

## **An Insider Within: Reflections from Navigating Positionality during Doctoral Research on University Law Clinics**

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### **Abstract**

*This article utilizes doctoral research on access to justice and clinical legal education to reflect on the positionality that the researcher embodies from their diverse professional affiliations. It adds a nuance to the debate on positionality by relaying it as a concentric experience. The article offers insights on navigating layered insider status through the use of reflexivity journals, removing familiarity in the interview environment and returning to the literature after fieldwork. Noting that one may still be perceived as ‘other,’ it outlines the role of go-betweens to access research participants, follow-up questions to allow for participant voices to be heard and a friendly demeanour to build rapport. The article supports training of novice researchers in reflexivity and grounded theory research as ways of facilitating rigour. It will be useful for socio-legal researchers who have a propensity to embody layered insider status from their diverse professional affiliations when researching in their own countries.*

## **Introduction:**

This article shares reflections from a doctoral researcher navigating their positionality during empirical research on access to justice work by law clinics in Kenyan universities. It draws from experiences in identifying researcher positionality and adopting strategies to navigate it by attending to its benefits and drawbacks. The research sought to address the main question ‘what role do university law clinics play in enhancing access to justice in Kenya’s transformative constitutional dispensation?’ It was preceded by a review of literature whose justification, process and findings are discussed elsewhere.<sup>1</sup> Alongside the review was an examination of the legal frameworks for access to justice and clinical legal education in Kenya. The knowledge gap in the experiences of students and clinic staff in offering access to justice in the prevailing legal framework justified the fieldwork consisting of interviews with university clinic directors and key informants from legal aid institutions that collaborate with the universities. The questions included the establishment, nature, operations and challenges facing the clinics. To obtain in-depth perspectives from both the students and staff, focus group discussions on similar matters were held with student leaders of the clinics. A purposive sampling of the total population was carried out. The inclusion criteria applied was that the research was deliberately carried out only in law schools that have clinics; thus 11 law schools were eligible for the study because these comprised the population in which law clinics operate. This empirical segment was conducted after ethical clearance and obtaining the consent of the research participants.

In focusing on how positionality emerging from intertwined professional identities influences research, the article builds on the existing body of work on navigating positionality in the research field where familiarity is often only approached from recognized social identities of race, culture and class. The article may be particularly insightful for socio-legal researchers

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<sup>1</sup> Anne Kotonya, ‘A Systematic Quantitative Review of Literature on Social Justice and Clinical Legal Education in Africa’ (2023) 30 International Journal of Clinical Legal Education 9 <<https://www.northumbriajournals.co.uk/index.php/ijcle/article/view/1362/1757>>; Anne Kotonya, ‘A Review of the Social Justice Function of Clinical Legal Education in Africa’ (2022) 14 African Journal of Legal Studies 93.

heeding the call to pay greater attention to communicating positionality in their work that links law, social science and social justice <sup>2</sup> as is done in the research under consideration.

### **Positionality**

Positionality is the relationship between the researcher and the process and outcomes of the research by being an insider, outsider or a status in that continuum. Positionality and the emerging power relations are recognised through reflexivity, which is critical for grounded theory studies because of the significance of the recognition and elimination of researcher bias for data analysis in a study that can be classified as truly grounded in the data. <sup>3</sup> Fluidity between factors that render a researcher an insider, outsider or in-between, shapes the nature and quality of knowledge they could draw from their fieldwork experience. They likewise occasion perceptions about the rigour of the research process. Interrogation of the researcher's positionality contributes towards 'the ability to recognize the tendency towards bias that is reiterated as one of the characteristics of a grounded theorist' <sup>4</sup> that can otherwise be explained as the researcher's reservation of their own interpretations thereby allowing the data to speak for itself as is underscored when utilising grounded theory strategies.

Attentiveness to one's positionality acknowledges that a researcher is not immune to their environment because they influence and are influenced by it. Such influence is ultimately manifested in the process or outcomes of their research. <sup>5</sup> Creswell approaches positionality as the relationship between a researcher and research participants. <sup>6</sup> This resonates with Laher et al who envisage positionality more broadly as the relationship between a researcher and their interaction

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<sup>2</sup> Mark Fathi Massoud, 'The Price of Positionality: Assessing the Benefits and Burdens of Self-Identification in Research Methods' (2022) 49 *Journal of Law and Society* S64, S66, S72.

<sup>3</sup> Tracey Giles, Lindy King and Sheryl De Lacey, 'The Timing of the Literature Review in Grounded Theory Research: An Open Mind Versus an Empty Head' (2013) 36 *Advances in Nursing Science* 29, 30.

<sup>4</sup> Michael Quinn Patton, *Qualitative Research and Evaluation Methods* (2015) 588.

<sup>5</sup> Roni Berger, 'Now I See It, Now I Don't: Researcher's Position and Reflexivity in Qualitative Research' (2015) 15 *Qualitative Research* 219, 220.

