

## A Conversation with Professor Anthony Terry Hanmer (Tony) Smith

by

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Date: 19 January 2016

*This is the tenth interview for the Eminent Scholars Archive with an incumbent of the Arthur Goodhart Visiting Professor of Legal Science.*

*Professor Tony Smith is Professor of Law and Pro-Vice Chancellor at Victoria University, Wellington.*

*This interview was recorded, and the audio version is available on this website. 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 Smith's answers are in normal type.

Comments added by LD, [*in italics*]. Footnotes added by LD.

**1. Professor Smith, you are the tenth Goodhart Professor we have the pleasure of interviewing and we are very grateful to you for agreeing to add to our archive. You've had an illustrious and a varied career in which you've held academic positions at five universities and professorships at three of those.**

**I hope that we can talk today about your early life and your career, touching on your aspirations and your time in the Goodhart Chair, and then at a later stage, there'll be a chance to talk about your scholarly work and again hopefully you can talk about your research as a Goodhart incumbent. So could we start with you were born just shortly after the war, in 1947.**

That's right. Two years after the war, born in Christchurch in New Zealand in 1947 in January. My father was in the air force and he stayed in the air force after the war, he'd been a navigator in the Solomons in Guadalcanal<sup>3</sup> during the war, but he decided he would stay in the air force and that meant that our early life, I had an older sister and a younger brother and sister, meant that it was a very disrupted life. We came to England I think the year after I was born, when my father was doing a specialist navigator's course but the services were such that we moved every two or three years so the early schooling was very, very disrupted. I think I went to about five different primary schools all over New Zealand.

**2. Professor Smith, your early life was somewhat disrupted because you moved several times. You went to primary school in Christchurch?**

No, I started in Wellington. Then went to Christchurch. Then back to Wellington.

**3. You did your high school at St Bede's College<sup>4</sup>?**

Yes, but I also had a year in Wellington. Well, we moved to a place called Blenheim in between, after Wellington, after Christchurch we went to Blenheim and I made the mistake of winning a scholarship to a boarding school in Wellington and I did not like it one little bit.

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<sup>3</sup> In the Solomon Islands, site of major WWII battles in 1942-43.

<sup>4</sup> <http://www.stbedes.school.nz/welcome/>



Fortunately, after a year of that my father decided he'd had enough of the air force and he changed his job and we then went to Christchurch. At which point I had to go to a new secondary school.

#### **4. Which was St Bede's? Is that a Catholic school?**

It was, they were all Catholic schools yes. The early ones taught by nuns, the later ones by priests.

#### **5. Right, and that early stage were there any subjects at school that you excelled in?**

I was most interested, I suppose, in literature. I was very bad at Latin and I think I was very badly taught at Silverstream<sup>5</sup> and then when I went to St Bede's I had a different teacher who made the subject completely different. I actually enjoyed chemistry but I didn't enjoy the chemistry teacher at St Bede's. He once told me I was a complete waste of time and I was so cross I worked hard at it and I got the top mark in chemistry in a national exam. He never spoke to me ever again. Mathematics I quite enjoyed, but again the teacher... I asked him why we were differentiating functions because I couldn't quite see the point of it and he said never mind just do it. That doesn't half put you off the subject I think.

But some of the teachers I had... particularly in English, I had a particularly good English teacher, a man called Father Weir, John Weir<sup>6</sup>, who was a poet, who had written quite a bit of his own poetry but was an expert on the poetry of James K Baxter<sup>7</sup>. I lost contact with him for quite a while but met him again quite recently when he published the complete prose works of James K Baxter, a full volume of work. He's now in his eighties. It's a wonderful piece of work, a quite amazing piece of scholarship. I'm pleased to have kept in touch with him.

#### **6. How wonderful to have met him again.**

Made in touch with him again, yes.

#### **7. Yes, it must have been very meaningful.**

It is, yes. He tells me he's writing a biography of Lewis Carroll and I told him I thought that field was already rather full but he was not daunted.

#### **8. That takes us from your high school at St Bede's to the University of Canterbury.**

The University of Canterbury, that's right, 1965.

#### **9. Was there a link between St Bede's and the university?**

Not particularly. Well, other than that the man who taught me history at St Bede's was actually giving some lectures at the university on history and he was a very good history teacher. I only studied it for two years I think with him at... he took a very different approach from pretty well all the other teachers at the school and just left us to get on with it to read and write essays and so forth. He was very good.

#### **10. You started an LLB. Was that your first degree or did you have to do a pre—**

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<sup>5</sup> <http://www.silverstream.school.nz/>

<sup>6</sup> After Weir became a priest, he taught at Catholic colleges in Christchurch and Upper Hutt, lectured in English at the University of Canterbury and edited the Catholic newspaper *Zealandia*. In 1965 he began keeping a bibliography of his friend's writing which, 50 years later, has eventually produced a monumental four-book set, *James K Baxter: Complete Prose*.

<sup>7</sup> James Keir Baxter (1926-72), poet, born in Dunedin.



No. In your first year you did only one law subject, the others were art subjects. In the art subjects I took political science, history and English and then the legal system. You had to get a good mark in legal system to get in... to be allowed to go on in law.

### **11. Any lecturers or teachers that stand out from that time?**

Yes, absolutely. In politics I had lectures by a man called Austin Mitchell<sup>8</sup> who was quite a national personality. He subsequently came back to England and became the MP for Hull and Grimsby, the Labour MP for Hull and Grimsby [LD - *Grimsby*], quite a major figure here too, a man called James Flynn<sup>9</sup> who was an American refugee really from the Vietnam War but had a very considerable mind, and then J G A Pocock<sup>10</sup>, who's an honorary fellow of St John's, who was... went off to become a professor at MIT [LMD: Johns Hopkins], a quite outstanding group of scholars.

### **12. What made you decide to read law in the first instance?**

I'd known since I was about 12 that I wanted to study law. I wanted to be a lawyer, yes. Mainly the product of reading. Reading about lawyers, mainly the English barristers, Patrick Hastings<sup>11</sup>, people of that sort.

