LEGISLATIVE COUNCIL

ORAL HISTORY PROJECT

At Sydney on Thursday 5 November 2015

The discussion commenced at 11.00 a.m.

PRESENT

Mr David Blunt
Dr David Clune
Mr John Evans

Dr CLUNE: To start with, John, can you tell us how you became an officer of the Legislative Council and what it was like when you commenced working here in 1971?

Mr EVANS: To give you a bit of background information, I was born and bred in Murwillumbah in the Tweed Valley in far northern New South Wales and I attended Lismore High School. I always wanted to be a cabinetmaker but I could not get an apprenticeship. I sat for the public service exams at the end of 1962 or early 1963 after completing the Intermediate Certificate. I was successful in those, and in about April 1963 I was offered a position in the Police Department. I started in the Police Department in 1963 and came to the Parliament in 1971.

During my latter career in the Police Department I was in the administration and management research branch as an organisation and methods analyst. One of the chaps I was working with said, "John, there is a position available at the Parliament. Someone has left recently. I think you ought to apply for it." Apparently a former colleague in the Police Department who was in the Parliament must have said to him, "Have you got any bright young lads who would like to work in the Parliament?" so that convinced me to apply for the position. I subsequently did apply and I won the position at interview, and the rest is history now.

In those days, senior people in the public service used to like getting people from the Police Department because to get on in the Police Department you had to have shorthand and typing skills, so I studied shorthand and typing at evening college whilst I was in the Police Department. You needed those skills to become an inspector's clerk in a police station or a clerk to a superintendent in a police station. Other public service departments liked to get a hold of lots of people from the Police Department and people often went to the Premier's Department and they also came to the Parliament as shorthand-writers. For example, a former Editor, Bob McDonald, was an ex-Police Department employee. That is a little bit of history. My predecessor, Les Jeckeln was ex-Police Department as well.

When I came here in 1971 I started off in the most junior position on the Legislative Council staff, as clerk of printed papers. All the senior staff were in their forties and fifties. I liked the work and I thought that it might be an interesting place to make a career. So I thought I would take myself off to university and undertake a law degree. Thankfully, as a reform of the Whitlam Government, I was able to undertake part-time studies at Macquarie University for a Bachelor of Legal Studies. I was able to do that part-time because I was working at the Parliament. I undertook that over a number of years while I was Black Rod. I thought if I had a law degree it would enable my progression in the Legislative Council, and maybe one day I might end up being the Clerk, and it would give me good credentials for not being passed over. So I undertook those studies and then I had an interest in constitutional law as a part of those studies.

In those days the Legislative Council sat for about two hours each day, usually from 4.00 p.m. to 6.00 p.m. It was part-time and a lot of the Members were business people, accountants, lawyers, union officials and so on. They were able to undertake their normal daily activities and then come to the sittings of the House as it started late in the afternoon and sometimes went into the night, of course.

Dr CLUNE: How effective was the Legislative Council when you first arrived? Did it perform a useful function in reviewing bills and delegated legislation?

Mr EVANS: When the Government didn't have the numbers in the Legislative Council it performed a somewhat effective role of reviewing bills. In those early days, you could usually guarantee that there were going to be disagreements between the two Houses on industrial relations bills, education bills and local government bills. This was because in the Legislative Council you had Members who had lots of experience in those areas. A lot of the Labor MLCs were union officials and they had an extensive knowledge in the industrial relations area. There were Members on both sides of the House who were councillors or ex-councillors in local government and they had lots of knowledge on local government issues. There were other Members who were solicitors, barristers and accountants who brought a lot of knowledge and experience to the House. Quite a large proportion of Members brought to the House practical knowledge and experience of their working life so with bills like local government, education and industrial relations, there were often disagreements on major pieces of legislation. There were disagreements between the two Houses over bills, with the Legislative Assembly disagreeing to the amendments, the Legislative Council insisting on the amendments, and the Legislative Assembly again disagreeing.

In those early days we had procedures where select committees of the Legislative Council were appointed to draw up reasons for insisting on amendments, reporting back to the House and sending messages to

the Legislative Assembly. I was involved in some of that in my early days when I became Usher of the Black Rod. The House did have an effective form of review in terms of that. The Council also appointed a Subordinate Legislation Committee. It looked at delegated legislation, making sure it was in accordance with the principles of natural justice and the like.

Dr CLUNE: Who were the MLCs you remember who most impressed you from the point of view of knowledge, performance in the House or just being characters?

Mr EVANS: There were lots of characters in the House. One maiden speech that comes to mind is that of Max Willis. I remember sitting in the House when Max Willis gave his maiden speech with no notes. He stood there in his place and gave his maiden speech for about half an hour. I have vivid memories of that occasion. Other Members were just as good. Some of the notable figures in the Council were people like Sir Asher Joel, who brought extensive business experience to the House. Bernard Blomfield Riley, a barrister and Queen's Counsel, was eloquent in his contributions on legal matters; Tom McKay, who was Chairman of Committees, and Sir Adrian Solomons were both lawyers who made knowledgeable contributions. You also had people from the Country Party like Leo Connellan, who was very knowledgeable on rural matters and local government, and Bill Kennedy who was also expert on local government. There were people like Lloyd Lange, a former accountant and great advocate of scrutiny by Council committees. He tried once or twice to establish a joint public accounts committee but was not successful.

On the Labor side there were people like Paul Landa, an eloquent debater who later became a Member of the Assembly. Some of the union officials like Peter McMahon and Joe Weir spoke at length on industrial matters. Sir John Fuller, who was Leader of the Government in those days, was an outstanding figure. Mac Hewitt, a Liberal Member of the House, was Deputy Leader. Another person that comes to mind is Neville Wran, who was a Member of the Upper House for a short while. Reg Downing was a well-known luminary and revered by many people. His length of his service was something like 30 or more years. There were some later Members like the John Hannaford and Michael Egan who made significant contributions.

