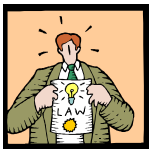
E-MANTSHI

A KZNJETCOM Newsletter

September 2008: Issue 32

Welcome to the thirty second issue of our KwaZulu-Natal Magistrate's newsletter. It is intended to provide Magistrates with regular updates around new legislation, recent court cases and interesting and relevant articles. Your feedback and input is key to making this newsletter a valuable resource and we hope to receive a variety of comments and suggestions – these can be sent to RLaue@justice.gov.za or gvanrooyen@justice.gov.za or faxed to 031-368 1366.



New Legislation

The South African Law Reform Commission (the SALRC) released its report on its investigation into *Consolidated Legislation Pertaining to International Co-Operation in Civil Matters* (Project 121) on 18.8.08.The investigation was prompted by the need to end South Africa's legal isolation so that the country could begin to participate more actively in global attempts to improve judicial co-operation. Some of the key findings and recommendations of the report include the following:

As a starting point, gaps and ambiguities in the common law must be remedied. These reforms will obviously benefit litigants seeking to serve process, take evidence or enforce judgments locally, but urgent attention must also be paid to the plight of South African litigants who wish to perform the same acts abroad. Unless an international agreement is negotiated in advance to secure an accelerated procedure under one of our domestic statutes, the judgment creditor is at the mercy of the domestic law of the state in which enforcement is sought.

At present, the scope of application of the following Acts is far too limited: the Foreign Courts Evidence Act 80 of 1962; Enforcement of Foreign Civil Judgments Act 32 of 1988; the Reciprocal Enforcement of Maintenance Orders (Countries in Africa) Act 6 of 1989 and the Reciprocal Service of Civil Process Act 12 of 1990. Steps should be taken to make our statutory procedures more widely available, and to ensure reciprocal treatment from foreign states. The most practical method for achieving this aim is the negotiation of bilateral treaties with our immediate neighbours and major trading partners, an initiative that will require action by the Department of Justice and Constitutional Development, together with the Department of Foreign Affairs. A key part of this commitment to international judicial

co-operation is South Africa's accession to certain multilateral conventions. The two conventions which are of immediate importance in this regard are the United Nations Convention on the Recovery Abroad of Maintenance of 1957 and the Hague Convention on the Recognition and Enforcement of Maintenance Obligations of 1973. Moreover, in order to keep abreast of global developments, South Africa should continue to participate actively in the Hague Conferences on international law.

The Report concludes that there is no pressing need to consolidate all legislation governing international judicial co-operation into a single instrument. In particular, legislation governing enforcement of maintenance orders and other civil judgments should be kept separate. Essentially, what is required, are amendments to existing Acts to improve their scope of application; amendments to the common law because of gaps and ambiguities and the repeal of the Protection of Businesses Act 99 of 1978.

The Report is available on the Internet at the following site:
http://www.doj.gov.za/salrc/reports.htm

Recent Court Cases

1. S. v. CAROLUS 2008(2) SACR 207 (SCA)

Description of an accused and his clothing prior to his arrest can be crucial in assessing evidence of identification.

The appellant was convicted in a regional court of indecent assault involving an 8-year-old boy, A, and sentenced to eight years' imprisonment. He appealed unsuccessfully to the High Court, which granted him leave, however, to approach the Supreme Court of Appeal. It was argued on behalf of the appellant that the identification made by the young boy, a single witness, was unreliable and that the trial court had erred in dismissing the appellant's alibi defence.

Held, that it was common cause that A's identification of the appellant had occurred at the police station after he had been informed of the appellant's arrest. Not much weight could be attached to this identification: it had taken place under strange circumstances, in a police cell, and the rules relating to the conduct of identity parades had certainly not been adhered to. The crucial question, however, was whether or not A had pointed out the scene of the crime and the perpetrator. He had pointed out the relevant house to his mother and to the police, and his description

thereof fitted in with the appellant's own evidence. A had even identified the type of furniture in the lounge where the offence had been committed, and the appellant had conceded that the house drawn on a sketch plan by A was his house. It was also to be remembered that A had visited the house in question regularly in the past. (Paragraphs [19]-[22] at 212*e*-213*c*.)

