Just Asking

Semi-Structured Expert Interviews as a Method in Legal Research

Moritz Schramm

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Have you ever wondered why a legal text is the way it is, or whether its implementation actually works as intended? Typically, one would approach such questions by consulting existing textual material, such as *travaux préparatoires*, legal commentaries, literature, or court decisions. If one is extraordinary inquisitive, one might even file access-to-document requests. However, sometimes one cannot escape the feeling that something is missing, or simply struggles to make sense of the heap of material cluttering their computer. In that situation, I suggest, one should do the obvious: talk to people who know better – ideally, the people working on or embodying the phenomenon one intends to research.

One specific – but somewhat irrationally feared – form of talking to people is the semi-structured expert interview. This blog post introduces semi-structured expert interviewing as a method in legal research and shares a few practical insights into how to conduct them.

Before we begin, two caveats seem worthwhile. First, this blog post is not a full guide on how to interview – that would be impossible in a short blog post and is much better done by others. For example, consider the excellent article by Emilia Korkea-Aho and Päivi Leino-Sandberg or the book by Anna Galletta. If you feel particularly inspired, have a look at the most recent book by the great Robert Caro (although Caro's interviewing, of course, is a wholly different exercise than what I discuss here). Second, this post is merely an appetizer, offering a general overview of semi-structured interviewing in legal research. It discusses the interviewing broadly because socio-legal work remains relatively uncommon in Europe. Moreover, it outlines only the general principles/findings of interviewing, since talking with an EU officer and a national civil servant is fundamentally the same. While these two may differ in habitus and discuss distinct topics, the broader methodological questions explored here remain largely similar.

What is semi-structured expert interviewing?

By *semi-structured expert interviewing* I refer to conversations the researcher conducts with people deemed knowledgeable about the phenomenon related to the research.

Not every conversation is an *interview*. Interviews are typically signified by being prepared, related to a research script and, crucially, conducted as such and to the knowledge of the interviewee. Interviewees must be aware of the fact that you talk to them because you want to learn from them for your research and that you will use what they say for your research. In short, interviewees must give informed consent, ideally written.

For an interviewee to be an *expert*, their knowledge usually stems from some professional context. For example, one could interview city planners and architects on how they perceive and deal with new zoning laws. I use the term *expertise* here to differentiate *experts* from other people involved, for example those who are directly affected or potentially marginalized. Interviewing the latter requires a host of more sophisticated considerations, which go beyond my expertise. However, if one also wants to interview people affected by the experts – e.g., communities potentially adversely affected by the implementation of these zoning laws – one should particularly focus on issues like vulnerability and power imbalances, which are usually less of an issue when interviewing experts.

Interviews are qualitative, as opposed to quantitative, when they are in-depth, responsive conversations with people rather than rigidly pre-structured, survey-

based queries. The goal of semi-structured expert interviews is to retrieve information that would be otherwise inaccessible. To do so – and this is, in my opinion, the biggest advantage vis-à-vis rigidly structured, more quantitative forms of social inquiry – one must give the interviewee some space for their personal narrative and subjective perspective.

Why semi-structured expert interviewing?

Simply put, qualitative interviews enable the object of study to narrate itself. It is an inherently reflexive exercise. And it makes sense, doesn't it? Legal research is, at the end of the day, exploring social practice. Law is created and applied by people. People talk about the law, read it, argue about it, and so forth. So why not talk to the people who do all these things to better understand why they decided A and not B, through which processes, and under what constraints?

Interviewing is, therefore, a double corrective. On the one hand, it corrects outside normative projections on often complicated and convoluted practices. Typically, one has a less clear normative perspective after conducting interviews than before. From my personal experience, I can say that the interviews I conducted over the past three years fundamentally called into question several normative priors I had and, eventually, added nuance to the final research outcome. On the other hand, interviewing may correct factual misunderstandings of opaque practices. How does an organization function? Who are the people in the room making this or that decision? There are various objective facts – quite different from agents' psychological motivations, something typically not really accessible through qualitative expert interviewing – that one can learn from interviewees. These facts may explain a lot and are often overlooked simply because nobody dared to ask.

Often, interviewing changes and complexifies previously held perspectives. It opens new questions. Interview-induced detours usually make the final research output much more nuanced and yield a better, more realistic understanding of what is going on.

