



***AUSTRALASIAN STUDY OF  
PARLIAMENT GROUP  
(Queensland Chapter)***

***Parliamentary Privilege and  
the Media***

**Monday, 29 March 2004  
Parliament House  
Brisbane**

*Reported by Parliamentary Reporting Staff*

**Ms Nonie MALONE:** Ladies and gentlemen, members of parliament, members and friends of the Australasian Study of Parliament Group, it is my pleasure to welcome you here this evening to our discussion on parliamentary privilege and the media. I extend a special welcome this evening to our speakers: Cathy Border, Peter McCutcheon and David Solomon—all members of the fourth estate.

Edmund Burke some years ago is attributed with having said that there are three estates in parliament but in the reporters gallery yonder there sits a fourth estate more important than them all. In Queensland I wonder if perhaps it is the third estate. We are missing one of the other three. Carlisle in later years—100 years ago—elaborated by saying, 'Whoever can speak, speaking now to the whole nation, becomes a power, a branch of government with inalienable weight in law-making in all acts of authority.' So the press has that role in our parliamentary system. We are just delighted tonight to have members of the media giving us their perspective on parliamentary privilege.

The format for tonight will be that we will conduct the speeches after the main course has been served, so each of our three guest speakers will speak after the main course has been served. Then we will have a pause for main course to be cleared and dessert to be served and then there will be free discussion from the floor—interchange with our speakers.

I invite you all to enjoy the rest of your dinner for the moment and look forward to those speeches in a short while, after we have started eating main course.

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**Ms Nonie MALONE:** It is now time to commence the discussion that we have long awaited. Each of our speakers tonight is going to speak on the subject of parliamentary privilege and take quite a different tack.

Our first speaker will be Cathy Border. Cathy comes to us from Channel 10. Cathy has been the political editor for Channel 10 for three years and over that three years has reported on state political affairs. Prior to joining Channel 10, Cathy was with the ABC for eight years hosting a variety of current affairs programs. So she has considerable experience in the observation of parliamentary privilege—probably from more than just Queensland. Tonight she is going to talk to us about her observations of parliamentary privilege as it now operates in Queensland. Please welcome Cathy.

**Ms Cathy BORDER:** Thank you, Nonie. Thank you, everyone. Just remind me if I'm not loud enough for you at some stage. It's interesting speaking tonight, at a time when a few people have just had the privilege of being elected or re-elected, when we have had a former Brisbane mayor helping a former Olympian become a mayor, who ousted the mayor who was the father of an Olympian, who blamed the Elvis impersonator—and that was just the Gold Coast. In Brisbane we've got the can-do man who has found out today that he really can't do. So it's a bit of an interesting time to be around politics yet again.

I didn't want to spend this evening delving exactly into what I see as the definition of privilege and cite case after case over the years that have warranted investigation by the parliamentary committee, for example. But, by the same token, I don't want to downplay what an important function it is and what a great impact it has on the media, of its reporting of what happens in parliament.

The fact is that it is one of those vital functions that is ever present but rarely rates a mention in our media reports. I am sure the great majority of taxpayers would have very limited knowledge of its power, but without it there is no doubt we would all be the worse off. It goes without saying that if this vital right of parliamentary privilege didn't exist scores of stories would never have seen the light of day. And it's not going too far to say that corrupt governments may not have been uncovered if parliamentary privilege didn't exist.

I think among the strongest examples in Queensland would have to be the lead-up to the Fitzgerald inquiry and the scores of claims that were made using parliamentary privilege that were howled down at the time by the Bjelke-Petersen government. Many of the claims were later proved to be right or at least have some substance, and those claims planted the seed for the eventual ousting of a government, numerous court trials and convictions and the complete overhaul recommended by Tony Fitzgerald. In more recent times in the Queensland parliament, privilege has been used to voice claims of shonky tourist operators, dodgy builders, and the list goes on. That is not to say that it has not been abused as well. And that raises questions of journalistic ethics and integrity on what should be reported.

I know my colleague Peter McCutcheon will examine the Hollingworth case this evening and David Solomon—oh wise one—will have a wealth of experience to share with you this evening, so I'm deliberately being brief so those with greater knowledge can share more time with you this evening. I thought looking at the current Queensland parliament would be the best thing I could do tonight. How effective is parliamentary privilege now? What are the different dynamics between the politicians and the media?

The last annual report of the Members' Ethics and Parliamentary Privileges Committee was four pages long. The bulk of the report outlines its responsibilities and the members' attendance record. Lots of ticks. Very impressive. Very few missed meetings. But, apart from that, the report shows that issues considered over the year included reviewing ethical standards, examining three matters of privilege referred by the Speaker and dealing with two citizen submissions for a right of reply. The committee's report examining privilege and its impact outside the chamber and the community's ability to raise a matter of concern with an MP without fear of retribution were subsequently tabled last November. But to the

person on the street it really gives little insight just how significant parliamentary privilege is in the day-to-day operation of the Queensland parliament currently and, indeed, the coverage that it receives.

To put it in a bit of perspective, I think we need to look at how the Queensland press gallery has changed and, indeed, I think, the make-up of the 89-member parliament. The changes have been dramatic over recent years. Does this have an impact on how effectively the right of parliamentary privilege is used and reported?

Media coverage of the Queensland parliament is not what it used to be. I hasten to say that I don't think it's as robust, but after the excesses of the 1980s media outlets are far more frugal with their resources. I can recall first covering state parliament in the 1980s. Not only was there the *Courier-Mail*, but the *Sun* newspaper and the *Australian* all had teams of dedicated state political reporters. The commercial television stations had teams of two specialised reporters, which I look upon with much envy these days. Radio stations 4KQ and 4BH had political reporters. They have no presence at the moment. I take that back: 4BH is aligned with 4BC now, so they do have a presence. The wire service AAP had a team of reporters covering everything that happened in the chamber. So it's dramatically different now. The *Sun* newspaper is no more, TV stations have one dedicated reporter and the ABC and 4BC are the only stations providing coverage.