Held, further, regarding the identity of the perpetrator, that there was no doubt that the description of the appellant and his clothing must have been given by A prior to the appellant's arrest, otherwise he could not have been a suspect. The appellant's housemate, whom the police had encountered at the house, had not been suspected since he did not fit the description; indeed, the housemate himself realised from the description that the police were looking for the appellant. A's description of the perpetrator fitted in with both the appellant's appearance and his clothing. As to the argument that A's failure to notice the appellant's skin condition (the appellant suffered from psoriasis) was indicative of the fact that the appellant could not have been the perpetrator, the extent of this condition at the time of the offence, as opposed to at the trial some years later, had not been established. The incident had also been a fleeting one; A had been traumatised and seeking an opportunity to escape from the house. These conditions were not conducive to a minute observation of the appellant's body. (Paragraphs [23]-[27] at 213*d-j*.)

Held, further, that the alibi defence was not a satisfactory one. The alibi witness, M, had not been convincing, had been selective in his recall of events, had been expedient in his estimate of times, and had simply retold the appellant's version. More importantly, the alibi defence had not been put to A or to his mother, and none of the other people who could supposedly corroborate the alibi had presented themselves to the police or testified in court. The magistrate had correctly assessed all the evidence, and had been well aware of the dangers inherent in A's testimony. Accordingly, the appeal against conviction must fail. (Paragraphs [28]-[31] at *214a-f*.)

2. S. v. NDIKI AND OTHERS 2008(2) SACR 252 (CKHC)

The admissibility of computer-generated print-outs can be assessed by taking relevant legislation into account.

During the course of a criminal trial the State sought to introduce certain documentary evidence consisting of computer-generated print-outs, designated as exhibits D1 to D9. The accused objected to the admission of these exhibits, as a result of which the court conducted a trial-within-a-trial to determine the true nature of the print-outs, the class of document into which they fell, and whether their admission was sanctioned by the provisions of any legislation dealing with the admission of documentary evidence. The accused argued, inter alia, that admission of the evidence would offend the presumption against retrospectivity; and that the documents failed to comply with the 'requirement of personality', in that the information contained therein had not emanated from a person and could not be regarded as evidence given or confirmed by a person. It was argued, further, that

the admission of the documents was not sanctioned by s 3 of the Law of Evidence Amendment Act 45 of 1988, or by s 34 of the Civil Proceedings Evidence Act 25 of 1965, or by s 221 of the Criminal Procedure Act 51 of 1977.

Held, regarding the 'requirement of personality', that what was being suggested was that, a computer not being a person, if it carried out active functions, over and above the mere storage of information, the documents produced in accordance with such functions were not admissible. For the same reason, it was argued, the provisions of the Law of Evidence Amendment Act were of no assistance because hearsay evidence extended only to oral or written statements, the probative value of which depended on the credibility of a 'person'. This approach to computer-generated evidence was incorrect and might result in otherwise admissible evidence being ruled inadmissible. It was not desirable to attempt to deal with the admissibility of computer print-outs as documentary evidence simply by considering the general characteristics of a computer. The issue was to be determined on the facts of each case, having regard to what it was that the party concerned wished to prove by means of the documents, the contents thereof, the function performed by the computer; and the requirements of the statutory provisions relied upon for the admission of the documents in question. (Paragraphs [10]-[20] at 258*h*-261*e*.)

The Law of Evidence Amendment Act 45 of 1988

Held, further, that what constituted hearsay was to be determined by having regard to the provisions of s 3 of the Law of Evidence Amendment Act, in terms of which the definition of hearsay quite clearly covered documentary evidence. If a computer print-out contained a statement of which an individual had personal knowledge and which was stored in the computer's memory, its use in evidence would depend on the credibility of an identifiable individual and would therefore constitute hearsay. On the other hand, where the probative value of a statement in a print-out was dependent on the 'credibility' of the computer itself, s 3 would not apply. In such a case, doubts as to the accuracy and reliability of the operating system might affect the reliability of the evidence and the evidential weight to be given thereto. *In casu* certain individuals had signed exhibits D1 to D4; the computer had been simply a tool used to perform a task and create the documentation. Consequently, these documents constituted hearsay. Exhibits D5 to D9, however, had been created without human intervention or assistance. To the extent that the computer had processed existing information, made calculations and 'created' additional information, such evidence constituted real evidence. Accordingly, the admissibility of this evidence depended on the reliability and accuracy of the computer, and its operating systems and processes, as opposed to the credibility of a person; and the duty to prove such accuracy and reliability lay with the State. Paragraphs [31]-[37] at 264*e*-266*e*.)

