

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-60099-CR-ZLOCH

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRADLEY BIRKENFELD,

Defendant.

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**SENTENCING MEMORANDUM OF DEFENDANT BRADLEY BIRKENFELD**

**Introduction**

The defendant Bradley Birkenfeld respectfully submits this Sentencing Memorandum in support of the imposition of a sentence that reflects the unique circumstances of this case: the defendant's own initiation of the federal investigation that ultimately led to the indictment against him, the defendant's timely (if not immediate) acceptance of responsibility, the extraordinary pre- and post-indictment assistance and cooperation that the defendant has provided to the United States Government, and the unprecedented results of that assistance and cooperation.<sup>1</sup> See Letters of Senator Carl Levin, Chairman of the United States Senate Permanent Subcommittee on Investigations, Robert Khuzami, Director of the Division of

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<sup>1</sup> Indeed, at Mr. Birkenfeld's Initial Appearance before the Honorable United States Magistrate Judge Seltzer on May 13, 2008, one of the Government prosecutors advised the Court, "Your Honor, what I would submit to the Court is *a little bit unusual about these circumstances*. It is that *Mr. Birkenfeld has been talking to the Government for a period that well exceeds a year*." See Transcript of Initial Appearance and Bond Hearing, at pp. 5-6 (pages not numbered, emphasis supplied), attached to accompanying Appendix as Exhibit A. Shortly thereafter, during the course of Mr. Birkenfeld's plea colloquy before this Court on June 19, 2008, another of the Government prosecutors emphasized to the Court, "[w]ith respect to Mr. Birkenfeld's cooperation I would just like to add for the record that *Mr. Birkenfeld's cooperation is anticipated to assist the Government nationwide in its investigation*, and the decision with respect to his 5K1 will not only be made by the local U.S. Attorney's Office but by the Department of Justice Tax Division". See Transcript of Plea Colloquy, p. 20 (emphasis supplied), Appendix Exhibit B.

Enforcement of the United States Securities and Exchange Commission, and John C. McDougal, Esquire, Office of the Chief Counsel of the United States Internal Revenue Service. Appendix Exhibits C, D, and E, respectively.

Mr. Birkenfeld respectfully submits that this Honorable Court ought to grant the Government's U.S.S.G. § 5K1.1 Motion and depart downward to a sentence within Zone B of the Sentencing Guidelines. Upon a careful consideration of the factors set forth in U.S.S.G. § 5K1.1 and 18 U.S.C. § 3553(a), Mr. Birkenfeld submits that the imposition of a sentence of five (5) years probation, to include as a special condition that he be placed in home detention for an appropriate period of time, U.S.S.G. § 5C1.1(c), would be fair and reasonable and would ensure that the defendant's punishment is sufficient, but not greater than necessary. 18 U.S.C. § 3553(a); United States v. Williams, 435 F.3d 1350, 1353-1356 (11th Cir. 2006).

### **General Background**

In October, 2001, Mr. Birkenfeld began working at UBS in Geneva, Switzerland, handling private banking, primarily for clients located in the United States. By 2005, Mr. Birkenfeld realized that UBS and he were acting improperly in their handling of UBS banking clients, including Mr. Birkenfeld's own clients.

Over the next three years, Mr. Birkenfeld voluntarily undertook affirmative actions -- at great personal and professional risk -- to initiate contact with and to provide sensitive, detailed information about such misconduct to his superiors and to his Government, first internally at UBS in Switzerland and then (despite long-standing Swiss banking secrecy laws) in the United States, his home country. In the end, the results of Mr. Birkenfeld's efforts were clear for all to see.

On June 30, 2008, United States authorities sought judicial authorization in the State of Florida to compel UBS to disclose the names of those American clients who had violated the law by not reporting and withholding taxes associated with monies maintained in offshore accounts. The following month, in July, 2008, UBS agreed to "exit entirely" the Swiss offshore banking business for U.S. clients.

In February, 2009 -- following the July, 2008 issuance of a "John Doe" summons that was based in significant part upon the information that Mr. Birkenfeld had provided to the IRS in June, 2007 -- UBS entered into an historic Deferred Prosecution Agreement with the Government. The Agreement could result in the release of the names of as many as 19,000 U.S. citizens in regard to their taxable assets being held by UBS (with an estimated value of \$20 billion) and a penalty of \$780 million for UBS to avoid criminal prosecution. In addition, UBS has recently settled outstanding issues with the IRS's "John Doe" summons concerning the disclosure of UBS client names.

None of these events would have occurred had Mr. Birkenfeld not (i) discovered and disclosed his concerns about UBS's private banking policies to UBS in 2005 and 2006, (ii) voluntarily contacted U.S. authorities, including the Department of Justice (DOJ), the Internal Revenue Service (IRS), the Securities and Exchange Commission (SEC), and Congress in 2007, (iii) voluntarily shared extensive privileged information about improprieties at UBS during six trips from Switzerland to the U.S and some eight different meetings with U.S. authorities, (iv) publicly acknowledged and accepted his own responsibility by pleading guilty within weeks of being charged himself in 2008, and (v) cooperated fully and completely with Government prosecutors to this day.

### **Consideration of Mr. Birkenfeld's Assistance and Cooperation**

#### **A. Mr. Birkenfeld's Discovery of Wrongdoing at UBS, Resignation, and Whistleblowing Claims in Switzerland**

After starting work at UBS in October, 2001, Mr. Birkenfeld performed well; he generated positive employment reviews and was titled as a Director. In May, 2005, Mr. Birkenfeld noticed a three-page legal document on UBS's internal company computer system that contained prohibitions completely at odds with UBS's *actual* banking practices with its U.S. clients. That same day, Mr. Birkenfeld notified his immediate superiors at UBS of the issue; the next month, in June, 2005, he formally brought the matter to the attention of certain high-ranking officials at UBS who were responsible for compliance and legal matters and pressed for clarification. Receiving none, Mr. Birkenfeld resigned within four months, in October, 2005.

Upon his resignation, UBS sent Mr. Birkenfeld threatening letters reminding him of his legal obligations under "bank/client confidentiality" and that he may be subject to prosecution if he disclosed or provided "client data" to anyone. In early 2006, when UBS refused to honor a bonus award that had been due to Mr. Birkenfeld, he invoked his rights under Swiss law and UBS's three internal procedures as a whistleblower in response to the apparent retaliation against him. Mr. Birkenfeld and UBS eventually entered into a severance agreement over the disputed bonus. More significantly, after Mr. Birkenfeld voiced his complaints in writing, UBS revised its internal practices by removing the three-page memorandum from its internal computer system and prohibiting its Swiss bankers from traveling to the United States.

#### **B. Mr. Birkenfeld's Pre-Indictment Assistance to the US Government**

In early 2007, while his employment dispute with UBS was being resolved, Mr. Birkenfeld -- through prior counsel -- voluntarily contacted the IRS, as well as the DOJ, and offered to provide authorities at both agencies with various sensitive information

regarding UBS and its private banking practices. Through counsel, Mr. Birkenfeld repeatedly sought full immunity from potential prosecution.

After agreeing to a proffer session that did not include full immunity, Mr. Birkenfeld voluntarily met with DOJ prosecutors and an IRS Special Agent on June 12, June 19, and June 21, 2007. During the course of those three full-day meetings at the DOJ in Washington, Mr. Birkenfeld provided Government authorities with extensive information, privileged documents, and investigative strategies about UBS's massive tax fraud scheme.

On October 12, 2007, Mr. Birkenfeld was again interviewed extensively by two additional IRS agents regarding the same subject matter. See generally, Letter of Mr. McDougal, Appendix Exhibit E.

In November, 2007, Mr. Birkenfeld initiated contact with U.S. Senate investigators and voluntarily provided them with sworn testimony, privileged documents, and various other materials. See generally, Letter of Senator Levin, Appendix Exhibit C. Following its public hearings in July, 2008, the U.S. Senate Permanent Subcommittee on Investigations issued a Report on Swiss banking secrecy entitled "Tax Haven Banks and U.S. Tax Compliance" in which Mr. Birkenfeld's deposition testimony is recognized and acknowledged. See Excerpts of Senate Report, Senator Levin statement at pp. 4-5, Appendix Exhibit F.<sup>2</sup>

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<sup>2</sup> Mr. Birkenfeld is the only UBS employee to have provided the Subcommittee with detailed, inside information concerning UBS's activities. See Exhibit Nos. 84-94 to the July 17 and July 25, 2008 Hearings Before the Investigations Subcommittee of the U.S. Senate Committee on Homeland Security and Governmental Affairs (materials that were provided by Mr. Birkenfeld to the Subcommittee), attached as Appendix Exhibit G. Martin Liechti, the Managing Director responsible for the division in which Mr. Birkenfeld worked at UBS, was called as a witness at the July, 2008 hearings, but invoked his 5<sup>th</sup> Amendment rights and refused to testify. Two weeks later, Mr. Liechti, was released by U.S. authorities, apparently with no charges having been issued against him. Id.

In November, 2007, Mr. Birkenfeld also initiated contact with the U.S. Securities and Exchange Commission and provided similar information, sworn testimony, and various materials to the Enforcement Division of that agency. See generally, Letter of Director Khuzami, Appendix Exhibit D.

Simply stated, the nature and extent of the information that Mr. Birkenfeld provided to each of these Government authorities was *unprecedented*:

- An overview of UBS's cross-border and offshore business activities;
- The UBS offices and private bankers that were directly involved;
- The volume and size of UBS accounts for its U.S. customers;
- UBS's internal accounting reports, training techniques, and presentations;
- Details on the frequency and location of UBS's bankers' travels to the U.S.;
- Urging Government authorities to have UBS's bankers cross-matched when traveling through U.S. Customs;
- Details concerning the lack of adequate U.S. licensing by UBS bankers to provide investment advice to clients;
- The failure of UBS to abide by the Qualified Intermediary and Deemed Sales regulatory guidelines; and
- Copies of internal UBS documents, e-mails, and memoranda corroborating the information being provided by Mr. Birkenfeld.

Each of these meetings with the Government and the disclosure of all of this information to the various U.S. authorities took place well *before* Mr. Birkenfeld was himself charged by the Government in this case.<sup>3</sup>

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<sup>3</sup> Significantly, among other information Mr. Birkenfeld voluntarily provided to the SEC and U.S. Senate was the name of his largest U.S. client: Igor Olenicoff. In October, 2007, Mr. Olenicoff entered into a plea agreement with federal prosecutors in the Central District of California on a single charge of tax fraud, pursuant to which he agreed to pay \$52 million in back taxes and was sentenced to two (2) years probation. See PSR at ¶¶ 8 and 42; United States v. Olenicoff, Case No.: 8:07-cr-00227-CJC-1.

### **C. Mr. Birkenfeld's Post-Indictment Assistance and Cooperation**

In April, 2008, based in large part upon Mr. Birkenfeld's alleged failure to be totally forthcoming about his own conduct at UBS during his meetings with DOJ prosecutors, the Government sought his indictment. In May, 2008, he traveled to the U.S. from Switzerland, where he was still residing, in order to attend additional pre-arranged meetings with the SEC and U.S. Senate, as well as for a high school reunion. When his plane landed in Boston, Mr. Birkenfeld was placed under arrest by federal agents.

Within weeks of his Initial Appearance, Mr. Birkenfeld pleaded guilty and agreed to continue his cooperation with the Government. Mr. Birkenfeld's continued cooperation has led directly to further action by the Government in numerous related investigations and prosecutions. In November, 2008, the Government indicted Raoul Weil, the Chairman of UBS's Wealth Management business. In December, 2008, the U.S. reportedly expanded its inquiry to include other banks, such as Credit Suisse and HSBC.

In February, 2009, following the settlement with the U.S., Marcel Rohner, UBS's Chief Executive Officer, resigned. In March, 2009, the Chairman of UBS, Peter Kurer, resigned, as did Martin Liechti, see n. 2, supra, under circumstances reported to be closely tied to their alleged connections to UBS's illegal activities in the US. In April, 2009, at a meeting of the "Group of 20," the Government of Switzerland agreed to relax bank secrecy rules and cooperate with other countries by providing more tax transparency in its exchanges of customer information.

In April, 2009, the U.S. Government indicted two UBS clients here in Florida, both of whom have already pled guilty. In July, 2009, a third UBS client was indicted in

Florida; he too has already pleaded guilty. Earlier this month, a fourth UBS client was indicted in California.

Indeed, earlier this year, Douglas Shulman, the Commissioner of the IRS, testified to the United States Senate that:

Informants are another part of IRS' enforcement net,... [Informant tips] involve the names and practices of financial institutions in those countries that typically have strict bank secrecy laws, and keep in mind that the value here is far greater than just the names of specific individuals. With additional development, these tips provide information that can lead to a John Doe summons – our next important tool.

See Testimony of Commissioner Shulman to Congress, March 4, 2009, Appendix Exhibit H. See also Commissioner Shulman's Announcement of the IRS Voluntary Disclosure Program, in which he stated that "[t]hose who truly come in voluntarily will pay back taxes, interest, and a significant penalty, *but can avoid criminal prosecution*" (emphasis supplied), Appendix Exhibit I.

Mr. Birkenfeld respectfully submits that this is precisely the same type of "valuable information" that he voluntarily provided not only to the IRS, but to the DOJ, the SEC, and Congress, long before he was ever indicted.

### **Consideration of Section 3553(a) Factors**

#### **A. The Nature and Circumstances of the Offense and the History and Characteristics of the Defendant**

Mr. Birkenfeld fully recognizes and acknowledges that what he did as an employee of UBS was wrong. At the same time, Swiss banking procedures had been a historic fact and deep-rooted secrecy was such a powerful element of Swiss law that Mr. Birkenfeld did not properly comprehend or question that which had long been standard operating procedure at his place of employment. Beginning in May, 2005, however, he



did, and over the next several years he undertook a series of affirmative actions to bring his concerns to the attention of the authorities, first those at UBS and then those throughout the U.S. Government.

While it does not excuse his own conduct, Mr. Birkenfeld's role as the first known Swiss private banker to "peel back the curtain" in what has become an international financial scandal over Swiss private banking is in many ways *sui generis*. Indeed, his own pre-indictment actions in coming forward to authorities in 2005, 2006, and 2007 reflect an individual genuinely attempting to shine light on a broader systemic problem, not someone trying to avoid or hide responsibility.

**B. The Need for the Sentence Imposed to Reflect the Seriousness of the Offense, to Promote Respect for the Law, and to Provide Just Punishment for the Offense**

A sentence of five years probation, a special condition of which is an appropriate period of home detention -- in addition to the past 15 months in which Mr. Birkenfeld has been subject to a curfew, supervision, and electronic monitoring (in the form of an ankle bracelet) -- will serve as a constant and daily reminder to Mr. Birkenfeld of his conduct and the need to act in accordance with the law. The U.S. has recovered the financial damages in this case from Mr. Olenicoff, who, as part of his plea agreement, paid some \$52 million in back taxes on the monies at issue. See PSR at ¶ 42. Moreover, as a result of Mr. Birkenfeld's assistance, the Government has derived even greater benefits, including those associated with the recent UBS settlement and the revisions to Swiss banking practices, as well as the ongoing voluntary disclosures to the IRS by U.S. clients of UBS and other banks. As such, a five-year period of probation, together with a term of home detention, would be a just sentence for Mr. Birkenfeld.