The floor of parliament is vastly different as well. Of course, the Labor Party dominates—63 of the 89 seats. The Liberals and Nationals are divorced. The Independents and the solo One Nation members total six. We have had only one sitting day of normal business so far this year, but in that day we saw some of the true and tried tactics of recent times again being trotted out. Queensland has seen some very strong parliamentary performers over the years, and the Premier, Peter Beattie, well and truly holds court at the moment. His mocking of the opposition and accusing them of being rude when they interject is a masterstroke that gets a daily work-out. Forget the fact it is the very forum where the opposition should be robust, interject and demand answers. It is a very clever tactic and it works for him time after time. The opposition is still playing catch-up in the parliamentary stakes. I think they greatly miss the skill of the former leader, Rob Borbidge, who knew the parliamentary rules through and through and was the consummate performer of pushing privilege to its limits at times and severely testing the Speaker and his skill in ruling the House.

I thought it would be interesting to speak to some members past and present for their thoughts on parliamentary privilege and the media. Best perhaps not to mention any names, but I guess predictably the vast majority strongly defended the right to use privilege and equally strongly defended the media's role in reporting it and being able to report it. But there were some interesting other observations—some comparing the current parliament to previous ones and absolutely lamenting the fact that there aren't as many characters who used privilege often in a more humorous way than what we see these days. Perhaps that is something that shouldn't be easily dismissed when you think that that was a skill that nurtured a lot of friendships, developed political skills and, I think, also forged a few relationships across the political divide with mutual respect.

Others have very strong views, one saying it was only gutless people who used the coward's castle to launch character assassinations without proper research and factual basis, the accusation being that some MPs have used and are using privilege to get a name for themselves instead of using it as a last resort to right a wrong. I think this is perhaps one of the biggest issues regarding privilege and the media. Say, for example, an MP raises explosive allegations in the House. Let's say it's about a building company and it's alleged that they are ripping off home owners. Especially for radio and AAP, those allegations may be reported within the hour to meet their never-ending deadlines. It may well not be until after those initial reports have gone to air that the media outlets seek comment from the company concerned or any consumers. I can recall some occasions reporting similar issues out of the House and not getting a response from the accused company or the individual before the nightly deadline or, indeed, sometimes simply no response at all. So if other issues arise, say, the next day, there may not be as much media interest in revisiting the story. So I think there are lots of complicating factors here challenging not only the MPs' right to raise the issue in the first place but also the media's right to report it, and I don't know that there can strictly be one answer to all of that.

So I just leave you with those thoughts. To sum up, my view would be that from the politicians' and the media's point of view what is important for us is to remember that it's actually a privilege to have parliamentary privilege. Thank you.

**Ms Nonie MALONE:** Thank you very much, Cathy, for taking us across those 30 or so years of history in Queensland to the present. Our next speaker will be Peter McCutcheon, who is a senior journalist and former foreign correspondent currently with the *7.30 Report* in Brisbane. Peter has recently reported on the Queensland election and jailing and subsequent release of Pauline Hanson for the *7.30 Report* and the controversy surrounding the former Governor-General, Dr Hollingworth, for the radio current affairs programs *AM* and *PM*. Peter was the ABC's North Asia correspondent in Tokyo from 1996 to 2000, where he covered the Asian financial crisis as well as the 1997 Kyoto climate change conference. Tonight we bring him back to local climes, to Australia, and to Queensland's relationship with the Governor-General. He will speak about the tabling of the Anglican Church report that ultimately brought down the Governor-General. Please welcome Peter.

**Mr Peter McCUTCHEON:** Thank you very much, Nonie, ladies and gentlemen. When a politician gets up in parliament and says something in the chamber that he or she would not be able to say outside of

parliament, they give that allegation a very good chance of getting covered in the media. In fact, no matter how dubious the allegation, it is probably going to get reported and it is probably going to get reported with some prominence as well. That is not necessarily a bad thing. It is parliament. You cannot expect journalists to self-censor. So let's take the example where Bill Heffernan made the allegations against Justice Kirby. Even though a lot of people felt it was dubious, it was covered because, after all, there is more than one story here. There's the story of the allegation. There's the story of the politics. Did John Howard know that Bill Heffernan was making that allegation? There is also the story of whether there has been an abuse of parliamentary privilege. So even when a dubious allegation is made, there are stories here for the media on many different levels.

It is not the media's responsibility to self-censor, to say, 'We think this is dubious. We can't report on it.' But it is the media's responsibility to scrutinise the use of that parliamentary privilege. With that in mind, I thought I'd use this evening to talk about my personal reflections on covering the Hollingworth affair, something I did feel a little uncomfortable with. I'll tell you my reflections in hindsight.

Peter Beattie, when he tabled the Anglican Church's report into its handling of sexual abuse cases, did say that this was a 'unique' use of privilege. That was the word he used. I do not know if it is unique—we have experts here this evening who will know—but I cannot think of any other example like that. His argument was that he is putting children first; that this is such a serious issue that we should forget about the legal niceties as urgent action needed to be taken.

The Anglican Church, of course, had approached Peter Beattie to table that report in parliament. The report was written by a QC and a child welfare professor. The fact that Peter Beattie agreed to table that report in parliament—that protected it under the rules of privilege so that it could all be reported, so that the rules of defamation did not restrict any of its findings—was welcomed by high profile child advocate groups.

It is obvious to say that it was shrewd politics as well. It was politically controversial. After all, the Anglican Church did ask John Howard to table the same report and he refused. There was a political gain for Peter Beattie. Dr Hollingworth was a personal appointment of the Prime Minister. He was engaged in a controversy for 12 months up to the tabling of that report. Peter Beattie was tabling something. He was tabling a report he did not know the contents of. He admitted he had not read it, but he said that he could trust the contents because it was written by a QC and a child welfare professor. However he did admit that he did not actually know what he was tabling. The effect of his action was to give the force of parliament—the equivalent of a royal commission or a court case—to what was fundamentally a private investigation. It was an investigation that was done behind closed doors. Witnesses were not called. The findings were mostly done by an exchange of paper.

One of the most vocal critics of this action in tabling that report was Terry O'Gorman from the civil liberties union. His argument was that by tabling this document the media focused on the negatives—the most damaging thing against Peter Hollingworth. There were lots of findings in the report where Peter Hollingworth had been accused of mishandling all sorts of cases where the report found that actually he was cleared, that he did no wrongdoing. And the media didn't cover that. I think Terry O'Gorman has gone a bit far there. I actually reported on that myself, so it is a criticism of me. So I do not accept all of that. However, I think there is an element of truth in it.

