

Socio-economic ‘diversity’ at the NSW Bar

By Joe Edwards¹

When the *Bar News* Committee made a decision to have a special edition of *Bar News* focussing on the diversity of the modern Bar, potential articles were swiftly identified addressing race, gender, disability, sexuality, parental or caring responsibilities, and the like. However, the editor then asked a difficult question: does a focus on these issues, important though they are, distract attention from the elephant in the room; which is to say, can a person who comes from a low or lower socio-economic background make it at the Bar? The question floated, issues of nomenclature and measurement arose around the Committee table. What is meant by the term ‘socio-economic background’? Does it mean anything different from the older term ‘class’ or the more newfangled one ‘social mobility’? And even if the term has a meaningful content, how do you measure it? More particularly, how would you measure the socio-economic background of a barrister?

Now, I should immediately confess that this article does not purport to address all of these questions in any fulsome way. Instead, it seeks to achieve two modest goals. First, to summarise the information we have – admittedly not a great deal – about the socio-economic background of members of the Bar. And second, to tell the stories of two barristers who hail from what might be described as ‘non-traditional’ socio-economic backgrounds: Vanja Bulut and Oshie Fagir. Vanja and Oshie kindly agreed to answer five questions relating to their experiences at the Bar and socio-economic barriers to practice. The questions were inspired by an initiative of the UK Bar Council, which last year selected – and interviewed – 11 ‘social mobility advocates’ from among the ranks of UK barristers. These interviews, which are online, provide food for thought for those interested in drawing comparisons between Australia and the UK.²

What do we know?

I hardly need to tell readers of this publication that there is a general perception in the community that most barristers come from relatively privileged socio-economic backgrounds. But is this perception warranted?

To answer this question in a systematic way, we would need to have rather a lot of



information about barristers and their lives prior to joining the Bar. Assessing a person’s socio-economic status at any particular point in life is difficult. As the Australian Bureau of Statistics (ABS) points out, ‘[s]ocio-economic status is generally unobserved’ and ‘[t]here is no single correct measure of socio-economic status’: ‘proxy measures’ must be used.³

Common concepts in searching for such proxy measures include education, employment, income and consumption. The trouble, of course, is that we do not have especially good or comprehensive information about these matters insofar as barristers are concerned. No-one asks a person applying to sit the bar exam about his or her post-tax income in the five years prior to sitting the exam. Still less do we have good or comprehensive information about barristers’ parents or broader families. No-one collects data on the highest level of educational attainment of an incoming barrister’s parents (this being something which is known to be strongly correlated with a person’s overall socio-economic background⁴).

However, while we may not be able to answer the question in a systematic way, we do have information about one common proxy measure used to assess socio-economic background: we know where barristers and a particular class of former barristers (judges) went to secondary school. The information concerning barristers’ secondary schooling comes from the Bar Association’s 2018-2019 practising certificate renewal survey (PC renewal survey) which, for the first time, asked barristers to describe ‘the affiliation of the secondary school(s) you attended’. The information concerning judges’ secondary schooling comes from a very different source: swearing in speeches, where it is of course customary to offer a potted summary of the new judge’s journey from birth to bench.

Before turning to the data, it is necessary to point out the obvious: using only one proxy measure (where did you go to school?) to assess the socio-economic background of barristers and judges is problematic. A meaningful assessment of socio-economic status generally involves the use of a number of proxy measures, not just one.⁵ Moreover, there are real questions to be asked about whether knowing where a person went to secondary school necessarily tells you anything (or anything much) about the person’s socio-economic background. For one thing, as anyone who has followed recent political debates about education funding in Australia would know, the labels ‘public school’ and ‘private school’ mask great variability between schools. An independent school, especially a prestigious independent school, may be very different to a Catholic school, especially a systemic Catholic school, notwithstanding that both are typically lumped together in the category ‘private school’ (including by the ABS). Second, to know that a person went to a private school, even a prestigious independent school, does not tell you whether the person went there on a scholarship or because his or her parents took out a second mortgage or took on a third or fourth job. Third, those who attend public selective schools have on average a higher socio-economic background than those who attend other public schools, in some cases not significantly different to those at surrounding private schools. Parents who might otherwise send their children to private schools will often prefer a public selective school (and in many cases pay for tutoring to assist them to gain entry). Put simply, then, there are both systemic and personal issues with using secondary schooling as a proxy measure to assess a person’s socio-economic background. That said, the information we have is the information we have: so what does it tell us?

