

Conversations with Emeritus Professor John Rason Spencer
Part 2: University Career and Retirement

by
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This is an interview with the thirty-third entrant in the Eminent Scholars Archive. John Spencer was Lecturer and Professor in Law at Selwyn College from 1973 to 2013. He is Hon QC, CBE, and was Faculty Chairman 1995-97. The interview was recorded online from Professor Spencer's home in Norfolk.

Questions in the interviews are sequentially numbered for use in a database of citations to personalities mentioned across the Eminent Scholars Archive.

Interviewer: Lesley Dingle, her questions are in **bold type**.
Professor Spencer's answers are in normal type.
Comments added by LD, [*in italics*]. Footnotes added by LD.

63. Professor Spencer, this is our second interview. In our first interview we looked at your early life and your career up to the point where you'd been lecturer for 15 years culminating in your book "The Evidence of Children"³ and your Paris sabbatical.

In 1991 you were promoted to a readership so can we look at your career from this point to your retirement in 2013 and then to the present? Before we do that, in the notes that you kindly sent yesterday, you mentioned you'd like to pay tribute to Professor Meredith Jackson⁴. Would this be an appropriate time in which to do that?

Yes. I'd like to do that, please. Meredith Jackson was a big figure in the Law Faculty for many decades. At Professor Jennings's⁵ retired 90th birthday party he made a speech in which he mentioned, with appreciation, going to Meredith Jackson's lectures. I was astonished to think that Jackson had lectured to him and also lectured to me. Jackson lectured to me, I think, in the year in which he retired. He wrote a book which everybody used to read before they started reading law called "The Machinery of Justice in England" and I read it before I came to Cambridge. Later, completely by chance, my wife bought a house next to him and his wife. We became friends and we used to go round there often and drink glasses of sherry with them in the evening. He said he was getting old and would I be interested in helping him produce a new edition of the book? I agreed to do that. It was a long job because there was no online research in those days so if you wanted to find some piece of official information you went to the university library. There would be a queue of other people. Very busy library staff would eventually bring you what you wanted and then you would look through in the hard copy. Or sometimes you had to buy the publication from Her Majesty's Stationery Office. So research that would now be done in a few minutes would take a day back then.

Sadly, Meredith Jackson had died by the time I had finished initially helping him and then finally completing, without his help, an eighth edition of the book. Sadly I never

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³ 1990. *The Evidence of Children: the Law & the Psychology*. with R Flin. Blackstone Press 362pp. 1st Edit.

⁴ Richard Meredith Jackson, (1903-86), Downing Professor of the Laws of England (1966-70), Fellow of St John's College

⁵ Sir Robert Yewdall Jennings (1913-2004). Whewell Professor of International Law, (1955-81)



mustered the energy to continue to do future editions The book has basically evaporated from the CUP website and I don't think anybody reads it now.

He was a figure who was like Glanville Williams⁶ in some ways. I don't think he liked Glanville Williams much and thought he was too theoretical, but they were very similar in a key respect, which was that they looked through to the reality of things and were prepared to criticise legal institutions which they thought were defective. Undoubtedly a lot of the criticisms that Meredith Jackson made went through to general public understanding. Thanks to his book, he was a considerable reformer in his time. He was a big, gruff figure, a bit like a bear, and I think in his younger days he could be quite frightening but I never found him other than a delightful man, and so was his wife. If I think of the people who were influences on my thinking, he was quite as important as Glanville Williams.

64. Thank you, Professor Spencer, that's very interesting indeed. Fleeting mentions have been made by Professors Milsom⁷, Stein⁸, and Mr Prichard⁹ but not an extensive description or narrative, if you like, and I, after your message yesterday, had found an entry by Peter Stein, a most interesting entry in the British Academy memoirs which mentioned *inter alia* his sailing exploits which sounded to me very courageous.

Yes. He was a sportsman of all sorts in his younger days. He played rugby extensively at one time and I remember he said once that he'd recently gone to the doctor about some ache or pain and the doctor said, "Have you ever strained a muscle in your body?" He said, "In my younger days I think I strained every muscle that it's possible to strain, so I'm paying the price now!"

65. Well, returning then to the point of your Readership. You were 45 years old then and I wonder what the circumstances of this promotion were?

Promotions to readerships and personal chairs were done in a very informal way in those days, as I discovered after I'd become a Reader myself. In the Law Faculty the existing readers and professors simply got together in conclave and talked about whom it would be a good idea to move up for promotion and they'd then collect the necessary information and forward a file. If the university authorities agreed then, out of the blue, you received a message that you'd been promoted to a readership or maybe even a personal chair. The first I knew of it was when John Tiley¹⁰, I think it was, contacted me to tell me. I was very surprised.

The system was not a particularly fair one in as much as it depended on your having attracted the attention of the people who were prepared to speak at the relevant meeting. It's changed since so that everybody has to apply if they want promotion and they have to go through the practice of writing what somebody sarcastically called, "a personal overstatement"! But that's how it was then and those were the circumstances.

66. Were there any changes to your duties?

No. I went on doing what I did before. I was paid more. Being promoted to a Reader meant a bit more money for doing the same things and a higher status, I suppose, but functionally no different at all.

⁶ Glanville Llewelyn Williams (1911-1997). Quain Professor of Jurisprudence UCL (1945 -55), Rouse Ball Professor of English Law University (1968-78)

⁷ Stroud Francis Charles (Toby) Milsom (1923-2016). Professor of Law (1976-90)

⁸ Peter Gonville Stein (1926-2016). Regius Professor of Civil Law (1968-1993)

⁹ Michael Prichard (b. 1927 -) Lecturer in Law (1952-95)

¹⁰ John Tiley (1941-2013), Professor of the Law of Taxation (1990-2008)



67. 1993 saw the second edition of your “Evidence of Children” book and this was written, at least partly, in response to the 1991 Criminal Justice Act and the 1989 Children Act. This must have taken up a huge amount of your research time as a Reader.

