

Secret trials threaten open justice in Australia

Whistleblowers, lawyers and journalists face prosecutions without proper public scrutiny

Written by Kevin Rennie

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[<https://www.flickr.com/photos/ajmercer/34218876302/in/photolist-pShUuk-pShZrp-pSgBqe-UnNevP-U8NFKU>]

Protesters in Brisbane protesting Australia's claim on Timor Leste oil, May 2017- Photo by Andrew Mercer / Flickr (CC BY-NC 2.0)

[<https://creativecommons.org/licenses/by-nc/2.0/>]

A government illegally bugs the office of a foreign country's Prime Minister during treaty negotiations. The spy in charge who turned whistleblower and his lawyer face secret trials. Connections are exposed between government politicians and a big oil company that gained financially from the treaty.

A cold war spy novel or a modern scandal involving Russia's Foreign Intelligence Service (SVR) or America's Central Intelligence Agency (CIA)? Think again!

Spying on Timor Leste

In 2004 Australia and the new nation of Timor Leste were negotiating a treaty [<http://www.internationalaffairs.org.au/australianoutlook/the-story-of-the-shameful-timor-prosecution/>] over their border in the Timor Sea. The future of rich oil and gas fields was at stake. The Australian Secret Intelligence Service (ASIS) bugged [https://en.wikipedia.org/wiki/Australia%E2%80%93East_Timor_spying_scandal] PM Xanana Gusmão's office to steal an advantage in the talks. The Australian Foreign Minister at the time, Alexander Downer, apparently ordered [<http://www.internationalaffairs.org.au/australianoutlook/the-story-of-the-shameful-timor-prosecution/>] the surveillance. He later took a consultancy with Woodside Petroleum, the company that benefited from the original treaty. There have been other suggestions of conflicts of interest [<https://www.michaelwest.com.au/since-when-did-it-become-a-crime-to-report-a-crime-bernard-collaery-exposes-the-timor-sea-betrayal/>]. That treaty was eventually renegotiated in 2018 after the deception was made public.

Global Voices reported on the unfolding story in 2013:

'Australia Spied on Timor Leste to Gain Commercial Advantage'

Australia it seems likes to spy on its friends and neighbors. After Indonesia, it is East Timor's turn in criticizing Australia for allegedly spying on its leaders.

East Timor: 'Australia Spied on Us for Oil Secrets'

East Timor is battling Australia in The Hague over Australia's alleged spying and violation of East Timor's sovereignty in a dispute over an oil and gas treaty between the two.



Global Voices

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Veil of secrecy

The identity of the whistleblower, known as Witness K [<https://www.theguardian.com/australia-news/2019/aug/10/witness-k-and-the-outrageous-spy-scandal-that-failed-to-shame-australia>], has been suppressed. In 2018 he and his lawyer Bernard Collaery [https://en.wikipedia.org/wiki/Bernard_Collaery] were charged with conspiracy to give secrets to Timor Leste. This required the consent of the minister in charge of justice, the Attorney-general Christian Porter. They are facing separate trials.

Witness K has pleaded guilty but maintains that his only breach was to prepare an affidavit for arbitration hearings between the governments at the International Court of Justice in The Hague.

Collaery, who is a former Attorney-general of the Australian Capital Territory, has pleaded not guilty. Part of Collaery's trial will take place in secret following a court decision that protects sensitive or classified information.

Many people on social media have been outraged by the prosecutions, fearing the direction their country is taking:

Jenny Coles

@meerpup11



"A crime against one of the poorest countries in the world by one of the richest." This is our Australia. [#bernardcollaery](#) [#witnessk](#) [#DroptheProsecutions](#)

 **Guardian Australia**  @GuardianAus

Witness K and the Australian spying operation that continues to betray Timor-Leste [theguardian.com/world/2020/jul...](https://www.theguardian.com/world/2020/jul...)

