



## From hack to senior junior – is nothing sacred?

By David Ash

The barrister's path to success is well-recognised and well-trod: red-faced, then red-bagged, then red-gowned; 14 years' genuflection, 14 years' stage direction, 14 years' vivisection. But is this the only path? What is success? And can the rest of us look forward to getting old?

Yes. And we can by aspiring to no more than an invisible appendage.

'SJ', or 'senior junior', requires no points of professional education and no approbation. It requires no peer approval and is safe from judicial review. It does not even require respect. Even better, it bestows anonymity, the Jesuits having nabbed the publicity for themselves. There is no 'Find a senior junior' on the bar's collegiate – and, now with photos, convivial – website.

However, things are never as simple as they seem. Can it be true, for example, that the only prerequisite for this invisible appellation is age, wrapped in that most elegant of euphemisms 'experience'? Is one disqualified by incompetence? In short, can a hack and ever a hack ever become a senior junior? To this we now turn.

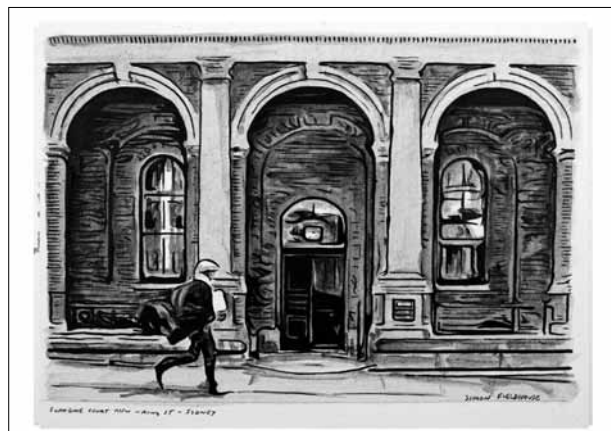
The word 'hack', like many words, is well-known and less learnt. It can be one who is used to doing servile work for hire, or a prostitute, or a common drudge. Each of these descriptions may describe an effective junior or an ineffective one; it really depends on one's own frailty when playing the timeless game of 'Self-Description'.

As far as I can discover, hack was first used to describe lawyers in *Tom Jones*:

... there was likewise present another person, who stiled himself a lawyer, and who lived somewhere near Linlinch, in Somersetshire. This fellow, I say, stiled himself a lawyer, but was indeed a most vile petty-fogger, without sense or knowledge of any kind; one of those who may be termed train-bearers to the law; a sort of supernumeraries in the profession, who are the hackneys of attorneys, and will ride more miles for half-a-crown than a postboy.

The pedant might suggest that this is not even descriptive of lawyers. To the contrary, the argument will run, there is sufficient context to show that Fielding was at pains to distinguish a lawyer on the one hand and a hackney on the other.

Ultimately, though, I think the use of the word 'in' in 'supernumeraries in the profession' must be taken as



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displaying an outrage of paradox and not an oxymoron of unintent. There is support for this when we read later that 'Unluckily, a few Miles before [Sophia] entered that Town, she met the Hack-Attorney...'

Then, of course, there is the delicate question of whether Fielding was referring to advocates at all, or was limiting his slight to what we know now as the other branch of the profession.

The question is not without difficulty. Fielding was writing in 1749, almost two decades before Blackstone commented on the one hand 'An attorney at law answers to the procurator, or proctor, of the civilians and canonists', while on the other 'Of advocates, or counsel, there are two species or degrees; barristers, and serjeants'.

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Was Fielding writing in more general terms, as though he were in the US today, where attorney and counsel know no division? When Shakespeare made Edward IV's widow the victim of a direct access brief from Richard III (his cause being her daughter, herself widow of Edward V, lately killed at the client's direction), he had the client say:

Therefore, dear mother, – I must call you so, –  
Be the attorney of my love to her:  
Plead what I will be, not what I have been...