<sup>6</sup> *Qualitative Inquiry and Research Design* (3rd edn, Sage Publications Inc 2013) 214.

with their research.<sup>7</sup> Interrogating positionality typifies the elusive quest for objectivity by taking cognisance of one's subjectivities.<sup>8</sup> Through reflexivity, the researcher honours the biases, values, experiences and influences that impact their inquiry.<sup>9</sup> These are often inherent in any human endeavour although they acquire particular importance in the attempt to apply grounded methodologies because these detest external influences prior to analysis of data.<sup>10</sup> In alignment with the argument that insider-outsider status is a dynamic reality and not a binary position,<sup>11</sup> the article expands the literature on navigating the limitations of insider-outsider status as a continuum during the process of qualitative research. It is responsive to challenges to 'be more explicit in discussing the ways our situated lives guide and affect our research design; the questions we ask, the methods we use to collect data, the interpretations made and the relationships we have with our research participants.'<sup>12</sup>

This article conflates the identities of an insider researching educational settings that are familiar,<sup>13</sup> academics researching universities that are not their workplaces,<sup>14</sup> research on one's

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<sup>7</sup> 'Trends in Social Science Research in Africa: Rigour, Relevance and Responsibility' in Sumaya Laher, Angelo Fynn and Sherianne Kramer (eds), *Transforming Research Methods in the Social Sciences: Case Studies From South Africa* (Wits University Press 2019) 399.

<sup>8</sup> Brian Bourke, 'Positionality: Reflecting on the Research Process' (2014) 19 *The Qualitative Report* 1, 3 <<https://nsuworks.nova.edu/tqr/vol19/iss33/3>>; Andrew Gary Darwin Holmes, 'Researcher Positionality - A Consideration of Its Influence and Place in Qualitative Research - A New Researcher Guide' (2020) 8 *International Journal of Education* 1, 4.

<sup>9</sup> Creswell (n 6) 216; Holmes (n 8) 2.

<sup>10</sup> Kathy Charmaz and Robert Thornberg, 'The Pursuit of Quality in Grounded Theory' (2021) 18 *Qualitative Research in Psychology* 305, 310 <<https://doi.org/10.1080/14780887.2020.1780357>>.

<sup>11</sup> Anna Wiederhold, 'Conducting Fieldwork at and Away from Home: Shifting Researcher Positionality with Mobile Interviewing Methods' (2015) 15 *Qualitative Research* 600, 602; Bryan C Clift, Jenny Hatchard and Julie Gore (eds), 'How Do We Belong? Researcher Positionality Within Qualitative Inquiry', *Proceedings of 4th Annual Qualitative Research Symposium at the University of Bath*. (2018) xi.

<sup>12</sup> Heidi Collins and Yvonne McNulty, 'Insider Status: (Re)Framing Researcher Positionality in International Human Resource Management Studies' (2020) 34 *German Journal of Human Resource Management* 202, 221.

<sup>13</sup> Iskender Gelir, 'Can Insider Be Outsider? Doing an Ethnographic Research in a Familiar Setting' (2021) 16 *Ethnography and Education* 226, 228.

<sup>14</sup> Addisalem Tebikew Yallew and Paul Othusitse Dipitso, 'Higher Education Research in African Contexts: Reflections from Fieldwork in Flagship Universities in South Africa, Mozambique and Ethiopia' [2021] *Higher Education Research and Development* 10.

own organisation<sup>15</sup> with aspects of engaging local research assistants and respondents.<sup>16</sup> Unlike familiarity by a female African returning from the West as a doctoral researcher in their own country,<sup>17</sup> it examines the familiar context of a female African doctoral researcher based in their own country striving to represent participant voices without the influence of her familiarity<sup>18</sup> while explaining how the latter was done. Since the present research entails a constructivist grounded theory associated with Charmaz, it can be further differentiated from the aforementioned works by the nuances of their feminist,<sup>19</sup> ethnographic<sup>20</sup> and other theoretical and methodological lenses. Unlike in Phillippo and Nolan's work,<sup>21</sup> the article examines black-on-black research in which race does not confer privilege. Reflexivity and positionality are particularly significant for grounded theory strategies because of the researcher's role as a research instrument therein.<sup>22</sup>

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<sup>15</sup> Sussane Tietze, 'Researching Your Own Organization' in Gillian Symon and Catherine Cassell (eds), *Qualitative Organizational Research: Core Methods and Current Challenges* (Sage 2012); Catherine Cassel, Anne L Cunliffe and Gina Grandy, *The SAGE Handbook of Qualitative Business and Management Research Methods* (Sage 2017) 366.

<sup>16</sup> David Mwambari, 'Local Positionality in the Production of Knowledge in Northern Uganda' (2019) 18 *International Journal of Qualitative Methods* 1.

<sup>17</sup> Nungari Mwangi, '*Good That You Are One of Us*': *Positionality and Reciprocity in Conducting Fieldwork in Kenya's Flower Industry* (L Johnstone ed, 2019) 14.

<sup>18</sup> P Nwabisa Shai, 'A Local Researcher's Experiences of the Insider–Outsider Position: An Exercise of Self-Reflexivity During Ethnographic GBV and HIV Prevention Research in South Africa' (2020) 19 *International Journal of Qualitative Methods*.

<sup>19</sup> Tigist Shewarega Hussen, 'Exploring "Familiar" Spaces in Feminist Ethnographic Fieldwork: Critical Reflections of Fieldwork Experience in Gurage, Ethiopia' (2014) 2 *International Journal of Political Science and Development* 12; Aparna Parikh, 'Insider-Outsider as Process: Drawing as Reflexive Feminist Methodology during Fieldwork' (2020) 27 *Cultural Geographies* 437; Morolake Josephine Adeagbo, 'An "Outsider Within": Considering Positionality and Reflexivity in Research on HIV-Positive Adolescent Mothers in South Africa' (2021) 21 *Qualitative Research* 181.

<sup>20</sup> Shai (n 18); Mwambari (n 16).

<sup>21</sup> 'White-on-White Research: A Study of White Qualitative Researcher Positionality Among White Participants' [2022] *International Journal of Qualitative Studies in Education*.

