

# Legislative Assembly

Wednesday, 21 December 1988

THE SPEAKER (Mr Barnett) took the Chair at 2.15 pm, and read prayers.

## SELECT COMMITTEES - PRIVILEGE

### *Report*

MR PEARCE (Armadale - Leader of the House) [2.16 pm]: I have for presentation to the House the report of the Select Committee on Privilege established to inquire into allegations made by a member. I move -

That the report do lie upon the Table.

The report which I have tabled includes a report by the majority of the committee, that is four members out of five; a report by a minority member of the committee, that is the member for Conesloe; and a number of appendices and exhibits tabled by the member for Mt Lawley.

Question put and passed.

[See paper No 759.]

## MOTION - CENSURE

### *Member for Mt Lawley*

MR PEARCE (Armadale - Leader of the House) [2.17 pm]: Arising out of that report, I now move the recommendation of the majority. I move -

That the Legislative Assembly censure Mr Cash for his abuse and breach of parliamentary privilege.

The matter that the committee was set up to inquire into was relatively simple and straightforward. On Thursday of last week, as is well known, the member for Mt Lawley made an allegation in this House of severe criminal misconduct by members of the Government - unnamed - in that they were involved in bugging the offices, facilities and homes of people in this town. That was a very simple claim, made at the end of a debate. It clearly was not the kind of claim which had motivated the Leader of the Opposition to move the motion that was being debated. It appeared to many in the House to be the kind of spur of the moment, throwaway line that the member for Mt Lawley has in the past been inclined to use. Nevertheless, the accusation is an extremely serious one because it asserts that members of the Government have been involved in a criminal conspiracy. I do not know of any more serious allegation that could be made against members of this House than that they had been involved in a criminal conspiracy.

Yesterday when the House sat I did not make a lot of the matter in moving to set up the Privilege Committee because I worked on the basis that the member for Mt Lawley would have the opportunity of going before that committee to present such evidence as he might have about the truth of his claim. I waited with some interest for the appearance of the member for Mt Lawley at the committee yesterday evening and again this morning.

I want to say a few things about the evidence which the member for Mt Lawley failed to present. Let there be no misunderstanding about this: The member for Mt Lawley did not present a skerrick of evidence in support of his claim. For example, when he was asked which members of the Government was he alleging were involved in the conspiracy, he would not say. When he was asked who had had their facilities, offices or homes bugged, the member would not say. What he said was, "I cannot tell you those things because I am fearful of infringing the sub judice rule."

Several members interjected.

Mr Lightfoot: The whole Government is hiding behind the sub judice rule.

Mr PEARCE: I think I am one of the experts in the Parliament on what constitutes hiding behind the sub judice rule. I have just spent four hours chairing a committee where somebody has been trying to do that. I have watched the process from close quarters; in fact

the length of a table away. This is how it is done: One turns up at a committee, and when asked a direct question, namely, against which Government member this criminal conduct is alleged, one says, "I cannot tell you, I am sorry, because of the sub judice rule." A canny chairman would say, "All right, we will put the committee into camera; we will meet in camera where no records are kept which can be reported to the House and you can then tell the committee, in peace and quiet and protection, any evidence you have. All you need to do then is convince the committee that you have something behind your allegation and the committee can report back to the House, without any detail, that the circumstances are justified." The committee moved into camera in that way, and the member for Mt Lawley was still not willing or able to present a skerrick of evidence. He could not name the allegation and he could not do anything.

Several members interjected.

Mr Clarko: Everybody knows the reason why.

Mr PEARCE: That is dead right; everybody knows the reason why is because there is no evidence.

Several members interjected.

Mr Lewis: Because we can't trust you criminals over there.

Mr PEARCE: There is no truth in the claim made by the member for Mt Lawley.

Several members interjected.

#### *Withdrawal of Remark*

Dr GALLOP: My point of order is against the member for East Melville, who uttered the expression, "We can't trust you criminals on the other side." I would ask him to withdraw that comment.

Mr BURKETT: Mine is the same point of order. The member for East Melville smartly interjected, "Because we can't trust you criminals over there." I request an immediate withdrawal.

The SPEAKER: I think it is appropriate for the member for East Melville to withdraw, but I want to say this before I ask him to withdraw: I am not the only person who has become increasingly concerned at the use of parliamentary privilege to say things in this place which are unparliamentary and untrue. Indeed we are now faced in two days of Parliament, this being the second, with something that was said in this place that people thought fitted that category. I am not going to sit here and tolerate members continuing to abuse parliamentary privilege by saying things like that and then withdrawing, thinking that is perfectly appropriate. I do not think it is appropriate, and I will take action against the next member who does. I want the member to withdraw.

Mr LEWIS: Mr Speaker, what do you want me to withdraw?

The SPEAKER: The member for East Melville well knows what I want him to withdraw. This is the second time.

Mr LEWIS: I withdraw the word "criminal".

The SPEAKER: This is the last time I will ask you to withdraw in a proper, parliamentary way.

Mr LEWIS: I would like you to tell me what I need to withdraw. I have withdrawn the word "criminal".

The SPEAKER: Order! I said that was the last time. This is unquestionably the last time. If you do not withdraw in a proper, parliamentary way I will name you.

Mr LEWIS: I withdraw the words which apparently offend members who may feel guilty.

The SPEAKER: Order! I give you one last chance. There is absolutely no question that if you play that game again when you rise I will name you.

Mr LEWIS: I withdraw.

#### *Debate Resumed*

Mr PEARCE: That is a demonstration of the kind of thing the Privilege Committee was set

up to inquire into in the first place. I hope members of the Opposition will not carry on the practice this afternoon of trying the tactic they tried yesterday - where one of the Opposition members is being brought to book for unjustified mudslinging, to think that the way to cover that is in a rain of mud.

Mr Court: That is what you think. You know what happened yesterday.

Mr PEARCE: The member for Mt Lawley was given a clear opportunity yesterday to do what he failed to do in the Parliament on either occasion, and that is to produce the evidence for his claim. There is more riding on this than the simple credibility of the member for Mt Lawley. The loss of credibility of the member for Mt Lawley would not be a very serious loss because not a lot of credibility lies there.

Mr Court: If we said that about one of your members you would have jumped up and asked us to withdraw. You talk about mudslinging.

Mr PEARCE: The difference is that I am doing it by way of a substantive motion. I am moving a motion to censure the member for Mt Lawley, and I am moving that motion as the Chairman of a Privilege Committee of this House which has instructed me to move that motion.

Several members interjected.

The SPEAKER: The member for East Melville will cease interjecting.

Mr PEARCE: The member for Mt Lawley had the opportunity to present any evidence that he had. He could not do it. He sought to provide a range of excuses to the committee for not being able to, or for being unwilling to, present any evidence to the committee. I shall deal with those excuses one by one, because the committee gave him every opportunity to provide any evidence that he might have in a way which would not be a problem for him. When he talked about the sub judice rule and his fear that he might impact on the trial of people before the court, the member for Mt Lawley was asked this question: "How can the allegation which you made in the House last Thursday not infringe this sub judice rule if the evidence to support that allegation does?" That was a fair question. If the evidence which might be brought before the Privilege Committee infringes the sub judice rule, the allegation itself must infringe the sub judice rule.

The member for Mt Lawley was completely unable to explain how the allegation could be all right but the evidence to support the allegation would be sub judice. But given the fact that the member for Mt Lawley, though failing to understand the contradiction there, seemed to be fearful of the results for himself, the committee moved to an in camera session in order to enable the member to present his evidence in a way which would absolutely prevent any problem before the courts; because in an in camera session this rule applies: No records may be kept. The section of the discussion that was in camera cannot be raised by way of parliamentary debate, in flat contradiction of the legal opinion which the member for Mt Lawley brought into the House.

Opposition members interjected.

Mr PEARCE: I am not surprised that members opposite are so concerned about the effect of this debate as to want to keep up a continual running chatter.

Mr Bradshaw: We think you are a joke over there for bringing this on.

Mr PEARCE: Members opposite may think it is a joke that somebody can stand in the House and allege serious criminal activity on the part of Government members without being able either to name those members or to produce a skerrick of evidence in support of that claim. That might be a laughable matter to members of the Opposition, and I am sure it is; it is also a clear demonstration of the lightness with which they treat the parliamentary democracy of this State and the parliamentary system under which we operate. I wish in a way we had allowed the television cameras into that Select Committee room to record the member for Mt Lawley in action, because it really was quite a fascinating spectacle. He would not answer. I think a judge or magistrate would say that the witness was evasive and untrustworthy.

Mr Blaikie: That is not true.

Mr PEARCE: It is absolutely the truth. He could not answer a question directly. If he was

asked once he was asked 50 times in open session and 30 times in camera -

*Points of Order*

Mr COURT: Mr Speaker, I would like the Minister to withdraw his comments about the member for Mt Lawley being untrustworthy and evasive.

The SPEAKER: For two reasons the Minister's comment does not come under Standing Order No 132. At the moment we are debating a substantive motion. In my view, that in some way allows those sorts of comments to be made. In any event the comment that I heard was that a judge would accept that.

Mr CLARKO: On a point of order, Mr Speaker, I thought your ruling yesterday was to the effect that if a member objects to certain words those words shall be withdrawn, irrespective of what the words are. If that is so, I believe these words should be withdrawn. I also believe that what the Leader of the House is saying is not central to the motion that he is speaking to. The question about untrustworthiness is not part of the motion we are dealing with; the motion deals with whether the member provided evidence to back up his allegations about phone tapping. Mr Speaker, I ask you to reconsider the matter because I believe it is a classic case of words that are quite properly regarded as offensive to anybody who has them directed at him, and therefore they should be withdrawn. It seems to me our Standing Orders go further than that, and create the situation where a thoughtless Speaker - of which you are not one, Sir - might take the view that you can stand and get a person to withdraw a whole speech.

Mr PEARCE: To the same point of order, Mr Speaker -

The SPEAKER: Order! Let us just stop it here. I have no intention whatsoever of allowing this House to canvass my rulings in this manner. There is a proper course of action to take; it has not been taken. The Leader of the House.

*Debate Resumed*

Mr PEARCE: As I was saying, the member for Mt Lawley was given ample opportunity before open session and before an in camera session of the committee to -

*Points of Order*

Mr HASSELL: On a point of order, Mr Speaker, there has been some banter across this Chamber about the effect of in camera evidence and how secure it is, yet I have now heard on two occasions the Leader of the House refer to what was happening in camera.

Mr Blaikie: Hear, hear!

Mr Thompson: And they want to set up a code of conduct!

The SPEAKER: Order!

Mr Court: A judge would say you are corrupt.

The SPEAKER: Order!

Mr HASSELL: Mr Speaker, I wonder if it is within the Standing Orders for that matter to be referred to.

Mr PEARCE: If I can guide you, Mr Speaker -

Mr Blaikie: If you have a point of order, say what it is.

The SPEAKER: Order!

Mr PEARCE: To the same point of order -

The SPEAKER: Order! Just a minute.

Mr Clarko: If it is a point of order you have to say that.

Mr PEARCE: I just said it.

