

**URGENT MATTER – TIME SENSITIVE**

December 7, 2009

The Honorable Eric Holder  
Attorney General  
United States Department of Justice  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20530

David W. Ogden  
Deputy Attorney General  
United States Department of Justice  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20530

RE: *Bradley Birkenfeld – Request to Reopen Record*

Dear Attorney General and Deputy Attorney:

We have recently been retained to represent Mr. Bradley Birkenfeld on matters related to his status as a whistleblower under U.S. law. We had the opportunity to review the record in his case and are concerned that a major miscarriage of justice may be committed if Mr. Birkenfeld is sent to prison on January 8, 2010. For the reasons set forth below, we request that your offices carefully review the accuracy of statements made by the Department of Justice’s representative during Mr. Birkenfeld’s sentencing hearing and reverse the decision of the DOJ to recommend that Mr. Birkenfeld be sentenced to prison. Additionally, the facts set forth below warrant a re-examination of the decision of the DOJ to indict Mr. Birkenfeld, especially in light of Mr. Birkenfeld’s unprecedented and voluntary disclosures concerning illegal off-shore banking practices by UBS and clients of that bank.

**A. Material False Statement at Sentencing Hearing**

At the August 21, 2009 sentencing hearing the lead Department of Justice (“DOJ”) prosecuting attorney stated, on the record, his justification for indicting Mr. Birkenfeld and for insisting that Mr. Birkenfeld serve a substantial jail sentence. Attachment 1, *See* Excerpts from the Sentencing Hearing.

As set forth on pages 32-33 of the hearing transcript, the prosecutor pointed to the failure of Mr. Birkenfeld to disclose the identity of his major client, the billionaire Igor Olenicoff when he met with the DOJ in June of 2007. The prosecutor then hypothesized to the Court as to why Mr. Birkenfeld withheld his client’s identity

during the June DOJ-Birkenfeld meetings: Mr. Birkenfeld withheld information on Olenicoff because he wanted to “continu[e] aiding and assisting Mr. Olenicoff committing tax evasion.” See Sentencing Transcript, Tr. 32, lines 12-16.

On page 33, lines 14-21 of the transcript the prosecutor is more specific in his criticism of Mr. Birkenfeld, and states that “Mr. Olenicoff would be in jail had Mr. Birkenfeld come in, in 2007 and disclosed that information.” The prosecutor concludes by stating that Mr. Birkenfeld’s failure to disclose information on Olenicoff was key to “why the U.S. government seeks jail time for Mr. Birkenfeld.” See Page 33, lines 19-21.

Moreover, on page 11 of the transcript the DOJ again references Mr. Birkenfeld’s failure to “give details with respect to” Mr. Olenicoff as a central reason not only for seeking jail time, but for commencing the criminal investigation of Mr. Birkenfeld and indicting him. See Tr. 12, lines 23-25 through Tr. 12, lines 1-6 (“Given the fact that he refused to provide that information led us down a course where we had to start to investigate Mr. Birkenfeld . . . that is why he was indicted.”).

As set forth before the Court by the DOJ’s representative, Mr. Birkenfeld’s failure identify Mr. Olenicoff was the central fact behind the government’s recommendation that Mr. Birkenfeld be sentenced to prison. See Attachment 1.

However, our review of this matter demonstrates that this allegation against Mr. Birkenfeld was *not true*.

#### **B. Mr. Birkenfeld did Disclose Olenicoff as a Client of the Bank in 2007**

It has been Mr. Birkenfeld’s contention that he was fully ready and willing to disclose Mr. Olenicoff’s identity as a major client of the Bank during his June of 2007 meetings with the DOJ. According to Mr. Birkenfeld, DOJ understood that he was reluctant to disclose his own client identities due to the fact that Mr. Birkenfeld still resided in Switzerland, and such disclosures were illegal under Swiss law. Mr. Birkenfeld and his representatives at the time repeatedly requested a subpoena from DOJ, which would have justified the disclosure of client information. DOJ refused all of these requests to serve a subpoena on Mr. Birkenfeld.

The DOJ apparently denies this contention, and stated before the Court that Mr. Birkenfeld did not want to identify Mr. Olenicoff “in 2007” because Birkenfeld was still “aiding” Olenicoff in his tax evasion activities. See Attachment 1, Tr. 33.

We have now had an opportunity to carefully review the record of this case. It is clear that the justification made by your representative at the sentencing hearing is not supported.

The record of this case demonstrates that after meeting with DOJ officials for three days in June of 2007 (in which substantial information about the UBS frauds was

disclosed), Mr. Birkenfeld was frustrated that he was not issued a subpoena and that the DOJ was not treating him as a “whistleblower.” The concern Mr. Birkenfeld had regarding the need for compulsory process in order to identify clients appears to be well grounded. At the time of his meetings with the DOJ Mr. Birkenfeld still resided in Switzerland and had a non-banking related business in that country. When he quit UBS the Managing Director of the Bank provided him with a letter outlining his obligations under Swiss law. One of those central obligations was a duty to maintain the confidentiality of bank clients. He was informed that any “unauthorized disclosure,” “exploitation,” or other “use” of client information could subject Mr. Birkenfeld to criminal or civil prosecution:

**“Any willful or negligent contravention of these obligations . . . especially after [the] termination [of the employment contract] constitutes a criminal act in accordance with Art. 47 para. 3 of the Federal Law on Banks . . . and Art. 162 of the Swiss Penal Code. A breach of the applicable legal provisions may also have consequences under civil law in the form of claims for damages by clients concerned or by the bank itself.”**

*See* Attachment 2, UBS to Birkenfeld, October 14, 2005.

Unfortunately, despite voluntarily providing extensive information to the Department of Justice without an immunity agreement, the negotiations between Mr. Birkenfeld and DOJ came to a standstill at the end of August, 2007. *See* Attachment 3, E-mail dated August 21, 2007 and follow-up letter from DOJ to Counsel for Birkenfeld dated September 6, 2007.<sup>1</sup> In the face of this standstill, Mr. Birkenfeld did not stop his voluntary whistleblowing. Instead, consistent with the practices of numerous other whistleblowers that are sometimes frustrated with one government office, Mr. Birkenfeld commenced to seek out other representatives of the United States to whom he would blow the whistle. On his own initiative, Mr. Birkenfeld reached out to other government agencies and asked that he be served a subpoena so he could more fully testify, on-the-record, about UBS misconduct *and* the actions of bank clients. The U.S. Senate Permanent Subcommittee on Investigations listened to Mr. Birkenfeld’s concerns and agreed to issue a friendly subpoena.

As reflected in the attached e-mail dated September 20, 2007 from Mr. Birkenfeld’s former counsel, Mr. Birkenfeld reached out to the U.S. Senate Permanent Subcommittee on Investigations and almost begged to be interviewed. The attorney wrote as follows to the subcommittee staff:

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<sup>1</sup> On August 21, 2007 counsel for Mr. Birkenfeld informed the DOJ prosecutors that Mr. Birkenfeld was “now in the US for a few days” and was interested in having the “immunity issue resolved” so he could “move forward” with additional “disclosures of information.” On September 6, 2007 the DOJ prosecutors informed counsel for Mr. Birkenfeld that DOJ “declined to extend the requested immunity” but that the “government will take steps to evaluate” the numerous “allegations” Birkenfeld had already provided to the government.

**“I don’t mean to sound alarmist, but my client has risked his livelihood and even his life to expose massive tax fraud on an international scale and yet, no one in two branches of government seems concerned enough to listen to him and recognize his sacrifice . . . We have a limited opportunity to change an entire industry designed to evade US taxes. *Let’s not fiddle while Rome burns.*”**

See Attachment 4, Counsel for Birkenfeld to Senate Staff (September 20, 2007).

In discussions between the Senate staff and Mr. Birkenfeld’s prior attorneys (held on September 21, 2007), it was understood and agreed that the Senate could not provide Mr. Birkenfeld with immunity and could not help him with any whistleblower claims he filed with the IRS. But the Committee could issue him a subpoena.

In a September 21<sup>st</sup> e-mail to an IRS agent detailed to the Senate Subcommittee and to Subcommittee staff, counsel for Mr. Birkenfeld told the Senate/IRS investigators: “I know he [Birkenfeld] will jump on this opportunity to meet with you as soon as he can arrange to come to the US.” See Attachment 5, September 21, 2007 e-mail to McDougal (4:02 pm).

On October 9, 2007 Mr. Birkenfeld was provided with a friendly subpoena by the Senate subcommittee. He was scheduled to commence testifying two days later. See Attachment 6.

Because he was under subpoena Mr. Birkenfeld was able to identify his own UBS clients and provide information on these clients.

On October 11, 2007, *three weeks before Mr. Olenicoff was indicted*, Mr. Birkenfeld commenced testifying to the U.S. Senate investigators.<sup>2</sup>

At the October 11<sup>th</sup> deposition with the Senate staff Mr. Birkenfeld identified Olenicoff as one of his client at the Bank that engaged in illegal offshore activities. See, Attachment 8, e-mail chain with Senate Staff. In other words, Mr. Birkenfeld was *not* hiding Mr. Olenicoff’s identity from the government nor was he attempting to protect Olenicoff in any manner. Instead, he freely identified Olenicoff to the government. This confirms Mr. Birkenfeld’s statements that he would have identified Olenicoff to the DOJ in June, if he had been subpoenaed. It further demonstrates that Mr. Birkenfeld was not only willing to identify Olenicoff as a participant in the illegal tax schemes, Birkenfeld in fact *did* turn over his identify to government agents in 2007, *before Olenicoff was indicted*.<sup>3</sup>

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<sup>2</sup> The date of Mr. Olenicoff’s indictment, along with the other proceedings in that case, as set forth in Attachment 7, the Docket Sheet from that proceeding.

<sup>3</sup> Mr. Olenicoff was indicted on November 1, 2007 – nearly three weeks after Birkenfeld identified him as a client of the bank engaged in illegal off shore activities. Mr. Olenicoff’s plea

Mr. Birkenfeld's testimony against Mr. Olenicoff could have been used in a timely manner as part of the indictment of Olenicoff (which occurred three weeks after Birkenfeld made his Olenicoff-disclosures to the Senate investigators); as part of the plea agreement, which was submitted to the Court two months after Birkenfeld made his Olenicoff disclosures to the Senate; or at the sentencing hearing which occurred over six months *after* Mr. Birkenfeld, as a whistleblower, voluntarily identified Mr. Olenicoff to the government. *See* Attachment 7.

The fact that Mr. Birkenfeld identified Mr. Olenicoff to government investigators *before* the indictment was issued is irrefutable. We had the opportunity to review e-mails between the Senate investigators and Mr. Birkenfeld's prior attorneys that confirm the fact that Birkenfeld identified Olenicoff voluntarily to government investigators on October 11, 2007. *See* Attachment 8 is an e-mail chain between Mr. Birkenfeld's former attorneys and the lead investigator for the Senate Permanent Subcommittee. The e-mails are dated March 4, 2008, but they concern disclosure made to the subcommittee on October 11, 2007.

The chain begins with a question from the Senate investigator to Mr. Birkenfeld's prior attorneys. The investigator asked Mr. Birkenfeld's counsel: "Has Brad ever heard of a person named Olenicoff?" Although the investigator does not state what prompted the inquiry, it appears that Olenicoff was entering a guilty plea that became public, and the investigator was trying to determine whether Mr. Birkenfeld had information on this person.

In response, Mr. Birkenfeld's counsel informed the investigator that Mr. Birkenfeld fully disclosed Olenicoff during his testimony before the Subcommittee on October 11, 2007:

*"Yes. Olenikov was identified to you during the session we had on October 11, 2007 . . . Olenikov was Brad's biggest client with over \$200,000,000 in accounts . . . Olenikov just plead guilty to tax fraud and from the press reports I read, it doesn't appear that Olenikov disclosed the UBS Switzerland funds. We went back to the IRS and DOJ-Tax people and told them that Brad had information that would help them with Olenikov, but DOJ-Tax merely threatened Brad with withholding information from them . . . I hope that someone in Congress takes note of the poor handling that Brad has received*

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agreement was not filed with the Court until December 10, 2007. His sentencing hearing was held on April 14, 2008 and the Court sentenced him on April 16, 2008. Attachment 7. Prior to November 1, 2007, Mr. Olenicoff apparently had discussions with the U.S. Attorneys Office for the Central District of California (the prosecuting office in the Olenicoff case). A plea deal was apparently discussed and signed in mid-October of 2007. Regardless of the status of these confidential discussions between the local U.S. Attorneys Office and Mr. Olenicoff, the record reflects that Mr. Birkenfeld disclosed Olenicoff's identity to the U.S. Senate (and thereafter to the IRS and SEC) before Olenicoff signed any plea deal, and well before any such plea was filed with the Court.

*from DOJ-Tax.”*

The Senate Committee investigator, Robert Roach, then confirmed that Mr. Birkenfeld had identified Mr. Olenicoff during the October 11, 2007 testimony: “*You are right. I completely forgot about Olenicoff... so I apologize.*”

This e-mail confirms Mr. Birkenfeld’s statements that he was not holding back on identifying Olenicoff. *See* Attachment 8. Had Mr. Birkenfeld intended to continue to aid and abet Olenicoff’s tax evasion, he would not have voluntarily disclosed information about Mr. Olenicoff.

The fact that Mr. Birkenfeld disclosed his relationship with Olenicoff on October 11, 2007, is also confirmed in a report published by the U.S. Senate Permanent Subcommittee on Investigations entitled *Tax Haven Banks and U.S. Tax Compliance Staff Report*. This report was released to the public on July 17, 2008, well over one year before Mr. Birkenfeld was sentenced and is readily available on the website of the subcommittee. The report identifies October 11, 2007 as the date in which Mr. Birkenfeld provided sworn deposition testimony to the subcommittee staff. Report, page 100. The report then contains extensive footnotes to the transcript of the testimony. On October 11, 2007, Mr. Birkenfeld told the subcommittee staff that Olenicoff was his biggest client, with over \$200 million dollars in the Bank. When the subcommittee staff asked Mr. Birkenfeld whether this account was an illegal “undeclared” account, Mr. Birkenfeld did not hold his punches. He testified as follows: “**Yes, every bit.**” *See* Report, page 131.<sup>4</sup>

The subcommittee deposition transcript confirms that Mr. Birkenfeld extensively discussed his (and UBS’s) dealing with Olenicoff. Mr. Birkenfeld confirmed that the Olenicoff account was illegal. This testimony was provided in 2007, before Mr. Olenicoff entered his plea and before Mr. Olenicoff was indicted. If Mr. Birkenfeld had an interest in continuing a business relationship with Mr. Olenicoff (i.e. if Mr. Birkenfeld was willfully withholding information from the DOJ in bad faith) it seems rather peculiar that Mr. Birkenfeld would voluntarily identify Olenicoff to Senate investigators, confirming that Olenicoff was his biggest client holding a completely illegal account.

### **C. Mr. Birkenfeld Disclosed Olenicoff to the SEC and IRS in 2007**

In addition to this e-mail confirmation, we understand that immediately after providing testimony to the Senate committee, Mr. Birkenfeld provided similar information to agents from the Securities and Exchange Commission and the IRS. Specifically, Mr. Birkenfeld’s counsel was in contact with John McDougal, an IRS

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<sup>4</sup> In accordance with Senate rules, counsel for Mr. Birkenfeld was permitted to review a copy of the depositions transcript (which under Committee rules is confidential). The statements made in the Senate Report were confirmed, along with the date of the meeting between Mr. Birkenfeld and the Senate staff.

agent who was also working on detail with the U.S. Senate Permanent Subcommittee on Investigations. An agreement was reached whereby immediately after his Senate testimony, Mr. Birkenfeld would meet with Mr. McDougal and Mr. Reeves of the IRS. *See* Attachments 9-10. That meeting occurred on October 12, 2007 and we understand that the information about Olenicoff was also fully disclosed before Olenicoff was indicted. Additionally, Mr. Birkenfeld was able to reach an agreement with the U.S. Securities and Exchange Commission. *See* Attachment 23. He provided testimony to the SEC investigators on November 14, 2007 (the same date the agreement was reached between Mr. Birkenfeld and the SEC). We also understand that Mr. Olenicoff's identity was disclosed during this meeting.

There clearly was a breakdown in communication between DOJ and Mr. Birkenfeld. *See* Attachment 3. There also appears to have been a breakdown in the cooperation and information sharing between various government entities. But this breakdown did not interfere with Mr. Birkenfeld's willingness, as a whistleblower, to fully disclose the fraud at UBS - including fully disclosing information on his clients and/or other clients of the bank. Moreover, even assuming that the SEC, IRS and Senate did not share information with the DOJ,<sup>5</sup> the failure of various government entities to share information from a whistleblower cannot constitute grounds to penalize an American citizen who attempted to disclose serious wrongdoing. Mr. Birkenfeld thought these agencies were sharing information. These agencies *should have been sharing information*. Given the magnitude, scope and complexity of the international tax fraud scheme Mr. Birkenfeld exposed, a sophisticated Joint Task Force should have been created and information obtained from the one government office should have been shared with others. DOJ knew that Mr. Birkenfeld was providing extensive and privileged information to the SEC, IRS and Senate. If steps were not taken to ensure that DOJ was in the loop as to Birkenfeld's disclosures, that matter should be reviewed. But again, Mr. Birkenfeld (who is not an attorney) did think that information was being shared.

The record simply does not support the DOJ explanation as to why they sought jail time. The fact that Mr. Birkenfeld had disclosed Olenicoff to Senate investigators (and to the SEC and IRS) before Olenicoff was indicted may prove to be embarrassing to the DOJ, but unquestionably, Mr. Birkenfeld did not withhold information about Olenicoff. The fact that Mr. Birkenfeld provided information on Olenicoff in 2007 was confirmed by the Senate Report, that was on the public record over one year before the Birkenfeld sentencing hearing. These facts completely undercut DOJ's conjecture (made in open court without supporting materials) that Birkenfeld willfully concealed Olenicoff's identity in order to continue to conspire with Olenicoff. The statements made to the Court by the DOJ during Birkenfeld's sentencing are incorrect and misleading and were very prejudicial.

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<sup>5</sup> As stated elsewhere in the letter, Mr. Birkenfeld thought that the government agencies were working together. For example, as set forth in Attachment 24, Mr. Birkenfeld informed the DOJ that he was subpoenaed by the Senate Permanent Subcommittee on Investigations and that this subcommittee was "moving ahead with its investigation."

It is absolutely incumbent upon your office to fully, fairly and completely investigate these facts in order to determine whether the Court was provided inaccurate, incomplete or misleading information. Moreover, it is evident that the DOJ itself, when internally weighing prosecutorial and sentencing decisions concerning Mr. Birkenfeld, was acting under false information.

#### **D. The Attorney General Must Correct the Record and Prevent a Miscarriage of Justice**

It would be a grave miscarriage of justice for Mr. Birkenfeld to commence a 40-month sentence on facts for which the record does not support. As set forth during the sentencing hearing, the critical factor in the DOJ's determination to indict and seek a prison sentence for Mr. Birkenfeld was its belief that Mr. Birkenfeld intended to hide the identity of to Mr. Olenicoff in order to assist Mr. Olenicoff in continued tax evasion.

The record now demonstrates that this belief was not accurate.

The record also demonstrates that the DOJ misrepresented Mr. Birkenfeld's relationship to Mr. Olenicoff in open Court during the sentencing hearing.

The Court was led to believe that Mr. Birkenfeld willfully kept information from the U.S. government about Mr. Olenicoff in order to continue to profit from his relationship to this billionaire. However, the record demonstrates that these statements to the Court were not accurate. Not only was Mr. Birkenfeld fully prepared to blow the whistle on his former largest client, he in fact *did* blow the whistle on him, *before* the United States indicted Mr. Olenicoff. Thus, it is wrong to blame Mr. Birkenfeld on the government's decision not to seek jail time for Mr. Olenicoff. The government had the opportunity to have access to all of the material information needed to fully prosecute Mr. Olenicoff. Three departments of the government were provided this information by the whistleblower before Olenicoff was indicted, and four months before he was sentenced.

It would constitute a gross miscarriage of justice, and a violation of the ethical rules that govern the conduct of the Department of Justice, for the Department to permit Mr. Birkenfeld to be imprisoned based on inaccurate, incomplete and misleading information. Based on the representations made by the DOJ's representative in open court, the DOJ should not only seek to vacate the prison sentence it recommended in this matter, but should re-open its decision to indict Mr. Birkenfeld.

#### **E. Other Misleading Information was Provided to the Court**

The inaccurate statements concerning Mr. Birkenfeld's alleged withholding of information concerning Mr. Olenicoff were not the only false or misleading



statements made during the sentencing hearing, but they clearly were the most prejudicial.

However, we would be remiss if we did not address another serious misstatement made by the DOJ at that hearing. The DOJ alleged that Mr. Birkenfeld was not a true whistleblower. They stated that a “whistleblower letter” Birkenfeld filed with UBS “appears to me to be a set up at the end of the day to find a way to get compensation from UBS after he decided to take his scheme with Mr. Olenicoff elsewhere.” See Attachment 1, Tr. 32, lines 17-20.

These representations, which the attorney conceded were simply his theory (i.e. his statement that it “appears to me”), were not accurate. First, when Olenicoff left UBS bank, Mr. Birkenfeld did *not* become his banker. Second, as stated above, Mr. Birkenfeld did not hide his relationship with Olenicoff, and did not hide the fact that Olenicoff had participated in illegal offshore tax evasion. Thus, the theory that Mr. Birkenfeld’s conduct was somehow part of a scheme to continue profiting from the illegal offshore tax frauds he voluntarily brought to the government’s attention is simply implausible.

However, the DOJ completely failed to inform the Court of the actual background and nature of Mr. Birkenfeld’s whistleblowing. For example, the record demonstrates that Mr. Birkenfeld first blew the whistle internally to his managers within UBS *nine months* before the whistleblower letter identified by the DOJ during the sentencing hearing. In e-mails and inter-office correspondence dated June 17, 2005, June 24, 2005, July 19, 2005, and August 15, 2005, Mr. Birkenfeld attempted to inform UBS’s top attorney and compliance officer of the issues he had identified regarding “The U.S. Cross Border Banking Business.” He informed these persons that his concerns were “urgent” and that his concerns were a “very serious matter that has a variety of negative consequences” concerning UBS “compliance.” These e-mails and correspondence are attached at Attachments 11-16.

When UBS managers refused to address the allegations raised by Mr. Birkenfeld concerning the illegal practices of the Bank, Mr. Birkenfeld voluntarily quit his job. See Attachment 17. When he resigned from the bank, he wrote the following e-mail to his bosses:

**“I want to thank you for taking the time . . . to discuss my resignation from UBS. Per our discussion [the] major reason for my resignation (the 3 page internet document on “Cross-Boarder Banking Activities in the USA”) which I gave you. As stated, I sent this document (by interoffice and email) to UBS Legal department and UBS Compliance department on several occasions with NO response whatsoever. I feel this is an URGENT matter as it has many consequences for my colleagues, clients and the bank. . . .”**

See Attachment 18, e-mail dated October 10, 2005.

After he resigned from the Bank, the Managing Director of UBS threatened Birkenfeld with civil or criminal prosecution if he disclosed internal bank or client information. *See* Attachment 2.

