

TRENDS IN LEGAL ADVOCACY: INTERVIEWS WITH LEADING PROSECUTORS AND DEFENCE LAWYERS ACROSS THE GLOBE

Instructions to Interviewers

Each interview with a prosecutor or defence lawyer will comprise a book chapter which should be useable to teach students in a university class/professional institute. As a book, it should be a source of knowledge and information to readers interested in legal systems, lawyers, prosecutors and defence lawyers working in the criminal justice system, as well as policy makers, trainers, researchers, academics in universities, and teachers and trainees in legal academies.

The following guidelines clarify what we are looking for to attain consistency in the chapters. If you have any questions, please contact one of the editors: Jane Goodman-Delahunty, jdelahunty@csu.edu.au or Dilip Das dilipkd@aol.com

Aim of the interviews (and the book) and interview guidelines:

We have listed six topics to cover in the interview, and 25 suggested questions to address these topics. Questions on all the topic areas should be asked, but the specific questions below are suggestions. Interviews have their own dynamics. Follow the topics down their most fruitful avenues, using the suggested questions to suit the interview, taking into account that the conduct and flow of the interview will dictate the order. Feel free to add, elaborate, follow up as you see fit and necessary to clarify points, expand on ideas, or pursue an insight offered.

Since each of you will be interviewing legal advocates from different world legal systems, please adjust the list and sequence of questions as needed. For example, some questions may be more applicable to prosecutors and public defenders than to advocates working in the private defence bar. The wording of questions is, of course your own. In follow-up questions, try to get specific examples or details of generalizations made. Examples are probably among the most useful information to readers.

General themes to cover in the interview:

The main goal of the interviews is to elicit the views and interpretations of experienced legal advocates on legal developments and current issues in the criminal law and procedure. What do they see happening in the criminal courts and legal profession in their countries and internationally, and how do they evaluate or interpret these developments? There are many interpretations of legal issues by scholars and policy makers who are not legal advocates. What we are seeking are insights and interpretations within this sector by advocates making critical legal decisions. We are also seeking to build personal profiles of the legal advocates interviewed: their career, background, influences that shaped their personality; their successes, failures, joys, temptations and frustrations in their career and in their job.

We are seeking responses on the general themes of:

- What legal advocates see happening in criminal law and procedure;
- What issues they consider important;

- What changes they perceive as successes or failures, what as likely lasting futures or passing fads;
- What they would like to see.

The reason for the interviews is that legal advocates do not get time to write and reflect on their experiences, views, opinions and perspectives. We are requesting researchers like you to record their views and make them meaningful contributions to our understanding of criminal law and procedural problems of today. This may involve going beyond simple questions and answers to allow the interviewer to analyze and reflect on the issues discussed. The interviewer also needs to bear in mind that core elements of the personal profile of the interviewee should be developed. You will need to do some preliminary research on the interviewee so you can seek their candid views, probe and follow up.

The basic goal of the interview is to capture the views of the legal advocate, not those of the interviewer. Your role is not to be too critical of or to interpret what they mean to say, but to write as accurately as possible what they tell you. When we say “reflect” we hope you reflect on what the advocate said, not on your views of the issues discussed. It is the advocates’ views, based on their career, experience and thinking, that we are interested in. We know what scholars think about legal issues, but know less about what people engaged in advocacy think, and how they evaluate trends, developments and issues in criminal justice. It is our firm belief that legal advocates know a lot; it is that knowledge and their judgments of the legal issues that we are after. That is the important goal of the book.

The role of the interviewer is not to cross-examine. Having said that, by “not being too critical” we do not mean to suggest that you should not challenge and draw out what it is that the legal advocates tell you. We do not want the interview to consist of official rhetoric that high level professionals sometimes fall back on during interviews; we want their personal views and thinking. If you sense that you are getting the formal language, see if you can get the advocates to go beyond that, and push them for their own views.

Before starting the interview.

Get a sense of how much time you are likely to have and what questions you can cover during that time. In no interview will you be able to ask all the questions you have. When you write up the interview, you will have space for about 7,500 words. Choose your priorities. The high priorities for the book are the reflections by the legal advocates on changes experienced and the inter-relations of theory and practice, as well as insights into the person.

You should, if at all possible, tape-record the interview. Chances are you will have much more information than we will have space for in writing up your interview for the proposed book chapter. Taping the interview may be critical to allow you to review what is covered, and select the priority topics for write-up.

At the conclusion of the interview:

Be sure at the end of the interview to discuss opportunities to follow up, e.g., by phone, for clarification as needed. Discuss arrangements for sending a draft of the interview chapter to the advocate so it can be checked for accuracy before submission to the editors.