The Civil Proceedings Evidence Act 25 of 1965

Held, further, that the view that the documents the State wished to introduce, having been produced by a computer, had not been made by a person, as required by s 34 of this Act, was a restrictive approach to the section which ignored the function performed by a computer in any given case. It was clear from the evidence, for

example, that where exhibits D1, D2 and D4 were concerned, the computer had been simply a tool. In any event, exhibits D1 to D4, although printed on a computer, had been compiled and signed by a functionary, as envisaged by s 34(4); they had therefore been 'made' by the functionary concerned, as envisaged by s 34(1). The same, however, did not apply to exhibits D5 to D9, and these accordingly did not comply with the requirements of s 34. (Paragraphs [42]-[43] at 267*d*-*i*.)

Held, further, that the question might arise as to whether the person or persons who had made the statements in exhibits D1 to D4 had had 'personal knowledge of the matters dealt with in the statement' as required by s 34(1)(a)(i) of the Act. A further question was whether every representation of fact in a document had to fall within the personal knowledge of the maker of the statement, or whether s 34 should be more narrowly interpreted to refer only to the particular representation of fact in the document which the party concerned wished to introduce into evidence. The answer lay in the wording of s 34: having regard to the fact that s 34 applied to proceedings where direct oral evidence of fact would be admissible; that it referred to a statement in a document that tended to establish that fact; and that personal knowledge was required of the matters dealt with in the statement, as, opposed to the document, such personal knowledge was required only of such matters that tended to establish the particular fact in issue. (Paragraphs [44] and [45] at 267j-268*b* and 268*c*-268*f*.)

The Criminal Procedure Act 51 of 1977

Held, further, that computer print-outs produced by a computer that had sorted and collated information would be admissible under s 221 of this Act if the foundational requirements thereof had been satisfied. *In casu*, the print-outs were documents within the ordinary meaning of the word, and they fell within the category of a record relating to a trade or business. Section 221 did not require the record to be compiled by a person who had personal knowledge of the matters dealt with in the information; what was required was personal knowledge on the part of the person who had supplied the information. Applied to the present matter, the statements the State wished to introduce in exhibits D1 to D4 had been obtained from persons who had personal knowledge of the contents thereof. The information contained in those statements had then been sorted and collated by a computer in order to produce exhibits D5 to D9. (Paragraphs [50]-[52] at 269*f*-270*c*.)

Exhibits D1 to D9 provisionally admitted into evidence.

3. S. v. MAASDORP 2008(2) SACR 296 (NCD.)

A Magistrate taking a confession cannot just act as an impassive umpire.

The appellant was convicted of robbery with aggravating circumstances, arising from an incident in which a delivery vehicle was brought to a stop, apparently by means of a spiked chain being placed across a road, causing one of its tyres to be punctured. The appellant, together with two co-accused, was arrested on the basis of information received by the police. A chain and some sharp pieces of metal were found on his premises. In addition, the appellant was implicated by one S, who gave

evidence in terms of s 204 of the Criminal Procedure Act 51 of 1977. As soon as the appellant had been informed of his rights as an arrested person he declined to make any further statement to the police. One of the co-accused (accused 2) was also convicted, and subsequently lodged an application for leave to appeal which he failed to pursue. Despite this, the court, invoking its inherent review powers, dealt with his case in order to avoid 'a serious travesty of justice'.

Held, that the conviction of accused 2 had been based on a confession he had made to a magistrate. It was disturbing to note that a police inspector who was in charge of the appellant had been present in the magistrate's office while the latter was taking down the confession. More importantly, however, it was abundantly clear from the record that when the magistrate had asked accused 2 if he expected any advantage as a result of making the confession, the answer had been affirmative: he expected to avoid a jail sentence. This should have alerted the magistrate to the possibility of some influence having been used on him in order to make him confess. While a magistrate taking a confession was not expected to act as an inquisitor or investigator, he or she was also not expected to act as an impassive umpire, simply ensuring that the formal rules were observed. Given the historical evolution of confessions in South Africa, and the countless reported cases of abuses of authority by the police, it was to be expected that where there was some indication of improper conduct that could have amounted to undue influence on an accused to make a confession, the magistrate taking the confession should investigate the circumstances surrounding it. (Paragraphs [20]-[21] at 305b-306a.)

