Editorial Comment
by Johan Findlay

With this year being the centenary of WW1 I have been researching a bit about Justices during the war and found a few cases from those days which I hope you find interesting. There is some further information about both WW1 and WW11 including an article on the Nuremberg Trials from Gillian Mawdesley who has also brought us up to date with Statutory Breach of the Peace.

I am particularly delighted to have John Scott QC writing on his experience of being the QC, defending Nat Fraser, in the first murder trial to be filmed in Scotland. John has been Queen’s Counsel Solicitor Advocate since 2011 and won “Criminal Lawyer of the Year” Award (again) at the Law Awards 2013.

Two of our newest justices have produced articles – one is an advocate so the bustle of court was not a surprise. Both Kenneth Forrest and Iulia Toch were appointed approximately 18 months ago and reflect on their experiences with very thought provoking articles on sitting on the bench.

This year three new Sheriffs Principal have been appointed to take up posts over the next few months. North Strathclyde’s Bruce Kerr has retired and the new Sheriff Principal is Duncan Murray; Sheriff Principal Alastair Dunlop of Tayside Central and Fife retires in the Spring and will be replaced by Sheriff Marysia Lewis; while the Sheriff Principal of South Strathclyde Dumfries and Galloway, Brian Lockhart retires in early new year and his successor is Ian Abercrombie. Justices wish them all well in their new posts.

In these days of electronic communication, and in light of the fact that the Lord President has said that all communications should be by e-mail, some have asked why the Scottish Justice is not sent electronically. As a magazine in hard copy it is actually much easier to read and of course to take it with you and read it over coffee. We know ourselves that people tend not to read longer e-mails unless they have to read immediately so leave them on the computer “to read later”. Twenty e-mails at least have come in by then and the newsletter has disappeared! How familiar that sounds. The Scottish Justice also goes to a good number of people who are not justices of the peace but who have some interest in the criminal justice system of Scotland.

The Justice of the Peace has now been in Scotland for 405 years and a reminder of what was said in 1991 by Sir Thomas Skyrme who traced the history of the JP across the Commonwealth and commenting on the fact that the institution of the Justice of the Peace managed to continue in Scotland despite all the problems and lack of support, he states:

‘It suggests there must be some inherent quality in the system which, once introduced, ensures its retention even in the most unpropitious climate. It also illustrates the problems facing an institution which is introduced into an alien and largely hostile land. Throughout their history, the Scottish Justices of the Peace were faced with peculiar problems which did not confront those in England, or indeed in other territories into which the system was introduced. It is remarkable that, notwithstanding strong competing institutions, an unfavourable social climate, the lack of a national political involvement...’

www.scottishjustices.org
Retiring Sheriffs Principal

Sheriff Principal Brian Lockhart

Sheriff Principal Brian A Lockhart has been Sheriff Principal of South Strathclyde, Dumfries & Galloway since November 2005. Previously he was a Sheriff in Glasgow for 24 years, and before that a Floating Sheriff in North Strathclyde for three years.

Before being appointed Sheriff Principal, he was President of the Sheriffs’ Association. He has previously been a member of the Parole Board for Scotland and a member of the McInnes’ Committee to Review Summery Criminal Justice in Scotland. He has held a commission as a Temporary High Court Judge since November 2008—one of very few to be appointed from the ranks of solicitors.

Justices of the Peace have a good reason to thank Brian as he and Eilidh Murray were the two dissenting signatories to the McInnes Review which supported the retention of lay justice in Scotland and which was accepted by the Scottish Government. Brian could see that while much needed to be done, the basic concept of lay justice was worth supporting.

Brian was presented with an engraved glass bowl from the justices of SSDG at the November training conference and received a standing ovation from the floor. We wish him well in his retirement.

Brian’s successor is Sheriff Ian Ralph Abercrombie QC, who will take up the post in January 2015.

Sheriff Principal Bruce Kerr QC

Sheriff Principal Bruce Kerr QC was appointed Sheriff Principal of North Strathclyde in 1999 having been a sheriff in Glasgow since 1994 and a temporary sheriff for some three years previously. Bruce has had a keen interest in the CMJA during his tenure as Sheriff Principal. Mr Duncan Law Murray has been appointed to succeed Bruce Kerr as Sheriff Principal of North Strathclyde and has taken up the post.

Sheriff Principal Alastair Dunlop

Sheriff Principal Alastair Dunlop was appointed Sheriff Principal of Tayside Central and Fife in 2000. He was appointed Queen’s Counsel in 1990. He is currently a member of the Judicial Studies Committee and chairman of the three local criminal justice boards in his sheriffdom and is the Sheriff Principal member of the SCS Board. He retires in 2015 and his successor is Sheriff Marysia Lewis.

Editorial continued.....

and opposition from the population as a whole, their work at times covered a fairly wide area and was not without some impact on the life of the community. Perhaps most surprisingly they, as well as their English colleagues, weathered the reforming zeal of the nineteenth and twentieth centuries and, against all odds, have managed to survive.’

We could add the reforming zeal of the 21st century which has improved the institution of the Justice of the Peace enormously.

This is my final editorial as I stand down from the SJA at the AGM in November. It has been a great pleasure for me to produce the Scottish Justice since the SJA began some 8 years ago now and of course my previous involvement with the DCA newsletter. Well, it was retire or update the photo!!

Many people help in this production and I am indebted to all those who wrote articles over the years to help fill the pages, many even being kind enough to repeat it. Special thanks go to Miranda, the wonderful lady at Solway Offset who puts the copy together and does all the finishing touches to the publication before it is printed and sent out. Finally, thanks to you, the justices of Scotland for your support over the years.

Johan Findlay
Editor

Sherrif Principal Lockhart receives a retiral gift from Johan Findlay JP
The Scottish Justice

Some Clarification On ‘Statutory BOP’:  
PATERSON v PF, AIRDRIE, BOW v PF AIRDRIE, LOVE v PF STIRLING : [2014] HCJAC 84

Common law breach of the peace has been partly replaced by the offence of behaving in a threatening or abusive manner, likely to cause a person fear and alarm, and intending to do so or recklessly doing so, under s38 of the Criminal Justice and Licensing (Scotland) Act 2010.

The precise wording of the provision has caused some difficulty. A new decision of the High Court on three appeals heard together has removed one such difficulty, and as this is an offence regularly cropping up before us, it is worth looking at the issue in some detail.

First, the history: in Rooney v Brown 2013 SCCR 334, the accused made sectarian and racist threatening remarks in front of police officers. These remarks were taken seriously by them, and were offensive to them, but they were not actually put in a state of fear or alarm by them. The sheriff convicted the accused of the s38 offence.

On appeal, the High Court agreed with the sheriff, saying that the context of the events was important, and the context in this case included that the accused was struggling with the police and had to be handcuffed. This behaviour meant that (whether or not the police in this case actually did so) it was likely that a reasonable person would suffer fear and alarm.

However, shortly thereafter, in Jolly v HMA 2013 SCCR 511, the Rooney interpretation was narrowed in an important way. In interviews with social workers, the accused in Jolly had threatened revenge upon his girl-friend and her family, and this was passed to the police.

It was in fact found inadmissible evidence (because the accused had been promised there would be no repercussions from what he said in the interviews). But of more immediate interest, the High Court declared that while a “reasonable person” test was appropriate, as Rooney had decided, this reasonable person must be someone actually present at the events, and not a hypothetical person who would have suffered fear and alarm if s/he had been present.

The Court in Jolly decided that Rooney had passed this narrowed test because the police had been present, and although there were not in fact put in fear and alarm, they had taken the threats seriously, and the threats had been in part directed against them.

So, the Court decided, Rooney should not be taken to mean that it was not necessary for anyone to suffer actual fear and alarm for the offence to be committed.

Not everybody was persuaded by the interpretation of s38 in Jolly, so, turning to these three latest appeals, a Court of Five Judges (in other words, an enlarged Court, on this occasion including both the Lord Justice General and the Lord Justice Clerk, designed to give a conclusive decision) considered the matter again.

The first of the three new appeals was Paterson v PF, Airdrie. The accused had shouted and swore at police before and after being arrested. There was no evidence of the police actually being in fear or alarm. The sheriff refused a submission that there was no case to answer, and convicted of the s38 offence. He took into account that the events were in a public residential area known for disorder, that the accused was already out of control, and that there was potential for further trouble.

In the second, Bow v PF, Airdrie, the accused had shouted racist abuse and threats at a motorist. There was no evidence that the complainer had suffered fear and alarm. Again, the sheriff refused a submission of no case to answer, concluding that there was evidence that the behaviour would be likely to cause a reasonable person to suffer fear and alarm, and it appears that she convicted the accused of the s38 offence.

In the third, Love v PF, Stirling, the accused had posted on Facebook several sectarian messages, and these were seen by the complainer, who was upset and offended. The sheriff found that the messages would be likely to cause a reasonable person fear and alarm and also, it appears, convicted the accused of the s38 offence.

In its opinion covering appeals against conviction in all three cases, the Court of Five Judges concluded that there is no ambiguity in s38. It does not require actual fear and alarm, as the provision clearly gives the objective test that the behaviour is likely to cause it to a reasonable person, that is, a person not of “abnormal sensitivity”.

Thus, the fact that no individual (“for example, an intrepid Glasgow police officer”) actually suffered fear and alarm is neither here nor there. Thus Jolly was wrongly decided, and the narrowing of the reasoning in Rooney overruled. And thus, all three appealed cases, which relied on Rooney, were correctly decided and the appeals should be refused.

