Mark Euijen LRC Oral History Project 3"! September 2008

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This is an interview with Mark Euijen and itâ\200\231s Wednesday the 3â\204¢ of September (2008). Mark, on behalf of the SALS Foundation we really want to thank you for agreeing to participate in the LRC Oral History Project.

Itâ\200\231s a pleasure.

I wondered whether we could start the interview if you could talk about your early childhood memories, growing up in South Africa, and where you think your sense of social justice and injustice developed?

Well, I was actually born in Zimbabwe, but my parents came here when I was very young, probably about seven years old, that was before UDI, so it wasnâ\200\231t politicall y
motivated. My father was in the bank, he worked for the bank his whole life, and he got transferred all over the show, so thatâ\200\231s the only reason they came down. But, I grew up most...pretty much spent my whole life, both at school and all my working life, apart from the last ten years which have been in Grahamstown, in Johannesburg. You know, I had a very normal, you know, white middle-class up-bringing. Social justice came from my mother, she was a Black Sash type, and my father was very conservative, caused...that and other things caused a lot of conflict between the two of them. Ja, then my...my mother died when I was quite young, and ja, I think just...just seeing, you know, what was happening in South Africa, one couldnâ\200\231t really avoid it, I
suppose.

So, growing up in a household where you have parents with two different sets of ideas, how did that influence you...did you experience some conflict around that?

There was a lot of conflict between the two of them, I donâ\200\231t think it was just poli tical,
I donâ\200\231t think they were well-matched, you know? They got married in the days when...when, well, they had to get married, my mother was pregnant. In fact, they only got married, as far as I can work out, after about a year or two after I was born. Ja, there was a lot of conflict between the two, but, as I say, she died quite young and then...Ja, you know, she...she was quite outspoken, she didnâ\200\231t take...you know, she is
the sort of...she used to embarrass us terribly, you know, sheâ\200\231d get involved in arguments in the street with policemen and the other people in queues, and that sort of thing.

(Laughs). You say that you got your sense of social justice from her, did you find that, as a young child...how did you make sense of what your mother was trying to achieve?

Well, you know, I was quite intimidated by it, I was quite embarrassed by her a lot of the time. But, no, I certainly respected...I certainly grew to respect her point of view a lot more than my fatherâ\200\231s.

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And then...schooling and university, where did you do that, and what were your experiences?

I went to government...white government schools, well, all schools in those...you know, were segregated...

And this was in Johannesburg?

...in Johannesburg, ja. You know, normal...actually, no, my high school was quite unique, I suppose, because it...it...the year I went into what was then, standard six, grade eight, it was the first year the school opened, so there were only about...there were only about fifty of us in the school. And...and then there...and there were two very influential teachers whoâ\200\231d just come from Maritzburg University, which is then where I went to go and study. And then each year that we progressed to the next year, the school...so we were always, sort of, at the top and so it was quite unique in that way, but, I wouldnâ\200\231t really say that developed my sense of social justice, frankly, you know, the children in those days, especially white children, really didnâ\200\231t have a clue. I was probably one of the more politically aware people around. But, it wasnâ\200\231t...I mean...apartheid South Africa was kept quite hidden from the rest of us, except in obvious ways, you know? I mean, through housekeepers and gardeners and...and the obvious fact that (laughs) where are all the black people in white South Africa...ja. But, I...then it was really more at university, in the seventies, I started university in 1975 and there was quite a lot of social unrest then already.

You were at Wits?

I went to Wits subsequently, but I did a BA and an LLB at University of Natal in Pietermaritzburg. But, it was 70...you know, it was June â\200\23176, it was Black Septembe r â\200\23179, and then it was the...Ja, and then in the eighties itâ\200\231s...it was the u nrest in the townships and the State of Emergency and by then, Iâ\200\231d already been at the LRC and I did articles with Cheadles, and I sort of continued from there.

When you started university were you aware of, for example, the NUSAS trial?

Ja.

And the Wages Commission, because those...that was really happening around the time when you started university, and I was wondering how aware were you of NUSAS politics then?

NUSAS was a burning issue at that time, particularly in Maritzburg...at Maritzburg campus, because it was a pretty conservative campus, and the big debate then in student politics, was affiliating or disaffiliating from NUSAS. Maritzburg, and I think, Rhodes, had disaffiliated a couple of times, and so there was a lot of campaigning.

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Thereâ\200\231d be a referendum, the campus would disaffiliate from NUSAS, and then the SRC would, sort of, override that, and re-affiliate, and there was a lot of...and that was the student politics issue. So, yes, there was a lot of campaigning for NUSAS, the campus as a whole probably was anti, it would be fair to say. And then we also had a large Rhodesian contingent, as did Rhodes, and they were very anti, and those guys used to...there was a lot of...well, not a lot, but there was physical violence. I mean, I remember the Rhodesian students would come back on Friday and Saturday night, drunk, and kick our doors in, and want to beat us up, and all that sort of stuff, you know?

