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BEFORE: THE HONORABLE NATHANIEL M. GORTON

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1                                    P R O C E E D I N G S

2                    THE CLERK:    This is Criminal Matter 10-10359, United  
3                    States vs. Peter Schober.    Will counsel please identify  
4                    themselves for the record.

5                    MR. MITCHELL:    Good afternoon, your Honor.    Jonathan  
6                    Mitchell in behalf of the United States.

7                    THE COURT:    Good afternoon, Mr. Mitchell.

8                    MR. SEGAL:    Good afternoon, your Honor.    Terry Segal  
9                    and Alissa Christie on behalf of Peter Schober.

02:48 10                  THE COURT:    Mr. Segal, Miss Christie and Mr. Schober,  
11                  good afternoon to you all.

12                  As I understand it, Mr. Segal, your client is here to  
13                  enter into a waiver and to enter a plea as well, is that right?

14                  MR. SEGAL:    Yes.

15                  THE COURT:    Then if he would please take the witness  
16                  stand, you may join him if you wish.

17                  (Defendant sworn.)

18                  THE COURT:    Good afternoon again, Mr. Schober.    Do you  
19                  understand that you have a constitutional right to be charged  
02:49 20                  by an Indictment of a grand jury but that you can waive that  
21                  right and consent to be charged by what is called an  
22                  Information of the U.S. Attorney?    Do you understand that?

23                  MR. SCHOBER:    I do.

24                  THE COURT:    Now, instead of Indictment, these felony  
25                  charges against you have been brought by the United States

1 Attorney by the filing of an Information. Unless you waive  
2 Indictment, you may not be charged with a felony unless a grand  
3 jury finds by return of Indictment that there is probable cause  
4 to believe that a crime has been committed and that you have  
5 committed it. And if you do not waive Indictment, the  
6 government may present the case to the grand jury and request  
7 it to indict you; do you understand that?

8 MR. SCHOBBER: I do.

9 THE COURT: Now, a grand jury is composed of at least  
02:50 10 16 and not more than 23 persons, and at least 12 of those grand  
11 jurors must find there is probable cause to believe that you  
12 have committed the crime with which you are charged before you  
13 can be indicted. And a grand jury might or might not indict  
14 you; do you understand that?

15 MR. SCHOBBER: I do.

16 THE COURT: If you waive Indictment by a grand jury,  
17 the case will proceed against you on the U.S. Attorney's  
18 Information just as though you had been indicted.

19 Have you discussed the matter of waiving your right to  
02:50 20 Indictment by a grand jury with your attorney?

21 MR. SCHOBBER: I have.

22 THE COURT: And do you now in open court waive your  
23 right?

24 MR. SCHOBBER: I do.

25 THE COURT: Have any threats or promises been made to

1 induce you to waive that right?

2 MR. SCHOBBER: No.

3 THE COURT: Mr. Segal, do you know of any reason why  
4 your client ought not to do so?

5 MR. SEGAL: No, your Honor.

6 THE COURT: Then it is the Court's finding that the  
7 defendant's waiver of Indictment is made knowingly and  
8 voluntarily, and the defendant's waiver of Indictment is,  
9 therefore, accepted by this Court.

02:51 10 The Court should have also acknowledged Mr. Riley's  
11 presence in the courtroom from Pretrial Services. Good  
12 afternoon to you.

13 Turning, then, to the plea itself, Mr. Schober, do you  
14 understand that you are under oath, and that if you answer any  
15 of my questions falsely, those answers may later be used  
16 against you in a prosecution for perjury or making a false  
17 statement? Do you understand that?

18 MR. SCHOBBER: I do.

19 THE COURT: Would you please state your full name for  
02:52 20 the record.

21 MR. SCHOBBER: Peter Arthur Schober.

22 THE COURT: How old are you, Mr. Schober?

23 MR. SCHOBBER: Fifty-one.

24 THE COURT: What is your educational background?

25 MR. SCHOBBER: Undergraduate degree from Georgetown

1 University and a master's degree from the University of  
2 Pennsylvania, both an M.B.A. as well as an M.A.

3 THE COURT: All right. Have you ever been treated for  
4 any mental illness or addiction to narcotic drugs of any kind?