Turning first to the PC renewal survey information, a total of 1527 barristers answered the question concerning secondary schooling, a response rate of 63.2%. Of these respondents, 641 (or approximately 42%) went to a public school and 886 (or approximately 58%) went to a private school.⁶ When the results are broken down according to the age bracket of respondents,

a fair degree of constancy in these percentage shares is evident, except among the younger and older age brackets. For example:

- Barristers less than 29 years (19 respondents): approximately 53% public to 47% private⁷
- Barristers 30 to 39 years (283 respondents): approximately 40% public to 60% private⁸
- Barristers 40 to 49 years (379 respondents): approximately 41% public to 59% private⁹
- Barristers 50 to 59 years (385 respondents): approximately 42% public to 58% private¹⁰
- Barristers 60 to 69 years (335 respondents): approximately 42% public to 58% private¹¹
- Barristers 70 to 79 years (116 respondents): approximately 50% public to 50% private¹²

These results suggest that a disproportionate number of barristers at the NSW Bar attended a private school, given that, in the population at large, the enrolment share of private schools has never been more than 40% (ranging from approximately 20% in 1970 to approximately 40% in 2017).¹³ A similar overrepresentation in the number of private school attendees is evident at the UK Bar. The latest data collected by the UK Bar Standards Board shows that 15.5% of UK barristers went to an independent school, compared with 7% of the population at large.¹⁴ The Victorian Bar has not (to my knowledge) collected similar data from Victorian barristers.

The information about judges' secondary schooling presents a fairly similar picture. Using only publicly available information (mainly, as already noted, judges' swearing in speeches), the results are as follows:

Court	Public	Private	Unknown
HCA	2 (29%)	5 (71%)	0 (0%)
NSWSC (incl NSWCA)	21 (36%)	31 (54%)	6 (10%)
FCA	14 (29%)	17 (35.5%)	17 (35%)

Again, even allowing for the relatively poor data concerning Federal Court judges, these results suggest that a disproportionate number of superior court judges attended a private school relative to the population at large.

What to make of all of this? I have already noted some of the difficulties associated with using secondary schooling as a proxy measure to assess the socio-economic background of barristers and judges. To those difficulties could be added several others. For instance, even if you accept that going to a public school rather than a private school offers meaningful information about a person's socio-economic background – and, more particularly, suggests that the person may be from a low or lower socio-economic background – that background may have been well and truly overcome by the time the person considers applying for readerships in Phillip Street. A relatively humble secondary school education may have been followed by a first class honours degree from Sydney University, an associateship with a Federal Court judge and a stint in the dispute resolution group of a top tier law firm: a person in this situation probably has few socio-economic barriers to overcome by the time he or she makes the leap to the Bar.

However, these difficulties aside, the results summarised above do show that barristers are different from the population at large in one important proxy measure of socio-economic background. This may provide some evidentiary support for the proposition that there are indeed socio-economic barriers to joining and succeeding at the Bar. (It bears mentioning that, if this is the case, the Bar is hardly alone, as a recent study of the fields of television broadcasting, accounting, architecture and acting (yes, acting) has shown.¹⁵) Firmer conclusions may be able to be drawn if, in future surveys of members, the Bar Association takes the same step as the UK Bar Standards Board, which surveys barristers about not only their secondary schooling, but also the level of educational attainment of their parents. But in the absence of better data, there is always anecdote, so I turn now to my two interview subjects.



Interview with Vanja Bulut, 12 Wentworth Selborne Chambers

1. *Tell us about your background and why you decided to become a barrister*

I was born in (what is now) Bosnia and Herzegovina and my family immigrated to Australia as refugees when I was nine years old. A civil war broke out in Bosnia when I was five years old, and my family was trapped in Sarajevo – a city under siege – for three years. We fled Bosnia to Serbia and then sought asylum in Canada and Australia. We were fortunate to be granted humanitarian visas by the Australian government in 1996 and the government flew my family to Darwin, and provided settlement support to us.

