

A Swiss Banker Helped Americans Dodge Taxes. Was It a Crime?

Stefan Buck created bank accounts for dozens of Americans hiding money from tax collectors. The U.S. tried to hold him personally accountable.

“We really tried to make sure that how we did the business is correct,” said Stefan Buck. Claudio Bader for The New York Times

By David Enrich

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Diane Butrus, a business executive from St. Louis, wandered the streets of Zurich, looking for a bank that would help her keep \$1.5 million hidden from America tax collectors.

One bank after another turned her down on that afternoon in 2009. They were worried about a United States crackdown on tax evasion and were no longer willing to shelter American money.

Finally, across the street from a city park, up a discreet elevator, seated in a luxurious conference room, Ms. Butrus found a banker ready to help. His name was Stefan Buck.

Mr. Buck said that his employer, Bank Frey, would be happy to take Ms. Butrus’s money, according to court documents and interviews with Mr. Buck and Ms. Butrus. He instructed her to wire the \$1.5 million to Bank Frey. He told her that her name wouldn’t be attached to the new account. It would be known internally as Cardinal, an alias she chose in a nod to her favorite baseball team.

After that, Ms. Butrus contacted Mr. Buck via prepaid cellphones she picked up at a Walgreens drugstore. Every six months or so, she flew to Zurich to withdraw money directly from Mr. Buck. She would return to the United States secretly carrying just under \$10,000 in cash — the cutoff for having to make a customs declaration.

The setup allowed Ms. Butrus to avoid paying tens of thousands of dollars in income taxes. And it wouldn't have been possible without Mr. Buck and Bank Frey.

As much as chocolate and watches, Switzerland is known for bank secrecy. That made the country a destination for money that the wealthy wanted to hide. Last decade, it also made Swiss banks targets for an assault by the United States government, which was tired of Americans escaping taxes on money in offshore accounts.

Many banks came clean, divulging their clients to American authorities. Many Americans, including Ms. Butrus, searched for new places to park their money.

Bank Frey was among the very few to defy the legal onslaught. And Mr. Buck, a clean-cut and self-confident 28-year-old at the time he met Ms. Butrus, was the bank's public face, responsible for landing and then managing American accounts.

That put Mr. Buck in the government's cross hairs. In 2013, a federal grand jury indicted him for conspiring to help Americans avoid taxes. It seemed like another blow against Swiss bank secrecy.

But things didn't go as prosecutors had planned — and the chain of events could have big consequences for America's fight to keep people from evading taxes using offshore bank accounts.



Mr. Buck, center, leaving federal court in Manhattan with his lawyers a few days after arriving in the United States in late 2016. Brendan McDermid/Reuters

A Small Outfit

Mr. Buck was raised in Germany. His parents had been championship ice dancers; his mother competed in figure skating for Switzerland in the 1972 Olympics in Japan.

His father ran an insurance company, and Mr. Buck figured that one day he would take it over. But an acquaintance from business school offered him a job in early 2007 at Bank Frey. The bank was tiny, with about 20 employees. Mr. Buck shared an office with four people, including the bank's receptionist. "We all got along well," he said.

The business revolved around clients that the bank's founder, Markus Frey, had accumulated over the years, according to Mr. Buck and the court testimony of another former bank employee. At first, there wasn't a focus on Americans.

Then, in 2008, a legal earthquake shook the foundations of Swiss banking. American prosecutors started filing criminal charges against bankers and executives who had set up accounts for Americans. In 2009, UBS, the huge Swiss bank, admitted helping Americans hide money from the Internal Revenue Service and agreed to provide authorities with the names of its tax-dodging clients.

Soon Swiss banks were expelling American clients.

Not Bank Frey. It didn't have offices in the United States, and executives didn't see it as their responsibility to police whether their clients were paying taxes.

"We decided there's no reason not to maintain business with American clients," Mr. Buck said in an interview. Executives consulted with legal experts to ensure they weren't crossing any lines. "We really tried to make sure that how we did the business is correct."