In the debates in those early days there was lots of humour and give and take. You do not get a lot of that in later days. Politics is much more serious now. There were friendships across the Chamber and people on opposite sides of the House were often best friends. Of course, in those early days you had seven or eight MLCs all together in one room. There was a lot of collegiate work amongst those Members. With the modern building that came in the 1980s, Members were in separate rooms and things started to change, and the place became a lot different.

From 1978, when I became Usher of the Black Rod, I had more involvement with Members and people like Tom McKay, who was Chair of Committees, and other subsequent Chairs of Committees. I did not have much to do with Members as a younger officer because there were very few committees appointed. We did have a Clerk of Committees but there were hardly any committee inquiries. The main ones we did have in those days were select committees on private bills, dealing with minor things like local government land, which in those days could not be sold off without a bill passing through Parliament.

Mr BLUNT: Can I also ask about the other work environment, the administration? It was quite a small team then, a lot smaller than today.

Mr EVANS: When I first came here the team was very small. Alan Saxon was the Clerk, Les Jeckeln was Clerk Assistant, Ken McRae was Clerk Assistant and Usher of the Black Rod. There was Dennis Trickett, Clerk of Committees, Jim McCall, Clerk of Bills and myself as Clerk of Printed Papers. Mrs Elaine Luther was secretary to the Clerk. There were also Merle Cookson, Joan Hardon and one or two other secretaries. There were a number of stenographers who in those days were called amanuenses, to use an ancient title, who served various groups of Members of the Liberal Party, National Party and Labor Party. I cannot remember how many of those there were, but there were probably three or four. It was a very small staff. Of course, the House did not sit as long in those days. I remember when I first became Clerk looking back to see how many hours the House sat when Les Jeckeln became Clerk and it sat for two hours. On my first day as Clerk in the House, the House sat for seven hours, so there has been a remarkable change from the 1970s to the mid-1980s, when the House started to be more proactive in its role as a House of review.

Dr CLUNE: So General Stevenson had gone by the time you arrived?

Mr EVANS: I actually filled General Stevenson's vacancy. He was Clerk of the Parliaments and died while attending a Presiding Officers and Clerks' Conference in Fiji. He left a great legacy to the Legislative Council. He put together various papers about parliamentary procedure. One notable one was on parliamentary privilege. There were various other papers, such as the history of Parliament House. They also used to produce Records of the Parliament, a publication which documented various events for that particular Parliament. They sometimes suffered a bit of criticism because they were being prepared by people in the upper house. The other great legacy General Stevenson left to the Legislative Council was the *Consolidated Index to the Minutes of Proceedings*. Volume V was the first one, from 1934 to 1954, then there was volume IV from 1919 to1934, and subsequent volumes which were also published. When I first came to the Legislative Council I was involved in working on volume II of the *Consolidated Index*. That process gave me a tremendous insight into practice, procedure and precedents of the Legislative Council and I was forever grateful for that because of the knowledge I retained.

Dr CLUNE: My memory is that General Stevenson actually lived on the premises.

Mr EVANS: He lived in a building known as "The Residence". Following his death the then Clerk of the Legislative Assembly ensured that the new Clerk of the Parliaments was not going to occupy "The Residence". It was a different world then. I remember being told stories about officers of the Parliament repairing their cars in the car park and things like that when the House was not sitting.

Dr CLUNE: What was your attitude to reform of the Council in 1978? Did you see reform as inevitable or necessary?

Mr EVANS: Neville Wran was a Member of the upper House and then he subsequently moved to the Legislative Assembly. In his election speech before the 1976 election he said he wanted to reform the Legislative Council to make it a democratically elected House. I would have to say that was a sensible thing to do. It was probably a bit of an anachronism that we had Members of the Legislative Council who were elected by the Members of both Houses themselves. That meant whoever had the greatest number of Members in both Houses was able to successfully fill a vacancy in the Legislative Council with one of their own, through a most complicated system of election. I was involved in those over the years as well. The Clerk of the Legislative Council conducted the ballot and Members in both Houses voted under a proportional representation system for the candidate to be elected. The ballot papers were all gathered together and each vote was given a weighting and then there was this complicated formula to work out how to count the votes and eliminate candidates. It was very complicated but it worked. It was in the mid-1970s when there was this momentum for reform of the Legislative Council and I was Usher of the Black Rod by that stage. Then we had the process of the reform of the Legislative Council in 1978—the history of those reforms is well documented. In June 1977, the Premier introduced the *Constitution and Parliamentary Electorates and Elections (Amendment) Bill* in the Assembly. The second reading of this first Bill was referred to a Select Committee in the Council and government members refused to participate in the inquiry. When the bill was not returned to the Assembly within two months it was deemed not to have passed and a second bill was introduced and also referred by the Council to the select committee.

I became Clerk of the select committee on the bill to reform the Legislative Council. I did not have any assistance, I had to do it all myself. I had to do all the research necessary, with the assistance of able people like Greig Tillotson in the Parliamentary Library, who hunted down all these systems of election for me from Europe and other places. The committee took evidence from various people like the Solicitor-General, the Crown Solicitor and Ken Turner from the University of Sydney. We travelled to Canberra to have a look at the system for election to the Senate and had discussions with the then Clerk. We travelled to South Australia to look at the South Australian system of election—the system that was proposed by Neville Wran in the bill to reform the Legislative Council was very similar to which existed in South Australia—and we took evidence from various people there, including Ren DeGaris who was a prominent Member of the Legislative Council in South Australia.