5 MR. SCHOBBER: No, I have not.

6 THE COURT: Are you presently under the influence of  
7 any drug, medication or alcoholic beverage of any kind?

8 MR. SCHOBBER: No.

9 THE COURT: If you take any medications, you can put  
02:52 10 it on the record as to what you take and we'll proceed.

11 MR. SCHOBBER: I do take medications for various  
12 ailments, none of which would influence my ability to --

13 THE COURT: That's the question. Do any of them, in  
14 your opinion, affect your ability to understand or respond to  
15 my questions?

16 MR. SCHOBBER: I believe none of them do.

17 THE COURT: Okay. Have you received a copy of the  
18 Information pending against you in this case, that is, the  
19 written charges made against you? And have you discussed those  
02:53 20 charges and the case in general with Mr. Segal as your lawyer?

21 MR. SCHOBBER: I have received them and I have  
22 discussed them.

23 THE COURT: In your own words, what do you understand  
24 you're being charged with here today?

25 MR. SCHOBBER: Failing to indicate on a tax return the

1 existence of a foreign bank account.

2 THE COURT: All right. Are you fully satisfied with  
3 the counsel, representation and advice given to you by Mr.  
4 Segal as your attorney in this case?

5 MR. SCHOBBER: I am.

6 THE COURT: Now, I understand a written plea agreement  
7 has been entered into between you and the government. And I  
8 would ask Mr. Mitchell to please outline the provisions of that  
9 agreement for you and for the Court.

02:53 10 MR. MITCHELL: Thank you, your Honor. The defendant,  
11 your Honor, agrees in the plea agreement to plead to one count  
12 of willfully failing to comply with foreign bank account  
13 reporting requirements. The maximums for such an offense are  
14 set forth in Paragraph 2. Just for the record, your Honor --

15 THE COURT: We'll get to that in a minute.

16 MR. MITCHELL: Okay. Paragraph 3 sets forth the  
17 guideline calculation, your Honor. The defendant agrees that  
18 the loss is \$77,870.67. He also agrees that a two-level  
19 enhancement for the use of sophisticated means in connection  
02:54 20 with the offense is appropriate. The government agrees that a  
21 three-level downward adjustment for acceptance of  
22 responsibility is appropriate. And that would, altogether,  
23 yield a range of -- excuse me, an offense level of 13.

24 The government agrees to a low-end recommendation,  
25 with no criminal fine. There are certain provisions concerning

1 obligations to report to the IRS certain information during his  
2 period of either probation or supervised release.

3 Mr. Schober also agrees to pay a civil money penalty,  
4 under the Bank Secrecy Act, of \$777,986 in connection with the  
5 same events that gave rise to the Information.

6 There is a reciprocal waiver of appeal, your Honor, in  
7 Paragraph 7. And there is also a cooperation provision, the  
8 standard one that you've seen in other plea agreements.

9 In addition, your Honor, of note is a -- for lack of a  
02:56 10 better word -- a side letter between the government and Mr.  
11 Schober concerning his conditions of release. The letter was  
12 made part of the plea agreement. And, in essence, your Honor,  
13 it requires Mr. Schober to turn over the deed to his home here  
14 in Boston in exchange for the ability to travel internationally  
15 while on release.

16 THE COURT: Where is that agreement outlined in the  
17 plea agreement, Mr. Mitchell?

18 MR. MITCHELL: I think it's Paragraph -- Paragraph 15,  
19 your Honor. That's where it's incorporated.

02:56 20 THE COURT: Paragraph 15?

21 MR. MITCHELL: Yeah. It's referenced in Paragraph 15.

22 THE COURT: All right. Anything further?

23 MR. MITCHELL: That's it. In general, your Honor, the  
24 -- I will also note that Mr. Riley from Pretrial Services  
25 suggests that instead of Mr. Schober turning over the quitclaim

1 deed to the government that he turn it over to the court. I  
2 don't have a problem with that.

3 THE COURT: I was going to ask you about that. From  
4 reading the conditions before, I've never heard of the deed  
5 being held by the government, but I think it would be  
6 appropriately held by the Clerk's Office.