Iâ\200\231m also wondering, Mark, where your impetus to become a lawyer originated from, was it quite early on, or was it something you did...?

Well, I never really wanted to be a lawyer really, it was my motherâ\200\231s idea. I wante d to
be a Vet. I started...I started, in fact, doing Zoology and Science, and I wanted to get into Onderstepoort, and I just...and I think the thing that put me off that was, was I just couldnâ\200\231t bear the dissections, really, especially the live ones, and I was hop eless
at it, and there was blood all over the show. And then I failed two subjects at the end of my first year and my father was...and I wanted to go back and do something in the Science field. Then I was thinking more about doing Physics and Maths and I was thinking about Astronomy, and all sorts of things, but my father was dead against that idea, he said: you know, I donâ\200\231t know how you can go back and do a BSc when youâ\200\231ve just failed it the first time. So, I suppose, really, under a lot of pressur e from
him, then I swopped to doing a BA and I majored in Politics. And law was always my motherâ\200\231s idea for me, and I sort of drifted into it, frankly.

Right. Did you, at that time, get any sense of enjoyment from studying law or was it something...?

Not at all, I hated the whole thing, my father forced me through it, he said: well, just get the degree and then you can go and do what you like. And here I am.

Right. (Laughs). So, you did your BA, you did your LLB at Pietermaritzburg, and then from there, where do you go?

Well, then I worked as a judgeâ\200\231s clerk in Johannesburg for a year, my judge was Mr Justice Len Franklin. He was...in fact, it happened again by accident not by design, but he was one of the few judges in that division who just didnâ\200\231t hang people. So, that
was quite nice, because there was a lot of hanging going on at that time. And then he died at the end of that year, and I needed to find another job in a hurry. And I...and my wife...well, we werenâ\200\231t married at that time, but my partner, who Iâ\200\231m stil l with,
wanted to...wanted to go and do a teaching diploma at Wits, so I also needed to find something that paid enough for the both of us. So then, I taught at the Tech for a year and...

And you taught law?

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Ja, I taught law. And...and I think Iâ\200\231d applied...or Iâ\200\231d certainly asked at the LRC
previously whether there would be an opening for a fellowship, and there wasnâ\200\231t, but
they said: well, you know, apply formally, which I then did, and then I got the
fellowship the year after that.

So that was 19847

Ja.

Right, ok. And when you were there you were with other Fellows?

Ja, it was myself, Tim Bruinders, Ellem Francis and Mpueleng Pooe, were the four
Fellows that year. I think we were the second or third intake of Fellows after Paul
Benjamin and...ja.

So, when you started, how did you get to know about the Legal Resources Centre, had
you been aware of it earlier during your legal work, or...?

No, I suppose it was when I was a judgeâ\200\231s clerk, at that time their offices were in
Innes Chambers, and so I saw them there. Oh, and I knew...and they were all in
NUSAS, so I knew them from that.

From NUSAS, so Charles Nupen and Karel Tip...?

...Karel (Tip) and Paul (Pretorius), ja, well, I think Paul was a bit later...

Ok, right...

So, it was...I suppose it was from NUSAS, ja.

Ok. So, what was your experience of being a Fellow at the LRC, when you reflect on
it, what were some of your experiences?

It was great, really, you know, you were working with...with, I mean, people that I
probably never would have worked with any other way. And it was a real eye-opener.
It was getting into the township which I hadnâ\200\231t done much of. Ja, it was a very...it was
a very eye-opening experience, it was a very invigorating time. And I formed, you
know, well, one life-long friendship that year, as well, with Tim Bruinders, he and his,
or his then wife, he subsequently got divorced, and me and my wife, became great
friends, and we still are.

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And Iâ\200\231m also wondering, in terms of you coming hot on the heels of the Komani, the Rikhoto, the Mthiya cases, what was your sense of the test case approach and those legal victories?

Well, that was...you know, I suppose I learnt quite a lot there about legal strategy. The year I was there was really a labour year. It was the year of the Screenex and Fedsac cases, and I was involved in both of those.

What were those cases about?

(Whispers) No!

For the record...

Screenex...youâ\200\231re really asking me now, but it had to do with...ag, they were mass dismissal cases up...I think they...there must have been some sort of strike action first.

So it was a labour case?

Ja, they were the...two of the first cases that actually got heard before it became the Industrial Court.

Ok. And did you work with Charles Nupen on those?

Ja, Charles (Nupen) was the attorney...he was having a lot of health problems at that time. And that also...that also, sort of, threw Tim (Bruinders) and I into the deep end because we had to, you know, we had to do a lot of the work at that time. But, I mean, everybody was involved. Screenex was a trial, Paul Pretorius did that with Karel (Tip), Charles (Nupen) was the attorney. Fedsac was an...ag...ja, Fedsac was an application, which Arthur (Chaskalson) eventually argued. But I remember working on that replying affidavit late one night, with Tim (Bruinders), because Charles (Nupen) had been carted off to hospital, he was prone to collapse at that time, and ja...