The real work on “The Evidence of Children” took place for the first edition which I wrote in league with a psychologist. The book is called “Spencer and Flin” and Rhona Flin¹¹ was the psychologist. I spent a number of years, first nudged in that direction by Glanville Williams, looking into and writing about the law relating to the evidence of children. What got me into that was teaching the law of evidence and then having children of our own and realising how inappropriate the legal rules about evidence were for dealing with children of that age. Asking little children if they understood the meaning of “the truth”, for example. It takes the mind of a great philosopher to define truth and asking a little child of five or six makes little sense. I tried an experiment on our little daughter when she was three. I said, “Dorrie, do you know what the truth means?” She looked puzzled. Then, thinking she must have heard somebody shout it at somebody else in the house, I said, “Do you know what a liar is?” She said, “liet?, what a fat lady has.”

Then next year I tried again and I said, “Do you know what a liar is, Dorrie?” She said, “Yes. It’s when you say you didn’t do it.” I told that story to a number of audiences and I find the police particularly enjoyed that description. I later went to a Judicial Studies Board training session and I found the judge doing a training session repeating that story as something which had supposedly happened in court one day.

The second edition of the book did involve a certain amount of work because it had to take account of the changes that had happened in the meantime but the real work with the book took place in 1988 and 1989 for the first edition.

68. A paper that I came across of this vintage is your 1992, “Experts: Can England Learn a Lesson from France?” This was published in *Current Legal Problems*, volume 45. The editors had the following comments, they were then Professors Rideout¹² and Hepple¹³. I quote, “John Spencer considers in detail criticism of the use of expert witnesses. The present system is prone, he suggests, to produce examples of incompetence, bias, and unequal access to their services. Would the system used in France of court appointment be an improvement? This paper will be an authoritative source of comparison in the continuing argument on this issue.”

Yes. That paper did have an influence, I think. In this country we retained the system of experts appointed by the parties in criminal proceedings but under the influence of Lord Woolf¹⁴, Criminal Procedure Rules were developed which imposed various duties of good behaviour on expert witnesses, making it plain that they should owe their primary duty to the court, not the parties paying them and also making provision for a judge in a complicated case to arrange for the witnesses for each side to have a conference first to sort out what they agreed on. Each type of system, whether court appointed experts or expert witnesses, have their defects. I think we have improved things in this country to try to eliminate the worst of the defects we previously had with experts in criminal proceedings.

¹¹ Rhona Flin, Sen Lect in Psychology Robert Gordon’s Inst of Technology, Emeritus Professor of Applied Psychology University Aberdeen

¹² Roger Rideout (1935-2017), Emeritus Professor of Labour Law, UCL (1973-2000)

¹³ Sir Bob Hepple (1934-2015). Professor of Law (1993-2003), Professor of English Law UCL (1982-93)

¹⁴ Harry Kenneth Woolf, Baron Woolf of Barnes, (b.1933-). Master of the Rolls (1996- 2000), Lord Chief Justice of England and Wales (2000-05)



69. Professor Spencer, you mentioned that during this time you did a BBC World Service programme on common and civil law in which you interviewed Lord Denning.

Lord Denning¹⁵ was 92 or, to be exact, as he told us, 92 and a half when we took the interview. He had largely retired from public life following criticism of some embarrassing things that he'd said in Parliament and elsewhere and the person who was producing the programme said, "Are you serious about interviewing Denning? Isn't he senile?" I said, "I think we may find that, like a lot of very old people, he has good days and bad days and let's see if we get him on a good day."

We did get him on a good day and he gave us a beautiful interview, most of which was used in the BBC World Service programme. I've often thought of what he said to me after the interview and I quoted it in lectures sometimes. He said, "Well, John," he said (he liked to be informal), "What do you teach your students in Cambridge then?" I said, "Er ... um ... this and that," and he said, "Do you teach them about Magna Carta?" I said, "Well, no, I don't, actually." He said, "Well, it's very important." He said, "I always have my copy here and let's read that article together." He solemnly read out the article about no man being deprived of his life or his property without a judgment of his peers or the law of the land. (I can't quote it from memory.) I later looked up – you couldn't do it online; you had to do it in citators then. All the recent citations to Magna Carta in judgments that I found by Denning in his judgments. It had plainly guided his thinking in his whole time as a judge. Out of respect for him I would then always mention Magna Carta later if there was an appropriate occasion to do so.

70. How wonderful that you've captured his voice. I was once looking up Lord Denning for something else and I actually came across this BBC interview and it was a wonderful moment to listen to this voice which otherwise would have been lost actually.

Yes. He was a Hampshire man from a modest background and he had a Hampshire accent which is rather similar to a Dorset accent, from the county next door where I was brought up. A lot of people lose their original accents when they move around but some don't and clearly Denning never had. I think it may have helped him in his practice at the Bar initially because he sounded so different from the normal run of barristers. It probably meant people pricked up their ears and listened to him. So he didn't cultivate it; I think he just couldn't lose it. There was a great charm in listening to him.

71. So the period of your Readership culminated in the great move from the Old Schools to the West Road site and I gather that you weren't involved in the decisions. Were opinions canvassed?

They were. At that time I was getting over serving as Faculty Secretary and had rather concentrated my energy on things other than Faculty politics and I stood aside. One matter on which I do agree with Prince Charles is choice of architects and I was worried about the decision to have such a modern building. But I took no part in the discussions about it and just stood aside.