The select committee reported on the bill and gave reasons why it thought the method of election proposed in the bill, which was a system where you voted for party lists and if a party did not get a certain percentage of votes, I think it was 6.25 per cent, their votes were discarded and not included in the count. It was called a D'Hondt system of voting. That was the downfall of Neville Wran's proposal for the election of the Legislative Council.

The select committee made an interim report and that was an interesting series of events as well. Dr Derek Freeman was chair of the committee. The Clerk and I explained to him that the resolution appointing the committee did not give leave to the committee to report from time to time; nevertheless, he got up in the House and sought leave to make a report to the House. Leave was not granted, but he continued and read from the report of the select committee, which was only short. That process extinguished the committee. So then notices of motions were given for revival of the committee and the committee was subsequently reappointed and continued with its role. There was a two months requirement for the Legislative Council to send the second bill back to the Legislative Assembly, with or without amendments, or it could be regarded as having failed to pass the bill. The House had to resume early in January if it was to meet the two months requirement. Paul Landa, who was then Leader of the Government, moved a motion to adjourn the House until 25 January 1978. That is when Sir John Fuller moved an amendment that the House return on 10 January, by which time the select committee would have presented its report on the reconstitution bill. That is when we had the first fight over the reform bill.

Mr BLUNT: That must have been quite dramatic: an amendment to the date for the special adjournment of the House?

Mr EVANS: Yes. That was to ensure that the bill could be debated before the expiration of the statutory two month's period on 17 January. The select committee reported back to the House when the House met on 10 January and the second reading of the bill was set down for the next sitting day. It was on that day that there was lengthy debate on the bill and the Legislative Council rejected it for various reasons; also saying that the proper way to reform the Legislative Council was to go through the process of a constitutional convention, which in those days was an accepted way of amending the constitution. There had been constitutional conventions involving the States and amendments to the Federal Constitution so it was argued this was the way to go to reform the Legislative Council. I do not know that that sort of process would have got too far actually. So we got to the stage where the Legislative Council rejected the bill and sent it back to the Legislative Assembly. When the Legislative Council rejected the bill with its reasons, there was a stalemate between the two Houses over the reform bill. So then the Wran Government followed the procedures in the Constitution Act for having a free conference of managers between the two Houses, in an attempt to resolve the deadlock. No-one in the Legislative Council at that time had any previous knowledge of a free conference. There was one back in the 1960s on the bill to abolish the Upper House but the Legislative Council refused to attend.

The free conference was appointed by resolution between the two Houses. It was generally accepted that there would be 10 Members from one House and 10 Members from the other House. In those cases where the Legislative Council was insisting on its amendments or disagreement they were all Members of the same party and in the other House they were all Members of the opposing party. As I was saying, no-one had had any experience in free conferences. No-one on the Legislative Council staff had ever been to one but they knew that the Usher of the Black Rod and the Serjeant-at-Arms went along to the free conferences to assist in procedural aspects and the like.

So it was mainly the Clerks who did the organising. But the request for the free conference from the Legislative Assembly wanted the free conference to be held in a Legislative Assembly committee room. When that request came to the Legislative Council, it did not want to agree to that. The Legislative Council amended the resolution and insisted that the meeting be held in a Legislative Council committee room—and I have vivid memories of that being room C255. That was subsequently agreed to and the free conference was to be held on 31 January 1978.

It was an upstairs room in the old Legislative Council building and, being January, it was stinking hot, as the rooms were not air conditioned. It was a room right upstairs, down the back from the Chamber. Geoffrey Luton was the Serjeant-at-Arms and I was the Usher of the Black Rod. We were there in full regalia attending the free conference, but because it was so hot all the Members discarded their coats. Neville Wran and Labor Party Members sat at a table down one end of the room and the Legislative Council Members sat at a table down the other end of the room. There was discussion as to how we would organise the room—whether we would just have one big table and everyone would sit around it. But it was thought best to have a couple of tables and keep them apart a bit—perhaps like the table in the House, which keeps them apart so people cannot be attacked with swords and batons.

The free conference started on that day and, of course, Neville Wran insisted on his bill being passed. “Why won't you pass it?” Sir John Fuller insisted that they were not going to pass it. "We want a constitutional

convention to work out the way to reform the Legislative Council." It was initially thought that we had a stalemate; we were not going to get anywhere. The free conference continued over a number of days. The next day when it resumed. I also should say that no-one was officially taking notes at the free conference other than Pat Hills who was taking notes for Neville Wran, and Bob Rowland Smith who was taking notes for Sir John Fuller. It was only Neville Wran and Sir John Fuller who participated in the discussion, no other Members took part. When each session was over I used to come back to my room and, with my shorthand and typing skills, type-up on a manual typewriter all the proceedings of the free conference as I could recall them to the best of my memory. The sessions did not last too long.

It was at the third meeting of the free conference that Sir John Fuller put forward a proposition for a different system of voting for the Legislative Council, with an optional preferential system. He also proposed various things about when the reform should take place and whether the existing casual vacancies should be filled. Wran and the Labor Party wanted to go away and think about what Sir John Fuller had put forward. There was some give and take on both sides by Neville Wran and Sir John Fuller as to the ultimate system of election of the Legislative Council. They both gave way on certain things.

Mr BLUNT: Did it surprise you that compromise was able to be achieved?

Mr EVANS: No, I do not think so. I think Neville Wran realised that if he was going to get a system of popular election for the Legislative Council then he needed to compromise. There was no way that the people could have been persuaded to accept a system of election for the Legislative Council where a certain percentage of votes was going to be discarded. I could see that from my research with the committee, and other people could see that was not going to be popular with the electorate. So they both knew that they needed to come to some kind of compromise over the system of election.

