



Judicial Studies Committee

ANNUAL REPORT

For Year to 31 March 2008

JUDICIAL STUDIES COMMITTEE

COMMITTEE MEMBERS

The Hon. Lord Brodie

The Hon. Lord Menzies

Sheriff Principal R. A. Dunlop QC

Sheriff M. J. Fletcher

Sheriff J. K. Mitchell

Mr Robert Gordon, Head of Department, Justice Department Secretariat

Dr. J. McClure, Headteacher, St George's School for Girls

Johan Findlay JP (From 10 September 2007)

Graham Coe JP (From 10 September 2007)

Robin Wild JP (attending as an alternate from 10 September 2007))

Sheriff F. R. Crowe (*Director*)

Sheriff J. Newall (*Deputy Director*) (Until 4 September 2007)

Sheriff A. G. D. Thornton (*Deputy Director*) (From 4 September 2007)

OFFICE STAFF

Director of Judicial Studies: **Sheriff F. R. Crowe**

Legal Assistants: **Miss Morag McCracken**
Miss Heather McPhee (Until March 2008)
Mr Jamie Robb (From August 2007)
Mr Ewan Hawthorn J.P. (February -August 2007)

Personal Assistant: **Ms Aileen Shields**

Clerk/typist: **Ms Helen Stevenson**

Porter/messenger: **Mr Matthew Orton**

Summer Assistant: **Ms Amy McVey**

FOREWORD TO THE ANNUAL REPORT OF THE JUDICIAL STUDIES COMMITTEE

The past year has seen the Judicial Studies Committee undertake more work than ever before to, I venture to say, a higher standard than we have previously achieved while, at the same time, becoming more firmly convinced that there is a need to do more and a need to do what we do better.

The report details the courses delivered and facilitated by the JSC and the publications that it has issued. I would wish to draw particular attention to the work done in relation to the training of Justices of the Peace. Early in 2007 the JSC was asked by the Executive's Criminal Justice Directorate to find a way of accelerating the training of Justices who had recently been appointed in terms of Part 4 of the 2007 Criminal Proceedings etc. (Reform) (Scotland) Act and The Justices of the Peace (Scotland) Order 2007 SI 210 with a view to the implementation of the new scheme for lay justice. As has been acknowledged to me on behalf of the Criminal Justice Directorate, Sheriff Crowe, as Director of Judicial Studies, took up the not inconsiderable challenge of training well over 400 justices in a very compressed period of time. Eight residential courses were held, each of three days' duration. With the assistance of Mr Ewan Hawthorn, who was employed by the JSC on a consultancy basis specifically to assist with this project, a benchbook for justices and a benchbook for their legal advisers have been prepared and distributed. The response to the training provided for Justices has been very positive and I would wish to add my appreciation of Sheriff Crowe's typical energy, imagination and commitment to that which has been so generously expressed on behalf of the Criminal Justice Directorate.

The responsibility of the JSC for Justice of the Peace training, under the statutory oversight of the Lord President, will continue and in relation to this but also more generally in relation to the work of the JSC I have been delighted to welcome as members of the Committee, Johan Findlay JP and Graham Coe JP, with Robin Wild JP attending as an alternate. The Justices of the Peace make up the most numerous component of the Scottish judiciary. They have a considerable breadth of experience to share with their professional colleagues and I have been pleased to see the

attendance of Justices, together with senators and sheriffs, at courses of common interest.

That the JSC can look back on a year of positive achievements has not prevented the Committee from concluding that there should be improvement in the provision of education and training for the Scottish judiciary. With a view to identifying how this could best go forward the JSC has encouraged the commissioning of a study by Professor Dame Hazel Genn QC of the training needs of Scottish judges. We hope to have her report by the autumn of 2008.

Dame Hazel's work will be informed by her academic expertise as Professor of Socio-legal Studies at University College London and her very extensive experience which includes carrying out a similar training needs assessment for the Judicial Studies Board of England and Wales but it will be very firmly empirically based in the sense that Dame Hazel has been carrying out a series of interviews in focus groups of sheriffs and part-time sheriffs during and following their attendance at JSC courses, asking what it is that they want from judicial training. This is as it should be. It is consistent with the importance that the JSC attaches to written and verbal feedback from participants in courses with a view to revising and developing course content. A practical point is involved here but also a constitutional principle. The practical point is that judges (using the expression to comprehend senators, sheriffs and justices), like other adult learners, more readily engage in and benefit from education and training which is clearly focussed on the problems and concerns that arise in the course of their day to day work. Importantly, and this is the general experience of many jurisdictions, education and training delivered by another judge (wherever he or she comes from) is much more effective than that delivered by someone with a different professional experience. The constitutional principle is that democratic government according to the Rule of Law requires the judiciary to be independent; independent of the executive, of Parliament and of private and social special interest groups. A judiciary which cannot exercise final control over the content and method of delivery of judicial education and training can hardly be regarded as independent. It is not clear to me that this is always well understood. From time to time the demand is made for "more training for judges" or, perhaps, "mandatory training for judges" in this or that area. I have of course no quarrel with such calls if what is meant is the recognition of an entitlement on the part of the judiciary to be supported by receiving

adequate education and training to maintain and develop the knowledge and skills which are necessary to do its job. If, on the other hand, what is meant by “training” in this context is the presentation of a particular point of view in order that judges may deal with cases in a particular way or from a particular perspective, then the proponents of such “training”, however well intentioned, must be regarded as attempting to influence the judiciary in a way that is inconsistent with the maintenance of judicial independence and the application of the Rule of Law. Judges must be free from external directions or pressures in order that they may give proper consideration to the evidence, argument and issues before them and decide cases on their merits. The approach of the JSC is to try and assist them in that; not by advocating a particular way of dealing with cases or a particular point of view but rather, through factually informed and structured discussion, to suggest a range of solutions that may be deployed in appropriate circumstances. That is the approach that I propose the JSC should continue to adopt and I hope that it will be allowed to do so.