In terms of working with people like Mohammed Navsa, Arthur Chaskalson...what were some of your experiences, and who were your principals during the rotations?

My principal for the first six months was Paul (Pretorius), and then I...the second six months I went to the Hoek Street Law Clinic.

Oh, right. So, did you work with Mr. Zimmerman?

Ja.

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What were your experiences with Mr. Zimmerman?

Well, Mr. Zim wasnâ\200\231t actually at Hoek Street, Lies] Power was at Hoek Street.

Oh, right...

Hoek Street was quite tough, actually, it was much...it was much nicer being in Elizabeth House...Hoek Street was seeing clients off the street, day in and day out, and dealing with unpleasant people on the other side.

And then subsequently, after your fellowship?

Well, then, I mean, again by accident, really, because while Iâ\200\231d been at the LRC, Cheadle Thompson & Haysom were starting up, and Halton Cheadle â\200\230phoned in one day and said he urgently needed somebody to go out and take a statement and I got sent out to take that statement. And then Halton was quite impressed with that statement, and I was intending to go to the Johannesburg Bar the following year, and a few days before Christmas, Halton â\200\230phoned me up and asked me if I wanted to do Articles, and Iâ\200\231d never really thought about doing Articles. But, then I did Articl es at
Cheadle Thompson & Haysom.

And that was two years?

That was two years, ja. Then I still wanted to go to the Bar, but I donâ\200\231t know, for some reason, then I stayed for another two years...

At Cheadles?

...at Cheadles. And then, as I say, that was in 1989, my wife and I were convinced weâ\200\231d never see democracy in South Africa and we had decided to leave. And so, we bought a Bedford truck, which we eventually lived in for eighteen months, and we were wandering up north trying to find a place to live, and we ran out of money in various places, and one of them was in Windhoek, and so I worked for the LSC there for nine months.

And that was the Legal...?

And that was during 435 which was also a fabulous nine months.

And the work at the LSC, how was that related to the LRC?

It was very different because they were in a...much more in a war situation and a lot of that work was really just suing the army. A lot of damages cases, and criminal

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cases, and it was a really, sort of, a lot more direct involvement, and people were getting killed. And we did a...Andrew Corbett did a fabulous case that year, still one of the highlights of my time in law, where he got an Anton Pillar order and he, Henk Smith from Cape Town, and I, searched the Walvis Police Station on an Anton Pillar order, it was fabulous.

Was that for the torture equipment?

Ja, and we were with our client...with Andrewâ\200\231s client, and within half an hour, we found everything, and put the police into a complete tizz, it was a very well-orchestrated operation from our side.

It sounds a lot like detective work as well. (Laughs).

It was fabulous, I canâ\200\231t tell you how nice it is suing the police (laughter) and how prissy they are about insisting that you put everything back where you found it, just like they donâ\200\231t do. (Laughter).

Yes, but, youâ\200\231d...obviously youâ\200\231d started law in the 1980s but youâ\200\231d been at university during â\200\23176, and then 1980s was really about lawyers in the trenches, and working for Cheadles must have given you a lot of exposure around political detention cases?

Working for Cheadle was very tough, I mean, I virtually had a nervous breakdown at the end of that. But...and working for Cheadle himself was impossible. But again, you know, one learnt different ways of skinning a cat, and how to achieve things with very little...Oh, and I donâ\200\231t know that we achieved an enormous amount, but, you know, we played an important support role to people who were achieving an enormous amount. And it got me, you know, into contact with the trade union movement and thatâ\200\231s really largely been my legal work since then, even, although less these days, but, pretty much up until now.

Ok. So, after that one year in Windhoek, what did you do then?

Well, you know, then it was February the pnd 1990, so, we came home. And while I was waiting to go to the Johannesburg Bar, because we got back in about March, and the pupillage intakes were in January and June. At that stage it was still a six-month pupillage. Cary Kimble had ME at the Pretoria office and they were looking for a locum, so, I was a locum there for three months.

Right, ok. What was that experience working with Nic de Villiers and others in the Pretoria office?

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Well, Nic (de Villiers) I'd known from Maritzburg, because he also studied there, and Nic and I were also good friends at that stage. I mean, it subsequently...subsequently Nic, I mean, became very eccentric and isolated, I think, and as far as I can tell, pretty much from everybody. So, I donâ\200\231t know what heâ\200\231s up to now. But at that stage I worked very well with Nic. Ja, and I enjoyed my time at the Pretoria office too.

And what were the types of cases that you took on there?

Well, Cary Kimble was doing Land, for the most part, as I recall, so it was really just continuing with her cases.

Ok. And then at what point did you decide to come to Grahamstown?

