ADDRESS BY SIR DAVID SMITH KCVO. AO
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SENATE CHAMBER 12.30 PM-1.30PM
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Kate Cowie: The presentation by Sir David Smith. It's wonderful to have him here today. He's been an official secretary to Five Governor-Generals. An amazing career as a public servant and were very pleased to have him here today to talk about one of the most amazing events that happened in this building, the dismissal. So I will leave you in David's capable hands. Thank you.

Probably no event in Australia's political history has received as much coverage in the media and the history books as the dismissal of the Whitlam government by the Governor-General on the 11th November 1975, and certainly so event in Australia's political history has had received so much inaccurate and misleading coverage. As for Mr Whitlam himself there has grown up around him almost an entire industry devoted to polishing his image and a legend in his own lifetime. As we approach yet another anniversary of that day it's time we had a look at the basis of that legendary image.

Whitlam and others have described the events of 11th November 1975 as a coup, but it was nothing of the kind. A coup is defined as a violent or illegal change of government but the events of that day were neither violent nor illegal. A change of government was in accordance with the letter, the conventions and the spirit of the Australian Constitution and no one knows that better than Whitlam himself. The Whitlam Government was removed from office as the Governor-General and the Prime Minister sat on opposite sides of the Governor-General's desk in the study at Government House Canberra and by Sir John Kerr handing Whitlam a letter. The Governor-General then escorted Whitlam to the door of the room, told him that he could win the election that lay ahead and wished him good luck. They shook hands.

A few moments later the Fraser Government came into office as the Governor-General and the Leader of the Opposition stood on opposite sides of the Governor-General's desk, and by Fraser holding the Bible in his hand and taking the oath of office of Prime Minister. No sign of illegality and certainly no sign of violence in any of that. The Governor-General's parting remarks to Whitlam that he might win the election was no empty gesture. At that stage a Whitlam win was a real possibility and the Governor-General wanted to ensure that should that occur, Whitlam would have available to him the advantage of being able to hold a Joint Sitting of both houses of the Parliament, just as he had done before after the 1974 double dissolution.

In addition to the appropriation bills the Senate had failed to passed 21 other bills of the Whitlam Government and the Governor-General had insisted that Fraser should list them all in the Dissolution Proclamation. That was unprecedented. But it was done in fairness to Whitlam so that should he win the election he would be able to use the provisions of Section 77 of the Constitution to hold a Joint Sitting to pass all his legislation. No evidence of a coup. With nothing more than a few signatures on a piece of paper, a Prime Minister was removed, another was installed and the issue was

immediately referred to the Australian people in a national election of both houses of the Commonwealth Parliament.

One month later the people delivered their verdict and it was a decisive verdict. The Fraser caretaker government was returned in a landslide. The Governor-General's actions were vindicated. Some of the events of that November day also provide an interesting commentary on the more recent events in Australian politics. In what passes these days for debate on the Monarchy/Republic issue it is often claimed that Australia must free itself from the Monarchy. But it was Whitlam who telephoned Buckingham Palace on the 11th November 1975 after his removal from office by the Australian Governor-General. It was the Australian Labor Party that had the Speaker of the House of Representative write to the Queen to ask her to overrule the Governor-General, to holt the democratic election process which had already been set in train under Australian law and to restore Whitlam to office as Prime Minister. Mr Speaker was reminded by Buckingham Palace that the Australian Constitution placed all constitutional matters squarely in the hands of the Governor-General in Canberra and that the Queen had no part in the decisions which the Governor-General must take in accordance with that Constitution. That surely put an end to any claims that Australia's sovereignty, independence and national identity were centred on London. It also tells us something about the intellectual dishonesty of those who want to profess to want Australia's constitutional affairs to be entirely in Australian hands, which they clearly are under our present constitution and our present system of government; yet immediately appealed to the monarch in Britain as soon as a decision by an Australian Governor-General goes against them. The late Philip Graham, former publisher of *Newsweek* and the *Washington Post*, said that good journalism should aim be the first rough draft of history. On the other hand Thomas Jefferson, a former United States president once said, and I quote: "A man that never looks at a newspaper is more informed than he who reads them. In as much as he who knows nothing is nearer to truth than he whose mind is fed falsehoods and errors." When one looks at much of the reporting of the dismissal and the events surrounding it, one would have to conclude that Jefferson was closer to the mark than Graham.

So let me now go back to 1975 and look at what falsehoods and errors the future historians searching through that first rough draft of Australian history might find in the contemporary accounts of those days. I begin with Malcolm Fraser's early arrival at Government House on that fateful day on November 1975 before, and not after Gough Whitlam, as the Governor-General had instructed. This was due to a simple error by someone on Fraser's staff and had absolutely nothing to do with Government House, but it was presented as the beginning of a vice regal conspiracy. It was alleged that Fraser was closeted in a room at Government House with the blinds drawn. This clearly was a figment of a vivid journalistic imagination on the part of someone who was not there, for Fraser waited with me in a room next to the state entrance; a room which at that time was used as room for visitors who had arrived early and the blinds were certainly not drawn. Why would they be. There was no one outside trying to look in. It was alleged that Fraser's car was hidden around the back out of sight. It was not. The car dropped him off at the state entrance and then drove around to one of the three front of house parking areas used by visitors. The driver chose one which gave him a clear view of the state entrance so he could see when to drive forward to pick up his passenger. Unfortunately, that put the car on the inside curve of that part of the main drive which leads to the private entrance. It's one of the

