British court ruling on data seized from Miranda paves way for criminal prosecutions

Jordan Shilton
5 September 2013

Britain's high court ruled Friday that the government could continue to examine data seized from David Miranda, the partner of *Guardian* journalist Glen Greenwald, when he was detained at Heathrow airport earlier in August. The order will remain in force until a full judicial hearing scheduled for late October.

The judgement allows investigations of data in order to determine if Miranda had committed a criminal offence under the Terrorism Act 2000, the Official Secrets Act 1911, or the Official Secrets Act 1989. The ruling expanded the powers of the police, who had previously only been able to consider offences under the Terrorism Act, creating the conditions for the preparation of charges against Miranda and his partner *Guardian* journalist Glenn Greenwald.

The aim of such a prosecution would be to launch a further clampdown on democratic rights. British ruling circles have responded furiously to the exposure of their criminal spying operations carried out in collaboration with the United States and are intent on intimidating into silence anyone seeking to reveal further details. This has already been shown by their aggressive actions towards the *Guardian* newspaper, which had possession of thousands of classified documents leaked by whistleblower Edward Snowden.

Miranda, who was travelling back to his home in Brazil from a visit to Berlin, was carrying information on the spy programmes of the UK and US governments to give to Greenwald. He was questioned by security and police officials at the airport without access to a lawyer for eight hours and threatened with prison if he did not cooperate. After being held for nine hours, officials confiscated a laptop, mobile phone and portable storage devices containing over 58,000 classified documents.

He was detained under powers contained within section 7 of the Terrorism Act 2000. In another case last week relating to the detention of a woman at East Midlands airport in 2011, a court ruling declared that the power to hold someone for hours for questioning without access to a lawyer was not a breach of their human rights.

Both this ruling and Miranda's latest hearing demonstrate the vast erosion of democratic and legal principles which has taken place under the so-called war on terror. On the basis of vague allegations of a "security threat" and "national security" concerns, the government was granted virtually unhindered access to Miranda's files.

The high court's injunction preventing the "inspecting, copying or sharing" of the information obtained from Miranda is meaningless, given that it agreed to continue to allow the police to search the data for "national security purposes," a catch-all term which places no limits on state access to the data.

No evidence was presented by the government to back up its claims. As Gwendolen Morgan, a lawyer representing Miranda, put it, the government made "sweeping assertions about national security threats which they said entitled them to look at the materials seized, but they have said that they cannot provide further details in open court."

Under recently-enacted legislation, Britain's government has the powers at its disposal to avoid ever presenting evidence in open court for public inspection. In cases where "national security" issues are involved, the government can request a "closed material procedure," which permits a judge to consider evidence in secret without the presence of lawyers of the opposing side.

Although such a step has not yet been taken in the Miranda case, the bringing of charges against the

Brazilian citizen would provide the government with the opportunity to proceed in such a manner. Miranda or any of his associates could then be faced with trumped-up charges of the "commission, preparation or instigation" of a terrorist attack, with no access to the evidence held against them.

Ruling circles are pushing for the implementation of yet more authoritarian legal provisions to expand the police state powers at their disposal. Lord Blair, former commissioner of the Metropolitan Police at the time when Labour introduced much of its anti-terror legislation, declared on BBC radio in the aftermath of Miranda's detention, "The state has to have secrets—that's how it operates against terrorists."

"It has to have the right to preserve those secrets," he continued, "and we have to have a law that covers a situation when somebody, for all sorts of wonderfully principled reasons, wishes to disclose those secrets."

Blair defended the Orwellian claim made in the trial of US Army Private Bradley Manning that the possession of material or the leaking of information to the public on state crimes amounted to assisting terrorism. This was a "new threat which is not of somebody personally intending to aid terrorism, but of conduct which is likely to or capable of facilitating terrorism," according to Blair, and it must be a punishable offence.

The assertion that Miranda's data posed a security risk is based on a 13-page statement issued to the court by deputy national security adviser Oliver Robins. In it, he declared, "We urgently need to identify and to understand the entirety of the material … in order to assess the risks of sensitive intelligence sources and methods and the threat to intelligence agency staff should their identities or details of their operational tradecraft be obtained by hostile actors."

The reference to "hostile actors" and "the enemy" was a feature of the government's arguments. The charge under the Official Secrets Act 1911 for which Miranda is being investigated is disclosing information to "the enemy." Notwithstanding the lying claims of the government that this refers to unspecified "terrorists," the real enemy is the population. The ruling class correctly fears that the further exposure of their authoritarian practices will lead to the development of political opposition to the existing social order.

Robins went on to assert that the data posed a danger to other unnamed "intelligence practices vital to UK national security." Miranda had gained access to personal details of intelligence operatives, who would be open to recruitment by terrorists or foreign governments, he went on. Such a statement is aimed at preparing the way for a conviction under the Official Secrets Act, which outlaws the release of personal information relating to intelligence officers.

In a separate witness statement submitted to the court, British government officials confirmed that they had approached the *New York Times* to demand that it destroy copies of documents in its possession leaked by Snowden. Revealing little detail, a spokesman at the British embassy in Washington declared, "We are not going to get into the specifics about our efforts but it should come as no surprise if we approach a person who is in possession of some or all of this material."

The government received a tip-off regarding the *Times'* possession of the data from the *Guardian* in the immediate aftermath of the forced destruction of material at the newspaper's offices on July 20. According to a public statement released by *Guardian* chief editor Alan Rusbridger also on Friday, "On 22 July the *Guardian* directed the government towards the *New York Times* and ProPublica, both of whom had secret material from GCHQ."