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Appeals for ex-UBS banker gather pace



Lawyer Dean Zerbe says it's scandalous that Bradley Birkenfeld (pictured) should be put behind bars for 40 months (Keystone)

A campaign is building in the United States to defend Bradley Birkenfeld, the former employee of Swiss bank UBS who has started serving a 40-month prison term.

Birkenfeld blew the whistle on illegal practices by UBS, in which the bank helped Americans avoid paying taxes, but was himself sentenced after pleading guilty in 2008 to conspiring to defraud the US by helping a billionaire hide \$200 million (SFr205.3 million) from tax authorities.

He cooperated with investigators seeking to find other wealthy Americans who used Swiss bank accounts to evade US taxes.

Birkenfeld's lawyer, Dean Zerbe, has called on President Barack Obama to review the case. Zerbe is special counsel for the National Whistleblowers Center, an organisation with a 20-year history of protecting the rights of individuals who speak out about wrongdoing from retaliation.

swissinfo.ch: Bradley Birkenfeld, the man who offered the UBS scandal to the US authorities on a plate, has been serving his sentence since January 8. What is your reaction?

Dean Zerbe: It's sad for him and his family but it's a tragedy for honest taxpayers who will have to pay higher taxes; Bradley's fate will discourage a whole generation of individuals from blowing the whistle on tax fraud to the authorities.

swissinfo.ch: While recognising that Birkenfeld was a crucial contributor in investigations into UBS, American justice authorities considered him as a criminal and convicted him for not cooperating enough against Igor Olenicoff, a former client of the Swiss bank... But you almost make him a hero.

D.Z.: Bradley Birkenfeld is the embodiment of what we call a whistleblower, the one who raises the alarm when he sees wrongdoing at the workplace.

Birkenfeld first alerted his bosses at UBS and then the bank's ethics department. When he saw that there were no actions being taken, he resigned. He contacted the US Department of Justice. When he considered that it was not doing all it could he informed the tax authorities, the Securities Exchange Commission and the Senate.

As for Igor Olenicoff, Birkenfeld spoke openly about him to the US authorities. To do this he needed a subpoena to appear before the Senate so that he could be protected from the Swiss authorities. As soon as the Senate issued the subpoena, he cooperated. As a rule, whistleblowers are well treated by the American authorities but this was not the case here.

swissinfo.ch: So can you explain how they are generally treated?

D.Z.: Not with a prison term! There are a series of laws which protect them and compensate them for the risks they take in uncovering the truth.

People who sound the alarm bell on all kinds of fraud have allowed the US government to recuperate billions of dollars, and those individuals receive a small part in return. In this way, other employees are motivated to expose malpractices in their companies or administrations.

swissinfo.ch: Is Birkenfeld considered a whistleblower by the Internal Revenue Service?

D.Z.: He asked for such a status and he comes under that definition with the IRS. As such, he should be able to receive compensation from the fine paid by UBS to the IRS. He should also be able to claim money from the taxes that came to light to the IRS from an estimated 14,000 UBS clients.

This compensation is not limited to US citizens. The status of whistleblower can also be claimed by Swiss, particularly those in the banking sector.

swissinfo.ch: Why is Bradley Birkenfeld in prison?

D.Z.: There is a particular Department of Justice culture when it comes to tax fraud and this views informants with suspicion, compared with other government organisations which work with them all the time.



Dean Zerbe

swissinfo.ch: Who else do you think ought to go to prison in the UBS affair?

D.Z.: Let me say first that it's absurd and scandalous that Bradley Birkenfeld, a man who has done so much to help the American tax system, should be put behind bars for 40 months. Other individuals dealt with by the justice authorities received much lower penalties.

I don't know who deserves to go to prison but the American authorities would do well to pay particular attention to individuals who hid in a UBS account money from an illegal activity such as drug trafficking or those people who deliberately escaped the tax authorities.

swissinfo.ch: Martin Liechti, the former head of the wealth management business at UBS - should he go to prison?

D.Z.: Liechti was Birkenfeld's boss's boss. He's the kind of individual you have to talk to in such an inquiry. The US government had him in their hands but let him off the hook. It's crazy because there are much bigger fish than Birkenfeld named and Liechti certainly knows them.

swissinfo.ch: American analysts feel that Birkenfeld is a scapegoat and that the authorities keep it that way so as not to cause any damage to prominent politicians or others who were UBS clients. To what extent do you agree with that analysis?

D.Z.: The celebrity of some UBS clients does not prevent the IRS from investigating but you have first of all to know the names of these people. But the agreement between the US and Switzerland concerns a limited number of accounts and protects the names of the holders.

swissinfo.ch: What is the petition that you are launching on behalf of Bradley Birkenfeld?

D.Z.: It's a petition that members of the public can sign online. It will go to President Barack Obama and his attorney general, Eric Holder.

It asks them to order an independent examination into Mr Birkenfeld's case in the light of the serious consequences that his prison sentence risks having on the fight against corruption and against the secret and harmful practices of some banks.

swissinfo.ch: Mr Holder worked at one time for UBS as a lawyer. Is that a problem?

D.Z.: No. Every lawyer has to work and have clients. Having said that, the fact that he had ties to UBS increases the need for total transparency in this case.

Marie-Christine Bonzom in Washington, swissinfo.ch (Adapted from French by Robert Brookes)

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BRADLEY BIRKENFELD

Birkenfeld has just started a 40-month prison sentence.

Employed by UBS in 2001, he resigned in 2005, disillusioned by the lack of action by the bank over his concerns about the legality of operations in accounts held by US citizens.

After 2005, he alerted the US government.

On August 21, 2009, he was sentenced to prison, having deemed to have not fully cooperated in an investigation into Igor Olenicoff, a client of UBS in the US.

Birkenfeld was named 2009 Person of the Year by the Tax Analysts Group.

One leftwing editorialist of the New York Daily News felt that Barack Obama should have "put up a statue of Birkenfeld on Wall Street rather than put him in jail".

AN INFLUENTIAL LAWYER

Dean Zerbe is special counsel at the National Whistleblowers Center and the national managing director for the alliantgroup.

An expert in the Congress until 2008, he put together one of the US laws protecting

employees who blow the whistle on malpractices of their employees.

He also conducted several investigations, notably on tax havens, at the Senate Finance Committee.

He writes regularly for forbes.com.

LINKS

UBS (http://www.ubs.com/1/f/wealthmanagement/wealth_management_research.html)

US Justice Department (<http://www.usdoj.gov/tax/>)

United States Internal Revenue Service (<http://www.irs.gov/>)

National Whistleblowers Center (<http://www.whistleblowers.org/>)

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