

EXPERT REPORT OF JOE RAY WITTY

I, Joe Ray Witty, state as follows:

INTRODUCTION

1. I am a Green Beret and Master Sergeant (Retired) of the United States Army, Special Forces. I am a military-trained sniper and an explosives specialist, serving two tours of duty in military combat operations in Afghanistan and Iraq. I have participated in cross-training exercises with the Royal Thai Army, and I am familiar with its structure and armament.

2. I am currently employed by Los Angeles Police Department SWAT (Special Weapons and Tactics) team, where I am a member of SWAT's sniper and breaching cadres. I am also an instructor for the Los Angeles Police Department (LAPD) in crowd control and crowd management, and my responsibilities in that capacity include planning and execution of police response to public demonstrations throughout the greater Los Angeles area.

3. I have been retained by the law firm of Amsterdam & Peroff LLP to review and evaluate the Royal Thai Army's response to the Red Shirt demonstrations in Bangkok in April and May 2010. In that capacity, I have reviewed extensive video, examined numerous witness statements, and conducted independent interviews. I have also personally examined various sites in Bangkok where the Royal Thai Army carried out operations in response to the Red Shirt demonstrations.

TRAINING AND PROFESSIONAL BACKGROUND

4. I enlisted in the United States Marine Corps (USMC) in 1982, serving approximately 8 years in the 1st Reconnaissance Battalion, where I supervised reconnaissance teams deployed around the world. While a member of the USMC, I trained and operated in many host countries in small unit tactics and firearms training, including two MEU-SOC (Marine Expeditionary Unit, Special Operations Capable) deployments in the West Pacific. My MEU-SOC deployments included twice attending joint training in Thailand during Cobra Gold exercises, during which I participated in cross-training with Royal Thai Army forces.

5. I earned my Green Beret in 1988, with primary responsibilities in combat engineering/explosive demolition. Additionally, my Green Beret qualification course training included land navigation, small unit tactics, live fire training, target interdiction, unconventional warfare, direct action operations, and survival/evasion/resistance/escape training.

6. I am trained and qualified to identify, maintain, employ and defuse all forms of U.S., NATO and Soviet Block hand grenades, anti-personnel mines and anti-tank mines. I am also trained in the maintenance, employment and destruction of military grade explosives. I am a specialist in the use of explosives for breaching and building entry in hostage situations, together with explosive demolition of local infrastructure in the assistance of unconventional warfare.

7. In 1991, I enlisted in the 19th U.S. Army Special Forces Group (Reserves). In 1994, I graduated from the U.S. Army Scout Sniper Course, earning my designation as a military scout sniper. As part of my sniper training, I successfully completed range qualification with the .308 caliber (7.62 mm) weapons platform on moving and stationary targets, at known and unknown distances up to 1,075 yards.

8.As a member of the Special Forces, I served two tours of duty deployed with a Green Beret operational detachment to both the Afghanistan and Iraq combat theaters, with collateral duties as a sniper. During the course of those deployments, I engaged in some 160 battlefield operations, at least 30 of which as a sniper interdicting human targets.

9.I am formally qualified for the following weapons systems: Colt Model 1911 (.45 cal.) and Beretta 92F (9 mm) pistols, Remington 870 shotgun (12 ga.), Remington M24 sniper rifle (7.62 mm), Colt M16, M16A2 and M4 assault rifles (5.56 mm), H&K MP-5 submachine gun (9 mm), Barrett (50 cal.) sniper rifle, H&K SCAR-H assault rifle (7.62 mm) and H&K 416 assault rifle (5.56 mm). Additionally, I am intimately familiar with the operation of all NATO and Soviet Block weapons systems.

10.In 1990, I joined the LAPD, which is the law enforcement entity primarily responsible for crowd management and riot response in the Greater Los Angeles Metropolitan Area, covering some 450 square miles and containing a population of approximately 4 million civilians. As a member of the LAPD, I am a certified and credentialed instructor in crowd management and riot control, where I regularly teach tactics and procedures to other LAPD officers. Additionally, I teach crowd management and riot control to hundreds of other law enforcement agencies throughout the United States, under contract with the National Tactical Officers Association.

11.During my tenure with the LAPD, I have participated in at least 100 crowd management/riot control operations, many of which were carried out under my personal planning and direction. Some notable examples include the Los Angeles riots in 1993 stemming from the acquittal of four police officers charged with beating Rodney King, the 2000 Democratic National Convention in Los Angeles, annual hotel workers labor union demonstrations, numerous anti-war protests, and various gay rights demonstrations.

12.During the course of these incidents, I have encountered and responded to a wide range of demonstration techniques, both violent and non-violent, including: (a) use of hurling devices (slingshots, super-slingshots) for hard projectiles and corrosive substances; (b) burning of tires; (c) use of knitting needles and other sharp stabbing instruments; (d) use of firearms; (e) arson; (f) Molotov cocktails; (g) sit-downs, including various chaining methods, to disrupt and impede vehicular and pedestrian traffic flow; and (h) roman candles, bottle rockets and M80 firecrackers.

13. Some of these techniques are planned, while some behaviors are spontaneous, often stemming from a mob mentality. In all cases, however, the appropriate response of law enforcement is always measured and proportional to the encountered behavior. In no event is the use of lethal force by law enforcement appropriate except where there is an immediate threat to life, and in such cases the use of lethal force may continue only so long as such threat is present. Further, whenever any death or significant injury results from a law enforcement response to any form of civilian demonstration, a full investigation must be conducted to examine whether the use of force by law enforcement was appropriate under the specific circumstances present at the time.

