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## AFP raids on journalists 'a failure of governance': Bernard Collaery

LINDA MOTTRAM: Bernard Collaery is an Australian lawyer who is facing prosecution, along with a whistleblower known only as Witness K, for their roles in revealing that Australia had covertly bugged the East Timor government during sensitive oil and gas negotiations in 2004.

Tiny East Timor was appalled that Australia was secretly trying to get the upper hand in the negotiations to effectively try and get more money out of the natural resources there.

As with the raids today and yesterday over examples of investigative journalism in the public interest, involving leaks, the Collaery/Witness K case has raised questions about state overreach and silencing revelations of matters in the public interest.

I spoke a little earlier to Bernard Collaery.

BERNARD COLLAERY: This experience occurred to the United States in the 50s and 60s when the reds under the bed hunt was on. The legislature had given extra powers to the FBI, and those powers just took off.

And if Mr Morrison is saying that he has no control over the issues because the executive don't control it, then you've got the same circumstance that arose in the 50s and early 60s in the United States of America.

Those recent amendments to the Commonwealth Criminal Code, if you look at the amendments slipped through in the Foreign Interference Bill, you'll see how vulnerable journalists – particularly journalists who speak to sources outside legal professional privilege – are, and indeed lawyers are now, in our country.

LINDA MOTTRAM: The Prime Minister said Australia believes strongly in the Freedom of the Press and has clear rules and protections for freedom of the press.

He also says he has no trouble with the law being enforced. Can we trust and believe those statements in the current circumstance, do you think?

BERNARD COLLAERY: Well, there is no concept of a Prime Minister abdicating control over state agencies such as the AFP. The Prime Minister has to be exemplary. He must understand there are higher values involved in being a prime minister than simply allowing the black letter laws to be technically – sometimes technically, and other times oppressively, enforced.

The Foreign Interference legislation involved a great deal of breast beating by both major parties, but it was the major parties that had been involved in very, very close liaisons with sovereign powers themselves, affecting vast economic issues affecting Australia. No investigations there, next to no inquiries. And now there are to be, according to Mr Morrison, a hands-off approach.

LINDA MOTTRAM: So are you saying that the Prime Minister should step in in these cases and protect the public interest journalism that's at stake in the matters involving Annika Smethurst and now the ABC.

BERNARD COLLAERY: There's a very well known aphorism – publicity is the soul of justice. Now, if there's an allegation- and I don't know very much about the Smethurst matter. But if there's an allegation of executive misconduct, then the matter is in the prime ministerial hands. He has to be exemplary.

If there is to be a report of executive misconduct that does no affect Australia's national security, that is, he has to weigh those values, become involved and decide whether

imposing burdens on the media in a way that the current raids impose to try and keep the media non reportive of executive misconduct is a failure of governance.

It's a failure – a core failure of a Prime Minsiter who must set and defend the rule of law. The rule of law involves far greater issues than technicalities. It involves balancing all of the issues of civil liberties in our country.

And as the former human rights commissioner Gillian Triggs said, Australia is now the least observant and the most repressive of the Western democracies. And this is- the Prime Minister has to explain the raids. He has to not say, 'Well, you know, the police have got a role to play and it's very important that no one speaks about what goes on behind closed doors'.

But the reality is, the Prime Minister should state very clearly what's at stake for Australians in stopping journalists from reporting alleged misconduct – executive misconduct.

LINDA MOTTRAM: All AFP warrants are authorised by a magistrate or an appropriate member of the judiciary. The AFP tells us that in a statement on today's raids at the ABC.

Can we rely on such judicial figures to get these matters right?

BERNARD COLLAERY: It's not a question of relying on judicial figures. They do their duty with great integrity.

It's a question of what in the affidavit that supports the application for a warrant. And that's an issue that's veiled, opaque and not available, usually, to the lawyers, the people acting for the persons subject to such warrants.

What is the information being conveyed to our judicial figures? Is it complete? Does it say 'this journalist, for example, wants to expose executive misconduct?'

LINDA MOTTRAM: Still, the AFP has demonstrated that it will pursue public servants who leak information, and obviously journalists. What would you say to anyone in Australia who is considering divulging information that they consider to be in the public interest, but they know the Government considers to be a matter of national security?

BERNARD COLLAERY: Well the Government knows that there are public interest disclosure laws that allow so-called whistle-blowers to bring impropriety – serious impropriety, misconduct, and serious illegality to the public eye.

Anyone doing that has to themselves judge the issues involved, in terms of national security and the safety of personnel, etc etc. Generally, the Australian media is most attentive to those issues.

There is a natural antagonism between public interest disclosure laws that allow public servants, for instance to come forward with issues of impropriety and misconduct, and the need for secrecy in terms of operational national security issues – particularly in a defence area.

One hopes that Prime Minister Morrison has the full story, has weighed the full facts, and has, particularly, given consideration to the higher values in our rule of law country.

LINDA MOTTRAM: Bernard Collaery, thank you very much for joining us.

BERNARD COLLAERY: It's a pleasure.

LINDA MOTTRAM: Lawyer Bernard Collaery.