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Prosecution of Witness K and his lawyer is a disgraceful act of revenge

By David Dixon

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They just couldn't leave it alone could they? The Attorney-General's decision to approve charges against "Witness K" and his lawyer, Bernard Collaery, for telling the government of East Timor that their offices had been bugged by Australia is a crude act of political revenge against a whistleblower. Their real offence was not breaching secrecy, but embarrassing Australia and encouraging East Timor to push for the treaty on maritime boundaries which was signed earlier this year.

The spark for the incident leading to the charges was Alexander Downer's appointment to a lucrative consultancy with Woodside (the company seeking access to the Greater Sunrise oil and gas field) when he finished as foreign affairs minister.



Bernard Collaery with senators who support him at Parliament House on Thursday.

Photo: Alex Ellinghausen

notionally as part of an AusAid development program, Australia had taken the opportunity to install listening devices.

These had been used to spy on East Timor's preparation for negotiations over maritime boundaries and exploiting resources in the Timor Sea. There was already resentment in sections of the Australian Secret Intelligence Service that the Dili operation had improperly diverted resources from investigation of the terrorist bombing of Australia's embassy in Jakarta.

Using aid work to camouflage espionage was highly irresponsible. As *The Age* commented at the time, it "runs the risk of endangering all legitimate aid workers who seek to help the disadvantaged ... To deploy intelligence agents under the cover of aid workers is to exploit the fragile trust that aid agencies must forge with their host country. It weakens their security because it discredits their altruism."

The government claims that Witness K's action endangered ASIS officers and their families. But the real threat was to development workers as a result of ASIS espionage.

Australian security officials responded by raiding Witness K's home and Collaery's premises and seizing various documents. This led to international embarrassment for Australia when East Timor initiated international legal action over the affair.

The International Court of Justice made Australia the subject of a humiliating interim order neither to use the material seized nor to obstruct contact between East Timor and its lawyers. (Australia returned the papers and the case was discontinued.)

A lasting effect of this affair was to allow East Timor to take the moral high ground in arguing for new maritime boundaries, not least to deflect persistent claims about corruption and misconduct within its own government. Australia was eventually brought, kicking and screaming, to compulsory conciliation.

When these proceedings could not be avoided, Australia changed its tune, co-operating with a process which produced a treaty that is very favourable to Australia and which, crucially, allows Australia to trumpet its commitment to "international legal order" in contrast to China's activities in the South China Sea. The hypocrisy is brazen and shameful.

No doubt fearing that action against Witness K and Collaery would jeopardise the treaty, the Australian government waited until it was signed, then sought revenge. It did so just as the Parliament passed the National Security Legislation Amendment (Espionage and Foreign Interference) Bill, which includes "economic relations with another country" within its expansive definition of national security, further restricting public access to information.

The prosecution is a disgrace. Witness K and Bernard Collaery deserve to be honoured, not charged.