Chapter 8

Stories from the Field: Collecting Data Outside Over There*

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Introduction

In recent years there has been increased attention to the value of qualitative research and the methods for conducting that research in a rigorous manor. We now have available excellent discussions of issues of design (King, Keohane, and Verba 1994; Yin 1994), data collection (Douglas 1985; McCracken 1988; Spradley 1979; Spradley 1980), and analysis (Feldman 1995; Miles and Huberman 1994; Silverman 1993; Strauss 1987). My interest in this chapter is on data collection.

There are three archetypal methods of generating qualitative data: reading (relying on existing texts, typically from archival sources), talking (interviewing), and watching (observation).[1] Historians have been very candid about the issues and dilemmas of their data sources, and historiography provides a wealth of guidance regarding the issues involved in relying upon archival materials (Barzun and Graff 1992; Bloch 1953). Users of field interviews and of observational techniques have devoted less attention to the limitations of the information their methodologies produce.[2] Consequently, I will concentrate my attention on talking versus watching as methods of data generation.

A great deal of sociolegal research (as well as sociological and political science research) relies upon open-ended interviews. These interviews typically focus on a combination of factual and attitudinal issues. Sometimes they are a kind of personal oral history interview, in which respondents are asked to reconstruct past events, with the added element of asking for the reasoning behind specific actions. The duration of the interviews is most often in the range of one to three hours. Interviews can be an efficient way to collect data. For one hour interviews, it can be possible to conduct four or five interviews per day if the respondents are close together geographically and their schedules happen to allow the appropriate scheduling.

Much less research relies upon observation (or observation combined with interviewing[3]). This is not surprising. Observation is extremely time consuming, and much of the time spent doing the observation can be relatively unproductive given that it is not possible to restrict the observation to activities or events relevant to the research, and that much of the observation may involve extremely repetitive activities.[4] Even if time is not a constraint, for many of the phenomena of interest to sociolegal scholars it can be difficult to obtain the access necessary to conduct observation. For example, when Sarat and Felstiner (1995) were beginning to plan their observational study of divorce lawyers and clients, it was not at all clear that they would succeed in obtaining the access that the research required (Chambers 1997: 214–219; see also Danet, Hoffman, and Kermish 1980). In addition, because of the time required, observational methodologies tend to limit the number of data sources in ways that can raise questions about generalizability.

Because of the difficulties of observation, it is not unusual that researchers (perhaps with the important exception of anthropologists, who will find nothing of what I say in what follows the least bit surprising) more often opt to collect data through interviews, attempting to capture through the interview process the kind of information that would be obtained if observation could be carried out. Researchers pay unexpectedly little attention to the limitations of the pure interview methodology, even though at least some of these limitations are well documented (see, for example, Briggs 1986; Converse and Schuman 1974), perhaps because few researchers have the opportunity to compare directly the results obtained with the two methodologies. When such comparisons are possible, the differences can be striking.

An Example

Let me illustrate this with an example from my research on contingency fee legal practice in Wisconsin. The design for this research involved three major components: a structured mail survey of Wisconsin practitioners, observation in three different firms (one month in each firm),[5] and a series of semistructured interviews with contingency fee practitioners around the state. Of interest here are the latter two components. In designing the research, I was very aware of the issues of generalizing from what amounted to three observational case studies (even if those settings were specifically chosen to insure variability). The specific goal of the interviews, which were conducted after the completion of the observation, was to assess the generalizability of the observational data. To do this, I sought to design questions that would provide information that was as comparable as possible to the kind of information I obtained from the observation. Among other things this involved:

- a question asking the respondent to give me a tour of what he or she did the previous day ("Can you walk me through what you did yesterday ... What would I have seen if I had sat in this office from the time you got here until you left for the day? How many different matters did you deal with? How many phone calls did you take or return yesterday? In what ways was yesterday typical and atypical?")
- a question asking the respondent to describe the most recent case closed ("Could you tell me about the most recent case you closed? What type of case was it? How did it come to your office? What valuation range did you see it falling into when you first evaluated it? Who prepared the initial draft of the demand letter/brochure: you, another lawyer, a paralegal? Can you walk me through the negotiating history of the case—when was the first demand made, what was the first offer, etc.?")

- a question asking the respondent to describe what would happen if a potential client contacted his or her office about a particular hypothetical case ("Could you walk me through what would happen if your firm received a call from a potential client who described the following case—who would I talk to first, etc.? [I then described a case that involved a twelve year-old bicycling on a sidewalk who was struck by a car exiting from a commercial driveway]")

Given that I had already conducted the observation when I did the interviews, I knew very clearly the type of information I was seeking. I found that I was unable to get information that was even marginally comparable about the details of events and processes.

