

## The Table 2013

# “YOU HAVE COMMITTED A GREAT OFFENCE AND HAVE BUT A WEAK ANSWER TO MAKE FOR YOURSELF”: WHEN CLERKS MAKE MISTAKES

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“I never made a mistake in my life; at least, never one that I couldn’t explain away afterwards.” (Rudyard Kipling *Under The Deodars*)

“Success does not consist in never making mistakes but in never making the same one a second time.” (George Bernard Shaw<sup>2</sup>)

Mistakes matter. To clerks advising members in the chamber, mistakes matter a lot. With parliamentary proceedings being broadcast, webcast and recorded, any trip up or omission can become a very public event. The pace of proceedings and the imperative to keep the business of the House moving reduces the time to pick up errors and recover from mistakes.

The consequences of mistakes can be significant. Mistakes can affect legislation passing through the House, accidentally thwart tactical moves by an opposition and create precedents which will affect the operation of the House in years to come. Professionally, repeated mistakes will lower the confidence of members in the officer providing advice—one mistake may be easily forgiven; several mistakes less so.

If this is distressing to anyone beginning work in the chamber, spare a thought for predecessors in the role, who lived in a far less forgiving age. In the early 17th century, when the role of the clerk was growing in range and responsibility, errors were certainly not taken lightly. A complaint was made to the Committee

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<sup>2</sup> While this quote is extensively repeated on the internet it does not appear in the *Oxford Dictionary of Quotations* and never appears on the web with a source reference. It is possible that this quote is in fact erroneously attributed; the author would be grateful to anyone who can provide a source from any of Shaw’s writings.

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of Privileges that a clerk had made a mistake in a writ by leaving out certain words. The Lord Chancellor stated:

“You have committed a great offence and have but a weake answer to make for your self for there went out writs in the new Parliament in the years 1614 ...”

For this fault it was ordered “that by the howse he should be committed to the Fleete till the Howse’s pleasure weare further knowne.”<sup>3</sup>

In that period it was easy to be perceived as making a mistake as a clerk. The clerk Henry Scobell, in the turbulent era of Cromwell’s Parliament, innocently inserted into the Journal of the House for 20 April 1653: “This day his Excellency the Lord General dissolved this Parliament.” Factually correct though the statement was, it was perhaps a misreading of the times and of Cromwell’s view of his actions, because the clerk was called to the bar of the House in 1659 to be rebuked for a breach of privilege, and his words ordered to be erased as a forgery.<sup>4</sup>

Times changed but tolerance for mistakes by clerks changed more slowly. In 1882 a less harsh but still embarrassing approach was taken by a presiding officer in the NSW Parliament when the Tamworth Gas and Coke Company’s Bill was returned from the lower house with a message indicating, ironically, the word “careful” had accidentally been substituted for “lawful”:

“The President regretted that an error had been committed by the clerk, and he hoped that more care in the preparation of messages would be taken in future.”<sup>5</sup>

The early clerks of the New South Wales Legislative Council dutifully recorded their mistakes (or the ones they would admit to) under the helpful index heading of “errors”, which included:

- inserting the wrong year of Her Majesty’s reign in an Act assented to;<sup>6</sup>
- omitting an amending clause limiting crown land leases to five years when printing a bill;<sup>7</sup>
- distributing by error a pamphlet containing a speech made by the Treasurer;<sup>8</sup>
- various mistakes in messages sent to the Assembly, requiring reconsideration.<sup>9</sup>

No doubt in a spirit of fair mindedness, they also took to recording the errors

<sup>3</sup> From Camden Miscellany, vol. XX p 7 and p 8, quoted in J. R Stevenson “the Office of the Clerk of the Parliaments in New South Wales”, APSA News vol. 5, no. 3 (1960), available through the NSW Legislative Council.

<sup>4</sup> Williams O. C. “The Clerks of the House of Commons” *The Table* vol 2, 1933, p 26.

<sup>5</sup> LC Debates, 4 October 1882, p 697.

<sup>6</sup> LC Consolidated Indexes, vol. 1, 1856–74, p 338.

<sup>7</sup> LC Minutes of Proceedings, vol. 73, 1908 (2).

<sup>8</sup> LC Debates, 1896, vol. 55.

<sup>9</sup> LC Consolidated Indexes, vol. 1, 1856–74, p 338; vol. 2, 1874–93, p 419.

