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[Home](#) > [Commerce](#) > Telling Swiss secrets: A reversal of fortune

Telling Swiss secrets: A reversal of fortune

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Subhead:

Part 5: As a whistle-blower is jailed, UBS — perpetrator of a massive tax fraud — gets a backdoor bailout.

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[1]

Caption:

Bradley Birkenfeld walks to his car before surrendering to authorities at the Schuylkill County Federal Correctional Institution in Minersville, Pennsylvania, Jan. 8, 2010. (Tim Shaffer/Reuters)

NEW YORK — Bradley Birkenfeld had walked into a bear trap.

The former UBS bank director had offered himself up as a whistle-blower to prosecutors from the Justice Department's tax division and, over the course of several sessions in Washington, provided damning evidence that Switzerland's biggest bank had subverted U.S. tax laws and allegedly defrauded the U.S. government in a long-running conspiracy earning UBS upwards of \$200 million a year.

It was by far the biggest tax case the prosecutors had ever seen. But now they were asking questions Birkenfeld wasn't prepared to answer. The DOJ's lead prosecutor, Kevin Downing, wanted names — Birkenfeld's full client list — all the millionaires and billionaires the banker had helped set up secret Swiss accounts.

Revealing his clients' identities was against the law, Birkenfeld told the U.S. prosecutor — against Swiss law, specifically the Swiss Banking Law of 1934 codifying bankers'

"professional rule of secrecy." As a banker registered and resident in Switzerland, Birkenfeld risked jail in Switzerland if he betrayed his clients trust, he told Downing.

For five years as a Geneva-based UBS bank director, 45-year-old Bostonian Bradley Birkenfeld lived the well-heel life of an insider in the secret world of Swiss banking. That is, before he set out to break the bank. In an exclusive series of interviews with Birkenfeld, GlobalPost reveals how he blew the whistle on Swiss banking's rarefied world of secrecy and subterfuge, a scandal that is still reverberating around the globe. Birkenfeld believes he's a hero for exposing world-class tax evasion, but the judge in his case didn't see it that way. And now Birkenfeld is speaking out.

[Part 1: A banker's betrayal](#) ^[2]

[Part 2: 222 billionaires](#) ^[3]

[Part 3: The golden goose](#) ^[4]

[Part 4: A triple-double cross](#) ^[5]

Downing accused Birkenfeld of playing games. Later, as the case exploded onto a far bigger playing field, Swiss President Hans-Rudolf Merz and Foreign Minister Micheline Calmy-Rey would invoke the same Swiss secrecy laws in negotiations with U.S. Treasury Secretary Timothy Geithner and Secretary of State Hillary Clinton, with just as little success.

Downing saw in Birkenfeld nothing more than an overly clever informant trying to blow the whistle to his own tune. And that is when the music stops with the Justice Department.

Birkenfeld and his lawyers say they offered a simple solution: If the DOJ gave Birkenfeld the cover of a subpoena, he could show the Swiss government he had been compelled to give up the names.

"It never made any sense why they didn't do that," said Dean Zerbe, a member of Birkenfeld's legal team and a former investigator and tax counsel for the Senate Finance Committee, which gave countless witnesses the cover of friendly subpoenas as a matter of course during Zerbe's 25 years in Congress. (The Justice Department refused several interview requests for this story.)

Instead, beginning in late 2007, Downing began secretly investigating his own whistleblower. The trail would lead him to Orange County, and the offices of a billionaire real estate mogul who was more than willing to fill in the blanks. Igor Olenicoff, formerly [Birkenfeld's golden goose](#) ^[4], would become Downing's.



On March 12, 2008, Downing and his team of government investigators flew to California for a secret meeting. Olenicoff had barely welcomed them into his office when Downing threatened him: "Don't bullshit us," said the prosecutor to the billionaire, by the latter's account. "I'll come down hard on you if you try."

Olenicoff agreed, and then gave Downing an earful about Bradley Birkenfeld.

When Birkenfeld boarded a flight for the U.S. two months later, he had no idea that Olenicoff had turned evidence against him. (He would learn of the California meeting for

Bradley Birkenfeld
(*Gaspar Tringale/GlobalPost*)

the first time from me during a follow-up prison interview with him this February).

