

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	
v.)	No. 10-CR-10359-NMG
)	
PETER A. SCHOBER,)	
)	
Defendant.)	

SENTENCING MEMORANDUM

I. BACKGROUND

On November 23, 2010, Peter Schober pleaded guilty to a one count criminal information charging him with failing to file in 2006 an FBAR disclosing his financial interest in an account at UBS in Switzerland. Sentencing has been deferred several times due to Mr. Schober's ongoing cooperation (Exhibit 1). Upon receiving from Peter on the day of his change of plea a detailed 10-year chronology¹ of the key emails in this case, Assistant U.S. Attorney Jon Mitchell, impressed with Peter's candidness and diligence, stated:

I have never seen anything like this.

II. THE INDIVIDUAL

Peter Schober, 52, comes from a family of Austrian diplomats. His maternal grandfather served as the first post-World War II Austrian Ambassador to the U.S. after spending 18 months in Auschwitz and Buchenwald concentration camps for denouncing the 1938 Nazi annexation of

¹ Index of chronology is attached as Exhibit 2. The complete two volume chronology is available to the Court at sentencing; volume one was given to AUSA Mitchell on November 23, volume two shortly thereafter.

Austria. Peter was born in Denmark, raised in Austria, Belgium, and Sweden, and moved to the United States in 1977, when his father served as Austrian Ambassador to the U.S during the Carter and Reagan Administrations. After graduating from Georgetown University's School of Foreign Service in 1982 and Wharton Business School with an MBA/MA dual degree in 1986, Peter settled here, has had a successful business career, and now runs a small Boston venture capital firm called Milk Street Ventures (see Exhibit 3).

Peter has two children from a prior marriage, has been an excellent father and ex-husband (Exhibit 4), and is engaged to marry his long-time companion Ms. Katja Schoenherr.

A. Peter Schober: Medical Issues

We have attached Peter's relevant medical records as Exhibits 5 through 8. In Exhibit 5, his primary care physician, Dr. Edward Weiss of Beth Israel Deaconess Hospital, summarizes his overall medical condition as follows:

Psoriatic arthritis: This patient has a long history of psoriatic arthritis which is a chronic inflammatory condition of the joints and skin. This has been severe enough to require treatment with an injectable medication called Humira.;

Degeneration of the spine: He has a long history of chronic spine pain and has had several evaluations by spinal orthopedists including back surgery in 1994 and 1997. Despite the surgical intervention, he continues to have significant pain of the back and neck, and the compression of the nerve endings in the neck. This condition has been difficult to manage because he does not tolerate the usual therapies which are anti-inflammatory medications.;

Headaches: He has been having chronic headaches which are attributed to the disease in the spine. He has had several injections into the neck to control the headaches although the relief is not complete and he will need a series of injections for management going forward. The injections have been administered through the pain clinic at Beth Israel Deaconess.;

Reflux: He has a prior history of severe reflux esophagitis which required surgery in 1996. Because of this he has to follow a very restrictive diet and avoid medications such as anti-inflammatories

which would otherwise be useful to control his arthritis and back and neck pain as described above.;

Pectus excavatum: He has a congenital deformity of the chest wall called pectus excavatum which compresses his lungs and displaces the heart. He is at risk of life-threatening internal injury if there is any significant impact to the chest such as falling or getting into an altercation or other accident.; and

In conclusion, this patient has a series of significant medical conditions as described above which put his health at serious risk if he were in an environment that would increase the risk of physical injury or the risk of infection exposure. From my point of view, the risk of infection is quite significant and it would not be safe for him to live in close quarters with others.

In Exhibit 6, Peter's rheumatologist, Dr. Artur Diaz of Beth Israel Deaconess, explains the risks associated with psoriatic arthritis and the bi-weekly injections of Humira required to control this condition:

Mr. Schober is a 51 years-old patient diagnosed with psoriatic arthritis in 2004. He has been under my care for the treatment of his psoriatic arthritis since November 2007. Mr. Schober has been treated with the anti-TNF agent Humira since October 2008 with an excellent response. This agent is a monoclonal antibody that is ministered as a subcutaneous injection every two weeks.

Humira controls the psoriatic arthritis by blocking the inflammatory response. **Because the inflammatory response is suppressed, patients are susceptible not only to common respiratory and cutaneous infections, but to more severe (and lethal) infections such as disseminated tuberculosis and fungal infections.**

Because of these risks, patients treated with Humira (and similar agents) should not be exposed to sources of these infections, environmental or human.