Raising internal whistleblower concerns with UBS legal and compliance officials for five months was not done to financially benefit Mr. Birkenfeld. It was done to inform the Bank about major compliance violations. The Bank ignored his complaints. Quitting his job did not provide Mr. Birkenfeld with any material advantage. After quitting his job, Mr. Birkenfeld attempted to utilize the internal UBS whistleblower program to identify the abuses committed by the Bank and provided the Bank with an opportunity to voluntarily comply with the law. His whistleblower letter speaks for itself. *See* Attachment 19. The DOJ's speculation over this letter is absolutely not true and has no basis on the record. Indeed, the United States Government reviewed this letter extensively and determined that had UBS properly investigated Mr. Birkenfeld's concerns at the time he filed this letter, UBS would have "uncovered" the "violations of U.S. law" which were used as the factual predicate for the Deferred Prosecution Agreement. *See* Attachment 20, Exhibit C, and Statement of Facts to the Deferred Prosecution Agreement, ¶ 15.<sup>6</sup>

In other words, far from attempting to profit from his whistleblowing, Mr. Birkenfeld spent months trying to get the attention of his top managers regarding the Bank's violations. When that failed, he resigned from his job and filed a formal UBS whistleblower complaint internally with the company. Had the company properly investigated Mr. Birkenfeld's allegations, the Bank itself would have been in a position to identify and fix the violations of law that Mr. Birkenfeld would eventually raise with U.S. officials.

Mr. Birkenfeld did what any loyal employee should have done. He raised his concerns with these managers and tried to fix the problem within. That is what most whistleblowers do. At the sentencing hearing, the DOJ ignored these facts.

Indeed, it was only after UBS top officials ignored a formal whistleblower complaint and an internal investigation (filed under three separate UBS policies)<sup>7</sup> that Mr.

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<sup>6</sup> When UBS initially acknowledged Mr. Birkenfeld's whistleblower complaint letter, UBS agreed to conduct an "independent investigation." *See* Attachment 21. This letter clearly identifies his complaint as being filed under the official UBS Whistleblower Policies, and makes no reference to any form of compensation or other monetary reward for Mr. Birkenfeld. After the investigation was closed UBS did indicate a willingness to discuss a bonus that Mr. Birkenfeld was owed based on the work he had already performed for UBS, but this reference was made by UBS after it closed-out his whistleblower claims. *See* Attachment 22. At no time was there any indication that Mr. Birkenfeld filed his whistleblower claim with UBS in order to personally profit, and in fact under those rules there was no provision or mechanism for Mr. Birkenfeld to request or obtain any reward.

<sup>7</sup> The three UBS internal whistleblower policies were provided by hand service to the DOJ prosecutor in June of 2007. These policies do not provide for any financial reward. They only provide for assurance against retaliation for exposing wrongdoing.

Birkenfeld decided to raise his concerns with U.S. authorities. All of these initial whistleblower filings occurred *before* Congress amended the Tax Code to permit financial rewards to IRS whistleblowers.

The record also demonstrates that Mr. Birkenfeld retained U.S. lawyers, at his own expense, to assist him in blowing the whistle to U.S. authorities *before* the tax code was amended. The fact that the tax code was amended in December of 2006 to provide additional support for whistleblowers like Mr. Birkenfeld should not be used to undermine Mr. Birkenfeld's credibility or integrity. It is wrong for the DOJ to imply that whistleblowers may be acting in bad faith simply because they choose to utilize the laws passed by Congress, especially when those laws were intended to help and encourage whistleblowers.

#### **F. Public Policy Mandates an Immediate Attorney General Review**

Mr. Birkenfeld's case is unique in the history of tax law prosecutions. Before the Court the DOJ set forth the tremendous contributions made to the public interest by Mr. Birkenfeld. See Attachment 11, Letter from Public Interest Groups to Attorney General. The DOJ admitted his key role in exposing and eventually stopping massive tax violations by UBS (which at the time was the largest bank in the world). Mr. Birkenfeld's disclosures have directly or indirectly resulted in the recovery for the United States of well over one billion dollars and the identification (to date) of over 14,000 taxpayers who had improperly used offshore accounts to hide their assets and avoid taxes. The American people will enjoy the benefits of these disclosures for years to come.

On its face it is troubling to imprison the only person responsible for exposing these massive and systemic frauds. However, the fact that the decision to indict Mr. Birkenfeld, and seek a long prison sentence for Mr. Birkenfeld, was predicated on false, misleading, inaccurate and incomplete information is simply intolerable.

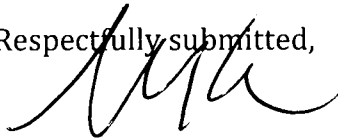
The Justice Department, at the highest levels, must take action to correct this miscarriage of justice. Our system of government relies upon the Truth. It relies upon the ability of witnesses of wrongdoing to freely and without fear of retaliation to step forward and help their government enforce the laws. Given Mr. Birkenfeld's contributions to the public interest, his imprisonment should not be based on inaccurate, incomplete, false or misleading information.

Mr. Birkenfeld did not, in bad faith, withhold information about Mr. Olenicoff. Mr. Birkenfeld voluntarily disclosed extensive information about his former client before Mr. Olenicoff entered a plea or was indicted. He disclosed the information long before Mr. Olenicoff was sentenced.

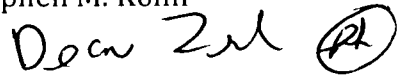
Thank you for your attention to this serious matter. We would appreciate an opportunity to meet directly with you and discuss this important matter.

As I am sure you can appreciate this is a very time-sensitive matter, as Mr. Birkenfeld will commence serving his prison sentence in approximately 30 days. Consequently, we look forward to your response to this letter within five days.

Respectfully submitted,



Stephen M. Kohn



Dean Zerbe

Attorneys for Mr. Birkenfeld

Enclosures (twenty-four attachments)

CC:

Senator Patrick Leahy  
Chairman, Senate Judiciary Committee

Senator John Kerry  
Chairman, Foreign Relations Committee

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

THE UNITED STATES OF AMERICA, )  
 )  
 ) PLAINTIFF, )  
 )  
 ) VS. )  
 )  
 ) BRADLEY BIRKENFELD, )  
 )  
 ) DEFENDANT. )  
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CASE NUMBER  
08-60099-CR-ZLOCH

THIS VOLUME:  
PAGES 1 - 40

TRANSCRIPT OF SENTENCING HAD BEFORE THE HONORABLE  
WILLIAM J. ZLOCH, IN FORT LAUDERDALE, BROWARD COUNTY,  
FLORIDA, ON FRIDAY, AUGUST 21, 2009, IN THE ABOVE-STYLED  
MATTER.

APPEARANCES:

FOR THE GOVERNMENT: KEVIN DOWNING, A.U.S.A.,  
JEFFREY A. NEIMAN, A.U.S.A., AND  
MICHAEL P. BEN'ARY, ESQ.

FOR THE DEFENDANT: DAVID MEIER, AND  
ROBERT STICKNEY, ESQS.

CARL SCHANZLEH  
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954 769-5488

1 (FORT LAUDERDALE, BROWARD COUNTY, FLORIDA; FRIDAY,  
2 AUGUST 21, 2009, IN OPEN COURT.)

3 THE COURT: GOOD MORNING. PLEASE BE SEATED.  
4 CALLING CASE NUMBER 08-60099-CRIMINAL.  
5 COUNSEL, WOULD YOU NOTE YOUR APPEARANCES.

6 MR. DOWNING: GOOD MORNING, YOUR HONOR. KEVIN  
7 DOWNING FOR THE UNITED STATES. I'M HERE TODAY WITH  
8 ASSISTANT UNITED STATES ATTORNEY JEFFREY NEIMAN.

9 MR. NEIMAN: GOOD MORNING, YOUR HONOR.

10 MR. DOWNING: AND MICHAEL BEN'ARY.

11 THE COURT: GOOD MORNING.

12 MR. STICKNEY: GOOD MORNING, YOUR HONOR. ROBERT  
13 STICKNEY ON BEHALF OF THE DEFENDANT, BRADLEY BIRKENFELD, WHO  
14 IS SEATED TO MY LEFT. WITH US IS LEAD COUNSEL FROM BOSTON,  
15 DAVID MEIER.

16 THE COURT: GOOD MORNING.

17 MR. MEIER: GOOD MORNING, YOUR HONOR. MY NAME IS  
18 DAVID MEIER. THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE  
19 YOU.

20 THE COURT: GOOD MORNING, COUNSEL.

21 LET THE RECORD REFLECT THAT BRADLEY BIRKENFELD IS  
22 PRESENT AND IN THE COURTROOM.

23 CAN I HAVE THE REPRESENTATIVE FROM THE PROBATION  
24 OFFICE NOTE HER APPEARANCE.

25 THE PROBATION OFFICER: GOOD MORNING, YOUR HONOR.

1 KATHRYN GOMEZ ON BEHALF OF PROBATION.

2 THE COURT: GOOD MORNING.

3 WHO WILL BE LEAD COUNSEL FOR MR. BIRKENFELD?

4 MR. STICKNEY: MR. MEIER WILL BE, YOUR HONOR.

5 THE COURT: MR. MEIER, HAVE YOU READ IN ITS  
6 ENTIRETY THE REVISED PRESENTENCE REPORT AND THE ADDENDUM TO  
7 IT?

8 MR. MEIER: I HAVE, YOUR HONOR.

9 THE COURT: AND HAVE YOU DISCUSSED THOSE PAPERS  
10 FULLY WITH YOUR CLIENT?

11 MR. MEIER: I HAVE, YOUR HONOR.

12 THE COURT: OTHER THAN WHAT HAS BEEN FILED IN  
13 WRITING BY LETTER DATED AUGUST 12, 2009, WHICH HAS A  
14 SUBSTANTIVE OBJECTION, ARE THERE ANY ADDITIONAL OBJECTIONS  
15 OR ANY MOTIONS FROM MR. BIRKENFELD TO ANYTHING CONTAINED IN  
16 THE REVISED PSR?

17 MR. MEIER: NO, YOUR HONOR.

18 THE COURT: AND THEN THERE IS A LETTER DATED  
19 AUGUST 18, 2009, WHICH BASICALLY IS MORE IN THE NATURE OF A  
20 CLARIFICATION?

21 MR. MEIER: YES, YOUR HONOR.

22 THE COURT: OKAY.

23 MR. MEIER: THANK YOU.

24 THE COURT: MR. BIRKENFELD, HAVE YOU READ IN ITS  
25 ENTIRETY THE REVISED PRESENTENCE REPORT AND THE ADDENDUM TO

1 IT?

2 THE DEFENDANT: YES, I HAVE, YOUR HONOR.

3 THE COURT: AND HAVE YOU DISCUSSED THOSE PAPERS  
4 FULLY WITH YOUR LAWYER?

5 THE DEFENDANT: YES, I HAVE, YOUR HONOR.

6 THE COURT: OTHER THAN WHAT YOUR LAWYERS HAVE  
7 FILED IN WRITING ON YOUR BEHALF, DO YOU HAVE ANY ADDITIONAL  
8 OBJECTIONS OR ANY MOTIONS TO ANYTHING CONTAINED IN THE  
9 REVISED PSR?

10 THE DEFENDANT: NO, YOUR HONOR.

11 THE COURT: ALL RIGHT. THANK YOU.

12 ARE THERE ANY FROM THE GOVERNMENT?

13 MR. DOWNING: NO, YOUR HONOR.

14 THE COURT: ALL RIGHT. IS THE OBJECTION STILL  
15 PENDING?

16 MR. MEIER: YES, YOUR HONOR.

17 THE COURT: BEFORE I HEAR FROM THE DEFENSE, WHAT  
18 IS THE GOVERNMENT'S POSITION ON THE OBJECTION?

19 MR. DOWNING: WE HAVE NO OPPOSITION TO THE  
20 OBJECTION, YOUR HONOR.

21 THE COURT: IN LIGHT OF THE RESPONSE BY THE  
22 PROBATION OFFICE DO YOU STILL MAINTAIN THE POSITION THAT YOU  
23 HAVE NO OBJECTION.

24 MR. DOWNING: THAT'S CORRECT, YOUR HONOR.

25 THE COURT: DOES THE GOVERNMENT HAVE PROOF THAT



1 THERE WERE OTHER INDIVIDUALS SOLICITED?

2 MR. DOWNING: WE DO AT THIS TIME, YOUR HONOR, BUT  
3 THAT IS PRIMARILY BASED UPON MR. BIRKENFELD'S COOPERATION  
4 WITH THE UNITED STATES GOVERNMENT. AT THE TIME THE PLEA  
5 AGREEMENT WAS ENTERED INTO WE DID NOT HAVE SUCH INFORMATION.

6 THE COURT: BUT IS IT YOUR POSITION THAT AT THE  
7 TIME THAT THE PLEA AGREEMENT WAS ENTERED INTO THAT -- LET ME  
8 TURN TO THE PROBATION OFFICER'S RESPONSE.

9 AND JUST SO THE RECORD IS CLEAR. OBVIOUSLY WHEN  
10 THE GOVERNMENT SAID THERE ARE NO OBJECTIONS OR ANY MOTIONS,  
11 THE GOVERNMENT HAS FILED A 5K1 MOTION.

12 MR. DOWNING: THAT'S CORRECT, YOUR HONOR.

13 THE COURT: IN THE PROBATION OFFICER'S RESPONSE IN  
14 THE ADDENDUM DATED AUGUST 13, 2009, THE PROBATION OFFICER  
15 SETS FORTH QUITE A BIT OF ACTIVITY ON BEHALF OF  
16 MR. BIRKENFELD IN ADDITION TO STAGGL. DO YOU AGREE WITH HER  
17 STATEMENTS?

18 MR. DOWNING: WE DO, YOUR HONOR.

19 THE COURT: BUT YOU DID NOT KNOW THAT AT THE TIME  
20 OF THE PLEA?

21 MR. DOWNING: WE DID NOT.

22 AT THE TIME THE PLEA AGREEMENT WAS ENTERED INTO WE  
23 DID NOT -- AND, YOUR HONOR, I WOULD ADD ALSO THAT IN LOOKING  
24 AT THAT ENHANCEMENT. AT THE TIME WE ENTERED INTO THE PLEA  
25 AGREEMENT WE VIEW THAT ENHANCEMENT AS DEALING WITH VERY

1 LARGE TAX PROTESTERS, TAX SHELTER PROMOTOR TAX TYPE CASES.  
 2 GIVEN THE NUMBER OF CLIENTS THAT WE HAVE SUBSEQUENTLY  
 3 LEARNED DURING A DEBRIEFING PROCESS WITH MR. BIRKENFELD WE  
 4 DIDN'T SEE THE NUMBERS THERE WERE THE TYPE OF SITUATIONS  
 5 WHERE THE UNITED STATES GOVERNMENT SEEKS THAT ENHANCEMENT.

6           ADDITIONALLY, GIVEN THE FACT THAT MR. BIRKENFELD  
 7 IS PLEADING TO ONE COUNT, CONSPIRACY, WHICH CAPS HIM AT 60  
 8 MONTHS, WITHOUT THAT ENHANCEMENT HE IS IN THE 57 TO 71  
 9 MONTH RANGE WE REALLY DIDN'T THINK THAT THAT ENHANCEMENT IN  
 10 THIS ISSUE IT SEEMED MORE ACADEMIC ONCE IT GOT RAISED THAN  
 11 SOMETHING OF SUBSTANCE FOR THE SENTENCING PURPOSES, YOUR  
 12 HONOR.

13           THE COURT: BUT YOU WOULD AGREE THAT THERE IS  
 14 NOTHING IN THE PLEA AGREEMENT THAT IS BINDING ON THE COURT  
 15 OR ON THE PROBATION OFFICE.

16           MR. DOWNING: I DO, YOUR HONOR.

17           THE COURT: MR. MEIER, LET ME HEAR FROM YOU ABOUT  
 18 YOUR OBJECTION. THIS WOULD BE TO BASICALLY PARAGRAPH NUMBER  
 19 46 OF THE REVISED PSR WHERE MR. BIRKENFELD RECEIVED A TWO  
 20 LEVEL INCREASE PURSUANT TO THE GUIDELINE SECTION THAT IS  
 21 REFERENCED. WHAT DO YOU SAY WITH RESPECT TO THE PROBATION  
 22 OFFICER'S ADDENDUM?

23           MR. MEIER: RESPECTFULLY, JUDGE, MY UNDERSTANDING  
 24 OF THE INDICTMENT, THE PLEA COLLOQUY BEFORE THIS COURT, AND  
 25 THE AGREED STATEMENT OF FACTS AT THAT TIME IS THAT

1 MR. BIRKENFELD'S ACTIONS WERE LIMITED TO CERTAIN  
2 INDIVIDUALS, PRIMARILY THE CO-CONSPIRATOR, MR. STAGGL.

3 I UNDERSTAND THE PROBATION OFFICER'S RESPONSE, AND  
4 I UNDERSTAND HER READING AND HER VIEW OF THE PARTICULAR  
5 ENHANCEMENT. I SUGGEST TO THE COURT, AS I DID TO  
6 MISS GOMEZ, THAT THAT MOST RESPECTFULLY IS A RATHER  
7 EXPANSIVE READING OF THAT PROVISION OR THAT ENHANCEMENT ON  
8 THESE FACTS.

9 HAVING SPOKEN TO MR. DOWNING AND MR. NEIMAN, I,  
10 TOO, SUGGEST TO THE COURT RESPECTFULLY THAT THAT  
11 ENHANCEMENT IS MORE -- IS MORE APPROPRIATELY APPLIED TO AN  
12 INDIVIDUAL WHO IS INVOLVED IN SOME SORT OF TAX PROTEST, OR  
13 MORE TRADITIONALLY TRYING TO ENCOURAGE OTHERS TO TRY AND  
14 VIOLATE THE TAX LAWS.

15 I COULD NOT FIND ANY CASES IN THIS DISTRICT OR IN  
16 THIS CIRCUIT ON THAT PARTICULAR ENHANCEMENT. THOSE THAT I  
17 DID FIND FROM OTHER FEDERAL CIRCUITS WERE IN LARGE PART  
18 RESTRICTED TO INDIVIDUALS WHO DURING THEIR PLEA COLLOQUY,  
19 OR BASED UPON A STATEMENT OF FACTS INDICATED THAT THEY DID  
20 SORT OF AFFIRMATIVELY GO OUT AND ENCOURAGE OTHERS TO  
21 VIOLATE THE TAX LAWS.

22 THE COURT: WITH RESPECT TO THAT, THE LAST PART OF  
23 YOUR STATEMENT, DO YOU AGREE THAT YOUR CLIENT ENCOURAGED  
24 OTHERS IN ADDITION TO STAGGL, TO VIOLATE THE TAX LAWS? DO  
25 YOU AGREE THAT YOUR CLIENT DID THAT?

1 MR. MEIER: I DO, YOUR HONOR.

2 THE COURT: IS WHAT THE PROBATION OFFICER RECITES  
3 IN HER ADDENDUM ACCURATE?

4 MR. MEIER: I BELIEVE IT IS, YOUR HONOR, BECAUSE  
5 IT COMES, AS I UNDERSTAND IT, DIRECTLY FROM FACTS THAT  
6 ALREADY KNOWN TO THE PROBATION OFFICE.

7 THE COURT: BUT, IN ANY EVENT, WHETHER THE COURT  
8 WERE TO AGREE WITH YOU OR TO REJECT YOUR POSITION IT REALLY  
9 HAS VERY LITTLE IMPACT ON THE SENTENCE TO BE IMPOSED WITH  
10 RESPECT TO THE ADVISORY GUIDELINE COMPUTATION, YOU WOULD  
11 AGREE WITH THAT?

12 MR. MEIER: YES, YOUR HONOR.

13 THE COURT: OKAY. WAS IT PART OF THE PLEA  
14 AGREEMENT THAT THIS TYPE OF ENHANCEMENT WOULD NOT BE  
15 CONSIDERED?

16 MR. DOWNING: AT THE TIME OF THE PLEA AGREEMENT,  
17 YOUR HONOR, I DON'T THINK THIS ENHANCEMENT WAS CONTEMPLATED  
18 BY EITHER PARTY.

19 THE COURT: IF IT WERE NOT CONTEMPLATED THEN  
20 OBVIOUSLY IT WAS NOT DISCUSSED?

21 MR. DOWNING: CORRECT.

22 THE COURT: IS THAT CORRECT, MR. MEIER?

23 MR. MEIER: I TAKE MR. DOWNING AT HIS WORD. I WAS  
24 NOT INVOLVED IN THIS MATTER AT THAT STAGE OF THE CASE, YOUR  
25 HONOR.

1 THE COURT: WHO HANDLED THAT, MR. STICKNEY?

2 MR. MEIER: NO, YOUR HONOR, PRIOR COUNSEL OUT OF  
3 WASHINGTON, D.C., MR. ONORATO.

4 THE COURT: ALL RIGHT. THANK YOU.

5 WELL, THE ADVISORY GUIDELINE RANGE AT THIS POINT  
6 IS 70 TO 87 MONTHS. HOWEVER, THE MAXIMUM PENALTY THAT CAN  
7 BE IMPOSED IS 60 MONTHS BECAUSE THAT IS THE STATUTORY  
8 MAXIMUM, AND WHEN THE STATUTORY MAXIMUM IS LESS THAN THE  
9 GUIDELINE RANGE THEN THE COURT MUST ADHERE TO THE STATUTORY  
10 MAXIMUM. THE COURT IS NEVER ALLOWED TO GO HIGHER THAN THE  
11 STATUTORY MAXIMUM UNDER NO CIRCUMSTANCES. SO THE GUIDELINE  
12 RANGE COULD BE 200 MONTHS TO 250 MONTHS, AND SINCE THE  
13 STATUTORY MAXIMUM IS 60 MONTHS THE COURT CANNOT GO HIGHER  
14 THAN 60 MONTHS.

15 MADAM PROBATION OFFICER, IF I GRANT THE  
16 DEFENDANT'S OBJECTION WHAT DOES THAT DO TO THE ADVISORY  
17 GUIDELINE RANGE WHICH NOW IS 70 TO 87 MONTHS?

18 THE PROBATION OFFICER: IT WOULD BECOME A TOTAL  
19 OFFENSE LEVEL OF 25, AND THE GUIDELINE IMPRISONMENT RANGE  
20 WOULD CHANGE TO 57 TO 60 MONTHS. THE GUIDELINE FINE RANGE  
21 WOULD CHANGE TO 10,000 TO 100,000, AND EVERYTHING ELSE WOULD  
22 REMAIN THE SAME.

23 THE COURT: ALL RIGHT. THANK YOU.

24 I WILL HONOR THE PLEA AGREEMENT THAT WAS ENTERED  
25 INTO BETWEEN THE GOVERNMENT AND THE DEFENSE. I WILL GRANT

1 THE DEFENDANT'S OBJECTION. THEREFORE, THE ADVISORY  
2 GUIDELINE RANGE THAT IS APPLICABLE AT THIS POINT IS 57 TO  
3 60 MONTHS.

4 DOES THE DEFENSE AGREE WITH THAT?

5 MR. MEIER: YES, YOUR HONOR.

6 THE COURT: DOES THE GOVERNMENT?

7 MR. DOWNING: YES, YOUR HONOR.

8 THE COURT: ALL RIGHT. LET ME HEAR FROM THE  
9 GOVERNMENT ON THE 5K1 MOTION AND THEN I WILL HEAR FROM THE  
10 DEFENSE, JUST ON THE MOTION, IF YOU HAVE ANYTHING ADDITIONAL  
11 TO ADD AFTER YOU HEAR FROM THE GOVERNMENT.

12 MR. MEIER: YES, YOUR HONOR.

13 MR. DOWNING: YOUR HONOR, AFTER --

14 THE COURT: JUST USE THAT PODIUM FOR THE COURT  
15 REPORTER.

16 MR. DOWNING: THANK YOU, YOUR HONOR.

17 AFTER MR. BIRKENFELD WAS ARRESTED AND AN UNDER  
18 SEAL INDICTMENT WAS UNSEALED, MR. BIRKENFELD IMMEDIATELY  
19 BEGAN TO COOPERATE WITH THE UNITED STATES GOVERNMENT AND  
20 PROVIDE DETAILED INFORMATION ABOUT HIS PERSONAL INVOLVEMENT  
21 WITH WHAT IS NOW KNOWN AS A MASSIVE TAX FRAUD SCHEME THAT  
22 WAS COMMITTED BY UBS'S EXECUTIVES, BANKERS, AND OTHERS  
23 AGAINST THE UNITED STATES GOVERNMENT.

