

Australian authorities blocking prosecutions over lawyer who spied on clients

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22 June 2023

In an extraordinary intervention this week, Geoffrey Nettle, a former Australian High Court judge, highly-respected legal figure and the head of an Office of the Special Investigator (OSI), denounced Victorian state authorities for refusing to level any charges over the unlawful spying by a top criminal barrister on her own clients.

The OSI was established in the fallout of 2019 revelations that for years, Nicola Gobbo had functioned as an informant for Victoria Police, giving them information about her own clients. At the time of the revelations, top lawyers and legal experts said that the Gobbo operation was possibly unparalleled in any country based on a western legal system, entailing, as it did, the most obvious violations of lawyer-client privilege.

Gobbo, it emerged, had first been registered as an informant in 1995, while still a student. That had taken place shortly after her boyfriend's house was raided over drug supply allegations. Despite her brush with the law, Gobbo, from a prominent legal family, would rise through the ranks of Melbourne's criminal defence barristers.

She came to public prominence in the late 1990s and early 2000s, amid a gangland war that pitted reputed criminal leaders against one another. Some thirty-five people would be murdered. Gobbo represented individuals involved in the conflict. Over that period, from 1999 to 2009, she was a police informant.

The OSI's brief was to investigate fully the extent of the wrongdoing, and to prepare briefs for prosecution, which were delivered to the state's Director of Public Prosecutions (DPP). But Nettle's statements this week have branded the whole exercise as a charade. It appears clear, from his remarks, that there was never any intention to prosecute Gobbo, much less the senior police officers involved in the operation.

In a report tabled in the Victorian parliament Wednesday, Nettle wrote: "In light of the director's past

refusal of permission for OSI to file charges of relevant offences... I consider that there is no longer any point in OSI persisting with investigating." He was effectively calling for his own office to be abolished. If it were not, he would resign.

Nettle stated that he had identified eight issues that justified prosecutions of five individuals. "Each of those eight matters concerned multiple suspected offenders in relation to a range of facts traversing a period of more than nine years," Nettle wrote.

There were voluminous audio and video recordings, corroborating the alleged criminal acts. The OSI had prepared briefs of evidence that spanned more than 5,000 pages.

Despite all this, Nettle indicated that the DPP Kerri Judd had made it plain that there would be no prosecutions at all. He claimed Judd did "not consider that there was a reasonable prospect of conviction." In one instance, a brief for a charge of perjury had been prepared against an alleged offender. But it was rejected on the grounds that a non-custodial sentence was likely and the individual was out of the country.

Gobbo was spirited out of Australia when her identity was publicly revealed in early 2019. While this was purportedly carried out to protect her from possible reprisals against the hundreds of clients whose rights she wantonly violated, it also had the effect of placing her outside any Australian legal jurisdiction. Her whereabouts are secret and publishing them is a punishable offence.

Nettle appended a letter from Judd. It noted that the offending had concluded in 2009, and had occurred over the preceding decade. The letter stated: "Accordingly, a hypothetical trial would likely proceed some 15–25 years after the event it concerns. The passage of time will undoubtedly have a significant bearing on the prospects of conviction."

That seems a fairly extraordinary position. Prosecutions

for serious crimes often take place decades after they occurred. There is no issue, in this instance of an elapsed statute of limitations. If 2009 is to be considered the distant past, lost in the fog of time, will the DPP vow never again to launch a prosecution based on events that occurred fifteen years or more ago?

Since Nettle's public intervention, the DPP and other Victorian prosecuting representatives have added to the reasons against prosecution. They include a lack of confidence that a key witness, who has done various deals with the state authorities, would testify against police, or that the testimony would be credible. That appears to be a reference to Gobbo.

Whatever the rationalisations, increasingly tortured, the essential issue is unchanged. A vast, decades-long operation, involving the highest reaches of the capitalist state and violating the most basic precepts of due process and the rule of law is on the public record. But not a single individual will be held to account, or even brought before a courtroom.

The refusal to prosecute occurs in the context of a years-long cover-up of the Gobbo operation. It became widely-known, in legal and alleged criminal circles in 2008–09, when an inexplicable decision was made by Victoria Police to use Gobbo as a witness in a murder trial. While her identity was nominally protected, her collaboration with the police became an open secret in legal and alleged criminal circles.

The public, however, was kept in the dark for years more. A March 2014 article in the Murdoch-owned *Herald Sun* first revealed the operation, without providing extensive details. Victoria Police, the very entity accused of the wrongdoing, responded by successfully seeking injunctions against further coverage. This included the protection of Gobbo's identity, by force of serious criminal punishment, for five years.

In the course of her career as an informant, Gobbo provided thousands of reports to police. The scope is indicated by the fact that this included more than 5,000 reports between September 2005 and January 2009 alone. Gobbo represented or gave legal advice to an estimated 1,297 individuals while working as a police informant. There are disputes over the exact tallies, but the number of cases tainted by her secret dual role sits at more than 1,000.

Dozens of individuals represented by Gobbo and subsequently convicted have appealed based on her role. Several high-profile individuals have had a handful of convictions reversed. For the most part, they have

extensive rap sheets and thus are remaining in prison despite the official wrongdoing. The vast majority of individuals potentially violated by Gobbo, however, have received no justice whatsoever.

The longtime cover-up has clearly served to protect Victoria Police, some of whose senior most figures were directly implicated.

But questions of broader knowledge and involvement are raised. The Melbourne gangland wars came to national and international notice. In a country where gun violence is relatively uncommon, for a period of years, gangland executions, including in public places of Melbourne, the country's second-largest city, were not uncommon.

Some of the individuals Gobbo represented, moreover, were accused of being top criminal leaders. They were alleged to control substantial portions of the national drug supply and to have links to international crime syndicates.

Such issues come under the purview not only of the state police but of the Australian Federal Police. Given that they touch on national security, they may also be monitored by the Australian Security Intelligence Organisation (ASIO), the domestic spy agency.

Were all of these entities entirely in the dark, when Victoria Police were securing valuable information from a barrister representing alleged criminal bosses? That would appear unlikely.

In any event, the Gobbo operation and its fallout provide an object lesson in the class character of bourgeois democracy and legality.

While due process and the rule of law exist on paper, state agencies feel impunity to grossly violate them. And then, when it comes out in the wash, those involved walk away unscathed.

Contrast that with the thousands of overwhelmingly poor and working-class people in prison, a substantial proportion of whom are on remand and have not been convicted of a crime, and a majority of those who have been sentenced have committed petty offences related to theft and the drug crisis.



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