

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 05-CR-00209
	)	Judge John E. Sprizzo
ROBERT GOEHRING,	)	
	)	
Defendant.	)	

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**MEMORANDUM IN AID OF SENTENCING  
ON BEHALF OF DEFENDANT ROBERT GOEHRING**

Defendant Robert Goehring, through counsel, respectfully submits this memorandum in aid of sentencing. The sentencing hearing is set for Tuesday, November 7, 2006, at 12:30 p.m.

**INTRODUCTION**

In this case, there is no dispute that the advisory guideline range is 10-16 months in Zone C. The Probation Office has recommended the *lowest possible sentence* in that range – a five-month term of imprisonment and five months of home confinement as a condition of supervised release. See Presentence Investigation Report (“PSR”) at 23-24. Under the plea agreement, the parties are free to request a sentence outside of the advisory guideline range. See Plea Agreement at 3.

The preeminent congressional command in 18 U.S.C. § 3553(a) – that a sentence be “sufficient, but not greater than necessary” to comply with the purposes of sentencing set forth in Section 3553(a)(2) – has taken on revitalized meaning now that the Guidelines are merely advisory. See *United States v. Foreman*, 436 F.3d 638, 644 n.1 (6th Cir. 2006) (“[A] district court’s job is not to impose a ‘reasonable’ sentence. Rather, a district court’s mandate is to impose ‘a sentence sufficient, but not greater than necessary, to comply with the purposes’ of section 3553(a)(2).”);

*United States v. Fairclough*, 439 F.3d 76, 79 (2d Cir. 2006) (referring to the rule as a congressional “directive”). Given the application to this case of the Section 3553(a) factors, as discussed below, Mr. Goehring requests that the Court sentence him to a term of probation with conditions (including, should the Court deem it appropriate, community service and a period of home confinement). We respectfully submit that such a sentence – which is just a small step away from the advisory guideline range – is appropriate in light of Mr. Goehring’s explanation for the offense conduct (which is not rooted in avarice); the effect of the lengthy pre-indictment period and parallel SEC litigation on Mr. Goehring; his efforts to cooperate; and his family responsibilities, employment history, and history of charitable and community activities.

### **DISCUSSION**

The “sufficient, but not greater than necessary” rule is rooted in the principle of parsimony. “All punishment which is not derived from necessity,” wrote Montesquieu, “is tyrannical.” Montesquieu, *Spirit of Liberty*, 19.14 (available at [www.constitution.org/cm/sol\\_19.htm](http://www.constitution.org/cm/sol_19.htm)). Relying on Montesquieu, Cesare Beccaria made the same point in time to influence Enlightenment thinkers like the Framers. See Beccaria, *Of Crimes and Punishments* (1764), Chapter 2 (available at [www.constitution.org/cb/crim\\_pun.htm](http://www.constitution.org/cb/crim_pun.htm)); Garry Wills, *Inventing America* 95 (1979) (discussing impact of Beccaria on Jefferson); David McCullough, *John Adams* 66-67 (2001) (discussing John Adams’s use of Beccaria’s ideas). Given that pedigree, it is not surprising that Congress saw fit to make the principle of parsimony foremost in Section 3553(a). See Richard Frase, *Punishment Purposes*, 58 Stan. L. Rev. 67, 82-83 (2005) (“Section 3553(a) begins with a statement of the parsimony principle[.] . . . [F]ederal trial and appellate courts should interpret section 3553(a) . . . subject to the overall requirement of parsimony”); *United States v. Jimenez-Beltre*, 440 F.3d 514,

525 n. 8 (1st Cir. 2006) (“Commentators note that this provision, which was originally part of the House sentencing reform bill and was later added to the Senate resolution and adopted in committee, ‘is not just another ‘factor’ to be considered along with others set forth in Section 3553(a) – it sets an independent limit on the sentence a court may impose” (citing David L. McColgin & Brett G. Sweitzer, *Grid & Bear It*, 29 *Champion* 50, 50 (2005)); see also Norval Morris, *The Future of Imprisonment* 59-62 (1974).

Subject to the principle of parsimony, sentencing courts are required under Section 3553(a)(2) to consider the need for the sentence imposed to (1) reflect the seriousness of the offense; (2) promote respect for the law; (3) provide a just punishment for the offense; (4) afford adequate deterrence to criminal conduct; and (5) protect the public from further crimes of the defendant. See *United States v. Crosby*, 397 F.3d 103, 112-14 (2d Cir. 2005). In addition, under Section 3553(a)(1), sentencing courts are required to consider (1) the nature and circumstances of the offense; and (2) the history and characteristics of the defendant. See *Crosby*, 397 F.3d at 112-14.