24 PRIOR TO HIS ARREST, AND IN PARTICULAR IN THE  
25 SUMMER OF JUNE OF 2007, MR. BIRKENFELD CAME TO THE

1 DEPARTMENT OF JUSTICE AND STARTED TO LAY OUT THE PARAMETERS  
2 OF THIS FRAUD SCHEME, GAVE SOME INFORMATION ABOUT THE  
3 INDIVIDUALS AT UBS THAT WERE INVOLVED, INCLUDING MANAGERS  
4 AND EXECUTIVES, AND TALKED IN RATHER DETAILED FASHION ABOUT  
5 THE PARAMETERS OF THE SCHEME AND HOW IT WAS CONDUCTED.

6 MR. BIRKENFELD AT THAT TIME ALSO PROVIDED  
7 DOCUMENTS TO THE UNITED STATES GOVERNMENT. SO IN JUNE --  
8 AS OF JUNE OF 2007, THE UNITED STATES GOVERNMENT WAS IN A  
9 POSITION TO APPROACH UBS, TO REQUEST THAT THEY BEGIN TO  
10 PROVIDE INFORMATION TO THE UNITED STATES GOVERNMENT ABOUT  
11 THIS FRAUD SCHEME, AND THAT IN FACT DID OCCUR.

12 UNFORTUNATELY WHEN MR. BIRKENFELD CAME IN, IN THE  
13 SUMMER OF 2007, HE DID NOT DISCLOSE TO THE UNITED STATES  
14 GOVERNMENT HIS OWN PERSONAL INVOLVEMENT WITH THAT FRAUD  
15 SCHEME, NOR DID HE IN PARTICULAR GIVE ANY DETAILS WITH  
16 RESPECT TO WHAT IS NOW PUBLICLY KNOWN ONE OF HIS CLIENTS  
17 MR. OLENICOFF, WHO IS ONE OF THE LARGEST CLIENTS IN THIS  
18 BUSINESS AT UBS THAT WAS INVOLVED WITH THIS TAX FRAUD  
19 SCHEME.

20 THE COURT: JUST FOR A REFERENCE POINT, THAT IS  
21 SET FORTH IN THE PRESENTENCE REPORT WHICH IS NOT AVAILABLE,  
22 BUT WHAT DID MR. OLENICOFF END UP PAYING BY WAY OF BACK  
23 TAXES, INTEREST AND PENALTIES?

24 MR. DOWNING: I THINK IN TOTAL IT WAS  
25 APPROXIMATELY 53 MILLION DOLLARS, YOUR HONOR.

1 THE COURT: FIFTY-THREE MILLION DOLLARS AND  
2 CHANGE.

3 MR. DOWNING: YES. AND THERE WAS A SUBSTANTIAL  
4 PENALTY INVOLVED WITH THAT.

5 I WILL SAY THAT WITHOUT MR. BIRKENFELD WALKING  
6 INTO THE DOOR OF THE DEPARTMENT OF JUSTICE IN THE SUMMER OF  
7 2007, I DOUBT AS OF TODAY THAT THIS MASSIVE FRAUD SCHEME  
8 WOULD HAVE BEEN DISCOVERED BY THE UNITED STATES GOVERNMENT.

9 MOREOVER, BY ALLOWING US TO BEGIN OUR  
10 INVESTIGATION BACK IN JUNE OF 2007, THAT INVESTIGATION NOW  
11 HAS RESULTED IN NOT ONLY CHANGING THE WAY IN WHICH WE OBTAIN  
12 FOREIGN EVIDENCE FROM BANKS IN SWITZERLAND, IT HAS CAUSED  
13 THE SWISS GOVERNMENT TO COME AND ENTER INTO NEW TAX TREATIES  
14 WITH THE UNITED STATES GOVERNMENT THROUGH WHICH THE UNITED  
15 STATES GOVERNMENT WILL NOW OBTAIN INFORMATION IN CIVIL TAX  
16 CASES WHICH NEVER HAPPENED BEFORE AND MORE READILY OBTAIN  
17 THEM IN CRIMINAL CASES.

18 THE COURT: LET ME JUST -- I'M SORRY, FINISH YOUR  
19 THOUGHT.

20 MR. DOWNING: I JUST WANTED TO FINISH. IT HAS NOW  
21 LED THE INVESTIGATION INTO OTHER SWISS FINANCIAL  
22 INSTITUTIONS AND FINANCIAL INSTITUTIONS IN OTHER TAX HAVENS.

23 AND, IF I MIGHT, YOUR HONOR, BUT FOR  
24 MR. BIRKENFELD FAILING TO DISCLOSE HIS INVOLVEMENT WITH THE  
25 FRAUD AND THE U.S. CLIENTS THAT HE AIDED AND ASSISTED IN TAX



1 EVASION, I BELIEVE WE WOULD HAVE NONPROSECUTED  
2 MR. BIRKENFELD. BUT GIVEN THE FACT THAT HE REFUSED TO  
3 PROVIDE THAT INFORMATION AND LED US DOWN A COURSE WHERE WE  
4 HAD TO START INVESTIGATE MR. BIRKENFELD AND HIS ACTIVITIES,  
5 THAT IS WHY WE ARE HERE TODAY, THAT IS WHY HE WAS INDICTED,  
6 AND THAT'S WHY HE PLED.

7 THE COURT: HAVE THE IDENTITIES OF OTHER U.S.  
8 CITIZENS BEEN DISCLOSED IN LIGHT OF MR. BIRKENFELD'S  
9 ASSISTANCE?

10 MR. DOWNING: THEY HAVE.

11 THE COURT: AND THOSE INVESTIGATIONS ARE ONGOING?

12 MR. DOWNING: CORRECT. AND IN OUR LETTER WE  
13 INDICATED CURRENTLY THERE IS APPROXIMATELY 150 UNITED STATES  
14 TAXPAYERS UNDER INVESTIGATION AS A RESULT OF THE INITIAL  
15 DISCLOSURES MADE BY MR. BIRKENFELD ABOUT THIS MASSIVE TAX  
16 FRAUD SCHEME PERPETRATED BY UBS AND OTHERS.

17 THE COURT: NOW, YOU SAID SOMETHING THAT HAS GREAT  
18 SIGNIFICANCE AND I JUST WANT TO MAKE SURE THAT I AM CLEAR ON  
19 YOUR STATEMENT, AND THAT IS THAT BUT FOR MR. BIRKENFELD THIS  
20 SCHEME WOULD STILL BE ONGOING?

21 MR. DOWNING: I HAVE NO REASON TO BELIEVE THAT WE  
22 WOULD HAVE HAD ANY OTHER MEANS TO HAVE DISCLOSED WHAT WAS  
23 GOING ON BUT FOR AN INSIDER IN THAT SCHEME PROVIDING  
24 DETAILED INFORMATION, WHICH MR. BIRKENFELD DID.

25 THE COURT: HOW IS IT THAT MR. BIRKENFELD CAME TO

1 THE GOVERNMENT?

2 MR. DOWNING: WELL, I THINK MR. BIRKENFELD MIGHT  
3 BE IN A BETTER POSITION TO EXPLAIN THAT. I DON'T KNOW --

4 THE COURT: ALL RIGHT. I WILL HEAR FROM HIS  
5 LAWYER ON THAT.

6 MR. DOWNING: -- SPECIFICALLY ON THAT. I DO KNOW  
7 WE WERE CONTACTED BY LAWYERS. I DO KNOW WHEN MR. BIRKENFELD  
8 CAME IN THE DOOR HE -- HE SEEMED TO BE MOTIVATED AND --  
9 WHICH IS A GOOD THING BY THE NEW WHISTLE BLOWER STATUTE THAT  
10 APPLIES TO TAX CASES.

11 THE COURT: YOU MENTIONED THAT SWITZERLAND HAS NOW  
12 ENTERED INTO A NEW TREATY --

13 MR. DOWNING: CORRECT, YOUR HONOR.

14 THE COURT: -- WITH RESPECT TO BANKING  
15 DISCLOSURES?

16 MR. DOWNING: THE SWISS GOVERNMENT HAS ENTERED  
17 INTO A NEW TAX INFORMATION EXCHANGE AGREEMENT WITH THE  
18 UNITED STATES GOVERNMENT. IT HAS NOT BEEN FINALIZED BUT IT  
19 IS ANTICIPATED THAT IT WILL.

20 IT HAS NOT ONLY BROUGHT IN THE SITUATIONS IN  
21 CRIMINAL CASES WHERE THE U.S. GOVERNMENT WILL GET TAX  
22 INFORMATION, BUT NOW IT ALSO INCLUDES GETTING INFORMATION  
23 FROM THE SWISS GOVERNMENT IN CIVIL TAX CASES WHICH IS  
24 UNPRECEDENTED.

25 THE COURT: IS THAT THE CASE BEFORE JUDGE GOLD?

1 MR. DOWNING: THE CASE BEFORE JUDGE GOLD THAT  
2 RECENTLY -- THERE HAS BEEN A SETTLEMENT ON DERIVED OUT OF A  
3 SUMMONS ENFORCEMENT ACTION THAT WAS BROUGHT FOR THE UNITED  
4 STATES GOVERNMENT SEEKING TO HAVE A COURT IN THIS -- IN THE  
5 UNITED STATES DECIDE WHETHER OR NOT BASED ON THE CONDUCT OF  
6 UBS THEY SHOULD BE ORDERED TO TURN OVER ADDITIONAL ACCOUNT  
7 INFORMATION.

8 THE COURT: BUT THAT CASE HAD NOTHING TO DO WITH  
9 THE TREATY.

10 MR. DOWNING: IT DID NOT.

11 THE COURT: ALL RIGHT.

12 MR. DOWNING: AND WHEN I SAY, "IT DID NOT," I  
13 BELIEVE THE SWISS GOVERNMENT INTERPOSED AN OBJECTION THAT  
14 THE UNITED STATES GOVERNMENT SHOULD BE LIMITED TO UTILIZING  
15 THE TREATY PROCESS TO GET INFORMATION FROM SWITZERLAND, A  
16 POSITION WHICH THE UNITED STATES GOVERNMENT CLEARLY  
17 DISAGREED WITH.

18 THE COURT: AGAIN, YOU KNOW THE FACTS MUCH BETTER  
19 THAN THE COURT BECAUSE YOU HAVE BEEN INVESTIGATING THE  
20 MATTER, BUT AGAIN BUT FOR MR. BIRKENFELD THIS SCHEME WOULD  
21 NOT HAVE BEEN DISCOVERED BY THE UNITED STATES GOVERNMENT.

22 MR. DOWNING: I BELIEVE THAT YOUR HONOR, YES.

23 THE COURT: ALL RIGHT. ANYTHING ELSE THAT YOU  
24 WOULD LIKE TO BRING TO THE COURT'S ATTENTION --

25 MR. DOWNING: I BELIEVE THAT'S IT, YOUR HONOR.

1 THE COURT: -- ON THE MOTION?

2 MR. DOWNING: THANK YOU.

3 THE COURT: MR. MEIER, WHAT DO YOU SAY THE 5K1  
4 MOTION?

5 MR. MEIER: YOUR HONOR, ON BEHALF OF  
6 MR. BIRKENFELD, I APPRECIATE MR. DOWNING'S CANDOR AND  
7 FORTHRIGHTNESS WITH THE COURT WITH RESPECT TO THE GENERAL  
8 ROLE --

9 THE COURT: JUST USE THAT MICROPHONE.

10 MR. MEIER: -- OR THE CHARACTERIZATION OF  
11 MR. BIRKENFELD THROUGH ALL THE RESPONSES TO THE COURT'S  
12 QUESTIONS.

13 AS I HAVE SET FORTH ON BEHALF OF MR. BIRKENFELD IN  
14 HIS SENTENCING MEMORANDUM AND THE ATTACHED EXHIBITS, AND AS  
15 THE GOVERNMENT IN ITS 5K1 MOTION DETAILS, I RESPECTFULLY  
16 SUGGEST THAT BASED ON THESE FACTS AND CIRCUMSTANCES THE  
17 COURT OUGHT GRANT THE MOTION AND DEPART DOWNWARD.

18 I HAVE REVIEWED THE RELEVANT CRITERIA, OR THE  
19 STATUTORY CRITERIA UNDER THE GUIDELINES, I HAVE REVIEWED  
20 THE GOVERNMENT'S MOTION IN DETAIL, I HAVE REVIEWED IT WITH  
21 MR. BIRKENFELD, AND ON HIS BEHALF SEVERAL DAYS AGO I FILED  
22 A SENTENCING -- A SENTENCING MEMORANDA WHICH IN SOMEWHAT  
23 GREATER DETAIL FROM HIS PERSPECTIVE SETS FORTH THE  
24 CHRONOLOGY -- THE CHRONOLOGY OF EVENTS BY WAY WHICH HE  
25 PHYSICALLY LEFT GENEVA, SWITZERLAND, TRAVELED TO THE UNITED

1 STATES, AND MOST RESPECTFULLY BEFORE BEING CHARGED HIMSELF  
2 SAT DOWN WITH THE GOVERNMENT PROSECUTORS IN THE DEPARTMENT  
3 OF JUSTICE FOR THREE FULL DAYS IN THE -- IN JUNE OF 2007.

4 THE COURT: BUT IF YOU WOULD GO AHEAD AND  
5 ARTICULATE WHAT CAUSED HIM TO APPROACH THE GOVERNMENT.

6 MR. MEIER: AGAIN, JUDGE, AS MR. DOWNING SUGGESTS,  
7 I AM NOT TRYING TO AVOID THE ANSWER, I THINK MR. BIRKENFELD  
8 HIMSELF IS IN THE BEST POSITION TO ADDRESS THIS, AND I DO  
9 KNOW THAT HE WISHES WITH THE COURT'S PERMISSION.

10 THE COURT: THAT'S FINE.

11 MR. MEIER: RESPECTFULLY, I WAS NOT INVOLVED IN  
12 THOSE NEGOTIATIONS AS MR. DOWNING CHARACTERIZES THEM WITH  
13 THE GOVERNMENT, AND I DO NOT WANT THIS HEARING, AT LEAST ON  
14 MR. BIRKENFELD'S BEHALF, TO BECOME A BACK AND FORTH ABOUT  
15 WHAT COULD HAVE HAPPENED HAD THINGS TAKEN A DIFFERENT  
16 COURSE. THEY DIDN'T. MR. BIRKENFELD WAS CHARGED, HE  
17 ACCEPTED RESPONSIBILITY.

18 AS I UNDERSTAND THE FACTS -- AGAIN, JUDGE, THIS IS  
19 LONG BEFORE I GOT IN THE CASE. AS I UNDERSTAND IT,  
20 MR. BIRKENFELD WAS INDICTED IN THE SPRING OF 2008. HE FLEW  
21 BACK FROM GENEVA, LANDED IN BOSTON, HE WAS ARRESTED, AND  
22 BEFORE COMING TO THIS COURT TO BE ARRAIGNED MY UNDERSTANDING  
23 IS THAT HE FLEW TO WASHINGTON, D.C., AND SPENT SEVERAL MORE  
24 DAYS COOPERATING AND PROVIDING ADDITIONAL INFORMATION TO THE  
25 GOVERNMENT BEFORE HIS ARRAIGNMENT IN THIS COURT.

1 THE POINT BEING, JUDGE, THAT I DO THINK, AS I  
2 POINT OUT IN MY SENTENCING MEMORANDUM AND AS ONE OF THE  
3 GOVERNMENT PROSECUTORS HIMSELF INDICATED THAT JUDGE SELTZER  
4 AT MR. BIRKENFELD'S ARRAIGNMENT, THIS IS A LITTLE BIT OF AN  
5 UNUSUAL OR EXTRAORDINARY CASE, MOST RESPECTFULLY, IN THAT AS  
6 MR. DOWNING POINTS OUT THE GENTLEMAN SEATED TO MY LEFT,  
7 MR. BIRKENFELD, WAS IN FACT PROVIDING INFORMATION, SPEAKING  
8 VOLUNTARILY, AFFIRMATIVELY ABOUT THE BIGGEST BANK IN THE  
9 WORLD WITHOUT AN INVESTIGATION -- WITHOUT AN INVESTIGATION  
10 HAVING EVEN BEEN OPEN --

11 THE COURT: RIGHT.

12 MR. MEIER: -- BY THE GENTLEMAN TO MY RIGHT.

13 FOR THOSE GENERAL GROUNDS, WHICH I'M PREPARED TO  
14 SPEAK TO MORE DIRECTLY ON THE ISSUE OF THE EXTENT OF THE  
15 DOWNWARD DEPARTURE, I WOULD JOIN IN THE GOVERNMENT'S MOTION  
16 AND ASK THE COURT TO GRANT THE 5K1 MOTION.

17 THE COURT: ALL RIGHT. THANK YOU, SIR.

18 THE COURT WILL GRANT THE GOVERNMENT'S 5K1 MOTION  
19 FOR A DOWNWARD DEPARTURE BASED ON SUBSTANTIAL ASSISTANCE  
20 PROVIDED BY THE DEFENDANT. THE COURT FINDS THAT  
21 MR. BIRKENFELD HAS RENDERED SUBSTANTIAL ASSISTANCE TO THE  
22 UNITED STATES GOVERNMENT, THE GOVERNMENT CONCEDES THAT  
23 POINT. ACCORDINGLY, THE COURT WILL CONSIDER A DEPARTURE  
24 BELOW THE ADVISORY GUIDELINE RANGE.

25 HAVING GRANTED THE GOVERNMENT'S MOTION THE COURT

1 RESERVES THE RIGHT TO IMPOSE ANY SENTENCE AUTHORIZED BY  
2 LAW.

3 MR. BIRKENFELD, IF YOU WILL STEP UP TO THE  
4 PODIUM, PLEASE.

5 THE DEFENDANT: GOOD MORNING, YOUR HONOR.

6 THE COURT: BRADLEY BIRKENFELD, YOU NOW BEING  
7 AGAIN BEFORE THIS COURT ACCOMPANIED BY YOUR LAWYER, AND YOU  
8 PREVIOUSLY HAVING PLED GUILTY TO THE OFFENSE CHARGED IN THE  
9 ONE COUNT INDICTMENT OF THE UNITED STATES OF AMERICA VERSUS  
10 BRADLEY BIRKENFELD, CASE NUMBER 08-60099-CR-ZLOCH OF THE  
11 UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF  
12 FLORIDA, AND THE COURT HAVING PREVIOUSLY ADJUDGED YOU GUILTY  
13 OF THE OFFENSE CHARGED IN THAT ONE COUNT INDICTMENT, DO YOU  
14 OR DOES ANYONE ON YOUR BEHALF NOW HAVE ANY LEGAL REASON TO  
15 SHOW WHY THE SENTENCE OF THE LAW SHOULD NOT BE PRONOUNCED  
16 UPON YOU?

17 THE DEFENDANT: NO, YOUR HONOR.

18 THE COURT: NO LEGAL REASON HAVING BEEN SHOWN AS  
19 TO WHY SENTENCE SHOULD NOT NOW BE IMPOSED, THE COURT WILL  
20 RECEIVE WHATEVER INFORMATION OR EVIDENCE MAY BE OFFERED IN  
21 EXTENUATION OR IN MITIGATION OF PUNISHMENT OR WHICH IS  
22 OTHERWISE RELEVANT TO THE SENTENCE TO BE IMPOSED.

23 MR. MEIER?

24 MR. MEIER: YES, YOUR HONOR.

25 THE COURT: MR. STICKNEY, WHOEVER WOULD LIKE TO GO

1 FIRST.

2 MR. STICKNEY: YOUR HONOR, FOR PURPOSES OF THIS  
3 HEARING, I APPEARED ABOUT A YEAR AGO AS LOCAL COUNSEL, AND  
4 MR. MEIER IS HANDLING MOST OF IT BUT WE HAVE WORKED VERY  
5 CLOSELY IN CONCERT TOGETHER THROUGH THIS ENTIRE PROCEEDING.

6 THE COURT: THAT'S ALL RIGHT.

7 MR. STICKNEY: THANK YOU, YOUR HONOR.

8 MR. MEIER: THANK YOU, YOUR HONOR.

9 THANK YOU FOR THE OPPORTUNITY AGAIN TO ADDRESS  
10 THE COURT AS TO THE EXTENT OF A POTENTIAL DOWNWARD  
11 DEPARTURE ON BEHALF OF MR. BIRKENFELD.

12 AS I UNDERSTAND IT, YOUR HONOR, THE GOVERNMENT  
13 HAS ASKED THE COURT TO DEPART DOWNWARD SOME 50 PERCENT TO A  
14 LEVEL WHICH WOULD REQUIRE MR. BIRKENFELD TO BE IN PRISON  
15 FOR SOME 30 MONTHS.

16 IN THE MEMORANDUM THAT I HAVE SUBMITTED TO THE  
17 COURT TOGETHER WITH THE ATTACHED EXHIBITS, RESPECTFULLY I  
18 AM ASKING THE COURT IN RECOGNITION OF THESE UNIQUE AND  
19 EXTRAORDINARY CIRCUMSTANCES TO DEPART DOWNWARD SOME 80  
20 PERCENT SO THAT MR. BIRKENFELD'S ADVISORY GUIDELINE RANGE  
21 FALLS WITHIN ZONE B OF THE SENTENCING GUIDELINES, AND TO  
22 THEREAFTER BASED ON THESE FACTS AND THESE CIRCUMSTANCES IN  
23 THE COURT'S DISCRETION TO FASHION WHAT I SUGGEST MOST  
24 RESPECTFULLY IS A FAIR AND A REASONABLE SENTENCE WHICH  
25 WOULD REQUIRE MR. BIRKENFELD TO BE ON PROBATION FOR A



1 PERIOD OF FIVE YEARS AND TO SERVE AN APPROPRIATE PERIOD AS  
2 A CONDITION OF THAT IN HOME DETENTION, PERHAPS SIX MONTHS  
3 OR NINE MONTHS.

4 I SUGGEST TO THE COURT MOST RESPECTFULLY, AS I  
5 NOTED PREVIOUSLY, THAT AT MR. BIRKENFELD'S ARRAIGNMENT  
6 BEFORE JUDGE SELTZER FOR HIS FIRST APPEARANCE, ONE OF THE  
7 GOVERNMENT PROSECUTORS NOTED, AND IT IS CITED IN  
8 MR. BIRKENFELD'S MEMORANDUM AND AS AN EXHIBIT, THAT  
9 THESE -- THAT THIS IS A RATHER UNIQUE OR UNUSUAL CASE, IN  
10 THAT, AS THE PROSECUTOR ADVISED JUDGE SELTZER,  
11 MR. BIRKENFELD HAS BEEN SPEAKING TO THE GOVERNMENT FOR WELL  
12 OVER A YEAR NOW.

13 I UNDERSTAND, JUDGE, THAT THAT WAS IN THE CONTEXT  
14 OF A BAIL PROCEEDING. BUT AS TIME HAS GONE BY I SUGGEST TO  
15 THE COURT IN THIS CONTEXT, AS MR. DOWNING DID ON BEHALF OF  
16 THE GOVERNMENT, THAT THIS IS INDEED AN EXTRAORDINARY CASE.

17 TWO DAYS AGO I BELIEVE THE COMMISSIONER OF THE  
18 INTERNAL REVENUE SERVICE ANNOUNCED THAT THERE HAD BEEN AN  
19 HISTORIC AGREEMENT REACHED TO WHICH YOUR HONOR JUST  
20 REFERRED WITH THE SWISS GOVERNMENT BY WHICH THE IRS WOULD  
21 BE ABLE TO GAIN ACCESS TO THOUSANDS OF UBS ACCOUNTS OF  
22 AMERICAN TAXPAYERS. IN THAT ANNOUNCEMENT THE COMMISSIONER  
23 OF THE IRS STATED WORDS TO THE EFFECT THAT THE WORLD OF  
24 INTERNATIONAL TAXES HAS CHANGED DRASTICALLY.

