

Four Corners

Secrets, Spies and Trials

Posted Mon 26 Aug 2019, 8:30pm Updated Thu 29 Aug 2019, 5:19pm

National security vs the public's right to know.

"I feel we're living in very dangerous times here in Australia...one day we'll wake up and wonder how on earth we got here." MP

In a Canberra court room one of the most controversial trials ever to be held in Australia will soon get under way. The case is highly sensitive, with key evidence central to the allegations unlikely to ever be heard by the public.

"This could be...one of the most secretive trials in Australian history." Former judge

A former spy and his lawyer have been charged with conspiring to reveal secret information relating to an Australian intelligence operation aimed at a friendly foreign government.

"There is a legitimate public interest in knowing what is being tried...That's difficult to do if a trial, at the pointy end, will be held secretly." Lawyer

The two men involved are a former intelligence operative known only as Witness K and his lawyer, the former ACT Attorney-General Bernard Collaery.

"Traditionally, it's simply not in the public interest to prosecute this kind of thing." Lawyer

Witness K and Collaery are accused of disclosing an Australian bugging operation carried out in the government offices of Timor Leste in 2004. It was years after the revelations became public that they were charged.

"There is that I think overall perception that this sort of litigation is a payback, firstly. Secondly, that the secrecy provisions are perceived to be a coverup." Former judge

On Monday Four Corners investigates the extraordinary steps the Australian government has taken to prosecute these men and to keep them silent.

"I don't know what I'm going to be allowed to say in court. I've only just been allowed to speak to my lawyers after 18 months...but I'm circumscribed even in what I can tell my own lawyers. It's an amazing experience." Bernard Collaery

The intelligence community argues that prosecuting those that leak is an essential part of our national security.

"If you have everybody going out and saying, well, I don't agree with something, and disclosing privileged information, then you don't have an intelligence service." Former intelligence analyst

But former judges and senior lawyers who have worked closely with the intelligence agencies say they are deeply worried about the prosecution and the use of the national security laws created in the wake of 9/11.

"I don't think (these laws) were designed for this sort of case at all." Former judge

The program examines the tension between those who say national security is paramount and those who fear the steady encroachment of state security on the public's right to know.

"I think that for far too long, there has been this notion that, very few people will decide what's good for us to know, and what's good for us not to know. And I, for one, am not prepared to give them a blank check." Lawyer

Transcript

BERNARD COLLAERY: Well my dear friends this is a difficult day of course for myself and my family and all of my good friends.

STEVE CANNANE, REPORTER: In the nation's capital a momentous legal case is unfolding.

BERNARD COLLAERY: This trial will enable the Australian people to indicate the moral and political values that they expect from their political leaders.

STEVE CANNANE: The man at the centre of it a lawyer and former ACT Attorney-General - could soon be facing a jail sentence.

BRET WALKER: Usually, traditionally, it's simply not in the public interest to prosecute this kind of thing.

ANTHONY WHEALY: There is that I think overall perception that this sort of litigation is a payback, firstly. Secondly, that the secrecy provisions are perceived to be a coverup. 56'06

ANDREW WILKIE: I feel we're living in very dangerous times here in Australia, there is clearly a reduction in civil liberties. // I would characterise it as being in a pre-police state.

STEVE CANNANE: Bernard Collaery and a former spy known as 'Witness K' helped expose one of Australia's most controversial intelligence operations...in which Australian secret agents bugged the government of one of our closest allies.

JOSE RAMOS HORTA: It was very ugly. It's not worthy of Australia as a rich democratic country. It's not what we know ... knew about Australia. You know, fair-minded people. A fair-minded society.

SISTER SUSAN CONNELLY: I think it is about the most despicable piece of trickery that I know of, that Australia has committed.

STEVE CANNANE: 15 years later this secret operation is about to have its sequel in one of the most secretive trials in Australian history...

It's the trial not of those who hatched the plan to bug this building, but of the two men accused of revealing what happened.

Tonight on Four Corners the extraordinary steps the Australian government has taken to prosecute those men and to keep them silent.

BERNARD COLLAERY: This is a very very determined push to hide dirty political linen.

That's what this is all about. Dirty political linen under the guise now of national security imperatives.