Mr BLUNT: During the conference was there any talk about the nature of the council that would ultimately result after the transition period?

Mr EVANS: No, I do not think so. They were more concerned to ensure, with the current vacancies that there were in the Legislative Council, that the continuing Members of the House resulted in sort of equal representation between the Houses. There were certain casual vacancies that existed and they reached agreement that they would not be filled. I think Wran wanted a Council election sooner rather than what was agreed to, at the next general election. The end result was that they agreed on a system of election of optional preferential voting, where people had to vote for a certain number of candidates and there was not a cut-off quota and people were able to allocate their preferences and votes were counted under a system of proportional representation. There was no particular discussion about what would be the outcome of that system of election for the Legislative Council. They saw what happened in the Senate—sometimes the Government had control and sometimes it did not.

I was sort of a messenger—there were bits of paper going between the leaders of the Legislative Council and the Legislative Assembly. The Houses met at various times over the period of the free conference and it was reported that we had not reached agreement. They adjourned again. So the process went on for a number of days. When they did finally reach agreement, I came back to Sir John Fuller's room and we put together the list of what they would agree to. It was subsequently agreed to by Neville Wran. Then the Clerk and I had to formally put together the report of the free conference and what had been agreed on. The free conference reported back to the House. One of the essential things that had to occur in that process was to avoid a situation where the Legislative Council would not pass a second bill; it was decided to request that the original bill, which had been returned to the Legislative Assembly and rejected, be returned to the Legislative Council. Whilst that was occurring, the Parliamentary Counsel was requested to put together a series of draft amendments to what was known as the Constitution and Parliamentary Electorates and Elections Amendment Bill.

Mr BLUNT: Was that unusual in those days because they were non-government amendments?

Mr EVANS: They were technically non-government amendments but both Houses had agreed to what the amendments were to be. It was a rare and unusual precedent to request the bill to come back to the Legislative Council. The bill was returned to the Legislative Council and the Council went through the process of amending it. There were quite a substantial number of amendments. One of the amendments incidentally included an amendment to section 7A of the Constitution Act because in those days a bill affecting the powers of the Legislative Council had to be sent to London for Royal Assent. So there was an amendment to remove that provision. So when the referendum was passed the ultimate bill did not have to be sent to London for Royal

Assent. The Legislative Council amended the bill. It was send back to the Legislative Assembly and agreed to, of course. At the same time there were other bills—constitution referendum bills and the like, to set the date for the referendum on the bill to reform the Council as 17 June 1978.

Dr CLUNE: What was the atmosphere like between the two sides? Was it angry, bitter or did they have civil exchanges?

Mr EVANS: On the whole, they had civil exchanges. A couple of times a little bitterness came out—you may well remember how Sir John Fuller's lip would turn up when he was getting angry. There were a couple of times where one interrupted the other and the retort was: "I let you go on without being interrupted. You let me continue on without being interrupted." It was not heated but it was assertive deliberation—assertive toing and froing and discussion between Sir John Fuller and Neville Wran and, as I said earlier, they did most of the talking. They did nearly all of the talking until the last day when people could see they were reaching agreement and started to ask questions. When they got to the stage where they were reaching a compromise, the other managers at the free conference started to participate and ask questions like: "What if this? What if that?" There was conviviality in the room: "We have reached agreement on this. Let's move forward from here." Sir John Fuller and Neville Wran were both relieved at the end of the deliberations. They shook hands. Then the Premier went off to get the Parliamentary Counsel to prepare the necessary amendments to the bill.

I recall that there were some comments by the Premier about how pleased he was that in the early stages of the free conference there had been no leakage to the media. When they had reached agreement on what was to be the processes and system of reform, Sir John Fuller wanted to adjourn the free conference over the weekend to enable the Premier to give final consideration to the compromise that he put forward. Although in the previous days there had been no leakage, the Premier thought that it would be unwise to adjourn the conference over the weekend. He thought that if he left it that long, it was going to be inevitable that the media would get hold of what took place. The Premier did express some concern about an article that had appeared in the *Sydney Morning Herald* that day from which it seemed someone had leaked something to the press. He believed that the leakage had come from someone in the Legislative Council but not from any of the managers present at the conference. He said that it was really good to see that the managers at the conference kept what had transpired confidential. He had given strict instructions for Members of the Labor Party not to talk to the press. Someone, it would seem, had discussed something with another colleague who had given a little information to the media.

Dr CLUNE: It has been said that the Opposition wanted the first Council election to be held with the next general election for the Legislative Assembly. They were concerned that the referendum would go through and Neville Wran would then have a Legislative Council election and get control of the Legislative Council, and then be able to put a redistribution bill through so that the next general election was held on Labor boundaries.

Mr EVANS: That is true. I think that was the issue in the minds of the Liberal Party and Labor people, but I do not recall that actual scenario being discussed at the free conference. Sir John Fuller insisted right from the outset, when he offered a compromise at the third meeting of free the conference, that the election be held at the same time as the election for the next Legislative Assembly. As you mentioned, that was probably the very reason why he insisted that the next election for the Legislative Council be held at that time.

Mr BLUNT: As to the free conference process, clearly the bill for the reconstitution of the Legislative Council is one of the most significant pieces of legislation in 150 years—we will not have pieces of legislation of that significance every year. I just wonder, though, on the basis of your experience with the free conference process, do you think there is a role for free conferences in the modern era to resolve disputes between the Houses, effectively between a non-Government majority in the Legislative Council and an Executive Government over really significant pieces of legislation?

