

INSIDE THE CARTEL

BRADLEY BIRKENFELD

In October 2001, Bradley Birkenfeld began working at UBS, in Geneva, as a private banker for high-net-worth clients, primarily in the United States. After learning that UBS's secret dealings with American customers violated an agreement the bank had reached with the Internal Revenue Service (IRS), he attempted to solve matters internally with UBS for approximately a year and a half. After these efforts failed, he resigned and provided the IRS with information about 19,000 alleged tax cheats with accounts worth more than \$19 billion—the largest whistleblower case of its type ever exposed. However, the Justice Department did not view Birkenfeld as being forthcoming about his largest client, a Russian émigré and California real-estate developer, who was convicted for having hidden some \$200 million. Though Birkenfeld voluntarily disclosed information about this client to other government agencies (which issued him a subpoena that protected him from prosecution for violating Swiss bank secrecy laws), the Department of Justice refused to issue Birkenfeld such a protective subpoena, after repeated requests. Arrested on a single charge, he pleaded guilty and was sentenced to 40 months in a federal penitentiary, a stiffer sentence even than the 30 months demanded by prosecutors. On January 8, he entered a federal penitentiary, where he wrote this note for World Policy Journal.

MINERSVILLE, PA—Switzerland has been revered as the epitome of safety, luxury, and privacy for centuries. This is a small mountainous country, nestled in the center of Europe, composed of 7.6 million inhabitants with four official languages. Switzerland has vigorously defended its independence from its inception in

1291 and has never been successfully invaded. More recently, Switzerland has refused admission into the European Union as well as the European currency as unnecessary. It is world renowned for gourmet cuisine, luxury watches, pristine ski resorts, and, most notably, bank secrecy.

Swiss bank secrecy was implemented into law under Article 47 of the Swiss Banking Act of 1934. This was done in direct response to thwart the dubious measures taken by the German Third Reich to execute any German who transferred any monies outside the country. In the years immediately following World War II, international business expanded rapidly, foreign governments imposed taxes, illegal enterprises evolved globally, and the attraction of Swiss bank secrecy began to quietly thrive worldwide.

With the expansion of criminal conduct in the world (including, but not limited to: intelligence agencies, corrupt dictators, drug cartels, arms dealers, corporate malfeasance, individual tax dodgers, etc.) Switzerland was the ideal offshore jurisdiction to deposit, shield, and invest illegal assets, due primarily to strict bank secrecy laws, an ingrained culture of deniability, and the lack of any accountability or transparency. Today, in Geneva, there are over 120 licensed Swiss private banks for a population of approximately 200,000 residents, which equates to one bank per 1,666 residents.

The Swiss government, private banks, and businesses have all benefited directly from this massive illegal enterprise. If the Swiss government was truly serious about prosecuting senior



executives at UBS for their extensive illegal conduct, that would mean investigating itself, an inherent conflict of interest and something that has proven to be a total farce. In essence, bank secrecy is analogous to criminal racketeering—and the Swiss government, along with every Swiss private banker, is a co-conspirator.

In 2007, I voluntarily approached the U.S. Department of Justice (DOJ), the Securities and Exchange Commission (SEC), the IRS, and the Senate Permanent Subcommittee on Investigations with everything I knew about the Swiss banking industry. I became the very first Swiss private banker in history to reveal to the outside world the inside secrets behind these illegal practices. I outlined in great detail how the illegal UBS enterprise was operated, who was directing the enterprise, and how they tried to conceal what they were doing for so long from the U.S. law enforcement authorities. In the summer of 2007, I voluntarily provided virtually every essential and material fact contained within the now-famous “John Doe” summons to UBS. I revealed tax evasion on a massive and unprecedented scale. For readers who may wonder if there might be some puffery in the importance of my role, look no further than the Department of Justice’s own statements to the federal judge in Florida stating plain and clear that “but for” my actions of blowing the whistle there would not have been a case against UBS.

The early stages of the investigation have, so far, yielded over \$1 billion in fines and penalties paid to the U.S. government, to the benefit of the American people. I knew that blowing

the whistle would risk my career in Switzerland, but I did not expect that I would be risking my very freedom in my home country.

Blowing the whistle on the firm’s offshore tax evasion business has been credited with shattering centuries of Swiss bank secrecy and crippling UBS (the largest bank in the world prior to my whistleblowing). The bank underwent damaging U.S. Senate hearings, terminated their entire executive management, and had over \$200 billion in client assets depart. UBS’s stock price has plunged over 75 percent, the bank is under investigation by foreign governments, and faces countless and costly class-action lawsuits. I helped transform the way in which centuries of Swiss private banking will be conducted in the future, but I’m paying a huge price for being the only person to have the courage to come forward.

Though the Swiss government struck a deal with the United States to turn over approximately 4,500 names of these tax dodgers, the Swiss are now effectively backing out under the guise of a domestic court ruling, which branded this deal illegal. The U.S. government can still try to salvage this deal, however, and can also utilize the extensive and unprecedented information I provided them—without help from the Swiss government. Germany, on the other hand, is doing whatever it can to get the names of its tax cheats and is even paying substantial amounts of money for these names. For the United States, it has been a huge step backward—by taking legal action against me, the whistleblower, Washington has discouraged

other whistleblowers from ever coming forward.

The American taxpayers are not the only ones disadvantaged as a result of this illegal scheme. This corruption and secrecy takes money from many government endeavors that are used to fund humanitarian projects and aid developing countries. Without tax monies from these accounts going to governments, these well-intended projects will fail and, ultimately, the poor and helpless suffer.

However difficult my personal situation has become, it is small compared to the cost incurred by the law-abiding American taxpayer—and the cost goes far beyond the billions of dollars lost in the mishandling of the UBS case by the DOJ. The fact that I am the only person behind bars as a result of the international banking scandal sends a chilling message to future financial whistleblowers: if you come forward to expose illegal banking practices, you could go to jail. The previous administration did not take full advantage of the information I gave them, but this information does not have to go to waste. The Obama administration has the opportunity to use the information I gave to the DOJ, the SEC, the IRS, and the Senate to make meaningful policy change and as a result, put money back in taxpayers' pockets. Equally as

important, the new administration has the opportunity to send a clear message of encouraging and rewarding whistleblowers. It is important for readers to remember that secret banking has been going on for decades and the only way the U.S. government has managed to put a real dent in it is because of my individual efforts as a whistleblower. We need to encourage more whistleblowers if we are going to be serious about going after offshore accounts and bank secrecy.

Whistleblowers already too often suffer retaliation from their employers that leaves them blacklisted and in bankruptcy. If whistleblowers are afraid to bring information to the authorities for fear of prosecution, they will stay silent, bank secrecy will continue, and illegal offshore tax havens will operate free of scrutiny, taking money out of taxpayers' pockets, and making the super-rich even wealthier. Future financial whistleblowers deserve infinitely better treatment than I received. They deserve to be praised and protected, not prosecuted. And truth-tellers should not have to choose their conscience over their career and especially over their very freedom. ●