traditional courtesies extended to a Prime Minister at Government House that he comes and goes via the private entrance, so called because it's used by the Governor-General and his family, rather than via the State entrance which is for all other callers on the Governor-General. The duty aide-de-camp had been told to expect the Prime Minister and the Leader of the Opposition and their estimated times of arrival but nothing more. He knew from experience that the Prime Minister's convoy consisting that the Prime Minister's car, and the police security car which followed it always travelled very fast, and I mean very fast. Even within the grounds of Government House. He could see that Fraser's car having arrived out of sequence was now parked where it posed at best, an inconvenience and worst a possible serious hazard to the Prime Minister's car as it swept around the bend. The aide-de-camp used his own judgement, made a decision in the interest of safety and ask the driver to move his car to the parking area outside the Official Secretary's office right next to the state entrance. The car was not hidden around the back but was in fact, moved even closer to the front of the building and was in full view. In deciding to move the car the aide-de-camp did not consult either the Governor-General or the Official Secretary, nor did he need to. The three aides-de-camp were responsible for the smooth arrival and departure of all visitors to Government House and they frequently directed vehicles where to the park in the interest of safety and convenience. The first that the Governor-General and I knew of what had happened to Fraser's car was when we read the press reports the next day alleging some devious conspiracy to conceal it. It was a measure of the man that Sir John refused me permission at that time to correct that story. The aide-de-camp had acted properly and in good faith and Sir John would allow nothing to be done or said which suggest otherwise even by implication.

The next pair of myths grew out of my arrival to read the Governor-General's proclamation from the steps of this Parliament House. I came as always to the front entrance. I drove up to the front steps in a big black Government House car, clearly identified as such by the traditional crowns where number plates would normally be. I wore full morning dress so I could hardly have been mistaken for one of the crowd that had gathered around the building. I was met by a Senate officer and he's sitting right there. He escorted me into Parliament House via Kings Hall. I was taken to the office of the Clerk of the Senate where I was to wait until the top landing had been cleared and Whitlam had vacated the microphone which I was to use. On being asked to leave the microphone Whitlam, who had apparently not noticed my arrival, expressed surprise that I was already in the building. He questioned the officer who'd met me, then he immediately returned to the microphone. He described me as an emissary from the Governor-General and then in what sounded very much like an incitement to riot, given the way he'd already stirred them up, he told the mob that I would appear shortly and asked them to give me the reception I deserved. Then having just been told that I had arrived at the front of the building, he announced that the official secretary normally arrived at the front of the building but that on this occasion I'd come through the kitchens and as he so eloquently put it, up the back passage. I could see and hear what was happening from my position in the clerk's office and although I was alone, I was so affronted by Whitlam's deliberate lie that I shouted out at the top of my voice, "you bloody liar." No one could hear me but it made me feel better. Whitlam later claimed that my reading of the proclamation was an unnecessary provocation on the part of the Governor-General. This allegation was also not true and he knew it was not true. The practice of having the Governor-General's proclamations dissolving of Parliament read from the front steps was begun

in 1963 on the advice on the then Attorney-General and for good legal reasons. The 1963 public reading was followed by similar public readings in 1966, 1969, 1972 and 1974, before we came to the 1975 reading and there have been at least 10 more since then. My first reading was the one in 1974 when Sir Paul Hasluck dissolved both houses of parliament on the advice of Prime Minister Whitlam. Whitlam had no complaints about my reading of that proclamation, yet he denounced an identical reading the next year as unnecessary and provocative.

Now so far I've dealt only with the minor events which preceded the main game. Each was not greatly significant in itself, yet together they helped establish an atmosphere aimed to taint the public's perception of what was to follow. They suggested together, an aura of irregularity or impropriety emanating from Government House which Whitlam and his supporters then sort to transfer to the main events of the day. The original attack of course had been on the Senate's refusal to pass the Labor Government's budget. The Whitlam Government's view was that the Constitution and its associated conventions invested control of the Supply of money to the government in the House of Representatives and that the actions of the Senate in threatening to block that Supply of money were a gross violation of the roles of the respective houses of the Parliament. This view of the respective roles of the houses of the Parliament had not always been the view of the Labor Party nor had it been the view of Whitlam himself prior to 1975. On the 12th May 1967 in this very senate chamber, Senator Lionel Murphy, then Leader of the Opposition in the Senate, had this to say about the upper house and money bills and I quote: "There is no tradition that has been suggested that the Senate will not use its constitutional powers whenever it considers it necessary or desirable to do so in the public interest. There are no limitations on the Senate in the use of its constitutional powers except the limits self imposed by discretion and reason," and Murphy went on: "There is no tradition in the Australian Labor Party that we will not oppose in the Senate any tax or any money bill or what might be described as a financial measure." End of quote. On the 12th June 1970 the then Leader of the Opposition Goff Whitlam, had this to say in the House of Representatives just across Kings Hall, and I quote: "The Prime Minister's assertion that the rejection of this measure does not affect the Commonwealth has no substance in logic or fact. The Labor Party believes that the crisis which would be caused by such a rejection should lead to a long term solution. Any government which is defeated by the parliament on a major taxation bill should resign, said Whitlam. "This bill will be defeated in another place, a parliamentary term for the Senate. The government should then resign." Unquote. Let me repeat that view of Whitlam's as he expressed it in Parliament in 1970. Any government which is defeated by the Parliament on a major tax bill should resign. This bill will be defeated in another place. The government should then resign. When that same bill reached the Senate this is what Senator Lionel Murphy, Leader of the Opposition in the Senate had to say on the 18th June 1970. For what we conceive to be simple but adequate reasons the Opposition will oppose these measures. In doing this the Opposition is pursuing a tradition which is well established, but in view of some doubt recently cast on it in this chamber, perhaps I should restate the position. The Senate is entitled and expected to exercise resolutely but with discretion, its power to refuse its concurrence to any financial measure including the tax bill. There are no limitations on the Senate in the use of its constitutional powers except the limitations imposed by discretion and reason. I'm still quoting Senator Murphy. The Australian Labor Party has acted in accordance with the tradition that we will oppose in the