And he did not know that Downing had filed a sealed indictment against him based on Olenicoff's information. He boarded his usual Geneva-Zurich-Boston flight still hoping to salvage his whistle-blower relationship with the U.S. government, planning to travel on to Washington after attending his 25-year high-school reunion.

There were two Department of Homeland Security officials waiting on the jetway in Boston when he arrived, checking passengers' passports as they disembarked. The photo in Birkenfeld's shows him smiling and relaxed. As a female DHS official looked up from the picture to the man, Birkenfeld's heart sank. "She said, 'Oh, there is something wrong with your passport,' and I just said, 'Oh, whatever, fuck, it's over.'"

The arrest wasn't a total surprise, Birkenfeld told me. The week before, UBS Wealth Management Americas International chief Martin Liechti, formerly one of Birkenfeld's superiors and purportedly complicit in the fraud (as Birkenfeld had documented in detail for the DOJ), had been handcuffed and marched out of the transit terminal in Miami while changing planes en route to South America, detained as a material witness in a then-unspecified DOJ investigation.

"I could have just stayed in Switzerland," Birkenfeld reflected in our interview. "The DOJ was just playing such hardball, but what am I going to do? I was coming forward as a whistle-blower. I wasn't trying to hide."

Birkenfeld spent the night in a local jail near the airport and was arraigned in federal court in Boston the next morning on one count of criminal conspiracy to defraud the U.S. government.

Birkenfeld would eventually plead guilty. In addition to helping Olenicoff evade \$7,261,387 in taxes, Birkenfeld admitted to advising clients on all sorts of tactics to conceal their undeclared accounts, accepting "bundles" of checks from U.S. clients for deposit into Swiss, Liechtenstein and Danish banks and, on one occasion, buying diamonds for an American client and transporting them to the U.S. in a toothpaste tube.

The judge sentenced him to 40 months, the longest prison sentence by far for anyone associated with this case. UBS agreed to pay \$780 million to avoid prosecution, admitting it fostered tax evasion from 2000 to 2007 and consenting to turn over the names of some 4,500 U.S.-based clients, a transfer which was approved in June by the Swiss parliament. Olenicoff plead guilty to filing a false tax return and received two years of probation and paid \$52 million in back taxes and penalties. (He is currently suing Birkenfeld and dozens of other UBS executives in a sweeping civil action.)

By all accounts, it is extremely rare for the Justice Department to indict a valuable informant, and immunity has been granted to witnesses implicated in far more serious crimes than Birkenfeld's (hit men, mobsters and members of the Manson Family, to name a few). Given the massive scope of the UBS fraud, why the government would arrest a whistle blower who came forward voluntarily remains a puzzle, for many observers of the case, even after Downing explained his reasoning in court.

Bradley Birkenfeld had tried to play the DOJ, Downing explained in court. Having

discovered that Birkenfeld had helped move Olenicoff's \$200 million from UBS to a less conspicuous Liechtenstein bank before resigning from UBS, Downing accused Birkenfeld of a bold scheme to continue the lucrative relationship with Olenicoff even as he courted the Justice Department as a whistle-blower seeking a huge IRS reward.

If true, Birkenfeld would be the most audacious would-be whistle-blower ever to present himself in Washington, or the stupidest.

The rub is that at the same time Downing and his team say they were secretly investigating Birkenfeld's hidden agenda — in late 2007, after Birkenfeld refused to give up his client's names without a subpoena — Birkenfeld was sitting at a conference table in the bowels of the Russell Senate Office Building with Senate investigators talking about Igor Olenicoff by name and under oath.

The meetings took place in October and November 2007, on Birkenfeld's initiative, seven months before his arrest and before he had any inkling he was under investigation: When the DOJ refused to give Birkenfeld a subpoena that June, he'd simply crossed the capital looking for someone who would. He'd found the Senate Subcommittee on Investigations more than willing.

Birkenfeld's Senate testimony about UBS headlined two days of riveting hearings held the following summer, and his trove of documents figure heavily in the subcommittee's 1,200-page report.

The Senate also subpoenaed live testimony from the UBS wealth management chief, Martin Liechti, Birkenfeld's superior, who had been held as a material witness since his arrest in the Miami airport months before. Liechti arrived at the hearings with a suntan; with no house in the U.S. in which to remain under house arrest, the Justice Department had agreed to confine him to the Four Seasons. On the advice of his attorneys, Liechti pled the 5th at the Senate hearings. The Justice Department then allowed him to return to Switzerland a free man. By all appearances, Liechti had been granted immunity — an inequity that keeps Birkenfeld up in his cell at night.