Philip Thalís

@PhilipThalis

The Bernard Collaery persecution has to be one most evil prosecutions (that we know about) in Aust history. A lawyer, assisting a whistleblower going to International Court of Justice, being secretly tried for calling out morally bankrupt if not criminal conduct by Aust Govts

Quentin Dempster @QuentinDempster

National Security Information Act applies blanket censorship on court  rings of charges against Bernard Collaery. Australian Government claims 'national security' in bugging of Timor Leste cabinet office for commercial advantage over Timor Sea resources. @ABCmediawatch

6:18 PM · Jun 15, 2020

Many also question just who or what is being protected. The intelligence agencies? Government ministers who authorized the spying operation or have approved the prosecutions? The commercial oil interests and others who profited from the original treaty?

Human rights campaigner Tom Clarke is a vocal advocate for Witness K and Collaery:

Tom Clarke
@TomHRLC

The Howard Government spied on our Timorese neighbours in an attempt to plunder their oil & gas. Now the Morrison Government is trying to hide the truth and 'bury the bodies'. It's outrageous, morally bankrupt and must be challenged

Secret trials: our judges need to resist the government's pressure
The prosecutions of a former spy and his lawyer following Australia's bugging of Timor Leste raise critical questions about the independence o...
[smh.com.au](https://www.smh.com.au)

2:07 AM · Jul 23, 2020

Others believe that the real purpose behind the drawn-out legal proceedings is to deter possible future whistleblowers.

In August 2019, the Australian Broadcasting Corporation (ABC) Four Corners program examined the Timor Leste scandal in [Secrets, Spies and Trials](https://www.abc.net.au/4corners/secrets,-spies-and-trials/11451004) [https://www.abc.net.au/4corners/secrets,-spies-and-trials/11451004]. It explored 'the tension between those who say national security is paramount and those who fear the steady encroachment of state security on the public's right to know'.

Stephen Charles, a former judge of the Supreme Court of Victoria and barrister, has represented both ASIS and ASIO (the foreign and domestic intelligence agencies) in past cases. He was just one of several senior legal figures [interviewed in the program](https://www.abc.net.au/4corners/secrets,-spies-and-trials/11451004) [https://www.abc.net.au/4corners/secrets,-spies-and-trials/11451004] who were disturbed by the direction of the trials:

It is a fundamental aspect of the rule of law that proceedings take place in public. It is difficult to imagine any justification for these proceedings taking place in secret.

Everyone who reads the newspapers is aware that ASIS officers entered and bugged the Timorese cabinet premises. Everyone is aware that the result of bugging those premises was that Australia got a huge and very unfair advantage in the negotiations being carried out between Timor and Australia.

Prisoner in the iron mask

The trend to prosecute whistleblowers has been alarming. In an unprecedented case, decorated military intelligence officer [Witness J](https://www.abc.net.au/news/2019-12-05/witness-j-revealed-secret-trial/11764676) [https://www.abc.net.au/news/2019-12-05/witness-j-revealed-secret-trial/11764676]'s identity, trial, conviction and prison sentence were kept completely secret. He and Bernard Collaery have been given [Empty Chair](https://libertyvictoria.org.au/content/liberty-victoria-honours-bernard-collaery-and-witness-j-empty-chair-human-rights-award) [https://libertyvictoria.org.au/content/liberty-victoria-honours-bernard-collaery-and-witness-j-empty-chair-human-rights-award] Human Rights awards by civil rights organisation Liberty Victoria:

The secret trials... challenge one of the fundamental bases of our legal system: the requirement for open justice and accountability.

The cases... highlight the need for strong action to ensure that any such trials are held in open court and subject to public scrutiny.