**C. The Need for the Sentence Imposed to Afford Adequate Deterrence to Criminal Conduct**

Mr. Birkenfeld, who in early 2008 was unknown to anyone except family and friends, has gained international notoriety as a result of his indictment and guilty plea.<sup>4</sup> This infamy already serves as a deterrent to others in the financial services field and elsewhere.

Given his efforts to bring attention to the conduct of UBS and, ultimately, his own participation in it, Mr. Birkenfeld submits that a period of imprisonment is not necessary to further the goal of deterrence. Such a punitive measure might adversely affect the willingness of others to come forward with similar information.

**D. The Need for the Sentence Imposed to Protect the Public From Further Crimes of the Defendant**

Mr. Birkenfeld has no history of any relevant criminal conduct or behavior. Moreover, he has no future in his professional career. As an Economics major who obtained an MBA and who was trained in the areas of financial advice and wealth management, see PSR at ¶¶ 80-82, he has no future in financial services. Through counsel and by permission of the Court, in order to pay living expenses and legal fees he has liquidated most if not all of his overseas assets.

Mr. Birkenfeld's father described his son as a "person who is never one to shirk his responsibilities." See PSR at ¶ 64. He has complied fully with all conditions of pretrial release and pretrial probation, including his curfew and electronic monitoring. See PSR at ¶ 6. By agreement with the Government, he was permitted by Judge Seltzer to travel locally during the Christmas holidays; he complied fully without issue.

Mr. Birkenfeld has accepted and acknowledged his responsibility; his participation in the crime to which he has pleaded guilty is an anomaly in an otherwise law-abiding

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<sup>4</sup> Today, well over a year since his guilty plea, the term "UBS" and "Birkenfeld" appears over 15,000 times on "Google," the popular internet search engine; the term "UBS", "Birkenfeld", and "guilty" appears in excess of 4,000 times.

life. See generally, Personal Letters in Support of Mr. Birkenfeld, Appendix Exhibit J. The protection of the public does not require that Mr. Birkenfeld serve a period of imprisonment.

**E. The Need for the Sentence Imposed to Provide the Defendant with Needed Educational or Vocational Training, Medical Care, or Other Correctional Treatment in the Most Effective Manner**

The defendant submits that a sentence of five years probation would allow him to proceed with any appropriate correctional treatment, whether educational or vocational training, in the most effective manner.

**Conclusion**

For the reasons set forth above, the defendant Bradley Birkenfeld respectfully submits that this Honorable Court ought to impose a sentence of probation for a period of five years, including as a special condition home detention for an appropriate period of time. In the circumstances of this truly unique case, such a sentence reflects the considerations set forth in U.S.S.G. § 5K1.1 and is sufficient, but not greater than necessary to achieve the goals enunciated in 18 U.S.C. § 3553(a).

Respectfully submitted,

**s/ Robert W. Stickney**

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- 12 -

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed by CM/ECF this 18th day of August 2009.

Respectfully submitted,

s/ **Robert W. Stickney**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-60099-CR-ZLOCH

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRADLEY BIRKENFELD,

Defendant.

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**APPENDIX OF EXHIBITS IN SUPPORT OF SENTENCING  
MEMORANDUM OF DEFENDANT BRADLEY BIRKENFELD**

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Respectfully submitted,

**s/ Robert W. Stickney**

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*Admitted Pro Hac Vice*  
Attorneys for the Defendant

Dated: August 18, 2009

- 2 -

Exhibit A.	Transcript of Initial Appearance and Bond Hearing, dated May 13, 2008
Exhibit B.	Transcript of Plea Colloquy, dated June 19, 2008
Exhibit C.	Letter of Senator Carl Levin, Chairman of the United States Senate Permanent Subcommittee on Investigations, dated July 28, 2009
Exhibit D.	Letter of Robert Khuzami, Director of the Division of Enforcement of the United States Securities and Exchange Commission, dated August 11, 2009
Exhibit E.	Letter of John C. McDougal, Esquire, Office of the Chief Counsel of the United States Internal Revenue Service, dated August 14, 2009
Exhibit F.	Excerpts of Senate report, Senator Levin statement at pp. 4-5
Exhibit G.	<u>See</u> Exhibit Nos. 84-94 to July 17 and 25, 2008 Hearings Before the Investigations Subcommittee of the U.S. Senate Committee on Homeland Security and Governmental Affairs (materials that were provided by Mr. Birkenfeld to Committee)
Exhibit H.	Testimony of Commissioner Shulman to Congress, dated March 4, 2009
Exhibit I.	Commissioner Shulman's announcement of the IRS Voluntary Disclosure Program, dated March 26, 2009
Exhibit J.	Personal Letters in Support of Mr. Birkenfeld

# Exhibit A



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION  
UNITED STATES OF AMERICA,  
Case No. 08-Cr-60099-ZLOCH/SELTZER**

Plaintiff,

vs. **FORT LAUDERDALE, FLORIDA**  
MAY 13, 2008  
**BRADLEY BIRKENFELD, et al.,**

Defendant.

**TRANSCRIPT OF INITIAL APPEARANCE & BOND HEARING  
BEFORE THE HONORABLE BARRY S. SELTZER,  
UNITED STATES MAGISTRATE JUDGE**

**APPEARANCES:**

**FOR THE GOVERNMENT:**

*United States Attorney's Office*  
500 E. Broward Boulevard  
Fort Lauderdale, Florida 33301  
**BY: JEFFREY NEIMAN, A.U.S.A.**  
**BY: JEFFREY KAY, A.U.S.A**

**FOR THE DEFENDANT:**

**BY: PETER RABEN, ESQ.**  
1200 Brickell Avenue  
Miami Florida 33131

**ALSO PRESENT: BY: DANNY ONORATO, ESQ.**

**REPORTED BY: JERALD M. MEYERS, RPR-CM**  
**J.M. Court Reporting, Inc.**  
**1601 N.W. 109 Terrace**  
**Telephone: 954-431-4757**  
**Pembroke Pines, Florida 33026-2717**

**(Call to order of the Court)**

**THE COURT:** Okay. Let me call the United States versus Bradley Birkenfeld. Bradley Birkenfeld.

Mr. Birkenfeld, if you will approach. Is the government moving to unseal the indictment?

**MR. NEIMAN:** It is, Your Honor.

**THE COURT:** All right. I will go ahead and sign the order. I am unsealing the indictment. All right.

And does the government have an extra copy of the indictment for the defense?

**MR. NEIMAN:** He has been provided a copy.

**THE COURT:** Okay. Very well. Let me ask counsel to state their appearances.

**MR. NEIMAN:** Jeffrey Neiman on behalf of the United States.

**THE COURT:** Welcome.

**MR. RABEN:** Good morning, Your Honor. Peter Raben here on behalf of Mr. Birkenfeld. And if the Court please, I am here with Danny Onorato.

Mr. Onorato will be filing a motion to proceed pro hac vice. He is a member of the D.C. and California Bars. He has been an attorney for 12 years.

He is also a member of the Federal Bars of Colorado, Maryland and California. He is in the District of Columbia. He is a partner with Sherman & Onorato over the last four years, and prior to that he was an Assistant United States Attorney for 5 years in the District of Columbia.

I would ask the Court to allow him to appear pro hac vice, with the proviso that we follow-up with the written pleadings which are required for this district.

**THE COURT:** All right. With that understanding, that there will be a written motion that conforms to the local rules and a proposed order and no objection and the fee paid into the Clerk of the Court, any objection?

**MR. NEIMAN:** No, Your Honor.

**THE COURT:** Okay. Can I have the spelling of your last name?

**MR. ONORATO:** Yes, sir. It is O-n-o-r-a-t-o.

**THE COURT:** O-n-o-r-a-t-o?

**MR. ONORATO:** Yes, sir.

**THE COURT:** Okay. Onorato?

**MR. ONORATO:** Yes, sir.

**THE COURT:** Your first name is Danny or Daniel?

**MR. ONORATO:** It is Danny.

**THE COURT:** Danny. Okay. Welcome. All right. Welcome. All right. Bradley Birkenfeld, good morning.

**THE DEFENDANT:** Good morning, sir.

**THE COURT:** Mr. Birkenfeld, you are here for your first or your initial appearance, having been arrested on a warrant or surrendered, actually, I understand on a warrant issued pursuant to an indictment I will get to in just one moment.

Let me first take this opportunity, however, to inform you that you have the right to remain silent; that anything that you say may be used against you.

If you take a look at the indictment, it is rather lengthy. Count I appears to charge a violation of Section 371, Title 18.

It says that, "From in or about 2001, up to and including the date of this indictment, in the Southern District of Florida, and elsewhere, that you and another individual, and others, known and unknown to the grand jury, unlawfully and willfully and knowingly conspired to defraud the United States or an agency thereof, to wit: The IRS, in violation of 18, United States Code, Section 371."

It says that, "The object of the conspiracy was that you would and did defraud the U.S. for the purpose impeding, impairing, obstructing and defeating the lawful government functions of the IRS, and the ascertainment, computation, assessment and collection of U.S. income taxes."

It then goes on to detail the means and methods of the conspiracy and the overt acts committed in furtherance thereof, all in violation of 18, U.S.C., Section 371.

Okay. Mr. Birkenfeld, do you understand the allegations against you?

**THE DEFENDANT:** Yes, sir.

**THE COURT:** Mr. Birkenfeld, you are entitled to be represented by counsel throughout these proceedings.

If you cannot afford an attorney, you may be entitled to have one appointed for you by the court.

Mr. Raben, Mr. Onorato, are you both going to be entering permanent appearances?

**MR. ONORATO:** Yes, sir, we are, and we have filed those with the clerk.

**THE COURT:** Okay. Very well.

Mr. Birkenfeld, you are entitled to have a hearing to determine the terms and conditions of your bond.

Well, let's do this: I am sorry. Since you are entering permanent appearances, we can go forward with the arraignment.

**MR. NEIMAN:** Yes.

**MR. RABEN:** Yes.

**THE COURT:** Why don't we do that.

Mr. Birkenfeld, have you had an opportunity to review the indictment and do you understand the allegations against you?

**THE DEFENDANT:** Yes, Your Honor.

**THE COURT:** All right. Either Mr. Raben or Mr. Onorato, do you waive reading of the indictment in its entirety and are you prepared to enter a plea at this time?

**MR. ONORATO:** Yes, Your Honor. We have been given access to a copy of the indictment. I have gone over it with our client.

At this time we will waive formal reading of the indictment, and we will enter a plea of not guilty and ask for a trial by jury, and we will ask that the court sign the standing discovery order for the district.

**THE COURT:** Very well. The plea of not guilty and the demand for jury trial will be entered into the record, and the standing discovery order will be issued as of this date.

The status conference is set for?

**THE CLERK:** May 28th at 11:00 o'clock before Judge Snow.

**MR. ONORATO:** Does the court have discretion to move that to the first week in June?

**THE COURT:** All right. Aaron, what date? What is the first date in June?

**THE CLERK:** The 2nd is a Monday.

**THE COURT:** How is June 2nd at 1:00 o'clock in the afternoon before Judge Snow?

**MR. ONORATO:** That's fine, Your Honor.

**THE COURT:** All right.

**MR. ONORATO:** Thank you very much for the courtesy.

**THE COURT:** Yes. The status conference will be June 2nd at 1:00 p.m. before Judge Snow here in Fort Lauderdale.

Now, Mr. Birkenfeld, you are entitled to have a hearing to determine the terms and conditions of your bond.

Let me ask the government what its bond recommendation is as to Mr. Birkenfeld?

**MR. NEIMAN:** Your Honor, by way of background, the defendant was arrested last week in Boston and had his initial appearance and there was a Rule 20 to down here.

**THE COURT:** Right. Okay.

**MR. NEIMAN:** He appeared here, after I believe it was a million dollar corporate surety bond was set in Boston.

We do have a jointly recommended bond proposal for the Court to consider in order to, actually in lieu of the one million dollar corporate surety bond.

The defendant has agreed to pledge to the Clerk of the Court --

**THE COURT:** We don't take pledges.

**MR. NEIMAN:** Okay. Could a deed --

**THE COURT:** No. We don't take deeds.

**MR. NEIMAN:** No? You don't take deeds?

**THE COURT:** No.

**MR. NEIMAN:** If I may have a moment?

**THE COURT:** Yes.

**MR. NEIMAN:** Your Honor, if we may have a few moments?

**THE COURT:** All right.

**MR. NEIMAN:** Your Honor, the parties would recommend a 1.5 million personal surety bond to be co-signed by the defendant and his brother.

**THE COURT:** Wait. Wait. There was a corporate surety bond posted in --

**MR. ONORATO:** Your Honor, that's incorrect. There was no corporate surety bond posted.

**THE COURT:** All right. Then let me get the correct information.

**MR. ONORATO:** Your Honor, the judge up in Boston released Mr. Birkenfeld on his promise to appear here. His brother and he co-signed for a one million dollar personal surety bond.

**THE COURT:** A one million dollar personal surety bond?

**MR. ONORATO:** Correct.

**THE COURT:** So that was the bond that was set in Massachusetts?

**MR. ONORATO:** Correct. Then the judge ordered him to appear here so Your Honor could more fully develop other conditions.

It was contemplated that Mr. Birkenfeld's brother at the time would post his personal residence to assure his appearance here today.

The judge said she was not going to go through that process, but told him he was on the hook if Mr. Birkenfeld did not appear for his residence being taken.

**THE COURT:** Well, I have got to tell you Mr. Birkenfeld lives outside of the United States. I am not comfortable with a personal surety bond, notwithstanding the amount and the nature of the charges.

So if you all want to talk and work out something more substantial, fine, but it is going to have to be considerably more substantial than a personal surety bond.

**MR. ONORATO:** Judge, could we approach for one second?

**THE COURT:** No. You can all talk about it and work it out, but, no.

**MR. ONORATO:** Your Honor, although he resides outside of the United States, during the pendency of this case he will not be residing outside of the United States.

**THE COURT:** No. I have read the Pretrial Services report. I did read the Pretrial Services report.

He has been living in Switzerland for 13 years, and so I am not willing to accept a personal surety bond, but if you all want to talk and work out something far more substantial, I will listen to it. In the meantime, let me go ahead and take the other matter.

**MR. ONORATO:** Thank you.

[There was a short recess].

**THE COURT:** Let's do this: Mr. Raben, and Mr. Onorato, I don't want to put you on the spot, although I think it is inevitable in this situation to a certain extent that you are on the spot.

If you want, we can break for lunch. If there are people that you need to speak to, and maybe somebody other than Mr. Neiman, I don't know if this is Mr. Neiman's case.

**MR. NEIMAN:** It is, Your Honor.

**THE COURT:** It is your case. Oh. All right. Then Mr. Neiman will be the one that you speak to, and we can continue it after lunch, or if you are ready to go forward now, we can do that.

**MR. NEIMAN:** Well, what the government and the defense would propose, and whether the court would accept a personal surety bond as well as a substantial 10 percent bond, because all of the properties that are going to be used to collateralize these are United States properties. None of these properties are foreign properties.

**THE COURT:** Well, I have got to tell you when I have got somebody living overseas, I normally like to have a bondsman on the case; somebody who is actually going to go and drag him back, and so that is what I would be looking for if we are going to set any type of bond.