Iâ\200\231d been...Iâ\200\231d been at the Joâ\200\231burg Bar for seven or eight years, and our children were just about to go to school, and one day Clive Plasket, who Iâ\200\231d also known from Maritzburg and Articles at Cheadle, â\200\230phoned me up and said, well, you know, he was leaving the LRC and wasnâ\200\231t I interesting in taking over his position. And, in fact, it was just before our fortieth birthday, and my wife and I discussed it and we decided, you know, itâ\200\231s a good idea for the children, and itâ\200\231s a good idea for us, and weâ\200\231d been thinking of getting out of Johannesburg, and so then I applied. And at that stage, the LRC was on a big affirmative action hobby horse, and my application wasnâ\200\231t successful. Nobodyâ\200\231s application was successful. They re-advertised the position, and I was quite put out by that, quite frankly. And then Bongani (Majola) came to see me in Chambers and said: you know, I can imagine youâ\200\231re feeling quite put out. And...and by then Iâ\200\231d also done a Masters at Wits in Land Reform, that was actually what I wanted to come here and do, it didnâ\200\231t turn out that way. But, you know, wonâ\200\231t you apply again? So, then I swallowed my pride and I applied again. And after much humming and hawing and really, because they couldnâ\200\231t find anybody else, they eventually employed me, (laughter) I mean, I really felt welcome at the outset. But, then...then I did get the job and I started in...in the beginning of 80...â\200\23198.

â\200\231987?

Inaudible.

Ok. And so what were the focus areas that you implemented, what was the office like, what was your experience?

Well, the office when I came here had just blown apart, Clive had left and Gerald (Bloem) was leaving, and shortly after that Pushpa (Naidu) also left, her father died and she moved to Durban. So, I was the only one left, really. Iâ\200\231d come down...the idea was to do Land Reform, it was my idea. Anyhow, what I found in the office were...there were these seventy pension cases set down in the High Court, and they had to be argued, and so, I started with that, and then pensions just took over my life.

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And in terms of the test case approach, Mark, how did you...Clive Plasket mentioned to me that you had lots of applications and...?

Ja. Well, he started them, he drafted seventy applications and then he went to go and sit on the hill.

Right. (Laughter).

And they had to be finished.

Right...

No, I mean, he was a lot of help, he really was at that time, he really put an enormous amount of time and effort into helping me, because there was nobody else.

Gosh, right. As I understand it there was initially a lot of reluctance, particularly from the National Office or perhaps from other LRC offices, for the LRC in Grahamstown to take on the pension cases?

I know, hey, I never really quite understood that, well the main reason of course was that it was unfunded. In fact, all that pension work, over the five or six years that we did it, got funded by the Pension Department itself, effectively, because we never got any...any dedicated, or any other funding for it. We, sort of, got indirect funding through the Advice Office Programme, but, that was, you know, we couldnâ\200\231t avoid it because thatâ\200\231s what people...that was the main problem that was walking through the door every day and...from the Advice Offices, so, we had to respond to that need. And Clive (Plasket) had done a lot of the groundbreaking work and heâ\200\231d started off that â\200\230carpet bombingâ\200\231 litigation campaign. But the whole feeling then in the LRC had
changed, you know, thatâ\200\231s when the attitude in the LRC changed from litigation to something else.

Negotiation, would you say?

Ja, that sort of thing, and it was...and, you know, there were political...there was political resistance to suing the government of course.

Itâ\200\231s the ANC government?

Ja, it was feeding...it was supposed to be feeding into a DA agenda, and, you know, we should be building partnerships and, you know, and you canâ\200\231t sue your ex comrades, and all that sort of thing. But I did try that for about two years...

The negotiations?

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Mm. But, it just got us nowhere, absolutely nowhere.

Where do you think this was coming from, the resistance to suing an ANC government, was that coming from internally, from the office, or was it coming from other offices or from National Office, or the Trustees?

It wasnâ\200\231t from my office, I mean, my office was really just me at that stage. And then, a couple, you know, a couple of other...but it...I mean, the Grahamstown office was fine. It was coming from other offices, it was...I mean, we, sort of, experienced it at the places where we all...all meet at Exco and at the AGM. But, ja, there was...there was that kind of feeling, but...and it was...a lot of the land work, I think, suffered from that, greatly, to be frank, but, I wouldnâ\200\231t really know, because I wasnâ\200\231t in...didnâ\200\231t do much in the Land Unit. I just got swamped with pensions. I did a bit in the Land Unit, but that was limited to estate and tenure security cases, where I argued evictions and that sort of thing, but, I never got involved in big land restitution cases then. I subsequently did a labour tenant case for the Pretoria office, but, that was after Iâ\200\231d come back to the Grahamstown Bar.

Sure. What were some of your major cases, would that be pension cases...that you feel very proud of having done, whilst at the LRC?

Well, there was only one and that was Ngxuza, the class action pension case...

Could you talk a bit about that?

I mean, that is the best case that I probably ever will do in my whole career.

Gosh! Right.