Those who work in the media would be aware of what is involved, but for those who don't, just picture this. The report was 470 pages. It was given to us at about 10 in the morning. There was no executive summary. There were nine cases covered in various different parts of the report. It took, even in quick reading, well over an hour to just get a grasp of how the report was structured let alone what the findings were. Within an hour and a half I had to go on live national radio to speak for five minutes about what the finding was. TV reporters had to do live crosses into the *Midday* program and put together packages. At the end of the day on TV news or even on radio current affairs, the package had to involve reaction from the Prime Minister, from Peter Beattie, from the Anglican Church. So tabling the report the way it was tabled ensured that, really, the essence of the most negative findings is what got reported on that day and it did create a sensation. If it had been a court case or a royal commission or a public hearing, the report would not have been released into a vacuum in the way it was in the lead-up to Peter Beattie's actions. The public had none of the perspective of what the arguments were. They got what was a media frenzy about the most negative aspects of how Peter Hollingworth dealt with several cases. I am describing that as a fact. I am not necessarily criticising it; I am just saying that was the case.

The use of parliamentary privilege in this way, I am arguing, was a very shrewd political act. It had the effect of creating this media frenzy. The use of parliamentary privilege in this way for a political purpose was covered to some extent by the media but was not scrutinised to the extent that you might have expected. Why is that? Well, there are a number of points. First of all, there was—I will stress this—a genuine news story here. It was not an allegation that could be simply disproved. Some of the findings against Dr Hollingworth were fairly damning. I was involved in a forensic examination of those findings and the way he handled several cases. It did involve a public figure who was already under scrutiny. To some extent, the tabling of this report was ultimately upstaged by the fact that there was a sensational court case about rape allegations going back to the 60s and ultimately by Dr Hollingworth's resignation.

Also a very important point here is that it was a use of privilege in the Queensland parliament. It was an issue in Queensland, but it became a national story. Most national news organisations are driven to some extent by their Canberra bureau. The Canberra bureaus did take over this story. So parliamentary

privilege and abuse of it became a very minor issue in the scheme of things. The issue became the politics surrounding John Howard—whether it was an appointment that should have been made to begin with and how he was handling this controversy.

Summing up, I still feel uncomfortable with the way that was covered. There was shrewd politics involved. Peter Beattie did argue there was urgency here, that children were at stake. But the Anglican Church had already introduced a substantial number of its reforms. This report was mainly about past history and how it was handled. You might argue—you'd have to ask the Anglican Church—that this report did help it to push reform further. Perhaps it did to some extent, but ultimately I think the effect of tabling this report was to claim a political scalp. If it had not been tabled there would have been a lot more work for the media to do. Some of the material there was defamatory. But I am of the opinion that ultimately those legal obstacles could have been negotiated. The findings, in some form or another, would have eventually come to light.

Dr Hollingworth? Well, this is just a personal opinion, but there were a lot of things at stake and a lot of things happening at that time. I think perhaps in retrospect he probably would have resigned anyway, but without the frenzy that the tabling of the report set off in the first place. I make no apology for being part of that frenzy. As I said in my opening comments, you can't expect the media to self-censor. The information that was tabled was of enormous public interest. It was fairly damning of Dr Hollingworth. It was a duty as a reporter to analyse the implications of that information. But, in hindsight, I think the motives of the Queensland Premier and the manipulation of parliamentary privilege for a political purpose were not scrutinised to the extent that they should have been. Thank you.

**Ms Nonie MALONE:** Thank you, Peter, for taking us on the ins and outs of that most interesting case that touched all of us. Our next speaker will be David Solomon—the wise one, from Cathy's earlier reference. David is the contributing editor at the *Courier-Mail*. He has been a journalist for more than 40 years, reporting mainly politics and then law and then both from Canberra. He was president of the federal parliamentary press gallery in the late 1960s and early 1970s. He spent about a year and a half as chair of Queensland's EARC, the Electoral and Administrative Review Commission—the assignment that brought him to Brisbane from Canberra almost 12 years ago for a very brief period, I believe, and he hasn't left. David has degrees in arts and law from the Australian National University and he has written a number of political and legal books, six of which were the basis of the award to him of the degree of doctor of letters by the ANU, which he assures us is a real doctorate and not an honorary one. He is an adjunct professor at the University of Queensland in politics and not in law. He was for several years at the beginning of the 1990s the national chairman of the Australasian Study of Parliament Group, of this organisation. We are very privileged to have David addressing the Queensland chapter this evening. This evening David is going to look at parliamentary privilege from the perspective of law I think more than politics. Please welcome David.

**Mr David SOLOMON:** Thank you very much. Actually, I'd like to start with a few observations very different to my colleagues, whose presentations I thought brought up some excellent points. I want to say something very different about the experience of parliamentary privilege on me as a journalist and on journalists generally. Most of what I am going to say relates to the federal parliament and I intend, towards the end, to say something about the most famous privilege case of all, the Browne and Fitzpatrick case.

What journalists often don't realise is that when they start reporting parliament they are not allowed to act properly as journalists. One of the marks of a good journalist is to break a story. Break a story about what a parliamentary committee is going to report and you've committed a breach of parliamentary privilege. You can be summonsed before the House. You can be fined, although no-one has been fined for actually doing so. You can certainly be required to apologise. You could be banned from the precincts for a while. That is one aspect of parliamentary privilege that is terribly limiting on the work of political journalists. Mind you, these days people tend to ignore that. There have been lots of reports in the last six months of what is going to appear in the report by X,Y or Z committee of the federal parliament tomorrow, next week or whatever. This has been largely ignored, but there have been quite a few cases which have been taken before the privileges committees of both the House of Representatives and the Senate. There have been findings that the reports were in contempt. I might say that I suspect the main reason they have not gone any further is that it has been obvious that the details have not been leaked, of course, by members of the parliamentary staff but by the other people who might have access to them.