**MR. NEIMAN:** Your Honor, what I would submit to the court is a little bit unusual about these circumstances.

It is that Mr. Birkenfeld has been talking to the government for a period that well exceeds a year. He knew coming into Logan last week that he was going to get arrested, and it wasn't any surprise to him.

**THE COURT:** The Pretrial Services report said he was going to his high school reunion.

**MR. NEIMAN:** He was.

**THE COURT:** I am not sure he anticipated being arrested, but all right.

**MR. NEIMAN:** Your Honor, there is a matter which at least I read it in the newspaper which suggested that someone connected with his old employer, if we can approach I can tell the court.

**THE COURT:** No, no. We do everything in the open here.

**MR. ONORATO:** Well, then, perhaps we ought to recess for lunch.

**MR. RABEN:** Yes, Your Honor.

**THE COURT:** Why don't we recess for lunch. We will take this up at 2:00 o'clock.

**THE CLERK:** All rise.

**[There was a recess for the noon hour].**

**THE COURT:** Welcome back. Let me recall the United States versus Bradley Birkenfeld. Let me ask counsel to state their appearances.

**MR. NEIMAN:** Jeffrey Neiman and Jeffrey Kay on behalf of the United States, Your Honor.

**THE COURT:** Welcome.

**MR. RABEN:** Good afternoon, Your Honor. Peter Raben and Danny Onorato appearing for the defendant.

**THE COURT:** All right. Welcome. All right. Have the parties had an opportunity to confer with one another during the break?

**MR. NEIMAN:** We have, Your Honor, and I think it also would be helpful for Your Honor to hear a little more background as to why we are here.

**THE COURT:** All right. I will also note in the Pretrial Services report that there is no financial information provided.

I don't know what the extradition treaty in Switzerland provides. It is probably a non-extraditable offense, as we have had experience with people who have had tax issues with people over there before.

So this, obviously, raises a lot of red flags. The government has not proffered a word as to what Mr. Birkenfeld's advisory guidelines would be, nor have you told me what his role in the offense was.

The idea of a personal surety bond at this point does not have any appeal, but let me give you an opportunity to be heard.

**MR. NEIMAN:** Your Honor, I think that --

**THE COURT:** If you can approach the lectern, please.

**MR. NEIMAN:** I am sorry. Your Honor, I think that the defendant would be willing to proffer his financial background as well. I have discussed this with his counsel.



**THE COURT:** Well, he had the opportunity to speak to Pretrial Services, and he declined to do it.

**MR. ONORATO:** That was in Boston back before. Since he arrived in Boston, he has reached an agreement in principle to cooperate with the United States.

**THE COURT:** Well, that may be, but that's not a factor I consider.

I would like to know what his financial situation is. His assets. His liabilities.

I want to speak to Mr. Neiman, please. I will give you an opportunity. Right now let's just start from the beginning.

**MR. NEIMAN:** All right, Your Honor. First off, his advisory guideline range would max out at 60 months, the statutory max. In fact, there would be 73 months under the guidelines.

**THE COURT:** All right.

**MR. NEIMAN:** So the statutory maximum is what is in control here.

**THE COURT:** All right.

**MR. NEIMAN:** The defendant was a former employee at a Swiss bank.

**THE COURT:** Right.

**MR. NEIMAN:** Who reported in the chain of command to other bankers at the bank.

**THE COURT:** Right.

**MR. NEIMAN:** He came into the United States and assisted U.S. clients and set up nominees and sham entities in order to conceal their assets.

**THE COURT:** Right.

**MR. NEIMAN:** And that they were the beneficial owner of these assets so that the Swiss bank wouldn't have to report to the IRS certain tax information.

**THE COURT:** Right. Did he fabricate documents?

**MR. NEIMAN:** He caused the filing of false what they call W-8 bends which basically falsely state that a non-U.S. client is the beneficial owner of accounts which he knew was not to be the case.

**THE COURT:** All right. So he fabricated documents?

**MR. NEIMAN:** Yes. By way of his financial resources, he has, our understanding is some assets in Switzerland, although not much.

In the United States he has about 700 or \$650,000 in a Fidelity brokerage account, which is predominantly, this is again being told to us by the defendant, one stock which is thinly traded. So it is not as if this is a truly liquid brokerage account.

His father has a residence in Massachusetts. My understanding is there is equity in excess of a million dollars in the residence, and his brother also has a residence in Massachusetts with equity of about \$300,000.

The brother also has a 401-K brokerage account with about 150,000 in it as well, and these are the assets which they were willing to pledge to the Clerk of the Court in order to assure his appearance down here.

**THE COURT:** But as you know, this court for many, many years has not accepted pledges of collateral.

**MR. NEIMAN:** Which is why, Your Honor, we come to you with another recommendation.

Do you have anymore questions about the facts of the case and the development of the case?

**THE COURT:** What was Mr. Birkenfeld's role in this scheme?

**MR. NEIMAN:** With regards to the count charged in the indictment --

**THE COURT:** Well, just tell me what he did, not what is charged.

**MR. NEIMAN:** He had a series of clients here in the United States who he did this, set up the sham entities for. He was their private banker for his clients.

**THE COURT:** What is the loss in the fraud on the government?

**MR. NEIMAN:** In this particular instance?

**THE COURT:** No, no. Total. How much is he responsible for defrauding the United States Government?

**MR. NEIMAN:** Around \$7,000,000 in this one case. It was by far and away his largest client here in the United States.

**THE COURT:** All right. What was the total fraud that he engaged in?

**MR. NEIMAN:** I do not know the specifics, Your Honor. We know he had a handful of clients.

One problem we face in the investigation is having difficulty getting records from Switzerland and identifying the true U.S. clients, the amount of money they had offshore, but we do know that Mr. Birkenfeld had several other clients here in the United States.

**THE COURT:** All right. And so he would receive a statutory maximum, if convicted, of 60 months on this charge. And are there going to be other charges forthcoming based upon any additional fraud?

**MR. NEIMAN:** Not at this time, Your Honor.

**THE COURT:** All right. And tell me what the basis is for your bond recommendation, given, I take it, it is true that this is non-extraditable; that if he were to return to Switzerland we could not get him back; is that correct?

**MR. NEIMAN:** That's correct, Your Honor.

**THE COURT:** All right. Given that this is a non-extraditable offense, and he has been living the last 13 years in Switzerland, explain to me, and I take it you feel you have a strong case?

**MR. NEIMAN:** Yes, we do, Your Honor.

**THE COURT:** All right. So that you believe the likelihood of conviction is high. Explain to me then why you would be recommending a personal surety bond?

**MR. NEIMAN:** We are no longer recommending that, Your Honor.

**THE COURT:** All right. Then let me hear what your new recommendation is.

**MR. NEIMAN:** Our recommendation would be a \$100,000 corporate surety bond, coupled with a \$2,000,000 personal surety bond to be signed by both his brother and his father, whereby they would pledge as collateral the assets which we know they have those assets which would cover the basis for the bond.

**THE COURT:** What about the \$600,000 in the brokerage account?

**MR. NEIMAN:** That would be part of it.



**THE COURT:** But he would have access to that, correct?

**MR. NEIMAN:** He would be willing to forfeit that as well and pledge that as part of the personal surety bond.

**THE COURT:** We don't take pledges. So what will you do?

**MR. NEIMAN:** It will serve as collateral.

**THE COURT:** What is he willing to do so that is outside of his reach so he cannot have access to that \$600,000? What is he willing to do on that, Mr. Neiman?

**MR. NEIMAN:** I think, Your Honor, he will sign it over to the government and he will not have any access to it.

**THE COURT:** All right. Now, how do you know he does not have any additional assets in Switzerland?

**MR. NEIMAN:** We are going upon his representations, Your Honor, and he does have a home over there, we know, and small amounts of stock.

**THE COURT:** Yes.

**MR. NEIMAN:** Not small?

**THE COURT:** Not small, no.

**MR. NEIMAN:** Judge --

**THE COURT:** Look, I have been doing this long enough that just by looking at this indictment and the little bit that is in the Pretrial Services report to have sufficient concerns that there are far more assets than what you are telling me about, but I will give Mr. Onorato an opportunity to disclose that.

**MR. ONORATO:** Thank you, Your Honor. First, I wanted to clarify one point. The Court indicated that Mr. Birkenfeld might be a risk of flight to go back home to Switzerland.

**THE COURT:** Yes.

**MR. ONORATO:** The reason that that is not really an option here is because actually, as Mr. Neiman referred to, he is cooperating here in the United States.

He is actually violating Swiss law by talking about his private clients, and the Swiss would prosecute him for that if he were to go back there.

**THE COURT:** Well, flight just means actually leaving or not showing up for court.

**MR. ONORATO:** No.

**THE COURT:** But he doesn't have to go back to Switzerland.

**MR. ONORATO:** Understood.

**THE COURT:** But my concern is his foreign assets and our ability to get him back.

**MR. ONORATO:** Sure.

**THE COURT:** I would like to know what all of his assets are and where they are.

**MR. ONORATO:** As Mr. Neiman told the Court, he does have about 650 to \$700,000 in a small stock.

In fact, when I was outside in the ante room before, I checked the volume on that stock. So far today it has traded 11,000 shares.

I think it is worth \$8.00 a share. So he owns about \$100,000 to get them up to that 6 or \$700,000 figure that I told the court.

If he were to try to unload that, the stock price would plummet because it can only handle about 10 or 11,000. The average volume on that stock a day is 10,000 shares being traded.

**THE COURT:** All right. So what other assets does he have?

**MR. ONORATO:** He has about 1.5 million dollars worth of that same stock held overseas in trust in Lichtenstein.

**THE COURT:** In Verdune?

**MR. ONORATO:** I am sorry?

**THE COURT:** In Verdune? Verdune, Lichtenstein?

**MR. ONORATO:** Yes. Yes. And the co-defendant in the case, Your Honor, Mario Staggl, is the person who was supervising that money. At this point in time based on Mr. --

**THE COURT:** The DOJ has a representative in Verdune. I guess he can find out more about that.

**MR. ONORATO:** He could, and Mr. Birkenfeld has been directed to have no contact with Mr. Staggl.

He has not been in touch with him, and he does not have access to those funds. That's simply where he stands with respect to that money.

He does own a home in Switzerland. The home is worth approximately one million francs or about \$1,000,000 U.S. dollars.

It is encumbered; about three-quarters of it. So about 700 to 750,000. There is roughly 250 to \$300,000 in equity there.

**THE COURT:** Is that in Zermatt?

**MR. ONORATO:** Yes. He has some bank accounts, Your Honor; I believe a Bank of America in Boston account that has about 2 or \$3,000, and he has two other bank accounts which have about 2 or \$3,000 in them.

Other than those bank accounts and the \$650,000, the home, and he owns a BMW which is worth roughly about \$50,000 which is overseas in Switzerland as well.

**THE COURT:** I thought there were no motorized vehicles in Zermatt?

**THE DEFENDANT:** There aren't, sir.

**THE COURT:** So where do you keep the car?

**MR. ONORATO:** Geneva.

**THE COURT:** Geneva.

**MR. ONORATO:** He has an apartment in Geneva.

**THE COURT:** All right. Is that another property?

**MR. ONORATO:** He rents it, Your Honor.

**THE COURT:** He rents an apartment in Geneva. Now, tell me why he does not have access to the money in Lichtenstein; the stocks in Lichtenstein?

**MR. ONORATO:** Well, because they are being held in trust by Mr. Staggl who now is aware that Mr. Birkenfeld is cooperating against him.

Mr. Birkenfeld would have to have communication with Mr. Staggl who the government I think is going to want to extradite back here to the U.S.

There has been no cooperation between those two gentlemen to get him to provide Mr. Birkenfeld the funds, but even if he were to be able to have access to those funds, Judge, they are still subject to that same stock.

So we are talking about only being able to liquidate about 10,000 shares a day. I looked today.

The stock started out at about \$8.60 a share, and it is now down to \$8.30, and that's based upon 11,000 shares being sold.

**THE COURT:** All right.

**MR. ONORATO:** So it is a small stock. It is something that cannot absorb the kind of volume that Mr. Birkenfeld would put through it to raise the money.

**THE COURT:** All right.

**MR. ONORATO:** Your Honor, I would like to tell the Court a couple of other things.

**THE COURT:** All right.

**MR. ONORATO:** Although he has lived overseas, he did know about this case. In fact, he has had discussions with the United States Government about this case for more than a year.

My firm has been representing him for about two years in this matter. I don't want to say too much in that regard, but he has been cooperative with the government in a number of different respects.

He finds himself in this position because we were trying to work out an immunity agreement vis-a-vis he being charged, and we lost that battle, as the court can see, but that being said, Mr. Birkenfeld knew that Licdee was incarcerated overseas.

He knew that by coming over here, because we talked to him about it, that he could be arrested. Nevertheless, he came over here with that knowledge.

He did not want to run from this potential case. What I tell the Court is he has a father who is --

**THE COURT:** Well, you are not saying that he surrendered on this. My understanding was that he came here for a high school reunion and got arrested.

**MR. ONORATO:** That's true, but he knew coming over here that Mr. Licdee back in April was arrested.

**THE COURT:** Right.

**MR. ONORATO:** He knew that he provided Mr. Licdee's name to the United States Government authorities, and he knew that there was a substantial chance that he would be caught up in the net.

**THE COURT:** Right. But he did not come here to surrender on this case?

**MR. ONORATO:** No. He did not come here to surrender. There was no warrant or we would still be in the posture where we are still talking to the government, but on the same point, he didn't literally stay out of the country.

He came into the country knowing this was a possibility.

Judge, his father is a neurosurgeon who lives in Massachusetts. His brother is a lawyer who lives in Massachusetts.

He is going to be living with his brother. He is very close to his father. He has a brother in Seattle.

Mr. Birkenfeld has no desire to put himself and his family at any greater risk by not appearing in any court on appearance, and I can tell the court that since he was released last Wednesday, he has complied with everything that he has been asked of, including, you know, going to Washington and meeting with the prosecutors on two different days and going to pretrial and meeting with the pretrial supervisors up in Massachusetts.

I mean, I have had daily contact with him and will continue to have daily contact with him.

I understand the court's concerns, and we don't come here lightly, but I do think that Mr. Birkenfeld has made efforts to kind of rectify what he has done with the wrong that he has done and is trying to fashion himself in a situation where he can benefit from cooperating with the government further.

**THE COURT:** All right. Mr. Kay?

**MR. KAY:** Judge, the only thing I can add is based on my familiarity with the case, and I've been with the case since Mr. Neiman started the case in this district, is based on what counsel has said, everything is correct as far as the government --

**THE COURT:** Will you approach.

**MR. KAY:** With everything the government knows, we are also going to recommend, Your Honor, if the court would want to do it, some type of electronic monitoring or house arrest while he is in the Boston area.

It is our opinion and it is Justice's opinion, Judge, that it is an unusual situation, seeing that things with Mr. Birkenfeld have progressed much faster than anyone ever expected, and he has been somewhat cooperative with the government, which I know is not a consideration for you, Judge, but it is a major consideration for the United States.

**THE COURT:** Yes, but that is important because the government's agenda is not my agenda or the court's agenda, and it is different than the defendant's agenda.