R.M. White JP (from the e-bulletin)
Normally a book of 100 legal cases would be something that would be of limited appeal and as such, appeal only to the earnest legal scholar anxious to obtain an easy revision aid.

Not so with this small book. It will be of interest to anyone who wishes to learn something about the Scottish legal system and its operation. It is ideal for justices who wish to widen their knowledge of Scots Law in an entertaining, original and interesting fashion through cases included from America, Europe (this book includes ‘Power Bows to Reason’ – the Nuremberg trials) and England.

The main aim of this book is to present cases about ‘everyday people’ covering a wide range of topics. These include Oban’s McCaig’s folly, snails and ginger beer bottles, the Hillsborough disaster, and the naming of Queen Elizabeth the Second.

Law is always developing. Those interacting with the law need to be aware that as they deal with issues as judges in court, these are real issues for those actually involved. Mrs Donoghue did suffer gastro-enteritis. To them, these are not esoteric, erudite, and obscure issues. But they went on to form actual legal precedents.

The format of the book means that there are humour, anecdotes and actual legal analysis.

The 100 cases have been chosen by academic staff at Strathclyde University. They have been identified for their importance in legal developments. It also allows those interested to understand an area of law and/or the operation of the legal system. This is the second edition where there could be an interesting discussion about what cases make the top 100 (who fell and falls to be included). As the book was published in 2010, Cadder is a case perhaps conspicuous by its omission. Presumably given its effect on Scots law, it will be there in the next edition.

To encourage justices, the best way forward is as the authors suggest to dip in and see what entertains. So I thought that a little quiz might amuse. What cases are these?

1. In 1930, a Glasgow draper employed females who left his employ as he made sexual advances towards them. There were 21 charges against him but none of the assaults had been witnessed.

2. The woman concerned became pregnant through a rape. To have an abortion was illegal. To forbid her an abortion was claimed to be a breach of her constitutional rights.

3. In 1999, an Aberdeen law student was acquitted of an allegation of rape. His defence was that it had been consensual. The judge held a no case to answer because there had been no force or threat of force used to overcome her will.

4. In 1997, two then friends went to the Bingo in Drumchapel. One of them won the jackpot of over £100k and refused to implement an agreement on the way to ‘go halfers’ on the winnings if any.

5. In 1950, milk was delivered in bottles which were then of some value. A company was set up to return bottles to the correct diary producing the milk. It was an offence for one dairy to use the bottles of another. A diary keeper in Portobello was found to have such bottles when her premises were searched under a warrant: The inspectors had had no right to enter the premises.

There are many more similar cases to sample in the book.

Readers of this book can obtain an understanding of the historical, social and human background that makes Scots law and the legal system in which justices operate today. More importantly such cases are highly accessible without reading through pages of judgements in a dusty old law library and indeed it is excellent bedtime reading and background to Sheriff Duff’s Quiz!

Gillian Mawdesly

An interesting question from Hansard put to Mr Robert Munro, MP for Roxburghshire and Selkirk and the Secretary for Scotland, by Mr Henry watt MP for Glasgow College. It appears there was a perception that the clerks (now Legal Advisers) in setting the rota, favoured some justices more than others. It does not say whether this perception was widespread or local to Glasgow.

**Justices of the Peace (Scotland)**

Hansard 1916  
HC Deb 31 December 1916 vol 88 cc1641–2 1642

§ 57. Mr. WATT asked the Secretary for Scotland whether he proposes to adopt any new methods of dealing with the rota of justices of the peace in Scotland whereby the presence of justices arbitrarily selected by the clerks is constantly called for, while the others on the roll are correspondingly neglected; and whether he will insist that all clerks to justices will call all in turn to serve?

§ The SECRETARY for SCOTLAND (Mr. Munro) As my hon. and learned Friend has frequently been informed, the control of the matters referred to rests with the justices themselves, and any complaint regarding the arrangements for the constitution of their Courts should be addressed to the justices of the jurisdiction concerned. There were no females on the bench till after WW1 and this paragraph from the Scots Law Times notes the first appointments in Glasgow.

1920 SLT (News and Statutes) 107 (September 4, 1920) “Glasgow Lady JPs Sworn In” – A unique and interesting ceremony took place in the JP Court, Glasgow on Wednesday last, when the first Lady Justices of the Peace were sworn in. The Lord Provost officiated, and he was accompanied by Sir Chas. Cieland. Sir TF Wilson, Clerk of the Peace, read over the names. Two of the six ladies appointed, Lady McAlister and Miss EMF Hughes, were unavoidably absent. The ladies who came forward to the Bar and repeated the allegiance and judicial oaths after the Lord Provost were: Miss Frances H Melville, MA, BD, Margaret’s College, Glasgow; Mrs Agnes Lauder, 34 Aberdour Street, Glasgow; Mrs Nellie H Hunter, 16 Glasgow Street, Glasgow; and Mrs Wilhelmina A Campbell Green lees, Langdale, Dowanhill. The Lord Provost remarked that the ladies were the first to qualify for the offices of Justices of the Peace for the county of the city of Glasgow. The office, he stated, was an honourable one, and the duties attached to it were equally important and responsible. He was quite sure that the dignity of the office and the weal of the community would be safely entrusted in their hands. Mrs Campbell Greenlees replied.


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**The importance of the Judicial Hub**

Baktosch Gillan, Judicial Media and Communications Officer and former Editor of Scottish Legal News, discusses the importance of the Judicial Hub as a news, communications and learning platform for judicial office holders.

The President of the Supreme Court of the United Kingdom has stressed the importance of the principle of open justice and the role of press in that regard. “The media, and perhaps particularly the written media, have a very important function in relation to the judiciary and therefore to the rule of law. The media play an essential part in ensuring open justice by reporting to the public what goes on in court and what judges and juries have decided,” Lord Neuberger said in a speech earlier this year (http://supremecourt.uk/docs/speech-140826.pdf).

However, the printed press has been in precipitous decline for a number of years with newspaper sales falling year-by-year, month-by-month, day-by-day. As print advertising revenues move online, resources are being cut, with editorial staff the first to get the chop. This has led to a decline in the coverage of the courts, save for those high profile cases which attract particular public and media interest. Both The Herald and The Scotsman, whose average daily sales have fallen to record lows of 37,000 and 27,000 respectively – according to figures from the Audit Bureau of Circulations – have long since abandoned their dedicated legal pages. This is where the Judicial Hub and legal publications such as Scottish Legal News and the Law Society Journal have an important role to play.

I was the launch editor of Scottish Legal News (www.scottishlegal.com) in 2008. The number of subscribers to the free, daily e-news service grew from a few hundred to more than 9,000 by the time I joined the Judicial Office six years later. SLN also publishes an A4 100-page glossy annual review with a circulation of over 7,000 copies. Its Twitter following is close to 5,000, with over 800 followers on Facebook. The free service, funded by classified advertising which was previously the preserve of the newspapers, provides the latest legal news and events, summaries of judgments from the courts, appointment announcements, updates on consultations, and follows the progress of legislation through parliament. The Journal of the Law Society of Scotland provides solicitors with the professional news and practice guidelines published by the society, together with legal and professional practice articles.

Drawing upon my experience at SLN I have sought to develop the Judicial Hub, which was launched in March 2014 to replace the judicial intranet. The purpose is to have a single, central, internal resource, through which judicial office holders can access all the latest information which is relevant to their daily work. However, at the time of writing, fewer than half of all justices have visited the Hub.

By logging in the Judicial Hub (www.judicialhub.com) you can find out more about the work of the Judicial Office, the Judicial Council, the Judicial Institute, Judicial Communications and the various representative bodies. There is also an eLibrary and a range of guidance and policy documents.

Continued on page 8
Where did this offence arise?
- Procurator Fiscal, Dundee v Ronald Martin [2014] HCJAC 97

Preliminary pleas on the basis that complaints lack specification appear to be much more commonly taken in the JP Courts. Effectively, the challenges are that there is a lack of adequate specification of the locus. The defence submit that the complaint should be dismissed. If successful, ending proceedings again the accused there and then. So in short a plea that is worth taking where appropriate by the defence.

With the substantial volume of road traffic cases being heard in the JP Courts, where the accused has much to lose, by imposition of penalty points or totting up disqualification, robust challenges can be expected. Complaints may well give rise a lack of specification, be it by typing error or inadequate specification from the original police report. Advice may well be required from the Legal Adviser when such issues arise. This was seen recently in the case of Strawbridge arising at Hamilton. Such challenges may well be quite technical in nature. In Strawbridge, the Appeal Court affirmed that each case needed to be considered on its own facts and circumstances. This was a point that the Appeal Court was keen to repeat in the recent Dundee case of Ronald Martin.

It is worth highlighting the circumstances of the Martin case for justices to note. Though the Appeal Court did uphold the Crown’s case, it did mark its decision ‘with some hesitation’. This was again a speeding charge. It occurred on the Kingsway West, Dundee. This was a road specified in the Schedule to the Perth-Dundee Trunk Road (A972) (50mph Speed Limit) Order 1989 Order contrary to Section 89 of the Road Traffic Regulation Act 1984. The defence had claimed that the reference to the Perth-Dundee Trunk Road (A972) (Kingsway, Dundee) (50mph Speed Limit) Order 1989 was invalid as the A972 had now been replaced by the A90. The 1989 Order also contained so many errors and inaccuracies that it was void for uncertainty.

