Observing judicial work and emotions: Using two researchers

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Abstract
Observation is an important component of research to examine complex social settings and is well-established for studying courtroom dynamics and judicial behaviour. However, the many activities occurring at once and the multiple participants, lay and professional, make it impossible for a sole researcher to observe and understand everything occurring in the courtroom. This article reports on the use of two researchers to undertake court observations, in two different studies, each nested in a different research design. The social nature of data collection and the value of dialogue between the two researchers in interpreting observed events, especially when studying emotion, are readily apparent in both studies.

Keywords
collaboration, court observations, courts, demeanour, emotions, emotion work, judiciary, observation research
Introduction

Courtrooms are complex legal and social settings, with several participants, varied decisions, and often time pressures (Eisenstein et al., 1988; Flemming et al., 1992; Hunter, 2005; Lynch 1997; Mack and Roach Anleu, 2007; Moorhead and Cowan, 2007). Observation is a well-established method for studying courtroom behaviour (Carlen, 1974; Dahlberg, 2009; Darbyshire, 2011; Fielding, 2013; Hunter, 2005; Laster and Douglas, 1995; La Trobe University Legal Studies Department, 1980; McBarnet, 1981; Mileski, 1971; Ptacek, 1999; Rock, 1991, 1998; Tait, 2001; Travers, 2007). However, as with observation research generally, courtroom studies affirm that it is impossible to capture everything, no matter what vantage point or methodology used (Lofland et al., 2006; Mack and Roach Anleu, 2007).

Two researchers collaborating can effectively handle obstacles associated with observational field research investigating courts and judicial behaviour with a particular focus on emotions (Mitteness and Barker, 2004). Two researchers can provide more than one perspective, strengthening the density and intersubjectivity of the data collection and analysis (Alvesson and Sköldberg, 2009). While neither the Swedish study nor the Australian study discussed here claim ‘to capture fully the social world portrayed’ (Lofland et al., 2006: 90), having two researchers extends the scope and understanding of what is captured in the research process.

These two studies examine the everyday work of judicial officers through observational research in the courtroom. Each study involves two researchers undertaking observations in their own jurisdiction. The Swedish study explicitly examines emotions and emotional processes in judicial work, combining observations in four courts with interviews and shadowing of court professionals. The Australian study investigates the judiciary as a distinctive occupation undergoing change using national surveys and interviews undertaken over several years, combined with court observations in lower courts in different geographic locations, to investigate judicial decision making and courtroom dynamics, including emotions.

The article first considers methodological discussions of observational research then examines court observation research. The next section outlines the Swedish and Australian studies and discusses the role of the two researchers in designing the research, undertaking the observations and interpreting the findings. Benefits as well as limitations of two researchers undertaking this research are recognised.

Observational research

Methodological discussions of observational research highlight the position of the researcher as physically present in the natural setting of the observed. Direct experience of the setting, seeing and hearing events as they unfold, provides an immersed and multifaceted form of data collection (Atkinson et al., 2003; Becker and Geer, 1957: 32; Lofland et al., 2006; Silverman, 2013). Observations can vary by the researchers’ level of immersion in the social setting, the kind of participation, degree of quantification and the combination with other research methods (Small, 2011).

Level of participation presents a series of challenges for the researcher (Denzin, 1989: 162–5; Schwartz and Schwartz, 1955). At one extreme, the observer may have little
interaction with participants, potentially restricting access to some information or viewpoints and to parts of the physical setting observed. The researcher is an outsider. At the other extreme, the observer becomes a participant, even a trusted insider with wide access – a more ethnographic approach – but risks conversion or identification with some participants, thereby losing the critical edge of the researcher (Atkinson et al., 2003; Hunter, 2014; Lofland et al., 2006: 56–63; Runcie, 1980).