One can see the clarity of the problem by looking at an sample of my (edited) observational notes of one day in one of the three firms in which I observed, and one of the better (if not the best) responses I got to the first of the listed questions above.[6] The lawyer whom I observed in the example below, "Alex Stein" (a pseudonym—all names in what follows are pseudonyms), works in a small firm (fewer than five lawyers) that largely (but not entirely) specializes in personal injury cases, including workers' compensation. This firm handles routine, run-of-the-mill type cases, most of which are under $50,000 (no one in the firm has ever handled a case that led to a judgment or settlement of over $500,000, and the two senior lawyers have been in practice for over fifteen years). The day described below occurred toward the end of my time observing in the firm; it was reasonably typical, although there was more in the way of settlement discussions than on most days, and there was less in the way of client intake activities. [To assuage the curiosity of readers, I have included notes on the final outcomes of two of the cases dealt with during the day.]

At 7:00 A.M. Alex Stein called my home to tell me that he wasn't going to his gym this morning and wanted to get into the office early; he asked me if I would like him to pick me up and give me a ride (it's −24° out this morning, and I don't refuse). On the ride in, Alex told me that he had worked on the brief [for a case he is appealing] last night for four hours; he had sat down to do one paragraph and ended up revising one subsection.

When we arrive at the office (about 8:00 A.M.), Alex immediately went to work on the brief: He dictates changes. This takes thirty to forty minutes, during which he declines to take one or two phone calls. He gives the dictation tape to his paralegal/secretary, Jim Allen, at 8:55.

At 9:00 he turns to the mail and telephone messages. In the mail was a police report for the accident of one new client, medical records for another couple of cases (including one that prompts Alex to make an observation about the high charge for copying a bill), and a motion (and accompanying brief3 from the opposing lawyer in a non-PI (non-personal injury) case he is handling as co-counsel with another attorney.

In reaction to one of these bilh Alex comments on a $55,000 medical bill in a workers' comp case. The medical insurer in that case has agreed to pay Alex a fee (20 percent) if he can recover the medical costs from the workers' comp carrier. In fact, the case was referred to Alex by the medical insurer; it would not have been worth his while to pursue the case just for the benefits that would come to the client. Alex comments on the potential for conflicts of interest between the insurer and the client in cases like this. The client comes first.

At 9:30, Alex calls Bob Strong, a client for whom he had been negotiating a settlement the day before. (This call and most others are handled on the speakerphone.] He gets some additional info on Strong? work situation, work duties, and prior medical treatment. Strong tells Alex that he had no related symptoms prior to the auto accident; his former job (he had been dismissed for absenteeism last month) was on a limited-term basis [meaning that he received no benefits], even though it had lasted three or four years. Alex has Strong describe his job duties; this produces a somewhat confused discussion, but the thrust is that most of the work was light duty such as sorting mail, with occasional assignments (perhaps two to three times a month) that involved moderate to hea y over-the-head lifting (getting this information from Strong is not easy, but Alex does eventually get it). Strong missed virtually no work before surgery. Alex expkzins the adjuster: concern, "It is just as likely that the client's problem with his neck is related to work as to the accident." Alex observes to Strong, "It's not clear what happened here." Alex telh Strong that the situation is difficult, repeatedly telling him that the issue is whether the surgery is really related to the auto accident, and the difficulty of establishing proof. "This is a very iffy case in terms of litigation. I'm concerned whether this is provable in a court of law.·· During this conversation Alex discusses with Strong the option of filing for bankruptcy to avoid paying other outstanding debts which would absorb most or all of any settlement Strong might receive.

The call ends at 10:00 AM. Alex comments "This case is going to be a tough one"; Alex comments that Strong mentioned some leg problems that aren't in the record; Alex's view is that Strong does not have good recall on this, Alex tells me more about the bankruptcy option; under Wisconsin law, one can keep up to $25,000 of an injury settlement. Alex is very skeptical about this case; clearly he doesn't want to take it to litigation. Alex says that if the adjuster makes a low offer and Strong rejects it, Alex will encourage Strong to get another lawyer.

Jim (the paralegal) comes in with the revised brief Alex spends fifteen minutes or so reviewing it.

Alex's partner comes in with a question about whether there can be multiple independent medical examinations (IMEs) when there are multiple insurance carriers. After responding, Alex discusses a drunk driving case with his partner, wondering about whether the facts of the case might restrict the avaikzbility of punitive damages. Alex decides he needs to check the statutes; there is aho the question of who is responsible. A few minutes later, he checks the statute and finds a clear answer to his question.

