

# A nation — and those employed to uphold its democracy — failed Witness K to the very end

By Bernard Keane in Crikey.com, 21 June 2021



The wrong person was in the dock being sentenced last week in the ACT Magistrates Court in relation to Australia's 2004 bugging of the Timor-Leste cabinet room.

It is Alexander Downer who should have faced court, along with John Howard and David Irvine, the then-head of the Australian Secret Intelligence Service (ASIS). Ashton Calvert, then-head of the Department of Foreign Affairs and Trade, has since passed away, but senior officials of that department at that time, as well as Downer's staff, some of whom have gone on to subsequent parliament careers, should also have faced investigation.

For what? Ordering and overseeing a potentially illegal act by ASIS, one intended to benefit fossil fuel giant and political donor Woodside. Both Downer and Calvert went on to take positions with Woodside.

Instead, the person in the dock was an elderly former ASIS officer, a highly regarded man who had served Australia loyally over many decades, including in dangerous circumstances. Dangerous enough that if his identity is ever revealed, his own safety and that of his family would be compromised.

His decades of service to his country have been rewarded with being effectively dismissed from his job, being hounded by the government for years and finally subjected to a vexatious, drawn-out prosecution — all for revealing the Australian government's crime. A crime that deeply offended him, especially after Downer took employment with the beneficiary.

And Witness K had been failed at every turn by our major institutions.

He was failed by ASIS, which repaid his loyalty with an effective dismissal from his job despite his record of service. And failed by the Inspector-General of Intelligence and Security, whose advice he followed in relation to his workplace dispute with ASIS, only to be publicly abandoned by that IG's replacement.

He was failed by ASIO, under the direction of his former boss David Irvine, which raided his home and seized his passport purely to prevent him from giving evidence in support of Timor-Leste's dispute with Australia over the Timor Gap Treaty, the fruit of the deeply poisoned tree planted in 2004.

He was failed by [appalling](#) spy chief Nick Warner, who vetoed the return of his passport. Despite strong support for him among former colleagues within the Australian Intelligence community, K was failed at the most senior levels by the institutions he had served so well.

He was failed by Christian Porter, that privileged man-child whose record of public service is barely a footnote to the real service of K. Porter immediately permitted a vexatious prosecution that George Brandis, for all his spectacular faults, had declined to approve. And he was failed by a Coalition-chosen Commonwealth Director of Public Prosecutions Sarah McNaughton, who pursued the shameful prosecution half a decade after the alleged crimes.

He was failed by Labor, which stood silent on his prosecution and that of Bernard Collaery, with only a handful of MPs — Graham Perrett, Alicia Payne, Luke Gosling — willing to speak out. Anthony Albanese at least publicly stated that the Howard government's actions were wrong, but the opposition tiptoed around the prosecution even as it was covered up and drawn out by Porter.

The crossbench did not fail him. Andrew Wilkie, Rex Patrick and the Greens, and Nick Xenophon before his departure, spoke out consistently about the mistreatment of both K and Bernard Collaery. They used parliamentary processes to ask questions, they refused to be put off by the silence of the government and opposition, they criticised the abuse of process to which K was subject.

But much of the media failed him. The prosecutions of K and Collaery, and Christian Porter's attempts to cover them up, were allowed to proceed with little more than the occasional disapproving editorial from major newspapers. Some journalists such as the ABC's Steve Cannane, and Elizabeth Byrne who covered the trials for the national broadcaster, *Guardian* Australia's Christopher Knaus and Richard Ackland, along with academic Clinton Fernandes, who has written for several outlets including *Crikey*, have provided crucial coverage and context.

But we know from the fallout from the AFP raids on the ABC and Annika Smethurst that a strong press reaction against government intimidation can force authorities to pull back, refuse to prosecute and fret about media reaction to further attempts to intimidate. At no stage have K and Collaery been afforded that sort of response — despite *The Australian* being the outlet that broke the story of our crime against Timor-Leste in 2013. Despite the trials happening a few minutes down the road from Parliament House, a five-minute drive from the Press Gallery, which reacted with indifference to a blatant cover-up of Australia's biggest scandal in a generation.

And ultimately K was failed by the ACT Magistrate's Court, which despite recognising that his motivation was justice rather than personal gain, and handing him a suspended sentence, still criticised him for his actions and portrayed him as someone who had “deliberately” “unilaterally” departed from his obligations.

In fact, K was at all times acting in accordance with the advice he had received from the IGIS, and acted completely appropriately in revealing that a crime had been committed.

That these failures have been allowed to happen shows that, for all that we pat ourselves on the back that Australia is a democracy with the rule of law, we more closely resemble a banana republic. Corrupted institutions, self-interested politicians and senior officials, inadequate safeguards, a silent opposition, a sleeping watchdog.

The crime against Timor-Leste is a stain on Australia's recent history that will never be cleaned off. So too, now, is the conviction of Witness K. This is how Australia's most pre-eminent institutions treat a brave, patriotic servant — and how they allow the powerful to act with impunity.

*What can Australia do to make up for its failure to Witness K and Bernard Collaery? Let us know your thoughts by writing to [letters@crikey.com.au](mailto:letters@crikey.com.au).*