Held, further, that the trial court had sought and found corroboration for S's evidence in the confession made by accused 2; absent the confession, accused 2 would have been acquitted. The possibility that he had been unduly influenced by a promise that he would not go to prison could not be excluded; accordingly, the confession had been improperly admitted against him, and there was insufficient other evidence to convict him. (Paragraphs [23] and [24] at 306h-307b and 307d.)

Convictions and sentences of the appellant and accused 2 set aside.

From The Legal Journals

1. The *S.A. Legal Information Institute's* website is one of the best online resources for South-African Judgments. It also contains links to some Law Journals and a list of other legal information which is of great value to any magistrate. The website can be accessed at www.saflii.org.za/za/.

2. **Moodley, P**

   "Unraveling the Legal Knots around inter-country adoptions in De Gree v

Webb."

2007 Volume 3 *Potchefstroom Electronic Law Journal*

3. **Schoeman – Malan, M.C.**

   "Recent Developments regarding South African Common and Customary Law of Succession"

   2007 Volume 1 *Potchefstroom Electronic Law Journal*

4. **Steynberg, L.**

   "Gebeurlikhede en die bewyslas in die deliktuele Skadevergoedingsreg"

   2007 Volume 1 *Potchefstroom Electronic Law Journal*

5. **Bishop, M.**

   "Why must I cry? Justification, sacrifice, loneliness, madness and laughter in post apartheid judicial decision-making"

   Pretoria Student Law Review 2007: 1 33

6. **Neethling, D**

   "The Magistracy and judicial independence: A State of mind or the state of circumstances"

   Pretoria Student Law Review 2007: 1 69

(Copies of the above articles can be obtained from gvanrooyen@justice.gov.za)

Contributions from Peers

Sentencing offenders of advanced age

Whilst the sentencing of youthful offenders has been the focus of a great deal of discussion, both by judicial officers and academic writers, the same cannot be said to be true of the sentencing of offenders of advanced age. Yet this question is certainly worthy of discussion, as is evidenced by two recent cases, both of which were decided in July 2008. In the first case, two female offenders of 77 and 75 years of age were sentenced to life in prison without parole by the Los Angeles Superior Court for their part in a scheme in which they befriended homeless men, took out insurance policies on them, and then killed them in murders staged to look like hit-and-run collisions. The women apparently collected $2.8 million before being

arrested. In the second case, a 77-year-old wife killer was sentenced to three years of house arrest and correctional supervision, along with an order of 16 hours community service, by the Durban High Court.

It is axiomatic that the judicial officer will take into account the full gamut of sentencing principles and guidelines in imposing punishment. The simple fact of the offender's age is thus not in itself determinative of the appropriate punishment. Nevertheless, it is instructive to briefly examine the approach adopted by courts in respect of the elderly offender (for a fuller discussion of what follows, the reader is referred to a short note that we have authored, entitled 'Advanced age as a mitigating factor in the South African criminal courts', to be published in 2008 29(2) *Obiter*).

The Roman-Dutch authorities did not generally deal with this matter in much detail. Voet and Van der Linden briefly comment on the question, and the fullest treatment may be found in the writings of the 17th century German author Carpzovius, who exercised a strong influence on contemporary Dutch law. In brief, whilst the authors recognize that advanced age could be the basis for a finding of mitigating circumstances; this is counter-balanced by the view that where the offender was not ill his advanced age could equally aggravate the severity of the crime. After all, the argument goes, a person who has enjoyed a long life, and has accrued the wisdom associated with a wealth of experience, can hardly argue that he did not know any better – quite the contrary!

