

1 EILEEN M. DECKER  
United States Attorney  
2 LAWRENCE S. MIDDLETON  
Assistant United States Attorney  
3 Chief, Criminal Division  
JOSEPH O. JOHNS (Cal. Bar No. 144524)  
4 Chief, Environmental & Community Safety Crimes Section  
1300 United States Courthouse  
5 312 North Spring Street  
Los Angeles, California 90012  
6 Telephone: (213) 894-4536  
Facsimile: (213) 534-4300  
7 E-mail: joseph.johns@usdoj.gov

8 Attorneys for Plaintiff  
UNITED STATES OF AMERICA  
9

10 UNITED STATES DISTRICT COURT  
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 JONATHAN MARKELL, and  
16 CAROLYN MARKELL,

17 Defendants.  
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No. CR 10-925-DDP

No. CR 08-975-DDP

SUPPLEMENTAL FILING TO  
GOVERNMENT'S CONSOLIDATED  
SENTENCING POSITIONS FOR  
DEFENDANTS JONATHAN AND CAROLYN  
MARKELL; DECLARATION OF JOYCE  
WHITE, PHD. IN SUPPORT THEREOF

Hearing Date: December 14, 2015

Hearing Time: 1:30 p.m.

Location: Courtroom of the  
Hon. Dean D.  
Pregerson

21 Plaintiff United States of America, by and through its counsel  
22 of record, the United States Attorney for the Central District of  
23 California and Assistant United States Attorneys Joseph O. Johns and  
24 Sharon McCaslin, hereby files the Declaration of Joyce White, PhD.  
25 as a Supplemental Filing to the Government's Consolidated Sentencing  
26 Positions for defendants JONATHAN and CAROLYN MARKELL previously  
27 filed with this Court. Doctor White's declaration is specifically  
28 filed in support of the government's 18 U.S.C. § 3553(a) sentencing

1 factors argument for defendant JONATHAN MARKELL in the case of  
2 United States v. Jonathan Markell, et al. (Case No. CR-08-975-DDP),  
3 which is set forth at pages 14-18 of the Government's Consolidated  
4 Sentencing Positions for Defendants JONATHAN and CAROLYN MARKELL.  
5 See Docket Entry #67.

6 Government counsel will contact defense counsel for both  
7 JONATHAN and CAROLYN MARKELL to ask if they wish to cross-examine  
8 Dr. Joyce White. If counsel for either defendant wishes to cross-  
9 examine Dr. White, the government will make her available during the  
10 December 14, 2015 sentencing hearing for that purpose.

11 Government counsel also provide notice herein to both the  
12 defendants and the Court that the government will offer the  
13 testimony of the Operation Antiquities case agent during the same  
14 sentencing hearing for the express purpose of authenticating and

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1 "playing" a very short selection of undercover audio and video clips  
2 that highlight each defendant's mens rea in the two cases before  
3 this Court.

4 Dated: December 7, 2015

Respectfully submitted,

5 EILEEN M. DECKER  
6 United States Attorney

7 LAWRENCE S. MIDDLETON  
8 Assistant United States Attorney  
Chief, Criminal Division

9 /s/Joseph O. Johns  
10 JOSEPH O. JOHNS  
11 Assistant United States Attorney  
Chief, Environmental & Community  
Safety Crimes Section

12 Attorneys for Plaintiff  
13 UNITED STATES OF AMERICA  
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DECLARATION OF Joyce C. White

I, Joyce White, PhD, declare as follows:

1. As an archaeologist who has studied the archaeology of Thailand at the University of Pennsylvania (Penn) since 1974 and the site of Ban Chiang since 1976, I have specialized knowledge about the prehistoric archaeology, especially the artifacts from prehistoric cultures, of Thailand and Southeast Asia. I was guest curator for the Smithsonian-produced exhibition "Ban Chiang, Discovery of a Lost Bronze Age" that circulated nationally and internationally from 1982-1987, and I wrote the text and the catalog for the exhibition. I was awarded my PhD in 1986, and my PhD Thesis was a revision of the chronology of Ban Chiang. I have been the director of the Ban Chiang Project based at the University of Pennsylvania Museum ever since, focusing on publication of the Penn excavations undertaken in the 1970s. I am currently close to finishing (with collaborators) a monograph on the evidence for prehistoric metallurgy of Ban Chiang. In 2013 I founded and become the Executive Director of a new non-profit entity, the Institute for Southeast Asian Archaeology, dedicated to advancing the research of this region. We recently posted a new website on the Ban Chiang Project <http://iseaarchaeology.org/the-ban-chiang-project/>. I have knowledge of the facts set forth herein and could and would testify to those facts fully and truthfully if called and sworn as a witness.