<sup>22</sup> Mohamed T el Hussein, Andrea Kennedy and Brent Oliver, 'Grounded Theory and the Conundrum of Literature Review: Framework for Novice Researchers' (2017) 22 *The Qualitative Report* 1199, 1203.

### **Emerging positionality paradigms**

Clinical programs differ from doctrinal courses in law schools because of the practical and experiential methodology involved. Clinical legal education has been referred to as a global movement that seeks to advance justice education through clinical programs in law schools.<sup>23</sup> There exist regional and global clinic networks to which justice educators and their institutions belong. Additionally, the practice orientation means clinical law faculty also belong to professional legal bodies of their respective countries. The common law ones have traditionally entrenched hierarchies of seniority within them. Students training in clinical programs work under close supervision of faculty ultimately proceeding to join the same professional bodies to which the latter belong.

Professional affiliation is discussed herein in three tiers that are the legal profession, legal academy and clinic fraternity. At the cusp, the legal profession which has historically considered itself a ‘learned profession’ whose members operate within a unique legal culture.<sup>24</sup> This is manifested in power relations within the hierarchy of the profession and between the profession and ‘the others,’ institutional dynamics, gatekeepers and norms that belong to a self-governing professional association, which develops its own rules. Criticisms levelled against them include a dearth of legal aid orientation and practice<sup>25</sup> that appears contradictory to their objective of promoting access to justice in the country.

In the second tier of socialization, some members of the legal profession are occupied in academic life. These may or may not actively be engaged in the legal practice activities of the association. Law schools are governed by university legislation that sets standards for higher education and guidelines for the promotion of academic staff. Council for Legal Education, which uniquely focuses on legal education institutions, also regulates them. Despite existing hierarchical

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<sup>23</sup> Frank S Bloch, ‘Access to Justice and the Global Clinical Movement’ (2008) 28 Washington University Journal of Law and Policy 111.

<sup>24</sup> Freda Mugambi Githiru, ‘Transformative Constitutionalism, Legal Culture and the Judiciary under the 2010 Constitution of Kenya’ (Unpublished Phd Thesis, University of Pretoria 2015).

<sup>25</sup> Muigai Prof Githu, ‘Report of the Ministerial Task Force on the Development of a Policy and Legal Framework for Legal Education in Kenya’ (2005).

status within the academy, the administrative organization within universities and law schools also establish governance structures with resulting power dynamics.

In the third tier of socialization are lecturers at university law clinics. University law clinics generally operate within law schools and are allocated to teaching staff as part of their teaching or administrative duties. They too have operational structures that include staff, students and external institutions that proffer support in the form of personnel, funding or other similar resources.

Through reflexivity, I was able to identify personal attributes that contributed to my positionality. I am a Kenyan, female, advocate of the high court of Kenya with legal practice experience in litigation and as in-house counsel. I established the clinic at the law school in my university in 2015 and served as its director. These impacted power dynamics as well as relationships with gatekeepers and research participants. The systematic literature review preceding the doctoral study likewise appears to have engendered subliminal dispositions of familiarity with aspects of the research subject, explained further on as bearing implications for grounding the study in data.

My preceding experience with non-governmental organizations and university legal aid clinics shaped my choice of research topic and questions. The research topic I selected was aligned with my professional history and roles, about which I held deeply rooted convictions. Some of these were the expectation of positive student inclinations towards clinical legal education and a belief that lawyers were generally disinclined towards legal aid work.

I had to confront the pressing matter of the place of literature in a grounded theory study, given that its application, timing and effect on the grounded nature of the methodology in its various renditions are highly contested.<sup>26</sup> Although the influence of literature on coding during analysis<sup>27</sup> is acknowledged, the supposition that literature reviews may taint the data becomes problematic for doctoral researchers who must satisfy preliminary literature requirements for the

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<sup>26</sup> Robert Thornberg, 'Informed Grounded Theory' (2012) 56 *Scandinavian Journal of Educational Research* 243, 243.

<sup>27</sup> Creswell (n 6).

review boards and postgraduate committees charged with approving proposals for academic research.<sup>28</sup>

Reflexivity tools such as the social identity map,<sup>29</sup> facilitate the determination of positionality as well as the methodological impact of research and dissemination. They depict the researcher's identity as consisting of a wide range of variables that either establish or repel a connection with participants. The latter factors that brand a person as different or an outsider<sup>30</sup> include the researcher's age, gender, marital and parental status, race, ways of dress<sup>31</sup> and level of education. On the other hand, shared characteristics between the researcher and the participants establish commonalities that render the researcher an insider. While insider status facilitates the setting up of the research structures and fosters rapport with research participants, outsider status repels it. Both statuses have long been recognized as being a continuum.<sup>32</sup> A researcher who identifies as an insider can gain and sustain useful collaborative relationships with participants when they too recognize the researcher as an insider.<sup>33</sup> Whereas researchers often view the world from the lenses of their own identity, their attributes evoke perceptions in research participants that are also qualified by the kind of research questions being asked. These factors could also influence power relations during fieldwork, sometimes forming a 'power distance' between the researcher and the participants.<sup>34</sup> Unless the researcher intervenes,<sup>35</sup> the participants are likely to defer towards the person who wields power.

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<sup>28</sup> Jason Luckerhoff and François Guillemette, 'The Conflicts between Grounded Theory Requirements and Institutional Requirements for Scientific Research' (2011) 16 *The Qualitative Report* 396, 396; Hussein, Kennedy and Oliver (n 22) 1200.

<sup>29</sup> Danielle Jacobson and Nida Mustafa, 'Social Identity Map: A Reflexivity Tool for Practicing Explicit Positionality in Critical Qualitative Research' (2019) 18 *International Journal of Qualitative Methods* 1, 6.