There are other breaches of privilege from way back that most of you won't remember. I mean, there were advertisements that appeared in newspapers once of a fake budget, with Arthur Calwell saying something advertising something or other. That was a breach of privilege. My old friend Laurie Oakes was hauled before the parliament for saying that there were lots of drunks in parliament. Truth is not a defence.

In fact, contempt works in another way and privilege works in another way. I remember when I wrote an article—I think it was in the *Australian*—attacking Don Chipp about the way he voted on an abortion bill, saying, 'Here's this fellow who pretends to be a small 'l' liberal and who in private says one thing and gets up in parliament on a conscience vote and votes the other way.' Needless to say, Don got up and attacked me in parliament, under parliamentary privilege, for having dared question his integrity. I'm surprised he didn't haul me before the privileges committee, actually.

I was also attacked by Peter Reith once after I had been appointed to help a constitutional committee as an adviser. He attacked me as being a political appointment and said some very nasty things about me. I met up with him a couple of years later at the National Press Club. I said, 'Peter, that was very

unfair and you know that what you said was false. Why did you do it?' He said, 'Oh, it's politics.' I'm not saying that happens very often, of course. That would be a breach of privilege. And I have to say that it is not unknown for journalists to actually approach members of parliament to get them to make speeches or table documents that relate to material that they could not otherwise publish. It's best to do this on the adjournment late at night. No-one else knows that it is going to happen so that you can use it and no-one else uses it. That happens. I'm not saying it happens now, but in the old days it happened.

I referred to the most famous parliamentary privilege case in Australian history. I was at lunch the other day with several people who are present, actually, and I mentioned this. One of them said, 'When was that?' I said, '1955.' And he said, 'I was born then.' So I don't expect very many people here can remember it. This is the Browne and Fitzpatrick case. If you are a lawyer and you look up the High Court report of what happened in that case, you will find none of the facts. The High Court actually heard a case which was given to them by the ACT Supreme Court for a writ of habeas corpus by Browne and Fitzpatrick, who had been put in Goulburn jail for three months under a writ of the Speaker of the House of Representatives for a breach of parliamentary privilege. The High Court delivered a unanimous judgment through the mouth of the Chief Justice—there was no written judgment; it was an oral judgment—in which he expounded upon the law, and the law basically was that the High Court could not go behind the writ that was issued for committing these people to the jail, full stop. There was no discussion whatsoever about the circumstances under which they had been committed to jail, under the offence which they had committed.

If you look at the various accounts of what happened in the law books, you get a very brief account which says that Browne was the writer and Fitzpatrick was a publisher of a local newspaper in Bankstown in Sydney and they had produced what in effect was a defamation of the local MP, whose name was Charles Albert Morgan, who was a Labor member of parliament. He was accused of running an immigration racket—not, I might say, while he was a member of parliament. All of the events of which he was accused took place before he was elected to parliament, and there was no suggestion that he was continuing this racket. I mean, the racket consisted of offering immigration advice for 20 pounds a go—this is in 1939, 1940—to get people out of Europe to bring them to Australia, and he had stopped it. He was a solicitor, so he was entitled to do this. It turns out, though, that he and Fitzpatrick, who was the publisher of this local rag, had been in cahoots. They were business partners and they had fallen out.

I am going to read a little bit of what really happened in the parliament. You won't read about it in the *Hansard* because most of it didn't happen actually in the parliament. It happened in the corridors. This is written by a fellow who really knew, a fellow called Frank Green, who was the Clerk of the House of Representatives. The day Browne and Fitzpatrick were given their three months marching orders into Goulburn jail was his last day as Clerk of the Parliament. I should say that he didn't like Sir Robert Menzies, who was the Prime Minister at the time, and his account is absolutely devastating in relation to three QCs—Menzies, former judge of the High Court Dr H. V. Evatt and Percy Joske. Summarising it on what I've said about the accusations relating to what had happened before this fellow was in parliament, the advice that the Clerk gave in writing to the privileges committee was, 'No contempt. You can't deal with this. This is a defamation. If Morgan wants to take any action, he can do it through the courts.' He quoted May's Parliamentary Practice and all sorts of things and said that the civil courts was the place to go.

The Clerk found out that Menzies wanted to persevere with this. Menzies was not a member of the committee, of course, but the committee was reporting back to Menzies, and so it went on. To find out what was really happening, the Clerk said, 'I went up to the press gallery and talked to two senior men who generally knew what was going on. I learned from them that both the Prime Minister Menzies and Arthur Calwell, the Deputy Leader of the Opposition, were against Browne, who had earned their dislike by using his newsletter, "Things I hear", to their detriment.' He quotes actually one of the stories, which is very nasty indeed. It is about Menzies pretending to know something about cricket. Menzies actually relied on another member of the press gallery for all of his information about cricket. I am not drawing comparisons with current events.

Anyway, the committee, he said, disregarded his advice and summonsed Fitzpatrick and Browne to appear before them. They came accompanied by a barrister and a solicitor. Now, I might tell you—this is not in the account—that the barrister was a very young junior from Sydney who later became Sir Anthony Mason, Chief Justice of the High Court. The parliament denied Browne and Fitzpatrick legal representation before the committee. The committee then, thanks to its QC, Percy Joske, cross-examined Fitzpatrick, though not Browne, and managed to get from him an admission that they were really trying to damage this local member, that it didn't just relate to his past. This article says, 'Look, this bloke was really very simple. He really didn't know what he was doing. He didn't know what he was saying. He didn't have legal advice. Of course he would make these admissions.' It was those admissions which were later used when the matter came before parliament, when once again they were not allowed to be represented by counsel, and there was a vote to send them to jail.

Now, this is all very historical. It couldn't happen again—I think. It probably couldn't happen in the Commonwealth parliament because there's been a change in the law. The Commonwealth parliament in 1987 passed a Privileges Act which actually defines contempts and privileges to the extent that at least the author of Odgers Senate Practice says that it would now be justiciable that a person accused of the crime by parliament of committing a contempt could challenge on a factual basis whether it was a contempt or not. Now, that was something that the High Court said could not happen in the Browne and Fitzpatrick case because they could not go behind the writ. It would seem that the law has changed sufficiently that you could actually go to court to see whether there was a real crime.