25 I SUBMIT MOST RESPECTFULLY TO THE COURT THAT THE

1 INDIVIDUAL WHO IN ESSENCE SOUNDED THE ALARM, WHO IN ESSENCE  
2 PROVIDED THE ROAD MAP TO THE IRS, TO THE DEPARTMENT OF  
3 JUSTICE, TO THE SECURITIES AND EXCHANGE COMMISSION, TO  
4 SENATOR LEVIN'S SUBCOMMITTEE TO ENABLE THE UNITED STATES  
5 GOVERNMENT TO DRASTIC CHANGE THE WORLD OF INTERNATIONAL  
6 TAXES STANDS BEFORE THIS COURT TO BE SENTENCED TODAY.

7 I SUGGEST TO THE COURT THAT AS I HAVE SET FORTH  
8 ON BEHALF OF MR. BIRKENFELD IN HIS SENTENCING MEMORANDUM  
9 TOGETHER WITH THE VARIOUS ATTACHMENTS, INCLUDING LETTERS  
10 WHICH SPEAK FOR THEMSELVES FROM SENATOR LEVIN, THE CHAIRMAN  
11 OF THAT SENATE SUBCOMMITTEE, FROM THE DIRECTOR OF THE  
12 ENFORCEMENT DIVISION OF THE SECURITIES EXCHANGE COMMISSION,  
13 AND FROM THE OFFICE OF THE LEGAL COUNSEL FROM THE INTERNAL  
14 REVENUE SERVICE THAT THESE ARE INDEED EXTRAORDINARY  
15 CIRCUMSTANCES.

16 THIS IS NOT A SITUATION, YOUR HONOR, WHERE AN  
17 INDIVIDUAL HAS BEEN CHARGED, OR INDICTED, OR CONFRONTED  
18 WITH A SET OF FACTS AND THEN AGREED TO COOPERATE  
19 THEREAFTER. AS THE COURT KNOWS, AND AS THE COURT HAS HEARD  
20 FROM BOTH THE GOVERNMENT AND MYSELF, THIS IS A SITUATION  
21 WHERE THE DEFENDANT IN THIS CASE, MR. BIRKENFELD,  
22 VOLUNTARILY, AFFIRMATIVELY, PHYSICALLY TRAVELED FROM A  
23 FOREIGN COUNTRY WHERE HE HAD BEEN WORKING FOR SOME 14 OR 15  
24 YEARS, WHERE HE HAD BEEN LIVING IN THIS SHROUD OF SWISS  
25 BANKING SECRECY, AND MOST RESPECTFULLY HAD THE COURAGE TO

1 STAND UP, TRAVEL TO THIS COUNTRY, TO CONTACT THE DEPARTMENT  
2 OF JUSTICE, QUITE LITERALLY TO MAKE PHONE CALLS THROUGH  
3 THEN COUNSEL, TO KNOCK ON DOORS, TO PHYSICALLY APPEAR AT  
4 PEOPLES' OFFICES AND DO HIS BEST WITHIN THE CONSTRAINTS OF  
5 THE SWISS BANKING WORLD AND THE SWISS LAW WHICH PROHIBITED  
6 HIM FROM DISCLOSING INDIVIDUAL CLIENTS, WHICH  
7 PARENTHETICALLY APPARENTLY PROHIBITED A BANK ITSELF, UBS,  
8 FROM DISCLOSING ITS CLIENTS SO MUCH SO THAT IT TOOK SUCH  
9 PROTRACTIVE LITIGATION BEFORE JUDGE GOLD, AS THE COURT  
10 REFERRED, TO GET ACCESS TO THOSE NAMES.

11 I SUGGEST THAT MR. BIRKENFELD AFFIRMATIVELY,  
12 VOLUNTARILY ON HIS ONE STARTED THIS INVESTIGATION, EXACTLY  
13 WHAT MR. DOWNING HAS INDICATED TO THE COURT.

14 THE COURT: I JUST WANT TO ASK YOU ONE QUESTION,  
15 AND I APOLOGIZE FOR INTERRUPTING YOU. BUT BEFORE  
16 MR. BIRKENFELD EVER APPROACHED THE GOVERNMENT WAS THERE ANY  
17 EFFORT BY THE UNITED STATES GOVERNMENT TO CHANGE THE BANKING  
18 LAWS TREATIES WITH SWITZERLAND? WAS THERE ANY ONGOING  
19 EFFORT ALREADY UNDERWAY BEFORE MR. BIRKENFELD EVER  
20 APPROACHED THE GOVERNMENT?

21 MR. DOWNING: I DON'T BELIEVE SO, YOUR HONOR. I  
22 BELIEVE OVER THE YEARS THE GOVERNMENT HAS TRIED BUT I THINK  
23 PRIOR TO MR. BIRKENFELD COMING IN THERE WAS NO COMMITMENT  
24 BETWEEN THE UNITED STATES AND SWISS GOVERNMENT TO CHANGE  
25 THAT TREATY.

1 THE COURT: BECAUSE HASN'T BEEN THE POSITION OF  
2 UBS THAT, "WE WOULD LIKE TO GIVE YOU, WE, UBS, WOULD LIKE TO  
3 GIVE YOU THIS INFORMATION BUT BECAUSE OF OUR COUNTRY'S LAWS  
4 WE ARE PREVENTED FROM DOING THAT."

5 MR. DOWNING: SURE. THE PROBLEM WITH THAT  
6 ARGUMENT, AS THIS COURT IS AWARE, THAT UBS CAME INTO THE  
7 UNITED STATES THROUGH THEIR BANKERS, INCLUDING  
8 MR. BIRKENFELD, AND COMMITTED CRIMES HERE IN THE COUNTRY  
9 SUBJECTING THEM TO THE JURISDICTION OF THE UNITED STATES  
10 COURTS.

11 ONCE A COURT ORDER WOULD BE SECURED AND UBS NOT  
12 COMPLY WITH IT ALL PARTIES UNDERSTOOD THAT UBS WOULD BE HELD  
13 IN CONTEMPT, AT WHICH POINT THE FED RESERVE WOULD PROBABLY  
14 BE IN A POSITION TO BE REQUIRED TO YANK UBS'S LICENSE.  
15 EVERYBODY REALIZED THAT, AND I THINK AT THE END OF THE DAY  
16 THIS COURT AND EVERYONE UNDERSTANDS THAT THE TWO GOVERNMENTS  
17 GOT TOGETHER TO REACH SOME TYPE OF AGREEMENT TO AVOID SUCH A  
18 SITUATION OF THE INTERNATIONAL FINANCIAL MARKETS.

19 THE COURT: MR. MEIER, GO AHEAD.

20 MR. MEIER: THAT SAID, YOUR HONOR, I SUGGEST TO  
21 THE COURT THAT WITH THE INCEPTION OF THIS CASE IN THIS  
22 COURTHOUSE THE CASE ITSELF FOR MR. BIRKENFELD AND FOR THE  
23 UNITED STATES GOVERNMENT HAD STARTED LONG BEFORE THAT. SO I  
24 RESPECTFULLY SUGGEST THAT AT THE VERY INCEPTION THIS IS A  
25 UNIQUE SITUATION AS RECOGNIZED BY THE GOVERNMENT BEFORE

1 JUDGE SELTZER AT THE OUTSET OF THE CASE.

2 AS I NOTED EARLIER, YOUR HONOR, MR. BIRKENFELD  
3 LONG BEFORE HE HAD BEEN CHARGED HAD SPENT THREE FULL DAYS  
4 IN JUNE OF 2007 ESSENTIALLY STARTING THIS INVESTIGATION.  
5 NO ONE KNEW WHERE IT WAS GOING TO GO, AND THE -- THE  
6 RESULTS SPEAK FOR THEMSELVES OVER THE LAST SEVERAL DAYS,  
7 THE LAST SEVERAL WEEKS, THE LAST SEVERAL MONTHS, AND  
8 PERHAPS IN THE DAYS AND WEEKS AND MONTHS AND YEARS AHEAD.

9 THE GENTLEMAN TO MY RIGHT KNOW FAR BETTER THAN I  
10 WHAT INVESTIGATIONS ARE ONGOING, WHAT PROSECUTIONS ARE  
11 LIKELY, AND WHAT THE FUTURE MAY BRING.

12 BUT AS THE COMMISSIONER OF THE INTERNAL REVENUE  
13 SERVICE SAID TO THE WORLD SOME 48 HOURS AGO, THE WORLD OF  
14 INTERNATIONAL TAXES HAS DRASTICALLY CHANGED, AND I SUGGEST  
15 TO THE COURT THAT BASED ON THE MATERIALS THAT I HAVE  
16 SUBMITTED ON BEHALF OF MR. BIRKENFELD, BASED UPON THE  
17 ATTACHED EXHIBITS THAT HE IS THE INDIVIDUAL WHO STARTED  
18 THAT CHANGE, AND HE IS THE INDIVIDUAL WHO STANDS BEFORE  
19 THIS COURT UNDER EXTRAORDINARY CIRCUMSTANCES WHO I SUGGEST  
20 WARRANTS A DOWNWARD DEPARTURE TO ZONE B OF THE SENTENCING  
21 GUIDELINES.

22 WHEN MR. BIRKENFELD WAS ARRESTED, YOUR HONOR, IN  
23 MAY OF LAST YEAR 2008, HE WAS ARRESTED AT THE LOGAN AIRPORT  
24 IN BOSTON, MY UNDERSTANDING IS IN PART HE HAD RETURNED TO  
25 THE UNITED STATES TO MEET WITH ADDITIONAL GOVERNMENT

1 AGENCIES FOR PREARRANGED MEETINGS. WITHOUT AGAIN GOING  
2 BACK AND TRYING TO RECREATE WHAT HAPPENED AND WHY IT WAS,  
3 AS MR. DOWNING SAYS, THIS CASE IS IN THIS COURT BEFORE YOUR  
4 HONOR WHEN PERHAPS UNDER A DIFFERENT SET OF CIRCUMSTANCES  
5 MR. BIRKENFELD, AS MR. DOWNING SAYS, WOULD HAVE BEEN  
6 NONPROSECUTED, OR WHY PARENTHETICALLY, YOUR HONOR, IT IS  
7 THAT MR. OLENICOFF, PROSECUTED BY THE UNITED STATES  
8 GOVERNMENT, ALBEIT IN THE CENTRAL DISTRICT OF CALIFORNIA,  
9 DIFFERENT PROSECUTORS THAN THE THREE GENTLEMEN AT THE TABLE  
10 TO MY RIGHT, IS CHARGED IN AN INFORMATION AND ENTERS INTO A  
11 PLEA AGREEMENT SEVERAL MONTHS BEFORE THE INFORMATION BY  
12 WHICH HE AGREES WITH THE GOVERNMENT TO SERVE TWO YEARS  
13 PROBATION AND TO PAY SOME 52 OR 53 MILLION DOLLARS IN FINES  
14 AND PENALTIES.

15 AND YOU CONTRAST THAT, YOUR HONOR, MOST  
16 RESPECTFULLY TO WHAT THE GOVERNMENT NOW RECOMMENDS BEFORE  
17 THIS COURT IN TERMS OF A DOWNWARD DEPARTURE GIVEN THE ROLE,  
18 AS MR. DOWNING HIMSELF CHARACTERIZES IT, AS THE GOVERNMENT  
19 CHARACTER RISES IT IN VERY FORTHRIGHTLY AND FORTHCOMINGLY  
20 SETS IT FORTH IN THEIR 5K1 MOTION. I SUGGEST AGAIN THAT  
21 THESE ARE EXTRAORDINARY CIRCUMSTANCES.

22 WHEN MR. BIRKENFELD WAS CHARGED, JUDGE, IN MAY --  
23 OR WAS ARRESTED AT LOGAN AIRPORT IN 2008, AGAIN NOT TO  
24 REPEAT MYSELF, BUT HE DIDN'T APPEAR DIRECTLY BEFORE THIS  
25 COURT, HE TRAVELED WITH THEN COUNSEL TO MEET WITH THE THREE

1 GENTLEMEN AT THE TABLE TO MY RIGHT AGAIN, AND TO CONTINUE  
2 PROVIDING THEM WITH INFORMATION AND CONTINUING TALKING WITH  
3 THEM.

4 IN SUBSTANCE, JUDGE, HIS SUBSTANTIAL ASSISTANCE,  
5 HIS COOPERATION, THE INFORMATION THAT HE WAS PROVIDING  
6 BEGAN WHEN HE AFFIRMATIVELY, KNOWINGLY, CONSCIOUSLY STEPPED  
7 ON AN AIRPLANE IN GENEVA, LANDED IN WASHINGTON, D.C., AND  
8 QUITE LITERALLY KNOCKED ON THE DEPARTMENT OF JUSTICE'S DOOR  
9 BACK IN THE BEGINNING OF 2007, OR THE SPRING OF 2007. IT  
10 CONTINUED THROUGH THE FALL.

11 YES, SOMETHING HAPPENED, JUDGE, IN LATE 2007.  
12 AND, YES, THE GOVERNMENT MADE A DECISION TO CHARGE HIM AND  
13 INDICT HIM. HE WAS ARRESTED IN EARLY 2008, HE APPEARED  
14 BEFORE THIS COURT. HE INDICATED WITHIN 48 HOURS OF HIS  
15 ARREST THAT HE WISHED TO CONTINUE COOPERATING, AND THAT'S  
16 EXACTLY WHAT HE DID IN WASHINGTON, D.C. HE THEN APPEARED  
17 BEFORE THIS COURT, ENTERED A PLEA OF NOT GUILTY, BUT WITHIN  
18 SEVERAL WEEKS APPEARED BEFORE YOUR HONOR IN THIS COURTROOM  
19 AND ACCEPTED RESPONSIBILITY.

20 DURING THAT TIME PERIOD RESPECTFULLY, YOUR HONOR,  
21 HE HAS CONTINUED TO PROVIDE AS MUCH INFORMATION AS HE  
22 POSSIBLY, HUMANLY CAN ON THE ACTIVITIES OF UBS PRIVATE  
23 BANKERS. WHEN HE FIRST MET WITH THE GOVERNMENT IN JUNE OF  
24 2007, HE PROVIDED THEM WITH INTERNAL PROCEDURES, E-MAILS,  
25 PRIVATE SENSITIVE DETAILED INFORMATION THAT AS FAR AS I

1 KNOW HAD NEVER, EVER BEEN SHARED WITH THE U.S. GOVERNMENT.

2 I SUGGEST TO THE COURT THAT WHEN ONE REVIEWS THE  
3 APPELLATE CASES FROM THIS DISTRICT AND ELSEWHERE INVOLVING  
4 SK1 MOTIONS, AND THERE ARE SEVERAL CASES I KNOW OUT OF THE  
5 NORTHERN DISTRICT OF ALABAMA INVOLVING A MASSIVE FRAUD CASE  
6 THERE WHICH DISCUSSED AT THE COURT OF APPEALS LEVEL THE  
7 REASONING, THE RATIONAL, THE PRACTICE TO BE APPLIED IN  
8 EVALUATING THE NATURE AND THE EXTENT OF A DEFENDANT'S  
9 COOPERATION.

10 I SUGGEST TO THE COURT MOST RESPECTFULLY, AS I DO  
11 IN MY SENTENCING MEMORANDUM, THAT BASED ON THE FACTS OF  
12 THIS CASE, BASED ON THE NATURE AND EXTENT OF THE  
13 COOPERATION, THE ASSISTANCE THAT MR. BIRKENFELD HAS  
14 PROVIDED THE GOVERNMENT BEGINNING OVER A YEAR, AS THE  
15 GOVERNMENT PROSECUTOR TOLD THIS COURT AT HIS ARRAIGNMENT,  
16 BEFORE HE WAS EVEN CHARGED THAT THESE ARE INDEED  
17 EXTRAORDINARY CIRCUMSTANCES WHICH WARRANT AND JUSTIFY THIS  
18 COURT IN A DOWNWARD DEPARTURE SOME 80 PERCENT TO ZONE B OF  
19 THE SENTENCING GUIDELINES AND THE IMPOSITION OF A SENTENCE  
20 WHICH REQUIRES MR. BIRKENFELD TO BE ON SUPERVISED PROBATION  
21 FOR A PERIOD OF SOME FIVE YEARS, A SPECIAL CONDITION OF  
22 WHICH WOULD BE A PERIOD OF HOME DETENTION.

23 AS THE GOVERNMENT STATES IN THE FINAL PARAGRAPH  
24 OF THEIR SK1 MOTION, "DEFENDANT BIRKENFELD HAS PROVIDED  
25 SUBSTANTIAL ASSISTANCE IN THE INVESTIGATION AND PROSECUTION



1 OF OTHERS WHO HAVE COMMITTED OFFENSES. THIS SUBSTANTIAL  
2 ASSISTANCE HAS BEEN TIMELY, SIGNIFICANT, USEFUL, TRUTHFUL,  
3 COMPLETE, AND RELIABLE."

4 MOST RESPECTFULLY, JUDGE, I SUBMIT TO THIS COURT  
5 THAT IF EVER THERE WERE CIRCUMSTANCES BEFORE YOUR HONOR  
6 THAT WARRANTS SUCH A DOWNWARD DEPARTURE THIS IS THE CASE  
7 AND THIS IS THE DEFENDANT.

8 THANK YOU FOR THE OPPORTUNITY TO SPEAK ON BEHALF  
9 OF MR. BIRKENFELD.

10 THE COURT: THANK YOU, MR. MEIER.

11 MR. MEIER, I HAVE ONE QUESTION THAT I WOULD LIKE  
12 FOR, IF YOU WISH TO, TO RESPOND TO IT. AND THAT IS, THE  
13 GOVERNMENT IN ITS PRESENTATION ON THE 5K1 MOTION, IF I  
14 UNDERSTOOD THE GOVERNMENT CORRECTLY, INDICATED TO THE COURT  
15 THAT INITIALLY WHEN MR. BIRKENFELD APPROACHED THE GOVERNMENT  
16 THAT MR. BIRKENFELD DID NOT DISCLOSE HIS OWN INVOLVE IN THE  
17 MATTER. WHAT DO YOU SAY ABOUT THAT?

18 MR. MEIER: AGAIN, YOUR HONOR, I WAS NOT PRESENT  
19 FOR THOSE MEETINGS. THAT'S NOT THE POINT. MY UNDERSTANDING  
20 IS THAT MR. BIRKENFELD DID JUST ABOUT ALL HE COULD WITHIN  
21 THE WORLD, WITHIN THE LAW THAT HE WAS LIVING IN, IN  
22 SWITZERLAND. THAT IS, JUST LIKE UBS WAS UNABLE UP UNTIL  
23 SEVERAL DAYS AGO TO DISCLOSE THE NAMES OF ITS ACCOUNT  
24 HOLDERS, SO TOO MR. BIRKENFELD FELT WITHOUT A SUBPOENA,  
25 WITHOUT SOMETHING, AND WITHOUT THE SAFETY OF IMMUNITY THAT

1 HE WAS UNABLE TO PROVIDE CERTAIN INFORMATION.

2 MY UNDERSTANDING FROM MR. BIRKENFELD, AND FROM  
3 MR. DOWNING, AND MR. NEIMAN, AND MR. BEN'ARY IS THAT IN FACT  
4 MR. BIRKENFELD WAS NOT TOTALLY FORTHCOMING SPECIFICALLY WITH  
5 RESPECT TO HIS CLIENTS.

6 THE COURT: YOU KNOW I AM GOING TO HEAR FROM THE  
7 GOVERNMENT ON THIS POINT.

8 MR. MEIER: I UNDERSTAND, YOUR HONOR.

9 THE COURT: ANYTHING ELSE YOU WANT TO SAY?

10 MR. MEIER: NO, YOUR HONOR.

11 THE COURT: ALL RIGHT.

12 MR. BIRKENFELD, WHAT WOULD YOU LIKE TO SAY, SIR?

13 THE DEFENDANT: GOOD MORNING.

14 THANK YOU, YOUR HONOR, FOR GIVING ME THE  
15 OPPORTUNITY TO SPEAK THIS MORNING. I WOULD LIKE TO EXPRESS  
16 MY REGRET FOR MY ACTIONS AS IT BRINGS ME HERE TODAY.

17 UBS RECRUITED ME AND TRAINED ME, AS WELL AS MY  
18 COLLEAGUES, AND PRESSURED AND INCENTIVIZED US FINANCIALLY TO  
19 DO THIS BUSINESS WITHOUT ADVISING US OF THE CONSEQUENCES.

20 WHEN I PUT MY CONCERNS IN WRITING TO THE UBS LEGAL  
21 AND COMPLIANCE DEPARTMENTS IN SWITZERLAND THEY REFUSED TO  
22 ADDRESS ANY OF MY CONCERNS. SO I PROCEEDED TO INVOKE MY UBS  
23 RIGHTS TO PROTECT AGAINST RETALIATION AND SEND MY SAME  
24 WRITTEN CONCERNS TO THE GENERAL COUNSEL OF UBS, MR. PETER  
25 KEER.

1           SOON AFTER THIS, I REALIZED THERE WAS A COVER-UP  
2 OF THE CORPORATION AND I WAS DETERMINED TO CONTACT THE U.S.  
3 AUTHORITIES TO EXPOSE THIS SCANDAL WHICH I DID.

4           I WANT TO THANK YOU, YOUR HONOR, FOR TAKING THESE  
5 CIRCUMSTANCES INTO CONSIDERATION AND I'M HAPPY TO ANSWER ANY  
6 QUESTIONS YOU HAVE.

7           THE COURT: I HAVE NO QUESTIONS, MR. BIRKENFELD.  
8           IS THERE ANYTHING ELSE YOU WOULD LIKE TO BRING TO  
9 THE COURT'S ATTENTION?

10          THE DEFENDANT: YES, YOUR HONOR, THERE IS  
11 SOMETHING ELSE I WOULD LIKE TO ADD. IS THAT WHEN I SENSED  
12 THAT THIS WAS WRONG THIS CONDUCT I WANTED TO MAKE SURE THAT  
13 I CAME FORWARD FULLY TO COOPERATE WITH THE U.S. AUTHORITIES  
14 AND THE U.S. AGENCIES. THE PROBLEM I HAD WAS, WAS THAT I  
15 WAS UNDER SWISS LAW AS A RESIDENT IN SWITZERLAND, AND IF I  
16 DIVULGED ANY NAMES WITHOUT A SUBPOENA I WOULD GO TO JAIL IN  
17 SWITZERLAND WHICH I LIVED AT THE TIME FOR THE LAST 15 YEARS.  
18 SO THAT WAS MY PROBLEM IN THAT REGARD.

19          BUT I WANTED TO TRY AND START THIS PROCESS AND  
20 GIVE AS MUCH INFORMATION AS I COULD WITHOUT BREAKING THAT  
21 BANK SECRECY AND FINDING MYSELF IN JEOPARDY IN SWITZERLAND  
22 WHERE I LIVED.

23          THE COURT: ALL RIGHT. THANK YOU.  
24          ANYTHING ELSE FROM THE DEFENSE?

25          MR. MEIER: NO, YOUR HONOR. THANK YOU.

1 THE COURT: ALL RIGHT. WHAT SAY THE UNITED  
2 STATES?

3 MR. DOWNING: WELL, BRIEFLY, YOUR HONOR.

4 I THINK YOU GET A SENSE FOR THE DILEMMA THAT  
5 MR. BIRKENFELD INTENTIONALLY PUT HIMSELF IN. AS A U.S.  
6 CITIZEN HE GOES TO SWITZERLAND, HE TAKES A JOB IN A BUSINESS  
7 THAT IS CALCULATED TO HELP U.S. TAXPAYERS EVADE THE UNITED  
8 STATES INCOME TAXES, AND WHO BETTER THAN A UNITED STATES  
9 CITIZEN WORKING WITH MANY SWISS BANKERS WHO WERE NOT U.S.  
10 CITIZENS, WHO KNOW THE U.S. TAX LAWS TO KNOW BETTER THAN TO  
11 ENGAGE IN THAT CONDUCT. THAT'S NUMBER ONE.