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of presiding officers and chairs of committees under the same subject heading.

While mistakes are important, they are common to all parliaments. Although inconvenient and potentially embarrassing, most are far from catastrophic. The approach taken to mistakes is important. Dealt with honestly they can be an opportunity to learn and minimise future mistakes. Alternatively, the attempt to recover from a mistake can further weaken the confidence of members and the staff of the parliament. This article briefly examines examples from the UK where mistakes by parliamentary officers, operating in difficult circumstances, had publicly embarrassing consequences. Reflections are then made about the causes of mistakes and approaches to minimise their recurrence, so far as that is possible. The paper concludes with a plea for a culture where mistakes are treated as an opportunity to learn to avoid making similar mistakes in the future.

### **The Acts of Parliament (Correction of Mistakes) Bill**

The strange and ultimately futile attempt by the UK Government in the 1970s to introduce the Acts of Parliament (Correction of Mistakes) Bill is an example of an overreaction to an one-off mistake at time of an unusually heavy and complex parliamentary workload. Mistakes differ in their consequences: a simple ad hoc mistake such as leaving out a line of text matters little if it is a conference paper, but matters a great deal if it is a bill being certified by a clerk for assent. While the immediate error was quickly rectified, the Government sought to produce a quick fix to future instances of human error by clerks and members. The House of Commons soon concluded, however, that the solution proposed was a bigger mistake than the situations it sought to fix.

The story began, like many parliamentary mishaps, at the end of a parliamentary session. In November 1976 the House of Lords was faced with “the six most important and controversial government bills of the session 1975–76”.<sup>10</sup> One of these controversial bills was the Rent (Agriculture) Bill: “a Bill to afford security of tenure for agricultural workers housed by their employers and their successors”. Received from the House of Commons on 27 July, the second reading debate took four and half hours before the question was put on 5 October. This was the precursor to a four-day committee stage held between 20 to 29 October.

During the committee stage 80 amendments were agreed, then during the debate on the report stage a further 81 amendments were tabled on 11 November. One of these later amendments, made by the government and agreed by the House, contained the seed of future trouble. The bill was reprinted as

<sup>10</sup> M. G. Pownall, “Westminster (Mistakes in Acts—Rent (Agriculture) Act 1976) in *The Table* Vol XLV, 1977, p 128–30. Most of the factual detail regarding the bill is derived from this source unless otherwise attributed.

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amended on report, and passed after third reading on 15 November.

As detailed in the 1977 volume of *The Table*,<sup>11</sup> that day was exceptionally busy for the staff of the Public Bill Office in the House of Lords: Royal Assent had been given to 17 bills, while complex amendments were being considered to a different bill where the Commons had disagreed with 50 amendments proposed by the Lords. In this procedural hothouse on the evening of 15 November the officers of the Public Bill Office had to convert the line references for the 129 amendments agreed to the Rent (Agriculture) Bill in the House of Lords to match the references in the original bill brought from the Commons. During this matching process the government amendment was wrongly converted and three lines of text were incorrectly removed from the bill, which was then sent back to the Commons without the error being discovered:

“Once the mistake was made there was little time to put it right, for the session had only a few days to run and Bills were moving between the two Houses with alarming rapidity.”<sup>12</sup>

The result of the incorrectly transcribed amendment was to undo a significant time limit set on the decision-making authority in the bill: “Not to make too pretty a point, it made [the bill] into a load of nonsense!”<sup>13</sup>

The amendment, in its incorrect form, was agreed by the House of Commons on 17 November, although several other amendments were disagreed to and returned to the House of Lords on 18 November. The Lords then considered and did not insist on the amendments disagreed to, and the bill was submitted for Royal Assent on 21 November 1976 and received it the following day. The incorrect form of the bill had therefore been agreed by both Houses.

It was only at the stage of printing the Act that the Public Bill Office in the Lords discovered their mistake and its impact on the bill. The Clerk of the Parliaments did not consider he had the ability to rectify the mistake contrary to the form agreed to by both Houses. The only way the error could therefore be corrected was by an amending bill, which was introduced in January 1977, the Rent (Agriculture) Amendment Bill. This successfully restored the intent of the House by amending the bill as originally intended.

The debate is interesting for the reflections of various members on mistakes by clerks:

“I think we can all recognise that an essentially minor slip of this kind can and is almost bound by the law of averages to happen from time to time. Indeed, it is amazing that it does not happen more often. It is really very rare that this happens and I feel that is a great credit to the work of the officials in both

<sup>11</sup> *Ibid.*, p 128.