STEVE CANNANE: In 2004, in Canberra, as winter crept up on the capital, one of the top surveillance experts with Australia's foreign intelligence service ASIS was called into a secret meeting.

The agent was ordered to undertake a mission that would change his life for ever... and become one of the most infamous spying operations in Australian history.

He was told to bug the office of the prime minister of one of our closest neighbours - the new nation of Timor-Leste, formerly known as East Timor.

ANDREW WILKIE, INDEPENDENT MP: Well, it's now been widely reported that sometime in 2004, the Australian Secret Intelligence Service bugged the East Timorese... in order to give Australia an unfair advantage during the treaty negotiations that were going on at that time.

STEVE CANNANE: It was done under the cover of an aid project

SUSAN CONNELLY, Sisters of St Joseph: The Australian government, was offering assistance to East Timor and one of the ways it offered assistance was to refurbish the Prime Minister's residence in Timor and his offices, and that was under an AusAID Programme.

STEVE BRACKS, SPECIAL ADVISER TO TIMOR-LESTE, 2007-19: The bugging of the Prime Minister's office in Timor-Leste occurred at a very difficult time for the government of Timor-Leste.

They were a fledgling government, they'd just come out of the US mandate, just got independence.

STEVE CANNANE: After decades of struggle, Timor-Leste had gained its hard-fought independence from Indonesia in 2002.

Its new leaders faced the massive task of rebuilding the country.

PROFESSOR CLINTON FERNANDES, INTERNATIONAL AND POLITICAL STUDIES, UNSW CANBERRA: Timor had just come out of a genocide, okay.

They'd lost 31% of their population during the Indonesian occupation of Timor.

That's the largest loss of life relative to population since the Holocaust

SR SUSAN CONNELLY: Timor was a destroyed country, at this stage.

I saw with my own eyes, the destruction of Timor and I have seen the Australian government's assessment of the infrastructure destruction.

And it varies from 20% in some areas to the Capital, Dili, being 100% destruction.

The whole thing was destroyed. All the public buildings, and the services for the people.

STEVE CANNANE: Sr Susan Connelly had been working on aid projects in Timor-Leste since the 1990s.

SR SUSAN CONNELLY: The poverty and malnutrition, really, was huge. I met people who really were lucky if they had a meal a day.

STEVE CANNANE: The best hope for this poor country were tens of billions of dollars' worth of oil and gas that lay beneath the floor of the Timor sea.

SISTER SUSAN CONNELLY: Timor was really desperate for a good deal with Australia.

STEVE CANNANE: In April 2004, negotiations between the two countries began in Dili, to resolve who owned the vast oil and gas fields.

Already there was bad blood after Australia had withdrawn from the International Court of Justice's jurisdiction resolving maritime boundaries.

PETER GALBRAITH, FORMER LEAD NEGOTIATOR FOR TIMOR-LESTE: By withdrawing from the, mandatory jurisdiction of the International Court of Justice, uh, Australia, in effect, forced East Timor to negotiate.

JOSE RAMOS HORTA: Withdrawing from the jurisdiction, compulsory jurisdiction of ICJ.

Here you have a ... you know, only Donald Trump does these things.

You wouldn't expect previously, any other country doing that.

STEVE CANNANE: At the first round of talks Timor-Leste's prime minister Mari Alkatiri came out swinging.

MARI ALKATIRI, PRIME MINISTER, TIMOR-LESTE, 2002-2006 [In 2004]: For us, a twenty-year negotiation is not an option.

Timor-Leste loses one million dollars a day due to Australia's unlawful exploitation of resources in the disputed area.

Timor-Leste can not be deprived of its rights or territory because of a crime.

JOSE RAMOS HORTA: They were so annoyed with Alkatiri, because Alkatiri was a tough negotiator, a man of principles.

And so he really annoyed John Howard, annoyed Alexander Downer

ALEXANDER DOWNER, FOREIGN MINISTER 1996-2007 [In 2004]: I think they've made a very big mistake thinking that the best way to handle this negotiation is trying to shame Australia, is mounting abuse on our country accusing us of being bullying and rich and so on when you consider all we've done for East Timor.

PETER GALBRAITH: We wanted to say that this is really important to East Timor.

We wanted to put it in their face. We didn't want to have negotiations that lasted 30 years.