14. In 1998, I was selected to join the LAPD SWAT team, where I am currently posted. The primary mission of SWAT is to analyze and resolve barricaded suspect situations, serve high-risk warrants and carry out hostage rescue operations. My collateral responsibilities with SWAT include sniper and explosive breacher duties.

15.As a SWAT sniper, my responsibilities include securing high risk areas, reconnaissance and intelligence gathering in the context of crowd management and/or potential terrorist activity, and application of lethal force as necessary to resolve crisis situations. I am also an

LAPD and SWAT certified sniper instructor, and I teach sniper tactics, techniques and protocols to LAPD officers and other law enforcement entities throughout the United States.

16. My responsibilities as an explosive breacher involve the surgical application of explosives to provide entry into fortified structures, with minimal damage, for facilitation of law enforcement entry. I am also an LAPD and SWAT certified breacher instructor, and I teach explosive and mechanical breaching tactics, techniques and protocols to LAPD officers and other law enforcement entities throughout the United States. I hold a Blasting License issued by the State of California for Law Enforcement Tactical Breaching.

17. I have received various military and law enforcement awards, including two Bronze Stars, the Army Commendation Medal, four Army Achievement Medals, the National Defense Medal, the Iraqi Deployment Medal, the Afghanistan Deployment Medal and a Los Angeles Police Unit Citation.

18. I have held a U.S. State Department security clearance continuously since 1998, and I currently hold a Top Secret security clearance.

SCOPE OF REPORT

19. I have been retained by the law firm of Amsterdam & Peroff LLP to review, evaluate and provide my professional opinion regarding the Royal Thai Army's response to the Red Shirt demonstrations in Bangkok in April and May 2010. I understand that my opinion may be submitted to the International Criminal Court (ICC) in connection with a request by Amsterdam & Peroff LLP for the ICC to initiate an investigation into the situation in Thailand.

20. My opinions and conclusions as set out in this report are based upon:

- a. my personal examination and analysis of various sites in Bangkok where the Royal Thai Army engaged in activities in response to the Red Shirt demonstrations;
- b. personal interviews with various witnesses who were present in Bangkok during the Red Shirt demonstrations;
- c. review and analysis of hundreds of video clips and photographs taken in Bangkok during the Red Shirt demonstrations in April and May 2010;
- d. my personal examination and analysis of physical evidence recovered from the Pan Fa Bridge and Ratchaprasong areas in Bangkok following Royal Thai Army activities in response to the Red Shirt demonstrations; and
- e. written witness statements provided to me by Amsterdam & Peroff LLP.

SUMMARY OF OPINIONS

21. Based upon the materials and evidence I have examined, I have arrived at the following overarching conclusions and opinions:

- a. On April 10, 2010, the Royal Thai Army did not engage in a rational or reasonable crowd-management operation, which would necessarily have involved a genuine attempt to disperse the demonstrators without inflicting injury. Instead, the Royal Thai Army intentionally sealed off exit routes, herded the crowd into a confined area, and engaged in various illegal acts designed to provoke the crowd to violence so that the Army would appear justified in its use of deadly force against demonstrators. These illegal acts included, but are not necessarily limited to:

- i. The use of highly trained military snipers to shoot unarmed demonstrators with live rounds from elevated, concealed positions, without provocation or justification;
 - ii. The intentional, indiscriminate discharge of military weapons, including M-16 rifles and other automatic weapons firing live rounds, directly into dense crowds of unarmed demonstrators, without provocation or justification;
 - iii. The intentional detonation of multiple military-grade explosive devices within the immediate vicinity of Army troops, in a deadly form of “friendly fire” designed to create the false impression that the Army was under attack by demonstrators.
- b. The Royal Thai Army formally adopted rules of engagement that comport with accepted crowd management standards in order to create the false impression of reasonable conduct. However, the Thai Royal Army systematically violated its stated rules of engagement in a manner constituting criminal conduct.
- c. The Royal Thai Army’s operation on April 10, 2010 was military in nature. Its objective was to kill innocent civilians, without provocation or justification, in order to suppress the Red Shirt demonstrations.
- d. The Royal Thai Army repeatedly targeted unarmed civilians during the period April 10 through May 19, 2010, using deadly force in a manner that was wholly inconsistent with reasonable law enforcement standards, but rather was unprovoked, unjustified, intentional and criminal.
- e. The Royal Thai Army’s operations during the period May 13-18, 2010 were military in nature. They did not comport with accepted standards of crowd management or with the Royal Thai Army’s own stated ROE, and they were criminal in nature.
- f. The Royal Thai Army’s operations on May 19, 2010 were military in nature. They did not comport with accepted standards of crowd management or with the Thai Royal Army’s own stated ROE, and they were criminal in nature. They were designed to kill innocent civilians, without provocation or justification, in order to suppress the Red Shirt demonstrations. objective of the operations was to kill innocent civilians, without provocation or justification, in order to suppress the Red Shirt demonstrations.