This year saw the retirement of Lord Macphail after a considerable period of valuable service as chairman of the sub-committee which is responsible for production of the *Charging the Jury Manual*. As I observed in the foreword to last year’s report but which bears repetition, the *Manual* is an essential tool not just for recently appointed members of the judiciary but, having regard to the terms of the opinion of the Lord Justice-Clerk in *Nelson v HMA* 2002 SCCR 787, for all judges and sheriffs, however experienced. Every member of the professional judiciary has reason to be grateful to Lord Macphail and his sub-committee and I would wish to take the opportunity of expressing my thanks to them for their rigorous and unstinting work. Lord Uist has kindly agreed to take on the chairmanship of the sub-committee from June 2008.

Another retiree has been Sheriff John Newall. John was our first Deputy Director. So effective was he in developing the post that it is now impossible to conceive of the work of the JSC being done without the help of a Deputy Director, particularly having regard to the responsibilities it has assumed for Justice of the Peace training. Sheriff Newall helped to ensure that part-time sheriffs received the same training opportunities as full-time sheriffs so as to enable them to deal with the wide variety of work they undertake. I was very appreciative of all of John’s work and was reluctant to see him go.

The Committee has, however, been very fortunate in securing as successor in the post of Deputy Director, Sheriff Alistair Thornton. Sheriff Thornton is now a part-time sheriff, having been President of the Law Society of Scotland and convener of its Education Committee. I am delighted to have him as a member of what I consider to be the quite outstanding team of professional and support staff led by Sheriff Crowe which has enthusiastically carried forward the work of the JSC over the course of the year: Morag McCracken, Heather McPhee, Jamie Robb, Ewan Hawthorn, Aileen Shields, Helen Stevenson, Matthew Orton and, over the summer, Amy McVey. I thank all of them. I also thank the members of the Committee, for their work, for their good humour and for their support.

Philip H. Brodie

Introduction

Preliminary

The Judicial Studies Committee for Scotland (“the JSC”) was established in 1997. It was created to promote training for the judiciary in the Supreme Courts (the Senators of the College of Justice) and the sheriff court (the sheriffs principal and the sheriffs), including the part-time judiciary (temporary judges in the Supreme Courts and part-time sheriffs).

In 2005 following implementation of the recommendations of the McInnes Report on Summary Justice the Executive decided to continue and update lay justice in Scotland. The JSC was asked to oversee training for Justices of the Peace against a set of competences. Part 4 of the 2007 Criminal Proceedings etc. (Reform) (Scotland) Act and The Justices of the Peace (Scotland) Order 2007 SI 210 provides for various functions with regard to Justices of the Peace training to be exercised by the Lord President. In practice these functions will be carried out by the JSC under the oversight of the Lord President.

In any true democracy, judges must enjoy a high degree of autonomy so that they can exercise their judicial powers independently without others, including organisations of the State such as the Executive and Parliament, being able to control their decision-making. Unless judges have such independence, the public will not be able to have confidence in the administration of justice.

Judicial training itself, in so far as it seeks to influence how judges carry out their duties, might be thought to compromise judicial independence. In order to ensure that it does not, it has to be recognised, in all democratic countries that the overall control and direction of judicial training requires to be in the hands of the judges. This also ensures that judicial training has credibility among the judges. The composition of the JSC recognises the importance of these principles.

In general, training events involve providing a mixture of information, discussion of the issues and undertaking practical exercises. This approach is in keeping with the principles of adult further education.

The JSC

Changes on the Committee

Sheriff J. Newall retired as Deputy Director of the Committee on 4 September 2007 and Sheriff A. G. D. Thornton was appointed as the new Deputy Director of the Committee on the same date.

Changes in office staff

Mr Ewan Hawthorn was employed as a Legal Assistant on a consultancy basis from February 2007 until August 2007 to concentrate specifically on the Justices Training Project. In anticipation of the additional training demands that the Committee would be undertaking in respect of Justices of the Peace, a third full time Legal Assistant, Mr Jamie Robb was appointed in August 2008.

The Committee

The Committee meets on a quarterly basis. The Chairman and Vice Chairman are engaged full-time in duties as Senators of the College of Justice sitting either in the Court of Session or High Court. They are allowed time to attend JSC meetings and the main training events. The Director of JSC works full-time in that role but occasionally sits as a sheriff in the Sheriff Court. During the period covered by this report the Director sat as a sheriff on twenty-six days. The Deputy Director is a part-time sheriff who devotes a number of days each month to the work of the Committee.

JSC Activities

1. Courses

(a) Induction courses

In previous years there have been periods where a number of judicial appointments have been made around the same time thereby making it possible to hold formal Induction courses. However, following the large number of appointments made in 2006, appointments have become fewer and less concentrated in number over the reporting year. As a result, induction training has tended to be on an *ad hoc*, individual basis whenever appointments are made.

