green will
27 continue to receive appropriate prescription medications for his
28

1 medical and mental health needs. However, as noted above,
2 several of the medication that are currently prescribed for Mr.
3 Green are not on the BOP's formulary. As I have indicated,
4 however, BOP physicians would substitute equivalent medications
5 from the BOP's formulary if he is incarcerated.

6 22. If for any reason, Mr. Green's physician determines
7 that the substituted medications are ineffective to treat his
8 conditions, the physician will submit a request to provide him
9 with a non-formulary medication to the Health Services Division
10 of the BOP's Central Office in Washington, D.C. It is my
11 experience that requests for approval of non-formulary drugs are
12 assessed quickly and that a response is provided to the
13 requesting physician with twenty-four to seventy-two hours of the
14 request. If the request is urgent, a telephonic request for the
15 non-formulary approval can be given even more quickly. To the
16 extent Mr. Green's current physicians feel strongly that he needs
17 a specific non-formulary medication, they can facilitate the
18 process by providing BOP with the clinical basis for that
19 assessment as soon as practicable to expedite the non-formulary
20 review process.

21 23. In sum, it is my opinion that all of Mr. Green's
22 conditions can be treated adequately at a Care Level II BOP
23 correctional facility. It is also my opinion that Mr. Green will
24 received appropriate medical care, monitoring and medications if
25 he is incarcerated. Finally, I believe that Mr. Green will have
26 access to specialized medical care, including emergent care, as
27 necessary, and will undergo regular, routine follow-up
28 examinations and treatment. None of Mr. Green's medical

1 conditions are unique and all can be adequately provided for by
2 BOP Health Services staff.

3 I declare under the penalty of perjury, pursuant to Title
4 28, United States Code, Section 1746, that the foregoing is true
5 and correct to the best of my information, knowledge and belief.

6 Executed this 7th day of January, 2010, at Los Angeles,
7 California.



CARLOS DEVEZA
Health Services Administrator
Federal Bureau of Prisons
Metropolitan Detention Center,
Los Angeles

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A



THE NATIONAL ANTI - CORRUPTION COMMISSION
165/1 Phitsanulok Rd., Dusit, Bangkok 10300 Thailand
Tel. (662) 280 8203
Fax. (662) 280 7283

5 January 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 a Commissioner of the National Anti-Corruption Commission of Thailand, and Chairman of the Enquiry Subcommittee of the so-called Bangkok Film Festival case in this country, I send my warm greetings from my office in Bangkok, Thailand.

As you are about to decide on the sentence of the two guilty defendants of this case on the US side, I would like to use this opportunity to express our sincere gratitude and appreciation of the US legal system for its leadership and fortitudinous adoption and strict enforcement of the Foreign Corrupt Practices Act.

Like many developing countries in Asia and other parts of the world, Thailand is suffering from serious problems of corruption in the public sector. This is partly because many of our public officials are often prone to corruption temptations from within the system. But, increasingly, the advent of globalisation has brought about corruption temptations from outside, especially from richer and more developed countries, like the bribes and kickbacks of the case in question. As a member of the NACC, I am very concerned about this growing trend and am doing my best to help address and correct these problems in our country.

Your astute consideration in this case not only will send a correct and strong signal to many people in Thailand who are following the trial in your court with keenest interest that this kind of behaviour is wrong and totally unacceptable, but it will also tell the world that the US is serious about punishing its people for corruption inside as well as outside America, and to set example that may help towards stamping out, or at least lessening, corruption throughout the world.

Thank you very much for your goodwill and kind attention.

Yours sincerely,

Professor Medhi Krongkaew, Ph. D.
Commissioner

EXHIBIT B



138 of 382 DOCUMENTS

COPYRIGHT 2002 XINHUA NEWS AGENCY
XINHUA GENERAL NEWS SERVICE

January 11, 2002, Friday

SECTION: WORLD NEWS; SCIENCE, CULTURAL, EDUCATION, HEALTH

LENGTH: 259 words

HEADLINE: Thailand on Its Way to Become Regional Film-shooting Hub

DATELINE: BANGKOK, January 11

BODY:

Thailand is making rapid progress towards the goal of becoming a regional film-shooting center, with income from providing shooting places for foreign film producers surging 150 percent year-on-year in 2001, a Thai government minister said here Friday.

"435 foreign films were shot in Thailand in 2001, earning the country a record-breaking 1.27 billion baht (29 million U.S. dollars), which is more than double that of 2000 when only 553 million baht (12.5 million dollars) was earned," said Minister to Prime Minister's Office Somsak Thepsuthin at a press conference on the film industry of the country.

Thailand formed a committee to oversee foreign film-shooting ten years ago and last year the Thailand Film Office was set up to work out strategy for the development of the film-shooting business. These agencies, together with foreign affairs, tourism and export authorities, have been endeavoring to attract more foreign film makers.

"The close cooperation among agencies concerned is one of the factors for the expansion of this business," Somsak noted.

To further boost the foreign film-shooting business as a way of stable income for the country, the government will revise laws and regulations such as the tax on foreign films producers and the issuance of work permits for foreign film crews, he said.

"Thailand is aspiring to be the hub of foreign film making in this region and will open its door to welcome film makers from Hollywood and other emerging film powers such as China and India," Somsak said.

LOAD-DATE: January 12, 2002

110WQW

***** Print Completed *****

Time of Request: Sunday, January 10, 2010 21:19:56 EST

Print Number: 1861:197634055

Number of Lines: 39

Number of Pages:

Send To: SEARSBY, BURCE
USAO - LOS ANGELES, CA
312 N SPRING ST RM 446D
LOS ANGELES, CA 90012-4701



122 of 382 DOCUMENTS

Copyright 2002 Informa Publishing Group Plc.
Screen Finance

February 1, 2002

SECTION: Screen Finance

LENGTH: 65 words

HEADLINE: International film

BYLINE: Tim Adler, tim.adler@informa.com

BODY:

The Thai government announced a series of incentives in a bid to attract foreign filmmakers to the country. Thailand collected Dollars 29 million (GBP 21 million) in tax revenues from foreign film productions in 2001, more than double the Dollars 12.6 million collected in 2000. The government hopes the cuts will increase tax revenues to an estimated Dollars 45 million this year.

