

Richard Ackland: Term 'in national interest' misused as cover for spooky behaviour

Richard Ackland

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I am still trying to work out how impeding an international dispute resolution process in The Hague fits into protecting our "national interest" and our "national security".

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Where, in Timor-Leste's case for renegotiation of the Timor Sea agreements, is there a threat to the security of this country's citizens?

These terms are bandied about to cover situations in which the government or its agencies are caught up in some cack-handed operation that cannot be publicly justified.

Successive Australian governments have known for years of Timor-Leste's allegations about being bugged during the 2004 gas field negotiations and, as a result, wanting the agreement cancelled.

Strictly speaking this is all about the commercial interests of Woodside. The only government interest would relate to any tax that might trickle down from Woodside into the government's coffers.

Suddenly, Bernard Collaery, the lawyer in Canberra for Timor-Leste, days before a hearing is to begin, is raided by up to 15 ASIO and Federal Police officers, his files, computer and USB stick seized. In addition Timor-Leste's star witness for the case has had a knock on the door, been interviewed and had his documents and passport seized, effectively preventing him from giving testimony before the Permanent Court of Arbitration.

I wonder if Timor-Leste could issue him with a temporary passport and whether on "national security" grounds he would be allowed back into Australia?

In the process Attorney-General George Brandis has attacked Collaery, pooh-poohed the notion the raid is a contempt of the arbitral process or a breach of lawyer-client privilege. These concerns are swept aside on the grounds he is keeping Australia and its citizens safe.

He assured us it was ASIO's idea; he just signed the bits of paper.

The Attorney-General protests that these seizures are unconnected with the pending arbitration and that none of the electronic or hard copy material will be provided to the lawyers representing Australia in the case.

The timing and the extent of the operation make that difficult to swallow. It is one thing to try to stop the former ASIS witness from blabbing information about the bugging of ministerial premises in Dili, even though that particular genie escaped from the bottle long ago. It is quite another thing to go that mile further and seize case-related material from the lawyer.

Unquestionably that interferes with the process of the court because Collaery is without his correspondence with the client, with the professors in Cambridge and Oxford who have advised him, and with counsel representing Timor-Leste.

But the ASIO raid has absolutely nothing to do with the case - we have Senator Brandis' word for it.

The very fact of the raid and the interference with the witness has now made Australia's bugging in Timor-Leste much more widely known than it already was. While some might think this is a scandalous attack on lawyers and their independence, the Law Council of Australia has been strangely mute.

Memories of the David Combe-Valeri Ivanov affair come to mind, when in the earliest days of the new Hawke government ASIO came around to the PM's office with the startling news the former national secretary of the Labor Party might be compromised by a Soviet diplomat. The subsequent Hope Royal Commission found that ASIO's concerns were largely spurious. There was no proof of intelligence breaches or any security threats to the country.

Maybe it is an ASIO strategy to confront an incoming government with something really spooky, just to demonstrate its indispensability. After all, there are now more of these agents than ever before in the nation's history, occupying an incredibly outsized building in the nation's capital. It is a vast, essentially unregulated bureaucracy, with enormous powers. It simply must find important things to do.

Certainly, ASIO and Brandis can draw on global precedents for using national security to sidetrack embarrassing litigation. In 2004 about 250 Iraqis brought an action in the US Federal Court alleging they were tortured at Abu Ghraib by a CIA contractor, CACI Inc, which provided "integrated security solutions". The US government thoughtfully stepped in and denied or cancelled visas so that the Iraqi plaintiffs could not appear. The company then sought dismissal of the case on the grounds that the plaintiffs failed to turn up. The nice twist was that the court awarded the defendant company costs.

Then there is the time-honoured practice of witness tampering and tampering with the lawyers of witnesses. Shahzad Akbar is an English-trained barrister working on human rights cases in Pakistan. He was unable to accompany his clients to appearances before Congress because the State Department blocked his visa. Coincidentally his visa troubles commenced when he began to criticise drone strikes in Pakistan and to represent victims.

In a slightly different way, there is the cyber-seizing of materials and communications from lawyers representing detainees at Gitmo. And we should not forget Julian Assange's lawyer, Jennifer Robinson, finding herself on special "inhibited travel" lists.

So the hindering of lawyers and witnesses acting against government and important commercial interests is long established.

To get some idea of Australia's attractive negotiating style in the region, here is former foreign minister Alexander Downer applying leverage to the then Timor-Leste PM, Mari Alkatiri, according to a leaked transcript of the negotiations: "We don't have to exploit the resources. They can stay there for 20, 40, 50 years. 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."

Now we are reminded that Downer's PR firm, with the cute name of Bespoke Approach, is on the drip from Woodside. What a perfect alignment of the planets.

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