

## OBSERVATION, DIRECT PARTICIPANT

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(1,000 words)

Observation is the most direct form of finding out about something. It contains the most truth because it is grounded in direct experience. Observation enables us to perceive interaction in real time. Unlike interviewing or survey research, observation is not bound by frailties of memory and selection.

Observation has a long record in law and society. Anthropologists, and those interested in law, have long relied on ethnographic fieldwork as their primary source of data. Malinowski's sojourn the Trobriand Islands produced classical works such as Crime and Custom in Savage Society (1926). A key moment in the anthropology of law was the collaboration between an anthropologist and an academic lawyer. The result, The Cheyenne Way (1941), is an appealing conjoining of anthropological and legal skills. Lawyers elsewhere have used observation as part of their portfolio of research methods. Mann on white-collar defense attorneys, Flood on barristers' clerks, Sousa Santos on Brazilian favelas, Rock on crown courts, and Sarat and Felstiner on divorce attorneys.

The rules of participant observation are simple, their practice is painstaking. Select a site to study, perhaps a lawyer's office or a courtroom. Gain access. Be aware of all that is happening: context, time, roles, gender, power relations, temporal flows, who is saying what to whom. Take copious field notes. Analyse the field notes and write the ethnography. Each of these can be a difficult task. Observation is in many ways the most contingent form

of research available to scholars. It depends on enormous amounts of goodwill from a disparate group of people. One is dealing with power, interests, expectations and luck. This last item may seem inappropriate in this context, but it makes its presence known frequently in descriptions of ethnographic projects and so it cannot be ignored. Finally, observation is the most demanding of research techniques requiring extensive commitments of time and effort.

We will take these rules one by one.

- Selecting a site for study: This depends on the personal interest of the researcher. Is one concerned about the organisation of court work (e.g., Rock), how public interest lawyers act as advocates for poor people (e.g., Katz)? In combination with the selection process is the question of how realistic is the research project.
- Gaining access: This is one of the most difficult stages. A classic example of failure was Danet's attempt to study lawyer-client relationships. Her team were interested in the linguistic dynamics inherent in the lawyer-client dyad. The research team was unable to engender interest among lawyers, those they wished to study. In remarkable honesty the researchers believed that the lawyer-subjects were unable to understand the project's aims as articulated by the researchers.

There are essentially two ways to gain access. The first is by official sanction and the second is through more covert methods. These approaches also raise serious questions of research ethics, which may make the latter method virtually impossible these days.

Even with official sanction permission may be granted in degrees. For example, Flood, when attempting to gain access to barristers' clerks offices, found that the initial clerk he dealt with was suspicious of his motives. After Flood had spent time in his office he became an advocate for Flood ensuring that other barristers' clerks accepted him into their clerks' rooms.

Even if access is granted its mechanical elements may create difficulty. Mann's study of a white-collar defense law firm required that he be able to observe the interactions of lawyers and clients. The firm was willing in principle to have Mann observe, but found presence at lawyer-client discussions could potentially breach the attorney-client privilege. To overcome this hurdle the firm hired Mann as an attorney for the duration of his research bringing him in within the scope of the privilege.

- Doing the fieldwork: Managing oneself in the field is demanding. The researcher must develop trust and yet remain objective as possible. This will show in the field notes. These are at first wide ranging, taking account of physical, temporal and emotional constituents. They become more focussed as the researcher learns which parts of the setting to concentrate on. An extreme version of this was Sarat and Felstiner's research on divorce attorneys where they used tape recordings of the discussions between attorney and client. Observation also includes interviews, but these are different from the usual research interview instead resembling conversations, intermittent and informal.

Taking field notes requires two stages: the taking of notes during interaction and the reflection on those notes outside the setting. The importance of field notes is paramount for these are the materials that provide the basis for the final writing.

- Analysis and writing: At some point the researcher must leave the field and engage with the field notes. Methods of analysis vary depending on what questions researcher is asking. Some use card indexes, others use computer programs such as NU\*DIST.

Ethnographies are often written in a more narrative style than other social science texts. This reflects the nature of the materials used and the setting. More attention is given to understanding interaction because ethnography always respects the commitment to grounded experience.

A final point about participant observation, and one rarely mentioned, is that is among the most enjoyable ways of doing research. This is fair compensation for adopting one of the most challenging methods in the research canon

#### FURTHER READING

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