A second argument was made out that the locus was void through uncertainty as to exactly where the offence had occurred. The Crown argued that the summary of evidence served with the complaint set out the locus of the offence in more detail than the complaint. Thus presumably adequate specification and notice had been provided to the accused. A statement of evidence is only a form of communication between the Crown and the accused. It is not part of the complaint and as such, it is not subject to scrutiny from the judge, in this case, the justice. The justice in hearing the plea must form his/her own mind if the complaint provides adequate specification.

With current speed detection equipment, the Crown could have provided a greater specification of the location of the offence than it did. That information was available to the Crown. That might have included a reference to the description of the offence arising between two junctions rather than the offence occurring at some point over a stretch of road extending to 6.3 kilometres. That distance was thought not to have been an ‘extravagantly libelled length of road’. But perhaps on other occasions, the Crown would not have been successful.

Seeking to provide some guidance to justices dealing with these issues, the following may provide some help:-

1. Each case needs to be considered on its own facts;
2. If names or numbers of the road have been changed and are subject to challenge, hear the relevant history of the numbering and naming classification of the road;
3. The accused is entitled to fair notice of where the alleged offence has occurred. There is latitude so that the Crown if challenged may want to consider if an amendment to the charge may be made under Section 159 of the Criminal Procedure (S) Act 1995. That is a matter for the Crown to make and must be considered by the court before granting. The issue will be one of prejudice to the accused in making the amendment.
4. Precision as to where an offence has occurred should be possible given the detection equipment available to the police. What is required is fair notice. Consider if the complaint has achieved that.
5. Finally seek legal advice from your Legal Adviser – as these challenges may be expected to arise again and again.

Gillian Mawdesley
JP Legal Training Adviser
What does that name convey to you?

Depending on your background and your relative spheres of interest, I guess the responses might include: a town in Germany, German beer, lebkuchen, Nazi party rallies or the trials conducted in post-war Germany.

Nuremberg has long been a town where the relics of pre-war Germany could be seen in the rallying grounds of National Socialism. Court 600, in which the famous post-war trials were held, can be visited, except when the court is sitting. It remains today a criminal court room in use by the Bavarian judiciary. In addition, since 2010, in addition to visiting the court room is a Museum which provides a permanent institution providing information about the background, course of the trials and their global effects.

If visiting South West Germany, do consider a visit to Court 600 as it and the Museum provides much to ponder and be grateful for. Visiting for all involved in the criminal justice system of whatever country is inspiring. (http://museums.nuremberg.de/courtroom600/) Reflecting led me to consider reminding us all of what was involved in these trials.

Court 600 is not simply a court. It is instantly recognisable, little changed from November 1945 when the trials commenced. There was not one trial at Nuremberg but a number of trials were held when the representatives of Nazi Germany including members of the judiciary were tried for a range of offences including war crimes and crimes against humanity.

The judges came from the allies, being the victorious nations of United States, United Kingdom, Russia and France. These countries had agreed that there should be a joint trial of those involved. That in itself might well be considered to be a real achievement when viewed against the background of very different legal constitutions and legal concepts as well as the inevitable language issues.

What system of law was applied?

The rules of procedure that were adopted are very recognisable to us. The Anglo-American approach was used meaning that:-

Adversarial process where the prosecution presented the case and defence presented their own cases or obtained assistance from a lawyer. The defence could elect to give evidence or not as they saw fit. The judges did not investigate the cases themselves. (It presented a sharp contrast with the judicial process that prevailed in Nazi Germany in the Peoples’ Court.)

All lawyers worked under extreme time pressures.

Evidence was led from witnesses and through affidavits. It was subject to the usual rules of being excluded where held as irrelevant. Witnesses were subject to cross examination. Witnesses ranged from those that had supported Nazi policies as well as victims of the Holocaust atrocities. (It was only through this trial that these images, those grainy black and white photographs with which we have all become so aware, became familiar to a world wide audience).

There was no jury; a forerunner in some respects of the Lockerbie trial in that the judges themselves decided on the verdicts.

What was the defence?

Some defences may be familiar to those of you sitting today as judges. None of main challenges were ultimately successful though the prosecution against one accused did not proceed as the indictment wrongly named the father (and not the son) Gustav Krupp who was unfit to stand trial due to his age.

Defences included:-

- ‘The procedure is unfair.’ This is relevant too in some cases where justices have dealt with ‘sovereign claim’ cases by challenging the authority under which the court process was being held.
- ‘No equality of arms.’ The prosecution was better resourced than the defence in time and preparation. The defence counsel was not experienced in cross examination as trials were not being conducted under conventional German criminal advocacy.
- ‘You are equally guilty.’ Think of the bombing air raids of Dresden, Berlin and Hamburg. Just because the Allies had engaged in similar offences did not provide immunity from prosecution nor justification.
- ‘I was only acting under orders.’ This did not absolve those accused from personal responsibility for their actions.

The Verdict?

Some may consider that all indicted were convicted. That was not the case though well known names such as Goring, Hess and Ribbentrop were. Some were acquitted. Not all were sentenced to death with Hess surviving for many years in prison.

What were the longer term effects?

The effects have been debated by many historians since. It was not just a show trial. Without the successful prosecution of these war criminals, we would not have become aware of the full atrocities of the Nazi Regime. The long standing significance of the trials probably lies in the establishment of the institutions such as the International Criminal Court at The Hague and the formation of the European Convention on Human Rights. Crimes against humanity are an indictable crime today.

There were other less well-known developments such as the use of interpreters in courts; a topic recently introduced to judicial education. Nuremberg saw extensive use made of interpreters. It involved 350 members of staff in and out of court in translating and interpreting. It introduced simultaneous translation, effective court management reducing the length of the trials.

Gillian Mawdesley
JP Legal Training Adviser
The importance of the Judicial Hub

In the ‘My Judicial Role’ section, there is an area of the Hub which is specifically designed for you as members of the judiciary appointed as Justices of the Peace. It contains reference to the materials that you require regular access to and which are essential to support you in the performance of your JP duties, both on and off the Bench.

The Lord President has already signalled that all his communications will be sent electronically, via the Hub, so it essential that all justices take the time to access this information. Under the Lord President’s Announcements, you will find the latest guidance issued for judicial office holders.

In addition to providing a single resource where you can access a wide range of materials, the Hub’s news section is updated daily with the latest developments relevant to judicial office holders. Importantly, this page will also contain internal news items concerning the Judicial Office and the Judicial Institute, as well as information on events and courses taking place, like the annual JI lecture which was delivered by Justice Albie Sachs, and the two-day conference for Justices of the Peace, which will hear from the Lord President.

Another new initiative on the Hub is the launch of the ‘Brief Notes’ resource for judicial office holders, which will aim to raise awareness developments – whether case law, legislation or otherwise – in law, procedure and practice relevant to their daily work. Brief Notes supplements the work undertaken by the Institute through courses based in the Learning Suite and through the publication of occasional briefing papers. However some focused, single issue legal changes do not in themselves merit a briefing paper and may take some time to feed through into a relevant course. Brief Notes will offer judicial office holders alerts to relevant developing areas, but allow them then to conduct their own research. The Director of the Judicial Institute is also encouraging judges to submit suggestions for developments known to them which are of general interest and might be included in Brief Notes.

All this information – that is any news and events, announcements from the Lord President and new resources from the Judicial Institute – is collated in a weekly email, which is sent out to all judicial office holders every Friday.

Lord Neuberger says that it’s essential that the public know what’s going on in the law: “One of the purposes of the public being able to understand what goes on in court and what judges have decided.” But more important is that judges, justices and their legal advisers know what’s going on and are informed of the latest developments.

Baktosch Gillan

Memories of the first few days

September 2013 - June 2014

My first memories as a newly appointed Justice relate to courtesy in Court. I find very endearing the polite manner in which Fiscals, most Defence Agents and everyone else in Court afford me the time to follow the procedure, ponder over what has been said, read the documents put before the (very busy) Court and form an opinion which leads to a good decision. You will surely say that “endearing” is not the best choice of word.

The type of sorl! As lay judges, we uphold the law firmly and fairly and we do right to all manner of people in a formal set-up which is run in a professional manner!

Once after a short adjournment, I was coming back to a custody case. As I entered the Court Room I see that the accused is already in the dock. Everyone stands up and responds to my “Good Morning”. The case is called; I am thinking about the offender’s foreign name. As I look up from my Court list, I hear someone saying “Good morning”. It is the Turkish Interpreter who had been standing near the dock. His addressing me this way was the most polite way of reminding me that I need to put him on Oath. There was no need for the Legal Advisor to turn around or stand up to remind me that there is an interpreter to swear in. There are other tiny events like this one when I was encouraged to carry on properly without the offender wondering or noticing what is happening. So, you see, that is why I believe “endearing” is a good word.

The Mentoring Scheme works well and I was very grateful for the benefits of this support as actually sitting in court was very different from the training. I quickly learned that there were many and varied reasons for offences; no one had ever driven more than once over the limit before they were caught, and people had sadly just forgotten to bring bags for dog litter, or they were just badly organised and did not realise their car insurance was due. I also understood that we are not social workers and we need to remember that offenders have committed an offence and while their reasons may have mitigating factors, the facts remain. Peeling back the layers of the onion to get to the heart of the matter and reaching a fair sentence is our main purpose on the bench.

I learned to prepare well in advance and made sure I had the sentencing options available for each charge on the Court List for the day. Soon the procedures, processes, narrations and mitigating circumstances all started to become familiar.

