

Witness K speaks for first time in open court as he pleads guilty to breaching secrecy laws

Former spy charged over his role in exposing Australia's 2004 bugging of impoverished ally Timor-Leste

Christopher Knause – *The Guardian* - 17 June 2021

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Lawyers for the former intelligence officer Witness K have urged a court to spare him a criminal conviction for his role in unearthing Australia's bugging of [Timor-Leste](#), saying it would only serve to increase his "alienation, anxiety and post-traumatic stress".

Amid much secrecy and after extraordinary delay, [sentencing proceedings against Witness K](#) finally began on Thursday in the ACT magistrates court.

The former spy was present but surrounded by a wall of black panels which hid him completely from the crowd of lawyers and observers packing out the courtroom.

Electronic devices were banned from the court and security cameras were obscured. Glass panels leading into the courtroom and behind the magistrate, Glenn Theakston, were blacked out.



[‘Scapegoating’: protesters to gather at Australian parliament before Witness K sentencing](#)

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The voice of Witness K, whose identity is guarded closely, was heard for the first time in open court after he was arraigned on a [single charge of conspiring with his lawyer](#), Bernard Collaery, to disclose intelligence information to the government of Timor-Leste.

Asked how he would plead, Witness K responded quietly from behind the black panels: “Guilty, your honour.”

Collaery was watching on from the public gallery.

The charge stems from Witness K’s role in [exposing Australia’s bugging of its impoverished ally](#), Timor-Leste, during negotiations to carve up the resource-rich Timor Sea in 2004.

Prosecutors say Witness K disclosed details to the Timor-Leste government through documents he provided to Collaery – who he had approval to seek advice from – and the permanent court of arbitration in the Hague, where Timor-Leste disputed the maritime treaty signed during the bugged 2004 negotiations.

His counsel, Robert Richter QC, argued his client should be spared a criminal conviction and released with a good behaviour order.

“There is no utility at this stage in convicting Mr K,” Richter told the court.

Witness K had no criminal history, was a highly decorated ASIS officer, and was now suffering depression and post-traumatic stress disorder, the court heard. The court also received several medical reports detailing the health of Witness K.

“The option of imposing a conviction will simply increase the alienation, the anxiety, and the post-traumatic stress ... when it is not necessary to achieve any sentencing objective,” Richter said.

Witness K’s defence conceded the offence was not trivial but said that didn’t preclude a non-conviction order.

Richter argued his client has been effectively imprisoned in Australia for eight years after his passport was taken away. “The mental anguish that he’d suffered up until that time was amplified,” he said.

The prospect of prosecution loomed over Witness K for years before the charge was finally brought in 2018, the court heard.

After the 2013 raid, the then-attorney general, George Brandis, had avoided making a decision on whether to sign off on Witness K’s prosecution.



[Secrecy challenge by Witness K lawyer Bernard Collaery will itself be held in secret](#)

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Richter suggested this was because Brandis either had concerns about it or simply wanted to avoid making a decision. “To withhold that decision for a period of three years is itself imposing additional torment on someone who from the very first day ... has known he was susceptible to being prosecuted,” the barrister said.

When Christian Porter was made attorney general, the court heard, the approval to prosecute was granted quickly.

The removal of Witness K’s passport, the court heard, had robbed him of any hope of relieving the depression and anxiety he experienced. He and his wife used to take boating trips abroad, in a country that cannot be named, which were the source of great joy. “That was all taken away,” Richter said.

Richter said there were two documents provided by Witness K. The first was to Colleary, which was given as a set of instructions to the lawyer, and was never intended to be filed to the permanent court of arbitration.

The second was an affidavit designed to be filed with the court, which Richter said had security protocols and policies to handle such content.

The sentencing hearing is scheduled to resume on Friday.