At 10:30, Alex called Carl Hopkins, a client in another case (workers' compensation case), to check in. Hopkini employer has no work available, given the restrictions on what Hopkins can do, given his injuries. Alex mentions he has another client from the same employer (but at a different location). Hopkim comments that "it's rough work." Hopkins has a question about a recruitment bonus he got for finding another employee: He is supposed to get a bonus of $xx if the new employee stays yy months. The employer is hedging on whether he will pay this bonus because Hopkim is not currently working. Alex tells Hopkins that he is probably entitled to the bonus, but that Alex cant really do anything; he advises Hopkim to go to small claims court if it becomes necessary. Hopkins is concerned about problems he might encounter if he went back to work at the employer. Alex strongly repeats the warning "don't quit." Alex tells Hopkins about a case he had settled earlier in the week in which the employee had quit and about the problems *quitting had created. Alex tells Hopkins "don't do anything without talking to me." He mentions the upcoming IME, **and** Hopkins asks, "What should I **expect?" Alex** describes how the company that will do the IME operates, stating that 'the doctor is looking for ways to save the company money."Alex tells Hopkins that he **needs** to emphasize how the injury happened. About the doctor who will do IME, Alex comments 'there are worse doctors around... **he's** on the conservative side... I'm not looking for great things fi-om him... be polite... show him **deference."** The call lasted about thirty minutes.*

*Alex calls back the adjuster, Stan Davis, in Bob Strong? auto **accident** case. Alex gives Davis some **information** that Davis had requested (Strong; work **history,** medical treatment, work situation). Alex explains that his client does not have health insurance because of his LTE status. Alex emphasizes that he has no independent information, but is simply taking what Strong has said **at face** value; **"If you** want to interview him, **I'm** willing to make him available," Alex **offers.** Davis mentions that he is looking through his notes. Alex says 'there is nothing I am aware of [that **explains** the injury other than the accident]. **I've** asked him eyeball to eyeball... there; nothing **I'm** aware of that would be an intervening cause." Davis comments that **"it's** a hard one to swallow... that the auto accident is the sole cause." Davis is clearly having **difficulty** coming to a decision about what to **offer,** and Alex is not doing anything here to push him. Alex is holding back to see what he will **say.** Davis **offers** $30,000 'to get rid of this one."Alex is stunned. he was expecting $5,000 or $10,000 as an opening **offer** (and he would have been **happy** to get **it** and get out of the case). Alex does not hesitate in leaping to **it "let's probe** this one... **if causation** was not an issue is my **demand** of $50,000 appropriate?" Davis concedes that **if** there were no causation issue, the $50,000 demand would be reasonable, but **goes** on to say that he still has problem with the case. Alex says, **"I appreciate** the **problem** you have but here is my **problem.**"Alex goes on to describe **Strong's** outstanding $17,000 medical bill, and the problem **of getting providers,** as opposed to insurers, to take a reduction; **Alex goes** on to say to Davis '7 know where you are coming **from."** The call **ends** at 11:05, having lasted **twenty-five** minutes.*

*Alex comments to me that Strong **needs** to seriously consider the bankruptcy option. He then immediately calls Strong, and tells him about the offer, commenting that **it** is **"double** what I thought he would **offer...** a neck surgery with a good result is worth about $50,000 [**if there** is no causation problem]. We would have serious **problems** proving the case [at **trial]." Alex gives** detailed description of conversation with the adjuster (**including** adjuster? reluctance to come up with a number). Alex **recommends** a counter at $42,500 and **hopes for** a $35,000 **settlement.** He then goes on to tell Strong that '7 think you've got to make some tough decisions."Alex goes through various options mostly related to **bankruptcy.** He **offers** to take a fee reduction (rather than one-third of total, he will take one-half of what; **left after paying** the outstanding medical bills and expenses; this wouldprobably be about $9,000 rather than $12,000 **if the** settlement is $35,000). Alex comments to Strong that he wants to be sure that he **(Strong)** gets at least as much as Alex gets. Alex goes on to brag a bit: **"I've** done a **fine** piece of work on this case. I handled the adjuster the right way "Alex again talks about the bankruptcy option, which would avoid payment to the medical providers, commenting that '7 hate to write off the **doctor's** bill because he **made** the case **for you...** but business is business and the doctor probably makes at **least** $400,000 a year."Alex asks Strong about other debts. He then suggests some other options, such as talking to the medicalproviders to see **if they** would reduce their **bills** to* *avoid getting nothing at all if Strong filed bankruptcy. Alex asks for authority to demand $42,500 and to settle for whatever he can get, and Strong grants him this authority. He again emphasizes the problems with the case, commenting that "it's not agood risk at all." Alex mentions the downside of bankruptcy. The call lasted about fifteen minutes. Alex tells me that he will wait until Monday to call Davis back because he wants Davis to think that Strong really had to think about the offer and that perhaps that Strong had some reluctance. I ask Alex how much time he has spent on this case;' he estimates twenty hours, but remind me that ninety minutes ago he was ready to walk away from it.*[8]