These challenges can be particularly acute when observing emotions. From a sociological perspective, emotions arise from interactions, making emotional experience an ‘intersubjective medium’ (Kleinman and Kleinman, 1991: 277). This implies that the observation of emotions from an external standpoint becomes a contradiction in terms. Most people try to control their emotional experiences and expressions (Hollan, 2008: 485), and they do so in accordance with conventional beliefs that emotions are unprofessional and private phenomena (Hochschild, 2001). This makes the investigation of emotions difficult, especially among professionals in the courtroom setting, as the researcher has to overcome protective measures and interventions, both verbal and non-verbal, to conceal the emotionality of everyday (work-) life (Fitzpatrick and Olson, 2015; Flam and Kleres, 2015; Roach Anleu and Mack, 2005).

A second set of dilemmas surrounds the interpretive process, making sense of what is observed. First, as discussed above, observations are inevitably limited. Second, what is observed must be recorded, written up, or transformed into field notes which become a representation, necessarily selective, of what occurred (Coffey and Atkinson, 1996; Emerson et al., 2011; Van Maanen, 2011). Third, observations must be interpreted; seeing one set of interactions might result in different interpretations depending on the viewers and their positions (metaphorical and literal).

Possible responses to these challenges include repeated observations of the same setting, or combining observations with other research methods, such as interviews and shadowing (Kleinman et al., 1994). Shadowing, a form of mobile observation, implies following one person for a period seeing their everyday life from their perspective (Czarniawska, 2007). Another response is to use and reflect on the researcher’s own emotional responses in relation to the field (Bergman Blix, 2015; Petray, 2012; Trigger et al., 2012). Some of these research approaches were undertaken in the two studies considered in this article. Our focus here, however, is on the use of two researchers working collaboratively throughout the entire research process as a strategy to overcome challenges in observational research (Mitteness and Barker, 2004).

**Observational research in courts**

Observational research allows the investigation of courtroom interactions, strategies, the talk, orientations and behaviour of participants, and can capture the usual and routine as well as the unusual, and generate insights not available through court records, statistics, or even interviews (Mileski, 1971; Travers and Manzo, 1997). For example, Booth (2012) conducted an observational study of 18 sentencing hearings in homicide cases, with observations recorded in field notes. Her study examines how emotions are managed during victim impact statements and shows how family victims are ‘cooled out’ (a form of emotion management that Goffman [1952: 452] describes) through various legal
structures and processes, including ‘empathic responses conveying respect, compassion and sensitivity’ by the sentencing judges observed (Booth, 2012: 226).

Some court observation studies focus on particular actors in the setting, for example, judicial officers and their approaches to law or judicial decision making (Baldwin, 1999; Conley and O’Barr, 1990), defendants (Carlen, 1974; McBarnet, 1981) or victims and witnesses (Konradi, 2007; Rock, 1991). Many supplement observations with other methods of data collection/construction such as conversations, interviews, surveys and court records (Castellano, 2011; Darbyshire, 2011; Goodrum and Stafford, 2003; Lynch, 1997; Rock, 1991; Travers, 2007). Fielding (2013: 288) observed 65 Crown Court trials in England recorded in field notes along with interviews with judges, lawyers, court officials, victims, defendants and witnesses involved in the cases observed. He describes how the narrative storytelling of lay people conflicts with legal case making. Schuster and Propen (2010) combined judicial conversations with courtroom observations to examine the emotions that victim impact statements bring into the courtrooms and their impact on judicial decision making.

In these studies, typically one researcher conducted the observations in a single setting, though an individual observer may have been one of a large team, each observing different instances of the same or a similar setting. Some joint observations may have been used to develop the research design or observation template, but were not the core data collection process (La Trobe University Legal Studies Department, 1980: 32).

This article shows how a research design and implementation using two researchers, working simultaneously or in parallel, enhances data collection and analysis, especially when undertaking observational research to study emotions in the judiciary and judicial work.

**Observing courts in Sweden and Australia**

**Emotions in court: the Swedish study**

The purpose of the Swedish project *Emotions in Court* is to study emotion and emotion management by the professional participants (judges and prosecutors) in the Swedish courts.\(^1\) The project examines how emotions are active and acted upon in court trials and in everyday interactions around the hearings.\(^2\) The research questions cluster into three areas: learning and mastering emotion management; the influence of power, status and collegiality; and the strategic use of emotion. The project covers four District Courts and the associated Prosecution Offices.

