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## Australia spy trial carries hidden dangers

**Whistleblowers who exposed Australia's eavesdropping on Timor Leste during oil and gas negotiations go on trial this week in a free expression test case**

By [ALAN BOYD](#) SYDNEY, JULY 23, 2018

In 2004, Australian spies are said to have illegally bugged a room in East Timor, also known as Timor Leste, during sensitive negotiations over a revenue-sharing deal for energy resources in the Timor Sea's Greater Sunrise gas field.

Some expected amid the eavesdropping revelations that the spy agency would be brought to heel. Instead, the two whistleblowers who leaked the story to the media – a former intelligence agent and his lawyer – will be in the dock this week in a case that could have big ramifications for press freedom in Australia.

Such is the political paranoia surrounding the affair that it appears likely hearings in the Australian Capital Territory (Canberra) magistrates court could be totally suppressed, even though the spying accusations relate to a commercial transaction and have no connection to national security.

Yet the lawyer, Bernard Collaery, contends that his client identified in court papers only as Witness K was given the go-ahead to disclose his misgivings over the spying by none other than the Inspector General of Intelligence, who believed details would likely be disclosed in any case.

"I will survive these rats who are pursuing me at the moment," Collaery said after they were charged under the Intelligence Services Act with conspiracy to communicate information from the Australian Secret Intelligence Service, the agency which gathers intelligence for Australia overseas. If found guilty, they could both be imprisoned for up to two years.

The bugs were apparently planted in a Cabinet room in the Timorese capital of Dili that was being used for negotiations on a deal to share revenues from the Greater Sunrise field worth an estimated US\$25.5 billion at the time.



*Timorese students shout slogans during a protest in front of the Australian embassy in Jakarta, Indonesia, March 24, 2016. Photo: Reuters/Beawiharta*

Signed in 2006, the agreement gave Australia the lion's share of the income; its gas drillers are thought to have gained an advantage from the eavesdropping on lawyers.

Timor Leste challenged the validity of the deal at the International Court of Justice at The Hague in 2014. Witness K was supposed to give evidence, but his passport was seized during a raid on his home by the Australian Security Intelligence Organization, a domestic spying agency, in late 2013.

In March this year, Australia signed a new treaty that gives most of the contested gas field's revenues to Timor Leste, which badly needs a reliable source of wealth to lift the country out of poverty. In return, Dili withdrew its case at The Hague.

Even the main target of the bugging operation, American diplomat Peter Galbraith, thinks the wrong people are in court. Galbraith, a former ambassador to Croatia and the lead negotiator for Timor Leste in the 2004 talks, described the spying as "clearly a crime" under international law.

"I was the target, therefore, the 'victim' of the bugging," he [told](#) the British newspaper The Guardian. "But I'm not calling for prosecutions. It's just vindictive and pointless, it's time to move on," he maintained.



*US diplomat Peter Galbraith makes a point at the Aspen Institute, April 14, 2015. Photo: Youtube.*

Any decision to plant bugs would have been approved by senior ministers in the government, which at the time was a coalition of the Liberal Party and Nationals also the current incumbents.

Only two cabinet ministers survive from that era: Malcolm Turnbull, who is now the prime minister, and Julie Bishop, who controls the important foreign affairs portfolio.

Turnbull headed the minor environment and water resources ministry at the time and was probably not consulted on the bugging decision. Bishop did not gain a full portfolio until 2006, in the obscure education ministry.

Two of the Liberal Party's most influential power-brokers, then foreign minister Alexander Downer, and then attorney general Philip Ruddock, played key roles in the negotiations with Timor Leste.

Downer became the high commissioner in London, stepping down in April this year, while Ruddock retired from politics in 2016 and is now a suburban mayor. John Howard, prime minister at the time, has also retired from politics.

Current Attorney General Christian Porter approved charges against the two whistleblowers on a recommendation from the Commonwealth Director of Public Prosecutions. Prime Minister Turnbull has refused to intervene or even comment on the case because it is before the courts.



*Australian Prime Minister Malcolm Turnbull deep in thought. Photo: AAP via Reuters / Lukas Coch*

Why the affair should still be politically embarrassing 14 years after the event is unclear, though it might be part of a broader effort to muzzle media outlets that get under cabinet ministers' skin. There has been a concerted campaign against the state-owned Australian Broadcasting Corporation, the source of the spying story, amid claims that it is biased.

Pending changes in laws on espionage, which will tighten penalties for disclosures of information deemed to be in the national interest, appear to be partly intended to prevent politically damaging leaks by the media.

There is little chance the media will let the bugging story die, even if it is kept out of Wednesday's court hearing. The influential Fairfax Media newspaper group ran an [editorial](https://www.canberratimes.com.au/national/act/australia-s-greedy-theft-from-timor-leste-was-a-disgrace-20180714-p4zrir.html) (<https://www.canberratimes.com.au/national/act/australia-s-greedy-theft-from-timor-leste-was-a-disgrace-20180714-p4zrir.html>) in its major mastheads, under the title "Australia's greedy theft from Timor-Leste was a disgrace", which rebuked authorities.

"The international ignominy is being amplified by the Australian government's subsequent shameful treatment of the man who brought the scandal to light and of his lawyer," the editorial said. "Whistleblowers, sometimes at terrible personal cost, generally serve the public interest."

With the case likely to end up in the High Court, the most powerful level of Australia's judiciary and the final court of appeal, the media is pressing for the hearing to be open to the public. Galbraith believes it is essential. "The notion that you can have a secret trial, without a jury, and send someone to prison for two years – it's pretty shocking."