7 MR. MITCHELL: Yeah. I don't have a problem with it.  
8 As I understand, Mr. Segal doesn't either.

9 THE COURT: That's fine. Are those the terms of your  
02:57 10 plea agreement with the government, Mr. Schober, as you  
11 understand them?

12 MR. SCHOBBER: Yes, they are.

13 THE COURT: Has anyone made any other or different  
14 promise or assurance to you of any kind in an effort to make  
15 you plead guilty in this case?

16 MR. SCHOBBER: No, they have not.

17 THE COURT: Do you understand that the Court does not  
18 have to follow the government's recommendation or your  
19 unopposed request; and if it does not, you, nevertheless, will  
02:58 20 still be bound by your plea of guilty and will have no right to  
21 withdraw it? Do you understand that?

22 MR. SCHOBBER: I do.

23 THE COURT: Has anyone attempted in any way to force  
24 you to plead guilty in this case?

25 MR. SCHOBBER: No.



1 THE COURT: Do you understand that the offense to  
2 which you are pleading guilty is a felony, and that if your  
3 plea is accepted, you will be judged guilty of that offense,  
4 and that such adjudication may deprive you of valuable civil  
5 rights such as the right to vote, the right to hold public  
6 office, the right to serve on a jury, the right to possess any  
7 kind of firearm? Do you understand all of that?

8 MR. SCHOBBER: I do.

9 THE COURT: Then, Mr. Mitchell, will you remind the  
02:58 10 defendant of the maximum possible penalties involved in the  
11 charges against him.

12 MR. MITCHELL: Yes, your Honor. The maximums are five  
13 years imprisonment, a \$250,000 fine, three years supervised  
14 release, and a \$100 special assessment.

15 THE COURT: Do you understand the possible  
16 consequences of your plea here this afternoon, Mr. Schober?

17 MR. SCHOBBER: I do.

18 THE COURT: Now, under the Sentencing Reform Act of  
19 1984, the United States Sentencing Commission issued guidelines  
02:59 20 for judges to follow when imposing sentences in criminal cases.  
21 Have you discussed those guidelines with your attorney and how  
22 they might apply in your specific case?

23 MR. SCHOBBER: I have.

24 THE COURT: Do you understand that a recent decision  
25 of the Supreme Court has rendered those guidelines advisory

1       rather than mandatory, meaning that I have the discretion to  
2       sentence you anywhere in the range set forth in the statute  
3       governing the crimes to which you plead guilty and that I am  
4       not required to sentence you within the range proscribed in the  
5       guidelines or even based upon the factors contained in those  
6       guidelines? Do you understand that?

7               MR. SCHOBBER: I do.

8               THE COURT: Do you further understand that the Court  
9       will not be able to determine even what advisory guideline  
02:59 10       applies until after a Presentence Report has been prepared for  
11       me by the Probation Department and both you and the government  
12       have had an opportunity to challenge the facts that are set  
13       forth in that report? Do you understand that?

14              MR. SCHOBBER: I do.

15              THE COURT: Further, do you understand that after it  
16       has been determined what the advisory guideline is, the judge  
17       -- in this case that means me -- has the authority in some  
18       circumstances to impose a sentence that is more severe or less  
19       severe than those called for in the guidelines? Do you  
03:00 20       understand that?

21              MR. SCHOBBER: I understand.

22              THE COURT: Further, do you understand that, for all  
23       practical purposes, you've waived your right to appeal except  
24       for those conditions that were outlined by Mr. Mitchell a few  
25       minutes ago? But for all practical purposes, you've weighed

1 your right to appeal; do you understand that?

2 MR. SCHOBBER: I do.

3 THE COURT: Do you further understand that parole has  
4 been abolished; and if you are sentenced to be imprisoned, you  
5 will not be released on parole? Do you understand that?

6 MR. SCHOBBER: Yes.

7 THE COURT: All right. Then, Mr. Schober, do you  
8 understand generally that you have a right to plead not guilty  
9 to any charge against you and to persist in that plea and that  
03:01 10 you would then have the right to the assistance of counsel  
11 during the trial; you would have the right to see and hear all  
12 of the witnesses and have them cross-examined in your defense;  
13 you would have the right on your own part to decline to testify  
14 unless you voluntarily agree to do so; and you would have the  
15 right to the issuance of subpoenas or compulsory process to  
16 compel the attendance of witnesses to testify in your defense?  
17 Do you understand all of that?

