

# Why is Bernard Collaery's trial a secret?

<https://www.theaustralian.com.au/commentary/why-is-bernard-collaerys-trial-a-secret/news-story/61168e207f3b89341db786b985338f35>

**STEVE BRACKS**



*Bernard Collaery is 'being tried in secret for reporting a crime by one of the richest nations in the world against one of the poorest'. Picture Kym Smith*

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The pandemic and the tragic unravelling of President Donald Trump's America have combined to aid Canberra's agenda to keep the prosecution of former ACT attorney-general Bernard Collaery out of the public eye.

There has been barely a mention in the media recently about an extraordinary cohort that included former prime ministers, presidents, ministers, generals and ambassadors who had provided affidavits to the ACT Supreme Court in support of Collaery's submission that his trial for breaching the Intelligence Services Act should be held in public.

It is a year since the AFP raided the home of News Corp journalist Annika Smethurst and the ABC headquarters over separate reports sourced from whistleblowers.

Now we have the media banned from covering key elements of a whistleblower's trial.

The charges against Collaery concern revelations that in 2004, the then foreign minister, Alexander Downer, approved an Australian Secret Intelligence Service operation to bug the room used by East Timor's negotiators during maritime boundary negotiations with Australia.

The ACT Supreme Court pre-trial hearing was necessary because Attorney-General Christian Porter issued a nondisclosure certificate under the National Security Information Act.

The act was introduced in 2004, the year the bugging in Dili occurred, to allow national security information to be used in Australian courtrooms — under a regime of strict secrecy. It was a response to the war on terror.

It is sensible that alleged perpetrators of breaches of Australia’s “security” should be prosecuted without exposing our intelligence secrets.

But why is an Act, introduced to facilitate the prosecution of terrorists, invoked in the trial of a whistleblowing lawyer, who revealed Australia’s spying on East Timor during Timor Sea maritime boundary negotiations almost a decade and a half ago?

There was no national security threat to Australia or Australian citizens, and any damage to Australia’s relationship with our close, friendly, underdeveloped neighbour East Timor, has surely already occurred — and arguably been remedied by the median line-based maritime boundary treaty East Timor signed in March 2018. If anything, the government’s decision to prosecute Collaery and Witness K, just two months after the treaty was signed, has again tested and stressed Australia’s relationship with Timor-Leste.

Two of the new nation’s leading statesmen, my friends Xanana Gusmao and Nobel Laureate Jose Ramos Horta, both of whom have served as prime minister and president, swore affidavits in support of Collaery’s plea for an open trial.

Both were prepared to travel to Canberra to be cross-examined on their evidence until the COVID-19 pandemic made that impossible.

The pre-trial hearing started on May 25 — in the ACT Supreme Court.

The absurd degree of secrecy surrounding the prosecution means that we don’t know if Gusmao or Horta appeared by video link, or if they will appear at a later date when they can travel, or if their evidence has been accepted by the prosecution unchallenged.

Nor do we know if Collaery’s other high-profile witnesses, Australia’s former Indonesia ambassador John McCarthy, former foreign minister Gareth Evans and former defence chief Chris Barrie, have given evidence.

The trio’s statements are not public, but Justice David Mossop told the court during an earlier pre-trial hearing that their affidavits were intended to directly challenge assertions by the Attorney-General that there would be a risk of prejudice to Australia’s national security if certain information was disclosed publicly during the trial.

Interestingly, given the past roles of Evans, McCarthy and Barrie, all three would have the highest level of security clearance. But again, we don’t know if this means they have been able to see and challenge the evidence against Collaery.

I suspect a primary motivation for the excessive secrecy surrounding Collaery’s prosecution is to protect former prime minister John Howard and Alexander Downer, who could both be called to give evidence about why the spying was authorised.

I can understand why they would be uncomfortable seeking to justify the bugging in open court.

How do you defend diverting ASIS officers from the war on terror to spy on the leaders of the desperately poor Timorese?

At the time of the bugging, the nation had only been in existence for two years and carried the physical and emotional scars of the brutal 24-year Indonesian occupation.

In what moral universe can you justify installing listening devices to add to Australia's already massive advantages in negotiations with the Timorese for rights to \$40bn-plus worth of oil and gas in the Timor Sea — on Timor's side of the median line? Clearly the same moral universe in which Collaery is being tried in secret for reporting a crime by one of the richest nations in the world against one of the poorest.

The spying was a disgraceful episode in Australia's history perpetrated by the Howard - government, and successive Coalition governments have continued to defend the indefensible.

The spying is out of the bag, and attempts to cover it up, and impose secret trials on moral men, only adds to Australia's shame.

*Steve Bracks was premier of Victoria from 1999 to 2007.*

Laurie

25 minutes ago

The moral of all this is we should have left East Timor to the Indonesians.

Keith

34 minutes ago

(Edited)

Doesn't Steve Bracks have some kind of consultancy work with East Timor? It's this capacity in which he is writing rather than former Premier of Victoria. This should be stated.

Gavin

39 minutes ago

The trial itself is not a secret. Any reasonably well read individual in current affairs knows the background and Australia has been duly criticised for trying to put it over its destitute neighbour. What may come out in testimony may well expose the inner workings of our security services and by the very nature of their work it needs to be 'secret'. Methinks this has more to do with political point scoring by the Left rather than a genuine call for transparency and given their machinations over the years to control free speech, their hypocrisy is on show yet again.

Patricia

42 minutes ago

If Steve Bracks cannot understand the connection between oil and gas resources and our national security interests then he has a serious problem with logical thinking.

other half

Harry

45 minutes ago

Sadly, another blatant misuse of the Australian legal system, and just for what?

