

Life Like A Thriller

In the beginning there is the desire for justice: Whistleblowers often risk their career, family, and health to expose misconduct in the financial sector.

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Rudolf Elmer couldn't sleep anymore. Restlessly he wandered through the house during the night. The worries about his family's safety kept him wide awake. His six-year old daughter told him about "black men", who watched her on the way to Kindergarden or when she was playing in the garden. One time one of the men started talking to her. Ever since then the little girl was scared in the dark.

And it was Rudolf Elmer was to blame for all of this. According to the British newspaper "The Guardian", Rudolf Elmer was the "most important whistleblower in the history of Swiss banking". However Elmer explains, what sounded heroic at first, turned out to be "psychological torture" for him and his family. Elmer's wife had been dragged into the whole mess, too. She was chased by an unknown car on the Swiss motorway. Elmer elaborates that "it was so bad that only the police could stop it." Also in the car were his daughter, a niece, and his mother-in-law.

The whistleblower was convinced: Private detectives, who were hired by the Swiss Private Bank Julius Baer, were responsible for these incidents. Julius Baer is the bank he reported to authorities for suspected involvement in money laundering and tax evasion. Whistleblowers, this is something Elmer has learned, are always perceived as traitors or tattle-tales, too. He literally felt like being chased. A psychologist diagnosed Post-Traumatic Stress Disorder, with insomnia, and paranoia. Elmer even thought about committing suicide.

The fate of the Swiss national is an experience that many whistleblowers share. Often the battles last for many years. According to a new study from New York's Columbia University, intimidation, demotion on the job, and exorbitant legal fees are common.

Katharina Wegmann investigated 14 whistleblower cases in the financial sector and found that next to losing their jobs, many whistleblowers risk their savings, family, and health. "In their fight for justice, many whistleblowers are being pushed to their limit", says Wegmann, who recently shared her insights with policy-makers in England. "The overwhelming majority describes the whistleblowing process as harassment that

often causes psychological and physiological harm, such as depression, paranoia, and weight problems."

According to Louis Clark from the Whistleblower organization "Government Accountability Project" in Washington D.C., financial institutions are known to be particularly aggressive against employees, who report misconduct. "I have never seen a bank that is not lawyered to the teeth." Regardless, once in a while there are still employees, who have the courage to report systemic wrongdoing in the financial sector. Common scandals include money laundering, Ponzi schemes, and mortgage fraud.

The former UBS banker Bradley Birkenfeld initially helped a wealthy client to evade taxes but then reported misconduct to U.S. authorities. UBS paid almost one billion Dollars in fines but never admitted wrongdoing. Eric Ben-Artzi publicly accused Deutsche Bank of concealing billions of losses, at a point where the bank was already in discussions with the authorities. Citigroup's Richard Bowen warned the Board of Directors of compliance issues in their mortgage business. Later the bank had to pay several million Dollars in fines.

Weghmann found that whistleblowers often get caught in a downward spiral. In the battle against their employer, whistleblowers adopt a behavior that completely isolates them. The social scientist elaborates that "whistleblowers turn on some sort of tunnel vision with the goal to make banks right their wrong." In most cases the direct network could not understand the actions of whistleblowers. Weghmann says "friends and colleagues distance themselves, so do even spouses in some cases."

Rudolf Elmer has had the tunnel vision for the past twelve years. The Swiss bank appointed the financial auditor to its subsidiary in the Cayman Islands. It took several years until he discovered "systemic tax evasion and suspected money laundering that was enabled through bank secrecy laws in Switzerland and the Cayman Islands." In 1998 Elmer reported his observations to local management first before escalating the matter to headquarters in Zurich. "At that time I didn't realize that nobody wanted to change the system. The bank was willing to protect the status quo at all costs."

That explains the "black men". Legal documents show that up to eleven private detectives were hired to follow Elmer, his family, and his new employer. They harassed his neighbors, talked to employees at his new job, and followed him and his family on vacation.

In panic, Elmer sent anonymous warnings to employees and wealthy clients of the private bank: "Watch out! The squirrel has built up a lot of supplies. Leave me alone or I will continue to release them." Today he admits that this was a mistake. In 2004 Elmer anonymously sent CDs with data to Swiss authorities. As he uncovered his identity at a later point, he was taken into custody.