72. Were you generally in favour of the move?

Well, I suppose I was sceptical about it but I could see we badly needed better accommodation for the Law Faculty. I suppose I was in principle in favour but concerned

¹⁵ Baron Denning of Whitchurch, Alfred Thompson (1899-1999). Master of the Rolls (1962-82)



about how it would work out.

73. So during your time as Chairman you inherited some of the problems. I, from an earlier interview with Professor Baker¹⁶, learned that he had found that the architect, Sir Norman Foster¹⁷, was a rather awkward man to deal with. I wondered whether, in your dealings with Norman Foster, post the move, he was amenable to suggestions for improvement.

As the Law Faculty had predicted, the building as designed and constructed initially had a terrible problem with noise in the library. I inherited the job of Faculty Chairman from John Tiley who had seen through the move and the final stages of the construction. I found I was Faculty chairman when a lot of people were disappointed in the building that they now had, having been excited about the prospect of having it previously.

The big issue was the noise. It was impossible to run the library properly when it was exposed to all the clatter and conversations from people coming out of lectures. Something had to be done about it. The real problem was persuading the Estate Management Department to stand up to Fosters. In the file I found a letter written by John Baker on behalf of the Faculty Board to Estate Management saying, “We are seriously concerned that this design will result in a noisy library and we request the Estate Management Department to obtain an independent expert report on the issue of noise.” There was a response from somebody in Estate Management saying, “Your request is noted but it would be offensive to Sir Norman and we shall not accept it.”

I remember going to a meeting with Estate Management and reading John Baker’s letter and their response. Eventually, when the University nerved itself to insist on something being done, Fosters had the grace to be embarrassed about the difficulty and put forward a good suggestion for solving the problem: that big screen at the back of the reception desk which now looks as if it was always meant to be part of the design. Once we had that, the noise problem disappeared and we started to like the building again. The day came when I found myself crossing the threshold and finding my heart rose going into that building, instead of sinking as it had done almost every day when I had gone in there as Faculty Chairman.

So I came to love the building in the end and I appreciate it, but I never thought that that would be the case when I was Faculty Chairman.

74. It sounds as though it was a very traumatic time, immensely diverting for the academics, particularly for yourself, with a very stark contrast to the old Cockerell Building.

Yes, though I can’t say I felt sentimental for the Cockerell Building; it was much too crowded for all the materials that we had and it had become tatty and run down. I later visited it after Caius had taken it over as a college library and had spent a lot of money making it attractive again. I could see what a beautiful building it was when it wasn’t too full of books. It wasn’t suitable to our needs any more; nor were the lecture rooms that we had scattered about the city. So, no, I don’t regret the move there.

75. This brings us to the time of your professorship from 1995 to 2013. I wonder if you could tell us about the circumstances of this promotion?

I had to write letters of application. I can’t remember whether I was successful in the

¹⁶ Sir John Hamilton Baker (b. 1944-). Downing Professor of the Laws of England (1998-2011)

¹⁷ Sir Norman Robert Foster, Baron Foster of Thames Bank (b. 1935-). Architect



matter of a personal chair on the first application or a later one. Obviously, I was honoured when I was offered a professorship.

76. Did this elevation alter in any way your teaching, your administrative duties, your research opportunities?

There was an expectation that if you were a professor you would devote your energies to the university rather than your college if you had one, which everybody in the Law Faculty did. There was also a rule then that you could not be a tutor in a college if you were a professor, so I wasn't able to be a tutor. I think I had still been a tutor in Selwyn College at that point. Then there were gentle enquiries in Selwyn as to whether I might give up my college room – which alarmed me because, as you know, the Law Faculty building was built with no offices for people other than the on-site staff and one or two academics. I could see that, from a college point of view, essentially, I had now become a burden instead of a benefit.

Some years later the university relaxed its rule, having made many people professors and the economic scene having changed so that junior college fellows had to spend all their time writing articles to get promotion instead of having no money, and time on their hands, which made them keen to be tutors to earn money. At that point I volunteered to be a tutor again at Selwyn and was a tutor there for the last ten years when I was in office. I took it on as a duty rather than an expected pleasure, but I found I enjoyed it. I tutored students reading other disciplines than law. If I think of the things that made me happy in my academic career being a tutor to these students was one of them.

77. Well, certainly in terms of your research these 18 years were extremely productive. I counted eight books, 18 journal articles, nine book chapters and, it seemed to me, there was a sharp swing in interest to comparative EU, continental and particularly French law. So three of your eight books, 11 of your 18 articles and seven out of your nine book chapters while only one book and two papers followed up on your earlier pioneer work on children and evidence. Is this is a fair conclusion to make?

Yes. I was much more involved in comparative criminal procedure, comparative criminal law – continuing to explain the common law rules in continental Europe and vice versa. I'd become involved in the development of European Union criminal law thanks to being recruited to the Corpus Juris project, which I expect you will ask me about later.

78. Yes, thank you. Also, this period would have coincided with the flourishing of the Double Maîtrise collaboration with Paris II that you established.

It corresponded with its launching and attempts to make a success of it. A lot of my time and effort was consumed in that, together with other Faculty colleagues – like Catherine Barnard¹⁸ who did much of the work, and others who gave support, like Alan Dashwood¹⁹. Meanwhile there was the Erasmus programme as well. Clifford Chance²⁰ provided money for a Faculty post to run and look after both programmes, which relieved me and others in the Faculty of some of the administrative work. Nevertheless, both of those programmes were a major concern of mine and took much of my time, yes.

