"To See Between":[1]

Interviewing as a Legal Research Tool

Susan L. Turley*

You talkin' to me? You talkin' to me? You talkin' to me?[2]

For lawyers doing scholarly research, the answer frequently is "no." Legal researchers often seem wedded to the memorialized, printed word, leaving them reluctant to look elsewhere.[3] While valid reasons support a general preference for documents as source material, legal writers do themselves, their audience, and the profession a disservice when they fail to explore all research options.

One of those options is the interview, defined as, among other things, a "conversation, such as one conducted by a reporter, in which facts or statements are elicited from another."[4] Lawyers at times relegate interviews to client intake or counseling sessions or to witness preparation—or they view them, as does the dictionary, as the purview only of reporters and others charged with newsgathering.

1 The word origin for interview reveals this meaning: "French entrevue, from Old French, from feminine past participle of entrevoir, to see: entre-, between (from Latin inter-; see inter-) + voir, to see . . . ." *American Heritage Dictionary of the English Language* (4th ed., Houghton Mifflin 2009) (available at Dictionary.com, http://dictionary.reference.com/browse/interview).

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2 *Taxi Driver* (Columbia Pictures 1976) (motion picture).

3 While it is difficult to prove a negative, see e.g. Roy M. Mersky & Donald J. Dunn, *Fundamentals of Legal Research* (8th ed., Found. Press 2002); S. Ill. U. Sch. of L. Lib. *Research and How to Guides*, http://www.law.siu.edu/lawlib/guides/ (accessed Dec. 16, 2009). Neither discusses interviewing as a legal research method. One research text does provide a short, indirect mention, noting that sometimes "it may be more efficient to send an e-mail or make a telephone call" as a beginning research step. Morris L. Cohen & Dent C. Olson, *Legal Research in a Nutshell* 16 (8th ed., West 2003). "The ABA describes legal research as, among other things, including a familiarity with, and relationship between, the following: case law; statutes; administrative regulations and decisions; rules of court; restatements; and secondary legal materials such as treatises, digests, annotated code compilations and loose-leaf services." Patrick Meyer, *Law Firm Legal Research Requirements for New Attorneys,* 101 L. Lib. J. 297, 299 (2009). Interviews are not on the list, nor are they discussed anywhere in the article, which focuses on issues such as "the need to take an integrated approach to research (not relying solely on online research, but using print and online sources interchangeably) and to learn why and when to use secondary sources and finding aids." *Id.* at 303.

4 *See American Heritage Dictionary*, *supra* n. 1, at "interview."

Such a perspective, however, ignores the similarities between the law and journalism. It also overlooks the realities of what legal writers should hope to accomplish through legal research and writing and how interviewing can help achieve those goals. This article posits that interviewing people is a valuable yet underutilized research tool. To do so, it briefly examines the parallels between journalism and the law and explores why the law often seems to prefer print over people. It then discusses how and why interviews have proven worthwhile in legal research and how they can be even more useful. After looking at the interviewing training (or lack thereof) that lawyers receive, the article closes with suggestions for effective interviewing, including examples from the author's own experiences.

Parallels Between Law and Journalism

Almost 50 years ago, writer Norman Mailer said, "Once a newspaper touches a story, the facts are lost forever, even to the protagonists."[5] While perhaps some would apply the same sentiment to lawyers, that quality is not where the only similarities lie.[6] Ultimately, both professions are—or should be—about storytelling.[7] Journalists have for years clung to the "just the facts" theory of objectivity, but even with that premise, the most compelling news reports are those that harness narration's impact.[8] The very act of choosing *which* facts to report and *how* to report them not only

5 The Quotations Page, *Quotations by Subject: Journalism,* http://www.quotationspage.com/ subjects/journalism/(accessed Dec. 17, 2009).

6 An online search for "lawyer turned journalist" returns crossovers such as CNN staffer Jeffrey Toobin, a Harvard Law School graduate who notes his surprise that "there are people going to law school because they want careers on television." Diane Clehane, *So What Do You Do, Jeffrey Toobin, Author?* www.mediabistro.com/articles/cache/a9909.asp (Oct. 10, 2007). On the flip side, the general counsel of Gannett Co. is a former journalist who became an attorney. Gannett Co., *Kurt Wimmer Named Gannett Senior Vice President, General Counsel,* http://www.gannett.com/news/pressrelease/2006/pr072506b.htm (July 25, 2006).

7 *See e.g.* Richard K. Sherwin, *The Narrative Construction of Legal Reality,* 6 J. ALWD 88, 93 (2009) (discussing the "heightened sensitivity to the importance and persuasiveness of storytelling in the law"); Nancy Levitt, *Legal Storytelling: The Theory and the Practice—Reflective Writing Across the Curriculum,* 15 Leg. Writing 253 (2009).

8 A good example is the opening of this 2008 Pulitzer Prize winner for breaking news reporting:

> BLACKSBURG, Va., April 16—An outburst of gunfire at a Virginia Tech dormitory, followed two hours later by a ruthless string of attacks at a classroom building, killed 32 students, faculty and staff and left about 30 others injured yesterday in the deadliest shooting rampage in the nation's history.
>
> The shooter, whose name was not released last night, wore blue jeans, a blue jacket and a vest holding ammunition, witnesses said. He carried a 9mm semiautomatic and a .22-caliber handgun, both with the serial numbers obliterated, federal law enforcement officials said. Witnesses described the shooter as a young man of Asian descent—a silent killer who was calm and showed no expression as he pursued and shot his victims. He killed himself as police closed in.

Ian Shapira & Tom Jackman, *Gunman Kills 32 at Virginia Tech in Deadliest Shooting in U.S. History*, Wash. Post A1 (Apr. 17, 2007) (available at http://www.pulitzer.org/archives/7803).

influences the article's slant, but shapes its narrative power.[9]

For lawyers, the field abounds with tips on using storytelling to enhance advocacy.[10] Depending on the forum, a lawyer may be free to choose which facts to highlight, or he may have to decide how to impart or control unfavorable or unpleasant information. Again, the very ways an attorney obtains and conveys the facts will impact both his advocacy's message and its result.

Both the legal writer and the journalist have numerous constraints: deadline pressures, restricted time or space in which to convey information, concerns about the data's accuracy, and a limited attention span on the part of the recipient, who often knows little or nothing about the subject at hand—and sometimes cares even less. Persuasive storytelling, rooted in efficient research and preparation, can overcome many of these obstacles for both professions.

News reports (as opposed to analysis, opinion, or other similar articles) seldom rely on anything other than first-hand accounts, quotes the reporter obtained directly from the source and the occasional official government document (e.g., police reports or court filings). Reporters understand that the best way to harness the power of storytelling is to find someone with a good story—and have him tell it.

To practice law, all attorneys have to gather stories from people, most fundamentally clients and witnesses. Recognizing this, most law schools offer training in client interviews.[11] Outside the clinical setting, however—for example, in scholarly research—legal writers seem hesitant to cite conversations with living, breathing sources in their footnotes.[12]

9 Consider the difference in describing hundreds of people as a "large group," a "tightly packed crowd," a "teeming mob," or a "huddled mass." *See also* Christopher T. Caldiero, *Crisis Storytelling: Fisher's Narrative Paradigm and News Reporting,* 9 Am. Comm. J. (Spring 2007) (asserting that reporters use certain "narrative types . . . regardless of the specific crisis being covered").

10 *E.g.* Faculty, The Judge Advocate General's School, U.S. Army, *The Art of Storytelling,* Army Law. 30 (Oct. 1999); John D. Mooy, *Advocacy and the Art of Storytelling,* (NITA 1991) (DVD); Symposium, *Once Upon a Legal Time: Developing the Skills of Storytelling in Law,* 14 Leg. Writing 1 (2008); *see also* sources cited in *supra* n. 7.

11 William and Mary Law School, for example, has a "Legal Skills Program" in which students conduct an initial (simulated) client interview, document the results, draft a memo, and then conduct a follow-up interview with the client. William & Mary Law School, *Legal Skills Program, Curricula Details, Legal Skills I Criteria,* http://newlaw.wm.edu/academics/programs/jd/requirements/legalskills/curriculardetails/index.php (accessed Dec. 22, 2009). *See also* Roy Stuckey et al., *Best Practices for Legal Education: A Vision and a Road Map* 62 (2007) (stating that interviewing skills are one of the fundamentals of the "craft of law"); *infra* nn. 77–90 and accompanying text.

12 *See* Michael DeStefano Beardslee, *Advocacy in the Court of Public Opinion, Installment One: Broadening the Role of Corporate Attorneys,* 22 Geo. J. Leg. Ethics 1259, 1263 n. 9 (citing a study in which the "editors mention interviews of lawyers, judges and journalists but fail to explain any details, interview methodology, or the number of interviews"); Robert Richards & Nancy Ross, *Practical Issues in Assignments for the Benefit of Creditors,* 17 Am. Bankr. Inst. L. Rev. 5, 5 n. a1 (2009). In that footnote, Richards and Ross similarly acknowledge "the valuable input from interviews with many others about their practical experiences with ABCs" (assignments for the benefit of creditors). Yet they do not cite a single interview in their ninety footnotes. That is not to say that the sources they do cite are lacking—they are not, as they consist almost entirely of case law, statutes, and law reviews. However, it does leave one wondering what "valuable input" these interviews in fact provided.

Preference for Print over People

This hesitance, to some extent, grows out of the legal profession's dichotomy between preferred sources for in-court proof and substantiation for scholarly writing and research. In court, advocates seek the "best" or "primary" evidence—generally the original;[13] when it comes to testimony, the law explicitly favors hearing from the original source in person.[14] Outside the courtroom, live "testimony" will admittedly not always be the "best evidence" for legal scholars. Yet, just as courtroom advocates must evaluate and select from a number of tactics for presenting their case, legal scholars should also—but generally do not—assess whether to use interviews in scholarly research and writing.[15]

In some cases, of course, a researcher cannot conduct an interview because the source is dead or otherwise unavailable.[16] One way to resolve the debate over what Thomas Jefferson meant when he wrote about "building a wall of separation between Church & State"[17] would be to ask Jefferson himself. Lacking that ability, scholars generally rely on published materials. Another reason legal writers may depend exclusively on written documents is the justifiable priority given to the sources of primary authority—"statutes, constitutions, administrative regulations issued pursuant to enabling legislation, and case law"—that are binding on courts (and thus most compelling).[18] This rationale, however, loses validity when applied to secondary sources or materials.