And it got...and again it developed out of the â\200\230carpet bombâ\200\231 campaign, and talking to Clive (Plasket) a lot as to, you know, how weâ\200\231re going to manage this process. And again, by accident, really, because in the Bashula application, the government put a throw-away line in the answering affidavit, where they admitted that the way in which they had cancelled Mr. Bashulaâ\200\231s disability grant, was no different to the way...was no different to the way in which theyâ\200\231d cancelled everybody elseâ\200\231s disability grant. And they...at...I can still remember reading that line, quite late one night, and just virtually having a party, because then I knew that that was the way in, is that if they admitted that theyâ\200\231d done it the same way for everybody else, then we could get the same relief for everybody else, without having all these hundreds and hundreds of individual applications.

Right, ok.

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And so then, that was where the class action started from, and it took...and it took...it took a while to put that application together. Eventually, I compiled a dossier, a list of annexures two thousand pages long, and it was basically a dossier from all my advice offices in the Eastern Cape, showing that, yes, thatâ\200\231s right, everybody has been treated exactly the same way as Bashula and therefore everybody should be reinstated just the same way as Bashula.

And youâ\200\231d briefed Clive Plasket on that, at the time?

Clive (Plasket) was at Rhodes at that time. He gave me...he gave me immeasurable help from the point of view...he probably...he must have settled those papers, I mean, we were discussing it intensely, he was settling my drafting, he was giving me the admin, the cases from the academic point of view. And then I was fortunate, I had an intern by the name of Janine inaudible from Canada, who was just one of these people who was dedicated far beyond whatâ\200\231s good for her, and probably still is, and she did all the spade work in putting those annexures together, and really, without those two people it wouldnâ\200\231t have seen the light of day. But, otherwise ja, I put that application together and we launched it. And then it just consumed, I mean it consumed my life until...even continuing to the Bar, because following up that order was also a nightmare. And then there were the appeals and all the rest of it. No, Clive (Plasket) didnâ\200\231t argue the pensions case, Hans van der Riet from the Joâ\200\231burg Bar argued that case. Clive (Plasket) argued Bashula, because the judges were unhappy with me arguing Bashula because I had an affidavit.

And the outcome of ..that major case...?

Ngxuza, well, the outcome eventually was...it got settled eventually because it had to be, we didnâ\200\231t really have the resources to monitor compliance, but the government said they did reinstate everybody, I mean, we really had no way of verifying if that was true.

One would presume that people would come back though, if they hadnâ\200\231t been reinstated?

Look, there certainly was a lot of money. The one thing that is true, is there is a lot of money that passed from the government into the hands of people in the Eastern Cape and really, even without any intelligent discernment that is going to...by and large, had...find it...hands...way into the hands of the deserving. I mean, there was eventually even a special vote in Parliament, where they had to increase the budget for the Welfare Department here, by some millions to...just to pay for the class action. So, money did get transferred to poor people. It did keep...it did highlight...it did keep the Social Welfare Department in the headlines for over...for many years. But...but, whether it changed anything at the end of the day...look, I don...I suppose Iâ\200\231d like to think that it maybe was one of the impetuses for centralising the welfare service, which I think is an improvement, particularly for people in the Eastern Cape. But again, you know, Iâ\200\231’m not one...you know, I donâ\200\231t think any lawyer really believes that

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law changes things, in the sense of, you know, being at the forefront of social change, itâ\200\231s a support function.

But, when you started off in the early eighties, and given that the legal victories garnered by the LRC quite early on, Rikhoto, Komani, as I mentioned before, and given the fact that under apartheid Parliament was supreme, those legal victories could have been overturned, but they werenâ\200\231t, what was your sense of that?

It was always curious, actually, and I suppose it was something we never really understood, but...but the last government did, somehow, respect the Courts, once there was a Court Order...Look, they did...they did overturn some of them, they did pass... they did undo...they did undo some of the legal successes. I mean, I remember Fink (Haysom) had a lot of problems with that in Magopa, but he eventually won through. But, there was a strange sense of respect for the judicial system, and once there was a Court Order, then...the last government did actually respect that.

Right. Iâ\200\231’m also wondering whether, especially with regard to the pension cases, Iâ\200\231ve heard that thereâ\200\231s been an issue around government complying with Court Orders and judgments...?

.ja.

...has that been your experience?

Well, certainly itâ\200\231s a particular problem in the Eastern Cape, because the provincial government is so moribund. And itâ\200\231s not just Welfare Orders, itâ\200\231s...I mean, even your straight commercial transactions, and I think that has to do with, you know, the immense administrative problems that they have in Bisho, thatâ\200\231s what led to the appointment of the Pillay Commission, and...My sense is, is that...that Bisho is improving in small ways, but, I wouldnâ\200\231t really know.

Ok. So, when you...when you were the Regional Director from â\200\23198 till 2003, I think it was, what were your experiences in terms of the actual administration of the office, what were some of the tensions and...?

I was a very reluctant manager, I never wanted to do it, it was even worse then because the LRC was becoming a lot more bureaucratic...

From National Office?