Even in the pre-Booker days of mandatory guidelines, “an extraordinary physical impairment may be a reason to impose a sentence below the applicable guideline range.” U.S. v. Martin, 363 F.3d 25, 49 (1st Cir. 2004). (Dan Martin suffered with Crohn's disease; his suppressed immune system made him susceptible to life-threatening infections. Mr. Martin's

guideline range exceeded two years.) Unlike Mr. Martin, Mr. Schober's offense is much less serious while his susceptibility to life-threatening infections is similar to Martin's.

B. Peter Schober Stepped Up On Day One To Make Amends For Failing To File An FBAR

On the day (October 27, 2010) the criminal information in this case was filed, Peter Schober accepted full and complete responsibility for his transgression. Attached as Exhibits 9 and 10 are the statements to the media and his venture capital clients which he helped draft. The criminal charges were widely publicized. Attached as Exhibit 11 is the October 28, 2010, Boston Globe article in which Peter Schober stated:

I take full responsibility for failing to inform the government of the existence of my Swiss bank account. I am fully committed to paying all penalties, interest and taxes.

Peter Schober promptly paid "all penalties, interest and taxes." On November 23, 2010, the day he pleaded guilty, Mr. Schober brought with him to a meeting with Assistant U.S. Attorney Mitchell checks to pay all of his civil penalty and civil tax obligations. Several weeks later, a check for the civil penalty (\$777,652) was sent to AUSA Mitchell who returned it, because he wanted the civil tax obligations resolved at the same time. As soon as Mr. Schober was notified of the civil tax obligations (\$166,449.73), he sent in both checks. Attached as Exhibit 12 is a copy of the \$777,652 check which he sent the Treasury to pay the FBAR civil penalty pursuant to the plea agreement. Attached as Exhibit 13 is a copy of the \$166,449.73 check Peter Schober sent to Revenue Agent Joseph Guidoboni to settle his IRS civil tax obligations. In all, Mr. Schober paid \$954,101.73. As calculated in the Presentence Report, the tax loss to the government in this case was limited to \$77,870.67 (PSR ¶25).

It should be noted that one unintended consequence of Peter Schober's guilty plea is that Fidelity, where he had his checking account and all his financial assets, summarily closed all his

accounts (Exhibit 14) without prior notification because of these charges, bouncing all of his checks, including the original \$777,652 and \$166,449.73 payments to the IRS.

To date, three other financial institutions have unilaterally closed Peter Schober's checking account, and others have refused to open a new checking account for him, because of his guilty plea (Exhibits 15 through 17).

Prior to this matter, Peter Schober had no criminal record. Now, because of this conviction, Mr. Schober has found it difficult, if not nearly impossible, to open a checking account at a bank in the United States.

III. FASHIONING AN APPROPRIATE SENTENCE

Sentencing is governed by 18 U.S.C. § 3553(a)'s mandate to impose a sentence “**sufficient, but not greater than necessary**” to meet the goals of sentencing. (Emphasis added). Under 18 U.S.C. § 3553(a), such a sentence should consider the nature and circumstances of the offence as well as the history and characteristics of the offender. 18 U.S.C. § 3553(a)(1). It should also:

- consider the history and characteristics of the defendant;
- reflect the seriousness of the offense;
- promote respect for the law;
- provide just punishment;
- afford deterrence to criminal conduct (general deterrence);
- protect the public from further crimes by the defendant (specific deterrence);
- provide the defendant with any needed educational or other training or medical treatment in the most effective manner; and
- reflect the need to avoid unwarranted sentencing disparities among defendants with similar records.

18 U.S.C. § 3553(a)(2). Section 3553(a)(3) moreover “directs the sentencing judge to consider sentences other than imprisonment.” *Gall v. United States*, 552 U.S. 38, 128 S.Ct. 586, 602 (2007).

The U.S. Supreme Court's decisions in *United States v. Booker*, 543, U.S. 220, 125 S. Ct. 738 (2005), *Gall v. United States*, 552 U.S. 38, 128 S. Ct. 586 (2007); and *Kimbrough v. United States*, 552 U.S. 85, 128 S. Ct. 558 (2007) represented an important break from the old, mandatory Guidelines regime by “significantly broaden[ing]” “the range of choice dictated by the facts of the case.” *Gall*, 128 S. Ct. at 602. The Guidelines (with their focus on punishment) are now just one of the § 3553(a) factors a district court must consider in setting a sentence that reflects an “individualized assessment based on the facts presented,” *id.* at 596, 597 – an assessment that may include “the judge’s own sense of what is a fair and just sentence under all the circumstances.” *United States v. Jones*, 460 F.3d 191, 195 (2d Cir. 2006).