### **13. So you completed your degree and went on to do an LLM. Was that a research course or a taught course?**

No, it wasn't immediately actually. Between the LLM and the... the LLB and the LLM, I had in fact got married in the last year of my LLB, which was probably not a very wise thing to do, in August of the year when the examinations were in November, so I possibly wasn't concentrating as well as I should have. But I then went to the Treasury for a year and taught and worked in the Treasury in Wellington for a year and decided that that sort of practise was not for me, it was extremely dull. I'd always thought about being an academic and so I went back to Canterbury as an Assistant Lecturer and did the LLM while I was doing that, so the LLM was part-time but it was a two year course. I did papers on jurisprudence and criminal law and then a dissertation in criminal law. On the doctrine of provocation.

### **14. At this point you were resolved to become an academic, so that it was just a natural stepping stone to take an assistant lectureship at the end of your LLM?**

While I was doing the LLM. That was a quite common step, but it was a slightly dangerous step because nobody had ever got a first in the LLM writing a dissertation. Now that's not... it's not saying a great deal because the faculty... although law had been taught there for a very long time, its origins were still very much as a place where young men were taught how to become practising lawyers. So the idea that you might be doing you know, a research type degree was a not a common one. So that's what I did.

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<sup>8</sup> Austin Vernon Mitchell, (1934- ), British Labour Party politician, Member of Parliament for Great Grimsby (1977-2015). 1959-63 he lectured in history, University of Otago; lectured in sociology (1963-67), University of Canterbury.

<sup>9</sup> James, R. Flynn, (1934 -) PhD, MA, BA (University of Chicago) Emeritus Professor of Politics, University of Otago, Hod (1967-96). Foundation Chair in Political Studies Otago in 1967.  
<https://www.youtube.com/watch?v=khWxYIO5w-M>

<sup>10</sup> John Greville Agard Pocock (b. 1924-) Historian, Harry C. Black Professor Emeritus Johns Hopkins University (1974-94). Reader to professor of political science, University of Canterbury (1959-65). Born in London. After New Zealand, moved to the United States in 1966.

<sup>11</sup> Sir Patrick Gardiner Hastings, KC (1880-1952), British barrister and Attorney General (1923-24)



**15. You had this position as an Assistant Lecturer for two years? It was at this point perhaps that you began to think about perhaps a bigger stage?**

Yes.

**16. What made you think about Cambridge?**

Well, the subjects that I taught at Canterbury were... I lectured first year courses in both criminal law and constitutional law and they're two subjects that have stayed with me throughout my career. I also took jurisprudence in my Masters course and some of that was the criminal jurisprudence of H M A Hart<sup>12</sup>, we studied that. So I knew I wanted to go abroad and I knew I wanted probably to come to England and I knew that further study would be as good a way of doing that as any, so I looked at both Oxford and Cambridge and in fact I was accepted for Oxford and Cambridge, obviously, and I had thought about trying to work with Hart, but his work was too philosophically oriented for me, some of the work that he... the early works that he had written, on Punishment and Responsibility in particular, a wonderful book. In fact I met Hart when he came to New Zealand and showed him round Christchurch and we discussed Glanville Williams and it is fair to say that in one of his essays he shows, I think fairly convincingly, that some of the thinking about the liability for negligence was not properly thought through, which he attributed to Glanville, but which I don't think was quite fair. But certainly J W C Turner<sup>13</sup> in Cambridge at the time, really had a view of the impermissibility of punishing negligence which wasn't... it just wasn't... it didn't hold water. So my choice was between those two and then the possibility of Sir John Smith<sup>14</sup> or John Smith, later Sir John Smith, at Nottingham and I came to know John really quite well, but I preferred, obviously, Cambridge to Nottingham just as a place to study.

**17. Yes. I also wondered why Gonville and Caius as a college?**

A fairly simple reason, I got a scholarship there. It wasn't quite as straightforward as that. I'd got a scholarship, I got a Commonwealth scholarship which took me to... well, it could have taken me to Nottingham or Oxford, but I decided to come here with that and then subsequently I got the Tapp scholarship<sup>15</sup> which was a Caius scholarship. There is a strong New Zealand link which you probably know, between Caius and New Zealand. Robin Cooke, who became Lord Cooke, had been a fellow there and so I was aware of that link. So that was the real...yes.

**18. When you first arrived in 1973.**

'72.

**19. '72.**

Because I came as a student.

**20. Was it a huge change for you from New Zealand?**

Yes, a very significant change and a change much for the better, although I struggled

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<sup>12</sup> Herbert Lionel Adolphus Hart, (1907-92). Professor of Jurisprudence Oxford University (1952-69)

<sup>13</sup> James William Cecil Turner, LLD (1886-1968), writer on Roman and criminal law, former Fellow and Bursar of Trinity Hall, Cambridge, and university lecturer. Royal Field Artillery in France WWI, Military Cross.

<sup>14</sup> Professor Sir John Cyril Smith, , CBE QC FBA (1922-2003), University of Nottingham (1957-87), English criminal law and the philosophy of criminal liability. Author of *Smith & Hogan's Criminal Law*.

<sup>15</sup> <http://www.cai.cam.ac.uk/postgraduate/finance/tapp-studentships>



with the place at first, I have to say. The sheer intensity of it. But the law fellows then were Michael Pritchard<sup>16</sup> and Len Seeley<sup>17</sup> and there was in fact a third fellow, Jim Farmer<sup>18</sup>, who was also a New Zealander. Len Seeley of course is a New Zealander. It helped I think that Michael was familiar with New Zealanders and their ways, that I went from being a teacher to a full-time student again and I found that really quite difficult. I found it difficult not having my own place to work because in those days of course there was nowhere in the faculty particularly for you to work. If you worked, then you worked in the old Squire law library, now the Caius library. It wasn't a very congenial place. There were people to talk to, Paul Finn<sup>19</sup>, my predecessor in the Goodhart Chair, of course, he was a year ahead of me and I became very friendly with him. Jim Evans<sup>20</sup>, another New Zealander was a year ahead of him, so there was a bit of a community, but it was actually quite an isolated position to be in.

**21. I just contrast in general terms with New Zealand which was probably better run in many senses, but to come here with this huge population density for a start. It must have taken a bit of getting used to.**

A bit of getting used to. I think that's right, yes.

**22. You were here for... you would have stayed at Caius from 1973 to 1981.**

Yes.