<sup>30</sup> Bourke (n 8) 5.

<sup>31</sup> Parikh (n 19) 9.

<sup>32</sup> Admire Chereni, 'Positionality and Collaboration During Fieldwork: Insights From Research With Co-Nationals Living Abroad' (2014) 15 *Forum: Qualitative Social Research*.

<sup>33</sup> Chereni (n 32).

<sup>34</sup> Laher, Fynn and Kramer (n 7) 399.

<sup>35</sup> Yallem and Dipitso (n 14) 7.



### *An insider within*

Whereas researchers have highlighted the absence of dichotomy between being an insider and being an outsider,<sup>36</sup> this article treats these as a concentric relationship. It expresses this phenomenon as ‘an insider within’ and ‘less of an insider’ in the attempt to articulate the proximity to insider status in the concentric levels of the status of insider. With the layered insider status emerging from my being a Kenyan researching Kenyan institutions as well as the multiple professional affiliations discussed in the preceding section, I saw myself as an insider within- a status at the core of concentric layers of insider. This amplifies a challenge that is typical of such studies and was helpful in defining where one falls when one belongs to the same race, nationality, profession and academic role. The expectation would be that a layered insider status should therefore yield greater benefits to the researcher.

Indeed, my positionality as an insider influenced the research area, topic, and questions because of the conviction I had gained about clinical legal education from prior work experience and literature. Although some of these examples could apply to any form of qualitative research, what makes them specific to insider research is the direct contribution that insider status brings with it. Admittedly and as dealt with further on, some constructs identified from the literature review seemingly influenced aspects of the data collection process while ideas for the initial coding themes appear to have been influenced by literature with the latter ones being drawn from the data. The gaps in the documentation of clinical legal education in Kenya prompted an empirical study guided by questions inspired by the literature on the growth and history of clinics globally. My dispositions were further fortified by comparative literature on the access to justice role of clinical legal education. These exposed my predispositions about unsupportive legal frameworks and challenges that were similar to those in other countries that I, undeniably, brought with me to the fieldwork segment of the research.

Participation is a commonly acknowledged benefit that insiders gain from their status.<sup>37</sup> Indeed, my insider status had some impact on interviewee participation, as I was able to build on

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<sup>36</sup> Clift, Hatchard and Gore (n 11) xi; Wiederhold (n 11) 602.

<sup>37</sup> Wiederhold (n 11) 605; Berger (n 5) 220; Phillippo and Nolan (n 21) 8–9.

my networks to achieve acceptance from interviewees. My assumptions on the responses were largely based on the strength of collegial support, the power dynamics resulting from networks, personal interest of the participants in both the doctoral research process and subject. Either consciously or subconsciously, the participants who expressed an interest in the research outcomes thereby communicated an underlying expectation of how their institutions would be presented in the report.

Interviewee CA: But, more importantly, I would be interested in your report. Because then it would help us also know how to move forward in our engagement with law clinics. So, for me, I would say I'm very excited in [about] your area. Most people do broad theses, broadly access to justice, and there is no that focus that you've given as you have in this study, and more so on the universities...So, we would be really interested in your report, and appreciate that you are expanding that.<sup>38</sup>

Chances are that those who did not respond to the invitation to participate in the research were motivated by reasons of convenience, gate-keeping, institutional politics, personal or other circumstances that were unrelated to the researcher and their subject.

Nevertheless, my being an insider seemed to have influenced some participants' consent to the study and their agreeing to meet as well as the creation of a safe environment that enabled the divulging of information without embellishing it. The benefits of insider status towards accessing research participants are well documented.<sup>39</sup> Indeed, access to participants and information was facilitated by the sense of support towards a colleague that the insider status generated. Thus, the researcher was viewed as one of 'us' in the academy, one of 'us' clinicians as well as one of 'us' passionate about law clinics and legal aid. With the majority of lecturers undertaking or having completed doctoral studies, they were very helpful and happy to assist one of 'us' who is still in the treacherous doctoral journey.

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<sup>38</sup> On file with author Protocol Number H18/10/17, 'Interview 8', *Combined Transcripts* (2019) 178.

<sup>39</sup> Anna Gawlewicz, 'Language and Translation Strategies in Researching Migrant Experience of Difference from the Position of Migrant Researcher' (2016) 16 *Qualitative Research* 27, 30; Christina Chavez, 'Conceptualizing from the Inside: Advantages, Complications, and Demands on Insider Positionality' (2015) 13 *The Qualitative Report* 474, 481–485.

The narratives in the interviews and focus groups were characterized by shared understandings in several respects.<sup>40</sup> The participants had legal knowledge and highly appreciated the informed consent process. Instead of curtailing my access to the field as may happen with untrained communities<sup>41</sup> or those uninformed about research ethics,<sup>42</sup> it created a sense of security and fostered engagement with the participants because they were confident about the legal and ethical boundaries of our interaction.

Additionally, my cognizance of the prevailing debates in the research area brought with it multiple assumptions about the research participants, particularly student and lawyer disposition towards pro bono work, and the thorny question of student representation. In identifying as an advocate and critiquing the legislation on advocates in Kenya, I became uncomfortable with the weaknesses I encountered in the law. This ignited my curiosity to ascertain whether these shortcomings were factual or merely my own perception of lawyers in society.