At 11:40 Alex receives a call from a chiropractor (a couple of days earlier Alex had a rather heated conversation with the receptionist at the chiropractor2office). Alex describes what happened. He had called the office wanting to insure that medical record pertaining to his client were sent to him before being sent to a third party insurer in order to be sure there were no errors in the record (he describes the example of an error he recently discovered in the record of another medical provider). Overall the conversation with the chiropractor goes vety well. the chiropractor has no problem sending record to Alex for review before sending them to the insurer, but will not erase record, only note corrections. That is fine with Alex. The chiropractor says that he normally sends a draft of his report to the lawyer before doing the final version; Alex is delighted. Overall, it is a vety good conversation. Alex comments, "wasn't he great."[9] *The call lasts twelve minutes. Alex tells Jim to call the client to let her know that things are smoothed over, and that her husband doesn't need to straighten out the situation with the chiropractor.*

At 11:55 another client, Sue Edward, calls. Alex had been waiting for the doctor? report, which finally has come in. Alex tells Edward that on first glance the report looks good. Edward has a notice from DILHR (the agency responsible for workers' compensation); Alex tells her to send the notice to him and he will deal with it. They discuss the case a bit; Edward is concerned that her postinjury wage potential is reduced. Alex explains that because she is back at work at her former employer that he can't do anything about the larger labor market, even though Edward is concerned about what might happen if the employer were to close up the local operation. The call lasts eight minutes.

For about fifteen minutes, Alex works on miscellaneous tasks such as looking at his mail, sorting through and balancing a checking account, etc.

At 12:22, adjuster Bob Fox calls regarding a claim. Alex had demanded $75,000; Fox hadpreviously acknowledged that the case was in the $50,000–$75,000 range. Fox offers $62,500 on a take-it-or-leave-it basis, saying that he will not budge. When Alex indicates that he "would like to counter it," Fox essentially says that he would be wasting his time. Alex talks about the problems ofgetting the subrogation claims reduced, but he gets no encouragement from Fox. This is an underinsured motorist claim, so if they can't agree on a settlement it will go to arbitration; Alex raises that possibility, but Fox says that going to arbitration is no problem as far as he is concerned. The call ends at 12:27. Alex tells me that the "offer is imminently fair" (there were two accidents and there is some uncertainty about which accident caused what). Alex thinks that Fox might be serious that $62,500 is all there is (i.e., take it or leave it), but Alex says he will test it.[10]

From 12:30 to 1:35 Alex leaves the office for lunch.

When be gets back at 1:35, his partner is on the phone with an adjuster. The adjuster would like to talk to Alex. It turns out that the adjuster wants status reports on several cases, which Alex provides.

Alex had tried calling Sarah James, a potential client involved in an accident caused by a drunk driver, several times before lunch, and tries again now; the line was busy earlier, and is still busy.

ALex has a callfiom another lawyer on the "lawyer to lawyer hotline."Alex is listed as knowledgeable on a particular area. The conversation lasts about ten minutes.

Alex looks at the opposing brief in the non-PI case for which he is serving as co-counsel. The defendant has moved for dismissal on several bases. Alex does not think the other side has a strong argument.

At 2:00, Alex calh another lawyer to discuss the brief he had worked on the previous evening. The lawyer has little to say "I think it [the second argument] is splendid... I think it? a darn good job." He has no substantive comments. The call end at 2:10.

ALex returns a call from the Larry Gavin, the other driver in a case he is handling as a UIM claim. Gavin wants to know what? happening. He specifically asks about the injuries suffered by Alex's client, information which Alex does not want to provide. Gavin asks for the name of Alex's client's insurer, which ALex is reluctant to give out because he is concerned Gavin might make a claim against his client (Gavin ran a stop sign, but Alex's client might have been speeding). It turns out that Gavin need to get documents from the insurer in order to get his drivers license back under Wisconsin? financial responsibility law. Alex explains that his client cannot sign a release because that would jeopardize the client? UIM claim. Alex agrees to call his client? insurer to tell them that Gavin wants to get in touch, and then the imurer can contact Gavin.

ALex and his partner are talking about letters from doctors. Alex notes that a doctor he met with a few days earlier charged $87.50 for a ten-minute conference. His partner tells of a $187 bill from a doctor for a fifteen-minute conference. Neither is really complaining, because in these cases the doctors' letters were central for making the case.

At 2:30 Alex finally gets through to Sarah James. Alex tries to explain something about one of the potential issues in the case; James gets confused and thinks Alex is telling her that no damages are available. Alex clarifies. James had expected to be downtown in connection with the arraignment of the drunk driver, but it turns out she doesn't need to come. Alex had suggested that would be a good time to meet (and he hoped to get a signed retainer at that time). Alex offers to come out to James? home (which is just outside of town). James says that f on Monday the doctor says she can get out, she would just as soon come downtown. They Leave it that they will talk on Monday or Tuesday, after the doctor? appointment. James asks about a crime victimization form that she has filled out and returned; Alex tells her that it raises no problems. The call lasted about twelve minutes.

