

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

By Christopher Knaus in *The Guardian*, 17 June 2021

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.

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.

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.

‘Scapegoating’: protesters to gather at Australian parliament before Witness K sentencing

Christopher Knaus in the Guardian, 17 June 2021

Protesters supporting Witness K will gather at federal parliament to decry his treatment as he faces possible sentencing and “a very real prospect” of being jailed for speaking out about Australia’s misconduct abroad.

Witness K is scheduled to face court again on Thursday for his role in exposing the Australian government’s [bugging of Timor-Leste](#), an impoverished ally, during lucrative oil and gas negotiations in 2004.

The former Australian Secret Intelligence Service officer and his lawyer, Bernard Collaery, are considered heroes by Timor-Leste leaders, including José Ramos-Horta, who has previously [told the Guardian](#) Witness K was a hero whose honesty and courage should be praised.

Witness K’s case has been slow to wind its way through the ACT magistrates court since it began in 2018.

Almost [two years have passed](#) since he indicated he would plead guilty to a summary offence – one breach of section 39 of the Intelligence Services Act for communicating secret information obtained in the course of his duties as an ASIS officer.

Sentencing proceedings were initially listed for earlier this month but were delayed at the last minute.

This week’s sentencing hearing is, barring any further dispute over the facts of the case, expected to take place over two days.

Labor MP Andrew Leigh is among a handful of federal opposition MPs who have spoken out about the case in recent weeks and will address protesters outside Parliament House on Thursday morning.

He told the Guardian the way the case had been dragged out was “unjust”.

“The government’s unexplained decision to spend millions of dollars and many years on the prosecutions of Witness K and Mr Collaery, and the Morrison government’s attempts to have the trials conducted in secret, are part of a broader shift towards more secrecy and less accountability in government,” he said. “That shift began with the election of the Abbott government over seven years ago and has escalated rapidly under prime minister Morrison, who, despite multiple scandals on his watch, has never held any of his ministers to account. The double standards are breathtaking.”

Sister Susan Connelly, a nun who has worked extensively in [Timor-Leste](#), has been a fierce supporter of Witness K and Collaery for many years.

Connelly will tell the protesters the pair have falsely been made scapegoats by the Australian government.

“That’s why we’re here today. We see through the scapegoating of these two men, and today we stand up for that hero, that man of integrity, Witness K,” she will say, according to a draft speech.

The prosecutions of Collaery and Witness K have been criticised by leading legal figures and a growing chorus of MPs from across party lines. In April, the former New South Wales director of public prosecutions Nicholas Cowdery, said the case undermines confidence in the justice system, and commonwealth prosecutors were wrong to deem it in the public interest.

“The wrong parties are being prosecuted,” he said.

Last month, [the Canberra Times](#) reported that all four of the ACT’s federal MPs had condemned the prosecutions of Collaery and Witness K.

At the same time, federal Labor senator Kim Carr said he was “particularly concerned” before he and crossbench senator Rex Patrick [grilled the commonwealth director of public prosecutions](#) about the public interest rationale for the prosecutions.

Human Rights Law Centre senior lawyer Kieran Pender said in a statement on Wednesday there was “no public interest in prosecuting whistleblowers”.

“There is no public interest in prosecuting Witness K, or his lawyer Bernard Collaery,” he said.

“As the Witness K prosecution edges closer towards sentencing, we face the very real prospect that this courageous individual will be imprisoned for revealing Australia’s misconduct in Timor-Leste.”

Pender said the case reinforced the need for reforms of Australia’s whistleblowing laws, to make members of the public feel safe and supported when they call out wrongdoing.

“The commonwealth director of public prosecutions should reconsider the prosecution of Witness K before it’s too late, along with Collaery, defence whistleblower David McBride and Australian Taxation Office whistleblower Richard Boyle,” he said.