Consider the Bluebook's order of secondary sources within each signal. Books are second, followed by journals, while newspapers are a middling seventh. Interviews do not merit even a specific call-out but fall under "unpublished materials not forthcoming," which occupies the

13 *See* Black's Law Dictionary 160 (6th ed., West 1990) (discussing "best evidence" and the "best evidence rule").

14 *Id.* at 722 (explaining hearsay's "weakness" under the law and thus its general inadmissibility).

15 A Westlaw query for the word "interview" in the Harvard Law Review over the last three years returned 42 results, of which only seven involved interviews the authors themselves conducted with sources. Search conducted Sept. 8, 2009 (results on file with Author). Results of the same search in the Stanford Law Review were similar—out of 45 articles, only eight used author-conducted interviews. *Id.* A search among all U.S. law reviews and journals published in the past five years on Lexis for "interview" in the same sentence as "research" produced 1544 articles. *Id.* Not one dealt with interviewing as a research method outside of the witness or subject interview (for example, forensic interviewing of child victims). *Id.*; *see also supra* n. 3 (noting the lack of discussion of interviews as a research method in several texts).

16 *See Social Work Research and Evaluation: Quantitative and Qualitative Approaches* 248 (Richard M. Grinnell Jr. & Yvonne A. Unrau eds., 7th ed., Oxford U. Press 2005) ("An obvious limitation of research interviews is that the investigators may have a hard time getting to the interviewees.") For many footnotes, I have deliberately used non-legal sources because interviewing is a well-accepted research method within the social sciences. *See infra* nn. 71–75 and accompanying text.

17 Ltr. from Thomas Jefferson to Nehemiah Dodge *et al.,* (Jan. 1, 1802) (available at http://www.loc.gov/loc/lcib/9806/danpre.html).

18 Mersky & Dunn, *supra* n. 3, at xxxiv.

penultimate slot (surpassing only electronic sources).[19] What makes a book or journal more authoritative than an in-person interview?

One response might be that books and journals, before publication, were scrupulously researched by the authors and rigorously reviewed by editors, and afterwards, withstood public scrutiny and gained public acceptance. Or put another way, age and examination equals reliability—just as the longer a decision has stood even after being reviewed and the more often others have cited it as authority, the greater the precedential value.

However, neither publication nor a wide readership makes a written work infallible. The *New York Times,* considered by most other media to be the "most revered newspaper" in the United States,[20] had to admit in 2003 that one of its reporters had plagiarized, lied or otherwise deceived the newspaper and its readers in about half the articles he wrote.[21] On the other hand, *The National Enquirer,* considered by many to epitomize tabloid journalism, claims to be "the best selling newspaper in America," with a readership of more than 9.7 million.[22] The *Enquirer,* the newspaper asserts, "has been getting it first, getting it fast and getting it right for over 70 years,"[23] yet lawsuits for defamation, libel or other inaccuracies against the tabloid are a frequent occurrence.[24]

Similarly, the passage of time may mean only that the flaws in a written work have not yet been discovered. It took more than 25 years for some cases of plagiarism by Steven Ambrose, author of *Band of Brothers,* to surface.[25] James Frey's purported memoir, *A Million Little Pieces,* hit the publicity jackpot—Oprah Winfrey's selection for her book club—before it was exposed as a lie three years after it was published in 2003.[26]

19 *The Bluebook: A Uniform System of Citation* 51, 148 (Colum. L. Rev. Assn. et al. eds., 18th ed., Harv. L. Rev. 2005).

20 Paul Harris, *America's Most Revered Newspaper Is Latest to Be Hit by Financial Woes,* Observer, http://www.guardian.co.uk/media/2009/jan/11/new-york-times-credit-crunch (Jan. 11, 2009) ("It is hard to overstate the place that the *New York Times* holds in American journalism.").

21 Jayson Blair wrote for the newspaper for nearly four years. During that time, "[h]e fabricated comments. He concocted scenes. He lifted material from other newspapers and wire services. He selected details from photographs to create the impression he had been somewhere or seen someone, when he had not." *Times Reporter Who Resigned Leaves Long Trail of Deception,* N.Y. Times N1 (May 11, 2003).

22 The Nat'l Enquirer, *2009 Direct Response*, http://search.rja-ads.com/pdfs/demographics/natenq-demographics.pdf (accessed Dec. 29, 2009).

23 *Id.*

24 *See e.g.* Iver Peterson, *The National Enquirer Cuts Back on Sensationalism, but Is Still Haunted by Its Past,* N.Y. Times D11 (Sept. 8, 1997) (noting that celebrities had recently filed six lawsuits against the paper).

25 Ambrose was first accused of plagiarizing passages in his book *The Wild Blue.* Fred Barnes, *Stephen Ambrose, Copycat*, The Wkly. Stand. 27 (Jan. 14, 2002). Later, reporters discovered four other cases of plagiarism in that book and other Ambrose books written between 1975 and 1997. David Plotz, *The Plagiarist: Why Stephen Ambrose Is a Vampire*, http://www.slate.com/?id=2060618 (Jan. 11, 2002).

26 *See* Evgenia Peretz, *James Frey's Morning After,* Vanity Fair, http://www.vanityfair.com/culture/features/2008/06/frey200806 (June 2008) (discussing the events leading up to the publishing scandal and Frey's life afterwards). These examples

It is simply specious to argue that works that were written decades or even centuries ago are, simply by virtue of their age and apparent public acceptance, somehow more authoritative, reliable references. The truth is people lie,[27] cheat and steal—and they have done so for hundreds of years.[28] The corollary is that some lies and inaccuracies have become accepted as truth only because earlier societies lacked the tools to expose them, whereas today's technology has made it easier—and quicker—both to deceive or take literary shortcuts and to catch the perpetrators.[29]

While it may be an interesting intellectual exercise to imagine how many "classics" might lose that title if the Internet had existed when they were written, this article is not intended to attack the validity of published materials as source documents. Nor will every research and writing endeavor benefit from interviews. The point is that printed works should not be the lawyer's *only* research references, because interviews offer unique advantages that attorneys should at least consider when they begin their research.

Interviewing's Value to Both Information Gathering and Delivery

Everybody lies.[30]

During a 26-month assignment as the Air Force equivalent of a public defender, I concluded that all my clients distorted "reality" in their

are just two of the more public incidents of deliberate deception in published works; space does not allow compiling an exhaustive or even representative list.

27 Apparently they lie not only in the books they write, but about the books they read. A 2009 survey found that two-thirds of British readers have misrepresented their reading habits. The most lied-about book was George Orwell's "1984," while the Bible came in fourth on the top 10 list. *Most Britons Have Lied about the Books They Read*, Reuters (Mar. 5, 2009) (available at http://uk.reuters.com/article/lifestyleMolt/idUKTRE5244Q220090305?sp=true).

28As Samuel Johnson supposedly said in the eighteenth century: "Your manuscript is both good and original. But the part that is good is not original, and the part that is original is not good." *The Samuel Johnson Sound Bite Page*, http://www.samueljohnson.com/apocryph.html#3 (accessed Dec. 22, 2009). Ironically, the site also notes that this comment is not found in any of Johnson's works or biographies. *Id.*

Admittedly, many well-respected authors have found themselves accused of plagiarism. For example, Clausewitz's "On War," written between 1815 and 1831 (Carl von Clausewitz, *On War* (Peter Paret & Michael Howard trans., Princeton U. Press 1976)), is perhaps one of the most revered works in American military studies. *See e.g.* Christopher Bassford, *Clausewitz in English: The Reception of Clausewitz in Britain and America, 1815–1945*, 3 (Oxford U. Press 1994) (calling the book "the bible of many thoughtful soldiers" and a "major, direct influence on American military doctrinal writing"). However, a contemporary, Swiss military theorist Antoine-Henri Jomini, accused Clausewitz of plagiarizing his works. Antulio J. Echevarria II, *Clausewitz and Contemporary War* 19 n. 31 (Oxford U. Press 2007) (noting that Jomini called Clausewitz an "unscrupulous plagiarist, pillaging his predecessors").

29 *See e.g.* Andrew Beck et al., *Communication Studies: The Essential Introduction* 19 (2002) ("Widespread access to the Internet has made plagiarism more prevalent in some academic disciplines."); Kimberly Chase, *Teachers Fight against Internet Plagiarism,* Christian Sci. Monitor 12 (Mar. 2, 2004) ("Across the country, educators have become savvier about using a combination of in-class writing samples, Internet search engines, and antiplagiarism technology to beat the cheating scourge.").

30 *House M.D.*, "Pilot" (Fox, Nov. 16, 2004) (TV broad.).

explanations to me. Some blatantly, deliberately manipulated their version of the truth; others unconsciously shaded the facts out of fear, embarrassment, denial or guilt. If, therefore, lawyers accept that at least some of the people will lie some of the time, then the issue for the legal researcher is how to best detect the falsehood, whether intentional or otherwise.

With documentary resource material, the researcher must either accept what is written at face value or find another printed source to rebut it. Printed sources may offer few, if any, clues, to help discern the authors' biases, prejudices, or preconceived agendas that may have shaped their writing. Yet legal writers frequently take them, literally, at their word, seldom stopping to think how much the courts prefer first-hand assessments of source and witness credibility.[31] While lawyers are not and should not be human lie detectors (the claims of television series and books notwithstanding),[32] legal researchers should recognize that interviewing offers a distinctive opportunity to evaluate a potential source's reliability.

Compare the flat page, which offers no chance for dialogue, to the live interview. If a researcher does not understand an answer, he can ask for explanation right then and there.[33] If a source appears hesitant, hostile, or confused, the interviewer can immediately probe for the reason. If a response seems incomplete, biased, or otherwise lacking, the researcher can pose follow-up questions until she gets what she needs.[34] All these situations provide valuable opportunities to weigh the credibility and validity of a source, even (or perhaps especially) when the researcher realizes the interviewee is not going to provide a satisfactory reply. [35]

31 *See e.g. Manzi v. Texas*, 88 S.W.3d 240, 243 (Tex. Crim. App. 2002) (reaffirming "the long-standing rule that appellate courts should show almost total deference to a trial court's findings of fact, especially when those findings are based on an evaluation of credibility and demeanor").