When we arrived, we did not speak English and literally had two suitcases which carried all our belongings. I went to local public schools in Darwin, including an Intensive English Unit within a local primary school for the first 12 months, where I learnt English. My father got a job in his field of work (as a welding inspector) within months of us arriving in Australia, but my mother could not get a job as an accountant, which was her profession, and instead retrained as a chef and worked in local restaurants during my teenage years.

After finishing high school, I moved to Sydney to study at university, graduating with an arts degree from UNSW and a law degree from the University of Sydney.

For as long as I can remember, I have been interested in advocating for others. Experiencing first-hand the horrors of war, the failed attempts of international intervention and the benefit of humanitarian programmes made me passionate about the justice system and addressing what I perceived to be injustices. In Darwin, I often saw others unable to speak for themselves, at times due to language barriers. I found myself acting as an interpreter for my parents and other

members of the community in Darwin, assisting older community members deal with various government departments and newly arrived children deal with issues at school. Being able to speak on behalf of others, who were more vulnerable than me, felt powerful. I also took part in high school debating, model United Nations and public speaking competitions.

After making the decision to study law, I knew early that I wanted to come to the Bar. I enjoyed reading decisions and I viewed litigation as being at the forefront of the law-making process. I wanted to be part of that – simply ‘instructing’ was never going to be enough for me.

2. Did you face any obstacles along your journey to becoming a barrister and how did you overcome them? Have any of them persisted since becoming a barrister?

Growing up in Darwin, and being the only person in my family to complete a university degree, let alone study law, I did not know any solicitors or barristers in Sydney. I was fortunate to obtain a summer clerkship and graduate position with Clayton Utz, and then went on to work at Seyfarth Shaw. I worked with and learned from some fantastic lawyers at these firms and this gave me both practical knowledge of the law and confidence in my skills and abilities.

However, at university, and while I was working as a solicitor, there was an information vacuum about coming to the Bar. I can remember attending a Bar Association open day for university students – this was the only platform I could find to obtain information publicly. To overcome this, I started to speak with the barristers I briefed and with whom I had formed a professional working relationship. I sought their advice and general information about coming to the Bar. One of those barristers was Yaseen Shariff, who went on to become my tutor and my mentor. Perhaps in part because his background was somewhat similar to mine, Yaseen went out of his way to explain the process and give me encouragement. He was also able to provide me with practical advice about my proposed timing of coming to the Bar, when to apply to for readership on floors, the relevant contact persons, etc.

Since coming to the Bar, the challenges and obstacles I face have changed. The Bar has a lot more work to do to reflect the true diversity of the community. And by diversity, I mean diversity of all kinds. On a regular basis, I find myself at the bar table as the only female, the only (relatively) young person, the only person from a non-English speaking background, or indeed all of those. It is tempting to seek to blend in, but there are some terrific examples of female leaders

at the Bar, along with senior members of all backgrounds, whom I look up to.

One of the great things about the Bar is that, over time, you find likeminded people and you develop your own ‘family’ of barristers with a similar background, and others who have completely different backgrounds but who have been welcoming and giving with their time and support.

3. Did you receive any support, assistance or encouragement along your journey to becoming a barrister? What impact did that have?

Apart from the unconditional support of my family, I found the support and encouragement of the barristers I briefed to be invaluable.

I was also very grateful for the encouragement of my solicitor colleagues. Vice President Joe Catanzariti of the Fair Work Commission, who I reported to at Clayton Utz, offered me the opportunity (which I gladly accepted) to work for him as his first associate following his appointment to the Commission. He thought that the experience would be valuable given my aspirations – and he was right!

I was always honest with my solicitor colleagues about my aspirations of coming to the Bar. Far from the warnings some gave me that this disclosure would result in lack of promotion, I found that honesty worked to my benefit.

4. What are the challenges facing an aspiring barrister from a non-traditional or less socially mobile background? How can they be addressed? Is there a role for the Bar Association?

I am glad to say that some things have changed in the years since I first looked into coming to the Bar. There is more information available to the public, including more practical advice. I note that in 2017, the Bar Association issued a ‘Guide to becoming a barrister in New South Wales’. I think that’s a great initiative.

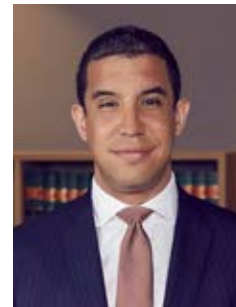
The Bar is a sum of its parts. The Bar can improve by ensuring it is contemporary, accessible and approachable. The Bar Association and members of the Bar should continue proactive initiatives which reach out to law students, and even high school students, to provide information about the opportunity of coming to the Bar and what a career as a barrister can bring.