Les

59 minutes ago

(Edited)

There it is, had to wait to the last two paras to find Bracks' true colours.

Let me tell you, intelligence collection is not immoral. It is an imperative. And you don't direct 100 per cent of your capability to the war on terror even if it is important. You develop an organisation to do, I don't know, more than one thing at a time?

Here's the lesson: you don't get to reveal highly classified information to the public, even if you're friends with Barrie and Evans. You go to gaol.

Barry

1 hour ago

(Edited)

Why are your knickers in a knot about this Mr Bracks?

Altruism?

Politics?

Interesting that it's Howard and Downer.

gej

1 hour ago

I support the spying.

The Timorese powerbrokers at the time were some Portuguese speaking characters who had returned after the Indonesians departed and they seemed motivated by self interest. They even declared that the national language of Timor was to be Portuguese. No wonder we were watching them carefully.

At the time it looked like a disaster in the making.

Martyn

1 hour ago

Steve Bracks? Wasn't he another Labor disaster?

bill

46 minutes ago

Bracks was nothing brilliant as Victorian premier, until you compare him to the present incumbent.

James

1 hour ago

At a time when Australia is paying a high price for criticising China's official secrecy, it is beyond the pale for Australia to cover up its own embarrassing scandal which has nothing to do with counter-terrorism.

Les

57 minutes ago

Who said it has to do with CT? A Labour clown revealed highly classified information. That's the end of the argument.

John

53 minutes ago

"nothing to do with counter-terrorism." and you know that how?

The Law is there for a reason and just because you do not agree with it does not give one the right to break it.

If one chooses to break the Law as a matter of principle then one must be prepared to do the time.

That is why they are called a martyr.

Deakin

2 hours ago

This is the sort of secret political trial that we criticise China for.

Les

56 minutes ago

The trial has been in the media for years. Testimony won't all be public because some will include highly classified information.

Ken

2 hours ago

Maybe the government has had enough of leftie lawyers taking matters into their own hands on the basis of their personal political beliefs.

interesting too how Steve Bracks has taken up the cudgels for this bloke. Steve is hardly known as a defender of free speech..

Greg

2 hours ago

Why is Daniel Andrews' BRI deal secret?

Arvid

2 hours ago

Aside from any political implications in all this, you gotta wonder why things are kept from the Australian people at all.

Look at the current BRI in Victoria or the arrangements over gas meaning it is cheaper to buy from overseas than our own.

Politicians of all sorts stick out their necks a long way for international resources companies rights and sometimes for foreign governments and organisations. Look only at the Paris tax on us all. What a con that is a tax on air! What next, breathing?

Graeme

2 hours ago

the tragic unravelling of President Donald Trump's America

What is happening in the U.S. now is a direct consequence of democratic policies and attitudes. Why else do you think it's the Democratic held cities that are burning. The burning, looting and rioting are not a result of Trumps policies.

King Coal

2 hours ago

Thanks Graeme, saved me from highlighting the sneering that goes with that statement.

Richard

2 hours ago

The chief beneficiary of the spying operation was Woodside Petroleum. When he lost his seat in Parliament a few years later, Downer stepped straight into a well remunerated position with Woodside. If this had happened in, say, Russia or China, the Australian media would cite it forever after as blatant corruption and misuse of power.

Walter

1 hour ago

So, we have a Russian mafia of our own. What a surprise, and no wonder they do not want a federal ICAC ...

Glencoe

41 minutes ago

Downer did not lose his seat re retired.

Tim

2 hours ago

The Morrison Govt overall is doing a wonderful job but let's not lose our moral compass. What we did to East Timor was disgraceful and any trial must be public

Greg

2 hours ago

Yes, like supporting them liberate from Indonesia.

P

2 hours ago

"The spying was a disgraceful episode in Australia's history perpetrated by the Howard - government"

Not in the least.

"and successive Coalition governments have continued to defend the indefensible."

But not intervening ALP/Green governments?

Frankly, the "disgraceful" & "indefensible" was Bishop caving in to East Timor.

Paul

3 hours ago

He knowingly broke the law and should be prosecuted. While some of the evidence being presented at the trial might be secret, the trial itself is not secret. Lawyers should be no more exempt from the law than journalists.

Steve

3 hours ago

Lucky he didn't go to a strip club or he'd be all over the media?, Kevin Rudd, one nation.???

Stereo Mike

3 hours ago

Hardly a polarising case and one has to wonder why Steve Bracks is so concerned he's writing pieces in the Oz about it.

peter

1 hour ago

Trying to draw attention away from Andrews.

Edi

3 hours ago

A touch of bias Mr Bracks.

Peter

3 hours ago

The author presumes the outcomes and findings pre-trial. Saves the expense of the justice system I suppose.

Warren

4 hours ago

Why is not everyone out protesting ??? Shameful ...

Noel

4 hours ago

If the debt that Australia owed (and still does in my mind) to the Timorese people for their courageous defence and support of our Diggers in WW2 had any meaning, the then government would not have engaged in such underhanded behaviour. Greed is greed is greed and if the reputations of various people are undermined by exposure of their unscrupulous actions, then so be it. Let the truth out!

Martin

5 hours ago

If he doesn't like it he can challenge it in court. Who in their right mind would disclose an ASIS operation under any circumstances? Any concerns or complaints should be made to the Inspector-General of Intelligence and Security.

Texas Jack

6 hours ago

On what planet is Trump responsible for what happens in a Canberra courtroom in a case that preceded his presidency by twenty years? The lengths we now go to to apply a smear are fantastic.

norman

7 hours ago

There should be one law for all, and public servants should not run their own personal foreign policies.