32 The 2009 television season saw the debut of "Lie to Me," a series centered around "deception detection" and based on the "genuine . . . science" pioneered by Dr. Paul Ekman. Michael Fleming, *Tim Roth to Star in Fox's 'Lie to Me,'* Variety 1 (June 30, 2008). Ekman has his own web page on reading "microexpressions" and using other emotional awareness tools to catch liars at http://www.paulekman.com/(accessed Mar. 5, 2010).

33 *See* Grinnell & Unrau, *supra* n. 16, at 251–54 ("The major advantage of unstructured interviews is that the interviewer has almost unlimited freedom to . . . seek in-depth clarification of their answers . . . .")

34 *See* Gen. Acctg. Off., *Using Structured Interview Techniques* 14 (June 1991) (available at *www.gao.gov/special.pubs/pe1015.pdf*) [hereinafter GAO, *Interview Techniques*] (noting that interviewers can often persuade otherwise recalcitrant sources to "provide truthful answers in a telephone or face-to-face interview" and "a well-trained interviewer can recognize when a respondent is having a problem understanding or interpreting a question"). *See infra* n. 39 for an explanation of the GAO's name change.

35 "One drawback of interviews as a research technique is that what people say may be at cross-purposes with what they do. Interviewees have beliefs and prejudices that influence their perceptions of events and issues." Peter Ross & Greg J. Bamber, *Strategic Choices in Pluralist and Unitarist Employment Relations Regimes: A Study of Australian Telecommunications,* 63 Indus. & Lab. Rel. Rev. 24, 25 (2009) (internal citations omitted). While no method can totally negate such biases, the more training and experience an attorney has in conducting interviews, the better he or she will be in detecting them. *See infra* nn. 100–62 and accompanying text for tips on conducting interviews.

Interviews can provide information available nowhere else, especially in areas of new or developing law. [36] During my LL.M. studies, I wrote about online reverse auctions in government contracting, a relatively new technique at the time.[37] At the time, "no court ha[d] ruled specifically on reverse auctions, although several ha[d] addressed auctions in general . . . [and] there ha[d] been only two reported reverse auction protests"[38] to the (then) General Accounting Office.[39] Lacking primary source material, I turned to interviews and spoke with representatives from the Army, Navy, and Air Force, a reverse auction provider, and an industry attorney.

I could tell from published news and magazine reports that the three military branches had implemented their programs differently. What I could not discern was why, but the interviews gave me that information and much more. Nearly one-fifth of my footnotes—59 out of 313—depended at least in part on the interviews. My sources provided me with a two-year table of Army auctions,[40] first-hand perspective on maintaining supplier relationships,[41] personal encounters with technology glitches,[42] and real-world experience to counter or sustain critics and supporters' claims about reverse auctions.[43]

For other topics, primary sources may never provide the needed research material, especially for the researcher trying to prove a negative. If a dispute never results in even a case filing or if a law never results in a criminal charge, let alone a verdict, opinions and rulings offer little help.[44] In 1993, a California law student analyzed the deterrent impact of a federal civil rights statute on police brutality. As she found out, "[c]ase law does not tell much of the story, since deterrence cannot be measured in judicial opinions. Thus, much of the material for this Note was obtained from interviews with attorneys, legislators, city officials, police officers, and

36 *See e.g.* William W. Sapp, *Field Citation Programs: The "Ticket" to Better Environmental Compliance,* 20 Colum. J. Envtl. L. 1, 1 n. 3 (1995) (explaining that "because many of the field citation programs do not have a formal statutory or regulatory basis, telephone interviews remain the best source of information available").

37 Susan L. Turley, *Wielding the Virtual Gavel—DOD Moves Forward with Reverse Auctions,* 173 Mil. L. Rev. 1 (2002). A reverse auction is an auction in which participants bid down the price, with the winning (i.e., lowest) bidder earning the right to sell the auctioned product to the auction holder. *Id.* at 3.

38 *Id.* at 17.

39 In 2004, it became the Government Accountability Office. GAO, *Our Name,* http://www.gao.gov/about/namechange.html (July 7, 2004).

40 Turley, *supra* n. 37, at 67.

41 *Id.* at nn. 125 & 132 and accompanying text.

42 *E.g. id.* at nn. 176–81 and accompanying text.

43 *See e.g. id.* at nn. 145–47 and accompanying text (rebutting criticism that reverse auctions would lead to underbidding and resulting poor performance by the winners).

44 *See e.g.* Julie Pearl, Student Author, *The Highest Paying Customers: America's Cities and the Costs of Prostitution Control*, 38 Hastings L.J. 769, 773 (1987) (using interviews with vice officers to explain the obstacles to making actual arrests for prostitution).

journalists who are knowledgeable in the field of police misconduct."[45] Out of the Note's 296 footnotes, 140 (47 percent) relied on interview material,[46] achieving balance by providing input from both sides of the issue, including lawyers for alleged victims of excessive force[47] and current and former police officers.[48] Her results were compelling, largely because she used real-world practitioners to demonstrate a statute's real-world, practical effect.[49]

Finally, using interview results can bolster the narrative and descriptive power of an author's research and writing. One researcher said:

> [A]fter reading the statistical summaries of a large-scale survey—an indigestible medium—one turns with relief to a small sample of interviews of individuals whose lives are otherwise reflected in the characterless quantitative data. Comprehensive and factual though the latter may be, it is interviews that illustrate what it is like to be elderly and living alone, or to be made redundant, or to have had a privileged education. Such accounts are more than illuminating; they appeal to us because of their human character. This is about "real" people not just "statistics."[50]

For example, studies and statistics abound on various aspects of legal practice: "working conditions in large U.S. law firms;"[51] how the relationships between law firms and their clients have changed law firm organizational structure, including promotion policies;[52] women in the law;[53] and salaries and compensation, recruitment and hiring, and law

45 Alison L. Patton, Student Author, *The Endless Cycle of Abuse: Why 42 U.S.C. § 1983 Is Ineffective in Deterring Police Brutality,* 44 Hastings L.J. 753, 755 (1993).

46 *Id. generally*.

47 *E.g. id.* at nn. 13–20 and accompanying text.

48 *E.g. id.* at nn. 162–66 and accompanying text.

49 According to a Shepard's search on Lexis, Patton's note has been cited in two Supreme Court briefs—Br. for Amicus Curiae Natl. Assn. of Crim. Def. Laws. in Support of Petr. at 16, *Herring v. United States,* 129 S. Ct. 1692 (May 16, 2008); and Br. of Respt. at n. 4, *Devenpeck v. Alford*, 543 U.S. 953 (Aug. 25, 2004)—and 42 articles in law reviews and bar journals. Search conducted Sept. 8, 2009 (results on file with Author). *See also Adversarial Versus Inquisitorial Justice: Psychological Perspectives on Criminal Justice Systems* 392 (P.J. Van Koppen & Steven Penrod eds., Kluwer Academic 2003) (including the note in the list of references).

50 Bill Gillham, *Research Interviewing: The Range of Techniques* 8 (Open U. Press, 2005). Using the actual words of a live source can be especially valuable for those attorneys who seem convinced that unless they pontificate by eschewing the argot of the proletariat, they do not sound sufficiently lawyer-like. A Westlaw search for "Scylla and Charybdis" in federal cases returned 276 results, while the "devil and the deep blue sea" showed up only 35 times. Search conducted Sept. 8, 2009 (results on file with Author). Which metaphor will resonate most with the average person?

51 William D. Henderson & David Zaring, *Young Associates in Trouble,* 105 Mich. L. Rev. 1087, 1096 (2007) (reporting on results of the annual Midlevel Associate Survey performed by *The American Lawyer* magazine).

52 George P. Baker & Rachel Parkin, *The Changing Structure of the Legal Services Industry and the Careers of Lawyers,* 84 N.C. L. Rev. 1635 (2006) (using Martindale-Hubble data).

53 *E.g.* Elizabeth K. Ziewacz, *Can the Glass Ceiling be Shattered? The Decline of Women Partners in Large Law Firms,* 57 Ohio St. L.J. 971 (1996) (reporting on various studies of women in law schools and private practice).

school career services staffing and facilities.[54] But to illuminate the life of the law—the "real" people behind the case reports, the statutory applications and the statistical surveys—legal researchers will find interviews their most valuable resource.

In 2004, the American Bar Foundation and the National Association for Law Placement published the first report of a joint research initiative, *After the JD,* a ten-year study of "the professional lives of more than 5,000 lawyers during their first ten years after law school"[55] that is loaded with facts and figures. Five years later, two of the authors of *After the JD* published an article that sought to "add a qualitative component to the raw data." To do so, the authors interviewed more than sixty-six lawyers and found that the interviews presented them with a "story" about who "fits" into law firms that was more complex than statistics implied.[56]

Statistics can show that minorities and women achieve partner status less frequently than white males at large law firms. But it takes interviews to explain that "fitting in" depends on more than just legal expertise:

> And here I am sitting in this room as a first year associate listening to these two senior associates compare notes about how many times they've flown the Concorde, and what hotels they should stay in Paris. And I remember I also went on this lunch with a senior associate and a mid-level associate, and they were talking about where they like to go yachting off the coast of France . . . . You know we could barely pay the electric bill growing up . . . . [57]

The "narratives" that these legal researchers found through their interviews proved again the value of storytelling in reaching an audience that may sport a limited attention span, minimal subject knowledge, and even slimmer interest in the topic.[58] For example, when it comes to story-

54 *See generally* The National Association for Law Placement (NALP), *Research & Statistic link*, http://www.nalp.org/research (accessed Jan. 7, 2010).

55 Ronit Dinovitzer et al., *After the JD: First Results of a National Study of Legal Careers* 13 (NALP 2004).

56 Bryant G. Garth & Joyce Sterling, *Exploring Inequality in the Corporate Law Firm Apprenticeship: Doing the Time, Finding the Love,* 22 Geo. J. Leg. Ethics 1361, 1363 (2009). This article, along with others cited from the same edition, was part of "Empirical Research on the Legal Profession: Insights from Theory and Practice," a March 2009 symposium sponsored by the Center for the Study of the Legal Profession and the Georgetown Journal of Legal Ethics. The authors reported:

> Qualitative interviews are typically the best way to uncover what in fact people bring to the field, how they are orienting their behavior, what they expect from the moves that they make, and what it means in terms of the forms of capital that they can accumulate . . . . But interviews about the position they occupy, where they are aiming, and the gains they expect as they make their way in the legal field provide the kind of insights that quantitative data alone cannot provide.