Opening accounts for desperate Americans seemed like a golden opportunity. "The positioning of Bank Frey as a solely Swiss private bank is now considered as a competitive advantage by the market," the bank's chief executive, Gregor Bienz, said at a board meeting in late 2008, according to records of the meeting. Mr. Bienz didn't respond to requests for comment.

Over the next few years, hundreds of millions of dollars in American deposits flowed from Swiss banking stalwarts — institutions like Credit Suisse and Julius Baer — to Bank Frey. Its number of American clients roughly tripled, according to court records. By September 2012, nearly half of the bank's \$2.1 billion in assets was held on behalf of American taxpayers.

The Matterhorn Debit Card

Ms. Butrus was one of them. C. Richard Lucy, a former Goldman Sachs and Bank of America executive in New York, was another.

In late 2009, Mr. Lucy's contact at Julius Baer, where he'd had an account for many years, told him he had to move it elsewhere. Mr. Lucy traveled to Zurich and met with about 15 banks. None would take his money, according to his court testimony.

There was one exception. "A couple of times the name Bank Frey came up as a bank that was new and aggressively seeking out accounts," he testified. (He didn't respond to requests for comment.)

Sure enough, when Mr. Lucy showed up at Bank Frey's offices, Mr. Buck said he would open him an account.

Mr. Lucy was impressed by Mr. Buck's assurances that his bank had nothing to worry about in the American tax-evasion investigations. "I had found what I was looking for," Mr. Lucy said.

Mr. Lucy said that Mr. Buck arranged for him to get a Matterhorn-emblazoned debit card that didn't have Bank Frey's or Mr. Lucy's names on it. Mr. Lucy was told that, when he needed money, he should call Bank Frey and ask them to load money onto the debit card. He could use it at any ATM.

Mr. Lucy wanted to bring some account documentation back to New York. He said Mr. Buck advised him not to take anything with Bank Frey's name on it. (Mr. Buck denies giving that advice.) Mr. Lucy took a pair of scissors and snipped Bank Frey's name and logo off the paperwork.

Back in Manhattan, Mr. Lucy bought a prepaid phone card for his calls to Zurich. He made them from a pay phone outside his apartment building. When that phone was damaged, the only other functioning pay phone he could find nearby was inside the kitchen of a boutique hotel. Surrounded by the kitchen's hubbub, he chatted on the phone with his Swiss banker.

By the turn of the decade, other Swiss banks were booting their American customers — and handing them glossy Bank Frey brochures on the way out the door.

Mr. Buck, who eventually rose to be Bank Frey's head of private banking, said he felt he wasn't doing anything wrong. All the same, he warned one client, Christine Warsaw, against sending banking instructions through the United States Postal Service, she said in court. "No USPS, use fax," she wrote in a note to herself. Mr. Buck said he didn't tell her not to send materials through the mail.

By 2011, it was dangerous for Americans to keep their money in undeclared offshore accounts. More banks were handing over client lists to the Justice Department. If you showed up on a list, prosecutors might pursue you.

A safer option was to turn yourself in to the I.R.S. through a voluntary self-disclosure program. It allowed taxpayers to pay back taxes, cooperate with investigators and move on with their lives.

Ms. Butrus closed her Bank Frey account and eventually declared the money to the I.R.S. She paid her taxes and a stiff penalty and pledged to help the I.R.S. and prosecutors. Mr. Lucy did, too. On disclosure forms, both identified Mr. Buck as their relationship manager.

Mr. Buck in St. Moritz, Switzerland. He became the public face at Bank Frey, responsible for landing and then managing American accounts. Claudio Bader for The New York Times

Prosecutors were hunting for bankers to hold accountable. The theory was that bankers knew they were enabling Americans to break the law and therefore were part of a conspiracy to defraud the United States government. Prosecutors turned to people including Ms. Butrus and Mr. Lucy.

By 2013, more than 20 employees of Swiss financial institutions had been criminally charged. At least a dozen pleaded guilty and received a fine, probation or both. Several hunkered down in Switzerland, which refused to extradite its citizens to the United States for actions that weren't illegal in Switzerland.

None had actually gone on trial.

