Insider/outsider issues: Reflections on qualitative research

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Abstract
In this report, I present some of the "outsider/insider" issues involved when carrying out qualitative research with the judiciary, a neglected area within the methodological account. This research note highlights the tensions in the research process and interviewing is a former court judge and later doctoral student, then interviewing other court judges. My position as "outsider/insider" had implications for my ability to understand the terminology, abbreviations, and acronyms used by the participants and the issues raised by them that were specific to the Indonesian court setting. This article contributes to an examination of the ways in which our ethical appraisal navigates our whole methodology.

Keywords
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Insider/outsider issues: Reflections on qualitative research

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Abstract

In this report, I present some of the "outsider/insider" issues involved when carrying out qualitative research with the judiciary, a neglected area within the methodological account. This report highlights the tensions in the research process and interviewing is a former court judge and later doctoral student, then interviewing other court judges. My position as "outsider/insider" had implications for my ability to understand the terminology, abbreviations, and acronyms used by the participants and the issues raised by them that were specific to the Indonesian court setting. This article contributes to an examination of the ways in which our ethical appraisal navigates our whole methodology.

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One of my motivations in uncovering the hidden struggles of fieldwork in academic publications is to explore the gap, particularly in researching the judiciary, as to give further explanation of "outsider/insider" issues in relation to fieldwork. These remained puzzles in methodological accounts. This study is likely to be useful/of interest to local stakeholders similar to other judicial contexts on a more global level, for example, the international researcher who uses a qualitative method in researching the judiciaries. Therefore this study deals with issues with significant, tangible benefits for wider researchers. As an Insider, I reflected on my professional background as a practising judge in rural court Indonesia. The conceptualisation of this study stems from my former self-identity as a judge but also my biography since I am more familiar with the practical pressure and challenges of lower Court judges. Having worked previously at a Rural Court, I had prior experience of the Indonesian court system. As an Outsider, I reflected on my academic role as a researcher. I carried out all the fieldwork for this study in my capacity as a full-time doctoral researcher at the University of Stirling. My concern about the judicial perspective on sentencing comes from my learning journey arising from my experiences as a practising judge, and doctoral student. During my seven years, as one of the 3034 district court judges in the nation, I have sent less serious drug offenders to prison for standard minimum sentences ranging from one to four years, including women and young adults. However, I believe that such terms of imprisonment are too harsh for drug offenders, whose involvement in drug offending is based on many factors, including economic factors such as income generation. Also, I perceive drug crimes to be less serious than the crime of murder. Previously, I felt conflicted regarding my role in sentencing minor drug offenders. Regarding the sentencing behaviour of judges, they are likely to face criticism from the public and the media where lower sentences are given for drug offences, as this is perceived as judges being too soft on drug crime. Meanwhile, among the public, drug offences are perceived as a moral issue according to the Islamic religion, and judges' sentencing will be viewed with suspicion as favouring drug offenders. Yet, when I have asked offenders after a drug conviction what they think a fair sentence would be, most of them asked for lower sentences or for the opportunity to receive drug treatment. However, within my jurisdiction, there are no viable resources to support drug treatment in the community. Therefore, any attempt to sentence drug offenders to treatment would be futile.

Having felt that sentencing drug offenders to prison would be the best option because it would protect the public, since studying sentencing practices internationally, I realise that there may be more effective sentencing options available for drug offenders. This sentencing option may be true of other Indonesian judges, who may have experienced a lack of understanding about alternatives to imprisonment. Additionally, the topic of sentencing a minor drug offender may touch upon judicial perceptions and accounts. I consider that my background may be beneficial in dealing with this aspect. By studying it, I am presenting the contemporary understanding of judges' perspectives and experiences, which will potentially help a greater understanding of drug sentencing in the context of delivering justice in Indonesia. Regarding delivering justice in an Indonesian context, I identified from the judicial training that the sentencing of drug offenders should cover at least three dimensions, juridical, philosophical, and sociological: juridical concerning executable sentences; philosophical in terms of the aims of sentencing and sociological concerning public acceptance. Therefore, I considered these three dimensions to be essential within the Indonesian context. The study which forms the basis for this paper offers insight into
these three dimensions of sentencing in practices. Although the Chief Justice permitted them to study, they exerted no influence on any of the fieldwork, data analysis, or interpretation.

