

HAND SERVICE AND EMAIL

October 22, 2009

The Honorable Eric Holder
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

**Re: URGENT REQUEST FOR INDEPENDENT REVIEW
UBS BANK WHISTLEBLOWER CASE
BRADLEY CHARLES BIRKENFELD**

Dear Attorney General:

On behalf of the undersigned organizations, we ask that you personally review the case of Bradley Charles Birkenfeld and take swift action to prevent one of the worst setbacks in international law enforcement history.

As estimated by the U.S. Senate Subcommittee on Permanent Investigations, \$5-7 trillion in U.S. "taxpayer" assets are hidden in offshore accounts. Annually, the treasury loses over \$100 billion in revenue due to these illegal accounts. These accounts provide sanctuary for the worst criminal elements in our society. They are safe havens for people who profit from selling drugs in our inner cities and/or who bribe our elected leaders. As recognized under international treaties signed by the United States, bank secrecy is the handmaiden of corruption. These international treaties recognize that corruption undermines the rule of law and threatens human rights around the world.

The United States government's treatment of Bradley Charles Birkenfeld must be understood not simply as a local criminal matter, but how his case will undoubtedly impact national and international law enforcement efforts to combat the trillion dollar illegal off-shore banking industry. If Mr. Birkenfeld is denied whistleblower protections and goes to jail on January 8, 2010, the Department of Justice will be sending the wrong message to the thousands of other international bankers who have direct knowledge concerning the billions of dollars in lost U.S. tax revenues and the trillions of dollars stashed in these illegal accounts.

As you may be aware, starting in April 2007, Mr. Birkenfeld voluntarily provided the United States government an unprecedented amount of information about the

largest Swiss bank in the world, UBS AG. As a former director of the bank, involved for years in its activities, he wisely sought immunity and whistleblower protection status. He obtained neither. Despite this, and at exceptional personal risk to his career as an international banker, Mr. Birkenfeld *voluntarily* and *without any immunity deal* began providing the United States of America with shocking details of corrupt international banking practices committed by UBS AG.

The allegation that Mr. Birkenfeld improperly withheld information from the Department of Justice (DOJ) is absolutely untrue. Since Mr. Birkenfeld was providing information to the DOJ without an immunity agreement, he was under no obligation to reveal everything that he knew. Mr. Birkenfeld cooperated fully with the DOJ and answered all of their questions. There is a radical difference between dealing with a whistleblower who voluntarily provides information and dealing with an informant who is cooperating only in order to avoid criminal prosecution. Mr. Birkenfeld was never an informant.

Mr. Birkenfeld's voluntary whistleblower contributions to rooting out illegal off-shore banking practices led directly to the agreement between the United States and UBS AG for the payment of \$780,000,000.00 in fines and penalties and an agreement to commence turning over the identity of some of the 19,000 illegal secret bank accounts owned by U.S. "taxpayers" identified by Mr. Birkenfeld.

A considerable amount of time could be spent outlining the scope of Mr. Birkenfeld's disclosures.¹ But this is unnecessary. Your DOJ representatives outlined some of his contributions to the public interest in various court documents and on-the-record statements. For example:

* Mr. Birkenfeld "provided to the United States information relating to an ongoing multi-billion dollar scheme to defraud the United States perpetrated by UBS AG ("UBS") and its United States clients."²

¹ Mr. Birkenfeld provided the U.S. Government with hundreds of pages of documentation, verification of over 19,000 illegal U.S. accounts at UBS AG containing approximately \$20 billion dollars in assets and details of a long-standing UBS conspiracy to enter the U.S. market in order to promote money laundering. He provided details of these activities in numerous meetings attended by IRS officials (June 12, 19, 21, 2007; October 12, 2007; May 8, 9, 2008; June 9, 10, 2008); DOJ officials (June 12, 19, 21, 2007; May 8, 9, 2008; June 9, 10, 2008); SEC officials (November 14, 2007) and meetings/under oath testimonies with representatives from the Senate Permanent Committee on Investigations (October 11, 2007; November 13, 2007; July 9, 2008). All of this testimony was voluntary.

² United States' Motion for Sentence Reduction filed in Case No. 08-CR-60099-Zloch (August 17, 2009).

- * The information provided by Mr. Birkenfeld constituted “substantial assistance” to the government and, in the words of the Justice Department, was “timely, significant, useful, truthful, complete, and reliable.”³
- * The investigation of UBS would not have commenced “but for” the voluntary disclosures of Mr. Birkenfeld.⁴
- * “Without Mr. Birkenfeld walking into the door of the Department of Justice in the summer of 2007” the “massive fraud scheme” perpetuated against the American people by UBS would not “have been discovered.”⁵
- * Without the assistance of a whistleblower like Mr. Birkenfeld, the United States would not have had “any other means” to discover the massive tax fraud identified by Mr. Birkenfeld.⁶
- * Mr. Birkenfeld’s detailed information concerning “the activities of Swiss bankers in the UBS United States cross-border business” directly led to a deferred prosecution agreement between UBS and the United States.⁷ As a result of this agreement, UBS AG repaid to the U.S. taxpayers \$780,000,000.00 in fines and penalties, stopped illegal offshore money laundering operations and agreed to participate in a process to turn over the names of some of their 19,000 U.S. clients who participated in the tax evasion schemes.⁸
- * Mr. Birkenfeld’s disclosures directly triggered the enactment of new treaties and agreements between Switzerland and the United States to curb illegal bank secrecy practices.⁹

³ *Id.*, ¶ 12.