At 2:48, Alex takes a callfiom a doctor to whom Alex has written for a report (Alex is not at first sure who the doctor is). Alex is sympathetic, but not sure what to say. A h coaches him on the 'magic language." Alex is careful not to push doctor on the substance of opinion but on how to say it. Alex emphasizes that the magic word are that the accident was "a substantial factor"; doctor says "I think I'm willing to say that." The call ends at 2:52. Alex tells me after the call, "That? a surprise." ALex tells me the background of the case, and that he did not expect to get a favorable opinion from the doctor. He has twenty to twenty-five hours into the case, and it? "just warming up."

Alex telh me that his currently active cases seem to him to be a bit more compkx than average. He has lots of routine stuff in the hopper but not at the top. Alex comments on *the normally routine nature of workers' compensation claims; for those cases the key is "staying on top of them."*

Alex tries calling his co-counsel in the non-PI case; the other lawyer is not in, so Alex leaves a message asking him to call back.

Alex calls another lawyer to talk about the bankruptcy issue confronting his client Bob Strong. The discussion suggests that it might be best for Strong to file bankruptcy before consummating the settlement. Alex says he will try to call Strong immediately and make it a conference call. There is no answer at Strong? number.

At 3:45 Alex gets another call from a lawyer on the lawyer hotline. The other lawyer has a question having to do with claim of an adult child. the case is complicated by the fact that the accident happened out of state. Alex is clearly thinking stuff through as he goes. Alex talks about some cases he? had involving recovery by adult children in wrongful death claims. The call lasts about thirteen minutes.

Alex makes notes on his extensive "things to do" list.

Jim brings in the completed brief, which is ready for printing.

Alex reviews the status of medical bills in a couple of cases, and then cleans off his desk (it's about 4:30). [This is a bit earlier than his usual 5:30 departure, but he arrived at the office about an hour earlier than usual.]

He goes over to EconoPrint to drop off the brief to be printed.

While this day's activities differed in some ways from most of the other days I spent in the firm, the overall pattern is reasonably typical In the course of the day, Alex Stein dealt with at least twenty different cases, often moving quickly from one matter to another (for Stein to keep anything resembling accurate time records would have been virtually impossible). A very large portion of the day was spent on the telephone with incoming calls often disrupting the activity that Stein was working on; Stein had conversations with clients, potential clients, adjusters, medical providers, and other lawyers. No clients actually came into the office (most clients came in only for the intake interview and then to receive the settlement check, with most contact taking place via telephone).

How well can the image captured by the observation be recreated using an interview format? I attempted to do this by using a standard type of question described in the literature on ethnography: what Spradley (1979) calls a "grand tour question." As noted above, this is probably the best response I was able to get to my question and its follow-ups.

Q: I spent the last few months literally following lawyers around. If I had spent yesterday following you, that is, if I had spent the day with you as a "ride along," can you give me a tour of what I would have seen in the course of the day?

A: Let me just refresh my memory by looking at my calendar of yesterday. I do recall several things that did take place. I have a fairly substantial case that I am trying to negotiate a settlement on right now. I set up a conference with another attorney involved in the case. I talked to my client. There are several subrogated carriers involved and I am trying to work out a reduction in the amount that they are asking in subrogation. I was successful in getting all of them to take at least a 50 percent reduction, but I want a 60 percent reduction. Talking to them and then getting back to my client took up several hours of the day yesterday.

Q: *How many calk did that involve, do you have a sense? A dozen?*

A: *Six, seven, eight—somewhere in that range. It was several calk...*

Q: *Did you settle that case yesterday?*

A: *Not quite. We are awfully close now. We are in the range now that I think it can be done, and we will work that one out. And there were two other calk, two other claims representatives...*

Q: *Different cases.*

A: *Dzfferent cases. I am working on settlements there. I recall sitting down with my associate yesterday and reviewing two PI [personal injury] cases that he has. I was trying to give him an idea of what would be a reasonable demand range, a reasonabk settlement range, and a reasonable jury range if we were to go to trial on those cases. They are coming up to trial rather quickly. In addition, I did some things on a couple of worker? comp. cases. I worked on compromise agreements for them, and got one compromise agreement done. I am preparing the actual formal compromise agreement for that case. On another one Iprepared a proposal to try and work toward a settlement on a compromise agreement.*

Q: *On a worker? comp.?*

A: *On a worker? comp. as well. And another case I got out the request for attorney? fees from the Social Security Administration.*

Q: *Did you have any calk from new clients yesterday? Potential new clients?*

A: In the personal injury field?