The SPEAKER: Order! I must say I am a little disappointed with the behaviour of members of the Opposition today. You know full well, members of the Opposition, that when points of order are taken they are being addressed to me and it is appropriate for you not to interject. That has been a practice of this place for a long time, long before I ever came here and certainly before I was the Speaker, and I would appreciate your conforming to that.

Mr PEARCE: I want to read from the report to be clear about this. On the second page of the report -

Mr Lightfoot: Is this the in camera report that doesn't exist?

Mr PEARCE: No, but -

The SPEAKER: Order! The Leader of the House will resume his seat. I am not sure whether the member for Murchison-Eyre is hard of hearing, but this is a point of order which is being raised with me. I have just asked for interjections to cease during points of order.

Mr PEARCE: I will refer to page 2 of the report - and this is an important point; it is not in fact revealing evidence that was given in camera because no evidence was given in camera. The committee went into camera to allow the member for Mr Lawley to give evidence but he gave no evidence. I will read to the House the whole section on sub judice from the report -

Mr Cash sought to invoke the sub judice rule to explain why he was unable to tender any evidence before the Committee. He also claimed that what he alleged was not in breach of the sub judice rule. He was not able to explain why the allegations did not breach the sub judice rule, whilst any evidence which would support the allegations would.

The Committee met *in camera* to allow Mr Cash to tender any evidence that he may have without any fear of infringing the sub judice rule. Mr Cash declined to provide any evidence even under this protection.

That is an important point for the House to know, because the committee gave the member for Mr Lawley the opportunity to present his evidence in a way which clearly would not infringe the sub judice rule.

Mr Clarko: Is this a speech or a point of order?

Several members interjected.

The SPEAKER: Order! I will name somebody if members behave like that again, and I will not have any hesitation in doing so. I remind the Leader of the House that he is advising me on a point of order which was taken by the member for Cottesloe.

Mr PEARCE: Thank you, Mr Speaker. I think I have quoted and explained the point at some length. The situation is that I am quoting in part from the report, and am advising the House of the reasons why the committee recommended in that way. I did not canvass evidence given in camera because no evidence was given in camera; the member for Mr Lawley declined to do so.

The SPEAKER: I have now been given a copy of the report which was tabled. It is my understanding that the Leader of the House is referring to that and that there was no evidence taken in camera, so he can proceed.

#### *Debate Resumed*

Mr PEARCE: I think it is important for the House to understand that point, because the member for Mr Lawley has been trying - as he tried in Parliament yesterday and in the committee yesterday and again this morning - to find a range of excuses to get out of the situation that he has made an allegation which he knows to be untrue, of which he has no evidence, and now for which he is being brought to book.

The member also sought to bring before the committee 16 or 17 witnesses, whose names he tabled during the course of the debate yesterday. This is what the member was asked to do: First, he was asked to give an indication of what each of those witnesses had to say that would be relevant to the allegation he was making so that the committee would properly know whether it would be reasonable to call those witnesses. That is what he could not do; he could not give any indication whatsoever of anything that any of those witnesses might say that might support his allegation. There were two reasons for this: First, he admitted he had had no personal conversation with any of the witnesses about any of the matters discussed in the House; secondly, he would not specify his allegation, so he could hardly demonstrate the relevance of any of the witnesses to his allegation when he could not say before the committee in specific terms precisely what his allegation was. So the committee found it difficult to determine that anything in evidence would be relevant towards the

allegations he made because before the committee the member consistently refused to be specific, even about the allegation he made in the House.

Mr Greig: On pretty good advice.

Mr PEARCE: Let me tell the House what the committee concluded with regard to the QC's advice. The finding section of this report reads as follows -

Mr Cash presented no evidence at all to the Committee in support of his allegations, citing the sub judice rule as his excuse.

The Committee was not convinced that this excuse was valid as Mr Cash had the opportunity of an *in camera* session to present evidence with protection from infringement of the sub judice rule. Under the circumstances the Committee concludes that Mr Cash has made serious allegations of criminal misconduct by Government members under parliamentary privilege. As there was no indication by him of any evidence to support these claims, the Committee concluded that Mr Cash has abused his parliamentary privilege and has breached the parliamentary privilege of other members.

With regard to the advice on which Mr Cash sought that protection, the committee had this to say -

Mr Cash tendered to the Committee the advice of a QC which he had previously tabled in the House. The Committee was not inclined to rely on this advice as it did not show a good understanding of parliamentary practice and procedure in some parts, and was clearly wrong in others. The Committee preferred to rely on the normal resources of the Parliament for its advice on these matters.

The fact is, with regard to the QC's advice which was tendered before the House, it did not understand the way in which *in camera* evidence was taken and the limitations on the use of the evidence tendered in camera in parliamentary debate. In fact the QC's advice was based on the premise, which has just been denied by way of a point of order by the member for Cottesloe, that statements taken in camera can be used in the course of a parliamentary debate. So the QC's opinion sought to say on this matter that, if he were to tender any evidence in camera, that evidence could form part of the debate of the matter in Parliament itself. That is clearly wrong.

Mr Hassell: That is not what he said. That is a total misrepresentation.

Mr PEARCE: That is why the member for Mt Lawley could quite easily have told the committee of any evidence he had while the committee was in camera.

Secondly, the member for Mt Lawley could not explain - and I think this is a serious point - why he could make an allegation of this kind without infringing on the sub judice rule but was prevented from producing evidence for that allegation under the sub judice rule.

Mr Watt: You said you preferred to rely on advice from within Parliament. Who gave you advice contrary to that of the QC?

Mr PEARCE: The member knows perfectly well what the normal sources of advice in the Parliament are. They come from the Clerks, from Erskine May, from the Standing Orders and from the knowledge and wisdom of some of the more senior members of the Parliament. They are the bases on which we sought it. However, if the member wants to argue the toss about the QC's opinion, he can go through it carefully and pick out the bits I referred to, which are the ones the committee was concerned about - so concerned that it was prepared to put those sections into the report - because any QC who is being briefed on these matters is a QC who is being briefed by a member of Parliament. A member of Parliament goes to that QC and puts his or her story; on that basis the QC tenders advice on that brief. It is not a comprehensive brief necessarily, nor is it necessarily a comprehensive piece of advice, but effort has been made recently to suggest somehow that the advice of the QCs shows superior ways of declaring what is right and wrong in this House. This House has always jealously preserved discussion of its own forms to itself. That is precisely what the committee is recommending it does in this case.

The member for Cottesloe in fact has been the main spokesman in the Chamber for that particular point of view. He made an impassioned speech in that regard on Thursday last

week, when he asked whether the bringing to Parliament of a letter from a barrister representing clients suggesting that we should be careful in the course of debate lest we infringe upon the rights of his client was not itself a breach of privilege, although it did not stop his colleagues from producing letters of a comparable kind like confetti during the course of the debate yesterday.

The facts of this case are very simple. Last Thursday the member for Mt Lawley made an allegation in the Parliament that Government members were involved in a criminal conspiracy to tap phones. It clearly was not a part of the argument which was being adduced by his own side in the course of that discussion. The Leader of the Opposition, the main speaker, did not refer to it. When it appeared that the Deputy Leader of the Opposition had referred to something like that and the Premier sought a withdrawal, the Deputy Leader of the Opposition said he had been misinterpreted. On a reading of the words, I think that was probably the case. In the last two minutes of 30 minutes of Opposition speeches, suddenly came one of the most dramatic claims made in the recent history of this Parliament - that Government members were involved in phone tapping. That was one line; no evidence, no argument, no line of thought to support it - just an allegation. The next day the children of Government members had to go to school, on the last day of the school year, and face questioning by people who had seen on the front page of the paper the proposition that their mothers and fathers had been involved in telephone tapping.

Several members interjected.

The SPEAKER: Order!

Mr PEARCE: That is absolutely true. The sons and daughters of Government members had to go to school and be subjected to the kind of smear which was sent against all of us. We have a right, as members of this Parliament, to say to anybody who makes a serious allegation of that kind, "You prove it." The member for Mt Lawley -

Mr Taylor interjected.

Mr PEARCE: That is right. If he cannot prove it absolutely, he should justify he has good grounds for thinking that. The member for Mt Lawley, when the opportunity was presented to him in the special sitting of the Parliament yesterday, just wanted to ignore the whole thing. No evidence was forthcoming in the course of the discussions. There is a difference between the House, where Opposition members cannot be made to answer questions, and a Select Committee of Privilege where members making these claims do face questioning. There is a difference between facing questioning and having to answer questions, and anybody who reads the transcript of the open sessions of the meeting of the Privilege Committee will see what that difference is because they will notice that the answers given by the member for Mt Lawley to questions in almost every case bear no relationship to the questions at all. We had a series of straight and pertinent questions, which were firmly and fairly put, and a whole raft of evasive answers and readings from bits of his legal advice to say why he could not answer this or that question, but the bottom line of it was that there was no evidence. There was no suggestion of evidence; there was not a sniff of evidence; there was no possibility of anybody listening to the member for Mt Lawley concluding that he knew anything at all about this allegation. He could not even explain to the committee why people were on the list of his proposed witnesses. All he could say was, "If I can get all these people before the Select Committee and I can ask them all the questions I want something might come out which will be of assistance to my case." He was proposing a mammoth fishing expedition and no doubt, if those 16 or 17 people could not have helped, there would have been a list of another 16 or 17. If he could not get an adjournment to next Friday, next month or next year, no doubt he would have sought an adjournment to the next century in the hope that maybe something would turn up. It is not good enough for a member to come into this House and make those kinds of claims and not face up to the consequences. The member could have faced up to the consequences of his actions here in three ways: Firstly, the proper thing for him to have done once he realised the way in which his off the cuff comments had been reported and the media treatment they received was to stand up at the beginning of yesterday's sitting of Parliament and retract and apologise. That would have been the manly thing to do; the proper, honest and responsible thing to do. Secondly, if he were not going to do that, he should have produced before the House or the committee the evidence on which his claim was based. He has not done that. Every opportunity has been

given to him; every protection has been afforded the member for Mt Lawley to produce his evidence and to support his claims in a way which would not impact on him if there were some basis to his claims or evidence or on those who are currently facing the courts on matters which may or may not be related to the subject of his claims.

The third way of taking the consequences is the way the House now faces. The member for Mt Lawley made scurrilous accusations under parliamentary privilege. He has no evidence of those claims. That is my firm belief. He certainly did not present any evidence to the committee. That has led the majority of members - four to one - to recommend to this House that the member should be censured.

The least that this House can do is to have its members confirm and to say to the people of Western Australia that members of the Legislative Assembly appreciate the importance of the institution of parliamentary privilege; that they will not have it debased; that they are prepared to regulate parliamentary activities and their own members. If parliamentary privilege allows a member to stand above the law we will make sure people will not abuse the privilege or breach the privilege of other members by making those kinds of baseless claims of criminal activity under the cloak of parliamentary activity in this place.

The member for Mt Lawley is thoroughly deserving of censure. It is with great pleasure and a great belief in the justice and truth of the motion that I commend to the House the recommendation of the Privilege Committee.

