



# Judicial Studies Committee

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## **ANNUAL REPORT**

**For Year to 31 March 2009**

# JUDICIAL STUDIES COMMITTEE

## COMMITTEE MEMBERS

THE HON. LORD BRODIE (CHAIRMAN)

THE HON. LORD MENZIES (VICE CHAIRMAN)

SHERIFF F. R. CROWE (DIRECTOR) (UNTIL SEPTEMBER 2008)

SHERIFF T. WELSH QC (DIRECTOR) (FROM SEPTEMBER 2008)

SHERIFF A. G. D. THORNTON (DEPUTY DIRECTOR)

SHERIFF PRINCIPAL R. A. DUNLOP QC

SHERIFF J. K. MITCHELL

SHERIFF M. J. FLETCHER

MR R GORDON, HEAD OF DEPARTMENT, JUSTICE DEPARTMENT SECRETARIAT  
(UNTIL SEPTEMBER 2008)

MS V MACNIVEN, CRIMINAL JUSTICE DEPARTMENT (FROM SEPTEMBER 2008)

DR J McCLURE, HEAD TEACHER OF, ST GEORGE'S SCHOOL FOR GIRLS

MS J FINDLAY JP

MR G COE JP

## OFFICE STAFF

DIRECTOR OF JUDICIAL STUDIES

SHERIFF T. WELSH QC

DEPUTY DIRECTOR

SHERIFF A. G. D. THORNTON

LEGAL ASSISTANTS

MR J ROBB (2 YEARS FROM  
AUGUST 2007)

MS H MCPHEE (UNTIL MARCH 2008)

MS M MCCRACKEN (UNTIL JUNE 2008)

MS R GRAY (UNTIL AUGUST 2008)

MS X VENGOECHEA (1 YEAR FROM  
AUGUST 2008)

MR L MCBRATNEY (2 YEARS FROM  
SEPTEMBER 2008)

LAY JUSTICE CONSULTANT

MR E HAWTHORN JP

PERSONAL ASSISTANT TO THE DIRECTOR

MS A SHIELDS

CLERK/TYPIST

MS H STEVENSON

PORTER/MESSENGER

MR M ORTON

## **FOREWORD TO THE ANNUAL REPORT OF THE JUDICIAL STUDIES COMMITTEE BY LORD BRODIE, CHAIRMAN**

This has been a year of changes in the Judicial Studies Committee. At the beginning of September the Director's baton passed from Sheriff Frank Crowe to Sheriff Tom Welsh QC. Robert Gordon who, as Head of Department, Justice Secretariat, had been a member of the Committee since December 2004, resigned in September on taking on further responsibilities as Director General for Justice and Communities, to be replaced by Valerie Macniven. Colin Mackay of the Constitutional Law and Courts Directorate of the Scottish Government now attends the Committee in succession to John Anderson. In Ximena Vengoechea and Luke McBratney we have two new legal assistants in place of Heather McPhee and Morag McCracken. However, important as these changes in personnel are, more significant is the work undertaken by JSC in preparation for further change. Since its establishment it has been the aim of the Committee constantly to improve the provision made for the continuing education and professional development of the Scottish judiciary but two events have given this objective particular urgency.

The first is the enactment by the Scottish Parliament of the Judiciary and Courts (Scotland) Act 2008. Among the provisions of the Act are those contained in section 2 which establish the Lord President as the Head of the Scottish Judiciary and impose upon him the responsibility for making and maintaining appropriate arrangements for the welfare, training and guidance of judicial office holders (defined so as to include judges of the Court of Session, temporary judges, sheriffs, part-time sheriffs, stipendiary magistrates and justices of the peace). This is the first reference in Scottish legislation to judicial education.

The second event was the delivery, in August 2008, by Dame Hazel Genn QC of her Learning Needs Analysis in relation to the Scottish judiciary. As explained in last year's report, following similar work that she had done for the Judicial Studies Board of England and Wales, Dame Hazel was commissioned by the JSC to investigate and report on what Scottish judges, sheriffs and part-time sheriffs saw as their training needs and how effectively they were being provided for. Dame Hazel reported that the judges and sheriffs she had surveyed displayed an appetite for self-development. They were generally appreciative of the programmes offered by JSC and Dame Hazel's assessment was that the training provided in Scotland was relevant and practical, comparing well in terms of content and delivery with that in other jurisdictions. On the other hand, she identified a number of concerns about the organisation of judicial education in Scotland and put forward specific suggestions as to how training courses could be improved so that they better met the development needs of the judiciary. Dame Hazel's recommendations and the strategic objectives flowing from these recommendations were accepted and adopted by the Committee at its meeting on 8 September 2008.

