



# Bernard Collaery: A warrior for democracy

*Veteran lawyer at the centre of the sensational Witness K trial over allegations Australia bugged East Timor's government tells of his fight against the creep of 9/11-era national security laws.*



Bernard Collaery: "I had to come home. In the end, I could not leave Witness K to face this by himself. I could not do it." **Alex Ellinghausen**

**Tom McIlroy** *Political reporter*

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**T**he voice is familiar, even though we've never met. "Do you know Ottoman?" asks [Bernard Collaery, who is calling to](#) confirm plans for lunch.

Everyone in Canberra knows Ottoman – the default dining spot of the powerful and aspirational since Paul Keating was in The Lodge.

But we're not going to Ottoman. Instead the former ACT attorney-general wants to eat next door, at a modest cafeteria popular with public servants.

"It's the same food, and just as good," Collaery says. "I'll introduce you to Ali, the cook. Don't eat before you come."

Collaery, one of Australia's most experienced lawyers, is a man under pressure: along with his former client – the intelligence operative known as 'Witness K' – he's at the centre of the sensational, censored trial over allegations [Australia bugged East Timor's government during a dispute over lucrative oil and gas rights](#). Despite the pressure, the 75-year-old is still a warrior who has no plans to stop challenging laws that undermine our democracy.



Bernard Collaery's father, Edmund Francis Collaery, who was killed in action just months before his son was born.

When we meet, he laments that a lone diner has secured the best table, replete with sunshine, at the front of the room.

Collaery, dressed in a blue blazer, a striped pink shirt and cufflinks from Trinity College, Cambridge, warns his trial must remain off limits.

His eyes follow each new arrival entering the room. We're metres from the Australian Federal Police headquarters, the Attorney-General's Department and intelligence agency the Office of National Intelligence.

Collaery suggests his phone is being tapped, but is relaxed and talkative.

Collaery was born in England, in the last year of World War II, months after his father, RAAF Flying Officer Edward Collaery, was killed in action. He and his mother, Alice, arrived in Australia in 1945 and settled in the Illawarra. Collaery went to a Christian Brothers school in Wollongong followed by University of Sydney Law School.

His career has combined diplomacy, politics and high-profile legal fights including for the families caught up in the Thredbo landslide in 1997 and the Royal Canberra Hospital implosion the same year.

After serving as the second attorney-general of the ACT and deputy chief minister in the tumultuous early years of territory self-government, he lost a re-election bid in 1992.



Collaery in 1997 representing the family of Thredbo landslide victim Steve Urosivic. **Glenn Hunt**

More recently, he's been busy running his Canberra firm, Collaery Lawyers, and writing a book, *Oil Under Troubled Water: Australia's Timor Sea Intrigue* (Melbourne University Press). It was planned as a two-volume history, but had to be cut back to 400 pages over sub judice concerns.

"Really the book is, rather than an achievement, a compromise," he says. "And I'm disappointed. I think I could have made it more interesting and less compressed."

For more than 30 years, Collaery has advised the East Timor resistance movement, working on the ground on international law matters alongside key figures in the nation's emergence in the early 2000s including Xanana Gusmão and José Ramos-Horta. He represented East Timor at the International Court of Justice during the maritime sea boundary dispute with Australia.

"I'm interested in strategy, I'm interested in the thought processes that make leaders take decisions. If you visited my house, there's a whole wall of what my kids call 'war books', but a lot of them are pretty dry, strategic studies."

It's an easy through line from the strategy of war to where Collaery finds himself today.

Along with Witness K, an Australian Secret Intelligence Service operative, he was charged with breaching secrecy laws and could face two years' imprisonment.

Attorney-General Christian Porter was required to sign off on charges by the Commonwealth Director of Public Prosecutions against Collaery and K.

Collaery says the charges, which he likens to something in Stalinist Moscow, point to fragility in Australia's democracy.

The media has been barred from the court after the federal government invoked draconian powers in the National Security Information Act, usually used to suppress information such as the identities of intelligence officers or military secrets.



Secretary of the Department of Immigration and Border Protection Michael Pezzullo and ASIO Director-General of Security Mike Burgess. **Alex Ellinghausen**

And although the action has been behind closed doors, the witness list is impressive: senior bureaucrats Michael Pezzullo and Frances Adamson have given evidence, as well as spy bosses Paul Symon and Mike Burgess plus former foreign minister Gareth Evans.

In June, the ACT Supreme Court ruled against Collaery about which parts of his trial would be held in public. Those days of lengthy testimony were only the most recent developments in a saga that stretches back to the Howard government.

The widely known allegations are that in 2004 Australian spies planted listening devices in Timor-Leste's cabinet room, as the fledgling nation attempted to settle its maritime boundary with Australia.

[The government has never confirmed, nor denied, if the East Timor spying operation actually took place.](#) Australia and East Timor settled the boundary dispute in May 2018.

Just where that boundary fell was crucial to determining the rights to the lucrative Greater Sunrise oil and gas field.