A combination of interlinked methods was used: observations, interviews and shadowing. Prosecutors and judges were shadowed in order to study the preparation of cases and the shift between front and back stage performances (Goffman, 1959). The observations during hearings focused on body language, facial expressions, glances and gazes, the use of explicit emotion words, tone of voice, interruption of speech and management of open transgressions (of court procedure). While shadowing, the two Swedish researchers accompanied judges and prosecutors at work for several days, observing them during trials, as well as in their offices, and conducting informal as well as semi-structured interviews. The two researchers proceeded this way in parallel at two different courts and with
two different professional groups. The data consists of 83 interviews with 62 people. Overall, around 160 trials were observed, ranging from five minutes (when adjourned) to eight days.

**The everyday work of lower courts: the Australian study**

The Australian research investigates several aspects of everyday work in the lower courts, including time management, the kinds of cases and their disposition, decision making, and the magistrate’s demeanours toward other participants in the courtroom, including the defendant. The research design entailed interviews, surveys and court observations conducted by the two researchers over several years (Mack et al., 2012).

In 2006, the Australian researchers observed non-trial procedures in criminal cases in magistrates’ courts throughout Australia, including pre-trial decisions such as adjournments or bail decisions as well as guilty pleas and sentences. The two Australian researchers observed 27 magistrates in 30 court sessions, most lasting a full day, in 20 locations, producing snapshots of 1287 individual matters, at various stages of their progress. This cross-sectional study did not follow cases from beginning to end, unless that occurred within the one day (or session) that was observed. The criminal list was selected as it is a large component of the work of all magistrates’ courts and of most magistrates, at least for part of their career. In these sessions, magistrates frequently interacted directly with defendants who were often without legal representation. This provided an opportunity to observe judicial behaviour, including emotions, as displayed in the varied interactions in a busy court.

**Discussion**

The analysis below outlines the roles of the two researchers in three phases of the observational research: developing the research design, undertaking the research and analysing and interpreting the data. Then, the findings about the value of two researchers are examined.

**Developing the research design: construction and calibration of data collection instruments**

Using two researchers requires specific strategies to develop an observation strategy and to establish an intersubjective method of observation and common observation criteria. When studying emotions in a judiciary with a strong tradition of affective neutrality (Bandes and Blumenthal, 2012; Bybee, 2010; Maroney, 2011; Maroney and Gross, 2013), it is critical to fine-tune methodological instruments to register subtle displays of emotion.

In the Swedish study, the two researchers observed trials jointly, in order to construct a shared observation instrument or template to facilitate the recording of the emotions observed. However, both noticed that it is rather easy to become absorbed by the verbal interactions in court and to miss the non-verbal exchange between parties. During these joint observations, the original template was partly abandoned in favour of open-ended
and descriptive field notes. Parts of the template were retained for recording data on sex, dress and age of the court professionals and lay judges, and the general demeanour of the judge (Mack and Roach Anleu, 2010).

Since the aim was to study interactions in court, it became apparent that the flow of the court process was better conveyed in terms of a narrative rather than recorded on the pre-printed template. In spite of the highly ritualised character of the process, including words and sequences required by the code of judicial procedure, variations were frequent. These became intelligible only in relation to the dynamics of the ongoing and situated interactions between the parties and the style of the judge. A narrative description accounts for these dynamics.

Instead of using a template, the researchers decided to write field notes focussing on cues, such as breaches, ruptures, mistakes, or pauses, in the ritual and routine performance of the trial, as occasions where emotional reactions and joint efforts to return to the ritual procedure occur. When observing reactions, they focused on subtle facial expressions and hand movements, tone of voice, fiddling with glasses, pens and papers, shifting of body posture, and so on. When a new subtle expression was discovered, the researchers discussed it, offered a tentative interpretation, and then looked for it in the upcoming observations. Meanwhile, the meaning of observed subtle expressions was validated in post-court informal and formal interviews with shadowed participants.