Senate any Tax or Money Bill or other financial measure whenever necessary to carry out our principles and policies. The opposition has done this over the years and in order to illustrate the tradition which has been established with the concurrence of honourable senators I shall incorporate in Hansard at the end of my speech a list of the measures of an economic or financial nature, including taxation and appropriation bills which have been opposed by this Opposition, in whole or in part, a vote in the Senate since 1950.

At the end of his speech Senator Murphy tabled a list of 169 occasions when Labor oppositions had attempted to oppose Money Bills in the Senate for the sole purpose of forcing the government of the day to face the people at an early election. On the 25th August 1970 the Labor Opposition launched its 170th attempt since 1950. On that occasion Whitlam had this to say in the House of Representatives, and I quote: "Let me make it clear at the outset that our opposition to this budget it no mere formality. We intend to press our opposition by all available means on all related measures in both Houses. If the motion is defeated we will vote against the Bills here and in the Senate. Our purpose is to destroy this budget and destroy the government which has sponsored it." End of quote.

As Jack Kane, one time Federal Secretary of the Australian Democratic Labor Party and a former DLP senator for New South Wales wrote in 1988 and I quote: "There is no difference whatsoever between what Whitlam proposed in August 1970 and what Malcolm Fraser did in 1975 except that Whitlam failed. Senator Murphy, for Whitlam, sought the votes of the DLP senators unsuccessfully. That is the only reason why Whitlam did not defeat the 1970 budget in the Senate and thus fulfilled his declared aim to destroy the Gorton government."

Now while all this was going on in the parliament, the High Court of Australia was also given the opportunity to express its view on whether the Senate had the power to block supply. On the 30th September 1975 the High Court handed down its judgement in Victoria versus the Commonwealth. Four of the learned judges expressed opinions which support of the view that except for the constitutional limitation on the power of the Senate to initiate or amend the money bill, the Senate was equal with the House of Representatives as a part of the Parliament and could reject any proposed law, even one which it could not amend. The judges who expressed these opinions were Sir Garfield Barwick, the then Chief Justice, Sir Harry Gibbs and Sir Anthony Mason who each in turn became Chief Justice, and Sir Ninian Stephen who later became Governor-General. The relevant parts of these judgements were incorporated in Hansard on the 30th October 1975. Yet still the media and particularly the Parliamentary press gallery except for one journalist, kept silent on this issue; and Whitlam continued to rail against the Senate. As a result, many Australians still believe today that the Senate has no right to block Supply.

The next two myths which Whitlam sought to propound were part of a package, and they related to the question of advice to the Governor-General. The first myth was that the Governor-General could act constitutionally only on the advice of his ministers or more particularly, only on the advice of his Prime Minister and then only in accordance with that advice. The second myth was that the reserve powers of the Crown which allow a Governor-General to act contrary to, or even without ministerial advice, had long since lapsed into desuetude and that the Governor-General no longer

had any discretion to act other than in accordance with ministerial advice. But Whitlam and his acolytes in the media had forgotten, if they ever knew, that Lord Casey as Governor-General as recently as the 19th December 1967 had exercised the reserve powers of the Crown following the disappearance of Prime Minister Harold Holt. Without ministerial advice, for there was no one who legally could give it, the Governor-General had revoked Holt's appointment as Prime Minister in accordance with Section 64 of the Constitution exactly as Sir John Kerr did with Whitlam's appointment, and had chosen Sir John McEwen to be the next Prime Minister exactly as Sir John Kerr did with Fraser's appointment. Although Whitlam was constantly reminding the Governor-General both privately and publicly that he could act constitutionally only on the advice of his prime minister, the existence of the reserve powers would have been, or should have been, well know in Labor circles. One of the most definitive and scholarly works on the subject entitled 'The King and his Dominion Governors' had been written in 1936 by H. V. Evert, then a Justice of the High Court, later to become a member of the House of Representatives and leader of the parliamentary Labor Party. Then there is the more recent double dissolution which Prime Minister Menzies had recommended to Governor-General Sir William McKell in 1951. On that occasion the Governor-General did in fact accept the advice of the Prime Minister, supported as it was by the opinions of the Attorney-General and the Solicitor General, that the Senate's failure to pass a bill which had twice been passed by the House of Representatives satisfied the requirements of Section 57 of the Constitution and allowed the Prime Minister to recommend a double dissolution. Significantly, nowhere in the document submitted to the Governor-General by Prime Minister Menzies was there any reference to any obligation on the Governor-General's part to accept the ministerial advice unquestioningly. On the contrary, Prime Minister Menzies advised the Governor-General that he was entitled to satisfy himself and to make up his own mind on the matters submitted to him. Interestingly enough, and especially so in the light of Labor's contrary view in 1975, the Labor view in 1951 was that the Governor-General was not obliged to accept the Prime Minister's advice and indeed should not accept it unquestioningly; that he should not simply accept the advice of the first two law officers of the Crown and should instead seek independent legal advice; and that he should seek it from the then Chief Justice, Sir John Latham. Labor's view in 1951 and particularly that the Governor-General should consult the Chief Justice accords exactly with what happened in 1975 - but with the boot on the other foot, Labor quickly changed its tune.

