

Judicial Studies Committee



ANNUAL REPORT

For Year to 31 March 2010

JUDICIAL STUDIES COMMITTEE

COMMITTEE MEMBERS AS AT 31 MARCH 2010

THE HON. LORD BRODIE (CHAIRMAN)

THE HON. LORD MENZIES (VICE CHAIRMAN)

SHERIFF T. WELSH QC (DIRECTOR)

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

SHERIFF PRINCIPAL R.A. DUNLOP QC

SHERIFF J.K. MITCHELL

SHERIFF M.J. FLETCHER

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

REV. R. NEILSON, VICE-CHAIRMAN OF THE JUSTICES ASSOCIATION (SINCE
FEBRUARY 2010)

MS B. CAMPBELL, DIRECTOR OF CRIMINAL JUSTICE (SINCE DECEMBER 2009)

MR G. COE, JUSTICE OF THE PEACE

MRS J. FINDLAY, JUSTICE OF THE PEACE (UNTIL DECEMBER 2009)

MS V. McNIVEN, CRIMINAL JUSTICE DEPARTMENT (UNTIL SEPTEMBER 2009)

OFFICE STAFF

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|---------------------------------------|--|
| DIRECTOR OF JUDICIAL STUDIES | SHERIFF T. WELSH QC |
| DEPUTY DIRECTOR | SHERIFF A.G.D. THORNTON |
| OFFICE MANAGER | MS A. FISHER |
| LEGAL ASSISTANTS | MR L. McBRATNEY |
| | MISS A. BAREKAT (SINCE AUGUST 2009) |
| | MISS E. JOHNSTON (SINCE AUGUST 2009) |
| LAY JUSTICE CONSULTANT | MRS G. MAWDSLEY (SINCE FEBRUARY 2010) |
| 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, CHAIRMAN¹



It is probably of the nature of annual reports to be commentaries on work in progress. The culmination of projects and other significant events do not usually neatly coincide with an organisation's year end. This is perhaps an exception, at least up to a point.

At the conclusion of its year on 31 March 2010, the Judicial Studies Committee as constituted following the statement by the then Secretary of State for Scotland, Mr Michael Forsyth, on 14 January 1997, came to an end. That was the inevitable consequence of the coming into force, on 1 April 2010, of section 2 of the Judiciary and Courts (Scotland) Act 2008. Section 2 is the provision which provides that Lord President has become Head of the Scottish Judiciary and on doing so has assumed a number of responsibilities. Among these responsibilities is the "making and maintaining appropriate arrangements for the welfare, training and guidance of judicial office holders." This statutory responsibility is new. It supersedes such responsibility as previously lay with the JSC as a result of its establishment by the Secretary of State "to promote training for the judiciary both in the supreme court and in the sheriff court".

A committee without a function not only has no reason to exist, it does not exist and, accordingly, had nothing more occurred, the Judicial Studies Committee would have expired at midnight on 31 March 2010 and this would have been the final JSC annual report. I am glad to be able to say that this is not what has happened.

¹ Photograph taken by Bill McBryde.

As I reported last year, JSC was then engaged in a process of planning for change which was informed by the terms of the 2008 Act and the conclusions and recommendations submitted in August 2008 by Dame Hazel Genn following her investigation of the training needs of the Scottish professional judiciary. This task fell at first instance on the Project Board which was set up in December 2008 and which finished its work with the completion of a draft Business Plan in November 2009. The substance of that Business Plan together with a proposed Governance Model were approved by JSC at its meeting on 7 December 2009 and a finalised Business Plan and Governance Model were put to the Lord President for his consideration in January 2010.

In carrying out the planning process and preparing the Business Plan, JSC was very much aware that the methods by which and the structure through which the Lord President will discharge the responsibilities imposed by section 2 of the 2008 Act were for the Lord President and the Lord President alone to determine. However, JSC took the view that as the principal provider of judicial training and education in Scotland, it had a duty to put before the Lord President the information relevant to the decisions that he required to take and recommendations as to how he might chose to discharge his new role. A consequence of setting out that information and these recommendations in narrative form was to make the Business Plan rather more wordy than is usual with such documents. I make no apology for that. The JSC Business Plan of January 2010 provided a comprehensive and readily comprehensible statement, endorsed by the Judicial Studies Committee, of where judicial education and training has got to in Scotland and where it should be aiming to go. Reflecting the language of the 2008 Act, it described the current arrangements as to courses, other activities, and accommodation and it set out recommendations as to what would be appropriate arrangements for an independent judiciary entering the second decade of the twenty-first century. Among the recommendations was that a Judicial Studies Committee be constituted of new in terms of the proposed Governance Model.