Ultimately, the sentencing judge’s “reasoned and reasonable decision that the § 3553(a) factors, on the whole, justif[y] the sentence” is reviewable only for abuse of discretion, whether the sentence falls, “inside, just outside, or significantly outside the Guidelines range.” *Gall*, 128 S. Ct. at 591-92, 602. This highly deferential standard of review reflects the widely held understanding, articulated in *Gall*, that “[t]he sentencing judge has greater access to, and greater familiarity with, the individual case and the individual defendant before him than the [Sentencing] Commission or the appeals court.” *Id.* at 597-98 (quoting *Rita v. United States*, 127 S. Ct. 2456, 2469 (2007)). Accordingly, for example, in *United States v. Thurston*, 544, F.3d 22 (1st Cir. 2008), the First Circuit affirmed a three-month sentence and supervised release where the applicable Guideline sentence was 60 months. See also *United States v. Martin*, 520 F.3d 87 (1st Cir. 2008).

In this case, we submit a non-guideline short probationary sentence is “**sufficient, but not greater than necessary**” to meet the goals of sentencing.

IV. CONCLUSION

Peter Schober is a first time offender who has been a solid son (see letter from his mother, attached as Exhibit 18), good father (letter from former wife, marked Exhibit 4), and valued friend (letter from Ivan Blinoff, Exhibit 19). His former wife writes (Exhibit 4) that “I have always been able to count on Peter to be a devoted and loving father to the boys and a reasonable and reliable ex to me” who “never once missed a child support payment to me nor did he ever take me back to court for any reductions even when times were hard for him”. She goes on to state that “I put my faith in his honesty and love of his boys and I have not been disappointed...I have known Peter for nearly 30 years now through good times and bad ones and I know him to be an honest and decent man, hardworking, kind, polite and generous”. He has been a serious student (letter and business school recommendation submitted by Hon. William Clark, former National Security Advisor to President Reagan and California Supreme Court Justice, attached as Exhibit 20) and valued classmate (letter from Keith Abell, attached as Exhibit 21). He has also proven himself to be a respected professional who has earned the respect of leaders in his business community (see letters from Craig Burr and Jack Crosby, attached as Exhibits 22 and 23). Mr. Burr, one of Boston’s most respected retired venture capitalists, says of their tight-knit community: “With firm brushstrokes the financial and investment community paints a portrait of Peter Schober to show an honorable and high-minded person”.

Peter has already been punished by loss of clients and widespread media publicity of his guilty plea. He has also suffered the unintended consequence of having difficulty maintaining a bank or brokerage account.

Peter Schober will not commit another crime. On the day criminal charges were filed, Peter stepped up and took responsibility for his actions. Since then, he has extensively cooperated with the government – providing valuable information and solid documentary evidence (the index of the two-volume chronology can be seen in Exhibit 2) which will assist the government in its ongoing investigation of professionals who assisted Peter set up the Swiss account.

The fact Peter has already paid more than \$954,000 to the IRS will deter others from failing to file FBARs. **Sending Peter Schober to prison will seriously endanger his precarious medical condition rather than “providing him with needed medical care.” (18 U.S.C. § 3553(a)(D)).**

There remains serious concern for Peter Schober’s health, should he be imprisoned. In addition to being subject to the dangers of infection and other environmental hazards, at least two medications currently prescribed to control Peter Schober’s pain, Tramadol and Skelaxin, are not found on the Bureau of Prison’s formulary. The other drug that is required to suppress Peter Schober’s overactive immune system, Humira, is found on the formulary as one requiring extensive clinical justification. While Peter Schober’s doctors have not prescribed this dangerous drug without scientific understanding of its effects, it is not certain that the Bureau of Prisons would maintain Peter Schober’s prescribed regimen without interruption.

Moreover, should Peter Schober be incarcerated, most likely he would need to be placed in a medical facility. Such a designation would significantly disadvantage Peter Schober because of his physical condition. Without his physical disabilities, Peter Schober would otherwise be designated to camp, a much less restrictive environment.

Even in the absence of a physical disability, based on the offense and amount of tax loss, defendant's immediate acceptance of full responsibility, and his substantial cooperation as well as unblemished prior record, we submit that a short non-guideline probationary sentence with no further financial fine (the government recommends no further financial penalty) is **“sufficient but not greater than necessary”** to meet § 3553(a)'s sentencing goals.

Respectful Submitted,

Peter A. Schober

By his attorney,

/s/Terry Philip Segal
Terry Philip Segal (BBO No. 450760)
DUANE MORRIS LLP
100 High Street, Suite 2400
Boston, MA 02110-1724
Tel: (857) 488-4200
Fax: (857) 488-4201
Email: tpsegal@duanemorris.com

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