12 NUMBER TWO, WHEN MR. BIRKENFELD DECIDED TO BE A  
13 WHISTLE BLOWER HE HAD TRANSFERRED ALL THE FUNDS THAT  
14 MR. OLENICOFF FROM UBS TO OTHER BANKS SO THAT HIM AND  
15 MR. STAGGL COULD CONTINUE AIDING AND ASSISTING MR. OLENICOFF  
16 COMMITTING TAX EVASION.

17 THE WHISTLE BLOWER LETTER APPEARS TO ME TO BE A  
18 SET UP AT THE END OF THE DAY TO FIND A WAY TO GET  
19 COMPENSATION FROM UBS AFTER HE DECIDED TO TAKE HIS SCHEME  
20 WITH MR. OLENICOFF ELSEWHERE.

21 FINALLY, WHEN HE CAME INTO THE UNITED STATES  
22 GOVERNMENT HE CAME IN TO BE A WHISTLE BLOWER HE WANTED TO  
23 EARN MONEY BY DISCLOSING THE WRONGDOING OF OTHERS. HE  
24 REFUSED TO DISCLOSE HIS OWN WRONGDOING. THERE IS A MAJOR  
25 PROBLEM FOR US IN INVESTIGATING A CASE AND TRYING TO USE

1 MR. BIRKENFELD AS A WITNESS.

2 THAT IS WHY THE GOVERNMENT CHARGED MR. BIRKENFELD.  
3 THAT'S WHY HE WAS INDICTED. THAT'S WHY WE ARE SEEKING JAIL  
4 TIME. WE CANNOT HAVE PEOPLE, U.S. CITIZENS, ENGAGE IN THAT  
5 KINDS OF FRAUD SCHEME COME BACK HERE AND PUT HALF THE LEG IN  
6 THE DOOR, DISCLOSE THE WRONGDOING OF OTHERS.

7 AS TO HIS BANK SECRECY CLAIM? WE MADE IT CLEAR TO  
8 MR. BIRKENFELD AND HIS LAWYERS THAT WE WOULD SEEK A COURT  
9 ORDER THAT WOULD GIVE HIM THE NECESSARY LEGAL COMPULSION  
10 THAT WOULD SHOW THE SWISS GOVERNMENT THAT HE WAS COMPELLED  
11 AND AS A NECESSITY HAD TO PROVIDE INFORMATION, AND THAT IS A  
12 KNOWN EXCEPTION TO SWISS BANK SECRECY DISCLOSURES.  
13 MR. BIRKENFELD KNEW THAT, HIS LAWYERS KNEW THAT.

14 BUT FINALLY, I MUST SAY TO YOU, MR. OLENICOFF  
15 WOULD BE IN JAIL HAD MR. BIRKENFELD COME IN, IN 2007 AND  
16 DISCLOSED THAT INFORMATION. THEY WANT TO COMPARE  
17 MR. OLENICOFF'S TREATMENT WITH MR. BIRKENFELD? WE DID NOT  
18 HAVE THE EVIDENCE THAT MR. BIRKENFELD PROVIDED AFTER  
19 MR. OLENICOFF PLED. THAT IS WHY WE ARE HERE TODAY, AND THAT  
20 IS WHY THE U.S. GOVERNMENT SEEKS JAIL TIME FOR  
21 MR. BIRKENFELD.

22 THAT'S ALL, YOUR HONOR.

23 YOUR HONOR, MIGHT I ADD ONE MORE POINT?

24 THE COURT: SURE.

25 MR. DOWNING: I WANTED TO END ON ALSO A POSITIVE

1 NOTE.

2 WE DO INTEND ON CONTINUING TO UTILIZE  
3 MR. BIRKENFELD IN CONDUCTING INVESTIGATIONS AND BRINGING  
4 CASES AGAINST OTHER UBS CLIENTS AND OTHER CLIENTS OF  
5 MR. BIRKENFELD, AND WE DO ANTICIPATE THAT WE MAY BE BACK TO  
6 THIS COURT.

7 THE COURT: FOR A MOTION FOR A REDUCTION IN  
8 SENTENCE --

9 MR. DOWNING: THAT'S CORRECT, YOUR HONOR.

10 THE COURT: -- PURSUANT TO RULE 35?

11 MR. DOWNING: CORRECT.

12 THE COURT: WELL, I APPRECIATE YOU BRINGING THAT  
13 TO THE COURT'S ATTENTION.

14 ALL RIGHT, MR. BIRKENFELD, IF YOU WILL STEP UP TO  
15 THE PODIUM, PLEASE.

16 THE COURT BEING FULLY INFORMED OF THE FACTS AND  
17 CIRCUMSTANCES SURROUNDING THE CRIME AND NO LEGAL REASON  
18 HAVING BEEN SHOWN AS TO WHY SENTENCE SHOULD NOT NOW BE  
19 IMPOSED, AFTER CONSIDERATION OF STATEMENTS BY ALL PARTIES  
20 AND A COMPLETE REVIEW OF THE ENTIRE REVISED PRESENTENCE  
21 REPORT WHICH CONTAINS THE ADVISORY GUIDELINE RANGE WHICH  
22 THIS COURT HAS CONSIDERED -- IT CONTAINS THE ADVISORY  
23 GUIDELINE COMPUTATION AND RANGE WHICH THIS COURT HAS  
24 CONSIDERED, THE COURT HAS ALSO CONSIDERED ALL OF THE  
25 STATUTORY FACTORS.

1           FURTHER, IT IS THE FINDING OF THE COURT THAT  
2 MR. BIRKENFELD IS ABLE TO PAY A FINE. THEREFORE, A FINE  
3 SHALL BE IMPOSED.

4           AS THE COURT NOTED EARLIER, THE COURT WILL DEPART  
5 BELOW THE OTHERWISE APPLICABLE ADVISORY GUIDELINE RANGE FOR  
6 THE REASONS PREVIOUSLY STATED.

7           ACCORDINGLY, PURSUANT TO SENTENCING REFORM ACT OF  
8 1984, IT IS THE JUDGMENT OF THE COURT AND THE SENTENCE OF  
9 THE LAW THAT BRADLEY BIRKENFELD IS HEREBY COMMITTED TO THE  
10 CUSTODY OF THE UNITED STATES BUREAU OF PRISONS TO BE  
11 IMPRISONED FOR A TERM OF 40 MONTHS AS TO THE ONE COUNT  
12 INDICTMENT.

13           IT IS FURTHER ORDERED THAT MR. BIRKENFELD SHALL  
14 PAY TO THE UNITED STATES A TOTAL FINE OF \$30,000. THE FINE  
15 IS PAYABLE TO THE CLERK, UNITED STATES COURTS, AND IS TO BE  
16 FORWARDED TO THE UNITED STATES CLERK'S OFFICE, ATTENTION  
17 FINANCIAL SECTION, 400 NORTH MIAMI AVENUE, ROOM 8N09,  
18 MIAMI, FLORIDA 33128.

19           THE FINE IS PAYABLE IMMEDIATELY. THE UNITED  
20 STATES BUREAU OF PRISONS, THE UNITED STATES PROBATION  
21 OFFICE, AND THE UNITED STATES ATTORNEY'S OFFICE ARE  
22 RESPONSIBLE FOR THE ENFORCEMENT OF THIS ORDER.

23           UPON RELEASE FROM IMPRISONMENT MR. BIRKENFELD  
24 SHALL BE PLACED ON SUPERVISED RELEASE FOR A TERM OF THREE  
25 YEARS.

1           WITHIN 72 HOURS OF RELEASE HE SHALL REPORT IN  
2 PERSON TO THE PROBATION OFFICE IN THE DISTRICT TO WHICH HE  
3 IS RELEASED.

4           WHILE ON SUPERVISED RELEASE HE SHALL NOT COMMIT  
5 ANY CRIMES, HE SHALL BE PROHIBITED FROM POSSESSING A  
6 FIREARM OR ANOTHER DANGEROUS DEVICES, HE SHALL NOT POSSESS  
7 A CONTROLLED SUBSTANCE, HE SHALL COMPLY WITH THE COLLECTION  
8 OF DNA, AND HE SHALL COMPLY WITH THE STANDARD CONDITIONS OF  
9 SUPERVISED RELEASE THAT HAVE BEEN ADOPTED BY THIS COURT  
10 INCLUDING THE FOLLOWING SPECIAL CONDITIONS.

11           ONE, THERE SHALL BE A FINANCIAL DISCLOSURE  
12 REQUIREMENT; SECOND, THERE SHALL BE AN EMPLOYMENT  
13 REQUIREMENT; THIRD, THERE SHALL BE A SELF-EMPLOYMENT  
14 RESTRICTION; FOURTH, THERE SHALL BY A RELATED CONCERN  
15 RESTRICTION; AND, FIVE, THERE SHALL BE A PERMISSIBLE SEARCH  
16 REQUIREMENT, ALL AS NOTED MORE SPECIFICALLY IN PART G OF  
17 THE REVISED PRESENTENCE REPORT.

18           IT IS FURTHER ORDERED THAT MR. BIRKENFELD SHALL  
19 PAY IMMEDIATELY TO THE UNITED STATES A SPECIAL ASSESSMENT  
20 OF \$100.

21           DOES THAT COVER EVERYTHING, MADAM PROBATION  
22 OFFICER?

23           THE PROBATION OFFICER? YES, YOUR HONOR, IT DOES.

24           THE COURT: EXCEPT AS OTHERWISE MODIFIED BY THE  
25 COURT GRANTING THE DEFENDANT'S OBJECTION TO THE GUIDELINE



1 COMPUTATION, THE COURT OTHERWISE ADOPTS THE FACTUAL FINDINGS  
2 AND ADVISORY GUIDELINE COMPUTATION, THE TOTAL OFFENSE LEVEL,  
3 THE CRIMINAL HISTORY CATEGORY, THE IMPRISONMENT RANGE, THE  
4 SUPERVISED RELEASE RANGE, AND THE FINE RANGE AS SET FORTH IN  
5 THE REVISED PSR.

6 A FINE HAS BEEN IMPOSED. NO RESTITUTION HAS BEEN  
7 IMPOSED BECAUSE IT IS NOT APPLICABLE.

8 THE SENTENCE DEPARTS FROM THE OTHERWISE ADVISORY  
9 GUIDELINE RANGE, AND THAT DEPARTURE IS BASED ON THE  
10 GOVERNMENT'S 5K1 MOTION WHICH THE COURT GRANTED FOR THE  
11 REASONS PREVIOUSLY STATED.

12 MR. MEIER, DOES THE DEFENSE HAVE ANY OBJECTIONS  
13 TO ANY OF THE FINDINGS OF FACTS OR CONCLUSIONS OF LAW MADE  
14 BY THE COURT HERE THIS MORNING?

15 MR. MEIER: NO, YOUR HONOR.

16 THE COURT: MR. BIRKENFELD, DO YOU HAVE ANY?

17 THE DEFENDANT: NO, YOUR HONOR.

18 THE COURT: ANY FROM THE GOVERNMENT?

19 MR. DOWNING: NO, YOUR HONOR.

20 THE COURT: DOES THE DEFENSE HAVE ANY OBJECTION TO  
21 THE MANNER OR PROCEDURE IN WHICH SENTENCE HAS BEEN IMPOSED  
22 OR THAT THIS HEARING HAS BEEN CONDUCTED, MR. MEIER?

23 MR. MEIER: NO, YOUR HONOR.

24 THE COURT: MR. BIRKENFELD?

25 THE DEFENDANT: NO, YOUR HONOR.

1 THE COURT: ANY FROM THE GOVERNMENT?

2 MR. DOWNING: NO, YOUR HONOR.

3 THE COURT: THE MEIER, ARE YOU PRIVATELY RETAINED?

4 MR. MEIER: YES, YOUR HONOR.

5 THE COURT: MR. BIRKENFELD, THE COURT NOW INFORMS  
6 YOU, SIR, THAT YOU HAVE 10 DAYS FROM TODAY WITHIN WHICH TO  
7 APPEAL THE SENTENCE IMPOSED. YOUR FAILURE TO APPEAL WITHIN  
8 THE 10-DAY TIME PERIOD SHALL CONSTITUTE A WAIVER OF YOUR  
9 RIGHT TO APPEAL.

10 IF YOU ARE WITHOUT FUNDS WITH WHICH TO RETAIN A  
11 LAWYER TO ASSIST YOU IN ANY APPEAL THE COURT WOULD APPOINT A  
12 LAWYER FOR YOU UPON A SHOWING THAT YOU ARE INDIGENT AND  
13 UNABLE TO AFFORD A LAWYER.

14 IF YOU WERE DECLARED INDIGENT THE CLERK OF THE  
15 COURT WOULD FILE A NOTICE OF APPEAL ON YOUR BEHALF IF YOU  
16 REQUESTED THE CLERK OF THE COURT TO DO SO.

17 WHAT DOES THE GOVERNMENT SAY ABOUT VOLUNTARY  
18 SURRENDER?

19 MR. DOWNING: WE ARE NOT OPPOSED TO THAT, YOUR  
20 HONOR.

21 THE COURT: HOW MUCH TIME DO YOU THINK THAT YOU  
22 WILL NEED FOR THE ADDITIONAL COOPERATION?

23 MR. DOWNING: YOUR HONOR, AT THIS TIME COULD WE  
24 ASK FOR 90 DAYS.

25 THE COURT: WELL, UNDERSTANDING THAT THESE MATTERS

1 TAKE SOME TIME, JUST AS THIS SENTENCING DID BECAUSE OF THE  
2 COOPERATION, THE EXECUTION OF SENTENCE IS HEREBY DEFERRED.

3 MR. BIRKENFELD, YOU ARE TO SURRENDER YOURSELF AT  
4 THE FEDERAL FACILITY DESIGNATED BY THE BUREAU OF PRISONS NO  
5 LATER THAN NOON ON JANUARY 8, 2010. NO LATER THAN NOON ON  
6 JANUARY 8, 2010.

7 IS THERE ANYTHING ELSE FROM THE DEFENSE?

8 MR. MEIER: NO, YOUR HONOR.

9 THE COURT: FROM THE GOVERNMENT?

10 MR. DOWNING: NO, YOUR HONOR.

11 THE COURT: ALL RIGHT, COUNSEL, THANK YOU VERY  
12 MUCH. THE COURT APPRECIATES YOUR EFFORTS.

13 EVERYONE HAVE A GREAT WEEKEND.

14 MR. MEIER: THANK YOU, YOUR HONOR.

15 THE COURT: THE COURT IS IN RECESS.

16 - - -

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**Personal**

Mr.  
Bradley Birkenfeld  
Cours de Rive 20  
1207 Genève

14th October 2005  
Ref.: RLCG-VOL

**Confirmation of employment termination**

Dear Mr. Birkenfeld,

We hereby confirm receipt of your resignation letter of 5th October 2005 and acknowledge your request to terminate your employment relationship with the bank as of 30<sup>th</sup> April 2006. Please note the following points in connection with this termination:

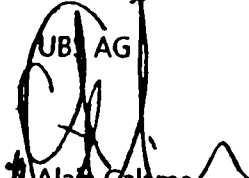
We would like to remind you that you remain bound by the duties of bank/client confidentiality and business confidentiality both during your notice period and on leaving the Bank's service (Art. 14 of the Employee Guideline). Any wilful or negligent contravention of these obligations while the employment relationship is still in force and especially after its termination constitutes a criminal act in accordance with Art. 47 para. 3 of the Federal Law on Banks of 8 November 1934 and Art. 162 of the Swiss Penal Code. A breach of the applicable legal provisions may also have consequences under civil law in the form of claims for damages by the clients concerned or by the bank itself.

In concrete terms, the unauthorized disclosure, exploitation, use or provision of client data to which you have been party in your capacity as an employee of our bank to or for a third party (either an individual or a legal entity, within our bank or at another bank) may constitute a breach of confidentiality and as such be subject to prosecution.

All the necessary information on insurance policies, the pension fund and general departure formalities can be found in the enclosed documentation and the document entitled «Information for employees leaving UBS». Please complete and sign the forms «Accident insurance», «Reference information», «Termination of membership of the HELSANA joint daily illness rate insurance scheme» and «Application for termination benefit (vested benefits)» forms and return them to your HR Advisory and Services Center.

If you have any questions, the HR Advisory and Services Center will be delighted to help you.

Sincerely,



UBS AG  
Alan Calame  
Associate Director



Christian Bovay  
Managing Director

**Enclosures**

- Information sheet for employees leaving UBS
- Accident insurance
- Termination of membership of the HELSANA joint daily illness rate insurance scheme
- Vested benefits

**Mealey, Denise**

---

**From:** David H. Dickieson [ddickieson@schertlerlaw.com]  
**Sent:** Tuesday, August 21, 2007 6:22 PM  
**To:** Kevin.M.Downing@usdoj.gov; Karen.E.Kelly@usdoj.gov  
**Cc:** David Schertler; Peter V. Taylor  
**Subject:** Whistleblower

Would either of you fill me in on the status of our client's request for immunity. He is now in the US for a few days and would like to get this immunity issue resolved, so we can move forward with his disclosures of information.

Schertler & Onorato, L.L.P.

**David H. Dickieson**

202.824-1222  
202.628.4177 fax  
ddickieson@schertlerlaw.com  
www.schertlerlaw.com

Schertler & Onorato, LLP  
601 Pennsylvania Avenue, NW  
North Building - 9<sup>th</sup> Floor  
Washington, D.C. 20004



U.S. Department of Justice  
Tax Division

Northern Criminal Enforcement Section  
P.O. Box 972, Ben Franklin Station  
Washington, D.C. 20044

(202) 514-5150  
Telefax: (202) 514-8455

September 6, 2007

**BY FACSIMILE: (202) 628-4177**  
**and FIRST CLASS MAIL**

David Dickieson  
Schertler & Onorato  
North Building, 9th Floor  
601 Pennsylvania Ave, NW  
Washington, DC 20036

Re: **Brad Birkenfeld**

Dear Mr. Dickieson,

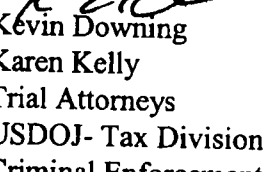
As discussed on August 31, 2007, your client Mr. Birkenfeld terminated his proffer with the Tax Division regarding alleged criminal conduct of his former employer, UBS.

You sought full criminal immunity for your client prior to the completion of the full proffer. We declined to extend the requested immunity.

Please advise your client that the government will take steps to evaluate the allegations.

Should your client change his mind and wish to continue his proffer please do not hesitate to contact us.

Very truly yours,

  
Kevin Downing  
Karen Kelly  
Trial Attorneys  
USDOJ- Tax Division  
Criminal Enforcement

cc: SA Matthew Kutz

**Mealey, Denise**

---

**From:** David H. Dickieson [ddickieson@schertlerlaw.com]

**Sent:** Thursday, September 20, 2007 7:52 PM

**To:** julie\_davis@levin.senate.gov

**Subject:** Whistleblower

Dear Ms. Davis – I don't mean to sound alarmist, but my client has risked his livelihood and even his life to expose massive tax fraud on an international scale and yet, no one in two branches of government seems to be concerned enough to listen to him or to recognize his sacrifice. Would you please ask Mr. Roach to contact me as soon as possible. As I have indicated in prior messages to you, events are rapidly evolving at the bank. All salespeople have been ordered to terminate all sales trips to the US in reaction to news that my client has gone to the US Department of Justice. My client is getting feedback from his contacts in the bank and such information has a very short shelf life. We have a limited opportunity to change an entire industry designed to evade US taxes. Let's not fiddle while Rome burns.

David H. Dickieson  
**Schertler & Onorato, L.L.P.**  
601 Pennsylvania Avenue, NW  
North Building, 9th Floor  
Washington, DC 20004  
(202) 824-1222  
Fax: (202) 628-4177  
[ddickieson@schertlerlaw.com](mailto:ddickieson@schertlerlaw.com)

7/31/2008

Attachment 4

**Mealey, Denise**

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**From:** Roach, Bob (HSGAC) [Bob\_Roach@hsgac.senate.gov]  
**Sent:** Friday, September 21, 2007 4:18 PM  
**To:** David H. Dickieson; McDougal, John (HSGAC)  
**Cc:** McDougal, John (HSGAC)  
**Subject:** RE: Follow Up  
**Attachments:** Levin fir stmt-Stop Tax Haven Abuse Act (2-17-07 Final).doc

Mr. Dickieson – Thanks for taking the time to speak with John and me today. I hope that we will have the opportunity to meet with you and your client in the near future.

As promised, attached is a recent floor statement by Senator Levin of the abuse of offshore tax haven.

Please call me if you have any questions.

Regards.

Bob Roach.

---

**From:** David H. Dickieson [mailto:ddickieson@schertlerlaw.com]  
**Sent:** Friday, September 21, 2007 4:02 PM  
**To:** McDougal, John (HSGAC)  
**Cc:** McDougal John C; Roach, Bob (HSGAC)  
**Subject:** RE: Contact information

Thanks. I haven't heard from my client, but I know he will want to jump on this opportunity to meet with you as soon as he can arrange to come to the US.

David H. Dickieson  
**Schertler & Onorato, L.L.P.**  
601 Pennsylvania Avenue, NW  
North Building, 9th Floor  
Washington, DC 20004  
(202) 824-1222  
Fax: (202) 628-4177  
[ddickieson@schertlerlaw.com](mailto:ddickieson@schertlerlaw.com)

---

**From:** McDougal, John (HSGAC) [mailto:John\_McDougal@hsgac.senate.gov]  
**Sent:** Friday, September 21, 2007 3:30 PM  
**To:** David H. Dickieson  
**Cc:** McDougal John C; Roach, Bob (HSGAC)  
**Subject:** Contact information

Hi Mr. Dickieson. Here is my contact information after next Wednesday:

John C. McDougal  
Special Trial Attorney  
Internal Revenue Service (SBSE)  
Main Street Centre, Suite 1601  
600 East Main Street  
Richmond, Virginia 23219  
Telephone - (804) 916-3942  
FAX - (804) 916-3939  
E-mail – [John.C.McDougal@irs.counsel.treas.gov](mailto:John.C.McDougal@irs.counsel.treas.gov)

7/31/2008

Attachment 5



As we discussed, if your client decides to come to D.C. to meet with the Subcommittee staff, I would also appreciate the opportunity to interview him in connection with a broader interest the IRS has in the practices of private banks with respect to offshore financial activities of U.S. clients. I will talk to Bob Roach about the propriety of conducting a joint interview, but if that doesn't work, perhaps it would be possible to arrange a separate interview with me during the same trip.

Thank you.

**John**

John C. McDougal

Permanent Subcommittee on Investigations

Telephone: (202) 224-4209

Fax: (202) 224-1972

JOSEPH I. LUBERMAN, CONNECTICUT, CHAIRMAN

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TED STEVENS, ALASKA  
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TOM COBURN, OKLAHOMA  
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JOHN WARNER, VIRGINIA  
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# United States Senate

COMMITTEE ON  
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS  
WASHINGTON, DC 20510-6250

October 9, 2007

VIA U.S. MAIL & EMAIL (ddickieson@schertlerlaw.com)

Mr. Bradley Birkenfeld  
c/o David H. Dickieson, Esq.  
Schertler & Onorato, LLP  
601 Pennsylvania Avenue, N.W.  
North Building, 9th Floor  
Washington, D.C. 20004

Dear Mr. Birkenfeld:

Pursuant to its authority under Senate Resolution 89, Section 11(c), 110<sup>th</sup> Congress, the Permanent Subcommittee on Investigations is currently reviewing matters relating to the use of offshore jurisdictions and financial institutions for the avoidance of U.S. taxes.

Attached please find *Notice of Senate Deposition 000379* and *Subpoena #E02731* for your appearance at the Deposition which is scheduled for October 11, 2007, at 10:00 a.m. and October 12, 2007, at 1:30 p.m., in Room 199 of the Russell Senate Office Building. Additionally, to assist the Subcommittee with these matters, please provide the documents requested in *Subpoena #E02732* (attached) no later than October 11, 2007.