79. I also note that you had a special interest in the EU arrest warrant and other trans-

¹⁸ Catherine Sarah Barnard, FBA Professor of European Union and Employment Law (2008-), Fellow of Trinity College (1996-)

¹⁹ Alan A Dashwood, Emeritus Professor of European Law (1995-2009)

²⁰ Clifford Chance, multinational law firm headquartered in London, a member of the "Magic Circle"



EU border topics. What drove this interest, Professor Spencer?

EU law was not on the agenda when I was an undergraduate. Some people in the Law Faculty were anti-EU and nobody seriously imagined the UK would ever join, but of course it later did. The EU Commission was much troubled by the abuse of EU funds and the reluctance of the governments and the prosecution services of the different member states to pursue people who applied them dishonestly. The Commission set up a study group to consider what to be done about it. They wanted somebody who would work on it who could work in French, which was still predominantly the language in which the EU operated. I was an English criminal and criminal procedure lawyer who could work in French and so was recruited to this group and helped to formulate the idea of a European Public Prosecutor, which was floated in our report in 1997. The idea was that a European Public Prosecutor would have power to prosecute for frauds on European Union finances, and that would include the power to issue arrest warrants which would work throughout Europe. That was what lay behind the idea of a European arrest warrant. This brought me into contact with EU officials and with colleagues in other member states who were interested in the whole idea of the EU and criminal law and thereafter I was repeatedly asked to take part in expert meetings on the subject. This it kept me busy for a number of years.

80. Very interesting. Presumably, Professor Spencer, this was linked to your being on the 1995-1996 study group on fraud on EU finances which produced the Corpus Juris proposal for a European Public Prosecutor.

Yes. That was my way into it. It started when I was still Faculty Chairman. I received this invitation to join, out of the blue. It was a whole new development in my interests.

81. Can you tell us anything more about this very important project?

Our report floating the idea of a European Public Prosecutor to deal with EU fraud was first ignored by the British press and then “discovered” by an obscure, ultra-Euro-sceptic magazine which presented it as a plot by Brussels to cause the UK to abolish the common law and introduce the inquisitorial system. Some journalists at the *Daily Telegraph*, possibly including Boris Johnson²¹ but I don’t know for sure, read this and made it headline news in the *Daily Telegraph*. That set the public opinion against it in this country.

The Blair²² government was in charge at the time and, like the governments of a number of member states, they thought it was a step too far and didn’t want it. The Conservative Party internalised it as a plot by Brussels and one of the first things the Coalition government did was to pass an Act of Parliament which said the UK should have nothing to do with the European Public Prosecutor unless there was first a national referendum in favour: which meant, of course, that it would never happen. There are many academics whose brain-children are disregarded by the governments, but I must be the only academic whose idea was thought to be so bad that legislation was passed to change the national constitution to make it impossible for it ever to be implemented. Eventually, an EU a European Public Prosecutor for fraud was created, which is starting about now [2021:LD]. The UK, of course, has had no part in it. I am sad about the structure of it. Our group proposed something simple which would operate economically and efficiently but the structure that finally emerged is an enormous, complicated and expensive : so complicated that I can’t seriously imagine it will ever succeed in prosecuting anybody for anything. But “the proof of the pudding will be in the eating”.

²¹ Alexander Boris de Pfeffel Johnson (b. 1964-). UK Conservative Prime Minister (2019-), Mayor of London (2008-16)

²² Anthony Charles Lynton Blair (b. 1953-). UK Labour Prime Minister (1997- 2007)



82. Very interesting. Professor Spencer, it was also in this period that you served as a stand-in Director at CELS.

Yes. This was because I'd got in with the Law Faculty EU lawyers, thanks to my interest in EU criminal law, and a stand-in was needed to run CELS when Alan Dashwood took sabbatical leave. I can't claim to have run an innovative programme. But it was one of the jobs that I did. Some years later, when Catherine Barnard was Director, I stood in again when she was on sabbatical leave.

83. Apropos the long-term effect the UK's departure from the EU will have on the trajectory of our legal system, what do you think that the main effects will be?

I can see as far into a crystal ball as anybody else. But I would expect it to be a gradual lessening of the influence of EU law and a general turning in upon ourselves and reduced interest in what goes on in continental Europe. That said, the judiciary in this country were generally receptive to EU criminal law. Where they have a choice of action, our judges are intelligent enough to follow a good idea when they see one, wherever it comes from.

84. During this time of your professorship, your research expanded in scope: European comparative studies; reproductive choices; hearsay evidence; evidence of bad character; general criminal theory and a revisit to children and evidence. So, if you had to summarise your journey in your professorial years what would you like to emphasise as your legacy?

Goodness. I certainly had an influence, together with co-workers, on the rules of evidence of vulnerable people. I think I probably had some influence on the development in a better direction of the law relating to bad character evidence and hearsay evidence. I think I've always been "a jack of all trades and a master of none", as the saying goes. I always found any legal subject interesting when I was forced to pay attention to it and that resulted in my taking up one interest after another rather than concentrating single-mindedly on one particular thing. So "diverse", I think, would be my influence.

85. You also, in this period, had quite an extensive collaboration with Italian academics and I wonder if you could elaborate upon this.

Yes. The Italians were very interested in criminal procedure in what the French would call, 'the Anglo-Saxon world'. There had been a big reform in Italian criminal procedure in 1988 and it was a big subject of academic study there and there were a lot of doctoral students working on it. I found I was receiving doctoral students from Italian universities who wanted help and direction on comparative work on aspects of English criminal procedure. As a result of the contacts made there, I found I was repeatedly invited over to Italy to take part in things. I realised that it would be a great advantage if I could speak Italian and so I learnt Italian. I went to night school and Hills Road Sixth Form College where my children had been through, in company with Nicky²³ and Christopher Padfield who also learnt Italian at the same time. I spent quite a lot of time going to and fro from Italy and giving lectures there, latterly sometimes in Italian. In the end though, I became less and less interested in foreign travel because I found it more and more stressful and started to feel guilt about the impact on the environment of taking planes everywhere, so I gradually withdrew from that scene.

