

## The secrecy around Witness K is not for national security. It's for face-saving

Those who benefit the most from all the secrecy may well be former members of the Howard government. The public will remain in the dark.

*By Clinton Fernandes in Crikey.com June 23, 2021*

Late last week, the former Australian spy known only as Witness K [pleaded guilty](#) to conspiring to revealing classified information about an Australian operation to bug Timor-Leste's cabinet rooms during sensitive oil and gas treaty negotiations in 2004.

Some media coverage [continues to refer](#) to that operation as “alleged” — an unnecessarily cautious term for several reasons.

First, successive Australian governments have acted in a manner consistent with that espionage operation having occurred — for example, by bringing charges against Witness K and his former lawyer, Bernard Collaery, at a cost of nearly \$4 million.

Second, the government of Timor-Leste has acted in a manner consistent with that espionage operation having occurred — for example, by bringing proceedings against Australia in the Permanent Court of Arbitration in the Hague and the International Court of Justice.

Third, successive Australian governments have responded to those proceedings over several years with a full team of lawyers and negotiators. These acts do not occur over mere allegations of hypothetical espionage operations.

Yet the federal government continues to insist on secrecy when it comes to discussing the operation and the cases against Witness K and Collaery.

It appears the sole reason for this secrecy is to avoid having to admit to the public that it spied on Timor-Leste — a curious, if revealing, fact about democratic accountability. It is as if the government believed that the public that elected it would disapprove of its actions if they knew about them. The other reason for secrecy — to protect Witness K's identity — was easily overcome in the ACT Magistrate's Court by seating him behind black screens and having the cameras in the courtroom turned off.

Collaery has chosen to undergo a jury trial at the ACT Supreme Court. The attorney-general is seeking to have this trial held largely in secret, too. If the government wishes to conceal the fact of its 2004 espionage operation from the public, there are likely to be interruptions to the proceedings as the jury is escorted in and out of court every time that operation is discussed. The blame for these interruptions may be imputed to Collaery, whose actions would inevitably be believed to be responsible for the overwhelming secrecy.

Beyond the courtroom, the 2004 operation raises serious questions about the manner in which the Australian Secret Intelligence Service has been used.

The operation targeted the newly independent Timor-Leste to eavesdrop on its internal discussions during oil and gas negotiations with Australia. It diverted precious ASIS resources away from the war on terrorism. When the ASIS team was in Timor-Leste in September 2004, Jemaah Islamiyah terrorists succeeded in bombing the Australian embassy in Indonesia. To make matters worse, the Timor bugging occurred under cover of an aid project, jeopardising the safety of Australian aid workers everywhere.

The foreign affairs minister at the time of operations against Timor-Leste, Alexander Downer, worked as a lobbyist for Woodside Petroleum after leaving Parliament in 2008. The secretary of the Department of Foreign Affairs and Trade, Dr Ashton Calvert, retired in January 2005 and was [appointed to the board of Rio Tinto](#) the following month. He also joined the [board of directors of Woodside Petroleum](#). Professor Andrew Serdy, a former DFAT officer, said:

“Senior officials at all times simply assumed — whether because of direction to that effect by ministers or their offices I do not know — that the national interest was identical to Woodside’s.”

The public should be allowed to hear that we spied on Timor-Leste, then the poorest country in Asia. It should be allowed to hear the “mission requirement” of the espionage operation: to capture in clear voice the internal deliberations of Timor-Leste’s prime minister and his cabinet during oil and gas treaty negotiations. It should hear who gave these orders.

The courtroom is the only place available because Parliament, which has deliberately restricted its own powers on intelligence matters. The Intelligence Services Act 2001 prevents the parliamentary joint committee on intelligence and security from “reviewing the intelligence gathering and assessment priorities” or “reviewing particular operations that have been, are being or are proposed to be undertaken” by ASIS, ASIO and the other intelligence agencies. Likewise “the sources of information, other operational assistance or operational methods” available to the agencies. It can review only the administration and financing of the intelligence agencies.

As things stand, the primary beneficiary of all this secrecy may well be people in the former Howard government who enjoy security from knowledge of their actions by the Australian public, and security from robust, evidence-based debate as to how the intelligence services should be used.

But this is not national security in any meaningful sense.

The case against Collaery continues.

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