There is a general acceptance in South African authority that once an offender has reached an advanced age, this may be regarded as a mitigating factor in the sentencing of such an offender (Terblanche *A Guide to Sentencing in South Africa* 2ed (2007) 197). Once again, it should be noted that there is somewhat of a dearth of detailed analysis on the point. Old age is referred to as a mitigating factor in a number of cases (*S v Munyai* 1993 1 SACR 252 (A); *S v Du Toit* 1979 3 SA 846 (A); *S v Heller* 1971 2 SA 29 (A); *S v Tshatsha* [2007] JOL 19598 (Ck); *Mfengu v S* [2005] JOL 14813 (E); *Mgudu v S* [2002] JOL 10060 (Tk); *S v Makua* 1993 1 SACR 160 (T); *S v Berliner* 1967 2 SA 193 (A)), however only one Supreme Court of Appeal case contains any discussion of the issue: *S v Zinn* 1969 2 SA 537 (A).

When exactly should the offender benefit from being regarded as of advanced age? South African reported judgments seem to regard a person as elderly from about 58, although that would depend on the offender before the court, especially since old age is often accompanied by another mitigating factor namely illness or ill health (See *Du Toit, Zinn, Berliner, Mfengu and Mgudu* cases *supra*). In exercising its discretion, the court should bear in mind that the length of one's life is in itself no longer a reliable measure as to how a person is affected by the process of aging (Leavitt "Proposal for senior offender law" (1999) 19 *Pace Law Review* 293 312). Thus, as was stated in the Australian case of *Kaye v Queen* [2004] WASCA 227 par 65:

> "What is 'old age' can change over time as the average lifespan increases and may vary according to the particular circumstances of the offender,

including his or her mental and physical health and lifestyle".

It has been said that the rationale for the reduction in sentence is compassion and mercy. It "… evokes a note of compassion in considering the bleak recompense of imprisonment in the afternoon of his years" (*Heller* 55C-D). This is consistent with the community expectation that that old people would be treated with sympathy (*Munyai* 255h-i; Van der Merwe *Sentencing* 6ed (1998, loose-leaf) 5-26)). Furthermore, older persons are more sensitive to some forms of punishment, especially imprisonment (Van der Merwe 5-26), and that the older offender 'would suffer more given a specific quantum of punishment, and that imprisonment for a certain period might really turn out to be life imprisonment' (5-26A). It may be argued that to imprison an elderly person would not be justified by retributive or utilitarian (in the form of special deterrence) purposes of punishment (see *Zinn* 541B-C; Fox & Freiburg *Sentencing: State and Federal Law in Victoria* (1985) par 11.408). The court cannot overlook the fact that each year of the sentence represents a substantial portion of the period of life left to the offender (see the Australian case of *S v Tasmania* [2007] 173 A Crim R 492 par 14). Ultimately, it is clear that the purpose of a sentence is not to destroy the offender completely (*Zinn* 541B-C).

Old age does not however provide any guarantee of being spared imprisonment as the final decision depends on a number of factors, and in particular the gravity of the offence. Thus in *Tshatsha supra* the age of the offender (59) was outweighed by the abhorrent nature of the crime committed – the rape of a 6-year-old girl. In itself, advanced age cannot justify the imposition of a non-custodial sentence, and should not lead to an unacceptably insubstantial sentence. (This is consistent with the approach in countries such as Zimbabwe, England, and Australia).

If one considers the other available sentencing options, it is noteworthy that a warning or a monetary fine is not generally influenced by the age of the offender. And, although no reported case is available on this point, it is submitted that, when assessing the possibility of imprisonment, correctional supervision could be an ideal means to punish the elderly offender (in this regard see Terblanche 279ff). The use of house arrest coupled with community service would serve to negate the fears associated with incarceration.

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Matters of Interest to Magistrates

Proposal for the Support of a Peer Education Programme for Magistrates

Background

Chief Justice I Mahomed has said that “it is in the Magistrates' Courts that justice is tested in its most crucial, most pervasive, most voluminous, most pressurised, and logistically most demanding dimensions – in literally thousands of cases every day. The continuous struggle for the legitimacy and the efficacy of the instruments of justice is substantially lost or won in the Magistrates' Courts”.

In fact one can go as far back as 1787 when Alexander Hamilton suggested that “the ordinary administration of criminal and civil justice… contributes, more than any other circumstance, to impressing upon the minds of the people affection, esteem and reverence towards the government” in finding support for the argument that the effective functioning of South African Magistrates’ courts is a key aspect of ensuring a viable democracy in South Africa.