Considered a constant challenge,<sup>43</sup> my insider status meant that I entered the research with certain preconceived notions I exemplify in the subsequent paragraphs that I was frequently unconscious of. Some of these were based on my past experiences<sup>44</sup> with members of the professional body while others resulted from an awareness of the institutional undercurrents around these issues. A noteworthy disadvantage of my insider status was the presumption by the research participants that I was mindful of the nuances<sup>45</sup> and therefore there was no need to elaborate or explain further. Resultantly, my insider status influenced the quality of information I obtained, since I too presumed that I understood the participants' line of discussion. This became apparent when reflecting on the transcripts, I digressed from the interview guide each time the responses did not align with expectations I wasn't even aware I had. For instance, it became clear that I was working with the assumption that, like in my undergraduate clinic experience, the

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<sup>40</sup> Holmes (n 8) 6.

<sup>41</sup> Hussen (n 19) 17.

<sup>42</sup> Yallem and Dipitso (n 14) 7.

<sup>43</sup> Wiederhold (n 11) 606.

<sup>44</sup> Berger (n 5) 220.

<sup>45</sup> Wiederhold (n 11) 606.

students would be interested in access to justice work and would want to engage in these tasks to make a difference in their communities. This arose during an interview in which students had misgivings about pro bono work and would therefore fail to take up opportunities presented to them by faculty.

Interviewee: So, unfortunately, most students wouldn't sign up.

Interviewer: Really? (*this is my strongest expression of surprise*)<sup>46</sup>

My response was one of genuine surprise; a moment of enlightenment that I had a certain expectation and that it had not been met.

The notion of student representation emerged in multiple interviews. It was always qualified by the participant in anticipation of potential rejection of the idea by the Law Society. This consistent deference to the professional society was a nuance that could have escaped me had I been a stranger to the history, operations and regulations of the Law Society that limited client representation to advocates.

Additionally, having come to the project with previous experience from legal practice, I carried some presumptions about lawyers that emerged in the research, such as the view that lawyers do not engage in legal aid work. This was manifested in scepticism whenever positive data emerged about lawyers offering services to disadvantaged persons.

Interviewee: even now law firms have a running legal aid department.

Interviewer: Really?

Interviewee: Yes, in of themselves where they have a percentage of legal aid and pro bono work that they do independent of you know? Just as their policy as law firms.<sup>47</sup>

Examples here include my discovery of a little-publicized pro-bono lawyers scheme managed by the Law Society, law firms that work with students and meet clinic expenditure as well as the existence of law firms with pro-bono departments. The bias was apparent from the

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<sup>46</sup> On file with author Protocol Number H18/10/17, 'Interview 4', *Combined Transcripts* (2019) 115.

<sup>47</sup> On file with author Protocol Number H18/10/17, 'Interview 9', *Combined Transcripts* (2019) 188.

sense of vindication I felt when lawyers who formally enlisted to offer pro bono services amounted to only 8.5 per cent of the 17,000 qualified lawyers in the country; the exception and not the rule.

### *Less of-an-insider*

The foregoing layers of alignment notwithstanding, I still encountered a subtle sense of exclusion that was generated by experiences with particular research participants. One of these was the pattern that was established in which persons, whom my school or I had not had previous interactions with, consistently failed to respond to my emails. This happened despite my having sought the relevant office-bearers' names and addressed the emails correctly. Accordingly, the majority of the institutions and persons who responded at the first instance were direct institutional or personal contacts.

Differences in institutional resourcing and the perception that my university's clinic was seemingly operating at an optimum excluded me from the participant's lived realities. This is because I worked in a private university and while the government sponsors public universities, private entities manage and operate private universities with funding obtained primarily from the fees charged to students. It is often the case that the latter institutions are smaller and better endowed economically, a factor that influences the quality and availability of facilities one finds in the respective institutions. The private institutions have the capacity for multiple projects that aren't often feasible for institutions with limited resources. Consequently, several participants shared that although I was studying their institution, my institution had a law clinic that was presumably well-staffed and run and seemingly had little or no resource challenges. Taking the position of interviewers themselves, they took the opportunity to find out about how they could develop aspects of their clinics. Additionally, there were participants from universities with nascent clinics who took a modest view of their clinical programs, presenting them in comparison to thriving clinics. They mistakenly associated the researcher with the latter, expressing the illusory view that they did not belong to the clinics within the study category. The sense of exclusion created by these factors cast me as less of an insider.

### *Power dynamics*

Possession of the research permit from the Institutional Ethics Review Board symbolized government approval of the research.<sup>48</sup> Such authorization facilitated entry into the field and also appeared to positively influence institutional approvals to conduct research. The permit was therefore a subtle manifestation of power dynamics that was beneficial in obtaining research clearance from the institutional heads and in traversing institutional hierarchies and gatekeepers.

Cursory comments from some participants revealed their perception of my working at a private university as privileged. This may have fostered the erroneous view that I may not appreciate the diversity of needs of clinics in their institutions. This presumption cultivated a power asymmetry based on my apparent privileged status which hindered the data collection process because the participants were disinclined to share their experiences and instead asked about the interviewer's experiences.

Power asymmetry was also made salient by the lecturer-student dynamic in the interaction with student leaders in the clinics. Teacher authority, a power relation that is often palpable in interactions between teachers and students,<sup>49</sup> surfaced in the initial interviews when the students from various universities who were interviewed always responded positively to the request for a meeting. The power dynamics attributable to my being a university lecturer introduced to students by their own lecturer, who wielded power over them and their grades, were likewise manifested in some of the interviews and focus groups. Two students who happened to be in school and easily accepted to join their colleagues in the focus group at short notice became visibly restless and unsettled.

