

## Court documents shed new light on man behind moniker 'Witness K' and how he met lawyer Bernard Collaery

Elizabeth Byrne, ABC, 4 July 2021

I can't tell you who Witness K is.

Even if I knew I couldn't say without risking jail time, because as a former spy for Australia's overseas intelligence service, his identity is protected under strict security laws.

But his notoriety has grown since he was [charged with conspiracy to reveal classified information about alleged Australian espionage in East Timor, with his former lawyer Bernard Collaery](#).

It has been a long, curious and partly secret prosecution involving the discovery of key evidence in a handbag, the international courts in the Hague and the unwelcome exposure of alleged Australian espionage in East Timor.

[When he finally fronted a Canberra court last month to be formally charged and sentenced](#), he and his wife were hidden behind tall black screens, in a room where even the glass doors were blacked out.

"Guilty your honour," were his only words to the court.

The voice that emerged from behind the screens was not deep or loud, instead sounded like the voice of a man in his late 70s you might say hello to on the street and pass by without a second thought.

When Witness K entered his plea and was sentenced to a three-month suspended sentence, it was the first time he had stepped foot in the court — despite multiple sessions in the lead up as lawyers fought over how secret the case should be, and what facts would be agreed.

Witness K's case has been polarising from the start, with a loyal crowd of supporters gathering outside every time it appeared in court.

Now documents cleared by the Canberra courts for public release have revealed something of the man, and the circumstances which led to this extraordinary chapter for Australia's intelligence community.



Supporters of Bernard Collaery and Witness K have been a fixture outside the ACT Supreme Court every time the cases are being heard. (AAP: Lukas Coch)

### A career characterised by danger and trauma

Witness K had had a career of nearly four decades, starting in the navy in Vietnam and ending as a senior Australian Secret Intelligence Service (ASIS) spy.

But three psychiatric reports to the court gave perhaps the best insight into the man, who had suffered episodes of depression and anxiety since he was sent to Vietnam when still a teenager, and was more recently diagnosed with chronic post-traumatic stress disorder.



Documents cleared by the Canberra courts for public release reveal more about the man behind the moniker "Witness K".(ABC News: Emma Machan)

One report noted his mother said he had been "crazy" when he returned from Vietnam.

The trauma listed by the doctors included his service on the "gun line" when he had been fired at and feared he would die.

Another said, "two major incidents seemed to have had a significant effect on his mental state, however, he never sought treatment or support for many years".

But the trauma did catch up with him, leading to several periods of stress leave, after breakdowns at work.

According to court documents, in 2005 it all came to a head when he missed out on a job he had been acting in for some time.

Witness K was profoundly disappointed and called for an independent inquiry.

And that is when Bernard Collaery was appointed his lawyer to help him through the legal process.

At the time Mr Collaery was also representing the government of East Timor.

### 'A process of vindication'

One of the key pieces of evidence in the case was a letter Mr Collaery wrote to Witness K in February 2013, in which he reflected on how the alleged spying operation arose in their discussions.

"As I have said to you I was troubled for some considerable time about the knowledge you unwittingly passed to me in my dual role as adviser to the Timor-Leste government," Mr Collaery said, as he also noted he had sought legal advice to confirm that there was no conflict of interest with him acting in both capacities.

In the letter, he advised Witness K his best legal option for his own case would be to seek an ex-gratia payment but noted his real objective was not money, but vindication.

"The interlocking issues are that you seek a remedy through the scope of the Timor-Leste government to have an independent inquiry into the actions that you most disapproved of, namely the activities of your clandestine mission in Timor-Leste that had nothing to do with national security."



A letter from Bernard Collaery to his client Witness K sheds light on how the alleged spying operation arose in their discussions.(ABC News)



East Timor claimed a treaty on maritime arrangements in the Timor Sea was invalid because Australia had engaged in espionage.(ABC News: Emma Machan)

The letter came only weeks before Timor Leste launched action against Australia in the Permanent Court of Arbitration in the Hague.

East Timor alleged a negotiated treaty on maritime arrangements in the Timor Sea was invalid because Australia had not negotiated in good faith and had engaged in espionage.

But as hearings were about to begin, ASIO swooped on the homes of Bernard Collaery and Witness K.

### Key evidence found in Witness K's wife's handbag

The statement of facts released by the court revealed the letter from Mr Collaery to Witness K, as well as copies of letters exchanged between East Timor's then-prime minister Xanana Gusmao and Australia's then-prime minister Julia Gillard, were found in Witness K's wife's handbag.

The summary of facts said the key piece of evidence was found in a camera tripod bag in the hallway linen cabinet.

It was an affidavit intended for the International Arbitration Court, dated May 7, 2013, using Witness K's own name, and containing information consistent with statements made to the media by Mr Collaery.



ASIO raided Bernard Collaery's home and office on December 3, 2013, just as he was preparing to represent East Timor in its spying case against Australia. (ABC)

The summary also stated a second affidavit signed in November was also found, both witnessed by Mr Collaery.

Documents were also seized from Mr Collaery's home, with TV footage from the time showing the agitated bees from his hive swirling around, as ASIO agents went to work inside.

Mr Collaery was in Europe preparing for the hearing at the Hague, but the raids put a stop to his star witness.

After all of that, the pair was not charged, even after Commonwealth prosecutors recommended a prosecution to then federal attorney-general George Brandis.

It was not until 2018 that a new attorney-general, Christian Porter, authorised the case to proceed.

## **Court hears Witness K is now like any other retiree**

[While Witness K pleaded guilty and was sentenced last month](#), Mr Collaery, who is facing other charges, is fighting the case in the ACT Supreme Court.

Currently the parties are locked in a battle over what evidence is of national security significance and should stay secret, to be heard in a closed court.

Lawyers for the federal Attorney-General won round one, but Mr Collaery is awaiting the results of an appeal, as others including the ACT's Bar Association call for the prosecution to be abandoned altogether.

For Witness K, the matter is now at an end, and he is no doubt relieved he will not spend time in jail.

His barrister Robert Richter QC did his best to avoid even a conviction, telling the court Witness K had been a highly decorated officer but was now an elderly man, married with children.

One of his doctors listed those activities.

"[Witness K] reports to be using playing music, fixing guitars, physical fitness and endurance exercises as his main coping mechanisms", he said.

Mr Richter also noted it had been many years since Witness K had known there would probably be a prosecution.

"The mental anguish he has suffered has been amplified," he told the court.

"There is no utility in convicting Mr K."

But Magistrate Glenn Theakston found Witness K had still deliberately breached security laws, convicting him, handing him a suspended sentence with a 12-month good behaviour order, and an opportunity to move on with his life.