LOAD-DATE: February 7, 2002



106 of 382 DOCUMENTS

Copyright 2002 Agence France Presse
Agence France Presse -- English

March 11, 2002 Monday

SECTION: International News

LENGTH: 840 words

HEADLINE: Thailand's movie industry hoping to lure Hollywood productions

BYLINE: SAMANTHA BROWN

DATELINE: BANGKOK, March 11

BODY:

With its tropical beaches, emerald rice paddies and expanses of wild jungle, Thailand is a natural choice for foreign film crews looking for exotic locations to shoot in Asia.

But the government hopes Hollywood will soon look to Thailand as a highly skilled Asian film-making centre with a lot more to offer than pretty scenery.

"Productions in Hollywood can create any place, anywhere," said Pakinee Chaisana, executive producer of the Sixth Element, the international section of Thai entertainment company GMM Grammy.

One recent example is Jackie Chan's latest action flick, the Hong Kong-financed 35-million-dollar "Highlanders", which has just completed filming in a massive exhibition hall on the outskirts of Bangkok.

Some 250 craftspeople, mostly Thai, worked to create the gloomy interior of a sixteenth century Irish castle, complete with twisting stairwells and Gothic archways.

Sculptors, usually employed on Thai temple restoration projects, crafted the heads of bulls, goats and deer that dotted the interior.

"They are the best sculptors I've met in my life," said standby art director Connor Dennison. "They're phenomenal."

Cheap, too -- and that's the bottom line for international film-makers looking to shift production out of high-cost locations like the United States and Europe.

"The industry is now saying to the foreign filmmakers... the quality is high here for your budget," said Pakinee.

Industry insiders say that with last year's threatened actors' strike in the United States, and the September 11 terrorist attacks, a window of opportunity has opened for Thailand.

"There is a backlog of US productions looking for places to go now," said Don Balfour, managing director of Bangkok-based production company Phenix Films Asia.

"For producers looking to film in Asia, Thailand is the best choice," he said.

The Philippines, Malaysia and Indonesia are seen as unsafe, Hong Kong is expensive, mainland China can strangle producers in red tape, and Thailand's poorer neighbours lack the infrastructure filmmakers require, Balfour said.

But the next year will be crunch time for Thailand as its bid to establish an Asian Hollywood is put to the test.

Thailand's movie industry hoping to lure Hollywood productions Agence France Presse -- English March 11, 2002
Monday

"We need to get it right. I don't think the current focus on Thailand will come around again," Balfour said.

Success will depend on better cooperation between the Thai government and film-makers who in the past have criticised the bureaucratic approach of the Thai Film Board, which issues the necessary permits.

Industry observers say things have improved since Sidhichai Jayant took over as Film Board director a year ago, revising actors' tax schedules and amending old permit regulations that had discouraged film-makers from heading here.

Sidhichai said he wants to set up a government committee charged with "helping facilitate foreign filmmakers in Thailand".

"Permits can now be issued very quickly, even quicker than in the United States," he said.

The verdict so far is good. "He's actively cut a lot of red tape, he's liaising between groups, he's giving us help in talking to higher people in ministries when we need it," Pakinee said.

But Ctar Sudasnd, chairman of production house Siam Studios, believes more must be done to ease the path of foreign film-makers who are often tripped up by Thailand's free-wheeling approach to business.

"A lot of people go away with a nasty taste in their mouth, saying that 'Hey, this is a ripoff place man'," he said at the FCCT. "So we need to address that."

Ctar said it was vital Thailand looked to the future and ensured a constant stream of talent continued to come on line.

"Our crews are fantastic. But how many crews do we have? Who's looking after the training of the next generation of crews?" he asked.

"The guy who did James Bond in 1974, he doesn't move so fast anymore," he said, referring to "The Man with the Golden Gun" which was partly filmed around the dramatic limestone coast of southern Thailand.

The consensus is that Thailand only has the capacity to supply crews for three major productions at any time. And demand over the next year could exceed that.

"We have skilful people, but we don't have enough of them," Sudhichai acknowledged.

Nevertheless, the Film Board is still hoping to attract three or four foreign productions with budgets of over 200 million baht (4.6 million dollars) each this year.

Some 59 foreign films were at least partly produced in Thailand last year.

Sudhichai told AFP he also aims to overcome the negative press that surrounded probably the best-known film to be made here -- "The Beach", starring heart throb Leonardo Di Caprio.

Thai environmentalists grabbed headlines around the world after complaining that the film crew tore away native plants along the dunes of stunning Phi Phi Island and planted coconut trees in order to create their idea of paradise.

"Our image was not so good after the shooting of The Beach," Sudhichai admitted. "But I think things have changed since then."

LOAD-DATE: March 11, 2002



92 of 382 DOCUMENTS

Copyright 2002 Agence France Presse
Agence France Presse -- English

April 16, 2002 Tuesday

SECTION: International News

LENGTH: 314 words

HEADLINE: Thailand planning to build its own Hollywood

DATELINE: BANGKOK, April 16

BODY:

Plans to build a major film production complex are afoot in the Thai capital, which could see Bangkok emerge as Southeast Asia's Hollywood, government officials said Tuesday.

The Industrial Estate Commission (IEC) is considering a feasibility study for a proposal to build a massive "film industry zone" aimed at boosting Thai and international movie-making, deputy industry minister Pichet Sathirachaval said.

"The idea is very good because the zone will keep the film environment fresh here," Pichet told AFP.