**23. The third time you became a fellow.**

I did. There's a story there. The third person I mentioned, Jim Farmer, who was as I say also a New Zealander, decided that... he was an Assistant Lecturer but he decided that he was going to go back to New Zealand and practise law, which he's done and is still practising law in New Zealand. He for a while had chambers between Sydney and Auckland, he's an extremely high profile barrister. But anyway, he decided to do that and it meant there was a vacancy in the college and I saw it advertised in *The Times*, nobody told me about it. I thought, "Oh I'll apply for that," so I did and got it, to my great surprise.

**24. Shortly after that you became a tutor. That was in 1974 and you retained that until 1981.**

Yes.

**25. What courses were you tutoring?**

Ah, now I was a tutor in the sense of a Cambridge tutor, so that I had... my pupils were people not lawyers.

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<sup>16</sup> Michael J Prichard, (1927 - ). Lecturer in Law, Life Fellow of Gonville & Caius, President (1976-80), Edit. *Cambridge Law Journal* (1996-2002).

<sup>17</sup> Leonard Sedgwick Sealy, (1930 - ), Emeritus & Inaugural S J Berwin Professor of Corporate Law, University of Cambridge (1991-97).

<sup>18</sup> James (Jim) Farmer QC, barrister. Barrister from Chambers in Auckland. Queen's Counsel, admitted to practise in New Zealand, New South Wales, Victoria and the Australian Capital Territory. Former lecturer at Auckland and Cambridge. One time holder of the New Zealand Universities' 3 mile track record.

<sup>19</sup> Professor Justice Paul Finn (1946- ), Judge of the Federal Court of Australia (1995-2012), Goodhart Professor (2010-11), Professor & Head, Department of Law and Division of Philosophy and Law Australian National University (1988- 95)

<sup>20</sup> James (Jim) Farmer, QC, barrister, practise as such in New Zealand, New South Wales, Victoria and the Australian Capital Territory, part-time Professor of Law Auckland.



**26. Right.**

They were tutorial people. Some of whom went on to great notoriety including people like Alastair Campbell<sup>21</sup>.

**27. How interesting.**

Yes. So one would watch one's pupils go off and do various things. But no I was... as a supervisor and a college lecturer, I was supervising criminal law and constitutional law.

**28. Did you have administrative duties?**

As a tutor you do. Yes, quite significant ones, yes. I went to see the students at the beginning and end of each term and dealing with things when they went wrong, really. I think occasionally... no I never did stand in at that stage as acting Director of Studies. Michael Pritchard was the Director of Studies pretty well the whole... well, the whole time and if he was away then Celia would have done it, although Len was the senior tutor for much of that period.

**29. He's spoken of that [for the Eminent Scholars Archive] and what a considerable responsibility and time commitment it was.**

It was a major, major commitment for him because he was both, in those days, senior tutor and admissions tutor and you know, it was himself and a secretary really, running the whole place, you know? The Master at that stage was a man called Joseph Needham, FRS, FBA, a very unusual combination, who was a man who just thought about his subject the whole time and that meant there was a considerable vacuum underneath him to be filled by others running the college really.

**30. Do any other notable scholars spring to mind? I'm thinking for example of Crick<sup>22</sup>, I know that he had left but perhaps you glimpsed him?**

I met him once, I met him yes. In fact I didn't know who he was when I first met him and I was in the company of Jim Farmer and we found ourselves talking to him at dinner one night and the person presiding was the Quick Professor of Insect Physiology, Sir Vincent Wigglesworth<sup>23</sup>.

Crick was very pleased that he thought he'd discovered the origin of life or something, life or the universe, one of the two, and Wigglesworth was teasing him, particularly at dessert, about aspects of this and he was a man full of... I mean, of fun actually and you know... Crick I'm talking about, well both of them really, although Wigglesworth was a much quieter gent. He was probably about 80 at that stage. But I met him on... Wigglesworth, on the stairs the next day and I said, "I enjoyed your conversation with Crick," and he said, "Yes, he didn't know what I was talking about did he?" Then the... I mean the major figures in the university, of course... for me were Glenville and he really was a great mentor.

The other person I would say I had a huge admiration for was David Williams, D G T

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<sup>21</sup> Alastair John Campbell, (1957 - ) Director of Communications and Strategy for Prime Minister Tony Blair (1997 - 2003).

<sup>22</sup> Professor Francis Harry Compton Crick (1916-2004). Co-discoverer with James Watson of the structure of DNA (February 1953), J.W. Kieckhefer Distinguished Research Professor at the Salk Institute for Biological Studies in La Jolla, California. Fellow of Gonville & Caius.

<sup>23</sup> Professor Sir Vincent Brian Wigglesworth CBE FRS (1899 - 1994). Entomologist who made significant contributions to the field of insect physiology. Quick Professor of Biology University of Cambridge (1952-66).



Williams<sup>24</sup>, who was again a very... well, I went to some of his lectures and I thought they were the best lectures I ever saw. I really did think that he had an ability... because he had a background as an historian, to put public law into a political, social, economic, historical context and you know, in addition to the law, in a way that I've never seen anybody else really being able to do.

**31. VI know that he was at Wolfson, he was the President at Wolfson.**

Oh he was the Senior Tutor of Emmanuel at that time, yes. He was a Reader in law I think when I first met him. But he was very supportive, a very nice man.

**32. Any other scholars that you recall, perhaps Sir William Wade<sup>25</sup>, do you perhaps recall him?**

Well, yes, he was Master of Caius, he became Master of Caius, a slightly forbidding individual in public but actually a very pleasant man. No, I was involved in his election to the Mastership. I'm afraid David Williams wasn't very happy because Sir William came and took the Rouse Ball Chair in English Law which I think David had rather supposed he might possibly get and almost nobody else would have beaten David for it apart from Sir William Wade and David did in fact succeed Sir William Wade in due course. But no, he was a very good Master. Michael, Len Seeley....

**33. Both have been interviewed for the archive and obviously would have been quite well-known to you.**

Very good colleagues, yes. Very, very good colleagues, yes.

**34. You became a barrister and a solicitor at the [New Zealand] High Court in 1979.**

It seemed that you had to go back, you went back to New Zealand. No, I happened to be back in New Zealand. I qualified for that in 1972, I just never got called that's all. So I was actually eventually called in 1979 so there was nothing very magical about that, it wasn't as though I was doing any work, it was just that I thought I might as well get called since I was eligible to do that.

I had probably got an idea of possibly moving to practise in this country. I can't remember now to be perfectly honest, but that might have been what was in my mind, because I did join an Inn of Court, the Middle Temple. There are a couple of other people I perhaps ought to mention, John Smith I've mentioned earlier, who was also a holder of the Arthur Goodhart.