This report highlights the tensions in the research process and interviewing being a former court judge and later doctoral student, then interviewing other court judges. Nowadays, it is broadly acknowledged that the method of generating knowledge is frequently examined in connection with the scholar's standpoint as well as their life story by means of the method of reflexivity (Lumsden and Winter 2014). The issue of reflexivity in social research has emerged in the literature which contributes to this field. I recognised that data interpretation is influenced by the process of data generation (Bloor and Wood 2006; Creswell 2007; Maykut and Morehouse 2002; Mason 2002;). Nevertheless, there are several challenges of the process of data generation which merit more acknowledgment. Scholars have called for further explanation of ethical procedures in relation to fieldwork. Blackman (2007:771) affirms that uncovered qualitative research is vital in generating knowledge and it reveals, moreover, that the current explanation of how qualitative inquiry is carried out contains a gap. Part of that ‘gap’ is uncovered in this report by examining the ways in which our ethical appraisal affects our whole methodology. The following objectives were presented for this report: To describe tensions in the research process.

My study in Indonesia investigated how the judiciary sentenced minor drug offenders. It involved one period of fieldwork from December 2015 to March 2016. The study was carried out in two district courts which I termed the urban court and the rural court based on locations. The key aim was to understand the social conditions against which sentencing was practiced. During the three months, I interviewed 31 judges (17 in the urban court, 15 in the rural court, and 3 in the Supreme Court). Many of the judges relocated to other jurisdictions, thus I had to either take a trip to meet them in the new jurisdiction or interview them by telephone. I spent one month in the urban court, followed by several days in the Supreme Court. This experience allowed me to understand leadership expectations regarding sentencing. It is perhaps noteworthy that researching within the Indonesian judiciary was not difficult in terms of access. Many researchers engage in research with more difficult access to the judiciary (Ashworth et al 1984; Feldman et al 2003, Maxfield 2014; Tata 2002;). Perhaps, access issues may be eased by the researcher's prior working experience in the court, the management of contact in the fieldwork, and demonstrating a basic understanding of organizational routine and culture. While access was relatively easy, I still encountered a range of ethical and practical challenges throughout my fieldwork (De Laine 2000; Maykut and Morehouse 2002; Miller et al 2012). To work through this process, I utilised my field journal as a way of expressing various challenges and ethical appraisals that I encountered to assist me in carrying out my fieldwork. The field journal developed in numerous forms. Occasionally, it was a Google drive version of the emotional journey of my Ph.D. I also wrote notes on my smartphone, about my conversations with the gatekeepers. In addition, I wrote emails to my supervisor and began to use them as a form of asking for advice about the real-time difficulties that emerged from the fieldwork. For this report, I selected extracts that show the tensions in the research process and interviewing being a former court judge and later doctoral student, then interviewing other court judges.
As a doctoral student, I created a research protocol to follow; this was to secure access to interviewing the judiciaries. It was clear that my research had to employ a number of quality assurance steps and strategies. The first strategies were that it was particularly important not to impose on the participant's time. In doing so, I wanted to know about the possible time to schedule interviews with them given their full-time schedules. Ideally, I had to interview them within 1 hour. However, I decided to accept the participants' willingness to continue the interviews and, therefore, as a result, the interviews lasted between 27 and 90 minutes.

The second strategies were that I framed my questions very carefully when I asked each judge about the factors that they thought influenced their sentencing. The questions were open-ended in order to allow for consistency amongst the judge's responses. I asked both district judges and Supreme Court judges about possible solutions in order to help me to identify ideas on how the current approach could be improved to support drug users. Attention is given, also, to ask the Judges' thoughts on what was interesting regarding judges' experiences in sentencing and how sentencing could be made better.

I wanted to interview more judges to ensure that I obtained rich data and, consequently, I composed interview guidelines whereby my question was followed by the participant's response. I reworded the question during the interview to allow the participant to understand the specific issue being asked. In order to persuade the participants, I changed my approach to explaining carefully about my position as a doctoral researcher in order to generate an understanding of their perceptions as well as an appreciation of their views and also, how it would help me to complete my Ph.D.

14 Dec 2015: I felt shocked; one of the participants who is a colleague of mine warned other participants not to disclose too much information about the reality of the judicial approach to sentencing because the research data would be used by outsiders from a western university. His statement might have made one of the other participants limit his responses by giving shorter answers. The participant criticised me, also, because the question about the perceived effectiveness of his sentencing should not have questioned him but rather the role of society. I explained that this research would help me to finish my Ph.D. and would contribute, also, to a greater understanding of the judicial perspective on sentencing.