Ja. We were constantly having to do these...I mean, the reports were fine, but then they had to be done in all these new ways, and then you just learn one lot of NGO speak and then there was another one, and it was just process, process, process and

workshops, and it just drove me crazy. And endless meetings, and I really hated that

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part of the job intensely, and it took...it detracted from the legal work. So, I was a very reluctant manager, I think I was...Iâ\200\231m quite a bad manager, Iâ\200\231'm certainly not good at dealing with people. But, it didnâ\200\231t really create any tensions in my office, that I can recall. Oh, there was one...ja...there was a...I had to dismiss our administrator, at that time, Joan Hack, who was a terrible woman, caused a lot of trouble in the office. And...I canâ\200\231t remember anybody else...I certainly had a lot of conflict with Sarah Sephton, but, that was towards the end.

She was a lawyer at the time?

Ja. She came in more or less as [was on my way out. Anyway, I tried my best to extricate myself from that job, which I eventually managed to do, and handed over to Johan Roos, who had come up from Cape Town. But, frankly, it didnâ\200\231t help an enormous amount, for some reason. Ja, there were a lot of tensions at that time, I suppose coming from...I experienced it was coming from outside more than from within my own office, but, they were developing within the office too.

When you say coming from the outside, do you mean, National Office?

There was tension between the litigators, and at that stage I just felt the LRC was just developing into any other NGO, you know? Which is fine, thereâ\200\231s nothing wrong with that, but, we were a litigating law firm and there are lots of other people that can do training and gender sensitisation and everything else that they wanted to do, and I was really only just interested in continuing with the...with what lawyers are trained to do. And there was that tension in the organisation, there were also endless discussions about race, there was race tension, gender tension, and it was...I just felt in somehow that some way that the organisation was tearing itself apart for no really good reason. You know, there hadnâ\200\231t been huge problems there before, and yet we were endlessly trying to fix something, which didnâ\200\231t appear to me to be particularly broken to start off with. And in the process of endlessly fixing it, we were messing it up.

Where do you think that came from? Do you think that came from the fact that there were a lot of tensions around the fact that Bongani Majola was there at the time, or was it...?

I donâ\200\231t know where it came from, I mean, Bongani (Majola) had picked up a lot of flak, I donâ\200\231t know why, I suppose...I was a great Bongani (Majola) supporter myself. You know, he was a good leader from the point of view he was a good people-person, he got on well with people, he was a good administrator. Ok, he lacked the stature of Arthur and Geoff and the litigators, because he was an academic, but, he didnâ\200\231t...you know, he wasnâ\200\231t disinterested in the legal work, he was very keen to do pupillage, which he eventually did. Yes, he did bureaucratise the National Office, which, with hindsight, was a huge mistake, it was far too expensive, and all the rest of it. But, you know, frankly, I was on Exco at that time, I donâ\200\231t recall pointing that out in any serious way. I probably supported Bongani (Majola)..you know, those sorts of ideas from Bongani (Majola) more out of...a kind of sense of loyalty, I felt that he was getting a lot of unjustified criticism from other quarters, and I probably went along

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with things like that...that massive bureaucratisation of National Office, more than I should have, because, you know, because I felt I did want to support him.

Iâ\200\231’m also wondering, one thing that has stood out when other people speak about you ,
although you say you were a terrible manager; But people like Nomfundo Somandi, for example, will say that you were incredibly encouraging, and pushed her to do things that she wouldnâ\200\231t normally have had the courage to do.

Ja.

So that...

Well, she took over from Joan Hack, you see..,

and she felt that you really empowered her to do that...

...Well, Iâ\200\231’m glad to hear that.

Yes And the other level that you get a lot of praise for is the enormous amount of travelling you did, going to advice offices. I’m wondering whether you could talk a bit about that, because I think that was a very special time, in terms of the co-operation between the LRC and advice offices, and it seems to me that the advice office culture, or certainly advice offices, have really dwindled away?

Well, I really enjoyed it, you know, it was getting into...into...out into the Eastern Cape, which is what I enjoy doing, and it was essential because thatâ\200\231s where the wo rk
was. So, for those two reasons I really liked it, and it had to be done and there was nobody else to do it.

Whatâ\200\231s happened since then, then, since the advice offices...?

The advice offices were...have collapsed largely...again funding, and again, you know, there just arenâ\200\231t the people any more to man them, like there used to be. Whe re
people would volunteer and run these things, you know, that whole cultureâ\200\231s changed ,
and people are now looking for more self-interested motives and trying to get positions in...Ja, so I think those two things. But, the advices offices, even...ja, even towards 2003, I could see the advices offices were in huge decline. I noticed it myself, I mean, Iâ\200\231d arrive there, people werenâ\200\231t in the office...

You mean people manning the office werenâ\200\231t there?

People manning the office, or they were there drunk or, you know, all sorts of things.

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Gosh!

And um...ja.

So, what then persuaded you to leave; youâ\200\231ve been wanting to come to the Bar for a long time, but, what persuaded you to leave the LRC?

Ja, I wonder eventually...Iâ\200\231d...I canâ\200\231t think of a specific reason, other than that, yes, I
was getting more...I was getting quite unhappy, and it was just quite a stressful situation. Iâ\200\231’m trying to think of specific things, but I was quite stressed at that time
and I just felt that there were just so many demands, and I just really wanted to streamline my life a bit more.