(b) Refresher courses

Four Refresher courses were held in the year to 31 March 2008. In May 2007 the eighth course in the rolling programme of Refresher courses commenced. It is envisaged that each member of the judiciary will attend a Refresher course every three years. Judicial training is not however, compulsory in fact most judges attend subject to court commitments. The Refresher Courses held during the reporting year are noted below. The courses are residential and three days in length. Approximately one third of the judiciary attends a course each year. The courses include talks on matters of topical and general interest and recent development in law and practice. Practical exercises and group discussions are also included in the programme.

(i) 14 - 16 May 2007

This course was chaired by Lord Brodie, who was supported in his directing duties by Sheriff F. R. Crowe and Sheriff J. Newall. The course was attended by One Sheriff Principal, eight sheriffs and twelve part-time sheriffs. Two judges from England attended as guests. There was also a party of Bulgarian judges and trainers in attendance as part of a UK Training Council visit to the UK to learn about judicial training.

The presentations given were as follows:

- **Current developments in Criminal Law and Procedure** – Sheriff A. M. Bell
- **Sentencing and the Use of Guidelines in the English Court** – Her Hon. Judge Barbara Mensah
- Presentations by Delegates
 - **My first year in office** – Sheriff Principal B. Lockhart
 - **The Work of the Dundee Court Committee** – Sheriff T. Hughes
 - **The Work of the Traffic Commissioners and how it impacts on the Sheriff** – Sheriff R. McFarlane
- **Judicial Ethics** – Rev. Emeritus Professor Jack Mahoney, SJ
- **The reliability of eyewitness identification evidence: Do we need experts?** - Professor Amina Memon
- **Vulnerable Witness Legislation: present, forthcoming and future** – Paul Smart, Scottish Executive
- **Civil Justice Reform and the English Perspective** – District Judge Robert Hill
- **Prison and Sentences-** Rachel Gwyon, Director of Corporate Services
- **Recent Legal Aid changes affecting Civil and Criminal business in the Sheriff Court** - Tom Murray, Director, SLAB
- **The Establishment of Community Justice Authorities and the Role of the National Support Team** – Professor George Irving, Management of Offenders, National Support Team

As with previous courses syndicate sessions on problems in court, bail and sentencing exercises were held. The results and conclusions drawn from the exercises were discussed at plenary sessions.

(ii) 1-3 October 2007

The ninth refresher course was held on 1-3 October 2007 and was attended by one Senator, six sheriffs and ten part-time sheriffs. There was also a Belgian and a Hungarian guest in attendance. The course was chaired by the Hon. Lord Brodie, who was supported in his directing duties by Sheriff F. R. Crowe.

The course contained the same presentations and syndicate sessions as the May course, with the addition of a number of new presentations to the programme. These were as follows:

- **Risk Assessment** - Professor David Cooke, Dept of Psychology, Glasgow Caledonian University
- **Media and the Courts** – Rosalind McInnes, BBC Legal Department
- **The Establishment of Community Justice Authorities and the Role of the National Support Team** – Professor Alec Spencer, Management of Offenders, National Support Team
- **Anti-Social Behaviour Order and Criminal Anti-Social Behaviour Orders** – Trish Pryce, National Co-ordinator for Anti-social Behaviour, Scottish Executive
- **Dealing with the media** - Elizabeth Cutting, Public Information Officer
- **Visit to Kilmarnock Sheriff Court for a Demonstration of CCTV equipment** – Colin Armstrong Unit Manager, Electronic Service Delivery Unit

(iii) 26 – 28 November 2007

The tenth refresher course was held on the 26 – 28 November 2007 and was attended by one senator, fourteen sheriffs and two part time sheriffs. There were two guests in attendance at the course, one from Spain, the other from Austria. The course was chaired by the Hon. Lord Brodie, who was supported in directing duties by Sheriff F. R. Crowe and Sheriff A. G. D. Thornton.

This course followed a similar structure to the October course. However the visit to court which included a demonstration regarding the use of CCTV equipment was not delivered at this course or the subsequent course.

(iv) 25 – 27 February 2008

The eleventh refresher course was held on 25 – 27 February 2008 and was attended by two senators, nine sheriffs and eight part-time sheriffs. In addition,

the course was attended by three guests, two of whom were visiting judges - one from Romania and the other from Italy as well as Professor Dame Hazel Genn QC. The course was chaired by the Hon. Lord Brodie, who was supported in directing duties by Sheriff F. R. Crowe.

Although this course followed a similar format to the previous course, there were some alterations to the programme regarding both the presentations and the order of their delivery as outlined below:

- **Risk Assessment** - Professor David Cooke, Dept of Psychology, Glasgow Caledonian University
- **Appraisal –Threat or Opportunity?-** Robin Jordan
This topic was included in light of the remarks made in the government White Paper of 2006, ‘Strengthening Judicial Independence.’
- **Current developments in Criminal Law and Procedure** – Sheriff A. M. Bell
- **The reliability of eyewitness identification evidence: Do we need experts?** - Professor Amina Memon
- **Anti-Social Behaviour Order and Criminal Anti-Social Behaviour Orders** – Trish Pryce, National Co-ordinator for Anti-social Behaviour, Scottish Executive
- **Media and the Courts** –Alistair Bonnington, BBC Legal Department
- **Violence Reduction Unit-** John Carnochan QPM, Detective Chief Superintendent, Violence Reduction Unit
- **The Parole Board** – Professor Sandy Cameron, Chairman of the Parole Board for Scotland
- **Dealing with the Media** – Elizabeth Cutting, Public Information Officer
- **Recent Legal aid Changes Affecting Civil and Criminal Business in the Sheriff Court** – Douglas Haggarty, Head of Legal Services SLAB.