**35. From Nottingham?**

Yes. But he was a Cambridge man of course, a Downing man. He became a real mentor and it was mainly through the... what used to be called The Society of Public Teachers of Law<sup>26</sup>. We had an annual conference and John always came and at that stage it was the work that was done in the subject groups and Glanville incidentally was the one responsible for dividing the annual meetings up into subject groups so that people could talk about their own subjects and write papers and present papers and so forth. But John was

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<sup>24</sup> Professor Sir David Glyndwr Tudor Williams (1930-2009). Rouse Ball Professor of English Law (1983-92), President of Wolfson College (1980-92), Vice-Chancellor, Cambridge University (1989-96).

<sup>25</sup> Professor Sir Henry William Rawson Wade (1918-2004). Professor of English Law, University of Oxford (1961-1976), Rouse Ball Professor of English Law, University of Cambridge (1978-1982).

<sup>26</sup> Society of Public Teachers of Law (now Society of Legal Scholars), 1909-2011. Founded in 1909 by Dr Edward Jenks, the then Principal and Director of Studies of the Law Society.



always there every year and he was at that stage writing commentaries for the *Criminal Law Review*, something he did for 40 odd years I think, it was an astonishing contribution. He was always very happy to talk with you, particularly in the bar afterwards, you know, over a half as he always had just a half. You know he was quite happy to be challenged on the way in which he'd interpreted a recent case and all that kind of thing. He would read one's material and comment on it, yes. The other person was Andrew Ashworth<sup>27</sup> who in 1976 was the editor of the *Criminal Law Review* and he was a wonderful editor, very good at reading your stuff very carefully and critically, suggesting how you might rephrase or think a point, think about a point again. Very happy... particularly with a younger scholar, to help people produce a good piece of work. I mean he was a contemporary of mine more or less, but he's just retired from the primary chair at Oxford, the name of which escapes me at the moment, I'll come back to it. It's the oldest chair of English law. But he... I think I said earlier that I did my Masters' thesis on the doctrine of provocation and Glanville had said I ought to publish it and I was one of these days going to get round to publishing it. Then in 1975 Ashworth wrote an article in the *Cambridge Law Journal* and I thought I'm not going to publish mine in the light of that, it was a quite astonishing piece of work. So when I first met him I think in 1977 at one of these SPTL conferences we got on extremely well because it was quite clear that he knew a vast amount about provocation, yes. So he became a very good friend, still is.

**36. Well, you were in this position at Caius for... until 1981 when you were given a readership at Durham. I think you were 34 years old. It was quite young.**

Probably about that, yes.

**37. I wondered what the circumstances of this appointment were.**

Well, the person who initiated it was John Smith. John Smith wrote to me and said, "I wonder whether you might be interested in taking this position, you know, it's a way forward for you, it's a good little university." John himself came from Barnard Castle which is up in that area of the country, but he was obviously sitting on the committee that was appointing to the readership and for various domestic reasons too, which I won't go into, it was quite a good time to think of moving away for a while. It's not that far away from Cambridge, it's only about three hours on the train, so that's what I did for a while, yes.

**38. It was a similar sort of lovely medieval structure. Lovely scenery as well.**

Beautiful yes.

**39. Perhaps that reminded you a bit of New Zealand?**

Up to a point. It had been lived in for rather longer. I mean the cathedral is absolutely wonderful. I used to have lunch there quite regularly, they had a... in the undercroft, it was an extremely Good Food Guide restaurant which was really quite cheap. But it was very small and had been kept small by the then dean, Frank Dowrick and that was quite a controversial stance for him to take, but he liked the idea that he knew all the students, he could... knew them all by name and so forth. But it did mean that the possibilities for people to get promotion... and of course the place was getting bigger, were limited.

**40. You mentioned the dean. You became the dean there in 1984.**

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<sup>27</sup> Professor Andrew Ashworth (1947 - ). Edmund-Davies Professor of Criminal Law and Criminal Justice at King's College London (1988-1997), Vinerian Professor of English Law (1997- 2013), Chairman of the Sentencing Advisory Panel before it was abolished in 2010.





Yes. But it was a fairly nominal position. The place was in practice run by the head of school but Frank Dowrick was the dean.

**41. So it wasn't too onerous?**

No, not really at all, no. I taught criminal law there mainly, criminal and public law again and I taught that with a man called Bob Sullivan, G R Sullivan<sup>28</sup>, and we had very similar extracurricular interests; rugby, cooking and opera. I got on very well with him. I think he was slightly worried when I first arrived and he was a lecturer I think and I think he was worried that I might try to edge him out of the criminal law class, but I'm certainly not... so we did it conjointly, very happily for several years. He then wrote a book with Andrew Simester<sup>29</sup>, whose name you might know. Andrew has been a fellow of Caius, another New Zealand fellow of Caius and he's a research fellow. They have written, *Simester and Sullivan on Criminal Law*, which is now written also by Virgo and John Spencer<sup>30</sup>. He was a very, very good colleague, I enjoyed him a great deal and still do.

**42. I have a photograph given to me by Len Seeley of yourself and Professor Simester.**

And Robin Cooke, I think.

**43. That's right, yes.**

I've got one with Jim Farmer in it, but not Simester, Jim Farmer and Len Seeley, Robin Cooke and myself in it at Christchurch, which I can dig up if it's of use to you.

**44. Oh I would love a copy of that [for the Archive], thank you.**

Right, yes.

**45. You were awarded a PhD during this period. Was it a Durham degree?**

No, it's a Cambridge degree by special regulations. In other words by publications. The story behind that is that Glanville, after I'd been working on the PhD, we settled on the law of contempt, so I was... it took me a while, I knew I wanted to do a PhD but I wasn't quite sure what I was going to write a PhD on. But I had always been interested in contempt of court and Glanville said, "Oh no, I think that's a very good topic, so why don't you do that?" So I started working on that and after about six months or so I discovered that another quite senior academic in England was writing a book on it and there was the possibility of reform of the law in the air. It was a man called Gordon Borrie<sup>31</sup> who became Lord Borrie and he did in fact publish a book with a chap called Nigel Lowe and so *Borrie and Lowe*<sup>32</sup> was the first book on contempt of court. So what Glanville then said is, "Well, I'm not sure that PhDs are worth having anyway," the usual sort of iconoclasm that you might expect from Glanville, "Would you like to write a book with me instead?" So I began working on his

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<sup>28</sup> Prof G. R. Sullivan LLB, LLM Durham Law School: Corporate criminal liability, Criminal law, Criminal law theory, Legal responses to serious fraud.

