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## Edward Snowden Is No Traitor

By Evan Soltas - Jun 12, 2013

What do the speaker of the House of Representatives, the chairwoman of the Senate Intelligence Committee and a former U.S. ambassador to the United Nations have in common? None of them seem to understand what "treason" is.

Representative John Boehner, Senator Dianne Feinstein and John Bolton accused Edward Snowden, who leaked documents that revealed secret National Security Agency surveillance programs, of the crime this week.

"I don't look at this as being a whistle-blower," Feinstein [said](#). "It's an act of treason." Boehner [called](#) Snowden a "traitor." "This guy thinks he has a higher morality" Bolton [said](#). "I say that is the worst form of treason."

Snowden's leak was illegal -- but it wasn't treason under U.S. law. Article III of the Constitution [defines](#) it narrowly: It "shall consist only in levying War against" the U.S., "or in adhering to their Enemies, giving them Aid and Comfort."

Judges have read that to mean joining enemy military forces or giving them intelligence directly. Snowden did neither. He sent documents to two newspapers.

Snowden's case is similar to that of U.S. Army Private First Class Bradley Manning, who sent secret documents to the website WikiLeaks. Manning went to trial last week accused of theft, computer fraud and violations of the [Espionage Act](#), which criminalizes sharing sensitive military information. He won't face charges of treason.

Treason cases, in fact, are rare: Fewer than [30 Americans](#) have ever been charged with the crime, and none since the aftermath of World War II.

Not even John Walker Lindh, who fought alongside the Taliban when the U.S. invaded Afghanistan, was accused of treason. Lindh was originally charged with conspiracy to commit murder and terrorism, but he took a [plea bargain](#) on two yet lesser offenses.

Lindh's dodging of treason charges matches a broader pattern during the last half-century. Robert Hanssen, who gave spent two decades as a Soviet and Russian spy while working at the Federal Bureau of Investigation, was convicted of [espionage](#) in 2001. Julius and Ethel Rosenberg, who gave U.S.

atomic-bomb research to the Soviet Union, were convicted in 1951 of conspiracy to commit espionage and later were [executed](#).

The last time a U.S. court convicted someone of treason was in 1948. Tomoya Kawakita, a dual citizen of the U.S. and Japan, had tortured American prisoners of war while in Japan and holding U.S. citizenship. Adam Gadahn, who collaborated with the terrorist group al-Qaeda on propaganda videos, was the last American [charged](#) with treason. Gadahn, indicted in [2006](#), is still wanted by the FBI and hasn't been tried or convicted.

Why do U.S. prosecutors avoid treason charges? One reason is that the standards of evidence are high: The Constitution requires "two witnesses to the same overt act." Another likely explanation, however, is that treason convictions simply aren't worth the trouble. Most traitors can be put away for life on several counts of espionage and conspiracy. That's less work for the prosecution.

Snowden's crime doesn't fit the standards of treason, anyway. If captured, he will be prosecuted for offenses similar to those of Manning. One likely charge: the disclosure of classified information "concerning the communication intelligence activities of the United States," which is a [federal crime](#). If past leakers are any indication, he will be in prison for decades, if not the rest of his years.

(Evan Soltas is a contributor to the Ticker. [Follow](#) him on Twitter.)

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