I am pleased to say that the law in Queensland has also changed under the Parliament of Queensland Act, which uses terms very similar to—obviously copied from—the Commonwealth act to define what a contempt is so that there would be at least a possibility that you could challenge it in court, though, having read Gerard Carney's book, I am less sure than I was before I read it that you might have a successful action. But I am sure that the climate has changed—that it is no longer likely that journalists will be hauled up before the parliament accused of trying to unseat a member of parliament. Now, we do that all the time.

Actually, the act is not terribly helpful. The Queensland act actually has examples of what is meant by contempt. It includes "assaulting, obstructing or insulting a member" and "attempting to compel a member by force, insult or menace to take a particular position". Really, this is the 21st century! I have to say that I am not terribly happy as a journalist with the power that the parliament has kept to itself to discipline me for what I have to say about members and the way that they perform as members of parliament. I think the present law remains—it is better than it was—undemocratic. I think we still have a problem. I just hope that it's never tested. Thank you.

**Ms Nonie MALONE:** Thank you, David, for bringing to our attention that very famous case of Browne and Fitzpatrick and for demonstrating to us that really nothing changes. Ladies and gentlemen, we will now adjourn for some time. We will commence dessert shortly. I would ask you to formulate your questions and observations during that period as we will reconvene some stage thereafter.

**Ms Nonie MALONE:** Ladies and gentlemen, I would like to introduce the question discussion session now. Our three speakers will come and join me. I would invite you to in turn ask your question. Our session tonight is recorded by Hansard, so would you kindly state your name before you ask your question so that it appears in our record?

**Ms Colleen FORRESTER:** I wanted to ask if anyone here has an opinion on the report that was tabled that was spoken about. You said there was a political reason that the Premier tabled that report. Would you like to enunciate what you believe that was?

**Mr Peter McCUTCHEON:** Well, Peter Hollingworth was an appointment by John Howard. It was a controversial appointment. As everyone will recall, it was the first time a clergyman has been appointed as Governor-General. There was huge debate about that. So to undermine the Governor-General was to undermine John Howard. It so happened that the ammunition that would really give Peter Hollingworth a king hit came out of Brisbane. He was a former archbishop of the diocese of Brisbane. Peter Beattie was given this opportunity to table something in parliament that would undermine John Howard, who is a political rival of the Labor Party. That is what I meant by that.

**Mr Neil LAURIE:** David, I refer to the commencement of your talk. An issue of some interest to me is when the media are acting in the public interest or in the commercial interest of their media organisation—not necessarily the *Courier-Mail*, of course. When you started out you were talking about, from a journalist's perspective, an important or a big motivating factor being breaking the news and how that didn't stack up with, for example, the prerule of a committee report. When a journalist decides to break news about a report that is going to be tabled in due course anyway, are they acting in the public interest or the private interests of the media organisation?

**Mr David SOLOMON:** Good question. Both. It is difficult to appreciate this in what people tend to dismiss as a one-newspaper town, but newspapers are not the only source of news, even in Brisbane. In a place like Canberra in particular—I was referring mainly to Canberra—you have 200 to 300 journalists competing against each other all the time, partly to establish their own reputations and partly to advance the interests of the newspaper, radio station or television station that employs them. There is huge competition. So breaking stories is about being there first. There is an element of the public interest as well. Presumably it is the public interest that compels a politician or a politician's staffer to leak the material to the journalist.

**Prof. Ken WILTSHIRE:** I was very attracted to the idea of putting journalists in jail for three months. Cathy got to the essence of my question, which is about the interaction of the media with parliament. That is what we are talking about. Peter's comment that you can't expect journalists to self-censor struck me a little bit, too. I am astounded by the number of cases where the media reports something that has been said under privilege but somebody still launches a defamation case, even though it has been reported under privilege. I thought this was all wrapped up and sealed in law. What are the constraints on a journalist in deciding whether or not and how to report something that has been said under privilege in parliament? Is it the defamation law? Is it the code of ethics? Is there some other public interest framework? What is it, because something is going wrong here? I am a great believer in the sovereignty of parliament. I do not like taking away their right to have privilege. I'd rather have them keep that. But if it's about how the media reports that, it is not at all clear. What framework do you guys use in judging, or do you just write and be damned and take the consequences? That is what I'm interested in, because the interaction of the two fascinates me.

**Ms Cathy BORDER:** With parliamentary privilege, I think the defamation argument is perhaps not as strong as it would be outside of parliament. But as a journalist, I think the ethics is always something that is very strongly to the fore with any decision that I make. What I tried to say earlier is that I do always try to test out the validity of a claim that is made under privilege with either the person or company or whatever that is being accused or another source that can validate that. Often, time simply doesn't permit that, the problem being that it is parliamentary privilege, it's on the record and it's out there. Often the

problem for the aggrieved party, if you like, is that, as I said, by the next day or two interest in that story has quite often moved on. Often, time is the restraining factor, I find. I don't know about my colleagues.

**Mr Peter McCUTCHEON:** Defamation is probably the biggest issue. Information gets out and is in the public arena that wouldn't have got out otherwise. It is only there because it was mentioned in parliament. Once that is done, I think journalists should report it. My comments were that it shouldn't be self-censored. I know there are other cultures where journalist clubs might get together. I know in Japan, for example, there are examples where they might say, 'Let's not report on this for a few days and check it out and then we'll report it as a fait accompli after three days and say, "This allegation was made but it's wrong.'" That doesn't work in Australia, and I think it's good that it doesn't work. You want something more robust than that. There's a problem that that can eventually become a conspiracy against the rest of the public. As I was arguing also, the fact that an allegation is made in parliament, whether it is true or false, is not the only part of a story. There is also the politics behind it and the issue of parliamentary privilege.

**Mr David SOLOMON:** If I can cut back to the competition, as opposed to the situation in Japan, where you have an anticompetitive situation in clubs and so on, the example that really is the worst possible example are the allegations against Michael Kirby. They were deliberately made late at night so that there was no opportunity to check them out. All media organisations were faced with running what was said or missing out on a story and either missing out on a story that they believed was wrong from their knowledge of the judge—and not many were in a position where they would say 'the senator is wrong'—or accepting parliamentary privilege. There was no defamation possibility anyway because it was protected by parliamentary privilege. This is a genuine ethical dilemma, but I regret to say that competition dictates the answer.