18 MR. SCHOBBER: I do.

19 THE COURT: Do you further understand that by entering  
03:01 20 a plea of guilty, if that plea is accepted by this Court, there  
21 will be no trial, and you will have waived or given up your  
22 right to a trial by jury as well as those other rights  
23 associated with such a trial that I just described? Do you  
24 understand that?

25 MR. SCHOBBER: I do.

1 THE COURT: Then, Mr. Mitchell, will you please inform  
2 the defendant of exactly what facts the government would prove  
3 if this matter were to go to trial.

4 MR. MITCHELL: Your Honor, if this matter had gone to  
5 trial, the government would have proven beyond a reasonable  
6 doubt that, like many other American investors, Mr. Schober hid  
7 assets and income in accounts at UBS AG, the largest of the  
8 Swiss banks, for the purpose of reducing taxes he owed to the  
9 United States Government and that this was done principally  
03:02 10 through the formation of a shell corporation organized outside  
11 the United States.

12 In December of 2000, your Honor, Mr. Schober caused to  
13 be established a company called Small Guard Foundation, which  
14 was a Panamanian corporation that had no operations whatsoever.  
15 It was a complete shell.

16 In 2002, less than two years later, he opened an  
17 account at UBS in the name of Small Guard Foundation. In  
18 opening up the account, he was aware that -- in the name of  
19 Small Guard Foundation, he was aware that UBS would conceal his  
03:03 20 ownership and control of the account as well as any  
21 transactions or accrued interest in the account. As he was  
22 aware at the time, other American investors were doing the same  
23 thing.

24 In November of that year, that is, 2005, he had his  
25 sister transfer approximately \$800,000 from another phony

1 account at UBS into the Small Guard Foundation account; and  
2 then for the next two years, roughly, two-plus years, Mr.  
3 Schober caused funds to be wired in and out of the account for  
4 his own personal reasons.

5 Among those wirings was a deposit of almost \$300,000  
6 in earnings that he received for professional services in  
7 connection with his consulting business. In addition, he --  
8 during a period from November of 2005 to October of 2008, he  
9 earned approximately \$98,847 in dividend and interest income.

03:04 10 Now, as an American resident, he had a -- and now a  
11 citizen, as I understand it, he had an obligation to report  
12 both the assets in the account as well as the income he accrued  
13 from -- in that account to the United States Government. He  
14 was obligated, first off, to file reports of foreign bank  
15 account, which are called colloquially FBARs, that report each  
16 foreign account that had a balance of over \$10,000 which he  
17 controlled. At the same time, he was obligated to note on his  
18 Form 1040 for each year that he earned income from foreign bank  
19 accounts. He was aware of this all the time; and,  
03:05 20 nevertheless, willfully did not follow these rules.

21 In the tax years 2005, 2007, 2008, he signed under the  
22 pains and penalties of perjury and then filed FBARs that  
23 indicated that he had a financial interest in a foreign bank in  
24 England, in the United Kingdom, but he willfully omitted that  
25 he had an interest in the Small Guard Foundation account at

1 UBS. In 2006, he willfully failed to file any FBAR at all.

2 For the tax years 2005 to 2008, he signed under the  
3 penalties of perjury and filed Form 1040s with the IRS. On  
4 Schedule B of each of those returns, he indicated that he had  
5 foreign bank accounts -- he had a foreign bank account in  
6 England but willfully omitted to note that he also had this  
7 Small Guard Foundation account at UBS. And in so doing, he  
8 deprived the Internal Revenue Service of approximately  
9 \$77,870.67.

03:06 10 THE COURT: Mr. Schober, do you have anything to add  
11 to what Mr. Mitchell says the government would be able to prove  
12 if this matter were to go to trial?

13 MR. SCHOBBER: May I consult my attorney?

14 THE COURT: Yes, you may.

15 (Discussion held off the record.)

16 MR. SEGAL: Could I respond --

17 THE COURT: No. I'm going to ask your client to  
18 respond. You can then add something, Mr. Segal, but I want to  
19 have a colloquy with your client first.