²³ Nicola Margaret Padfield, (b. 1955-). Professor of Criminal and Penal Justice, Cambridge (2017-)



86. Professor Spencer, still during your professorship. You were the Faculty Chairman from 1995 to 1997. This, of course, was the aftermath of the move and, as you've very interestingly told us, had to deal with some of the teething problems, the glass screen and so on. Do you have any other incidents or anecdotes which you could share or put on record 25 years after the event?

As many colleagues have said who were Faculty Chairman, it was a difficult time. When I was first Faculty Chairman remember feeling rather like somebody who'd been told to drive a high-speed train without being told how to do it. I'd had little experience of university administration – at least at that level (I'd been Faculty Secretary years before). So I found the job a worry and wouldn't list it as one of the happier periods in my life. It was a job you were expected to do if you were a Professor and thought to have the administrative competence to do it. I could tell many anecdotes about that time but I'm not sure that they're particularly elevating so perhaps, Lesley, we should move on.

87. Any other notable event during your chairmanship?

The high point was when Her Majesty the Queen and the Chancellor of the university, the Duke of Edinburgh, came to open the building in 1996. The Queen opened the building and I had the very great honour of showing her around the building, with John Tiley one pace behind, showing the Chancellor. I will tell you one anecdote about it. The idea was that we should put displays on around the building which would be politely looked at by the royal party. We had a visit from an equerry from Buckingham Palace to talk about what these displays should be. The equerry didn't seem to be particularly impressed by the idea of books and manuscripts so I said, half-jokingly, "I understand Her Majesty is very interested in horse racing, I wonder whether an exhibition of horse law would be appreciated?" The equerry said, "That's a wonderful idea. I'm sure Her Majesty and the Duke would enjoy that." I told my Faculty colleagues about this and they divided two ways. Half of them said, "How shocking. You've let us down again, what a stupid idea!" The other half said, "If Her Majesty wants it, Her Majesty should have it." So we put on a display of "horse law".

Andrew Tettenborn²⁴ was a colleague in the Faculty then and he entered into the spirit of it. I don't think he knew one end of a horse from another when he started, but he went to a Newmarket firm of solicitors for a couple of days to learn about legal problems to do with racehorses; we borrowed a beautiful statue of a racehorse from the Racing Museum at Newmarket²⁵ and we made placards with pictures of horses involved in various lawsuits and, in large letters, a brief account of what it was about. Andrew Tettenborn even managed to get a checked suit, as worn by bookies, to where when he manned the stall. The Queen and the Duke came round and smiled politely at the other displays, but when they saw this stall their eyes lit up. Tettenborn began to talk about a case that involved an allegation of horse doping and explained how he thought it had been done. The Duke turned to Her Majesty and said, "No, I expect it was probably done such and such a way." The Queen then said, "No, I expect it was probably done such another way." There we had a three-way discussion on doping horses with Her Majesty the Queen and the Duke of Edinburgh – who smiled for the rest of their visit! I expect if there's one building opening they remember, I'll bet it's the opening the Cambridge Law Faculty.

88. What a wonderful anecdote.

²⁴ Andrew Tettenborn, Professor of Commercial Law, University Swansea, previously Exeter (Professor) and Cambridge (Lecturer). In 2001 General Election he stood as UKIP candidate in Bath

²⁵ <https://www.nhrm.co.uk/>



Also during this period you served on various committees and boards. The UL Syndicate Board of Scrutiny, the Board of Scrutiny, the Exam Complaints Review Committee, and I wonder if you could comment on your contributions to these?

The Board of Scrutiny is a body under the constitution of the university which publishes a review every year and draws attention to things that need attention drawn to them. Things were not altogether happy at the university at the time and I remember we ended up ruffling the feathers of various sections of the university by our reports.

The University Library Syndicate was, and I expect still is, a very civilised body. We had the impression that the library was well run. The meetings were well conducted. I think we did a useful job supporting the librarian. It was very quiet compared with the Board of Scrutiny.

The Exam Complaints Review Committee, the proper name of which I forget, was something I did towards the end of my career. We were the court of final appeal on complaints by students about things that had gone wrong in examinations. Some of the complaints were obviously ill-founded. But some caused us real disquiet and I hope we ensured justice was done by what we recommended. The main lesson I learnt from that was how well we do things in the Law Faculty compared with some other faculties. I felt reassured by the solidity of our examining process in the Law Faculty.

89. In 1999 to 2001 you were a consultant to Sir Robin Auld's²⁶ review of the criminal courts and I wondered if you could say something about this work and what it achieved.

Yes. Sir Robin Auld was the Director of this review, with power to appoint consultants. He asked me to be a consultant to help him learn more about continental criminal procedure and whether there were any lessons to be learnt. He said, "Do you know some criminal procedure lawyers in continental Europe who are English speakers who could come to an English language seminar?"

With the help of the Law Faculty and of his administrative staff we arranged a seminar. The proceedings were confidential and he could ask them the direct questions about how things actually worked and they were able to give him honest answers. Some of the things he learnt there influenced the recommendations that he made. His report, I thought, was excellent and I wish the government of the day had accepted all of it instead of cherry picking some of the parts which it thought would attract favourable headlines in the newspapers.