And when I hear people proffer cooperation, to suggest that that somehow shields them from a bond that is appropriate, as we all know, people have put themselves in a position where they have represented they are going to cooperate and, in fact, have cooperated and used that opportunity then to jump bond.

**MR. KAY:** Judge, your concern is our concern, Judge, as far as Mr. Birkenfeld's continuing appearances.

Obviously, if Mr. Birkenfeld would go back to Switzerland, it puts the United States Government and the Department of Justice in a very bad weak position as far as future bargaining with the Swiss authorities with where this case is ultimately going.

It is the collective opinion, and I think I can say this on behalf of the Department and the United States Attorney's Office, that we are trying to fashion a bond, Judge, that is reasonable for Mr. Birkenfeld to continue the situation he is in and make the court comfortable at the same time and make us comfortable at the same time.

We have his passport. We have his travel documents. I cannot say anymore than that, Judge.

We are trying to bend over and be as reasonable as we can to accommodate everybody's concern here to do the right thing.

**THE COURT:** All right. Mr. Raben?

**MR. RABEN:** Judge, everything has been adequately set forth before the Court. I just came into the case recently as local counsel, but I would remind the court that although that Mr. Birkenfeld did live in Switzerland, he is a U.S. citizen.

And so while the court is, of course, concerned about where he would flee to, it is not likely that he is going to flee to Switzerland, and it is not likely he is going to jeopardize the property that his family has.

Also, although the statutory maximum is 5 years, the authorities in Washington, D.C. and Boston thoroughly went over this case, and Mr. Birkenfeld has been cooperating with them, and there is a substantial degree of trust and hope that exists in both parties that is ultimately going to result in a much lower sanction against Mr. Birkenfeld.

I think that what he has done in the last week would suggest to the Court that this court can adopt the trust that the Boston magistrate put on the parties and accept that trust.

**THE COURT:** All right. Mr. Birkenfeld, if you would approach the lectern, please.

Mr. Birkenfeld, I am going to put you under oath. Therefore, the answers that you give must be truthful.

They are subject to the penalties of perjury. Please raise your right hand.

**BRADLEY BIRKENFELD WAS DULY SWORN BY THE COURT**

**THE COURT:** All right. I want to go over the assets that Mr. Onorato had proffered. You heard his proffer; is that correct?

**THE DEFENDANT:** Yes I did.

**THE COURT:** All right. And he indicated that you have 650,000 or \$700,000 in a stock account here in the United States?

**THE DEFENDANT:** Yes, Your Honor, at Fidelity Brokerage.

**THE COURT:** And, Mr. Onorato, what are you going to do now again to put that out of your client's control?

**MR. ONORATO:** Your Honor, I will work with the government in figuring out a way to either put it in a trust or to sign over ownership to them or agree to some type of lis pendens; whatever we need to do to satisfy them.

**THE COURT:** All right. You will put it outside of your client's control?

**MR. ONORATO:** Yes, Your Honor.

**THE COURT:** All right. Now, you have additionally 1.5 million dollars in stock in Lichtenstein in a trust; is that correct?

**THE DEFENDANT:** It is in a company, yes, Your Honor. It is the same stock. That is correct.

**THE COURT:** Okay.



**THE DEFENDANT:** Controlled by Mr. Staggl.

**THE COURT:** All right. And you have no access to that; is that correct?

**THE DEFENDANT:** I have been told not to speak to anybody.

**THE COURT:** All right. Who is the gentleman behind you there?

**MR. NEIMAN:** He is an IRS agent.

**THE COURT:** Oh, okay. You were looking at him. That's why I didn't know.

So you would have access to it through the co-defendant Mr. Staggl; is that correct?

**THE DEFENDANT:** Yes, Your Honor.

**THE COURT:** Other than that, is there any other way you can access it?

**THE DEFENDANT:** No, Your Honor.

**THE COURT:** All right. You have a house in Switzerland worth \$1,000,000 with a lien of about or a mortgage of about 750,000 roughly?

**THE DEFENDANT:** That's correct, Your Honor.

**THE COURT:** In Zermott. You have three bank accounts with roughly 2 to \$3,000 in each?

**THE DEFENDANT:** That's correct, Your Honor.

**THE COURT:** The Bank of America?

**THE DEFENDANT:** There might be a very small pension of about 10,000 with Credit Swiss in Switzerland. 10 or 15. I can't remember.

**THE COURT:** All right. And you have got a BMW vehicle in Geneva. Do you have any other assets anywhere in the world, for that matter?

**THE DEFENDANT:** No, Your Honor.

**THE COURT:** Do you have any accounts receivable? Does anybody owe you any monies?

**THE DEFENDANT:** To the contrary. I actually owe some people money.

**THE COURT:** Okay. All right. The court will do the following: I will set a \$100,000 corporate surety bond. What is the source of the premium on that, Mr. Onorato?

**MR. ONORATO:** We are going to ask leave of the court and the government to liquidate just a few shares of that Fidelity account to come up with that premium.

**THE COURT:** Well, you have a Nebbia issue. Is that the proceeds of the illgotten, the proceeds of the fraud? I suspect the fraud money has been commingled.

**MR. ONORATO:** I believe it is his own money, Your Honor.

**THE COURT:** Well, I know it is his money, but did he earn it through the type of fraudulent activity that we have talking about?

**MR. ONORATO:** That becomes a hard question to answer.

**THE COURT:** Because if it is commingled, is there somebody else that can post the premium for that?

**MR. ONORATO:** Your Honor, I am sure that we can figure out a way to do that.

**THE COURT:** All right. There will be a Nebbia requirement on the \$100,000 corporate surety, a \$2,000,000 personal surety co-signed by the defendant's brother and father and a condition of electronic monitoring.

Mr. Onorato, I will take you at your word that you are going to devise a manner with the government through which the money and the stock account here will not be accessible, and your client is not to have any contact with Mr. Staggl with regard to this 1.5 million dollars.

What about the house in Switzerland? What are we going to do to make sure he doesn't liquidate that and use that?

**MR. ONORATO:** Your Honor, what the court can do is direct him, to the extent that he is going to, first of all, he can't get back to Switzerland to do any of those things.

**THE COURT:** Correct, but he can give somebody power of attorney who could resell it.

**MR. ONORATO:** Well, logistically it would be very difficult. In fact, he has a lot of affairs that need to be attended to in Switzerland that he just simply cannot attend to.

That being said, if the Court would order him to have contact before he is to do anything with that property, to seek leave of the Court before he does anything, and I think Mr. Birkenfeld would, of course, respect the court's order.

**THE COURT:** Other than his word, how do we enforce that?

**MR. KAY:** It can be a condition of the bail. It is common as a condition that an individual not be able to mortgage, pledge, hypothecate or lien any properties that he owns.

**THE COURT:** No, I understand that, but how do we enforce that? How do we know that, other than his own representations?

**THE DEFENDANT:** I guess it is with the bank.

**MR. ONORATO:** Other than making any conditions of his bail --

**THE COURT:** But you understand the problem is, and please don't take this personally, Mr. Birkenfeld, but the problem is I am not willing to rely upon his word, and it is not a personal thing, but we have to have some way --

**MR. ONORATO:** No I understand.

**THE COURT:** -- just as with this \$650,000 in stock Mr. Onorato was going to devise a method of or a means by which that will be outside of his custody and control, I want to do the same thing with regard to his home; that he does not liquidate that and take the funds and then has a quarter of a million dollars at his disposal.

**MR. ONORATO:** He does not have the deed because, as the Court heard, he only owns 25 percent of the property. The bank holds the deed.

**THE COURT:** Right.

**MR. ONORATO:** So it is not a matter of surrendering the deed, other than giving the government permission to lien on it or entering into an agreement that, you know, with the government that it is not only a violation of the bond, but a violation of the decree that he will enter into with the government.

I can't think of anything else that can assure the court he can't sell it.

**MR. KAY:** Judge, as a suggestion to the Court, and I don't know the answer to it, my own theory here is to give us some time to see whether or not the United States Government would be allowed to put some type of lien on the property in Switzerland,

and I would have to go through OAA and through our asset forfeiture people to find out the answer to that, Judge, but that's a possibility.

**THE COURT:** Well, what I want to do is be relatively assured that all of his assets are tied up and he does not have access to any of them.

Again, we would not be able to extradite him, and this is a relatively lenient bond.

**MR. ONORATO:** Judge, I have one idea.

**THE COURT:** Yes.

**MR. ONORATO:** I do know that Mr. Birkenfeld has counsel in Switzerland.

**THE COURT:** Yes.

**MR. ONORATO:** I would be happy to reach out to counsel in Switzerland and seek his assistance --

**THE COURT:** All right.

**MR. ONORATO:** -- to see if there is a way that we can somehow encumber the property in a manner which would make the court comfortable.

**THE COURT:** All right.

**MR. ONORATO:** And if the Court would allow me about 10 days, I would be happy to --

**THE COURT:** Report back?

**MR. ONORATO:** -- report back to your staff.

**THE COURT:** All right. And file a status report. All right. In addition, the court is going to set the following standard and special conditions of bond:

Mr. Birkenfeld, I will ask that you please listen carefully. When I am done, I will ask whether you understand each and everyone of the conditions of bond that I have set forth.

First and foremost, you are to appear in court as at such times and places as directed to appear. Your failure to do so may result in a straight indictable offense of bond jumping.

Your travel will be restricted. You are going to be living in Massachusetts?

**THE DEFENDANT:** Yes.

**THE COURT:** Where? Boston?

**THE DEFENDANT:** With my brother, yes, sir.

**THE COURT:** In Boston?

**THE DEFENDANT:** It is South Boston.

**THE COURT:** South Boston. Your travel will be restricted to the District of Massachusetts and the Southern District of Florida and any intermediate jurisdictions traveling to and from your court appearances.

I will also permit you to go to D.C. to meet with counsel in D.C. You are to continue to reside at your brother's address and not change that address without prior approval from the court.

You will be affixed with a bracelet; an ankle or a wrist bracelet. You are to be present inside the home between 10:00 a.m. and 6:00 a.m. barring an emergency every day.

**MR. ONORATO:** Your Honor, is that 10:00 p.m.?



**THE COURT:** What is that?

**MR. ONORATO:** Is it 10:00 a.m. or 10:00 p.m.?

**THE COURT:** 10:00 p.m. to 6:00 p.m. each day.

**MR. ONORATO:** Thank you.

**THE COURT:** You shall not commit any violation of local, state or federal law.

Do you possess any passports other than the American passport?

**THE DEFENDANT:** No, Your Honor.

**THE COURT:** And that has been seized?

**THE DEFENDANT:** Yes, Your Honor.

**THE COURT:** Are you a citizen of any country other than the United States?

**THE DEFENDANT:** No, Your Honor.

**THE COURT:** All right. This isn't a Mark Rich situation. No. All right.

**MR. RABEN:** Not at all.

**THE COURT:** So you are not a Swiss citizen?

**THE DEFENDANT:** I am just a U.S. citizen, Your Honor.

**THE COURT:** Okay. You are to report to the Pretrial Services Office in Boston with the frequency that they instruct you to report.

With regard to employment, what about that?

**MR. ONORATO:** Your Honor, Mr. Birkenfeld is going to have to seek employment. Obviously things have changed single last Tuesday when he arrived here, and he is trying to figure out, you know, what comes forward, but he will be seeking employment.

**THE COURT:** All right. You are to seek and maintain full time legitimate, verifiable employment outside of the finance services industry.

You are to avoid any contact with any victims or witnesses to this offense, except through and with your attorneys as they deem necessary in preparing your defense. Do you have any guns?

**THE DEFENDANT:** They were removed. We had those removed by the Wayman Police Department, and they were taken out of the safe.

**THE COURT:** Okay. Very well. While out on bond, you are not to be in the possession of any guns or other dangerous weapons.

You shall, of course, refrain from the consumption of any illegal narcotics and from the excessive use of alcohol and submit to any random urine analysis that the Pretrial Services officer deems necessary, as well as any recommended follow-up treatment.

Let me ask whether the government or the defense has any other recommended additions or modifications of bond? First from the government?

**MR. NEIMAN:** Just one second, Judge.

**THE COURT:** Anything else?

**MR. KAY:** Nothing else from the United States, Judge.

**THE COURT:** And from the defense?

**MR. ONORATO:** No, Your Honor, other than I am going to ask the court to be lenient regarding the maintaining and seeking employment.

I want the court to be aware that his only background is in the financial services area in Switzerland, and suddenly he is going to find himself that he is going to be virtually unemployable, so that the probation officer is probably going to say to him, "Where did you go looking for work today?"

Ultimately, we are going to be back before the court, and it is not to say that because he has not tried.

**THE COURT:** Well, for obvious reasons he is not going to be able to work in the financial services industry, but it seems to me that somebody of his intellect and ability should be able to find employment.

It may not be the employment of his first choice, but, you know, obviously pretrial, you know, up there can work with him and give him a little time to find a job, but it has got to be outside the financial services industry.

**MR. ONORATO:** I just wanted to put that out there.

**THE COURT:** All right. Mr. Birkenfeld, do you understand each and everyone of the conditions of bond that I have set forth?

**THE DEFENDANT:** Yes, Your Honor.

**THE COURT:** In just a moment we are going to give you a form entitled, "Conditions of release." I would like you to please read and sign it, but don't sign it until you have read it and thoroughly understand it.

Finally, I need to inform you, as I inform all defendants, that for a violation of any one or a combination of conditions of release, that you may have a warrant issued for your arrest and your bond may be revoked and you may be subjecting yourself to contempt of court, as well as further and additional criminal penalties. Do you understand?

**THE DEFENDANT:** I understand, Your Honor.

**THE COURT:** All right. And, Mr. Onorato, you are going to within 10 days file a status report with the court as to what you are doing with the stocks and what you have devised in that regard and also with regard to the home in Switzerland, correct?

**MR. ONORATO:** Yes, Your Honor.

**THE COURT:** All right. Does the government or the defense have any other matters as to Mr. Birkenfeld that they wish to raise?

**MR. NEIMAN:** No, Your Honor.

**THE COURT:** Okay.

**MR. ONORATO:** No, Your Honor.

**THE COURT:** All right.

**MR. ONORATO:** The only request that I would have of the court is that the court would allow us a period of time to get both bonds in place. He is going to have to have time.

**THE COURT:** Yes. I was going to mention that. Thank you, actually, for reminding me.

With regard to the personal surety bond, the brother and the father can co-sign up in Massachusetts. They are both in Massachusetts?

**MR. ONORATO:** Yes, Your Honor.

**THE COURT:** They can go into the Clerk's Office there. Today is Tuesday. I will give them until the close of business on Friday to go into the Clerk's Office in Boston to sign on the paperwork there.

You can speak to Aaron down here and he can make those arrangements for the paperwork to be faxed up there for their signatures.

With regard to the corporate surety bond, how long will you need to have that posted?

**MR. ONORATO:** Your Honor, if I could have a week because I have to find Mr. Birkenfeld's funds to do that.

**THE COURT:** All right. And there is a Nebbia requirement. I will waive the Nebbia if the government is satisfied, Mr. Neiman, that the funds are free; absolutely free of any taint.

**MR. NEIMAN:** Yes, Your Honor.

**THE COURT:** It cannot be commingled. All right. It is to be free of taint. Whether it is the father or the brother, that is fine, but, obviously, you know, if Mr. Birkenfeld is putting up the funds, there is an issue there.