<sup>12</sup> *Ibid.*, p 128.

<sup>13</sup> HL Debates, 1 February 1977, col 728.

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Houses.”<sup>14</sup>

“I feel that we should most certainly say this afternoon that your Lordships’ House is very well served by its clerks and that, although it may appear at first sight that this is an error which is to be attributed to them, we should not forget that not only were 129 amendments attached to the Rent (Agriculture) Act but that a very substantial number of other bills were in their hands at the same time. To quote one example, no less than 169 amendments were attached to the Health Services Bill, all of which must be accurate.”<sup>15</sup>

Certainly these members took a more realistic approach than some of their 17th century counterparts. The lesson most reasonable onlookers would draw from this incident is that mistakes are likely to happen when parliaments consider a large volume of complex legislation within timeframes where proper checking cannot take place. What the executive took from the incident, however, was that there needed to be better ways quickly to change errors in legislation. The response was, in the words of one member: “A bill designed to allow ministers to correct mistakes in rotten legislation that had been rushed through the House.”<sup>16</sup>

On 27 April 1977 the Government introduced “a Bill to facilitate the Correction of Mistakes in Acts of Parliament”, or the Acts of Parliament (Correction of Mistakes) Bill in its short title. It enabled the clerk to lay before both Houses a statement that a mistake had been made which, in his opinion, affected the text of an Act. This tabling of a statement by the clerk would become the trigger for the minister to table a draft order “making such changes in the Act to which the statement relates and such consequential changes in any other enactment as appear to him required in order to bring the law into conformity with what, in his opinion, it would be had the mistake not been made” (clause 1(3)). The purpose was to avoid the need for amending legislation to be brought before Parliament when an error such as that made in the Rent (Agriculture) Bill was made.

Introduced on 27 April, the bill was withdrawn on 11 May 1977 without debate. It was reported that the opposition was suspicious of the intent behind it.<sup>17</sup> The Lord Chancellor withdrew the bill from government business on the ground that as a purely technical bill to rectify clerical errors it was undesirable to proceed if it did not have support from the opposition.<sup>18</sup> The decision to withdraw the bill was reported in *The Times* with the headline: “Mistake Bill was

<sup>14</sup> HL Debates, 1 February 1977, col 728.

<sup>15</sup> HL Debates, 1 February 1977, cols 729–30.

<sup>16</sup> Norman Tebbit, HC Debates, 25 May 1977, vol 932, col 1434.

<sup>17</sup> “Mistake Bill was a Mistake: Minister Admits”, *The Times*, 11 May 1977.

<sup>18</sup> Pownall, *op. cit.*, p 130.

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a Mistake: Minister Admits”.

In response to the attempt to pass the bill, the member for Chingford, Norman Tebbit MP, on 25 May sought leave to introduce the Limitation of Legislation bill: “a bill to stop others from introducing bills”.<sup>19</sup> Criticising the tendency of all governments to rush through too much detailed legislation in too short a time, he referred to the “legislative incontinence” of the Parliament: “[although] incontinence implies an unwilling or unintended dribble. This Parliament is no unintentional dribbler of legislation. It pours out the stuff—presumably by intent—year after year.”<sup>20</sup>

Complex, high-volume work undertaken in short timeframes is a challenge for the most skilled workers. Clerks and Table Office staff are experts, and the experience and repetition of tasks over a number of years allows them, when under pressure, to operate at a level of proficiency in high-pressure situations such that mistakes are rare.

But they are mortal, and mistakes are and will be made. Some will not be noticed by anyone other than the persons who made and detected the mistake; few mistakes will face the embarrassment of correcting legislation. It is notable that even in the case above it was the Public Bill Office, rather than anyone external, who first detected the mistake.

### Mistakes in *Erskine May*

The above is a rare documented example of an error made by parliamentary staff—but there are others. For instance in *Erskine May* there is an example where the heading alone is enough to send a chill down the spine of any clerk: “Royal Assent Given by Mistake”.<sup>21</sup> In this instance there were two bills in 1844 covering the same topic: the Eastern Counties Railway. One had passed through all its stages, while the other was awaiting further debate in the House of Lords. Unfortunately the wrong bill was sent for and given Royal Assent on 10 May. As with the Rent (Agriculture) Act 1976, corrective legislation was required. This had the effect that, on the correct Eastern Counties Railway Bill being given Royal Assent, it would have the effect as if it had been agreed to on 10 May, and the wrong Eastern Counties Railway Bill would then be deemed not to have received Royal Assent.