Whitlam started claiming that Sir John Kerr in consulting the Chief Justice Sir Garfield Barwick, and that the Chief Justice in responding to that request had acted improperly and unconstitutionally and almost without precedent. The attacks sought to discredit both the Governor-General and the Chief Justice. As a result, as in the case of the blocking of Supply by the Senate, many Australians still believe today quite wrongly, that Sir John Kerr and Sir Garfield Barwick acted improperly, unconstitutionally and without precedent. In fact at least two other Chief Justices in addition to Sir Garfield Barwick, have given advice to Governors-General on the exercise of their vice regal powers. They were Sir Samuel Griffith and Sir Owen Dixon. These three chief justices gave their advice when it was asked for to no less than seven Governors-General. They were Lord Northcote, Lord Dudley, Lord Denman, Sir Robert Munro-Ferguson, Lord Casey, Sir Paul Hasluck and Sir John Kerr. The research into these consultations was done not by me, I hasten to add, but by Dr Don Markwell, formerly an Australian Rhodes Scholar, visiting Fellow in

Politics at the University of Western Australia, Junior Dean at Trinity College, Oxford, Fellow and Tutor in Politics at Merton Hall, Oxford and now the warden at Trinity University, Trinity College – I beg your pardon - at the University of Melbourne. Markwell also concluded that at least one other Chief Justice and four other justices of the High Court, Sir Edmund Barton, Sir Keith Aiken, Sir Richard O'Connor and Dr H. V. Evert would have agreed with the proposition that such consultation was permissible. There are also many examples of state governors consulting a chief justice, but I need not go into the details here. The Whitlam falsehood that only one Governor-General, Sir Ronald Munro-Ferguson had consulted with a chief justice was finally laid to rest.

As the Supply of money started to run out in October 1975 Whitlam sought to by passed the Constitution and the Parliament by trying to arrange with the banks for them to advance his government the funds that it could not get from Parliament. Such action by the banks would have been illegal and they refused to participate. Yet Whitlam has always claimed that his proposed arrangement with the banks would have solved the Supply crisis had the Governor-General given him more time. This of course is simply not true. As the crisis continued and as calls mounted in the Parliament and in the media for the Governor-General to do something, Sir John Kerr asked Whitlam for a joint legal opinion on certain matters from the first two law officers of the Crown, the Attorney-General Kep Enderby and the Solicitor General, Sir Maurice Byers. Whitlam claimed at the time and continues to claim to day that these two men gave the Governor-General their joint legal opinion on the 6th November and that he ignored their advice. The truth is somewhat different.

Attorney-General Enderby did call on the Governor-General on the 6th November 1975 with a document which had been prepared by the Solicitor General. At the top it was headed 'Joint Opinion' and at the bottom it had been signed by the Solicitor General and there was a place for the Attorney-General to add his signature. Enderby told the Governor-General there were parts of the document with which he did not agree and that he could not add his signature to it. So he took out his pen, wrote the word 'draft' at the top of the document, crossed out the signature of Sir Maurice Byers, an insult that caused Sir Maurice Byers great offence. The Attorney-General went on to say that he proposed to prepare another Joint Opinion with which he could agree and which he could sign and that he would send it to the Governor-General as soon as possible. That joint legal opinion never came. The Attorney-General was obviously busy with far more important matters. So what Whitlam has always described as a joint legal opinion from the first two law officers of the Crown was in fact a draft signed by neither of them and disowned by the Attorney-General. Despite Whitlam's claim to the contrary the Governor-General did not receive a legal opinion from the first two law officers of the Crown.

The next myth which I want to dispel is the one which presented Sir John Kerr in retirement as an exile and a recluse. He had asked the Queen that he might be allowed to retire early and he stepped down in December 1977 after only three and a half years in office, in order that a successor might set about healing the national wounds. He had withstood the public protests and demonstrations of 1976 and had had a further year 1977, virtually free of such public annoyances. He had asserted his right as was also his duty, to go about his public engagements throughout Australia without let or hindrance and the overwhelming majority of his fellow Australians

continued to welcome him warmly. Nevertheless he felt that the fairest thing he could do for his successor would be to remove himself from the local scene for a few years. Living and travelling in the United Kingdom and Europe was no exile for Sir John, and those who attended his memorial service in Sydney heard one of his more recent friends, a young Australian scholar at Oxford speak of his time in England. This was Don Markwell to whom I've already referred. That friendship began in 1982 when Don Markwell was one of a group of Australian students who invited Sir John to speak at an Australian dinner in Oxford. Of their first meeting Markwell said, and I quote: "We were pretty nervous about entertaining so great a figure but all went well. There was immediate warmth between us. All reserve vanished and an enduring friendship began." End of quote. Some 9 years later at Sir John's memorial service, and Markwell flew out from London specially to be there, he was able to say this: "The man I knew was a man who enjoyed life. A serious minded man certainly, with a strong sense of duty and a man of industry and achievement but one whose seriousness was balanced by a buoyant sense of humour and of fun; a man who rejoiced in the joy of life. He was no exile, no embittered recluse." End of quote.