<sup>29</sup> Professor Andrew Simester, Edmund-Davies Chair in Criminal Law at King's College London (2015 - ). Holds the Provost's Chair in Law at the National University of Singapore, and is Honorary Professor at the University of Uppsala in Sweden. Best known for his treatise (with Bob Sullivan) on the criminal law of England and Wales

<sup>30</sup> *Simester and Sullivan's Criminal Law: Theory and Doctrine*. Fifth Edition. A P Simester, J R Spencer, G R Sullivan, G J Virgo. 2013. Hart Publishing, 984 pp

<sup>31</sup> Gordon Johnson Borrie, Baron Borrie QC (1931 - ) lawyer and Labour Party life peer. Professor of law and Dean of law at Birmingham University.

<sup>32</sup> *Borrie and Lowe: The Law of Contempt* (Butterworths Common Law Series), 2009, Lord Justice Sedley, Sue Prince, Victoria Jolliffe, Richard Munden et al. 778pp, 4th Revised edition



book on property offences and he had been commissioned by Sweet & Maxwell to write a four volume account of English criminal law. So he did criminal law, the general part, in 1961, then he was supposed to be following up with either the offences against the person or the offences against the state or the offences against property. In 1968 the Theft Act had been passed and although Sir John Smith had written a book on it, it was only on the Theft Act and so I began working on the book on property offences with Glanville.

**46. That was published?**

1984, I think.

**47. Yes. I hope that we can talk about that in the second...**

Later... yes surely. Of course I eventually picked up the interest in contempt which we can come back to later too. I finished up writing an edition of a book written by Arlidge and Eady<sup>33</sup>, and Arlidge<sup>34</sup> had in fact been a student of Glanville's and had been encouraged by Glanville to write a book on contempt. So he had actually scribbled quite a bit of the book and then he got it out, he was a busy practising barrister, he got it out and he and David Eady put together a book on really the Contempt of Court Act. It was not terribly well reviewed or received, there was a particularly low review by a man called Graham Zelic<sup>35</sup> who had been a student at Caius, he became Vice-Chancellor of the University of London and a professor at Queen Mary and dean... at Queen Mary, and so forth. He was very critical because it didn't have any academic input. So I was the academic input for the new edition which was done I think in... you've got the bundle, 1998, the fourth edition. But we did a much earlier edition I think. The fourth edition was 2011.

So we've done a second, third and fourth edition.

**48. Thank you. 1986 you were given a chair at the University of Reading, again this was quite early in your career, you were still in your thirties.**

In my thirties, yes, that's right.

**49. So presumably you moved to Reading to take this opportunity.**

I did, that's right. I think John Smith was in the background again.

**50. What were your specialities at Reading, still criminal law?**

And constitutional law, yes.

**51. You brought out a book during this time, 1987.**

The Public Order.

**52. You became head of department in 88. Any recollections about this period in your life?**

Yes, actually if we just go back one step. While I was in Durham I was interested in computing and the law and one of the reasons I was interested is that Glanville was using a word processor and to keep up with him I had to buy a word processor, while we were still trying to work on the book together. It was one of those things that you had floppy discs that big, you know six inch floppy discs, 13 to a chapter sort of thing. But it seemed to me that

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<sup>33</sup> *Arlidge, Eady and Smith on Contempt* 4th ed by David Eady, A.T.H. Smith. 2011, Sweet & Maxwell Ltd.

<sup>34</sup> Anthony Arlidge QC, Red Lion Chambers

<sup>35</sup> Graham J. Zelic, CBE FRSA QC (1948 - ) Vice-Chancellor of the University of London (1997–2003), Principal of Queen Mary and Westfield College, University of London (1991–98)



although I couldn't see it very clearly, that this was clearly going to get better and so while I was at Durham an organisation, a governmental organisation called The Computer Board, invited scholars to bid for grants on the use of computing in their subjects. So I applied for one and got £150,000 from them to start working on that. That eventually developed into... after I left, it developed into a special centre and there were two centres in the country, one in Durham and one in Warwick, on... and further monies were pumped into it subsequently, and by the time I got to Reading things had changed quite significantly at that stage, by that stage and there were one or two people in Reading who were interested in computing. But again I managed to persuade the university at that stage that we all ought to have computers and I was using them for administrative purposes, you know sorting out timetables and all that kind of thing. So that was one of the things that I managed to get done while I was there, to get the whole faculty computerised. That was fairly early. Yes, helped by a nice man called John Murdoch in particular, who has made a bit of a thing of this.

Also while I was in Reading, I had a very good friend in the sociology department, a man called Tank Waddington, P P A J Waddington<sup>36</sup>, who was about 6' 6" and was an ex-policeman and he was doing quite a lot of work on the public... the implementation of the Public Order Act 1986, he was able to get access to quite a lot of what was actually going on in the Metropolitan Police, how they were actually policing the Act. So when I was writing my book I had quite a lot of contact with him, yes. Sir Peter Imbert<sup>37</sup> was a good colleague and friend of his and so I became... I got to know him quite well. He was the man who managed the Balcombe Street Siege<sup>38</sup>, I don't know whether you remember that, one of those rather nasty kidnapping sieges in London. But he was very sympathetic to the academic enterprise and so he let Waddington... arranged it that Waddington could go and take part in the organisation of the policing of demonstrations and so forth. So he was writing about that aspect of it and I was writing about the legal stuff, Yes.

**53. It sounds like a very fruitful time.**

It was, yes. I think it was at that stage too that I did join the Middle Temple.

**54. Then you left the chair to take up a lectureship here at Cambridge in 1990.**

Yes, as Glanville had done. Glanville left the chair in London. He became professor of jurisprudence I think it was, hadn't he? But he lived in Cambridge the whole time and he came back to a lectureship and a fellowship at Jesus. I did the same thing

**55. When you returned, I noticed there were several book publications during this period, the time that you returned to Cambridge.**

Yes, that would be right.