Because of increased security concerns, the Senate Sergeant at Arms requires special treatment for packages delivered to Senate offices. We ask, therefore, that you review the attached document outlining *Procedures for Transmitting Documents to the Permanent Subcommittee on Investigations* and call the Subcommittee Chief Clerk, Mary Robertson, 202/224-9868, to arrange for delivery of the documents. Please contact Robert Roach or Cliff Stoddard at 202/224-3721 if you have any questions about this matter. Thank you for your assistance with this matter.

Sincerely,



Norm Coleman  
Ranking Minority Member  
Permanent Subcommittee on Investigations



Carl Levin  
Chairman  
Permanent Subcommittee on Investigations

Attachments

Attachment 6

# UNITED STATES OF AMERICA

## Congress of the United States

Notice of  
Senate Deposition

000379

To Bradley Birkenfeld

**Greeting:**

**Please take notice that at** 10:00 o'clock a. .m., on October 11 & 12, 2007,  
**at** 199 Russell Senate Office Building, Washington, D.C. 20510,  
Robert Roach, Laura Stuber and Clifford Stoddard  
**of the staff of the PERMANENT SUBCOMMITTEE ON INVESTIGATIONS OF THE**  
**COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS of the Senate**  
**of the United States, will take your deposition on oral examination concerning what you**  
**may know relative to the subject matters under consideration by said Subcommittee. The**  
**deposition will be taken before a notary public, or before some other officer authorized**  
**by local law to administer oaths; it will be taken pursuant to the Subcommittee's rules, a**  
**copy of which is attached.**

**Given** under my hand, by authority vested in me by

the Subcommittee, on this 4<sup>th</sup>

day of October, 2007.

*Paul J. Kim*

Chairman, Senate Permanent Subcommittee on  
Investigations of the Committee on Homeland  
Security and Governmental Affairs

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA**  
**(Southern Division - Santa Ana)**  
**CRIMINAL DOCKET FOR CASE #: 8:07-cr-00227-CJC-1**

Case title: USA v. Olenicoff

Date Filed: 11/01/2007

Date Terminated: 04/16/2008

---

Assigned to: Judge Cormac J. Carney

**Defendant (1)**

**Igor M Olenicoff**

*TERMINATED: 04/16/2008*

represented by **FPD**

Federal Public Defender

321 East 2nd Street

Los Angeles , CA 90012-4202

213-894-2854

Email:

zzCAC\_FPD\_Document\_Receiving@fd.org

*TERMINATED: 11/19/2007*

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

*Designation: Public Defender or*

*Community Defender Appointment*

**Edward M Robbins , Jr**

Hochman Salkin Rettig Toscher and Perez

9150 Wilshire Boulevard Suite 300

Beverly Hills , CA 90212

310-281-3247

Fax: 310-859-5129

Email: edr@taxlitigator.com

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

*Designation: Retained*

**Pending Counts**

26:7206(1): WILLFUL FILING OF A  
FALSE TAX RETURN

(1)

**Disposition**

2 years probation under terms and  
conditions of US Probation Office and  
General Orders 318 and 01-05. Pay \$100  
special assessment. Pay total fine of  
\$3,500.00.

**Highest Offense Level (Opening)**

Felony

**Terminated Counts**

None

**Disposition**

**Highest Offense Level (Terminated)**

None

**Complaints**

None

**Disposition**

**Plaintiff**

USA

represented by **Brett A Sagel**  
AUSA - Office of US Attorney-Criminal  
Div  
411 West Fourth Street Suite 8000  
Santa Ana , CA 92701  
714-338-3598  
Fax: 714-338-3708  
Email: USACAC.SACriminal@usdoj.gov  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
11/01/2007	<u>1</u>	INFORMATION filed as to Igor M Olenicoff (1) count(s) 1. Offense occurred in Orange. (ln) (Entered: 11/02/2007)
11/01/2007	<u>2</u>	CASE SUMMARY filed by AUSA Brett Sagel as to Defendant Igor M Olenicoff; defendants Year of Birth: 1942 (ln) (Entered: 11/02/2007)
11/01/2007	<u>3</u>	MEMORANDUM filed by Plaintiff USA as to Defendant Igor M Olenicoff. This criminal action, being filed on 11/01/07, was not pending in the U. S. Attorneys Office before the date on which Judge Stephen G. Larson began receiving criminal matters. (ln) (Entered: 11/02/2007)
11/01/2007	<u>4</u>	MEMORANDUM filed by Plaintiff USA as to Defendant Igor M Olenicoff re Magistrate Judge John Charles Rayburn Jr, Magistrate Judge Jacqueline Chooljian, Magistrate Judge Patrick J Walsh, Magistrate Judge Jennifer T Lum, Magistrate Judge Jeffrey W Johnson(ln) (Entered: 11/02/2007)
11/19/2007	<u>6</u>	MINUTES OF POST-INDICTMENT ARRAIGNMENT: held before Magistrate Judge Robert N. Block as to Igor M Olenicoff (1) Count 1. Defendant arraigned, states true name: as charged. Attorney: Edward M Robbins, Jr for Igor M Olenicoff, Retd, present. Defendant's first appearance. Bond is ordered in the amount of \$5,000.00 Unsecured

		Appearance Bond. Court orders defendant to report to the US Marshal's Office forthwith for processing. Defendant entered not guilty plea to all counts as charged. Case assigned to Judge Cormac J. Carney. Counsel are ordered to contact clerk regarding setting a date for guilty plea. Trial estimate: 3 days. Court Smart: CourtSmart. (mt) (Entered: 11/26/2007)
11/19/2007	<u>7</u>	STATEMENT OF CONSTITUTIONAL RIGHTS filed by Defendant Igor M Olenicoff (mt) (Entered: 11/26/2007)
11/19/2007	<u>8</u>	WAIVER OF INDICTMENT by Defendant Igor M Olenicoff before Magistrate Judge Robert N. Block (mt) (Entered: 11/26/2007)
11/20/2007	<u>5</u>	PASSPORT RECEIPT from U. S. Pretrial Services as to Defendant Igor M Olenicoff. USA passport No: 038023740 was received on 11/19/07. (mt) (Entered: 11/21/2007)
11/20/2007	<u>9</u>	BOND AND CONDITIONS OF RELEASE filed as to Defendant Igor M Olenicoff conditions of release: \$5,000.00 Unsecured Appearance Bond (see bond form CR-1 for further details) approved by Magistrate Judge Robert N. Block. Original bond routed to File. (mt) (Entered: 11/26/2007)
12/07/2007	<u>10</u>	MINUTES OF IN CHAMBERS ORDER by Judge Cormac J. Carney: The Court, on its own motion, hereby schedules a Change of Plea Hearing for 12/12/2007 at 1:00 PM before Judge Cormac J. Carney. (mu) (Entered: 12/07/2007)
12/10/2007	<u>11</u>	PLEA AGREEMENT filed by Plaintiff USA as to Defendant Igor M Olenicoff (Sagel, Brett) (Entered: 12/10/2007)
12/12/2007	<u>12</u>	MINUTES OF Change of Plea Hearing held before Judge Cormac J. Carney as to Defendant Igor M Olenicoff. Defendant sworn. Court questions defendant regarding the plea. The Defendant Igor M Olenicoff (1) pleads GUILTY to Count 1. The plea is accepted. The Court ORDERS the preparation of a Presentence Report. Sentencing set for 4/14/2008 at 10:00 AM before Judge Cormac J. Carney. Court Reporter: Deborah Parker. (mu) (Entered: 12/16/2007)
03/25/2008	<u>13</u>	NOTICE of Assent to the PSR filed by Defendant Igor M Olenicoff (Robbins, Edward) (Entered: 03/25/2008)
03/31/2008	<u>14</u>	SENTENCING MEMORANDUM filed by Plaintiff USA as to Defendant Igor M Olenicoff (Sagel, Brett) (Entered: 03/31/2008)
04/09/2008	<u>15</u>	POSITION WITH RESPECT TO PRESENTENCE REPORT filed by Defendant Igor M Olenicoff (Robbins, Edward) (Entered: 04/09/2008)
04/14/2008	<u>16</u>	MINUTES OF SENTENCING Hearing held before Judge Cormac J. Carney as to Defendant Igor M Olenicoff. Defendant Igor M Olenicoff (1), Count(s) 1, 2 years probation under terms and conditions of US Probation Office and General Orders 318 and 01-05. Pay \$100 special assessment. Pay total fine of \$3,500.00. Bond Exonerated. Defendant advised of right to appeal. Court Reporter: Maria Dellaneve. (mt) (Entered: 04/17/2008)
04/16/2008	<u>17</u>	JUDGMENT AND COMMITMENT by Judge Cormac J. Carney as to Defendant Igor M Olenicoff (1), Count(s) 1, 2 years probation under terms and conditions of US Probation Office and General Orders 318 and 01-05. Pay \$100 special assessment. Pay total fine of \$3,500.00. Signed by Judge Cormac J. Carney. (mt) (Entered: 04/17/2008)

04/23/2008	18	TRANSCRIPT filed as to Igor M Olenicoff for dates of 4/14/08 before Judge Cormac J. Carney, Court Reporter: Maria Beesley-Dellaneve. (lwag, ) (Entered: 04/24/2008)
05/19/2008	19	TRANSCRIPT filed as to Igor M Olenicoff for dates of 12/12/2007 before Judge Cormac J. Carney, Court Reporter: Deborah D. Parker. (lwag, ) (Entered: 05/19/2008)
06/11/2009	<u>20</u>	SATISFACTION OF JUDGMENT filed by Plaintiff USA as to Defendant Igor M Olenicoff (Segina, Zoran) (Entered: 06/11/2009)
08/26/2009	<u>21</u>	STIPULATION to allow Travel to Greece from 9/4/09 to 9/15/09 filed by Defendant Igor M Olenicoff(Robbins, Edward) (Entered: 08/26/2009)
08/28/2009	<u>22</u>	ORDER ALLOWING TRAVEL by Judge Cormac J. Carney as to Defendant Igor M Olenicoff to Greek Island of Paros, from 9/4/09 to 9/15/09. (ade) (Entered: 08/28/2009)

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
12/01/2009 07:08:39			
<b>PACER Login:</b>	kk0155	<b>Client Code:</b>	495
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	8:07-cr-00227-CJC End date: 12/1/2009
<b>Billable Pages:</b>	3	<b>Cost:</b>	0.24

**Mealey, Denise**

---

**From:** Roach, Bob (HSGAC) [Bob\_Roach@hsgac.senate.gov]  
**Sent:** Tuesday, March 04, 2008 6:08 PM  
**To:** David H. Dickieson  
**Subject:** RE: Swiss Accounts

Hi – Thanks. You are right. I completely forgot about Olenicoff. I remembered ██████████, but not Olenicoff, so I apologize. This is something we are definitely interested in pursuing.

I know you mentioned Brad might be coming back here in the near future. Does he have any fixed dates or time period?

Thanks again, Dave.

Bob.

---


**From:** David H. Dickieson [mailto:ddickieson@schertlerlaw.com]  
**Sent:** Tuesday, March 04, 2008 5:57 PM  
**To:** Roach, Bob (HSGAC)  
**Subject:** RE: Swiss Accounts

Yes. Olenikov was identified to you during the session we had on October 11, 2007. [Check your notes it was in the part of the discussion where Brad mentioned ██████████, too.] Olenikov was Brad's biggest client with over \$200,000,000 in accounts brought to UBS by Brad as Olenikov's account representative.

Olenikov just pled guilty to tax fraud and from the press reports I have read, it doesn't appear that Olenikov disclosed the UBS Switzerland funds. We went back to the IRS and DOJ-Tax people and told them that Brad had information that would help them with Olenikov, but DOJ-Tax merely threatened Brad with withholding information from them. Of course, this made it all the more imperative that Brad get immunity before providing any further information to the DOJ, but they were unbending in their denial of anything at all for Brad.

I hope that someone in Congress takes note of the poor handling that Brad has received from DOJ-Tax.

David H. Dickieson  
**Schertler & Onorato, L.L.P.**  
601 Pennsylvania Avenue, NW  
North Building, 9th Floor  
Washington, DC 20004  
(202) 824-1222  
Fax: (202) 628-4177  
[ddickieson@schertlerlaw.com](mailto:ddickieson@schertlerlaw.com)



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**From:** Roach, Bob (HSGAC) [mailto:Bob\_Roach@hsgac.senate.gov]  
**Sent:** Tuesday, March 04, 2008 5:47 PM  
**To:** David H. Dickieson  
**Subject:** Swiss Accounts

Hi Dave – I was wondering if Brad ever heard of a person named Olenicoff, or a company called Guardian Guarantee Company Ltd. ("GGLC"), which was controlled by Olenicoff. Olenicoff lives in California and had an account at UBS Switzerland – for at least \$89 million.

Thanks.

Attachment 8



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**From:** McDougal, John (HSGAC) [mailto:John\_McDougal@hsgac.senate.gov]  
**Sent:** Friday, September 21, 2007 3:30 PM  
**To:** David H. Dickieson  
**Cc:** McDougal John C; Roach, Bob (HSGAC)  
**Subject:** Contact Information

Hi Mr. Dickieson. Here is my contact information after next Wednesday:

John C. McDougal  
Special Trial Attorney  
Internal Revenue Service (SBSE)  
Main Street Centre, Suite 1601  
600 East Main Street  
Richmond, Virginia 23219  
Telephone - (804) 916-3942  
FAX - (804) 916-3939  
E-mail - [John.C.McDougal@irscounsel.treas.gov](mailto:John.C.McDougal@irscounsel.treas.gov)

As we discussed, if your client decides to come to D.C. to meet with the Subcommittee staff, I would also appreciate the opportunity to interview him in connection with a broader interest the IRS has in the practices of private banks with respect to offshore financial activities of U.S. clients. I will talk to Bob Roach about the propriety of conducting a joint interview, but if that doesn't work, perhaps it would be possible to arrange a separate interview with me during the same trip.

Thank you.

**John**

John C. McDougal  
Permanent Subcommittee on Investigations  
Telephone: (202) 224-4209  
Fax: (202) 224-1972

~~11/17/2008~~

Attachment 9

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**From:** McDougal John C [John.C.McDougal@IRSCOUNSEL.TREAS.GOV]  
**Sent:** Wednesday, October 10, 2007 6:44 PM  
**To:** David H. Dickieson  
**Subject:** Witness interview

Hi Dave. In case you didn't get the phone message I left you, I am writing to tell you that I will be coming to DC mid-day Thursday, and Revenue Agent Dan Reeves and I will meet at our hotel, which is a few blocks from your office, until we hear from you. Please call me on my cell phone – (804) 916-3939 – when you have concluded your meeting with Bob Roach. We can then work out a time to meet with you and your client. Thank you for the offer of your office as a meeting place.

By the way, Jack Blum will not be joining us for the interview.

Thank you.

John

(804) 916-3939

FAX: (804) 916-3939

<mailto:John.C.McDougal@IRSCOUNSEL.TREAS.GOV>

Attachment 10

## Birkenfeld, Bradley

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**From:** Birkenfeld, Bradley  
**Sent:** vendredi, 17. juin 2005 18:26  
**To:** Wuethrich, Rene  
**Cc:** Furrer, Stephane  
**Subject:** Interoffice Memorandum - URGENT

**Importance:** High

Dear René,

I would like to inform you that I sent to you today an interoffice memorandum regarding a very serious situation regarding my business sector and practices. Please confirm receipt of the interoffice memorandum when you receive it on Monday. Additionally, I would be available at anytime to review and discuss this matter with you. Thank you.

Best regards,

Brad



Bradley C. Birkenfeld  
Director - Key Clients  
UBS Wealth Management

+41-22-375-6132 (tel)  
+41-22-375-6080 (fax)

Attachment 11

Bitte berücksichtigen Sie die Deklarationspflichten, Einfuhrbestimmungen und die Klassifizierung für den internationalen Postversand.  
Veuillez prendre en considération les devoirs de déclaration, les règlements en matière d'importation et la classification pour l'expédition postale internationale.

La preghiamo di rispettare l'obbligo di dichiarazione, le direttive di importazione e la classificazione per l'invio postale internazionale.  
For international mails please consider appropriate classification as well as applicable duties of declaration and other import regulations.

PE GENEVE COR2-718

17.06.2005

**UBS AG**  
**René Wüthrich**  
**COR2 - 2.OG CGXK-WHH**  
**Case Postale 2600**  
**1211 Genève 2**  
**Switzerland**

**Begleitzettel / Fiche d'accompagnement**  
**Biglietto d'accompagnamento / Instruction slip**

Absender / Expéditeur / Mittente / Sender:

**PE GENEVE RHON-430**  
**UBS AG**  
**Bradley Birkenfeld**  
**RHON - A328 AFGT-1YV**  
**Rue du Rhône 8**  
**Case Postale 2600**  
**1211 Genève 2**  
**Switzerland**

External Tel. **+41-22-375 61 32**  
Internal Tel. **19600-61 32**  
External Fax **+41-22-375 60 80**

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- |   |  |
|---|--|
| <input type="checkbox"/> zur Kenntnisnahme<br>pour information<br>per conoscenza<br>for your information                    | <input type="checkbox"/> gem. Besprechung/Tel.<br>selon entretien/tel.<br>secondo intesa/tel.<br>as discussed/tel. |
| <input checked="" type="checkbox"/> zur Stellungnahme<br>pour prise de position<br>per presa di posizione<br>please comment | <input type="checkbox"/> für Ihre Akten<br>pour vos dossiers<br>per documentazione<br>for your files               |
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| <input checked="" type="checkbox"/> zum Entscheid<br>pour décision<br>per decisione<br>please decide                        | <input checked="" type="checkbox"/> dringend<br>urgent<br>urgente<br>urgente                                       |

# Memorandum

**TO:** René Wüthrich  
**FROM:** Bradley Birkenfeld  
**DATE:** June 17, 2005  
**SUBJECT:** URGENT MATTER

Dear René,

I am contacting you regarding a **very** serious matter that has a variety of negative consequences and I wanted to ensure that I made you aware of this, as well as ensuring I am in **total** compliance with the policies and procedures of UBS as a Director.

I was on the UBS intranet website (Wealth Management International, Americas International, QI - deemed sales, Country Paper USA *new*) and read a very lengthy and legal document (please see attached), covering the market I presently cover - the United States of America.

Please respond back to me, as I feel this should be given immediate and top priority, not just for me, but for my colleagues in Geneva and Zurich too! Thank you for your expertise and time in this matter.

Best regards,



Bradley C. Birkenfeld

Director



## Birkenfeld, Bradley

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**From:** Birkenfeld, Bradley  
**Sent:** vendredi, 24. juin 2005 14:10  
**To:** Wuethrich, Rene  
**Cc:** Furrer, Stephane  
**Subject:** Cross Border Banking - USA

Dear Rene,

I would like to follow up with you regarding this earlier discussed topic, as it is urgent and has many complicated negative ramifications. I look forward to hearing from you and your expert advice on this matter with respect to how we (me and my colleagues) are to conduct our business going forward. Thank you.

Best regards,

Brad



Bradley C. Birkenfeld  
Director - Key Clients  
UBS Wealth Management

+41-22-375-6132 (tel)  
+41-22-375-6080 (fax)



## Birkenfeld, Bradley

---

**From:** Birkenfeld, Bradley  
**Sent:** Dienstag, 19. Juli 2005 18:02  
**To:** Wuethrich, Rene  
**Cc:** Furrer, Stephane  
**Subject:** Cross Border Banking - USA

Dear Rene,

I wanted to follow up with you regarding your expert advice on this matter with respect to how we (me and my colleagues) are to conduct our business under the policies and procedures of UBS. Please let me know, as this is an urgent issue needing clarity. Thank you.

Regards,

Brad



Bradley C. Birkenfeld  
Director - Key Clients  
UBS Wealth Management

+41-22-375-6132 (tel)  
+41-22-375-6080 (fax)

**Tracking:**

**Recipient**  
Wuethrich, Rene  
Furrer, Stephane

**Read**  
Read: 05.08.2005 18:07



## Birkenfeld, Bradley

---

**From:** Birkenfeld, Bradley  
**Sent:** Montag, 15. August 2005 12:18  
**To:** Wuethrich, Rene  
**Cc:** Furrer, Stephane  
**Subject:** Cross Border Banking - USA

Dear Rene,

I'm not sure if you saw my last email. I initially sent this to you on June 17, 2005 by interoffice mail, requesting your professional advice regarding the issue of what we should and should NOT do in the Americas for marketing, products, clients etc. This has wide implications (in my opinion) and I would very much like an answer to this from you and your team as how to proceed. The article is on the UBS intranet. I look forward to your response. Thank you.

Regards,

Brad





UBS AG  
Christian Bovay  
Managing Director  
8 Rue du Rhône  
1204 Geneva  
Switzerland

October 05, 2005

Dear Christian,

Please accept this original letter as my official letter of resignation from UBS, effective as of today. Thank you.

Respectfully,



Bradley Birkenfeld

*I hereby confirm  
having received the  
above letter.*

  
Christian Bovay  
Managing Director

*5/10/05*

Attachment 17

## Birkenfeld, Bradley

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**From:** Birkenfeld, Bradley  
**Sent:** Montag, 10. Oktober 2005 10:43  
**To:** Boesch, Monika  
**Cc:** Bovay, Christian  
**Subject:** Resignation Meeting

**Importance:** High

Dear Monika,

I want to thank you for taking the time to meet with me and Christian this morning to discuss my resignation from UBS. Per our discussion and the major reason for my resignation (the 3 page intranet document on "Cross-Border Banking Activities in the USA") which I gave you. As I stated, I sent this document (by interoffice and email) to UBS Legal department and UBS Compliance department on several occasions with NO response whatsoever. I feel this is an URGENT matter as it has many consequences for my colleagues, clients and the bank. I look forward to following up with you on these matters.

Sincerely,

Brad



Attachment 18

**Bradley C. Birkenfeld  
20 Cours de Rive  
1207 Geneva  
Switzerland  
+41-79-779-7779**

UBS AG  
Mr. Peter Kurer  
Bahnhofstrasse 45  
8001 Zurich  
Switzerland

**REGISTERED MAIL  
CONFIDENTIAL**

March 17, 2006

Dear Mr. Kurer,

I wish to bring to your attention a very important matter. As an employee and officer of UBS (as well as a shareholder of UBS) I wish to invoke my rights listed under the UBS Whistleblowing Protection for Employees – Group Policy (1-P-000042), UBS Whistleblowing Policy – Corporate Center (9-P-001354) and UBS Whistleblowing Protection for Employees – WM & BB Supplementary Document (2-S-001014).

My submission refers to a UBS intranet three page legal document entitled “Cross-Border Banking Activities into the United States (version November 2004)” which can be located at (Wealth Management International, Americas International, QI-deemed sales, Country Paper). I was never informed by UBS senior management of the existence of this legal document and I never received any advice, briefing, guidance or input of any kind from UBS senior management with respect to this legal document. When I did become aware of this legal document, I was extremely concerned by its implications and I immediately sent it by interoffice mail followed by an email to the Head of UBS Compliance (Mr. Philipp Frey) and the Head of UBS Legal (Mr. Rene Wuthrich) on June 17, 2005. After many months of repeated emails requesting an answer to ensure that I (as a Director) and the business were in complete compliance with the policies and procedures of UBS – I received no responses of any kind. Due to the total lack of any response from UBS senior management over a three month period, I had no choice but to seek professional external legal counsel advice on this matter. On October 05, 2005, I gave notice of my resignation from UBS. I was compelled to do so, as I was left with no answers nor alternatives from UBS senior management.

The aforementioned legal document, which professed to outline what business practices were forbidden by UBS, ran directly contrary to the actual UBS business practices which were actively encouraged by UBS senior management. The posting of this legal document, coupled with the existing and ongoing actual business practices of UBS, constitute unfair and deceptive business practices, which are made all the more egregious by the collective silence of UBS senior management in the face of repeated inquiries.