I have been in situations not as bad as this, where members of parliament have not deliberately set out to defame someone but they have said things—and not just members of parliament. Let's go out into the ordinary community. You are interviewing someone and they say something and you know what they are saying is wrong. What do you do? In a sense, this is one of the ultimate dilemmas for a journalist. Do you report it and try to get a countervailing answer? If you are senior enough, do you report it and say 'and I believe this is wrong'? If you are really senior, do you not report it because you are convinced that it is wrong and you risk the competition thing? I've been searching for an answer to this dilemma for most of my journalistic career. If you have an answer, I would love to hear it.

**Mr Peter McCUTCHEON:** There is a difference also between someone in public saying something that you know is wrong and someone actually saying it in parliament under parliamentary privilege. Parliament is something a bit different and a bit special, and if someone is abusing that parliamentary privilege or making that allegation it has to be treated a little differently. You cannot say, 'We can't report on this.' I think you are obliged to report on it. If it turns out to be wrong, that is an issue that should be dealt with by the parliamentary privileges committee—whoever handles it. Ultimately it cannot be the media that judges what should be done.

**Ms Cathy BORDER:** I disagree. I have had times when there have been some things said under privilege in parliament that we have chosen not to report on by doing a few checks and have found that parts of it have not stacked up. I totally disagree with the fact that if it's said in parliament it must be automatically reported.

**Mr Peter McCUTCHEON:** But that should be a story—that someone has said something that does not stack up. That should be the issue, that someone has abused parliamentary privilege.

**Mr David SOLOMON:** But then you are committing a contempt of parliament.

**Mr Peter McCUTCHEON:** But if parliament is being abused in that way, I think it is the duty of the media to point that out.

**Ms Cathy BORDER:** Not if there are bigger and better stories about and you are giving someone who does not deserve the air to a story giving them more life.

**Mr Peter McCUTCHEON:** I just think if someone is abusing parliament to that extent then that should be exposed.

**Ms Colleen FORRESTER:** Does it come back to personal integrity?

**Mr David SOLOMON:** No. Well, unless you mean the parliamentarians' personal integrity.

**Ms Colleen FORRESTER:** Surely journalists have integrity. I am not being flippant.

**Mr David SOLOMON:** Are you suggesting that if the journalist thinks, believes or knows that what is being said is wrong they shouldn't report it? You have to choose.

**Ms Colleen FORRESTER:** I suppose my question is: am I hearing 'because it's said it therefore deserves an airing'?

**Mr David SOLOMON:** No. Well, I think we differ on that.

**Mr Geoff WILSON:** I have a question particularly to Peter, but the others might have an observation as well. You used the expression earlier that, in the case of the Hollingworth document, you don't think the media is in a position where you should self-censor and therefore choose not to publish something about what you might otherwise think is a questionable tabling of a document under parliamentary privilege. I just want to challenge your concept there and the language you use. Even the language you use—self-censorship—implies that there is some virtually automatically applying obligation that you have to publish.

Really, what surely is happening is that you're making a value based decision to publish. It's not that you have some compulsion to publish but you are making a value based decision to publish. You see, the way in which you can examine that issue is by looking at matters that are published under parliamentary privilege but which you don't report on. For example, over the three-year term of the last government John Mickel on four occasions made speeches in the House about the preselection sorting, so alleged, within the Liberal Party in the federal seat of Ryan. None of those allegations—names were used and instances given—were ever reported on, so far as I recall, in the *Courier-Mail* or on the TV. They are instances that people don't find out about, where the media has exercised a discretion, based on their own judgment, not to report. It seems to me those instances give the lie to the observation that you can't self-censor and therefore you must publish the Dr Hollingworth report.

**Mr Peter McCUTCHEON:** I take your point. Cathy was saying earlier, 'Well, there were allegations made. We had bigger stories to follow and we didn't want to follow up and it was pretty dubious anyway.' What I was trying to draw a distinction between is a situation in countries like Japan, where a sensational allegation is made and a group of journalists come together and think, 'There is a big public issue here but let's just pull back for a few days and investigate it before we publish it and we will agree on what we are going to publish.' I did not want the media in that situation to be the ultimate judge of when that information comes to light, especially if it's a serious allegation made by a senior member of parliament or someone with some standing in parliament as well. I guess I wanted to draw the parallel between a situation where media can deliberately hold back information while they investigate it or want to check it out as opposed to, I guess, your example of an allegation that might be out there that is not high on the public agenda but seems to be defamatory but does not have a huge public interest. I take your point to some extent, but that is the parallel I wanted to draw between how the media might work in countries like Japan and how they work in Australia.

**Ms Elaine THOMPSON:** Are there stories that you did choose to publish that with hindsight you would not have published? Coming from New South Wales, of course, I am always thinking of the Franca Arena allegations that are said to have led to the suicide of a judge. Do you think that our system is a reasonable compromise between the American system, where everything goes, and the Japanese system, or would you like to see it move in one or other of those directions?

**Mr David SOLOMON:** I think our system is too limiting. If I could return to the previous question, there are stories that are written out of the press gallery every day that do not get into the paper. That is a question of news judgment not by the journalist, which is the Japanese system, but by editors, and that's what they're there for. Now, in a sense, same answer. Of course it's driven by competition as well, but the journalist has to write the story—or file it for radio or television—and the editors have to make that ethical decision. Sometimes the competition element is the most important and the ethical question is buried. If one can foresee that publishing a story could cause someone who is innocent harm, of course that would be taken into account, but we can't always foresee these things. The working journalist has to file the story and editors, hopefully, take these things into account.