With the commencement of section 2 of the 2008 Act the Lord President will take up a statutory responsibility for making and maintaining appropriate arrangements for judicial training. How the Lord President will discharge this responsibility is obviously a matter for him. In practice the Judicial Studies Committee has always looked to the Lord President for supervision and direction. It continues to do so and in the run-up to the implementation of the new Act, JSC has seen it as its duty to do what can be done, subject to his approval, to equip the Lord President with the “appropriate arrangements” for training judicial office holders; hence my reference to preparation for change. In the Genn report we have an independent and empirically based assessment of what appropriate arrangements might consist of. To put them in place will require additional infrastructure, a clear recognition of the entitlement of judicial officers to the time necessary for professional education and an incorporation of that into the court programme, and improvement in the delivery and content of training courses. JSC appreciates that whether what we see as necessary will be achieved will depend on, among other things, what budget is allocated to judicial education. With that in view, in December 2008 we set up a Project Board advised by John Murphy as project manager, in order to formulate a business case for new accommodation and to develop the basis for a budget. John Murphy is an experienced project manager who among other projects piloted the set up of the Scottish Legal Complaints Commission.

The Board has met once a month and I acknowledge the important contribution to its work which has been made by John Murphy and by Colin McKay of the Scottish Government, Alan Swift of the Scottish Courts Service and David Stewart of the Lord President’s Office.

In parallel with this work in preparation for structural and logistical change, again with an eye on the Genn Learning Needs Analysis, our new Director, Sheriff Tom Welsh QC, and the Deputy Director, Sheriff Alastair Thornton, have been engaged in the constant process of evaluating and improving existing courses and developing new ones. A five day induction course for new appointees to the Bench, has been offered this year. There has been substantial modification of the IT programme. What looks to be an increasingly important resource in course development is the assistance afforded by the National Judicial Institute of Canada under its Executive Director, Justice Brian Lennox. The Canadians are widely recognised as world leaders in judicial education and are enormously generous in putting their expertise and experience at the disposal of those in other jurisdictions at little or no cost. It is our hope in the coming year to strengthen this link with the National Judicial Institute which has been established by Sheriff Welsh.

The other work of the Judicial Studies Committee has of course continued in the year ending 31 March 2009, as appears from the report which follows. None of it would be possible without the Director’s quite exceptional team of administrators in the persons of Aileen Shields, Helen Stevenson, and Matthew Orton; and legal assistants in the persons of Jamie Robb, Ewan Hawthorn, Ximena Vengoechea and Luke McBratney. I am admiring of all of them and most grateful for their unstinting hard work. I would also wish to

express my gratitude to the members of the Committee for their good advice, friendship and support and to the members of the *Jury Manual* sub-committee chaired by Lord Uist for their essential and demanding work in formulating model jury directions. I suspect that for the great majority of judges who preside over trials on indictment the publication and up-dating of the *Manual* is the most important thing that the JSC does.

I could not end this foreword without paying tribute to Sheriff Frank Crowe who resigned as Director of Judicial Studies at the end of September 2008 to become a resident sheriff at Edinburgh. Sheriff Crowe took up the post of Director on 25 October 2004. In Sheriffs Stoddart and then Morrison he had hard acts to follow but he quickly proved himself worthy of his predecessors. He was enthusiastic, imaginative and energetic. His background in the Procurator Fiscal Service gave him useful insights into the ways in which the work of the Judicial Studies Committee might relate to that of other governmental agencies. He built on the earlier work of Sheriff Morrison in skills training with such success that, as our colleagues in England and Ireland acknowledge, JSC is the leader in the British Isles as far as this aspect of judicial education is concerned. As I reported last year, his management of the special programme for training justices of the peace was highly appreciated by the Scottish Government's Criminal Justice Directorate. Not by nature unduly subordinate, he was loyal and supportive to the Chairman and Vice-Chairman and an unyielding champion of judicial independence. JSC is fortunate to have had Sheriff Crowe as its Director as it is fortunate to have secured Sheriff Welsh as his successor. Chosen from a strong field of candidates, Tom Welsh QC has been a full-time sheriff since 2000. He is editor of Macphail's *Sheriff Court Practice* and general editor of the journal *Scottish Criminal Law*. He has taken over the Directorship of Judicial Studies at a very interesting time.

*Philp H Brodie*

## INTRODUCTION

There are presently 36 Court of Session/High Court Judges, 6 temporary Court of Session/High Court Judges (who are not sheriffs), 6 temporary Court of Session/High Court Judges (who are sheriffs), 6 Sheriffs Principal, 141 sheriffs, 80 part time sheriffs, 441 Justices (with a further 52 in the process of recruitment), 4 stipendiary magistrates and 3 relief stipendiary magistrates. The Judiciary thus presently comprises 723 serving judicial officers, 196 of whom are full time judges. This figure fluctuates over time but comprises a significant and varied group of judicial officers with widely differing levels of training need. These needs range from those of the lay magistracy, on the one hand, who will have had no formal legal education and have no civil jurisdiction to the needs of the full time professional Appeal Court judges. The JSC is presently charged with the non statutory responsibility of providing training and continuing legal education to this entire judicial family. Under the new provisions of the Judiciary and Courts (Scotland) Act 2008 a statutory responsibility for making and maintaining appropriate arrangements for the training welfare and guidance of judicial officers in Scotland will pass to the Public Office of the Lord President as Head of the unified Judiciary in Scotland. That statutory responsibility is anticipated to commence in April 2010.