East Timorese leaders Gusmão and Ramos-Horta are witnesses in the corner of K and Collaery. He proudly mentions that his friend Xanana ate the same food we're having during a visit to Canberra before East Timorese independence.

Collaery says the Department of Foreign Affairs and Trade and then minister Alexander Downer snubbed the liberation leader turned president.

He says Australia was favouring Fretilin, the main East Timorese political party that Gusmão had fallen out with, and didn't want him here. Collaery and his firm felt obliged to cover up the undiplomatic treatment of their friend.



Collaery says the transcript of five days of court proceedings must be made public, even if it takes 50 or 60 years. **Alex Ellinghausen**

"Downer is the man in 2000, who with Foreign Affairs would not send a car to Canberra Airport. I had to borrow a big black limousine so Xanana wouldn't be aware of the way he was being treated."

In December 2013, K's home and Collaery's Canberra legal office were raided by ASIO and the Federal Police.

His friend Sevgi serves us Turkish meze, turmeric chicken, vegetables, chargrilled mushrooms and meatballs.

Other diners carry their meals from the counter, but Collaery isn't just any customer. Sevgi is Ali's daughter and later she'll insist on boxing up the leftovers to be taken home.

Collaery mentions "the Dili issue", lashing Australian foreign policy and calling today's decision makers the "latter-day colonialists" of the region.

He charges diplomatic pragmatism with causing Australia to lose sight of national values.

"For current advisers' views, considering the mess we're in with our foreign policy, to be preferred over eminent fellow travellers, is extraordinary."

Collaery says the transcript of five days of court proceedings must be made public, even if it takes 50 or 60 years.

"The reason why I think the bureaucracy does not want it released is they're going to be found to be wrong," he says.

It's not a quick meal and the stories traverse decades. Collaery recalls seeing the dawn of multiculturalism in Australia, being fascinated at the food some of his classmates ate for lunch at school.

He recounts the shock of seeing the body of an 8-year-old classmate who died from diphtheria.

"Those were the days when parents lost children to what were really preventable diseases. I think COVID-19 is reminding us really that science hasn't defeated everything."



Collaery arriving at court in 2019. **Alex Ellinghausen**

Collaery's love of strategy has carried him through a long career, including lengthy murder trials.

"My present situation suggests I'm not actually very good at handling things. I think I've finally fucked up," he laughs.

Despite anger at Australia's treatment of its near neighbour, he speaks with admiration of the conduct of Aussie soldiers practising grassroots diplomacy in Timor-Leste in the early 2000s, including witnessing a group present a handmade pulpit to a church destroyed by fire.

He's spent years in the 21st century's first sovereign state, witness to the good and bad. Today the relationship is more positive, Collaery says.

"I think the current leadership needs to put things behind them. They'll be weary now. We really never had their trust, given what they went through during the Indonesian occupation."

Away from here, he owns a 283-hectare property on the NSW south coast.

"It has 100km views at the top, with three great ridges and tall Budawang ash. It was purchased to save from logging. It's a folly in one sense.

The property was completely burnt out in the January bushfires, and he dreams of building a stone and timber house one day.



Nobel laureate Jose Ramos Horta says the Morrison government should drop the prosecution of Witness K and Bernard Collaery. **James Massola**

But for people like Bernard Collaery, there's always more work to be done.

He plans a High Court challenge against the creep of 9/11-era national security laws, including terrorism orders requiring secret trials and closed courts.

Likening the task to childhood swimming training on cold winter's mornings, Collaery says it is hard but necessary.

"We can't allow legislation like that to remain on our statute books."

Collaery says he didn't seek the notoriety of the Witness K trial, which he believes is designed to send a message to "L, M, N, O, P and Q."

He felt compelled to help his friend and left his position as a senior academic visitor at Cambridge University to return home permanently.

"I don't need this soapbox," he says. "I absolutely loved being at Cambridge. I'd got away from trial work, I had my bicycle and could write my book in peace. But I had to come home. In the end, I could not leave Witness K to face this by himself. I could not do it."



For more than 30 years, Collaery has advised the East Timor resistance movement, working on international law matters alongside key figures including Xanana Gusmão. **AP**

One positive from the saga has been the close support of his four children and seven grandchildren. Collaery says they're proud of what he's doing.

"They're not a demonstrative family. Lawyers' children often keep a distance from the work."

Collaery's partner, Pollyanna, has a two-year-old child which allows him to draw on his long experience as a parent and grandparent.

Collaery has a pressing commitment and the plates are being cleared away.

Friendships run deep at Ottoman Cafeteria and Sevgi isn't interested in being paid for the food. Eventually she agrees to a nominal sum for the large spread. Colleary goes into the kitchen to catch up with Ali.

"You can write whatever you like," he says confidently. "I never get offended."

## The bill

Ottoman Cafeteria, Broughton St, Barton, ACT

Banquet lunch, \$15 per person

**Total: \$30**

Tom McIlroy reports from the federal press gallery at Parliament House. *Connect with Tom on [Twitter](#). Email Tom at [thomas.mcilroy@afrc.com](mailto:thomas.mcilroy@afrc.com)*

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