That the brief could have been returned under our rules is not to the point. When one remembers that 'hack'

was also a word for what we today call a taxi and that Fielding qua barrister if not qua writer was bound by the cabrank rule, we have to be comforted by his later use of the word, in *Amelia*, when 'She took a Hack, and came directly to the Prison.' She should have used an attorney.

Ultimately, I think the utter bar is entitled to exercise self-deprecation: provided we know our limitations, Hack House is no Chambers of Horror. That said, we must appreciate this is not a view held by anyone else. Let us move on the supposition that a hack is by description and no more, incompetent. And so, back to the original question. Can a hack – in the pejorative sense – ever be a senior junior?

In the days before Tom Brown's school days, I think that they might have. To Shakespeare again, in *Love's Labour's Lost*, when the bard posits the existence of a senior junior who might be good, or bad, or both:

This senior-junior, giant-dwarf, Dan Cupid:  
Regent of love-rhymes, lord of folded arms,  
The anointed sovereign of sighs and groans,  
Liege of all loiterers and malcontents,  
Dread prince of plackets, king of codpieces,  
Sole imperator, and great general  
Of trotting paritors!

Again, though, we have the unhelpful distraction of intraprofessional division. Was Shakespeare using 'paritor' in its narrow sense, a summoner in the ecclesiastical courts, for Milton that 'hell pestering rabble of Sumners and Apparitors'? Or was he again – via the direct access brief – acknowledging a place in the law for the advocate barrister, as Carlyle would 200 years on:

In no Piepowder earthly Court can you sue an Aristocracy to do its work, at this moment: but in the Higher Court, which even it calls 'Court of Honour,' and which is the Court of Necessity withal, and the eternal Court of the Universe, in which all Fact comes to plead, and every Human Soul is an apparitor, – the Aristocracy is answerable, and even now answering, there.

What of today? Is the senior junior defined by age alone, or is it age and competence?

In an online Australian resource, it is said 'Sometimes the expression senior junior is used to indicate that a junior barrister is very experienced'. However, this resource was written by a (well-regarded) silk, begging



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the question, is the expression sometimes not?

A similar English resource defines 'senior junior' as '[A] barrister who has not yet become a QC, but who has been working successfully for some years'.<sup>1</sup> I cannot accept this. The 'yet' seems rather to presuppose a senior junior has no right not to take silk, and the last clause evidences the danger of adverbs. My doubt is fortified by another entry, 'Con', which is defined as '[A] meeting in chambers between a barrister and clients.' Con indeed. Whither the attorney?

### *What of today? Is the senior junior defined by age alone, or is it age and competence?*

The suggestion that experience of itself is sufficient without more is put firmly by 'Michael' on a *Sydney Morning Herald* blog, 'Is it time for the legal fraternity to join the 21st century?'<sup>2</sup>

I'm a 'senior junior' barrister, as are all barristers after 7 years in the profession who have not taken silk.

As there has been some discussion about fees, I charge \$2,500 a day...

The blog is now closed, but that should not stop anyone recalling the views of other bloggers:

Horsehair wigs are very expensive and the longer more elegant varieties can run into the thousands of dollars. Personally I would only support their removal if they were replaced by some other form of ceremonial headpiece such as a 3-foot tall wizard's hat, pointed mitre or at least something jewel encrusted.

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And from ‘Tom’ (a hackney of yesteryear with time to burn and puns to churn):

This just sounds like another attempt by a few neig-sayers to buck the trend and stirrup trouble in a profession where barristers are already more than saddled with unbridled responsibilities. Maybe it’s time for Phar-reaching reform, but I for one don’t believe there’s anything odd or lame about the wigs, and to suggest the Court has gone colt on how its own should dressage, well - I think they’re full of Shetland.

‘Michael’'s certitude is given legislative support from the UK. Regulation 17 of *The Proceeds of Crime Act 2002 (Legal Expenses in Civil Recovery Proceedings) Regulations 2005* gives a table of rates of remuneration for legal representatives. The table distinguishes three beasts, ‘queen’s counsel’, ‘senior junior counsel (of at least 10 years’ standing)’, and ‘junior counsel (of less than 10 years’ standing)’. (Interpretation avoids absurdity. The second beast must be ‘senior junior counsel (being junior counsel of at least 10 years’ standing)’.)