**Prof. John HENNINGHAM:** I was interested to see that the Speaker of this parliament has declared, just in the last few weeks, that people in the public gallery may take notes of proceedings. I do not know whether this is the first parliament in the Westminster tradition where this has happened, but it reverses a tradition of several centuries. Parliament traditionally saw it as a breach of privilege for its proceedings to be reported by anyone, and there was considerable resistance to having the press admitted to the parliament in Westminster. It does bring to light the fact that a great deal has changed, particularly with the introduction of broadcasting and most particularly with the Internet, where the proceedings of parliament are available through *Hansard* on the very day a speech is being made and now through the Internet, with direct broadcast of the Queensland parliament. I understand that cable television will be offering the federal parliament in the same way that the United States has access to this. This really means that the role of the media as an interpreter and selector of events is somewhat diminished—or one could argue it is even more important. What is your comment on the role of the media in an environment where the proceedings of parliament are now, in a sense, broadcast directly to people in their homes or through their laptops?

**Ms Cathy BORDER:** I still think the bulk of people will find out what has happened through the major media outlets. That's my answer. As much as I welcome the opening up of it—being on the Internet and the like—I still think it will be your nightly fix on the TV or the radio or by reading the newspapers where most people will find out what has happened.

**Mr Peter McCUTCHEON:** I agree with that. We were talking about this earlier. I remember when federal parliament was broadcast on metropolitan ABC radio. It's now on a separate channel and I suggest perhaps fewer people listen to parliament now because it's not on the mainstream ABC radio channel. I remember growing up with my father, who wasn't involved in politics or media at all, listening to parliament whenever it was sitting, just as a matter of course. Anecdotally, I think it's changed. I think fewer people listen to parliament. It's a good step in the direction of maybe changing things back to the way they were 30 or 40 years ago.

**Mr David SOLOMON:** Indeed. I remember actually listening to Menzies announcing the Petrov defection. That's really going back! In a sense, it means that the public media has to be more responsible because there's a check and balance.

**Ms Cathy BORDER:** And the politicians.

**Mr David SOLOMON:** The same with the politicians, yes. There are alternative sources. I think actually the rules about recording things in the press gallery—the legal rules—have also changed, thanks to the Parliamentary Privileges Act, slightly.

**Prof. John HENNINGHAM:** One implication is that the press and the other media cannot not report anything that happens, because there are alternative sources of information.

**Mr David SOLOMON:** That's not true. We do not report 95 per cent of what happens in parliament because there is no room for it.

**Dr Paul REYNOLDS:** There is comment as well as reportage, and that's what's important.

**Mr David SOLOMON:** There is very little comment either, Paul. The amount of space that we devote to parliament, regrettably, is very small. I remember the days when you could ask your local member to be put on his list—it was 'him'—of people who got free *Hansard*.

**Mr Terry SULLIVAN:** You still can.

**Mr David SOLOMON:** How many?

**Mr Terry SULLIVAN:** The same number it was 20 years ago.

**Mr David SOLOMON:** Two hundred and fifty or whatever? Lots of us had access to *Hansard* then. Now the subscription cost is so ridiculous, because you are expected to get it off the Internet and so on. It's all very well if you've got a high-speed printer or high-speed eyes and know how to work the system, but for most people it remains the case that, while it is possible to access what is happening in parliaments, they depend on what the newspapers, primarily, report, and that is a very small fraction of what is actually said.

**Ms Cathy BORDER:** That also gets back to what I was saying earlier about our resourcing, that there aren't nearly as many journalists covering it as there used to be not too long ago. You'll find—I'm sure many of you have sat in on parliament—that the bulk of the media is there at the start of 9.30. At 11.30 there is a mass exodus and you will find perhaps that the *Courier-Mail* and ABC Radio are the only ones keeping an account of what is happening in the chamber from then on. Unfortunately that is reality. We just don't have the resources to keep covering it as much as we would like to. The onus is often on the politicians then to make us aware if something is coming up that they think is worthy of us to report it. But again, the bottom line is resourcing.

**Mr Terry SULLIVAN:** If MPs get it wrong, or if an MP from the other side thinks another MP has got it wrong, there are a lot of ways to get a retraction or to put the member under scrutiny. There is the immediate point of order, a point of privilege, a question on notice, a question without notice or a speech. The press can write about it. They can broadcast and write what they want. Or a member can refer it to the privileges and ethics committee. If a journalist gets it wrong, what happens? The Australian Press Council and the Australian Broadcasting Authority are toothless tigers. They are virtually useless. We all know that. The very good code of ethics for journalists is not enforced by anyone. In the print media, David, the front-page error becomes the page 17 correction. I notice it is no longer an apology from the *Courier-Mail*; it is now a correction. But with the electronic media there is no apology and no correction. My question is: why should the public have any faith in an unapologetic and unaccountable media?

**Ms Cathy BORDER:** I take issue with you saying that we have never made apologies. I know that we have on channel 10. That has happened—infrequently, which I think is a good thing. That shows that hopefully we don't get it wrong too often, but when we do apologies have been made on air. There are echoes of the Premier's comments in parliament there, Terry, with how he'd like more controls over the media. I get very wary of politicians who are not too happy with how the media is 'controlled'. The overtones of what you're saying is that there isn't enough control over us, which I find very alarming.

**Mr Terry SULLIVAN:** It is quite the reverse. It is self-control. As your colleague said, there is no censorship for the media. You don't self-control. There are people from both sides of politics and crossbench members who will point out the errors of those within the House. The media do not do that.

**Ms Cathy BORDER:** That's in the House. What about politicians who do something wrong outside of the House? What happens then?

**Mr Terry SULLIVAN:** A range of things.

**Ms Cathy BORDER:** What controls are there over them then?

**Mr Terry SULLIVAN:** Again, people from the other side of the House are only too willing to point out those errors.

**Mr David SOLOMON:** Can I say that I disagree with most of your premises? It is wrong to say that there is no recourse. First of all there is the letters to the editor, which are used quite frequently by politicians to correct supposed errors, whether or not they be errors. Secondly, the Australian Press Council might be toothless in the sense that it can't impose penalties, but those who belong to the Press Council—that is all of the major newspapers—undertake to publish their adjudications on any complaints that are made against them and publish them in full, and we do. All of the members of the Press Council do that. Thirdly—

**Mr Terry SULLIVAN:** When was the last time that happened, David? They are as rare as hen's teeth. You know that.

**Mr David SOLOMON:** That is because maybe people don't complain very much to the Press Council. The Press Council actually sends me personally every month all of their adjudications. The

*Courier-Mail*, I am pleased to say under present circumstances, is there very rarely because there are few complaints. There is another source; that is, if we get it very wrong people go to the courts. It's called defamation. We have more problems with defamation actions than we do through the Press Council.

