

<https://www.abc.net.au/mediawatch/episodes/timor-spying/9972178>

Timor spying

JUANITA PHILLIPS: A high-profile lawyer and a former spy face up to two years jail, accused of conspiring to release top-secret intelligence information. The charges cap off an infamous episode more than a decade ago when Australia bugged the fledgling Timorese government.

— ABC News, 28 June, 2018

That high-profile lawyer, Bernard Collaery, and his client, a former Australian Secret Intelligence Service officer known only as Witness K, are accused of conspiring to leak information that embarrassed the Australian government and threatened a lucrative international deal:

GREG JENNETT: The charge is that Witness K and Bernard Collaery worked to breach ASIS' golden code of sworn ultra-secrecy about a 2004 mission that's very public knowledge - the bugging of East Timor government offices to spy on its negotiations for oil and gas rights.

— ABC News, 28 June, 2018

It was The Australian that first made the bugging public, reporting on its front page in May 2013 that East Timor believed then-foreign minister Alexander Downer had ordered the bugs to be planted in 2004.

Collaery, who was acting for Witness K after his employment was terminated by ASIS after complaining about the bugging operation, told the paper's Leo Shanahan:

"So it was a Watergate situation. They broke in and they bugged, in a total breach of sovereignty, the cabinet room, the ministerial offices of then prime minister [Mari] Alkitiri and his government. They placed clandestine listening devices in the ministerial conference room ..."

— The Australian, 29 May, 2013

Alexander Downer refused to comment on the story and it gained little traction.

Until the ABC's Lateline noted this development six months later:

EMMA ALBERICI: A bitter court battle between Australia and East Timor has taken an extraordinary turn tonight after the home of a key lawyer was raided. Files from the house and office of Canberra-based lawyer for the East Timorese government, Bernard Collaery, were removed by ASIO in the raid. A whistle-blower, a former Australian spy, has also been questioned by ASIO today.

— Lateline, ABC, 3 December, 2013

Collaery, who was interviewed by Alberici, denies that Witness K is in fact a whistle-blower, claiming he's never talked to the media.

But in preparing his court case, K - who is reported to have been the chief technical officer at ASIS - set out what he knew of the bugging operation in an affidavit.

And prosecutors snatched that affidavit in the 2013 raid.

The following year, Collaery told Four Corners:

BERNARD COLLAERY: This is no Snowden affair. There are no revelations to come beyond the fact that this eavesdropping operation took place.

— Four Corners, ABC, 17 March, 2014

Collaery certainly hasn't been shy in defending East Timor, Witness K or himself in the media.

And that might have consequences for the journalists he spoke to.

The summons from the Commonwealth Director of Public Prosecutions, not publicly released but seen by Media Watch, names journalists Collaery had contact with.

They include ABC News reporters Peter Lloyd and Conor Duffy, Emma Alberici, who spoke to Collaery on Lateline, and Four Corners reporter Marian Wilkinson and her producer Peter Cronau.

Strangely, Leo Shanahan, who broke the story for The Australian and quoted Collaery, is not named. And that makes Crikey political editor Bernard Keane smell a rat:

Why the selective focus on the ABC when the original "offence" was committed with News Corp?

— Crikey, 29 June, 2018

That is a very good question.

But the government won't answer it, and it's warned the media against commenting on the proceedings.

However, many are worried about what it means for free speech.

Independent MP Andrew Wilkie, a high-profile whistleblower himself, used parliamentary privilege to reveal the charges on Thursday:

ANDREW WILKIE: ... and now this government wants to turn the former ASIS officer and his lawyer into political prisoners. But that's what happens in a pre-police state, deputy speaker, where instead of a royal commission they lock up people who more likely deserve the Order of Australia.

— ABC News, 28 June, 2018

Barrister Greg Barns of the ALA, or Australian Lawyers Alliance, says it's the latest in a long line of government attacks:

GREG BARNES: There has been a chilling of freedom of speech in this country and a chilling of dissent in recent years ...

And so there's a general trend here which we think, at the ALA, is quite disturbing.

— PM, ABC Radio, 28 June, 2018

Under the Intelligence Services Act, which is being used to prosecute Collaery and Witness K, there appears to be no chance that journalists could be charged, although they could be subpoenaed to give evidence.

But, the Espionage and Foreign Interference Bill 2018, passed by parliament last Thursday, offers no such protection, because it applies to any person leaking or receiving information.

So a journalist merely keeping a copy of Witness K's affidavit in a filing cabinet could now be prosecuted.

Publishing the affidavit - which could be regarded as reckless - would potentially attract a penalty of up to 25 years in prison. As one specialist in counter-terrorism and whistleblowing law told Media Watch:

This is the worry now. If any other similar situation comes up. Journalists possessing information in their offices could trigger a search under this criminal offence. I wouldn't want to be the first person to disclose this information.

— Dr Keiran Hardy, School of Criminology & Criminal Justice, Griffith University, 2 July, 2018

I believe that new law threatens our freedom of speech. And especially the freedom of the media to report on matters the public has a right to know about.

And while there is a public interest defence, you would not want to be relying on it.

Meanwhile, prosecutors have asked for Collaery and Witness K's case to be heard in secret, meaning we won't know the evidence against the pair or if journalists are called.

It is chilling stuff for anyone who believes in justice and transparency.

A directions hearing is set down for July 25. We'll let you know what happens - if we can.