Did you feel that the LRC wasnâ\200\231t litigating enough, was that part of it?

I did feel that, particularly in the Land Unit. And it was just very...it just seemed to be very difficult to...it just seemed like a lot of effort to get anything done, it was very difficult to get good lawyers to assist. Ja, I just felt very...I just felt very snowed under
on all sorts of different fronts, and that I wasnâ\200\231t making much headway, you know? I
wasnâ\200\231t earning the sort of salary that could afford my childrenâ\200\231s school fees, I was
having to do a lot of extra private work to make ends meet, and I just got to the stage where I just thought: well, you know, thereâ\200\231s got to be a simpler and less stressful
way of just paying the bills, which is, at the end of the day, what I’m really here for, for my family. And ja, so then I came back to the Bar.

Ok, and youâ\200\231ve been here ever since?

Ja.

Right, ok. So, since...since you left the LRC, whatâ\200\231s your level of contact, if any?

Well, at the moment, unfortunately itâ\200\231s completely severed with the Grahamstown office, which is entirely due to an unfortunate personal relationship that I donâ\200\231t have
with...well, I do have...but, I donâ\200\231t have any relationship any more with Sarah Sephton; that disintegrated completely, it was problematic from the word go. It was in

decline, really, and now, itâ\200\231s non-existent. So, thatâ\200\231s the main reason for that.

So, as a consequence, you donâ\200\231t get briefed at all?

No, I donâ\200\231t do any work for the LRC. I did...I did do some work for the LRC. My honest impression is, is I donâ\200\231t think this office is doing an enormous amount of work,
at the moment, which is at least some of the reason for the tension and conflict between me and Sarah, because she feels that I'm hypercritical, and I am. And I donâ\200\231t...I donâ\200\231t do work for any of the other offices any more either. I donâ\200\231t know too

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many people in the LRC any more. Oh, actually I say that, um, I did get pulled into William Kerfootâ\200\231s artisanal fisherâ\200\231s case, last year. But, again, I donâ\200\231t think that was his idea, I think that was Timâ\200\231s (Bruinders) current partnerâ\200\231s idea, Nadine Fourie, who was involved in it, she still is. So, again, I donâ\200\231t think that came from the LRC.

Ok.

But, at the moment, no, I'm not involved in any work at all for the LRC. The last major case, apart from the artisanal fisherâ\200\231s case that I did, which got settled, and now is continuing again, was the Pretoria officeâ\200\231s labour tenant case, which was actually a great case. I did that with Asmita Thakor, sheâ\200\231s now at the Pretoria Bar, and as far as I know, itâ\200\231s still the only labour tenant case ever to have been done in South Africa ...

Really?

...and it was successful...

Can you talk a bit about that, Mark?

That case involved a labour tenant family that live on...lived on the same farm for...since the turn of the last century, so it went back to about great grandfather. Theyâ\200\231d been...theyâ\200\231d been proper labour tenants, theyâ\200\231d had crop and grazing rights, all of that time, in lieu of payment. And then they were facing eviction, I mean, the farmer...and it wasnâ\200\231t a new farmer whoâ\200\231d come in, it was...Uys...it was also somebody whoâ\200\231d been there his whole life, and very right-wing, sort of, typical kind of, very reactionary-type of people, and...ja...and they just wanted to get rid of the Msizas for the sole reason that they didnâ\200\231t want them to have permanent rights to their land. Very acrimonious case, reminded me a lot of actually pre 94 type litigation, quite an emotional case. It ran for a week in the Land Claims Court, and we were successful, at the end of the day, in front of Judge Moloto, I think he transferred...it was roughly about sixty hectares of the farm, permanently into the Msizaâ\200\231s name and they can never...itâ\200\231s now...they now own that land in perpetuity.

Right. Iâ\200\231m also wondering, recently there have been attacks on the judiciary, the Constitutional Court, the Constitution, thereâ\200\231s what Arthur Chaskalson and George Bizos have released a statement...emphasising the independence of the judiciary and the use of intemperate language from certain quarters. What are some of your concerns for Public Interest Law organisations, like the LRC, more generally?

Ja. Well, those are all worrying things, you know. And one does have to be concerned because, really, there is always a need for...and I have quite a cynical view of human

nature, and I feel that poor and powerless people will always be exploited by the rich and the powerful, and so, thereâ\200\231s always a need for some sort of, inadequate as it may
be, some sort of balancing, or some sort of defence for people like that, and all of those things are worrying. Look, itâ\200\231s never...I mean, people think that after â\200\23194,

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human rights became fashionable and popular, itâ\200\231s never been...itâ\200\231s never b
een
fashionable or popular, particularly when itâ\200\231s effective, then it becomes very
unfashionable and very unpopular. And in the old days it was, you know, youâ\200\231re a
front for the Communist Party, now itâ\200\231s, youâ\200\231re a front for the DA, or, you
know,
whatever happens to be the...So, there will always be that vilification. But, it is
worrying when itâ\200\231s applied to, I mean, when...when...it is worrying when...when
judges feel that...and theyâ\200\231re all placed under the types of pressures that litigat
ing
lawyers take for granted, I think it is worrying, because it is...it is powerful and it is
influencing. So, itâ\200\231s...it does make me worried and it does make me quite pessimist
ic,
and I hope it will change, but, Iâ\200\231m not so sure that it is going to.