⁴ *See*, Transcript of Sentencing, U.S. District Court of Florida, Case No. 089-60099-CR-Zloch, Tr. 15, lines 18-21 (Statements and admissions of the prosecuting Assistant United States Attorney) (August 21, 2009).

⁵ *Id.*, Tr. 12.

⁶ *Id.*, Tr. 13, lines 21-24.

⁷ Motion for Sentence Reduction, ¶¶ 7-10.

⁸ Deferred Prosecution Agreement entered into in the case of *USA v. UBS AG*, 09-60033-CR-Cohn.

⁹ Transcript of Sentencing, U.S. District Court of Florida, Case No. 089-60099-CR-Zloch, Tr. 12, lines 5-8; Tr.21, lines 14-25 (Statement of Assistant United States Attorney).

- * Mr. Birkenfeld's disclosures led directly to the investigation of "other Swiss Financial Institutions and Financial Institutions in other tax havens"¹⁰ and widespread voluntary payments from U.S. citizens who had abused bank secrecy to escape paying taxes.¹¹

These considerable achievements, which benefit all honest American taxpayers, are not the sole reason your office needs to take immediate action. Punishing Mr. Birkenfeld with over three years in prison, after he voluntarily disclosed one of the largest offshore bank fraud schemes in history, will undermine the long-term law interests of American law enforcement.

Mr. Birkenfeld's information was simply the tip of the iceberg concerning the cancerous nature of international bank secrecy. For example, Mr. Birkenfeld identified 19,000 U.S. "taxpayers" who illegally used UBS accounts to hide profits from American authorities. As part of its deferred prosecution agreement, UBS agreed only to identify 250 of these criminals. To settle a separate civil suit, they promised to help identify another 4,450. However, due to Swiss banking laws, that promise was hollow. Over 15,000 criminals are receiving a free pass, while the whistleblower is facing jail time.

In addition to the 15,000 tax evaders who are escaping criminal prosecution, we are also deeply concerned that UBS, which systemically orchestrated and profited from a decades long international illegal enterprise, was rewarded with a deferred prosecution agreement in February 2009 by the DOJ. This agreement allows UBS to escape criminal prosecution. Likewise, the government instituted an amnesty program that allowed thousands of willful tax evaders to avoid criminal prosecution. Finally, Martin Liechti who was allegedly one of the masterminds of the UBS scheme was released from DOJ custody after pleading the 5th Amendment in front of the U.S. Senate on July 17, 2008 and permitted to return to Switzerland. He was allowed to escape criminal prosecution and enjoy the fruits of a tax fraud scheme that cost American taxpayers billions of dollars. All of these people were allowed to walk away. Mr. Birkenfeld, the American whistleblower who made all of this possible, is the only one who is facing jail time.

Worse still is the impact of this case on the thousands of other international bankers who, like Mr. Birkenfeld, could blow the whistle on the trillions of dollars hidden in secret offshore accounts. What international banker will follow in Mr. Birkenfeld's

¹⁰ *Id.*, Tr. 12, lines 20-22.

¹¹ Tr. 13, lines 13-16.

footsteps? Who would risk the complete destruction of their professional career, their safety, and *jail time* if they decided to blow the whistle?

Denying Mr. Birkenfeld whistleblower status, and sending him off to a long prison term, radically undermines the ability of the U.S. government to detect, prosecute and prevent illegal off-shore banking practices. Without exaggeration, on the day Mr. Birkenfeld enters a federal penitentiary, every criminal using offshore secret banks to hide their ill-gotten gain will celebrate. The Department of Justice will, unintentionally, be party to a well-publicized worldwide event that will send a chill down the spine of any international banker who, like Mr. Birkenfeld, feels guilty about the practices they participate in and wants to help stop these insidious practices that undermine the rule of law.

Due to the destructive impact of Mr. Birkenfeld's sentencing, honest U.S. taxpayers will continue to bear the burden of the \$100 billion lost to the Treasury annually because of secret banking. Victims of crimes funded by laundered funds, often funneled through secret banks, will shudder. These secret accounts are used to hide "blood money": money stolen from development projects designed for the most impoverished; bribe money obtained by crooked politicians, undermining the rule of law; profits from illegal arms deals to terrorist organizations.

What happens on January 8, 2010 in a federal district courtroom in Fort Lauderdale, Florida will reverberate throughout the world. Your office must make a decision. Will the Department of Justice imprison the international banker who had the courage to voluntarily step forward and blow the whistle on one of the world's most powerful corporations? Or will the Department of Justice use the Bradley Birkenfeld case as an historic opportunity to promote whistleblowing in the fight against corrupt international banks?

Due the potential impact of Mr. Birkenfeld's disclosure on compliance and law enforcement efforts world-wide, we ask that you personally and immediately conduct an independent review of this matter and take necessary corrective action to ensure that the policies underlined in U.S. whistleblower laws are fully and completely vindicated. We believe that a thorough review of Mr. Birkenfeld's case should include consultation with experts in the areas of international treaties and banking. We also believe that the international impacts of this case demand consultation with the Secretary of State. Please carefully evaluate the crime that Mr. Birkenfeld is accused of committing versus the strong public interest in encouraging other whistleblowers to step forward.

If you have any questions please do not hesitate to contact us at (202) 342-1903 or by email at lmw@whistleblowers.org.

Thank you for your time and courtesy.

Respectfully submitted,

Lindsey M. Williams, Esq.
Advocacy Director
National Whistleblowers Center

Jesselyn Radack
Homeland Security Director
Government Accountability Project

Danielle Brian
Executive Director
Project On Government Oversight

Cc:
Senator Charles E. Grassley
Senator Patrick J. Leahy
Senator Carl Levin
Senator John Kerry
Senator Claire McCaskill