STEVE CANNANE: Peter Galbraith, a former US Ambassador was Timor-Leste's lead negotiator in the talks.

PETER GALBRAITH: I was very concerned about Australian intercepts of cell phones, including cell phones when they weren't being used, but were still on, and I was very concerned about intercepts of emails.

But I did not imagine, one, that they would break into a building and bug it, or that they would have access to the building to bug it.

STEVE CANNANE: It was during a six month halt in negotiations that a team of ASIS agents arrived in Dili to install covert listening devices inside Timor-Leste's palace of government.

PROF CLINTON FERNANDES: I understand that the bugs were placed in.

The conversations were then beamed via a line of sight microwave transmission to a listening post which is about 500 metres away.

STEVE CANNANE: Their listening post was in a floating hotel in the Dili harbour called the Central Maritime Hotel.

PROF CLINTON FERNANDES: That listening post collected the transmissions, and then, then they were then couriered across a town, uh, to the Australian embassy.

So that our negotiating team would have had real time access to the internal deliberations of the Timorese side.

STEVE CANNANE: Successive Australian governments have refused to confirm or deny that this spying operation took place.

PROF CLINTON FERNANDES: An operation like this would need to have been authorised by the National Security Committee of Cabinet, ordered in turn by the responsible minister, the foreign minister, Alexander Downer.

And then the direct order to Witness K would come from the director-general of ASIS, David Irvine.

PETER GALBRAITH: The greatest benefit that Australia would have achieved from the bugging is to know what East Timor's bottom line is.

What we were prepared to settle for, uh, because once you know that, then you never have to offer anything more.

You're entire negotiating strategy is to go below the bottom line.

JOSE RAMOS HORTA, PRESIDENT, TIMOR-LESTE, 2007-2012: The war is over, Australia help restoring Timor freedom, peace.

We are negotiating in good faith as mature adults.

And then they bug our offices to try to obtain advantages in the negotiations.

SISTER SUSAN CONNELLY: When I think back now, that here we were talking to schools, running concerts, sending out messages in newsletters saying give us money, give us money, give us money all the time, at the same time, our government is plotting and implementing a fraud against these very same people.

Because Timor is really important to a lot of Australians, because we know we sold them out in 1975, we haven't paid the Second World War debt, and here we are in our name, in my name, Governments, Foreign Ministers, various ones would stoop so low as to spy on their negotiators, under the guise of a tax payer funded refurbishment. It is despicable. That's all I can say.

STEVE CANNANE: After two years of intense negotiations a deal was signed in 2006.

JOHN HOWARD, PRIME MINISTER, 1996-2007 [in January 2006]: Well done, Alexander. This is a very significant moment. We might have something to say to the media about it."

STEVE CANNANE: Advocates for Timor-Leste say the bugging swung the final deal in Australia's favour:

STEVE BRACKS: This is an oil and gas field, in between Australia and Timor, which is located 150 kilometres from Timor-Leste's shore, and 400 kilometres from Australia's shore, and yet, because of this industrial espionage, the deal came out as 50:50.

Now no drawing of any maritime boundary anywhere in the world between two countries would result in that sort of outcome.

JOSE RAMOS HORTA: As if Australia didn't have enough oil, enough gas, and enough money.

Trillions of dollars economy, and they still wanted you know, us to accept their continental shelf claims and give to them all our Greater Sunrise, all of the Timor Sea.

STEVE CANNANE: The bugging operation is likely to have remained a secret except for one man.

He was the head of technical operations for ASIS. And the team leader of the Dili bugging operation

His identity is top secret. He's now known as Witness K.

BRET WALKER SC, FORMER LAWYER FOR 'WITNESS K': This is not a person who, goes, as it were, to the tabloids or the scandal sheets and then tries, to cover up with a fig leaf of public interest.

This is the very opposite of all of that.

STAVE CANNANE: Bret Walker is the former independent monitor of Australia's national security legislation and has previously acted for Witness K.

BRET WALKER: Confining myself to the public record, it's clear that Witness K is the kind of person in whose favour, there will be lots able to be said about a long, honourable career, making him, a person who's rendered great service to this country, who is now being prosecuted as if he has committed a great disservice to the country.

STEVE CANNANE: Witness K retired from ASIS after a long career in late 2006.