I also became aware of the level of evidence which was sometimes poor for what is required to deliver justice. The defence would always start with “My client tells me”, which, because it implies no factual investigation of the events by the solicitor, passes a greater onus on the Court as to assessing the credibility of his client. On another occasion I was presented with an unsigned letter written (and typed on a computer) by an old and ill person who did not speak English very well, a relative of the accused who was to be disqualified from driving.

The type of charge brought before the Justice of the Peace may explain its use. For some reason, after two years of training and learning about summary justice and after years of working within disadvantaged communities, I imagined the JP Court to be an unsparring place, populated by severe people having no time for eloquent statements.

Nothing of the sort! As lay judges, we uphold the law firmly and fairly and we do right to all manner of people in a formal set-up which is run in a professional manner!

The Scottish Justice
The Scottish Rural Parliament

“Well, that was different from a day in Court!”

I was driving back to Lochaber from Oban where I had been privileged to attend Scotland’s inaugural Rural Parliament over 6th – 8th November. Rural Justices might well wonder what the Rural Parliament actually is and what it will do (and don’t we have enough public bodies already?).

My role is to chair Scottish Rural Action (SRA), the management body for the Rural Parliament and, once PM Angus MacColl had played our newly-commissioned “The Rural Parliament March”, composed by Donald Shaw, it fell to me to open proceedings in Scots, Gaelic and English.

The Rural Parliament is not a public body; SRA has a voluntary board with two paid staff. More than 20 European countries have rural movements and 10 have rural parliaments, the exemplar being Sweden which has existed for over 20 years. The aim is to bring community folk together with those from public bodies, NGOs and the like who make decisions for them. By metaphorically putting them in the same room together we aim to gain better policies for rural areas and, by harnessing the energy and enterprise of community folk, develop better ways of doing things and providing services in rural Scotland. While 1,000 people gather in Sweden every two years, our inaugural Rural Parliament totalled 400, with 300 being from the community sector and 100 being policy people and decision makers from NGOs and public bodies. Promoting a Rural Parliament for Scotland has been the vision of Cabinet Secretary Richard Lochhead and he, along with two other Ministers, attended parts of the event. The Rural Parliament will of course be community-led.

The gathering was bursting with ideas, discussion, exhibitions and workshops producing recommendations for change. Folk from different parts of the country met for the first time and learned valuable lessons from each other’s projects and ideas. We had several colleagues from established and embryonic rural parliaments in mainland Europe and Scots learned of their operation.

We were made very welcome by the good folk of Oban and Lorne and I was been invited to press the button for the town’s fireworks display on 5th November. Fortunately, the display lasted around 8 minutes, being around 7 minutes longer than the event a few years ago when Oban basked in international publicity thanks to the unplanned 50 second display!

I have attended rural parliaments in Estonian and Sweden, and learned how effective they are felt to be by the communities there. I hope that we will achieve the same for Scotland. The National Mòd moves around Scotland each year and I am hoping that a similar bidding process might start for the Rural Parliament. Not until the event has been to Dumfries & Galloway, Aberdeenshire, Orkney and the Western Isles, say, will it become properly established.

But the Rural Parliament will be more of a process than an event as the recommendations for change arising from Oban will go to public bodies and the Scottish Government, with a stocktaking meeting in 2105, ongoing monitoring, then eventually the next Rural Parliament in 2016 and so on, following the European model.

Less than a fifth of Scotland’s population lives in rural Scotland with over 90% of the natural resources and yet, when UK-wide targets are given, such as achieving specific broadband speeds for 95% of the population by 2016, virtually all of rural Scotland is excluded. We’re fed up always having to catch up and aim to ensure that the Rural Parliament will strengthen the rural voice.

Our message to the Scottish Government and other agencies was that we want them to support rural communities and the new Rural Parliament to decide and deliver more of what we aspire to, including tailored support arrangements for community-led actions.

There was also wholehearted agreement that it is time for a national conversation on local democratic renewal as a first step towards a radical reform of local government that will bring power much closer to local communities.

John Hutchison MBE JP
Some research on the work of JPs during WWI required a visit to Register House Edinburgh where the Sederunt books of the Justices of the Peace for Edinburgh, Peebles, Nairn and Dumfries are held. These four were chosen because they were available – some Sederunt Books have returned to their areas.

Looking through these four Books it became obvious very quickly that many aspects of life did not change much in the towns for the citizens of Scotland despite the horrors of the trenches. Neither Edinburgh, Nairn nor Dumfries appear to have dealt with cases involving desertion or any other case involving the War, while Peebles dealt with many cases of desertion / being absent without leave and they make for very sad reading. However, because nothing was found in these particular books does not mean there were no such cases as it may be that the documents are held elsewhere or are now lost. It is also possible that cases went to the sheriff. The Licensing Courts continued unabated and of course were nor restricted to licensing pubs but also for game shops, boarding houses and the many other premises which required a licence then. In those days of course, Courts were run by the local authority.

Edinburgh

Applications for licensed premises and appeals – these were heard by a different court when the license was refused. Justices of the peace and bailies held Licensing Courts at quarter sessions so there were relatively few courts over the year.

Petty session on 16 June 1914 – in the courtroom of the City Chambers- Sederunt:

Bailie John Lyon and Bailie John Stark

Read letter from Mr Alexander Yule, School Board Attendance Officer resigning the appointment held by him as a Justice of the Peace Constable in connection with Small Debt Courts at the instance of Edinburgh School Board against defaulting parents: Read also an application by the said School Board to have Daniel William Irvine another of their attendance Officers appointed in the place of the said Alexander Yule which having been considered by the Sessions they appointed the said Daniel William Irvine to be a Justice of the Peace constable of the said County of the City of Edinburgh and Limits foresaid for the cases of the said School Board only and during pleasure and he being present gave oath de fidele administratione officii.

Signed by Lyon and Stark

The next entry in the minute book is:

The meeting of the Court of Appeal for the Burgh of Edinburgh under Section 4 of the Licensing (Scotland) Act 1903 held within the Burgh Court Room, City chambers Edinburgh the second day of November 1914.

Present:

The Right Honourable The Lord Provost, Bailies Stuart Douglas Elliot, John Stark and James Rose, Mr William Smith JP, Mr David Grieve JP, Mr Alexander Brand JP, Judge Alexander Stevenson JP and Mr James Gibson JP

Read an application by Harry Rawson for James Roberston and company for confirmation of a new Grocer's certificate (wine and beer) for premises at 8 Duke Street Lane, Edinburgh granted by the licensing Court of the Burgh of Edinburgh on Tuesday 20 October 1914 which application was unanimously confirmed.

Signed by the Lord Provost Robert Kirk Inches NB by December 1916, he was styles Sir Robert Kirk Inches

19 December 1916

At a General Meeting of the Justices of the Peace for the County of the City Edinburgh and limits of the Edinburgh Police Act 1848 convened in terms of the Licensing (Scotland) Act 1903 and held within the Burgh Court Room, City Chambers, Edinburgh on

Tuesday 19 December 1916

The purpose of the meeting was to appoint 8 justices of the peace from the large group of Bailies to be members of the Court of Appeal for licensing cases. The names were proposed and then votes cast with the 8 men receiving the largest number of votes being appointed.

Interestingly, there was no mention of the war and it does not appear that the work of the justices altered much – if at all- during the war years.

(As a matter of interest, by 1944 the city of Edinburgh was looking into setting up a Juvenile court with a Special Committee being appointed at the General Meeting of the Justices of the Peace held on 21 December 1943. This committee was to make representation to the Secretary of State to make an order directing that Sec 20 of the Children and Young Persons (Scotland) Act 1937 should apply in the area of the City of the County of Edinburgh.

The Clerk was instructed to look at the questions of cost, accommodation, staffing, possible numbers of juveniles to be dealt with, possibility of grading of cases, time and frequency of diets and immediate and long term policy. The matter was discussed again in May 1944.

The next mention of this special committee in the Minute book is not until December 1946 when the discussion was about the Royal Commission looking at the appointment and removal of justices of the peace in Great Britain and a decision was made to wait till this Commission had completed their report.

The Clerk in his memorandum noted that Edinburgh Corporation had no power meantime to rate for any expenses incurred by justices but that the local Government (Scotland) Bill, at present before Parliament included a clause empowering a county Council and Town Council of a County of a city to provide
accommodation for the transaction of business of the justices of the Peace for their area and for salaries and outlays in connection with any Justice of the Peace Court.

The matter was held until the Royal Commission had reported to the Lord Chancellor.

No further mention is made in this particular Minute book.)

Peebles Justice of the Peace minute Book   JP 3

At Peebles the Twenty first day of April 1914, being a half yearly Statutory Meeting of the Licensing Court for the County of Peebles held within the Court Room, County Buildings at one o’clock afternoon.

A much smaller group attending, 7 dealt with the applications for licensing of premises and noted the new rules – that the premises must close at ten o’clock that in terms of Sec 7 of the Temperance (Scotland) Act 1913 there should be inserted in all certificates as the hour of opening at ten o’clock in place of eight o’clock.

In May and June of 1915, two persons were charged with vagrancy, under s3 of the Trespass (Scotland) Act 1865. One plead guilty and was fined 7/6d with 7 days to pay. He was of no fixed abode and was found ... ‘lodging in a bothy without permission’.

It is only now that the War is mentioned.

Peebles 30 Nov 1915

Complaint by PF v Sapper John Thompson No 68197 of the III Coy of the The Royal Engineers in custody charged with being a deserter or an absent without leave. Accused plead guilty and was committed to Edinburgh Prison for seven days to await Military escort.