THE RED SHIRT DEMONSTRATIONS

April 10, 2010

22. For several weeks preceding the April 10 Army crackdown, thousands of Red Shirt demonstrators had occupied virtually the full length of Rachadamnoen Avenue, from the area of the Parliament, south to the Pan Fa Bridge area and winding east to the Democracy Monument and Khok Wah Intersection areas, stopping just a few blocks short of Pinklao Bridge on the Chaopraya River. I refer to this broad demonstration area in this report as the “Pan Fa Demonstration Area.” The gatherings in the Pan Fa Demonstration Area were carried out in conjunction with collateral Red Shirt demonstrations in the area of the Ratchaprasong intersection, which I refer to generally in this report as the “Ratchaprasong Demonstration Area.”

23. I have examined maps and diagrams of the Pan Fa Demonstration Area, including the areas around Democracy Monument, the Jor Por Ror intersection, Khok Wua intersection, Tanao, Road, Dinso Road, and the Pan Fa Bridge. I have also examined numerous witness

statements – including anonymous witness statements provided by an officer of the Royal Thai Army with extensive knowledge of the events – and I have examined the Royal Thai Army’s blocking positions both on maps and in person.

24. On April 10, 2010, several platoons of Royal Thai Army soldiers were equipped with riot protective gear designed for crowd management situations. This equipment included: Kevlar ballistic helmets with clear acrylic, non-ballistic face shields; padded chest, shoulder, upper arm, forearm, elbow, hand and shin protectors covered with hard non-ballistic plastic; limited blood borne pathogen protection; abrasion protection; batons; and acrylic riot shields. This is standard crowd management protective gear used by many law enforcement organizations to protect officers from various forms of assault and/or projectiles during crowd management operations. Some Royal Thai Army soldiers were also equipped with gas masks, indicating anticipated tear gas deployment. Documenting video can be viewed at www.thaiaccountability.org/media/witty-video-1.

25. The Royal Thai Army’s stated Rules Of Engagement (ROE) involved the following seven steps, which should always be taken incrementally, only as necessary, and with clearly announced advance warning prior to escalation between steps: (1) show of force by lining up the security officers holding riot shields and batons; (2) informing and warning the protesters that the officers are about to use force; (3) use of shields; (4) use of water cannon or high-powered amplifiers; (5) use of throw-type tear gas; (6) use of batons; and (7) use of rubber bullets.¹

26. Many elements of the Royal Thai Army were equipped with both M-16 rifles and crowd management protective gear. This combination serves no valid crowd management purpose. In my opinion, troops were equipped in this manner to intimidate and/or because their command planned to re-task them in a combat capacity. Documenting video can be viewed at www.thaiaccountability.org/media/witty-video-1.

27. Numerous soldiers carried pump action or single shot shotguns. Based on witness statements, video evidence and physical evidence, the soldiers fired less-than-lethal munitions (*i.e.*, rubber bullets) using these weapons. However, video evidence demonstrates that in some cases the soldiers fired less-than-lethal munitions directly at demonstrators who presented no threat, without any announced warning, in a manner likely to cause serious bodily injury. Such use of less-than-lethal munitions does not comport with accepted crowd management protocols or with the Royal Thai Army’s own stated ROE, and suggests criminal intent to inflict bodily injury. Documenting video can be viewed at www.thaiaccountability.org/media/witty-video-1.

28. Further, my examination of 12-gauge shotgun shell casing recovered from the scene of the Red Shirt demonstrations reveals that at least some soldiers loaded and fired live buckshot rounds. As detailed below, it is my opinion that the circumstances presented during the Red Shirt demonstrations at no time warranted the use of live ammunition by the Royal Thai Army.

29. The vast majority of soldiers deployed in combat gear were equipped with either Tarov-21 or M-16 automatic assault rifles. This suggests that their command expected to task them in a combat capacity rather than a strictly crowd management capacity. Documenting video can be viewed at www.thaiaccountability.org/media/witty-video-1.

¹ <http://www.thaiembassy.sg/announcements/backgrounder-current-political-situation-in-thailand>, at note 2.

30. The Royal Thai Army used automatic weapons during the daytime hours of April 10. I was able to discern from media clips the clear sound of at least one weapon fired on full automatic, in a three round burst. Several soldiers fired their weapons at an upward angle above the crowd. There is no question that these soldiers used live ammunition, based on several factors. First, none of the assault rifles fired into the air was fitted with a "Blank Firing Adaptor" (BFA), which prevents gases from escaping and allows the rifle to retain enough energy from the discharged blank to force the bolt to retract, ejecting the spent blank shell and loading a new blank round. Without a BFA, the operator of an assault rifle firing blanks must manually operate the weapon's charging handle to chamber another blank round. However, none of the soldiers I observed was forced to recharge his weapon manually, despite firing repeated shots. Further, BFAs are always painted a bright color for safety reasons, to ensure that live ammunition is not introduced into a training environment, yet no such BFA was visible on any of the weapons fired by the Royal Thai Army. Documenting video can be viewed at www.thaiaccountability.org/media/witty-video-1.

31. Second, I examined numerous spent brass casings recovered from the demonstration areas, all of which were from expended live ammunition. None of these casings had the distinctive crimping around the crown of the cartridge, found on all blank rounds.