As I have already foreshadowed, the Lord President has accepted the recommendations in the Business Plan and reconstituted the Judicial Studies Committee by reference to the Governance Model with the reappointment of its previous members with effect from 1 April 2010. There is provision for further appointments with a view to bringing in

additional members with particular relevant skills. The Lord President has assumed the new position of President of the Judicial Studies Committee. I very much welcome this. This close association between the leader of the judiciary and the leadership of judicial education mirrors arrangements that are in place in very many Commonwealth countries including Canada, Australia, New Zealand and Nigeria. It is important. When addressing a session at the conference of International Organisation for the Training of the Judiciary in Sydney in October 2009, Livingston Armytage, Director of the Australian Centre for Judicial Studies, emphasised that programmes for judicial training fail where they do not have a “judicial champion” in the person of the Chief Justice of the relevant jurisdiction in order to provide the necessary leadership, recognition and nurture. It has always been the opinion of the JSC that it has had an enthusiastic champion in the person of the Lord President but his formal assumption of the presidency of the Judicial Studies Committee makes a powerful and public statement as to the value that he attaches to its work. The significance of this cannot be overestimated.

The progress that we make in implementing the recommendations in the Business Plan will be a matter for future annual reports. I would wish, however, broadly to outline the direction that the Lord President, in approving our proposals, has instructed us to take.

The Genn report, while praising what JSC had been able to achieve, commented on its almost skeleton organisation and the consequential heavy burden that fell on the Director and Deputy Director. This led to inefficiencies and was a bar to sustained progress in addressing the various unmet needs for professional training and education that Dame Hazel identified. She recommended that JSC required “an organisation, rather than one or two people, with proper administrative support and sufficient resources to deliver training of the quantity and quality that the Scottish judiciary deserve and require.” An important step towards the implementation of that recommendation was the appointment of Anne Fisher as office administrator and the proposals approved by the Lord President will take things further. Structurally, JSC has been located within the Lord President’s new Judicial Office, headed by its Director, Steve Humphreys. This will ensure the continuation of the close contact with the Lord President that we have in the past enjoyed as well as affording us additional support and advice. It underlines the central importance of education in developing a strong and independent judiciary. For the first time, JSC will have a budget (to be administered through the Judicial Office).

Although not strictly a financial tool, the Business Plan was used to make a bid to the newly incorporated Scottish Courts Service. That bid was approved and with it authorisation to create two new posts the purpose of which will be to develop the content and means of delivery of teaching: an educationalist and an IT specialist. It is accepted that even for its present needs, the accommodation available to JSC at Bearford House is quite inadequate. In cooperation with the Scottish Court Service we are therefore now actively engaged in option appraisals of alternative sites. What we are looking for is not only more space for our administrative staff but a building that could provide a lecture theatre, seminar rooms and a mock courtroom with associated information and communication facilities.

The work involved in this planning process has been considerable. I am very grateful for the assistance of everyone on the Project Board who included Lord Menzies, Colin McKay, Alan Swift, David Stewart, and the Project Manager, John Murphy; their contributions were essential, but I would wish to single out the Director, Sheriff Tom Welsh QC, and the Deputy Director, Sheriff Alastair Thornton for particular praise. Significant as this planning work has been, the other activities of the Judicial Studies Committee have of course continued, as appears from the report which follows. Courses for the professional judiciary have had to be structured and delivered, Justices' training supervised and coordinated, individual judicial office holders advised, publications monitored, staff managed, representation on outside bodies maintained and communications responded to. All that has been done and done very well. I shall have something further to say about the excellent support from administrative staff and legal assistants but JSC is very fortunate indeed in its Director and his Deputy.

This is the last year in which the financing of JSC has been on the basis of its outlays and expenditures being met directly by the Scottish Government with no forward planning beyond the understanding that they would bear a relationship to expenditures in previous years. That in future JSC will have a formally allocated budget can only be regarded as a move forward but, while this fairly informal method of proceeding which operated up until 31 March 2010 probably made for a modest level of spending, it also reflected significant mutual goodwill and trust as between JSC and its sponsoring government department (latterly the Legal System Division). I would wish to take this opportunity to acknowledge what has been a happy relationship between JSC and responsible

government officials. Senior civil servants have been very supportive of the idea of judicial education from the early days of JSC and, most recently, Colin Mackay has proved a very worthy successor to David Stewart in this regard. I am very grateful to him. Colin leaves us with what were his department's responsibilities transferring to the new Scottish Courts Service. However JSC is, I am very glad to say, retaining Bridget Campbell, Scottish Government's Director of Criminal Justice, as a member. Bridget succeeded Valerie Macniven when Valerie's changing responsibilities took her away from what was an all too short membership of the Committee.

Another change in membership of JSC in the course of this year resulted from the resignation of Johan Findlay JP. A very valuable member of the Committee, Johan has demitted office as chairman of the Scottish Justices Association and taken up appointment as a judicial member of the board of the newly incorporated Scottish Courts Service. She has been succeeded on JSC by Rev Rodger Neilson JP, the vice-chairman of the Justices Association.