The Australian court observation research design was also developed in stages. First, the two researchers together observed a wide variety of civil and criminal matters in 23 magistrates’ courts nationally and separately took detailed field notes (Emerson et al., 2011). Following this, and drawing from other court observation studies plus survey and interview data from their own previous research, they decided to focus on magistrates’ decision making and interaction with various court participants and to record the length of each matter. They developed a pre-printed code sheet to complete for each new matter. An aim was to quantify the observations to be able to capture patterns across the courts observed. Pilot testing showed that, because of the pace of matters in these courts, it would not be possible to record everything the two researchers saw and heard or to capture detailed information on every matter in the session.

The pre-printed code sheet comprised two sides of a single page. The front side enabled recording of aspects of the magistrate’s demeanour and interaction with others in the courtroom, including the defendant when present, information for decisions, the manner of giving the decision, the kind of language used by the magistrate, and the time each matter took. On the reverse side, space was available to record information such as the exact charges and the court order; it also contained space for field notes recording additional observations. A new code sheet was completed for each matter. The two researchers developed detailed instructions to explicate the meaning of the categories and give guidance regarding the characterisation of what was observed. These instructions were constantly revised in light of variations in events or new situations. For example, the first version of the instructions provided for noting on the code sheet the magistrate’s orientation to various participants. However, early observations revealed that magistrates sometimes shift their orientations, perhaps commencing a matter with a patient and courteous demeanour then moving to impatience or rudeness. The instructions were amended to specify how to record multiple demeanours. As with the Swedish study, having two
researchers meant that such issues could be discussed immediately, in the moment and resolved collaboratively.

In addition to the code sheets for each matter, a session code sheet recording aspects of the courtroom structure, participants in proceedings, and court house was completed by both researchers as well as field notes on more informal conversations with court staff, the magistrate or other court participants. These were written down on either the session code sheet or as separate field notes, and used to establish a sense of the context, a deeper understanding of the wider setting of the courtroom and locality. In contrast to the Swedish study, there was no shadowing and no formal interviews with the magistrates observed in Australia. Conducting all aspects of the observational research together reduced the ‘potential for fundamental misunderstandings’, as any taken-for-granted assumptions could be identified and discussed immediately (Mitteness and Barker, 2004: 285).

Undertaking the observations

Both studies are somewhat unusual in having the two chief investigators (CIs) undertake nearly all of the data collection. This method contrasts with a team research project where several researchers, often part-time assistants, are trained to conduct the observations singly and separately, an approach to primary data collection that is increasingly adopted (James, 2012: 563). In the Swedish and the Australian studies, data collection was filtered through the primary researchers’ experience, not those of research assistants or post-doctoral students. Consequently, the CIs are ‘inextricably implicated in the data generation and interpretation processes’ (Mason, 2002: 149).

Both studies used two primary researchers throughout the court observation phase, though the place of the court observations was different in each research design and the two researchers were deployed differently in data collection. During the Swedish data collection, the two CIs worked in parallel at separate sites, in different parts of Sweden; each researcher was responsible for two courts in two different cities, studying prosecutors and judges at each location. The researchers engaged in discussions with each other via Skype and telephone on a daily basis, as well as regular email/text contact. This use of Skype enhances flexibility in research, reduces the difficulties of physical distance, and simulates face-to-face interaction among researchers (Deakin and Wakefield, 2014).

This ongoing dialogue between the researchers invited a more deliberate analysis earlier in the research process than would have been possible if reflecting alone. Being two made it possible to compare experiences, notice differences between emotional experiences when shadowing prosecutors and judges respectively and get individual interpretations contested (Holmes, 2010). Emotional experiences that easily could have been hidden for fear of being private often turned out to be recognised by the other researcher. These joint experiences could thus be elaborated upon resulting in questions for subsequent interviews (Blackman, 2007). The internal dialogue pertinent to emotional reflexivity as discussed by Burkitt (2012) thus surfaced and transformed into an intersubjective dialogue. As a result, irrelevant experiences could be sorted out, and those deemed relevant could be trusted as valid sources of information. The everyday contact and exchange of experience between the two researchers enabled comparison
and reflection concerning differences and similarities between the legal and judicial professions as well as between different courts.