Id. at 1367–68 (internal citations omitted).

57 *Id.* at 1380 (recounting an interview with an Hispanic attorney).

58 *See e.g. id.* at 1364–65 (discussing the story of how associates survive to become partners by "finding the love" through support both in and out of their firms); *see also* Elyse Pepper, *The Case for "Thinking Like a Lawyer": Using Lars von Trier's*

telling, journalists learn that children and animals garner the most interest among readers.[59] I was not able to interject children into my article on reverse auctions, but with help from interviews, I was able to pepper it with references to goats (the four-legged kind). [60] Among other things, the goat sales helped rebut claims that reverse auctions disadvantaged small businesses because " 'there were guys in their barns logged onto AOL bidding'—farmers who knew more about auctioning than Army officials, thanks to their long experience with livestock auctions."[61]

In areas where it might seem that there is nothing new to be said, interviews can not only enliven an article but can add something original to the scholarship that otherwise might remain undisclosed. An excellent example is another note written by another California law student, this one on prostitution.[62] Unlike reverse auctions, this topic suffers no dearth of inherent reader interest, but perhaps for that reason, the world's "oldest profession"[63] has been the subject of numerous legal articles.[64] By using interviews "with law enforcement officials and prostitutes' representatives throughout the nation,"[65] the author provided a unique perspective not often found in scholarly articles.

Dogville *as a Model for Writing a Statement of Facts,* 14 Leg. Writing 171, 175 (2008) (arguing that using films as a story-telling guide provides a compelling tool for lawyers to communicate and persuade their audiences).

59 *See* WALB News 10 Viewpoint, *Mitchell County Done Good—Eagle Soars*, http://www.walb.com/Global/story.asp?S=8079396&nav=menu37_11_15_19 (Mar. 27, 2008) ("There's a truth in broadcasting: People sit up and pay attention to news stories about kids and animals.").

60 *See e.g.* Turley, *supra* n. 37, at 2, 10. For a much better use of animals to add interest to an often mind-numbing legal topic (in this case, fiscal law), see 1 Govt. Acctg. Off. [hereinafter GAO], *Principles of Federal Appropriations Law* §§ 4–27, n. 17 (3d ed., GAO Jan. 2004), which deserves to be quoted in its entirety:

> Everyone loves a good animal case. Unfortunately, the animals in most GAO decisions are dead or, as in the cases cited in the text, soon to become dead. Readers interested more in amusement than precedent might also check out 7 Comp. Gen. 304 (1927) (removal of a horse "found dead lying on its back in a hole"); 18 Comp. Gen. 109 (1938) (another dead horse); B–86211, July 26, 1949 (death of hogs allegedly caused by being fed garbage purchased from Navy installation; it was pointed out that other hogs had eaten the same government-furnished garbage and managed to survive); B–47255, Feb. 6, 1945 (burial of three dead bulls); B–37205, Oct. 19, 1943 (mule fell off cable swing bridge); A–92649, Apr. 22, 1938 (still another dead horse); B–115434–O.M., June 19, 1953 (agency borrowed a bull from another agency for breeding purposes, then had it slaughtered when it became vicious). These cases are being memorialized here because they will probably never be cited anywhere else. Insects do not escape either. *See* 34 Comp. Gen. 236 (1954) (grasshopper control in national forests). With the third edition of this volume, GAO is pleased to report our first fish case. *See* 70 Comp. Gen. 720 (1991) (rate of fish migration measured by fisherman returning government fish tags from fish presumed dead or to have at least had a very bad day).

61 Turley, *supra* n. 37, at 48.

62 Pearl, *supra* n. 44.

63 "Politics is supposed to be the second oldest profession. I have come to realize that it bears a very close resemblance to the first." Pres. Ronald Reagan, The Quotations Page, *Quotations by Author,* http://www.quotationspage.com/quotes/Ronald_Reagan/ (accessed Dec. 22, 2009).

64 A Westlaw search for the word "prostitution" turned up 9559 documents in U.S. law reviews and journals. Search conducted Apr. 8, 2009 (results on file with Author). Limiting the search to just the title still returned 115 articles. *Id.*

65 Pearl, *supra* n. 44, at 771.

The author first noted "some troubling statistics" on crime: In one decade, prostitution arrests shot up 135 percent despite no corresponding growth in prostitution *offenses*; at the same time, violent crime reports increased 32 percent but arrests rose less than four percent.[66] She then analyzed the public costs to enforce prostitution laws, using information gleaned from the interviews[67] to look behind the statistics and dollar totals at the total effort involved in prostitution arrests. When San Francisco police found that repeat offenders now recognized their undercover officers, they "gave one prostitute fifty-four citations over a three month period for 'obstructing the sidewalk,' resulting finally in a sixty-day jail sentence."[68] "Other officers have donned casts . . . . Two vice decoys even rented wheelchairs to make their arrests."[69] Still, one officer reported, "The girls are back on the street before we are. We get paid by the hour, so we don't mind much, but if this were a business, we'd be bankrupt."[70]

The two Notes discussed above also highlight the intersection between legal research and that done in the social sciences, a juncture that has seen both smooth traveling and occasional roadblocks[71] in the half century since Thurgood Marshall brandished social science studies and expert testimony in *Brown v. Board of Education*.[72] Interviews have long

66 *Id.* at 769–70.

67 Between May 1985 and 1987, the author interviewed "police officials in 20 of the 22 cities in the United States with populations greater than 500,000 (based on 1985 estimates)." *Id.* at 769 n. 2.

68 *Id.* at 773.

69 *Id.* at 774 n. 34.

70 *Id.* at 780–81.

71 *Compare e.g. Social Science, Social Policy and the Law* 17 (Patricia Ewick et al. eds., Russell Sage Found. 1999) (stating that "in the past thirty years, social science has indeed become deeply embedded in the processes of legal policymaking, particularly in the United States"); and Susan S. Fortney, *Taking Empirical Research Seriously,* 22 Geo. J. Leg. Ethics 1473, 1474 (2009) (asserting that "empirical research on the legal profession can actually bridge the divide between theory, social science, and the ethical practice of law"); with *Law, Social Sciences, and Public Policy: Towards a Unified Framework* 1 (Anthony Chin & Alfred Choi eds., Sing. U. Press 1998) (contending that because academic discourse between law schools and schools of social sciences "is a rare phenomenon . . . students cannot appreciate the need and usefulness of bridging the two disciplines"); Fortney, *supra,* at 1482 (describing the "institutional barriers" for law professors who want to collaborate with social scientists).

72 *Thurgood Marshall Before the Court* (Am. Radio Works May 2004) (radio broad., transcr. available at http://americanradioworks.publicradio.org/features/marshall/brown.html):

> Marshall's argument before the Supreme Court also featured an unusual element: social science data. Psychologist Kenneth Clark had carried out experiments in Massachusetts, Pennsylvania, and Arkansas using dolls to show that racial segregation made black children feel inferior to whites. Thurgood Marshall and his second-in-command at the NAACP Legal Defense Fund, Robert Carter, read Clark's work and drafted him into their courtroom army. . . . Not everyone . . . thought Clark's doll studies should be part of the strategy. They worried that including interpretations of children's psyches rather than just interpretations of legal precedents was risky. But Marshall sensed the Court would respond well to scientific evidence of segregation's social harms.

Marshall was following the example of another lawyer whose arguments before the Court presaged his appointment—Louis Brandeis, who in 1908 "turned American law on its head with the 'Brandeis brief.' " Adam Cohen, *Looking Back on Louis Brandeis on His 150th Birthday*, N.Y. Times A26 (Nov. 14, 2006). The brief, supporting an Oregon law limiting women to 10-hour workdays, contained a mere two pages of legal analysis and more than 100 "setting out statistical and sociological data on the harm that long workdays did to women." That tactic proved to be "both shocking and enormously successful." *Id.*

been a key tool for social scientists,[73] and in areas where the law and social science overlap, legal writers are beginning to find them useful as well.[74] As they do so, they realize what most social scientists already knew: interviews as a research technique require more work than compiling and reading printed material.[75]

Interviewing Ignorance

As with most other areas of the law or any other endeavor, however, proper training and preparation can make interview research much easier. Unfortunately, few professions—even those that substantially rely on interviewing—provide extensive formal education on how to do it right.[76] Law schools are no better. Almost all legal interview training comes—if it comes at all—in the context of client and witness interviews, rather than research methodology.[77]

73 *See e.g.* William D. Crano & Marilynn B. Brewer, *Principles and Methods of Social Research* 223 (2d ed., Lawrence Erlbaum Assocs., Inc. 2002) (discussing the research interview as a method of social research); Robert S. Weiss, *Learning from Strangers: The Art and Method of Qualitative Interview Studies* 209 (Free Press 1995) ("Qualitative interviewing is important in a number of fields: the social sciences, of course, but also in journalism, advertising research, history, biography, and criminal justice").

74 *See* Fortney, *supra* n. 71, at 1476 (noting that "a number of studies on the legal profession have relied on interviews"); *see also* Dorothy Thornton, Robert A. Kagan & Neil Gunningham, *When Social Norms and Pressures Are Not Enough: Environmental Performance in the Trucking Industry,* 43 L. & Socy. Rev. 405 (2009) (reporting the results of in-person interviews with sixteen trucking company officials); Amy Muslim, Melissa Labriola & Michael Rempel, *The Commercial Sexual Exploitation of Children in New York City*, Prac. L. Inst., Litig. & Admin. Prac. Course Handbook Series, Crim. L. & Urb. Probs., 393, 399–400 (2009) (listing the numerous agencies where representatives were interviewed).

75 *See* Crano & Brewer, *supra* n. 73, at 223 ("It has always been easier and cheaper to use written questionnaires completed by respondents than it is to expend the time and effort necessary for an interview."); Thornton, Kagan & Gunningham, *supra* n. 74, at 415 (describing the interviews as a "labor-intensive research strategy").

