

“Witness K” convicted for exposing Australia’s illegal bugging in East Timor

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A former senior Australian Secret Intelligence Service (ASIS) officer, known publicly only as “Witness K,” was sentenced to a suspended jail term last Friday. His “crime” was to blow the whistle on the Howard Liberal-National government’s use of ASIS to plant a listening device in East Timor’s cabinet room in 2004 during crucial oil and gas negotiations.

While “Witness K,” now 70, was spared immediate imprisonment after pleading guilty to breaching his secrecy obligations as an intelligence official, the current Liberal-National government and the magistrate presiding over the case insisted that he had to be punished to “send a message” on “national security.”

Meanwhile, the real criminals remain free—those responsible for bugging the East Timorese government in order to help retain Australian corporate control over the multi-billion dollar energy resources beneath the Timor Sea between the two countries.

Moreover, the government is pushing ahead with the closed-door trial of Witness K’s lawyer Bernard Collaery, who has pleaded not guilty to conspiring with the intelligence officer and could face years of imprisonment if convicted.

The government, through former Attorney-General Christian Porter, personally signed off on the prosecutions, invoking section 39 of the Intelligence Services Act, which criminalises the communication of any information acquired by ASIS, punishable by up to 10 years’ imprisonment.

A wall of secrecy has been retained around the Timor bugging case for many years because it is so politically and ideologically damaging to the Australian ruling class and its intelligence apparatus. It lays bare the reality that behind the cloak of “national security” stands the plundering interests of Australian imperialism throughout the region, from the underwater riches of the Timor Sea to South East Asia and the Pacific and Indian Oceans.

The dirty operations of ASIS, the overseas surveillance service, and other Australian intelligence agencies must be hidden from public view all the more because they are always conducted in close collaboration with their US counterparts, reflecting Australian capitalism’s dependence on Washington for military and intelligence protection.

The Australian spy services are an integral component of the US-led “Five Eyes” global network that conducts mass surveillance on the world’s population and monitors other governments whose interests could potentially conflict with those of Washington.

East Timor, a statelet on half an island in the sprawling Indonesian archipelago, is also a key strategic location in the intensifying US economic and military drive to combat the rise of China and reassert the hegemony over the region that Washington established via its victory in World War II.

To maintain absolute secrecy, the ex-ASIS officer Witness K stood behind a wall of black panels, invisible to the packed courtroom, as he was handed a three-month suspended term of imprisonment and a 12-month good behaviour order.

In return for his guilty plea, first entered two years ago, the government did not seek an immediate jail term. However, Richard Maidment, the Commonwealth director of public prosecutions, opposed Witness K’s application for a non-conviction order. Maidment said Witness K’s case should be used as a vehicle to deter others from engaging in similar acts.

Witness K’s lawyers had urged the court to show the former highly-decorated naval and intelligence officer “judicial mercy,” saying he suffered from numerous mental health afflictions—post-traumatic stress disorder, suicidal ideation, depression, anxiety and hyper mania.

Magistrate Glenn Theakston nevertheless agreed with the government. He declared that Witness K had violated

“strict and absolute” proscriptions regarding ASIS. Even though Witness K had been motivated by considerations of justice and a “rules-based order of international relations,” he had compromised the agency’s effectiveness, safety and security and jeopardised Australia’s relationships and reputations.

Theakston insisted the offence was “not trivial.” It was an “express, deliberate breach of the defendant’s obligations to maintain the secrecy of the operations of ASIS.” Nor was it any excuse that Witness K made no attempt to hide his actions from the Australian government.

Witness K made the “illegal” disclosures in two affidavits in 2013, which were intended to be used at the Permanent Court of Arbitration in The Hague, where East Timor had accused Australia of failing to negotiate in good faith by spying on its impoverished supposed ally.

Witness K’s home was raided in 2013 and his passport seized to prevent him from going to The Hague to testify for East Timor in its bid to overturn the unfavourable oil and gas deal secured by Australia. Despite the raid, conducted by the internal spy agency, the Australian Security Intelligence Organisation (ASIO), no charges were brought until 2018, after the conclusion of a treaty with the East Timorese government.

Confident of the opposition Labor Party’s support, Prime Minister Scott Morrison personally endorsed the trials of Witness K and Collaery in September 2018. Morrison told reporters “justice will be served” by the prosecutions. Labor’s shadow attorney-general, Mark Dreyfus, made clear his party’s backing, telling the *Guardian*: “The charges are serious and it is important to let the judicial process take its course.”

Both the Coalition and Labor uphold the use of the National Security Information (Criminal and Civil Proceedings) Act, passed in 2004, supposedly to assist the “war on terrorism,” to conduct Collaery’s trial behind locked doors.

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

These are not the only secret trials. In 2019, it was revealed that an ex-soldier and intelligence officer, known only as “Witness J,” had been convicted and imprisoned in Canberra for 15 months via a criminal trial that was completely hidden from public knowledge.

This assault on basic legal and democratic rights matches the brutal methods being used against Julian Assange, the WikiLeaks founder. With the backing of the Australian government, he remains incarcerated in a maximum-security UK prison, facing extradition to the US on “espionage” charges for exposing the war atrocities and anti-democratic conspiracies of the US government and its allies, including those in Canberra.

Collaery, a former Liberal Party attorney-general in the Australian Capital Territory, has described Witness K as a “patriot” who raised criticisms of the ASIS bugging mission through the proper channels.

Collaery’s comments indicate that his concern is to repair the damage done to ASIS’s credibility. Among other things, the illegal bugging operation further exposed the fraud of Canberra’s claims to have intervened militarily in East Timor in 1999 for the benefit of the long-impooverished Timorese people.

Whatever the motivations of Witness K and his lawyer, however, there is no doubt that the working class must demand the dropping of all the charges. The people who should be on trial are members of the Howard government, such as its foreign minister, Alexander Downer, who was in charge of ASIS in 2004.

Alongside them should be members of the subsequent Labor government, which authorised the raids on Witness K and Collaery in 2013. Labor also refused to renegotiate the 2006 treaty with East Timor, which was secured with the help of ASIS’s spying and retained the lion’s share of the oil and gas revenues for Australian imperialism and the conglomerates it favoured, including Shell, Woodside and ConocoPhillips.



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