"It will draw more Thai and Hollywood producers, and it will bring more revenues to the country," he said.

The feasibility study could be approved "within the next one or two months," he added.

Pichet said the zone being considered for the outskirts of the city would be "similar to Universal Studios" in the film-making centre of Hollywood.

Thai entertainment giant Kantana Group would help develop the self-contained facility, which would include studios and other production facilities for costuming and editing, as well as equipment leasing, he said.

It would also incorporate a theme-park element to attract tourists, Pichet said, adding that costs of the massive project had yet to be tabled.

The government was prepared to offer tax exemptions and other benefits in its bid to support the project, he said.

Thailand made record-breaking returns from foreign film shoots here last year with 59 feature films, 192 documentaries and 184 commercial advertisements that generated revenue of 1.27 billion baht (28.3 million dollars), according to the national film office.

Most big-budget films shot here are produced and edited outside the country.

IEC governor Anchalee Chavanit told the Nation newspaper Tuesday that the commission in the past had invited Universal Studios to set up a studio in Thailand but the invitation was declined.

LOAD-DATE: April 17, 2002



60 of 382 DOCUMENTS

COPYRIGHT 2002 XINHUA NEWS AGENCY
XINHUA GENERAL NEWS SERVICE

June 27, 2002, Thursday

SECTION: WORLD NEWS; SCIENCE, CULTURAL, EDUCATION, HEALTH

LENGTH: 316 words

HEADLINE: Thailand Aims to Be World-class Film-shooting Location

DATELINE: BANGKOK, June 27

BODY:

It is the Thai government's policy to promote the kingdom to be a world-class film-shooting location, in order to earn more foreign exchange and lift the country's international profile, a Thai government minister said Thursday.

"Endowed with famous tourist sites such as Bangkok, Ayuttaya, Pattaya, Chiang Mai, Phuket and Krabi, as well as natural beauty and rich cultural resources, Thailand has many advantages to become a center for international film-making in this region," Minister to Prime Minister's Office Somsak Thepsutin told a press conference titled as "the New Era of Thai Film Industry".

"To build a film-shooting hub is a good way to earn foreign exchange, as some countries like Canada and the United Kingdom get millions of U.S. dollars every year in this business," he said.

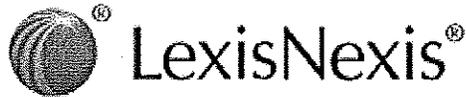
"To that aim, the government will relax certain rules for foreign film makers to access shooting locations in Thailand and reduce income tax for foreign film workers who make films in the country," said the minister.

Meanwhile, since that to serve international film makers will require high standards of services and equipment, the government will help the private sector to build good shooting-facilities and provide better services, according to him.

Somsak mentioned that to raise Thailand's standards for providing services in film-shooting, the country recently joined the Association of Film Commissioners International (AFCI), a New York-based official organization for government film agencies worldwide.

Official statistics show that Thailand has been doing well in attracting foreign film makers in recent years. The number of all kinds of foreign movies shot in Thailand has increased from 271 in 1996 to 435 last year. In the same period, the country's income from the business has also been expanded from 3.6 million dollars to 30 million dollars.

LOAD-DATE: June 28, 2002



56 of 382 DOCUMENTS

Copyright 2002 The Nation Publishing Group
The Nation (Thailand)

July 4, 2002, Thursday

LENGTH: 554 words

HEADLINE: Thailand bids for a starring role

BYLINE: The Nation.

BODY:

Thailand bids for a starring role

Government support and fresh access to the worlds filmmaking industry will promote the Kingdom as a prime locale for movie shoots.

Thailands reputation internationally as a film location has been acquired largely on the back the 1974 James Bond hit The Man With the Golden Gun and a little more recently The Beach, starring Leonardo Di Caprio.

However, following the Kingdoms admission as an interim member of the Association of Film Commissioners International (AFCI), the Thai film industry hopes to enter a new era and aspires to become the centre for international filmmaking in Southeast Asia.

The AFCI is a non-profit organisation founded in 1975 in the United States and now has around 300 members, including Hong Kong and Malaysia in this part of the world. The commission aims to help its members attract filmmakers to their respective regions by giving information and assistance to film producers on location filming and organising trade shows.

The government is keen to encourage international filmmakers to Thailand in an effort to bring in foreign currency and promote tourism.

On Thursday, the Minister to the Prime Ministers Office, Somsak Thepsutin, announced that the government will continue to support the film industry, and will particularly focus on inviting foreign filmmakers to work here.

Premier Thaksin Shinawatra, he said, has a policy to promote location shooting which may be new to Thailand, but it is an industry that Western countries have long been involved in and it is also a good way to bring foreign exchange into our country.

We see AFCI membership as a recognition of our service standard. It shows that we are capable of establishing an excellent infrastructure to cater to the international film industry.

During this 18-month trial period, the Thailand Film Office and all of those who work in the film industry will do our best to create an even better standard to make Thailand a more film-friendly country. And I hope that by the end of this year, we will earn an ordinary member status, he said.

In an effort to develop Thailand as an international film production centre, the Cabinet has approved an income-tax reduction for expatriate actors and actresses filming in Thailand to a flat rate of 10 per cent, as opposed to the usual range of five to 37 per cent. The Cabinet believes the measure will not only encourage more international filmmakers to use Thailand as the location for filming, but will also help promote tourism as well.

Thailand bids for a starring role The Nation (Thailand) July 4, 2002, Thursday

Santa Pestonji, president of the Film Production Services Association, said he believes Thailand has all the right ingredients for the location filming business.

We have unique locations, professional equipment and film crews, skilled craftsmen and inexpensive labour. And Thailand is also a very safe location as she is free from extreme political and religious conflicts. I think we are more than ready to welcome international filmmakers to work here, he said.