2. Beginning in August 2005, I have authenticated more than 10,000 artifacts falling within the Operation Antiquity investigation that, based on my professional knowledge, must have been removed from prehistoric archaeological sites in mainland Southeast Asia,

1 primarily Thailand. The two Jonathan and Carolyn Markell cases before  
2 this court are part of Operation Antiquity.

3 a. Based on my long familiarity with Thailand, it long  
4 has been common knowledge, stated in most tour guides, that  
5 individuals seeking to export antiquities must have a permit from the  
6 Thai Fine Arts Department (FAD).

7 b. Among the thousands of artifacts I authenticated for  
8 Operation Antiquity, I saw only one or two examples where export  
9 permission had been obtained from the Thai Fine Arts Department.

10 c. This led me to believe that the remainder had been  
11 looted (excavated illegally and without professional scientific  
12 methods) from prehistoric archaeological sites primarily in Thailand  
13 and then illegally imported into the United States.

14 3. The scale of the archaeological damage was obviously  
15 devastating for Thai archaeological resources.

16 a. Artifacts entering the antiquities market such as  
17 those I authenticated for Operation Antiquity tend to be fairly  
18 intact. Intact artifacts are rare in archaeological sites and tend to  
19 come from human burials.

20 b. To retrieve intact artifacts from sites like Ban  
21 Chiang, large scale excavations must be undertaken. Most of the  
22 materials recovered from such sites like Ban Chiang, which are  
23 occupation/mortuary sites, are overwhelmingly fragmentary artifacts  
24 and/or materials that are not marketable, such as human bones, animal  
25 bones, evidence of food, and other materials discarded during daily  
26 life such as broken pottery.

27 c. Based on quantitative comparisons of materials  
28 recovered by scientific excavations at Ban Chiang and similar sites



1 with artifacts of similar condition that I authenticated for  
2 Operation Antiquity, I estimate that Operation Antiquity's artifacts  
3 represent somewhere between 10 to more than 175 times the scale of  
4 the Penn/FAD excavations at Ban Chiang in the mid 1970s. The lower  
5 number represents the most charitable calculation, but the higher  
6 number represents what I, in my professional opinion, believe is the  
7 minimum true scale of damage in terms of disturbed archaeological  
8 deposits represented by Operation Antiquity seizures.

9 4. Like other illegally imported commodities (e.g., illegal  
10 drugs), "production" in the source country is driven by the market in  
11 the recipient country.

12 a. Villagers have no motivation to loot if there is no  
13 income gained, they do not just do it for fun or incidentally and  
14 produce numbers of artifacts or the scale of damage represented by  
15 the quantities of intact artifacts recovered by Operation Antiquity.

16 5. The Operation Antiquity cases are special and unusual, in  
17 that, the investigation uncovered and documented some of the drivers  
18 in the US market that provided major stimulus for vast amounts of  
19 damage to archaeological sites in Thailand.

20 a. I understand from speaking to Operation Antiquity  
21 investigators that several individuals, including the Markells, were  
22 key players in developing the US market in Ban Chiang and related  
23 Southeast Asian prehistoric artifacts that drove the looting activity  
24 in Thailand and the illegal export of those materials to the US.

25 b. If Operation Antiquity is to have a deterrent effect  
26 on the antiquities market and distributors, the individuals involved  
27 in pushing the market must be held accountable to the full legal  
28 extent.

1 c. Only with clear and significant consequences for the  
2 marketers will, at least in the United States, other marketers of  
3 similar items be likely to change their behavior and choices to stop  
4 trafficking in antiquities.

5 d. The absence of significant penalty will serve to  
6 encourage antiquities marketing and thus the continued looting, and  
7 really, the grave robbing, of archaeological sites around the globe.