When one researcher followed prosecutors at one court, the other followed judges at another court, then the researcher following prosecutors switched focus to judges, while the other changed to observe prosecutors. This design created the opportunity to share and compare different settings and different professional positions from within. It resulted in a heightened sensitivity for similarities and differences between the different cognitively and emotionally embedded professional perspectives, generating an analytical inkling for what is at stake at the different sites and how these different professional perspectives may unite or collide. Consequently, there was an early focus on how the different professional roles were associated with different forms of power that could both advance and disrupt the hearings (Sackville, 2008). An additional advantage came when the researchers switched professions; this method evoked recognition of aspects observed by the other researcher concerning the same professional group, enriching the observation data.

In the Australian study, two researchers observed the same court proceedings together, throughout each day of the study and discussed the sessions observed at the end of each day. During court proceedings, both researchers sat together in the public gallery of the court room, each completing a separate code sheet for each matter. It was essential to be as unobtrusive as possible in the process of data recording so as not to disrupt the proceedings observed. Pre-planning correspondence and practical arrangements meant that the magistrate and some of the court staff were always aware of the researchers’ presence. They did not sit on the bench, as did Darbyshire (2011), though they were invited to do so. Two researchers were perhaps more obtrusive than one, and made finding suitable seating more difficult, if the courtroom was small or crowded. While the presence of two researchers may have affected the magistrates’ behaviour and conduct of the proceedings, their experience confirmed other research findings ‘that any effect will be fairly minor, given the pressure to get through a list and the likelihood that judges will act accordingly in their “usual” manner in order to achieve this’ (Hunter et al., 2008: 86).

At the end of each session, in the late afternoon and into the evening, the two observers carefully compared their notes on the matter and session code sheets. This involved completing parts of the forms that might have been left blank or correcting any mistakes that might have occurred due to the rapidity of the matters, and ensuring that the code sheets were being completed consistently in light of the instructions developed. It also entailed discussion of any differences in the characterisation of the observed events and unpacking the rationales for classifying the magistrates’ conduct and decisions, as discussed below.

The interpretive process: the use of emotions as a research tool

In the Australian court observation study, observers both collected and interpreted some data simultaneously. For example, recording the kind of language the magistrate used required observers to interpret what they saw to choose the appropriate code. This provides an example of the way two researchers balanced these structured observations and interpretive coding with awareness of the specificity of each researcher’s perspectives.
In the court setting, a degree of formal, legal language would be expected. In the observation study, the legality/formality of the language was recorded using a scale ranging from 1 (legal) to 5 (informal). Legal language involved references to statute, case law, legal terminology or legal reasoning. Informal language used everyday, ordinary or non-technical words. Both observers are themselves law graduates and were conscious that they might be less sensitive to legal language than lay observers, so that any disagreement in the legality/formality rating between the observers was resolved by choosing the more legal score. If the language sounded legal to either observer, it would very likely have sounded legal to the defendants and others in the public gallery.

In the Swedish study, interpretation of the subtle emotion expressions observed in court, which might indicate that an important emotional process was going on within or between professionals, was validated in recurrent discussion and exchange of observation data between the two researchers and in informal and formal interviews with the shadowed court professionals. One example is putting down the pen. Swedish judges take notes during trials. Both researchers at different sites observed judges stop taking notes and even put down their pen, in a manner that seemed noteworthy. In the researchers’ discussion of this observation and from informal interviews with the shadowed persons, this move emerged as an important marker of an irritated judge. Judges said that they were sure that putting down the pen was noticed and they wanted it to be noted as a sign that they thought the things said were superfluous or unimportant. The prosecutors said that they noticed the move as a sign of anger or irritation at irrelevant questions. The exchange of perspectives between the two researchers on this observation led to insights into the general value of subtle expressions in courts, and how judges and prosecutors ascribe somewhat different emotional weight to the expression, depending on their different positions in the power relation. Such an insight in the research process might have come much later with a single researcher, lacking the benefit of contrasting two perspectives simultaneously.