*May* also provide examples where bills covering similar subject matter had their titles incorrectly transposed, so that Royal Assent was given in each case to a bill where the title belonged to a different bill. In 1809 the error was made with two bills both relating to the town of Worthing; in 1821 two local Acts were

<sup>19</sup> HC Debates , 25 May 1977, vol. 932, col 1431.

<sup>20</sup> *Ibid.*

<sup>21</sup> Jack, M (ed.), *Erskine May Parliamentary Practice* (24<sup>th</sup> edition, 2011), p 666.

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similarly mixed up and later corrected by a new Act.<sup>22</sup>

While these examples may be comical to read, they should be understood like the 1977 example as the almost inevitable consequence of a high volume of legislation:

“During the period from 1809 to 1814, for instance, the average number of private bills passed *per year* was nearly 300—how many were projected and not passed, of course, we do not know. But it is clear that with business going through at such a dizzy rate something had to suffer ... and in this case it was quality and accuracy that became the casualties. No matter with what celerity bills were rushed through their required stages; no matter with what error of amendment or ingrossment they were brought forward for their third and final reading, there still remained at the end of each session a backlog of private business that had to be completed before the close. And needless to say, those that left were inevitably pushed through with scant regard for the proprieties, and the standard of legislation suffered accordingly. Half-baked and half digested bills, many of them completely unchecked, passed into law as Acts of Parliament, and the chaos that reigned increasingly inside the House bid fair to spread into the courts.”<sup>23</sup>

### **Types of errors by clerks**

The types of errors made by clerks in parliamentary proceedings can take a number of forms and have different causes. As indicated above, the consequences can be very public, but in the large majority of cases the errors are either detected, or pass through without being noticed by most or all participants in the process. While not an exhaustive list, the causes include:

- volume and pressure of work, particularly at the end of parliamentary sessions;
- fatigue;
- inexperience;
- lack of attention or distraction;
- equipment or technological failure;
- judgement errors.

### **Volume of work**

Volume of work errors are possibly the most common source of mistakes. Certainly in Australian jurisdictions the last two or three weeks of each parliamentary session is a time of very large legislative programmes and long sittings. During the last two sitting weeks of 2001 the NSW Legislative

<sup>22</sup> *Ibid.*, p 666.

<sup>23</sup> Marsden P, *The Officers of the Commons 1363–1965*, pp 68–69.

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Council received 21 bills from the Assembly, introduced three of their own and concluded consideration of 37 bills. The House sat for more than 42 hours over three days to conclude the session. The following year it considered 47 bills in the final two-week period, representing 66% of the bills passed during that session.<sup>24</sup> This pales into insignificance compared to the final days of the 43rd Federal Parliament. In the final sitting week the Senate had 42 bills listed on its notice paper, and in the end over 50 bills were passed. The week before, reportedly, 23 non-controversial bills were passed in less than two hours.<sup>25</sup>

The dilemma is that the volume and speed of work means it is much easier for details to be overlooked. Perhaps more important than the initial mistakes that are made is that there is little time for mistakes to be detected in the normal checking process. The type of complex transposition of amendments in the Rent (Agriculture) Bill ideally requires careful checking by a person or persons separate from the officers involved in the original transposition. It is not clear whether this occurred, but would be no surprise if the omission of this stage was the primary cause of the error—certainly when given more time, after it was too late, the Public Bill Office discovered their earlier error. When work pressures are at their highest the need for existing systems of checking to continue, at an accelerated pace, is even more important.

## Fatigue

At these times, a related cause of error is more about the physical rather than mental limits of parliamentary officers. It is not uncommon in many jurisdictions for several days at the end of session to involve long nights, with debates on multiple bills being heard until the early hours of the morning, followed by a repeat the next day. In the NSW Legislative Council the final three weeks of the sitting period for 2013 saw back to back sittings after midnight for two of those weeks, while controversial bills can involve sittings up to 5 am, followed by the next day's sitting beginning a few hours later.<sup>26</sup>

Tired, sleep-deprived clerks make mistakes more frequently than well-rested officers. There is strong scientific evidence that complex tasks, such as driving a car, are affected by tiredness, with fatigue contributing to more than 20% of road crashes.<sup>27</sup> Evidence suggests an association between increasing fatigue

<sup>24</sup> The concentration of government bills into the final sitting period has declined somewhat in recent years since the regular introduction of a cut-off date provision for bills to enter the House, similar to that used in the Senate.