Ok, but I'm not a social scientist

One main concern, when contemplating whether to conduct interviews, is lack of training. Most lawyers do not have a social science or psychology degree, let alone training in interviewing. It is important to identify this knowledge gap and take it seriously.

That gap is, however, not a reason to categorically rule out interviewing for lawyers. In fact, I believe lawyers, who are involved in interviewing – in conducting the interviews themselves or designing interview scripts – can contribute significantly *because* they are lawyers. Especially when interviewing legal professionals, with all the jargon and legalese, non-lawyers often have a difficult time carving out the legally important aspects.

Interviews in legal research are, in that sense, inherently interdisciplinary, as they incorporate a method that is typically foreign to traditional legal research. Interdisciplinary work always has to strike the delicate balance between, on the one hand, bringing two disciplines together and productively pairing them and, on the other hand, not butchering the whole endeavor by inadvertently violating core principles of one of the disciplines.

Consequently, interviews will require extensive preparation, training, and planning. One should talk to people who have conducted interviews. One should thoroughly investigate different types, methods, and approaches as well as potential university guidelines and how interviews make the most sense for the specific research project. Ideally, one conducts formal training, takes a course, or attends a workshop. If you have one, talk to your supervisor – but come with a plan, as most law professors might not have much experience with interviewing either. If you do not have a supervisor, talk to colleagues who might have experience in interviewing, lawyers and social scientists alike.

Contemplating, preparing, setting up, conducting, and analyzing the interviews takes a lot of time. Just to give an impression – in my case, I prepared for roughly eight months before I conducted my first interview, and then it took more than two years to finalize them.

But don't be immediately discouraged by the required effort. So far, I have not talked to a single person who ventured down the path of conducting interviews who said it was not worth it.

But will these experts talk to me?

Facilitating interviews with experts – particularly legal professionals – often poses a formidable challenge, largely due to issues of accessibility, attorney-client privilege, and transparency. Put simply, not every lawyer will agree to speak with you on agreeable terms, and some may refuse to answer certain questions altogether. Addressing these accessibility hurdles, along with often legitimate confidentiality concerns, requires considerable time and effort – and may not always yield results. That is ok.

Access to insiders of large organizations can be quite challenging. The practical constraints of trade secrets, political expediency, and (understandable) institutional interests in control over the narrative may significantly complicate retrieving information from experts who have a specific economic or political interest, especially so if those experts are embedded into an organization. For example, as legal researchers had to discover through access-to-documents requests, the EU is not always the paragon of transparency in this regard (again, crucial digging being done by Päivi Leino-Sandberg). Ultimately, fostering openness may be a matter of gradual cultural change: the more researchers request documents and seek interviews, the more normalized these practices will become, raising the justificatory burden for stonewalling. With persistence, trust-building, and clear communication on how the material will be used, you may find that some – perhaps even many – experts will agree to participate. And when they do, such interviews can be invaluable.

How to formulate questions

Let's return to the various textual sources we began with. In legal research, interviewing is unlikely to ever be the primary source. Rather, it typically serves as a supplementary one, especially compared to research in sociology or psychology, where studies are often based solely on interviews. This fact, incidentally, eases much of the pressure on the interviewees themselves. Most legal research is text-based: legislation, decisions, contracts, press releases, journal articles, etc. Regularly, conducting interviews does not replace reading and analyzing all these documents but merely complements already conducted analyses.

In our above example of interviewing city planners, it would be crucial to begin with a thorough analysis of the zoning laws, the local budget, the laws, decisions, and literature on the topic. Then, as you have an idea of what's going on, formulate a hypothesis and several questions.

When formulating questions, it is absolutely crucial to structure them in an open-ended way. Avoid the terminology you want to hear or the concept you are after in your question. Dropping that concept prematurely in your question will bias your interviewees' thought processes, language, and the whole conversation. One should give the interviewees the opportunity to provide their version of what they think is valuable or even nudge you towards other aspects you had not yet considered but which might be as important.

Accordingly, I recommend what I call the *funnel technique*. Begin with a really broad question – for example, "How would you describe your work?" or "What is it that you do?" I also often asked "How did you end up in your current position?" This allows interviewees to connect their job and expertise with their personal stories, which is often very illuminating and opens the window to the human dimension and idiosincrasies behind many practical decisions. Then, based on the answer, one may further refine the questions using the terminology introduced by the interviewee. For example, if the interviewee says, "I work for the city planning department, and the main task of my job is to improve the quality of life in our city," you could ask, 'Interesting, how would you define quality of life?" And then, step by step, one gets a better understanding of the interviewee's thinking – or at least the aspects of the thinking that the expert is willing to share.

