

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

THE UNITED STATES OF AMERICA,))	CASE NUMBER
PLAINTIFF,))	08-60099-CR-ZLOCH
VS.))	
BRADLEY BIRKENFELD,))	THIS VOLUME:
DEFENDANT.))	PAGES 1 - 40
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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
OFFICIAL COURT REPORTER
U. S. COURTHOUSE
299 E. BROWARD BLVD., 202B
FORT LAUDERDALE, FLORIDA 33301
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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 5K1 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 5K1 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.

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C E R T I F I C A T E

UNITED STATES OF AMERICA
SOUTHERN DISTRICT OF FLORIDA

I, CARL SCHANZLEH, OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, DO HEREBY CERTIFY THAT THE FOREGOING 39 PAGES CONSTITUTE A TRUE TRANSCRIPT OF THE PROCEEDINGS HAD BEFORE THE SAID COURT HELD IN THE CITY OF FORT LAUDERDALE, FLORIDA, IN THE MATTER THEREIN STATED.

IN TESTIMONY WHEREOF, I HEREUNTO SET MY HAND ON THIS 22ND DAY OF AUGUST 2009.

/S/CARL SCHANZLEH
CARL SCHANZLEH, RPR-CM
OFFICIAL FEDERAL COURT REPORTER
299 EAST BROWARD BLVD., 202B
FORT LAUDERDALE, FL 33301
TELEPHONE 954/769-5488