**56. You produced your Property Offences and your Harm and Culpability, which was a jointly edited.**

Yes. Now, I wonder whether by that stage we hadn't done a new edition of the other contempt book. I can't honestly remember. Yes. Because I think I was... I might have been made a bencher of the Middle Temple in 1992 that might be it.

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<sup>36</sup> Professor J Waddington, Professor of Social Policy, University of Wolverhampton (2005 - ).

<sup>37</sup> Peter Michael Imbert, Baron Imbert (1933 - ). Commissioner of the Metropolitan Police Service (1987-93), Chief Constable of Thames Valley Police (1979-85).

<sup>38</sup> Balcombe Street Siege involved the Provisional Irish Republican Army (IRA) and the Metropolitan Police Service of London. Lasted 6-12 December 1975. The siege ended with the surrender of the four IRA paramilitaries and the release of their two hostages. Events were televised.



**57. Your “Who’s Who” entry has it as bar and Middle Temple.**

Does it have bencher? Does it say when I was made a bencher?

**58. 2001.**

Okay.

**59. You came back to Cambridge and you lectured. Presumably your specialities were criminal law and public law?**

Yes, and civil liberties at the LLM level. I also did media law. I did a half paper on media law for the faculty.

**60. Right, so in fact that’s an extra six years that you were in Cambridge for, making your ultimate departure perhaps even more of a wrench, but we’ll come back to that later.**

Well, I think I was here for 16 years. 1990 to 2007.

**61. You were awarded a Chair in Criminal and Public Laws in 1996. You were still at Caius.**

Yes. Well as it happens, somebody had left Caius at the same time, so Caius was looking for a fellow in law again, so it worked out very well.

**62. You became chairman of the faculty in ’99 and you had this position until 2001. I wondered whether there were any innovations that you may have brought in during this period.**

Yes. I did work on a few. I think probably the most important one was the Freshfields<sup>39</sup> money, because when I came back the chairman of the faculty was John Baker, and I found him an extremely easy man to work with and get on with and he was very receptive to new ideas, as long as you didn’t say, “Well, in Reading, we did this...” But what I found was that a number of the people in the faculty didn’t have access to computing, particularly people from the poorer colleges. The people from the wealthier colleges were provided with this by the colleges but the people... the others were not, and I took the line that this was something the faculty ought to be doing something about. So we did set up a system, I think using your fund money, whereby people from the colleges who weren’t being supplied could actually get computerised, so it was a mirror of what I was doing in Reading, the same sort of thing. But of course here we weren't simply using computers for administration but also for learning, teaching, research and scholarship.

**63. I didn’t realise that.**

Then it was pretty clear that we were not going to get any government money to help us equip the university and I remember being on various university committees trying to persuade them that you know, the law faculty... sorry, you know, that computing was something in the future, in the law too, could we have some money for it please, and the answer was no we couldn’t. So at that stage we went to the city and we dealt with a very pleasant lawyer called Hugh Crisp at Freshfields. He was an incredibly decent person to work with and they gave us a significant amount of money as you know, for the equipment

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<sup>39</sup> Major law firm: Freshfields Bruckhaus Deringer, formed in 2000 by a merger between Freshfields (UK), Deringer Tessin Herrmann & Sedemund (Germany) and Bruckhaus Westrick Heller Löber (Germany and Austria).



and then for Daniel [LD - Daniel Bates, Freshfields Legal IT Teaching & Development Officer] in effect.

That goes back to my interest in Durham. The other thing that we did was set up the Herbert Smith<sup>40</sup> [LD - Freehills Visiting Scheme] and that was talking to Jonathan Scott at Herbert Smith<sup>41</sup> and I'm pleased to see that that is still running. In fact I was a beneficiary of it when I had six weeks or so here, while I was still the dean at Wellington and met Jonathan in the course of that. The negotiations were tough but I think... you know we thought and you know, my adjutant in all of this I think was Jack Beatson<sup>42</sup>, I think. He certainly was. The other thing I want to mention, where we talked about a whole variety of things. I think at one stage we tried to persuade him to buy a property for us so that we could actually invite somebody and you know, accommodate them and so forth. But I thought that was a step too far. But they have been extremely loyal to us subsequently giving us this funding every year. That meant we can invite people who we wanted to be here and you know... so there was that and then the other thing was the endowment of the D G T Williams lecture. Now, that had been going for a while when I was... when I took over, but there was the prospect of it being endowed by a man called John Nolan<sup>43</sup> who was a good friend of David Williams, an American, an American lawyer in Washington. At a certain point we had to gather up our courage and get in touch with John and say, would you be prepared to do it and he said... wrote back saying yes, how much did we want. I didn't have an idea, so I asked Jack if he would work it out and Jack worked out a figure and we wrote to Nolan and he said by return, here it is.

Although it's tended to be focused on public law which I don't mind, in fact I think Nolan thought it would be a general lecture but as I say it's mainly been public law since, but that wasn't necessarily. I think three institution highlights if you like. There were other events I think, a very memorable event when Lord Bingham<sup>44</sup> came to open a conference on law reporting.

#### **64. I remember that.**

You remember at the beginning that I made a silly joke about where the exits were and if anything went wrong these were the exits and I did sort of gestures like an airline steward. Five minutes into the lecture the alarm bells went and we all had to go outside. So there was that. There was the opening of the history room by the Lord Chancellor, Derry Irvine<sup>45</sup>.

#### **65. That's right. That was a wonderful occasion.**

The resolution of the difficulties with the building... that was really just after I'd taken over and it was in the process of happening, the decisions had been taken.

#### **66. You would still have been around during the translocation, which was very divisive.**

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<sup>40</sup> <http://www.law.cam.ac.uk/herbert-smith-freehills>

<sup>41</sup> Herbert Smith LLP, multinational law firm headquartered in London. Merged with the Australian Freehills on 1 October 2012, forming Herbert Smith Freehills. Formed part of the "Silver Circle" of leading British law firms

<sup>42</sup> Sir Jack Beatson, FBA (1948-), Rouse Ball Professor of English Law (1993 - 2003). Lord Justice of Appeal (2013- ).

<sup>43</sup> John E. Nolan Jr. <https://www.dcb.org/bar-resources/publications/washington-lawyer/articles/may-2003-legends-in-the-law.cfm>

<sup>44</sup> Thomas Henry Bingham, Baron Bingham of Cornhill, (1933-2010), KG, PC, FBA. Master of the Rolls (1992-96), Lord Chief Justice of England and Wales (1996-2000).