Well to be the personal representative of the sovereign and to be the Head of State of his country was the high point in Sir John's career. But if history is to deal with him accurately and fairly he deserves to be remembered for more than just that. In the words of Sir Anthony Mason, the then Chief Justice of the High Court, who also spoke at the memorial service, and I quote: "Sir John Kerr's record of achievement speaks for itself. Behind the record was a distinguished lawyer with a wide ranging interest in law reform, politics, administration and public and international affairs. His vision of the law extended well beyond the preoccupation of a technical professional lawyer. He was conscious of the intricacy of the relationship between law, government and society. These are all values which modern legal education seeks to foster in future generations of Australian lawyers." End of quote.

Over the past 29 years we've seen the creation of the Whitlam legend, by those who still believe that his was a brilliant Prime Ministership that was cruelly cut short and there is no more committed proponent of this legend than Whitlam himself. The facts however, are somewhat different. How many times have we read that Whitlam needed more time to prevail over Fraser but Fraser won the 1975 election because Kerr intervened when he did. But Fraser persuaded Kerr to close off the issue on the 11th November and that Kerr chose the timing that Fraser wanted. The fact is it was Whitlam and on one else who chose that fatal day. That was the day he called on the Governor-General to advise a half Senate election to be held on the 13th December. For the election of Senators who would not take their seats in the Senate for another seven months. Such a possibility had already been canvassed in the media. However, writs for Senate elections are issued not by the Governor-General but by state governors, following a request from the Governor-General and there had been much speculation in the media that the Premiers of Queensland, New South Wales and Victoria would be likely to advise their respective Governors-General – their respective state Governors, I peg your pardon – to ignore any request from the Governor-General and to refuse to issue the necessary writs for the election of senators for their states. In the event the Governor-General did not give Whitlam the opportunity to present his advice on the 11th November and for very good reason. Had the Governor-General refused to accept his Prime Minister's advice, that would have precipitated another Constitutional Crises right in the middle of the one we

already had. On the other hand had the Governor-General accepted his Prime Minister's advice and gone on to ask all state governors to issue writs for the election of senators for their respective states, a refusal by even one state governor to do so, let alone three, would have precipitated yet another kind of constitutional crisis. So the best advice that this so called great Prime Minister could give to the Governor-General in the midst of the country's greatest constitutional crisis ever, a crisis which if allowed to continue could have lead this country into economic ruin and could have resulted in the collapse of good government, was to present the Governor-General with the impossible task of choosing between two more unprecedented and potentially equally disastrous constitutional crises. Had Whitlam not decided to go to Government House on that day to ask the Governor-General for a half Senate election, the events of 11th November simply would have not have occurred. If Whitlam had needed more time he could have had it. Instead he chose to present the wrong advice at the wrong time.

Whitlam was the architect of his own misfortune and he was hoisted on his own petard. Whitlam was certainly not the great leader that his adoring fans would have us believe. Look at his record as Prime Minister of this country and as leader of his party. He served as Prime Minister for only one term of three years. Certainly he had to fight an election mid term, but that was an election of his own choosing. In parliamentary terms, his Prime Ministership was that of a oncer. Having himself tried to use the Senate to force the government to an early election on two occasions, and with his party having tried to do it 170 times over the previous 25 years, did it never occur to him that his opponents might one day try to use the same tactics against him? And once they did turn the tables on him, what did he do? On leaving Government House with his commission as Prime Minister withdrawn, did he return to Parliament House to consult with colleagues on the strategy to be employed when the Parliament resumed after lunch? No. He went back to the Lodge and ordered a steak for lunch. And given that the cause of his downfall had been the Senate, who did this great parliamentarian send for? He sent for Fred Daley his party's leader in the House of Representatives. Did he send for his party's leader in the Senate? No. Did he let his Senate colleagues know what had happened, that they were no longer in government? No. As a result, when the Senate resumed after lunch and the Coalition said that they were prepared to vote on the deferred Supply Bills, Labour Senators still thought that they were in government and that they were voting Supply to themselves when in fact, they were voting it to the Coalition.

The fact is that Whitlam was a failure as the leader of his party and as Prime Minister and he led the most incompetent government this country has ever seen. He has never been prepared to let truth get in the way of the legend. As a further example he still claims and often is given the credit for giving the Queen the title of Queen of Australia in 1973, when in fact this was done 20 years earlier by Prime Minister Menzies when he asked parliament to pass the Royal Style and Titles Act 1953. In a press statement he issued on the 19th October 1975 Whitlam referred to the Opposition's action in the Senate as an abuse of power and as a violation of every constitutional and democratic principle yet the very same actions were legitimate and principled when he was doing them to his opponents in 1967 and 1970 when he was in opposition. On the 20th October 1975 he told the House of Representatives that the Senate was in breach of constitutional conventions relating to the passage of Appropriation Bills, Supply Bills and Money Bills. Apparently these must have been

new constitutional conventions because we saw no sign of them in 1970 or 1967, nor as far back as 1950. Well, maybe they were very specialised Constitutional conventions that applied only to Coalition oppositions and not to Labor oppositions.