### JUDICIAL OFFICERS IN SCOTLAND

JUDGES	TEMPORARY JUDGES	SHERIFFS PRINCIPAL	SHERIFFS	PART TIME SHERIFFS	JUSTICES	STIPENDIARY MAGISTRATES
36	12	6	141	80	441	7

## THE JSC

### Changes on the Committee in 2008

Sheriff F. R. Crowe's term as Director ended in September 2008 and he took up a commission as resident sheriff of Lothian and Borders at Edinburgh.

After an application and interviewing process Sheriff T. Welsh QC was appointed as the new Director of Judicial Studies in September 2008.

Following a re-organisation of the Justice Department, Robert Gordon stepped down from the Committee in September 2008, and Valerie Macniven (Director of Criminal Justice) was nominated to take his place.

### Changes in Office Staff

Morag McCracken left on 4 June 2008. Ruth Gray left on the 29<sup>th</sup> August 2008. Ximena Vengoechea commenced a one year contract as legal assistant on 12 August 2008 and Luke McBratney began a two year contract on 1 September 2008.

### The Committee

The Committee meets on a quarterly basis. The Chairman, Lord Brodie, and the Vice-Chairman, Lord Menzies, are engaged in full-time duties as Senators of the College of Justice sitting in the Supreme Courts. The Director of Judicial Studies is committed only to a limited number of days sitting as a sheriff each year. Sheriff Principal Dunlop, Sheriff Fletcher and Sheriff Mitchell are full time judicial office holders. Sheriff Thornton is a part-time Sheriff. Colin McKay is Deputy Director of the Constitutional Law and Courts directorate of the Scottish Government. Valerie Macniven is the Director of Criminal Justice of the Scottish Government. Johan Findlay and Graham Coe are lay Justices of the Peace sitting respectively in the District Court and the JP Court. Dr. Judith McClure is the Head Teacher of St George's School for Girls and is the lay representative on the Committee.

### The Genn Report

In 2007 the JSC commissioned Professor Dame Hazel Genn QC<sup>1</sup> to report on the training needs of the Scottish Judiciary. Following several months of interviews and research, Professor Genn compiled and submitted her report to the Committee in August 2008. In her report, entitled "[Learning Needs Analysis of the Scottish Judiciary](#)", Professor Genn outlined a series of proposals for improving delivery of judicial training in Scotland. The report constitutes a wide ranging and detailed analysis of the history and development of judicial training in Scotland.

Following the delivery of this report JSC has set up a working group (the Project Board) which meets monthly to discuss and implement these proposals.

The [Project Board](#) consists of:

The Hon Lord Brodie,  
The Hon Lord Menzies,  
Sheriff T. Welsh QC, Director,  
Sheriff A.G.D. Thornton, Deputy Director,  
Mr J Murphy (Project Manager),  
Mr C McKay (Scottish Government),  
Mr A Swift (Scottish Court Service),  
Mr D Stewart (Lord President's Office).

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<sup>1</sup> Professor Dame Hazel Genn is Dean of Laws, Professor of Socio-Legal Studies and co-director of the Centre for Empirical Legal Studies in the Faculty of Laws at University College London, where she is also an Honorary Fellow.

## JUDICIAL STUDIES COMMITTEE ACTIVITIES

### 1. COURSES

#### (a) Induction Courses

Induction courses have been held for new judicial appointments. Additionally, all new appointments have been invited to attend a Judicial Skills or Refresher course at their earliest convenience. Induction courses have been conducted at the JSC office premises. The JSC also organises, when requested, sitting-in days and judicial mentors for new judicial appointments.

#### (b) Refresher Courses

The JSC offers four refresher courses every year. It is envisaged that every member of the judiciary will attend a refresher course once every three years. The programme is varied and includes talks on matters of topical and general interest and recent developments in law and practice. The courses are residential and three days in length.