76 *See e.g.* Patrick Dilley, *Interviews and the Philosophy of Qualitative Research*, 75 J. Higher Educ. 127 (Jan.-Feb. 2004) ("Despite the primacy of verbal data in qualitative research, basic introductions to qualitative research and 'how to' guides for conducting qualitative projects include only sections on interview.") (internal citations omitted); Bob Steele, *Interviewing: The Ignored Skill,* http://www.poynter.org/column.asp?id=36&aid=37661 (June 16, 2003) [hereinafter Steele, *Ignored*] ("Journalists get little or no training in this vital aspect of their job. Most learn by painful trial and error.") (quoting Chip Scanlon). My personal experience was similar—I had lots of formal instruction on writing but no classes dedicated solely to interviewing.

77 *See* Stuckey, *supra* n. 11, at 21 (asserting that skills such as talking to and listening to people and facilitating conversations are given little attention in traditional law school curricula); *id.* at 58 ("Many students graduate without an introduction to many of the basic skills of the legal professions, such as . . . interviewing . . ."); *see also* Fortney, *supra* n. 71, at 1477 (asserting that only a "limited number of legal academics" are qualified to conduct empirical research such as research interviews); David B. Wilkins, *The Professional Responsibility of Professional Schools to Study and Teach About the Profession,* 49 J. Leg. Educ. 76, 90 (1999) (stating that some would argue that most law teachers lack the expertise "to do serious empirical work . . . and don't know the difference between an interview and an interrogation"); Elizabeth Chambliss, *When Do Facts Persuade? Some Thoughts on the Market for "Empirical Legal Studies,"* 71 L. & Contemp. Probs. 17, 21 (2008) (arguing that "many doctrinal law faculty are skeptical about the role of the social sciences in law and legal education").

A review of some of the legal works cited in this article that do employ interviews as a research technique showed that none of the authors is trained solely as a lawyer, and some are not attorneys at all. *See e.g.* Thornton, Kagan & Gunningham, who interviewed trucking company officials, and Muslim, Labriola & Remple, who used interviews to research child sexual exploitation, both *supra* n. 74. Thornton is a professor of public health, Gunningham is an "interdisciplinary social scientist and lawyer," and Kagan is a professor at Berkeley's Boalt Hall School of Law who first taught political science. Thornton, Kagan & Gunningham, *supra* n. 74, at 405 n. a1; Berkeley Law, *Faculty Profiles: Robert A. Kagan*, http://www.law.

A decidedly unscientific, non-random[78] survey of nine law schools' curriculum looking for the word "interview" found almost nothing related to legal research or writing except in a attorney-client setting. In the first year legal research and writing course at the University of Alabama, "students apply what they have learned by interviewing a client, performing research on the client's legal problem, and drafting a legal memorandum concerning the matter."[79] In upper-class clinics, students are assigned client intake interviews.[80] At Harvard, an online search of the academic catalog for "interview" in any term, any schedule block and any subject area, returned nineteen different courses, ranging from a clinical workshop for at-risk children in the educational system[81] to environmental law[82] to skills and ethics in civil practice.[83]

Moving on to advanced legal research does not change the results.[84] Stanford's advanced legal research course "emphasize[s] cost-effective research"; developing online research skills; "enabling students to make clear choices between research formats"; and "introducing students to the array of non-legal information resources."[85] At the University of Texas, second- and third-year students are offered a "comprehensive course in legal research methods" that "focuses on the identification of relevant legal

berkeley.edu/php-programs/faculty/facultyProfile.php?facID=62 (accessed Feb. 18, 2010). Rempel, Muslim and Labriola are all trained in the social sciences rather than as lawyers. Center for Court Innovation, *Staff*, http://www.courtinnovation.org/index.cfm?fuseaction=page.viewPage&pageID=471 (accessed Dec. 31, 2009); E-mail from Michael Rempel, Research Dir., Ctr. for Ct. Innovation, to Author (Jan. 4, 2009). All the authors of the interview-based follow-up to *After the JD* also have Ph.D. degrees. Dinovitzer et al., *supra* n. 55, at 8. *See also* Chambliss, *supra* n. 77, at 32 (noting that most law professors associated with empirical legal studies are trained in political science).

78 I selected the University of Texas, my law school alma mater; the University of Arizona, where I got my undergraduate degree; the University of Alabama, the closest public law school to my current location; the University of Missouri, where I took the LSAT; Harvard and Stanford, East and West Coast representatives, respectively, of top private schools; and the University of California, Hastings, because both Notes cited earlier were written by Hastings students.

79 The University of Alabama School of Law, *Law 610 Legal Research/Writing I Course Description*, http://www.law.ua.edu/students/info.php?re=courseinfo (accessed Feb. 17, 2010).

80 *Id.* at *Course Description for Law 665, Domestic Violence and Civil Clinics.*

81 Harvard Law School [hereinafter Harvard], *Education Advocacy and Systemic Change: Children at Risk Clinical Workshop A*, http://www.law.harvard.edu/academics/courses/2008–09/?id=6292 (accessed Feb. 17, 2010) (students practice skills such as "interviewing and counseling clients . . . [and] preparing and interviewing expert witnesses").

82 Harvard, *Environmental Law Practice: Skills, Methods, and Controversies: Seminar,* http://www.law.harvard.edu/academics/courses/2008–09/?id=5600 (accessed Feb. 17, 2010) (explaining that classes will involve "exercises including . . . interviewing clients and experts").

83 Harvard, *Introduction to Advocacy: Civil—Skills and Ethics in Clinical Practice* http://www.law.harvard.edu/academics/courses/2008–09/?id=5356 (accessed Feb. 17, 2010) ("The majority of class meetings will focus on specific lawyering tasks such as client counseling and interviewing . . . .").

84 *See* Stuckey, *supra* n. 11, at 53 (reporting the criticism that law schools fail to teach students the ability to find "outside the library, the facts they decide they need to know. This includes the ability to listen.").

85 Stanford Law School, *Legal Research: Advanced*, http://www.law.stanford.edu/program/courses/details/222/Legal%20Research%3A%20%20Advanced/ (accessed Feb. 17, 2010).

information resources . . . and the role of technology in legal information access and use."[86]

The University of California Hastings College of the Law is something of an exception. As with the other schools, Hastings offers a course in interviewing and counseling, as well as applying these skills in various settings.[87] Additionally, though, one of the courses available to satisfy the school's writing requirement is "California Legal History Seminar," during which students will interview a California attorney.[88] The "Case Studies in Contract Law Seminar" similarly assigns students with "interviewing attorneys and others, and considering the legal, lawyering, and social implications of the dispute and its resolution."[89] However, those courses appear to be the result of chance, rather than any conscious effort to include interviewing as a part of research training.[90]

The other area where law schools provide plenty of guidance in interviewing skills is that of ultimate importance: landing a job. On the University of Missouri's web site, of the top twenty search results for "interview," sixteen deal with career-related interviews;[91] at the University of Arizona, the ratio is eighteen out of the top twenty.[92]

None of these offerings by the law schools surveyed is improper or wrong. Certainly, attorneys in training must learn to interview clients and witnesses. Just as certainly, a would-be lawyer benefits little from his education if he is unable to find gainful employment after graduation. However, the fact that an attorney has been taught to interview clients or to be interviewed as a prospective hire does not mean she will feel comfortable using an interview as a research tool. Similarly, if no one ever suggested that method at law school, she is unlikely to consider it on her

86 University of Texas at Austin School of Law, *Research and Writing*, http://utdirect.utexas.edu/loreg/car.WBX?area_key=0000124&year= 2009&semester=2 (accessed Feb. 17, 2010).

87 *See e.g.* University of California Hastings College of the Law [hereinafter UC Hastings] *2008–09 Course Catalog* 11 (rev. Dec. 12, 2008) (description of *Law 550 Roles & Ethics in Practices*) (on file with Author).

88 *Id.* at 26.

89 *Id.* at 27.

90 *See* e-mail from Toni Young, Dir. of Moot Ct., Appellate Advoc., Leg. Writing and Research, UC Hastings, to Author (Apr. 20, 2009) (stating that the Notes' "use of interviews as a research tool might have been a coincidence" and that interviewing is not a part of the current writing and research curriculum). Young was an adjunct professor from 1988–1992, when she became the program's director. *Id.*

91 University of Missouri School of Law, http://law.missouri.edu/, search "interview" (search conducted Apr. 17, 2009) (results on file with Author).

92 University of Arizona James E. Rogers College of Law, http://www.law.arizona.edu, search "interview" (search conducted Apr. 17, 2009) (results on file with Author). Another researcher found much the same results when surveying journalism schools. When she looked at the School of Journalism at Columbia University, she "found very little about journalism interviewing—but lots on how to interview for a journalism job." Steele, *Ignored, supra* n. 76 (quoting researcher Linda LaScola).

own.[93] Again, the point is that legal scholars should not stop at expanding the research toolkit to include "the array of non-legal information resources" and the "role of technology in legal information." If blogs, online posts and e-mails are to serve as valid source material, students should learn how to properly vet and use them. But once these electronic resources are deemed legitimate, lawyers should also learn when and how to go one step farther and deeper and to interview the source directly.

Some of this may stem from several identified deficiencies in legal research as whole, such as an over-reliance on computerized methods and a diminishing but persistent skepticism of "empirical" research[94] in the law. For example, respondents in one survey "believed that students and new associates did not understand the limits of online research, how to evaluate resources, 'how or why' to use secondary sources, cost-effective print and online legal research strategies, or how to perform integrated legal research."[95] In 2002, two legal scholars surveyed several hundred law review articles on or using empirical research.[96] Their conclusion was that "the current state of empirical legal scholarship is deeply flawed" because of inadequate methodology and analysis.[97] Another law professor reports both the disparagement of social scientists, some of whom "argue that what law reviews publish is not 'scholarship' at all," and the reluctance of legal academia to embrace empirical research.[98]

Viewed in light of these criticisms, the beauty of research interviews is they fall within the grasp of most lawyers, building on skills common in legal training and practice, rather than highly specialized techniques needed in the social sciences. As one proponent said, a researcher "does not require an advanced degree in statistics . . . [to conduct] in-depth interviews with chief public defenders about how they understand their institutional responsibilities."[99]

93 *See* Stuckey, *supra* n. 11, at 133–34 (asserting that traditional law schools do no more than introduce students to interviewing techniques without producing students who are proficient in such needed lawyering skills).

