

Bradley Manning: American Hero

By Marjorie Cohn

Army Pfc. Bradley Manning is accused of leaking military secrets to the public. This week, his supporters are holding rallies in 21 cities, seeking Manning's release from military custody. Manning is in the brig for allegedly disclosing a classified video depicting U.S. troops shooting civilians from an Apache helicopter in Iraq in July 2007. On April 5, 2010, WikiLeaks published the video, available at www.collateralmurder.com. Manning faces 52 years in prison. No charges have been filed against the soldiers in the video.

In October 1969, the most famous whistleblower, Daniel Ellsberg, smuggled out of his office and made public a 7,000 page top secret study of decision making during the Vietnam War. It became known as the Pentagon Papers. Dan risked his future, knowing that he would likely spend life in prison for his expose.

The release of the Pentagon Papers ultimately helped end not only the Nixon presidency, but also the Vietnam War, in which 58,000 Americans and three million Indochinese were killed. Dan's courageous act was essential to holding accountable our leaders who had betrayed American values by starting and perpetuating an illegal and deadly war.

Manning's alleged crimes follow in this tradition. The 2007 video, called "Collateral Murder," has been viewed by millions of people on the Internet. On it, U.S. military Apache helicopter soldiers from Bravo Company 2nd Battalion 16th Infantry Regiment can be seen killing 12 civilians and wounding two children in Iraq. The dead included two employees of the Reuters news agency.

The video shows U.S. forces watching as a van pulled up to evacuate the wounded. They again opened fire from the helicopter, killing more people. During the radio chatter between the helicopter crew members and their supervisors, one crew member gloated after the first shooting, saying, "Oh yeah, look at those dead bastards."

One Iraqi witness told Amy Goodman on "Democracy Now!" "The helicopter came yesterday from there and hovered around. Then it came right here where a group of people were standing. They didn't have any weapons or arms of any sort. This area doesn't have armed insurgents. They destroyed the place and shot at people, and they didn't let anyone help the wounded."

Another witness said, "They killed all the wounded and drove over their bodies. Everyone witnessed it. And the journalist was among those who was injured, and the armored vehicle drove over his body."

Journalist Rick Rowley reported that the man who they drove over had crawled out of the van that had been shot and was still alive when the American tank drove over him and cut him in half.

Commanders decided that the wounded children would not be taken to a U.S. military field hospital. Ethan McCord, one of the soldiers on the scene who picked up one of the children and tried to take him to a military vehicle, was reprimanded for his response.

The U.S. Central Command exonerated the soldiers and refused to reopen the investigation. Reporters Without Borders said, "If this young soldier had not leaked the video, we would have no evidence of what was clearly a serious abuse on the part of the U.S. military."

In fact, the actions depicted in "Collateral Murder" contain evidence of three violations of the laws of war set forth in the Geneva Conventions,



which amount to war crimes.

There were civilians standing around, there was no one firing at the American soldiers, and at least two people had cameras. There may have been people armed, as are many in the United States, but this does not create the license to fire on people. That is one violation of the Geneva Conventions — targeting civilians who do not pose a threat, not for military necessity.

The second and third possible violations of the laws of war are evident in the scene on the tape when the van attempts to rescue the wounded, and a later scene of a U.S. tank rolling over a body on the ground. The soldiers shot the rescuer and those in the van, another possible violation of the Geneva Conventions — preventing the rescue.

Third, when the wounded or dead man was lying on the ground, a U.S. tank rolled over him, effectively splitting him in two. If he was dead, that amounted to disrespecting a body, another violation of the Geneva Conventions.

Josh Steiber, a former U.S. Army specialist and member of the Bravo Company 2nd Battalion 16th Infantry Regiment, was not with his company when they killed the civilians depicted in "Collateral Murder." Steiber told Truthout that such acts were "not isolated incidents" and were "common" during his tour of duty. "After watching the video, I would definitely say that that is, nine times out of 10, the way things ended up," he said.