32. Shooting live rounds into the air is inherently dangerous. Every live round fired on an upward trajectory propels a bullet that eventually comes back down. According to US Army manual FM 3-22.9 (M16/A2 Rifle), the maximum range of the M16A2 rifle is 3600 meters. A live round fired randomly into the air poses risk to any person within that range. Indeed, a report published in December 1994 in *Journal of Trauma* states that doctors at the King / Drew Medical Center, at the time a major Los Angeles Trauma Center, treated 118 people between 1985 and 1992 for injuries caused by falling bullets discharged during New Years and Independence Day celebrations, with 38 of those victims perishing.²

33. Live rounds fired into the air by Royal Thai Army soldiers posed a grave risk to all civilians in the area. The use of live ammunition by the Royal Thai Army under non-threatening circumstances, even when directed over the heads of demonstrators, clearly violated accepted crowd management protocols and, in my opinion, constituted – at minimum – criminal negligence.

34. Based on my review of extensive video evidence, it is clear to me that the Thai government acted inappropriately in deploying the Royal Thai Army in a crowd management capacity. Many of the soldiers were obviously untrained in crowd management tactics and protocols, and were ill-equipped to enter any crowd management environment. This lack of proper training was exacerbated by the fact that many soldiers were issued crowd management protective gear together with assault rifles, which sent a contradictory and confusing message to these troops. In my opinion, the very deployment of military troops to perform a function that should always be limited to trained law enforcement personnel demonstrated a callous disregard for public safety.

35. The standard for crowd management in a similar situation is to establish a plan and brief all key leaders. Leaders should in turn brief and supervise at all levels of command to ensure that the ROE are understood and followed. Decisions should be made to encourage the direction of the crowd, for a natural dispersal. Blocking positions should be identified and occupied. At least one major avenue should always remain open to permit natural egress of the crowd. Supervisors should use public address systems to broadcast dispersal orders

² Ordog, Gary J.; Dornhoffer, Peter; Ackroyd, Greg; Wasserberger, Jonathan; Bishop, Michael; Shoemaker, William; Balasubramaniam, Subramaniam, *THE JOURNAL OF TRAUMA INJURY, INFECTION, AND CRITICAL CARE*, *Spent Bullets and Their Injuries: the Result of Firing Weapons Into the Sky*, December 1994, 3 January, 2011, <http://journals.lww.com/jtrauma/toc/1994/12000>.

and communicate exit routes. Crowds should be given reasonable time to comply. Squads should form in a line, walking slowly toward the crowd, while supervisors instruct the crowd. Water cannons might be used to encourage dispersal, and less-than-lethal munitions might be used against specific unruly elements. Persons involved in criminal acts should be arrested, using only such force as is reasonably necessary. Perpetrators who escape into the crowd should be located and prosecuted subsequently, based on video evidence from cameras deployed by law enforcement.

36. It is obvious that these measures were not employed on April 10. There is no question that the Royal Thai Army failed to comply with accepted standards of crowd management and with their own stated ROE.

37. I have read the Statement of Anonymous Witness No. 22, at ¶ 35, which states that the methods employed by the First Infantry Division were “designed to intimidate rather than disperse.” Based on the evidence I have examined, I agree fully with that statement.

38. Based on witness statements, interviews and video evidence, the Royal Thai Army’s Second Infantry Division (Queen’s Guard) deployed company-sized elements in the late afternoon of April 10 from the rear gate of the First Army Region Headquarters, located on Outer Ratchadamneon Avenue near the Makhawan Bridge. Units moved by military vehicle south and occupied Tanao Road. They established and fortified a Command Post (CP) on Tanao Road north of the Khok Wua intersection west of the Democracy Monument, occupying the Sib Sarm hang Roundabout. Troops moved on foot to occupy and heavily fortify a blocking position on the north side of the Khok Wua intersection where Tanao Road meets Ratchadamneon Klang Avenue.

39. On Dinso Road, elements of the Second Infantry Division occupied a blocking position on the southern end of the road, where it meets Ratchadamnoen Klang Avenue at Democracy Monument Square. These troops were supported by three armored personnel carriers (APCs) with heavy machine guns mounted and manned on each vehicle. The machine guns were locked and loaded with belts of live .50 caliber ammunition.





40. The Second Infantry Division established its positions with the military precision of units deployed under the threat of combat in a combat theater. On Dinso Road, they deployed a platoon-sized element in front of the APCs, equipped with crowd management protective gear and, in some cases, assault rifles, in violation of crowd management protocols. I estimate that this element was comprised of more than 80 soldiers. Immediately behind, a company-sized element of approximately 100 troops was deployed in combat gear, suggesting that the true intent of the Second Infantry Division was not to manage and disperse a demonstration that had been declared unlawful, but to treat the unarmed crowd as a hostile combat force. I observed tear gas canisters thrown into the protest crowd.

41. I have examined photographic evidence of shooters firing rifles from the third floor balcony on the white office building located on the corner of Tanao Road and Rachadamnoen Avenue (The Government Lottery Office). In my opinion, this photograph depicts an urban sniper hide, established by trained military snipers. I have read testimony that the Thai military leaders deployed trained snipers in the area of the Khok Wua intersection, which shot into the crowd beginning at approximately 17:00 hours on April 10, with the intent to provoke the crowd to violence. (See Anonymous Witness Statement No. 22, at ¶¶ 32 and 38.) In my opinion, the photographic evidence I examined supports that testimony.



