

RIGHTING WRONGS

Elmer trial highlights whistleblowing dilemma

By Matthew Allen

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The Swiss whistleblowing debate has ratcheted up a few notches with Wednesday's court appearance of notorious former banker Rudolf Elmer accused of violating banking secrecy as well as proposed new laws to prevent informants going to the media with their concerns.

Former Julius Bär employee Elmer could get up to four and half years behind bars if found guilty of illegally handing over client data to the Wikileaks campaigning website.

In 2011, Elmer – dubbed the “Robin Hood” of Swiss banking by some media – was given a suspended fine for breaking bank secrecy laws. But days before that trial he defiantly, and publically, handed over more data to Wikileaks, leading to his further arrest and now a second court hearing.

Elmer was not paid by Wikileaks, but has embarked on a crusade to expose what he claims are the immoral activities of some Swiss banks. His court cases are vehicles for drawing public attention to his message: that his former employer allegedly set up trust funds and other constructs to help people evade taxes and launder money.

Whistleblowing has also been in the spotlight due to proposed changes to legislation on the issue. Recently debated in parliament, the changes have drawn sharp criticism from civil rights groups but have won praise from those concerned that outspoken



Accused of violating Swiss banking secrecy, Rudolf Elmer will make his second appearance at a Zurich court (Keystone)

whistleblowers with questionable motives could unfairly damage companies.

Whilst whistleblowers would receive greater compensation for unfair dismissal (up from a current maximum of six months' salary to a year's pay), the proposed law would also make it illegal for an employee to go public with concerns if the relevant authority opened investigations within two weeks of the complaint being made.

That ban would remain in force even if the whistleblower suspected a botched inquiry or a cover-up.

Deep divisions

"These new laws would make life harder for whistleblowers as it would make it practically impossible for them ever to report their concerns to outside agents, such as the media or politicians," Zora Ledergerber, creator of Integrity Line, told swissinfo.ch. Integrity Line advises companies on setting up whistleblowing systems.

But the Swiss Employers Association sees things differently. "This solution takes into consideration the irreparable damage that can be inflicted on a company's image through a hasty public message that is subsequently found to be unlawful," Daniella Lützel Schwab wrote in the Neue Zürcher Zeitung newspaper.

Having been passed by the House of Representative in September, the proposed law was sent back to the Justice Ministry for revisions by the Senate last month. Parliament will debate those revisions at a later date.

It is easy to see why whistleblowing causes such sharp divisions in a country that has seen its treasured banking secrecy culture severely dented in recent years, thanks in part to former employees enriching themselves with the sale of stolen client data.

In Elmer's case, Julius Bär has consistently denied the accusations, countering that the former banker is driven by a personal grudge after being sacked by the bank.

Elmer is far from being the only banking whistleblower in recent years. Former Credit Suisse and UBS employee Bradley Birkenfeld and ex-HSBC Switzerland banker Herve Falciani are the most notorious financial whistleblowers in recent years.

According to a report issued this week by the Washington-based National Whistleblower Center, 16 people in Switzerland have claimed rewards in the US for passing on information of malpractice since 2011, although the study does not say whether they were related to the financial industry.

Toothless system

Whistleblowing is not confined to banks and tax evasion. A whistleblower lifted the lid on a government IT procurement scam that stretched over several ministries and which drew a strong rebuke from a parliamentary commission last month.

Adrian Strött, a lawyer who has represented whistleblowers, told swissinfo.ch that many workers have lost faith in the internal reporting system.

“There is a perception that internal complaints systems are ineffective and toothless. When whistleblowers are told: ‘We have checked out your complaint and found that everything is fine’, then sometimes they are tempted to go public,” he said.

But Strött warned against whistleblowers going too quickly to the press with their stories.

“This is a dangerous game because people risk losing their entire financial and professional existence. They would not only lose their jobs and income but would pick up such a bad reputation that they could find it impossible to find new employment,” he said.

Motivation irrelevant

By contrast, Ledergerber fears that a level of public complacency threatens to allow the proposed new whistleblowing legislation to go through, to the detriment of society.

“Swiss people put a lot of trust in their public authorities, and they believe that if people report allegations then they will be acted on,” she told swissinfo.ch. “Even if this works 95% of the time, there would be a greater chance of the other 5% of cases slipping through the net if these laws go through.”

Whilst drawing a distinction between people who blow the whistle out of social conscience and those who trade data for financial gain, Ledergerber dismissed arguments that companies always need protecting against disgruntled employees.

“Some people may blow the whistle because they are disenchanted with their company or do not like a person, but the motivation does not really matter as long as the accusations are true, in the public interest and serious enough,” she added. “There are many studies that show that whistleblowers are not financially motivated when they reveal their concerns.”

Notorious Swiss whistleblowers

Christoph Meili was a Swiss security guard who saved Holocaust-era bank documents from the shredder at UBS bank in 1997.

Meili, who was then working for an outside security firm, gave the documents he saved to a Jewish organisation. The disclosure led to the Zurich authorities opening a judicial investigation against Meili on suspicion of violating banking secrecy.

Bradley Birkenfeld, a former Credit Suisse and UBS private banker, handed over confidential information to the United States authorities, starting a process that allowed them to prosecute several banks and tear down some of Switzerland's secrecy walls.

Herve Falciani took data from his former employer, HSBC Switzerland, to several foreign governments. As a result, more charges have been laid at the doors of Swiss banks whilst Falciani holes out in Spain, which refuses to extradite him.

Rudolf Elmer worked for nearly two decades at Swiss private bank Julius Bär until he was sacked in 2002. He unsuccessfully attempted to pass on evidence of alleged malpractice of the bank to the media until finding a willing recipient in Wikileaks in 2007, that appeared on the campaigning group's website.

In 2011, he passed on a second batch of information to Wikileaks, days before being convicted of violating Swiss banking secrecy laws. On December 10, 2014, Elmer will appear again before the same Zurich court to stand trial of a second breach of banking secrecy laws.

Other bankers have also passed on information (sometimes in exchange for financial rewards) in direct violation of Swiss laws. A few individuals have been jailed or fined for their activities, most recently former Credit Suisse employee Renzo Gadola who was given a suspended fine this summer for handing secret data to the Department of Justice in exchange for a lighter sentence in the US.

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