Mr EVANS: I think there is room and opportunity for that to occur. When I was Usher of the Black Rod, Deputy Clerk and in my early days as Clerk of the House, there was a tendency to use the method of a committee being appointed to draw up reasons and attempting to resolve any disagreements between the Houses, and on most of those occasions they did reach a compromise over bills.

In recent times, there has been a tendency where the Legislative Council amends a bill, the government might disagree with our amendments and we insist on our amendments, for governments to set the bill aside and do nothing about it—they just accept defeat in the Legislative Council. No-one has bothered to try and use the processes of what is available in the standing orders to resolve those disagreements. Maybe sometime in the

future on some significant piece of legislation the Premier of the day might wake up to the processes that are available to them.

Dr CLUNE: Since 1988, no government has had control of the Council. Do you think such an outcome was ever envisaged at the time of the reform?

Mr EVANS: No-one at that time predicted that Neville Wran would be returned at the 1978 election with such a huge majority. Of course, that enabled Labor to have control of the Legislative Council from 1978 to 1988 when Nick Greiner was elected. Then the Greiner Government changed the system in 1991—decreasing MLCs' terms, reducing the size of the House and lowering the quota for election. No-one expected or predicted what was going to happen, that a whole lot of Independent Members would be elected to the Legislative Council with a very small percentage of the vote. No-one knew with any predictability about which way some of these people were going to vote. Some of them were good and I guess some of them were not so effective as Members of the Legislative Council.

Dr CLUNE: Leading on from that, what are your views on the Government's right to legislate and the House's right to review the work of the Executive?

Mr EVANS: I suppose as a Clerk of the Legislative Council and Clerk of the Parliaments I am always going to say that it is good for government where you have a bicameral system and governments do not control the second Chamber. As Don Chipp said, at least it "keeps the bastards honest".

The Legislative Council in the mid-1980s started to become more assertive in its powers, appointing committees, for example. It was then that the Legislative Council became much more active in amending bills and returning them to the Legislative Assembly. There are records that will show the increase in that work—the number of bills that the Legislative Council amended and returned to the Assembly; we had processes of disagreement and select committees to draw up reasons and the like. There were occasions when some bills never went any further once the Legislative Council insisted on their amendments. The Government just did not proceed further with them because they knew they would never get them through the upper house.

When Ted Pickering was Leader of the Government in the Greiner years he delegated to John Hannaford the establishment of a system of standing committees for the Legislative Council. As Deputy Clerk I worked with John Hannaford in preparing submissions to Treasury and drafting notices of motions for the establishment of a system of standing committees for the Legislative Council. There was a Standing Committee on Social Issues and one on State Development. It did not come about but John Hannaford had this great idea of having a committee to look at major infrastructure proposals. There used to be a committee in the Legislative Assembly until the 1930s called the Public Works Committee that used to look at major public works worth over a certain amount. John Hannaford had this vision of having a committee to look after overall infrastructure development throughout the whole of the State.

Mr BLUNT: State Development and Social Issues were set up first and then Law and Justice came with the next tranche.

Mr EVANS: Yes. It was through the efforts of crossbench Members that things were able to be established like the estimates committees. We had a system of review by estimates committees looking at the annual Appropriation Bill and the budget papers. Then we introduced the five general purpose standing committees, which were given general oversight of various areas of government activity that allowed them to initiate their own inquiries. All annual reports were to go to these committees which would enable them to initiate their own inquiries about matters raised in the annual report. I am not sure that there were too many inquiries initiated by that process.

It was only through the Independent Members having control that the Legislative Council was able to establish itself as a genuine house of review and undertake more scrutiny and accountability of the executive. They were some of the significant reforms that occurred during my time as Clerk.

Mr BLUNT: At the outset, did you ever think that the Government's resistance to the Legislative Council's assertion of its power to call for State papers would end up before the High Court?

Mr EVANS: I can probably answer that: no, I did not think it would reach that far. But it was a successful outcome in the end.

I will give you a little bit of background to those events and the planning for the processes that evolved in the House. I mentioned earlier my undertaking of a law degree at Macquarie University, which gave me an interest in constitutional law. My years in the Parliament and work on the Consolidated Index gave me a lot of retained knowledge about the precedents and practices that had occurred in the Legislative Council. All that gave me a fairly good understanding of some of the things that went on in the past. Also in those early days, officers of the Legislative Council kept a parliamentary handbook—both Houses had them—which contained the standing orders and various other relevant pieces of legislation. Everyone kept their own record of precedents. The standing orders were interleaved with lined pages so you could make a note of precedents and things that had occurred relevant to various standing orders. Staff of each House kept their own personal copy of the parliamentary handbook. Sometime around the mid-1980s, I recall working with David Clune and Peter McHugh on the Parliament's Automation Committee, and introducing the first word processing system in Parliament House. We also introduced computers into the Parliament. That gave me an opportunity to get all these various handbooks that officers of the Legislative Council had and consolidate all the notes that various people had into an annotated list of events relative to the standing orders so that they were all together in one place.

It was in the mid-1990s that John Hannaford, as Leader of the Opposition in the Legislative Council, wanted to get some papers about the closure of the Lake Cowal goldmine. We sat down and had a discussion as to how we might call for the production of papers. I had remembered about all the precedents that occurred from 1856 right through until about the mid-1930s where the House had ordered the production of papers and they had been presented to the House. There was a time between 1991 and 1995, when in the Legislative Assembly there was a minority Coalition Government and the Independents had the balance of power there. They used the process for ordering the production of papers in the Legislative Assembly. John Hannaford and I had a whole series of discussions about how we might go through the process of ordering the production of papers in the Legislative Council, and what would happen if it did not occur. So together we worked out a process that we would go through: calling for the production of papers; if they were not presented to the House, sanction the Minister; if he still did not produce them, have him found guilty of contempt; call him to his place in the House to answer questions as to why he would not produce the papers; and then judge him guilty of contempt and have him suspended from the service of the House.