42.As darkness fell, the soldiers of the Second Infantry Division exercised little if any restraint in the discharge of their M-16 assault weapons. While some soldiers on Dinso Road fired their weapons at an upward angle, over the heads of the crowd assembled at Democracy Monument, several fired at a level angle, directly into the crowd. None of these

weapons was fitted with a BFA, indicating that the soldiers were firing live ammunition. Documenting video can be viewed at www.thaiaccountability.org/media/witty-video-2
www.thaiaccountability.org/media/witty-video-3

43. I also observed a heavy machine gun (.50 caliber) mounted on one of the APCs firing in full automatic mode with its barrel level to the horizon, with no BFA attached, indicating that the weapon was firing live rounds. I also observed several soldiers seated calmly atop APCs during the same timeframe, indicating that they felt no genuine threat from the crowd. This type of heavy .50 caliber machine gun is often employed in the combat theater to disable military vehicles by firing large caliber bullets into engine blocks, and it is sometimes deployed in an anti-aircraft role. It possesses devastating destructive capability, and its use in the context of crowd management – particularly, like here, in the absence of any genuine threat to troops – is shocking and unconscionable. Documenting video can be viewed at www.thaiaccountability.org/media/witty-video-2; www.thaiaccountability.org/media/witty-video-3

44. Based on witness statements and photographic evidence, this heavy machine gun was being fired primarily into the Democracy Monument structure itself. The number of demonstrators in the Democracy Monument Square clearly numbered in the thousands, many of whom were directly in front of the soldiers, standing on parts of the monument at the same elevation as the top of the APCs. There is no question that the gunner on the APC was creating grave risk of injury from possible direct hits, falling and/or ricocheting bullets, and from concrete particles thrown off at high velocity by .50 caliber bullets impacting the monument structure.

45. Based on witness statements, interviews and video evidence, it is my opinion that the behavior of the crowd on April 10 at no time presented any genuine threat of significant injury to the troops. The use of live fire over the heads of the protesters did not comport with accepted crowd management standards, violated the Army's own ROE, and constituted – at minimum – criminal negligence. Live fire directly into the crowd was beyond question criminal.

46. A few minutes prior of 19:15 hours, the troops on Dinso Road significantly increased the rate at which they were discharging their weapons. I observed the silhouette of a soldier repeatedly gesturing upward with his arm, apparently ordering the troops to increase their rate of fire, which in fact occurred in conjunction with the gesture. In response to this increase, some protesters threw water bottles, bricks, sticks and fireworks at the troops, which may have caused some minor injury, but in my opinion would almost certainly have been largely deflected by the riot shields, particularly considering that the Royal Thai Army's use of tear gas had created substantial separation between the troops and the demonstrators. The separation between the troops and the crowd is also confirmed by the wide arc of the flying water bottles. Documenting video can be viewed at www.thaiaccountability.org/media/witty-video-2; www.thaiaccountability.org/media/witty-video-3

47. I also observed a soldier standing atop an APC, holding a semi-automatic pistol in his hand, which indicates to me that he was an officer and held a leadership position. In response to the plastic water bottles thrown by the demonstrators, he fired his pistol repeatedly into the air. There is no doubt that he was firing live rounds because a blank fired from a semi-automatic pistol does not generate sufficient back pressure to cause the weapon to complete its reloading cycle. The fact that this officer was discharging live rounds from a hand gun, in plain view of the troops and in the absence of any legitimate threat, further confirms that the troops were being ordered to fire their weapons, and it also suggests that the Army's intent was to provoke the crowd. Documenting video can be viewed at www.thaiaccountability.org/media/witty-video-4.

48. Based on witness statements regarding concurrent military sniper fire in the area of Democracy Monument (see Statement of Anonymous Witness No. 22), it is plausible that the troops on Dinso Road were ordered to increase their rate of fire to cover the sounds of sniper fire into the crowd. Additionally, given that the rate of fire increased shortly before 19:15 hours, it is also plausible that the increase was timed to coincide with the two explosions that would come at approximately 19:15 hours, in response to which the troops on Dinso Road opened fire without restraint into the crowd, killing many and injury hundreds.

49. Indeed, during this same timeframe, the street lights in the Democracy Monument Square were fired upon and shattered, greatly reducing the ambient light in the area. Not only was this action unwise in that it hampered the soldiers' ability to react appropriately to the actions of the crowd, its timing moments before the explosions suggests to me that it was part of a larger plan to cause confusion and/or conceal.¹⁹

50. I have read the Statement of Anonymous Witness No. 22 at ¶ 41, which states that "this activity was designed to provoke the crowd to violence so that the troops would have an excuse to open fire." In my opinion, the events are entirely consistent with that statement.

51. I have closely examined video of the explosions that killed several Royal Thai Army soldiers on Dinso Road at approximately 19:15 hours on April 10. I was able to pause one such video clip at the precise moment of the first explosion, and it is clear to me that it was caused by military-grade explosives, almost certainly a grenade. The shrapnel pattern generated by this device was highly symmetrical, indicating that the explosive material burned at a consistent rate. By contrast, the explosive pattern from an improvised device is almost always erratic because the seal is never perfect, owing to the fact that improvised devices are not created in an industry-grade manufacturing environment. Consequently, humidity will access the explosive material in an improvised device wherever there is even a minor breach in the seal, compromising the explosive material and reducing its burn rate in that area, leading to erratic shrapnel patterns. The first explosion on Dinso Road, however, was much too symmetrical to have been caused by an improvised device, leading me to conclude that it was almost certainly caused by a military-grade device.