<sup>25</sup> Crook, A, "The final countdown: Parliament's pre-election laundry list", *Crikey.com.au*, 24 June 2013.

<sup>26</sup> See, for example, debate on Victims' Rights and Support Bill, *LC Minutes*, 29 May 2013, concluding at 4.45 am.

<sup>27</sup> Vicroads—fatigue and road safety website, 2012.

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and declines in cognitive function, impaired performance and increased error rates.<sup>28</sup> In fact being awake for 20 hours is said to impair performance to the same level as having a blood alcohol level of 0.1, or more than four standard drinks consumed within two hours. For the highly complex, mentally demanding work undertaken by clerks at the table the conclusion is that fatigue will lead to more errors.

Systems of checking should be able to detect errors, but not if the checkers themselves are working at 4 am for the second night in a row. In this respect the experiments by Houses such as the Federal House of Representatives and the Victorian Parliament in fatigue management and rotation are to be applauded as measures which not only address work health and safety issues but will reduce errors.

### **Inexperience**

Inexperience is a significant cause of error. The understanding of parliamentary law, procedure and precedent, and detailed understanding of specific standing orders is a challenge which takes many years to acquire. To become an expert a long apprenticeship is required, observing at close hand the work of experienced clerks providing advice in real time in the chamber and being supervised in providing that advice. While many events occur in a pattern each sitting week, even the most experienced clerks can find themselves in situations where a question has arisen for the first time in their career. In the current workplace with great mobility, faster career paths and greater choices, many officers find themselves in the chamber expected to give advice after very limited exposure to the knowledge base they are required to draw from. Mistakes will be made more frequently by inexperienced clerks.

This is no different from any other profession or form of expertise. Nobel Prize winner Daniel Kahneman, in his bestseller *Thinking, Fast and Slow*<sup>29</sup> contrasts “fast” thinking—fast, automatic intuitive thinking—and “slow” thinking, which is more logical, painstaking and slow. The first type is a result of frequent exposure to a situation or type of problem, whereas the second occurs when a problem is unusual and requires deliberate and effortful thought. The typical advice required in the chamber requires “fast” thinking, but for one new to the situations they are facing providing advice will usually require “slow” thinking if errors are to be avoided.

Addressing inexperience as a source of potential error is quite different to minimising other errors. Succession planning is of course important, as it

<sup>28</sup> Dawson D, McCulloch K, *Managing Fatigue: It's about sleep—stupid*, cited in draft Fatigue Management factsheet, Parliament of Victoria, September 2013.

<sup>29</sup> 2011, Penguin.

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always has been, but it is not the whole answer. Accelerated learning needs to match accelerated career paths. The individual needs to put in time to learn and master the basic understandings required, and experienced staff need to focus on sharing their knowledge reflectively and intensively. Above all a learning environment needs to be cultivated, an important part of which is the sharing honestly of mistakes made and solutions to them. When all else fails, having a telephone in the chamber with the clerk at the other end of the line has proven a lifesaver for the author of this article.

### Equipment failure

If inexperience is an increasing factor in recent times, equipment failure must be even more so. Chambers once relying upon little more complex than a notepad or an hour glass now have electronic timers, microphones, cameras and broadcasting systems, webstreaming, pagers, laptops and handheld devices. All of these can and do fail, both of their own accord and as a result of “user error”. For instance, the Clerk of the Journals in the House of Commons, Liam Laurence Smyth recalls:

“that as a fairly new Table Clerk, I whispered to the chair that I had accidentally pressed the timer too hard, giving a member extra speaking time. The Deputy Speaker replied that if anyone queried it, he’d blame the error on a digital malfunction—“but, Liam, we won’t let them know whose digit it was!””<sup>30</sup>

In the NSW Legislative Council the division bell and the bell to adjourn the House are located side by side at one end of the Table, and it has not been unknown for staff new to the chamber to accidentally flick the wrong switch and appear to be sending proceedings to a dramatic early close.