In both studies, the researchers had to maintain a high degree of emotional reflexivity, and, at times, to use their own emotions as a tool or an aspect of the research strategy (Berger, 2013; Holmes, 2010). Observational research can lead to feelings of dislike or sympathy, building on Becker’s classic question of whom to feel sympathy for (Becker, 1967; see also Atkinson et al., 2003). However, self-reflection also runs the risk of navel-gazing; how do we know which emotions are relevant in relation to the field and which tell us more about our private selves? Molding Nielsen (2010) and Liebling’s (2001) prison studies show how their sympathies for prisoners and guards respectively were contradictory and needed constant attention. In studying different professional participants in courts and prosecution offices, the developing sympathies for different positions demands constant attention to juggle several hierarchies of status, but can also offer important insights into their relationships with each other (Molding Nielsen, 2010). Similarly, the need to continuously build trust and rapport with participants easily turns the researchers’ focus on themselves for critical examination (Purdy and Jones, 2011).

For these reasons, observational research can require that researchers present multiple suitable demeanours which entail careful emotion work (Bergman Blix and Wettergren, 2014). The extent of this demand may depend in part on how much of an insider the researcher becomes and on sources of emotional support. Being in the field is a highly
emotional endeavour (Dickson-Swift et al., 2009; Lorimer, 2010). In particular, studying court and strong emotions inevitably exposes the researcher to distressing, even tragic narratives. Most of the information is confidential, imposing an additional burden of emotional management on the researchers. Under these circumstances the opportunity to share one’s reactions with a colleague who is also directly undertaking the research can provide significant support, which will enhance the researchers’ well-being and strengthen the quality of the research (Bergman Blix and Wettergren, 2014; Hubbard et al., 2001; Lofland et al., 2006; Watts, 2008).

In the Australian study, drawing on other court observation research (Hunter, 2005; Mileski, 1971; Ptacek, 1999), aspects of emotion and emotional expression were identified by categorising the magistrates’ demeanours toward the main courtroom participants – the defendant, the prosecutor and the defence lawyer – and the defendant’s demeanour (Goffman, 1956). It was clear to both observers that the feeling in the courtrooms was quite perceptibly different, depending on the magistrate’s demeanour, confirming Ptacek’s remark that ‘there is a quality to the courtroom atmosphere that the judge produces with his or her emotional expressiveness or inexpressiveness’ (1999: 111). After a day in a courtroom with a magistrate who had exhibited even a few instances of harsh conduct, and/or several instances of impatience or inconsiderateness or rudeness, the observers (and perhaps other courtroom participants) came away with a feeling that these were the dominant moods. When the data was analysed, it was surprising to find how few specific instances of rudeness or impatience had occurred.

This experience illustrates one aspect of the difficulty of seeing the emotional climate in a room and how emotions are exchanged between social actors. The researcher’s body, feelings and tacit knowledge become important instruments to understand the interaction (Gieser, 2008; Wettergren, 2015). Whether or not the researcher experiences the same emotions as the participants, awareness of and reflection on their own emotions – a form of emotional participation – furthers the researcher’s ability to sense emotional shifts and focus on the emotions pertinent to the observed interaction (Bergman Blix, 2009, 2015). Ongoing dialogue with a collaborating researcher functions as a reality check to test the reliability of one’s own body-and-senses-as-instrument (cf. Jonsson, 2009). Thus, did they both experience the atmosphere as tense? How to resolve if one thought it was tense but not the other? How come they felt that? What actions and behaviours did we observe to sustain the claim that others present, too, experienced the atmosphere as tense? In the Australian study, the aggregated data from the matter code sheets demonstrated the frequency of magistrates’ demeanours and thus was a reality check on the researchers’ feelings that negative emotions were dominant or that a magistrate was always impersonal without emotion.