(c) Judicial skills courses

Four Judicial Skills courses were held in the year to 31 March 2008. The programme for these courses includes sessions on effective communication in the court room, charging the jury, sentencing, judicial writing and note taking. The courses involve participation in simulated court hearings and sessions on charging the jury, situations in court, and sentencing, all with video feedback are included in each course. Sessions were also held on child welfare hearings, options hearings, party litigants seeking to negotiate settlements in small claims and summary causes, dealing with intermediate diets and drug treatment and testing order reviews. These sessions encouraged group discussion and the sharing of ideas between participants.

Each member of the judiciary is invited to attend such a course every five years. Having established Skills courses in October 2000, members of the judiciary are now beginning to attend their second course. The course programme was updated towards the end of 2005 to reflect this and the course continues to be revised. In February 2007 a new set of sentencing exercises was introduced to keep the exercises up-to-date and subsequently further changes have been made to reflect the comments noted in the Evaluation Questionnaires. As distinct from Refresher Courses where sentencing in specific cases is discussed in order to inform on the range of disposals and the attitude of the Appeal Court, at Skills courses the aim is to consider how best to explain a sentence to the accused, parties and the public. Some disposals, such as probation and drug treatment and testing order require a greater dialogue with the accused rather than the mere pronouncement of a sentence. In February 2008 a new session concerning the assessment of witnesses was added. This involves the viewing of a DVD produced by the National Judicial Institute in Canada showing two witnesses providing conflicting testimony and then considering this evidence in a structured way. Using feedback from previous courses, the 'situations in court' scripts were also amended. Written submissions for the judicial writing exercise were issued by means of a DVD format of oral submissions for the courses. The DVD attempts to replicate a debate between parties in court out of which a written judgment has to be prepared. Copies of the Skills *aide-mémoire* are distributed to participants at the end of every Skills course. The Skills *aide-mémoire* is currently being revised to include issues raised since it was last updated in 2004.

(i) 23 -25 April 2007

The April course was attended by one senator, four sheriffs and five part-time sheriffs. A further sheriff attended as a facilitator. Two visiting judges from Ireland attended as guests. The course was chaired and directed by Sheriff F. R. Crowe who was supported in his directing duties by Sheriff J. Newall.

(ii) 4 – 6 June 2007

The June course was attended by one senator, four sheriffs and three part-time sheriffs. A further two sheriffs acted as facilitators. A visiting judge from England attended as a guest. The course was chaired by the Hon. Lord Menzies, who was supported in directing duties by Sheriff F. R. Crowe and Sheriff J. Newall.

(iii) 12 – 14 November 2007

The November Skills course was attended by two senators and eight sheriffs. Also attending the course were five visiting judges, two from Ireland and the others from Germany, Bulgaria and Poland. The course was chaired by the Hon. Lord Menzies who was supported in directing duties by Sheriff F. R. Crowe and Sheriff A. G. D. Thornton.

(iv) 4 -6 February 2008

The February Skills course was attended by four sheriffs and five part-time sheriffs. Two judges from Germany also attended as guests along with Professor Dame Hazel Genn QC. The course was chaired by the Hon. Lord Menzies who was supported in directing duties by Sheriff F. R. Crowe and Sheriff A. G. D. Thornton.

(d) Special Courses

In the Business Plan for the three years commencing 1 January 2007 it was indicated that the JSC proposed to increase substantially the number of special courses on different areas of law and practice. During the year the following courses were held:

(1) IT Training

Three courses were run during the reporting year. The courses were directed by Sheriff J. Newall and each course followed the same format Presentations were made by David Morris, Director of IT, SCS and Sheriff S. C. Pender, Dumbarton Sheriff Court, with question and answer sessions between each presentation. There was also a talk and a practical demonstration given on the Legal Information Network for Scotland (LINETS), by Sue Sandeman, Knowledge Manager, Crown Office and Sarah Kerr, Systems Manager, LINETS.

(1.1) 19 April 2007

This course was attended by two senators, one Sheriff Principal, five sheriffs and two part-time sheriffs.

(1.2) 23 May 2007

This course was attended by ten sheriffs.

(1.3) 24 May 2007

This course was attended by one Sheriff Principal, seven sheriffs and five part-time sheriffs.

(2) Interviewing Children

Two one day courses were held this year. Presentations were delivered by Professor Amina Memon, Department of Psychology, University of Aberdeen and Professor Ray Bull, Department of Psychology, University of Leicester who also directed the course. A bound handout of course papers was issued to participants in advance of the course. The course was run using a mixture of presentations, group exercises and filming exercises with group review. This course is designed to assist sheriffs who may require to interview children in family cases to determine what residence and contact arrangements should be made.

(2.1) 21 June 2007

The first forensic interviews of children course was held on 21 June 2007. The course was chaired by Sheriff F. R. Crowe and was attended by one sheriff and four part-time sheriffs.

(2.2) 22 June 2007

The second forensic interviews of children course was held on 22 June 2007 and was chaired by Sheriff J Newall. This course was attended by three sheriffs and two part-time sheriffs. In addition, a visiting judge from Portugal attended as a guest.