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<sup>48</sup> National Commission for Science Technology and Innovation, 'Research Permit No. NACOSTI/P/18/44934/25918' (2018); University of the Witwatersrand Human Research Ethics Committee (Non-medical), 'Ethics Clearance Certificate Protocol Number H18/10/17' (2019).

<sup>49</sup> Edward Taylor, Elizabeth J Tisdell and Mary Stone Hanley, 'The Role of Positionality in Teaching for Critical Consciousness: Implications for Adult Education', *Adult Education Research Conference 2000 Conference Proceedings (Vancouver, BC, Canada)* (2000) 4.

Interviewer: Okay. Yeah. Thank you. So, who would like to go next? I have a feeling you want to go next because you need to be somewhere else.

Interviewee 1: We have a meeting with our supervisors.<sup>50</sup>

Several students in the interviews and focus groups were already looking to enter employment as they awaited admission to the bar school. Since my university has a graduate assistantship program, this discussion frequently came up as part of building rapport. We considered post-graduation prospects and I encouraged those who seemed interested in our program to apply. Finding out that some of them had already applied for a position at my institution inadvertently tilted the power dynamic by unveiling prospects of a potential employment relationship. Naturally, these particular students were motivated to make a positive impression in their responses during the interviews thereby influencing the data collection process.

With regard to gender dynamics, I observed that male students dominated the leadership in the clinics. The converse was true of key informants and clinic staff, the majority of whom were female. Arguments persist about an insider status rising from female researchers speaking to female participants<sup>51</sup> but this is distinguishable by the nature of research, and cultural norms.<sup>52</sup> Since the research subject and questions did not border on the personal, I felt that the effect of my femaleness was either negligible or was surpassed by other commonalities.<sup>53</sup> Thus, gender dynamics did not affect the research process.

The possibility of bearing both an insider and an 'other' in varying degrees and to different participants situates positionality as dynamic and contingent.<sup>54</sup> Even with the commonality of shared ethnicity that should render a researcher an insider, attributes such as skin colour, citizenship and educational background establish otherness that limits the connection between a

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<sup>50</sup> On file with author Protocol Number H18/10/17, 'Focus Group Discussion 3', *Combined Transcripts* (2019) 97.

<sup>51</sup> Mwangi (n 17) 17.

<sup>52</sup> Shai (n 18) 7; Gelir (n 13) 238.

<sup>53</sup> Jacobson and Mustafa (n 29) 7.

<sup>54</sup> Jessica Soedirgo and Aarie Glas, 'Toward Active Reflexivity: Positionality and Practice in the Production of Knowledge' [2020] *PS: Political Science and Politics* 527.

researcher and the research participants.<sup>55</sup> Realisation of such limits helps researchers to appreciate that their self-perception does not always coincide with how the participants perceive the researcher,<sup>56</sup> a notion that is equally useful during data analysis. Thus, the researchers should be aware of obstacles resulting from their status of not being insiders even when researching a familiar setting.<sup>57</sup> They can then devise strategies for confronting such limitations.

### **Formulating strategies to navigate concentric insider positionality**

The nuances merging from conceiving insider status as a concentric relationship is a call to the researcher to navigate the layered influences of their status on the research. Insider research remains valuable because of the given the unique qualities of each researcher. For instance, human experiences remain distinct despite shared social identities.<sup>58</sup> Indeed, personal attributes such as age<sup>59</sup> also colour insider observations. The quality of research is likely to benefit from researchers' endeavours to grapple with the tensions and limitations arising from researching the familiar. Examples here are managing aspects of the researchers' insider or outsider status by highlighting those identities which facilitate rapport and data collection<sup>60</sup> as well as levelling power imbalances through cultivating a more reciprocal relationship with research participants by "locally institutionalizing" the knowledge acquired from the research.<sup>61</sup> Additionally, tackling the

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<sup>55</sup> Sarah Mayorga-Gallo and Elizabeth Hordge-Freeman, 'Between Marginality and Privilege: Gaining Access and Navigating the Field in Multiethnic Settings' (2017) 17 *Qualitative Research* 377, 378.

<sup>56</sup> Morgan L Maxwell and others, 'Conducting Community-Engaged Qualitative Research in South Africa: Memoirs of Intersectional Identities Abroad' (2016) 16 *Qualitative Research* 95, 106; Jacobson and Mustafa (n 29) 9.

<sup>57</sup> Gelir (n 13) 226.

<sup>58</sup> Gawlewicz (n 39) 31; Adeagbo (n 19) 10; Nompilo Tshuma, 'The Vulnerable Insider: Navigating Power, Positionality and Being in Educational Technology Research' (2021) 46 *Learning, Media and Technology* 218, 225.

<sup>59</sup> Nicole Angotti and Christie Sennott, 'Implementing "Insider" Ethnography: Lessons from the Public Conversations about HIV/AIDS Project in Rural South Africa' (2015) 15 *Qualitative Research* 437, 438.

<sup>60</sup> Hussien (n 19) 16.

<sup>61</sup> Mwangi (n 17) 25.



emerging limitations of insider status facilitated the implementation of grounded theory strategies that require the researcher to reserve their interpretations and allow the data to speak for itself.