##### (i) 12-14 May 2008

The course was chaired by Lord Menzies, who was supported in his directing duties by Sheriff F. R. Crowe. The course was attended by ten sheriffs, seven part-time sheriffs and a District Judge from Ireland attended. The course included:

- **Risk Assessment** – Professor David Cooke, Dept of Psychology, Glasgow Caledonian University
- **Current Developments in Criminal Law & Practice** – Sheriff Andrew Bell
- **Professional Development for Judges** – Sheriff Frank Crowe, Director
- **Disclosure – Plenary session** – Sheriff Frank Crowe, Director
- **The Court implications arising from a multi-cultural Scotland** - Daniel Onifade LLB MA, Principal, Intra Vires, Edinburgh
- **Are We Making Law Better? Legislation since Devolution** — Gerard Bonnar, Alex Gordon and Stephen Crilly, The CPR Bill Team
- **Violence Reduction Unit** – John Carnochan QPM, Detective Chief Superintendent, Violence Reduction Unit
- **The Café Project** – Sheriff Norrie Stein
- **Whose Criminal Justice Board is it anyway?** – Rachael Weir and Craig Flunkert, National Criminal Justice Board Secretariat
- **The Parole Board** – Professor Sandy Cameron, Chairman of the Parole Board for Scotland

Syndicate and plenary sessions were held on Problems in Court, Bail or Remand and Sentencing Exercises.

(ii) **6- 8 October 2008**

This course was chaired by Lord Brodie, with the support of Sheriff Welsh QC and Sheriff Thornton. It was attended by one temporary judge, ten sheriffs, seven part-time sheriffs and two European Judicial Training Network participants: a judge from Portugal and a judge from Poland. Both of them contributed with a short presentation on how their respective judicial systems work. The programme included lectures and presentations on the following topics:

- **Risk Assessment** - Professor David Cooke, Dept of Psychology, Glasgow Caledonian University
- **Current Developments in Criminal Law & Practice** – Sheriff Andrew Bell
- **Professional Development for Judges** – Sheriff A G Johnston
- **Are We Making Law Better? Legislation since Devolution** — Gerard Bonnar, Alex Gordon and Stephen Crilly, The CPR Bill Team
- **Anti-Social Behaviour Order and Criminal Anti-Social Behaviour Orders** – Trish Pryce, National Co-ordinator for Anti-social Behaviour, Scottish Executive
- **The Court implications arising from a multi-cultural Scotland** - Daniel Onifade LLB MA, Principal, Intra Vires, Edinburgh
- **Violence Reduction Unit** – John Carnochan QPM, Detective Chief Superintendent, Violence Reduction Unit
- **Disclosure – plenary session** – Sheriff T Welsh QC
- **Criminal Justice Statistics** – Nick Bland, Scottish Government
- **The Parole Board** – Professor Sandy Cameron, Chairman of the Parole Board for Scotland

Syndicate and plenary sessions were held on Problems in Court, Bail or Remand and Sentencing Exercises.

(iii) **24 – 26 November**

The course was chaired by Lord Brodie with the support of Sheriff Thornton. It was attended by two Senators of the College of Justice, one sheriff principal, nine sheriffs, four part-time sheriffs, one Justice of the Peace and a Swedish judge as a guest.

- **The Parole Board** –Professor Sandy Cameron, Chairman of the Parole Board for Scotland
- **Current Developments in Criminal Law & Practice** – Sheriff Andrew Bell
- **Professional Development for Judges** – Sheriff A G Johnston

- **Violence Reduction Unit** – John Carnochan QPM, Detective Chief Superintendent, Violence Reduction Unit
- **Anti-Social Behaviour Order and Criminal Anti-Social Behaviour Orders** – Trish Pryce, National Co-ordinator for Anti-social Behaviour, Scottish Executive
- **The Court implications arising from a multi-cultural Scotland** - Daniel Onifade LLB MA, Principal, Intra Vires, Edinburgh
- **Are We Making Law Better? Legislation since Devolution** — Gerard Bonnar, Alex Gordon and Stephen Crilly, The CPR Bill Team
- **Disclosure – plenary session** – Sheriff A G D Thornton
- **Judging the evidence: Criminal justice research and statistics** – Dr Nick Bland
- **Risk Assessment** - Professor Roisin Hall, Risk Management Authority

Syndicate and plenary sessions were held on Problems in Court, Bail or Remand and Sentencing Exercises.

**(iv) 23 - 25 February 2009**

The course was chaired by Lord Menzies, who was supported in his directing role by Sheriff Welsh QC and Sheriff Thornton. It was attended by two Senators, eight sheriffs and four part-time sheriffs. The programme included lectures and presentations on the following topics:

- **Disclosure** - The Rt Hon Lord Coulsfield and DCI Stuart Laurie
- **Conducting a Civil Court** - Discussion lead by Directing Team
- **Contemporary Issues in Family and Private Law**, Professor Joe Thomson, Scottish Law Commission
- **Judicial Ethics** – Discussion lead by Directing Team
- **Diligence** - Nicholas Grier, Napier University
- **Multicultural Scotland** - Daniel Onifade LLB MA, Principal, Intra Vires, Edinburgh
- **Violence Reduction** - John Carnochan QPM, Head of the Violence Reduction Unit.