52. Additionally, what appear to be sparks emanating from the explosion are fragments of molten metal of the type military grenades are designed to project. This was a high-order detonation, and the pattern of falling soldiers coincides with the effects of a grenade. In my opinion, the explosion was wholly consistent with the M67 hand grenades widely used by the Royal Thai Army. Documenting video can be viewed at www.thaiaccountability.org/media/witty-video-5a.

53. Thirty-four seconds after the first explosion, a second explosion can be heard on Dinso Road. Although this explosion is not visible on the video I examined, I was unable to discern any significant difference in tone or timbre between the sounds made by the two explosions. Because varying types of explosive devices differ significantly in the sound they produce, it is reasonable to conclude that the second explosion was also caused by a military grenade.

54. Following these explosions, the Army troops immediately react by firing directly into the crowd of demonstrators. The troops retreat north up Dinso Road, away from Democracy Monument, but as they do so, they continue to fire into the crowd. My understanding is that dozens of civilians were killed and thousands injured as a result. Documenting video can be viewed at www.thaiaccountability.org/media/witty-video-5b.

55. The video evidence and my personal examination of the site lead me to conclude that the first grenade could not possibly have come from the Red Shirt crowd. First, had the grenade come from the crowd, it would necessarily have been thrown a distance of at least 70 yards.

The average soldier is able to throw a 14-ounce hand grenade less than half that distance, only about 30 yards.

56. Second, taking into consideration the trajectory of the water bottles being thrown from the crowd in the direction of the soldiers, it is inconceivable to me that an incoming 14-ounce grenade on the same or similar flight trajectory would not have been noticed in advance by the troops, given their numerical concentration in the area of the explosion. All soldiers – including those in the Royal Thai Army, with whom I have trained – are trained to react to any hazardous object thrown into their vicinity. In the case of an incoming grenade, or any object that even remotely resembles a grenade, all soldiers are specifically trained to yell a “grenade” warning and immediately seek cover or go prone. However, it is clear from the video evidence that the troops did not react in any way to the grenade in advance of the explosion. Documenting video can be viewed at www.thaiaccountability.org/media/witty-video-5c.

57. Third, proper law enforcement practice under the circumstances would have called for extensive deployment of video cameras in the area, monitoring the crowd for unruly elements for real-time interdiction and, if appropriate, subsequent prosecution. It is my understanding that the Thai government has been unable to produce any video of anyone from the Red Shirt crowd throwing a hand grenade into the ranks of the First Infantry Division on Dinso Road.

58. It is clear to me, therefore, that the grenade was either dropped or rolled along the ground by someone within the ranks of the troops in the immediate vicinity of the explosion. An M67 grenade has a timed fuse of five seconds, ample time for someone to surreptitiously drop a grenade in the area of the explosion and walk behind the adjacent APC, visible in the video evidence, in time to avoid injury. In my opinion, this is the only plausible deduction, based on the evidence I have examined.

59. I have heard that the Thai government claims that certain “men in black” or other unknown elements affiliated in some way with the Red Shirts carried out the grenade attacks on Dinso Road on April 10. In my opinion, this is an unreasonable deduction. The Second Infantry Division was deployed on Dinso Road with military precision, indicating that they were following military strategies and protocols designed to secure their perimeter and prevent access by undesirable elements. In my opinion, these protocols would have prevented any “man in black” or, indeed, anyone not affiliated with the Royal Thai Army from gaining access to the area near the explosion.

60. I have read the Statement of Anonymous Witness No. 22, which suggests that the grenade attack on Dinso Road may have been carried out by soldiers of the rival First Infantry Division (King’s Guard) or, alternatively, by elements working under the direction of General Prayuth Chan-ocha, Commander of the Second Infantry Division. In my opinion, either deduction is plausible, based on the evidence I have examined.

61. I have read the Statement of Anonymous Witness No. 22, which states that the Army’s strategy on April 10 “was not to disperse the demonstrators. Rather, the operational strategy was to concentrate the demonstrators in a confined area, provoke the crowd to violence in order to create a perceived need for self-defense, and open fire.” (Statement of Anonymous Witness No. 22, at ¶ 29.) In my opinion, based on all of the evidence I have examined, the events prior to the grenade explosions on April 10 were entirely consistent with that statement.

62. Further, this statement provides a rational motivation, in my opinion, for the grenade attacks themselves. This is particularly true given the troop reaction following the explosions, which was to open fire on the crowd.

63. In my opinion, even if the grenades on April 10 had been thrown from the Red Shirt crowd – which, as explained above, is not a reasonable deduction – the Army’s reaction following the explosions was criminal in nature. The proper reaction to the grenade explosions would have been for the troops to hold fire, retreat, and deploy snipers with spotters to identify elements in the crowd who might be prepared to throw another grenade. Lethal sniper fire would be appropriate under such a scenario only if an individual were spotted preparing to throw another grenade. Instead, as indicated above, the troops immediately began to fire without restraint into the crowd, and they continued to fire into the crowd as they retreated north up Dinso Road. In my opinion, this is clearly criminal behavior.