It would be virtually impossible, as Mr. Onorato indicated, to sever out the legitimate from the illegitimate.

All right. Does the government or the defense have any other matters?

**MR. NEIMAN:** No, Your Honor.

**MR. RABEN:** No, Your Honor.

**MR. ONORATO:** No, Your Honor.

**THE COURT:** All right. Mr. Birkenfeld, do you have any questions that I can answer, either about what we have done today, about the terms and conditions of your bond or about what will be occurring next in your case?

**THE DEFENDANT:** No, Your Honor.

**THE COURT:** All right.

**THE DEFENDANT:** Just one other thing: I made an appointment to see pretrial at 10:00 a.m. on Thursday in Boston.

**THE COURT:** All right.

**THE DEFENDANT:** Two days ago I made that appointment.

**THE COURT:** All right. You will be released today. Unless there are any other holds, you will be released today. So you should be able to be back in Boston later today.

**MR. ONORATO:** We have the business card.

**THE COURT:** What is that? I am going to permit him to, what I said was I will give him a week to post the corporate surety bond and give him until Friday to get the co-signatures on the personal surety bond.

**MR. ONORATO:** We have the business card for the Pretrial Services Officer in Massachusetts, and what we would ask is that the clerk fax those documents directly to the clerk and the Pretrial Services officer report.

So he will be there on Thursday and his parents or his father and brother can go in on Thursday.

**THE COURT:** Well, why don't you do this: As soon as we are done, give the information to Aaron and he will take care of getting the documents up there that need to be signed.

The only thing that I am thinking of that maybe we didn't touch on that I might want is a waiver of extradition.

**MR. KAY:** Judge, generally, I've been through this before. It is my obligation to tell the court that usually it is useless, especially in foreign countries.

The foreign country says, "It is nice, but we are not obligated to it." I just want to make the court aware of that.

Especially in this situation, Judge, we know right up front that in a tax offense in Switzerland, it is not an extraditable offense.

**MR. ONORATO:** Judge, if it is a concern to the Court, it maybe be meaningless legally, but as a gesture to the court, we have no problem signing it.

**THE COURT:** All right. Why don't you go ahead and have one prepared for signature. He may wind up in a country that will honor it.

**MR. KAY:** Judge, you may be right on that one.

**THE COURT:** But let's hope we don't have to put it to the test.

Mr. Birkenfeld, your lawyers have made certain representations with regard to your word and your honor in this matter, and that you do not intend to put your brother and your father's financial well-being, as well as your own well-being at risk by violating a condition of the bond.

I trust that you will behave in a manner that supports their representations.

**THE DEFENDANT:** You are correct, Your Honor. Absolutely.

**THE COURT:** All right. Very well. We will stand in recess

**MR. RABEN:** Thank you.

**MR. NEIMAN:** Thank you, Judge.

**THE DEFENDANT:** Thank you, Your Honor. **(Whereupon the proceedings were concluded)**

**CERTIFICATE**

I hereby certify that the foregoing is an accurate transcription of proceedings in the above-entitled matter.

---

DATE **JERALD M. MEYERS, RPR-CM**  
Miami, FL 33128-7797

# Exhibit B

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

THE UNITED STATES OF AMERICA,	)	
	)	CASE NUMBER
PLAINTIFF,	)	08-60099-CR-ZLOCH
	)	
VS.	)	
	)	
BRADLEY BIRKENFELD,	)	THIS VOLUME:
	)	PAGES 1 - 30
DEFENDANT.	)	
-----	)	

TRANSCRIPT OF PLEA COLLOQUY HAD BEFORE THE HONORABLE WILLIAM J. ZLOCH, IN FORT LAUDERDALE, BROWARD COUNTY, FLORIDA, ON THURSDAY, JUNE 19, 2008, IN THE ABOVE-STYLED MATTER.

APPEARANCES:

FOR THE GOVERNMENT: KEVIN DOWNING, A.U.S.A.  
JEFFREY A. NEIMAN, A.U.S.A.  
MICHAEL BEN'ARY, A.U.S.A.

FOR THE DEFENDANT: DANNY ONORATO,  
PETER RABEN, AND  
DAVID SCHERTLER, ESQS.

CARL SCHANZLEH  
OFFICIAL COURT REPORTER  
U. S. COURTHOUSE  
299 E. BROWARD BLVD., 202B  
FORT LAUDERDALE, FLORIDA 33301  
954 769-5488

1 (FORT LAUDERDALE, BROWARD COUNTY, FLORIDA; THURSDAY,  
2 JUNE 19, 2008, IN OPEN COURT.)

3 THE COURT: GOOD MORNING. PLEASE BE SEATED.

4 CALLING CASE NUMBER 08-60099-CRIMINAL, UNITED  
5 STATES OF AMERICA VERSUS BRADLEY BIRKENFELD.

6 COUNSEL, WOULD YOU NOTE YOUR APPEARANCES.

7 MR. DOWNING: GOOD MORNING, YOUR HONOR. KEVIN  
8 DOWNING FOR THE UNITED STATES GOVERNMENT. I'M JOINED BY  
9 JEFFREY NEIMAN AND MICHAEL BEN'ARY.

10 THE COURT: GOOD MORNING.

11 MR. RABEN: GOD MORNING, YOUR HONOR. PETER RABEN  
12 HERE ON BEHALF OF THE DEFENDANT.

13 IF THE COURT PLEASE, THIS COURT PREVIOUSLY GRANTED  
14 OUR REQUEST TO ALLOW DANNY ONORATO TO MAKE A LIMITED  
15 APPEARANCE, AND MR. ONORATO IS HERE ON BEHALF OF THE  
16 DEFENDANT. MR. ONORATO IS PARTNERS WITH DAVID SCHERTLER,  
17 SCHERTLER & ONORATO, AND I FILED THIS MORNING A PROPERLY  
18 EXECUTED MOTION FOR A LIMITED APPEARANCE AND I WOULD ASK  
19 THAT MR. SCHERTLER BE ALLOWED TO PARTICIPATE IN THESE  
20 PROCEEDINGS PENDING THE ENTRY OF AN ORDER.

21 THE COURT: ALL RIGHT. SO ORDERED.

22 MR. ONORATO: GOOD MORNING.

23 THE COURT: GOOD MORNING.

24 LET THE RECORD REFLECT THAT BRADLEY BIRKENFELD IS  
25 PRESENT AND IN THE COURTROOM.



1 DOES THE DEFENSE HAVE A CHANGE OF PLEA TO ANNOUNCE  
2 TO THE COURT?

3 MR. ONORATO: WE DO, YOUR HONOR.

4 THE COURT: AND THAT IS?

5 MR. ONORATO: YOUR HONOR, MR. BIRKENFELD IS  
6 PREPARED TODAY TO CHANGE HIS PLEA FROM NOT GUILTY TO GUILTY  
7 FOR THE SINGLE COUNT OF THE INDICTMENT.

8 THE COURT: ALL RIGHT. MR. BIRKENFELD, IF YOU  
9 WILL STEP UP TO THE PODIUM.

10 THE DEFENDANT: GOOD MORNING, YOUR HONOR.

11 THE COURT: MR. BIRKENFELD, YOU MOVE IN FRONT OF  
12 THAT MICROPHONE. IT IS MORE IMPORTANT I HEAR YOU AND NOT  
13 YOUR LAWYER.

14 THE DEFENDANT: YES, SIR.

15 THE COURT: YOU CAN ADJUST THAT MICROPHONE UPWARD.

16 THE DEFENDANT: THANK YOU.

17 THE COURT: BRADLEY BIRKENFELD, YOU HAVE HEARD  
18 YOUR LAWYER ANNOUNCE TO THIS COURT THAT YOU WISH TO ENTER A  
19 PLEA OF GUILTY TO THE CHARGE CONTAINED IN THE ONE COUNT  
20 INDICTMENT OF THE UNITED STATES OF AMERICA VERSUS BRADLEY  
21 BIRKENFELD, CASE NUMBER 08-60099-CR-ZLOCH OF THE UNITED  
22 STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA,  
23 IS THAT CORRECT?

24 THE DEFENDANT: THAT'S CORRECT, YOUR HONOR.

25 THE COURT: SIR, IT IS YOUR RIGHT TO PLEAD GUILTY

1 TO THE CHARGE CONTAINED IN THAT INDICTMENT. HOWEVER, BEFORE  
2 THE COURT MAY ACCEPT YOUR PLEA OF GUILTY IT IS NECESSARY  
3 THAT THE COURT FIND THAT YOUR DECISION TO PLEAD GUILTY IS  
4 BEING MADE KNOWINGLY, VOLUNTARILY AND INTELLIGENTLY, AND  
5 THAT IT IS NOT THE RESULT OF FORCE, THREATS, PROMISES,  
6 COERCION, OR INTIMIDATION APART FROM THE PLEA AGREEMENT.

7 FURTHER, THE COURT MUST BY SATISFIED THAT YOU ARE  
8 IN FACT GUILTY AND THAT YOU FULLY UNDERSTAND YOUR RIGHTS.  
9 THEREFORE, IT WILL BE NECESSARY TO ASK YOU VARIOUS  
10 QUESTIONS HERE THIS MORNING. IF AT ANY TIME YOU DO NOT  
11 UNDERSTAND ANY QUESTION THAT I ASK, PLEASE ASK TO HAVE IT  
12 REPEATED OR EXPLAINED.

13 IF AT ANY TIME DURING THE QUESTIONING YOU WISH TO  
14 TALK PRIVATELY WITH YOUR LAWYER FEEL FREE TO ASK FOR  
15 PERMISSION TO DO SO, DO YOU UNDERSTAND THAT?

16 THE DEFENDANT: YES, YOUR HONOR.

17 THE COURT: PLEASE RAISE YOUR RIGHT HAND.

18 DO YOU SOLEMNLY SWEAR THAT THE TESTIMONY THAT YOU  
19 ARE ABOUT TO GIVE SHALL BE THE TRUTH, THE WHOLE TRUTH AND  
20 NOTHING BUT THE TRUTH, SO HELP YOU GOD?

21 THE DEFENDANT: YES, YOUR HONOR.

22 EXAMINATION

23 BY THE COURT:

24 Q. EXCUSE ME FOR ONE MOMENT.

25 SIR, DO YOU UNDERSTAND THAT YOU ARE NOW UNDER

1 OATH AND THAT THE COURT WILL ASK YOU CERTAIN QUESTIONS  
2 CONCERNING THE OFFENSE TO WHICH YOU ARE PLEADING GUILTY AND  
3 THAT IF YOU GIVE FALSE ANSWERS THOSE FALSE ANSWERS CAN BE  
4 USED AGAINST YOU IN A FUTURE PROSECUTION FOR PERJURY OR  
5 FALSE SWEARING; DO YOU UNDERSTAND THAT?

6 A. YES, YOUR HONOR.

7 Q. WOULD YOU PLEASE STATE YOUR FULL LEGAL NAME THE  
8 RECORDS.

9 A. MY NAME IS BRADLEY CHARLES BIRKENFELD.

10 Q. AND HAVE YOU EVER USED ANY FALSE NAMES?

11 A. NO, SIR. NO, YOUR HONOR.

12 Q. AND HOW OLD ARE YOU?

13 A. I'M 43 YEARS OLD.

14 Q. HOW FAR DID YOU GO IN SCHOOL?

15 A. I HAVE AN MBA, YOUR HONOR.

16 Q. AND ARE YOU MARRIED?

17 A. I AM SINGLE, YOUR HONOR.

18 Q. HAVE YOU EVER BEEN MARRIED?

19 A. NO, YOUR HONOR.

20 Q. AND WHAT TYPE OF WORK DO YOU DO?

21 A. I USED TO BE A BANKER.

22 Q. AND HAVE YOU EVER BEEN TREATED FOR ANY MENTAL ILLNESS  
23 IN THE PAST?

24 A. NO, YOUR HONOR.

25 Q. ARE YOU PRESENTLY SUFFERING FROM ANY MENTAL OR

1 EMOTIONAL DISABILITY OR PROBLEM?  
2 A. NO, YOUR HONOR.  
3 Q. HAVE YOU EVER SUFFERED FROM ANY ADDICTION TO ANYTHING  
4 OR ALCOHOL ABUSE?  
5 A. NO, YOUR HONOR.  
6 Q. ARE YOU TAKING ANY DRUGS, MEDICATIONS, OR PILLS OF ANY  
7 KIND?  
8 A. LIPITOR, 10 MILLIGRAMS, FOR HIGH CHOLESTEROL.  
9 Q. HAVE YOU TAKEN ANY DRUGS, MEDICATIONS, OR PILLS OF ANY  
10 KIND IN PAST 24 HOURS?  
11 A. NO. JUST THE LIPITOR, YOUR HONOR.  
12 Q. NOW, DO YOU UNDERSTAND THE PURPOSE OF THIS HEARING?  
13 A. YES, YOUR HONOR.  
14 Q. DO YOU UNDERSTAND THAT THE PURPOSE OF THIS HEARING IS  
15 FOR YOU, IF YOU WISH TO, BECAUSE IT IS STRICTLY YOUR  
16 DECISION BUT THAT THE PURPOSE OF THIS HEARING IS FOR YOU TO  
17 ENTER A PLEA OF GUILTY TO THE CHARGE CONTAINED IN THE ONE  
18 COUNT INDICTMENT; DO YOU UNDERSTAND THAT?  
19 A. YES, YOUR HONOR.  
20 Q. IS THAT WHAT YOU WISH TO DO?  
21 A. YES, YOUR HONOR.  
22 THE COURT: MR. ONORATO, ARE YOU SATISFIED AS TO  
23 YOUR CLIENT'S COMPETENCE TO ENTER A PLEA AT THIS TIME?  
24 MR. ONORATO: I AM, YOUR HONOR.  
25 BY THE COURT:

1 Q. DO YOU HAVE A COPY OF THE INDICTMENT THERE IN FRONT OF  
2 YOU?

3 A. YES, YOUR HONOR.

4 Q. MR. BIRKENFELD, HAVE YOU READ THAT INDICTMENT IN ITS  
5 ENTIRETY?

6 A. YES, YOUR HONOR.

7 Q. AND HAS YOUR LAWYER EXPLAINED THE CHARGE TO YOU?

8 A. YES, YOUR HONOR, IN DETAIL.

9 Q. HAVE YOU TALKED WITH YOUR LAWYER ABOUT THE EVIDENCE  
10 THAT THE GOVERNMENT HAS IN THIS CASE?

11 A. YES, YOUR HONOR.

12 Q. AND HAVE YOU TOLD YOUR LAWYER EVERYTHING YOU DID  
13 REGARDING THE CHARGE IN THE INDICTMENT?

14 A. YES, YOUR HONOR.

15 Q. AND HAS MR. ONORATO DISCUSSED ALL THOSE POINTS FULLY  
16 WITH YOU, EXPLAINED THEM TO YOU, AND GIVEN YOU HIS ADVICE  
17 AND COUNSEL REGARDING THIS ENTIRE CASE?