#### **A. Factual Background.**

As Mr. Goehring’s statement to the Probation Office shows, his crime grew out of desperation. See PSR ¶¶ 18-28. Mr. Goehring is a 64-year-old man from a modest background who found the “job of [his] dreams” at Gerber. PSR ¶ 23. He has never committed a crime before. *Id.* at ¶¶ 41-43. Ever since he left college to provide for his first-born child, PSR ¶ 59, Mr. Goehring has taken care of his family. As his wife told the Probation Office, he is the family’s “rock.” *Id.* at ¶ 51. Mr. Goehring keeps the house. He attends to his mother-in-law, who suffers from Alzheimer’s disease, and he is a key source of support for his stepdaughter, who lives at home. *Id.* at ¶¶ 49-51. Mr. Goehring’s presence is sorely needed in the family with respect to the caregiving requirements

detailed in the PSR. *Id.*

Along with the information in the body of the PSR, counsel for Mr. Goehring provided additional information to the Probation Office in response to the initial disclosure of the PSR that bears on sentencing. See PSR ¶ 86. We summarize that information again here:

- **SEC Case.** A parallel SEC case is pending before Judge Alvin Thompson in the District of Connecticut. Discovery was stayed in that case shortly after undersigned counsel entered appearances on behalf of Mr. Goehring in the civil and criminal cases. Mr. Goehring has executed the documents necessary to allow the Staff to seek settlement approval from the Commission. Mr. Goehring also has placed \$50,000.00 in an escrow account controlled by his counsel's firm in anticipation of paying that amount as part of the SEC settlement. Mr. Goehring was able to obtain the \$50,000.00 only by taking out a second mortgage on his house. PSR ¶ 66 n. 1; *id.* at 20. Undersigned counsel fully anticipates that the Commission will authorize the settlement.
- **Lengthy Investigation Period.** Mr. Goehring was terminated by Gerber Scientific in May 2001. At least three months earlier (in February 2001), the SEC had begun its investigation of Mr. Goehring as well as others at Gerber Scientific. Goehring was indicted in early 2005 and charged civilly by the SEC shortly thereafter. Thus, he has been living as the target of an investigation (and ultimately as the defendant in civil and criminal cases) for well over five years. During that time, Mr. Goehring has been the subject of ongoing media scrutiny in the Hartford Courant and the local paper (the Journal-Inquirer). That scrutiny has subjected him to community derision that has changed his daily existence dramatically. Many former friends no longer even acknowledge Mr. Goehring.
- **Employment History.** Mr. Goehring's employment history at Pratt & Whitney was sterling. He worked there for 28 years, rising from an entry-level position to a role as a senior public relations figure in the company. He won two significant awards for outstanding service to the company. He and his wife – who also worked at Pratt & Whitney, where they met – were the subject of downsizing during a massive restructuring. Mr. Goehring has not been employed since Gerber terminated him in May 2001 and his future employment prospects are bleak – especially in light of his age and the conviction in this case.
- **Charitable and Community Activities.** Mr. Goehring has a history of charitable good works and community involvement. At Pratt & Whitney, he founded the “Corporate Cup” – a five-mile road race for teams from Hartford area businesses. All entry fees support local charities. Mr. Goehring ran the event for 10 years while

he was employed at Pratt & Whitney. Mr. Goehring founded the Gerber Scientific Holiday Food Drive. He ran the drive, in which employees donated food items during the holiday season to support Greater Hartford food share programs, for three years while he was employed at Gerber. Mr. Goehring is also a member of the Connecticut 100 Club. The organization supports families of police and fire agencies who have lost their lives in service to the community. He was a volunteer coach for Manchester Youth Soccer from 1965-73. He was a Connecticut Interscholastic Athletic Conference Soccer Official from 1993-98.

- **Efforts to Cooperate.** Mr. Goehring, through former counsel, made efforts to cooperate with the government, although those efforts ultimately did not lead to further discussions with the government. Those efforts are described further in Goehring's response to the first disclosure of the PSR. They illustrate Mr. Goehring's efforts to be candid and assist government officials in their investigatory duties.

**B. Request for Variance from the Guideline Range.**

As stated above, Mr. Goehring asks the Court to consider imposing a sentence of probation with appropriate conditions (including community supervision and, if the Court deems it appropriate, a period of home confinement). The sentence recommended by the Probation Office would require just five months of incarceration. Thus, the requested variance, in light of the statutory factors, the factual circumstances, and the preeminent consideration that a sentence be "sufficient, but not greater than necessary," would be quite modest.

**1. Seriousness of the Offense – § 3553(a)(2)(A).** Mr. Goehring does not dispute that insider trading that results in an unwarranted gain between \$20,000.00 and \$40,000.00 must be deemed a serious offense. He understands that the integrity of the financial markets, fairness to shareholders, and the confidence of investors depends on fair play and full disclosure in the conduct of securities transactions. At the same time, Mr. Goehring has fully accepted responsibility for the offense conduct, appreciates the devastating wrong turn that he made, and is attempting to make amends for his wrongdoing.

