

Cape

By Marilena Ioannou, Cape Bar

Cape Bar 2009 silks



From left to right: Andrew Breitenbach SC, John Butler SC, Patsi Weyer SC, Eduard Fagan SC and Geoff Budlender SC.

The following members were elevated to silk during 2009: Patsi Weyer SC, Andrew Breitenbach SC, Eduard Fagan SC, John Butler SC and Geoff Budlender SC.

We thought we would introduce our new silks by giving some facts relevant to their careers at the Bar, as well as other facts which, although entirely irrelevant, may possibly be of more interest.

Need to know

Geoff Budlender SC: Geoff was born in Port Elizabeth on 18 May 1949. In 1975, he obtained the BA LLB degree at UCT. Since 1978, he has practised law, first as an attorney

and then as an advocate, with the exception of just under four years (between 1996 and 2000) when he was Director General of the Department of Land Affairs. In 1979 he co-founded the Legal Resources Centre. He was the National Director at the Legal Resources Centre from 1994 to 1996, and headed its Constitutional Litigation Unit from 2000 to 2004. In January 2005, he became a member of the Cape Bar. He served as an acting judge in the Witwatersrand Local Division from May - June 2001, and the Cape Provincial Division from January to September 2004, June to July 2007, and from April to May 2009.

John Butler SC: John was born in the Free State on 9 March 1966. He graduated from UCT. Prior to joining the Bar he worked as a research assistant with Prof Reinhard Zimmermann at the University of Regensburg in Germany. Thereafter, he studied at Oxford University for the degree BA (Jurisprudence)

for two years. On returning to South Africa he tutored and then lectured in private law at the University of Cape Town. During 1993, after completing his pupillage with John Newdigate, he became a member of the Cape Bar, where he has continued to practise for the past 16 years. His practice focuses primarily on commercial litigation.

Eduard Fagan SC: Eduard was born in Cape Town on 4 March 1961. In 1981, 1983 and 1984 he obtained BA, BA Hons, and LLB degrees from the University of Cape Town. In 1988 he obtained his PhD (UCT). From 1985 to 1988 he worked as an assistant lecturer in the Department of Afrikaans & Nederlands, at the University of Cape Town. He became a member of the Cape Bar on 1 December 1990, having completed his pupillage with Les Rose-Innes. In 1994 he worked as a research assistant at the University of Regensburg, Germany, with Prof Reinhard Zimmermann. In

1995 he held the position of senior lecturer at the Department of Criminal and Procedural Law, and between 1996 and 1997, at the Department of Public Law, at the University of Cape Town. His practice focuses primarily on commercial legal work.

Andrew Breitenbach SC: Andrew was born in Grahamstown on 4 January 1966. In 1986 and 1988 respectively, he obtained BComm and LLB degrees at Stellenbosch University. In 1990 he obtained his LLM degree at Cambridge University. Prior to joining the Bar he taught administrative law at the University of Cape Town, and was a senior lecturer in public law at Stellenbosch University. During 1995, after completing his pupillage with John Newdigate, he became a member of the Cape Bar, where he has continued to practise for the past 14 years.

Patsi Weyer SC: Patsi was born in King William's Town in the Eastern Cape on 27 November 1964. In 1987 she obtained her BA LLB degree from Rhodes University. In 1988 she lectured part-time at Rhodes University in the faculties of law, commerce and journalism. During 1989, after completing her pupillage with Izak Smuts, she became a member of the Grahamstown Bar and joined the Eastern Cape Society of Advocates. During 1991 she became a member of the Cape Bar, where she has continued to practise until now. In 1994 she undertook a further course on the Bill of Rights at the University of Cape Town and in 2004, she became a FAMAC accredited mediator. Patsi's practice focuses mainly on the fields of family law, medical negligence and personal injury matters, although she also has commercial and public interest elements which she maintains and enjoys.