Together we had worked out this process. Of course the first one, as I mentioned, was the Lake Cowal goldmine. The papers were not produced. There were other orders asking about the Sydney Showground and its transformation into Fox Studios. Other instances included the closure of regional educational offices. The Legislative Council tried to get those papers. Eventually, when the Legislative Council could not get any of those papers, it went back to the old Lake Cowal matter and, after the initial order for papers which were not provided to the House, there was a subsequent resolution for the leader of the Government Michael Egan to produce the papers to the House by the next day or the next afternoon. When those papers were again not presented, the next day the House expressed its displeasure at the Minister not tabling them and called on him to table them by a certain time the next morning, which was before the House met. They were again not tabled.

The procedure then was that when they were not tabled, when the House met there was a motion finding Michael Egan in contempt of the House. He was censured and asked to produce the papers again. When the papers still had not been presented and he was held to be guilty of contempt. The President then asked the Black Rod to remove the Member from the House.

The President and I had given the Black Rod specific instructions not to lay a hand on the Minister, and no doubt the Minister had his own instructions from the Crown Solicitor and others not to leave the Chamber. So when the President directed the Black Rod to remove Egan from the Chamber, he refused to go. The President regarded that as being disorder in the House and he left the Chamber. Subsequently, Mr Egan did accompany the Black Rod out of the Chamber and the Black Rod escorted him out onto the footpath in Macquarie Street.

When Mr Egan was suspended from the House it was for the remainder of that sitting day—and I think that might have been the last sitting day of the session, so he was suspended for the remainder of the sitting—the effect being that when the House met the next day the Leader of the Government could not come back into the House. That was seen by the Government as an opportunity to take legal action in the courts over an alleged assault that Black Rod had committed on the Treasurer. Of course, it was well known that there was no point in the Government trying to question the powers and privileges of the House by an appropriate action in the courts because of parliamentary privilege and the courts generally accepted that they will not inquire into the

proceedings of Parliament. So it was, in a manner of speaking, agreed to between the parties that the vehicle for testing the powers of the House was the assault committed by Black Rod on Mr Egan.

Mr BLUNT: Was that agreed before the events took place?

Mr EVANS: No, that happened after the event. When the Government did institute legal proceedings in the Supreme Court I was in a bit of a dilemma—who are we going to get to appear for the Legislative Council? So I rang Ian Knight who was the Crown Solicitor and said, "Can you give me the names of some barristers around town who might know a bit about constitutional law?" He gave me two names: one was Leslie Katz, SC, and the other was Bret Walker, SC. I rang Leslie Katz and he said he could not do it; he had provided some advice to the Government. I then went to Bret Walker. I phoned Mr Walker and, in naivety, I guess, said: "What do you know about cases such as Kielly and Carson, Armstrong and Budd, Barton and Taylor?" Mr Walker responded and started to tell me all about them, what they were about and what was interesting. So we subsequently had conferences with him. I think it might have included the President initially. We discussed how we were going to proceed. So Bret Walker was obviously engaged by us as a barrister to represent our interests and what a bonus that has been with the Legislative Council over all these years. We developed a close working relationship with Bret Walker over many matters that involved the Legislative Council.

Mr BLUNT: If I can just interpose—as have your successors. Thank you for that wise choice.

Mr EVANS: Although we had a barrister we then had to find a solicitor to instruct Mr Walker, and he suggested that I get in touch with Mallesons Stephen Jaques, which I did. I was subsequently in contact with a chap by the name of Gerald Raftesath, who was a partner in the firm, and there was another solicitor that worked alongside him Brian Pointing. We basically had to educate them about parliamentary practice and procedure and constitutional law, about the role of the Legislative Council. So once we had a firm of solicitors in place, and we had Bret Walker, we were then able to produce a document that could go before the courts regarding the assault committed by Black Rod on Mr Egan. The case would be a vehicle for testing the powers of the House in regard to Egan's expulsion and removal from the Chamber and being taken onto the footpath in Macquarie Street.

I was fortunate in having some very competent staff that worked with me in the Legislative Council at that time—Lynn Lovelock and Velia Mignacca. We extracted from the Minutes of Proceedings every Order for Papers from 1856 right through until when they stopped being used in the mid-1930s. We undertook significant research on constitutional law and looked at articles by authors about the role and functions of Parliament and the upper house and the like. We got valuable assistance from the Library staff in being able to find all these documents, works and publications and copy them and provide them to the solicitors to enhance their knowledge about the role and functions of Parliament.

Mr BLUNT: If I can just clarify: the engagement of Bret Walker and the solicitors only happened once Mr Egan and the executive took legal action?

Mr EVANS: Yes, once Egan had instituted proceedings in the Supreme Court.

Mr BLUNT: So the technical assault by Black Rod on Egan happened without the benefit of having that legal advice?

Mr EVANS: Yes, without having any legal advice, because there were precedents where the Legislative Assembly had evicted its Members out onto the footpath from the Parliament building and we thought we were doing the right thing.

Mr BLUNT: Throughout those processes, as Clerk you were advising the President and you were also working with John Hannaford. Did you have a sense as to the extent to which other non-government Members in the House were up to speed on what was happening and their level of engagement with what was going on?

Mr EVANS: I think they were supportive of it although not many of them knew about it. My role was working with Bret Walker and the solicitors and keeping the President up to speed on what was happening and also John Hannaford, of course. I do not know what went on behind the scenes in a political sense of how the Government and Opposition were keeping their own colleagues informed of what was happening.