**MR CASH** (Mt Lawley) [2.51 pm]: We have just seen another charade on behalf of the Government, an absolute charade filled with hypocrisy. Who would have thought that we would be sitting in this House and hearing the Leader of the House speak in those terms, given his performance in this House over recent years. One only has to refer to *Hansard* to see the sorts of things that the current Leader of the House has dished out - and often not picked up by members of the Opposition, not challenged on a point of order. Without doubt the Leader of the House is a person who has taken every opportunity to try to denigrate those people who oppose him. His speech represents hypocrisy at its best.

The Government has made a political blunder. Last Thursday in this House I made a statement which we are now told offended some members of the Government.

Government members: All members of Government.

**Mr CASH**: I am now told that the remarks offended all members of the Government. If that is the case, let them tell me why none of them rose on a point of order to ask me to withdraw the comment I made at that time.

**Mr Parker**: Because we do not listen to you.

**Mr CASH**: Maybe that is the point. The Deputy Premier admits that he fails to listen to what people say in this place. Is that the excuse the Government now wishes to use in condemning me - that it fails to listen to speakers in this House? What absolute rubbish!

The Government has blundered. When the Premier rose on Friday morning and read the headlines in *The West Australian*, he fell out of his tree. He knew he was on a losing wicket the previous day in Parliament; he could not cope with the situation because he knew that things were not looking too good for the Government. Within a short time, Mr Speaker, the Premier announced on the radio that he was considering calling a special meeting of Cabinet to give consideration to suing me and West Australian Newspapers for the comments that were published. Is that the case? Did the Premier say that?

**Mr Peter Dowding**: No.

**Mr CASH**: Fair go! Your nose is growing, Pinocchio.

**Mr Peter Dowding**: No, it is not.

**Mr CASH**: The Premier made the statement, which was reported in the media, that he intended setting up a special meeting of Cabinet to give consideration to taking action against me and West Australian Newspapers.

**Mr Peter Dowding**: Against you.

**Mr CASH**: Why did the Premier not correct the media, which also said the Premier was to take action against West Australian Newspapers?



Let us forget the Premier, Mr Speaker. He does not count in this place any more. Members will accept that the only person who counts in this place when it comes to defending the Government's position is the Leader of the House, the man who I said should have been the Premier after the former Premier, Brian Burke, resigned. But regrettably, even with my support and the support of some of my colleagues, we could not get the numbers to allow him to be the Premier; that is something I and many of my colleagues regret.

The Government blundered; it failed to act at the appropriate time. The Government blundered because it is not in control of the House. Given this political blunder by the Premier, what does he think the public think about the cost of his recalling Parliament? The Federal Labor Party criticised some of the Federal Opposition members for making amendments to a Bill.

The SPEAKER: Order! I understand the member wants to prepare a case to defend his position - at least I presume that is what he is trying to do - but it is not what he is doing. He is ranging in a manner I consider to be far wider than the matter before the House. The matter before the House is -

That the Legislative Assembly censure Mr Cash for his abuse of and breach of parliamentary privilege.

The member's speech should centre on whether that should happen.

Mr CASH: Thank you, Mr Speaker. I will move on.

Mr Clarko: Do not mention Victoria.

Mr CASH: I understand that the Victorian Parliament has been recalled to look at some of the actions in that place.

I made the point yesterday in this Parliament that I believed that the Parliament would be ill advised to set up a Privilege Committee. I made that statement based on the points raised in the opinion of Mr Geoffrey Miller QC, who in that opinion -

Mr Thomas: I hope you did not pay too much for that opinion.

Mr CASH: Is the member reflecting on Mr Miller's opinion? The member should be very specific if he is reflecting on that opinion. The member should be specific in any comments made about that senior Queen's Counsel. What comments does the member wish to make?

Mr Thomas: I hope that you did not pay too much for the opinion because it is wrong.

Mr CASH: I object to the import of the member for Welshpool's comments with respect to Mr Geoffrey Miller QC who I believe is a very senior Queen's Counsel in Perth, and someone for whose opinion the Premier expressed respect yesterday.

Yesterday I said that the House would be ill advised to set up a Privilege Committee, as Mr Miller in his opinion had suggested it was his belief that I had not breached parliamentary privilege. I understand that in the minority report which has been tabled the member for Cottesloe commented along those lines. I will be pleased to hear the member for Cottesloe speak in due course.

Central to the comments I made yesterday was the desire to raise the various points made by Mr Brian Singleton QC who acts on behalf of a person who is presently charged with offences under the Telecommunications (Interception) Act, the comments of Mr Miller, my own legal counsel, and the statements you, Mr Speaker, directed to the members of this House last Thursday. When the House decided that it would set up a Privilege Committee I was obviously faced with a number of options. Having spoken yesterday in this House and made my position absolutely clear - that is, I would not see those trials that are about to take place in Perth prejudiced or jeopardised in any way - I was reluctant to give any evidence whatsoever to the Privilege Committee that could in any way prejudice those trials. As a result of forming that view I made the following statement to the Privilege Committee -

This Committee must act in a way which will enable me to present evidence to substantiate the statements I have made, and which this Committee is to consider.

I request the Committee to adjourn to a date to be fixed, to enable

(a) the list of witnesses I will table to be called before the Committee

- (b) the trial of those accused under the Telecommunications (Interception) Act to first be heard and determined.

I went on to say -

... I seek the right to be represented before this Committee by counsel. That counsel is Mr G. Miller QC who I have already retained, but who needs to be properly briefed.

I also seek the right to have my counsel examine all witnesses whom I seek to call before the Committee.

I made it absolutely clear to the committee that that was the position from which I acted.

I remind members that yesterday in the House I made a statement to the effect that the Government should not believe that it could railroad me through an instantaneous Privilege Committee. There is no question in my mind that, as far as the Government is concerned, it intended to convene the Privilege Committee, invite me across the road to appear before that committee, and get the matter over and done with as soon as possible. In fact, the House itself imposed a restriction on the time available for the committee to consider evidence that might be brought before it. The time limit was 2.15 pm today when the committee was required to report. From the very setting up of that committee we faced time constraints and there is no question in my mind that, irrespective of anything that I said to that committee, the Government intended it to report today no matter what evidence I adduced.

I sought to have the people I named yesterday in this House brought before the committee. After some deliberations the committee denied me that right.

Mr Peter Dowding: Did you tell the committee what the witnesses would say, or don't you know?

Mr CASH: It is interesting that the Premier, as a lawyer, should make that statement because he knows -

Mr Peter Dowding: It is exactly what you do at the beginning of a trial; you tell the judge what the witnesses are going to say.

Mr CASH: - that in order to prepare a case and, as in this case, for me to have the opportunity of justifying the statements that I made to this House last Thursday, it is necessary for me to take statements from certain persons who I believe could contribute material evidence.

Mr Peter Dowding: But what did you know last Thursday when you made the allegation? Nothing!

Mr CASH: I ask the Premier to either get on the ground and stay on the ground, or stay up in his tree - but do not keep falling out of it because he cannot cope. I have said before that the Premier is a loser and I confirm that that is my belief. The Premier is a loser and he is having problems coping at the moment. He has lost his grip.

Mr Peter Dowding: Why don't you answer the question? Why did you not check with the witnesses before you made your allegation last Thursday?

Mr CASH: Given the comments of the Premier and his demeanour at the moment, I really believe that he has lost his grip on the Government. The Premier will know, as a lawyer, that it is necessary to take statements from persons who are intended to be called as witnesses.

Mr Peter Dowding: But not if you are making an allegation of that sort. You can surely tell the committee what you understand them to know.

Mr CASH: I know that what I say may be unpalatable to the Premier, but I ask him to allow me to say it and, in due course, he will be able to respond.

The fact is that I asked the committee to bring certain people before it so that they could be examined by me, with the assistance of my Queen's Counsel, and that request was denied.

At about 7 o'clock last night it was agreed, after some discussion with the committee, that it would suit the committee for it to adjourn to enable me to ask Mr Geoffrey Miller, my counsel, if he would be available to attend the committee with me at 8 o'clock this morning so that we could make further progress.

Mr Pearce: We gave you two opportunities - later that evening or in the morning, and you picked the morning.

Mr CASH: I did, and the reason, as the Leader of the House well knows, is that, as I told the committee, I was having difficulty contacting Mr Miller. I did not expect that he would be available last night, and when the committee proposed to sit at 8 o'clock this morning I said I would do my best to see if I could get him here, and the Leader of the House knows that. I made contact with my counsel -

Mr Parker: Weren't you the person to recommend night courts?

Mr CASH: If the Deputy Premier wants to spend a few minutes talking about night courts I can tell him that I support night courts and it is a pity his Government has not introduced them during the five years and nine months, or whatever it is, that it has been in office. No doubt that is another promise that we will hear from the Government in the lead up to the next election.

The SPEAKER: Can I perhaps assist this debate by suggesting that you ignore those interjections which have nothing to do with the debate, and address your remarks to me. If you do that I will offer you the protection of the Chair and we might make some progress.

Mr CASH: Thank you, Mr Speaker. The point I was making is that the committee denied me the opportunity to bring before it the witnesses I wanted called. That, in itself, has prejudiced my opportunity to verify the statements that I made in this House recently. This morning, at 8 o'clock, I advised the committee that I had made contact with Mr Geoffrey Miller and he had advised me that he would be available to appear with me before the committee at 9 o'clock on Friday, 23 December. I therefore made a request to the committee in the following terms -

I request the Committee to adjourn to 9.00 am Friday 23 December 1988 to enable my Counsel Mr Geoffrey Miller QC to accompany me to the hearings of the Committee and to tender to me such advice as he believes appropriate.

I think that was a reasonable request for me to put to the committee, and it would have assisted the committee in its deliberations had it been agreed to, but I regret to inform the House that that request was refused. As a result of that, Mr Speaker -

Mr Peter Dowding: What did you need your lawyer for? You made a very serious accusation and you should be able to back it up in the House or withdraw it.

Mr CASH: I hope that the Premier, in making those statements, is not suggesting that I did not have the right to engage counsel to give me advice in respect of a particular matter.

Mr Peter Dowding: I said, "What did you need him for?"

Mr CASH: The Premier is not saying that, is he?

Mr Peter Dowding: You are not prepared to back it up without a lawyer.

Mr CASH: Yesterday the Premier said in this House that he had some regard for Mr Miller's opinion. What is it that causes the Premier today to change his position? In the interests of that committee, and in the interests of justice in this State, it was proper for me to make the request to the committee that it should adjourn until 9 o'clock on Friday morning to allow Mr Miller to accompany me to that committee meeting and tender such advice as he deemed appropriate. That request was also denied. I was denied the right to call witnesses and the right to have the committee adjourned.

Mr Crane: When are you going to the salt mines?

Mr CASH: I do not know; we will see about that shortly. I can tell the member for Moore that if I go to the salt mines there is every chance there will be other members - not necessarily members of this House - who might be accompanying me, so I might be in good company.

Having been denied the opportunity of an adjournment of the committee I made the following statement -

You have denied me the right to have legal counsel of my choice available to tender advice to me and I am of the view that such action represents a gross miscarriage of justice. The Committee seems to be motivated by a desire to report to the House by

2.15 pm today rather than allow me to have my chosen legal counsel available to advise me.