(3) Mental Health

This course was held on 6 September 2007 and was attended by twenty-three sheriffs and seven part-time sheriffs. The course was chaired by Sheriff F. R. Crowe who led a discussion based on case studies. The main presentations were given by Dr. Lyndsay Thomson of the State Hospital and Dr. Tom White, Tayside NHS Trust and Sheriff R. A. Davidson. The course concentrated on the procedures and considerations that are involved in dealing with accused persons who suffer from mental disorders.

(4) Sexual Offences

This course was held on 8 October 2007 and was chaired by Sheriff F. R. Crowe. The course was attended by one senator, eleven sheriffs and eight part-time sheriffs. In addition, a German judge, Dr Arnold Weishaupt attended as a guest.

The following presentations were delivered:

- **The Prosecution of Sexual Offences** - Andrew McIntyre, Victims and Witnesses Unit, Crown Office
- **The JSB Approach to Training Judges for Sexual Offences Jury Trials in England and Wales** – Judge Peter Rook QC, The Old Bailey

- **Rape and Associated Offences – changes in case law and legislation in this context over the last ten years** – Sir Gerald Gordon QC
- **Reviewing the Law of Rape and Related Offences** – Professor Gerry Maher QC, Scottish Law Commission

This seminar represented the first in the new series of Sexual Offences seminars.

(5) Intervention and Guardianship

This course was held on 8 November 2007. It was chaired by Sheriff A. G. D. Thornton and was attended by seven sheriffs and six part-time sheriffs. Debra Allison from the Office of the Public Guardian also attended as an observer. The course was chaired by Sheriff Baird and presentations were delivered by Stuart Fowle, Public Guardian's Office, Tony Jevon, Mental Welfare Commission, Mr Adrian Ward MBE, Solicitor and Dr. Alexandra Campbell, Senior Medical Officer, Health Department.

This course is an updated version of an annual seminar which has been held since 2003 and covers the procedures contained in the Adults with Incapacity (Scotland) Act 2000.

(6) Contempt of court

This course was held on 10 March 2008 and was chaired by the Hon. Lord Brodie. The course was attended by one senator, three temporary judges, seventeen sheriffs and seven part-time sheriffs. In addition, two Justices of the Peace and Carolyn Breeds, solicitor in the Lord President's Private Office attended as guests. Presentations were delivered by the Hon. Lord Brodie and Sheriff T. Welsh on contempt of court following the decisions in the cases of *Kyprianou v Cyprus* and *Robertson and Gough v HMA*. The course also included syndicate sessions on aspects of contempt of court and workshops on Prevarication, concluding with a plenary discussion on these matters.

(7) The Party Litigant

This course was held on 31 March and was attended by two senators, thirteen sheriffs, twelve part-time sheriffs and nine guests comprising two Justices of the Peace, the Deputy Principal Clerk of Session and the Clerk to the First Division of the Supreme Courts, a visiting Judge from Northern Ireland, the Chairman of the Employment Tribunals for Northern Ireland, a member of the JSB for Northern Ireland, the Vice President from the Industrial and Fair Employment Tribunals for Northern Ireland and Professor Dame Hazel Genn.

The following presentations were delivered:

- **How to Deal with Part Litigants** – The Hon. Lord Philip
- **The Difficult Party Litigant** – Jane Neil-Maclachlan, Adult Autism Co-ordinator of Lothian Primary Care NHS Trust
- **Judgcraft, Disability and Incompetence** – Judge Gordon Ashton, Nominated Judge of the Court of Protection, Preston Combined Court Centre
- **Party Litigants in the Small Claims and Summary Cause Court** – Sheriff P. Gillam

(8) Justices of the Peace Training Seminars – Refresher courses

Eight residential courses were held, each of three days duration. In the interests of consistency, the course programmes and format followed were almost identical in respect of each course. The courses contained a mixture of presentations, tutorials and workshop sessions.

The following presentations were delivered over three days:

- **New Local Arrangements** – A Sheriff Principal
- **Sentencing Issues** – A Sheriff
- **The Crown's Approach to the New JP Courts** – Speaker from COPFS
- **Court Craft** – A Sheriff

- **The Role of the Justice in the New Regime** – A Justice of the Peace
- **New appraisal Scheme for JPs – Update on Progress by Robin Jordan Associates** – An independent consultant

21 – 23 September 2007

This course was chaired by Sheriff F R Crowe and Mr Andrew Webster J P who were assisted by two sheriffs and seven facilitators. Fifty Justices of the Peace attended. Talks were given by Sheriff Principal Sir Stephen Young Bt QC, Sheriff A L MacFadyen, Jim Brisbane, COPFS, Sheriff D. Pyle, Mr Andrew Webster JP and Sheriff F. R. Crowe.

19-21 October 2007

This course was chaired by Malcolm MacAskill JP and Sheriff F. R. Crowe who were assisted by ten facilitators. Seventy-six Justices of the Peace attended. In addition, Sheriff Principal B. A. Lockhart attended as a guest. Talks were given by Sheriff Principal James Taylor, Sheriff R Rae QC, John Logue, COPFS, Sheriff J. K. Mitchell, Mr M. McAskill JP and Robin Jordan

22-24 October 2007

This course was chaired by Peter Ross JP and Sheriff F R Crowe who were assisted by nine facilitators. Sixty-eight Justices of the Peace attended. In addition, Sheriff Principal B. A. Lockhart attended as a guest. Talks were given by Sheriff Principal R. A. Dunlop QC, Sheriff D. McIntyre, Leanne Cross, Crown Office, Mrs B. Bott, District PF Edinburgh, Sheriff R. H. Dickson, Mr P. Ross JP and Robin Jordan.