<sup>45</sup> Alexander Andrew Mackay "Derry" Irvine, Baron Irvine of Lairg, PC, QC (1940 - ), Scottish lawyer, judge, and political figure, Lord Chancellor (1997-2003) under former pupil barrister, Tony Blair.



**Do you feel, Professor Smith, that the new facility, all glass and steel and so on, is conducive to thinking, academic work?**

I think so. Yes I think so.

**67. Were you in favour of it?**

Ah, I wasn't here when the decision to move over here was taken. I was just talking about the difficulty that we had with the noise when the building first opened and when the glass screen was put right through the middle.

**68. Was that during your time as chairman?**

Well, the implementation of it was, yes. You know, we saw a great deal of the architects at that stage and we came... particularly with the help of Kirsty Allen, who had the major job of refereeing that whole business.

**69. It was a very successful outcome in terms of the screen.**

Yes that's right. The other thing we did during my time was put that little café in down in the basement, that had been just unused and I can't remember whether it was my suggestion but I think it was. I got into a certain amount of trouble about it actually.

**70. I remember there was some criticism.**

That's right.

**71. Now it's inconceivable that there isn't some form of refreshment.**

Yes that's right. So those are highlights. I know that I ought to be thinking more of academic highlights.

**72. Well, this is what I hoped you would... I didn't know of these achievements and, for the record as a faculty history as well as your own history this is.....**

Well, these are when they happened while I was the chair and I'm not claiming credit for them by any means, but I think, you know, it was sort of plotting with a lot of helpful colleagues and I've mentioned Jack Beatson, but there were others, John Spencer<sup>46</sup>, Bill Cornish<sup>47</sup>, various people really.

**73. Yes, a very active dynamic period in the history of the faculty.**

I think it was. Well I think it was consolidating the use of the building really. We'd not had anything like that before. Something that was ours. I tried quite hard to get pictures into the basement on the walls, and spoke with one of the curators of the National Gallery I think, she came down and had a look at it, and we talked for quite a while about the possibility of getting possibly the products of art students' work and putting that sort of thing on our walls on a rotating basis. Because I wasn't very keen on having pictures of, dare I say it, deceased white men, all over the place. I wanted other things really. But the practicalities of it were all too great. All kinds of problems about insurance and what happens if they're damaged and all of that kind of thing, so in the finish it came to nothing. I'm sorry about that.

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<sup>46</sup> John R. Spencer, Professor Emeritus of Law, President of the European Criminal Law Association (UK), Murray Edwards College

<sup>47</sup> William "Bill" Rodolph Cornish, QC (1937-), Herchel Smith Professor of Intellectual Property Law, Cambridge University, 1995–2004, Professor of English Law LSE 1970-1990, Director Centre for European Legal Studies Cambridge, 1990-



**74. I didn't know about that. That's really interesting. You were at Cambridge for 16 years, during which time, in 1999 you were awarded an LLD. This was by the faculty. Any particular comments about that?**

No. Again it's for published works, the various books that I've written.

**75. You became an honorary bencher in 2001.**

Ah, right. Yes that would be right. I wish I'd actually taken a more active interest in the Middle Temple earlier because I've greatly enjoyed my association with it I have to say, and both John Smith and Glanville Williams were Benchers of the Middle Temple, which is why I chose it. But it's a great opportunity for people to mingle with, you know, practitioners, both barristers and the judiciary and so forth. Yes, I greatly enjoyed it.

**76. Professor Smith, you moved in 2007, after many, many years here, it would have been close to over 40 years, in all. That must have been quite a wrench to leave Cambridge.**

Yes.

**77. You took up a chair and a deanship at Victoria University. I wonder why you decided to return to New Zealand.**

Well, it's mainly family reasons. My son... I've only got one son, who is married to a woman, Nicole Moreham, who was a fellow of Caius. He was a student at Sydney, he was a barrister in London and they... it was clear they were going to get married and then they decided that they were going to go back to New Zealand and start a family and so forth. His mother died some time ago, so he was more or less on his own.

The university got in touch with me and said this was a job, would I be interested in it, you know the head hunters, and at first the idea didn't appeal too much because it would have been such a wrench, but on the other hand, the idea of actually being around when they were trying to start a family and so forth was something that did appeal. Victoria was known to be a difficult faculty so it was quite an interesting challenge and I thought, well, I've done this job now in two or three places and it's something that I've had quite a bit of experience at and it would be interesting... you know, an interesting challenge really and so it proved.

**78. Obviously you continued with your research.**

Yes.

**79. In more specialised areas?**

Yes, that was one of the conditions that I put down before I agreed to take the position up. In fact I also wanted to try and teach while I was doing it. But that proved impossible. It was not so much the deanship as the pro vice-chancellorship.

**80. That's a relatively recent appointment?**

No I took that up at the same time. I was in charge of the law faculty and the school government. That meant I was part of the senior management of the university and we met every morning... every week, one morning a week, but it meant being responsible for promotions, for the budgeting for the university, for the strategic direction of the university.

**81. That's a considerable project.**

Yes it was. I got on very well with the vice-chancellor, who had been at St Bede's as it happens. He also had a great interest in cricket, but he was also very supportive, so Yes. It



was very hard work. One of the big challenges for us was the research assessment exercise and we concentrated on that in a quite significant way. I think in 2012 the results came out and we were regarded... we were scored as the most research active university in the country and the faculty was the top faculty in the country. So that was an interesting.....

**82. Yes. Rewarding.**

Yes. Some really tough decisions had to be taken about the way in which the place was working. It wasn't a very happy place when I first got there and some of that... well, I won't expand on that, but there were ways in which it could be made happier without doing terribly much.

**83. It sounds with hindsight that it was a very worthwhile move, Professor Smith.**

Oh yes I think so. I don't regret it in the slightest. I was able to come back here for a short time every year.