'Do It Now'

At 5 o'clock one morning in April 2013, Mr. Buck was awakened by a phone call. Bank Frey's chief executive was on the line. "Go look at Bloomberg," Mr. Buck recalls him saying, referring to the business-news service.

"I'm sleeping," Mr. Buck said he replied.

"Do it now," his boss ordered.

Mr. Buck pulled out his cellphone. There it was: an article saying he had been indicted.

Terrified, Mr. Buck skimmed the indictment. The indictment made clear that his former clients were assisting the government. "It was surreal," Mr. Buck said.

Mr. Buck, 32 years old at the time and single, went to work to hand in his I.D. card and cellphone. He was placed on paid leave; the bank would cover his legal expenses.

Then Mr. Buck headed to his sister's house. It was her husband's birthday, and they were hosting a barbecue.

His sister, Sylvia Muther, was nearly nine months pregnant. "We were scared he'd go to jail," she said. "We tried not to think about that."

"I got hammered," Mr. Buck said.

Mr. Buck spent months weighing his options. He could plead guilty and be done with it. He could spend the rest of his life in Switzerland, which wouldn't extradite him. Or he could fight the charges.

That third road was perilous. If Mr. Buck won at trial, he would be free — and the Justice Department's fight against bankers who enable tax evasion would be dealt a serious blow. If he lost, he was looking at up to five years in prison.

In October 2014, one of UBS's top executives, Raoul Weil, went on trial in Florida. Federal prosecutors accused him of helping clients hide billions. Mr. Weil's lawyers argued he had no knowledge of or responsibility for what had happened. The jury deliberated for barely an hour before acquitting him.

The same week, a Los Angeles jury acquitted an Israeli banker who faced similar accusations. The Americans' pursuit of foreign bankers no longer looked invincible.

A few months later, on a cloudy morning in January 2015, Mr. Buck was skiing with friends in the Swiss Alps. Above the tree line, they started their descent.

A sign on the slope marked the boundary between France and Switzerland. Mr. Buck realized he was crossing an international border — and that meant he theoretically could be picked up on an American arrest warrant in France. "I was scared," Mr. Buck said.

He told his friends to continue without him. He snapped off his skis, trudged back up the slope and skied down the Swiss side of the mountain.

Mr. Buck realized he couldn't spend the rest of his life fearful of crossing a border. "There was no way I was just going to stay in Switzerland," he said.

Mr. Buck's lawyer, Marc A. Agnifilo. The Swiss banker hadn't realized that Mr. Agnifilo had another prominent client: Martin Shkreli, the hedge fund manager later convicted of fraud. Sasha Maslov for The New York Times

Mr. Buck told his lawyer, Marc A. Agnifilo, that he wanted his day in court.

Coming to America

On Nov. 9, 2016, Mr. Buck boarded a flight to New York. He had spent the previous two nights too scared to sleep. Mr. Agnifilo had negotiated with Manhattan prosecutors to let Mr. Buck out on bail once he arrived. The catch was that he would have to stay in the United States, with his passport confiscated, until his trial.

"Do you have any idea when I'm going to come back?" he asked Mr. Agnifilo.

"No," his lawyer responded. "Hopefully you don't have a cat you need to feed."

An I.R.S. agent collected Mr. Buck as he exited the plane in New York. He was fingerprinted, photographed, shackled and driven to a prison next to the Brooklyn Bridge. He spent the night with a cellmate whose hedge fund had been raided that morning by agents with machine guns.

The next day, Mr. Buck pleaded not guilty and was released on bail. He moved into an Upper East Side apartment, paid for by Bank Frey, which by then had ceased operations, its business model seemingly up in smoke.

It would be months before his trial was scheduled.

Mr. Buck made the most of the free time. He trained in Central Park for the New York City Marathon. He became a Yankees fan. For New Year's, he went to Miami with friends. Since he had no I.D., he couldn't fly; instead he spent 33 hours on a Greyhound. "He sees it all as an adventure," Mr. Agnifilo said.

He spent much of his time in Mr. Agnifilo's 26th-floor law offices, helping his lawyers translate German-language documents.

