

Former intelligence officer says ASIO raid legitimate national security action

Mark Colvin interviews Dr Clinton Fernandes. 4 December 2013

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MARK COLVIN: Dr Clinton Fernandes is a former intelligence officer with the Australian Army who teaches on intelligence matters at the University of New South Wales' Canberra faculty.

I asked him first about George Brandis' assurances that material seized in the raids would not be used against East Timor in the Hague court case.

CLINTON FERNANDES: ASIO (Australian Security Intelligence Organisation) is very reliable and very believable when they say that they weren't trying to impede the international arbitration between Australia and East Timor.

I believe their motives were solely related to defending Australia's national security because they wanted to make sure that if the affidavits that Mr Collaery was going to be using contained the name of any Australian Secret Intelligence Service agent, well, they'd need advance warning so they could take counter-measures. There were very legitimate reasons for yesterday's raid.

MARK COLVIN: But what about cancelling the former ASIS (Australian Secret Intelligence Service) agent's passport? Isn't that bound to impede East Timor's case if that person was going to give evidence in The Hague?

CLINTON FERNANDES: I think that person would already have made a sworn statement, a formal legal deposition, to ensure that the case could go ahead regardless of whether he was in The Hague or not.

MARK COLVIN: But surely the actual appearance of a witness is important in cases, otherwise it'd all be done by sworn legal depositions?

CLINTON FERNANDES: Definitely, definitely. I think that probably would harm Mr Collaery's case, or the Timor Leste government's case, but that's not the intention of the warrant that ASIO sought. That's simply a by-product of the warrant being sought.

But shouldn't we be asking questions about the timing? They could have done this before Mr Collaery left for The Hague or they could have done it next week, perhaps?

CLINTON FERNANDES: Definitely. I think questions should be asked about the timing. It may well be that they only very recently got wind of it because of the operational secrecy that

Mr Collaery and the Timor Leste government had been maintaining. I'm speculating here. Yes, questions should be asked about the timing but there are probably very good reasons for it.

MARK COLVIN: Mr Collaery is also talking about the fact that he represents lots of other people who probably won't be terribly happy about ASIO being able to go through their documents. I mean, what kind of protections do people have in these circumstances?

CLINTON FERNANDES: Here is a question that I think should really be asked of Mr David Irvine, the Director-General of ASIO, precisely how Mr Collaery's other clients are going to have their privacy protected.

MARK COLVIN: But it's a legitimate question in your view?

CLINTON FERNANDES: Sure, it's a legitimate question but it's a legitimate question in pretty much any secret service or police raid on any law firm, not just this one.

MARK COLVIN: They're not too frequent, though; it's not a common event for a law firm to be raided by ASIO?

CLINTON FERNANDES: It's not a common event, no. But this kind of raid on any law firm, regardless of who the client was, would invariably capture or risk capturing documents pertaining to other clients of that law firm and so I think ASIO is quite normal in this regard.

MARK COLVIN: Do you think that this ex-ASIS agent is what one might call a legitimate whistleblower? I know that the Official Secret Act is all-encompassing: you're not supposed to say anything. But is this a case where there was a genuine public interest served?

CLINTON FERNANDES: Well, we have the Intelligence Services Act and if a person were to find out this sort of information as a result of being an ASIS agent, there are specific prohibitions about it. But, to my mind, yes; it's a legitimate whistleblowing action, although I of course want more information. But at this stage, yes, it looks like a legitimate whistleblowing disclosure because...

MARK COLVIN: What particularly about it makes it that?

CLINTON FERNANDES: The fact that the agent apparently believes that the operation was done, not in order to advance Australia's national security, but for the sectional interests of an oil company. That, at least, is what I'm reading, but only from the open sources.

MARK COLVIN: So he is saying that ASIS was actually operating on behalf of Woodside, not on behalf of the Australian Government?

CLINTON FERNANDES: I'm not sure what, if that is what he is saying, but if that is what he's saying then definitely it's a legitimate whistleblowing disclosure, yes.

MARK COLVIN: Is it also legitimate to disclose the means by which they got in if they were posing as aid agents?

CLINTON FERNANDES: Definitely. That is very much in the public interest because every

Australian wants to know or ought to know if their ordinarily innocuous activities overseas as human rights workers, as doctors, as builders, plumbers and so on, puts them in danger of being suspected as spies. That is very, very legitimate and I'm personally grateful that this whistleblower has come out with that specific disclosure.

MARK COLVIN: So do you believe that that's what happened: that ASIS acted, pretended to be AusAID workers?

CLINTON FERNANDES: Yes. That's what I think happened based on the disclosures that I've seen in the press. And if that's true, that is very cynical.

MARK COLVIN: But isn't it the case that foreign intelligence agencies generally suspect just about everything of being a cover for foreign spying?

CLINTON FERNANDES: Definitely not. I think that certain categories of occupations should never be used for espionage. For example, members of the International Committee of the Red Cross should never be impersonated. Similarly, medical personnel, religious personnel should never be impersonated in a foreign intelligence operation and I think the misuse or the alleged misuse of the Australian aid program is really disgraceful.

MARK COLVIN: And yet the US only got Osama bin Laden by under cover of a vaccination operation; again, this kind of pretence?

CLINTON FERNANDES: Yeah, that is similarly contemptuous. Yes. And in fact, that has put in jeopardy the vaccination program of poor people in Pakistan and elsewhere in the Third World. Yes.

MARK COLVIN: And you're saying that the consequences in this case have the potential to be as bad as that?

CLINTON FERNANDES: It puts in doubt the neutrality of every Australian who goes overseas: young kids who go overseas on a gap year; middle-aged people who go and try and do agricultural programs; people who do medical assistance, you know, in the global south. All of those people can have their motives impugned because of actions like that, yeah.

MARK COLVIN: Dr Clinton Fernandes, a former intelligence officer who teaches on intelligence matters at the University of New South Wales' Canberra campus.