"They had never been able to crack this nut and I did it. I educated them," he railed when I visited him in prison recently, dissing Downing and his DOJ team. Birkenfeld then suggested something more subtle: "I fucked so many politically powerful and wealthy people with this maneuver," he said. "I was a whistle-blower, and they fucking hate that."

Of all those who admitted complicity in what became the biggest tax fraud case in the country's history — from UBS and its executives to Igor Olenicoff and nearly 15,000 other U.S.-based tax offenders, most former UBS clients, who avoided prosecution through an IRS-sponsored amnesty program initiated after the UBS revelations — the view from Birkenfeld's jail cell is understandably jaundiced.

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Relying heavily on Birkenfeld's evidence, the DOJ threatened to bring criminal charges against UBS unless it turned over the names of thousands of U.S.-based clients holding undeclared accounts. Prosecutors had the bank over a barrel. UBS earns between 30 and 40 percent of its total annual revenue through its regular U.S. operations; if UBS lost its U.S. banking and brokerage licenses, the bank would collapse, and likely the Swiss

economy along with it.

But the Swiss had a strong position for the same reasons. UBS employs more than 23,000 people in the U.S., with some 4,000 in Connecticut alone. The bank's brokerage division serves more than two million U.S. households, with more than twice as many UBS financial advisors based in the U.S. (some 7,300) than the bank has in the rest of the world combined. In the middle of the economic crisis, there was no way the Obama administration was going to kill UBS: The bank was too big to fail.

Despite its long-running criminal conspiracy to defraud the U.S. government, UBS, one of the banks hardest hit in the subprime mortgage crisis, received \$5 billion in a backdoor bailout through AIG, which honored some of its policies.

Salvaging UBS' reputation was another story. The bank shuttered Birkenfeld's division and shed its entire staff — between 40 and 60 private bankers and senior management. The bank also appointed a new chairman and CEO, Oswald J. Grübel, who set out to reassure skittish clients.



Bradley Birkenfeld
(Gasper Tringale/GlobalPost)

"Mr. Grübel has said repeatedly and emphatically that compliance failures like this will not happen again," UBS spokeswoman Karina Bryne told GlobalPost. "We have definitely lost clients due to reputational issues," she admitted, "but those outflows have slowed and we are working very diligently toward positive net new money."

Last August, just three days after Birkenfeld was sentenced and five days after the U.S. and Swiss governments agreed to a settlement, President Barack Obama played 18 holes at Martha's Vineyard's Farm Neck Golf Club with the UBS Group Americas chairman and CEO, Robert Wolf, one of the top donors to his campaign and a member of the president's economic recovery advisory board. UBS officials insist the bank's U.S. offices had no knowledge of the Swiss-based fraud, despite Birkenfeld's sworn testimony that UBS Americas coordinated the lavish marketing events in the U.S. for Swiss private bankers and their U.S. clients.

Obama's sweeping financial regulatory overhaul, signed into law in July, contains a strong nod to whistle-blowers, granting the SEC authority to pay rewards up to 30 percent of monetary sanctions, like the IRS bill, no matter whether the whistleblower is involved in the misconduct. The SEC has already paid a \$1 million reward — good news for whistle-blowers, if not for Bradley Birkenfeld. His June appeal to Obama to commute his sentence of 40 months has so far gone unanswered.

Birkenfeld, who went from managing hundreds of millions of dollars in investments, now mops floors in prison. But as he does, he just can't — and won't — let go of the idea that someday he'll get back what he believes he's owed. His lawyers have filed a claim with the IRS Whistleblowers Office seeking his share of the recovered monies from the case — "at least several billion dollars," they say.

If that seems unseemly, Bradley Birkenfeld couldn't care less.

“I am going for a reward, and rightly so,” Birkenfeld said. “I’m invoking my rights under federal law, you have a problem with that?”

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- [2] <http://A banker's betrayal>
- [3] <http://www.globalpost.com/dispatch/europe/100724/swiss-banking-secrecy-billionaires>
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