One of his central recommendations was that we should move away from having a magistrates' court and a crown court and have a tripartite division, as in many other countries. So we'd have the magistrates' court dealing with the small things only, which is what it was set up for centuries ago; Crown Courts with juries only for the really important things; and an intermediate court staffed by a professional judge and two lay magistrates, like the Crown Court today when hearing appeals from magistrates' courts, to deal with the bulk of other cases. This was ill-received both by the Criminal Bar and by the magistrates and it never happened. I think it's a great shame it didn't because I think it would have solved a number of problems which existed then and exist as badly or worse today.

90. I remember Sir Robin Auld's tenure in the Goodhart Chair and how hospitable and kind he and Professor Catherine Geissler²⁷ were in terms of inviting faculty to the

²⁶ Sir Robin Ernest Auld (b. 1937-) former Lord Justice of Appeal in the Court of Appeal of England and Wales (1995-2007)

²⁷ Catherine Geissler, Professor Emeritus of Human Nutrition, Kings College, Secretary General of International Union of Nutrition (UN) (2013-17)



Goodhart Lodge for some delightful parties.

Robin Auld is a warm and hospitable person, an Irishman by origin and with all the geniality and warmth that goes with that. That's what I would have expected him to do.

91. In 2003 you received several honours; you were an honorary QC, an Academic Bencher at the Inner Temple and you were made an Order of Chevalier. I wonder if you can tell us the circumstances and memories of the ceremonies involved?

Sequentially, I think it was the French decoration that I was given first. It was as a thank you present, I think, for collaborative ventures between Cambridge and France and French universities. The Ordre des Palmes Académiques is a French order of decorations set up originally by Napoleon. I got the bottom rung, which a cynical French friend said is given in France to primary school headteachers of great political reliability! Whether that is true or false, it is a big honour for anyone from another country. It was presented to me in Cambridge by the French ambassador, who kissed me on both cheeks, to the delight of various faculty colleagues who were present.

I needed permission from the Queen to wear a foreign decoration. I wore the French medal when I went to the ceremony in Westminster when I was made an Honorary QC. When I went in an official said, "Excuse me, but what is that decoration you are wearing?" I said, "It's a French one but it's all right, I have the Queen's permission!" The ceremony took place in a room with an enormous tableau of, I think it was the Battle of Trafalgar being won by the British opposite. I felt a little incongruous with a French medal that before my eyes. Very sadly, my wife and my sister, who had been planning to come, were held up by a delay on the railway and so they missed the ceremony. But they were present at the celebrations afterwards. But our son was present at the ceremony.

Being made an Academic Bencher of the Inner Temple was, I think, an honour that flowed from my being made an Honorary QC. It was very kind of them. I'm embarrassed that I've done so little for the Inn in the time that I've been an Academic Bencher.

92. You were also awarded an honorary doctorate from the University of Poitiers. This presumably was for your many contributions to French/ English law and understanding collaboration. Was there a grand ceremony for this as well?

Yes. As there is in Cambridge when we award honorary degrees. I was invited to bring some colleagues along to watch. It was in term, but happily two retired members of the faculty were free to come. So as well as family members Sir David Williams²⁸ and Tony Weir²⁹ joined us. It was a very happy day. I've not been to the University of Poitiers for a long time and most of the people I worked with there have now retired. But I have the happiest memories of visits to Poitiers.

93. Sounds like you had delightful company as well from the Faculty.

It's hard to think of two colleagues more charming and amusing than those two.

94. In 2006 you were given an LLD for the body of research work you've done at Cambridge over 30 years or so.

Yes. You supplicate for an LLD and then it's sent out to be refereed by various people. Sometimes it's awarded and sometimes it isn't. I was cautious in applying because typically it's awarded to people who have written a monumental work in one particular area. I'd dabbled in so many areas and was afraid the answer would be, "Well, it's all interesting

²⁸ Sir David Glyndwr Tudor Williams (1930-2009), Rouse Ball Professor of English Law (1983-92), President of Wolfson College (1980-92), Vice-Chancellor, Cambridge (1989-96)

²⁹ J. A (Tony) Weir (1936-2011), Reader in Law, Trinity College



but none of it amounts to anything.” But I was successful. I was awarded the LLD and, yes, obviously very proud and honoured to have it.

95. Professor Spencer, that brings us to your retirement in 2013. You retired on 31st December. You’ve had the proverbial “busy retirement” although in the notes you sent you said that it was something of a relief to have given up supervising and serving on various committees.

I continued to supervise for six years after retirement. In Selwyn you have to give your room up when you retire, as in most colleges, and I was wondering what to do when Murray Edwards College approached and, most kindly, said, “Would you like to be a By-Fellow? We can give you an office if you’re willing to supervise our students.” So from ’14-’15, ’15-’16, ’16-’17, ’17-’18, ’18-’19, and ’19-’20 I was attached to Murray Edwards and I continued to supervise in criminal law and criminal procedure and criminal evidence. Effectively, it was like a being junior teaching fellow there. I’m glad to be out of supervising this year, with all the difficulties caused the Covid19 epidemic. I decided to stand down before the Coronavirus outbreak occurred, because I shall be 75 at my next birthday and 2019-2020 was my 50th year in practice. I didn’t want to go on teaching to the point when students began to complain that I was losing my wits. My feelings at not supervising now are mixed. I’m sad not to be doing it, though relieved not to be involved in the problems of this year. Yes, and I miss the students.

Before I retired I went to my last meeting of all the committees in the university that I belonged to, to be solidly thanked for my service – and thought “That’s the end of it for committees”. Now, in this Norfolk village from which I’m talking to you now, I find myself a member of the Parish Council. And there I see replayed all the sort of personal issues which I’d seen played out with larger egos in the university over a great many years of serving on committees.