**Mr Terry SULLIVAN:** David, you know that no individual can match a media conglomerate in the courts. You know that.

**Mr David SOLOMON:** That is absolute nonsense.

**Ms Cathy BORDER:** Just because it's not in the front of our news that this has happened does not mean it is not happening.

**Mr David SOLOMON:** The point is that there are juries in most cases, and the normal reaction of a jury is, strangely enough, when choosing between the media and the politician to go for the politician.

**Mr Peter McCUTCHEON:** I should add: I have actually worked the other side. I actually worked as a media manager for an organisation once where the *Courier-Mail* made an error. It was published in the paper the next day in letters to the editor. It was not a huge issue. It was fairly straightforward. In my experience as a journalist I have found sometimes politicians claiming an error was made becomes a matter of an opinion or a matter of plain politics. There is no error at all; it's a matter of it not being the spin the politician wanted. You can have some politicians who swear blue in the face that it's completely wrong and for the life of me it's a matter of political opinion or it was not the way they wanted it covered. That is not all the time. If you lodge a complaint with the ABC you set off a bureaucratic process that can go for months. Even the most minor complaint about the use of an adjective on live radio in the middle of the Gulf War is still going on. Also, when you are dealing with the media it is a matter of dealing with individuals. I have reported on cases where someone has rung up and said, 'Peter, you didn't get it right.' I have been asked to put in a correction or do something else or make up for it in some way. I have been on the other side where I have dealt with a journalist who got it wrong and we have made up for it that way. Other times it is not so good. You are dealing with different people. You cannot make a generalisation that the media never admits it gets it wrong.

**Mr David SOLOMON:** I can think of two editorials I have written when I have made a mistake. Both of them were accidental, of course. In relation to one of them there is a defamation action still going, so I can't talk about that. With the other one we ran an apology the next day. But the next time I had a dinner with the particular politician I was blasted for four hours about this single mistake. Newspapers do correct mistakes when they are brought to their attention, generally in the letters column, because that is the quickest and easiest, otherwise through a correction or an apology, depending on how serious it is. And I might say that corrections are sometimes published when no correction is really due.

**Ms Nonie MALONE:** Thank you very much to everybody for your questions and for broadening the territory which we have covered tonight in this discussion of parliamentary privilege. I now call on Paul Reynolds to give a vote of thanks to our speakers.

**Dr Paul REYNOLDS:** Distinguished guests, our speakers, ladies and gentlemen. Thanks, Nonie, for this opportunity. It is a very fraught and very well-canvassed topic, parliamentary privilege. When the parliaments were established during the periods of self-government from New South Wales in the 1820s to WA in 1890 and then the federal parliament in 1901, the ruling on parliamentary privilege was that it would be as the House of Commons had it at the point of the various parliaments' establishments. Of course, the House of Commons had never codified its privilege. Indeed, Britain had never codified anything very much in constitutional terms. So this was very much left as a sort of 'make up as you go along'. I think David's contribution to remind us of the 1950s case, although it was a one-off and not replicated, nor even really approached, in the federal or even other jurisdictions before or since, stands as a bit of a landmark. Did they get it right? Did they get it wrong? The answer as a political scientist as I see it is that we don't know because it was so ill defined and had been left that way.

I want to refer to another matter which is adjacent to this but is another ill-defined area. This occurred when I was researching my biography for Mike Ahern. It concerns the case of Vasta. Vasta was collateral damage from Fitzgerald—not direct damage but certainly collateral damage. Ahern's government, which was a government in almost perpetual crisis for the time he was Premier, had then address the dismissal of a justice of the Supreme Court. I won't go into the circumstances of this, except to say that Vasta was brought before the bar of the parliament and pleaded his case for two and a half to three hours. Immediately the parliament went into debate and he was dismissed. This was not a matter of parliamentary privilege, per se, but it was certainly a matter of the parliament sitting as a court on a judge. The parliament's powers to do that were similarly ill codified and ill designed.

When we are thinking about these cases we are not just thinking about the slanging match that Terry Sullivan has with every journalist he hates in the press gallery and what we are pleased to call the symbiotic relationship; that is, journalists can't do without politicians and politicians can't do without journalists. That reminds you of the worst marriage you've ever heard of: they can't live together yet they can't live apart. or Benjamin Franklin's wonderful words after they had signed the declaration of independence, 'Gentlemen, we must hang together lest we hang separately.' So the journalists and the politicians must/need hang together. That does not of course prevent a spat like this, which Nonie, in all her wisdom, has orchestrated. Having said those things, I would urge you, if you are interested in the Vasta-Pratt situation, to read it in the book—better still buy it.

## Parliamentary Privilege and the Media

It remains for me to thank our speakers. Cathy Border and I from time to time do ABC Radio commentary *Week in Review* together. I have enjoyed her perspicacious reporting, both in the ABC and in the private media situation. I have learnt to know and work with Peter of recent times and I respect his judgment enormously. Balthasar, Melchior or—which wise man are we talking about now? David is a legend in terms of political reporting in this country. His books on the federal parliament run to 10 editions, probably—

**Mr David SOLOMON:** Seven.

**Dr Paul REYNOLDS:** Seems like 10. David is one of the unique reporters who has made the transition from Canberra journalist to barrister to distinguished public servant and media commentator par excellence. It is tremendous that he is in Queensland. As long as the ASPG has been going he has been an extremely enthusiastic and strong supporter of ASPG and also its national president. We have been served very, very well. Thank you for your questions and comments. We have not heard the last of this topic, but I hope, as far as the Queensland chapter of ASPG is concerned, that we don't raise it in my lifetime.

**Ms Nonie MALONE:** Thank you very much, Paul, for that vote of thanks. That almost brings our formal proceedings to a close. I would very much like to record my gratitude to channel 10, to the ABC and to the *Courier-Mail* for providing these excellent speakers for us this evening. Thank you all also for participating and for adding to the breadth and the depth of the discussion tonight. I hope we see you again at an ASPG function. Thank you.