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The Witness K Case: when prosecution becomes persecution

By Warren Reed
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This case, involving a former ASIS officer involved in a bugging operation in Timor Leste in 2004, and the related prosecution of his lawyer, Bernard Collaery, has come to a sorry pass. Legal action that the Commonwealth government is pursuing against both individuals is increasingly damaging and it's time that common sense and decency prevailed.

The principle both men are fighting for is the simple fact that Australia's overseas spy service must never be used for the personal gain of people in the Canberra system, particularly those in positions of public trust and authority. As G.K. Chesterton observed in a 1932 speech, "Once abolish the God and the government becomes the God." In our liberal democracy, the national interest must reign supreme; not the fervent desire of the government of the day to cover its tracks and shirk responsibility. Truth and integrity are central to our system of government and the law and our court system should never be used, especially in secret sittings, to get around this. The Commonwealth, after all, is supposed to be a "model litigant".

Instead it's playing with fire. How so?

ASIS men and women are sent overseas to gather secret intelligence and to do so they specifically engage in breaking the laws of the countries they operate in. They do so to protect and enhance Australia's national interest; not that of greedy individuals. When they see their political masters back home using the law to avoid accountability they are not only disgusted, especially when their lives are at risk, but a small number may decide that if Canberra's moral anchor has drifted that far theirs can, too.

How? Well, as anyone who has worked as a spy knows, there is always a handful of officers who join in the hope that they might be able to "go rogue" and do their own thing. Self-interest, personal gain and promotion are their prime motivation and when they see politicians willing to subvert the system for their own benefit they won't hesitate to get alongside and offer their services. Many of us can remember the odd things that happened at the Deakin Phone Exchange in Canberra in the old days.

Such ASIS officers have access to a wide range of information, both overseas and domestically, that can be useful to politicians and bureaucrats with something to hide, as well as to their minds. The suggestion that something might "fall off the back of a truck" that could damage a political opponent or someone on the scent of serious wrongdoing, can be awfully tempting. There's usually more than enough material available on personal peccadilloes picked up when politicians and senior officials are on overseas jaunts that can cause grave embarrassment or worse.

The natural decency of the majority of ASIS men and women, combined with generally astute management, keep this sort of nefarious activity to a minimum, if not preclude it from happening. But the temptation is always there.

What the government is presently doing is advertising to bad apples in ASIS or in any of our other intelligence agencies, that adhering to the principles that are fundamental to our democratic system is a matter of "flexibility". Everything is up for negotiation. That's as low as it gets.

Really, it's about time the government bit the bullet and faced up to reality on the Witness K case and that of Bernard Collaery. We all know the names of those involved in the original act as well as those involved in the current cover-up. None of that can be erased from history, along with dimensions of this tawdry affair that the Australian public is yet unaware of. Stringing it out, and persecuting fellow Australians who stand up for principle, ultimately won't help one bit. Far better for the government to come clean, apologise, and hopefully with the full backing of the Opposition, assure Australians that this will never happen again.

If this can't be done, and soon, then any belief that a federal ICAC might solve all our problems is but a pipe dream. As Sarah Dowse, highlighted in her recently re-published classic novel, "West Block", about the Canberra system: "Ministers came and went and reappeared, seeking to lay their hands on a splendid prize: the machinery of government."

But it's not about greed and personal aggrandisement. It's not "winner takes all". It's about duty. And for those politicians who can't do theirs, the judgement of the Australian people will be harsh, no matter how well the pandemic might be handled.

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