03:07 20 MR. SEGAL: Okay. All right.

21 THE COURT: Do you have anything to add, Mr. Schober,  
22 to what Mr. Mitchell says the government would be able to  
23 prove?

24 MR. SCHOBBER: I believe the thrust of what Mr.  
25 Mitchell said is correct. The one thing I would correct was

1 that the original purpose to open the account was not to evade  
2 taxes; and, in fact, the account -- the original account dates  
3 back to 1993 or 4, I believe, preceding UBS. And until, as Mr.  
4 Mitchell correctly points out, 2006, when, in fact, there was  
5 income that should have been reported and wasn't reported, that  
6 until such time the account wasn't earning anything.

7 THE COURT: Mr. Mitchell?

8 MR. MITCHELL: I don't think that changes anything,  
9 your Honor. It's a -- the purpose and intent to evade is not  
03:08 10 one of the elements of the offense. The effect was, in the  
11 end, as I'm understanding Mr. Schober, is that he did, in the  
12 end, deprive the IRS of funds that I noted earlier. But I  
13 don't think the correction matters in terms of whether the  
14 elements of the offense were met.

15 THE COURT: Do you agree with Mr. Mitchell's summary,  
16 Mr. Schober?

17 MR. SCHOBBER: I don't dispute that. That's correct.

18 THE COURT: And there's nothing else -- or is there  
19 anything else that you disagree with that Mr. Mitchell says the  
03:08 20 government would be able to prove?

21 MR. SCHOBBER: Not of substance. I believe some of the  
22 facts may be slightly off, but I think that can be cleared up  
23 in conversation. I think the thrust of it is right.

24 THE COURT: Then I would ask the deputy clerk to  
25 inquire of the defendant as to how he now wishes to plead. Mr.

1 Schober, will you now stand.

2 THE CLERK: Mr. Schober, Count 1 of the single count  
3 Information charges you with willfully violating foreign bank  
4 account reporting requirements, in violation of Title 31 of the  
5 United States Code, Section 5314 and 5322A. How do you wish to  
6 plead to Count 1, guilty or not guilty?

7 MR. SCHOBBER: Guilty.

8 THE CLERK: Thank you. You may be seated.

9 THE COURT: That being the case, it is the finding of  
03:09 10 the Court in the case of the United States vs. Peter Schober  
11 that the defendant is fully competent and capable of entering  
12 an informed plea and that his plea of guilty is a knowing and  
13 voluntary plea, supported by an independent basis in fact,  
14 containing each of the essential elements of the offense  
15 charged. His plea is, therefore, accepted, and he is now  
16 adjudged guilty of that offense.

17 Mr. Schober, a written Presentence Report will be  
18 prepared for me by the Probation Department. Both you and --  
19 actually, you will be asked to give information for that  
03:09 20 report, and your lawyer may be present if you wish. Both you  
21 and your lawyer will be given the opportunity to read the  
22 Presentence Report before the sentencing, and at the sentencing  
23 hearing itself, not only your lawyer but you will be afforded  
24 the opportunity to speak. Do you understand all of that?

25 MR. SCHOBBER: I do.



1 THE COURT: Then the sentencing will be scheduled for  
2 Wednesday, February 8th, at 3 p.m. Any known conflict, Mr.  
3 Segal?

4 MR. SEGAL: No, not at the moment, your Honor.

5 THE COURT: You want to check your records?

6 MR. SEGAL: My hope was to be out of state February,  
7 March and April, but I'm not sure I'll make it. But I can  
8 report back. I'll know in about a week.

9 THE COURT: We could move it up a week if that would  
03:10 10 help you.

11 MR. SEGAL: Well, I think Mr. Mitchell might have some  
12 thoughts.

13 MR. MITCHELL: I actually -- I have another sentencing  
14 that afternoon, your Honor, in front of Judge Gertner.

15 THE COURT: All right. We'll change the date.

16 MR. MITCHELL: There's -- I know, as I noted before,  
17 there's a cooperation provision in the plea agreement, so there  
18 may be -- we may be the asking the Court --

19 THE COURT: That's fine. If for those reasons you  
03:11 20 want to postpone it and it's a joint motion, the Court, of  
21 course, will entertain one. But we want to get it scheduled  
22 now, in default of which we will go forward. So if the 8th is  
23 not good, we'll find another date for you, maybe earlier that  
24 week.