### *Reserving the effects of familiarity*

Reflexivity is widely recommended<sup>62</sup> throughout the research process. Such reflexivity serves to expose potential biases that are then documented.<sup>63</sup> The need for reflexivity is therefore more apparent in scenarios of layered insider status. A reflexivity skill I transferred from clinical practice is writing a research journal, from which this essay is drawn. This allowed me as a researcher to mentally step aside from the research and its participants. In striving to separate my own beliefs from the voices of the participants, as presented in the transcripts of the focus group discussions and interviews, I let some time pass between the interviews and reviewing of transcripts in a bid to create some distance between my ideas and those in the transcripts. I then slowly revised the transcripts, taking notes beside the sections where personal reflection and my gut feeling made me question why a particular participant said what they did, and left unsaid what had been left unsaid. I also reflected on my reactions and follow-up questions, seeking to uncover the motivations behind them. I became aware that I was listening to my participants from the standpoint of law clinics and legal practice as I had experienced them. Any divergence from this standpoint immediately drew my attention as being different or worthy of further examination. This journaling proved critical in exposing my predominant notion that the stereotypical ‘shark’ perpetuated in popular satire and humour represented the values and beliefs held by the legal profession. Admittedly, the foregoing process which was neither systematic nor structured helped confront possible subjective researcher influence during coding. Although reflective practice is a critical

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<sup>62</sup> Berger (n 5) 221–222; Soedirgo and Glas (n 54); Collins and McNulty (n 12); Tshuma (n 58) 226; Chavez (n 39) 491.

<sup>63</sup> Collins and McNulty (n 12) 16; Katja Mruck and Günter Mey, ‘Grounded Theory and Reflexivity’ in Antony Bryant and Kathy Charmaz (eds), *The Sage Handbook of Grounded Theory* (2nd edn, Sage 2007) 518; Phillippo and Nolan (n 21) 14.

skill for clinical programs,<sup>64</sup> research training would serve to better prepare other novice researchers for both fieldwork and analysis.

To avoid clouded perceptions that deter objectivity in data collection and analysis, researchers are encouraged to utilize methods that deter familiarity.<sup>65</sup> While Wiederhold<sup>66</sup> disrupted familiarity by using peripatetic interviews which were practical in the particular context, Parikh<sup>67</sup> asked participants to explain their responses as if to an alien who knew nothing of their social identities. I, in turn, sought disruptors of familiarity that are recommended for grounded theory strategies<sup>68</sup> that were feasible for my research topic, budget and participants. I found that holding the interviews and focus group discussions in the participants' environments immersed me into their journeys, albeit briefly, allowing me to listen to and observe them in their settings, which differed from mine. This was my way of confronting possible subjective researcher influence during the interviews. Relatedly, theorists of place and clinical programs denote the significance of clinics for clients as physical or virtual locations for the attainment of health or access to justice and whose dynamics reflect certain power relations occasioned by law.<sup>69</sup> That I sat in a law school boardroom which student clinicians used as their meeting room, visited a university I had only heard about, conducted interviews at two offices in different parts of the city and was a guest at a university walk-in clinic therefore tilted the power balance from the interviewer to the interviewees. Despite these efforts, it was convenient to hold several interviews in my office during the stakeholder's workshop with participants who were visiting my university briefly from other

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<sup>64</sup> Hugh McFaul, 'Towards a Capability Approach to Clinical Legal Education' in Omar Madhloom and Hugh McFaul (eds), *Thinking About Clinical Legal Education; Philosophical and Theoretical Perspectives* (Routledge 2021) 133.

<sup>65</sup> Wiederhold (n 11) 606.

<sup>66</sup> (n 11) 606.

<sup>67</sup> (n 19) 11.

<sup>68</sup> Mruck and Mey (n 63) 523.

<sup>69</sup> Rachel Stalker and Sarah Buhler, 'Place-Based Education: Clinical Legal Education and Ethics' in Omar Madhloom and Hugh McFaul (eds), *Thinking About Clinical Legal Education; Philosophical and Theoretical Perspectives* (Routledge 2021) 12,13.

parts of the country. In these instances, the factor that disrupted familiarity was that the majority of the interviewees were strangers.

In a departure from original grounded theorists, contemporary scholarship considers literature review as particularly important for grounded theory studies, especially if used reflexively.<sup>70</sup> My endeavour to determine the research gaps, its overall trajectory and frame questions for the study through a systematic review of the literature was therefore justifiable. Likewise, my reflexive journaling about the interviews and focus group discussions offered a certain degree of awareness about my expectations that emanated from the preliminary literature review that was conducted as a mandatory section of the research proposal presented for confirmation of candidature. The latter compelled my fostering the co-creation of knowledge by allowing the participants to replace, clarify and build on my predispositions. These served to align the incongruences between my expectations and their own experience of law clinics. This strategy was evident at the end of one focus group discussion when a student leader asked whether their conversation was relevant to me and whether there was specific information that I wanted from them outside of the clinic experiences they had shared. When possible, I used follow-up questions to clarify doubts or to compare the data with presumptions I was aware that I held. I endeavoured through these efforts to ‘render strange what is established as normal.’<sup>71</sup> This was another way of confronting possible subjective researcher influence during the discussions.

In a bid to clarify the place of literature in light of the grounded theory strategies, I returned to the literature after the fieldwork. In this way, I examined my journal to attempt an evaluation of the connectedness, or lack thereof, between the empirical study and existing knowledge. Reflexivity at this level likewise elicited greater clarity on the extent to which the initial systematic review influenced the data collection process, which influence was inevitable given that both activities were conducted by the same researcher. Nevertheless, there remained a lingering doubt about reflexivity and literature, whether one can completely separate one’s knowledge from the field from that of literature. Did I know this before the literature review? How much did it influence

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<sup>70</sup> Giles, King and Lacey (n 3) 29.

<sup>71</sup> Tietze (n 15) 56.

the data collection process? Once more, these challenges may have been addressed by prior research training in both areas of reflexivity in insider research as well as in grounded theory research.