18 A. YES, YOUR HONOR.

19 Q. HAVE YOU UNDERSTOOD EVERYTHING YOUR LAWYER HAS SAID TO  
20 YOU REGARDING THIS ENTIRE CASE?

21 A. YES, YOUR HONOR.

22 Q. DO YOU THINK THAT YOU HAVE HAD ENOUGH TIME TO DISCUSS  
23 THIS CASE FULLY WITH YOUR LAWYER?

24 A. YES, YOUR HONOR.

25 Q. AND ARE YOU SATISFIED WITH MR. ONORATO AND THE WAY THAT

1 HE HAS REPRESENTED YOU THROUGHOUT THIS ENTIRE MATTER?

2 A. YES, I AM, YOUR HONOR.

3 Q. NOW, PART OF MY RESPONSIBILITY HERE THIS MORNING,  
4 MR. BIRKENFELD, IS TO READ THE INDICTMENT TO YOU. IT IS  
5 QUITE LENGTHY. YOU HAVE TOLD ME THAT YOU HAVE DISCUSSED IT  
6 WITH YOUR LAWYER, THAT YOU FULLY UNDERSTAND IT, THAT HE HAS  
7 EXPLAINED THE CHARGE TO YOU. YOU HAVE THE RIGHT TO WAIVE OR  
8 TO GIVE UP READING OF THE CHARGE. DO YOU WANT TO TAKE A  
9 MOMENT AND TALK PRIVATELY WITH YOUR LAWYER?

10 A. YES, WE WOULD WAIVE THAT RIGHT, YOUR HONOR.

11 Q. ALL RIGHT. DO YOU FULLY UNDERSTAND THE CHARGE AGAINST  
12 YOU?

13 A. YES, YOUR HONOR.

14 Q. DO YOU HAVE ANY QUESTIONS ABOUT IT?

15 A. NO, YOUR HONOR.

16 Q. NOW, I HAVE BEFORE ME A DOCUMENT TITLED, "STATEMENT OF  
17 FACTS."

18 A. YES, YOUR HONOR.

19 Q. THIS IS A SEVEN-PAGE DOCUMENT --

20 A. YES, YOUR HONOR.

21 Q. -- DATED TEN SIX ZERO EIGHT AND IT PURPORTS TO HAVE  
22 YOUR SIGNATURE. IS THAT YOUR SIGNATURE ON THE BOTTOM LINE  
23 OF THE LAST PAGE?

24 A. YES, YOUR HONOR.

25 THE COURT: AND, MR. ONORATO, YOUR SIGNATURE?

1 MR. ONORATO: YES, YOUR HONOR.

2 THE COURT: AND, MR. NEIMAN?

3 MR. NEIMAN: YES, YOUR HONOR.

4 THE COURT: AND, MR. DOWNING?

5 MR. DOWNING: YES, YOUR HONOR.

6 BY THE COURT:

7 Q. MR. BIRKENFELD, BEFORE YOU SIGNED THIS STATEMENT OF  
8 FACTS DID YOU READ IT IN ITS ENTIRETY?

9 A. YES, YOUR HONOR.

10 Q. AND BEFORE YOU SIGNED IT DID YOUR LAWYER, MR. ONORATO,  
11 EXPLAIN THIS STATEMENT OF FACTS TO YOU PARAGRAPH BY  
12 PARAGRAPH?

13 A. YES, HE DID, YOUR HONOR.

14 Q. AND DID YOU UNDERSTAND EVERYTHING YOUR LAWYER SAID TO  
15 YOU ABOUT THIS STATEMENT OF FACTS BEFORE YOU SIGNED IT?

16 A. YES, I DID, YOUR HONOR.

17 Q. IS EVERYTHING IN THIS STATEMENT OF FACTS TRUTHFUL AND  
18 ACCURATE?

19 A. YES, YOUR HONOR.

20 Q. IS THERE ANYTHING THAT YOU WISH TO HAVE REMOVED OR  
21 DELETED FROM THIS STATEMENT OF FACTS FOR ANY REASON?

22 A. NO, YOUR HONOR.

23 Q. IF I WERE TO ASK YOU TO TELL ME WHAT YOU DID REGARDING  
24 THE CHARGE IN THE INDICTMENT, DOES THIS STATEMENT OF FACTS  
25 REPRESENT YOUR CONDUCT?

1 A. YES, IT DOES, YOUR HONOR.

2 Q. YOU KNEW WHAT YOU WERE DOING WHEN YOU COMMITTED THESE  
3 ACTS?

4 A. YES, I DID, YOUR HONOR.

5 Q. YOU COMMITTED THESE ACTS WILLFULLY. NO ONE FORCED YOU  
6 TO DO THIS.

7 A. NO, YOUR HONOR.

8 Q. IS THAT CORRECT?

9 A. THAT'S CORRECT.

10 Q. WHY DID YOU ENGAGE IN THIS CONDUCT?

11 A. I WAS EMPLOYED BY U.B.S., AND I WAS PAID A LARGE SALARY  
12 AND INCENTIVIZED TO DO THIS BUSINESS.

13 Q. EVEN THOUGH IT WAS FRAUDULENT.

14 A. YES, YOUR HONOR.

15 Q. THAT DID NOT CONCERN YOU.

16 A. IT DID CONCERN ME, YOUR HONOR.

17 Q. BUT NOT ENOUGH TO STOP YOU.

18 A. I DID HAVE DOUBTS ABOUT THAT AND THEN RESIGNED FROM MY  
19 BANK SEVERAL YEARS AGO.

20 Q. BUT THAT WAS AFTER THE FACT.

21 A. YES, YOUR HONOR.

22 THE COURT: THIS STATEMENT OF FACTS WILL BE MADE  
23 A PART OF THE RECORD WHEN THIS PLEA COLLOQUY IS CONCLUDED.

24 DOES THE GOVERNMENT STAND ON THE STATEMENT OF  
25 FACTS OR DOES IT HAVE ANY ADDITIONAL FACTS TO PROFFER TO



1 THE COURT?

2 MR. DOWNING: YOUR HONOR, THE GOVERNMENT STANDS ON  
3 THE STATEMENT OF FACTS.

4 THE COURT: AND I DID NOT SAY THIS IN THE  
5 STATEMENT OF FACTS, BUT JUST SO THE RECORD IS CLEAR SOME OF  
6 THESE ACTS TOOK PLACE WHERE?

7 MR. DOWNING: YOUR HONOR, SOME OF THE OVERT ACTS  
8 IN FURTHERANCE OF THE CONSPIRACY OCCURRED HERE IN THE  
9 SOUTHERN DISTRICT OF FLORIDA.

10 THE COURT: IN BROWARD COUNTY, IN THE SOUTHERN  
11 DISTRICT?

12 MR. DOWNING: YES. CORRECT, YOUR HONOR.

13 THE COURT: ALL RIGHT.

14 BY THE COURT:

15 Q. MR. BIRKENFELD, THE COURT NOW INFORMS YOU THAT YOU HAVE  
16 THE RIGHT TO A SPEEDY AND PUBLIC TRIAL BY A JUDGE OR A JURY,  
17 A JURY MADE UP OF 12 CITIZENS OF THE UNITED STATES. YOU  
18 HAVE THE RIGHT TO A LAWYER. YOU HAVE THE RIGHT TO PLEAD NOT  
19 GUILTY.

20 IF YOU WERE TO PLEAD NOT GUILTY THEN IN ALL  
21 LIKELIHOOD THERE WOULD BE A TRIAL. AT THE TRIAL THE  
22 GOVERNMENT WOULD HAVE TO PRODUCE WITNESSES. YOU AND YOUR  
23 LAWYER WOULD HAVE THE RIGHT TO SEE AND HEAR THOSE WITNESSES  
24 AND TO CROSS-EXAMINE THEM. YOU WOULD ALSO BE ENTITLED TO  
25 CALL WITNESSES AT THE TRIAL TO TESTIFY ON YOUR BEHALF IF

1 YOU WISHED TO DO SO.

2 FURTHER YOU, YOURSELF, COULD TESTIFY AT THAT  
3 TRIAL IF YOU WISHED TO DO SO. HOWEVER, YOU COULD NOT BE  
4 FORCED OR COMPELLED TO TESTIFY, NOR COULD YOU BE FORCED OR  
5 COMPELLED TO INCRIMINATE YOURSELF, BUT RATHER THE  
6 GOVERNMENT WOULD HAVE TO PROVE THAT YOU WERE GUILTY BEYOND  
7 A REASONABLE DOUBT.

8 NOW, HAVE YOU UNDERSTOOD EVERYTHING THAT I HAVE  
9 EXPLAINED TO YOU SO FAR?

10 A. YES, YOUR HONOR.

11 Q. DO YOU HAVE ANY QUESTIONS ABOUT ANYTHING?

12 A. NO, YOUR HONOR.

13 Q. DO YOU UNDERSTAND, HOWEVER, THAT IF YOUR PLEA OF GUILTY  
14 IS ACCEPT HERE THIS MORNING THAT YOU WILL LOSE, YOU WILL  
15 GIVE UP ALL OF THE RIGHTS THAT I HAVE JUST EXPLAINED TO YOU  
16 EXCEPT FOR YOUR RIGHT TO A LAWYER.

17 A. YES, YOUR HONOR, I UNDERSTAND THAT.

18 Q. DO YOU ALSO UNDERSTAND THAT A PLEA OF GUILTY ADMITS THE  
19 TRUTH OF THE CHARGE WHILE A PLEA OF NOT GUILTY DENIES THE  
20 CHARGE. SO THAT BY TENDERING YOUR PLEA OF GUILTY TO THIS  
21 OFFENSE YOU ARE CONFESSING OR ADMITTING THAT YOU COMMITTED  
22 THE ACTS WITH WHICH YOU WERE CHARGED IN THIS ONE COUNT  
23 INDICTMENT.

24 A. YES, YOUR HONOR.

25 Q. DO YOU ALSO UNDERSTAND THAT IF YOUR PLEA OF GUILTY IS

1 ACCEPTED HERE TODAY THAT THERE WILL NOT BE ANY FURTHER TRIAL  
2 OF ANY KIND AND THE COURT WILL SIMPLY ENTER A FINDING AND  
3 JUDGMENT OF GUILTY HERE THIS MORNING BASED ON YOUR PLEA AND  
4 ALL THAT WILL REMAIN AT A LATER POINT IN TIME WILL BE  
5 SENTENCING.

6 A. I UNDERSTAND, YOUR HONOR.

7 Q. ARE YOU PRESENTLY ON PROBATION, PAROLE, OR SUPERVISION  
8 FROM ANY OTHER, ANY OTHER CASE?

9 A. NO, YOUR HONOR.

10 Q. SIR, THE COURT NOW INFORMS YOU OF THE MAXIMUM STATUTORY  
11 PENALTY WHICH THE LAW COULD IMPOSE FOR THE OFFENSE TO WHICH  
12 YOU ARE PLEADING GUILTY AND THAT IS AS FOLLOWS.

13 THE COURT CAN IMPOSE A MAXIMUM TERM OF  
14 IMPRISONMENT OF FIVE YEARS, WITH ANY PERIOD OF IMPRISONMENT  
15 FOLLOWED BY A TERM OF SUPERVISED RELEASE, NOT TO EXCEED TWO  
16 YEARS. THE COURT CAN ALSO IMPOSE A MAXIMUM FINE OF  
17 \$250,000, AND THE COURT MUST IMPOSE A MANDATORY SPECIAL  
18 ASSESSMENTS OF \$100; DO YOU UNDERSTAND THAT?

19 A. YES, YOUR HONOR.

20 Q. DO YOU TENDER YOUR PLEA FULLY REALIZING THAT YOU MIGHT  
21 RECEIVE THE MAXIMUM PENALTY OF WHICH I HAVE JUST INFORMED  
22 YOU?

23 A. YES, YOUR HONOR.

24 Q. HAVE YOU BEEN FORCED IN ANY WAY BY ANYBODY AT ANY TIME  
25 TO ENTER YOUR PLEA?

1 A. NO, YOUR HONOR.

2 Q. HAVE THERE BEEN ANY THREATS, FORCE, PRESSURE, COERCION,  
3 OR INTIMIDATION EXERTED UPON YOU TO CAUSE YOU TO PLEAD  
4 GUILTY?

5 A. NO, YOUR HONOR.

6 Q. I NOW WANT TO COVER WITH YOU WHAT WE CALL THE ADVISORY  
7 FEDERAL SENTENCING GUIDELINES.

8 FIRST OF ALL, DO YOU UNDERSTAND THAT THERE EXISTS  
9 WHAT ARE CALLED ADVISORY FEDERAL SENTENCING GUIDELINES  
10 WHICH THE COURT IS BOUND TO CONSIDER REGARDING ANY SENTENCE  
11 THAT I IMPOSE UPON YOU BUT WHICH I AM NOT BOUND TO FOLLOW.

12 A. YES, YOUR HONOR.

13 Q. NOW, BEFORE COMING HERE TODAY HAVE YOU DISCUSSED WITH  
14 YOUR LAWYER THE GENERAL CONCEPT OF THESE SENTENCING  
15 GUIDELINES?

16 A. YES, SIR, BOTH ATTORNEYS, YOUR HONOR.

17 Q. DO YOU UNDERSTAND THAT YOU CAN YOU CAN NEVER RECEIVE A  
18 TERM OF IMPRISONMENT GREATER THAN THE FIVE-YEAR STATUTORY  
19 MAXIMUM, YOU UNDERSTAND THAT?

20 A. I DO, YOUR HONOR.

21 Q. AND DO YOU UNDERSTAND THAT THE COURT HAS THE DISCRETION  
22 TO IMPOSE A SENTENCE WITHIN THE GUIDELINE RANGE, TO IMPOSE A  
23 SENTENCE LOWER THAN THE LOW END OF THE GUIDELINE RANGE, OR  
24 TO IMPOSE A SENTENCE HIGHER THAN THE HIGH END OF THE  
25 GUIDELINE RANGE BUT NEVER HIGHER THAN FIVE YEARS; DO YOU

1 UNDERSTAND THAT.

2 A. YES, YOUR HONOR.

3 Q. DO YOU UNDERSTAND THAT AT THE TIME OF SENTENCING YOU  
4 WILL NOT BE ALLOWED TO WITHDRAW YOUR GUILTY PLEA SOLELY  
5 BECAUSE OF ANY LAWFUL SENTENCE THAT THE COURT IMPOSES?

6 A. I UNDERSTAND, YOUR HONOR.

7 Q. DO YOU HAVE ANY PRIOR CONVICTIONS?

8 A. ONE ARREST BACK IN 1983, YOUR HONOR.

9 Q. WHAT WAS THAT FOR?

10 A. THAT WAS A DRUG OFFENSE WHEN I WAS IN HIGH SCHOOL.

11 Q. WHAT WAS THE OUTCOME OF THAT?

12 A. IT WAS DISMISSED, YOUR HONOR, I BELIEVE. I DON'T  
13 RECALL. I HAVEN'T --

14 Q. ALL RIGHT. WELL, THE PROBATION OFFICE WHEN THEY DO A  
15 PRESENTENCE REPORT THAT MAY OR MAY NOT SHOW UP IN THE  
16 PRESENTENCE REPORT. BUT YOU SHOULD UNDERSTAND THAT YOUR  
17 PRIOR CRIMINAL RECORD, IF YOU HAVE ONE, IS AN IMPORTANT  
18 FACTOR IN THE GUIDELINE COMPUTATION AND IT IS ALSO AN  
19 IMPORTANT FACTOR FOR THE COURT TO CONSIDER AT THE TIME OF  
20 SENTENCING, YOU UNDERSTAND THAT?