25 Thursday, the 9th. Any problem with that, Mr. Segal?

1 I thought Wednesday was the 9th.

2 MR. SEGAL: Tuesday is the 8th.

3 THE COURT: Wednesday, the 9th, is what we have down.

4 MR. SEGAL: That's fine.

5 THE COURT: Wednesday, the 9th, at 3 p.m. Any problem  
6 with that, Mr. Mitchell?

7 MR. MITCHELL: No, your Honor. That's fine, thanks.

8 THE COURT: Then I understand there are certain  
9 conditions that have been drafted by the Pretrial Services that  
03:12 10 the Court will read into the record.

11 The defendant is to be released on a \$100,000  
12 unsecured appearance bond; to maintain his residence at 9  
13 Harcourt Street, No. 9, in Boston; his travel is restricted to  
14 the District of Massachusetts.

15 MR. SEGAL: Your Honor, may I ask -- I think I have  
16 both the approval of Pretrial and Mr. Mitchell. If that could  
17 be continental United States, I think both feel that that's  
18 appropriate in this case.

19 THE COURT: You mean rather than the District of  
03:12 20 Massachusetts?

21 MR. SEGAL: Yes, your Honor.

22 MR. RILEY: That's agreeable as long as the defendant  
23 provides us with advance notice to travel outside of  
24 Massachusetts.

25 THE COURT: Yes. Any travel outside of the

1 Commonwealth of Massachusetts will be upon notice to the  
2 Pretrial Services.

3 MR. SEGAL: Thank you.

4 THE COURT: And then, as I was saying, the defendant  
5 is to surrender both his U.S. and Austrian passports to  
6 Pretrial Services. Apparently that has already been done. He  
7 is to seek permission of Pretrial Services one week in advance  
8 of any proposed international travel and is to provide Pretrial  
9 Services with complete travel itinerary. If approved, the  
03:13 10 defendant may obtain temporary release of his passports which  
11 must be surrendered upon his return to the United States, in  
12 Boston, on the next business day after return.

13 Any international travel authorized by Pretrial  
14 Services shall be limited to 24 days in duration, and failure  
15 to return to the United States by the 24th day shall cause the  
16 forfeiture of the \$100,000 unsecured bond.

17 Now, I do understand that the agreement has been  
18 further amended, that, in addition, the defendant is, before  
19 any foreign travel, to submit to the Clerk of Court, rather  
03:14 20 than to the government, a quitclaim deed on his property.  
21 Where is that property located?

22 MR. SEGAL: He has -- your clerk has the deed, your  
23 Honor.

24 THE COURT: Property at 9 to 17 Harcourt Street, Unit  
25 206, in Boston. And the quitclaim deed, which the Court -- at

1 least a copy of which the Court has in hand, is the one that's  
2 to be turned over to the Clerk of Court?

3 MR. SEGAL: I gave the Court the deed.

4 THE COURT: All right. Now, all of those conditions  
5 -- first of all, Mr. Schober, your failure to attend your  
6 sentencing, which has been scheduled for Wednesday, February 9,  
7 2011, at 3 p.m., in this courthouse -- failure to appear is a  
8 criminal offense for which you could be sentenced to  
9 imprisonment. And all of the conditions on which you are  
03:15 10 released, which the Court just recorded on the record, continue  
11 to apply, and the penalties for violating any of those  
12 conditions can be severe. Do you understand all of that?

13 MR. SCHOBBER: I do.

14 THE COURT: Is there any further business then to come  
15 before the Court in these proceedings? Mr. Segal?

16 MR. SEGAL: No, your Honor.

17 THE COURT: Mr. Mitchell?

18 MR. MITCHELL: No, your Honor.

19 THE COURT: Thank you. We are adjourned.

03:15 20 (Whereupon, at 3:13 p.m. the hearing concluded.)

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript  
of the record of proceedings in the above-entitled matter to  
the best of my skill and ability.

/s/Cheryl Dahlstrom

12/16/2010

Cheryl Dahlstrom, RMR, CRR

Dated

Official Court Reporter