According to the Thailand Film Office, the number of foreign productions filmed in Thailand has been increasing every year since 1997. Last year, Thailand earned Bt1.28 billion from the industry and so far this year the industry has brought in Bt420 million.

Rangsita Sirivanich

The Nation

LOAD-DATE: July 3, 2002



39 of 382 DOCUMENTS

Copyright 2002 Knight Ridder/Tribune Business News
Copyright 2002 Bangkok Post, Thailand
Bangkok Post, Thailand

September 20, 2002, Friday

KR-ACC-NO: TH-TOURISM

LENGTH: 215 words

HEADLINE: Film Remake May Aid Thai Tourism

BYLINE: By Chatrudee Theparat

BODY:

A remake of the Oscar-winning movie *Around the World in 80 Days* is expected to bring 1.2 billion baht to Thailand, according to Somsak Thepsuthin, the minister in charge of tourism.

Mr Somsak met yesterday with executives of US-based Balloon Production Co to discuss the company's plan to use Thailand as one of the locations for the four-billion-baht production.

The original *Around the World in 80 Days*, based on the 1870 novel by Jules Verne and starring David Niven and Shirley MacLaine, won the Academy Award for best picture in 1956.

The remake will star Jackie Chan as Passepartout, while the role of Phileas Fogg has yet to be cast. Mr Somsak said filming would take place from January to March in many northern provinces, Bangkok and Krabi. A Thai director and 300 Thai workers would be hired.

In the first eight months of this year, 343 foreign film productions were shot in Thailand, including movies, television programmes, music videos and commercials, representing a total investment of 1.04 billion baht.

Mr Somsak forecast Thailand would earn two billion baht from foreign film productions this year, compared with 1.27 billion last year.

To see more of the Bangkok Post, or to subscribe to the newspaper, go to <http://www.bangkokpost.com>

JOURNAL-CODE: TH

LOAD-DATE: September 20, 2002



12 of 382 DOCUMENTS

Copyright 2002 Financial Times Information
All Rights Reserved
Global News Wire - Asia Africa Intelligence Wire
fnWeb.com

December 11, 2002

ACC-NO: A20021211190-31F6-GNW

LENGTH: 1076 words

HEADLINE: FNWEB INDUSTRY REPORT - THAI FILM INDUSTRY UNDERGOING STRONG RESURGENCE

BODY:

fnWEB - Bangkok - December 11, 2002 - Ron Corben - A resurgence in the Thai film industry is proving to be a boon for Thai post-production companies going into 2003, with work also steady from both local and foreign sources for production companies.

But war in the Middle East over Iraq lies unsettling on the horizon amid concerns of any further violence in South-east Asia will unsettle foreign studios from work in favored regional locations such as Thailand.

On the slate for 2003 are some 50 locally made feature films - double the number in 2002. At the same time, the advertising market is stable, so the industry is looking to the film industry for growth.

The increased demand for postproduction services has led major houses, such as Oriental Post - a joint venture of production house Kantana and industrial and media house, Loxley plc - to invest US \$ 140,000 in new editing equipment (Sony HD VTR) for special effects. Oriental Post is planning to purchase a second Sony HD VTR given the high demand for work, says Bobbie Wong, Oriental Post's chief executive. "We are trying to expand for the foreign film market," Wong said. "The advertising market is looking quiet steady, stable, so we are looking to the film industry for next year," he said.

The Thai historical epic film, "Suriyothai", led the way in harnessing the technology, with the Francis Ford Coppola's re-edited version making its Thai debut last December (2002). The film's success added to the demand by local film makers for the crucial special effects through computer graphic features to win over audiences. The technology used came from SGI, a California-based advanced graphics solution provider.

The industry has been going through tough times since the Sept 11 2001 terrorist attacks in the U.S., says of production house, Big Blue Production Co Ltd managing director, Malinee Tosakul. And recovery appears jittery. "Next year there will not be much change," Malinee said. On the local scene, while spending on advertising is ahead in real terms, she says clients are looking for higher returns. But tight spending is affecting the final product. "Overall advertising creativity has gone down.

Budgets have been reduced - clients are just not spending that much but still want their brand to be remembered," she said. Local clients - who in the past left much to the agencies in overseeing the ad spending budget, are now becoming more involved. "It is making it tougher and tougher on us," she said.

Advertising expenditure in Thailand posted growth of 13.7 per cent in the third quarter compared to last year - from US \$ 307 million to \$ 349 million. But expenditure dropped by 2.0 per cent when compared to the second quarter. But industry analysts expected Thailand to sustain its healthy position for the remainder of the year. The Advertising Asso-

FNWEB INDUSTRY REPORT - THAI FILM INDUSTRY UNDERGOING STRONG RESURGENCE fnWeb.com
December 11, 2002

ciation of Thailand had predicted Thailand's advertising expenditure to increase by 12 per cent for the whole of this year over 2001.

Benetone Films Co director Kulthep Narula, also is cautiously optimistic. Benetone Films focuses on foreign demand production in Thailand. "The outlook looks all right," Kulthep says.

"There is more interest in, and about, Thailand," And the competitive rates offered by Thailand add to the incentive by foreign studios for Thailand as production and post-production location. "We are getting more interest, especially in post production where the service level (in Thailand) has definitely improved," he said.

Producer with Hub Ho Hin Bangkok Co Ltd, Atchara Takaew, says that compared with 2001 the past year is much improved. Hub Ho Hin focuses some 75 per cent of its work on the local market with the remainder coming from work overseas. "I hope its getting better. But at the moment the feeling is still not quite there," Atchara said.

Thailand's strengthening position - and lower costs - in both production and postproduction has been another lure for major advertising companies to base in Bangkok.

Peter Mantello, the creative director at Asia Kinetica, says the ease of communication and low costs make foreign production operations located in Thailand attractive to overseas clients. "It's a big selling point and we see it getting better," he said. "Companies are not curtting back; everyone is going forward. It seems like it will be OK," he said, adding the market in Thailand "had a lot of potential".

