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Labor stands shoulder to shoulder with Turnbull on Timor Leste cover-up

Bernard Keane, Politics editor

Only one person has ever been jailed in relation to the CIA's torture program. Not the people who designed it. Not the torturers or managers of the "black sites" where it was carried out. Not even the people responsible for Afghan man Gul Rahman being tortured to death in Afghanistan. The person jailed for it was John Kiriakou, a former CIA officer. What did he do? He blew the whistle on the program, when the CIA was trying to cover it up and deny it existed. Kiriakou was jailed by the administration of the sainted Barack Obama.

Similarly, no one has ever been jailed - or even subjected to disciplinary action, or censure - for one of the most sordid moments in Australia's intelligence history, the bugging of the Timorese cabinet by ASIS at the behest of Alexander Downer. The goal of the "operation" was to benefit Australia's commercial interests and gain an advantage over a fledgling state that needed all the help it could get to become viable after decades of occupation and a violent transition to independence. Instead, we sent spies in to bug them. It's Alexander Downer's legacy from all those years as foreign minister, that and outsourcing Australia's foreign policy to the Bush White House.

It was also, unquestionably, illegal under Australian law. Our overseas spy agency broke the law, as part of a particularly grubby exercise in screwing over one of the poorest countries in the region.

Now the Turnbull governments wants to punish the people who revealed it, Witness K and his lawyer Bernard Collaery. It's important to note that K is not a whistleblower, and has at no stage acted outside the law. He has never spoken to the media - who are in any event prohibited, rightly, from revealing his identity - and he has acted in accordance with the advice of the then-Inspector-General of Intelligence and Security, Ian Carnell, about how to handle his dispute with ASIS. But he's been charged with "conspiring" with Collaery to communicate information, a novel interpretation of lawyer-client privilege.

An illegal, and particularly grubby, act committed at the direction of the Howard government, and a prosecution by the Turnbull government, by its hand-picked Director of Public Prosecutions, signed off by the Attorney-General you'd think Labor would be all over this. But the opposition has been deathly silent. That's because Labor is up to its ears in this saga almost as much as the Coalition. Timor Leste began its Timor Sea suit against Australia when Julia Gillard was Prime Minister, and as the ABC's Steve Cannane reported later, it was Julia Gillard who rejected Timor Leste's complaint about the bugging when they learnt of it in 2012. As it has on so many of the Coalition's assaults on basic liberties, Labor is standing shoulder to shoulder with its own opponents.

The prosecution raises major free speech and transparency issues. The government will likely seek to have the trials conducted in camera. It has much to hide on the bugging operation, particularly given its illegality; there may also be evidence ASIO has bugged not just Collaery - that's already known - but journalists as well. Collaery will seek to prevent his trial

being conducted in secret. Hopefully media organisations will join his attempt to do so next month at the initial hearing. Beyond that, the sheer fact that the government is attempting to punish a lawyer for revealing something embarrassing to the government means the case will attract considerable interest as a test of how far the High Court's implied freedom of political communication extends.

Only the minor parties - Centre Alliance's Rex Patrick, Andrew Wilkie, Tim Storer, and the Greens' Nick McKim - were prepared to stand by Collaery yesterday and protest the prosecution. When we write the history of how Australia became a police state, it will note that Labor colluded and collaborated in its creation.

Collaery prosecution targets ABC but strangely misses News Corp

Bernard Keane, Politics editor

At a time when the government has launched a full-scale war on the ABC over its journalism, the decision of the government's hand-picked Director of Public Prosecutions former Trade Union Royal Commission counsellor Sarah McNaughton to charge Canberra lawyer Bernard Collaery for talking to the ABC raises serious questions about the agenda behind the prosecution.

In addition to facing a charge of conspiring with Witness K to reveal the illegal bugging of the Timorese government by the Australian Secret Intelligence Service under Alexander Downer in 2004, Collaery is being charged with illegally communicating information via interviews or conversations with a number of ABC journalists and producers: Emma Alberici, Peter Lloyd, Connor Duffy, Marian Wilkinson, and Peter Cronau.

Alberici has been a regular target of both the Turnbull government and its media supporters in relation to her journalism on economic issues.

But there's a strange omission from the prosecution's summons to Collaery. The charges relating to ABC journalists or producers all relate to early December 2013 or March 2014, in the wake of raids by ASIO on Witness K and Collaery's offices, which included the seizure of privileged material. ASIO had waited until Collaery was out of the country to conduct the raid of his office.

The omission is that the revelation of the illegal bugging of the Timorese cabinet wasn't by the ABC in December 2013, but by The Australian on May 29, 2013 when Collaery told The Australian's Leo Shanahan what ASIS had done. Shanahan isn't mentioned in the summons to Collaery, which goes through chapter and verse of all the times he is meant to have illegally shared information with ABC staff. Why the selective focus on the ABC when the original "offence" was committed with News Corp?

If the government has its way in preventing Collaery and K's trials from being held in public, we'll likely never find out.

No journalists, editors or producers have been directly charged.