On a more general note, the research process benefits from research collaboration, as the researchers can inspire mutual creativity and confidence in breaking ground for the study of emotions in socially situated interactions. This claim is valid also for the process of analysis, which builds on trust and confidence in the pursuit of ideas and findings (Barbalet, 2011). For example, in the Swedish study, the researchers’ experiences of and discussions about private life flashbacks of the criminal cases encountered during trials resulted in construction of a question about flashbacks in the interview guide. This resulted in concrete data on emotional memories to which most participants could relate.
Trust in hunches like these is more likely when two researchers can reinforce each other’s intuition; a single researcher engaged in critical reflection might doubt the value of their own experience.

Two researchers: presumptions and problems

The intensive collaboration between two researchers, and the enhanced trust in the analysis and interpretation, needs an effective combination of researchers. Successful collaboration depends upon mutual research interests, trust and intellectual compatibility, combined with complementary skills and knowledge. Social or formal status may be less important than the situational status established in the interaction between the researchers, but it is essential that the researchers can let go of academic competition in the relationship and relate to one another in an open-ended and unprejudiced manner (Kemper, 2011). In both the Australian and the Swedish studies the two collaborating researchers, all female, enjoyed similar social status to each other, shared a passion for the topic of research and a commitment to the methods deployed, and entered the project with overlapping but complementary theoretical perspectives and methodological expertise. In the Australian example one researcher has an undergraduate degree in behavioural sciences and postgraduate law qualifications, while the other has undergraduate social science and law training and postgraduate degrees in sociology. Both studied in the United States and Australia indicating shared experiences at a general level. In the Swedish study, while the researchers were not in the field together, they did joint feedback at the different sites. They could take turns to represent the critical eye where they had not done fieldwork. The social similarities between the collaborating researchers furthered mutual understanding, though some social differences might have generated contrasting experiences that could have benefited the analyses.

Even if a trusting, mutually inspiring and reinforcing relationship can be sustained over time, there are downsides of being two researchers. The study design may be more costly and the research may generate more data than can be processed and analysed within the time span accorded to the project. If the two researchers collect data together at the same sites, it may also be more intrusive to the field. Working together potentially requires more time for respectfully negotiating the limits and boundaries between research as an occupation and the researchers’ private lives.

The need to cross-check many decisions and actions in research design, data collection, interpretation and writing up can be more demanding. In a strong research partnership, these obstacles are more than outweighed by the higher quality of the research outcomes and the professional and personal satisfaction. However, there is always a risk of lowest common denominator thinking where shared perspectives lead to limited understandings. Personal investment in maintaining the relationship can trump critical thinking. While some convergence in viewpoints and interpretations is inevitable, indeed valuable, complete isomorphism can be avoided where the two researchers are based at different universities or are in different disciplines, and maintain networks with other colleagues.

Another set of issues relates to institutional structures and requirements which can make collaboration difficult in a practical sense. Competing timetables, separate reporting systems, incompatible financial regimes and generally different organisational ways
of doing things frustrate collaborators who may perceive these challenges as obstacles which need to be taken into account when designing and undertaking the research.

Conclusion

Although observational research is an established methodology for examining courtrooms and judicial behaviour and decision making, investigating emotion expression and management in this context is especially challenging, no matter what standpoint or research design is used. Even when observation is combined with other research strategies, such as interviews, surveys and transcript analyses, it is impossible to capture everything occurring in this natural setting.

Analysing two studies that entailed two researchers working collaboratively throughout the entire research process demonstrates several distinct advantages, especially considering the social nature of data collection when studying emotion. Although the two studies were nested in different research designs, each generates opportunities to overcome some of the limitations of observation research. Using two researchers requires explicit articulation of research strategy and its justifications and assumptions, which can then be challenged and revised; enables an expanded scope and detail of data collection; greater depth of interpretation; more confidence in the validity of data and its interpretation; and provides practical and emotional support during the demanding research process.