Syndicate and plenary sessions were held on Problems in Court, Bail or Remand and Sentencing Exercises.

**(c) Skills Courses**

Three Judicial Skills courses were held in the year to 31<sup>st</sup> March 2009. Each member of the judiciary is invited to attend such a course every five years. Having established Skills courses in October 2000, many members of the judiciary are now attending their second Skills course.

**(i) Judicial Skills course, 10–12 November 2008, Fairmont St Andrews**

Facilitated discussions were held on the assessment of witnesses, the charge to the jury, dealing with problematic cases, court-room communication, and judicial ethics. The participants were filmed in jury charging and courtroom situations exercises. Sentencing and witness assessment workshops were held. The Rt Hon the Lord McCluskey spoke on court-room communication.

This course was led by the Vice Chairman, with the Director and Deputy Director providing support. This course was attended by one Senator, one Crown Court judge from England, five sheriffs, five part-time sheriffs and two foreign participants.

**(ii) Judicial Skills course, 2 – 4 February 2009, Dunkeld House Hotel**

Facilitated discussions were held on the assessment of witnesses, the charge to the jury, dealing with problematic cases, court-room communication, and judicial ethics. The participants were filmed delivering a charge to the jury. Situations in court and witness assessment exercises were held. The Rt Hon the Lord Cullen spoke on court-room communication.

This course was led by the Chairman, with the Director and Deputy Director providing support. This course was attended by two Senators, seven sheriffs, two part-time sheriffs and two Irish judges.

**(iii) Judicial Skills course, 20 – 22 April 2009. Fairmont St Andrews**

Facilitated discussions were held on the assessment of witnesses, the charge to the jury, dealing with problematic cases, and court-room communication. The participants were filmed delivering a charge to the jury. Judicial ethics exercises were held and a talk on the subject was given by a professor from Edinburgh University. Situations in court and witness assessment exercises were held. The Rt Hon Lord Philip spoke on court-room communication.

This course was led by the Chairman, with the Director and Deputy Director providing support. This course was attended by one Senator, the judge of the Scottish Land Court, ten sheriffs, one part-time sheriff, one Irish judge and one foreign participant.

## **(d) One-Day Courses**

### **Bankruptcy and Diligence**

18<sup>th</sup> April 2008 - Glasgow Hilton Hotel

The Accountant in Bankruptcy spoke on the Bankruptcy and Diligence (Scotland) Act 2007, two solicitors from the Office of the Scottish Parliamentary Counsel spoke on the background of the Act, a practitioner spoke on the practical consequences of the reforms, a lecturer from Aberdeen University spoke on personal insolvency and syndicate groups were held to work through case studies.

This course was attended by one sheriff principal, fifteen sheriffs, eight part-time sheriffs and one foreign participant.

### **Interviewing Child Witnesses**

5<sup>th</sup> and 6<sup>th</sup> June 2008 - Carnoustie Hotel.

The first of these one day courses was chaired by Sheriff F. Crowe and the second by Sheriff A. Thornton. Professors Memon and Bull assisted in the delivering of these courses, which comprised workshops, role-play, lectures and discussions on the topic of interviewing children. Sheriff B Kearney acted as a guest facilitator on both days.

In total, five sheriffs and five part-time sheriffs attended these courses.

### **Mental Health and the Law**

12<sup>th</sup> June 2008 - Cameron House Hotel, Loch Lomond.

The course was chaired by Sheriff B. Kearney. Presentations were delivered by Sheriff R.A. Davidson, Dr Tom White, Consultant Forensic Psychiatrist at Murray Royal Hospital and Dr Lindsay Thomson, Consultant Forensic Psychiatrist and Reader in Forensic Psychiatry at the University of Edinburgh.

This course was attended by ten sheriffs and ten part-time sheriffs.

### **Family Law**

4<sup>th</sup> September 2008 - Glasgow Hilton

Jonathan Mitchell QC spoke at the seminar on the new law on cohabitation, Sheriff K Mackie spoke on dealing with domestic abuse cases, case studies were discussed in syndicate groups, a representative from Gilmerton Children's Family Centre spoke on the viewpoint of the father, and a practising solicitor spoke on the mother's viewpoint. Alan Finlayson OBE, an honorary sheriff, former Children's Reporter and child law consultant gave a presentation on grandparental rights.

This course was attended by one sheriff principal, ten sheriffs, fifteen part-time sheriffs, and two foreign participants.

## **Sexual Offences**

13<sup>th</sup> October 2008 - Mar Hall, Bishopton

Professor Gerry Maher QC spoke on the Sexual Offences (Scotland) Bill, Judge Peter Rook QC spoke about statutory sexual offences, a divisional Procurator Fiscal spoke on the prosecution of sexual offences, and Graeme Brown, a Supreme Courts legal assistant, spoke on sentencing in sexual offences cases and the notification requirements on sex offenders. Case studies were discussed.

