

Hey True Blue is this who we are in 2020?

Ian Cunliffe August 2020

Late in 2018, independent federal MP Andrew Wilkie revealed to the Australian Parliament and people that the Australian Government is surreptitiously prosecuting two men for letting the world know that Australia had bugged Timor-Leste – formerly East Timor – in 2004. Australia had agreed to negotiate in good faith. Timor-Leste's key offices were bugged so that Australia could listen in as its leaders prepared for negotiation sessions with Australia over the ownership of immensely valuable resources in the Timor Sea. It's always useful to know the weak points and bottom lines of the other side in a negotiation, and to know any weak links in its camp which can be exploited.

Timor-Leste was newly independent after a quarter of a century of brutal occupation by Indonesia. It was the poorest country in Asia. Its best hope of improvement was from revenue from the undersea resources – oil, petroleum gas and helium. The Howard Government knew that, and exploited it to the maximum. They could probably guess that Timor-Leste was desperate, but the meetings and conversations they listened in to made Timor-Leste's desperation starkly apparent.

The Australian Secret Intelligence Service (ASIS) planted the bugs in a major logistical operation, under the guise of refurbishing Timor-Leste's government offices as part of an aid donation to Timor-Leste. It was a sneaky new take on the Trojan Horse. Australia's motto was "Never Give a Sucker an Even Break". Knowing every move that Timor-Leste was going to make before they made it, Australia won the negotiation hands down.

Woodside Petroleum Ltd was the major beneficiary. Alexander Downer was Foreign Minister. ASIS came under his ministerial responsibility. Ten years later Downer admitted that Australia had acted in Woodside's interests. After leaving politics, Downer became a paid consultant to Woodside. The Secretary of Downer's department, the late Dr Ashton Calvert, became a director of Woodside just nine months after his retirement from Foreign Affairs, and very soon after the bugging.

A very senior officer in ASIS – now known as Witness K - who led the bugging operation was apparently aggrieved at Downer's consultancy and at ASIS being used for commercial espionage. He complained to the Inspector General of Intelligence and Security, who authorised the officer to talk to ACT lawyer, Bernard Collaery.

At exactly the same time as the bugs were being planted in Dili, terrorists bombed the Australian Embassy in Djakarta, where ten people died and 200 were wounded. Focusing on terrorism rather than commercial espionage might have prevented that bombing and also the Bali bombing of October 2005.

Timor-Leste got wind of the fact that they had been suckered and took action in the Permanent Court of Arbitration to overturn the treaty which had been entered – on the basis of fraud. Witness K was to be Timor-Leste's key witness in that action. ASIO and the Federal Police raided K and Collaery. They seized K's passport, preventing him from going to The Hague, and also seized the legal brief for the case.

Long story short: Australia was embarrassed into renegotiating a much fairer treaty, but was not humiliated totally because Timor-Leste withdrew its proceedings at the door of the Court of Arbitration. Secretly, five years later the Australian Government charged K and Collaery for illegally disclosing information prepared by ASIS. The proceedings against K are being conducted in near total secrecy. An occasional titbit emerges from Collaery's matter. Attorney-General Christian Porter has sought that Collaery's trial also be cloaked in secrecy. It recently emerged that the ACT Supreme Court has agreed, over the objection of numerous leading Australians and Timor-Leste's Xanana Gusmao and Jose Ramos Horta.

When he revealed the prosecutions in Parliament, Andrew Wilkie called on the AFP to investigate the illegal bugging of Timor-Leste. He said senior government officials were the "real criminals — the people who ordered the illegal bugging". The AFP has apparently not investigated. Wilkie was joined in his call by three cross-bench senators:

"We wish the police to conduct an investigation to look at who's involved, who the senior officials are, who the government ministers were, noting all of this has been done in secret," Mr Wilkie said.

"No-one is above the law."

Ian Cunliffe is a practising lawyer, formerly senior federal public servant (CEO Constitutional Commission (1986-88), ceo Australian Law Reform Commission (1983-86), Department of PM&C (1979-83), Deputy Secretary, first Royal Commission on Intelligence and Security (1975-78) and Protective Security Review (1979-79), senior lawyer at National Crime Authority (1988) and High Court Associate (1971)); partner of major law firms (1989-2002).