

Australian PM defends secret “national security” trials

Mike Head

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Prime Minister Scott Morrison last week publicly supported the holding of criminal trials in total secrecy if they allegedly involve “national security information”—that is, any information about the undercover activities of Australia’s military and intelligence agencies.

Asked by a journalist at a media conference if he thought it appropriate to have a “permanently secret legal proceeding in Australia in 2019,” Morrison replied in the affirmative. He specifically backed the government’s use of the National Security Information (Criminal and Civil Proceedings) Act (NSI Act) against an ex-intelligence officer known only as “Witness J.”

Morrison’s statement is a further warning of the creation of a police-state framework. No known Australian precedent exists for what happened to “Witness J.” In effect, he was thrown into a legal black hole. He was prosecuted, convicted and imprisoned in Canberra last year via a criminal trial that was completely hidden from public knowledge, let alone scrutiny.

This violates the fundamental democratic principle of public jury trials established by centuries of struggle against tyranny, including the English Revolution of the 1640s. Among the outrages that led to the overthrow of Charles I and the end of the absolute monarchy was the use of the secretive and arbitrary Star Chamber court to suppress political dissent and execute opponents of the regime.

Jailed for 15 months last year in a high-security facility—with the first month in solitary confinement—“Witness J” was released in August. However, he and the media are still gagged by undisclosed “Commonwealth orders” from informing anyone about the details of his case.

No one even knew of his fate until a sketchy outline emerged last month via a related lawsuit he took to challenge the Australian Federal Police (AFP) seizure of two manuscripts he wrote in prison.

At Morrison’s media conference, the prime minister not only defended the secret trial of “Witness J.” He endorsed the wider use of such suppression orders and indicated that

they would be applied to two trials currently underway against whistleblowers and lawyers who exposed war crimes and illegal spying conducted by the Australian military and intelligence apparatus.

“The National Security Information Act was invoked to manage the protection of national security information on those proceedings and in proceedings like these,” Morrison said. “And the attorney-general has said that the information is of the kind that could endanger the lives or safety of others.”

Asked if that applied to “Bernard Collaery and Witness K,” Morrison said: “I’ve just answered the question.”

Collaery, a Canberra lawyer, is being prosecuted for helping his client, an ex-intelligence officer known only as “Witness K,” to expose the Australian Secret Intelligence Service bugging of East Timor’s government during oil and gas negotiations in 2004.

The government is also demanding closed-door proceedings in the trial of an ex-military lawyer, David McBride, who revealed a cover-up of civilian killings and other violations conducted by Australian Special Forces units during the invasion and occupation of Afghanistan.

Similar provisions could be invoked in any trials of the journalists who were subjected to intimidating AFP raids in June. Police ransacked the home of News Corp journalist Annika Smethurst, who reported plans for domestic surveillance by the Australian Signals Directorate. The AFP also raided the headquarters of the Australian Broadcasting Corporation (ABC), which had published information about Special Forces war crimes in Afghanistan.

These raids followed the global precedent set by the April 11 arrest in London of Julian Assange, the WikiLeaks founder and journalist, and charging with “espionage” for exposing the war atrocities and anti-democratic conspiracies of the US government and its allies, including those in Canberra.

“Witness J’s” imprisonment confirms that the highest echelons of the political, military and intelligence establishment are engaged in intensive operations to deny

the public any knowledge of the crimes, abuses and mass surveillance committed by the US-linked “security” agencies.

According to information reported by the ABC, “Witness J” is an ex-military officer who served in East Timor, Afghanistan and Iraq—all targets of Australian military interventions. His intelligence career ended in South East Asia, another sensitive region for predatory Australian military and spying operations.

“Witness J” was not a whistleblower. But he was convicted of allegedly divulging classified material after he sent complaints via email and “other unsecure electronic means” to a head of security and a departmental psychologist about his treatment by the agency that employed him.

A recent series of tweets, published under the name of “Witness J,” denied the claims of Morrison and Attorney-General Christian Porter that he endangered lives and “consented” to the suppression orders imposed on his trial. “The accusation that I disclosed recruited agents (for those who understand the professional definition) while overseas is categorically untrue,” he wrote.

It was also “unequivocally untrue” that he had consented to his secret trial, another tweet stated. “I was not informed of, nor given an opportunity to give my consent to, these orders ... Why would I consent to orders that restricted my own friends and family from coming to visit me?”

A further tweet said: “For me the scariest aspect to my Kafkaesque situation is that Shane Rattenbury, as ACT [Australian Capital Territory] Minister for Corrections, claims he did not know of my existence in his tiny territory.” That is, the minister nominally responsible for Canberra’s prison system, a Greens member of a Labor Party-led coalition government, said he knew nothing about the secret jailing.

“Kafkaesque” is a reference to Franz Kafka’s dystopian novel, *The Trial*, in which the accused man, Josef K., is arrested, tried and ultimately executed without knowing what crime he allegedly committed.

With the Labor Party’s support, the Howard Liberal-National government introduced the NSI Act in 2004 under the guise of protecting the population against terrorism following the September 11, 2001 terror attacks in the US.

The WSWs warned at the time that the NSI Act’s draconian provisions would not only be used against those accused of terrorist-related offences: “The Act permits trials on terrorism, espionage, treason and ‘other security-related’ charges to be held in complete or partial secrecy.”

We also explained that the Act facilitated frame-ups: “In closed court sessions, judges can allow government witnesses to testify in disguise via video and, in some

circumstances, exclude defendants and their lawyers from trial proceedings.”

It is now clear that the Act enables governments to go further, by conducting trials that no members of the public even know are taking place. This raises a disturbing question. How many other such trials have been held?

The NSI Act is just one aspect of a myriad of secrecy measures imposed to protect the operations of the police-military-intelligence apparatus. A 2010 Australian Law Reform Commission report identified 506 secrecy provisions in 176 pieces of federal legislation, including 358 criminal secrecy offences.

Since then, these walls of secrecy have been extended repeatedly by successive Labor and Liberal-National governments. This was taken to a new level by last year’s “foreign interference” legislation, which criminalised the leaking or publication of any material deemed to damage the country’s military, intelligence or economic interests.

This assault on basic legal and democratic rights goes beyond covering up the past crimes of the military and intelligence apparatus. It is being driven by preparations for even greater crimes. Amid Washington’s increasingly frenzied economic and military confrontations against its rivals, particularly China, the Trump administration is demanding that the Australian ruling elite take a front line in the conflict with China.

These police-state developments highlight the importance of fighting for the freedom of Assange and the courageous whistleblower Chelsea Manning. The demand for their release is central to the struggle against war and authoritarianism, and their source, the capitalist profit system itself.



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