As in previous years I must record my grateful thanks to everyone who has served on 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. Their enthusiasm, commitment and sheer ability are remarkable. The same applies to the staff of the JSC. As an organisation JSC may, as Dame Hazel said, be no more than a skeleton but it is an energetic, hard-working and tremendously loyal skeleton, a skeleton with some muscle, if that is not a confusion of metaphors. We have an exceptional team of administrators in the persons of Anne Fisher, Aileen Shields, Helen Stevenson, and Matthew Orton. Despite their frankly cramped accommodation, their enthusiasm and commitment remains undiminished. The very high standard of our legal assistants, as exemplified by Ximena Vengoechea and Jamie Robb, both of whom left in the course of the year to continue their careers, has been maintained by Luke McBratney, Emma Johnston and Afsi Barekat. The good work done by Ewan Hawthorn in supporting the Justices of the Peace is being continued by Gillian Mawdsley.

Whether we at JSC achieve what we are aiming to achieve will be for the future to tell but, for all that we are working in times of severe constraints on public spending, I

consider that in the past year we have completed the necessary foundation work for what has the potential to be a very significant advance towards making arrangements for education and training which is, to use the language of the Genn report, “of the quantity and quality that the Scottish judiciary deserve and require.”

PHILIP H BRODIE

INTRODUCTION

There were 32 Court of Session/High Court Judges, 7 Temporary Court of Session/High Court Judges (who are not Sheriffs), 11 Temporary Court of Session/High Court Judges (who are Sheriffs), 6 Sheriffs Principal, 139 Sheriffs, 76 Part Time Sheriffs, 441 Justices, 4 Stipendiary Magistrates and 3 Relief Stipendiary Magistrates at the end of March 2010. The Judiciary thus comprised 719 serving judicial officers in the reported year. There is therefore no doubt that the work of the JSC, 12 years since its inception, is as demanding as ever.

The JSC endeavors to provide varied and stimulating training for the whole spectrum of Scottish judicial officers from the lay justices who have had no formal legal education to the full time Senators of the College of Justice. At present, JSC offers some 32 training courses with 818 delegate places. JSC also prepares and publishes the Jury Manual as well as bench books and briefing papers. The reported year also saw the creation of the Business Plan which was completed in January 2010.

The key to the work of JSC is the independence of the judiciary, which is fundamental to the Rule of Law. In short, training is delivered ‘by judges, for judges’. During the reported year, JSC was charged with the non-statutory responsibility of providing training and continuing legal education to this entire judicial family. Since April 2010 this position has changed and now, under the new provisions of the Judiciary and Courts (Scotland) Act 2008, a statutory responsibility for “making and maintaining appropriate arrangements for the welfare, training and guidance of judicial office holders” in Scotland has passed to the Public Office of the Lord President as Head of the unified Judiciary in Scotland.

JUDICIAL OFFICERS IN SCOTLAND

| SENATORS | TEMPORARY JUDGES | SHERIFFS PRINCIPAL | SHERIFFS | PART TIME SHERIFFS | JUSTICES | STIPENDIARY MAGISTRATES |
|----------|------------------|--------------------|----------|--------------------|----------|-------------------------|
| 32 | 18 | 6 | 139 | 76 | 441 | 7 |

1. THE JSC

1.1 Changes to the Committee in 2009

In December 2009, Mrs Johan Findlay stepped down from the JSC Committee and was replaced by Rev. Rodger Neilson. Ms Valerie McNiven also stepped down from the Committee in September 2009, and Ms Bridget Campbell (Director of Criminal Justice) was nominated to take her place in December 2009.

1.2 Changes in Office Staff

A new post of Office Manager was created and Ms Anne Fisher was appointed in June 2009. Mr Ewan Hawthorn, Lay Justice Consultant, left the organisation in September 2009 and was replaced by Mrs Gillian Mawdsley in February 2010.

Legal Assistants Jamie Robb and Ximena Vengoechea left JSC in July and August 2009 respectively and were replaced by Afsi Barekat and Emma Johnston.

1.3 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. The Deputy Director is a part-time sheriff who commits a significant proportion of his time to the work undertaken by the Committee. Colin McKay is Deputy Director of the Constitutional Law and Courts directorate of the Scottish Government. Bridget Campbell is the Director of Criminal Justice of the Scottish Government. Rev Rodger Neilson and Graham Coe are lay Justices of the Peace. Dr. Judith McClure is the former Head Teacher of St George's School for Girls and is the lay representative on the Committee.

1.4 The Genn Report

In 2007 JSC commissioned Professor Dame Hazel Genn QC² 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).

1.5 The Business Plan 2010

The Business Plan takes forward the analysis and recommendations of the Genn Report. It describes the current arrangements and emphasises the inadequate nature of JSC’s current resources and facilities. It thereby sets out recommendations to the Lord President as appropriate arrangements for the discharge of his statutory duty under the Judiciary and Courts (Scotland) Act 2008.