The crux of the defense was that the responsibility to pay taxes and declare income did not rest with Mr. Buck. It was his clients who had decided not to pay taxes. He was under no obligation to tattle; in fact, he was prohibited from doing so by Swiss bank-secrecy laws.

Trial preparations dragged on, partly because Mr. Agnifilo also was representing Martin Shkreli, the hedge fund manager who eventually would be convicted of fraud.

Mr. Buck had heard of Mr. Shkreli. He hadn't realized they would be sharing a lawyer. Mr. Agnifilo and Mr. Buck both recall shouting matches over whether the lawyer was sufficiently devoted to his client's case.

Mr. Buck's trial started in October. Prosecutors branded him as a crucial cog in an international tax-evasion scheme.

Mr. Agnifilo decided that Mr. Buck shouldn't testify. While the defendant was confident of his innocence, the cross-examination promised to be brutal. And Mr. Buck's English was imperfect.

Jurors heard from a parade of Mr. Buck's former clients, including Ms. Butrus and Mr. Lucy. They testified that Mr. Buck and Bank Frey had been instrumental in allowing them to dodge taxes.

"We didn't want anyone, specifically the I.R.S., to find out we had an account at the time," Ms. Butrus testified.

Prosecutors said all the secrecy — the nameless debit cards, the scissored bank paperwork, the shadowy phone calls — showed Mr. Buck knew what he was doing was wrong. "These are techniques used by a person who is trying to keep from getting caught, not by a person who thinks he's operating legally," said Sarah E. Paul, an assistant United States attorney, near the end of the trial.

Then it was Mr. Agnifilo's turn.

"At the center of the crime scene, there is an American with a pen," he intoned. "Stefan Buck has nothing whatsoever, nothing whatsoever, to do with the choice that an American taxpayer makes" to not declare offshore assets.

Mr. Agnifilo said the fact that Mr. Buck came to America, rather than staying in Switzerland, confirmed that he had nothing to hide. "Let Mr. Buck go back to Switzerland," he finished.

It was a moving performance. "I'm close to crying the first time in 25 years," Mr. Buck wrote on a Post-it note he handed his lawyers.

A Post-it note Mr. Buck handed to his lawyers after listening to Mr. Agnifilo's stirring closing argument.
Marc Agnifilo

The judge, Jed S. Rakoff, also was impressed. “I knew you were a powerful orator,” he told Mr. Agnifilo after the jury left, “but you have exceeded all bounds.”

The jury deliberated for a little more than a day. On Nov. 21, Mr. Buck was sitting on a toilet in the courthouse bathroom when the verdict came in. He hustled to the courtroom.

A pair of United States Marshals hovered at the back. “Are they here for me?” Mr. Buck recalled asking his lawyer.

No, Mr. Agnifilo fibbed. He knew the marshals were there to take Mr. Buck into custody if he was found guilty.

The jury filed in and delivered the verdict: not guilty.

Afterward, Mr. Buck spoke to the jurors in the hallway — the first time they had heard his voice. “Happy Thanksgiving,” he told them.

A Changed Calculus

Mr. Buck’s acquittal reverberated through the legal community. The Justice Department had now lost the three cases it had tried against foreign bankers who helped Americans avoid taxes.

Dozens more cases are pending. Those who represent accused Swiss bankers say they expect Mr. Buck’s verdict to embolden defendants and to cause prosecutors to think twice before bringing new charges.

“It should change their calculus,” said Marc S. Harris, a lawyer at Scheper Kim & Harris, who successfully defended the Israeli banker in 2014. He said the cases represented a “misguided effort” by the Justice Department to respond to political pressure to prosecute bankers.

In early December, Mr. Buck’s family and friends greeted him at the Zurich airport with a giant welcome-home poster. His priority was to get to the Alps for peak ski season.

“The timing of my return is perfect,” he said. He hopes to get back to work soon in the Swiss finance industry.

Mr. Buck and his lawyers wore Switzerland hats that they used to commemorate key moments in the trial. David Enrich/The New York Times

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