Nice to know

1 If your chambers were on fire, what is the one thing you would take with you?

Budlender: My laptop (sorry to be so boring)

Fagan: Gordon and Getz *The South African Law of Insurance*.

Butler: My copy of a first edition of Wille's Principles, which was sent to a prisoner of war camp in Poland in World War II, for a relative of mine to read.

Weyer: Besides my laptop, it would have to be my yellowwood table which has a long history and huge sentimental value - may cause a bit of a traffic jam!

Breitenbach: My laptop, because I don't back it up often enough.

2 What was the very first thing you did when you heard you had taken silk?

Budlender: Phoned my wife.

Fagan: Continued working: it seems to me that these days the transition (if transition it is) is fairly seamless, which causes one to question the ongoing value of the institution. There is no similar change in status for senior attorneys, or senior architects or engineers. In the result, the hurt that is caused to those of one's colleagues whose silk applications are turned down (for reasons that are not always easy to discern) becomes a very significant factor in considering whether a sharp divide between 'senior' and 'junior' counsel is still warranted.

Butler: Called my referees to tell them.

Weyer: I had a sleepless night!

Breitenbach: Cannot remember.

3 Who would you most like to represent and why?

Budlender: Vulnerable people who are asserting their rights under the Constitution; and government authorities which are carrying out their duties under the Constitution.

Fagan: Historically, Galileo: 'As Wittgenstein famously asked, in response to the suggestion that people had for so long thought that the sun revolved around the earth because it looks that way, "Hmm, and what would it look like if the earth revolved around the sun?"' Mythologically, Adam and Eve: 'So being omnipotent and omniscient and all, what did you think the snake was going to do?'

Breitenbach: Zapiro because he's insightful, brave and often very funny.

4 What is the most embarrassing thing you have ever said in court?

Budlender: In argument before a magistrate about similar fact evidence, I referred by way of example to the impermissibility of evidence that some attorneys had been struck off the roll for dishonesty, where the issue was the honesty of a particular attorney - only to discover later that the magistrate was himself a struck-off attorney.

Fagan: There are too many to recount, and I embarrass easily. Slightly off the point, I remember being particularly proud of my cross-examination in a pro deo appearance, in which the state witness variously said that my client had had a steak knife in his hand,

make that a clasp knife, with a blue handle, with a black handle, it was a panga, definitely a brown handle; and Rose-Innes J finding my client guilty, remarking sagely that the state witness was consistent in his evidence that accused number 3 had been in possession of a sharp object.

Butler: (When cross-examining Elize Steyn in a trial about 15 years ago): 'Do you expect the Court to believe that?'

Weyer: I referred to a colleague at the end of a long and arduous trial in summation as 'My learned friend.' He promptly leapt to his feet, interrupted my argument and much to the surprise of everyone, me included, pronounced that I was no friend of his! Since then I have kept to 'My learned colleague!' Much safer than another public decry of friendship, even if it is no more than one of those superficial niceties! I should of course have been quicker in retort and reciprocally withdrawn the 'learned!'

Breitenbach: 'Oh Lord' instead of 'My Lord' when under pressure in motion court.

5 If you weren't an advocate, what would you be?

Budlender: Not a lumberjack.

Fagan: What I would *like* to be is some kind of scientist, even if an unconvincing one. The verities of the natural sciences are so much more persuasive, and in the final analysis more satisfying, than are those of the social sciences. Imagine an aeroplane wing being designed to provide lift on a balance of probabilities.

Butler: Unemployed.

Weyer: I think a few professions have been spared, but definitely something creative - an architect most likely.

Breitenbach: A travel guide.

6 What will you miss the most about being a junior?

Budlender: Free lunch after a big case.

Fagan: Working with seniors, which would also be my answer to the question, What will you miss the least about being a junior?

Butler: Free lunches.

Weyer: The comfort of knowing that there could be a senior to help if in doubt.

Breitenbach: Having Peter Hodes correct my grammar. 📧