Mr Peter Dowding: A miscarriage of justice! You think you can say whatever you like about people on this side of the House.

Mr CASH: The Premier should get back in his tree. The Leader of the House should control his Premier, because he is the only one with any authority on that side of the House. Come on, control the chap - fair go!

The SPEAKER: Order!

Mr CASH: I made that statement to the committee and I made a number of other statements to the House after the questions were put to me about the various matters. I quote one answer that I gave on a number of occasions -

I have asked the Committee to adjourn to 9.00 am Friday, 23 December 1988 to enable my counsel, Mr Geoffrey Miller QC, to be available to advise me on matters before the Committee -

The Committee has rejected my request and accordingly I am unable to answer the question on the grounds that I may prejudice the fair trial of certain persons who are the subject of charges against the Telecommunications Interception Act:

Mr Pearce: We were asking you which Government members were on charges, and you said that there were none.

Mr CASH: I was asked which Government members were facing charges relating to that particular Act and I replied that I was not aware of any Government members being charged, and I asked the Leader of the House, as chairman of the committee, to advise me whether he knew of any Government member who had been charged. The chairman advised me that he, also, was not aware of any members who had been charged, but I say that the chairman of the committee was the one who raised that question. To many of the questions that were asked of me I replied, having regard to the statements that I made yesterday, in the following terms -

Having regard to the direction of the Speaker of the Legislative Assembly and the request made by Mr Brian Singleton QC, and having regard for the matters raised in the opinion of my counsel, Mr Geoffrey Miller QC, I am unable to answer the question as it may prejudice the trial of certain persons currently awaiting trial on charges against the Telecommunications Interception Act.

Mr Peter Dowding: How could it?

Mr CASH: If the Premier had wanted to be on the committee, I suggest that he should have had himself nominated.

Mr Peter Dowding: How could it?

Mr CASH: The Premier, as a lawyer, understands the current situation. I believe that the Premier made a tactical blunder in calling the House together and he has cost the public dearly.

Mr Peter Dowding: We gave you an opportunity to prove what you are.

Mr CASH: It has given me an opportunity to say to the House that I believe I could show the veracity of the statement I made only if I could call the witnesses, which has been denied to me. It has given me the opportunity to say to the House that I will be more than happy to answer questions in respect of the statement that I made to the House last Thursday after the trial of those who are presently charged has been concluded in the courts. I have made this point on a number of occasions; that is, that I do not want to be the one who prejudices those cases presently before the court; I do not want anyone in the House to be put in a position to prejudice the cases and I do not want anyone in the State to make statements that may prejudice the cases. I want the cases to go on.

Mr Peter Dowding: It did not stop you making allegations on Thursday.

Mr CASH: I want the cases to go on and I want people who are called to give evidence to give evidence in a court of law.

The censure motion that the Government has proposed will probably be carried on the weight of numbers as that certainly has been the case when previous censure motions have been moved in this House. I say to the public that the mere carrying of a censure motion by the weight of numbers - because one political party has a greater number in this place than another - does not necessarily mean, as such, that the statement that I made cannot be verified; what it does say is that the Government, that body with superior numbers in this House, has the numbers to say that it was offended by the statements that I made. Members opposite are running out of steam and they have lost control. That was clearly evident last Thursday when I stood in this place to speak and made a statement that the Government now claims has offended it. But remember this: Not one Government member stood in this place at the time to take umbrage, and not one Government member took a point of order to ask me to withdraw. Perhaps that is a clear indication of the fact that the Government has lost control and the Premier has lost his grip on the administration of this State. I oppose the censure motion in the strongest possible terms.

MR MacKINNON (Murdoch - Leader of the Opposition) [3.16 pm]: This censure motion is probably the most predictable event that has happened in Western Australia this year. When the Premier decided, as the member for Mt Lawley has indicated more than once, in a fit of pique last Thursday, to recall Parliament, we all knew that either on Tuesday or today we would be here debating a motion of censure against the member for Mt Lawley. We have seen the Premier bungle the attempt to divert attention from the real issues of the day. All day yesterday, and again for most of the day today, the Premier and his Government have continued to pursue vigorously the member for Mt Lawley for some political point or other, clear in the knowledge that that was a clear contravention of legal advice. I remind members opposite that that legal advice was not sought - in the case of Mr Singleton - by the Opposition.

Mr Peter Dowding: You solicited it! You rang him and asked for it!

Mr MacKINNON: It was not sought from Mr Singleton.

Mr Peter Dowding: Did you ring him or not?

Mr MacKINNON: It was not sought from Mr Singleton.

The Government has treated this Parliament with absolute contempt in bringing here this particular motion, and it is prepared to lambaste Mr Singleton, as it has Mr Miller; these two most professional people.

Mr Parker: We did not lambaste them; we said that they were wrong.

Mr MacKINNON: The member for Welshpool did it today, and so did the Leader of the House. The Government uses the weight of numbers to deny that advice, and at the same time it has not bothered to take the time to seek its own advice. It has not bothered to take its time to take separate advice to see whether its actions would in fact contravene, or set aside, the trial that is being proposed. The Government has established a committee that clearly, by any measure, would not have the time to pursue its job properly and it was established on the basis admitted today by the Deputy Premier and other members opposite, that they do not listen to debates in this House.

Mr Parker: I did not say that at all!

Mr MacKINNON: That is why we are here. The Deputy Premier said that he does not listen to the member, and if comments have been made about him and he subsequently finds out that they cause him some concern, we will have a Committee of Privilege. That is the basis of it. As I said continually yesterday, one must ask why it is so. Perhaps the answer was given today on 6PM when we heard that the election is to be held on 4 February. Perhaps that is the reason for this last minute desperate attempt by the Premier to try to salvage points out of the quagmire into which he is leading his Government. That must be his real concern if 4 February is the date.

The committee was given less than 24 hours to report on a matter that this Government claims is one of the most serious to come before this Parliament in the last six years.

Mr Peter Dowding: Do you think it is serious?

Mr MacKINNON: If it is serious, why was the committee given less than 24 hours to report?

If it is such a monumental miscarriage of justice why did the majority report contain only one and a half pages and the minority report by the member for Cottesloe contain such sensible statements? It addresses issues in detail and sensibly and does not support the position put in the majority report.

The minority report makes the point firstly, that there has been no breach of privilege. I challenge anyone to examine the one and a half pages of the majority report and show me where the question of a breach of privilege has been properly addressed. It was not. Those members did not care. All they were interested in pursuing was the member for Mt Lawley, and the Leader of the House underlined that with every utterance that he made in this House today. Secondly, the member for Cottesloe said that there may have been a breach of the Standing Orders, but as no objection was made at the time and no action was taken by the Speaker at the time, no redress is available. That is a statement of clear fact under the Standing Orders.

Mr Peter Dowding: That is not correct.

Mr MacKINNON: Perhaps the Premier should read the Standing Orders because they state quite clearly that that is true. Thirdly, the minority report states that the Privilege Committee procedure is totally inappropriate to present and like circumstances. That was acknowledged by the Premier yesterday when he said that he wanted to set up a committee to establish a code of conduct for members of Parliament. Even he agrees that that committee was not an appropriate body to examine this matter. If it was, why did he make that statement supporting the contention that I expanded on yesterday?

Fourthly, the member for Cottesloe said that the process of dealing with alleged breaches of privilege of the Parliament is in urgent need of reform. Hear, hear! I quoted from the member for Cottesloe's report of 1986 yesterday and I repeat his comments, which are as true today as they were then, that we need to look closely at how we should address the question of privilege and breaches of it in this Parliament. As the member for Cottesloe said in his report today, the process of dealing with alleged breaches of privilege is in urgent need of reform, and I agree. The sooner we move to a conclusion of that matter the better.

I remind members opposite, particularly the Leader of the House, who stood holier than thou today, of the motion that he moved the last time we addressed the question of privilege. It makes interesting reading. On 24 July 1986, when a minority report was brought down by the member for Cottesloe, the Leader of the House moved a motion as follows -

That this House refers the report of the Select Committee to the Standing Orders Committee with the request that the Standing Orders Committee examine and report upon the matters raised in the minority report on or before 30 October 1986.

What has the Leader of the House done since then to pursue that matter to a conclusion?

Mr Pearce: I am not on the Standing Orders Committee.

Mr MacKINNON: Who is the chairman of the committee?

Mr Pearce: The Speaker, I suppose.

Mr MacKINNON: That is right. I think it was the responsibility of the Leader of the House as the mover of the motion - he has indicated his real interest in the question of privilege by statements he has made over the last few days - to pursue the motion that he moved on that day. However, it has been left languishing until the Premier tried to save face out of the rubble of the disaster yesterday by coming up with the idea of a committee to establish a code of conduct for members of Parliament. The Government's track record is in tatters. It is not sincere about its commitment, as that motion clearly indicates. The minority report presented today is a sensible report and addresses the real issues. I support it fully as I oppose the majority report.

The Leader of the House said that it was appropriate for the committee to take evidence in camera, that that was a proper protection. Again I remind the House and its leader of what Mr Geoffrey Miller QC, said about that matter. On page 8 of his report he said -

The fact that the Privilege Committee may determine to take the evidence in camera will not overcome the problem, as the Committee is obliged to report to Parliament and that report may be ordered to be printed with any documents accompanying it. In

due course such a report may be brought under the consideration of the House upon motion.

Mr D.L. Smith: That shows how wrong he is.

Mr MacKINNON: Again the member for Mitchell attempts to lambast a senior QC of this State.

Today, the Leader of the House said that when the committee went into camera, the committee asked the member for Mt Lawley questions but he would not give it any answers. We just heard from the Leader of the House what the committee did in camera. How much protection is that?

Mr Peter Dowding: The report says what it did. That is not improper.

Mr MacKINNON: Let us assume for the sake of the argument that the member for Mt Lawley went against all the advice offered to him and gave information to the committee in camera. Does the House sincerely believe that that committee, with a majority of Government members, would not have censured the member for Mt Lawley for the evidence he gave in camera? We did not come down in the last shower and neither did any other person in this State. The reality is that the point made by Geoffrey Miller QC is entirely accurate and the Leader of the House has underlined the comment and advice given by Geoffrey Miller QC.

Geoffrey Miller QC referred to the question of representation in point (b) on page 7 when he said -

Mr Cash will be entitled to seek to be represented by counsel.

It is important for members to remember that the member for Mt Lawley did not have a right to legal representation. Clearly he was entitled to seek that representation, but it was denied. Probably that is the most important single factor to come out of that committee's findings - that the member for Mt Lawley was denied legal representation. The committee met and concluded its report in less than 24 hours and, as I said at the outset of my remarks, one can conclude only that the decision of the committee was already made. It did not matter whether the member for Mt Lawley wanted legal advice; the result was premeditated and predictable as I have already indicated.

I now turn to the question of the witnesses. Again the Government is not naive, but it is deceitful in what it is trying to get across in that regard. The Government has indicated that prior to the member for Mt Lawley being able to talk with his legal adviser - first, to obtain advice as to the direction to take and, secondly, regarding discussions with any witnesses - the committee wanted him to say, "This is the evidence I have and this is the evidence I want from each witness." Again that would fly in direct contradiction of the advice given yesterday which clearly indicated that if we went down that path, in or out of camera, the case would be placed in grave doubt and in jeopardy.