15 January 1916

Complaint against John Black, No 24/14540 a driver in the Army Service Corps No 2 Reserve Horse Transport Depot Blackheath and at present in custody charged with being a deserter or an absent without leave contrary to the Army Act s 154. Accused plead guilty to being absent without leave. Committed to await military escort.

26 April 1916 Peebles

Complaint against William Williamson laundryman residing in 84 High Street Innerleithen, having been called to the colours on 24th April 1916 and failing to report himself at the recruiting office in Peebles contrary to the Military Service a/c 1916 s1. Reserve Forces act 1882 s15. Accused appeared and plead guilty. Handed over to military custody, No fine imposed.

Peebles 10 May 1916

Complaint PF v Peter Herron, a private in the Kings Own Scottish Borders plead guilty to being absent without leave and was committed for 7 days to await escort.

Peebles 10 July 1916

Complaint against William Forrest, Bakers van man charged with contravening the Bread Act 1836 s 7. Warrant to cite for Monday 17 July 1916 at twelve o’clock noon. ....when .... accused appeared and plead guilty. fined £1 1shilling or 5 days, fine to be paid to the Provost and applied by him thus - £1 for his expenses and 1shilling to the Inspector of the Poor for the Parish. Accused did not wish time to pay.

A similar case was heard on 4 August when the accused did not appear but his solicitor plead guilty for him. The same fine and instructions imposed.

16 August 1916

Pat Rafferty, a farm worker being a person subject to military service failed to report. He plead not guilty and on 25 Aug he appeared with his birth certificate. The case was adjourned till 6 Sept when he was found guilty but again adjourned for sentence till 11 September when the PF moved the court to pass no sentence as the accused had been examined by the military authorities as to his physical fitness and was exempted and returned to his farm labouring work.

27 August 1917, John Buchan, charged with being absent without leave but stated he was 17 last May and produced his birth certificate with a view to his discharge. He was committed into military custody and requested that the military authorities are informed about his age.

1916 saw a high number of men charged with failing to recruit or being absent without leave or even desertion. The licensing of premises continued which included farm sales. The Peebles court met frequently sometimes several times per week. August 4, 15, 16 18 19 25 and September 4, 6, 9 11 26 Sept then not until 31 October.

Nairn Justice of the Peace Minute Book   JP 9/2

There is a gap between 7 July 1914 and 7 March 1916. On the latter date there was an application from the Procurator Fiscal, Mr John Bruce, requesting a rise in his salary. This was adjourned to a special sub committee with three justices of the peace which met on 15 March 1916 and having received the application - with a statement of the penalties recovered in court, agreed that the salary be increased from £2 2s to £3 3s to take effect from 15 May.

No cases of failing to recruit, absent without leave or desertion are recorded in the available minute book of Nairn and it would appear that little work was done by the justices in that location with regard to any aspect of the War.

Dumfries Quarter Session Minute Book   JP 12

Several applications for licenses for game shops,

In 14 February 1917, the clerk told the Licensing committee that he had erroneously assumed that the members of the licensing courts would continue to act until the end of the war, that the current court should have been held in December last and that he had to get an order from the Secretary of Scotland to hold the present meeting. Representatives then had to be elected until December 1919

No cases of justices dealing with desertion etc are recorded in this book.

Johan Findlay

“Do not regret growing older.  
It is a privilege denied to many.”
by John Scott QC

How does it start? “Lights, camera, action!”

No, wait a minute. That’s not right. “Court” or “Court, all rise”. That’s it.

Who said that a little fame won’t always go to the head?

It’s probably stretching it a bit to claim that there was any fame involved at all but, for a few days, in the legal world at least, there was a little attention

The reason - the showing of the Windfall Films programme “The Murder Trial” on Channel 4 in July last year in which I acted as QC for Nat Fraser.

The programme was a first, so they said. The first murder trial to be captured in its entirety and shown (in edited form) from start to finish. The editing was indeed a demanding process in this programme, much more so that the run of the mill “Match of the Day” or “Today at Wimbledon”. The trial lasted 6 weeks whereas the programme lasted only 2 hours, in which there were about 20 minutes worth of adverts. And it was a circumstantial case against the accused. Would it be possible to capture the intricacies of such a case in just over 90 minutes?

But, even before considering such practical issues, what was the point of the programme? The main stated purpose was education of the public. The programme had its roots in a Practice Note issued by the then Lord President, Lord Hope, in 1992 which allowed cameras into the courts. At the time Lord Hope stated “the public have a right to know and to understand what goes on in court. Access to proceedings by means of a television camera will assist this process.” He said that it was “in the public interest that people in Scotland should become more aware of the way in which justice is being administered in their own courts. There is a risk that the showing on television of proceedings in the courts of other countries will lead to misunderstandings about the way in which court proceedings are conducted in our own country.”

About 15 years ago, there was an entire series of programmes called “The Trial”. These were based around the High Court and Edinburgh Sheriff Court. They were memorable, for me at least, mostly for those moments when lawyers were not doing their best work. Inappropriate on-screen celebration of acquittal in a case involving a death, tortured pronunciation of the word “kebab” in a plea in mitigation (it seemed to have acquired several extra vowels and syllables). I enjoyed it but I am not sure it was for the right reasons.

After “The Trial” nothing much happened until more recently when Windfall Films, the production company which filmed the Fraser case, got in touch with the Courts and the Crown. Delicate negotiations took place over many months. The first suitable case, a murder trial, was identified, the equipment set up in Glasgow High Court and even some early filming of key participants occurred. And then the family of the deceased changed their minds about filming. The terms of the earlier Practice Note meant that filming had to stop. Soon after, in 2012, the then Lord President, Lord Hamilton amended the original Note to allow for filming even where some key party objected. This was done by separating the process into 2 parts – the filming, which could be allowed by the Judge even in the face of objection, subject to considerations of the administration of justice, and the broadcast, which required the consent of all involved.

It was around that time that some discussions started about the Fraser case. Windfall had identified it as a trial they wanted to film, even though it is entirely untypical of even what goes on in the High Court, never mind the sheriff summary court or the Justice of the Peace Court. Indeed, it is hard to think that the profile of the case played no part in its selection.

I was approached, along with others. I had been instructed in the case in September of 2011, just after taking silk. I have to confess that I was personally wary about the presence of cameras when what was involved was likely to be one of the most demanding cases of my career. While I know of very few who practise in the criminal courts who are untouched with at least some, let’s call it “confidence”, and while I have my ego-driven moments like the rest, I was not so confident that I thought this a completely risk-free development.

Eventually an application was made to the Trial Judge, Lord Bracadale. The application was opposed on behalf of Mr. Fraser, while the Crown were neutral in a manner generally supportive of the process, albeit voicing concerns expressed by family members touched by the case. There were some concerns expressed about the impact of filming on witnesses, with one in particular being feared to be at risk of playing to the cameras.

I made no mention of my own personal concerns, because I had heard that such concerns had been expressed by Senior Counsel in the Gilroy case where such an application had also been made. The same Judge, Lord Bracadale, had refused the application in that case, but not because of counsel’s concerns. Indeed he had been unimpressed at the idea that experienced counsel would be worried or affected by the fact of filming or fear of broadcast. I was not so sure but there seemed little point in even mentioning it, especially when the main ground of opposition related to concerns about the fairness of the trial itself.

I should mention also that I did not make my decisions alone as to the implications of filming and broadcast. I contacted the Professional Practice Department of the LSS. They confirmed what I had already decided – that I should not allow filming of consultations with the accused, especially as he did not agree to the filming or broadcast at that stage. No order of the court could require me to allow filming of these confidential meetings.

Before the trial started the Windfall team, especially Nick Holt and Marina Parker, spoke to Alex Prentice and I. We both agreed to do interviews on camera to discuss general issues. I made it clear that I could not discuss the case. Alex discussed it to a limited extent but, again, only with care.

And what of the trial itself, how did the fact of filming affect that? Well, it’s impossible to know for sure, but my answer to that is – not at all. There were warning signs up outside the court that filming would be happening. All witnesses had been warned well in advance. I have to confess that I was unaware of anyone at all playing to the cameras.

The cameras were in very small boxes in set positions in the courtroom furniture. There were no hand-held cameras in court. Lord Bracadale, his clerk, Alex and I all wore radio-microphones. The only palaver was the few seconds before the court sat, and before resuming after coffee and lunch, when these were re-fitted in our waistcoats.

The TV people were very friendly. There were around 12 or so of them involved in the filming and they were given a very
small room near the courtroom in which to set up their equipment.

As for the trial, all I can say is this. With the original trial taking place in 2003, it was fascinating to see how much things had changed, particularly in terms of disclosure. The first trial pre-dated the High Court reforms following Lord Bonomy’s report. It was striking to see the different approach only 9 years later. We had so much material that it could only be managed electronically. I had drives with all statements, productions and transcripts of the first trial. I was fortunate that the instructing solicitors, Bridge Litigation in Glasgow, were geared up for preparation and management of a case of that size and complexity.

The lengthy examination and cross-examination of Hector Dick took 7 days, with cross lasting 4 days. That was largely because of the number of different statements he had made over many years. Much of the drama in the programme was to be found in his evidence. Many were struck, for example, by the intervention of Lord Bracadale during Mr Dick’s evidence, when he had formed the view that Mr Dick was prevaricating. Lord Bracadale is an excellent trial Judge. Unless he is needed for some legal issue, you would not know he is there. After some fencing with me in cross, Mr Dick certainly knew he was there. Some in the court jumped because of the shock at hearing a seldom-heard voice raised in controlled frustration. In any event, Mr Dick appeared to stop fencing after his extremely effective warning.