But many errors are the domain of engineers, contractors and electricians, with clerks and members as innocent victims. In New South Wales in 2011 a new, state-of-the-art committee room experienced initial glitches with the broadcasting system. After an arduous committee hearing the room was cleared and the broadcast was switched off by the staff, but unfortunately due to a connection error the equipment continued to broadcast throughout the building, including the press gallery, during which time a member of the committee discussed with another member a visit to a gynaecologist.<sup>31</sup>

Equipment failure is probably the area in which clerks have least ability to reduce errors, other than ensuring their engineering and IT staff regularly test equipment and that staff are trained in its use. But it is likely that these will

<sup>30</sup> Laurence Smyth, L, email to author, 28 October 2013, used with his kind permission.

<sup>31</sup> Consistent with the discretion shown by the NSW press gallery, this was duly reported in a gossip column.

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continue to be some of the errors which cause most embarrassment to members and, as a consequence, clerks and other parliamentary staff.

#### **Distraction errors**

Errors that can be made by even the most experienced clerks involve distractions, or momentary failure to pay attention. A member talks to the clerk in the chamber just at the time that a member in debate stands and fails to move the correct motion, or the clerk only hears the last part of a point of order taken and provides incomplete advice to the chair. New sessional orders can be source of trip-ups, if a clerk temporarily forgets the changes to the existing standing orders. The nature of parliamentary proceedings is that long periods of relative procedural inactivity (such as routine second reading debates) can be suddenly interrupted by a series of quick proceedings—reporting a message, tabling a document, postponing an item, suspending standing orders—in rapid succession. While experience assists in anticipating these, a succession of events increases the likelihood that something important may be overlooked.

The most effective strategy to minimise such mistakes is to accept that a clerk is only human and cannot concentrate fully on three things at once. It is the responsibility of other clerks at the table, and staff watching proceedings, to pick up what the distracted clerk misses. Mistakes of this type are collective responsibilities, while ultimate responsibility may lie with the senior officer and should not be shirked.

#### **Judgement in responding to errors**

There is another category of error which is not dealt with in this paper, but is extremely important, as the example above of poor Henry Scobell and Oliver Cromwell illustrates.<sup>32</sup> Successful officers at the table require good judgement, a keen sense of when it is appropriate to intervene and give advice or when to do so is being “political”. The balance between upholding the procedures and precedents of the House and having a pragmatic understanding of the will of current members is crucial. Too far in one direction leads to expediency and the rights of the minority of members being ignored; too far in the other ultimately can lead to the clerk being ignored. As expressed by a former UK House of Commons Speaker:

“In any case a Speaker who allows clerks at the Table to feel that they are running Parliament and that the Speaker could always be relied upon to accept their advice would soon lose the respect both of the clerks and of

<sup>32</sup> The unfortunate incident of the journal entry was not a one off—he has been described as “one of those unfortunate persons who, in doing what they conceive to be right, contrive to incur everybody’s censure”, Williams, *op. cit.*, p 26.

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Members of Parliament ... If [the members] wanted the Clerk to be the Speaker then they should appoint the Clerk as the Speaker.”<sup>33</sup>

This is really the subject of a separate paper, and one this author would not be willing to write. It is very difficult for anyone outside the circumstances of the decision-making to determine what is good judgement and what is poor judgement in the context of the role of a clerk.

Good judgement is relevant, however, in the way the errors discussed above are responded to. No system in the world has found a way of eradicating human error. When an error occurs good judgement is required by the clerk and senior management as to whether it requires a systemic response—such as establishing a new layer of checking—or whether it is an ad hoc mistake explained by the circumstances, such as a lapse in concentration at 3 am. Applying a systemic response to a one-off mistake is likely to create its own problems—the Acts of Parliament (Correction of Mistakes) Bill is a good illustration.

### A culture of learning from mistakes

The best way to avoid future error is to learn from past error. This is particularly true of errors caused by lack of experience. A parliamentary officer repeatedly making exactly the same mistake is in the wrong role, but making mistakes is unfortunately part of learning. Responses to learning from mistakes differ. One approach is to encourage “perfection through fear”, where staff come to dread the personal consequences of making a mistake. The aim of this approach is to minimise errors. However, adding to the personal embarrassment of an individual the anticipation of anger or a dressing down from their senior has an important consequence that works against reducing error. Individuals will keep their mistakes largely hidden from their colleagues. Those colleagues, unaware of what has occurred, may make similar errors in future, not having been sensitised to them or having learnt from their colleagues. A worst-case scenario would have officers actively concealing their mistakes for fear of their senior officers’ reaction.