I always felt from my knowledge of the practices and conventions of the House and my own reading of early constitutional law cases involving the Legislative Council that we were on solid grounds; we were never going to lose when we got to that stage. Bret Walker was also very confident that we would not lose in the Supreme Court. And of course I attended, where practicable, all the sittings here in the Supreme Court. I was somewhat surprised that the Government took it on appeal to the High Court but it did. `

When it went to the High Court in Canberra, Bret Walker asked me to go down there with him and we had various documents that had to go before the High Court. Bret Walker used to have this rather large red pencil which he used to mark documents in his own handwriting, in addition to what the solicitors and lawyers had prepared for him. I well remember it was the middle of winter in Canberra. We stayed at the Hyatt Hotel. On the morning before the court case we walked to the High Court, and as we were walking along, Bret Walker was going through in his mind the things he had to say and what he had to do. He said: "What do you think about this? What would happen if this happened?" It was really enthralling to be involved as part of the process. He was always picking my brains about what would happen if various outcomes came about. Hopefully, I was able to assist him. Anyway, he appeared before the High Court, and it was just brilliant to see him standing there addressing the Judges, in his usual eloquent manner with hardly any notes - it was just coming out of his mind.

I think that the judges of the High Court were impressed by Bret Walker although, of course, his performance would not finally influence their decisions. It was just brilliant to be there and witness what transpired. I was able to keep the notes that he had made before the High Court and hopefully they are still around in the Parliament. In November 1998, the High Court handed down its decision. Of course, we were over the moon. We won on most points but lost on the footpath point. No-one was worried over that. We always knew we could turf a member out of the Chamber.

Following the High Court decision, there had been some earlier resolutions of the Legislative Council trying to get some papers. That was a couple of months before the High Court decision came down. There were further orders for papers. There was one in September 1998 before the High Court decision came down about papers on Sydney's water supply. It was at about that time that we introduced this system involving an independent arbiter being able to look at papers that the Government wanted only Members of the Legislative Council to see.

Later in October, there were other motions about suspending Michael Egan or calling for the production of papers and the Government refused to comply, including with regard to papers about Sydney's water supply, and also going back to the previous four occasions. I think they were encompassed in one resolution and there had been consistent failure by the Government to supply documents to the House. Then we introduced a system involving an independent arbiter. It was not so much about Cabinet confidentiality; it was about documents over which they claimed there was legal-professional privilege or public interest immunity. It came to a head on 20 October 1998. We had gone through a process of calling for papers, Egan failing to supply, motions of censure, and contempt. On this occasion, John Hannaford, in conjunction with myself, decided that we would make it for a number of days. The resolution was that he be suspended for five days.

A month later the High Court decision was handed down. So, a week or so after the High Court decision, the Legislative Council reapplied its previous four orders for papers. A number of days later, after we had gone through various processes, on 26 November Egan was suspended from the House for the remainder of the sittings, which would normally go on until the end of the calendar year. Of course, that issue resulted in the Egan and Chadwick case that came before the Supreme Court and ultimately decided what the powers of the House were with regard to legal professional privilege and public interest immunity documents.

Of course, people were careful—probably for very good reasons on both sides because sometimes you are in government and sometimes you are in opposition—and they left open the issue of the production of Cabinet documents. The case went to the Supreme Court, and the Government, I think wisely, did not want to take it to the High Court because it might have lost. They would have lost on legal professional privilege and public interest immunity grounds. They might well have lost on Cabinet documents, too, because I had done a fair amount of reasonable research about Cabinet confidentiality. There had been various court cases, including in the Administrative Appeals Tribunal in New South Wales, where they were able to get hold of Cabinet documents. If courts could get hold of them, why should the Parliament not be able to get hold of them? Probably wisely, the Government did not want to take it on appeal to the High Court. The Legislative Council has been left with significant powers.

One day someone may want to insist on the production of Cabinet documents. However, there are issues about what is a Cabinet document. Is it purely the deliberations of Cabinet that are not able to be revealed to the Parliament? Or is it documents and submissions prepared for consideration by Cabinet? One would think that those things should not be subject to Cabinet confidentiality. Lots of reports and documents are prepared by public servants that end up as submissions to Cabinet. The Department of Premier and Cabinet seemed to think that you could put all those things in a wheelbarrow and claim them as being part of the deliberations of Cabinet. One day it may or may not be tested.

I mentioned John Hannaford and I deciding how we would deal with these processes and take it step by step, gradually building up a case for censuring Ministers and giving them further opportunities to lay papers before the House: first time around, suspending for the remainder of the sitting; second time around, suspending for a few more days; and third time around, suspending for the remainder of the session. The ultimate weapon we had up our sleeve was that if it ever came back to the House for another opportunity, Hannaford was prepared to move a motion for the expulsion of Egan for failure to comply with the orders of the House. But it never did eventuate. We were pretty confident given the Armstrong and Budd case that he could be suspended from the House for contempt and conduct unworthy of a Member and various other things.

Mr BLUNT: During this period, as Clerk you were no doubt called upon to provide advice on very different matters to Michael Egan and other Ministers, representatives of the Government and so on. I am interested to know what the atmosphere was like during that period while there were legal actions on foot, or even before the legal actions were on foot, in terms of your liaison with the Government. They were obviously getting advice from their own lawyers. What were the feelings like?

Mr EVANS: I personally did not sense any animosity between Hannaford and Egan. I had amicable relations with the Crown Solicitor. He disagreed with my views about the powers of the Legislative Council. I had various subsequent dealings with the Cabinet Office about producing documents. As you well know, they came in truck loads to the Legislative Council following the High Court decision. We established a great working relationship with the Cabinet Office about how they would provide documents to us. There were various enhancements to the resolution about orders for papers and ensuring that appropriate lists of documents were provided.