26-28 October 2007

This course was chaired by Mr B. Ritchie JP and Sheriff F. R. Crowe who were assisted by the Deputy Director and nine facilitators. Fifty-six Justices of the Peace attended. Talks were given by Sheriff Principal E. Bowen QC, Sheriff R.H. Dickson, Mrs Geri Watt, Area PF Central Region, Sheriff M Smart, Mr B Ritchie JP and Robin Jordan.

5–7 November

This course was chaired by Johan Findlay JP and Sheriff A. G. D. Thornton who were assisted by nine facilitators. Sixty-three Justices of the Peace attended in addition to Richard Wilkins, Lay Justice Reform Project Manager, Scottish Government who attended as a guest. Talks were given by Sheriff Principal B. A. Lockhart, Sheriff F. R. Pieri, John Dunn, Area PF Kilmarnock, Sheriff K. Ross, Mrs J. Findlay JP and Robin Jordan.

9-11 November 2007

This course was chaired by Robin White JP and Sheriff F. R. Crowe who were assisted by the Deputy Director and six facilitators. Forty-four Justices of the Peace attended in addition to Richard Wilkins, who attended as a guest. Talks were given by Sheriff Principal Bowen QC, Sheriff N. M. P. Morrison QC, Tom Dysart, Area PF Dumfries and Galloway, Sheriff H. Small, Mr R. White JP and Robin Jordan.

23-25 November 2007

This course was chaired by Susan Kirkwood JP and Sheriff F. R. Crowe who were assisted by five facilitators. Forty-four Justices of the Peace attended. Talks were given by Sheriff Principal Sir Stephen Young Bt QC, Sheriff D. Cusine, Miss Morag McLaughlin, Area PF Aberdeen, John Logue COPFS, Sheriff G. Napier, Miss S. Kirkwood JP and Robin Jordan.

3–5 December 2007.

This course was chaired by Rodger Neilson JP and Sheriff F. R. Crowe who were assisted by the Deputy Director and nine facilitators. Fifty-six Justices of the Peace attended. In addition there were three guests in attendance from the Scottish Government Justice Department who attended as observers. Talks were given by Sheriff Principal R. A. Dunlop QC, Sheriff R. A. Davidson, Tom Dysart COPFS, Sheriff W. Gallacher, Mr R. Nielson JP and Robin Jordan.

2. Other activities

(a) The Jury Manual

The last edition of the Jury Manual was published in October 2005. Sheriff J. M. S. Horsburgh QC was given a leave of absence during Spring 2006 to revise this version of the manual and a sub-committee, chaired by Lord Macphail, met three times to deliberate and agree these revisions. A special thanks is extended to the individual members of the sub-committee, which comprises; Sheriffs J. K. Mitchell, C. N. Stoddart, I. A. S. Peebles QC, F. R. Crowe, and Sir Gerald Gordon QC, for their continuing commitment and help with the Jury Manual. It had been hoped to issue an update to the manual in late 2006 but this did not take place until April 2007 due to pressures of work. Work is already in progress for the 2008 update.

(b) Developments in law, practice and procedure

The JSC has continued to ensure that briefing material and information on recent developments in law, practice and procedure are available to the judiciary. Summaries of important decisions of the Appeal Court and Court of Session have been circulated to judges, together with briefing notes on procedure and legislation.

Briefing notes on the following topics were issued to the judiciary:

- (i) The Custodial Sentences and Weapons (Scotland) Act 2007
- (ii) The Adult Support and Protection (Scotland) Act 2007
- (iii) The Sheriff Courts (Scotland) Act 1971 (Private Jurisdiction and Summary Cause) Order 2007
- (iv) The Bankruptcy and Diligence etc. (Scotland) Act 2007 (Commencement No. 1 Order) 2007
- (v) Three updating briefing notes on The Debt Arrangement Scheme (Scotland) Amendment (No.2) Regulations 2007
- (vi) Four briefing notes on The Criminal Proceedings etc. (Reform) (Scotland) Act 2007
- (vii) The Finance Act 2007

- (viii) The Corporate Manslaughter and Corporate Homicide Act 2007
- (ix) The UK Borders Act 2007 (Commencement No. 1 and Transitional Provisions) Order 2008
- (x) Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Equality Act (Sexual Orientation) Regulations 2007) 2007
- (xi) Act of Sederunt (Sheriff Court European Enforcement Order Rules) Amendment (Extension to Denmark) 2007
- (xii) The Emergency Workers (Scotland) Act 2005 (Modification) Order 2008 SSI No. 37
- (xiii) Four briefing notes on The Vulnerable Witnesses (Scotland) Act 2004 regarding (Commencement No. 4, 5, 6 and 7 Savings and Transitional Provisions) Orders 2007
- (xiv) The Supervised Attendance Order (Prescribed Courts) (Scotland) Order 2007 SSI No. 120

The following briefing papers were issued to the judiciary:

- (i) The Criminal Proceedings etc. (Reform) (Scotland) Act 2007.
- (ii) The Bankruptcy and Diligence etc (Scotland) Act 2007.
- (iii) A briefing paper on further developments since the case of *Du Plooy* on discounts in sentencing is in the process of being completed for distribution later in 2008.

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

Work is ongoing to update and revise the material issued to new judges. To keep the starter pack within reasonable bounds essential books are issued at the outset to new judges and they are directed to the JSC Intranet and specialist publications which are available when required to deal with specific areas of casework.