94 While not all scholars accept interviews as "empirical research," I find most compelling the position that empirical research should "include the rich body of work that uses qualitative approaches, as well as those studies that use quantitative methods." Fortney, *supra* n. 71, at 1477.

95 Meyer, *supra* n. 3, at 305 (reporting the results of 2006 and 2007 surveys by Thomson West).

96 Lee Epstein & Gary King, *The Rules of Inference,* 69 U. Chi. L. Rev. 1, 15–16 (2002).

97 *Id.* at 6.

98 Chambliss, *supra* n. 77, at 21.

99 Wilkins, *supra* n. 77, at 90.

Interviewing Tips

Regardless of the field, interviewing may get short shrift when it comes to training, perhaps because everyone assumes that everyone knows how to talk and ask questions. That assumption is no more valid, however, than presupposing that verbal ability translates to mastery of direct and cross examination.[100]

Many interviewing tips are common sense; others are less obvious. And, as with courtroom advocacy, not all the experts agree,[101] nor will every rule work in every case for every lawyer and every source. But understanding some basic guidelines can help the legal researcher know how and when to adapt these foundational rules to his or her specific situation. This section of the article provides advice on advance preparation, the interview itself and actions afterwards.[102]

The Three P's of Preparation

As a reporter, I sometimes felt fortunate if I had enough interview preparation time to outline a complete set of potential questions. With no daily deadline, legal researchers should be far more thorough in preparing, whether it be professional, psychological, or physical preparation.

To be prepared **professionally**, the researcher must decide first why he has chosen a subject to interview.[103] What information does he want to get from the subject? Sometimes a researcher may need primarily factual information, but the inquiry should not stop there. If all an author wanted were the objective data, he could frequently find that in traditional sources. Instead, identify the known unknowns—the particulars not available elsewhere, such as opinions, evaluation, and interpretation, the

100 *See* Bob Steele, *Interview Techniques,* http://www.poynter.org/column.asp?id=36&aid=38681 (June 20, 2003) [hereinafter Steele, *Techniques*]. Steele quotes investigative reporter and two-time Pulitzer prize winner Eric Nalder, *infra* n. 108, who says:

> Many of us assume we were born with the ability to interview. Some of us think we were born without the skill because we are shy, or because we have problems with halting speech. Neither assumption is accurate. To be glib is not to be a trained interviewer. To be shy is not to be handicapped.

See also Meyer, *supra* n. 3, at 304 (reporting the results of a survey showing that new attorneys needed additional training "to be comfortable with asking many questions—and must learn how to ask such questions—in order to clarify what is expected of them"); Keith Evans, *Common Sense Rules of Advocacy for Lawyers* 38 (TheCapitol.Net 2004) (asserting that being a good trial lawyer requires not just legal skills but dramatic and theatrical abilities).

101 For example, different articles on interviewing in the same newsletter offer these contradictory suggestions: "Avoid making a statement during an interview" and "A statement from the reporter can lead to a really good answer." *Interviewing: The Sawatsky Method* and *Interviewing: Advice from All Over*, respectively, 2 Above the Fold (newsltr. of Minneapolis Star-Trib.) 2 (Aug. 2002).

102 Again, I have deliberately focused on suggestions from non-legal sources, because, as mentioned earlier, most legal guidance deals with client or witness interviews and is likely to be more familiar and accessible to attorneys.

103 *See* Gillham, *supra* n. 50, at 5 (stating that deciding on research goals is a fundamental step).

reasons behind the facts—that is, why things are the way they are and how they got that way.[104]

Roughly contemporaneous with this step, the researcher should also be reviewing anything else the source has said or written (just as she would review all a witness's statements before interviewing him) "because research shouldn't take place in a vacuum."[105] Along the same line, interviews should seldom, if ever, occur early in research. Interviews will be most effective if the researcher has already gleaned as much as possible about a subject before asking an interviewee to opine, analyze, or explain.[106] The interviewer also will be better equipped to spot avenues she wants to pursue, whether because she thinks the angle will add something to the planned article or because she thinks the source's answers lack reliability.[107] "A well-researched question is a better question. A well-researched interviewer is empowered."[108]

While a good researcher will outline questions in advance, how much detail one puts into questions beforehand is a matter of personal style based on each person's comfort level and experience with interviewing (much like in-court examinations). Some investigators suggest simply writing "single-word clues on the flap of your notebook to remind you of issues you want to cover."[109] Other researchers recommend crafting explicit, precise questions, especially in situations where a source may limit the available time.[110] Similarly, as with courtroom questioning, what kind of information the interviewer needs to obtain will determine the kind of questions asked. If a researcher wants a source to confirm or deny something, use leading questions. If seeking a more narrative explanation or opinion, ask open-ended questions.[111]

104 Grinnell & Unrau, *supra* n. 16, at 254 ("What do we want to know that we don't know already? Who can tell us what we don't know and what we want to know?"); *see also* Dana Lynn Driscoll & Allen Brizee, *Conducting Primary Research: Interviewing*, http://owl.english.purdue.edu/owl/resource/559/04/ (accessed Dec. 29, 2009) (asserting that interviewing is a useful tool to obtain expert opinions).

105 Gillham, *supra* n. 50, at 19.

106 *Id.* (advising researchers to review the available literature and ask others in the field for suggestions).

107 "Not knowing your subject matter can have dire consequences. The person being interviewed can buffalo you. Or they can shade the truth. Or they can be nonresponsive." No Train, No Gain, *Tips for the Interviewing Process*, http://www.notrain-nogain.org/Train/Res/Report/inter.asp (accessed Dec. 29, 2009) [hereinafter Cox Training] (recounting advice provided at a Cox Newspapers training session); *see also* Gillham, *supra* n. 50, at 19 (suggesting that extensive preparation will help a researcher "pick up clues that [he] could pursue more productively").

108 Eric Nalder, *Loosening Lips*, http://www.concernedjournalists.org/loosening-lips (July 9, 2007).

109 *Id.* Note that Nalder is talking about the old-fashioned notebook, generally a stenographer's size or smaller, with cardboards covers and spiral binding, not one with a wireless Internet connection that sits on your lap.

110 Cox Training, *supra* n. 107; *see also* Weiss, *supra* n. 73, at 48 (recommending an "interview guide" that lists "topics or lines for inquiry so they can be grasped at a glance, with just enough detail to make evident what is wanted").

111 *See* NewsLab.org, *Steps to a Strong Interview*, http://www.newslab.org/resources/interview.htm (accessed Feb. 17, 2010) ("Know what you hope to accomplish in each interview. Do you need factual information or the person's reactions to a

Physical preparation means deciding how and where to conduct the interview. Frequently, the first issue to confront is whether to tape-record the interview. In the litigation arena, lawyers almost instinctively shy away from recording potential witness interviews, mainly because such recordings are frequently discoverable,[112] while notes from witness interviews are commonly safeguarded as attorney work product.[113] Generally unburdened by such concerns, social science researchers view tape (video or audio) recording differently but still without unanimity on how and when to do so.

> Investigators' policies regarding the use of tape recorders vary enormously. At one extreme is the investigator whose books are compilations of interview excerpts, who brings two tape recorders to an interview, each with its lapel mike, clips each mike on the respondent's shirt front, and sets both machines going. At the other extreme are investigators who treat a tape recorder as an intruder in the interview.[114]

As a reporter, I never taped an interview, nor did most of my coworkers. Any number of reasons could have driven that practice,[115] but I do not remember it even being an issue for discussion. It was something that print journalists (as opposed to broadcast media), for the most part, just did not do. I am still firmly entrenched in the "do not tape" camp. I do

situation, or are you looking for a deeper understanding of the person? This will guide you in planning and preparing questions.")

112 For example, the Jencks Act, 18 U.S.C. § 3500 (2006), makes any "statement" by a government witness discoverable after the witness has testified in a federal criminal case. "Statement" includes contemporaneous tape recordings of a witness's oral statement. *Id.* at (e)(2). The Federal Rules of Criminal Procedure impose essentially the same requirement, expanding it to include defense witnesses. Fed. R. Crim. P. 26.2(a), (f); *see also* Adv. Comm. n., 1979 addition (explaining that the amendment would add the substance of the Jencks Act to the rules, with the added disclosure of defense witness statements). *See also* John G. Douglass, *Confronting the Reluctant Accomplice,* 101 Colum. L. Rev. 1797, 1835–36 (2001) (asserting that "few prosecutors even consider videotaping or tape recording their pretrial witness interviews").

113 *See generally* David B. Harrison, *Notes or Reports Made by Prosecuting Attorneys,* 125 A.L.R. Fed. 1, 22 (1995). *See also The Litigation Manual* 178 (John G. Koeltl & John S. Kiernan eds., 3d ed., ABA 1999) (stating that a tape recording "cannot be as easily protected as work product as the lawyer's memorandum describing the interview").

114 Weiss, *supra* n. 73, at 53. *See also* Armstrong Atlantic State University, *Conducting Effective Interviews* (on file with Author) [hereinafter Armstrong] (discussing the conflicts between those who favor tape recording interviews and those who do not).

115 It could have been technology limitations—microcassette recorders were not yet widely available, cassette tapes could be ruined so many ways, and, of course, batteries went dead very quickly. Or maybe it was cost or time constraints—newspapers could buy a lot of notebooks for the price of one tape recorder, and daily publication deadlines left little or no time for playing back or transcribing tapes. And, in another similarity between lawyers and journalists, tape recordings were considered more vulnerable to forced disclosure than reporters' notes. *See e.g.* Christopher Albritton, *PDRs: Personal Digital Recorders Make Minitapes a Thing of the Past,* Pop. Mech. 34 (Aug. 1, 2004) (describing how cassette tapes could break or be erased by magnetic exposure); Tony Rogers, *The Basics of Conducting Interviews for News Stories,* http://journalism.about.com/od/reporting/a/interviewing.htm (accessed Feb. 17, 2010) (recommending always taking notes to avoid losing an interview to dead batteries); Weiss, *supra* n. 73, at 53 (noting the time consumed by transcription); *Ethical News Gathering,* S.F. Chron, http://asne.org/article_view/smid/370/articleid/289/reftab/57.aspx) (May 9, 1996) (warning that interview tapes "may be subject to court seizure and thus disclosure").

not tape interviews—ever, regardless of their purpose (legal, journalistic, or scholarly).[116] Even when I want an independent record of a witness interview, I prefer to have a paralegal accompany me and take copious notes.[117] I dislike tape-recording primarily for two reasons, both based on experience: I find transcription far more burdensome than reviewing notes,[118] and I believe people respond differently when they know they are being taped.[119]

My personal idiosyncrasies aside, tape-recording interviews for scholarly research seems to have become an accepted, standard practice.[120] Again, how a researcher records interviews will depend largely on personal preferences and style, comfort level and expertise in note taking,[121] and the interview's purpose.