The above extract highlights the importance of focusing on the positive consequences of my research. When it became clear that my research would be used to complete my Ph.D. and would be disseminated at the Indonesian judiciary research centre and in academic publications, I focused, also, during the interviews on the aspect of seeking solutions to promoting better approaches to sentencing.

I realised that my methodology evolved by working in the field. When considering that not all participants were willing to be recorded, I decided to take notes. Also, I was able to record the phone interviews of the participants whom I was physically unable to meet. In addition, I decided to conduct a kind of focus group. Having two judges in the room at the same time. with the
participants who were unwilling to partake in a one-to-one interview. In this regard, I was able to capture the participant’s experience without being too intrusive:

17 Dec 2015: Interviewing the senior participant is challenging. After I met with him and asked about his willingness to participate in my study, he agreed and we looked for free time to do the interview. I realised that he was very busy and I waited for the participant until 5.00 pm; it seemed that he was still holding a court session and, therefore, I postponed my plan. The next morning, I saw him again as he was inspecting the courtroom. I had, also, a feeling, that perhaps the participant did not as yet have time to arrange an interview with me and perhaps he might be uncomfortable about the questions directed to a member of the judiciary about ‘to what extent the influence from the external, the senior judges (which is about him)”. This became my strategy to understand from the participants what factors they thought influenced the judges when sentencing minor drug offenders.

My observations of the sentencing hearings by a panel of judges were mostly carried out after the interviews. As Anleu and Mack (2017) suggested, that the observational data was useful to add insight to the interview data and to illuminate the arrangement of the routine court hearing. For example, the observational study in the Australian context was useful to add a nuanced insight to the individual judges’ performance at the court hearing (Anleu and Mack 2017). However, it is noteworthy that in the Australian context, the judges acted in their capacities as not as a member of the panels. Since the Australian judges sit alone at the bench, their statement in the courtroom might restate the individual judge's attitude toward the offender. This is perhaps different from the Indonesian context where I considered that during the observations, the judges acted in their capacities as members of the panel, and therefore, the judges' statements in the courtroom during sentencing might reflect the panel's attitude towards the offender.

Regarding the use of court observations as a method. Baldwin (2008) discussed court observation as a method and its usefulness, but also limitations. The observational study was useful to understand the influence of ‘court culture’ on sentencing and to illuminate the relationship between the various court actors. However, the limitation of the observation is that after several observations, the researcher becomes aware of the tedious nature of the court hearing. In Baldwin's (2008) study, the researcher could easily spot the delay in the court calendar, which may upset the researcher's energy and time and enthusiasm to observe 'the lively dynamic of court actors'. In this study, the offender was often vulnerable, weak, sleepy, concentrated, and looked down. The offender was often not familiar with the court process in contrast to the prosecutors. In Baldwin's (2008) study, the researcher has no influence on the theatre of courtroom drama. This is perhaps different from my experience when my appearance may influence participant behaviour, (as some participants asked for comments on their performance). In Baldwin's (2008) study, the researcher felt that the decision-making had been made elsewhere before the court hearing. This is perhaps different to my experience where I felt that the decision-making was made in the foreground of the court hearing.
Regarding positionality, I adopted an outsider/insider position. As an outsider, I considered it would be important to establish my status as a researcher. I never sought the responsibility of sitting on the bench or making the judgment of the case. I was ensuring to consider the implication of the finding and its contribution to knowledge. In order to persuade the participants, I changed my approach to explaining carefully about my position as a doctoral researcher in order to generate an understanding of their perceptions as well as an appreciation of their views and also, how it would help me to complete my Ph.D. Although the Indonesian government has funded my research, they did not determine the formulation of my research question and the research design. The formulation of the research question resulted from my own reflection. I was also aware of the need to adhere to the principle of independent research. I take responsibility for the interpretation of the data and for presenting an argument reflexively and contextually. My claim to such epistemological privilege is based on a careful reconstruction and retracing of the route by which I arrived at this interpretation (Mason, 2002). In doing so, data analysis, data generation, and theory were developed concurrently in a dialectical process. Also, I explained to the participants my position as a researcher and as someone who wanted to know more about the subject area. Then, the participant Judge introduced me to the audience in the Courtroom. After the court hearing ended, the participant Judge asked me to comment on the panel’s Courtroom “performance”. I am aware that the participants wanted me to evaluate their performance. This might have occurred because of the participants regarding me as a former judge who is already familiar with the procedural aspect of a court hearing and due to studying abroad may be expected to improve the procedural aspect of the court hearing. I explained that I am not in the position to evaluate the participants’ performance.