People are complicated

Interviewees do not remember or know everything. Or sometimes they actually know but seek to deceive you or at least highlight certain things and sweep others under the rug. Especially professionals might be skilled – and lawyers usually are – in narrating a story in a certain way. They might use certain vocabulary, veer off course to muddy the waters of what you thought was a clear-cut normative case. This can be a valuable nuance because few things are, in fact, clear-cut. However, occasionally it may be just a narrational tactic to shift the focus. Such argumentative tactics of interviewees can be insightful in and of themselves. They can, however, also lead to confusion or, in the worst case, to the researcher doing the bidding of the interviewee.

One way to eliminate the danger of losing critical distance and being manipulated by the interviewee – and in expert interviews, at some point those risks usually manifest at some point – is to get a diverse set of perspectives. One should talk to different people, both inside and outside of the the subject of the analysis. One can use snowball sampling – that is, asking each interviewee for additional people to interview and, if possible, explicitly seeking out those with different perspectives.

The expert-bambi dichotomy

A crucial advantage of interviews conducted by lawyers is the expertise of the interviewer themselves. Sometimes, legal experts – judges, lawyers, activists, politicians – are more willing to talk openly and seriously if they have the impression that the interviewer herself is an expert in the field, at least to a certain degree. Sometimes it is exactly the opposite. I call this the *expert-bambi dichotomy*.

Sometimes, one must show that one is an expert oneself. Only then do people – and often it's men – take you seriously and might even develop a genuine interest to help and support you, whereas they are – busy as they undoubtedly are – quickly annoyed by someone whom they perceive as unable to fully comprehend and appreciate what they are saying.

According to many conversations I had with colleagues who supervised interviewing of lawyers by non-lawyers, this is a common phenomenon. Think of a hypothetical high-profile judge who might easily deceive or simply talk down to an ethnographer or psychologist who tries interviewing them about the law. However, once another lawyer is present, that very same judge might share much more comprehensive information – especially because interviewers who are lawyers can follow up.

It is important to clarify in preparation for the interview what exactly one intends to find out. Psychological aspects – what are hidden psychological motives – might be hard for lawyers to properly assess, as those are even complicated for psychologists. More mundane legal and organizational subjects – what are the main documents you consult, who came up with a particular argument, did you consider some other point? – may be very illuminating and retrieved simply through conversing.

Yet, every now and then, the interviewer may mask their knowledge and simply, continuously ask "why" or "what do you mean by that". To come back to our city planning example, it would be interesting to know what exactly city planners mean when they want to improve the quality of life in a city. And, crucially, why they think so. Such why questions are best asked – like Bambi – with metaphorical big and innocent eyes. To ask as if you have no preconception, and to be entirely open to whatever the interviewee might say, may tease out the unexpected.

Making sense of interviews

Whatever it is you tease out should not be psychologized or scrutinized in some form of crooked remote diagnosis. People are complicated. They have various, conflicting motives, and it is impossible to clearly tie simplistic projections of what the interviewer perceives to be the motives of the interviewee to the latter's concrete actions. Yet, if one conducts enough interviews, one can get a general impression of prevailing arguments, perceptions, and communicated goals, which may help to make some sense of individual or group behavior.

Once the interviewer obtains a general impression, it might make sense to revisit the textual material and rethink your positionality. Often, in the light of the interviews, one begins to understand legal or policy documents differently, recognizing the factional struggles hidden in odd phrasing, and the definitional skirmishes imbuing otherwise nondescript paragraphs.

In the end, once the interviews are conducted, data analyzed, and the research complete, one may likely look back on a process that was exhausting, challenging, and ultimately enlightening. This journey won't just deepen your understanding of the subject matter; it will also broaden your perspective on how law and institutions truly function – or at least, that's what I hope interviewing has done for me. And to think – all of this insight, simply from a few good conversations.

ABOUT THE AUTHOR

Moritz Schramm

Moritz Schramm is an Adjunct Professor of Law and Research Scholar at New York University, member of the Verfassungsblog Advisory Board, and holds a PhD from Humboldt-University of Berlin.

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