Two years later he took a grievance about being sidelined and passed over for promotion to the Inspector General of Intelligence and Security.

He was given clearance to consult a lawyer. The lawyer he chose was Bernard Collaery.

PROF CLINTON FERNANDES: Canberra's a very small place. Bernard Collaery is the former Attorney General of the ACT.

But ASIS has always known about Collaery's commitment to the right of self-determination of the people of East Timor.

STEVE CANNANE: BERNARD COLLAERY has worked with the Timorese in legal cases since the 1980s and has also been given clearance to represent members of the Australian intelligence community.

SISTER SUSAN CONNELLY: Bernard Collaery is not just some two bit lawyer from up the street, just on the make.

He has been the Attorney General of the Australian Capital Territory. He has held high position.

He is highly respected, not only in Canberra but across Australia and Internationally.

The Timorese certainly hold him in high regard.

STEVE CANNANE: Bernard Collaery met with Witness K in 2008 to discuss his grievance.

Collaery later made a written statement to the Senate about what Witness K told him.

ACTOR'S VOICE: Witness K alleged he had been constructively dismissed from ASIS, as a result of a new culture within ASIS.

The evidence indicates that the change sought included an operation he had been ordered to execute in Dili, Timor-Leste.

STEVE CANNANE: Bernard Collaery is now restricted in what he can say because of his upcoming trial, but in 2015 he said Witness K was appalled by the bugging operation.

BERNARD COLLAERY, IN 2015: I recall in my instructions mention being made of the infant mortality rate.

So this was morally-based grievance, not on lost promotion or the end of a career, which in my view was a very legitimate grievance, but it was a grievance based on the immorality of that conduct.

STEVE CANNANE: Prime Minister Xanana Gusmao found out about the bugging and in late 2012 told Australian Prime Minister Julia Gillard that he knew about the operation and wanted the treaty invalidated.

XANANA GUSMAO, PRIME MINISTER OF TIMOR-LESTE, 2007-12: I sent a letter to her and she said, "No, we didn't. We didn't". And I continued to insist...

STEVE CANNANE: Do you think she didn't know that this operation took place?

XANANA GUSMAO: I believe so. I believe so. I believe so.

JOSE RAMOS HORTA: Xanana is incredibly intelligent. He studied issues. He had been studying it from Day One.

He was looking for an opportunity.

So Australia handed over to Xanana the angle, the excuse, the window of opportunity that Xanana was looking, to challenge the Timor Sea treaty.

STEVE CANNANE: In April 2013 Timor-Leste launched a case in the Permanent Court of Arbitration to overturn the treaty with Bernard Collaery as one of their lawyers.

It was the Australian government that revealed that the case was based on allegations of espionage.

TIM PALMER, PM, RADIO NATIONAL: East Timor is going to arbitration and accusing Australia of past espionage in the process.

MARK DREYFUS, ATTORNEY-GENERAL, 2013: Well that's the allegation, that in the course of negotiating this treaty back in 2004 Australian officials were aware of confidential information belonging to the Timorese negotiating team and we can't comment on the matter.

STEVE CANNANE: Timor-Leste now had the upper hand.

Armed with knowledge of the bugging, they could make the case that the treaty should be torn up due to negotiations held in bad faith.

JOSE RAMOS HORTA: Because you are negotiating, and rules say you don't do these things. You are caught, negotiations finish.

STEVE CANNANE: Bernard Collaery headed to the Hague in December 2013 to prepare for the hearings.

Back in Australia the authorities made an extraordinary move

Officers from ASIO and the AFP were sent in to raid Collaery's home and office while he was out of the country.

CHLOE PRESTON, LAW CLERK, COLLAERY LAWYERS [IN 2014]: At about between nine and nine thirty in the morning, there were about ten to fifteen officers at the door.

They told me as soon as I opened the door that they had a warrant. There were parts that were blacked out on it, which I couldn't read.

And I was denied a copy due to national security reasons.

STEVE CANNANE: Agents seized confidential legal documents including a copy of an affidavit by Witness K about the bugging.

In a raid on Witness K's home, his passport was seized, preventing him from traveling to the Hague.

STEPHEN CHARLES QC, FORMER SUPREME COURT JUDGE: I was horrified. You have two parties, engaged, in litigation and one party decides that, it will, raid the solicitor's office of the other party, seize its documents and prevent its witness from coming to the court.