This course was attended by eleven sheriffs and eleven part-time sheriffs.

## **Intervention and Guardianship**

6<sup>th</sup> November 2008 - Royal Zoological Society, Edinburgh

The Public Guardian spoke on adult protection, Hilary Patrick spoke on mental health care and treatment. Adrian Ward MBE spoke on guardianship and intervention orders. A session on dealing with procedural issues was held.

This course was attended by six sheriffs and six part-time sheriffs.

## **Seminar for Facilitators**

A group of 15 judicial office holders were trained as judge facilitators for future JSC events. This follows a recommendation from the Genn Report which suggests that trained facilitators were required for sentencing exercises and syndicate groups, to chair the session, identify the teaching objectives and channel the discussions to meet these objectives.

Presentations were given on judicial education and the skill of facilitation and discussions and exercises were held on the creation of a judicial training module. The course was run by Lords Brodie and Menzies, Sheriffs Welsh and Thornton and Sheriff Stoddart, a former Director of Judicial Studies.

### **(e) IT Training**

The Judicial Studies Committee has been working to develop its IT Training Programme in response to the Scottish judiciary's training needs. According to the results of a comprehensive survey the JSC IT training now comprises two independent one-day modules, the first on general **Computer Skills** and another on **Online Legal Research**.

The **Computer Skills** module covers topics such as file management, internet access, Outlook (e-mail) and Word processing. It is expected that by the end of the course participants would be able to understand how file directories, folders and paths work, find and manipulate files, work with removable media, set defaults and preferences for many functions, back up work, navigate the web and access internet files, add favourites, organise storage of e-mails, set up a personal address book, manage attachments, change the layout and

look of a document, switch between files, create lists and tables, use spell check, grammar check and dictionaries, and format text, paragraphs and documents, amongst many other skills.

The **Online Legal Research** module focuses on finding specific and detailed information on cases and legislation. At the end of the course, participants are enabled to use with confidence online legal databases (including the new Westlaw platform), apply different search methods, select the most effective one for the task in hand and find in-depth information about:

- (i) cases (including summaries and full text decisions, searching for cases by court, judge or date, and cases which have cited, considered, distinguished, applied, or overturned the case referred to, and articles commenting on any particular case), and
- (ii) primary and subordinate legislation (including commencement information, historic law, all amendments including pending ones, and legal commentaries).

In the reporting period six of the computer skills courses following the old, combined curriculum were held at Edinburgh Sheriff Court on 14 and 15 April, 19 and 20 May and 29<sup>t</sup> and 30 September 2008. These were attended, in total, by one Senator, nine sheriffs and eight part-time sheriffs.

In the reporting period one new Computer Skills course has been held, at Glasgow Sheriff Court on 19 March 2009. It was attended by seven sheriffs and four part-time sheriffs. One new Online Legal Research skills course has been held, in the IT suite at Legal House, Glasgow on 20 March 2009. It was attended by four sheriffs and three part-time sheriffs.

#### **(f) Training for Extradition Sheriffs**

Under the Extradition Act 2003 Edinburgh sheriffs deal with cases where extradition warrants are enforced against persons living or traced in Scotland who are sought by foreign countries. At present there are four Edinburgh sheriffs who have had training in this work. Through JSC these sheriffs attended a seminar in London on 8 November 2008 where matters of common interest were discussed with judges who deal with English and Welsh cases at Horseferry Magistrates' Court.

#### **(g) Justice of the Peace Training**

##### **Justices of the Peace Training Seminars – Refresher courses**

Two residential courses were held, each of three days duration, to provide an opportunity for those Justices who had been unable to attend the courses offered in the autumn of 2007. The course programmes and format were almost identical for each course and followed the same pattern as the courses delivered in autumn of 2007.

##### **(i) 16-18 May 2008**

This course was chaired by Johan Findlay JP and Sheriff Crowe who were assisted by one facilitator. Six Justices of the Peace

attended. Sheriff Principal BA Lockhart and Sheriff JK Mitchell attended as speakers.

**(ii) 9-11 June 2008**

This course was chaired by Johan Findlay JP and Sheriff Crowe who were assisted by two facilitators. 14 Justices of the Peace attended. Sheriff Principal BA Lockhart, Sheriff JK Mitchell, Sheriff R Dickson and John Dunn, Deputy Crown Agent, attended as speakers. Katrina McNeill of the Scottish Government Criminal Justice Directorate attended as a guest.