I feel as a UBS employee and as a United States Citizen, this is a very serious matter not only for me, but for UBS colleagues, UBS clients, UBS shareholders and UBS. I trust you as UBS Group General Counsel will research this matter fully and I look forward to receiving communication back from you on this very important matter. Certainly as a UBS employee, I will be at your disposal for any future meetings or discussions relating to this issue. Thank you.

Sincerely,

Bradley C. Birkenfeld

cc: Martin Liechti



# Whistleblowing Protection for Employees Group Policy (1-P-000042)

Category	Legal & Compliance
Version	1.0

## 1. Purpose

The purpose of this policy is to encourage Employees to report any breaches of laws, regulations or codes of ethics to appropriate senior management of UBS without fear of retaliation. It reflects applicable global legal and regulatory requirements and the Code of Business Conduct and Ethics of the UBS Group.

## 2. Scope of Application

This policy applies to all Employees of the UBS Group, i.e. all Business Groups and Regions, all Subsidiaries and Joint Ventures with a participation of 50% or more and/or management control by UBS Group (hereinafter referred to as "UBS").

"Employee" (for purposes of this policy) only means all full-time and part-time employees, interns on UBS payroll, temporary and casual employees and consultants employed or engaged by UBS.

The Business Groups and Corporate Center may establish their own whistleblowing procedures to implement and comply with this policy and should cover the policy's provisions in employee training programs. In addition, Business Groups and Corporate Center may adopt additional whistleblowing and non-retaliation policies and procedures to comport with applicable local legal and regulatory requirements. Where such additional policies set forth specific reporting procedures regarding certain categories of conduct (such as employment discrimination or harassment), Employees are encouraged to follow such specific reporting procedures in lieu of the reporting procedures set forth in this Policy.

## 3. Role of Employees – To Report Conduct

All Employees are encouraged to report promptly any conduct which they reasonably believe violates or will violate any laws, rules, regulations or other legal requirements or applicable UBS codes of ethics or ethical standards.

### 3.1 Reporting

Employees should report any such conduct, either orally or in writing, to their immediate line manager or next level manager and to one of the following individuals:

- (1) Head of the Compliance Department of their Business Group in the location;
- (2) Any other persons designated and identified by the Business Group Compliance Department as authorized to receive such reports;
- (3) Office of the General Counsel or of the Regional General Counsel of the respective Business Group; or
- (4) In the case of Accounting Matters (as defined in 4.2 below) to any of the above persons or to the Company Secretary.

If an Employee is uncomfortable with reporting to his or her immediate line manager or next level manager, the Employee may report directly to any of the persons identified in (1)-(4) above without the involvement of such managers.

A report may be made on an anonymous basis. Each Business Group and Corporate Center shall, through its Head of Compliance, establish, maintain and promulgate procedures for the anonymous submissions of reports.

Each Business Group and Corporate Center shall establish procedures for the documentation of reports, as appropriate, which come to the attention of any of the persons identified in (1)-(4) above.

### **3.2 Confidentiality**

When reports are not made anonymously, reasonable efforts will be made to keep a reporting Employee's identity confidential. In certain circumstances, however, the identity of the Employee may become apparent during an investigation or may need to be disclosed, for example in regulatory proceedings. Accordingly, it is not possible for UBS to give a blanket guarantee of confidentiality.

## **4. Procedures for handling reports**

### **4.1 General Reports**

The persons mentioned in section 3.1 above must promptly investigate any report made and take all actions, which they consider are appropriate in the circumstances, including notifying Group Legal or Compliance or arranging for investigations by other functions within UBS or third parties, as appropriate.

### **4.2 Reports in connection with Accounting Matters**

Where the persons mentioned in section 3.1 receive a report in connection with questionable accounting, internal accounting controls or auditing matters (collectively, "Accounting Matters") they must immediately refer this to the Company Secretary on behalf of the Group Audit Committee with a copy to the Group General Counsel. Accounting Matters include, but are not limited to, the following:

- fraud or deliberate error in the preparation, evaluation, review or audit of any financial statement of UBS;
- fraud or deliberate error in the recording and maintaining of financial records of UBS;
- deficiencies in or noncompliance with UBS' internal accounting controls;
- misrepresentation or false statement to or by a senior officer or accountant regarding a matter contained in the financial records, financial reports or audit reports of UBS; or
- deviation from full and fair reporting of UBS' financial condition.

The Audit Committee will be responsible for investigating any report made to it and for taking all actions, which they consider are appropriate in the circumstances, including arranging for investigations by other functions within UBS or third parties. The Audit Committee shall establish, maintain and promulgate, through the Company Secretary, procedures for the confidential, anonymous submission of reports regarding Accounting Matters. Each Business Group and Corporate Center shall implement such procedures as the Audit Committee may require.

## **5. Non Retaliation**

No Employee or any contractor, subcontractor or agent of UBS may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against any Employee in the terms and conditions of employment because of any lawful act of the Employee either:

(1) to provide information, cause information to be provided or otherwise assist in any investigation (including by making a report under this Policy) regarding conduct that the Employee reasonably believes constitutes a violation of any laws, rules, regulations or other legal requirements or applicable UBS codes of ethics when the information or assistance is provided to, or the investigation is conducted by:

- any person identified in section 3.1 above;
- any other person with supervisory authority over the employee or other person working for UBS who has authority to investigate, discover or terminate misconduct;
- any regulatory or law enforcement agency or authority; or
- any member or committee of the United States Congress.

Or

(2) to file, testify, participate in or otherwise assist in a proceeding filed or about to be filed relating to an alleged violation of United States federal criminal laws prohibiting bank, wire, mail or securities fraud and any analogous laws of other jurisdictions or any rules or regulations of any banking or securities regulator of UBS.

In addition, no Employee or any contractor, subcontractor or agent of UBS shall knowingly, with the intent to retaliate, take any action harmful to any Employee or other person, including interference with the lawful employment or livelihood of such Employee or other person, for providing to any law enforcement official any truthful information relating to the commission or possible commission of any crime.

#### **6. Breach of this policy**

Conduct which amounts to a breach of this policy could result in criminal or regulatory sanctions or civil liability or have an adverse effect on UBS' reputation. As a result, a breach of this policy may constitute gross misconduct and may result in disciplinary action including dismissal.

*Peter Kurer*

**Group General Counsel**

# Whistleblowing Protection for Employees

## WM&BB Supplementary Document 2-S-001014

### Basic principle

These principles are based on the Group Policy "Whistleblowing Protection for Employees" (1-P-000042), and set out the principles and implementation measures for Business Group WM&BB.

### Purpose

The purpose of these principles and measures is to

- enforce compliance with legal, regulatory and internal guidelines, as well as with ethical standards, and
- provide suitable procedures so that employees who suspect or know about violations of such guidelines and standards can make senior management aware of them without suffering any disadvantages.

### Principles & measures

#### 1. Reporting & confidentiality

All employees are encouraged to immediately report any conduct they know or assume to violate laws, regulatory provisions, rules or any other legal provisions, as well as internal and other ethical standards.

Such reports can be filed either orally or in writing (by letter, fax or e-mail). If a report is not filed anonymously, best efforts will be made to keep the reporting employee's identity confidential and to ensure that he or she does not suffer any retaliation.

#### 2. Reporting units

Suspicion or knowledge of violations may be reported to one's line manager or to one of the following units:

- Risk & Compliance
- Legal
- Operational Risk Incidents
  - Whistleblowing Hotline, international (+41 (0)840 000 888)
  - Mailbox (Whistleblowing)
  - Postal address: UBS AG, Operational Risk Incidents, P.O. Box, 8098 Zurich
- Security Risk Control
  - Hotline, international & 24h (+41 1 234 24 24)
  - Mailbox (Crime-Invest@ubs.com)



### **3. Handling of Whistleblowing reports**

The addresses of Whistleblowing reports must immediately notify Operational Risk Incidents and initiate the appropriate investigations.

If the violation notified is considered to be minor (isolated cases without further consequences), such investigations can be carried out by WM&BB Line Management (WM&BB competency regulations), Risk & Compliance or Legal in their own authority. Operational Risk Incidents is to be informed of the result of the investigation.

If, however, the report involves a grave violation or if there are pointers to risks with far-reaching significance, Operational Risk Incidents is to co-ordinate further investigations and assume the responsibility for notifying Group.

## **Employee training**

Risk & Compliance is charged with employee training concerning the relevant objects and processes as part of its Compliance training concept. This concept includes measures for newcomers ("Welcome Day") as well as for other staff ("Compliance Skills Review").



# Whistleblowing Policy

## Corporate Center (9-P-001354)

Category	Legal & Compliance
Version	1.0

### 1. Introduction

The purpose of this CC Whistleblowing Policy is to set forth the handling procedures for the whistleblowing cases that fall under the responsibility of Corporate Center. The CC Whistleblowing Policy recognizes and concretizes the rules set forth in the Group Whistleblowing Policy and the Attorney Conduct Policy.

### 2. Definitions

<b>Accounting Matters</b>	Reports in connection with questionable accounting, internal accounting controls or auditing matters as defined in section 4.2 of the Group Whistleblowing Policy
<b>Attorney Conduct Policy</b>	Group Policy 1-P-000040, Compliance with Attorney Standards of Professional Conduct
<b>CC Whistleblowing Form</b>	The form defined in section 5 herein
<b>CC Whistleblowing Policy</b>	This policy
<b>Group Whistleblowing Policy</b>	Group Policy 1-P-000042 Whistleblowing Protection for Employees
<b>Employee</b>	All full-time and part-time employees, interns on UBS payroll, temporary and casual employees and consultants employed or engaged by UBS (see also section 2 of the Group Whistleblowing Policy)
<b>General Counsel CC</b>	General Counsel Corporate Center

### 3. CC Reporting Chart for CC Whistleblowing Policy

See attached Chart for ease of reference (**Attachment 1**).

### **3.1 Initial Reporting**

Art. 3, 3.1 Group Whistleblowing Policy

Any Employee should report on the conduct of any Corporate Center employee that they reasonably believe violates or will violate any laws, rules, regulations or other legal requirements or applicable UBS codes of ethics or ethical standards to their immediate line manager (or next level manager) and to the General Counsel CC.

If a report is filed with any other person, then such a report must immediately be forwarded to the General Counsel CC.

An oral or written complaint by an employee does not fall within this policy if the alleged misconduct clearly fails to violate any laws, rules, regulation or other legal requirement, or applicable UBS codes of ethics or ethical standard. Employees are still encouraged to discuss such complaint. In case of doubt the General Counsel CC shall decide whether a matter falls under the CC Whistleblowing Policy.

Complaints that relate to Accounting Matters must be forwarded directly to the Company Secretary with a copy to the Group General Counsel (Art. 4.2 Group Whistleblowing Policy) and to the General Counsel CC.

### **3.2 Forwarding of Reports to General Counsel CC**

All reports must be forwarded to the General Counsel CC. In case of doubt whether or not a case falls under the CC Whistleblowing Policy, the matter shall still be forwarded to the General Counsel CC.

### **3.3 Responsibilities of General Counsel CC**

The General Counsel CC shall manage and supervise any investigation of matters under the CC Whistleblowing Policy. The General Counsel CC may mandate another appropriate person or function to conduct the investigation.

The General Counsel CC shall ensure that the report is forwarded to the Company Secretary in Accounting Matters (with a copy to the Group General Counsel).

### **3.4 Cases relating to non-Corporate Center Employees**

Generally, all reports on the conduct of non-Corporate Center employees received by Corporate Center shall be forwarded to the General Counsel CC who will redirect the report to the corresponding Business Group responsible for handling such a report.

However, the General Counsel CC shall be responsible to handle a case relating to the conduct of a non-Corporate Center employee if:

- the Group General Counsel asks him to handle such a case; or
- the case relates to a conduct by a member of the Group Executive Board or of the Group Managing Board except if the Group General Counsel decides that the case shall be handled by a Business Group; or
- the General Counsel CC and the General Counsel of a Business Group agree so.

### **3.5 Investigation**

Art. 3, 3.1 Group Whistleblowing Policy

The person or function mandated by the General Counsel CC shall conduct an investigation on the report based upon the instructions of the General Counsel CC.

The General Counsel CC and/or the person investigating a complaint shall ensure that the matter is adequately addressed especially in terms of the level of investigation, cost, staffing, and timing.

The investigation will be conducted by adhering to the principles set forth in section 6 below.

Any case relating to the conduct of a member of the Group Executive Board or of the Group Managing Board requires an investigation by external counsel.

## **4 CC Reporting Chart under Attorney Conduct Policy**

The Attorney Conduct Policy describes in detail the responsibilities of attorneys employed by UBS. Corporate Center does not deviate from this structure. For ease of reference, the responsibilities are visualized in the attached Chart (see **Attachment 2**).

## **5 CC Whistleblowing Form**

Any person reporting a case under the Group Whistleblowing Policy or the Attorney Conduct Policy is encouraged to use the attached CC Whistleblowing Form (see **Attachment 3**).

The General Counsel CC shall ensure that the CC Whistleblowing Form is used for cases reported to him.

## **6 Principles for Handling Whistleblowing Cases**

### **6.1 General Approach to Whistleblowing**

Art. 1, 2, and 3 Group Whistleblowing Policy

UBS encourages its employees to report any breaches of laws, rules, regulations or other legal requirements or applicable UBS codes of ethics or ethical standards without fear of retaliation.

### **6.2 Anonymity**

Art. 3.1 Group Whistleblowing Policy

Cases may be reported on an anonymous basis.

The person receiving a report or conducting an investigation under the Group Whistleblowing Policy or the Attorney Conduct Policy shall undertake all reasonable efforts to maintain the anonymity of the report's author. In certain circumstances, however, the identity of the reporting employee may become apparent during an investigation and may need to be disclosed (e.g. regulatory proceedings).

### **6.3 Confidentiality**

Art. 3.2 Group Whistleblowing Policy

The person receiving a report or conducting an investigation under the Group Whistleblowing Policy or the Attorney Conduct Policy shall undertake all reasonable efforts to maintain the reporting employee's identity confidential. In certain circumstances, however, the identity of the employee may become apparent during an investigation or may need to be disclosed (e.g. regulatory proceedings). Accordingly, UBS cannot guarantee confidentiality.

### **6.4 Documentation**

Art. 3.1 Group Whistleblowing Policy / Art. 4.3 Attorney Conduct Policy

The CC Whistleblowing Form (as described in Section 5) must be used as the tracking document for each report. Depending on the scope and importance of a case, additional documentation may be required.

It is the responsibility of the General Counsel CC and, if the General Counsel CC has mandated another appropriate person or function to conduct the investigation, the person conducting the investigation to ensure appropriate documentation of each case.

The General Counsel CC shall maintain a list of all cases that fall within his responsibility pursuant to this CC Whistleblowing Policy.

### **6.5 Independence**

The person mandating or conducting an investigation under the CC Whistleblowing Policy shall ensure that the investigation be conducted by a person who

- is independent, i.e. neither related to nor incriminated by the complaint; and
- has the necessary knowledge and skills to conduct the investigation. The level of skill and knowledge required depends on the complexity of the matter.

### **6.6 Non Retaliation**

Art. 5 Group Whistleblowing Policy / Art. 5 Attorney Conduct Policy

No employee shall experience any form of retaliation for a good faith report under the Group Whistleblowing Policy or the Attorney Conduct Policy.

### **6.7 Sanctions**

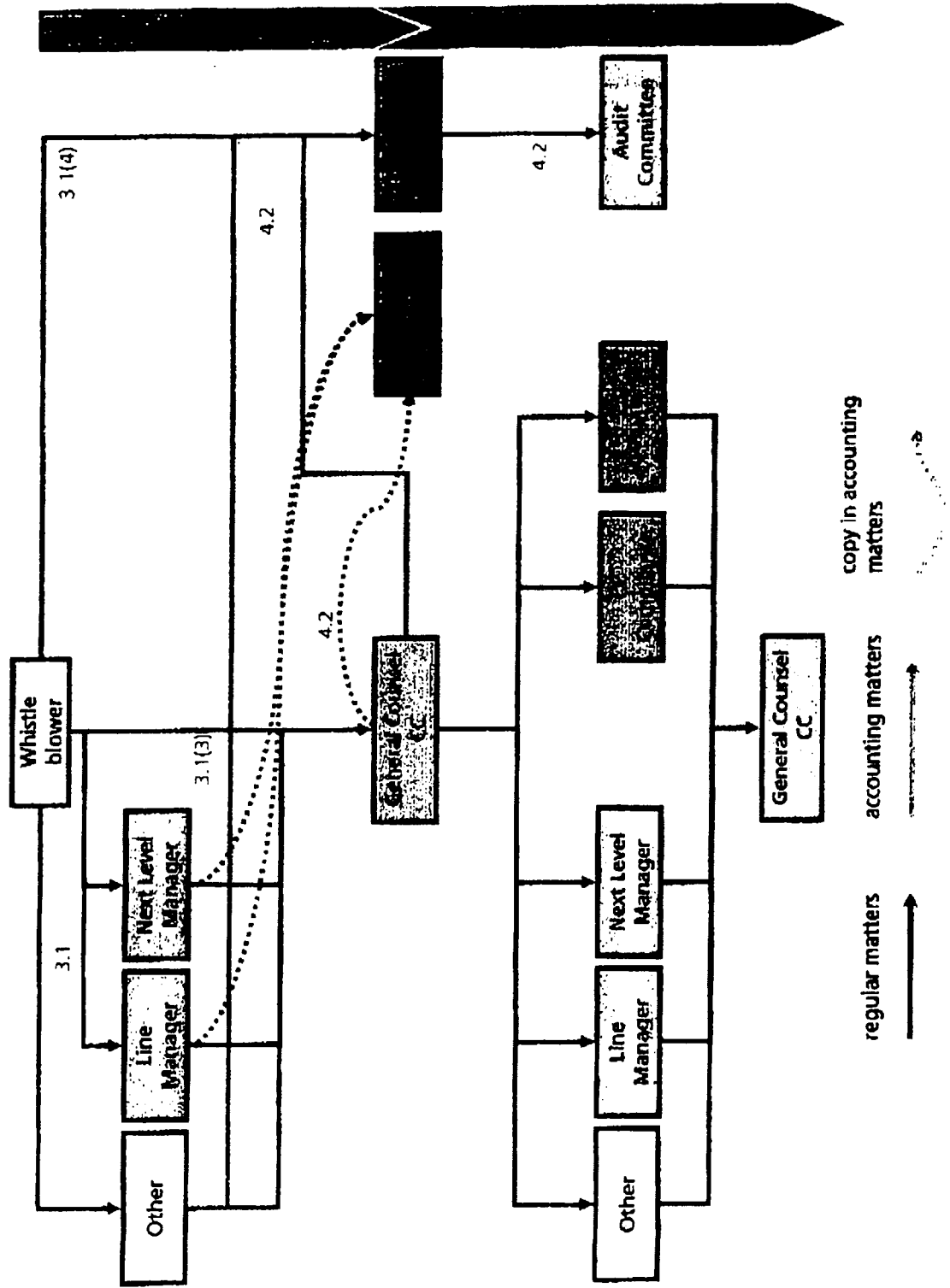
Art. 6 Group Whistleblowing Policy / Art. 7 Attorney Conduct Policy

Any breach of the Group Whistleblowing Policy or the Attorney Conduct Policy may result in disciplinary sanctions. Disciplinary sanctions must be coordinated with the General Counsel CC and the HR CRM.

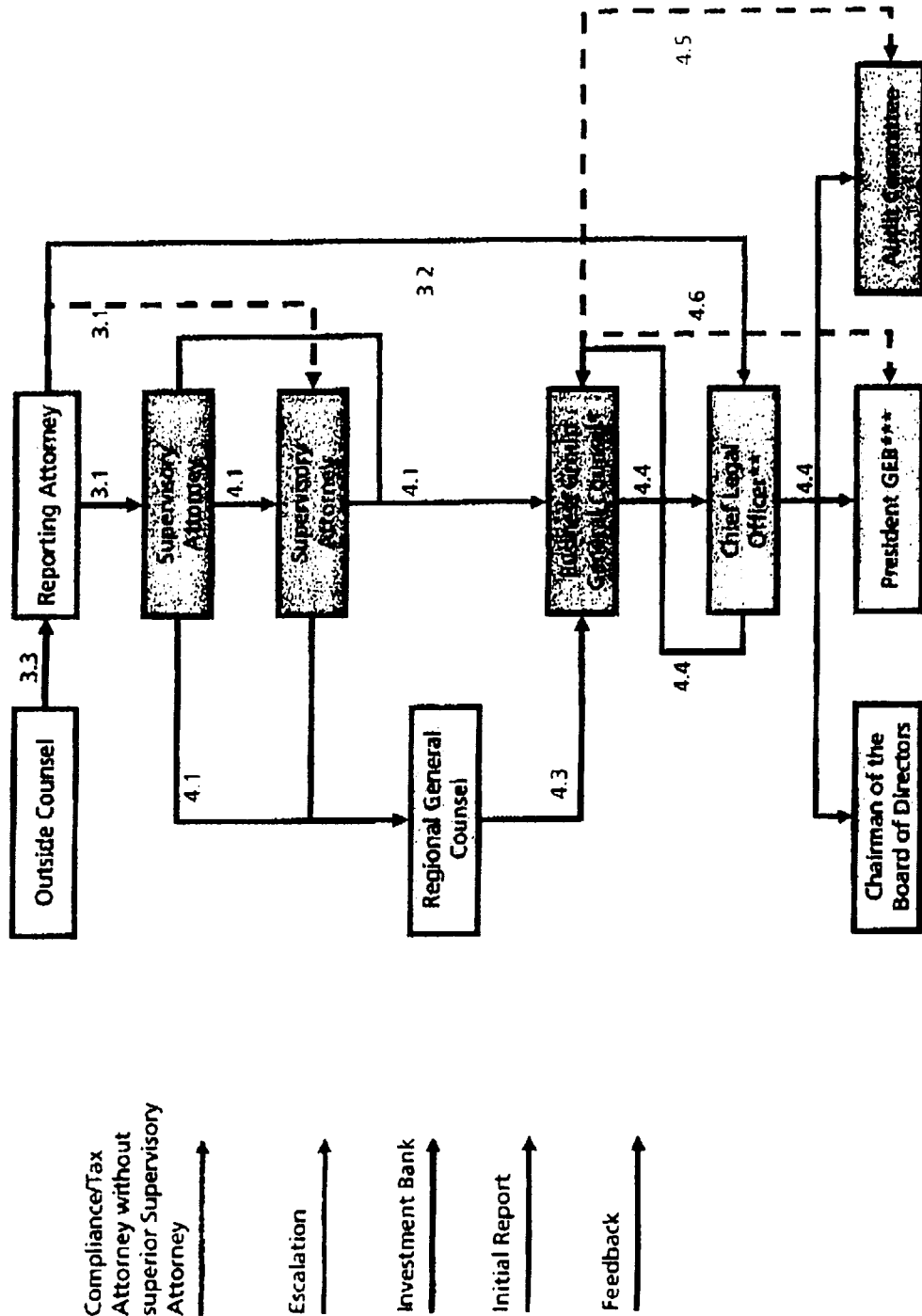
*Peter Kurer*

**Group General Counsel**

# CC Chart Group Whistleblowing Policy



# Chart Attorney Conduct Policy



\* Incl. Corporate Center Attorney directly reporting to the Chief Legal Officer  
 \*\* Group General Counsel  
 \*\*\* Group CEO

# CC Whistleblowing Form

Attachement 3

- As stated in the CC Whistleblowing Policy<sup>1</sup>, this form will serve as the reporting/tracking document for the whistleblowing cases of UBS Corporate Center.
- The person(s) receiving a report as described under the Group Whistleblowing Policy<sup>2</sup> or the Attorney Conduct Policy<sup>3</sup> must ensure that this form is completed.

