

Witness K case

Witness K is in the dock but institutions vital to Australia's democracy are on trial

Some people seem to be above the law. Those people do not include the whistle-blower and his lawyer, Bernard Collaery

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Witness K lawyer and co-defendant Bernard Collaery outside the supreme court in Canberra last year. Photograph: Lukas Coch/AAP

Timor-Leste only achieved independence in 2002. It was Asia's poorest country and desperately needed revenue. Revenue from massive gas resources in the Timor Sea was its big hope. But it needed to negotiate a treaty with Australia on their carve-up. Australia ruthlessly exploited that fact: delays from the Australian side in negotiating a treaty for the carve-up of those resources, and repeated threats of more delays, were a constant theme of the negotiations. In November 2002 the former Australian foreign minister [Alexander Downer](#) told Timor-Leste's prime minister, Mari Alkatiri: "We don't have to exploit the resources. They can stay there for 20, 40, 50 years." In late 2003 Timor-Leste requested monthly discussions. Australia claimed it could only afford two rounds a year. Poor Timor-Leste offered to fund rich Australia's expenses. Australia didn't accept.



Witness K and the 'outrageous' spy scandal that failed to shame Australia

The two countries had solemnly agreed to negotiate in good faith. But Australia's realpolitik approach was rather: "Never give a sucker an even break." Downer told Alkatiri: "We are very tough. We will not care if you give information to the media. Let me give you a tutorial in politics – not a chance." The truly stark realpolitik bottom line: Downer was probably an invisible man at Timor-Leste's cabinet table. The Australian Secret Intelligence Service, under the guise of renovating Timor-Leste's cabinet room, planted bugs so the Australians could overhear the leaders' deliberations. Downer was responsible for Asis. Downer and the Australian government have never confirmed or denied the bugging.

Fortunately, Australia's reputation has not been more badly damaged for its grubby behaviour towards [Timor-Leste](#), for two reasons.

First, long-suffering Timor Leste did not maximise opportunities to embarrass Australia. Perhaps Downer's bullyboy warning to Alkatiri worked. Ever since the second world war, Australia has promoted its brand as being member No 1 of the rules-based international good citizenship club. In 2004 it was Timor-Leste which played the honourable role, not Australia.

The people who let Australia down so badly in 2004 have not been punished

Second, because the bugging was quietly outed, Australia was given the opportunity to renegotiate the treaty with Timor-Leste to a much fairer outcome, and one more in accord with international norms.

Now one of the Asis officers who did the bugging, Witness K, and his lawyer, Bernard Collaery, are being prosecuted for alleged involvement in Australia's despicable actions becoming public.

The prosecutions of Collaery and Witness K were revealed in federal parliament more than two years ago by the independent MP Andrew Wilkie. [Wilkie said](#) senior government officials were

the “real criminals – the people who ordered the illegal bugging”. Wilkie called upon the Australian federal police to launch an investigation into the bugging. Three senators – Rex Patrick, Nick McKim and Tim Storer – joined that call. Wilkie said: “We wish the police to conduct an investigation to look at who’s involved, who the senior officials are, who the government ministers were, noting all of this has been done in secret,” adding: “No one is above the law.”

The bugging was probably criminal according to the laws of both Australia and Timor-Leste, and those who authorised it were likely to have committed the common law crime of conspiracy to defraud.



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Two years after Wilkie’s parliamentary call, the AFP seems to have ignored the four members of parliament. Some people do seem to be above the law. Those people do not include Witness K and Collaery.

The major beneficiary of Australia’s negotiated initial win was Woodside Petroleum, though the company says it is yet to make any profit from the Timor Sea reserves. In 2014 Downer said on ABC Four Corners that Australia had acted in Woodside’s interests in the negotiations. After leaving politics, Downer became a paid consultant to Woodside. The head of Downer’s department at the time of the bugging, the late Dr Ashton Calvert, became a director of Woodside within eight months after retiring from foreign affairs, and within a year of the bugging.

Witness K was incensed that Downer had profited by becoming a consultant to Woodside. The whistleblower complained to the inspector general of intelligence and security of a changed Asis culture. He was authorised to engage Collaery. The charges against Collaery stem from that engagement. Revelation of the bugging helped Timor-Leste overturn the deal initially negotiated, arguing that the bugging tainted “good faith” negotiations.

The people who let Australia down so badly in 2004 have not been punished. It is simply not credible that Asis undertook the bugging without the approval of Downer and the then prime minister, John Howard.

The bugging took place 16 years ago but it is not ancient history – the criminal prosecutions to “kill” the alleged messengers are in full swing. Further, although 16 years is a long time in politics, former colleagues of the guilty parties – and some of those parties themselves – are still very much on the scene.

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Richard Ackland



For example, according to his parliamentary biography, the present Australian treasurer, [Josh Frydenberg](#), was an adviser to Downer from 1999-2001, and was a senior adviser to Howard from 2003-04, the latter being the year of the bugging. Frydenberg’s Wikipedia entry says that, in Howard’s office, he specialised in “domestic security issues, border protection, justice and industrial relations”.

By 2005 Frydenberg was a director at Deutsche Bank. He was interviewed on Channel Seven’s Sunrise program from Timor-Leste in 2006. David Koch introduced Frydenberg to viewers simply as having been a former adviser to Howard and Downer – with no reference to Deutsche Bank. Frydenberg spoke to viewers as if he represented the Australian government: “Our team’s going to be led by a deputy secretary from the Department of Foreign Affairs. The Timor-Leste side is going to be led by their resources minister.” In effect, Frydenberg argued Australia’s case to the viewers, speaking knowledgeably about the resources at stake.

Collaery and Witness K are in the dock but institutions vital to Australia’s democracy are on trial: the judiciary, the director of public prosecutions and the AFP, as well as that once important guardian of the public interest – the attorney general. Each must ensure that Australia’s legal and criminal justice systems operate apolitically and are not strong-armed to protect ministers and other government officials – past and present – Andrew Wilkie’s “real criminals”.

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