It is generally agreed that the performance and demeanour of the magistrate has an immeasurable impact on the court, its functioning and the conduct of the other role players. The magistrate is still seen as the role model for the court and so any efforts aimed at building the skills and capacity of magistrates contributes enormously to the full effectiveness of the court system.

In 1993, the Magistrates Act (90 of1993) saw the de-linkage of the magistracy from executive control and the establishment of the Magistrates Commission as the

statutory control body for magistrates[1]. While the Act gave magistrates an increased level of independence there was still an argument that there was too much power vested in the office of the Minister of Justice. Since then the magistracy and the Department remain administratively interlinked despite ongoing debate around issues of magisterial independence and accountability. As of 2008 magistrates' salaries continue to be administered by the Department of Justice despite having been reallocated from the budget of the DOJ&CD to the state revenue fund. And currently training for magistrates is also delivered almost exclusively by an increasingly dysfunctional Justice College, the official training arm of the DOJCD, while the Judicial Education Bill is being debated in Parliament.

Currently magistrates find themselves in a "no mans land". On the one hand they are still dependent on the DOJ&CD for administrative support but have been left without strong management structures, access to budgets or representation at a national level. All of this has an impact on both the training available to magistrates and their perceptions around the value of that training. In 2005 one response from KwaZulu Natal was to form the KwaZulu Natal Judicial Education and Training committee and according to Senior Magistrate Ron Laue,[2] a number of factors contributed to this decision. Justice College had limited capacity to accommodate practical training needs. There was a need for uniformity and co-ordination, to pool resources and to access a regular financial resource base and a facilitation structure. He goes on to explain,

> "More importantly, the lower courts' judiciary was going through processes of change in relation to the separation of judicial and administrative functions, i.e. executive administrative functions were no longer being performed by magistrates and were being assigned to departmental administrators.

[1] This de-linkage eventually contributed to the DOJ&CD reallocating non-judicial administrative duties from Magistrates to the newly created Court Managers in 2003/4.

[44] R Laue Email Interview 18 May 2005.

> Prosecutors were no longer subject to the administrative control of magistrates. Departmental administrators [wrongly] assumed autonomy and the lines of accountability/reporting became blurred. Magistrates abdicated court and case management in the criminal courts to the prosecution. A process was initiated for the judiciary to [re]assert control. There were constitutional impacts on the work of the courts, brought about by changes in legislation, values, cultural diversity, gender and racial composition of the bench, mindsets, programmes, projects and so on.
>
> Even the notion of judicial independence, it seemed, was not generally understood in all its facets and in some instances it was misconstrued and understood as being incompatible with accountability.
>
> The combination of these events brought about a realization that the existing and potential array of education and training needs was continually expanding. In particular, the appointment ages of magistrates were reducing, with a concomitant drop in the experience levels".

Since then the KwaZulu Natal Judicial Education and Training Committee (KZNJetcom) in partnership with the Independent Projects Trust have run a programme which has provided a very effective solution to the dearth of training available to magistrates. This Peer Education programme was initiated using an informal network of senior magistrates who face similar challenges and experiences. These magistrates received training as Peer Education Facilitators and then began to facilitate regular opportunities to share good practice, knowledge, make contacts and resolve problems together. The purpose of this programme is to support the ongoing improvement of learning and provide a framework for engaging in constructive reflection on professional practice.

This initiative has proved to be extremely effective given that magistrates do not have access to a budget to provide for many of their training needs and that Justice College[3] can provide only a limited number of training opportunities.

Proposal

To provide ongoing support to KZNJetcom for the continued delivery of Peer Education as well as replicating the programme via the establishment of another Jetcom in Gauteng under the auspices of the Chief Magistrate of the Randburg Cluster in Gauteng. Randburg Magistrate's Court is a large court with both District and Regional Courts servicing 9 municipal areas including areas as diverse as Sandton and Alexandra Township, and including many areas with large foreign national populations.

The expansion of the project outside of KwaZulu Natal would be the first step in testing the replicability of the model in a different environment and would be utilised to develop a blueprint for further expansion to other provinces.

