

## Wasteful, Secret And Vicious: The Absurd Prosecution Of Witness K And Bernard Collaery

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Opinion: Binoy Kampmark in SCOOP Media, New Zealand

This week has not been a good one for the Australian legal system. For those who feel that an open justice process requires abuses of power to be exposed and held to account, it was particularly awful. It began with the [Q&A program](#) on the national broadcaster, the ABC, which supposedly gives an airing to the vox populi. The dominant theme of the conversation between the panellists was that of secrecy and the prosecution (read persecution) of lawyer Bernard Collaery and his client, a former intelligence officer known as Witness K.

Witness K, using authorised channels, revealed his dissatisfaction of an illegal bugging operation of Timor-Leste diplomats in 2004 by Australian operatives during the course of oil and gas treaty negotiations. The exposure enabled Timor-Leste, with the assistance of Collaery, who had agreed to act as Witness K's representative, [overturn the legitimacy of those discussions](#) and the treaty that followed. The revelations of this sordid affair was not something Australia's national security goons were ever going to forgive.

For years, both men have been subjected to a vicious process intent on securing a conviction. It exudes a police state rationale: punishing a former intelligence officer and his legal representative by means of purported conspiracy and the unlawful disclosure of secret intelligence information. On the Q&A program, Collaery [was combative](#). "I yearn for the day when I can defend Witness K and myself in open court. This is the democracy that my father gave his life in the war for."

That democracy is, evidently, in a parlous state. According to the *New York Times*, it is certainly [one of the most secretive](#), a point aided by two other guests on the panel: counter-terrorism wonk Jacinta Carroll and the former director-general of the Australian Security Intelligence Organisation, Dennis Richardson. Both cast long shadows of the opaque, impenetrable security establishment. Neither had much time for the niceties and nobilities of the two cases or, for that matter, broader principles at play. Democracy was for other people.

Stuck in their respective mental corridors, they had no opinion on whether the prosecutions should be taking place. "The government has neither confirmed nor denied any operation in respect of East Timor," Richardson deflected. "Leaving that aside, if an operation was indeed carried out, it would not have been a crime." First, neither confirm nor deny the existence of something; second, claim that such a surveillance operation mounted against the cabinet ministers of a friendly state was perfectly legal. Grotesquely, Collaery and Witness K are facing what can only be regarded as druidical powers, with any potential convictions drawn on exposing what Richardson and the Morrison government *might* regard as a fiction.

Having added that element of absurdity to his assessment, Richardson bolted for the exit of dim reasoning known as the cop-out: "in terms of current legal proceedings, it is ultimately the court that will determine that which is privileged and that which is made public." Transparency can go and hang.

Carroll was not much better, suggesting that all was in order regarding the court process. The question – that this prosecution farce should even be taking place – was evaded. On the court process itself, heavily loaded in favour of the views put forth by the Attorney General, Christian Porter, she was satisfied. Porter’s views constituted “expert advice” and should be given their measure. It was enough to bring Collaery back into the discussion. “The fact is that it’s not a judge balancing exercise, the [National Security Information Act] mandates and gives the attorney’s certificate the greatest weight.”

On June 26, that non-balancing act was in evidence. ACT Supreme Court justice David Mossop [ruled in favour](#) of the government submission that material deemed sensitive by the Attorney General would remain classified at trial. The door would be effectively shut. As Collaery had himself warned, the national security certificate would be given asphyxiating weight. His legal representative Christopher Flynn [spoke outside](#) the court of the need for this case to be heard in public in its entirety. “The view that national security needs this trial to be heard in secret is highly contested, even here in Canberra.” It would, he contended, be “a shame” if laws “meant to defend and protect us ended up eroding the very things that we mean to protect and defend.”

South Australian Senator Rex Patrick of the Centre Alliance [was in agreement](#). “Justice should be done openly where anyone can come to hear the accuser, the defender and the witnesses. Openness guards against improbity and keeps the judge, whilst trying, under trial.”

Both Flynn and Patrick should not be naïve in this. National security, as a concept, is often self-referenced, contained and resistant to the light of scrutiny or common sense. The protective, paternal principle – that the people, broadly defined, must be protected – has little to do with them, and much to do with the State itself. Citing the phantasmic quality of national security facilitates such prosecutions, which seem vindictive and more than a touch imbecilic.

That has led to one of the most wasteful prosecution efforts in recent memory. As of June 3, [some \\$2 million](#) has been expended despite the case still being at a pre-trial stage. As Patrick put it, this amount has been spent “persecuting two Australian heroes that called out the Australian government’s immortal and unlawful conduct”. But as with other maniacal complexes that beset the tyrannical mind, such heroes must be punished rather than rewarded.

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