

Top lawyers jump to the defence of former Australian spy Witness K

By Nick O'Malley

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A retired senior judge has expressed alarm over the decision to charge the former spy known as Witness K and his solicitor Bernard Collaery for exposing Australia's bugging of East Timor during contentious oil and gas negotiations.

Stephen Charles, who served on the Victorian court of appeals between 1995 and 2006, said the behaviour of the Australian government during and after the bugging affair was so appalling it served as evidence that the country needed a federal anti-corruption commission with the powers of the NSW ICAC.

He said that publicly available evidence shows that when Australia was in talks with East Timor in 2004 over an oil and gas field that lay between the two nations it used its external spy agency ASIS to bug East Timor's cabinet room to improve its negotiating position. As a matter of international law this constitutes fraud in Mr Charles' view.



Former judge Stephen Charles says the incident reveals 'the level of ethics and morality of parliament in Canberra'.

Later, when the whistleblower known as Witness K was preparing to travel to give evidence to the International Court of Arbitration about the bugging operation, the government used Australia's internal spy agency ASIO to raid Witness K's home and seize documents, and it cancelled his passport.

These acts appear to have been an effort to prevent Witness K from giving evidence, which most courts would consider to be a serious act of contempt of court punishable by imprisonment, said Mr Charles.

On Thursday, using parliamentary privilege, the independent MP Andrew Wilkie revealed the Commonwealth Director of Public Prosecutions had filed criminal charges against Witness K and Mr Collaery.

"The bottom line is that the spying on East Timor was indeed illegal and unscrupulous," Mr Wilkie said. "Although it was the Howard government's initiative, the crime has subsequently been covered up by all governments ever since."



Mr Charles said the behaviour of the Howard government during the negotiations and subsequent governments of both parties that have helped protect it was viewed as appalling in national and international legal circles.

He said the ongoing focus on the incident suggests that the government is embarrassed about the incident and does not want people talking about it. The incident damaged Australia's international standing and cost it a great deal of money.

“It suggests they think that Canberra can get away with anything and then laugh at East Timor while they try to prevent [the East Timorese] from proving their case.”

“I think it shines a light on the level of ethics and morality of parliament in Canberra that above all demonstrates we need a national integrity commission.

“A lot of people in legal circles are horrified by the government's behaviour.”

A former NSW director of public prosecutions, Nicholas Cowdery, agreed that there was broad concern about how Australia had behaved towards East Timor.

“Witness K made it possible for Australians to know that unlawful activity was undertaken on our behalf to improve the government's negotiating position.

“It has taken a very long time for the government to take this action against Witness K and Mr Collaery and there is a genuine question about whether the general interests of Australians would be served by the prosecution of either person.”

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