21 A. YES, YOUR HONOR.

22 Q. DO YOU UNDERSTAND THAT UNTIL A PRESENTENCE REPORT IS  
23 PREPARED BY THE PROBATION OFFICE, AT THIS POINT IN TIME IT  
24 IS IMPOSSIBLE FOR EITHER THE COURT OR FOR YOUR LAWYER TO  
25 KNOW EXACTLY WHAT THE GUIDELINE RANGE WILL BE IN YOUR CASE.

1 THE BEST THAT YOUR LAWYER CAN DO AT THIS POINT IN TIME IS TO  
2 SIMPLY GIVE YOU HIS BEST ESTIMATE OR HIS BEST PREDICTION AS  
3 TO WHAT HE THINKS THE GUIDELINE RANGE WILL BE IN YOUR CASE,  
4 YOU UNDERSTAND THAT?

5 A. YES, YOUR HONOR.

6 Q. CONSEQUENTLY IT IS IMPORTANT FOR YOU TO UNDERSTAND THAT  
7 YOU WILL NOT BE ALLOWED TO WITHDRAW YOUR GUILTY PLEA SOLELY  
8 BECAUSE YOUR LAWYER'S ESTIMATE OR PREDICTION AS TO THE  
9 GUIDELINE RANGE MIGHT TURN OUT TO BE WRONG OR INACCURATE,  
10 REGARDLESS OF HOW WRONG OR HOW INACCURATE, YOU UNDERSTAND  
11 THAT?

12 A. YES, YOUR HONOR.

13 Q. DO YOU UNDERSTAND THAT AT THE TIME OF SENTENCING YOU  
14 WILL NOT BE ALLOWED TO WITHDRAW YOUR GUILTY PLEA SOLELY  
15 BECAUSE OF ANY RULING OR DECISION THAT THE COURT MIGHT HAVE  
16 TO MAKE AT THE TIME OF SENTENCING EVEN IF THAT RULING OR  
17 DECISION IS AGAINST YOU OR ADVERSE TO YOU; DO YOU UNDERSTAND  
18 THAT?

19 A. YES, YOUR HONOR.

20 Q. DO YOU UNDERSTAND THAT UNDER SOME CIRCUMSTANCES YOU OR  
21 THE GOVERNMENT MAY HAVE THE RIGHT TO APPEAL ANY SENTENCE  
22 THAT THE COURT IMPOSES?

23 A. YES, YOUR HONOR.

24 Q. DO YOU UNDERSTAND THAT IN THE FEDERAL SYSTEM WHAT WE  
25 USED TO CALL PAROLE, PAROLE NO LONGER EXISTS IN THE FEDERAL

1 SYSTEM. THEREFORE, IF YOU ARE SENTENCED TO PRISON YOU WILL  
2 NOT BE RELEASED EARLY ON PAROLE AND ANY PERIOD OF  
3 IMPRISONMENT WILL BE THE ACTUAL AMOUNT OF TIME THAT YOU WILL  
4 SERVE LESS ONLY A MINOR REDUCTION FOR ANY GOOD TIME EARNED  
5 AND AWARDED; DO YOU UNDERSTAND THAT?

6 A. YES, YOUR HONOR.

7 Q. NOW, I HAVE BEFORE ME A DOCUMENT TITLED, "PLEA  
8 AGREEMENT." THIS WILL ALSO BE MADE A PART OF THE PUBLIC  
9 RECORDS. THIS IS AN EIGHT-PAGE DOCUMENT PURPORTING TO HAVE  
10 YOUR SIGNATURE DATED 6-18-08.

11 MR. BIRKENFELD, IS THAT YOUR SIGNATURE ON THE  
12 BOTTOM LINE OF THE LAST PAGE?

13 A. YES, YOUR HONOR.

14 THE COURT: MR. ONORATO?

15 MR. ONORATO: IT IS, YOUR HONOR.

16 THE COURT: MR. NEIMAN?

17 MR. NEIMAN: YES, YOUR HONOR.

18 THE COURT: MR. DOWNING?

19 MR. DOWNING: IT IS, YOUR HONOR.

20 BY THE COURT:

21 Q. MR. BIRKENFELD, BEFORE YOU SIGNED THIS PLEA AGREEMENT  
22 DID YOU READ IT IN ITS ENTIRETY?

23 A. YES, YOUR HONOR.

24 Q. AND BEFORE YOU SIGNED IT DID YOUR LAWYER, MR. ONORATO,  
25 EXPLAIN THE TERMS AND CONDITIONS OF THIS PLEA AGREEMENT TO

1 YOU PARAGRAPH BY PARAGRAPH?

2 A. HE DID, YOUR HONOR.

3 Q. DID YOU UNDERSTAND EVERYTHING YOUR LAWYER SAID TO YOU

4 ABOUT THIS PLEA AGREEMENT BEFORE YOU SIGNED IT?

5 A. YES, I DID, YOUR HONOR.

6 Q. DO YOU HAVE ANY QUESTIONS ABOUT THIS PLEA AGREEMENT?

7 A. NO, YOUR HONOR.

8 Q. YOU FULLY UNDERSTAND IT?

9 A. YES, I DO.

10 Q. SEVERAL THINGS THIS PLEA AGREEMENT.

11 NUMBER ONE, YOU SHOULD UNDERSTAND THAT THIS PLEA  
12 AGREEMENT IS A CONTRACT, AN AGREEMENT BETWEEN YOURSELF AND  
13 THE GOVERNMENT. YOU SHOULD UNDERSTAND THAT THE COURT IS  
14 NOT A PARTY TO THIS CONTRACT, TO THIS AGREEMENT.  
15 THEREFORE, THERE IS ABSOLUTELY NOTHING IN THIS PLEA  
16 AGREEMENT THAT IS BINDING ON THE COURT. THE COURT IS FREE  
17 TO IMPOSE ANY SENTENCE AUTHORIZED BY LAW REGARDLESS OF WHAT  
18 IS CONTAINED IN THIS PLEA AGREEMENT; DO YOU UNDERSTAND  
19 THAT?

20 A. YES, YOUR HONOR.

21 Q. NOW, THERE IS REFERENCE IN THIS PLEA AGREEMENT THAT YOU  
22 MIGHT RENDER ASSISTANCE TO THE GOVERNMENT, AND THE PLEA  
23 AGREEMENT INDICATES THAT IF YOU WERE TO RENDER WHAT IS  
24 CALLED SUBSTANTIAL ASSISTANCE THEN THE GOVERNMENT WOULD  
25 CONSIDER -- THEY WOULD CONSIDER FILING EITHER A MOTION FOR A



1 VARIANCE IF THAT TOOK PLACE AT THE TIME OF SENTENCING, OR A  
2 MOTION FOR A REDUCTION IN SENTENCE IF THAT TOOK PLACE AFTER  
3 SENTENCING; DO YOU UNDERSTAND THAT?

4 A. YES, YOUR HONOR.

5 Q. SEVERAL THINGS THAT YOU NEED TO UNDERSTAND. IF YOU  
6 RENDER ANY ASSISTANCE TO THE GOVERNMENT THE OFFICE OF THE  
7 U.S. ATTORNEY AND THAT OFFICE ALONE WILL EVALUATE YOUR  
8 ASSISTANCE, AND THAT OFFICE ALONE WITH MAKE THE DECISION AS  
9 TO WHETHER OR NOT YOUR ASSISTANCE RISES TO THE LEVEL OF WHAT  
10 IS CALLED SUBSTANTIAL ASSISTANCE.

11 YOU SHOULD UNDERSTAND THAT NEITHER THE COURT NOR  
12 YOUR LAWYER HAVE ANY INVOLVEMENT IN THAT DECISION MAKING  
13 PROCESS. THE MOST THAT MR. ONORATO CAN DO IS TO TALK WITH  
14 THE PROSECUTOR AND TRY TO PERSUADE HIM, BUT THE FINAL  
15 DECISION RESTS SOLELY WITH THE OFFICE OF THE U.S. ATTORNEY;  
16 YOU UNDERSTAND THAT?

17 A. YES, YOUR HONOR.

18 Q. AND YOU MIGHT RENDER ASSISTANCE, AND YOU MIGHT THINK  
19 THAT YOU HAVE RENDERED SUBSTANTIAL ASSISTANCE BUT THE U.S.  
20 ATTORNEY'S OFFICE MIGHT DETERMINE THAT YOU HAVE NOT RENDERED  
21 SUBSTANTIAL ASSISTANCE, AND IF, I SAY IF, THAT WERE THE  
22 CASE, NUMBER ONE, YOU WOULD NOT BE ALLOWED TO WITHDRAW YOUR  
23 GUILTY PLEA; AND, NUMBER TWO, THE GOVERNMENT COULD NOT BE  
24 FORCED OR COMPELLED TO FILE A MOTION FOR A VARIANCE OR FOR A  
25 REDUCTION IN SENTENCE; DO YOU UNDERSTAND THAT?

1 A. YES, YOUR HONOR.

2 Q. NOW, WHEN I SAY THAT THE GOVERNMENT COULD NOT BE FORCED  
3 OR COMPELLED THERE IS A VERY NARROW EXCEPTION TO THAT  
4 GENERAL RULE BUT I WILL LET YOUR LAWYER EXPLAIN THAT  
5 EXCEPTION TO YOU.

6 MR. DOWNING: YOUR HONOR --

7 THE COURT: YES.

8 MR. DOWNING: -- WITH RESPECT TO MR. BIRKENFELD'S  
9 COOPERATION I WOULD JUST LIKE TO ADD FOR THE RECORD THAT  
10 MR. BIRKENFELD'S COOPERATION IS ANTICIPATED TO ASSIST THE  
11 GOVERNMENT NATIONWIDE IN ITS INVESTIGATION, AND THE DECISION  
12 WITH RESPECT TO HIS 5K1 WILL NOT ONLY BE MADE BY THE LOCAL  
13 U.S. ATTORNEY'S OFFICE BUT BY THE DEPARTMENT OF JUSTICE TAX  
14 DIVISION.

15 THE COURT: FINE. THANK YOU.

16 BY THE COURT:

17 Q. AND, MR. BIRKENFELD, EARLIER WHEN I SAID THAT THERE IS  
18 NOTHING IN THE PLEA AGREEMENT THAT IS BINDING ON THE COURT,  
19 FOR EXAMPLE, THERE ARE CERTAIN RECOMMENDATIONS THAT ARE  
20 REFLECTED IN THE PLEA AGREEMENT AND THOSE ARE NOT BINDING ON  
21 THE COURT; YOU UNDERSTAND THAT?

22 A. YES, YOUR HONOR.

23 Q. FOR EXAMPLE, THE AMOUNT OF LOSS, THAT IS NOT BINDING ON  
24 THE COURT OR ON THE PROBATION OFFICE; YOU UNDERSTAND THAT?

25 A. YES, YOUR HONOR.

1 Q. NOW, IF YOU WILL TURN TO PAGE SIX OF THE PLEA  
2 AGREEMENT, PARAGRAPH NUMBER 12. I NEED TO COVER THAT  
3 SPECIFICALLY WITH YOU.

4 SIMPLY STATED, IN PARAGRAPH NUMBER 12 OF THE PLEA  
5 AGREEMENT YOU ARE GIVING UP YOUR STATUTORY RIGHT TO BE ABLE  
6 TO APPEAL ANY SENTENCE IMPOSED BY THE COURT, SUBJECT TO THE  
7 TERMS AND CONDITIONS THAT ARE CONTAINED IN THE PLEA  
8 AGREEMENT; DO YOU UNDERSTAND THAT?

9 A. YES, YOUR HONOR.

10 Q. FIRST OF ALL, DO YOU UNDERSTAND THAT YOU START OUT  
11 HAVING A STATUTORY RIGHT TO BE ABLE TO APPEAL ANY SENTENCE  
12 THAT THE COURT IMPOSES?

13 A. YES, YOUR HONOR.

14 Q. DO YOU UNDERSTAND THAT YOU ARE THE ONLY ONE THAT CAN  
15 GIVE UP THAT RIGHT?

16 A. YES, YOUR HONOR.

17 Q. IT IS A RIGHT THAT WE SAY IS PERSONAL TO YOU. YOUR  
18 LAWYER CANNOT GIVE IT UP ON YOUR BEHALF, HE CANNOT MAKE YOU  
19 GIVE IT UP, HE CAN NOT PREVENT YOU FROM GIVING IT UP.  
20 MR. ONORATO CAN ONLY GIVE YOU HIS ADVICE AND COUNSEL AND  
21 THEN AT THE END OF THE DISCUSSION YOU MUST MAKE THE FINAL  
22 DECISION; DO YOU UNDERSTAND THAT?

23 A. YES, YOUR HONOR.

24 Q. NOW, FIRST OF ALL, HAS MR. ONORATO EXPLAINED TO YOU  
25 THAT YOU START OUT HAVING A STATUTORY RIGHT TO BE ABLE TO

1 APPEAL ANY SENTENCE IMPOSED?

2 A. YES, HE HAS TOLD ME THAT, YOUR HONOR.

3 Q. AND HAS HE EXPLAINED TO YOU THAT IN PARAGRAPH 12 YOU

4 ARE GIVING UP THAT STATUTORY RIGHT, SUBJECT TO THE TERMS AND

5 CONDITIONS THAT ARE CONTAINED IN THE PLEA AGREEMENT?

6 A. YES, HE HAS, YOUR HONOR.

7 Q. HAS HE ANSWERED ALL OF YOUR QUESTIONS ON THAT POINT?

8 A. HE HAS, YOUR HONOR.

9 Q. HAS HE DISCUSSED WITH YOU THE ADVANTAGES AND

10 DISADVANTAGES OF YOUR GIVING UP YOUR RIGHT TO APPEAL?

11 A. YES, HE HAS ADDRESSED THEM.

12 Q. AND HAS HE GIVEN YOU HIS ADVICE AND COUNSEL AS TO WHAT

13 HE THINKS YOU SHOULD OR SHOULD NOT DO?

14 A. YES, HE HAS, YOUR HONOR.

15 Q. AND HAVE YOU UNDERSTOOD EVERYTHING THAT YOUR LAWYER HAS

16 SAID TO YOU ON THIS POINT IS THIS?

17 A. YES, I HAVE, YOUR HONOR.

18 Q. MR. BIRKENFELD, DO YOU WISH TO GIVE UP YOUR STATUTORY

19 RIGHT TO BE ABLE TO APPEAL ANY SENTENCE IMPOSED BY THE

20 COURT, SUBJECT TO THE TERMS AND CONDITIONS THAT ARE

21 CONTAINED IN THE PLEA AGREEMENT?

22 A. YES, YOUR HONOR.

23 Q. HAVE YOU BEEN FORCED IN ANY WAY BY ANYBODY AT ANY TIME

24 TO GIVE UP THAT RIGHT?

25 A. NO, YOUR HONOR.

1 Q. AND THEN FINALLY IF YOU WILL TURN TO THE LAST PAGE,  
2 PAGE EIGHT, PARAGRAPH NUMBER 13.

3 ALL THAT PARAGRAPH REALLY SAYS, MR. BIRKENFELD,  
4 IS THAT THIS PLEA AGREEMENT CONTAINS ALL OF THE AGREEMENTS  
5 AND UNDERSTANDINGS AND PROMISES AND REPRESENTATIONS BETWEEN  
6 YOURSELF AND THE GOVERNMENT, IS THAT A TRUTHFUL STATEMENT?