64. Further, long after the troops retreated and reestablished blocking positions approximately 150 meters north of Democracy Monument Square on Dinso Road, the Army continued to shoot at unarmed civilians without provocation. This is abundantly clear from video evidence I examined. One notable example shows a young Thai man carrying a pole, to which a Red Shirt banner was attached, walking slowly across Dinso Road, from west to east, at least 150 yards from where the Second Infantry Division had taken up a position upon retreat after the grenade explosions. He was not approaching the troops, nor was he exhibiting any kind of threatening behavior, and he does not appear to be armed. Notwithstanding, he was struck in the head by a bullet, and, as he collapsed to the ground, his entire brain mass spilled from his cranium onto Dinso Road. This event was captured on videotape, and the victim’s wound was subsequently photographed at close range, shown below. The video evidence can be viewed at www.thaiaccountability.org/media/witty-video-6.



65. In my opinion, this young man’s head injury was not caused by a 5.56 mm bullet from an ordinary M-16 rifle. This kind of gaping wound was unquestionably created by a .50 caliber round or, at the very least, a 7.62 mm round. In my opinion, this man was shot by a military sniper equipped with either a Remington M24 sniper rifle firing a 7.62 mm round, or a .50 caliber Barrett sniper rifle, both of which are available in the Thai military arsenal. Given the non-threatening behavior of the victim immediately prior to his death, it is my opinion that shooting him in this manner constituted criminal conduct.

66. Another example of the unprovoked shooting that continued well after the Army troops had retreated on Dinso Road can be seen in a video clip that shows a wounded soldier lying on the curb a few yards north of where Dinso Road meets Democracy Monument Square. It is not clear from the video evidence how his injury was caused, but it is plausible that it resulted from one of the grenade explosions or perhaps from the indiscriminate rifle fire of the troops as they retreated north on Dinso road. The wounded soldier calls out in Thai, and

I understand from an interpreter that he was requesting assistance. There is audible gunfire nearby. A man – Anonymous Witness No. 15 – approaches the injured soldier, carrying a medical kit with a red cross prominently displayed. Two shots ring out immediately, and the medic is wounded in the foot. Documenting video can be viewed at www.thaiaccountability.org/media/witty-video-7. Statement of Anonymous Witness No. 15 is available here: www.thaiaccountability.org/wp-content/uploads/2011/01/Witness-15-statement.pdf.

Summary of Opinions Regarding Events of April 10, 2010

67. A summary of my opinions concerning the events of April 10, 2010 follows immediately below. These are my broad, overarching views, and their summary here does not in any way diminish or detract from any other opinion I may have expressed elsewhere in this Expert Statement.

68. It is my opinion that the Royal Thai Army did not engage in a rational or reasonable crowd-management operation, which would necessarily have involved a genuine attempt to disperse the demonstrators without inflicting injury. Instead, the Royal Thai Army intentionally sealed off exit routes, herded the crowd into a confined area, and engaged in various illegal acts designed to provoke the crowd to violence so that the Army would appear justified in its use of deadly force against demonstrators. These illegal acts included, but are not necessarily limited to:

- a. The use of highly trained military snipers to shoot unarmed demonstrators with live rounds from elevated, concealed positions, without provocation or justification;
- b. The intentional, indiscriminate discharge of military weapons, including M-16 rifles and other automatic weapons firing live rounds, directly into dense crowds of unarmed demonstrators, without provocation or justification; and
- c. The intentional detonation of multiple military-grade explosive devices within the immediate vicinity of Army troops, in a deadly form of “friendly fire” designed to create the false impression that the Army was under attack by demonstrators.

69. The Royal Thai Army formally adopted rules of engagement that comport with accepted crowd management standards in order to create the false impression of reasonable conduct. However, the Thai Royal Army systematically violated accepted standards of crowd management and its own stated rules of engagement in a manner constituting criminal conduct.

70. The Royal Thai Army’s operations on April 10, 2010 were military in nature. Its objective was to kill innocent civilians, without provocation or justification, in order to suppress the Red Shirt demonstrations.

May 13-19, 2010

71. It is my understanding that, following the events of April 10, 2010, the Red Shirt demonstrators voluntarily dispersed from the Pan Fa Demonstration Area and concentrated their protests at the Ratchaprasong Demonstration Area. The Royal Thai Army established a perimeter around the Ratchaprasong Demonstration Area until, on May 19, they breached the Red Shirt barricades, leading to the surrender of the Red Shirt leaders and the official end of the demonstrations.

72. After the events of April 10, the Thai government issued the following statement amending its previously established ROE:

Following the incidents on 10 April 2010, during which use of weapons by armed elements among the protesters cost the lives of not just unarmed demonstrators but also a number of security officers, this rule has been revised for the operations to cordon off the Ratchaprasong Area in May to permit use of live bullets in one additional case, namely: to retaliate against clearly identified elements armed with weapons. Also, with a view to preventing casualties due to close confrontation as happened on 10 April, shotguns may be used against armed groups and terrorist elements approaching security units to prevent them from causing harm to others, and in this case, security forces would only aim below the knee level. The use of tear-gas launcher is also permitted in order to maintain distance between the officers and armed protesters. As a principle, security units would not use lethal weapons against unarmed demonstrators and in no circumstances would they be used against women and children.³

73. In my opinion, these amended ROE are inappropriate because they establish an official policy to use deadly force “to retaliate.” Retaliation has no place in reasonable and accepted standards of crowd management. In my opinion, the phrase “to retaliate” suggests an intent by the Thai government to engage in further criminal conduct through the use of unprovoked deadly force against the Red Shirt demonstrators.