### *Navigating the less of-an-insider status*

While I considered myself an insider within for the most part, I realized that certain participants viewed me as less of an insider because of the divergence in the resourcing and development of clinics in our respective institutions. The awareness of my positionality when perceived as ‘other’ was sharpened when participants did not consider me as an insider, although I considered myself as one. This presented a challenge that I had neither expected nor prepared for. It affected the research process because there were obstacles in accessing these participants and when I did, some were reticent and unconvinced about the value of their contribution. In reality, dealing with the status of less of an insider was similar to that of working with outsider status, because in both instances one was viewed as ‘other’ but just in different degrees.

After some thought, it was possible to resolve the difficulty of gaining access to research participants by leaning into professional networks available through my insider status. This entailed seeking the assistance of ‘go-betweens’ in the form of colleagues who had contacts in the institutions that had failed to respond to my communication. Such introduction by peers or familiar persons elicited a more positive reaction in potential interviewees who had previously not responded to my emails.

I perceived my status as less of an insider as affecting the disposition of the participants who considered me an ‘other.’ Viewing their role as unimportant, they were reluctant to divulge information. This threatened to curtail the data collection process so I quickly addressed this situation by countering their view and offering encouragement about the importance of their experiences for the research, even if this was not always successful in eliciting responses. In hindsight, it may have been helpful to ask more open-ended questions about their experiences and to ask follow-up questions in a bid to collect exhaustive data.

I attempted to compensate for my status as less of an insider by taking more time to build rapport with the participants. This was done by maintaining a friendly demeanour and engaging in small talk and peripheral conversations to help them get comfortable and ease into the interview.

Additionally, I offered a belaboured explanation of informed consent and reminded them of the purpose of the research, letting them know that they were free to participate and to discontinue their participation at any time if they felt uneasy. Although the prospect of anonymity was a relief to some participants, a significant number were comfortable waiving it. Once they gave consent to participate, I strived to ensure that the voices of these research participants were not stifled<sup>72</sup> by encouraging them to trust that the discussion was going to be helpful for the research even if they did not think it would. This is another instance where open-ended questions about their experiences would have proved helpful in getting participants to provide information.

Additionally, although the power balance weighed in my favour when I arrived as a researcher wielding a research permit, I endeavoured to resolve the resulting asymmetry by stemming any semblance of expertise in the subject. This was achievable by encouraging the participants to take charge of the experiences they wanted to share. Inevitably, it bore the resultant risk of collecting excess or unnecessary data.

Also, while all the students clearly stated that they were happy to be of help and were present willingly, this might have been their way of deferring to authority. It further emerged that some, to my earlier ignorance, accepted appointments occasioning unwarranted inconvenience to them. This practice was reinforced by the cultural socialization of young persons to be well-mannered and have respect for older persons, even when this entailed personal sacrifice. Endeavouring to counter this, I thereafter resolved to secure the students' convenient availability before confirming an interview by letting them select the day and time of the meeting instead of proposing these to them.

Engagement with research participants proved critical for incorporating the voices of student clinicians that were markedly absent from the review of the literature. Since clinics engage both staff and student leadership, I convened focus group discussions with student leaders from each school except on the rare occasion that a student was unable to join their colleagues. I asked a few questions and allowed the discussion to flow organically. This permitted me to observe their interactions and facilitated their spontaneous recounting of experiences with their law clinic.

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<sup>72</sup> Bourke (n 8) 3.

Similarly, I held interviews with clinic directors and key informants in collaborating institutions based on an unstructured interview guide. The guide included questions such as ‘what is the role of students in the clinic?’ ‘What is the role of staff in the clinic?’ ‘What sorts of challenges do you face in your work?’ The guide therefore provided the flexibility for us to delve deeper into specific questions when this was necessary.

Research participants received a participant information sheet and an informed consent form offering details about the study and providing a range of choices regarding how the information they provided would be treated. Even if the participants had consented to be part of the study, most preferred to speak on the condition of anonymity. This offered them the freedom to express themselves without inhibition. This election of anonymity was beneficial for the study because it facilitated unfiltered information exchange that would otherwise not have been possible.

## **Conclusion**

The scope of social identities is wider than classical class, ethnicity, race and personality. As such, researchers are likely to encounter insider status arising from other factors such as familiarity within professional circles. Insider status has limitations such as the fallacy of shared understanding among perceived insiders that disregards the singularity of personal experience of the world. In what may be unexpected, layered insider status emerging as a concentric reality bears challenges especially for novice researchers anticipating the benefits alone. Confronting the heightened risk of subjectivity that such insider status poses to the research therefore entails concerted reflectivity in the use of literature and indeed throughout the research process. Such reflexivity is important in gaining awareness of one’s positionality and in dealing with familiarity. Reflective journals facilitate reflexivity when utilized throughout the research process. Familiarity takes many forms, and so do strategies that could be deployed to disrupt it. Thus, the researcher would have to adapt these to their needs. Strategies for the latter include consideration of familiar places for interviewees in selecting interview environments. Strategies when the researcher is not considered less of an insider are similar to those of managing outsider status because one is considered an ‘other’ in both instances but just to varying degrees. These are provided by using intermediaries in one’s network to facilitate access to participants, promoting rapport through conversation and small talk as well as allowing the participants to co-create knowledge by actively participating and taking ownership of the discussions. This can be facilitated by using open-ended

questions and maintaining a friendly demeanour. Clinical researchers conduct reflexive practice in their programs. Nevertheless, training is recommended for novice researchers as these help sharpen skills in reflexivity for particular research such as for those doing insider research or grounded theory research.