This is even more important when considering students who are not from private or selective schools, or who are not from Sydney.

5. What advice would you give to someone from a non-traditional or less socially mobile background who is seeking to come to the Bar?

My message is simple – do not be afraid to ask questions. In my experience, staff at the Bar Association, clerks and individual barristers are approachable and eager to assist and guide you through the process.

I also add that you should look for mentors early in your career, and then become a mentor to those that come after you.



Interview with Oshie Fagir, Greenway Chambers

1. Tell us about your background and why you decided to become a barrister.

I was born in Saudi Arabia to a Sudanese father and Scottish-Australian mother. Skating over some detail, I was raised and schooled in Sudan, moving back here when I was 16. My mother’s family migrated from the Glasgow slums to Wollongong in the 1950s and that is where I landed 50 years later.

My mother, a nurse, was effectively a single parent. I occasionally look at the Nurses Award pay rates for that period and wonder how she managed, but I did not feel deprived at the time. Quite the opposite – having lived in Sudan for the ten years prior, the ready availability of hot chips and the absence of malarial mosquitoes produced an intense sense of wellbeing.

I spent years 11 and 12 at Wollongong High and then studied law and computer science at the University of Wollongong. I practised as a solicitor for about six years, first in a small criminal law practice, then a trade union and finally a commercial law firm.

About halfway through I realised barristers got to do all the parts of the job that are worth doing.

2. Did you face any obstacles along your journey to becoming a barrister and how did you overcome them? Have any of them persisted since becoming a barrister?

There must be doubts about the value in this context of anecdotal evidence from a small number of practising barristers. That group is (a) statistically insignificant (b) naturally inclined to understate any struggles and (c) by definition, has not faced any insurmountable obstacles. It may also be that the real obstacles are not readily detected by individuals—after all it is not really possible to identify opportunities not offered. A sociologist, or an aspiring barrister who didn't make it, might be better placed to explain why the profession does not reflect the diversity of the community.

In any case, I myself have not encountered any overt hostility or discrimination on ethnic or class grounds. No one ever told me, or implied to me, that I would not make it because I couldn't tell the difference between a stern pair and an openside flanker.

The main obstacle I confronted is the usual one: a lack of connections in the law and a general ignorance about the Bar. I did not know any lawyers when I graduated. Naturally that changed over my years in practice. By the time I came to the Bar I knew a handful of barristers (mainly people I had appeared against) and had some understanding of the industrial bar.

That, it turned out, was enough. The process of coming to the bar was quite painless, mainly thanks to Ingmar Taylor SC (as I explain below).

3. Did you receive any support, assistance or encouragement along your journey to becoming a barrister? What impact did that have?

In 2012 I appeared in an Industrial Court case against Ingmar Taylor SC (in a case we ultimately won – but we need not dwell on that). After the hearing Ingmar got in touch and asked if I had considered coming to the Bar. One thing led to another and I ended up as a reader on Ingmar's floor the next year.

Ingmar introduced me to solicitors and clients, got me into a series of cases as his junior and generally got my practice up and running. I had the support and assistance of a number of other colleagues including Franco Corsaro SC (who is largely responsible for my commercial practice), Max Kimber SC, Arthur Moses SC, Tom Dixon, Yaseen Shariff and Dilan Mahendra.

That assistance was invaluable. It meant I was busy straight away and gave me a chance to prove myself to solicitors and build a network. It is possible I would have succeeded without it, but it would have been a longer and more difficult path.

4. What are the challenges facing an aspiring barrister from a non-traditional or less socially mobile background?

How can they be addressed? Is there a role for the Bar Association?

Coming to the Bar is easier than succeeding at the Bar. The former requires ability but the latter both ability and opportunity. It does not matter how hard-working or brilliant a barrister is if they do not have the opportunity to prove themselves doing good work for good solicitors.

The problem of lack of connections leading to lack of opportunity can be ameliorated through the reader system. A tutor who is busy, has good work and is invested in their reader's success can make all the difference.

The Bar Association should politely indicate to potential tutors that they should only take on the role if they intend to have frequent contact with their reader, get them into cases and introduce them to people (solicitors and barristers).