When Whitlam opened his December 1975 election campaign in the Festival Hall, Melbourne on the 24th November1975, his theme was that his removal from office was the end of parliamentary democracy as we knew it, because an elected government in full command of a majority in the House of Representatives had been brought down by the Senate's attack on its budget and as I've said, this was the same Leader of the Opposition who had attempted to do the very same thing to the Holt Government in 1967 and to the Gorton Government in 1970 and I repeat it because it's not got into the public memory yet, and whose party had tried to employ the same tactics against incumbent governments170 times. As I've already said the Whitlam Opposition gloried in that record. It's Senate Leader, Senator Murphy proudly tabled it in the Senate in 1970. That which had been a legitimate parliamentary tactic for 25 years when it was used by Whitlam and his party against their political opponents, suddenly became the end of democracy as we know it, as soon as his political opponents used it on him. And today he still likes to falsify the record when it suits him. In 2002 when he recorded a television interview for the ABC with Senator John Faulkner, he totally misrepresented the circumstances surrounding my knighthood simply in order to have another cheap shot at me and at Bill Hayden and Bob Hawke as well, both of whom were in office as Governor-General and Prime Minister respectively at the time of my retirement in 1990. Whitlam's version as recorded, was so outrageous that Senator Faulkner sought confirmation, not from me, and although the senator was given the facts in writing, Whitlam's false accusation was allowed to stand in the final version of the television interview. And just two weeks ago, his rewriting of history was repeated when the 2002 interview was re-telecast by SBS. As Whitlam knows full well, my knighthood is in the Royal Victorian Order. It was a personal gift from the Queen and therefore required no ministerial advice, yet Whitlam had no hesitation in inventing a scenario that suited his purposes for it enabled him to hit not only at me but also at two former colleagues. Hayden, who would have been a much better Prime Minister than Whitlam ever was, and Hawke who was a much more successful Prime Minister than Whitlam.

During the recent federal election campaign the media developed a great interest in truth in politics. The words 'lies' and 'liar' were used extensively in their zeal to expose alleged misrepresentation and dishonesty. My challenge to the media is that they should make this new found interest in truth in politics retrospective, at least to 1975. Next year will be the 30th anniversary of the dismissal of the Whitlam Government, and no doubt many a journalist will go to their files and regurgitate what they find there. I suggest that instead of doing that, they should invite Whitlam down from the pedestal on which they've placed him and call on him to explain the litany of lies which he and his acolytes have spun about the dismissal. They might begin by asking him a few simple questions, such as: Why did he claim that the Governor-General acted too soon on the 11th November 1975 when it was Whitlam himself who chose that date to force the Governor-General's hand by giving faulty and defective advice? Why did he tell the crowd in front of Parliament House on 11th November 1975 that I had arrived at the back of the building, when he had just been told that I had arrived at the front? Why did he incite the mob against me when he knew that I was a public servant simply doing my job? Why did he claim that Fraser's car had

been hidden at the back of Government House when it had been moved closer to the front and was in full view? Why did he ignore the Senate in planning his party's parliamentary tactics following the withdrawal of his commission as Prime Minister? Why did he describe my reading of the proclamation from the steps of old Parliament House as a needless proclamation when he knew full well that it was a long established practice and that the previous year I had carried out the same duty for him and his government? Why did he describe the Senate's action in 1975 at unprecedented, when his own party had created 170 precedents and he himself had created two of them? Why did he describe the consultation between the Governor-General and the Chief Justice as almost unprecedented, himself acknowledging only one precedent, when in fact there were many? Why did he claim that his scheme to get money from the banks was lawful and would have solved the Supply crisis, when the banks had legal opinions that it was not lawful and had decided not to participate? Why did he say that the Governor-General had received a joint legal opinion from the first two law officers of the Crown, when he knew full well that there was in fact, no such legal opinion?

As we approach the 29th anniversary of Whitlam's dismissal as Prime Minister, I suggest that instead of continuing to strut the national stage as the wronged, legendary hero of Australian politics, it's time he said sorry to his party for being such a failure as leader. It's time he said sorry to the Australian people for being such a failure as Prime Minister and for giving us the most incompetent government we ever had and it's time that he told the truth about the events of 1975.

[clapping]

In Sir John Kerr's book 'Matters for Judgement' he refers to a scenario, and I think it was something Whitlam said, "It's going to be a matter of who gets to the Queen first, if I dismiss you or you dismiss me." Would you care to comment on that possible scenario?

It was - I can't be sure of the date it would have been sometime in October. There was a visit to Australia by the Prime Minister of Malaysia, Tunku Abdul Razak I think and it was the night of the state dinner the Governor-General was giving to the Malaysian Prime Minister. The practice at Government House was for the Governor-General, the Prime Minister and the guest of honour and spouses to assemble in the Governor-General's study while the rest of us were receiving the guests as they came in the front door and it was Tunku Abdul Razak who was taking an interest in our developing constitutional crisis – I suppose simple to make conversation - he had the two protagonists in the room and Tunku Abdul Razak asked the question: "How was this thing going to end?" And it was Mr Whitlam who replied: "It will probably end in a race between the two of us to see which of us can get to the Palace first." Now the remark was made by Mr Whitlam in the presence of the Governor-General, in the Governor-General's study in the presence of a visiting Prime Minister from another country.