Steiber explained that during his basic training for the military, "We watched videos celebrating death," and said that his commanders would "pull aside soldiers who'd not deployed, and ask us if somebody open fired on us in a market full of unarmed civilians, would we return fire. And if you didn't say 'yes' instantly, you got yelled at for not being a good soldier. The mindset of military training was one based on fear, and the

ability to eliminate any threat."

Manning is also being investigated for allegedly leaking the "Afghan War Diary" documents that were posted on WikiLeaks in coordination with the *New York Times*, the *U.K. Guardian*, and the German magazine *Der Spiegel*. But President Barack Obama said, "...the fact is, these documents don't reveal any issues that haven't already informed our public debate on Afghanistan."

Those reports expose 20,000 deaths, including thousands of children, according to WikiLeaks founder Julian Assange. Many of them also likely contain evidence of war crimes.

Besides the fact that targeting civilians is illegal, it also makes us less safe. A new study by the National Bureau of Economic Research, which was released by the New America Foundation, concluded that civilian attacks in Afghanistan make our troops more vulnerable due to retaliation. A typical incident that causes two Afghan civilian deaths provokes six revenge attacks by Taliban and other fighters.

Moreover, Marine Col. David Lapan, a senior Pentagon spokesman, said that so far, there is no evidence that the Taliban has harmed any Afghan civilians as a result of the WikiLeaks publication of the 76,000 logs this past summer.

Over 1,000 Americans and untold numbers of Afghans have been killed in this war, which is just as illegal, expensive, and counter-productive as the one in Iraq.

The charges against Bradley Manning end with the language, "such conduct being prejudicial to good order and discipline in the armed forces and being of a nature to bring discredit upon the armed forces." On the contrary, if Manning did what he is suspected of doing, he should be honored as an American hero for exposing war crimes and hopefully, ultimately, helping to end this war.



Marjorie Cohn is a professor at Thomas Jefferson School of Law and past president of the National Lawyers Guild. Her new anthology, "The United States and Torture: Interrogation, Incarceration, and Abuse," will be published in December by NYU Press. See www.marjoriecohn.com.

Tax Consequences for Customer Data Theft

By Sanford Millar

Identify theft is not a trivial issue. The costs to our national, state and local economies, businesses and individual consumers are substantial. According to *Forbes*, the 2009 estimated cost of identity theft was \$54 billion. These costs are directly and indirectly passed on in the purchase price of goods and services. But the theft of customer data is not limited to third party hackers breaking into servers. There is another serious source of data theft — employees. The alleged theft of customer data by an employee of a major international financial institution, UBS AG, has brought about important tax changes in this area that may change the face of international banking for private clients forever.

The UBS story begins in the Swiss bank secrecy laws. Under the Swiss Banking Act of 1934, the Swiss generally did not allow disclosure of account holder information absent a request from the foreign government for information on that specific account holder. The request had to identify the account holder and describe the alleged crime for which the person was accused. The crime had to be serious, such as tax fraud; mere tax evasion did not qualify. Enter the case of an employee who had access to substantial customer data about U.S. account holders and knowledge of UBS' business and marketing practices. The delivery of this information began an investigation that resulted in the U.S. Department of Justice accusing UBS of providing approximately 17,000 U.S. clients with the ability to conceal about \$20 billion in deposits.

UBS entered into a "deferred prosecution agreement" with the Justice Department in exchange for a penalty payment of \$780 million and specified account holder data. The Internal Revenue Service then issued a "John Doe" summons to UBS and brought a summons enforcement action, which sought account information on an estimated 50,000 accounts. At the same time, the IRS made an amnesty offer (the Offshore Voluntary Disclosure Initiative) to holders of foreign bank accounts who failed to file Foreign Bank Account Reports (Form TD 90-22.1) and report income on those accounts. The amnesty offer expired Oct. 15, 2009. Over 14,500 accepted the offer and filed voluntary disclosures.