5. What advice would you give to someone from a non-traditional or less socially mobile background who is seeking to come to the Bar?

I have three practical suggestions.

First, if you do not have connections at the Bar you need to make some. The Bar likes to think of itself as meritocratic and that is true, but only to a degree. It does not matter how brilliant or hard-working you are if you never get a chance to demonstrate your brilliance. It is not as though solicitors are monitoring the Bar Association website looking for novice barristers to brief (perhaps some are, but you do not want their work).

One of the strange and wonderful features of the Bar is that many barristers are happy to help strangers become competitors. You just need to get in front of them. Find (on Google and Austlii) and contact people working in areas that interest you. Cold call or email. If the first person is not helpful the second or third will be. Don't worry about seeming pushy. Lack of assertiveness is a reasonably common disability among those from less privileged backgrounds, and one that you should discard. (Incidentally being assertive is a skill commonly possessed by those who attend the best private schools.)

Second, you *must* choose your tutors and your floor carefully. Your tutors (have two) should be busy and should take their role as tutor seriously. Try to find out from past readers if the potential tutor introduced their readers to people and helped them find good work (there is a list of tutors and readers published each year which remains available online). Likewise you must be selective with your floor. There is no point just getting a start anywhere that will have you. You need a floor that can give work you want to do. That means it should be busy and it should be collegial.

Third, the hard truth is that there is not a

great deal of 'class' mobility *within* the Bar. Stories of barristers who begin their careers running fencing disputes in the magistrates' courts and work their way up to Solicitor-General belong to a different era. It is more likely than not that you will wind up doing the same kind of work you did in your first two or three years. So think carefully at the outset about the kind of work you want to do and how you will get it.

ENDNOTES

- 1 The author thanks Anthony Cheshire SC, Penny Thew, Lee-May Saw, Kevin Tang, Kim Pham and Chris Winslow for their ideas and assistance in the course of preparing this article. The author especially thanks his two willing interview subjects, Vanja Bulut and Oshie Fagir.
- 2 See <https://www.barcouncil.org.uk/careers/i-am-the-bar-social-mobility/social-mobility-advocates/>.
- 3 ABS, *Information Paper: Measures of Socioeconomic Status* (Commonwealth of Australia, 2011) (ABS Information Paper) at pp 1 and 23.
- 4 See, e.g., E Bukodi and J H Goldthorpe, 'Decomposing 'social origins': the effects of parents' class, status, and education on the educational attainment of their children' (2013) 29(5) *European Sociological Review* 1024-1039.
- 5 ABS Information Paper, op cit, p. 24.
- 6 I am simplifying a bit here because a number of respondents (63) said that they were educated in more than one school system.
- 7 Breaking these results down further: approximately 16% public comprehensive; 37% public selective; 42% independent; 0% Catholic systemic; 5% Catholic independent.
- 8 Approximately 24% public comprehensive; 16% public selective; 41% independent; 7% Catholic systemic; 11% Catholic independent.
- 9 Approximately 34% public comprehensive; 7% public selective; 31% independent; 9% Catholic systemic; 19% Catholic independent.
- 10 Approximately 36% public comprehensive; 6% public selective; 26% independent; 11% Catholic systemic; 21% Catholic independent.
- 11 Approximately 35% public comprehensive; 7% public selective; 30% independent; 7% Catholic systemic; 21% Catholic independent.
- 12 Approximately 35% public comprehensive; 15% public selective; 28% independent; 5% Catholic systemic; 17% Catholic independent.
- 13 See, e.g., ABS, *Schools, Australia*, 2017 (Commonwealth of Australia, 2017). See also <https://theconversation.com/fewer-students-are-going-to-public-secondary-schools-in-australia-79425>.
- 14 UK Bar Standards Board, *Diversity at the Bar 2018* (2019) at pp 18-19. The UK Bar Standards Board's data derives from a survey of UK barristers conducted at the time that barristers renewed their practising certificates. Only 47% of barristers answered the question concerning secondary schooling. However, as the UK Bar Standards Board points out in its report, 'even if every barrister who did not respond had gone to a state school, the proportion of barristers who went to an independent school would be higher than the wider population'.
- 15 S Friedman and D Laurison, *The Class Ceiling: Why it Pays to be Privileged* (Policy Press, 2019).