(d) JSC Intranet

The intranet was launched in November 2007 and can be accessed by Senators, sheriffs and part-time sheriffs through the SCS IT system. A JSC Intranet User guide has also been produced. The system enables judges to access documents quickly and efficiently.

(e) Checklists

The Penalty Guide containing maximum sentences for summary offences was updated in January 2008. In addition, both the Sexual Offences checklist and the Sentencing checklist were updated in March 2008. The JSC intranet was updated with copies of each of these amended checklists.

(f) Equal Treatment Bench Book

The last version of the Equal Treatment Bench Book was issued in October 2004. A working group was formed during 2006 under the chairmanship of Lady Paton. The committee comprises members of the judiciary, namely Sheriffs F. R. Crowe and N. M. P. Morrison QC, and representatives from Victim Support, the Mental Welfare Commission, the Commission for Racial Equality, and Equality Network. This is currently work-in-progress with the committee meeting on a regular basis. A revised version of the bench book will be produced later this year and once the working group's discussions are complete the updated version will be published on the JSC website.

(g) Sheriff Court Criminal Bench Book

This book is published by the Sheriffs' Association with assistance from the JSC. Amendments to chapter one have been completed and distributed to the judiciary. Further amendments to other chapters are currently underway.

(h) European Judicial Training Network

The Network exists to promote training programmes with a genuine European dimension for members of the European judiciary. It does so by facilitating the

exchange of experiences between the judiciary, promoting training events on matters of common interest thereby providing a forum during which issues such as cross border criminal, commercial and family law matters may be considered. It 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 exchange visits from judges from Romania, Bulgaria, Belgium and Poland. In addition to judicial exchanges, as part of membership the JSC reserves two free places on each course for members of the European judiciary who wish to attend JSC courses. During the course of the reporting year judges from Germany, Bulgaria and Poland have attended JSC courses on that basis.

(i) Meeting of the UK and RI judicial training bodies

The UK and RI Judicial Studies Council consists of the Chairman and Directors of the judicial training bodies of Scotland, England and Wales, Northern Ireland and the Republic of Ireland. The Republic of Ireland joined forces with the UK Judicial Studies Council in 2007. Prior to this the UK Judicial Council met on 9 July 2007 at the offices of the JSC in Edinburgh. The Council discusses training matters of mutual interest. The Council met on 21 January 2008 in the JSB's offices in London.

(j) Seminars for Senators

Two Away Days for Senators were held on 14 May and 10 December 2007 at the Winton House in Pencaitland and the Balmoral in Edinburgh respectively. During the course of these events a number of topics were discussed by the senior judiciary including such matters as constitutional reform and the impact of both the Criminal Proceedings etc (Reform) (Scotland) Act 2007 and the Judiciary and Courts (Scotland) Bill. Talks were also given by the Chairman of the Parole Board for Scotland and the Director of the Scottish Crime and Drug Enforcement Agency.

(k) Justices of the Peace and Legal Advisers' Benchbooks

Following the enactment in February 2007, of the Criminal Proceedings etc (Reform) (Scotland) Act 2007, Mr Ewan Hawthorn J.P. began the preparation of these

bench books. Both books have been prepared and distributed. The Justices of the Peace Bench book was distributed in December 2007. The Legal Advisers' Bench book was distributed in February 2008. The bench books cover summary procedure, evidence, sentencing and court craft. Both publications can be accessed via the JSC website on <http://www.judicialstudies-scotland.org.uk>

(I) Sheriffdom 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 preparing sentencing and bail exercises for discussion 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.

9 and 10 October 2007

Training days were held by the Sheriff Principal of South Strathclyde, Dumfries and Galloway. Sheriff Principal B. A. Lockhart chaired the event at which twenty-five sheriffs attended. Although a presentation was delivered by Sheriff F. R. Crowe regarding recent developments in the law, the main focus of the course was on discussing sentencing exercises and problems in court exercises by means of both syndicate and plenary sessions.

29 and 30 May 2007

Training days were held for the judiciary of the Sheriffdom of Grampian Highlands and Islands and North Strathclyde on 29 and 30 May 2007. The event was chaired jointly by Sheriff Principal B. A. Kerr QC and Sheriff Principal Sir Stephen Young Bt QC and was attended by a total of thirty-eight sheriffs from both sheriffdoms.

Criminal Proceedings etc (Reform) (Scotland) Act 2007 seminars

The JSC also assisted with six courses run in relation to the Criminal Proceedings etc (Reform) (Scotland) Act 2007. Each course followed the same format containing

presentations as outlined below together with practical exercises involving the bail provisions of the 2007 Act.

The following presentations were delivered:

- **Criminal Proceedings etc (Reform) (Scotland) Act 2007 – changes to law, procedure and sentencing** – Sheriff F. R. Crowe
- **The Summary Justice Model and the 2007 Act – the Crown approach** – Jim Brisbane, Deputy Crown Agent and Leanne Cross, Crown Office
- **The New Approach to Fines Enforcement under the 2007 Act** – Craig Donald, Fines Enforcement Manager

28 September 2007

This course was chaired by Sheriff Principal R. A. Dunlop QC and was attended by twenty-two sheriffs and eleven part-time sheriffs.

25 October 2007

This course was chaired by Sheriff F. R. Crowe and was attended by twenty-six part-time sheriffs.