It's the sort of, behaviour, which, in an Australian court would be regarded as the most serious contempt, which would almost certainly lead to a lengthy jail term.

BRET WALKER: You won't be surprised to know that, by and large, parties are not allowed to ransack the files of the other party in any litigation, including international litigation.

STEVE CANNANE: Bernard Collaery was furious about the raids.

BERNARD COLLAERY, ON LATELINE, 3 DECEMBER 2013: This is an attempt to intimidate our witness and to prevent the evidence going forward at the Hague of this conduct.

Nothing else is coming out of this case but that there was an operation in league with aid programs to construct listening devices into the walls of a building in Timor to be used by the new government.

What threat to Australia's intelligence integrity does that disclosure give?

STEVE CANNANE: In the Senate the day after the raids the Attorney-General George Brandis dismissed Collaery's claims.

SENATOR GEORGE BRANDIS, ATTORNEY GENERAL, 2013-17 [IN 4 DEC 2013]: Last night, rather wild and injudicious claims were made by Mr Collaery... that the purpose for which the search warrants were issued was to somehow impede or subvert the arbitration.

Those claims are wrong. The search warrants were issued on the advice and at the request of ASIO to protect Australia's national security.

STEVE CANNANE: Astonished by the raids and the seizure of its legal documents from Collarey's office, Timor-Leste rushed to the International Court of Justice accusing Australia of breaching lawyer-client privilege, and violating its rights and sovereignty under international law.

JUDGE: Good morning, please be seated.

JOAQUIM DA FONSECA, REPRESENTATIVE OF TIMOR-LESTE [In January 2014]: It has caused deep offence and shock to my country.

It is that that brings us here to this great hall of justice, to seek justice from the World Court over the seized documents and data.

ELIHU LAUTERPACHT QC, LAWYER FOR TIMOR-LESTE [In January 2014]: Australia had clandestinely been intercepting the internal discussions of the Timorese government by means of bugging devices.

STEVE CANNANE: In a stunning decision the international court ruled that Australia could not access the documents it had confiscated from Collaery...

JUDGE [In 2 March 2014]: By 15 votes to 1 that Australia shall not interfere in any way in communications between Timor-Leste and its legal advisors.

STEPHEN CHARLES: It was seriously humiliating and an indication of what each of the judges who voted in favour of imposing those orders on Australia thought about Australia's conduct.

STEVE CANNANE: After a year, Australia agreed to hand back Timor-Leste's legal documents...and Timor dropped its case about the raids.

BRET WALKER: We'll never know how the ICJ would have decided that case, because East Timor was satisfied, ultimately, with the return that was made to it of documents by Australia.

Some very powerful arguments were put on behalf of East Timor concerning the inappropriateness of that conduct by Australia.

STEVE CANNANE: In March last year the two countries finally resolved their long running dispute, signing a new agreement over a permanent maritime boundary.

JULIE BISHOP, FOREIGN MINISTER, 2013-2018 [7 March 2018]: This treaty reflects a new chapter in Australia - Timor-Leste relations. Congratulations to all involved in this process.

JOSE RAMOS HORTA: And we thought that when we withdraw the complaint against Australia from the International Court of Justice, that Australia would also likewise not only negotiate with us, but would forget about Witness K and Bernard Collaery.

STEVE CANNANE: But Australian authorities had not forgotten about the spy and his lawyer

BERNARD COLLAERY: I was cooking a meal here one evening, and two police officers came to the door; I thought it was in relation to another case I was pursuing at the time.

And I got served with a summons. I found that to be an understatement, to say a surprise. I was dismayed, to be quite frank.

This was a summons alleging that in providing professional legal advice, I had become an accused criminal.

STEVE CANNANE: 14 years after the spying operation, and four and a half years after their homes were raided, Bernard Collaery and Witness K were facing prosecution.

BERNARD COLLAERY: I let my dinner go cold, I went upstairs, and I had to apply the medicine I had told a generation of clients accused of criminal activity to myself.

To focus on their betterment, to be positive, not to create worry in their families and the rest.

I said to myself, I've got to apply my own medicine; I'm going to face almost certainly a trial in this matter.

STEVE CANNANE: On that same evening, Witness K had also been issued with a summons.