In order to enhance the effectiveness of judicial training, the Business Plan proposes to reduce reliance on lecture based learning in favour of a more experiential learning

² 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.

experience supported by appropriate audio-visual aids. The Report recommends the recruitment of a professional educationalist to aid JSC in the development of training modules. More adequate accommodation to allow education to take place on the JSC premises as well as more space for administrative purposes is also proposed. Furthermore, the Business Plan recommends the recruitment of an IT manager to assist and direct the JSC in updating the intranet and the currently drastically outdated website. The Business Plan was put to the Lord President in January 2010.

JUDICIAL STUDIES COMMITTEE ACTIVITIES

2. COURSES

2.1 Induction Courses

Induction courses are held for new judicial appointments over a period of three days. The course is in effect a crash course, covering many aspects of judicial training including modules on assessing witnesses, judgment writing, IT and online legal resources, sentencing exercises and judicial ethics. All new appointments are given a starter pack and are invited to attend a Judicial Skills or Refresher course at their earliest convenience. Induction courses are conducted at the JSC office premises.

2.2 Refresher Courses

Four three day residential courses were held during 2009/2010. Each member of the judiciary is invited to attend one such three day residential course every three years. The programme is varied and includes talks on matters of topical and general interest and recent developments in law and practice.

(i) 11-13 May 2009 – Dunkeld House Hotel, Dunkeld

The course was chaired by Lord Menzies, who was supported in his directing duties by Sheriff Welsh and Sheriff Thornton. The course was attended by one Senator, thirteen Sheriffs, six Part-Time Sheriffs as well as two Canadian guests. The course included lectures and discussions on disclosure of evidence, property law, diligence, sequestration and personal insolvency, violence reduction and judicial ethics. Mr George Thomson from the National Judicial Institute in Canada also led a module on preventing wrongful convictions. Syndicate and plenary sessions were held on Problems in Court and Sentencing Exercises.

(ii) 5-7 October 2009 – Carnoustie Hotel, Carnoustie

This course was chaired by Lord Brodie, with the support of Sheriff Welsh and Sheriff Thornton. It was attended by two Senators, one Sheriff Principal, eleven Sheriffs, three Part-Time Sheriffs and one European Judicial Training Network guest: a judge from Estonia. The programme included lectures and presentations on evidence, disclosure, constitutive harm and remoteness of loss, Scottish child and family law in the context of the ECHR, violence reduction, desistance from serious and persistent offending, diligence and judicial ethics. Syndicate and plenary sessions were held on Problems in Court and Sentencing Exercises.

(iii) 23-25 November 2009 – Dunkeld House, Dunkeld

The course was chaired by Lord Brodie with the support of Sheriff Welsh and Sheriff Thornton. It was attended by two Senators, one Temporary Judge, ten Sheriffs, five Part-Time Sheriffs and one Estonian guest judge. The programme included lectures and presentations on evidence, disclosure, constitutive harm and remoteness of loss, Scottish child and family law in the context of the ECHR, violence reduction, patterns of desistance from serious and persistent offending, diligence and judicial ethics. Syndicate and plenary sessions were held on Problems in Court and Sentencing Exercises.

(iv) 1-3 February 2010 – Dunblane Hydro Hotel, Dunblane

The course was chaired by Lord Brodie, who was supported in his directing role by Sheriff Welsh and Sheriff Thornton. It was attended by one Senator, fourteen Sheriffs and five Part-Time Sheriffs. The programme included lectures and presentations on disclosure, the law of privacy, diligence, violence reduction, sexual offences, patterns of desistance from serious and persistent offenders and judicial ethics. There were also short presentations on sentencing and the public perception, as well as the value of custody. Syndicate and plenary sessions were held on Problems in Court and Sentencing Exercises.

2.3 Judicial Skills Courses

Two three day residential Judicial Skills courses were held in the year to 31st March 2010, as well as two one day Judicial Skills seminars. Each member of the judiciary is invited to attend one such three day residential course every five years. Having established Skills

courses in October 2000, many members of the judiciary are now attending their second Skills course.

2.3.1 One Day Seminars

(i) 1st June 2009 - Caledonian Hilton Hotel, Edinburgh

The 27 participants at this seminar consisted of sixteen Sheriffs and eleven Part-Time Sheriffs. The day featured presentations on managing a solemn evidential hearing, conducting a sexual assault jury trial, taking evidence from vulnerable witnesses using CCTV and the concept of disproportionality in licensing law. These presentations were respectively delivered by the Honourable Lord Bonomy, the Right Honourable Lord Carloway, Sheriff R Rae QC and Professor Chris Himsworth.

(ii) 2nd November 2009 - Caledonian Hilton Hotel, Edinburgh

The 22 participants at this seminar consisted of four Senators, one Sheriff Principal, eleven Sheriffs and six Part-Time Sheriffs. The day featured presentations on the topics of statutory interpretation, the ministerial jurisdiction, sentencing from the perspective of the Appeal Court and Parole Board reports from such eminent speakers as the Right Honourable the Lord Rodger of Earlsferry, Sheriff J K Mitchell, the Lord Justice General and Professor Sandy Cameron.