**84. Which brings us to your present tenure as the Goodhart Professor. I wonder if you have any special projects in mind for your time as Goodhart Professor?**

Well I've got all sorts of things that I want to write. The publishers want me to write new editions of books which is something I've tried to avoid if possible because I want to do some more innovative stuff. But I've got some minor tweakings... one thing I'd like to do is make Arthur Goodhart<sup>48</sup> himself a rather more better known figure than he seems to be. A lot of people don't seem to be aware of who he was or what he was. He was a very significant figure in a whole variety of ways. There's a significant amount of his papers in the Bodleian, yes, there's quite an archive of his papers. A very interesting man, and as you probably know, he was the editor of the *Quarterly Review* for 50 years. He was HLA Hart's predecessor in the University of Oxford as the professor of jurisprudence, the Master of the University College Oxford. I think he had the great good fortune to inherit money of course, the L stands for Lehman, you know, for Lehman Brothers, the very wealthy firm, until the big crash, of course. But he was very good at fostering relations I think between the judiciary and academics and he was an American of course. One of the things I'd like to do too is to disinter the reasons why it is that the chair in legal science... I've tracked down the organisation in New York which administers the funds which underlie it and I hope to see if they've got the papers on the establishment of the chair... so that's one thing I'd quite like to do. The other thing that I'd like to help with anyway is to get some sense of continuity because at the moment each one has to come in almost cold as it were. I don't, because I know Cambridge reasonably well. So I spoke to Dyzenhaus<sup>49</sup> and went to see the house and so forth and my successors of course are John Laws<sup>50</sup> and the Dean of Yale, you know, Harold Koh<sup>51</sup>. So I'm quite keen on talking to John Laws in advance about what's involved and so there are no surprises and what the opportunities and possibilities are really and whether they're considerable, yes.

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<sup>48</sup> Professor Sir Arthur Lehman Goodhart, (1891-1978). American-born British academic jurist and lawyer, Professor of Jurisprudence, University of Oxford (1931–51), Fellow of University College, Oxford. First American to be the Master of an Oxford college, University College. Annual post of Arthur Goodhart Visiting Professor of Legal Science at Cambridge, is named after him.

<sup>49</sup> Professor David Dyzenhaus, (1957- ) Professor of Law, University of Toronto (1998-), Goodhart Visiting Professor (2014-15). Fellow of the Royal Society of Canada.

<sup>50</sup> Sir John Grant McKenzie Laws, (1945 -), The Rt Hon. Lord Justice Laws, a Lord Justice of Appeal since 1999.

<sup>51</sup> Harold Hongju Koh (1954 - ), Sterling Professor of International Law at Yale Law School, Dean (2004 - 09).





**85. Yes, because I think it can be quite a surprise to scholars who aren't acquainted with the college system. Everything doesn't happen in the faculty.**

Yes, that's right.

**86. Then it can be quite disappointing if that's not accommodated.**

Well, I don't think John will be caught unawares by that because he was at Oxford, but he read Greek... that keeps coming up in his judgments and his articles, yes. So that's a sort of longer term project just to foster some sort of... and possibly even write a sort of handbook for the incumbents that are coming in, the incomers.

**87. Professor Smith, before we end, have you done... presumably you have been teaching as well?**

Yes I have, yes.

**88. Has that been enjoyable?**

Very.

**89. You've been teaching public law I know.**

Yes that's right. That involves as you know, supervising dissertations and we start the business of the presentation this term, I've been preparing for that. So there's that. But I've also been giving a course with David Feldman<sup>52</sup> on legislation and to the best of my knowledge there's not a course on that in the country more or less and certainly there hasn't been here.

**90. There's no course on interpretation of statutes as far as I know.**

No. Well, interpretation is only one small part of it. What we've tried to do is look at legislation as a phenomenon. We spend a great deal of time looking at the common law and you know, how it works and so forth, but not anything like as much on the other great source of law which is legislation. In fact it's by far the bigger, greater source of law and it's been fun teaching it with David Feldman who's had significant experience of the legislative process. He was the legal adviser to the Joint Parliamentary Committee on the implementation of the Human Rights Act<sup>53</sup>, so he has got you know, something of an insider's view on how the legislature actually works. He had written a book relatively recently on aspects of the legislative process and that was when I was at a conference here in September I think, a year or so ago, that I spoke to him and said, "Look, I'm coming to the Goodhart," I don't suppose you'd be interested in trying to work that up into a course, would you? And he agreed to do that. So that's what we've done. So that's a project in itself and whether that gives rise to writing subsequently I'm not sure. I've broached that with him to see whether he might be interested and he didn't say no.

**91. Perhaps when we speak again in the summer you might be able to fill us in on these fascinating ideas and I thank you very much indeed for this account, which is extremely interesting. I'm very grateful to you, Professor Smith. It'll be very well received because you have a special place at Cambridge.**

Well, thank you very much.

Yes. I think I might go off and do some work now. We're going to the film Bridge of

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<sup>52</sup> David Feldman, Rouse Ball Professor of English Law (2004-) Fellow of Downing College, Judge of the Constitutional Court of Bosnia and Herzegovina (2002 - ).

<sup>53</sup> 1998, <http://www.legislation.gov.uk/ukpga/1998/42/contents>



Spies. I don't know whether you've...?

**92. Well I have been on that bridge actually recently.**

Not sighs, spies.

**93. I'm thinking of the bridge just near Potsdam.**

Oh yes, right. It's a new film and it's got Mark Rylance<sup>54</sup> in it. Who is playing the part of somebody who's prosecuted for spying in America, who is prosecuted for spying in America. He was defended by somebody... one of the things that I do in learning the law is... there's a small section on films, lawyers might like to go and see.

**94. I remember that, yes. That will be in addition to the book?**

Yes. I've got to actually see the films before I can.... But I've met Mark Rylance, he's a bencher of the Middle Temple.

**95. Really? Good heavens. I had no idea.**

Yes. He comes quite a bit and my... I say co-author, although he didn't actually do any writing with me, but Arlidge, Tony Arlidge, I was talking about earlier, and Glanville, tried to persuade the Temple or did persuade... he was Master Treasurer for a year and Arlidge was a very keen actor, or he was very keen on theatre and he persuaded the Middle Temple that they should put on Twelfth Night in the Middle Temple on the four hundredth year of its first performance, which was in the Middle Temple. So they put it on with Mark Rylance doing the productions and so forth. So that was wonderful.

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<sup>54</sup> David Mark Rylance Waters (1960 - ), known professionally as Mark Rylance, English actor, theatre director and playwright. First artistic director of Shakespeare's Globe in London (1995 - 2005), Nominated for Emmy, Golden Globe and Screen Actors Guild Awards for playing Thomas Cromwell in the 2015 BBC series *Wolf Hall*