**Justices of the Peace Annual Conference**

This three day residential judicial skills course was held between 29 and 31 August 2008. Each Justice is expected to attend a presentation of this course once during each five year term of appointment. The course was chaired by Johan Finlay JP and Sheriff FR Crowe who were assisted by 11 facilitators. 99 Justices of the Peace attended. Katrina McNeill of the Scottish Government Criminal Justice Directorate attended as a guest. Presentations were delivered by Andrew Brown, Advocate, Cindy Barnett, Chairman of the Magistrates' Association for England and Wales, Supt John Carnochan QPM of the Violence Reduction Unit and Susan Hewit JP, Justice Training Services Ltd. There were group sessions on Working with the Legal Adviser, Sentencing, Assessing Witnesses and Situations in Court.

A DVD was produced for the Assessing Witnesses session. This depicts the summary trial of a charge of breach of the peace with two Crown witnesses and two defence witnesses. This DVD can serve two purposes: it forms the basis for a discussion of how to approach the assessment of witness testimony and it shows a full summary trial that can be used for training on trial practice and procedure and judicial note taking. It will be utilised as a training tool at future Annual Conferences for JPs and at future Induction Training events organised by the JSC for prospective Justices of the Peace.

Over the course of the year Mr Ewan Hawthorn JP continued to work at the JSC on a consultancy basis to develop materials for and to support the training of Justices of the Peace. A budget for JSC training of Justices of the Peace has been prepared and specific funding from the Scottish Government has been approved.

These three day residential courses for Justices have delivered in involving a total of 238 judge days of training. Two of these were re-presentations of the refresher courses delivered in the autumn of 2007 for Justices who previously had been unable to attend. The third residential course was the first presentation of the Justices' Annual Conference.

The Justices of the Peace (Scotland) Order 2007 requires that all prospective Justices of the Peace undertake a course of training approved by the Lord President. Following extensive investigation and consultation, the Course of Training for prospective Justices of the Peace was devised and has now been approved by the Lord President. Corresponding detailed learning outcomes

have been written and the preparation of associated training materials has started.

The 2007 Order also requires the Justices' Training Committee in each sheriffdom to prepare a training plan and submit it to the Sheriff Principal and Lord President. The Lord President has delegated consideration of these plans to the JSC. A subcommittee, chaired by Sheriff Principal RA Dunlop, has been established. The subcommittee comprises a JP from each sheriffdom, a Sheriffdom Legal Adviser and representation from the JSC. That sub-committee had its inaugural meeting in September 2008 and met again in February 2009. At these meetings the remit of the sub-committee was agreed and sheriffdom training plans were considered.

In addition to the course delivered directly by JSC referred to above the JTCs have organised day, evening and residential courses for Justices in each sheriffdom and JSC have on occasion provided material, speakers and assistance.

## **2. Other Activities**

### **(a) The Jury Manual**

The Jury Manual Committee comprises

Lord Uist, Chairman,  
Lord Turnbull,  
Lord Bannatyne,  
Sir G Gordon QC,  
Sheriff J. Horsburgh QC,  
Sheriff J.K. Mitchell,  
Sheriff T. Welsh QC, Director

The Jury Manual Committee met on 2<sup>nd</sup> June 2008 and 22<sup>nd</sup> January 2009. The amendments and updates of the Jury Manual for 2007 were issued and the 2008 amendments were issued in 2009. The revision process has now been streamlined which should result in the annual amendments to the Jury Manual being issued sooner after they have been agreed by the committee. The streamlining involves the use of a more modern software programme by the publishers. This will be of significant benefit to the judiciary. Where necessary urgent amendments are provided to judges at short notice.

### **(b) Developments in law, practice and procedure**

The JSC produced [briefing material](#) on the following:

- [Act of Sederunt \(Sheriff Court Rules\) \(Miscellaneous Amendments\) 2008](#)
- [Counter Terrorism Act 2008](#)
- [Commercial attorneys](#)
- [Victim Statements](#)
- [Updates on case law](#)

**(c) Provision of starter packs to sheriffs, part-time sheriffs and Senators of the College of Justice**

There have been a number of judicial appointments during the reporting year, at the Senatorial, shrieval and part-time levels. All have been supplied with a pack of the relevant briefing papers, guidance, materials and legislation. A review of materials issued is due to try and reduce the size and quantity of material distributed.

**(d) JSC Intranet**

An overhaul and re-branding of the JSC Intranet is in progress starting with the installation of the Google Search engine. Time has been allocated by SCS to approve this upgrade which should address many of the issues identified in the IT survey sent last year. Cosmetic changes will also be instigated.

A new database is being trialled which will allow judges to book themselves on courses electronically and maintain their own training record. Updates are due to be completed before the end of 2009.

**(e) Checklists**

The Penalty Guide was updated to incorporate changes made by the Criminal Proceedings etc. Reform (Scotland) Act 2007. A more comprehensive update is currently underway.

**(f) Equal Treatment Bench Book**

Following the revision of the document by the Equal Treatment Bench book Committee, a new version of the bench book was published on August 2008 and distributed to all members of the judiciary. This is also available online on the JSC website.

