

Australian whistleblower trials shrouded in secrecy

Mike Head
18 June 2019

Two prominent criminal trials of whistleblowers, whose leaks exposed war crimes and illegal operations by the country's US-linked military and intelligence services, are likely to be largely conducted behind closed doors after the Australian government issued "national security information" certificates.

Defence lawyers are still contesting the full extent of the secrecy orders, one of which was issued this month, and the other last year. Such certificates can lead to entire trials being held behind closed doors. Defendants and their lawyers also can be excluded from hearings or viewing the evidence being used by the authorities.

The Liberal-National government's determination to block any public scrutiny of these crucial hearings constitutes wartime-like censorship. It violates the basic principle of open trials and the basic legal rights of the accused—essential centuries-old protections against authoritarianism.

Not a word of criticism has appeared in the corporate media. This is another demonstration of the Australian establishment's commitment to the US military alliance and its preparations for war.

The secrecy edicts have the same basic purpose as the two major police raids conducted this month against Australian Broadcasting Corporation (ABC) and News Corp journalists accused of reporting similar leaked exposures. As the Australian Federal Police chief declared, the raids were conducted to protect Australian involvement in, and access to, the US-led global Five Eyes surveillance network.

One raid, on the home of a News Corp journalist, concerned leaked plans to legalise spying on Australian citizens by the Australian Signals Directorate (ASD), the electronic monitoring and cyber warfare service.

The latest secrecy certificate relates directly to the ABC raid. David McBride, a former military lawyer, is

accused of leaking information about the killing of civilians, including children, the desecration of bodies and other abuses carried out by Australia's Special Forces as part of the US-led invasion and occupation of Afghanistan.

These leaks are potentially devastating because Special Forces commandos have undertaken all the frontline ground attacks conducted by Australia in Afghanistan and Iraq. They are also the troops who would be mobilised internally to deal with "domestic violence" under last year's expanded military call-out legislation.

Even though McBride was committed to stand trial in May, police conducted an eight-hour search of the ABC headquarters, clearly seeking to also incriminate the journalists to whom McBride allegedly gave the material.

McBride is charged with theft of Commonwealth property, three counts of breaching the Defence Act and one count of the unauthorised disclosure of information. He has pleaded not guilty to all charges. He does not dispute leaking the material, but insists that it was his duty to reveal it to the public.

During a brief hearing this month, a prosecution lawyer said the full brief of evidence could not even be served on McBride, despite him being arrested more than nine months ago. That was because of the government's certificates, issued under the National Security Information (Criminal and Civil Proceedings) Act 2004. He requested a two-to-three week delay to allow the prosecution and government to work out how to deal with sensitive material.

Speaking to reporters outside the court, McBride said everything involved in the case was classified secret, but the case was "not about secrets, it's about lies." His defence, he said, was "that it is an army officer's duty

to rebel against an unjust and illegal and immoral regime.” McBride said he would not agree to a proposed plea bargain which would keep the evidence hidden.

Inside the Australian Capital Territory (ACT) Supreme Court, McBride sought to limit further delay in the case by consenting to a private hearing to determine the bounds of “national security” information before he receives the full brief of evidence. He is representing himself to avoid having a security-vetted lawyer—another requirement of the legislation.

The case was adjourned until June 27 for a further mention.

The other trial relates to the illegal bugging of the East Timorese government’s cabinet room by the Australian Secret Intelligence Service (ASIS) in 2004, conducted during negotiations on a lucrative oil treaty with the tiny state.

ASIS’s electronic surveillance was just part of a concerted campaign of economic and diplomatic bullying by Canberra, from the day that it sent troops to occupy the territory in 1999, supposedly to protect the Timorese people.

ASIS is the country’s external spy agency. It is a key part, together with the Australian Signals Directorate (ASD), the electronic monitoring and cyber warfare service, of the Five Eyes network, which is crucial to Washington’s escalating trade war and military buildup against China.

In the case, currently before the ACT magistrates court, a former ASIS officer, known only as Witness K, and his lawyer Bernard Collaery are charged with communicating information about an ASIS operation. They face jail terms of up to two years.

By charging Collaery, as well as Witness K, the government is also attacking the principle of lawyer-client privilege, a centuries-old protection against authoritarian rule.

This case too has been subject to extraordinary secrecy and delay. A preliminary hearing, closed to the public, to decide how to deal with sensitive evidence is set down for August. Witness K and Collaery will have faced the courts for more than 14 months by that time.

In both cases, Attorney-General Christian Porter issued certificates declaring that evidence in the trials was “likely to prejudice national security.” Like all the

police-state laws imposed on the pretext of the “war on terrorism,” the 2004 Act extends far beyond alleged terrorist plots or acts.

Initially used to help convict “terrorist” suspects, the Act is now being utilised in “security” trials. As the WSWs warned from the outset, these measures can be used to cover-up and suppress opposition, even internal dissent, to the criminal wars and abuses—past, present and under preparation—of the US and its allies, including Australia.

Pushed through federal parliament in 2004 with the backing of the opposition Labor Party, the Act hands the government vague and far-reaching powers.

Any certificate issued by the attorney-general is “conclusive evidence”—making it virtually impossible to challenge. “National security” is defined to mean “Australia’s defence, security, international relations or law enforcement interests.” That covers all the predatory interests of Australian imperialism and its US and other Five Eyes partners.

The Act permits trials on terrorism, espionage and “other security-related” charges to be held in complete secrecy. In closed-court sessions, judges also can allow government witnesses to testify in disguise via video and exclude lawyers who fail to obtain security clearances.

The staging of secret trials is another component of a global war on journalists and whistleblowers, in order to intimidate and persecute anyone who exposes the criminal operations of the US-led military-intelligence apparatus. This offensive is being spearheaded by the bid to extradite Julian Assange, the WikiLeaks founder and journalist, to the US, and the re-imprisonment of the whistleblower Chelsea Manning, who laid bare Washington’s murderous and anti-democratic operations around the world.



To contact the WSWs and the
Socialist Equality Party visit:
wsws.org/contact