

Trials and tribulations – recollections about a different Bar and a different era

Life as a woman at the English Bar in the late 80s

By Jocelyn Sparks

Jocelyn Sparks, who has been Director Professional Conduct for the NSW Bar Association since 2018, commenced her professional life as a barrister in the UK. When she joined chambers as a full tenant in the Temple, London in 1988, she was only the fourth woman to be taken on by those chambers of 56 members.



I became the junior member of what was then the largest specialist set of criminal chambers in the UK. There were many legal luminaries, but only one female QC. She had been an absolute pioneer at the Bar in the 1950s/60s. She was very old-school and quite intimidating, no doubt because treading her own career path had been so difficult. She was a formidable advocate and an absolute powerhouse, one of the first women to prosecute for the newly created Serious Fraud Office. I think even some of her male contemporaries were scared of her. I know I was, and so were our clerks.

When I was still very junior, probably a second six-month pupil, she confronted me in a female robing room and told me off for wearing a string of pearls under my collarette. She insisted that I remove them, even though they were completely hidden, and snapped at me 'Young lady, if you want to get on at the Bar, never mix business with pleasure'. When you see what barristers wear under their robes these days, it seems funny. It was hideously shaming at the time.

All our clerks were male, and the clerking system in the UK could be brutal. The clerks could literally make you or break you and if you were not in favour, they would freeze you out, irrespective of how much support might

be provided by your barrister colleagues.

I was lucky – our senior clerk wanted our chambers to be progressive, so went out of his way to get the women some very good cases; and not just the usual diet of sex cases, which were generally regarded as 'women's work'. Many men simply would not accept a brief in a rape case or cases involving child sexual offences. Presumably that was because the brief fees were less than in frauds or murders, whether you were defending or prosecuting, unless you had a client who was paying privately, which was rare.

My first couple of weeks as the 'new girl' in chambers provides a good example of the clerks' way of testing out newcomers. I should preface the scene with a bit of background, as the UK way of getting known and thus getting work is different from here. For a start, almost no-one who sat the Bar exams and embarked on pupillage would have been a solicitor beforehand. We were around 23, maybe 24 years old, straight from our degree and the one-year full-time Bar course. For many people, the first time they saw the inside of a courtroom would be in their first six-months pupillage. Secondly, business cards were not permitted. The flow of work was the domain of the all-powerful clerking network. They were the ones to wine and

dine solicitors. Any discussion of barristers' fees was entirely a matter between them.

Those of us with almost empty diaries every afternoon had to hang around chambers until the various briefs flying around the Temple under the 'returns' system had been found a safe pair of hands. This sometimes meant waiting until 6 p.m. or even later, as the clerks would invariably give them out in order of seniority, added to which the women were last anyway. Of course, this might mean juniors and pupils got nothing, which meant we were not going to be earning anything the next day (unless someone got arrested overnight and we got the early-morning call to go and do a bail application somewhere far-flung). Alternatively, which was a more terrifying prospect, a decent brief would be handed to you but then you would have to get across it overnight, ready to start the case at 10 a.m. Again, this might involve significant travel, which also had to be factored-in to the available time.

After serving my obligatory first six months' pupillage trailing after a pupil-master in general common law, I applied for my second six to the specialist criminal chambers where I was later to become permanent.

Like all who were newly 'on their feet', we were kept busy with small criminal matters such as bail applications, driving offences, pleas in mitigation, sentences and committal proceedings. From time to time we had a trial in front of either a stipendiary magistrate (invariably terrifying bullies), but more often a bench of lay magistrates (always pro-police, and therefore frustrating – acquittals were rare, usually on some technicality and always pronounced in the most grudging terms by the chairman of the bench). This was the arena in which we honed our skills as advocates before being let loose in the Crown Court. Towards the end of the second six we started to appear more regularly there, until finally the clerks deemed us ready to do a full-blown jury trial.

My first jury trial brief was presented to me on a Friday evening, a return from a much more senior member of chambers (a QC, in fact). He was unavailable to even discuss it. Unfurling the red tape with trepidation, I discovered I was instructed to defend a homeless man who (along with three others) was on trial for concealing the dead body of one of their mates up a chimney. The previous week the same quartet had been acquitted of his manslaughter, but the Crown wanted to have another go on this second indictment. Clearly, the silk was not interested in this far less glamorous matter. The prosecution statements made a strong case against these four. Their first plan was very badly executed and had failed miserably. They then embarked on several different ways to make their problem go away, all to no avail. Suffice to say these involved a shopping trolley, a carpet, a fire and a canal. As they had been drinking steadily throughout the ordeal, they couldn't really remember what they had done, so the instructions were pretty thin. Unfortunately, there were lots and lots of witnesses and plenty of other incriminating evidence, including admissions.