Thailand's reputation as a location for postproduction hub is drawing work from regional countries China - with one of the fastest growing economies in the world - and is increasingly demanding top flight and affordable postproduction work. "Everybody is talking about China's (film and TV) production," says Wong. Some postproduction work in China is still viewed as falling short of the standards set elsewhere in the region. But markets like the Philippines and Indonesia remain haphazard, left to the vagaries of their mixed economic performance. The overall feeling remains optimistic for the Thai post-production market.

In local productions, Grammy Television stepped up its challenge against the league leader, Kantana. Grammy is now gearing to be a key player in the local TV production market, and now involved with a series of TV productions. The company's main successes have come in game show productions, and was also contracted by Independent TV (iTV) and BEC World Channel 3 to produce a local drama to be aired in early 2003.

Grammy launched three new programs directed to the local market in October, with managing director, Saithip Montrikul na Ayudhaya, saying the aim was establish the company's credentials as an independent producer in the television market place. "We want people to think of Grammy Television when they first think of TV program producers," Saithip told local media.

The largest production house in Thailand, the Kantana Group, has in recent years looked to regional expansion. Earlier this year, the Group announced it had undergone a program of restructuring, with the focus on television, film and post-production. Revenues from TV and post-production account for nearly 90 per cent of the group's income. Through 2002, as part of diversification plans, Kantana opened production houses in Indonesia, Malaysia, South Korea and China's Shanghai, with plans of opening in Vietnam's Ho Chi Minh City. The group's outlook also benefited from reports Fox Warner had contracted Kantana with several new post-production orders.

LOAD-DATE: December 11, 2002

EXHIBIT C



53 of 1498 DOCUMENTS

Copyright 2009 Council on Foreign Relations, Inc.
All Rights Reserved
Foreign Affairs

July 2009 - August 2009

SECTION: Pg. 108 Vol. 88 No. 4

LENGTH: 3920 words

HEADLINE: The Battle for Thailand Subtitle: Can Democracy Survive?

BYLINE: Bertil Lintner

BODY:

Bertil Lintner is a Swedish journalist and author living in Thailand. He was a correspondent for the Far Eastern Economic Review from 1982 to 2004. Over the past three years, Thailand has lived through a military coup, six prime ministers, and widespread civil unrest. The ongoing crisis grabbed headlines last year when protesters occupied two international airports, and it culminated this April in violent clashes in Bangkok. Observers have wondered how what was once such a promising democracy could devolve so quickly. Today, a semblance of normality has returned to Thailand.

But the battle for the country is far from over, and its future remains uncertain. The fractures that led to the confrontation in the first place have yet to be mended. Thai society has become deeply polarized, with different elites jockeying for power and the urban population pitted against the rural population, the north and the northeast against Bangkok and the south, and the poor against the rich. With Thailand's economy now contracting, these divisions might become even more salient. To make matters worse, speculation abounds about the health of the country's 81-year-old monarch, Bhumibol Adulyadej, who has traditionally stood for stability and continuity. Whatever the outcome of the present crisis, the future of Thai democracy does not look good. Thailand's democratic institutions remain weak and vulnerable to interference by unelected institutions, such as the military and the judiciary. Unless Thailand develops solid, independent state entities that can bridge the gap between various interest groups, the situation will only deteriorate. **THAKSIN'S TENURE** It all began with the meteoric rise of Thaksin Shinawatra, an immensely wealthy telecommunications tycoon who became prime minister in 2001 after his party -- the Thai Rak Thai (Thais Love Thais), or TRT -- won the general election by a landslide. (Thaksin's 2005 electoral victory would be even more spectacular.) He ran on a platform of reform, but once in power he flouted democratic rules. In 2003, for example, Thaksin launched a bloody and controversial "war on drugs." The campaign was initially regarded as successful: the price of methamphetamines, Thailand's drug of choice, more than doubled within a few months. But soon it began to lose its effectiveness. Extrajudicial executions became a commonplace policy tool. In each province, the police (and in some cases, the army) followed quotas on the minimum number of drug dealers to kill. Many innocent Thais who had nothing to do with the drug trade died during the campaign, having been targeted by the police after neighbors with grudges called government hotlines to report them as drug dealers. Community organizers and other innocent villagers, including children, were also killed. (The indiscriminate killings were documented by Human Rights Watch in a 2004 report and by the Asian Center for Human Rights in 2005.) In border provinces, the police started killing army intelligence informants, who were often in the drug trade, and the army responded by killing police informants. By late 2003, the price of methamphetamines was back to its pre-drug-war level. Another highly controversial aspect of Thaksin's premiership was his campaign against the media. For example, in 2003 the Shin Corporation, a telecommunications and satellite company

The Battle for Thailand Subtitle: Can Democracy Survive? Foreign Affairs July 2009 - August 2009

