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[International News](#) | [Editorials on World Affairs](#) | [Background on World Affairs](#) | [News about Switzerland](#) | [Swiss Week in Review](#) | [Swiss Stock Market Report](#) | [Swiss Business Abstracts](#) | [English Window](#)

[Most recent Background](#) | [Previous Backgrounds](#)

NZZ Background on World Affairs February 1998

The Sensation Hunter

The Dubious Devices of Class-Action Attorney Edward Fagan

by [Nikos Tzermias](#)*

New York attorney Edward Fagan has attracted a great deal of attention with his class-action suits against Swiss banks and against 16 European insurance companies. But U.S. judges have also warned him several times against "frivolous litigation" and family members of the victims of an airline crash have called him an "ambulance chaser."

For the past few months the World Trade Center, famous status symbol of American capitalism, has had a new tenant. The office on the 81st floor of one of the mighty Twin Towers at the southern tip of Manhattan seems to have some affinity with Switzerland. On the wall of the waiting room hang four clocks, showing the local time in Tokyo, New York, London and Zurich. But Suite 8101 does not house the branch office of some Swiss company. Lodged at that dizzying height is New York attorney Edward Fagan, who has instituted class-action lawsuits in the name of Holocaust survivors against Swiss banks and against 16 European insurance companies, and more recently filed charges of slander against the Union Bank of Switzerland on behalf of former Swiss bank security guard Christoph Meili and his wife Giuseppina. [Editor's note: It was Meili who, some time back, prevented stacks of bank documents from being illegally shredded in a Union Bank of Switzerland office and was subsequently fired and prosecuted for his pains.]

Loving the Limelight

The 45-year-old lawyer greets me for our interview with joviality and a show of ease. He offers me peanuts, candy and soda, and to further warm up the atmosphere he tells me why he is currently compelled to swallow painkillers at a great rate. It seems that he recently fell down the stairs of his home early one morning and is suffering from back pain.

Then we get down to business, and Fagan recounts with visible pride how he stumbled on the biggest case of his life. The idea of launching a class-action suit against the Swiss banks came to him in the fall of 1996, when his mother-in-law pointed out an article in the New York Times about the controversy over the dormant assets of Holocaust victims. And he said to himself: "O boy, that's big." He recalls being very excited after reading the piece, and wondering why some other attorney had not already taken up the case.

Fagan clearly loves being in the limelight, slugging things out in the glare of the media. In recent years he has made far more appearances at press conferences all over the world than in courtrooms. At the hearings about dormant bank accounts held last summer by U.S. District Judge Edward Korman in Brooklyn, New York, Fagan engineered a press conference with his "crown witness," Christoph Meili, whom he introduces wherever possible yet jealously guards from the media and possible rivals. In Korman's courtroom, Fagan appeared along with other lawyers who have instituted class-action suits, and there he tended to stay in the background, concentrating largely on keeping his clients supplied with cool drinks on that hot and humid summer day. In dealings with the judge, he left the argumentation largely to fellow attorneys Michael Hausfeld and Melvyn Weiss, who were far more familiar with class action suits and

Neue Zürcher Zeitung

Frontpage

Dossiers

English Window

News Ticker

NZZ-Archiv

Service

Anzeigen

Mail/Leserdienst

Suchen

Hilfe/Index

NZZ-Sites

18.18.1998

Die aktuelle

Neue Zürcher Zeitung

had already grown rich. Weiss, who makes large political donations to the Democratic Party, has been known in U.S. legal circles as "Mr. Class Action" since his spectacular legal moves against (ex-)junk bond king Michael Milken and against the Exxon oil company after the Exxon Valdez tanker catastrophe.

Crocodile Lawyers

Fagan boasts that now he too is taken seriously by the powerful. He proudly relates that he has been called in as an adviser by the office of Representative Jim Leach, the Republican chairman of the House Banking Committee, for the forthcoming Congressional hearings on the insurance policies of Holocaust victims. And Fagan also takes it as a mark of honor that Weiss and Hausfeld, feared by the American business world as "crocodile lawyers," followed his example by a few weeks and launched their own class-action suits against the Swiss banks in the fall of 1996. That's really getting up into the big leagues. "It's like playing with the Yankees," he gloats.

At the same time, Fagan's barbed words make it clear that he regards Weiss and Hausfeld as his arch rivals. And then he warns that his own group of plaintiffs - allegedly more than 15,000 of them - could "make or break" any legal settlement. Nor can Fagan hide his irritation at the fact that Weiss and Hausfeld have declared themselves willing to provide their services to Holocaust survivors free of charge. He sees this as a cheap marketing trick by rivals who have already pocketed a great deal of money. He practically accuses Hausfeld of discrimination, of being willing to work for Jewish plaintiffs gratis while having no compunction about earning millions in the discrimination suit which he conducted on behalf of African-Americans against the Texaco oil company, in which a settlement was recently reached for \$170 million.