In New South Wales, the other branch at first glance opts for age alone, when it advises in ‘Working with Barristers’:<sup>3</sup>

Queen’s Counsel and Senior Counsel wear silk gowns and are often known as ‘silks’ or ‘leaders’, as opposed to ‘juniors’ or ‘junior counsel’. Indeed in reality there is a middle category of barrister who is sometimes called a ‘senior junior’ meaning one who has considerable experience but has not been appointed or not sought appointment as a senior counsel.

At first glance only; I think it clear ‘considerable experience’ in this context is fairly regarded not so much as a euphemism for ‘great age’ but as a politic synonym for ‘competence’. (In turn I must accept what

is obvious to any true hack, that I have used ‘politic’ as a euphemism for ‘euphemism’.)

The strongest indication that mere age, experience, call it what you will, is not sufficient for ‘senior junior’ comes from two sources. First, Victorian Legal Aid’s ‘Talented Junior Counsel Program’:<sup>4</sup>

The success of this program depends upon the active and enthusiastic involvement of experienced senior trial advocates who are prepared to commit to developing the next generation of trial advocates.

VLA will fully fund the services provided by Juniors through the Talented Junior Counsel Program. There will be no fee sharing.

We are looking to recruit approximately 20 senior advocates as Lead Counsel for the program with a mix of Senior Juniors and Silks.

It reads too much into the plain language of the document to infer that only Smith TJC and not Smith Hack will one day be Smith SJ, but one can detect a barrier to entry.

The second source is the courts. In a 2009 matter, there was a direction by an appeal court to its registrar to approach the state’s professional association; the direction was for the purpose of seeking ‘the assistance of senior junior counsel or senior counsel who practises in these kinds of matter.’<sup>5</sup> It can hardly be supposed that an intermediate court could have intended that a hack as commonly understood was within the purview of the direction, the more so when senior counsel by definition are competent.

Some years ago, in ‘Junior Junior – baby barrister blogger’, *Justinian* observed:<sup>6</sup>

The NSW bar website posts a listing of chambers available for sale or licence.

A picture of the room would be nice. It can be difficult to visualise what 1.5m<sup>2</sup> looks like.

Some rooms are described as suiting a ‘senior junior’. What does that mean?

Perhaps it has a window? Does this suggest I might be over-reaching myself to hope for a window?

I’ve come to realise that Santa is probably far too busy to be wandering around the legal precinct of Sydney, checking out chambers for me.

Yes, Virginia, some things are sacred. Ultimately, a senior junior is not an aging hack. The senior junior has



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more than mere experience. In a world where privacy may soon be protected by the law of tort, the senior junior offers not merely experience, but competence of a most private kind. Who can ask for more? And how would we know if they did?

### Endnotes

1. [www.natashacooper.co.uk/glos.html](http://www.natashacooper.co.uk/glos.html) [accessed 22/10/2011].
2. [blogs.smh.com.au/newsblog/archives/your\\_say/014565.html?page=2#comments](http://blogs.smh.com.au/newsblog/archives/your_say/014565.html?page=2#comments) [accessed 22/10/2011].
3. [www.lawsociety.com.au/idc/groups/public/documents/internetcontent/026515.pdf](http://www.lawsociety.com.au/idc/groups/public/documents/internetcontent/026515.pdf) [accessed 22/10/2011].
4. [www.legalaid.vic.gov.au/rc\\_TJCP\\_factsheet.pdf](http://www.legalaid.vic.gov.au/rc_TJCP_factsheet.pdf) [accessed 22/10/2011].
5. *Satchithanatham v National Australia Bank Ltd* [2009] NSWCA 395, [37].
6. [justinianarchive.com/1389-article](http://justinianarchive.com/1389-article) [accessed 22/10/2011].