Q: *Or worker? comp. or Social Security, any of the contingent fee fields?*

A: *None of those three.*

Q: *What other kinds of matters did you work on yesterday;? You said you did some family cases yesterday.*

A: *Yes, because I had a hearing today that took the morning, so I was doing a lot of work on that. And I had some people come in; we are working on a final Marital Settlement Agreement to dispose of some remaining issues. I took care of that, and worked on several Marital Settlement Agreements; actually I did three of those yesterday.*

Q: *Three different cases?*

A: *Three dzfferent cases.*

Q: *How many dzfferent matters would you say, total, both contingent fee and otherwise, did you touch yesterday?*

A: *Dzfferent number of cases?*

Q: *Yes.*

A: *At least fifteen.*

Q: *Fairly typical?*

A: *Pretty typical. I usually work a ten or eleven hour day. I am usually here at 7:00 A.M. and I leave at 6:00, and I don't take lunch.*

Again, I should emphasize that this is one of the better answers I was able to obtain. Perhaps that was in part due to the respondent's referring to his calendar as a means of refreshing his memory. Yet, while the interview response is not inconsistent with the kind of flow reflected in the field notes, it gives none of the sense of continuity and discontinuity that comes out of the observation. It is highly likely that more extensive probing could have provided more detail from the respondent, but I doubt whether that would have moved the information much closer to the kind of depth obtained from the observation.

A good example of what almost certainly would not have been obtainable was information of the type that came from Alex's interaction with Bob Strong and the adjuster in Strong's case, Stan Davis. Recall that Alex first spoke with Strong and talked about the problems with the case ("this is a very iffy case in terms of litigation"). About an hour later he talked to Davis, hoping to get an offer in the $5,000 to $10,000 range, and was stunned by the offer of $30,000 "to get rid of this one," in the words of the adjuster. He then called Strong back to report the results of the conversation with Davis, during which he patted himself on the back for a job well done ("I've done a fine piece of work on this case. I handled the Adjuster the right way"). While an interview might have provided the information about the higher-than-expected offer, it is unlikely that it would have revealed either the depth of Alex's concern about the case or Alex's bragging about his success in the case. These are the subtle things that will only be picked up through observation.

Implications

That observation will render more detail than an interview seems virtually self-evident. There are, of course, some things that interviews may tap into more directly than will observation, particularly things related to expressions of motivation. However, for understanding the nature of a social or political or legal process, ultimately, nothing is going to replace actually seeing the process in operation. But beyond the accuracy of description, do the differences between interview data and observational really matter?

The best answer to this question must come from a comparison of analyses of data based exclusively on interviews, and data based on observation (usually supplemented by interviews with those observed). To do this, one needs matching pairs of studies, using the two different methodologies that look at more or less the same phenomenon. I have identified three such pairs of studies, all of which involve lawyer/client relationships:

- Divorce: A number of researchers have studied the relationship between lawyers and clients in the context of divorce. Drawing on their extensive observation of divorce lawyers interacting with their clients, Felstiner and Sarat find a great deal of ambiguity in the power relationship, with issues of dominance and control constantly in flux and subject to implicit renegotiation (1992: 1495–1498; see also, Sarat and Felstiner 1995). In contrast, Mather, Maiman, and McEwen, who conducted extensive interviews with divorce lawyers, found that the lawyers reported that they largely controlled the direction of their cases, and described the best way to handle them. The researchers found that lawyers report trying to avoid taking cases in which the client will insist on things that they lawyer views as unrealistic or undesirable. The researchers use the metaphor of passenger and driver, arguing that the driver (the lawyer) largely determines both the destination and the route, with the passenger (the client) at best being allowed to do a little backseat driving (Mather, Maiman, and McEwen 1995).

- ***Corporate Practice:*** Drawing on eighteen months of ethnographic field work in an eighty-lawyer corporate law firm in Chicago, Flood finds that corporate lawyers vary in their degree of responsiveness to their clients (i.e., how willing they are to simply execute their clients' instructions). The lawyers are most responsive to those clients who are seen as having substantial long-term fee potential; a key element of this finding is the variation among clients, even for a corporate law firm (Flood 1987: 386–390). In contrast, Nelson finds that lawyers in the four corporate law firms (also in Chicago) in which he conducted extensive interviews report their clients largely call the shots; there is no sense of any type of systematic variation in how the lawyers in the four firms studied differentiated among clients (see also Heinz 1983, 1988: 250–259).[11]
- ***Personal Injury Plaintiffs' (Contingency Fee) Practice:*** Drawing upon my observational work, I found that contingency fee practitioners are attentive to the interests of their clients, in significant part because the lawyers rely heavily on satisfied clients as sources of future clients (Kritzer 1998). In contrast, two interview-based studies, Hunting and Neuwirth (1962: 107–109) and Rosenthal (1974: 95–116), found that personal injury clients had little say in the settlement of their claims, although Rosenthal found that lawyers were more responsive to active clients.[12]

In all three of the pairs of studies the interview-based research presented a clear-cut, relatively unambiguous image of lawyerlclient control in the settings studied. The images involved can be readily explained in theoretical terms, which leaves the authors confident about their analyses. The researchers do not qualify their conclusions or discuss what factors account for significant variation in the lawyerlclient relationship. In contrast, the observational studies present more nuanced images, which tend to contradict the more straightforward results of the interview-based analyses. It is possible that these differences reflect actual differences in patterns in the behaviors studied; I have no way of ruling out this possibility.