The Afghan files

Former military lawyer David McBride also faces a potentially secret trial for blowing the whistle on alleged war crimes by Australian soldiers in Afghanistan. His "Afghan Files" [revelations](https://en.wikipedia.org/wiki/Afghan_Files_(Australia)) [https://en.wikipedia.org/wiki/Afghan_Files_(Australia)] were behind a Federal police raid on the ABC and possible [criminal charges](https://mumbrella.com.au/afp-sends-brief-of-evidence-to-federal-prosecutors-over-abcs-afghan-files-633328) [https://mumbrella.com.au/afp-sends-brief-of-evidence-to-federal-prosecutors-over-abcs-afghan-files-633328] against one of its journalists.

There is an official [investigation](https://www.sbs.com.au/news/sas-under-investigation-for-55-incidents-in-afghanistan) [https://www.sbs.com.au/news/sas-under-investigation-for-55-incidents-in-afghanistan] being conducted by the Inspector-General of the Australian Defence Force, with alarming [claims](https://www.abc.net.au/news/2020-07-15/sas-soldiers-allegedly-plant-gun-on-dead-bodies-in-afghanistan/12452964) [https://www.abc.net.au/news/2020-07-15/sas-soldiers-allegedly-plant-gun-on-dead-bodies-in-afghanistan/12452964] continuing to emerge such as the murder of non-combatants. The slow progress of the inquiry is a concern for some on social media:



Lionel Bopage

@Leonine111

Australia and War Crimes: Mistake - Same AK-47 planted twice on two dead Afghan civilians killed by Australian soldiers: For more than four years, Inspector-General of Australian Defence Force has been conducting inquiry into allegations of war crimes.

The same AK-47 was photographed on two dead Afghans killed by Austr...
An AK-47 assault rifle with teal-coloured tape wrapped around it was photographed next to two bodies in separate locations after an SAS raid i...
[abc.net.au](https://www.abc.net.au)

2:05 AM · Jul 17, 2020

Closed justice

These trials are being held as Australia is fast becoming a security state with [surveillance laws](https://globalvoices.org/2019/06/16/australias-digital-rights-advocates-and-tech-sector-push-back-against-law-undermining-encryption/) [https://globalvoices.org/2019/06/16/australias-digital-rights-advocates-and-tech-sector-push-back-against-law-undermining-encryption/] undermining digital rights and [police raids](https://globalvoices.org/2019/06/07/police-raids-on-major-media-organisations-expose-lack-of-press-freedom-in-australia/) [https://globalvoices.org/2019/06/07/police-raids-on-major-media-organisations-expose-lack-of-press-freedom-in-australia/] on news organisations and journalists attacking media freedom. Journalist Paul Gregoire, writing on [The Big Smoke](https://www.thebigsmoke.com.au/2020/05/02/this-man-was-imprisoned-by-our-government-even-the-prison-didnt-know-why/) [https://www.thebigsmoke.com.au/2020/05/02/this-man-was-imprisoned-by-our-government-even-the-prison-didnt-know-why/] opinions platform, argues that the decline of open justice in Australia has “glimmerings of totalitarianism”.

Journalists at the ABC have taken to Twitter to add their voices:



Linton Besser ✓

@lb_online



How can Australia ever pursue arguments for the importance of free speech in places like China when it criminalises public interest journalism at home? What a shabby, shameful affair this is.



Dylan Welch ✓ @dylanwelch

So @AusFedPolice have declared they're referring my colleague @DanielMOakes to the C'th prosecutors office ... to repeat that: the Australian Federal Police just referred an Australian journalist for prosecution over revelations about alleged unlawful killings by Aus soldiers.

6:41 AM · Jul 2, 2020

In a recent development, proposed national security [legislation](https://www.lawcouncil.asn.au/media/media-releases/statement-on-proposed-amendments-to-the-asio-act-by-law-council-president-pauline-wright) [https://www.lawcouncil.asn.au/media/media-releases/statement-on-proposed-amendments-to-the-asio-act-by-law-council-president-pauline-wright] would allow children as young as fourteen to undergo compulsory interrogation by intelligence agents. their parent or guardian could be removed from an interview for being disruptive. In addition, tracking devices could also be planted on cars or in bags without a warrant.