BERNARD COLLAERY: I just knew probably how he would be feeling. The officers told me they just served similar process on my client, and I felt as unimaginably, unprecedentedly, such a duty and obligation to that person.

STEVE CANNANE: The plan to charge Witness K and Collaery remained secret until Andrew Wilkie disclosed it under parliamentary privilege.

ANDREW WILKIE, IN JUNE 2018: Deputy speaker, Australia bugged East Timor's cabinet rooms during the 2004 bilateral negotiations over the Timor Sea treaty.

The operation was illegal, unscrupulous and remains unresolved.

Now deputy speaker, I can explain today the scandal has just gotten a whole lot worse because the Turnbull government has now moved to prosecute the intelligence officer who blew the whistle on the secret operation, along with his legal counsel Bernard Collaery.

STEVE CANNANE: Collaery and Witness K were accused of breaching the Criminal Code and the Intelligence Services Act by conspiring to communicate secret information to the government of Timor-Leste.

Bernard Collaery was also accused of disclosing restricted information in media interviews with five ABC journalists.

STEPHEN CHARLES: It's intimidation, intimidation of ASIS agents, intimidation of journalists against, matters of this kind.

It's an act of vengeance directed at the people who chose to expose Australia's appalling behaviour.

STEVE CANNANE: In intelligence cases like this the prosecution has to have the consent of the Attorney-General.

It's only the second time that consent has been granted under the Intelligence Services Act ...

The public interest of any prosecution has to be considered ...

CHRISTIAN PORTER, ATTORNEY-GENERAL, 2017-PRESENT [In 2 July 2018]: In matters of this type, there's a requirement to have the consent of the Attorney-General.

But the decision to prosecute was an independent decision made by the Commonwealth Director of Public Prosecutions based on their consideration of the evidence, the law and their prosecution policy and guidelines.

STEVE BRACKS: It would be nice to know why the attorney general Christian Porter thought it was in the public interest to proceed on these matters against Witness K and Bernard Collaery.

I mean if it was right and proper to proceed, they would have proceeded the point at which they had this material, which was several years ago.

STEVE CANNANE: The Commonwealth DPP first sought consent to prosecute back in September 2015 when George Brandis was Attorney General.

For over two years he considered advice from two different CDPPs and the Solicitor General.

Brandis left office in December 2017 to become High Commissioner to London. He never provided consent to prosecute.

BRET WALKER: Well, I imagine the former attorney, Senator Brandis, didn't find this a straightforward case to say yes to.

If I may say so, as a matter of my opinion, I'm not quite sure why it ... why it wasn't a straightforward case to say no to, but that's just my opinion.

But on any view of it, that's a very long time for something to be sitting on an attorney's desk. I imagine it was not for want of thinking about it, that that time elapsed.

STEVE CANNANE: Within six months of becoming Attorney general Christian Porter consented to the prosecution, something his predecessor chose not to do in the two years and three months after he was first given advice by the DPP.

Four Corners understands the former Attorney-general George Brandis had misgivings about approving a prosecution and that there were divisions among the national security agencies about the wisdom of prosecuting Bernard Collaery and Witness K.

ANDREW WILKIE: The suggestion that the former attorney general had misgivings about pursuing witness K and Bernard Collaery, it rings true to me because there was no sensible reason for pursuing it at the time.

ALAN DUPONT, FORMER INTELLIGENCE ANALYST: Agencies would be making their case, that it's necessary to protect their methods and the confidentiality of our, people, to prevent, other potential whistle blowers like Witness K from coming forward and disclosing information, classified information about ASIS activities.

That's what they want to prevent.

STEVE CANNANE: Former intelligence analyst Alan Dupont worked as an adviser for Jose Ramos Horta for ten years. But he has little sympathy for Witness K.

ALAN DUPONT: You can't really allow people to make individual judgments about the morality of efficacy of their, of their work when they voluntarily join and then take it upon themselves to disclose information that is privileged to them because they've been working there.

So, you know, I tend to understand where the intelligence agency is coming from me and the need to protect these confidentiality because if you have everybody going out and saying, 'well, I don't agree with something', and disclosing privileged information, then you don't have an intelligence service.

CITIZENS: Drop the charges now.