It is rare for observational research to include two researchers with complementary theoretical and methodological skills who are equally responsible for the whole research process: design, implementation, data gathering, interpretation of findings and preparation of presentations and articles. Such collaboration requires a particular kind of collegiality between the researchers and complementarity of skills, and imposes some additional costs and practical demands, in particular the importance of frequent, candid, open dialogue. Even so, the two researcher approach enables gathering richer observational data and more nuanced interpretation of the data, beyond what an individual researcher could generate.

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Notes

1. Scandinavian law adheres to the civil law system but is different from continental European Law. Swedish criminal procedure has elements of inquisitorial and adversarial practices (Eser, 1996: 343). Presiding in most District Court trials is one professional judge and three lay judges (The Swedish National Courts Administration, 2013).

2. The Swedish researchers signed confidentiality agreements for every court and prosecution office that was part of the study. This gave access to preliminary investigations, closed hearings and court deliberations. During closed hearings, the respective parties were informed and all consented to the researcher’s presence. In Australia, before the two researchers visited a court, each magistrate in the state or territory received a personally addressed letter explaining the proposed research and giving an opportunity to opt out on a confidential basis. When specific dates and locations were scheduled, if the sitting magistrate could be identified, they would also be contacted in advance, giving another confidential opt-out opportunity. Court staff were contacted directly, to explain the nature of the research and seek assistance. In each location, on the day before the first scheduled observation, one of the researchers, or usually both, visited the court and met with relevant staff and sometimes the magistrate, to answer any questions about the research. These conversations were not recorded. In both court systems, note-taking in public courts is not prohibited and does not warrant explanation. For further information on research design and court access for both studies see Roach Anleu et al. (2015); for the Swedish study, Bergman Blix and Wettergren (2014); and for the Australian research, Mack et al. (2012).

3. In Australia, a separate court system exists for each of the six states and two territories, as well as federal courts at the national level. Magistrates’ courts, the first level of state courts, hear less serious criminal charges, lower value civil cases including small claims, and the first stages of all criminal cases. Australian magistrates are paid judicial officers, with legal qualifications, and appointed until a fixed retirement age (Roach Anleu and Mack, 2008). They sit alone without juries, in metropolitan, regional and remote areas; those who appear in these courts are often unrepresented.

4. A ‘matter’, in the Australian research, was when each defendant’s case was called, regardless of whether the defendant actually appeared. Each case may have entailed only one or several charges. If two or more co-defendants appeared together, that was one matter. If a case was called, stood down and then recalled later, that was two matters, as it represented two separate events.

References


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Stina Bergman Blix, MA Lund, PhD Stockholm is Assistant Professor at the Department of Sociology, Stockholm University, Sweden. Bergman Blix’ research focuses on the sociology of emotions, in particular emotions in work life. Her doctoral thesis, ‘Rehearsing Emotions: The Process of Creating a Role for the Stage’ explored dramaturgical theory through close observation of the rehearsing process of professional stage actors. Her current research investigates emotions in the Swedish courts in collaboration with Åsa Wettergren.

Kathy Mack, BA magna cum laude Rice University, JD Law School, Stanford University, LLM Law School, University of Adelaide is Emerita Professor of Law, Flinders Law School. She is the author of a monograph, book chapters and articles on ADR, and articles on legal education and evidence. With Professor Sharyn Roach Anleu, she has conducted empirical research involving plea negotiations. Since 2000, they have been engaged in a major socio-legal study of the Australian judiciary.

Åsa Wettergren, MA Lund, PhD Karlstad is Associate Professor at the Department of Sociology and Work Science, University of Gothenburg. Her main research interest is in the area of sociology of emotions, particularly emotions in social movements, in migration, and in organizations. She is currently researching emotions in the Swedish courts in collaboration with Stina Bergman Blix. Wettergren is co-editor of the collected volume *Emotionalizing Organizations and Organizing Emotions* (Palgrave, 2010).