7 MR. ONORATO: YOUR HONOR, IT IS WITH ONE CAVEAT.

8 WHEN THE COURT HAD DESCRIBED PARAGRAPH 12 THERE IS  
9 SOME LANGUAGE IN THERE DESCRIBING A RESTITUTION ORDER. AS  
10 WE UNDERSTAND IT RESTITUTION HAS ALREADY BEEN MADE IN THIS  
11 PARTICULAR MATTER BY THE TAXPAYER REFERRED TO BY I.O. SO  
12 THAT RESTITUTION, AT LEAST THE GOVERNMENT WOULD NOT BE  
13 SEEKING IT FROM MR. BIRKENFELD. BUT OTHER THAN THAT THERE  
14 ARE NO AGREEMENTS OR SIDE PROMISES.

15 THE COURT: YOU SAID PARAGRAPH 12?

16 MR. ONORATO: YOUR HONOR, YES. IF YOU LOOK AT  
17 PARAGRAPH 12, I THINK IT'S ONE, TWO -- TALKS ABOUT SECTION  
18 3742, TO APPEAL ANY SENTENCE IMPOSED INCLUDING ANY  
19 RESTITUTION ORDER.

20 THE COURT: OKAY.

21 MR. ONORATO: SO MR. BIRKENFELD JUST WANTED THAT  
22 TO BE CLEAR ON THE RECORD.

23 THE COURT: OKAY.

24 BY THE COURT:

25 Q. MR. BIRKENFELD, DO YOU KNOW OF ANY OTHER AGREEMENTS, OR

1 UNDERSTANDINGS, OR PROMISES, OR REPRESENTATIONS BETWEEN  
2 YOURSELF, YOUR LAWYER, AND ANYONE FROM THE UNITED STATES  
3 GOVERNMENT THAT ARE NOT CONTAINED IN THIS WRITTEN PLEA  
4 AGREEMENT?

5 A. NOTHING, YOUR HONOR.

6 THE COURT: MR. ONORATO, ARE THERE ANY OTHERS?

7 MR. ONORATO: NO, SIR.

8 THE COURT: MR. DOWNING?

9 MR. DOWNING: NO, YOUR HONOR.

10 (MR. ONORATO AND THE DEFENDANT CONFERRING)

11 THE COURT: ARE YOU READY TO PROCEED?

12 MR. ONORATO: YES, SIR.

13 BY THE COURT:

14 Q. MR. BIRKENFELD, HAVE YOU UNDERSTOOD EVERYTHING THAT I  
15 HAVE EXPLAINED TO YOU HERE THIS MORNING?

16 A. YES, I HAVE, YOUR HONOR.

17 Q. DO YOU HAVE ANY QUESTIONS ABOUT ANYTHING?

18 A. NO, YOUR HONOR.

19 Q. IS THERE ANYTHING THAT YOU WOULD LIKE TO DISCUSS  
20 PRIVATELY WITH ANY OF YOUR LAWYERS BEFORE WE CONTINUE?

21 A. NO, YOUR HONOR.

22 Q. DO YOU THINK THAT YOU HAVE A FULL UNDERSTANDING OF ALL  
23 OF YOUR LEGAL RIGHTS?

24 A. YES, YOUR HONOR.

25 Q. UNDERSTANDING YOUR LEGAL RIGHTS AND HAVING BEEN ADVISED

1 OF THE POTENTIAL CONSEQUENCES OF A PLEA OF GUILTY, DO YOU  
2 STILL WISH TO ENTER YOUR PLEA OF GUILTY TO THE CHARGE  
3 CONTAINED IN THE ONE COUNT INDICTMENT?

4 A. YES, I DO, YOUR HONOR.

5 Q. IS YOUR DECISION TO PLEAD GUILTY BEING MADE KNOWINGLY,  
6 VOLUNTARILY AND INTELLIGENTLY?

7 A. YES, YOUR HONOR.

8 THE COURT: MR. ONORATO, YOU HAVE DISCUSSED THE  
9 CHARGE IN THE ONE COUNT INDICTMENT FULLY WITH YOUR CLIENT?

10 MR. ONORATO: I HAVE, YOUR HONOR.

11 THE COURT: YOU HAVE GIVEN YOUR CLIENT THE BENEFIT  
12 OF YOUR ADVICE AND COUNSEL REGARDING THE CHARGE TO WHICH HE  
13 INTENDS TO PLEAD GUILTY?

14 MR. ONORATO: I HAVE, YOUR HONOR.

15 THE COURT: BASED ON YOUR OBSERVATIONS HAS YOUR  
16 CLIENT UNDERSTOOD YOUR COUNSELING AND ADVICE?

17 MR. ONORATO: HE HAS, YOUR HONOR.

18 THE COURT: AND, SIR, ARE YOU SATISFIED AS TO HIS  
19 GUILT REGARDING THE CHARGE IN THE INDICTMENT?

20 MR. ONORATO: I AM, YOUR HONOR.

21 THE COURT: DO YOU JOIN IN HIS DECISION TO PLEAD  
22 GUILTY?

23 MR. ONORATO: I DO, YOUR HONOR.

24 THE COURT: AND, SIR, HAVE YOU MADE STATEMENTS TO  
25 MR. BIRKENFELD THAT HE IS GOING TO RECEIVE ANY SPECIFIC OR

1 PARTICULAR TYPE OF SENTENCE SIMPLY BECAUSE HE IS PLEADING  
2 GUILTY?

3 MR. ONORATO: ONLY WHAT YOUR HONOR HAS DESCRIBED,  
4 THAT THERE ARE PARTICULAR SENTENCING GUIDELINES THAT WE ARE  
5 DEALING WITH, WE HAVE GIVEN HIM AN ESTIMATE, WE HAVE TOLD  
6 HIM WHAT THE 5K1 PROCESS IS LIKE AND THE 3553 FACTORS, BUT  
7 OTHER THAN THAT NO, YOUR HONOR.

8 BY THE COURT:

9 Q. IS THAT CORRECT, MR. BIRKENFELD?

10 A. YES, IT IS, YOUR HONOR.

11 Q. MR. BIRKENFELD, ARE YOU PLEADING GUILTY TO THE CHARGE  
12 IN THIS ONE COUNT INDICTMENT BECAUSE YOU DID IN FACT COMMIT  
13 THE ACTS THAT ARE CHARGED?

14 A. THAT IS CORRECT, YOUR HONOR.

15 Q. ARE YOU PLEADING GUILTY BECAUSE YOU ARE IN FACT GUILTY  
16 OF THE CRIME CHARGED IN THE ONE COUNT INDICTMENT?

17 A. THAT IS CORRECT, YOUR HONOR.

18 Q. BRADLEY BIRKENFELD, HOW DO YOU PLEAD TO THE CHARGE IN  
19 THIS ONE COUNT INDICTMENT, GUILTY OR NOT GUILTY?

20 A. GUILTY, YOUR HONOR.

21 THE COURT: THE COURT FINDS THAT BRADLEY  
22 BIRKENFELD IS NOW ALERT AND INTELLIGENT, THAT HE UNDERSTANDS  
23 THE NATURE OF THE CHARGE AGAINST HIM, APPRECIATES THE  
24 CONSEQUENCES OF PLEADING GUILTY, UNDERSTANDS THE POSSIBLE  
25 PENALTIES AND FULLY UNDERSTANDS HIS RIGHTS.



1 THE COURT ALSO FINDS THAT THE FACTS THAT THE  
2 GOVERNMENT IS PREPARED TO PROVE AT TRIAL AND WHICH BY HIS  
3 PLEA MR. BIRKENFELD ADMITS ARE SUFFICIENT TO SUSTAIN THE  
4 PLEA, AND THAT THE EVIDENCE THAT THE GOVERNMENT IS PREPARED  
5 TO PRESENT CONTAINS ALL OF THE ELEMENTS OF THE CRIME.

6 THE COURT ALSO FINDS THAT MR. BIRKENFELD'S  
7 DECISION TO PLEAD GUILTY IS BEING MADE KNOWINGLY,  
8 VOLUNTARILY AND INTELLIGENTLY AND IS NOT THE RESULT OF  
9 FORCE, THREATS, PROMISES, COERCION, OR INTIMIDATION APART  
10 FROM THE PLEA AGREEMENT, THAT HE FULLY UNDERSTANDS HIS  
11 STATUTORY RIGHT TO BE ABLE TO APPEAL ANY SENTENCE IMPOSED  
12 BY THIS COURT, AND THAT HIS DECISION TO WAIVE OR TO GIVE UP  
13 HIS STATUTORY RIGHT TO BE ABLE TO APPEAL ANY SENTENCE  
14 IMPOSED BY THIS COURT, SUBJECT TO THE TERMS AND CONDITIONS  
15 THAT ARE CONTAINED IN THE PLEA AGREEMENT, THAT THAT  
16 DECISION IS ALSO MADE KNOWINGLY, VOLUNTARILY AND  
17 INTELLIGENTLY, AND IS NOT THE RESULT OF FORCE, THREATS,  
18 PROMISES, COERCION, OR INTIMIDATION APART FROM THE PLEA  
19 AGREEMENT, AND THAT HE HAS HAD THE ADVICE AND COUNSEL OF A  
20 VERY COMPETENT LAWYER WITH WHOM HE SALES HE IS SATISFIED.

21 THE PLEA OF GUILTY WILL BE ACCEPTED.

22 THE COURT FINDS BRADLEY BIRKENFELD GUILTY OF THE  
23 OFFENSE CHARGED IN THIS ONE COUNT INDICTMENT AND DOES  
24 ADJUDGE HIM GUILTY AT THIS TIME.

25 THE PROBATION OFFICE IS DIRECTED TO CONDUCT A

1 PRESENTENCE INVESTIGATION OF MR. BIRKENFELD AND SUBMIT A  
2 REPORT OF SAME TO THE COURT.

3 SENTENCING WILL BE WILL BE HELD IN THIS MATTER ON  
4 AUGUST 13, 2008, AT ELEVEN A.M. --

5 MR. DOWNING: YOUR HONOR?

6 THE COURT: YES.

7 MR. DOWNING: AS I INDICATED EARLIER WE HAVE AN  
8 ONGOING --

9 THE COURT: LET ME JUST DO ONE THING HERE. LET ME  
10 JUST FINISH AND THEN I WILL HEAR FROM YOU.

11 SENTENCING WILL BE HELD IN THIS MATTER ON AUGUST  
12 13, 2008, AT ELEVEN A.M. HERE IN COURTROOM A AT THE UNITED  
13 STATES COURTHOUSE IN FORT LAUDERDALE.

14 I HAVE A NOTICE OF SENTENCING DATE WHICH I WOULD  
15 LIKE TO HAVE SIGNED BY BOTH MR. BIRKENFELD AND MR. ONORATO.

16 I ALSO A COPY OF ADMINISTRATIVE ORDER 95-2 FOR  
17 THE GOVERNMENT AND FOR THE DEFENSE.

18 MR. BIRKENFELD IS ON BOND. ANY OBJECTION FROM  
19 THE GOVERNMENT?

20 MR. DOWNING: NO, YOUR HONOR.

21 THE COURT: MR. BIRKENFELD, YOU WILL BE CONTINUED  
22 ON YOUR PRESENT BOND PENDING FURTHER ORDER OF THE COURT.

23 IF THE GOVERNMENT NEEDS OR IF THE DEFENSE NEEDS  
24 TO FILE A MOTION FOR A CONTINUANCE OF SENTENCING YOU CAN DO  
25 THAT AT THE APPROPRIATE TIME.

1 MR. DOWNING: THANK YOU, YOUR HONOR.

2 THE COURT: ALL RIGHT.

3 MR. ONORATO: THANK YOU, YOUR HONOR.

4 THE COURT: ANYTHING ELSE FROM THE GOVERNMENT?

5 MR. DOWNING: NO, YOUR HONOR.

6 THE COURT: FROM THE DEFENSE?

7 MR. ONORATO: NO, YOUR HONOR.

8 THE COURT: MR. ONORATO, MR. DOWNING, THANK YOU  
9 VERY MUCH FOR YOUR EFFORTS IN THIS MATTER. THE COURT  
10 APPRECIATES THEM.

11 THERE BEING NO FURTHER BUSINESS WE WILL BE IN  
12 RECESS IN THIS MATTER UNTIL THE TIME OF SENTENCING.

13 EVERYONE HAVE A GREAT WEEK.

14 MR. ONORATO: THANK YOU, YOUR HONOR.

15 MR. DOWNING: THANK YOU, YOUR HONOR.

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C E R T I F I C A T E

UNITED STATES OF AMERICA  
SOUTHERN DISTRICT OF FLORIDA

I, CARL SCHANZLEH, OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, DO HEREBY CERTIFY THAT THE FOREGOING 29 PAGES CONSTITUTE A TRUE TRANSCRIPT OF THE PROCEEDINGS HAD BEFORE THE SAID COURT HELD IN THE CITY OF FORT LAUDERDALE, FLORIDA, IN THE MATTER THEREIN STATED.

IN TESTIMONY WHEREOF, I HEREUNTO SET MY HAND ON THIS 21ST DAY OF JUNE 2008.

CARL SCHANZLEH, RPR-CM  
OFFICIAL FEDERAL COURT REPORTER  
299 EAST BROWARD BLVD., 202B  
FORT LAUDERDALE, FL 33301  
TELEPHONE 954/769-5488

# Exhibit C

JOSEPH I. LIEBERMAN, CONNECTICUT, CHAIRMAN

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## United States Senate

COMMITTEE ON  
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS  
WASHINGTON, DC 20510-6250

MICHAEL L. ALEXANDER, STAFF DIRECTOR  
BRANDON L. MILHORN, MINORITY STAFF DIRECTOR AND CHIEF COUNSEL

July 28, 2009

VIA U.S. MAIL & EMAIL (dmeier@toddweld.com)

David E. Meier, Esq.  
Todd & Weld, LLP  
28 State Street, 31st Floor  
Boston, MA 02109

Dear Mr. Meier:

This is in response to your request that I provide my assessment of the assistance provided by Mr. Bradley Birkenfeld to the Permanent Subcommittee on Investigations in the course of its investigation into tax haven banks and their impact on tax compliance in the United States.

In October of 2007, Mr. Birkenfeld initiated a contact with the Subcommittee and subsequently provided testimonial and documentary information related to his employment as a private banker at UBS in Switzerland. In a sworn deposition before Subcommittee staff, Mr. Birkenfeld supplied information on the program conducted by UBS Switzerland to attract client accounts in the United States, and the activities and practices employed by UBS private bankers operating out of Switzerland.

Throughout the Subcommittee investigation, which lasted over 14 months, Mr. Birkenfeld voluntarily made himself available for additional staff interviews and provided additional documents to the Subcommittee.

The information provided by Mr. Birkenfeld has been accurate and enabled the Subcommittee to initiate its investigation into the practices of UBS.

Sincerely,



Carl Levin  
Chairman  
Permanent Subcommittee on Investigations