Julius Baer sued Elmer and claimed that his motives were revenge because he didn't get promoted. At first instance in 2011, Elmer was fined with 5600 Euros and probation for harassment and violation against Swiss bank secrecy. Elmer appealed. At an appeals court, the prosecution demanded the submission of more information. The

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appeal, along with a series of other trials, are scheduled for the next couple of months. Julius Baer declined to comment on the case: "We do not comment the case of Mr. Elmer because his contract with the firm has ended about twelve years ago", said a spokesperson at headquarters in Zurich.

Charles Alford has seen intimidation strategies in various shapes and forms. The professor at the University of Maryland is the author of the book "Whistleblowers: Broken Lives and Organizational Power", which portrays the battle of the individual against mighty organizations. Alford says that "the main objective is to discredit the whistleblower in an effort to diminish his or her credibility."

Typical strategies against opposing employees include isolation, exclusion from meetings, and assignment to tasks for which they are over-or under-qualified. "Organizations do not care about winning the battle. They care about creating a prime example to scare off future whistleblowers", he says.

Michael Winston is a great example of this. The member of the Board of Directors of Countrywide discovered massive fraud in 2005. Winston reported the matter internally in the hope to solve the issue quickly, especially given the fact that he was known to be a trusted adviser to top management. However, he did not receive any support and matters got worse. In 2006 he was asked to misstate information to the rating agency Moody's. Winston refused to cooperate and was faced with isolation and mobbing.

One day before Winston and his team were supposed to present a new strategy, the project was called off. "I had to inform my staff that they would no longer work for me. That was painful given that some of these people specially moved to the west coast for me." The team shrank from 200 to two employees and he was forced to relocate several times. "I changed office locations 9 times in 18 months", Winston explains.

In 2008 Countrywide was taken over by Bank of America. Winston remembers that they "supposedly forgot to invite me" to the first meeting with the new CEO. Shortly after Winston was let go.

Retaliation against whistleblowers is against the law, which is why Winston chose to sue the bank. "The bank defrauded employees, home-owners, shareholders, and tax payers", says Winston, who expected to win his trial in court. Instead, he found himself in a massive legal battle that would destroy his worldview forever. "Management lied repeatedly under oath, documents were forged, and legal officials were bribed", according to Winston. Still, the jury voted overwhelmingly in his favor in 2011 and awarded him 3.8 million Dollars in compensation.

The media called Winston a hero but the tides turned quickly: two years later the verdict was reversed by the Appellate Court although there was no new evidence. Winston was not even invited to the hearing. Even worse: "The Appellate Court re-evaluated the evidence and disregarded the verdict of the jury, which voted with overwhelming majority in my favor", says Winston. He refers to two eminent lawyers, who confirm the court has overstepped its competencies. Until this day Winston has not seen any of the 3.8 Million Dollars.

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Winston, who was a popular manager with guest appearances at INSEAD and Harvard a couple of years ago, was a broken man after the legal battle. Today no one wants to hire him. "I always defined myself through work", he says. Today he feels too weak to do the things he once enjoyed, like going on long runs

Retrospectively it becomes clear that the battle made him weak and depressed. Bank of America states that they are "satisfied with the verdict of the Appellate Court." Today, the SEC created a Whistleblower Protection Program that is supposed to efficiently investigate reported wrongdoings in the financial sector. Under the protection, employees can anonymously report misconduct of their respective organization. If the organization ends up being convicted with a fine, the whistleblower is entitled to a reward of up to 30 percent of the total fine. "This is a breakthrough", says Jordan Thomas, who works for the law firm Labaton Sucharow and specializes in representing whistleblowers. "The biggest reward that has ever been paid to an anonymous whistleblower is 14 million Dollars. Until today nobody knows who the whistleblower is."

However, the SEC protection program also has its weaknesses: not only the whistleblowers are anonymous but also the organization that committed the wrongdoing, which is why press releases these days read as follows: "SEC rewards two whistleblowers with a total of 875'000 Dollars for their help in an investigation." As a consequence, the bank avoids a potential reputational crisis due to public criticism. In addition, between the day a whistleblower reports misconduct to the SEC and the end of the process easily four years can pass by - a long period during which a bank can continue to do harm.

Elmer has not given up. He is one of the few, who are still eager to fight. A trial against Julius Baer for stalking and harassment has been settled - Elmer does not comment on the amount that was solely awarded to his daughter to compensate for her trauma. Today, Elmer is working on a documentary called "Leak in Paradise" and two books: one book is a survival guide for whistleblowers and the other is his story written as a thriller.