Mr Peter Dowding: That is not what the opinion states.

Mr MacKINNON: I bet it is. I suggest the Premier read it again and he will see it is the case. The Leader of the House indicated in his speech that as the Opposition had sought advice from Mr Miller QC it had directed the outcome - implying that Geoffrey Miller, a senior QC, would respond to the Opposition's direction. That is a scandal and the Leader of the House should apologise in this place to Geoffrey Miller.

Mr Pearce: It is based on your briefing. How adequate is your briefing?

Mr MacKINNON: Again the Leader of the House repeats it: He says that Mr Miller does not have the ability to closely question the member for Mt Lawley and he does not have the ability to obtain sufficient evidence to commit himself, on paper, in a document which he knew would be made public. He was quite satisfied, but the Leader of the House and the Premier are prepared to cut down that man in this place. It is an absolute scandal and a disgrace.

I turn now to the humbug by the Leader of the House about the effect on children of what happens in this Parliament. Of course our children are affected by what happens in this Parliament. Every other day my children ask me about comments the Premier makes about me. They say, "Is that true Daddy? The kids at school told us this." That is part of political life and it is the price we pay.

Several members interjected.

Mr MacKINNON: If we are so pure - we are talking about criminal activities - members should recall who said the following -

He has actually taken steps in Tasmania under false pretences, pretending to be an engineer, which he is not, with some brand new idea of affecting the paper pulp industry. He has attacked the casino, the Government and the Casino Control Commission, and he came to Western Australia immediately the casino was mooted to do the same thing in this State and to try to extort money from that commercial organisation.

That comment was made by the Premier of this State. At the time I challenged the Premier to repeat his comments outside this place and again I challenge him to do the same. Members should take note of the response made by the Premier when he was challenged, in writing, about those comments. How did Mr Samuel's children feel when they went to school and were asked whether their dad was an extortionist? What does the Premier think his children said?

Several members interjected.

The SPEAKER: Order! I do want to be a little tolerant in this debate and to allow it to range wide of the motion a little, but the Leader of the Opposition is now referring to something which, if one drew a fairly long bow, one could say had some relevance, but that is about the strength of it. I hope the Leader of the Opposition completes this section and moves on to the next section of his speech.

Mr MacKINNON: Mr Speaker, with your indulgence, it will take me about one minute to conclude that point. The point I wanted to make was the response by the Premier to a Mr Edmunds, who wrote to the Premier about that statement. In his response the Premier said -

I apologise for the delay in replying to your initial correspondence.

I have nothing to add to the remarks I made in the Parliament on the subject.

Those remarks are available to you in the relevant Hansard report.

I am sure you are also aware of the recent Legislative Council Select Committee finding on this matter.

So much for members in this House talking about criminal charges and allegations - the Premier of this State was not prepared to justify his serious allegations of criminal misconduct outside the House. The Government has a hide to come into this Parliament today and say what the Leader of the House said in that regard. It is utter humbug. I do not believe that the censure motion, although it will be passed by the majority of members in this House, has a feather to fly with. It was a predictable event - probably as predictable as Christmas Day falling on a Sunday this year.

#### *Amendment to Motion*

As a consequence of the remarks I have made I move an amendment -

To delete all words after "That" with a view to substituting the following words -  
the House expresses its total abhorrence at -

- (1) The refusal by the Committee to properly consider eminent legal advice relating to the prejudicial effect its actions could have on the impending court cases involving alleged phone tapping.
- (2) The denial of natural justice afforded the member for Mt Lawley by the Select Committee of Privilege in that the undue haste of the Committee's proceedings and deliberations prevented the member from being represented by his chosen legal counsel.
- (3) The failure of the Committee to address in its majority report the substantive question of whether there was any breach of privilege of the House.

There is no question that the censure motion should not be supported. However, it will ultimately be carried in this Parliament because of the weight of numbers of the Government.



I repeat that it was nothing more than, nor less than, a stunt that was entirely predictable from the outcome and it was probably because of the news report which members have read today that the people of this State will, on 4 February, at last have the opportunity to make a judgment on who they want to lead Western Australia into the 1990s and beyond.

MR HASSELL (Cottesloe) [3.39 pm]: I second the amendment moved by the Leader of the Opposition. I do so because the motion before the House to censure the member for Mt Lawley is no more than, nor less than, a travesty of justice and a farcical mocking of the procedures of this Parliament. The reality is that last Friday in a fit of panic the Government set out on a very foolish course. It set out to try to correct some political damage it had suffered by using the forms of the House for its own political purposes. Clearly and manifestly it has failed.

The SPEAKER: Order! The question now before the House quite simply is that all words after the word "That" be deleted. I have listened carefully and the member appears to want to debate other matters. I suggest to members that we stick fairly strictly to the rules of debate in respect of this matter, that we debate the proposed amendment that all words after "That" be deleted and that, subsequent to the success or failure of that motion, we will debate the additional words that the Leader of the Opposition will then move or return to the original motion.

Mr HASSELL: I am, of course, bound by the Standing Orders and I do not contest what you are saying, Mr Speaker. But the practicalities are that we usually dispose of these motions by having most of the debate on the deletion of the words and not then repeating it all. I do not know whether you would want me to repeat it all later. The business of the House would be facilitated if I ranged in between the deletion and the words proposed to be inserted. The other problem that we have, Mr Speaker, as you know, is that members of the Government are likely to try to cut us off at the pass if we want to debate it afterwards. While that is not a defence for bypassing the Standing Orders, it is a practical solution.

The SPEAKER: Let us try somewhere in the middle.

Mr HASSELL: I do not want to speak too long, quite frankly, because I think the House has got to the point and the issues are clear. We have seen a course of conduct embarked upon by the Government and that course has led inexorably to a motion of censure. We propose to delete the words that amount to a censure. Mr Speaker, does it not tell you the story about what is really going on when you know that last Friday it was openly said there would be a motion of censure? The committee meant nothing and it was never intended to mean anything in terms of dealing with the serious issue of privilege. The real problem is that there is no issue of privilege. There might be an issue of breach of the Standing Orders. There might be an issue of someone saying something that offends other members and there are various ways in which that might be contested.

In 1976, 1986 and 1988 certain members of this House have confused taking offence about words used in a debate and a question of privilege. The committee that was appointed by the House yesterday did not spend 10 minutes discussing what privilege meant or whether there had been any breach of privilege, yet we were a Privilege Committee. We were appointed to consider the issue whether the member for Mt Lawley breached a privilege. I invite anyone in the House after consideration of the report of the majority to tell me where in that report privilege is in any way defined or the facts of this case are in any way related to that definition. There is, of course, no attempt in the majority report in any way to relate the issues to the question of privilege.

Privilege is the ancient right of Parliament to be the highest place in the land. That right was developed originally in a battle, sometimes literally a battle, between the representatives of the people and the king of those people. Members who were representatives of the people in a Parliament sometimes lost their heads in the assertion of that right and privilege of Parliament.

Mr Clarko: It is interesting that it is exactly 300 years ago this year.

Mr HASSELL: Yes. The Bill of Rights of 1688 established and put beyond question for all time that members of Parliament should not be questioned for what they say.

Mr Blaikie: That was to challenge an unscrupulous king, wasn't it?

Mr HASSELL: It was to challenge many unscrupulous kings. Once again we find it being questioned by a Government which, first, does not understand what it is doing, and, secondly, is playing politics. If ever it was appropriate to describe a course of events as a game of tactics, that description belongs to the events of the last few days. On Friday the Government said it would recall Parliament and set up a Privilege Committee, after which it would censure the member for Mt Lawley. That is what the Government seeks to do right now by this motion to censure him and we are proposing to delete those words.

The Government proposes not only to censure the member for Mt Lawley, but also to censure him as quickly as possible, as evidenced by the work of the committee. When I suggested this morning that the committee should consider the question of privilege, there was no support for the proposition. We were not there to consider the question of privilege. We were there to go through the forms. It is the old story of the lynch mob: "We will hang him after a fair trial." In this case, there were not even the forms of a fair trial. A couple of weeks ago the Legislative Council, using the majority that belongs to our side of politics, established a Select Committee to examine the workings of the State Government Insurance Commission.

Mr Parker: It referred it to an existing Standing Committee.

Mr HASSELL: When that committee met to consider the matters referred by the Legislative Council, even though we were racing up to the end of the parliamentary session and it was the belief of our side of politics that the Government would prorogue Parliament to stop that and other inquiries, the Government members secured the adjournment of that committee for a whole week. The committee which sat yesterday and today could not wait two days to allow a member to be represented by the counsel whom he had already briefed and from whom he had sought advice.

Mr Peter Dowding: As a lawyer, do you agree that if you make an allegation, whether in court or elsewhere, you ought to be able at least to say what it is your witnesses will say? You would have to do that in a court, wouldn't you? You don't even have to name the witnesses.

Mr HASSELL: The Premier should choke on his words because he knows, as a man who has used every trick in the book on behalf of his clients in court - and he was fairly effective at representing some of them - that the very last thing that is ever permitted to happen in the courts is for a man who is pleading not guilty to be forced to carry on with his defence in the absence of representation.

Mr Peter Dowding: That's not the point that I am putting to you. All he has to do is establish what he is going to say.

Mr HASSELL: In court the most basic right, which the Premier himself would defend any day, is the right for someone who is under attack to be represented, to be advised. I have held this view for a very long time in relation to matters of privilege. I was publicly critical, although very young at the time, of the Menzies Government in the case of Fitzpatrick and Brown, when a couple of characters were dragged up to the Bar of the House of the Federal Parliament and summarily punished by those whom they were alleged to have offended. Does anyone in this House, or does the Premier, assert for one second that if the comments made by the member for Mt Lawley last Thursday had been made by one of the Government members, there would have been a Committee of Privilege to examine the matter?

Mr Peter Dowding: You would have gone ape.

Mr HASSELL: Does the Premier assert that a Committee of Privilege would have been set up if the boot had been on the other foot? The answer is no. The Premier, a man who is often careless with the truth, would not be so careless as to suggest even now that if one of his members had said last Thursday of members on this side of the House precisely what the member for Mt Lawley said on this side of the House, there would have been a recall of Parliament and the censure motion which we are now seeking to delete. The truth is that this was a process of a purely political nature to serve a political purpose. All of the carry on by the Premier, the Leader of the House, and the members of the Government trying to clothe that kangaroo court in respectability gives it not one whit of credibility. The Government has played a card; it was the wrong card. The Government has lost, although it will win the vote. The Government knows that this procedure was not dinkum. The Premier knows that the same procedure would not have applied against a Government member.

Mr Peter Dowding: Of course it would, if there were such an unscrupulous person on this side of the House.

Mr HASSELL: Mr Deputy Speaker, I crave your attention for just a moment; it is interesting that the Premier has said that if there had been such an unscrupulous statement from his side of the House the same procedure would have been followed.

Mr Peter Dowding: I said that it would not because unscrupulous allegations are not made on this side of the House.