## 1. Initial Report

<b>Name</b>	[Enter Name / Leave blank if anonymous report]
<b>To</b>	[Enter Name of recipient of report]
<b>Date</b>	[Enter Date]
<b>Facts</b>	[Enter short description of facts]

## 2. Escalation / Investigation

<b>Date</b>	<b>Event</b>
	[Enter Text]

## 3. Closure of Case

<b>Result</b>	[Summarize the results of the investigation including measures/sanctions taken, if any]
<b>Date</b>	[Enter Date]
<b>Name / Signature</b>	[Enter Name and Sign]

<sup>1</sup> Corporate Center Policy [9-P-001354]

<sup>2</sup> Group Policy 1-P-000042 Whistleblowing Protection for Employees

<sup>3</sup> Group Policy 1-P-000040 Compliance with Attorney Standards of Professional Conduct



**EXHIBIT C TO DEFERRED  
PROSECUTION AGREEMENT**

**STATEMENT OF FACTS**

1. UBS AG, a corporation organized under the laws of Switzerland ("UBS"), directly and through its subsidiaries, operates a global financial services business. As one of the biggest banks in Switzerland and largest wealth managers in the world, UBS provides banking, wealth management, asset management and investment banking services, among other services, around the globe, including through branches located in the United States (including the Southern District of Florida).
2. Effective January 1, 2001, UBS entered into a Qualified Intermediary Agreement (the "QI Agreement") with the Internal Revenue Service ("IRS"). The Qualified Intermediary ("QI") regime provides a comprehensive framework for U.S. information reporting and tax withholding by a non-U.S. financial institution that acts as a QI with respect to customer accounts held by non-U.S. persons and by U.S. persons. The QI Agreement is designed to help ensure that non-U.S. persons are subject to the proper U.S. withholding tax rates and that U.S. persons are properly paying U.S. tax, in each case, with respect to U.S. securities held in an account with the QI. QI agreements were subject to a "documentation transition period" announced by the IRS in Notice 2001-4 (Jan. 8, 2001) that gave QIs until the end of 2002 to achieve "substantial compliance" with the provisions of the QI Agreement. The QI Agreement expressly recognizes that a non-U.S. financial institution such as UBS may be prohibited by foreign law, such as Swiss law, from disclosing an account holder's name or other identifying information. In general, a QI subject to such foreign-law restrictions must request that its U.S. clients either (a) grant the QI authority to disclose the client's identity or disclose himself by mandating the QI to provide an IRS Form W-9 completed by the account holder, or (b) grant the QI authority to sell all U.S. securities of the account holder (in the case of accounts opened before January 1, 2001) or to exclude all U.S. securities from the account (in the case of accounts opened on or after January 1, 2001). Following the effective date of the QI Agreement, a sale of U.S. securities, if any, held by a U.S. person who chose not to provide a QI with an IRS Form W-9 was subject to tax information reporting on an anonymous basis and backup withholding.
3. For some time, UBS has operated a U.S. cross-border business through which its private bankers have provided cross-border securities-related and investment advisory services to U.S.-resident private clients who maintained accounts at UBS in Switzerland and other locations outside the United States. UBS was not registered as a broker-dealer or an investment adviser pursuant to the Securities Exchange Act of 1934 and the Investment Advisers Act of 1940, and the private bankers and managers engaged in this U.S. cross-border business were not affiliated with a registered broker-dealer or investment adviser. The Securities Exchange Act and Investment Advisers Act restricted the activities that UBS (and the private bankers and managers engaged in the U.S. cross-border business), absent

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registration, could engage in with such U.S. private clients either while in the United States or by using U.S. jurisdictional means such as telephone, fax, mail or e-mail, including the provision of investment advice and the soliciting of securities orders. During the relevant time period from 2001 through 2007, UBS private bankers in this U.S. cross-border business traveled to the United States to meet with certain U.S. private clients, and communicated by telephone, fax, mail and/or e-mail with such U.S. private clients while those clients were in the United States. Certain of these U.S. clients had chosen not to provide UBS with an IRS Form W-9 with respect to their UBS accounts and thereby concealed such accounts from the IRS.

- 4.A. Beginning in 2000 and continuing until 2007, UBS, through certain private bankers and managers in the U.S. cross-border business, participated in a scheme to defraud the United States and its agency, the IRS, by actively assisting or otherwise facilitating a number of U.S. individual taxpayers in establishing accounts at UBS in a manner designed to conceal the U.S. taxpayers' ownership or beneficial interest in said accounts. In this regard, said private bankers and managers facilitated the creation of such accounts in the names of offshore companies, allowing such U.S. taxpayers to evade reporting requirements and to trade in securities as well as other financial transactions (including making loans for the benefit of, or other asset transfers directed by, the U.S. taxpayers, and using credit or debit cards linked to the offshore company accounts).
- 4.B. In connection with the establishment of such offshore company accounts, UBS private bankers and managers accepted and included in UBS's account records IRS Forms W-8BEN (or UBS's substitute forms) provided by the directors of the offshore companies which represented under penalty of perjury that such companies were the beneficial owners, for U.S. federal income tax purposes, of the assets in the UBS accounts. In certain cases, the IRS Forms W-8BEN (or UBS's substitute forms) were false or misleading in that the U.S. taxpayer who owned the offshore company actually directed and controlled the management and disposition of the assets in the company accounts and/or otherwise functioned as the beneficial owner of such assets in disregard of the formalities of the purported corporate ownership.
- 4.C. Additionally, said private bankers and managers would actively assist or otherwise facilitate certain undeclared U.S. taxpayers, who such private bankers and managers knew or should have known were evading United States taxes, by meeting with such clients in the United States and communicating with them via U.S. jurisdictional means on a regular and recurring basis with respect to their UBS undeclared accounts. This enabled the U.S. clients to conceal from the IRS the active trading of securities held in such accounts and/or the making of payments and/or asset transfers to or from such accounts. Certain UBS executives and managers who knew of the conduct described in this paragraph continued to operate and expand the U.S. cross-border business because of its profitability. It was not until August 2007 that executives and managers made a decision to wind down the U.S. cross-border business. Executives and managers delayed this decision due to concerns that it would be costly, that it was not likely a third party buyer of the business could be found, and it could damage UBS's business reputation.

5. In or about 2004, the UBS Wealth Management International business changed its compensation approach to take account of a number of factors, including net new money, return on assets, net revenue, direct costs and assets under management, with weightings varying depending on the particular geographic market involved. Thereafter, the managers of the U.S. cross-border business implemented this new compensation structure in a way that provided incentives for U.S. cross-border private bankers to expand the size of the U.S. cross-border business. This encouraged those private bankers to have increased contacts in the United States with U.S.-resident private clients via travel to the United States and contact with U.S. clients via telephone, fax, mail and/or e-mail.

### **The U.S. Cross-Border Business**

6. U.S. private clients often visited their private bankers in Switzerland and otherwise communicated with their private bankers from outside the United States. However, during the relevant period, Swiss-based UBS private bankers also traveled to the United States to meet with certain of their U.S. private clients, including U.S. persons who were beneficial owners of offshore companies that maintained accounts at UBS. This U.S. cross-border business was serviced primarily from service desks located in Zurich, Geneva, and Lugano, which employed about 45 to 60 Swiss-based private bankers or client advisors who specialized in servicing U.S. clients. These private bankers traveled to the United States an average of two to three times per year, in trips that generally varied in duration from one to three weeks, and generally tried to meet with about three to five clients per day. An internal UBS document estimated that U.S. cross-border business private bankers had made approximately 3,800 visits with clients in the United States during 2004. In addition, while in Switzerland, these private bankers would communicate via telephone, fax, mail and/or e-mail with certain of their private clients in the United States about their account relationships, including on occasion to take securities transaction orders in respect of offshore company accounts. Private bankers in the U.S. cross-border business typically traveled to the United States with encrypted laptop computers to maintain client confidentiality and received training on how to avoid detection by U.S. authorities while traveling to the United States.
7. In response to concerns expressed in 2002 by some clients of the U.S. cross-border business regarding the effect of UBS's then-recent acquisition of U.S.-based brokerage firm PaineWebber on UBS's ability to keep client information confidential, UBS sought to reassure such clients that Swiss bank secrecy restrictions would continue to protect the confidentiality of their identities. Thus, on or about November 4, 2002, two managers in the U.S. cross-border business sent a form letter to U.S. clients of UBS, noting that UBS had been exposed to, and successfully challenged, attempts by U.S. authorities to assert jurisdiction over assets in accounts maintained abroad since it opened offices in the U.S. in 1939, and that the QI Agreement fully respected client confidentiality and thus UBS would be able to maintain the confidentiality of client information.
8. During the relevant period, UBS's U.S. cross-border business provided securities-related and investment advisory services to accounts of approximately 11,000 to approximately 14,000 U.S.-domiciled U.S. private clients who had chosen not to provide an IRS Form W-9 (or UBS's substitute form) to UBS or who were the underlying beneficial owners of

offshore companies that maintained accounts with UBS. The U.S. cross-border business generated approximately \$120 million - \$140 million in annual revenues for UBS and was relatively a very small part of UBS's global wealth management business: in 2007, for example, all of NAM (the business sector that included, among other businesses, the U.S. cross-border business) represented only approximately 0.3% of all client advisors; 0.7% of invested assets; 1.03% of clients; and 0.3% of net new money.

### **The QI Agreement**

9. In 2000, UBS decided to apply to become a QI because operating as a QI would enable UBS to continue handling U.S. securities transactions for non-U.S. persons in accordance with the requirements of the QI Agreement at reduced U.S. withholding tax rates and to handle QI-compliant accounts for U.S. persons. Also in 2000, UBS began communicating with its U.S. clients about the requirements of the QI Agreement. On July 14, 2000, managers in the U.S. cross-border business, with the approval of UBS's QI Coordination Committee, which was made up of various groups, including the U.S. cross-border business and UBS's Group Tax, Legal, Compliance, Operations and Financial Planning departments, changed the wording on a UBS form letter that was sent to U.S. clients entitled "Declaration for US Taxable Persons" from "I would like to avoid disclosure of my identity to the US Internal Revenue Service under the new tax regulations" to "I am aware of the new tax regulations" after U.S. clients expressed concern that the form as originally drafted could be considered an admission of tax evasion by such U.S. clients.
10. In advance of the January 1, 2001 effective date of the QI Agreement, UBS undertook substantial implementation efforts designed to address its obligations under the QI Agreement, including through a global program to communicate the new QI requirements to all affected clients, new policies, procedures and IT systems, and training. As part of those QI compliance efforts, UBS obtained authorizations from U.S. clients holding U.S. securities to sell, or required sales by such U.S. clients, totaling approximately \$530 million of U.S. securities prior to the January 1, 2001 effective date of the QI Agreement. As a result of these efforts, the vast majority of UBS's U.S. person client accounts no longer held U.S. securities by the effective date of the QI Agreement and had executed waivers agreeing not to invest in U.S. securities in the future.

### **The Offshore Company Scheme**

11. Some U.S. clients, however, indicated that they wanted to continue to maintain their U.S. securities holdings and not provide UBS with an IRS Form W-9 (or UBS's substitute form), thereby concealing their U.S. securities holdings from the IRS. As part of its QI compliance efforts, UBS had issued written guidelines advising U.S. cross-border managers and private bankers not to actively assist U.S. taxpayers who may seek to establish offshore companies, and that any such companies should respect corporate formalities and not be operated as a sham, conduit or nominee entity. Internal UBS documents also noted that active assistance by private bankers to help U.S. private clients set up offshore companies to evade the U.S. securities investment restrictions in the QI Agreement might be viewed as actively helping such clients to engage in tax evasion. Notwithstanding those warnings, certain managers in the U.S. cross-border business thereafter authorized UBS private

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bankers to refer those U.S. clients who did not wish to comply with the new requirements of the QI Agreement to certain outside lawyers and consultants, and did so with the understanding that these outside advisors would help such U.S. clients form offshore companies in order to enable such clients to evade the U.S. securities investment restrictions in the QI Agreement. Thus, rather than risk losing these clients, UBS, through such referrals to outside advisors made by certain private bankers and managers in the U.S. cross-border business, assisted such U.S. clients in creating and maintaining sham, nominee or conduit offshore companies in jurisdictions like Panama, Hong Kong, and the British Virgin Islands, that enabled such clients to conceal their investments in U.S. securities, and thereby evade UBS's obligation to provide tax information reporting on an anonymous basis and to backup withhold with respect to certain payments made to such accounts.

12. Also as part of the offshore company scheme, such offshore structures continued to be established after the January 1, 2001 effective date of the QI Agreement. For example, on August 17, 2004, certain managers in the U.S. cross-border business organized a meeting in Switzerland for certain UBS private bankers with outside lawyers and consultants to review options for the establishment of offshore entity structures in various tax-haven jurisdictions, including recommendations to U.S. clients who did not appear to declare income/capital gains to the IRS.

#### **Inadequate Compliance Systems**

13. During the period from 2000 through 2007, UBS adopted a series of compliance initiatives that were intended to improve compliance by the U.S. cross-border business with UBS policies, the QI Agreement and U.S. laws. For example, UBS adopted written policies regarding the proper handling of accounts for offshore companies beneficially owned by U.S. persons, including prohibitions on actively assisting undeclared U.S. private clients in setting up legal entity structures to evade QI Agreement restrictions against U.S. persons holding U.S. securities, and advisory guidelines which stated that offshore companies beneficially owned by U.S. persons should follow corporate formalities and should not be operated as sham, conduit or nominee entities. In addition, UBS adopted written policies designed to prevent UBS private bankers from providing securities-related and investment advisory services to U.S. private clients, including prohibitions on taking securities orders from or furnishing securities investment advice to U.S. clients, while those clients were in the United States, or by using U.S. jurisdictional means, as well as, among other things, instituting written internal guidelines, IT system changes, training, and centralizing the cross-border servicing of U.S. clients at desks in Zurich, Geneva and Lugano.
14. However, during the relevant time period, UBS did not develop and implement an effective system of supervisory and compliance controls over the private bankers in the U.S. cross-border business to prevent and detect violations of UBS policies regarding the proper handling of accounts for offshore companies beneficially owned by U.S. persons, and regarding restrictions on providing securities-related and investment advisory services to U.S. clients while those clients were in the United States or by using U.S. jurisdictional means. UBS failed to monitor and control the activities of certain private bankers and managers in the U.S. cross-border business, and, as a result, some private bankers and their managers came to believe that a certain degree of non-compliance with UBS policy was

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acceptable in connection with operating the U.S. cross-border business. Also, despite the above-described policies prohibiting certain contacts with U.S. persons, UBS did not have an effective system to capture and record instances when private bankers in the U.S. cross-border business may have violated U.S. laws. As a result, UBS did not monitor such activity and thus was not able to determine whether or not such activity may have required tax information reporting and backup withholding for certain payments made to the accounts of such clients.

15. Following a March 2006 whistleblower letter by a former Geneva-based UBS private banker alleging that the actual practices of UBS private bankers ran contrary to an internal legal document posted on UBS's intranet that outlined what business practices were forbidden by UBS and further alleging that the actual practices were actively encouraged by managers in the U.S. cross-border business, UBS conducted a limited internal investigation of the U.S. cross-border business. That investigation did not examine or follow up on available evidence of private banker communications with U.S. clients and, as a result, it found only "isolated instances" of non-compliance. A thorough investigation would have uncovered violations of U.S. law as described in this statement of facts.



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Group General Counsel

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Fax +41-44-234 88 55  
peter.kurer@ubs.com

www.ubs.com

Mr. Bradley C. Birkenfeld  
20 Cours de Rive  
1207 Geneva

March 21, 2006

Dear Mr. Birkenfeld

I thank you for your letter dated March 17, 2006.

You have listed allegations against individuals of the bank and invoked your rights under the UBS Group's Whistleblowing Protection for Employees.

In accordance with the Group Policy 1-P-000042 "Whistleblowing Protection for Employees" and the Corporate Center Policy 9-P-001354 "Whistleblowing Policy" I have asked the General Counsel Corporate Center, Bernhard Schmid, to lead an independent investigation. In a first step, Bernhard Schmid will talk to you and get a better understanding of your allegations. Then, he will define the scope of the investigation and involve other experts as thought necessary. I will personally make sure that the investigation will be made quickly and comprehensively.

I would be most grateful, if you could share your views with Bernhard Schmid who will contact you soon. If you have any question on the above, feel free to contact me or Bernhard Schmid.

Best regards,

Peter Kurer

cc: Lawrence A. Weinbach, Chairman of the Audit Committee of the Board of Directors  
Marcel Rohner, Chairman and CEO, Global Wealth Management & Business Banking  
Markus Ronner, Head of Group Internal Audit  
Bernhard Schmid, General Counsel, Corporate Center

Attachment 21

Mr. Bradley C. Birkenfeld  
20 Cours de Rive  
1207 Geneva

May 24, 2006

Dear Mr. Birkenfeld

This refers to my letter to you of March 21, 2006.

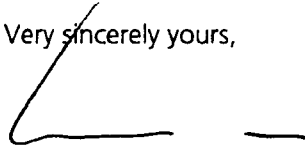
The General Counsel of the Corporate Center, Bernhard Schmid, has delivered to me his final report on his independent investigation into the whistleblowing matter which was raised by you. The investigation was made in conjunction with Group Internal Audit and it included a number of interviews with altogether 12 people, a thorough analysis of new client relationships, an analysis of portfolio and security transactions, an analysis of e-mail archives, an analysis of hold mail clients, and an analysis of e-banking services.

I am in the process of reviewing the results and formulating a number of recommendations to management. For that purpose, I also have asked the view of U.S. counsel. My recommendations will aim at improving the existing policy as well as improving the training and monitoring.

Since the independent investigation is now closed, I have asked Bernhard Schmid to discuss with [REDACTED] possible resolution of the outstanding bonus matter. I understand that members of my staff are in contact with your lawyer for that purpose.

I thank you for drawing my attention to this compliance issue. It is one of our core values to foster a high quality compliance culture. In line with our whistleblowing policy, you must not fear any retaliation and I have instructed our representatives to solve the outstanding bonus matter in the most objective and neutral way and in line with the applicable legal and contractual provisions.

Very sincerely yours,



Peter Kurer

cc: Lawrence A. Weinbach, Chairman of the Audit Committee of the Board of Directors  
Marcel Rohner, Chairman and CEO, Global Wealth Management & Business Banking  
Markus Ronner, Head of Group Internal Audit  
Bernhard Schmid, General Counsel, Corporate Center





UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

DIVISION OF  
ENFORCEMENT

November 14, 2007

Mr. Bradley C. Birkenfeld  
c/o David H. Dickieson, Esq.  
Schertler & Onorato, LLP  
601 Pennsylvania Ave., N.W.  
North Building, 9<sup>th</sup> Floor  
Washington, D.C. 20004-2601

Re: In the Matter of Unregistered Brokers, File No. MHO-10751

Dear Mr. Birkenfeld:

This is to confirm the terms of the November 14, 2007 meeting (the "Meeting") between you and the staff of the Division of Enforcement of the United States Securities and Exchange Commission in connection with the above-referenced matter. The meeting is subject to the following guidelines and conditions:

- (1) With respect to any civil or administrative actions brought against you by the Commission or its staff, the Commission will not offer at any trial or other proceeding, any statements made by you at the Meeting, except with respect to false statements made at this Meeting evidencing obstruction of justice, perjury, or other violations of law based upon the inaccuracy or incompleteness of the statements;
- (2) Notwithstanding paragraph (1) above, the Commission and its staff may use:
  - (a) information derived directly or indirectly from the Meeting for the purpose of obtaining leads to other evidence, which evidence may be used in any civil action or administrative proceeding against you by the Commission; and
  - (b) statements made by you at the Meeting and all evidence obtained directly or indirectly therefrom for the purpose of cross-examination should you testify, or to rebut any evidence offered by you or on your behalf in connection with any civil action or with any administrative proceeding, should any be undertaken;
- (3) It is further understood that this Agreement is limited to the statements made by you at the Meeting and does not apply to any oral, written or recorded statements made by you at any other time;
- (4) No understandings, promises, agreements and/or conditions have been entered into with respect to the Meeting other than those set forth above in paragraphs (1) through (3) of this letter and none will be entered into unless in writing and signed by the parties to this agreement; and

Attachment 23

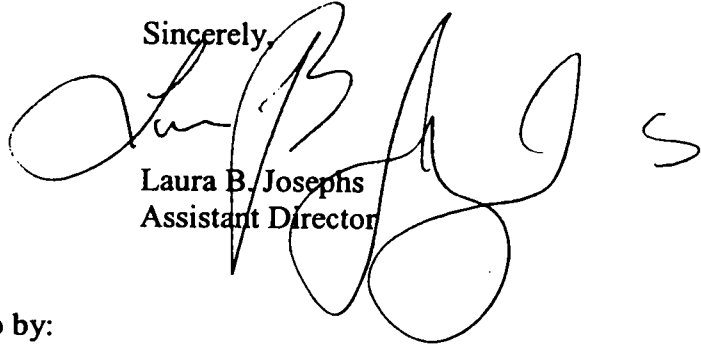
Mr. Bradley C. Birkenfeld

November 14, 2007

Page 2

(5) This letter does not limit or otherwise affect any understandings set forth in any agreement between you and any other agency or office, and any agreement between you and any other agency or office does not limit or otherwise affect the understandings and conditions set forth in this letter.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Laura B. Josephs'. To the right of the signature is a small, handwritten capital letter 'S'.

Laura B. Josephs  
Assistant Director

The foregoing is understood and agreed to by:

A handwritten signature in black ink, appearing to read 'Bradley C. Birkenfeld'. The signature is written over a horizontal line.

Bradley C. Birkenfeld

A handwritten date in black ink, appearing to read '11/14/07'. The date is written over a horizontal line.

Date

Approved as to form:

A handwritten signature in black ink, appearing to read 'David H. Dickieson'. The signature is written over a horizontal line.

David H. Dickieson, Esq.  
Counsel to Bradley C. Birkenfeld



SCHERTLER & ONORATO, L.L.P.

David Schertler  
DC & IL Bars

Danny C. Onorato  
DC & CA Bars

Vincent H. Cohen, Jr.  
DC, MD & NJ Bars

David H. Dickieson  
DC, MD, VA & PA Bars

Lisa Fishberg  
DC, MD & NY Bars

Mark E. Schamel  
DC, MD & NY Bars

Robert J. Spagnoletti  
DC, NJ, NY & TX Bars

Habib F. Ilahi  
DC & TX Bars

Carroll Crumbaugh  
DC & MD Bars

Julie L. Mitchell  
DC, MD & VA Bars

Mansi J. Shah  
VA Bar

Michael Starr  
DC Bar

Peter V. Taylor  
DC Bar

October 24, 2007

Kevin Downing  
Trial Attorney  
U.S. Department of Justice  
Tax Division  
PO Box 972, Ben Franklin Station  
Washington, DC 20044

Re: WHISTLEBLOWER

Dear Kevin:

My client, Brad Birkenfeld, has located additional documents relating to his whistleblowing activities. These documents provide, *inter alia*, training materials for salesmen coming to the United States detailing how they should react to inquiries from government officials. Please add these documents to the documents previously provided by Mr. Birkenfeld. This confirms another aspect of the inside information that Mr. Birkenfeld provided to you and the IRS.

As you may know, Mr. Birkenfeld received a subpoena for his testimony and documents from the Senate Permanent Subcommittee on Investigations, and the Senate Subcommittee is moving ahead with its investigation of the private banking industry overseas. Because we have provided these documents to the Senate Subcommittee, we believe that these documents should be included in the documents that you might be using for your investigation of Mr. Birkenfeld's whistleblowing allegations.

If you wish to discuss how we can get past the current impasse between my client's position and the Department of Justice's policies on immunity and subpoenas, please contact me.

Very truly yours,

SCHERTLER & ONORATO, L.L.P.

David H. Dickieson

DHD/pcf  
Enclosure

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