As far as I am concerned, Egan was Leader of the Government and I dealt with him on a regular basis. He and John Hannaford trusted my confidence. I was able to give Egan all the advice that he sought and needed about what they could and could not do without revealing what the Opposition was going to do. It worked likewise with John Hannaford. I advised him and knew what they were going to do in various events without disclosing to the Government what was going to happen. When various events happened in the House it came as a surprise to both sides, but not to me.

Mr BLUNT: Looking back over the years, after the two decisions—Egan and Willis and Egan and Chadwick—until you retired, but also looking on as an interested observer since your retirement, what are your views on how the House has used its powers that were upheld in the High Court and the Court of Appeal?

Mr EVANS: Those that support the actions of the House would say it is doing a good job and making the Government accountable to the House. Of course, those in Government probably do not like what the House does calling for papers. I think in most cases the resolutions of the House requiring the production of papers were sensible and there were various reforms introduced while I was there which have worked well. There may have been some occasions where the call for the order of papers might have been a bit excessive and, in hindsight, probably on some occasions, we could have used a staged process for the order of production of documents; get some initial ones and, once having done that, perhaps ask for some more.

In recent times there have not been a lot of orders for papers and documents, not like the latter years of my term. On the whole I think the system has worked well. The system introduced of an independent arbiter and the subsequent requirements have worked in ensuring that those papers the Government thinks are subject to legal privilege or public interest immunity are certainly made available for inspection by Members of the House and, ultimately through an independent person assessing those documents, deciding whether they should be public or not. In general I think that whole process has worked fairly well.

Mr BLUNT: It is understood that some clerks in some other jurisdictions were a bit nervous when the legal proceedings were on foot. What is, or was, your response to their anxieties or concerns?

Mr EVANS: They were anxious about it, particularly Clerks of upper Houses, and more particularly Harry Evans, the Clerk of the Senate. We used to have regular contact with Harry about the powers of the Senate and Legislative Council and talk to him about these things. Other people may have expressed their concern about what might happen if the case before the High Court did not turn out the right way. As I say, Bret Walker and I and others were always fairly confident we were going to win in the High Court and we did. The Senate, even though they have greater powers than the Legislative Council of New South Wales, like the imperial Parliament, has still not been prepared to call the Government to account and produce documents to the Senate like we have been able to do in the Legislative Council.

There are other Parliaments, upper Houses, that have been grateful for the outcome of the High Court decision. The Victorian Legislative Council has now followed in our steps. They have used Bret Walker for advice and they have passed resolutions ordering the production of papers. They have certainly used the powers of the Legislative Council. Laurie Marquet, the then clerk in the Western Australian upper house, was very supportive of what we were doing because he was a lawyer, and the Western Australian Parliament, like the Commonwealth Parliament, has significant constitutional powers.

Mr BLUNT: Is there anything else you would like to say about the Egan cases?

Mr EVANS: There is one thing. There were various comments, particularly from Justice Gleeson in the High Court, about the role of the Parliament and the executive government being accountable to not only one House of Parliament but both Houses of Parliament. There are significant statements in that High Court decision, which I am sure every practitioner of parliamentary practice and procedure and constitutional law has read. But from a parliamentary official's point of view there was one very important point made by Justice Gleeson. He says:

> In addition, the long practice since 1856 with respect to the production to the Council of State papers, together with the provisions in Standing Order 29 for the putting to Ministers of questions relating to public affairs and the convention and parliamentary practice with respect to the representation in the Legislative Council by a Minister in respect of portfolios held by Members in the Assembly are significant.

He goes on to say, and this is the important point from my point of view:

> What is reasonably necessary at any time for the proper exercise of the functions of the Legislative Council is to be understood by reference to what at the time in question have come to be conventional practices established and maintained by the Legislative Council.

He makes a very important point there for practitioners of parliamentary practice and procedure: you establish all these practices and conventions by procedures and resolutions of the House and if they come to be tested by the courts at some time in the future they will have regard to them. I think that was a significant point about Egan v Willis: there was that long history of conventional practices of the Legislative Council, of orders for papers being complied with by the Government, very few occasions where they were not, which led to Gleeson's conviction that this was something in our system of responsible Government and superintendence of the executive that ought to take place.

Mr BLUNT: I think that is a very important and emphatic point to finish on.

Mr EVANS: Just one more anecdote about the Egan cases and the involvement of the legal firms in those proceedings. The High Court case in Egan and Willis and the engagement of Mallesons Stephen Jaques to act as lawyers for the Legislative Council cost something in the order of $100,000 to educate those lawyers in Government and parliamentary practice and procedure. They knew basically nothing about what we were on about and we spent a lot of time providing documentation. They obviously did other research also.

When it came to the Egan and Chadwick case Bret Walker said, "I know this very competent solicitor at Corrs Chambers Westgarth, Michael Lee." So we engaged Corrs Chambers Westgarth to do the work on the Egan and Chadwick cases and Michael Lee was very good, very knowledgeable. I am not sure how much that case cost; it might have been in the order of $30,000, something like that. Of course, the court did order costs against Michael Egan but the Legislative Council subsequently did not attempt to recover those costs from the public purse. I think that is all I will say about that.

Mr BLUNT: You are suggesting that if the Parliament's budget requires it at some point in the future we could revisit that?

Mr EVANS: You could recover those funds from the executive Government.

Mr BLUNT: That is a great tip, thank you very much, John.

(The interview concluded at 1.45 pm)