Another rival for whom Fagan finds few good words is the World Jewish Congress (WJC). He accuses that organization of deliberately dragging its feet in pursuing lost or dormant Holocaust assets, so that many more survivors will die off and leave a greater amount of compensation money to be channeled through the WJC's own hands.

"I'm Not Crazy"

Fagan's hunger for recognition appears to be unassuaged. A few passing remarks during our interview indicate that the attorney is not yet certain of being taken entirely seriously in America. At one point he notes that he is still "quite young" for what he is getting done; at another he suddenly blurts out that some people think he's crazy, which he insists is not the case. Fagan also finds it hard to forget that, at the outset, New York Senator Alfonse D'Amato refused to see or talk with him, apparently regarding him as disruptive to the Senator's own campaign concerning Holocaust assets. "No one knew me, no one wanted to talk to me at first or even shake my hand," recalls Fagan, who grew up in Texas and comes from a Jewish family which, he says, has no relation to the Holocaust. He came to New York in his university years, studying law at the Cardozo School of Law, which is part of the Orthodox-sponsored Yeshiva University.

Edward Fagan shows no sympathy for the position of those American legal scholars and judges who maintain that class-action suits have become a plague and sometimes border on extortion. Fagan rejects that criticism with the assertion that the critics of class-action suits "just don't understand." As to the observation that the recently instituted suit for slander against the Union Bank of Switzerland on behalf of Meili seems especially frivolous, Fagan merely notes that, because of the Swiss TV broadcast "Arena" featuring UBS chief Studer in January 1997, he was trying to avoid being blocked by the U.S. statute of limitations.

Frivolous Litigation

The New York attorney remains oddly reticent about his announcement that he would institute legal proceedings against the Swiss government itself for alleged "enslavement of many refugees in Swiss internment camps" during World War II. It hasn't been decided yet, he adds, where those charges will be filed - perhaps he'll turn to the International Court of Justice in The Hague. Apparently Fagan has not looked into this matter very seriously yet, or else he would know that only governments can bring charges against other governments at the International Court.

Fagan likes to relate how, as a young lawyer, he began his career defending large companies in product liability suits. Then, he adds, he suddenly decided to do something better with his life. But the fact is that, in recent years, more than one judge has accused Fagan of filing "frivolous charges" on behalf of his clients. In 1996 he was reprimanded in a dispute over real estate rights; among those he accused at that time was the Union of Orthodox Rabbis of America and Canada. (It is noteworthy that his client at that time was Gizella Weiss Haus, who is also among the plaintiffs in Fagan's class-action suit against the Swiss banks.) In another case against the Ford Motor Company, Fagan was twice fined for frivolous litigation (1994 and 1996).

In 1994 Fagan broke into the pages of the tabloid press under rather dubious circumstances, when Rambo actor Sylvester Stallone filed charges of libel against him and demanded damages of \$50 million. The case, which has apparently bogged down since, arose when Fagan submitted a proposal for an article to the gossip sheet "Star" about some pictures Stallone had painted in his younger years and was trying to wrangle back from the woman who now owned them.

Vultures over the Andes

Since 1995 Fagan has also had a reputation as an "ambulance chaser." That winter he flew to Colombia, where there had been a crash of an American Airlines jet in which 160 people died, many of them from the Metropolitan New York area. Many other lawyers also flew to Colombia, where they heaped flowers and business cards on relatives of the crash victims in an effort to recruit them as clients for lawsuits against the airline.

Fagan still insists that he only wanted to help and that the pressure he put on American Airlines led to a more rapid rescue of Edison Claros's nine-year-old son. But Mr. Claros had at that time already contacted two other attorneys and felt Fagan to be a pest. The lawyers who flew down from the U.S. after the accident, he says, were "like vultures." And a spokeswoman for the Claros family during those tumultuous days stated on the record: "[Fagan] just wants to make a name for himself; he has nothing to do with us."

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[Most recent Background](#) | [Previous Backgrounds](#)

[International News](#) | [Editorials on World Affairs](#) | [Background on World Affairs](#) | [News about Switzerland](#) | [Swiss Week in Review](#) | [Swiss Stock Market Report](#) | [Swiss Business Abstracts](#) | [English Window](#)

[Top of Page](#)

[Frontpage](#)

[Impressum](#) [Webmaster](#) [Werbung](#)

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