Which goes to suggest that none of this would have come as a complete surprise to Whitlam [inaudible]

Of course not. We're all friends. I'll let you into another secret. After Mr Whitlam…after Mr Fraser had been sworn in as Prime Minister the Governor-General asked me if I was – the three of us were in the room. I held the Bible and the oath and witnessed the swearing in. Then Sir John asked me if I would phone Buckingham Palace so that the Queen could be informed what had happened and Mr Fraser asked me if I would mind ringing the head of his department, John Menadue to tell him that he had a new boss so that his boss wanted to see him and would I ring the Attorney-General's Department and ask them to prepare the proclamation which I was to read and to tell them that he had agreed to the recital of the 21 bills that had been blocked in the Senate. When I rang Mr Menadue, Mr Whitlam's departmental secretary and told him that the Governor-General had dismissed Mr Whitlam and we had a new Prime Minister, Mr Menadue's immediate response was: "Oh, he's done it already has he?" The rest I'll leave to you.

Sir David in your address you mentioned the rejection of the money bill throughout. Was it not a fact that as the 11th November there was really only a deferral and not an actual rejection of the money bill?

That's true. It's what parliament calls a failure to pass. Yes, that's true.

Yes, so there was actually a deferral rather than an outright…?

No there was a failure to pass.

Yes, thank you.

Yes

Sir David, during your presentation you referred to a constitutional crisis several times. Was it?

I've used the term Constitutional crisis because that's what everybody else says it was. In fact, I suppose the more you think about it, it wasn't a Constitutional crises. It was a parliamentary crisis because the Constitution dealt with it and dealt with it perfectly well. So yes, I accept the criticism.

[inaudible]

Sir David. One thing of course that Mr Whitlam argued at the time was this Westminster Convention that a government is entitled to remain in office so long as it has a majority in the Lower House and presumably that is something that still is a tension in our Constitutional arrangements. But from your address obviously there are things in the written Constitution which perhaps override that but I just wondered if you would like to comment on that and how that might be better resolve or appreciated in the future?

Well, I think the position remains as before. The Senate still has the power to block supply, to refuse to pass, to not grant the Government the money that it needs to govern and as the Senate has the same power as in that respect as the House of Representatives, the High Court said so, the Constitution says so. A Parliament that

cannot govern, that cannot raise money, cannot govern. And so the convention is, and Mr Whitlam and Senator Murphy said so repeatedly, if a government cannot get money with which to govern this country, the only option for the Prime Minister is to recommend an immediate election and that's what Whitlam wanted in 1970. It's what Whitlam wanted in 1967 and the Labor Party wanted 170 times back to 1950 and it should have been alright in 1975, but it was not. The duty of Parliament is to approve the Supply of money to the government and to approve the way in which the government spends it. A government that cannot raise the funds to run the country cannot govern. It has to seek another mandate. Mr Whitlam could have gone to the election as Prime Minister. He could have enounced the Senate for all it did. He chose, I think the phrase at the time was, to tough it out. But of course he didn't tough it out in the earlier years. He didn't expect Gorton and Holt to tough it out. Had he won the votes that he wanted in the Senate then he'd have expected those Prime Ministers to resign and recommend an election.

Thank you very much for dispelling those myths. That was very interesting and informative. My query is: did the Governor-General make contact, either through you or personally, with the Queen before you phoned or after?

No not at all and Sir John makes this clear in his own autobiography. He made it perfectly clear that this was a matter that he had to deal with in Australia under the constitution. He made the point that the Queen could not intervene. It was not a matter that she could deal with at all. It was his duty to keep her informed afterwards but not to consult her or to discuss it with her before hand. He felt that to do that would simply involve the Queen in an Australian issue that should be dealt with in Australia and I made the point that during the Monarchy/Republic debate the emphasis has always been on handling our own affairs and not having our constitution arrangements subjected to oversight from London. All that Sir John was doing was confirming what many of have always known about the Constitution; that it's the Governor-General who exercises the Head of State powers. The Governor-General is the only person who can commission or dismiss a Prime Minister. The Queen cannot do that and the defining power of the Head of State in a Constitutional democracy is the power to appoint and remove a Prime Minister. So Sir John was at great pains to make sure that he accepted full responsibility and as I said, I made a phone call to the Palace. It was – what I think with daylight saving it was 2 a.m. I had some fun with the switchboard but that's another story. No. We told them afterwards, not before.

Sir David, without the Reserve Powers of the Governor-General, how would the Australian public get rid of a corrupt, totally incompetent government?

Hang on, that's a bit of a tall one. It's not the role of the Governor-General to sit in judgement on a government. It's the role of the Governor-General to apply the provisions of the Constitution. One of the things that has saddened me in recent times has been the great emphasis which has been placed, for example, on the way in which Sir William Deane was freely able to speak out against his own government. He will go down in our Constitutional history as the first Governor-General to have made it respectable for a Governor-General to be openly critical of his own government. I don't believe that that's the role of the Governor-General at all. But the outcome of that has been this: that there are some Republicans who favour a popularly elected President. Now there are a great many conservative Republicans, including most

