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UBS Whistle-Blower Rues His Tack, Not His Tune

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By ARDEN DALE

MINERSVILLE, Pa.—Bradley Birkenfeld, the whistle-blower who helped expose widespread tax evasion in the Swiss banking industry, insists he would do it all over again. But, he would do it very differently.

With the benefit of hindsight sharpened by the view from the Pennsylvania prison where he began serving three-plus years in January, Mr. Birkenfeld says he is an informant who blew on the wrong whistle.

The 45-year-old Mr. Birkenfeld has a new legal team and tactics in place, and fuelled by anger at how he was treated by the Justice Department, he plans to ask President Barack Obama to commute his sentence. He also still hopes to claim a multimillion-dollar reward from an Internal Revenue Service whistle-blower office, which may begin paying monetary rewards this year.



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Bloomberg News

While Bradley Birkenfeld, a former banker with UBS AG, says he stands by his decision to blow the whistle on tax-evasion in the Swiss banking industry, he wishes he took a different tack. Here, Mr. Birkenfeld at Schuylkill Federal Correctional Institution in Pennsylvania earlier this year.

The former UBS AG banker was the central informant in an investigation that led to a wide-ranging IRS crackdown on secret offshore bank accounts. That he also is the only person so far to be sentenced to substantial prison time—40 months, for conspiring to defraud the U.S. government—has made Mr. Birkenfeld a popular hero in some corners of the tax community, though others disagree.

Tax Notes, a trade publication considered the bible of the tax community, picked him as its Tax Person of the Year for 2009. It characterized him as one of the biggest whistle-blowers of all-time, "the Benedict

Arnold of the private banking industry." It credited him with single-handedly convincing authorities to get serious about cracking down on international tax cheats.

Even as indictments or guilty pleas increase in the UBS case, there is a good chance that the IRS investigation will expand to non-Swiss bank clients or even other banks. The reason: U.S. citizens who came forward to the IRS under an amnesty program are providing details about other banks that may have aided in tax evasion.

During his first interview since he began serving time at the Schuylkill Federal Correctional Institute in Minersville, Pa., Mr. Birkenfeld said he is weathering prison fine. The son of a neurosurgeon who grew up near Boston, his years at a military academy in Vermont are serving him well now, he added.

A tall and lean man with cropped graying hair and an earnest manner, Mr. Birkenfeld said he has no regrets about speaking out.

"I saw it as something wrong that it was my duty to correct," he said of illegal activities he and colleagues engaged in at UBS, which he says encouraged bankers to help wealthy clients hide their money. "I would do it again because it was the right thing to do."

The right thing, but maybe done the wrong way.

Mr. Birkenfeld went to his UBS supervisors repeatedly in 2005 with concerns about his group. The company reviewed his complaint but he later resigned, not satisfied that it had taken him seriously.

He then took his story to the Justice Department, the U.S. Senate, the IRS and the Securities and Exchange Commission in 2007. Each of them has acknowledged his key role in exposing overseas tax evasion.

At his sentencing in August, Justice Department prosecutor Kevin Downing said: "I will say that without Mr. Birkenfeld walking into the door of the Department of Justice in the summer of 2007, I doubt as of today that this massive fraud scheme would have been discovered by the U.S. government."

Nonetheless, it was the Justice Department that prosecuted Mr. Birkenfeld, saying he held back information about his relationship with American billionaire real-estate developer Igor Olenicoff. Mr. Birkenfeld pleaded guilty to helping Mr. Olenicoff evade about \$7.2 million in taxes by concealing income on \$200 million in assets in sham corporations. Mr. Olenicoff said he paid about \$9 million in penalties to settle with the government. Mr. Olenicoff, who is suing Mr. Birkenfeld along with UBS and others in federal court, contends that his former banker concealed their continued relationship.

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Mr. Birkenfeld says he came to the DOJ ready to tell everything, and asked the agency to subpoena him for the information so that he wouldn't break the law by naming names. Bankers are constrained by secrecy laws designed to keep client information safe. The agency declined his request.

He then asked the Senate to subpoena him, which it did, and he says he gave it names and details. Correspondence with a Senate subcommittee indicates he gave it at least some information about Mr. Olenicoff before the billionaire was indicted.

Stephen M. Kohn, executive director of the National Whistleblowers Center in Washington, is a member of Mr. Birkenfeld's new legal team—technically his third group of lawyers after having fired his criminal attorneys. Another team of lawyers is defending him against the Olenicoff claims. Mr. Kohn said that going to the DOJ first was his client's big mistake.

Instead, Mr. Kohn says, he should have approached an IRS whistle-blower office, set up in 2006, because it would have offered him a better shot at anonymity. Another consideration: That office has been authorized to hand out large rewards, and is expected to make its first big payout this year.

The DOJ didn't take into account new whistle-blower protections under the statute that established the office, doing a "gross injustice to whistle-blowers, and setting back the process of whistle-blowing for a generation," said Mr. Kohn.

The White House, IRS, Justice Department declined to comment.

Bryan C. Skarlatos, a partner at Kostelanetz & Fink in New York who has represented Swiss account holders in the UBS case, agrees that Mr. Birkenfeld "may have been better off with the IRS." Nonetheless, Mr. Birkenfeld's claim to righteousness remains questionable to some. Mr. Skarlatos believes he could have been more forthcoming.

And as for casting Mr. Birkenfeld as the only one who really got punished, that mightn't be true for long. A year or two from now it could be a very different story, according to Mr. Skarlatos.

"We are in the first stages of this," said Mr. Skarlatos. "Many people will eventually go to prison."

Write to Arden Dale at arden.dale@dowjones.com

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