founded by Thaksin and owned by his family, brought a multimillion-dollar lawsuit against Supinya Klangnarong, a media rights advocate, for writing in the Thai Post, a Thai-language daily, that the company had benefited from favorable treatment by the Thaksin government. When Thaksin later claimed in an interview with Time magazine that he had "never intervened" in media activities, the executive director of the Thai Journalists Association responded, "Before he came to power, the Thai press was considered one of the freest in the world. . . . Thaksin constantly interfered with Thailand's printed and broadcast media using advertising revenues and stock acquisitions as key strategies. He shut down community radio, websites and TV programs critical of him." Thaksin was also widely accused of manipulating the democratic system to make billions for himself and his family. In January 2006, a firm owned by the Singaporean government bought a 49.6 percent stake in the Shin Corporation for nearly \$2 billion. Because the sale was made through a shell company registered in the British Virgin Islands, the Shinawatra family -- one of Thailand's richest -- paid no taxes to the Thai government. After the deal was announced, more than 100,000 protesters gathered near the old Royal Palace in Bangkok to demand Thaksin's resignation and impeachment. Thaksin responded by busing in nearly 200,000 supporters from the countryside. He accused his opponents of being "stupid" and pledged not to "betray the confidence of 19 million voters," who had supported the TRT in the 2005 election. A month after the controversial sale, Thaksin's opponents formed a loose federation known as the People's Alliance for Democracy. The PAD brought together a motley crew of various interest groups whose lowest common denominator was opposition to Thaksin's government: they see Thaksin and his cronies as a threat to the monarchy and the country's unity. Although Thai sources are reluctant to discuss the role of the monarchy, a taboo subject in Thailand, the PAD is also concerned about the king's impending succession and wishes to make sure Thaksin is not in power at such a sensitive time. The PAD's members are referred to as the Yellow Shirts, after the color associated with the Thai king; Thaksin's followers, who are known as the Red Shirts, call themselves the United Front for Democracy Against Dictatorship (UDD). But neither side could accurately be described as democratic. If Thaksin's tenure was characterized by undemocratic practices, his opponents are even more openly antidemocratic. The PAD advocates something it calls "new politics," whereby the elected parliament would be replaced by an assembly consisting of both elected and appointed members. Many of those living in Thailand's rural areas, the PAD believes, are not sophisticated enough to take part in general elections and are likely to sell their votes to the highest bidder. PARTY-HOPPING The PAD's rallies in 2006 led to the military's intervention in politics and the ouster of Thaksin. Staged while Thaksin was in New York for a United Nations meeting in September of that year, the coup was swift and bloodless. Since then, Thaksin has been convicted of corruption, and a warrant has been issued for his arrest. He lives in exile, mainly in Hong Kong and Dubai, and his assets in Thai banks -- totaling around \$2.2 billion -- have been frozen. Meanwhile, the government that the coup makers installed -- led by a former army chief and a member of the king's advisory body -- failed to live up to the expectations of the anti-Thaksin movement. It did not purge Thailand of Thaksin's influence. In certain parts of the country, a strong undercurrent of support for Thaksin survived. Following more than a year of rule by a military-appointed government, new elections were held. These resulted in the formation of a coalition government led by the People Power Party (PPP), the successor to Thaksin's TRT. (The TRT had been found guilty of electoral fraud and dissolved by the country's constitutional tribunal seven months before.) But by no means was the election a landslide victory for the PPP; the party was able to form a government only because it allied itself with smaller political parties -- some of which later joined the opposition. The PAD, which had ceased its activities after the coup -- its goal of toppling Thaksin had been achieved -- reestablished itself in March 2008. It led demonstrations in May 2008 to protest the government's proposal to amend the constitution in a way the PAD thought would benefit Thaksin and perhaps pave the way for his return to power; the PAD believed the PPP government was merely a proxy for Thaksin. In August 2008, tens of thousands of Yellow Shirts occupied the compound around Government House in Bangkok. Soon after, the PPP's first prime minister, Samak Sundaravej, was forced to resign when the courts ruled that his participation in a television cooking program violated the Thai constitution. He was succeeded by Somchai Wongsawat, Thaksin's brother-in-law. By the fall, the antigovernment demonstrations were occurring almost daily. They culminated in November 2008 with the PAD protesters' seizure of Bangkok's two airports. The crisis ended only when the PPP was dissolved by the courts -- like the TRT, it was convicted of electoral malfeasance -- and Somchai was forced to resign. The protesters vacated the airports. A new coalition headed by the Democrats, which had been the main opposition party during the Thaksin era, took over in December 2008. Led by the 44-year-old Oxford graduate Abhisit Vejjajiva, the new government rests on a fragile alliance between the Democrats and some smaller parties, as well as members of parliament who defected from the dissolved PPP and whose loyalty to the new prime minister cannot be taken for granted. MULTIPLE DIVISIONS The recent restlessness in Thailand is the result of the country's deep fault lines. The Thai imbroglio has often been labeled a struggle for democracy, but this is overly simplistic. Although the PPP and its predecessor, the TRT, won all the elections they participated in, once in power, both parties behaved in an extremely authoritarian manner. The political crisis has also been described as a battle between the traditional urban elite, represented by monarchic institutions such as the military and the bureaucracy, and

The Battle for Thailand Subtitle: Can Democracy Survive? Foreign Affairs July 2009 - August 2009