96. Looking back on some of the highlights of your retirement, in 2014 to 2016 you were the Vice-Chancellor’s deputy.

Yes. The Vice-Chancellor has “unpaid stunt doubles” to stand in on social occasions when the Vice-Chancellor has something more important to do. To my surprise I was approached to ask if I would be one of these and did it for two. And for the first time since I entered Cambridge as an undergraduate, I found I suffered from “imposter syndrome”, when I sat on the Vice-Chancellor’s throne in the Senate House to distribute university degrees. In the course of this time I must have conferred hundreds of Cambridge degrees. I also had to preside at one or two discussions in the Senate House and I also attended various University Sermons, and also organised hospitality for the visiting preacher. It’s a wonderful title to be called a Deputy Vice-Chancellor. It’s a certain amount of work but it’s really nothing like as important as the title suggests. I think nothing has ever made me feel prouder, however, than sitting on the Vice-Chancellor’s throne in the Senate House conferring degrees in the name of the university.

97. You were made a CBE in 2017 for reforming the law on the evidence of children in criminal proceedings and the protection of vulnerable witnesses, video-recorded evidence, reform of the rules on competency to give evidence, and so on. Was there a memorable ceremony involved in this?

Yes, very much. I was astonished when I got a letter asking me if I’d accept the honour of a CBE. I first thought it must be some kind of joke or possibly a scam. There was a telephone number to ring for further details and I rang it, half expecting to get some foreign



voice saying it was available if I sent a few thousand pounds somewhere by Western Union, but it was genuine. There was a magnificent ceremony at Buckingham Palace. Prince Charles presided. It was a sad occasion, in a way, because it was just after the Grenfell fire and while the ceremony was taking place the Queen was visiting the victims of the fire. Despite that unhappy national background it was a wonderful day occasion. And Buckingham Palace is to be congratulated on the smooth arrangements which made us all feel genuinely welcome.

98. Since giving up your academic career you've had time to read, edit, and write about criminal justice matters and you've had the time to follow your various hobbies which include gardening, DIY, music, Punch and Judy, and spending time with your extending family, as well as being a member of the Parish Council. Could you elaborate on any of these?

Punch and Judy started when our children were small. There was a time when our children were small and they had many friends of the same age when it nearly took my life over, then later it would come back at intervals afterwards as somebody remembered that I did it. It took on another lease of life up here in the Norfolk village of Trunch, where I found myself doing a round of church fetes and so forth with it. I'm now doing it to amuse my grandchildren. It's fun to do it. I think I can put on funny voices when I have to and that, plus a certain degree of motor coordination, is all you need. The other things are things that I always liked doing and I'm glad to have a little more time to spend on them now.

The Parish Council I've already mentioned. I try to do that conscientiously and I find myself trying to get my head inside local government law which is not a subject which I was previously familiar with. I still keeping going with some academic work. I'm an editor of *Archbold Review*, which is the magazine spin-off from *Archbold's Criminal Pleading and Criminal Practice*, in which I edit the chapter on bad character evidence. From time to time people get in touch with me to ask me about legal problems. And old students get in touch with me sometimes, to my great pleasure. So I haven't wholly severed connection with the law and academic life. But it's nice to have time to do some other things as well.

99. Professor Spencer, can you now metaphorically glance back over your shoulder in a career retrospective? Calling on the notes you supplied there appear to be several items on which you have some very interesting and valuable views. I wonder if I could just invite you to reminisce on some of these. First of all, the whole question of law reform in the criminal justice system, especially the law of evidence and the criminal appeals system. What are your hopes for the future and how could you describe your achievements?

I think with such achievements as I have, I've probably already talked about. I confess I'm deeply depressed about the state of criminal justice in this country. It used to be essentially apolitical, a matter on which there was consensus between the political parties, and the politicians were prepared to listen to informed people before deciding how the law should be reformed. Unfortunately, it then got much taken up by the popular newspapers and the politicians of the day found they could score votes by agreeing with the less informed things which were published in the tabloid press. This has had a malign influence on criminal justice in this country.

Something else which has had a bad influence is the reform of ministerial responsibilities for justice. We used to have a genuine Lord Chancellor. It was the senior office in state officially, always held either as an end-of-career position by either a senior politician with a legal background who, since he wasn't hoping for promotion, was not afraid



to speak his mind and willing to offend his colleagues. There was usually stability in the office. Or it was sometimes somebody seconded from the legal system, like Lord Mackay of Clashfern³⁰, and they were respected and listened to.

In the Constitutional Reform Act³¹ (2005: LD) we had a change. The first Lord Chancellors appointed after that would have satisfied the job description for the role as it was formerly, but since then they've been junior people of no standing and no legal knowledge and no genuine interest in the law. It's turned into a junior office and is no longer held by people who have any concern about justice in the broader sense. That and financial cuts have had a disastrous effect on the criminal justice system. My colleague Nicky Padfield and her husband will tell about the effect on the prisons, in particular. I wish I could see a happier future for it. Was there anything else you wanted to ask about?

100. Yes, Professor Spencer. I wondered about the question of English law and the EU, particularly pertaining to fraud. What are your hopes of a way forward after Brexit?

As the newspapers were full of fishermen being “thrown under buses” and red lines and Kent parked end to end with lorries, in the background sensible negotiations were taking place on future criminal justice cooperation with the European Union and its member states. Tacked on as part three of the Trade and Cooperation Agreement³² there is a package of workable measures to continue criminal justice cooperation with Europe, which came as a surprise to most of us who thought this issue was being overlooked. So I have hopes of sensible cooperation continuing, though on a less developed scale. There was a strong common interest between the EU and the UK on maintaining sensible criminal justice cooperation. Neither side had any particular red line or devastatingly important principle and it wasn't felt, I think, that the UK had to pay for keeping the parts of the previous arrangements that it wanted. So I think there will be sensible cooperation.