2.3.2 Three day residential courses

(i) 9 – 11 November 2009 - Mar Hall, Bishopton

Facilitated discussions were held on the assessment of witnesses, the charge to the jury, dealing with situations in court and problem cases, *ex tempore* decisions and judicial ethics. The participants were filmed in jury charging exercises and each performance was reviewed within the small group they filmed with. In addition to the facilitated discussion, workshops on judicial ethics and situations in court were held. Professor John Haldane of St Andrews University delivered a presentation on judicial ethics.

This course was led by Lord Menzies, with Sheriff Welsh and Sheriff Thornton providing support. This course was attended by one Senator, twelve Sheriffs, one Part-Time Sheriff and two foreign judges.

(ii) 22 – 24 February 2010 - Fairmont Hotel, St Andrews

Facilitated discussions were held on the assessment of witnesses, the charge to the jury, dealing with situations in court and problem cases, *ex tempore* decisions and judicial ethics. The participants were filmed in jury charging exercises and each performance was reviewed within the small group they filmed with. Voice coaches from the Royal Scottish Academy of Music and Drama were present to provide constructive criticism to each participant. The feedback demonstrated that the voice coaches added an extra dimension to the exercise. In addition to the facilitated discussion, workshops on judicial ethics and situations in court were held. The participants were filmed delivering a charge to the jury. Situations in court and witness assessment exercises were held. Exercises relating to situations in court, *ex tempore* decisions and witness assessment were held. Professor John Haldane of St Andrews University delivered a presentation on judicial ethics.

This course was led by Lord Brodie, with Sheriff Welsh and Sheriff Thornton providing support. This course was attended by one Senator, three Sheriffs, six Part-Time Sheriffs and two foreign judges.

2.4 Adoption

On the 8th of March 2010, the first of two one day Adoption Seminars in 2010 was held at the Glasgow Hilton Hotel. Seventeen Sheriffs and Part-Time Sheriffs were in attendance and participated in critical debate with two of the Phase II members of the Adoption and Policy Review Group (Ms Lexy Plumtree, Legal Consultant, BAAF Scotland and Sheriff Peter Gillam, Haddington Sheriff Court). In the morning of the seminar an overview of the significant provisions of the Adoption and Children (Scotland) Act 2007 was given by Sheriff P G McNeill QC as well as a comprehensive account of the related court rules by Lexy Plumtree. In the afternoon, the participants were split into three groups and worked through adoption order, permanence order and children's referral problems devised by Sheriffs Peter Gillam and Alan Finlayson. Unfortunately Sheriff Alan Finlayson was unable to attend due to ill health but it is envisaged that more of these seminars will be held in the future at which Sheriff Finlayson will be able to take an active role.

2.5 Contempt of Court

On the 7th of September 2009 a one day seminar on contempt of court was held at the

Glasgow Hilton Hotel. There was great demand for a place at this seminar and a total of twenty-four Sheriffs and Part-Time Sheriffs were accommodated as participants. The morning consisted of high-profile presentations on the subjects of '*Dealing with Party Litigants*' and '*Prevarication and Associated Problems*' from the Honourable Lord McEwan and Sheriff R Craik QC respectively. The afternoon slot featured a presentation from Sheriff Welsh on the new court rules contained in the Act of Adjournal (Criminal Procedure Rules Amendment No. 2) (Contempt of Court) 2009 and a joint presentation from media lawyer Campbell Deane and public information officer Elizabeth Cutting on '*Contempt of Court and the Media*'. Participants reported that they found the course of great interest and utility.

2.6 Vulnerable Witnesses

On 15th December 2009 at Parliament House in Edinburgh, a one day course was held on Vulnerable Witnesses. Five Sheriffs and eight Part-Time Sheriffs attended. The day consisted of Professor F Raitt speaking to the legislative provisions relating to vulnerable witnesses, Dr Kate Edward, a Child Psychologist speaking about children as vulnerable witnesses, and a technical presentation by Mr C Armstrong from Electronic Delivery Unit. The day concluded with the participants working through practical exercises with the court technology. The course was very well received.

2.7 IT Training

The Judicial Studies Committee has been working to develop its IT Training Programme in response to the Scottish judiciary's training needs. The JSC IT training comprises two independent one-day modules, the first on general Computer Skills and another on Online Legal Research. These are delivered as a consecutive pair of training days at quarterly intervals during the year.

2.7.1 Computer Skills

This module covers topics such as understanding file management, word processing and getting the most out of Outlook and the internet. It is expected that by the end of the course, participants should be able to understand how file directories, folders and paths work, find and manipulate files, work with removable media, set defaults and preferences for various functions, back up work, navigate the web and access internet files, add favourites, organise storage of e-mails, set up a personal address book and many other

skills. The Deputy Director leads this training course, with Bryan Goodfellow (Head of HR Service Delivery at the Scottish Court Service) providing the bulk of the face-to-face training. A total of 37 Sheriffs and Part-Time Sheriffs attended the course which was held on four occasions during the reported year.