Mr HASSELL: Let me remind the Premier that not two weeks ago in this House the member for Scarborough, by way of interjection, made the most scurrilous allegation that could possibly be made, relating his remark to matters previously aired in this Parliament over the years. He asked the Deputy Leader of the Opposition how much he had received from a certain transaction.

Mr Peter Dowding: He withdrew.

Mr HASSELL: He had to withdraw when he was asked to do so.

Mr Burkett: Two days later, to his credit, the Deputy Leader of the Opposition came and explained everything about that family company and I respect him for doing that. You are talking out of place, whinger.

Mr HASSELL: Where was the Committee of Privilege on that occasion?

Mr Burkett: I withdrew.

Mr HASSELL: Why did the member for Scarborough withdraw? Because a point of order was taken and he was forced by the Speaker to withdraw.

Mr Peter Dowding: The member for Mt Lawley could still withdraw his allegation.

Mr HASSELL: The member for Scarborough was not asked to produce evidence before a Committee of Privilege; the Parliament was not recalled. Was there a Committee of Privilege?

Mr Peter Dowding: If the member for Mt Lawley withdraws his allegation, he could have the motion withdrawn.

Mr Burkett: The member for Nedlands gave me all the evidence I wanted, whinger.

Mr Parker: We will withdraw the motion if the member for Mt Lawley withdraws the allegation.

Several members interjected.

The SPEAKER: Order!

Mr HASSELL: It is funny how the Premier gets so excited about this issue. The Premier has been presented only with the simple truth.

Mr Peter Dowding: What is the simple truth?

Mr HASSELL: There is a saying in the address given by Solzhenitsyn when he was awarded the Nobel Prize: One word of truth outweighs the whole world. The problem for the Premier is that the word of truth on this occasion is that the treatment of members is unequal; that there is no Committee of Privilege when a Government member says about members on this side of the House such things as the member for Mt Lawley said. There is no equality of treatment, and that simple truth proves how much the whole procedure is a farce.

Government members, like their predecessors of both political persuasions, have become a little confused, and that confusion is between a breach of Standing Orders, the taking of offence, and a breach of parliamentary privilege. Each of those three things is entirely distinct; each is a different issue. The issue before the House is not and never was a question of privilege; no attack has been made on the members of this House. No threat has been made to the capacity of this House to carry out its duties. An allegation has been made by the member for Mt Lawley which offends the Government and its members. The proper response was for one of the Government members to ask at the time for it to be withdrawn, or for the Government to move a substantive motion at the time in relation to those matters so that they could be aired. It was not proper, appropriate, or in accordance with

parliamentary precedent or procedures to set up - repeating the mistakes of the past - a Select Committee of Privilege, which has neither the forms nor the capacity to deal with the issue in this context.

The simple reality is that the Government has blundered procedurally and it has been left high and dry as a result of that blunder. Now it is desperately trying to crawl from under the rock by moving a motion to attack the member for Mt Lawley and, in fact, it is holding up a mirror to itself. The Government is seeing in that mirror its own failings, and everybody else is seeing them also. The committee which was set up was a farce: It did not have time to do the job; it was not intended to do the job; it never set out to do the job; and, it was not permitted to do the job. Even the terms of reference were wrong. The poor old Government in its panic could not get the terms of reference right; those terms were that the committee should inquire into and report upon the allegation made in the House, whereas a Committee of Privilege would be inquiring into and reporting upon whether an allegation made in the House was a breach of privilege. The Government could not even get the terms of reference right; it has blundered, and blundered, and blundered again. Mr Speaker, the poor old Premier has been called a loser and, my word, he has worked hard to prove it in these last few days.

MR PETER DOWDING (Maylands - Premier) [4.02 pm]: There are some important issues to be raised in relation to this debate, but none more important than this: What hope has the public got and what hope has the institution of Parliament got to ensure that the body of people sitting in this place act responsibly if we cannot have some dignity to the proceedings at least to the extent where a serious allegation of impropriety by every member on this side of the House is not made until it has some substance or, if it is made and has no substance, that at least this House has an opportunity to make some comment about the propriety of the member making it? The member for Mt Lawley had the whole of Friday, the weekend, Monday, Tuesday and today to decide whether to withdraw the allegation that he has made. Whether one likes it or not, Mr Speaker, and whether the other side likes it or not, there was never a suggestion that that allegation should be tried. Let us look at the way in which the member for Kalamunda said the Committee of Privilege should undertake its work when he said the following in 1976 -

The motion simply affords the opportunity to the member for Ascot to prove some base to the allegation he has made.

That is not to say that one is to establish the case beyond reasonable doubt. It is not to say, as Mr Miller has thought, that it would be a trial of those proceedings - it is simply to satisfy the Committee of Privilege to report to the House that there was some basis for the allegation. It is a most serious allegation. I cannot recall a member of this House suggesting before that members on the other side were together guilty of a criminal act. I am confident that such an allegation has never been made. However, what is fundamental to the rights of this House is that members should not act irresponsibly by using the forms of this House to make such an allegation with absolutely no basis.

The Committee of Privilege never had the intention, as I understand it, of asking the member for Mt Lawley to prove this allegation. The committee never wanted the member for Mt Lawley to bring forward witnesses to give evidence of the truth of the facts. All the committee wanted was for the member for Mt Lawley to satisfy it that this was not an irresponsibly made allegation; that this was not an allegation which he had made off the top of his head without any justification whatsoever.

What on earth do we now talk about when we say the member for Mt Lawley wants to uphold the rights of people who may come to trial at some stage in the future? There is no suggestion that the Government, or the Committee of Privilege, was ever asking the member for Mt Lawley about matters in relation to a trial; it is that he has asserted matters about the behaviour of members on this side of the House, matters which were regarded so seriously by commentators in this House that it was given an enormous run in the media - an enormous run which the member for Mt Lawley then had an opportunity to correct by saying, "Well, it was nothing more than a thought", "It is something that has been said to me", "I have heard it in the wind" or, "There are rumours." He took none of those options. He maintained the veracity of those statements but gave the committee absolutely nothing on which it could justify them.

Even if he had said to the Committee of Privilege, "I have some material to place before the committee. I cannot give the names of these people, but look at the things they have said to me", "I have had confidential discussions with somebody whose name I am not prepared to advise the committee but who has told me these things" or, "In relation to matters unconnected with a criminal trial in the future someone has provided me with a whisper." Even if he had said that, the committee may have had a hard time deliberating about what its report would be. He said none of those things. He declined to give the Committee of Privilege one iota of justification for the most serious allegation he has made. It is all very well for people on the other side of the House to suggest that somehow or other there has been a blunder because this thing has had more airing than it otherwise might have, but I ask what does the other side think of its reputation if it is suggesting to members on this side of the House that an allegation like the one which has been given such wide publicity should now stand without any opportunity for members to object to it? If the member for Mt Lawley, or any of the members who have supported this motion, genuinely believes that there is some right for people to object then he would concur with what has happened here. No-one moved a censure motion on the member for Mt Lawley until he had been given an opportunity to present the flimsiest base for his allegation.

The opinion of Geoffrey Miller is, frankly, incorrect because it proceeds on the view that witnesses would give evidence on this matter and that they would be giving evidence in public because the member for Mt Lawley would be tried on this issue. That is the incorrect statement around which this whole opinion hangs and which contains the following on page seven, where it states -

Witnesses if called before the Committee may give their evidence publicly or in camera . . . but presumably Mr Cash would seek a ruling that the evidence be in public.

Why would he presume that? If granted, why would the Committee of Privilege agree to it? The protection of the member for Mt Lawley to genuinely and honestly present matters to this House was the fact that there were two members of the Opposition sitting on the committee. That is not a public airing of allegations which might influence something else. It was the presence of members of his own party, if he trusts them, sitting there on the Committee of Privilege with the other representatives from the Opposition. Mr Miller's opinion is wrong because it proceeds on a false assumption. That assumption is that the member for Mt Lawley could not justify the statement that he made to the House without somehow or other being involved in a public statement of matters which might prejudice a trial.

What I say once again about this whole issue is that while it may have been an unpalatable thing for me to do to ask that Parliament be recalled to debate this matter, and while there may be people who want to sit on the sidelines observing it and suggesting it was a good thing or a bad thing, it nevertheless underlines the fact that we are prepared to be accountable; we are prepared, if we make statements, to justify them and we are prepared to take this institution seriously. There is absolutely no excuse for the member for Mt Lawley to suggest that every member sitting on this side of the House has now got some criminal allegation hanging over his or her head. There is no justification for that assertion and the member for Mt Lawley has not presented the slightest evidence to support it. Even worse, he has not been prepared to limit his allegation to the people for whom he has some dislike or wishes to criticise. He has not been prepared to remove the slur from those members on this side whom he would have absolutely no cause to dislike.

What is fundamental about this matter is that a Committee of Privilege of this House has not been designed to try the issues but to determine whether the member for Mt Lawley had the sort of justification for such a serious allegation that he made it properly without offending the privileges of this House. Of course members of this House need the freedom to speak. Of course members of this House need the freedom to make allegations. And of course they may wish to do that in the knowledge that they are not going to put matters on such a basis that they will stand up in a court of law.

That is an important freedom of this House, but it does not justify an allegation without any evidence, such that when his peers ask him whether he has any justification, he tells them, "No", and hides behind the very privileges that quite frankly he ignored last Thursday. What

was in his mind last Thursday when he made this allegation? Was the allegation designed to protect the people who may stand trial in the future, or was it made careless of their interests? Was it designed to protect the privileges of this House or was it made careless of those privileges? The relevance to the wider community is this: What hope do the public of Western Australia have if it is fair game for a member of the Opposition to accuse all the members on one side of the House of a serious criminal charge, and not be prepared to justify it one iota? This amendment should be defeated, and the motion should be supported, unless the member for Mt Lawley even now is prepared to withdraw his allegation against the men and women on this side of the House.

Government members: Hear, hear!

**MR CLARKO** (Karrinyup) [4.11 pm]: The events of the past few days have highlighted that this Government is in absolute chaos and in its death throes.

Several Government members interjected.

**Mr CLARKO**: We are getting a bit over there from East Eucla!

The **SPEAKER**: Order!

**Mr CLARKO**: The Parliament has been called together with inordinate haste, without proper advice having been given to members. The Government wants to follow a track along which the Premier sought to embark. He has tried to use this House -

The **SPEAKER**: Proper advice has not been given to members about the calling together of the Parliament?

**Mr CLARKO**: My point, Sir, is that I read in the newspapers about the calling together of this House before I received any notice of the fact that this House was being called. I am not saying the notices did not come out in the proper way, but I put it to the House that, in a State of one million square miles, the sort of notice that we got was very minimal, to say the least. In saying that I do not reflect on anyone, but that could well have put a member to great inconvenience. Just imagine if the member now at the rear of the Chair, the member for Kimberley, had been up in the outback of his electorate -

Government members: He was!

**Mr CLARKO**: It was all right for him because the Government probably told him about it well before we received our letter, so he was one of the first to know. This is part of a desperate attempt by the Government. I have found during the 30 years I have been in politics that every Government which has for months before an election been behind in the polls has been done at the polls. That will happen also to this Government, no matter when it decides to hold the election. The Government knows it will be done stone cold. Government members should go out into the streets and ask people what they think; they would soon find out that is the truth.