On June 17, 2010, the Swiss Parliament ratified an agreement between U.S. and Swiss governments allowing for the disclosure of account information for U.S. persons who directly or indirectly held Swiss accounts at UBS. An account holder brought a test case claiming that the amendment violated Swiss Bank Secrecy laws. The account holder lost and on or after Sept. 15, 2010, the data on account holders not already turned over will be delivered for 4,450 specified accounts. This result is clearly outside what one would expect from the theft of customer data, but there is more.

There are changes in the Internal Revenue Code that will affect U.S. persons that can at least in part be attributed to the UBS case. Under the HIRE Act, P.L. 111-147, (March, 19, 2010) Internal Revenue Code Sections 6038D, 6048 were added. These two sections deal with disclosures of foreign held assets on tax returns. Because the Internal Revenue Code is under Title 31 of the U.S. Code while foreign bank account reports are subject to Title 26 of the U.S. Code (the Bank Secrecy Act) two separate compliance regimes apply. Internal Revenue Code Section 6038D will require taxpayers who have specified foreign financial assets that are more than \$50,000 in value to disclose those holdings on their tax returns. This new disclosure goes way beyond the Form 1040 Schedule A questions regarding foreign financial accounts and is independent of the Foreign Bank Account Report filing requirement, which relates to foreign financial accounts of \$10,000 or more in a calendar year.

Internal Revenue Code Section 6048 effectively treats foreign trusts as "grantor trusts" (Internal Revenue Code Section 679) if the taxpayer has transferred assets, directly or indirectly, to a foreign trust and has retained any mechanism to control, directly or indirectly, the disposition of the assets. Those assets may need to be disclosed under Internal Revenue Code Section 6038D and income reported. Note that Internal Revenue Code Section 6048 deals with property transfers, not just financial assets. As a result, holdings believed to be held in secret may become transparent. Foreign asset protection trusts may be in jeopardy.

Discovery of foreign held assets may be more likely in bankruptcy and other proceedings where tax returns must be produced, such as divorce actions and some judgment debtor proceedings.

There are also changes that affect all U.S. information exchange agreements. The Foreign Asset Tax Compliance Act (Internal Revenue Code Section 1471-1474), which becomes effective Jan. 1, 2013, implements a new form of information disclosure by the bank to the IRS account. Under the Act, foreign financial institutions will need to enter into an agreement with the IRS to either obtain the consent of U.S. citizens who are account holders to immediately and unconditionally release account information to the IRS or face a 30 percent withholding on account earnings. The failure of a foreign financial institution to enter into an agreement with the IRS for the immediate and direct release of information will result in a 30 percent withholding on all U.S. based financial investments of the institution. This requirement constitutes a major change in the information exchange process and will apply to all accounts that are directly or indirectly held by U.S. citizens.

The Foreign Asset Tax Compliance Act will also require enhanced due diligence on the part of foreign financial institutions and may result in some of these institutions to reject accounts where a U.S. citizen is involved.

One must assume that the IRS will require these foreign financial institutions to provide the account data in a form that is consistent and can be used with existing matching programs. Alternatively the matching programs will need to be modified. Ultimately the goal is to track foreign account information back to specific tax returns to determine compliance.

The unexpected consequences from this one instance of employee customer data theft have had profound effects on individuals, financial institutions, and governments, and may even extend to international organizations like the OECD (Organisation for Economic Co-operation and Development). As an example, all parties may evaluate what constitutes bank secrecy. Will there be measures taken to adopt the new U.S. automatic disclosure standard as set forth in the Foreign Asset Tax Compliance Act will financial institutions resist. Will other governments demand the same measures? Will the model OECD treaty be changed to include automatic disclosures? These are just some of the questions to be answered. There is no doubt that many individuals will face criminal sanctions, including incarceration and civil penalties as a result of having undisclosed foreign financial accounts — but this is hardly the end of the story.



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