A course specification has also been drawn up for introductory IT training. We anticipate running this course in March 2011. The course is aimed at those who are less confident in their IT abilities than those who attend the course detailed above. The introductory course will focus on Windows desktop, creating and renaming folders, saving, deleting and renaming files, printing, basic word processing as well as sending, receiving, filing and deleting emails.

Occasionally, JSC offers one-to-one IT training to judges with very little if any knowledge of the workings of information technology. This training normally lasts a full day and introduces the participant to some of the areas mentioned above.

2.7.2 Online Legal Research

Four Online Legal Research Courses were held in the reported year. These one day seminars give members of the judiciary with intermediate IT skills the opportunity to develop their knowledge of the Westlaw legal database and other online legal resources accessible via LINETS (the Legal Information Network for Scotland). In the morning of these seminars participants are presented with a comprehensive and interactive demonstration of the functions of such databases (with particular emphasis on Westlaw) and in the afternoon they are set problem exercises which the Directing Team help the participants to apply their newly acquired knowledge to. A total of 32 Sheriffs and Part-Time Sheriffs attended these courses, which are chaired by the Deputy Director with substantial support from the Legal Assistants and Sarah Kerr, the System Manager at LINETS.

2.8 European Law

On the 12th of October 2009 a one day seminar on European law was held at the Caledonian Hotel, Edinburgh. A total of one Senator, thirteen Sheriffs and seven Part-Time Sheriffs as well as two guests from the Judicial Studies Board in Northern Ireland attended. The morning consisted of high-profile presentations by The Rt. Hon Sir David

Edward on 'The divide between the civil and common law traditions' and 'The Rt. Hon Lord Reed on 'Applying s. 3 of the Human Rights Act 1998 to domestic legislation'. The afternoon slot featured a presentation by Professor P. Beaumont concerning an 'Update on recent developments in private international law: Rome I, Rome II and Maintenance'. The evaluation questionnaires were particularly positive.

2.9 Road Safety and Football Banning Orders

On the 22nd October 2009, a one day seminar on Road Safety law and Football Banning Orders was held in the Glasgow Hilton. Attendees included one Temporary Judge, eleven Sheriffs and four Part-Time Sheriffs. The morning consisted of presentations on Road Traffic law by Sheriff A.D. Vannet and Road Traffic Safety by PC W. Graham, Strathclyde Road Policing Training Department. After lunch, the topic changed to Football Banning Orders with a presentation by DC L. Gray ACPOS Football Banning Order Authority and John Neilson, Assistant Chief Constable (Territorial Policing) Strathclyde Police on 'FBOs: A social context'. This presentation was followed by a talk on the law surrounding FBOs by Sheriff J.A. Baird. The Evaluation Questionnaires were again, very positive.

2.10 Sexual Offences

A one day seminar on Sexual Offences took place on 15th June 2009 in the Glasgow Hilton. The course proved popular, with one Senator, nine Sheriffs and eleven Part-Time Sheriffs attending. The morning consisted of a presentation by Graeme Brown, a senior Judicial Assistant at the Appeal Court on Sentencing for child pornography. Shona Barrie, a Divisional Procurator Fiscal spoke on the Prosecution of sexual offences. The participants were then invited to discuss sexual offences sentencing exercises in plenary session. Thereafter a debate followed, lead by Professor G. Maher QC and Professor C. Gane. The feedback on the course was very positive.

3. JUSTICE OF THE PEACE TRAINING

3.1 There are 441 Justices plus 51 justices who have just completed their training and whose appointment should be confirmed shortly. 61 prospective Justices have been appointed in 2010 from the Sheriffdoms of North Strathclyde and Tayside, Central and Fife who are currently undergoing their induction training.

3.2 Induction Courses

Two induction courses were held, entitled 'Judicial Skills for Prospective Justices.' Each course was of three days' duration providing an opportunity for those prospective Justices to attend a national induction course as required as part of their training programme approved by the Lord President. They had an opportunity to meet fellow prospective Justices from the four Sheriffdoms that recruited. The course programmes and format followed a similar pattern, albeit the speakers changed to suit availability.

(i) 25-27 September 2009 Dunblane Hydro Hotel

The course was chaired by Sheriff Thornton who was assisted by four facilitators. Twenty-four prospective Justices attended from the Sheriffdoms of North Strathclyde, Glasgow & Strathkelvin, and South Strathclyde, Dumfries & Galloway. Sheriff Hendry and Sheriff Cubie ('What Makes a Good Judge?'), Sheriff Mackie (Court Management) and Sheriff Galbraith (Sentencing) attended as speakers. Professor Amina Memon led the session on 'Assessing Witnesses.' Sheriff Thornton gave an interactive presentation on 'Ethical Problems for Justices'.