Proposed Activities

The project would consist of two simultaneous phases – one, which provided ongoing support for the Peer Education Programme in KZN and two, to facilitate the establishment of a Peer Education programme within the Randburg Cluster in Gauteng based on lessons learnt in KZN over last 3 years.

Phase One: Continued Support For KZNJetcom's Peer Education Programme

The activities for this phase are predominantly around providing administration and venues for the hosting of Peer Education events throughout the province. In addition we would run a review session on a biannual basis to provide peer educators with an opportunity to share learning, build capacity and strategise for future events. We

[3] Justice College is the official training arm of the Department of Justice and Constitutional Development.

would also provide administrative services to the KZNJetcom at their quarterly meetings.

KZNJetcom Secretary Magistrate Gerhard Van Rooyen also produces a monthly journal for magistrates called e- Mantshi that promotes the sharing of information and provides learning opportunities. We provide support for the distribution of this journal via the Justice Forum website.

24 peer education sessions held (2 per cluster X 6 clusters)	Venue and refreshments, payment of speaker
2 Peer Educator Review Sessions	Venue, facilitator costs, report distributed
4 KZNJetcom meetings	Venue, secretarial services
Web hosting for 12 months – justiceforum.co.za	Conversion of docs to PDF, uploading to website, monthly reminders
Publication and distribution of e - Mantshi	Uploading of docs

Phase Two: Establishment of Peer Education in Randburg, Gauteng

The activities for this phase would be a replication of those conducted during the establishment of the programme in KwaZulu Natal in 2004 and would include the following;

Series of meetings with Chief Magistrate and Senior Magistrates to establish a training and education committee	Time
Assessment of training needs and gap analysis	Questionnaires distributed and

	analysed
Peer Education Induction Session for Training Committee	Venue half day meeting, facilitator
2 day initial training for Peer Education Facilitators	Residential venue, manuals, facilitator
4 peer education sessions (quarterly)	Venue, refreshments, speaker fee
2 review sessions for Peer Facilitators	Venue, facilitation, report distributed

(Gauteng would have access to the Justice Forum Website and would receive the e - Mantshi Newsletter).

Monitoring and Evaluation

Since this proposal is for the continuation of an existing project there is already evidence of impact which includes an informal review which was held at the end of the first year. This process identified the following early achievements[4]:

- Queries from magistrates about difficult issues decreased following peer learning discussions
- An improved working relationships was evident with other role players i.e. SAPS
- Initial participants continued to meet with sustained interest and commitment to cooperation on training and development.
- Field practice reports indicate positive developments in a number of courts – one cluster held a capacity building meeting due to very low disposal rates and by March 2005 had reduced outstanding cases from 160 to 46.
- 30 plus items of material on peer learning have been developed and are available to others in the judicial environment

[4] Peer Learning Report; Everglades Hotel 20/22 April 2005 IPT

- Relationships have been strengthened and there is greater interaction amongst magistrates
- Better use was been made of IT – using e-mail to enhance learning and communication

An external evaluation also noted that "the KwaZulu-Natal Training Committee and the district court magistrates have made significant and substantial progress in putting in place the structures and processes to sustain continuing professional development".

In order to document and record both the process and the impact of this project we would have an internal monitoring mechanism and an external evaluator.

Monitoring	**Evaluation**
Recording and collection of documents from all events held	Base line interviews with magistrates and assessment of current performance standards
Collection of data from agreed data sources	Development of indicators and data sources
Records kept of all activities undertaken	Partial attendance at peer education events to collect evidence of process
Minutes from meetings	Review of project documentation
	Evaluative interviews with magistrates to determine perceptions of impact and review of performance standards in targeted areas.

Evidence of Support for Project

The project has support from the Chief Magistrates in Durban, Pietermaritzburg and Randburg (which covers the senior management of the entire proposed target

areas). There is also strong support from the existing KZNJetcom and the various area cluster heads throughout KZN. The project could begin with immediate effect as these magistrates have already requested assistance with this programme.

Iole Matthews

A Last Thought

Morality cannot be legislated, but behaviour can be regulated. Judicial decrees may not change the heart, but they can restrain the heartless…The habits, if not the hearts of people, have been and are being altered everyday by legislative acts, judicial decisions and executive orders.

Martin Luther King Jr.(1963)