8 6. The losses are much more than just for abstract knowledge  
9 of interest to a handful of academics.

10 a. The evidence for 99.9% of human existence on the earth  
11 is held in archaeological deposits. Written historical testimony of  
12 the human past only exists for a few thousand years (and in Southeast  
13 Asia no more than 1500 years). Therefore destruction of  
14 archaeological sites is like destroying libraries of rare and unique  
15 ancient manuscripts that could tell us about our species development  
16 over tens and even hundreds of thousands of years and around the  
17 globe.

18 b. Thailand's human heritage in particular is reliant on  
19 archaeological evidence because writing began in the territory only  
20 about 1500 years ago. Relative to parts of the world like Greece or  
21 the Near East, modern scientific archaeology has only recently been  
22 undertaken in Thailand, and experts, both Thai and international, are  
23 very few and poorly funded relative to areas with long histories of  
24 archaeological investigation. Therefore the scale of destruction  
25 represented by the Operation Antiquity case has had a proportionally  
26 greater impact on the heritage resources, because relatively little  
27 is known of the region's human prehistory.

1           c. Heritage resources, when properly developed, can  
2 profoundly affect and help rural economies at the grass roots level.  
3 The Ban Chiang excavations and museum are a stellar example of how  
4 world-class excavations associated with professional museological  
5 presentation transformed a formerly sleepy village into a significant  
6 tourist destination—e.g., it has received TripAdvisor's "Certificate  
7 of Excellence"—that brought significant resources into the pockets  
8 of ordinary villagers. In Thailand, there is increasing appreciation  
9 that in contrast to looting, heritage resource development represents  
10 a sustainable economic investment where the benefits can be  
11 distributed widely within a local community (not only employment with  
12 the heritage facility, but growth in associated sectors like  
13 restaurants and retail).

14           7. "Everyone was/is doing it" is no excuse. "Everyone"  
15 depends on the company kept (e.g., "Everyone is selling/taking drugs  
16 in South Central LA" or "Everyone on Wall Street is buying and  
17 selling stocks based on insider information" does not excuse the  
18 perpetrators or excuse the Justice Department from at least trying to  
19 enforce the law in the interests of the greater public good,  
20 especially when there is a good legal case.

21           8. Similarly "The Thais don't care" is no excuse. Some Thais  
22 may not care, but over the decades in which I have worked in  
23 Thailand, with the increasing educational level, increasing size of  
24 the middle class, the increasing sophistication accompanying the  
25 globalized access to knowledge, has come increased appreciation and  
26 valuation for their authentic heritage.



1           a.     A glance at the comments in Thai on TripAdvisor for  
2 Ban Chiang show a clear fascination of Thai visitors for discovering  
3 and learning about past societies that inhabited the Thai landscape.

4           9.     By holding US-based antiquities marketers fully accountable  
5 for their role in promoting the antiquities market and thereby  
6 stimulating the global destruction of irreplaceable heritage  
7 resources, this court has a special opportunity to dampen that trade  
8 and encourage others conducting similar enterprises to change their  
9 behavior and choices. The court also has a special opportunity to  
10 raise the awareness of the general public about this massive problem  
11 so that laypersons also make choices not to purchase antiquities  
12 either in the United States or when visiting other countries.

13           a.     Twenty years ago the National Geographic Society  
14 published, "If the present rate of archaeological destruction  
15 continues, there may be no more sites to preserve in much of the  
16 world in 50 to 100 years. Because archaeological sites form an  
17 irreplaceable resource, we who are alive today are responsible for  
18 saving this valuable record, and archaeologists must sound the  
19 warning. If we do not meet this obligation, the incomplete knowledge  
20 gained up to now and in the very near future must suffice for the  
21 rest of time." From Archaeology and You. By George E. Stuart and  
22 Francis P. McManamon. Published in 1996 by the National Geographic  
23 Society and online at the Society for American Archaeology.

24  
25           I declare under penalty of perjury under the laws of the United  
26 States of America that the foregoing is true and correct and that  
27 this declaration is executed at Philadelphia, Pennsylvania on  
28 December 7, 2015.

  
JOYCE C. WHITE

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