The tensions in the research process

Concerning the tensions in the research process, Sultana (2007) notes the importance of paying attention to building rapport in the study. This was clear to me when one of the court staff complained to me, during the court ceremonial in which the higher court attended the celebration of the urban court's achievement of international standard (ISO) for case management because I still planned to interview the judges. She was concerned that I was still using a tag as a researcher and bringing my folder containing the interview guide, information sheet and consent form, tape recorder, and observation checklist. Implicitly, she expected me to discard all of my study materials. This was despite the gatekeepers advising me to take advantage of the court community ceremonial as an opportunity to interview senior high court judges and Supreme Court judges. I realised that I had not consulted the court staff about my intention to interview the senior Supreme Court judges during the Court community ceremonial. This ceremonial was a time when perhaps I should have taken a step back and not interviewed the senior Supreme Court judges. In that situation, I realised that it was not the right time to interview the judges. Jabeen (2013) reminds us of the importance of adapting to this setback of power relationships. The plan of the interview was often canceled due to the potential participants’ situations. Mason (2002) notes that using qualitative interviewing reduces power imbalances since a high degree of trust is generated between study subject and researcher. Therefore, responsibility for data interpretation was
considered since an interpretation of the judge's perspectives is essential to avoid misinterpretation and to balance the competing interests of the study participants, my profession, my colleagues, my sponsors, and my institution. My claim to such epistemological privilege was based on a careful reconstruction and retracing of the route by which I arrived at this interpretation. In doing so, data analysis, data generation, and theory were developed concurrently as moving back and forth within the context of ethical considerations. It was evident that ethical dilemmas occurred due to the Judges' protective occupational culture. To minimise the possibility that awareness of being observed for study might affect the participant's behaviour, I positioned myself as a complete observer. During the Court hearing, the participants looked natural in making statements in the Courtroom. Then, I explained that observation was based on the observation checklist as described in the information sheet. Regarding positionality, I adopted an outsider/insider position.

As an outsider, I considered it would be important to establish my status as a researcher and to respect the study participants. I never sought the responsibility of sitting on the bench or making the judgment of the case. I was ensuring to consider the implication of the finding and its contribution to knowledge. In order to persuade the participants, I changed my approach to explaining carefully about my position as a doctoral researcher in order to generate an understanding of their perceptions as well as an appreciation of their views and also, how it would help me to complete my Ph.D. Although the Indonesian government has funded my research, they did not determine the formulation of my research question and the research design. The formulation of the research question resulted from my own reflection. I was also aware of the need to adhere to the principle of independent research. I take responsibility for the interpretation of the data and for presenting an argument reflexively and contextually. My claim to such epistemological privilege is based on a careful reconstruction and retracing of the route by which I arrived at this interpretation (Mason, 2002). In doing so, data analysis, data generation, and theory were developed concurrently in a dialectical process. Also, I explained to the participants my position as a researcher and as someone who wanted to know more about the subject area. Then, the participant Judge introduced me to the audience in the Courtroom. After the court hearing ended, the participant Judge asked me to comment on the panel's Courtroom "performance". I am aware that the participants wanted me to evaluate their performance. This might have occurred because of the participants regarding me as a former judge who is already familiar with the procedural aspect of a court hearing and due to studying abroad may be expected to improve the procedural aspect of the court hearing. I explained that I am not in the position to evaluate the participants’ performance.

As an Insider, I reflected on my professional background as a practising judge in rural court Indonesia. Access issues may be eased by the researcher's prior working experience in the court, the management of contact in the fieldwork, and demonstrating a basic understanding of organizational routine and culture. Also, the Indonesian Government-funded my study. Perhaps, my professional background and sources of funding for the study were determinants to the first impression with study participants which may pose challenges for the participants to say 'No' to my study invitation. This is an essential instance of experiences being a former court judge and later doctoral student that may be more typically attributed to researching the judiciary that adopts the common law system.
Conclusion

In this report, I drew on my experiences being a former court judge and later doctoral student, then interviewing other court judges. I consider that my background may be beneficial in dealing with this aspect. My position as "outsider/insider" had implications for my ability to understand the terminology, abbreviations and acronyms used by the participants and the issues raised by them that were specific to the Indonesian court setting. I was careful to avoid making assumptions about the field as far as possible. Through each discussion, I carried out checks on my understanding. This report can be considered original in the field of methodology generally and in relation to ethical appraisal particularly. This report contributes to an examination of the ways in which my experiences might have value in other judicial contexts.

References