However, my experience doing both the observation and the interviews lead me to the conclusion that the differences arise, at least in part, from the nature of the data each method produces. Reviewing the kinds of questions I asked and the answers I obtained, in relation to client control, I easily see that I could have been led to the conclusion that the lawyers have many tools of control and use them in ways that work against their clients' interests. However, the observations made clear the ways in which the lawyers work hard to satisfy their clients. For example, in the case of Bob Strong described in the observational notes, Alex Stein could readily have decided to try to settle it quickly by sharply reducing his demand. Instead, his approach was to keep his higher offer on the table and let the adjuster make the first move. During the observation, the lawyers I spent time with generally pursued this strategy rather than simply looking for the quickest way out of the case (which is what the interview research on personal injury practitioners tends to emphasize). The reason for this is not that the lawyers are all altruistic professionals (although this has some role), but that the lawyers recognize their own long-term self-interest as being served by producing satisfied clients who stay satisfied ***and who consequently refer friends and acquaintances in need of*** *legal representation to the lawyers* (Daniels and Martin 1999; Kritzer and Krishnan 1999; Van Hoy 1997); the lawyers do not want clients to go away and later realize that their lawyer sold them short in the settlement process (see Kritzer 1998).

This became clear only during the observation as I watched the lawyers interact with their clients and with potential clients. I saw one lawyer repeatedly spend significant amounts of time talking to persons about cases in which the lawyer had quickly determined he was not interested. This was not productive time for him in the sense of its generating a fee but it was extremely important in attracting future clients. I saw another lawyer take much more time with potential clients referred by prior clients, and even take one case he had doubts about because it had been referred by a prior client; his goal was to do whatever he could to encourage former clients to make referrals and he believed that once a client had made such a referral, paying particular attention to those referrals was a way of encouraging the former client to make still more referrals. Lawyers want to shape the way they are regarded by their clients because that has long-run benefits to the lawyers; for example, Alex Stein's bragging to Bob Strong about how well he had handled the case may have been in part an effort to increase the likelihood that Strong would talk positively about Stein to friends and coworkers who were potential future clients. A third example is one lawyer's "exit" process after a case was resolved: The lawyer would hand the client the check and his business card, saying to the client, "Hopefully, you won't need me again ... If you know anyone who does [need me], please send them in."

It is hard for me to see how I might have designed interview questions that would have turned up these kinds of patterns unless I had anticipated them in advance.[13] In the interviews, the preconceptions of the researcher will determine the questions, and if the literature says that lawyers tend to dominate their contingency fee (or divorce) clients, the questions are likely to be framed in ways that produce responses consistent with that literature. While the observer does not enter the observational setting with his or her mind a *tabla rasa,* what he or she sees will inevitably differ in important ways from initial expectations.[14] While the observer may fail to see some things because of various preconceptions, he or she will usually discover more than is unexpected than will the typical interviewer who imposes more structure on the data collection process.

Others have written on the limitations of interviews. This writing tends to focus on two problems, often related. The first is the general limitations of verbal communication, including

- the difficulty respondents have in understanding questions;
- the difficulty interviewers have in understanding answers; and
- the impact of cultural norms vis-à-vis interpersonal communication more generally (see Briggs 1986).

The second limitation involves the closely related problems of bias and social desirability: Responses may reflect what the respondents want the interviewer to think about the respondent rather than provide the information solicited by the interviewer. Dingwall describes this succinctly: "the products of an interview are the outcome of a socially situated activity where the responses are passed through the role-playing and impression management of both the interviewer and the respondent" (citing Cicourel 1964, 1997: 56; see also Melia 1997: 26).[15]

The point of this chapter is somewhat different: Interviews by their nature get only the information the interviewer solicits (with some relatively rare exceptions), and then usually only in a highly edited or abbreviated form (see Dingwall 1997: 59; see generally Garfinkel 1967). The most skillful interviewers can mitigate this problem to a limited degree, but the difference between what can be seen during observation versus what can be heard during an interview will remain large. Of course, observation does not allow the seeing of what is unseeable, and an interview can bring out to some degree the inner views, thoughts, motivations, and feelings of participants that the observer will typically not "see."