16 November 2007

This course was chaired by Sheriff Principal James Taylor at which the Director gave a talk on the provisions of the 2007 Act. The course was attended by 23 Glasgow sheriffs.

29 November 2007

This course was chaired by Sheriff Principal B. A. Kerr QC and was attended by nineteen sheriffs and two part-time sheriffs. In addition the PS to the Sheriff Principal at Paisley attended as a guest.

11 December 2007

This course was chaired by Sheriff Principal Sir Stephen T Young Bt QC and was attended by sixteen sheriffs and four part-time sheriffs.

24 January 2008

This course was chaired by Sheriff A. G. D. Thornton and was attended by two sheriffs and thirteen part-time sheriffs as well as a visiting member of the Prosecutor's Office in Bucharest and a visiting magistrate from Italy who attended as guests.

(m) The Work of the Director of JSC

In addition to organizing and directing many of the JSC training seminars, the Director has been involved in a number of other initiatives which are of relevance to the work of the JSC. These include: -

- Membership of Committees and working groups.
- Sheriffs' Associations.

The Director is *ex officio* a member of the Council of the Sheriffs' Association and attends their meetings approximately ten times per year. The Director assisted at the Annual Conference held in March.

The Director is a member of the following Scottish Government groups: --

- Summary Justice Reform Lay Justice planning and delivery group
- Bail and Remand Project Development Board (as an observer)
- Antisocial Behaviour Community Safety Unit.

As well as speaking at JSC events the Director gave presentations to: -

- The Anti Social Behaviour Officers' Forum
- The Holyrood Conference on Scottish Prisons
- Sheriff Clerks on Working with Sheriffs in the Civil and Criminal Courts –
- The JSB Advisory Council Meeting on Judicial Skills Training
- The Legal Advisers for the Sheriffdom of Lothian and Borders
- The Association of Directors of Social Work on Community Courts
- The Sheriffs' Association Conference
- Lothian and Borders Police regarding police involvement in Fatal Accident Inquiries from a Sheriff's perspective
- The JSB on the quality of criminal justice and lawmaking

- The Director was also involved in two interactive training sessions with students in connection with Social Work training at Edinburgh University. These sessions were designed to highlight the value of Social Enquiry Reports in the sentencing process. -
- Apex conference on community justice

The Director also attended a number of conferences as a delegate including: -

- The Skills for Justice Conference on tribunal training
- The Meeting of Experts in Brussels regarding European Judicial training -
- The Scottish Executive Conference on Restorative Justice

The Director assisted COPFS in preparing a DVD on the new bail provisions under the Criminal Proceedings etc (Reform) (Scotland) Act 2007. In addition, the Director and Children 1st cooperated in producing a DVD for use in training to illustrate the differences when children give evidence under the current law through the medium of intermediaries.

(n) The Work of the Deputy Director

The Deputy Director leads at many JSC events as a chairman and facilitator. He has a particular responsibility in respect of the updating and delivery of the Judicial Skills course. The former Deputy Director designed and delivered the IT training course and his successor continues to update and deliver that course as well as assisting the Director in many of his day to day duties, which includes participation in interview boards for legal assistants and trainees. He is a member of the LINETS Management Board. As well as speaking at JSC events he has given presentations to the Course Directors' Conference of the Judicial Studies Board (JSB) for England and Wales and to the Advisory Council of the JSB on the subject of Judicial Skills Training. During the year he also attended the Third International Conference on the Training of the Judiciary in Barcelona.

3. Draft Business Plan for three years commencing 1 January 2007

The Business Plan is still currently in draft form pending the outcome of Professor Dame Hazel Genn's training needs analysis for the JSC and the structural review of the JSC which has necessarily resulted from the changes proposed in the Judiciary and Courts (Scotland) Bill 2008.

Notwithstanding that, a number of objectives contained in the draft Business Plan have been achieved: -

- The number of training events organised by the JSC increased from twenty-nine last year to thirty-three this year.
- The number of special courses, one day seminars on particular topics, increased from seventeen last year to nineteen this year.
- Four skills courses were held during the last year and good progress continues to be made towards offering this training to all full-time members of the judiciary. Several sheriffs have now attended their second Skills course.
- The number of training days per judge¹ per year has risen from an average of 2.5 days to 3 days per annum.
- Approximately 444 Justices of the Peace (out of a total of 470) attended a weekend Refresher course. The remaining twenty-six Justices of the Peace shall attend similar courses planned for May and June 2008. It is anticipated that after these courses have taken place, all serving JPs will have attended a Refresher course. In terms of the legislation all JPs are required to attend a course of this type by September 2009. The JSC has worked with the Scottish Government and the Scottish Justices' Association to provide a refresher course for JPs at an early stage to coincide with their new responsibilities under the Criminal Proceedings etc (Reform) (Scotland) Act 2007. During the next reporting period the JSC will be able to concentrate on providing residential Induction courses for newly appointed JPs.

¹The term 'judge' includes all Senators, Sheriffs Principal and Sheriffs.

- A JSC intranet website has been set up for the judiciary and launched in November 2007.
- A CD-ROM version of the Jury Manual was produced for judges. This enables the material to be accessed by judges at any time whether they are in chambers, on circuit or preparing at home.
- Improving judicial IT skills. Three I.T. Training courses were held during the first quarter of the reporting year, with four more to be held in April and May 2008. A further four I.T. Training courses are scheduled for the autumn of 2008. In addition, a survey seeking to identify individual IT training needs is currently in the process of being produced.