> If you want a verbatim transcript . . . then you should make every effort to use a tape recorder . . . . And certainly if you want a record of what was said because your version may some day be questioned, you would do well to use a tape recorder. But if all you want are facts and you don't care about phrasings, you may be better off with notes.[122]

The researcher must also decide where to interview the subject and whether to do so in person or by telephone. Arranging a face-to-face meeting on the subject's own turf (*not* the interviewer's office) will generally produce better results,[123] but frequently one will have to settle

116 I am distinguishing interviews from testimony, depositions, and similar situations. Also, because the issue of surreptitious tape-recording is beyond this article's scope, I am presuming that all recording will be done only with the interviewee's knowledge and consent.

117 Teresa Odendahl & Aileen M. Shaw, *Interviewing Elites,* in *Handbook of Interview Research: Context & Method* 312–13 (Jaber F. Gubrium & James A. Holstein eds., Sage Publication 2001) (noting that team interviewing "allows one person to pose the questions and direct the conversation while the other concentrates on taking notes"); *see also* Faculty, The Judge Advocate General's School, U.S. Army, *It Is Not Just What You Ask, but How You Ask It: The Art of Building Rapport During Witness Interviews,* Army Law. 66–67 *(*Aug. 1999) (recommending having a third person present at witness interviews).

118 *See* Gillham, *supra* n. 50, at 124 (warning that transcribing an hour-long tape can take from six to ten hours).

119 Weiss, *supra* n. 73, at 53, 55 ("Even when people seem to have stopped attending to the tape recorder they can feel constrained by its presence . . . . Tape recorders can be, for some people in some circumstances, deterrents to candor."); Armstrong, *supra* n. 114 (stating that a tape recorder may encourage some subjects to "perform").

120 *See e.g.* Gillham, *supra* n. 50, at 93 (noting that video recording provides the most complete interview record possible); Grinnell & Unrau, *supra* n. 16, at 269 (listing the advantages of mechanical recording); Driscoll & Brizee, *supra* n. 104 (recommending using redundant recording equipment); Weiss, *supra* n. 73, at 54 (stating that using a tape recorder makes it easier for him to pay attention to his subject because he does not worry about taking notes).

121 *See* Grinnell & Unrau, *supra* n. 16, at 268 (observing that even if "interviewers were skilled at taking shorthand, they would still have difficulty taking down their interviewees' answers verbatim"); Armstrong, *supra* n. 114 ("Your ability (or inability) to take notes quickly may ultimately decide whether or not you should rely on a tape recorder").

122 Weiss, *supra* n. 73, at 54–55.

123 "[I]f you must interview farmers, you cannot expect them to take time from their work routine to travel to a place to meet you; you would need to go to the farms." GAO, *Interview Techniques*, *supra* n. 34, at 70.

for a telephone interview.[124] If both the interviewer and the interview have the technology and the expertise to make it happen, a video conference or "webcam" interview can offer a useful middle ground.[125] If planning to tape-record the interview, minimize or avoid interruptions, distractions and background noise.[126]

Psychological preparation means, first of all, that a legal researcher needs to realize what she is not: she is not interviewing a key source in hotly contested litigation or cross-examining a hostile witness. Do not assume a defensive attitude without cause; in other words, do not anticipate that a desired source is automatically going to respond with reluctance, apathy, or antipathy to an interview request. Unlike litigation, researchers should not be taking "sides," so they should not find themselves at odds with their interviewees (although of course they may disagree). An interviewer is also not "a vice cop . . . (or) Mike Wallace on uppers," so even if the researcher has a specific agenda for the research, she should keep her demeanor "confident, but . . . courteous."[127] Do not create an atmosphere where a source worries about being manipulated into producing a "gotcha" moment during the interview.[128]

While media reporters are trained to anticipate the recalcitrant source,[129] properly prepared researchers should legitimately expect cooperative interviewees. "It is sometimes extraordinary what an interviewee may disclose to someone they have not met before who is listening with sympathetic attention."[130] Approach the interview so that the source understands that the researcher has sought her out because she can add something valuable to the research, perhaps information found nowhere else. Do not be obsequious, but do not underestimate the power of appealing to an interviewee's self-esteem. Most people will grant an

124 Nalder, *supra* n. 108 ("The best place is usually where the person is doing the thing you are writing about . . . . A phone interview is the least desirable, but also the most common.").

125 *See* Barbara Rodriguez, *More Colleges Expected to Offer Online Interviews,* Wash. Post A04 (Jan. 2, 2009) (reporting on the growing trend of interviewing prospective students by webcam); Diane Hamblen, *Video Teleconferencing: The Next Best Thing to Being There,* http://www.chips.navy.mil/archives/93_jul/contents.html (July 1993) (observing that military officials have used video teleconferencing to interview candidates for annual awards and prospective senior leaders).

126 Gillham, *supra* n. 50, at 51.

127 Cox Training, *supra* n. 107.

128 *See* GAO, *Interview Techniques*, *supra* n. 34, at 23 (recommending that interviewers avoid questions that are needlessly confrontational or would incriminate or embarrass the interviewee).

129 *See e.g.* Above the Fold, *supra* n. 101, at 3 (quoting *New York Times* reporter Dan Barry, who says he respects his source, uses humor and sometimes "I bring doughnuts"); Cox Training, *supra* n. 107 (offering advice on securing an interview); Nalder, *supra* n. 108 (providing recommendation on dealing with reluctant sources).

130 Gillham, *supra* n. 50, at 10. *See also* Grinnell & Unrau, *supra* n. 16, at 248 (claiming that "many people enjoy the attention and stimulation of being interviewed"); Carol A.B. Warren, *Qualitative Interviewing,* in *Handbook of Interview Research, supra* n. 117, at 90 (stating that researchers commonly report "a willingness, even an eagerness to talk about oneself in interviews").

interview when they understand that the researcher sincerely views them as a subject-matter expert and is genuinely interested in what they have to say.[131] "Imagine a successful interview. Warm up like an athlete. Be skeptical but never cynical. Believe and you will receive . . . approach your subject as though you belong there . . . . Be open and unafraid."[132]

Thorough preparation—in all areas—is especially crucial when conducting what one expert calls "elite interviewing," which he defines as talking to people who are 1) "especially knowledgeable" about a research topic—in fact they are likely to know more than the researcher; 2) "commonly in positions of authority or power by virtue of their experience and understanding"; 3) often in a position to "control (or facilitate) access to other people and institutions" that may prove helpful in the research; and 4) "alert to the implications of questions, and their answers to them."[133] These "sophisticated subjects for interviewing" will expect a researcher to recognize in advance and address potential fallout from publication of the interviewee's comments.[134]

> Careers have been ruined by something as apparently simple as the construction of a sentence or an unfortunate choice of words. The very fluency of practised [sic] speakers can lead them into this sort of difficulty . . . . The problem for such people is not that a difficult or sensitive issue might exist but that the researcher is unaware of the possibility. The naïve researcher can unwittingly set in motion a series of events which have nuisance value, if nothing worse.[135]

Meticulous preparation, coupled with a confident but courteous attitude, will reassure a source that he or she need not fear the outcome of the interview.[136]

131 Grinnell & Unrau, *supra* n. 16, at 268 ("Research interviewees, like everyone else, respond to reinforcement. If interviewers demonstrate that they appreciate and value their interviewees' answers, the quality of subsequent answers will generally be enhanced."); Gillham, *supra* n. 50, at 54 ("People in positions of authority . . . need to feel that the project is interesting and worthwhile."); Nalder, *supra* n. 108 ("It doesn't hurt to say that you need the person's help. [Ask,] 'Who is going to explain this to me if you don't?'"); Above the Fold, *supra* n. 101, at 3 ("Be interested. If you ask boring questions, be prepared to get boring answers").

132 Nalder, *supra* n. 108.

133 Gillham, *supra* n. 50, at 54; *see also generally* Odendahl & Shaw, in *Handbook of Interview Research*, *supra* n. 117, at 299–316.

134 Gillham, *supra* n. 50, at 54.

135 *Id.* at 55.

136 As novelist Margaret Atwood said, "I don't mind being interviewed any more than I mind Viennese waltzing—that is, my response will depend on the agility and grace and attitude and intelligence of the other person. Some do it well, some clumsily, some step on your toes by accident, and some aim for them." Above the Fold, *supra* n. 101, at 1.

During the Interview

> Careful listening is the central skill in interviewing, and it is not what people normally do. Indeed, it is not what "interviewers" do in may situations, especially on television and radio where they often don't allow space for a response, appear to be listening only so far as to score a point, or particularly with the members of the public whom they appear to regard as inarticulate, provide the answer to their own questions (*"you must feel devastated by what has happened").*[137]

> It's amazing the times a novice interviewer will ask a question that has just been answered. Pay attention. Don't ask questions as if you're checking them off a "to do" list. Learn to build the interview as much on the answers as on the questions. If a source makes an assertion, follow up with a question asking for evidence to support it.[138]

> Listen to the witness'[s] answers. This may appear to state the obvious, but the fact remains that lawyers often forget to do just that. Witnesses [or interview subjects] constantly surprise you . . . . Don't bury your face in your notes, worrying about the next questions while the witness is answering the last one.[139]

> *But there ain't no point in talking when there's nobody list'ning, so we just ran away.*[140]

When rock singers, newspaper reporters, attorneys, and social scientists agree that listening is a crucial part of obtaining information, what more can be said? At the risk of stating the obvious, having a functioning pair of ears does not a good listener make. Listening requires conscious thought, consistent effort, and constant practice before and during the interview, as well as a thorough inventory of one's personal listening style, including strengths and weaknesses.[141] Many lawyers have been through the discomfort of watching their own videotaped performances, and one researcher recommends undergoing that same "mildly traumatic experience" to better understand and critique one's personal interviewing style.[142]

137 Gillham, *supra* n. 50, at 29 (emphasis in original).

138 Cox Training, *supra* n. 107.

139 Thomas A. Mauet, *Fundamentals of Trial Techniques* 216 (3d ed., Little, Brown & Co. 1992).

140 Rod Stewart, *Young Turks,* on *Tonight I'm Yours* (Warner Bros. 1981) (CD).

141 Gillham, *supra* n. 50, at 31 (stressing that "*listening demands intense concentration"* and self-scrutiny) (emphasis in original).