Many types of observational settings *do* allow the watcher to ask question that provide some of that which is unseeable. Beyond this, even when the core of the data is based on observation, systematic interviewing, either semistructured or unstructured, may be integrated with the observation; particularly if such interviewing can be conducted over a series of sessions rather than in a single sitting, it may be possible to probe very deeply, with the interviewing guided by the observation, and future observation guided by interviewing. In reality, most observational studies do combine observation and interview techniques, if for no other reason that researchers must usually obtain some information that falls outside the period of the interviewing (background, prior events, follow-ups regarding things left hanging when the observation concluded, etc.).[16]

The implications of the choice of data collection strategies for sociolegal studies (and other empirical social science research) are obvious. We must constantly be aware of the strengths and weaknesses of the data that we employ. Qualitative researchers often criticize quantitative researchers for relying upon data that are overly structured by the researcher. Yet, the largest portion of qualitative research relies upon interviews that involve very much the same type of structuring. Dingwall puts the problem very neatly when he notes that "interviewers [regardless of whether the interview is structured, semistructured, or unstructured] *construct* data, observers *find* it [emphasis in original]" (1997: 60); "in an interview study, we can pick and choose the messages we hear and that we elicit, [while] in observation we have no choice but to listen to what the world is telling us" (ibid.: 64). While this is overidealizing observation—observers regularly fail to see what is right in front of them—observation can be a more "open" form of data collection. While the researcher will not see everything and/or will often see selectively, the nature of the constraints imposed by the researcher differ markedly depending upon the data collection strategy employed.

Notes

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1. Dingwall (1997: 53) describes the three modes as "reading the papers," "asking questions," and "hanging out."
2. See the essays in Miller and Dingwall (1997) for a significant exception to this. Also, there is a large literature in anthropology dealing with the limits of and issues involved in ethnographic fieldwork (see, as one relatively early example, Agar 1980; other work in this genre include Hammersley 1992 and van Maanen 1988).
3. While in this chapter I tend to dichotomize between observation and interviewing, many, perhaps most, observational studies include a significant interview component. Thus, it is probably more accurate to distinguish between studies that rely heavily on observation supplemented by interviews and studies that rely exclusively on interviews.
4. In Dingwall's (1997: 52) words, "Researchers cannot make the field fit their lives, [nor is it] easy to make your life fit the field."
5. Before the research began, I was personally acquainted with one of the lawyers. A second lawyer I met during the preliminary stage of my research. The third lawyer was recommended by someone who knew many people in the local bar (the lawyer was one of several recommended as fitting a set of criteria I felt I needed to insure the variance in settings I was seeking). A fourth lawyer, whom I had met at a state bar function where I presented results from an earlier project, declined to participate.
6. The respondent in the interview was not one of the lawyers I observed.
7. Occasionally I posed questions to the person I was observing; usually my questions had to do with the background of the case, or something very specific, such as how much time had been devoted to the case (an issue that was important to my research, but not something that the lawyers typically thought about in very specific terms).
8. This case settled for $35,000, with Alex taking a fee of $10,000 rather than the one-third that the contingency fee retainer called for; the client did decide to file for bankruptcy.
9. It was fairly common for the lawyer I was observing (picture me in Alex's office, just sitting their on his couch, hour after hour) to comment on what he was doing or on something that had just transpired. This was more true the first few days I was in an office; as I increasingly became part of the furniture, the lawyers felt less need to acknowledge my presence.
10. The case did settle the following week; Alex was able to move the adjuster up only $500 to $63,000. He did succeed in getting the subrogation claim reduced to $11,000, which was a considerably larger reduction than he had expected to be possible.
11. Nelson is quite sensitive to the softness of his information on lawyer-client relations, given that it was based entirely on the reports of his lawyer-respondents.
12. It is worth noting that Rosenthal had originally wanted to do an observational study, but did not succeed in obtaining the needed access (Rosenthal 1974: 179–180); he was able to conduct interviews with both lawyers and clients.
13. Certainly it is possible that some theoretical perspective would have led me to anticipate the specific patterns that I found, but that would have undoubtedly left other kinds of gaps. It is also possible that the standard "clean-up" type question, "Are there any questions I did ask that I should have."' or "Are there topics that you thought I might have covered that I missed during our conversation?" might turn up unanticipated issues or patterns.
14. I do not want to glamorize field observation as a data collection technique. Anthropologists have written extensively on the problems inherent in field observation, and the problems that researchers encounter in what they see and hear; perhaps the best known of these concerns the controversy surrounding Margaret Mead's work in Samoa (Freeman 1983, 1999; Mead 1928).

15. A third related problem is that interview responses may not be accurate, either because the respondent lied or because the respondent is mistaken in either memory or self-perception (Heumann 1990: 201). Of course, there is also the problem that those being observed may behave differently when an observer is present.
16. One type of question that I would frequently ask during the observation, if the information was not otherwise volunteered, was for background on a case the lawyer was working on. I had in fact conducted a very long interview with one of the lawyers I observed during the planning stages of the research; I had not known the lawyer before that time, and the interview created a framework such that I felt comfortable asking him to participate in the'observational part of the research. For about a year after I completed the observations, I regularly touched base with the three lawyers to find out if there had been any interesting developments in the cases the lawyers had been working on while I was in their offices.

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