STEVE CANNANE: Just weeks ago Bernard Collaery made his way into the ACT Magistrates Court. Little did his supporters know that this case was about to take a shock turn.

BERNARD COLLAERY: Well my dear friends this is a difficult day of course for myself and my family and all of my good friends.

STEVE CANNANE: Bernard Collaery had just heard in court that his former client and co-accused Witness K was intending to plead guilty.

BERNARD COLLAERY: I have great empathy for witness K and the struggle that witness K has gone through both spiritually, mentally and physically.

I can understand exactly the position after six long years witness K has found the position to be.

STEVE CANNANE: Witness K intends to plead guilty, but only if the prosecution accepts that his only breach was to prepare an affidavit for the arbitration hearings in The Hague.

BRET WALKER: That is, for an onlooker, a fascinating sharp focus to bring to, an allegation of offending by releasing that material, supposedly, that should not be released. Because the focus is on it being presented for the administration of justice.

BERNARD COLLAERY: This is a very very determined push to hide dirty political linen.

That's what this is all about, dirty political linen under the guise now of national security imperatives.

STEVE CANNANE: Bernard Collaery is vowing to fight on. But the public may never know the full story of the evidence heard against him

ANTHONY WHEALY QC, FORMER SUPREME COURT JUDGE: This could be, in a strange way, one of the most secretive trials in Australian history.

There are some obvious national security matters where protection is required, but where, where is the national security elsewhere in the proceedings?

Because that's being shrouded in secrecy, it becomes much more secretive than a terrorist trial or something of that nature.

STEVE CANNANE: Collaery's trial will be conducted under the National Security Information Act brought in after the 9/11 terrorist attacks.

The Act allows certain evidence to be heard in secret.

As a judge Anthony Whealy presided over Australia's longest terrorism trial heard under these laws.

ANTHONY WHEALY: I don't think they were designed for this sort of case at all. I don't think they're designed for cases involving whistleblowers, journalists, or the lawyers for whistleblowers.

For the life of me, I can't see that this legislation is really appropriate except in a very minor way where we're dealing with what are really public interest issues.

STEVE CANNANE: The Attorney General has issued a secret certificate which will likely see key details of the bugging operation suppressed in court.

But ultimately, it's up to the judge or magistrate to rule what's made public.

BRET WALKER: is a legitimate public interest in knowing what is being tried, and what are the arguments that are being deployed for and against the conviction of a person in this position.

And that's particularly so, where the whole case concerns, a supposed or alleged concern that there has been misbehaviour, maladministration or worse, by Australian authorities.

Every Australian, I imagine, is interested to know that Australian authorities will be held to account. That's difficult to do if a trial, at the pointy end, will be held secretly.

STEVE CANNANE: Stephen Charles is a former judge of the Supreme Court who as a barrister represented both ASIO and ASIS.

He believes key evidence about the Dili spying operation is in the public interest and should be heard in open court.

STEPHEN CHARLES: It is a fundamental aspect of the rule of law that proceedings take place in public. It is difficult to imagine any justification for these proceedings taking place in secret.

Everyone who reads the newspapers is aware that ASIS officers entered and bugged the Timorese cabinet premises.

Everyone is aware that the result of bugging those premises was that Australia got a huge and very unfair advantage in the negotiations being carried out between Timor and Australia.

STEVE CANNANE: Attorney General Christian Porter declined to be interviewed.

In a statement he said he has confidence the court will strike the right balance between national security and the principle of open and transparent proceedings.

And that 'as far as possible, any legal proceedings in this matter should be conducted in open court'.

But Bernard Collaery says the NSI Act is already impacting on his defence

BERNARD COLLAERY: I don't know what I'm going to be allowed to say in court.

I've only just been allowed to speak to my lawyers after 18 months, or whatever it is.

I'm now able to speak to my lawyers, but I'm circumscribed even in what I can tell my own lawyers.

It's amazing. It's an amazing experience.

STEVE CANNANE: The NSI Act is one of over 70 laws in the name of national security which have passed since the 9/11 terrorist attacks.

And many of them interfere with democratic rights and freedoms.

STEVE CANANNE: As Australia's security state has expanded in response to the war on terror, so too has Australia's state of secrecy. More government documents are being classified, more journalists are being monitored, more whistle blowers are being charged.