101. Thank you. Apropos the university and the Faculty and specifically the college system, of which you are not 100 percent admiring. It has, of course, been at the heart of Oxbridge for 800 years. What would you like to see in its place? What are your criticisms?

I've been a beneficiary of much practical help and kindness and friendship from two Cambridge colleges. I'm not opposed to colleges. The trouble is the present relationship between the colleges and the university. I have a feeling that the colleges have more influence than they should and absorb a lot of money, more than is really required, and that their influence is not always beneficial.

For many years I was involved in undergraduate admissions. I also saw, as a parent, what it's like for people to apply for Oxford and Cambridge. Our children were able to navigate the system because they were Hills Road Sixth Form College which thoroughly understood the system. But if elsewhere I believe they might well have thought, “This is so ridiculously complicated that it's not for us.”

I think undergraduate admissions should be managed centrally, so people should state the preference for the college they'd like to go to if they're successful, but the Faculty should organise the admissions: instead of our present fantastically complicated system – vigorously

³⁰ James Peter Hymers Mackay, Baron Mackay of Clashfern, (b.1927). Lord Advocate, and Lord Chancellor (1987–1997). Conservative Member of the House of Lords

³¹ <https://www.legislation.gov.uk/ukpga/2005/4/contents>

³² 24-Dec-2020

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf



defended, of course, by those who have made it their life work to be admissions tutor in their particular college.

Something else that occurs to me this. When I was first a Fellow at Selwyn the total size of the fellowship was about a third of what it is now, but we still have about the same number of undergraduates. Fellows of colleges, even if they're not on the college payroll and their stipends are paid by the university, consume a lot of resources. What are they doing? Why are they necessary? What really is our function? I've always thought the main function of the university was teaching undergraduates to a high level, and Oxford and Cambridge fulfil the sort of role that the *Grandes Écoles* do in France: training up the cleverest young people in the country to lead it in the future. Do we need the present college structure, with such a large complement of staff, to do that? I am sceptical.

102. Thank you, Professor Spencer. Several of the Goodhart scholars remarked on what they perceived to be a slightly negative impact of the colleges in that they seemed to suck the life blood from the faculty.

I remember reading an article which said that we are Dr Jekylls in the Faculty and then Mr Hydes when we go back to our colleges. If you're a Fellow of a college and a member of a Faculty you find your allegiances are torn. But drawing the life blood out of a Faculty, I'm not so sure. We have an active group of Faculty criminal lawyers and we interact, thanks to an email network which I run (though Jo Miles³³ deserves the credit for suggesting it). Through that we're able to share ideas and keep in touch with each other and. This network is one of the things which keeps me in touch with the law in my retirement. I feel I have a bunch of friends and active colleagues around me, even though I hardly ever see them, least of all during a pandemic.

So I don't agree that the colleges suck the life blood out of the Faculty. The Faculty waxes and wanes in terms of enthusiasm for different projects at different times. I think it depends on who's around at what time and who shows what initiative and leadership.

103. Thank you. Are there any other items you feel moved to recall from your long and distinguished career which you could comment upon?

I've commented at length about so many things. So thank you, Lesley. Maybe we should leave it there.

104. Right. Professor Spencer, overall are you happy with your achievements of nearly 50 years in academia? Do you feel that you've left the law a better system than you found it?

In some ways the law is better than when I started. I hesitate to say that the respects in which it's better are much due to my efforts; they're probably not. Better in some ways, worse in others. Old people are inclined to think that everything is now worse than it was. But I don't take that view. Some things in the law are very much better than they used to be even only a few years ago. We have a better criminal appeals system than we used to have, for example, even though it still has its defects. Some of the changes I deplore but I'm conscious there have been other changes in the right direction and I'm prepared to have some optimism for the future.

105. Would you encourage students to follow law as it is now or do you think there are

³³ Joanna Miles, LL.B. (Nott), LL.M. (Cantab.), Reader in Family Law & Policy, Fellow and Director of Studies (Trinity College)



more fulfilling ways to spend their lives and talents?

As someone who has always found the law interesting, I would encourage people to follow the law as a career. What does make me sad, however, is that so many of our best undergraduates end up working for city solicitors' firms where they seem to spend all their time enabling rich people to get richer and pushing money around to no obvious good purpose. I sometimes think it's a waste of everything we taught them when our students then apply their energy to helping rich people make money and avoid paying taxes.

It's a fulfilling job to be a high street solicitor. There was a time when many graduates from Cambridge would become high street solicitors doing a range of work which made themselves useful to a wide range of people in society. But changes in the way that solicitors' firms work and are financed mean that it tends to be only the really big firms that have the money to pay trainees, and that is the direction in which most of our students go.

For those who have the ability, the Bar, though risky is an intellectually more fulfilling career, but it is a risky. The Criminal Bar is depressing, but interesting. We badly need good people to go into criminal practice. One of my biggest worries about the criminal justice system is the endless cuts to funding which mean that it's very difficult for anybody to earn an acceptable living either at the Criminal Bar or as a solicitor in that area of work, and inevitably that will damage the quality of criminal justice.

So, yes, I'd still encourage people to read law. But I wish I could persuade more of them to do something other than become city solicitors.

106. Well, all that remains now is for me to thank you most sincerely for another fascinating account. I hope that in your next interview we can discuss some of the important issues in your published work.

Thank you very much indeed, Professor Spencer. I'm very, very grateful to you.
Thank you, Lesley.