**2. Nature and Circumstances of the Offense – § 3553(a)(1).** The nature and circumstances of the offense point in a mitigating direction. As detailed in the PSR and the related documents that were submitted, Mr. Goehring committed the crime in the context of serious financial and emotional pressures within his family. Although Mr. Goehring’s motive certainly does not excuse the offense conduct, it does bear directly on the issue of punishment, especially in light of *Booker*. See *United States v. Milne*, 384 F. Supp. 2d 1309, 1313 n.4 (E.D. Wis. 2005) (“after *Booker*, courts are *required* to consider any § 3553(a) factor put forward by the defense that might make the guideline sentence inappropriate. . . . In many cases, this requirement will necessitate consideration of the defendant’s motive for committing the offense rather than merely the amount involved” (emphasis in original; citations omitted)); see also Carissa Byrne Hessick, *Motive’s Role in Criminal Punishment*, 80 S. Cal. L. Rev. 1, 23 (forthcoming 2006) (available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=921111#PaperDownload](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=921111#PaperDownload)) (“In some contexts a desire to help one’s family may be considered a mitigating motive” ).

**3. Need to Promote Respect for the Law – § 3553(a)(2)(A).** We submit that Mr. Goehring’s felony conviction, the many years that passed before Mr. Goehring was indicted (and charged by the SEC), the press coverage that this case has generated, the restraint on Mr. Goehring’s liberty that *any* sentence will impose, and the sanctions that he expects to incur in the anticipated SEC settlement, in combination, are sufficient to meet this requirement under the statute. While we do not suggest that the government did anything improper with respect to the lengthy pre-indictment period, we do note that pre-indictment delay, in combination with other factors, has been deemed a legitimate ground for departure in the pre-*Booker* era. See *United States v. Corneille*, 171 F.3d 748, 754 (2d Cir. 1999) (affirming departure based on “exceptional circumstances . . . including pre-

indictment delay and rehabilitation”).

**4. Need to Afford Adequate Deterrence to Criminal Conduct – § 3553(a)(2)(B).**

**a. Specific Deterrence.** Nothing in the record suggests that a sentence of imprisonment is necessary to deter Mr. Goehring from committing another crime.

**b. General Deterrence.** For the same reasons that a sentence of imprisonment is not necessary to promote respect for the law, we submit that such a sentence is not necessary to deter others from violating the criminal provisions of the securities laws (or any other law).

**5. Need to Protect the Public – § 3553(a)(2)(c).** The information in the PSR, and the additional information provided to the Probation Office, suggests that Mr. Goehring’s conduct, within the context of his life, was a dramatic departure from the norm. All indications are that a sentence of incarceration is utterly unnecessary to protect the public.

**6. History and Characteristics of the Defendant – § 3553(a)(1).** Mr. Goehring is 64 years old. Before he committed the offense conduct, he led a life marked by hard work, generosity of spirit, and decency. His impressive employment record, devotion to family, charitable good works, and community activities – all detailed above – reflect his core nature. Cf. *United States v. Greene*, 249 F. Supp. 2d 262 (S.D.N.Y. 2003) (SAS) (pre-*Booker* departure to probation from a range of 18-24 based in part on family circumstances and charitable good works). Furthermore, Mr. Goehring showed a willingness to cooperate with the government. And he did not hesitate to describe his wrongdoing fully when he appeared before the Court at the change-of-plea hearing.

**7. Need to Provide a Just Punishment – § 3553(a)(2)(A).** Given the confluence of factors in this case, we ask the Court to conclude that a just punishment does not require a sentence of incarceration. The record shows that the community would be better served if Mr. Goehring were

required, for example, to use his public relations skills as part of a community service obligation.

**CONCLUSION**

For the foregoing reasons, defendant Robert Goehring respectfully requests that the Court vary from the Probation Office's recommended sentence of five months in prison and five months of home confinement as a condition of supervised release and impose a sentence of probation with appropriate conditions (including an appropriate period of home confinement should the Court believe that to be necessary).<sup>1</sup>

Dated: October 31, 2006

Respectfully submitted,

By: /s/ Gregory L. Poe  
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<sup>1</sup> The Probation Office also recommends that Mr. Goehring be required to pay a \$3,000.00 fine. PSR at 25. Given the \$50,000.00 payment that Mr. Goehring expects to make to settle the SEC case (funded by an outstanding second mortgage), and the debt that his family is carrying (see PSR ¶ 69), we ask that the Court not impose a fine.

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true copy of the foregoing Memorandum in Aid of Sentencing on Behalf of Robert Goehring to be served via regular United States mail, first class postage prepaid, on October 31, 2006 (and electronically upon counsel participating in the ECF System), upon the following:

Jason Sabot  
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/s/ Gregory L. Poe

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