JEREMY FERNANDEZ, ABC NEWS : Tonight the ABC's Sydney headquarters raided by the Federal Police. Officers seize thousands of items related to news reports from 2017.

This is the second media organisation to be targeted after the home of a News Ltd journalist was raided yesterday.

ANDREW WILKIE: I feel we're living in very dangerous times here in Australia, there is clearly a reduction in civil liberties. Whistleblowers are being pursued in the courts, journalists are being raided, I would characterise it as being in a pre-police state, which left unchecked will get even worse, and one day we'll wake up and wonder how on earth we got here.

BERNARD COLLAERY: Laws have been passed that can make any work you do affecting Australia's economic activities espionage, sabotage, conspiracy. There are new laws that have quietly slipped through, basically unquestioned by the opposition.

BRET WALKER: The country generally should have a good hard look, with no preconceptions, about just what is the scope of information about government, that should be kept secret from the people, for how long, and why?

I think that for far too long, there has been this notion that, very few people will decide what's good for us to know, and what's good for us not to know.

And I, for one, am not prepared to give them a blank cheque.

STEVE BRACKS: I've got no doubt that if the public of Australia believed that the national security legislation which has been passed into law would be utilised in this way, to raid the ABC, to raid News Limited, to take action against a tax office whistle blower and to also in this case, in Bernard Collaery and Witness K, to take action for people who, in all conscience, were ensuring that our democracy was upheld, I don't think people would accept it. And nor should they.

STEVE CANNANE: Senator Rex Patrick and MP Andrew Wilkie are pushing for greater oversight of intelligence agencies and legal protection for whistleblowers.

SENATOR REX PATRICK: Some of the changes we'd like to see is the ability for someone to blow the whistle anonymously.

We'd also like to see changes where, if nothing is done after the whistle has been blown, people can go to either the media or to a politician.

ANDREW WILKIE: You know, it's way beyond time for a government to go back and revisit this, and to create effective whistleblower protections, so that insiders, including security insiders, if they are genuinely witness to misconduct, they can speak up. And if need be they can go to the media.

STEVE CANNANE: BERNARD COLLAERY will face court again later this year...in what could be a long trial. If found guilty he faces up to 2 years in prison.

SISTER SUSAN CONNELLY: The prosecution or the persecution of Witness K and Bernard Collaery, should be discontinued immediately because it is not right, under any law, to pursue people and charge them, when all they have done is told the truth.

Those two men told the truth about what we have done.

The people who did the fraud, the illegal fraud, the spying, the low down action against Timor, they've got away with it.

They're not being charged with anything and they should be, and here we have two truth tellers who are now being charged.

STEVE CANNANE: Timor-Leste's former prime minister Xanana Gusmao wants the Australian government to drop the prosecution.

If it goes ahead he says he will come to Canberra and give evidence in court on behalf of Witness K and Bernard Collaery.

XANANA GUSMAO: My message is only an appeal. Please, drop the issue. Please. Because I will always be on their side.

That's why I already promised to them, if it was not a secret trail, I will go to witness, to be their witness.

STEVE CANNANE: And what kind of evidence would you give?

XANANA GUSMAO: All the information that I know.

STEVE CANNANE: And is that evidence that the Australian government may not want to hear in court?

XANANA GUSMAO: Maybe.

STEVE CANNANE: So you're saying some secrets that may embarrass previous governments?

XANANA GUSMAO: I believe so.

STEVE CANNANE: Bernard Collaery has prepared for trial many times before... but never for one like this.

When he appears in the ACT Supreme Court it will be for the first time as a defendant.

With the full force of the Commonwealth against him, it's shaping up to be the fight of his life.

BERNARD COLLAERY: My papers and can I have my phone too.

MATILDA WALL, LAW CLERK, COLLAERY LAWYERS: Good luck.

BERNARD COLLAERY: Well, my practice earnings have crashed. It stopped my practice in the superior court effectively. It's the effective end of my career.

STEVE CANNANE: Are you able to tell us how this prosecution has impacted on Witness K?

BERNARD COLLAERY: I don't dare answer your question because I might pour out a torrent of heartfelt views.

I want to say this: when this is over and dusted, I will have a lot to say. I will have a lot to say.

We live in a country that understands the boomerang. There's a boomerang out there that's going to come back, regardless of that outcome.