We have today a situation where the Government decided last Friday to establish this Committee of Privilege. The Government probably wrote out the recommendations of that body last Friday or over the weekend, when it suited the Government to do so. We came in here at 2.15 pm, and within a few minutes after that time the Leader of the House got up and spoke on this inquiry which has been held over the last 24 hours. Can anyone tell me it is reasonable that I have been sitting here in my chair since 2.15 pm, but it was 3.40 pm before I received a copy of that report?

Several Government members interjected.

**Mr CLARKO**: There is the prefect, the year 11 student from East Eucla, just out of preschool; and his ideas match that. This just shows that the Government is trying to rush this whole thing through. At any moment now the Whip or the Deputy Whip will again stand and gag the debate, as was the case yesterday.

If members had listened to the ABC this morning, some time before 10.00 am, they would have heard the ABC reporter say in very cogent and clear terms that yesterday was an absolute flop for the Government, and particularly for the Premier. So the Government is trying to divert attention by switching to a code of conduct for members of Parliament. If there were one person in the Western Australian Parliament whose code of conduct I would not follow, it would be the Premier. I would be joined in that belief by millions of Western

Australians - probably up to two million. When this Premier entered the Legislative Council in 1980 he changed totally the style of debate in that House. He was christened "ankles" right from the beginning because the members considered that his form of invective and abuse in debates showed a complete disregard of that Chamber's 100 year old tradition. It took 100 years for someone of his character to come into that place and abuse people from one end of the country to the other under parliamentary privilege. He abused Dr Reid, the President of the Broome Shire Council, under the protection of Parliament. What a scandal it would be if he were to set up a code of conduct for parliamentarians. It would not be appropriate for him to set up a code of conduct for snails, although he would at least be down at their level!

We heard yesterday from the Leader of the House a sermon about how we have to respect parliamentary privilege and about how we have to behave in an exalted fashion. I remember the day when he gave his first speech in this House. He stood up, wearing a motley brown jumper, with a crew neck, and he wore a necklace around his neck which had on it a piece of jewellery. He stood up and announced to us with great pride that he did not own a tie. That was the level of behaviour of the Leader of the House when he first came in here.

Several Government members interjected.

The SPEAKER: Order! I ask for the cooperation of all members in keeping down the level and number of interjections so that the member for Karrinyup can speak without shouting, because I am beginning to develop a headache; and secondly, I ask the member for Karrinyup if he would mind addressing the matter before the Chair for at least part of his speech.

Mr CLARKO: I am making the point that neither the Premier nor the Leader of the House is an appropriate person to lecture us about a code of conduct or about obeying the laws of privilege that apply in this House because they have abused those principles in a gross way.

The opinion from Mr Geoffrey Miller QC says on page 5 -

I have no doubt that reference in Parliament to matters which are to be the subject of criminal proceedings will ordinarily prejudice a fair trial of persons who are to face those proceedings.

That is the heart of the matter; and that is why my colleague, the member for Mt Lawley, has not produced evidence to substantiate in detail the remarks he made on Thursday of last week. It would have been logical for him to have called witnesses, although I notice that one of his proposed witnesses is located in a place with which Australia does not have an extradition arrangement, so that might have created some difficulties - and some people in Western Australia have claimed that is why that person went there. Page 7 of the opinion says -

The calling of such witnesses and the cross examination of any such witnesses would undoubtedly have the result that if their testimony went to the merits of the criminal proceedings already before the courts, the fair trial of those accused of crimes would be seriously prejudiced.

That is why the member for Mt Lawley does not produce the information that he has. How can anyone suggest it is a serious matter when a Committee of Privilege meets at 4.30 yesterday afternoon, and at 2.15 this afternoon we are debating the matter, yet members have not received a copy of its report? There has not been time for the typist to type it, that is how quick it has been. This fiasco today was an attempt by this Government to try to gain political mileage, or some would say - and I am not saying it - it was a deliberate attempt to abort the forthcoming trial. That may or may not be so, but was it stupidity on the part of the Premier and his Cabinet members to enter into this? As the ABC said so clearly this morning, and I think *The West Australian* would confirm it, they failed yesterday and they have failed again today. We have taken the proper course of action, and that is why I support the proposal to take out the words censuring my colleague.

If my colleague stood in this House - and it has been contemplated - and released all the background that he has, it would have aborted that trial. We have the opinion of Geoffrey Miller and of the other QC, Brian Singleton, and many other people would take the same view. This must have put you, Mr Speaker, in a terrible position. I will try to make a further study of the sub judice question. I have been in this Parliament for 15 years, and time and

again I have heard rulings, not just by yourself but by a number of Speakers, that a matter was being dealt with in our courts and therefore we could not speak on it because it was sub judice. I need a QC's opinion on what sub judice is, because this matter has been discussed over the last few days. I am not saying it should not have been, but it opens up a new path for this Parliament when members stand up and say, "This is sub judice, we cannot talk about it." This court case with Mr Smith, Mr Martin and others might be a turning point in this Parliament. They have already been charged with a criminal offence, and here we are debating the matter. What the Opposition has been doing very carefully is avoiding transgressing that matter.

We have had this stunt by the Government to set up a Committee of Privilege, and it has not worked. The Premier, in his failure, has tried to talk about how we will have a code of conduct. I have tried to explain what an unsuitable person he would be to be associated with a code of conduct for members of Parliament, or for anybody else. Everybody knows what a rush there has been to have the Committee of Privilege sit, and for the House to consider its report. If members do not believe me, that would be fair enough, but how can anyone say that this is a serious attempt to set up a Committee of Privilege to investigate a matter which the Government maintains is so serious? This is said to be a serious allegation against Government members, yet the Government rushes it through in what it thought was a kangaroo court, but which turned out to be a quokka court - a stunted version of a kangaroo court.

The Premier has told us nothing new today. He has repeated his pathetic argument of yesterday. There is no doubt that the main speaker for the Government yesterday was the Leader of the House, who prides himself on speaking without notes; he has done it so often that he is now giving the same speech all the time. He raised nothing which had not already been stated in our papers. All he said was a lamentable repetition of things which had been talked about. He said the member for Mt Lawley should produce the evidence. It has been made quite clear by the Opposition and by the QCs that to produce the evidence would abort this trial. As do many people in this town, I question whether this Government seeks to abort that trial for some particular reason.

Telephone tapping is very serious, but many serious things have taken place in this Parliament over the last six years in which this Government has been involved, yet it has not been prepared to set up parliamentary committees of inquiry to look into these matters which greatly concern the people of Western Australia. This Government stands condemned for the charade in which it has been involved over the last few days. It has not been able to present a worthwhile case to support the need for the member for Mt Lawley to be censured. In fact, the member for Mt Lawley has quite properly given clear reasons why he cannot provide the specific details, and he set up a course of action, which was to have his counsel attend with him on Friday to discuss the matter in some detail. Because this Government controlled the Committee of Privilege, it deliberately refused that request. Although the people in the community might think that when a Committee of Privilege makes a recommendation like this, that means it is the right course, in fact the committee comprised only a bunch of three people - my former student was one of them, the debating champion was another. The member for Mitchell has his illustrious legal Raymond Burr style background. Those three people did not need any legal background. In this report they say that they actually dispensed with the QC's advice and chose to take their own advice. But if we look through that report which we received an hour and a half after the debate started, they do not give us that advice. I have had a chance for only a cursory glance at the report, but one section says that the committee chose to take normal parliamentary advice. That may be the best advice the committee could obtain, but the report does not give the details of where it found Mr Miller wrong and the committee right. If there had been more time the committee could have gone into it, but there was not. This is all about rush, rush, rush. It is not an accidental rush, it is a deliberate rush.

If this Parliament today moves, using the brutality of numbers - sometimes equated to democracy - to achieve a censure of my colleague, the member for Mt Lawley, the Government will in time regret it. The Government will not last many months; it is in its death throes. All the opinion polls and the people talking in bowling clubs and all the rest of it say that Labor is finished in this State; it has had its six years. It was lucky to get six; it should have had three. The ALP is on its way. It is waving goodbye. Even the Leader of the House called me the next Minister for Planning.



Mr Pearce: That was to horrify the people.

Mr CLARKO: I have always valued his judgment. No doubt he was right again.

We must support the amendment and oppose the proposal to censure this member because there is no sense in it. It is merely a device by the Labor Party to try desperately to save the day, and it has lost it.

MR STEPHENS (Stirling) [4.28 pm]: I would like to quote from the Encyclopedia Britannica, which gives a part of Edmund Burke's celebrated speech in 1780. It reads -

Parliament is not a congress of ambassadors from different and hostile interests, which interests each must maintain, as an agent and advocate, against other agents and advocates; but parliament is a deliberative assembly of one nation, with one interest, that of the whole; where not local purposes, not local prejudices ought to guide, but the general good . . .

Certainly, gentlemen, it ought to be the happiness and glory of a representative to live in the strictest union, the closest correspondence, and the most unreserved communication with his constituents. Their wishes ought to have great weight with him; their opinion high respect; their business unremitting attention . . . But his unbiased opinion, his mature judgment, his enlightened conscience, he ought not to sacrifice to you, to any man, or to any set of men living. These he does not derive from your pleasure: no, nor from the law and the constitution. They are a trust from Providence, for the abuse of which he is deeply answerable.

In effect he is saying, when we come into this place we must act according to the dictates of our conscience. I am aware that my judgments and decisions are at variance with those of my party; however, I came into this place 18 years ago acting on the dictates of my conscience and, notwithstanding the regret that I have in having a view different from that of my party, I feel I must act according to the dictates of my conscience. In doing so perhaps I could spread the message to those people who are supporting citizens' initiated referendums on the basis that people come into this place and are controlled and dictated to by their parties, that that is why we need citizens' initiated referendums. I would send a message out to them that if they support the National Party they will be supporting men of conscience who will act in their interests. Thank you, Mr Speaker, for your tolerance in allowing me to make that preamble. I think it was important for me to make it so that there is no misunderstanding as to the situation I am in.

Having supported the committee's recommendations it is quite obvious that there is no way in which I can support the first part of the amendment, namely -

1. the refusal by the Committee to properly consider eminent legal advice relating to the prejudicial effect its actions could have on the impending court cases involving alleged phone tapping.

Within this place - and I have referred to this already - we are masters of our own destiny and it is not really necessary to have eminent legal advice as to how we should conduct ourselves. In fact, I think it would be quite wrong and improper, and when we return to the debate on the motion I will make further reference to that point. Since I have been in this place I have had occasion to read a couple of eminent QCs' opinions and both of them in part have been completely wrong. I believe that is because our Standing Orders and procedures have been built up over hundreds of years and very few people other than those practising in this place fully understand them. Therefore, it is unnecessary and quite often inadvisable to place too much confidence in this eminent legal advice.

As to the denial of natural justice referred to in point 2 of the amendment, there is no right of a member to have legal counsel. That is quite clearly covered. It is an option that is given. The option was given and the member was told that the committee would meet and that if he could not get the counsel he wanted he should try to get other counsel; so he was given every opportunity. In any case I question whether legal counsel is necessary to answer a couple of simple questions to support a statement that has been made.