the rural poor, whose interests Thaksin supposedly sought to advance. Indeed, what at the beginning was not a social conflict has to some extent become one. The pro-Thaksin UDD has exploited the plight of the poor, whereas the PAD has rejected representative democracy for fear it would give the rural population too much political clout. Speakers at UDD rallies talk of a "class war," sometimes even going as far as advocating a "people's army" to challenge the elite. But it would be wrong to describe the crisis, as the Western media often do, as just a social conflict between the rich and the poor. For one thing, there are rich and poor in both camps, and Thaksin is a multibillionaire who primarily represents ethnic Chinese business interests, not poor farmers. The PAD, for its part, cannot be described solely as the vanguard of an "urban elite." Trade unionists, for example, rallied behind it because Thaksin had once tried to privatize state-owned enterprises. When the PAD was formed, its five-person central committee consisted of a media tycoon (Sondhi Limthongkul, the coalition's founder), a former Bangkok governor and retired major general (Chamlong Sri-muang), a social activist and longtime pro-democracy campaigner (Pipob Dhongchai), a labor leader (Somsak Kosaisuk), and an academic who is also a prominent Democrat (Somkiat Pongpaiboon). The present struggle for Thailand is actually more political and regional in nature than economic. The political crisis is best understood as a simple power struggle between two different groups of elites. According to David Fullbrook, an author and observer of the political scene in Thailand, conflict has been simmering since the rise of "new money" -- much of it in the hands of Sino-Thais, such as Thaksin -- in the 1960s, thanks to surging exports and modernization. Thaksin and his new-money cronies inevitably came to compete with "old money," represented by the monarchy and the traditional elite. This conflict pitted Thaksin's government against the institution that is supposed to bridge such gaps in society, the king's advisory body -- and therefore against the monarchy itself. As the Thailand scholar Kevin Hewison has argued, Thaksin and the palace were competing for the same things: societal supremacy and the hearts and minds of the masses. The origins of the anti-Thaksin movement thus lie in the old establishment's desire to keep from power someone they perceived as a manipulative arriviste. But even though Thailand's political crisis was not at the beginning a social conflict, it became one because of the way in which Thaksin took advantage of the plight of the poor, especially in the impoverished northeast. It is doubtful that the demonstrators who took to the streets in April -- who may have genuinely believed they were fighting for democracy and better living conditions -- realized that they were little more than pawns in a bigger game. As a result, the country has become deeply divided, not only between the old and the new elite but also between Thaksin's strongholds in the north and the northeast and his opponents' in Bangkok and the south. Pasuk Phongpaichit and Chris Baker, two of Thailand's leading commentators on social issues, have traced the regional divide to the north's and the northeast's "sense of exclusion and disadvantage, the legacy of a highly centralised state system and persistent neglect." Although Thailand has experienced some spectacular economic growth over the past few decades, not all regions have benefited equally, and the country has one of Asia's highest Gini coefficients, a measure of income inequality (the higher the coefficient, the greater the inequality). However, Thaksin was successful in portraying himself as a champion of the poor, mainly in the northeast, where he cleverly marketed his rural-development policies, inexpensive health care, generous monetary support for villages, and other populist policies. On the other hand, in the north, where Thaksin comes from, local residents know the Shinawatras as a Sino-Thai business family whose fortunes have waxed and waned over several generations. Thus, the TRT's election campaigns there never focused on poverty elimination but instead focused on provincialism, emphasizing that Thaksin was "a native of the north" and using distinct, northern Thai spelling on election posters and billboards. Clearly, playing on the rich-versus-poor divide has only been a tool for Thaksin's camp to gain support in certain parts of the country. As one Bangkok-based analyst put it, "This is not a class war but a regional conflict." The present Democratic-led coalition is acutely aware of the opposition's popularity in the north and the northeast, and it has pledged not to abolish any of the populist policies that Thaksin initiated. Still, it will be an uphill battle for the Democrats to win over those regions, where they are seen as representing mainly the upper and middle classes of Bangkok. AN UNCERTAIN DEMOCRACY Deep rifts such as these are enough to paralyze any country, but in Thailand, the monarchy has historically acted as a bridging institution. It is revered not only by the elite but also in the countryside, where the king enjoys an almost divine status. Most Thais think of the monarchy as a sacred institution, and Thailand has some of the world's most stringent *lèse majesté* laws (which criminalize offenses against the monarch). The Ministry of Information and Communication Technology claims to have shut down more than 2,000 Web sites deemed offensive to the monarchy. This drive began well before the Democrats came to power. But Abhisit's justice minister has gone a step further and suggested that the current maximum penalty for *lèse majesté* convictions, 15 years of imprisonment, should be extended to 25 years. This does not tally well with Abhisit's stated commitment to liberal democracy. In a recent speech before the Foreign Correspondents' Club of Thailand, Abhisit defended these laws, arguing that the monarchy, which is the key to political stability, must be shielded from the country's political turmoil. Near-universal respect for the monarchy is undoubtedly a unifying factor, but it is also closely linked to the present king. Because of the country's *lèse majesté* laws, no one is prepared to talk openly, let alone write, about what may happen when a new monarch takes over. Bhumibol, who ascended to the throne in 1946, is the world's long-

The Battle for Thailand Subtitle: Can Democracy Survive? Foreign Affairs July 2009 - August 2009