(ii) 13-15 November 2009 Dunblane Hydro Hotel

The course was chaired by Sheriff Thornton who was assisted by five facilitators. Twenty-seven Justices attended from the Sheriffdoms of South Strathclyde, Dumfries & Galloway and Grampian Highlands & Islands. Sheriff Smart (Court Management), Sheriff Vannet (Sentencing), and Sheriff Hendry and Sheriff Cubie ('What Makes a Good Judge?') attended as speakers. Professor Amina Memon led the session on 'Assessing Witnesses.' Sheriff Thornton gave an interactive presentation on 'Ethical Problems for Justices'.

3.3 Justices of the Peace Annual Conference 28-30 August 2009 – Westpark Hall, Dundee

This three day conference adopted a similar format to the Annual Conference held in 2008 with speakers and group syndicate sessions. Each Justice is expected to attend a national training event once during their five year term of appointment. The Annual Conference provides an opportunity to cover a range of topics of national importance in training including the judicial skills of presiding in court, working with Legal Advisers,

sentencing, court management and judicial conduct. The Justices meet other Justices and share their experiences in different courts across Scotland. This year's Annual Conference included introductory talks from a number of speakers. Its main focus concentrated on facilitator led, small group sessions and practical exercises using two DVDs.

A total of sixty-nine Justices attended as participants and a further eleven acted as facilitators during the conference. The course was chaired by Sheriff Thornton who was assisted by eleven facilitators and three staff members from JSC. Katrina McNeill of the Scottish Government Criminal Justice Directorate attended as a guest.

Sheriff Foulis provided a talk on road traffic issues followed by syndicate group on sentencing. Professor Amina Memon introduced the topic of 'Assessing Witnesses.' The DVD depicting a summary criminal trial on a breach of a peace charge was played. The discussion groups included completion of an evaluation forms on how each justices approached the assessment of each of the witnesses for reliability and credibility. That generated much debate.

Detective Chief Superintendent John Carnochan from the Violence Reduction Unit provided the afternoon talk which was followed by discussion groups on a range of scenarios from the DVD on 'Situations in Court.' This DVD filmed in 2009 will be used at future events organized by the JSC for Justices of the Peace. The final talk which concluded the Annual Conference was delivered by Sheriff Thornton on judicial ethics.

4. OTHER ACTIVITIES

4.1 The Jury Manual

The Jury Manual Committee met throughout the year to discuss a set of revisions. The Committee comprises:

- Lord Uist, Chairman
- Lord Turnbull
- Lord Bannatyne
- Sir G Gordon QC

- Sheriff J. Horsburgh QC
- Dr C. Stoddart
- Sheriff J.K. Mitchell
- Sheriff T. Welsh QC, Director

The Committee met twice within the reported year, on 22 June 2009 and 25th January 2010. Revisals were agreed and the amendments will be issued in the next financial year. On 25th June 2009, an immediate revisal was sent to all judges.

4.2 Developments in Law, Practice and Procedure

The JSC produced briefing material on the following:

- Act of Sederunt (Child Support Rules) (Amendments) 2009
- Act of Sederunt (Money Attachment Rules) 2009
- Act of Sederunt (Sheriff Court Rules) (Miscellaneous Amendments) SSI 2009/294
- Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) Amendment (Public Health etc. (Scotland) Act 2008) 2009
- Adoption and Children (Scotland) Act 2007
- Offences (Aggravation by Prejudice) (Scotland) Act 2009
- Policing and Crime Act 2009
- Sexual Offences (Scotland) Act 2009

4.3 Provision of Starter Packs to Sheriffs, Part-Time Sheriffs and Senators of the College of Justice

There were a number of judicial appointments during the reported 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.

4.4 JSC Intranet and Website

An overhaul and re-branding of the JSC Intranet is in progress. It has been agreed that the intranet will be largely modeled on the 'MY SCS' site and will therefore allow JSC

staff to update sections of the intranet at their will, for example the 'latest news' section. Meetings have been held with Owain Williams from the web design department at SCS in order to plan this redesign. The Google search engine has now been installed. Briefing papers continue to be uploaded as well as papers written and spoken to by distinguished academics and judges at training events.

The JSC Website also needs up-dated. Owain has agreed to work on both the intranet and the website in tandem during the summer. Currently there is a statement on the website homepage explaining that the website is under construction.

A new electronic booking system is currently being designed and will be up and running later this year. Judges will be able to book themselves on courses electronically and maintain their own training record.

4.5 E-Book on Criminal Jurisdiction

Dr Charles Stoddart has been responsible for the writing of the E-Book on Criminal Jurisdiction on behalf of the JSC since January 2010. Afsi Barekat has been assisting Dr Stoddart in this project. The aim is to produce high quality briefing material of immediate use to the busy first instance or appeal judge either on the bench or in chambers. The intention is to enable each judge to personalise their own copy by adding electronic annotations. The e-book is due to be completed early 2011.

4.6 European Judicial Training Network

This training network is the only body which represents most of the major judicial training organisations within the EU. The JSC is a member of the Network. It provides members with a means of communicating information about forthcoming training events and accessing written and electronic materials. 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. During the reporting year the JSC hosted EJTN sponsored exchange visits as well as reserving two places on each residential course for foreign guest judges. This reported year we had visitors from Romania, Spain, France and Estonia. These places are funded by the EJTN.

