

‘Alienation, anxiety and post-traumatic stress’: Witness K lawyer argues for no criminal conviction

Anthony Galloway – *Sydney Morning Herald* - 17 June 2021

<https://www.smh.com.au/politics/federal/alienation-anxiety-and-post-traumatic-stress-witness-k-lawyer-argues-for-no-criminal-conviction-20210617-p581v8.html>

[View all comments](#)

The former spy known as Witness K has pleaded guilty to conspiring to reveal classified information about an alleged Australian operation to bug East Timor’s cabinet rooms during sensitive oil and gas treaty negotiations.

Witness K’s lawyers are pushing for him to receive no jail time and to be spared a criminal conviction, saying he has already faced years of alienation, anxiety and post-traumatic stress after his home [was raided in December 2013](#).

The former ASIS intelligence officer helped expose an alleged 2004 bugging operation against East Timor that appeared to aid Australia in gaining an advantage in commercial negotiations to carve up oil and gas resources in the Timor Sea.

Appearing before the ACT Magistrates Court on Thursday behind makeshift walls to conceal his identity, Witness K was asked by Magistrate Glenn Theakston how he pleaded. “Guilty your honour,” he said.

The move to formally enter a guilty plea paves the way for him to be sentenced within weeks.

His barrister, Robert Richter QC, said Witness K had been a highly decorated officer with the Australian Secret Intelligence Service, with a “blameless and spotless reputation which earned commendation” from the government.

“There is no utility at this stage in convicting Mr K,” Mr Richter said. “It would simply increase the alienation, the anxiety and the post-traumatic stress when it is not necessary.”

Mr Richter submitted that former attorney-general George Brandis sat on the decision of whether to prosecute his client for three years because he must have held concerns, comparing it with his replacement Christian Porter’s authorisation of the prosecution eight weeks after taking over the portfolio.

Although he conceded the court couldn’t speculate on what Mr Brandis’s decision would have been, Mr Richter said the delay increased the “mental anguish” for his client.

“To withhold that decision for a period of three years is itself imposing additional torment on someone who from the very first day ... [had known] he was susceptible to being prosecuted,” Mr Richter said.

He conceded the offence of disclosing classified information was “not trivial”, but argued there were a number of mitigating factors such as the delay in a prosecution, which amplified Witness K’s suffering.

The former ASIS intelligence officer helped expose an alleged 2004 bugging operation against East Timor that appeared to aid Australia in gaining an advantage in commercial negotiations to carve up oil and gas resources in the Timor Sea. The actions of Witness K and this former lawyer, Bernard Collaery, helped the East Timor government build a case against Australia at The Hague, which led to Canberra re-negotiating the deal.

Witness K had always indicated he would plead guilty to breaching secrecy laws but there have been years of drawn-out negotiations between his defence and the prosecution over the agreed facts of the case as well as evidence that could be submitted in open court.

Mr Collaery is continuing to fight the charges against him in the ACT Supreme Court, where a two-day court hearing into an appeal brought by him challenging a secrecy order was last month [held behind closed doors](#).

Earlier in the day, a rally was held at the front of Parliament House in support of Witness K and Mr Collaery. Independent senator Rex Patrick told the crowd the alleged bugging of the East Timor government was a “betrayal”.

“Back in 1942, the Timorese stood behind our servicemen to help them in World War II,” he said.

“Bernard Collaery and Witness K called out something that was very wrong. In good-faith negotiations with the poorest and newest country in the world, Australia spied on a negotiations team to try and get an advantage in respect of oil and gas, and that is just abhorrent.”

Independent MP Andrew Wilkie said: “We can end this K/Collaery madness at any time. It would just take the stroke of a pen by the Attorney-General.”

Human Rights Law Centre senior lawyer Kieran Pender said in a statement that whistleblowers should be protected, not punished.

“Witness K’s prosecution will have a chilling effect on the willingness of everyday Australians to blow the whistle given the enormous personal risk that comes with doing the right thing,” he said.

The hearing in the ACT Magistrates Court will continue on Friday.