est-reigning monarch, and the vast majority of Thais have never experienced another king. The trauma that his succession will inevitably entail will be immense. According to Shawn Crispin, the Southeast Asia editor of Asia Times Online and a veteran observer of Thai politics, when the king dies it is possible that "the military will invoke the Internal Security Act -- which in times of crises gives the army commander more executive power than the prime minister -- to ensure a smooth and favorable transition." Indeed, despite Thailand's democratic institutions, the military is a powerful force, and it is likely to remain so for the foreseeable future. Between 1932, when the absolute monarchy was overthrown, and 2006, when the military ousted Thaksin, Thailand witnessed at least ten successful coups and seven abortive coup attempts. Powerful elements of the military have closely allied themselves with the PAD, which shares their loyalty to the monarchy and their dislike of Thaksin. According to Crispin, the military worked behind the scenes to form Abhisit's coalition. And if it retains such influence, Crispin wrote in Asia Times Online in January, Thailand's stability will be determined less by how Abhisit deals with the UDD and "more by how Abhisit negotiates power-sharing first with the military and second with his junior coalition partners." That prediction does not augur well for Abhisit, and it calls into question his progressive credentials. FORECAST: FAILURE? After taking power at the end of 2008, the Democrats gained even more seats in parliament and improved their majority in by-elections held this January. But their opponents still feel cheated. They believe that both of Abhisit's immediate predecessors and Thaksin were toppled by unconstitutional means -- Samak and Somchai by politically motivated court decisions and Thaksin by a coup. The new coalition, Thaksin's followers argue, is the product of behind-the-scenes horse-trading. The UDD has called Abhisit an "illegitimate prime minister." In April, the opposition's anger culminated in violent clashes that left two confirmed dead and more than a hundred wounded. In the coastal resort of Pattaya, protesters forced a regional summit to be canceled and its attendees to be evacuated by helicopter. Most of Thaksin's closest relatives left the country before and during the April events, but they are still in close contact with supporters in Thailand. Even before April, Thaksin himself -- who after his 2006 ouster pledged never to get involved in politics again -- repeatedly addressed his followers in Thailand by video from Dubai. During the height of the protests, he told them that he was prepared to come back and lead the country again, if they asked him to do so. In one address, he even urged his followers to stage a "people's revolution" -- a call that cost him his Thai passport. Even in exile, Thaksin remains powerful, and the country has become divided between those who love him and those who loathe him. The violent clashes in April failed to dislodge the government, and they antagonized residents of Bangkok, whose daily lives were upset by the Red Shirts' blockades. As a result, the UDD is now in retreat, and Abhisit has strengthened his position. The Red Shirts have been regrouping since the debacle and have vowed to continue their struggle. More violence may come. The assassination attempt in April against the PAD's founder, Sondhi, came as a grim reminder of how violent Thai politics has become. The UDD is still demanding that parliament be dissolved and fresh elections be held. But it remains to be seen if the Puea Thai (For Thais) Party, the successor to the dissolved PPP, will fare as well in an election as Thaksin's supporters believe. The party lacks a coherent leadership and, like the UDD, is disorganized and undisciplined. It is also insular and paranoid: close relatives of Thaksin -- trusted but inexperienced -- have been appointed to important positions in the party, making it seem like a family-run company. The crisis is far from over, and it is an open question how long Abhisit's government will last. Abhisit may be one of Thailand's brightest and best-educated politicians, but his coalition remains fragile. The price he and the Democrats had to pay for being able to put together a government was the inclusion of dubious characters, some previously allied with Thaksin, others PAD partisans. For example, Abhisit's choice of foreign minister, Kasit Piromya, was a regular speaker at PAD rallies and once described the group's occupation of Bangkok's international airports as "a lot of fun." The relationship between the Democrats and the less-than-democratic PAD is one of the most controversial aspects of the new coalition. Abhisit, who has repeatedly said that the law applies to everyone, touts transparency and good governance. But it is unclear whether his administration can afford to go after the PAD, which blatantly disregarded the law and severely tarnished Thailand's international reputation when it occupied the airports. Thailand can ill afford more turmoil as it begins to feel the effects of the global economic meltdown. For the first time in years, its exports are down and unemployment is rising. In the once-lucrative automotive industry, thousands of jobs are at risk: Toyota Motor Thailand, the country's largest automaker, has already announced that it will cut production to cope with falling demand. Because of the recent turmoil, fewer tourists are visiting the country and fewer foreigners are investing in it. Just a few days after order had been restored in April, Thailand's finance minister forecast that the Thai economy would contract by five percent as a result of the violence. Layoffs could lead to social unrest, and the pro-Thaksin opposition would no doubt accuse the government of ineptitude and incompetence -- a charge that could work to the Puea Thai's advantage whenever new elections are held. In an effort to avert another crisis, outside interlocutors are working behind the scenes to reconcile the opposing sides. Forming a government of national unity has been suggested, but the divide is so deep and antagonistic feelings so strong that it will not be easy to heal the country after three years of turmoil. Although the last thing Thailand needs is more street politics, they seem likely to return: the UDD's Red Shirts have vowed to continue their campaign to oust Abhisit's government. If Thailand is to become truly

The Battle for Thailand Subtitle: Can Democracy Survive? Foreign Affairs July 2009 - August 2009

stable, its democratic institutions will have to be strengthened through more grass-roots participation in the decision-making process at all levels. More attention will also have to be paid to the grievances of people in the north and the northeast; otherwise, populists like Thaksin will be able to ride a wave of social discontent, and Thailand will remain a political tinderbox. Never before has the country's future seemed as uncertain as it does today. If the confrontation continues and the economic crisis starts to bite in earnest, Thailand, a country seen as a pillar of economic and political stability in Southeast Asia just a few years ago, could become a textbook example of a democracy's collapse.

LOAD-DATE: September 7, 2009

EXHIBIT D



FOCUS - 262 of 309 DOCUMENTS

Copyright 2008 Associated Press
All Rights Reserved
Associated Press

July 13, 2008 Sunday

SECTION: INTERNATIONAL NEWS

LENGTH: 369 words

HEADLINE: Thai PM vows to amend constitution despite protests from political opponents

DATELINE: BANGKOK, Thailand

BODY:

Thai Prime Minister Samak Sundaravej, whose government faces streets protests and a barrage of corruption allegations, vowed Sunday to amend the post-coup constitution, despite strong political opposition.

In his weekly radio television program, Samak also said he would go through with an anticipated Cabinet reshuffle but gave no details.

Samak blamed the constitution for a spate of problems confronting his government, including legal action that has forced the resignations of three cabinet ministers.

Samak has been accused of trying to change the constitution to hold onto power and to prevent ousted Prime Minister Thaksin Shinawatra from facing corruption-related charges.

The document was written by a military government last year after a bloodless 2006 army coup that toppled Thaksin. The interim government relinquished power after more than a year in office, allowing a democratic election last December that saw Thaksin's ally Samak sweep into power.

Opponents charge that Samak and his People's Power Party are merely proxies of Thaksin, who still wields the real power behind the scenes.

Samak said the constitution makes it easy for political parties to be disbanded by court order, thus creating a dangerous vacuum in governing of the country.

Several parties, including the People's Power Party, are being threatened with dissolution on various charges including fraud during last December's election which brought Samak and a six-party coalition into power.

"The current constitution is a political trap to destroy this government, so this constitution must be changed and I will propose to amend the constitution once Parliament resumes next month," Samak said.

Samak said he had been warned that pressing to change the constitution would lead to a severe political crisis, but added, "I am ready to face whatever crisis comes. I have to do it or die," he said.

The government had proposed to amend the constitution June but the motion was withdrawn after thousands of people, led by the People Alliance for Democracy, staged protests which entered their 50th day Sunday.

Thaksin and members of his family face a slew of court cases related to corruption and abuse of power during his 2001-2006 premiership.