As to the failure of the committee to address in its majority report the substantive question of whether there was any breach of privilege of the House, quite apart from whether there was any breach of privilege with respect to the matter before the House, if members read the

Standing Orders they will see that a refusal to answer a question from a committee of the House is itself a breach of privilege; so a breach has been committed.

It is not my intention to labour the point. I just wanted to indicate why I could not support the amendment and to highlight the reason why on this occasion I find myself at variance with other members of the National Party.

Amendment put and a division taken with the following result -

Ayes (20)			
Mr Blaikie	Mr Cowan	Mr Lewis	Mr Fred Tubby
Mr Bradshaw	Mr Crane	Mr Lightfoot	Mr Reg Tubby
Mr Cash	Mr Grayden	Mr MacKinnon	Mr Watt
Mr Clarko	Mr Greig	Mr Mensaros	Mr Williams
Mr Court	Mr Hassell	Mr Thompson	Mr Maslen (Teller)
Noes (31)			
Dr Alexander	Mr Peter Dowding	Mr Marlborough	Mr Taylor
Mrs Beggs	Mr Evans	Mr Parker	Mr Thomas
Mr Bertram	Dr Gallop	Mr Pearce	Mr Troy
Mr Bridge	Mrs Henderson	Mr Read	Mrs Watkins
Mr Burkett	Mr Gordon Hill	Mr Ripper	Dr Watson
Mr Carr	Mr Hodge	Mr D.L. Smith	Mr Wilson
Mr Cunningham	Mr Tom Jones	Mr P.J. Smith	Mrs Buchanan (Teller)
Mr Donovan	Dr Lawrence	Mr Stephens	

Amendment thus negatived.

#### *Debate (on motion) Resumed*

**MR STEPHENS** (Stirling) [4.37 pm]: This debate gives me no pleasure whatsoever, not because I find myself at variance with the National Party, but because there are really no winners. Neither the Government nor the Opposition can win from the situation that has developed; but there is a big loser, and that is the Parliament. The dignity, integrity and prestige of this place have been affected by what has been going on in the last couple of days and I have no pleasure in being involved. If members were to go out to their electorates and listen to their constituents for a while they would discover how disgusted the public are with the performance of Parliament and some of its members. Being one of that body, it certainly hurts me to hear the comments that are made. What is worse, it hurts me a lot more to recognise that most of the comments are perfectly justified and valid.

I know this is the second time it has been my last speech in Parliament. I would hope that I can leave a message, and already the signs are developing that there will be - and I strongly support - an investigation and inquiry into a code of ethics and so on. Perhaps the new Parliament's members will come back with a desire to keep to logic and argument, and to desist from any smear and denigration. By saying that I do not deny them the right to make allegations, provided they can substantiate them with facts.

On the question of privilege I would like to quote from what is regarded as the Bible of our Parliament, Erskine May's *Parliamentary Practice*. On page 70 he says -

#### **What constitutes privilege**

Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the ordinary law.

Because it is an exemption from ordinary law I think it is something we should protect very closely. Referring to the duty of members to maintain privilege, Erskine May says on page 81 -

The Speaker having claimed and statutory recognition having been granted to the privilege of freedom of speech, it becomes the duty of each Member to refrain from any course of action prejudicial to the privilege which he enjoys.

Further on Erskine May says in reference to speeches in Parliament -

"Speech and action in Parliament may thus be said to be unquestioned and free. But this freedom from external influence or interference does not involve any unrestrained licence of speech within the walls of the House".

I think that is an important point, which has brought about this debate. Our freedom of speech in this place is definitely qualified.

With reference to the member's opinion that we should get eminent counsel or that the committee should have sought the advice of lawyers, it is important that we recognise something Erskine May says on page 201 -

The necessary sphere of exclusive parliamentary jurisdiction has been limited by successive judgments of the courts to the following:

1. The exclusive jurisdiction of either House over its own internal proceedings;
2. The right of either House to commit for contempt.

However, we are not considering contempt at the moment, we are considering the right of the House over its internal proceedings. That is what the committee has done. I believe it is right and proper that this House should have full control over its proceedings. As I said earlier, I believe we are the masters of our own destiny. The members here should have a better understanding of our Standing Orders and the procedures and precedents which have been created, so that they are in the best possible position to make judgments. That is what the committee tried to do.

Turning to the opinion that the member for Mt Lawley received from Mr Geoffrey Miller, QC, which he has quoted from frequently, I would like to point out a few errors in that. They rather support the point that we should control our own destiny and that we are the ones best able to understand what the procedures are, because Mr Geoffrey Miller QC makes several erroneous statements. I will read it all for the sake of regularity. In part his opinion reads -

Under Section 34 of the Constitution Act the Council and Assembly are empowered to adopt Standing Rules and Orders for the "regulation and orderly conduct of their proceedings and the despatch of business" and pursuant to this power the Council and Assembly have jointly adopted joint Standing Rules and Orders, they having been adopted by the Assembly on 2 February 1891. They have thereafter been amended on numerous occasions.

The Joint Standing Rules and Orders provide for the existence of certain Standing Committees but they are limited to committees which do not concern this matter.

The Joint Standing Rules and Orders (Chapter 28) -

Now, he has bracketed them all together in the one context, but he refers to the joint Standing Orders in chapter 28 quite incorrectly. Chapter 28, to which he refers and subsequently quotes from, contains the Standing Orders of the Assembly. He has made a fundamental blunder there. Standing Orders, chapter 28, are the Standing Orders of this Assembly.

His quotes from Erskine May are similar to the ones I used. After having quoted from that, I find it difficult to understand how he could hold the opinion that it was not a breach of privilege. However, that is an opinion and I will not elaborate on that. Mr Geoffrey Miller QC says further in his statement -

J.R. Odgers in his work *Australian Senate Practice* (5th ed.) makes it clear that it is a high breach of privilege . . .

I do not intend to go any further in quoting him, but once again he is quite wrong because J.R. Odgers was not an authority on this place and his work has no relevance to this place. I direct members' attention to Standing Order No 1. Obviously this eminent QC has not bothered to read our Standing Orders. Standing Order No 1 reads as follows -

In all cases not specifically provided for hereinafter, or not covered by our practices or usages, or by other orders, resort may be had to the rules, forms and usages of the Commons House of the Imperial Parliament of Great Britain and Northern Ireland, which may be followed so far as the same can be applied to the proceedings of this House.

I read that in its entirety. He is quite wrong. We have our Standing Orders; we have the practices of over 100 years in this place and I would like to point out that we are very privileged also inasmuch as this is the only Parliament which sets out precedents in the same volume as the Standing Orders. Each Standing Order is quoted with its precedent. For example, Standing Order No 1 has two pages of precedents to support it.

Finally, I come to a point which I believe is a little more serious. In speaking of the conclusions - and he made six of them - conclusion (v) reads as follows -

Even if the evidence were taken in camera, the Committee's report would undoubtedly become the subject of debate in the House at some later time.

When one first reads that one gets the impression - or I did and I think any normal person would - that the evidence taken in camera would be the subject of debate in this House. I believe that is the message he tried to convey. I certainly believe he deliberately tried to convey that message, but he is quite wrong because the evidence taken in camera cannot be the subject of debate in this House under any circumstances. That was highlighted this afternoon.

I have indicated that one cannot put much credence in this QC's opinion. I think it is regrettable that it was given prominence in the Press - although I am not criticising the Press for that - and the public may feel that because it is a QC's opinion it is right. I do not profess to be a lawyer. I have been around this place for a while, and I would challenge anybody here now to say that the statements I have just made are incorrect. I just hope that the Press will equally publish the serious errors and flaws in Mr Miller's statement. If I may be permitted to say quite facetiously, perhaps it is just as well he was not available to the member for Mt Lawley.

In conclusion, in making my determination I acted strictly in accordance with my conscience and the evidence that came before the committee. I was particularly keen to see evidence taken in camera because that would have given the member for Mt Lawley the opportunity to give an outline - even if only a brief one - of the substance behind his statements. That was not forthcoming, as has already been indicated. I believe strongly that if any member gets up in this place, whether to make an allegation about another member or a citizen, at least that person should be able to substantiate the allegations. I accept that subsequently the allegations may be proved incorrect, but at least the person should be able to give the reasons for making the statement.

Government members: Hear, hear!

Mr STEPHENS: In this case, no such reason has been forthcoming. I have no pleasure whatsoever in doing so but I must act according to my conscience.

### *House to Divide*

Mr THOMAS: I move -

That the House do now divide.

Question put and a division taken with the following result -

#### Ayes (30)

Dr Alexander	Mr Peter Dowding	Mr Marlborough	Mr Thomas
Mrs Beggs	Mr Evans	Mr Parker	Mr Troy
Mr Bertram	Dr Gallop	Mr Pearce	Mrs Watkins
Mr Bridge	Mrs Henderson	Mr Read	Dr Watson
Mr Burkett	Mr Gordon Hill	Mr Ripper	Mr Wilson
Mr Carr	Mr Hodge	Mr D.L. Smith	Mrs Buchanan
Mr Cunningham	Mr Tom Jones	Mr P.J. Smith	(Teller)
Mr Donovan	Dr Lawrence	Mr Taylor	

## Noes (21)

Mr Blaikie	Mr Crane	Mr MacKinnon	Mr Watt
Mr Bradshaw	Mr Grayden	Mr Mensaros	Mr Williams
Mr Cash	Mr Greig	Mr Stephens	Mr Maslen
Mr Clarko	Mr Hassell	Mr Thompson	(Teller)
Mr Court	Mr Lewis	Mr Fred Tubby	
Mr Cowan	Mr Lightfoot	Mr Reg Tubby	

Question thus passed.

*Motion Resumed*

Question put and a division taken with the following result -

## Ayes (31)

Dr Alexander	Mr Peter Dowding	Mr Marlborough	Mr Taylor
Mrs Beggs	Mr Evans	Mr Parker	Mr Thomas
Mr Bertram	Dr Gallop	Mr Pearce	Mr Troy
Mr Bridge	Mrs Henderson	Mr Read	Mrs Watkins
Mr Burkett	Mr Gordon Hill	Mr Ripper	Dr Watson
Mr Carr	Mr Hodge	Mr D.L. Smith	Mr Wilson
Mr Cunningham	Mr Tom Jones	Mr P.J. Smith	Mrs Buchanan
Mr Donovan	Dr Lawrence	Mr Stephens	(Teller)

## Noes (20)

Mr Blaikie	Mr Crane	Mr MacKinnon	Mr Williams
Mr Bradshaw	Mr Grayden	Mr Mensaros	Mr Maslen
Mr Cash	Mr Greig	Mr Thompson	(Teller)
Mr Clarko	Mr Hassell	Mr Fred Tubby	
Mr Court	Mr Lewis	Mr Reg Tubby	
Mr Cowan	Mr Lightfoot	Mr Watt	

Question thus passed.

**ADJOURNMENT OF THE HOUSE - SPECIAL**

On motion by Mr Pearce (Leader of the House), resolved -

That the House at its rising adjourn until a date and time to be fixed by Mr Speaker.

*House adjourned at 4.56 pm*