The most important thing about mistakes is that they are discovered quickly. To that end, it is desirable that house departments have a culture where people check each other’s work and readily share mistakes when they occur. If mistakes are seen as something to avoid but not a moral failing they are more likely to be revealed to the clerk. Of course this requires the clerk to set the tone by sharing their own mistakes on the rare times they occur. If staff assume the clerk or other senior officers are infallible, the consequence will be that, on those

<sup>33</sup> Thomas, G, *Mr Speaker: the Memoires of Viscount Tonypany* (Century Publishing: 1985) pp 217–18.

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occasions that more junior staff pick up an omission or error by a senior officer, they will not check whether this was indeed an error.

Two current clerks from the Commons provide examples of how a culture of learning from mistakes can work:

“As the senior Table Clerk on duty at the end of Wednesday sittings, I fairly often send an end-of-day email to the Clerk of the House, copied to other Table Clerks, to let them know anything of consequence, especially if it might have ripples for the following day ... [he then details a procedural mistake he had made] ... In that case, a frank admission by me to colleagues of this mistake was followed a lively discussion on whether we ought to get the standing order itself revised or repealed as indefensible/unworkable/obsolete/immaterial.”<sup>34</sup>

“We ... try and encourage people to share their near misses and minor collisions, as well as to ’fess up to them with their chair asap. This requires the tone to be set from the top.”<sup>35</sup>

The way in which a culture of learning from mistakes can be developed is many and varied, and mechanisms such as end of sitting week debriefs, precedents files and so on are examples of means to an end. The most important contributor is the attitude of senior officers, how they act when mistakes occur—both those rare mistakes they are responsible for and those mistakes made by their staff.

### **The mistakes that matter to members**

There is a final point which should not be overlooked. The mistakes that matter most to members are far narrower than those which matter to clerks. Clerks are rightly concerned about mistakes in documents, minutes and journals, errors which could then become precedents, failures to follow the standing orders and other irregularities in procedure. The majority of members simply want to pursue their political outcomes without being personally embarrassed in front of other members in the chamber by their lack of knowledge of parliamentary procedure. The timeliness of advice is in many cases more important to members than accuracy—as shocking as that may sound. A member speaking a second time in a debate is not so much concerned that they are in breach of the standing orders—their real concern is the embarrassment if someone points that out and they are sat down mid-speech.

In this regard it is interesting that in the debate over the amending legislation in 1977 the positive and understanding comments about the work of the clerks

<sup>34</sup> Laurence Smyth, L, Clerk of the Journals, House of Commons, email correspondence to author, 28 October 2013.

<sup>35</sup> Kennon, A, Clerk of Committees, House of Commons, email correspondence to author, 29 October 2013.

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fell away a little when the government's heavy legislative agenda was blamed for the original error:

“... before the noble Lord sits down I should like to ask him whether, on the basis of a clerk's mistake, it is really necessary to hang a political polemic against the Government?

**Several Noble Lords:** Yes, yes.”<sup>36</sup>

When a mistake in advice or an omission or failure to detect something causes a member embarrassment the person responsible or a more senior officer should apologise in some form. Members are very accountable in a public way for their mistakes, and it is crucial to their confidence in the advice they receive that there is accountability from parliamentary staff. Impartiality is a vital quality that members seek in their clerks; it is demonstrated by the way parliamentary staff respond in situations such as this.

### **Mistakes that don't matter to members**

Members want their clerks to be authoritative in their advice, and for this they will forgive the occasional mistake. However, too many mistakes will undermine faith in the authority of the advice. It is important therefore not unnecessarily to highlight errors that are not important to members. This is not inconsistent with the internal culture described above. Staff need to be rigorous in detecting errors, sharing their mistakes and ensuring lessons are learnt. But this learning through sharing is irrelevant to the member, who only desires the outcome of fewer errors. There is therefore no need to apologise to a member for errors of which they are not greatly concerned or barely aware. Errors of detail in many cases are of little interest to the political and policy outcomes sought by members, important as they may be to parliamentary clerks.

Internally it involves a recognition that confidence of the members in the advice they are provided is vital, and a professional approach is required to maintain that confidence. To some extent it is recognition that in terms of the embarrassing mistake, both the member and the clerk are in it together—“sending to the fleets” is no longer an option.

<sup>36</sup> HL Debates, 1 February 1977, p 730.