74. It is my understanding that, beginning in early May 2010, the Second Cavalry Division was assigned to secure Rama IV Road in the Bonkai area south of Ratchaprasong, while the First Infantry Division was assigned to secure the Ding Dang and Rajaprapop areas north of Ratchaprasong. It is my further understanding that the commanding officers of these divisions were given unwritten orders for their troops to shoot any moving target in their respective designated areas, regardless of whether such targets represented a threat. (See Statement of Anonymous Witness No. 22, at ¶¶ 48 and 52.) Such orders would unquestionably violate any reasonable standard of crowd management, and would constitute criminal conduct.

75. Nevertheless, based on witness statements, interviews and video evidence, it is my conclusion that the Royal Thai Army indeed set up live fire zones in the Bonkai, Ding Dang and Rajaprapop areas near Ratchaprasong. Although there is ample video evidence of unarmed civilians being fired upon, injured and killed by bullets coming from the direction of Army blocking positions in these areas during the period between May 13-19, one video clip in particular, taken from directly behind Army soldiers deployed in elevated positions, clearly demonstrates that the



³ . <http://www.thaiembassy.sg/announcements/background-current-political-situation-in-thailand>, at note 3.

soldiers were acting under orders to shoot any moving target, without regard to whether they represented a threat. This documenting video evidence can be viewed at www.thaiaccountability.org/media/witty-video-8.

76. In my opinion, the persons shown running across the alley represented no threat whatsoever to the troops, which are clearly deployed in an elevated position, armed with weapons that are not fitted with BFAs. The troops immediately opened fire upon seeing the civilians, in a clear attempt to use deadly force without provocation or justification. In my opinion, this is criminal conduct, as is any order to engage in such conduct.

77. I also understand that the Second Cavalry and the First Infantry Divisions were given orders to prevent any photographic evidence of Army troops killing civilians, and that these orders resulted in the intentional targeting of journalists. I also understand that these same Divisions were ordered to prevent the bodies of any persons killed by Army troops from being removed, which resulted in the intentional targeting of medical personnel. (See Statement of Anonymous Witness No. 22, at ¶¶ 48-50 and 52.) Such orders, to the extent that they call for troops to use deadly force against a person merely because they are taking photographs or assisting the wounded – rather than presenting an immediate threat of severe bodily injury – would violate accepted standards of crowd management, and would constitute criminal conduct, as would the carrying out of such orders.

78. Further, such orders would seem to represent a concerted and organized effort to suppress evidence. As an active law enforcement officer, it is clear to me that the intentional suppression, destruction and/or fabrication of evidence would constitute criminal conduct, as would any orders to engage in such conduct.

79. I understand that troops from the Second Infantry Battalion of the 31st Infantry Regiment, with support from the Third Special Forces Regiment, breached the Red Shirt barricades around Ratchaprasong on May 19, 2010. I also understand that their orders were to shoot any person suspected of having weapons, although they were not required to make a determination about whether such persons were actually armed. Further, their orders expressly stated that any individual carrying a slingshot was to be considered armed and dangerous. (See Statement of Anonymous Witness No. 22, at ¶¶ 56-57.)

80. In my opinion, such orders do not comport with accepted standards of crowd control or law enforcement. No law enforcement officer should use deadly force except where there is an imminent threat of severe injury to the officer or to other persons. Absent such a threat, actual possession of a deadly weapon does not constitute a justification to employ deadly force. Further, mere suspicion that someone might possess a deadly weapon is never a sufficient justification to use deadly force. In my opinion, these orders effectively gave the Army troops carte blanche to employ deadly force without provocation or justification,

81. It is my understanding that Army troops did, in fact, kill civilians on May 19 without provocation or justification, pursuant to these orders. Although I understand that they were not the only such victims on May 19, six people – including three nurses – were shot by Army troops from an elevated train rail outside the What Patumwanaram Temple that day, as they were taking refuge from the troops. This conduct is clearly criminal, as were any orders to engage in such conduct.

82. It is also my understanding that the Army troops who breached the Red Shirt barricades on May 19 were given orders to kill the Red Shirt leaders and any Red Shirt guards, without regard to whether they were armed, dangerous, or presented any threat. (See Statement of Anonymous Witness No. 22, at ¶¶ 57-58.) Such conduct would clearly be criminal in nature, as would any order to engage in such conduct.

83. In my opinion, the Royal Thai Army approached the clearing operation on May 19 not as a civilian crowd control operation, but as a military exercise, treating the demonstrators in the Ratchaprasong area as an opposing military force instead of civilians engaged in a demonstration that had been declared illegal.

Summary of Opinions Regarding Events of May 13-19, 2011

84. A summary of my opinions concerning the events of May 13-19, 2011 follows immediately below. These are my broad, overarching views, and their summary here does not in any way diminish or detract from any other opinion I may have expressed elsewhere in this Expert Statement.

85. It is my opinion that The Royal Thai Army's operations during the period May 13-18, 2010 were military in nature. They did not comport with accepted standards of crowd management or with the Royal Thai Army's own stated ROE, and they were criminal in nature.

86. It is my opinion that the Royal Thai Army's operations on May 19, 2010 were military in nature. They did not comport with accepted standards of crowd management or with the Thai Royal Army's own stated ROE, and they were criminal in nature. They were designed to kill innocent civilians, without provocation or justification, in order to suppress the Red Shirt demonstrations.

CONCLUSIONS

87. I am willing to review evidence – if any exists – that might contradict my opinions. As of this date, however, I have not seen any.

Dated: January 25, 2011


JOE RAY WITTY