I think that there were a few reasons why the cameras didn’t affect the case. It probably helped that the case was a circumstantial one, with no one witness being the key to the case. Those involved had already been through a lot, including the UK Supreme Court appeal and attendant publicity. I suspect that the fact that Alex Prentice and I have been doing the job for over 25 years apiece helped too.

There has been some comment on how friendly the Crown and defence were during the trial. People in the system already know that that is just how it usually is, and, indeed, how it should be.

We got a chance to watch an earlier event, Mr Dick appeared to stop fencing with me in cross, Mr Dick certainly knew he was there. Some in the court jumped because of the shock at hearing a seldom-heard voice raised in controlled frustration. In any event, Mr Dick appeared to stop fencing after his extremely effective warning.

I think that there were a few reasons why the cameras didn’t affect the case. It probably helped that the case was a circumstantial one, with no one witness being the key to the case. Those involved had already been through a lot, including the UK Supreme Court appeal and attendant publicity. I suspect that the fact that Alex Prentice and I have been doing the job for over 25 years apiece helped too.

The Lord President has put a freeze on any other filming apart from Windfall completing their work, although, as far as I know, there are no other cases in the pipeline at the moment.

He also set up a committee to look at the whole issue. It consulted for several months at the end of 2013 although its report has not yet been issued.

As for whether the Fraser programme was a success, it is hard to say. Maybe it depends how you measure that. In terms of educating the public about their courts I am not entirely convinced. Perhaps of necessity the programme emphasised the human interest and that meant many interviews with key individuals which took time away from showing the trial.

Did people learn anything about Scottish courts and trials?

Interestingly one blogger said:

In truth, this would have been fascinating in the newspaper or a book. The documentary showed how different British trials are to the ones we’re used to seeing on TV – dramatized US trials. As the Guardian observed this morning, “There is no shouting – everyone speaks in a low monotone, into microphones. The atmosphere is workaday, dispassionate.” Or as Prof David Wilson tweeted approvingly, “slow, undramatic and bureaucratic.” Detail, thoroughness and clarity is what British lawyers ‘do’. But there’s something a bit uncomfortable about sitting at home with a glass of wine and being entertained by watching a murder trial on the telly.

The tweeting, blogging and TV reviews were a reminder that we had entered into the bigger world of public opinion (thankfully pre-Gogglebox). Differing views appeared. By contrast to the suggestion of being slow, undramatic and bureaucratic, the Herald TV reviewer said that Alex was quietly persuasive by comparison to “the cape-flapping histrionics of his opponent”. Well, I’ve seen a few capes flapped in courts in Scotland over the years, and if my performance was an example of that, I think that there are some colleagues whose technique would defy suitably grand adjectives.

The tweeting and blogging also gave some insight into how non-lawyers think about, for example, the implications of the accused not giving evidence, what “circumstantial” means and the importance of first impressions.

Did the programme do justice to the case? I’m not sure that it reflected the full extent of the case but they did a pretty good job.

Should it happen again? Well, here I may have been converted. I think it should, although never for contemporaneous broadcast of cases with juries. (The Pistorius case has not changed my mind that with some evidence suggesting that even witnesses have been affected by watching footage before they gave testimony).

One argument against televising trials is that the courts are open to the public and anyone who is interested can go along. That is true but ignores the reality of people’s lives. While they may be interested they aren’t going to use up holidays to go to court. The only regular court attenders, in Glasgow and Edinburgh, are a group of some older citizens who take an interest. There’s even one man who comes to Edinburgh whose wife made cake for me during the Fraser trial.

The issue (filming, not cake for lawyers) has been considered by the Justice Committee although without any specific conclusions. In England there is now a pilot scheme involving some limited filming in the Appeal Court.

My preference would be for everyone to come along to the courts as part of their civic education. Recently I was at Edinburgh Sheriff Court for the Minitrials. This is a civic education scheme started by Sandy Wylie QC before he became Lord Kinclaven. In several parts of Scotland school kids get into real courts to play the part of the lawyers, witnesses, etc. As Sandy says to them every year – these are your courts.

Well, in the absence of any real possibility of everyone going along themselves, televising carefully selected cases gives at least some chance of letting people know what is done in the name of justice. It offers a counter-balance to the constant stream of English and American courtroom dramas which can give a wholly misleading impression of what to expect in Scottish courts.

Anyone who preferred their histrionics of the cape-flapping variety may have been disappointed with “The Murder Trial” but I hope that there was some reassurance that all the people involved take the job just as seriously as the public would wish.

John Scott QC  Solicitor Advocate
Capital Defence Lawyers, Edinburgh

“Has he come armed?” she asked anxiously. “Has he brought a pistol or a sword?” Ian shook his head. “Oh, no, Maam!” he said. “It’s worse. He’s brought a lawyer.” (“Voyager” by Diana Gabaldon; Delacorte Press (1993)).

“Yes, but why would you want to be a Justice of the Peace?” was the comment the person at the Scottish Government made when I asked him if lawyers were allowed to apply. Maybe, like Ian in the quote, he thought that the arrival of a lawyer was about the worst thing that could happen, and that lawyers should be kept as far as possible from the JP bench. He couldn’t believe that a lawyer would want to become a JP. I applied anyway, thinking that I would hear nothing. But I got an interview. One question the panel asked was how would I respond to legal advice from the legal assessor? What if I didn’t agree with it? I managed some answer about how I was aware of the importance of good impartial advice. The interview ended, and I thought I would hear nothing. But what I heard was that my application had succeeded!

I first sat as a JP over a year ago. The very first case involved a plea to the competency of the charge, the jurisdiction of the court, the relevancy of the libel and whether the case was time barred. The defence motion was opposed. Nor was the accused a “Freeman of Scotland”, or whatever they call themselves, but represented by a very experienced lawyer. Goodness knows why this case called first: although the defence lawyer did not bring a pistol or a sword, he must have persuaded a young fiscal to have his case call before the rest. I had been a lawyer for over 35 years. I had served as a (temporary) procurator fiscal. I had been a defence agent. Surely I would have no problem? I was terrified. What should I do? I have never been so glad of good legal advice: the assessor whispered a quiet word (well a few words) in my ear, and I remembered what to do. Having said that I can’t remember how the plea was disposed of, I only remember that I was delighted to get to the second case.

It taught me that however experienced you think you are, there is always something you can learn. I learned that although making decisions as a judge looked easy from when I used to appear (occasionally) in the old district court and (more regularly) in the Sheriff court (mainly civil work), and (now) in the Court of Session, it was far more difficult that it looked. That’s why the advice from the assessor is so valuable, and the JP training courses and conferences so essential. If you’re doing a very demanding and stressful job in your working life, it can be a relief to know that your decision is grounded in training and based on sound legal advice. It is said that the lawyer who represents himself has a fool for a client. We all need assistance to do our jobs properly. But more than anything, my first day as a judge taught me to rely on advice. I don’t know what I would have done without it.

Having sat as a JP for over a year now, I would say that I would have no hesitation in seeking advice. Why would you not, if it made your job easier? And the job can be difficult: it involves concentrating for long periods, and reaching decisions that in the end only you can make. I have been surprised at how difficult I have found this: in my every day job, I give advice to many clients and make decisions. But there is something different in making decisions as a judge. Despite the training and advice, at the end of the day the decision is yours and yours alone. Greater experience has taught me to be a bit more relaxed in conducting cases than I felt on my first day when the first case called before me, but although our sentencing powers are fairly restricted, every decision is going to have an effect on some person’s life, and in most cases, it will probably affect the lives of several people.

In my job, I specialise in immigration and asylum law. I often advise those who seek to remain in the UK because they say that if they are returned to their home country, they might be persecuted or even killed. You might think there was a lot of pressure giving advice in these sorts of situations, but – and maybe this is where experience comes in – I do not feel it (or can’t remember feeling it): That may be not only because I have been doing it constantly for the past ten years or so, but because I’m doing it regularly. A disadvantage of sitting as a JP is that you sit – on average, at least in our Sheriffdom – approximately once a month. Each time you sit, it can sometimes feel like you have to re-learn everything again, but that’s what makes the training and advice so helpful.

Looking back on the past year or so as a JP, I like to think that I have become as a result a better lawyer: since I have an idea of what may be going through the mind of the judge, I make may submissions accordingly (which means – or should mean – shorter!); and since I am aware of the value of sound legal advice, I make recommendations to a client as clear as possible. Whether I have become a better judge than on that first case on that first day last year will be for the appraiser to say!

The quotation at the beginning about the unwelcome arrival of a lawyer comes from a science fiction novel in which the heroine goes back in time for over two centuries, before returning to her own time to share about what she has learned. The legal system in which we operate is always changing, and it would be good to look forward to a time when the arrival of all judges, non lawyers and lawyers alike, is met not with suspicion but with a desire to learn from our experiences, whatever they might be.

Ken Forrest  JP Advocate
For the 52%, my colleague Jackie Carter the JI Learning Technology Manager wants to ensure that you can all access the Judicial Hub and are aware of the latest developments.