142 *Id.*

Other tips for handling the interview itself will sound similarly familiar to legal researchers. Make sure to grasp the material coming from the interviewee—and to understand it well enough to explain it in a way that potential readers will also understand. "If a person uses A-C-D logic, ask that they fill in the 'B' part. The most important information may be hidden in B."[143] When the interview subject makes an assertion, follow up by asking for supporting evidence. Probe for the "how, what, and why" of the source's information, using questions like "What does that mean?" "How do you know that?" and "Why do you say that?"[144] Then give the source time to answer, even if it means that the seconds tick by and no one says anything. Not only does this allow the interviewee to reflect on a response, some people will find the conversational void uncomfortable. "Sometimes if you just let silence hang, the source will expand on what he/she just said because he/she can't stand the silence."[145]

What if a source insists that some of the information be "off the record," confidential or unattributed? First, of course, if the interviewee is a non-lawyer, ensure he recognizes that the interviewer is not his attorney and no privilege exists.[146] Then, evaluate how much the research depends on that information and how, if at all, it will be hurt by obtaining information only "on background" or anonymously. Most journalists would probably agree with this reporter's viewpoint: "Absolutely 'off-the-record' information is useless, since you can't use it under any circumstance. Avoid it. It's a waste of time."[147] In other disciplines, however, researchers may view anonymity or confidentiality[148] as appropriate in certain situations.[149]

143 Nalder, *supra* n. 108.

144 Above the Fold, *Interviewing: The Sawatsky Method*, *supra* n. 101, at 2 ("If the source makes a judgment—for example, 'Brian can be excessive at times'—follow up with: 'What do you mean, excessive?' "); Cox Training, *supra* n. 107 (advising interviewers not to be afraid to challenge a source's credibility).

145 Above the Fold, *Interviewing: Notes from All Over*, *supra* n. 101, at 3 (quoting a Pennsylvania reporter). If you are taking notes the old-fashioned way, this time also allows you to get caught up writing things down.

146 This discussion does not cover situations in which an interview subject may reveal criminal conduct, because the ethical implications of such a disclosure are beyond the scope of this article.

147 Nalder, *supra* n. 108.

148 For the purposes of this article, confidentiality or non-attribution and off-the-record or background responses are discussed as almost synonymous, although they are not. Confidentiality refers to omitting a person's name or any other identifying data, although the subject's responses may be published, while off-the-record information cannot find its way into print. *See id.;* Odendahl & Shaw, *Handbook of Interview Research*, *supra* n. 117, at 313; GAO, *Interview Techniques*, *supra* n. 34, at 72.

149 *See e.g.* Gillham, *supra* n. 50, at 55 (asserting that granting anonymity "conforms with recognized ethical guidelines"); GAO, *Interview Techniques*, *supra* n. 34, at 72 (outlining the guidelines for when GAO researchers may offer to keep interviewees' responses anonymous or confidential); Grinnell & Unrau, *supra* n. 16, at 248 (discussing "reassurances of confidentiality"). For a useful discussion of obtaining cooperation from sources and other researchers, including addressing confidentiality and anonymity concerns, see Fortney, *supra* n. 71, at 1477–80.

Thus, once again, any decision on confidentiality depends on the circumstances. If an interviewee refuses to provide any attributed information, then the interview probably would be a waste of time—but not always. The subject may provide the names of other sources who *will* speak on the record or arm the interviewer with the kind of background knowledge needed to further the research.[150] More likely, however, the researcher will find that an interviewee will ask to keep selected facts or opinions off the record. In those cases, once she weighs the value of the source's cooperation against an honest assessment of how much she really needs that data, the interviewer will probably find that she can get by quite well without it.

In my case, one of my sources who talked to me about the goat auction would not tell me, for publication, why the military wanted to buy goats. I found that piece of information interesting, and I disagreed with the source about the potential negative publicity that might result from its publication. However, that data held no real relevance for my research, while the other information this subject had and would provide was crucial, so I agreed.[151]

If, on the other hand, information that an interviewee insists must be off the record is crucial to the ultimate article, consider a journalistic technique labeled "ratcheting." This involves taking notes of everything a source says during the interview. At the end, "pick out quotes that aren't too damning"[152] and ask the subject why he cannot or will not say the same thing for attribution and publication. If the interviewee agrees to put that comment on the record, "go to another one in your notes and say: 'Well, if you can say that on the record, why can't you say this?' And so on."[153]

Another tactic that may reduce interviewees' qualms is to allow them to review the information attributed to them before an article is published. While this can be part of the bargain a researcher strikes with any interviewee, elite subjects may demand it.[154] The rub, of course, is that "faced with the reality of the material appearing in print, respondents [may] substantially modif[y] their original remarks."[155] Researchers who might

150 *See* Warren, in *Handbook of Interview Research*, *supra* n. 117, at 92 (recalling several situations where sources had provided off-the-record pieces of data that were as useful as those captured on tape).

151 Neither note by the two UC Hastings students cited earlier indicates a reliance on anonymous sources, despite the potential for some of the interviewees to experience some backlash for speaking on the record.

152 Nalder, *supra* n. 108.

153 *Id.* ("I have gotten an entire notebook on the record this way.").

154 Gillham, *supra* n. 50, at 55; Odendahl & Shaw, *Handbook of Interview Research*, *supra* n. 117, at 313–14.

155 Odendahl & Shaw, *Handbook of Interview Research*, *supra* n. 117, at 314. I did not find this to be the case, however, when

balk at such a practice as a constraint on their scholarly freedom should remember, again, what they generally are seeking with the interviews: not an exposé, not an excited utterance, not a Perry Mason moment, but accurate, truthful information that will contribute to their research. Thus, while agreeing to give the subject pre-publication review rights "may appear restrictive . . . it usually makes the interviewee less cautious and more helpful."[156] The end result is enhanced, expanded source material for the hoped-for article.

Concluding the Interview

Unlike cross-examination, the end of an interview is not the time to leave the final question unasked. Having extracted all the information possible from the immediate interview, ask the source "who, what, or where else": Who else should be interviewed? What else can the source say about the research topic—is there some relevant information that has not been uncovered? Where else should the researcher look for useful data?[157]

Do not leave the room or hang up the telephone without good contact information for every source. Just like witnesses, interviewees may move, change jobs, retire, go on cruises, or otherwise be unavailable, and an interviewer should expect to have follow-up questions later on in the writing process.[158] If the interviewee is going to review a draft of the article, make arrangements for him to do so. Will he receive the entire article, or just extracts where he is quoted? Absent some compelling reason to hold back other portions of the article, I recommend sending a complete copy. Not only will the interviewee be better able to review his comments for accuracy and completeness if they are in the context of the full article, but he might also be able and willing to provide comments and suggestions on the rest.[159]

As soon as possible, review the interview notes or transcribe any recordings. Doing so accomplishes several things: First, it will expose any gaps in the interview material, as well as revealing any areas that are ambiguous, unclear or otherwise need clarification or resolution from the

I had all my interview subjects review their contributions to my LL.M. article. While they made a few tweaks, they left the substance largely unchanged.

156 Gillham, *supra* n. 50, at 55.

157 Cox Training, *supra* n. 107 (recommending a "catchall ending" to the interview); Nalder, *supra* n. 108 (telling reporters to ask the interviewee what else readers might be interested in).

158 Gillham, *supra* n. 50, at 55 (noting that most researchers will need to ask further questions of their sources after the interviews).

159 *But see* Odendahl & Shaw, *Handbook of Interview Research*, *supra* n. 117, at 314 (discussing a researcher's provision of redacted extracts of his report to interviewees).

source.[160] Tape-recording the interview does not obviate this requirement. Portions of the recording may be garbled or unintelligible, and a near-contemporaneous transcription makes it much easier to re-create the unusable parts of the conversation.[161] At the same time, it will also highlight the really good information—the pithy quotes, the catchy examples, the unique perspectives—that an interview can provide and that deserve a place in the final article.[162] Finally, it will underscore any other research sources suggested by the interviewee and allow the researcher to follow-up while the material is still fresh.

Conclusion

Pulitzer Prize winning author Anna Quindlen once said,

> I learned, from decades of writing down their words verbatim in notebooks, how real people talk. I learned that syntax and rhythm were almost as individual as a fingerprint, and that one quotation, precisely transcribed and intentionally untidied, could delineate a character in a way that pages of exposition never could.[163]

Legal writers should recognize the power of storytelling in research and writing. A few lines from an interview will not transform an otherwise poorly researched, badly written article or paper into a masterpiece. Nor will interviews replace primary legal sources such as case law and statutes. Interviews can, however, help lift an article above the ordinary, especially when they provide information and insights not available elsewhere. However, before a researcher can or will use interviews, she needs to know why they can be valuable and how to properly carry them out. While the rules for interviewing are not complex or arcane, they do sometimes require a shift in both attitude and practice for lawyers—and sometimes a step outside the comfort zone. Those who are willing to try to "see between" will find the view worth the trouble.

160 Nalder, *supra* n. 108 ("Go back over your notes and look for holes. Then conduct a second interview . . . [to] fill gaps and correct your mistakes."); *see also* Cox Training, *supra* n. 107 (urging interviewers to take advantage of the "recollection 'window'" immediately after the interview to review notes).

161 *See* Gillham, *supra* n. 50, at 123 ("The recency effect will mean that you are able to interpret the recording more easily: your memory will be refreshed by hearing the tape, and assist you in making sense of it.").

162 When I find compelling material, I type it verbatim into my computer draft without worrying about context, transitions, etc. This allows me to work with my source's actual words as I try to meld the various pieces into a cohesive final product. *See id.* at 125 (noting that reading over a transcript starts the researcher's mind working on the creative process involved in analyzing interview material).

163 Anna Quindlen, *The Eye of the Reporter, the Heart of the Novelist,* N.Y. Times E1 (Sept. 23, 2002).