The trial was to be held in a country town outside London. My first and only pre-trial conference with the client would have to be in the cells at court on the Monday morning. I was so nervous that I decided to travel up on the Sunday and booked a room in a local hotel for the duration of the trial. I had to borrow a copy of the criminal practitioners' bible, 'Archbold', as I had not yet earned enough to buy my own. Just to add to my nervousness, the only one I could get my hands on was two editions out of date.

Come the Monday, the atmosphere in the robing room of that provincial court was not welcoming. Clearly everyone on that circuit knew each other and the resident judge. I was the only non-local, the only woman in the case, and my client was first on the indictment, which meant I would be

first up to cross-examine the eye-witnesses who had observed the antics of the four hapless defendants. My instructing solicitor attended for the conference before the trial started and then left, never to return.

Amazingly, despite four days of unrelenting bullying from the bench and fending off a cut-throat defence from two of the co-defendants, all four were triumphantly acquitted. The client was delighted at being released from jail after twelve months on remand and I was very puffed-up with this result. I was, however, badly out of pocket, the hotel plus train fare having cost more than I had earned.

I trudged to the train station while the four innocent men headed to the nearest pub to renew their acquaintance with beer after a dry year inside. Upon my exhausted return to London, I went straight to chambers and waited in turn as usual for the clerks to dole out work, hoping desperately for a day out of court on the Friday. This was not to be. On the contrary; the senior clerk 'rewarded' me with another trial—this time to prosecute. Despite it being a Friday, I had to get across the brief overnight. In those days, courts were so stretched and public funding for criminal matters so tight that juries would be sworn in and trials started on any day of the week.

My pride over the outcome of the country trial quickly receded and was overtaken by panic. Refusal of such a brief was out of the question, and in any case I knew this was another test, as robberies were considered the pointy end of men's work. Instead of being able to join my friends in the wine bar to regale them with tales of my forensic glory and decompress from the past few days of doing grown-up work, I made my way home wearily to start work on an opening address. I should add that good as the work was in these chambers, we women were told in no uncertain terms that we could not charge at the same rate as men. On the back-sheet of the brief, there was my predecessor's rate struck out by hand and replaced with a new, lower fee for me. No reason given and I knew better than to question it.

It took my 'progressive' chambers six years to persuade the Middle Temple (our landlord) that it might be reasonable to have separate toilet facilities for the women. Although the number of women had grown to about ten, our Head of Chambers' pleas fell on deaf ears. Eventually it came to pass, but only because he was able to put the case on a different basis – we had just interviewed a female applicant for pupillage who was a wheelchair user, and even the Temple knew it could not trot out the usual excuses about having to preserve the interiors of listed buildings.

Around the same time the Bar Rules were changed to allow women to wear trousers.

This was welcome news for those of us who had to sometimes take instructions in the cells or in prisons where there were no table or chairs provided and we had no choice but to squat down, notebook on knee. Thinking this heralded a new era of change, the newly-formed Women Barristers Association took the opportunity to lobby for amendment of another rule which stipulated that women must only wear black suits. It was denied by unanimous vote of the Bar Council. It took about another four years for us to be able to cut some style, although this revolutionary step still only allowed us to don grey and navy blue.

Women barristers would never dream of appearing without having their hair tied-up under their wig. Earrings had to be very, very small and non-shiny. Lipstick was a total no-no. Only the reckless would describe themselves as 'Ms'. It absolutely had to be 'Miss' or, if you were confident enough and felt like opening yourself up to comments about your personal life, 'Mrs'. But if you did that, then you weren't taken seriously. The general feeling was that you couldn't be at the Bar and have any sort of family life.

I distinctly remember being in court waiting to get on in some list and a judge yelling repeatedly at a woman barrister in the case ahead of me, 'I can't hear you Miss Davies'. She was totally flummoxed and had no clue what the problem was, simply raising her voice and repeating her application. Eventually the court clerk sent her a note via the usher pointing out that she had made the unmentionable error of appearing in court with red nail polish. His Honour would be rising to allow her time to remove it.

All in all, practice was an exhausting roller-coaster of avoiding pitfalls and hidden traps, before you could even start to marshal legal arguments, ponder evidential issues, work out strategic lines of cross-examination or craft the all-important closing speech to a jury.

As my senior clerk said to me, when I meekly asked if I might take some time off for a mere long-weekend after a year without a break, 'Can't do that Miss, you're on at the Bailey on Monday. Don't worry, you'll enjoy it'. Goodbye to any idea of a relaxing weekend; hello three sleepless nights and two full days of work. **EN**

Postscript: The Editor asked me if I could provide a photo of myself in robes from those days. I have been unable to do so; the England & Wales Code of Conduct in that era prohibited photos of barristers in robes, not even on the occasion of being 'called' to the Bar. Indeed, it was not permitted to be seen in robes outside the precincts of court (except for crossing Fleet Street from the Temple to the High Court) and breaching that rule could possibly lead to a complaint to the Bar Council.