Customised judicial news stories are updated weekly; the 2015 Judicial Institute Prospectus was launched at the beginning of September, the new course booking system is up and running on the site. The new user-friendly booking system will improve and streamline the booking process increasing flexibility and accessibility for Justices going forward. The Judicial Hub is constantly developing and it is important that justices login to the site regularly to keep up with the latest news and developments from the Judicial Institute and the Lord President. Jackie and colleagues from the Judicial Hub Support team are available to provide advice and support to ensure that all justices are able to access the Hub, remember you do not need access to the SCS network, the Hub can be accessed from any computer with internet access, just enter the web address www.judicialhub.com

We attend and present at JI JP events in Edinburgh and will be making every effort to attend local events be it in cameo or person. If you have lost or forgotten your Judicial Hub login details or you simply haven’t had an opportunity to log into the site then email us at Judicialhub@scotcourts.gov.uk and we will talk you through the login process and get you logged into the site in no time at all.
The stated aims of the Conference were: Hague also attended the Conference. The International Criminal Court in The chief justices. In addition one judge from jurisdictions of the Commonwealth. The judicial officers included unpaid justices of the peace, paid magistrates, tribunal judges, high court judges, appeal court judges, supreme court judges and many chief justices. In addition one judge from the International Criminal Court in The Hague also attended the Conference. The stated aims of the Conference were:

- To promote better understanding amongst judicial officers of all ranks and from all parts of the Commonwealth of judicial independence issues and to explore the approach to those issues in different parts of the Commonwealth.

- To promote greater awareness amongst the magistrates and judges of the Commonwealth of international treaties and law relating to the development of and access to justice and to consider the practical application of that body of law.

- To enhance networking within the Commonwealth Magistrates’ and Judges’ Association on judicial developments.

The Conference began on 7 September with an informal dinner hosted by the Law Association of Zambia, which allowed the Conference participants to get to know one another before the Conference got down to business the following morning. The next morning, at the end of an entertaining and interesting welcoming speech, Dr Guy Scott, the Vice President of Zambia, formally opened the Conference. Following the opening of the Conference, Her Hon Lombe P Chibesakunda, the Acting Chief Justice of Zambia, gave the keynote speech, which both set the tone for the Conference and demonstrated Zambia’s support for the aims of the Conference. Lombe P Chibesakunda has a most impressive background starting with qualifying as a Barrister at Law at Gray’s Inn, London and a career that has included both judicial and diplomatic appointments. For example, in addition to her judicial appointments at all levels including Zambia’s High Court and Zambia’s Supreme Court, she was Zambia’s ambassador to Japan from 1975 to 1977 and Zambia’s High Commissioner to the United Kingdom from 1977 to 1982.

Over the 3 days of the Conference, there were 5 panel sessions, a further keynote speech, 2 breakout sessions, a specialist subjects’ session and a learning session:

Panel Sessions (each session ended with questions and points from the floor):

- Judicial Independence: Building Public Confidence through Judicial Accountability.
  - His Hon Lawrence Gidud of Uganda chaired this session and the 2 speakers were Mr Justice Annel Silungwe, the former Chief Justice of Zambia and His Hon the Chief Justice Silvio Camillieri, the Chief Justice of Malta.
  - In his talk, Mr Justice Annel Silungwe stressed that judicial independence required freedom from interference from either the executive or legislative organs of the state. To that aim, he stated that there was a need to guarantee protection for the judiciary on both an individual and a collective basis. He further stated that judicial independence was the guarantor of democracy. Next Mr Justice Annel Silungwe covered the topic of independence of the judiciary. In this area he stressed the need for all judges to have personal independence, free from external pressure from anyone including family, friends, government and other judges. He stated that judicial independence required a judge to be free from personal interest in a case and to lack any form of prejudice. This freedom requires a “wall” around judges so that they are protected from removal from office or other pressures, such as a reduction in salary but that this freedom for judges was not a licence for judicial lawlessness. He also stated that judicial independence required freedom from interference.

- Judicial Independence: Accountability.
  - The following guidelines: sit in public; reasons for decisions; remember that the power of judges is exercised with extreme care. He next stated that the power to remove judges must always be exercised with extreme care. He next stated that disciplinary measures short of removal were necessary in order to maintain public confidence in the judiciary. Thus, he felt that there was a need for a complaints procedure and, therefore, an administrative authority to handle complaints. Finally, he stated that such a complaints procedure implied the need for a judicial code, against which judicial conduct could be considered.
He felt that the nature of sanctions might vary from one jurisdiction to another but that they would probably include: transfers; formal warnings; suspensions; and recommendations for removal (which in any particular case might lead to voluntary retirement before any formal removal process was undertaken).


- Mrs Katalaina Sapolo of the Commonwealth Secretariat noted that the Nairobi Plan of Action on Judicial Independence: in the event, he only talked about 4 pillars of judicial independence: in the event, he only talked about 3 of the 4 pillars due to time constraints. His first pillar was the relationship between the branches of government and he stated that this relationship required effective means of communication. His second pillar was good governance and accountability. In this area, he stated that not only must the judiciary adopt sound principles but that it must also publicise these principles, perhaps by using the discipline of annual reports. His third pillar was the maintenance of judicial independence through judicial training. I Justice Charles Mkandawire stated that judicial training should also be given to support staff as well as to judges. He ended by stressing that judicial training should be funded by the judicial branch and that “donor” training should not be accepted due to likely conflicts of interest. Justice Charles Mkandawire concluded his talk by regretting that he did not have time to cover his fourth pillar and that in his view, the 19 principles contained in the 2005 Nairobi Plan of Action on Commonwealth (Latimer House) Principles in Africa were not well known to the executive branch in most African countries.


- The 2 speakers were His Worship Arazali Kagoro Muhirwa a magistrate in Uganda and Mr Graham Travers a magistrate in South Africa.

- Both speakers stressed the inferior terms and conditions of service that existed for magistrates when compared with the senior judges in their countries. They stated that it was all too easy for the executive at national, regional or local level to remove magistrates or to reduce their salaries. Both speakers said that it was of crucial importance that the senior judges looked after the magistrates in their jurisdiction. They concluded by stating that a lack of security for magistrates inevitably led to a lack of judicial independence.


- Mr Mark Guthrie a legal adviser at the Commonwealth Secretariat stated that the removal of judicial independence was always an early warning sign of a troubled judicial system. He ended by stressing that judicial independence was the first line of defense against corruption and that it was of crucial importance that the judiciary must also publicise these principles, perhaps by using the discipline of annual reports. His first pillar was the relationship between the branches of government and he stated that this relationship required effective means of communication. His second pillar was good governance and accountability. In this area, he stated that not only must the judiciary adopt sound principles but that it must also publicise these principles, perhaps by using the discipline of annual reports. His third pillar was the maintenance of judicial independence through judicial training. I Justice Charles Mkandawire stated that judicial training should also be given to support staff as well as to judges. He ended by stressing that judicial training should be funded by the judicial branch and that “donor” training should not be accepted due to likely conflicts of interest. Justice Charles Mkandawire concluded his talk by regretting that he did not have time to cover his fourth pillar and that in his view, the 19 principles contained in the 2005 Nairobi Plan of Action on Commonwealth (Latimer House) Principles in Africa were not well known to the executive branch in most African countries.

The next case covered by Lord Carnwath was the removal from office of the Chief Justice of Sri Lanka, Chief Justice Shriani Bandaranayake. In this case, Lord Carnwath drew attention to the actions of the parliament of Sri Lanka, which had voted to impeach the Chief Justice in defiance of a Court of Appeal ruling that had ruled against a parliamentary panel's ruling that Chief Justice Shriani Bandaranayake was guilty of financial irregularities. Lord Carnwath stated that despite the ruling by the Supreme Court of Sri Lanka that the impeachment process was illegal, the President of Sri Lanka, Mr. Rajapaksa, had exercised his executive power and dismissed the Chief Justice.

Finally Lord Carnwath talked about the recent case of Lord Fulford, which had been referred to the Judicial Conduct Office. He stated that this case demonstrated that even senior judges could come under suspicion and that such reviews should be conducted quickly, as happened in this case. Lord Carnwath concluded by stating that in the subsequent report, Lord Fulford had been “fully exonerated” of misconduct allegations and had been able to resume sitting.

- Mr Charles Pitto began his talk by stating that the removal of judicial independence led to the removal of the Rule of Law. He then stated that in dictatorships, the removal of judicial independence was always an early
step. He concluded his talk by stating that in some jurisdictions, for example in England and Wales, removal of a judge was a process undertaken by a tribunal and then confirmed by the Privy Council (and not a decision of parliament). He ended by stating that the tribunal was not a criminal process.

Women in the Law/Women and the Law.

- Mr Charles Quin QC of the Cayman Islands Grand Court chaired this session and the 2 speakers were Justice Lynne Leitch of Canada and Judge Fiona Mwale of Malawi.
- In her talk, Justice Lynne Leitch looked back over the period that women have been in the Law in Canada. She stated that 1897 saw the first female lawyer in the British Empire, Clare Brett Martin, who was a Canadian. At that time, as Canada prepared to enter the 20th century, women could not be voters, legislators, coroners, magistrates, judges or jurors; nevertheless, they were in the courts as litigants, witnesses and accused persons. Justice Lynne Leitch then stated that, despite this early start, difficulties remained for women in the law in Canada until the 1970s. Since then, however, progress has been made and now at least 50% of law graduates in Canada are women, while 34% of Canada’s judges are women. She finished her talk by stating that the progress of women in the law was not guaranteed: for instance, the present Canadian government had appointed women to just 30% of judicial vacancies.
- For her part, Judge Fiona Mwale talked about women and the law. She commented that judicial leadership had to be within an enabling environment and that she considered there were 2 problematic areas for women: the trivialisation of injuries to a women, especially when these injuries are not visible, and the obvious gender bias in judgements in cases of violence against women. To improve the lot for women, she stated that she thought jurisdictions within the Commonwealth could adopt the following 4 strategies: sharing of knowledge; the introduction of a judicial watch programme; law reform; and lobbying and advocacy. Judge Fiona Mwale ended by stating that these strategies would require judicial leadership, a judicial training system, judicial accountability, court monitoring, objective court observers and law reforms in the areas of domestic violence and victim protection. In the subsequent questioning, it was clear that many of the justices present were wary of her fourth strategy, lobbying and advocacy with a generally agreed view that justices should not become involved in lobbying activities.