4.7 The Council of the UK and Republic of Ireland Judicial Studies Committees

The United Kingdom Republic of Ireland Judicial Studies Council met in Dublin on 6th July 2009 and in London on 11th December 2009 and 17th March 2010. Topics of discussion included the developments of judicial training strategies in England, Northern Ireland and Scotland, the European Judicial Training Network, cross border conferences, specialist training for senior judicial officers and further international co-operation in judicial education.

4.8 Senators' Training

Much of the latter part of the financial year has involved preparations ahead of the Senators' Week 2010. The event involves a week-long training course for all Senators of the College of Justice. It is scheduled for 31st May – 4th June 2010 at the Mackenzie building in Edinburgh. Topics will include the new Sexual Offences legislation, expert opinion evidence, the law of privacy as well as various aspects of European law. The week will feature input from representatives of the National Judicial Institute of Canada (NJI) who are largely regarded as the world leaders in Judicial Training. A Partnership Agreement will also be signed by The Lord President on behalf of the JSC and The Hon Justice Cromwell on behalf of the NJI.

In January 2010 George Thomson and Marc Rosenberg travelled from Canada to meet with Sheriff Welsh, Sheriff Thornton and Luke McBratney to plan a framework for the Senators Week and discuss the training methodology which was to be incorporated in the week.

4.9 Legal Advisors Bench Books

Revisals to the Legal Advisor Bench books started in March 2010 and will be continued throughout the next financial year.

4.10 Local Sherifffdom Training Events

The JSC continues to support local annual training events held within each Sherifffdom, which are organized by the Sheriffs Principal. 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. In addition, a legal assistant attended each event to ensure the smooth running of the training day.

4.11 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 Scottish judiciary. In furtherance of this role, he supports a number of different initiatives. He sits on the Scottish Appropriate Adult Network Committee which exists to support the development and maintenance of the Appropriate Adult Services in Scotland. He is also a member of the Sheriffs' Association, the body responsible for representing the views of almost all full time Sheriffs. In addition, he sits on the Jury Manual Committee chaired by Lord Uist. 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. He is editor of Macphail's *Sheriff Court Practice* and general editor of the journal *Scottish Criminal Law*.

Sheriff Welsh attended the fourth International Organisation for Judicial Training in Sydney with the Hon Lord Brodie in October 2009. The conference brought together 215 participants from 48 countries. Under the title "Justice through Judicial Professional Development" 58 speakers from around the world delivered presentations and held workshops on a wide variety of interesting and important topics. The conference was an important source of inspiration and has resulted in increased use of the experiential approach to judicial training by the JSC.

The Director is in charge of the organisation of a Senators' Week which is scheduled to take place in June 2010. Numerous meetings have taken place throughout the reported year.

Sheriff Welsh significantly contributed to the creation of the Governance document with Sheriff Principal R.A. Dunlop QC, which sets out a framework for the Lord President's role as head of the Judiciary from April 2010. The Director was also heavily involved in the drafting of The Business Plan 2010 produced by the Project Group of the JSC.

4.12 The Work of the Deputy Director, Sheriff A.G.D. Thornton

The Deputy Director has primary responsibility for designing the training at national level for JPs. In 2010, he will lead the Annual Conference for experienced JPs in October and two national induction weekends for prospective Justices in November and December. In addition his work includes the filming of training DVDs for use at events for JPs. These provide innovative training tools for addressing good practice in judgecraft for lay justices. He is also involved in developing appropriate training to support those Legal Advisers who facilitate at the conference events. He is supported in his work in this area by Gillian Mawdsley as lay justice training consultant.

As part of his communications role, the Deputy Director meets with representatives of a number of criminal justice organisations, Scottish Government and representatives of the JPs to discuss issues arising from Justices' training needs. Regular liaison meetings are also held with the Sheriffdom Legal Advisers (SLAs) to discuss training needs for the JPs and preparation of training materials at a national level to support local delivery, where required. He also has regular contact with the Judicial Studies Board in England and Wales to discuss common areas of interest in training.

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 has provided support to the Director in connection with the Senators' Week scheduled for early June 2010. He is responsible for the design and delivery of the IT training modules on Computer Skills and Online Legal Research and is working on further modules for different levels of IT skills. He has provided training to

facilitators for JSC events, and has led induction training sessions for new judicial office holders. He also supports the Director in many of his operational duties, including assistance in creating the annual budget and annual programme of events, and participation in interview boards for legal assistants and members of staff. The Deputy Director has contributed to the JSC Business Plan 2010, and deputises for the Director when he is away. He is a member of the JSC Project Board and is currently Chair of the LINETS Management Board. He has undertaken work for the Judicial Council for Scotland on mentoring for the Scottish judiciary. He has also attended meetings of the UK and Republic of Ireland Council of Judicial Studies Committees.
