

Snowden's Case for Asylum

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Despite U.S. government pressure, Russian President Vladimir Putin is balking at demands that he extradite Edward Snowden from Moscow to face espionage charges for leaking secrets about America's global surveillance operations. Still, Snowden's status remains dicey.

The U.S. government is putting on a full-court press to track down, arrest and prosecute Edward Snowden for blowing the whistle on the National Security Agency's massive collection of data on phone calls by Americans and Internet use by foreigners.

U.S. Secretary of State John Kerry urged Russia to "do the right thing," block Snowden from leaving Moscow, and instead turn him over to the United States for prosecution. Talking to reporters in New Delhi, India, Kerry said, "We think it is very important in terms of our relationship. We think it is very important in terms of rule of law. There are important standards."

But Marjorie Cohn, professor at Thomas Jefferson School of Law, said there is another rule of law, international law, that may give the 30-year-old systems analyst a path to political asylum. Cohn said Snowden could cite "a well-founded fear of persecution" based on the mistreatment of fellow whistleblower Bradley Manning. Professor Cohn spoke about the Snowden case to Dennis J. Bernstein on Monday on the Flashpoints show on Pacifica Radio:

DB: Why don't you begin with an overview of the case, and how you see it.

MC: Edward Snowden revealed a secret program of massive spying on Americans and people all around the world and turned them [documents] over to the *Guardian* and *Washington Post*. Then he went to Hong Kong, which is where he was until he left [on Sunday]. The U.S. government is going to charge him under the Espionage Act with crimes that could garner him 30 years, or even life in prison if they decide to add extra charges.

The Obama administration has gone after whistleblowers in an unprecedented manner, filing charges against eight people under the Espionage Act, more than twice all prior presidents combined. Most recently, the firestorm around Mr. Snowden is about whether he will be extradited back to the U.S. to stand trial on these charges. He was in Hong Kong, left and stopped in Moscow. There have been reports that he might go to Ecuador where he applied for political asylum and he did confer with officials from the Ecuadoran government when he was in Russia.

He could be extradited, sent back to the U.S. for trial, either by Russia or any country he passes through on the way to Ecuador. Or Ecuador could extradite him back to the U.S.

Russia and the U.S. do not have an extradition treaty, but the U.S. has extradited seven Russian prisoners in the last two years. A country can refuse extradition when the offense is political in nature. He would be charged under the Espionage Act and espionage is a classic political act that gives rise to a refusal of extradition, so they could refuse extradition on those grounds.

There's also a provision in the Convention against Torture called *non-refoulement* that forbids extradition of a person to a country where there are substantial grounds to believe he would be in danger of being tortured. Since Bradley Manning, another prominent whistleblower, was tortured by being held in solitary confinement for nine months, a country could conclude Edward Snowden might be subjected to the same fate, and deny extradition on that ground.

Also a country has an obligation to refuse extradition when it would violate fundamental rights. The right to be free from torture and cruel treatment is a fundamental right. Under the refugee convention, Ecuador or Iceland, where he's applied for asylum as well, or any country, could grant Snowden political asylum if he can show he has a well-founded fear of being persecuted for reasons of political opinion in the U.S. He probably could make that showing in one of those countries. At this point it's very fluid.

The Johannesburg Principles of national security, freedom of expression and access to information, which were issued in 1996 provide, "No person may be punished on national security grounds for disclosure of information if the public interest in knowing the information outweighs the harm from the disclosure." It's important to be talking about that. What did Edward Snowden do? Did he harm the national security?

There have been claims that terrorist attacks were thwarted by the massive dragnet surveillance Snowden exposed, but Senators [Mark] Udall and [Ron] Wyden, who have been on the Senate Select Committee on Intelligence and looking at this classified information for years, say that's not true. The intelligence that is the most useful for foiling these plots is traditional intelligence and not a dragnet surveillance where they listen in to people's phone calls and track what kinds of places they visit on the internet.

Even if they are not listening in on the content of the phone calls or reading the content of the messages, the fact that they are profiling, coming up with so-called patterns based upon the websites people visit or the people they call could be a tremendous invasion of privacy and lead to a lot of false intelligence.

DB: The scuttlebutt in the press today talks about how Snowden's lack of character is reflected by his choice of going to one of the U.S. enemies, Ecuador, Cuba or Russia.

MC: Quite frankly, if the U.S. didn't have such an antagonistic and ill-advised policy against countries like Venezuela and Cuba, even Ecuador, then these countries would probably be extraditing him back to the United States. But when the United States pursues the kinds of policies it does in Latin America, it alienates progressive governments, like Ecuador, which has a democratic, not tyrannical government.

Let's keep in mind that In the 70s and 80s, the U.S. was supporting all the tyrannical countries in Latin America that were kidnapping, disappearing, torturing and murdering people. But it's hard to blame these governments for not being willing to jump to whatever the U.S. says. According to Michael Ratner, a lawyer for Julian Assange, the Obama

administration is bullying countries all over the world so they can get Ed Snowden rendered to the U.S. where he can be prosecuted.

Certainly the U.S. government is known for its bullying. It has bullied countries that signed the Rome Statute for the International Criminal Court [ICC] – bullied them into not turning Americans over to the court if Americans are found in those countries. The Bush administration certainly bullied countries about the ICC. Even the Obama administration has, if not by bullying, influenced Spain to drop charges under universal jurisdiction against the six Bush torture lawyers. That could be a form of bullying.

The U.S. has been notorious for bullying countries, especially smaller countries, for years – they are blackmailed into believing they will lose foreign assistance from the U.S. if they don't do what the U.S. wants. When Americans are asked in the polls about what Edward Snowden did, and they think about it personally – do we want the government monitoring our personal communications – they are very much against these massive spying programs and not so critical of Edward Snowden.

It's important that the independent media bring what is happening to the people so they are not just left with sound bites from the corporate media that will paint Snowden as a traitor because he violated national security that keeps us safe from terrorist attacks. We heard that all through the Bush administration and it certainly didn't make us any safer than we would have been otherwise. It probably makes us less safe since there's so much hatred for the U.S. since we invaded and killed so many people in Iraq and Afghanistan. The extensive torture, Guantanamo, the drone strikes, which have been stepped up during the Obama administration, have all created much more hatred against the United States.

DB: Is there any precedent, any case you could make that this man acted for the greater good of society?

MC: A precedent is Dan Ellsberg who leaked the Pentagon Papers, which revealed what was going on in the Vietnam War and helped ultimately end that war. You could say that was for the greater good. Also, Bradley Manning leaked evidence of war crimes, the collateral murder video, among other things, which showed commission of war crimes as defined by the Geneva Conventions, by people in the U.S. Army. Yes, there is precedent for this.

DB: Do you think the U.S. is going to figure out a way to get him? Would they be breaking international law if they sent a pick-up team to get him, wherever he was?

MC: Yes, they would. He needs very tight security wherever he is because it's not beyond belief to think some thugs could kidnap him and render him to the U.S.

DB: Is there any legal justification for the U.S. to do that?

MC: No, but somebody could do it and say they weren't working for the government. The government could say he's a traitor and we need to bring him to justice in our country and he is being shielded.

DB: So he can be kidnapped and left somewhere the U.S. could get him? The U.S. could say, "We didn't get him. We found him here."

MC: That's possible.

Dennis J Bernstein is a host of "Flashpoints" on the Pacifica radio network and the author of [Special Ed: Voices from a Hidden Classroom](#). You can access the audio archives at www.flashpoints.net.

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