Keynote Speech:

Chief Justices Promoting Judicial Independence.

- This speech was given by the President of the CMJA, the Hon Justice John Vertes, who is a retired senior judge of the Supreme Court of the Northwest Territories in Canada.
- In his speech, Justice John Vertes stated that a judicial leader has to lead by personal example and that the personal conduct of a chief justice was particularly important to the maintenance of public support for the judiciary. He went on to say that the Rule of Law and an independent judiciary were both essential elements in a democracy. He emphasised that judicial independence was at both the individual and collective levels. He finished the first part of his speech by asserting that judicial independence and impartiality were essential to public confidence in the judiciary.
- Next, Justice John Vertes talked about the powers of a chief justice. He stated that these powers had come about largely through tradition rather than by statute. Next he said that he considered this development allowed considerable flexibility and allowed chief justices the freedom to emphasize the independence of the judiciary. Justice John Vertes then spoke about the role of a chief justice in the informal supervision of judges, for instance in those cases where removal was not being considered. Next, Justice John Vertes talked about the need for a chief justice to have a constructive working relationship with the executive and legislature since the judiciary depended on government for its finances. Justice John Vertes finished this part of his talk by reminding the delegates that a chief justice is the public face of the judiciary and that all judges must be free from pressure/influence from any other judge, including the chief justice.
- In his concluding remarks, Justice John Vertes spoke about the battle between the Chief Justice of Lesotho, Mahapela Lehohla, (known as Happy) and the President of the Appeal Court of Lesotho, Justice Mathelaira Ramodibedi, to be the head of the judiciary in that country. The result of this bitter public battle was the retirement of Mahapela Lehohla and a move to impeach Mathelaira Ramodibedi, which resulted in his resignation. These concluding remarks sparked a lively interjection during subsequent questions by Mathelaira Ramodibedi, who was attending the Conference in his capacity as the Chief Justice of Swaziland.

Breakout Sessions (where delegates were divided into 5 groups to facilitate individual contributions):

- Judicial Independence: Zero Tolerance – Identifying and Eliminating Corruption in the Legal System. This session looked at the following questions:
  - What do we mean by ‘corruption’?
  - Is there a difference between petty corruption and grand corruption?
  - Are there local customs that are acceptable in one region that might be regarded as corruption by others?
  - Is corruption specific to judicial officers or does it occur amongst other court officials?
  - Are there particular corruption issues that arise only in civil or criminal cases?
  - Is corruption a rank-specific issue?
  - What can the judiciary as a whole do to combat the negative public perception of the courts?
  - How can the judiciary promote ethical behaviour?
  - How can the judiciary support each other to improve pay and conditions of service?
  - Note this question was asking senior judges to support the improvement of pay and conditions for magistrates.
  - Does the judiciary need to collaborate with the executive to create national anti-corruption strategies?

Diversity – Building a Gender, Ethnic, Social and Religious Balance in Judicial Office. This session looked at the following questions:

- What comes to mind when one talks about diversity on the Bench?
- How are members of the Bench in your country appointed?
- Are there gender, social or religious considerations attached before one is appointed to the Bench?
- What role does the judiciary in your country play in building a gender, ethnic, social and religious balance in Judicial Office?
- What role does the judiciary in your country play in defining and protecting Human Rights?

What are some of the difficulties encountered in dealing with cases around emerging issues such as gay rights?
Do the judges in your country have discretion to disapply or modify statutory legislation on Human Rights?

What is the role of the judiciary in your country in law reform and in the enactment of laws on gender issues?

Is it possible to attain gender balance within the judiciary in your country?

In Scotland, 9 of the 34 senators are female (26%), 2 of the 6 sheriffs principal are female (33%), 29 of the 137 sheriffs are female (21%), and approximately 30% of the 377 justices of the peace are female.

Are there gender, ethnic, social or religious considerations in the allocation of cases on the bench in your country?

What are your comments on the view that the 377 justices of the peace are female.

Is it possible to attain gender balance within the judiciary in your country?

What is the role of the judiciary in your country?

Do the judges in your country have

- Cybercrime led by Judge Colin Greasley, an immigration tribunal judge in England.
- Alternative Dispute Resolution by Mr Justice James Dingemans QC, a high court judge in the Queen’s Bench Division in England.
- Family Law and International Issues by Her Excellency Judge Joyce Aluoch from the International Criminal Court in The Hague.
- Criminal Law and Sentencing Reforms by Mrs Olufolake Oshin, a chief magistrate in Nigeria.

Learning Session: Producing Succinct and Quality Judgements in a Timely Manner.

- This interesting session was chaired by Baron Hope of Craighead, who had provided a background paper on writing judgements, and was delivered by His Hon Christopher Gardner QC, the Chief Justice of the Falkland Islands and a recorder in the crown court in England. Lord Hope is a Privy Councillor, a retired Lord President of Scotland and was the first Deputy President of the Supreme Court of the United Kingdom.

An Exquisite Sense of What is Beautiful by David S. Simons

A novel which takes the reader to London, Japan and Glasgow over some six decades backwards and forwards, weaving the places and the times into the tapestry which is Edward Strathain’s life. Like a tapestry, the threads of various lives intertwine, some becoming inextricable while others fray and tear into irreparable holes.

The book opens in modern day Japan with the now, very elderly Sir Edward returning to the place he wrote his first and most famous book, The Waterwheel, sympathetic to Japan in the aftermath of Hiroshima and Nagasaki. A book that truly lives up to the title.

Blood on the Thistle by Stuart Pearson and Bob Mitchell

With the centenary of WW1 this book is timely in its description of an ordinary family in Haddington who made the ultimate sacrifice in WW1. Seven of the sons of the Cranstoun family went to war, five died, two were seriously injured and only one was unhurt physically. The Great War had a devastating effect on thousands and thousands of families and this book explains in great detail the horrors inflicted on ordinary people called to serve their country and the extreme sacrifices they made.

Thoroughly researched including that taken from the relatives of the people involved this is a heartbreaking book. A good reason to Remember.

Co-author Bob Mitchell JP is on the SJA executive, a Haddington man who helped Stuart Pearson with the research for the book.

Book Reviews

Professor of Truth by James Roberston

A novel about the Quest for Truth and set in the undisguised aftermath of the Lockerbie Bombing – it is never actually admitted but it is obvious to any reader that the protagonist, Tealing, is based on Dr Jim Swire and the Lockerbie Disaster and starts from the premise of his belief that there was an unlawful conviction.

Alan Tealing, is a man obsessed by ’The Case’ and still, some 20 years after the event, he is on a mission to find the truth about how and why his wife and 6 year old daughter were killed and is publicly vocal about his disbelief in the official version.

A visitor arrives who, it is suggested, is an USA intelligence officer apparently dying of a terminal illness and gives Tealing some information which he then follows up.

However, the reader is left wondering what Tealing would do if he did find the answer- can he then move on in his life or does he want to stay in a grief ridden world? The book examines guilt in several ways – one aspect being does Tealing feel guilty about neglecting his family?

It also ponders the ideals of truth and justice – indeed a solicitor friend says to Tealing: “Neither of these things is necessary in the application of the law. They are actually irrelevant.” (Those of us on the bench appreciate this – we can only go on the evidence produced. There is no crystal ball.)

An intriguing book about the individual’s need for truth although the search may reveal more problems than answers. This is reminiscent of his book ’Joseph Knight’ about freedom from slavery but in fact we are all constrained by some aspect of civilisation whether religion, the law or simple etiquette.

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**Book Reviews - continued**

*The Hundred Year Old Man Who Climbed Out Of The Window And Disappeared* by Jonas Jonasson

Translated beautifully from the Swedish this novel starts on the 100th birthday of Allan who does not really want to die in an old folks home and decides almost anywhere else is preferable. So he climbs out of the window, gets to the bus station and manages to get on the bus having ‘accidentally’ stolen a case. He is pursued by a maniacal, if incompetent, motorbike gang, and along the way he meets up with various characters, including a feisty red haired woman and an elephant called Sonya, all pursued by a mystified Chief of Police. The book traces Allan’s life history and reads a bit like Forest Gump meets A Fish Called Wanda in the most delightfully funny crime story.


A very famous case which altered the way in which manufacturers are liable for their products and well worth reading.

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**No Solicitors!**

An amusing photo of a liquor store window captured whilst out for a stroll, Washington State USA.

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**A Numbers Game**

Pythagoras’ Theorem: ..........24 words.
Archimedes’ Principle: ..........67 words.
Ten Commandments: .................179 words.
Gettysburg Address: ....................286 words.
US Declaration of Independence: .............1,300 words.
US Constitution with all 27 Amendments: .................7,818 words.
EU Regulations on the Sale of CABBAGES: .................26,911 words.

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Johan Findlay  
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Opinions expressed in the Scottish Justice do not necessarily represent the views of the SJA.

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