

# Adventures in incompetence – Witness K sentenced

Susan Connelly – *Pearls and Irritations* – 21 June 2021

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*This whole farce is more about protecting the real criminals in the case, those politicians and public servants who devised and planned, enabled and financed the shameful act of spying on the Timorese people.*

Witness K has been sentenced. He has received a three months' suspended jail term and a longer good behaviour bond for conspiring to reveal classified information about a spying operation during maritime treaty negotiations between Australia and East Timor.

Witness K was not accused of lying about Australia; he was prosecuted for deciding to tell the truth, *confidentially*, to the Permanent Court of Arbitration in The Hague.

It's intriguing that some news reports still use the protective "alleged" when referring to the espionage. After the passing of three full years since charges were laid, and volumes of print and film on the subject, it is surely time to state the simple fact that Australia spied on Timor-Leste. As others have commented, why would the government spend millions of tax-payer dollars prosecuting a man for revealing an act of spying if it didn't happen?

The government failed to drop the prosecution of "Witness K" despite being asked by both ordinary and prominent Australians. It continued to savage a man of character and integrity who chose to place his conscience before other duties. He chose not to remain silent about the act of a government agency (ASIS) that was clearly beyond the scope of the "proper performance" of its [functions](#).

He became aware of the financial benefits enjoyed by oil and gas companies and high government personalities involved in planning the spying. His in-house complaints eventuated in him being allowed to approach a lawyer approved for the intelligence community – Bernard Collaery – who, as a result, is also enduring prosecution.

The refusal of both the Attorney-General and the Commonwealth Director of Public Prosecutions to discontinue these prosecutions raises questions in the minds of the increasing numbers of Australians who are learning of the economic espionage committed against Timor-Leste in 2004.

There is no question that both the AG and the CDPP have the [power](#) to end this farce. Neither has been convincing in their claims that the prosecutions are in the public interest, as was comprehensively shown in a recent Senate Estimates under the formidable questioning by Senators Kim Carr and Rex Patrick.

On the day that Witness K formally pleaded guilty, there was a rally at Parliament House to denounce, once again, this affair. The remarkable fire engine that traverses Canberra encrusted with large signs championing whistle-blowers accompanied the speakers.

They included Senators Rex Patrick and Peter Whish-Wilson, Andrew Wilkie MP, Andrew Leigh MP, Sister Susan Connelly, and that other Australian hero under duress, David McBride. Luke Gosling MP was in the crowd, and at earlier rallies Alicia Payne MP added to the numbers of Labor Members who publicly oppose the government's obduracy.

These, along with others such as Graham Perrett MP, save the Labor Party from the accusation of complete silence and inaction. Bernard Collaery spoke on the day of K's plea, constrained as always by the gag put on him concerning the whole truth.

Do these rallies achieve anything? It's the converted who come and have done so for years.

They are people who are concerned about what is happening to Australia, its institutions, laws and values through the crucifixion of whistle-blowers. They agree wholeheartedly with the speakers who described the present leadership of the nation as corrupt, self-serving, calculating, and lacking character.

They oppose the deeply offensive act by which Australia spied on its impoverished trading partner Timor-Leste, and the consequent betrayal of human decency in the cover-up. They no longer believe those politicians whose skills seem to gravitate around mouthing the set piece of the day, who cannot veer from the party line, and who accommodate any immorality on their climb up the greasy pole.

That is the real sticking point: we no longer believe the nominal leaders of our nation, because we have seen too much corruption and heard too many lies.

Laws are necessary, but they must be based on values. The separation of powers is meant to ensure the independence of the three branches of government – the legislative, executive and judicial. The protection of these branches cannot be assumed, as seen in the recent change of law regarding detaining refugees and people seeking asylum.

The High Court ruled against the government in cases of unlawful detention, so the parliament [changed the law](#). The result is that Australia can now detain people indefinitely, in contravention of international norms. Similarly, a swathe of National Security legislation passed swiftly through the Parliament in the wake of 9/11, providing Australia with an arsenal of stringent laws.

Instances of application of these laws to terrorists are few, but two honourable Australians, Witness K and Bernard Collaery, have felt their full force.

While the parliament has the power to change laws suitable to the ideology of the dominant group, it also has the power to make bad laws. It is therefore useful to reflect on comments accompanying the sentencing of Witness K.

It was reported that breaches of secrecy surrounding the activities of intelligence operations such as ASIS (Australian Secret Intelligence Service) could jeopardise that agency's effectiveness, affect its safety and security, and place Australia's reputation and relationships at risk.

Surely, "effectiveness" must be in the service of the common good. Swindling a smaller, weaker trading partner is not a worthy aim of a government agency and is clearly beyond its

brief. The espionage was a [conspiracy to defraud](#) Timor-Leste, and as it was commissioned in the ACT, was in defiance of the ACT Criminal Code.

Any threat to Australian “safety and security” as a result of the revelation of the spying, pales into insignificance beside the threat to the well-being and nation building of Timor-Leste posed by a successful Australian deception. Had the spying not been disclosed, the new nation would have been more impoverished than it now is.

Australia’s “relationships and reputation” abroad certainly have suffered from the knowledge of how low governments will stoop to retain corporate allies and reap financial gain, but the Australian people’s reputation surely has the right to have a firmer foundation than that provided by government greed, lies, and fraud.

There is another compelling thought arising from the three month suspended sentence given to Witness K. It is with sorrow we read of his mental and physical state after the unnecessarily prolonged prosecution, and his current lawyer did well to clarify the effects of the state-sanctioned violence he has endured.

But that aside, Australians have been led to believe that this man endangered national security by being willing to disclose Australian secrets. And yet he gets a three-month suspended sentence? Is that an adequate response to the threat that he is supposed to pose to the nation?

Obviously not, and that is because this whole farce is more about protecting the real criminals in the case, those politicians and public servants who devised and planned, enabled and financed the shameful act of spying on the Timorese people. It possibly also concerns other derelictions of government duty: time will tell, and the truth will out. And it has always been about warning anyone else with a conscience never to dare to defy government.

There are further important facts gradually being revealed to the consternation of thinking Australians. Bernard Collaery’s book “[Oil Under Troubled Water](#)” brought the matter to light first, and articles in this publication continue to illuminate the situation.

Clearly, Australia spied on the Timorese government in negotiations over the Treaty signed in 2006. However, in the earlier Treaty of 2002—whose provisions also affect the resources under the later 2006 Treaty—the definition of petroleum was changed.

Incredibly, mention of “inert gases”, one of which is helium, was omitted, thus robbing both Timorese and Australians of the revenue from that critical commodity. The helium was bestowed on the resource companies to their huge financial benefit. Hilariously, Australia now has to buy back the helium needed for the plethora of uses it serves in health, technology, and defence.

What are ordinary citizens to do in the face of the lack of morality and leadership that this whole saga demonstrates? Questions arise as to who was responsible for the change of the definition of petroleum, who knew about the spying, who coordinated these adventures in incompetence, and who are the Australians who benefitted?

These are matters that will occupy the minds of an increasing number of people now that Witness K has been sentenced.