After the interview

1. Each chapter will be preceded by a brief description of the basic structure of the **criminal justice system** in the country where the advocate works. You have to be the judge of how much an informed reader is likely to know about the country and how much should be explained. Please draft this description so that this information can stand alone in a separate section in the book from the interview.
2. Please write a short introduction to the actual interview. The introduction should:
 - a. Summarize highlights of the legal advocate's career. Some of this information will come from the interview and other parts from published sources or a copy of the advocate's curriculum vitae.
 - b. Describe, briefly, the interview itself. Where, when, how pleasant or not, etc.
3. Present the interview responses using the six major topic headings below.
4. Edit the interview to bring out the most important discussion and answers.
5. Write a short conclusion on your impression of the interview. What were the major themes, how well the views expressed accord with known literature, but do not be overly critical on this point, please. Again, keep it brief.
6. Write a glossary of terms or events mentioned in the interview with which a reader might not be familiar. For example, if an interview is with a German legal advocate who mentions the "Rechtstaat", describe very briefly what that is, or, if interviewing an American legal advocate and the Miranda Warning is mentioned, describe what the warning is. Just select the most likely items that will be unfamiliar to readers inexperienced with that legal system.
7. Send the completed chapter, the glossary of terms and description of the legal system to the editors by email in a Word document. The total length of the interview should be 7,500 words (not including the legal system description and glossary).

Interview Topics and Suggested Questions

Career

- Q1. Tell us a little bit about your career? (Try and include the length of service as a prosecutor/defence lawyer, organizations worked in, movements, specializations, etc.)
- Q2. As your career as a prosecutor/defence lawyer developed what has surprised you?
- Q3. Has your work as a prosecutor/defence lawyer proved as interesting or rewarding as you thought it would when you first started?

Philosophy of Legal Advocacy

- Q4a. What do you think should be the role of the prosecutor/(public) defence counsel in society?
- Q4b. What should be their job, functions and responsibilities? What should be left to others?
- Q4c. What organizational arrangements work and which do not?
- Q5. What policies on relations with the community, with political groups, with other criminal justice organizations work well? What hampers cooperation with other agencies and groups? (May be more relevant to prosecutors than defence lawyers)
- Q6. How difficult is it for prosecutors/defence counsel to relate to the living and social conditions of those from economically deprived backgrounds who appear before them?

- Q7. How can a legal advocate develop empathy for those from the lower rungs of the social division in society from which they can derive a degree of understanding why that person before them did what is alleged?
- Q8. How should the criminal legal system in your country be performing? What should be the preferred priorities and strategies; hard edged crime control, prevention, services, order work, what mix for which types of problems, etc.?

Problems and Successes Experienced

- Q9. In your experience what policies or programs have worked well and which have not? And can you explain for what reasons? (e.g., if someone has to plead guilty to enter drug court? What about “Probation before judgment” programs, with no criminal record if you complete them successfully?)
- Q10. What do you consider to be the greatest problems and issues facing the criminal courts at this time? (e.g., caseload, plea bargaining, misdemeanours never tried, preliminary dispositions; presumption of guilt; leniency, unlimited or preventive detention, etc.)
- Q11. What problems in courts do you find the most difficult to deal with?
- Q12. What would be easy to change? Internal problems (culture of the organization, managerial deficiencies, allegations of corruption or gender-related problems, etc.) or externally generated problems (resources, community support, etc.)? Is anything easy?

Theory and Practice

- Q13. What should be the relationship between theory and practice in legal advocacy?
- Q14. What can legal practitioners learn from theory, and what can theory builders learn from legal advocates?
- Q15. What is the relationship right now? Does it exist? Does it work?
- Q16. What holds back collaboration or interactions?
- Q17. What kind of research, in what form, on what questions would you find most useful for legal advocacy practice? If not very useful, what could or should theory builders do to make their findings more useful to you?
- Q18. Where do you find theory-based information? Where do you look? What journals, books, publications, reports?
- Q19. Do you conduct supplementary research (beyond legal research required) for pending cases? If so, what are the areas, issues or questions of law researched?

Transnational Relations

- Q20. Have you been affected by, and how, in the work of your organization, by developments outside your country (human rights demands, universal codes of ethics, practical interactions with legal practitioners from other countries, personal experiences outside the country, new crime threats, etc.)? (e.g., ACLU, Amnesty International, environmental crimes, trafficking, social science and law, expected relapses in drug court, etc.)
- Q21. Have those interactions been beneficial or harmful? What kind of external international influences are beneficial and which ones less so?
- Q22. How have developments since the terrorist attack in the USA on September 11 2001 affected your work?

General Assessments

- Q23. Are you basically satisfied or dissatisfied with developments in criminal law and criminal procedure in your system?
- Q24. What are the most likely developments you see happening and which would you like to see happening?
- Q25. What is most needed now to improve legal advocacy and the justice system?