Labor political leaders, who would tell you, not only Labor leaders, people like Sir Zelman Cowen, Malcolm Fraser, Sir Anthony Mason, would tell you that a popularly elected President would be madness under our Constitution arrangements. But the push for that, the justification for that, as I've seen it expressed in the letters pages of our newspapers, the letters columns of our newspapers, we must have a popularly elected President, so that when we have a Prime Minister who is doing things of which we do not approve, we can have the Governor-General intervene on our behalf. Now that to me is a gross perversion of our democratic process and as I said its not the role of the Governor-General to sit in judgement on a government or to remove a corrupt government. The Governor-General's role is to make sure that the Constitution is applied; that the Parliamentary processes are allowed to operate and that only when the parliamentary process cannot cope with the situation, the Reserve Powers of the Crown are not used to remove the Government, although that was the effect. The reason Mr Whitlam had to be removed because - was because he refused to advise an election. The Governor-General dissolves parliament and orders an election, but only on Ministerial advice; and the sole purpose of removing Fraser – of removing Whitlam and installing Fraser was to get a Prime Minister's signature on the proclamation and to get a Prime Minister's signature on the Executive Council papers that enable the government – the Governor-General to issue the writs for an election. So the exercise of the Reserve Powers is not to pass judgement on a government – is to ensure that an issue, an intractable issue, which Parliament has failed to resolve is remitted to the people for them to resolve. That was the sole purpose and that's what the Reserve Powers are for, they enable a Governor-General to act without advice or contrary to advice, only when the parliamentary process has broken down, and then only so that he can remit the question, the issue, whatever it might be, to the Australian people at a national election. It's not to pass judgement on the government. It's to enable the Australian people to pass judgement.

David, do you think the Reserve Powers could ever be successfully codified? Is it a task for the …

Well, I don't believe they can. I'm in good company. Paul Keating told the Parliament when he was launching his Republican push that he chose the parliamentary model, that's the Parliament would elect the Prime Minister and because he said they had looked at the question of codifying the Reserve Powers and had found they can't be codified because you cannot envisage every kind of situation which parliament might through up. You cannot envisage every kind of solution which might be necessary to solve the problem. So that even Paul Keating and Malcolm Turnbull, when he chaired the Republic Advisory Committee for Paul Keating, they both said that the Reserve Powers cannot be codified. I know it's popular for academics to say that if we could codify the Reserve Powers we could have a certain kind of Republic. That's a big if. No one has yet been able to codify the Reserve Powers and as I said, people like Keating and Turnbull who have tried desperately to codify the Reserve Powers, had to admit publicly that they found it impossible and that it just can't be done. You can't envisage every kind of situation.

I'm interested in your comments about Sir William Deane. Does it impede the ability of a Governor-General to act and to be perceived as an independent arbiter of the Constitution, when, if they speak out on public issues of the day. I guess I'm thinking

partly of the today's reports of the Governor-General talking about, something to do with abortion.

Sorry, about …

Today's report about the Governor-General talking out on abortion and the very current issues of the day.

Well, there's a difference between talking about and social issues and talking about political issues. I can recall that Mr Hayden making a speech in Queensland. I've forgotten the precise year but I can recall The Australian ran a big headline story and an editorial, in which they said that it's important that the Head of State should speak out on important social issues. The question of when a Governor-General should stop speaking is when a matter becomes not a matter for community debate, but a matter for government policy. That's the difference. I don't see any reason why a Governor-General couldn't participate in community debate about social issues and other Governors-General have spoken about all sorts of issues: education, literacy, medical procedures. I think Sir Zelman was very keen on, because he'd been before he came to office, he'd been on a committee relating to, that dealt with the transplant of human organs. It was a social, ethical, moral issue. When can you take organs from one body and pass them onto a living person? Should children be allowed to donate organs? What's the age of consent? These were not matters of government policy and I can recall The Australian saying it was good that the Governor-General can speak out on an issue such as this and encourage public debate. So I don't have difficulty with a Governor-General who encourages public debate on issues which the community is considering and talking about. The question, I think the line is drawn when public debate results in government policy and that's when Governors-General traditionally remain silent. I can recall being in a company of a number of Governors-General. I think we were attending a state funeral in one of the Pacific countries, I think it was Papua New Guinea but it's not important which country, but there were a number of Pacific Governors-General. Ours, New Zealand and a number of the other countries and as you probably know, some of our Pacific Governors-General are in fact, appointed by the Queen on the advice of the Prime Minister but those countries' constitutions require that the Prime Minister puts the name to the parliament and the parliament of that country has to approve the nomination going forward to the Queen; and one of the Governors-General said: "You know Prime Ministers come together regularly and they talk about issues that affect the region. Wouldn't it be a good idea if all of us Governors-General got together some times and had a summit conference about all sorts of regional issues? And Ninian, Sir Ninian Stephen looked back and gave me a grin and he said: "Well, that's fine for you fellows. You're elected Governors-General, I'm only an appointed one. You'll have to count me out."

One more question.

Sir David, in your quite comprehensive analysis of case here, it's a great paper, you didn't mention the Khenlani business which I think was very much of an affront to much of the public on this whole issue.

Well, there are lots of other issues. I tried to concentrate on the kinds of issues that the Governor-General needed to take into account. The bank one was important to me because as I said, there have been claims from Mr Whitlam and others that had he been allowed more time that would have solved his problem. Well of course, he chose the time and it wouldn't have solved his problem. What the Government was doing in trying to raise funny money from overseas sources was certainly an interesting issue but I could have kept going all day if I put all of that in. But no, that wasn't a factor in the Governor-General's mind because it didn't enter into any of the factors that he had to consider.

No. That's right.

But it was an interesting sideline, yes.

We might have to finish it there. I'd like to thank David on behalf of Old Parliament House for his talk today.

[clapping]

I'm glad that he could come an talk today. And thank you for your attendance as well. On a just completely different note, if you're interested, the ANU students …