**(g) Sheriff Court Criminal Bench Book**

All amendments have been completed. The Book is due for an update by the Sheriffs' Association.

**(h) European Judicial Training Network**

The Network exists to promote judicial training programmes with a European dimension for members of the European judiciary. This involves the exchange of experiences between the judiciary of the European Union, promoting training events on matters of common interest thereby providing a forum during which issues such as cross border criminal co-operation, commercial and family law matters may all be considered. The Network also organises exchange visits for judges. The JSC is a member of the Network, as are most countries in the EU. During the reporting year the JSC hosted EJTN sponsored exchange visits from judges from Romania, Sweden, Bulgaria, Belgium, Portugal, Italy and Poland. In addition to judicial exchanges, as part of membership the JSC reserves two places on each course for members of the European judiciary who wish to attend JSC courses. These places are funded by the EJTN. During the course of the

reporting year judges from Germany, Bulgaria and Poland have attended JSC courses on that basis.

**(i) The Council of the UK and Republic of Ireland Judicial Studies Committees.**

The United Kingdom Republic of Ireland Judicial Studies Council met in Belfast on 7<sup>th</sup> July 2008 and in Edinburgh on 1<sup>st</sup> December 2008. Matters discussed included the ongoing programmes of reform in all contributing judicial training organisations, specialist training for the senior judiciary, sentencing guidelines and international co-operation in judicial education.

**(j) Senators' Training**

The JSC organised a Senators' Away Day on 3<sup>rd</sup> November 2008 at Winton House. This event was attended by 20 senators with talks being delivered on judicial independence by Lord Justice Sedley, Professor Dame Hazel Genn QC, Sir Anthony Campbell and Mr Justice Peart.

**(k) Justice of the Peace and Legal Advisors Bench books**

The first editions to these manuals were distributed last year. These manuals are available on the JSC website. Revisals are being planned for next year however this remains a work in progress.

**(l) Local Sherifdom Training Events**

Local training events have been held by Sheriffs Principal for a number of years. The JSC has assisted in arranging for the attendance of speakers and preparation of material at these events. Advantage can be taken of local training days arranged by the Procurator Fiscal and Sheriff Court staff to run a reduced number of courts so as to allow as many sheriffs as possible to attend. This year the JSC provided case papers and assisted in arranging speakers for a number of local training events.

**(m) The Work of the Present Director of Judicial Studies Sheriff T. Welsh QC**

The Director is responsible for organising and directing the content of training and education for the judiciary. In addition the Director is available to give advice to interested parties on the work of the JSC. The Director is a member of the Sheriffs Association and the Scottish Appropriate Adult Network, which is developing a role for the use of appropriate adults in relation to witnesses and accused with learning difficulties. The Director participated in the Lord Advocate's Forum for witnesses with learning disability. The Director is a member of the Scottish Universities Joint Judicial Studies Committee and attends quarterly meetings of that organisation which is directed towards informing all levels of the legal profession, including the Universities, the Law Society of Scotland, the Faculty of Advocates and the Judiciary of current developments in legal education and training. The Director attended the EGM of the EJTN in Berlin to discuss the funding crisis of that organisation which has now largely been resolved. The Director also attended a training course organised by the National Judicial Institute in Niagra on the Lake in Canada to learn more about Canadian teaching methods. A teaching partnership with the NJI is in the process of being created.

The previous Director was a member of the Expert Advisory Group in the recent review of Anti-social Behaviour legislation.

JSC is a member of the Lisbon Network, a group formed by the Council of Europe to promote international judicial co-operation. The previous Director attended a meeting in Strasbourg on 26 May 2008 when Human Rights training was discussed.

**(n) The Work of the Deputy Director, Sheriff A.G.D. Thornton**

The Deputy Director leads at a number of JSC events as a chairman and facilitator. He assists the Director with the development and delivery of the residential Judicial Skills and Refresher courses. He is responsible for the design and delivery of the new IT training modules on Computer Skills and Online Legal Research and is working on further modules for different levels of IT skills. In addition, working with consultant Ewan Hawthorn, he has been responsible for the design of the new Course of Induction Training for Prospective JPs which has been approved by the Lord President, and will lead the two national induction training weekends as well as the JPs' Annual Conference. He has assisted in the training of facilitators for JSC events, and has led induction training sessions for new judicial office holders. He also supports the Director in many of his day to day duties, which include participation in interview boards for legal assistants and members of staff. He is a member of the JSC Project Board and the LINETS Management Board. He has attended training events run by the Judicial Studies Board in England and Wales on the training of small groups, on induction and continuation training for circuit judges and recorders, and on mentoring. He has also attended meetings of the UK and Republic of Ireland Council of Judicial Studies Committees. As well as speaking and facilitating at JSC events he has given presentations at sheriffdom training events for Justices of the Peace

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