In terms of...

...as I say, thereâ\200\231s that...there was that strange thing, you know, with the last
government that that was lacking, you know? I mean, theyâ\200\231d criticise the Communist
lawyers who were litigating in the court, but, theyâ\200\231d never criticise the judges, e
ven
judges like (Richard) Goldstone, or, (John) Didcott, who were handing down the
orders because they were the judges.

Right.

...and thatâ\200\231s whatâ\200\231s different and that is...and that is worrying.

So...what youâ\200\231re saying is that thereâ\200\231s a concern you have of the lack of r
espect for
the rule of law?

Ja, certainly. I mean, the Constitution is a fragile document, particularly given the fact
that the ANC has a two thirds majority and can easily amend it, if theyâ\200\231re prepared
to
weather the consequences of public and international opinion. So, itâ\200\231s not cast in
any
sort of concrete.

The PE office closed at some point and then, more recently, the Pretoria office closed.
What are...do you have concerns about the Grahamstown office closing and how
would that then impact on the Eastern Cape?

Ja. We always thought that we would avoid that because it would just be too...well,
because we thought we were doing good work and it would be too devastating for the
people in the Eastern Cape. Frankly, now, you know, if the Grahamstown office is not
going to do anything, then, they might as well close it, I donâ\200\231t know what they are
doing now, but, I suppose I might be unfair because I donâ\200\231t have much contact. But,
you know, I know whatâ\200\231s going on in this court, and I donâ\200\231t see much happen
ing. Ja, I
think it does have a big impact on the Eastern Cape because there are so few resources

here. But it seems to me, frankly, and I know the LRC is in a funding crisis, but it seems to me, if the LRC, in order to survive, is then going to be a Johannesburg, Cape Town-based organisation, then so be it. That, of course, is not where the bulk of the

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problem lies, the bulk of the problem does lie in the provinces that theyâ\200\231ve closed the offices in, those are the poor provinces, the Eastern Cape and the Northern Province. So, you know, thatâ\200\231s the irony of that situation, but, you know, youâ\200\231ll find poor people everywhere in South Africa, including Johannesburg.

Sure.

Ja, itâ\200\231s...again itâ\200\231s a big problem for the rural poor, they really always get the...get it the worst.

Absolutely. Iâ\200\231'm just wondering, in terms of your own practice, what is it largely, is it Public Interest, or, is it commercial...?

Not at all. I mean, these days...I used to...I used to do a lot of trade union work, even thatâ\200\231s falling away now, Iâ\200\231d really have to say, now, I have a pretty much completely commercial practice. I do a lot of property work for the rich, you know, fighting about views, and sub-divisions, and town planning rights, and that sort of thing. I still do some labour work for Cheadle Thompson in Johannesburg, thatâ\200\231s about my only union work left. I do some labour work for the Port Elizabeth Municipality, which is then against SAMWE. I do some town planning work, also for the municipality. And then just recently, for reasons that...one of the clerks I trained at the Grahamstown office who then also subsequently became an attorney there, Thabita Qangule, I donâ\200\231t know if youâ\200\231ve interviewed her?

No.

Sheâ\200\231s now legal advisor to the Premier of this province, and sheâ\200\231s just started sending me some medical negligence work, so Iâ\200\231ve been defending the Department of Health on medical negligence cases; thatâ\200\231s the case that Tim (Bruinders) and I are involved in next week. Itâ\200\231s a huge medical negligence case, the trialâ\200\231s going to run for about a month. So, to be frank, no, the Public Interest Lawâ\200\231s quite limited, say, for what I do pro amico, I still try to do my share of pro amico work.

Right. And none of that is LRC?

None of itâ\200\231s LRC, no, itâ\200\231s just, I mean, the Grahamstown attorneys they know if theyâ\200\231ve got a heartbreak hotel case, where to come to, so, I mean, recently I did a case

for a waitress in Port Alfred in the Labour Court, being involved in an acrimonious divorce, or a housekeeper, and that sort of thing.

Mark, Iâ\200\231ve asked you a range of questions, Iâ\200\231’m wondering whether thereâ\200\231s something
Iâ\200\231ve neglected to ask you, which you feel ought to be included as part of your LRC Oral History interview?

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Ja, no, I think itâ\200\231s been quite thorough. I mean, on balance, Iâ\200\231d have to s
ay, you know,
that...that, you know, the LRC has...has been a...was a wonderful experience, and it
shaped my life in many...in many ways. Oh, too...maybe one thing I could mention,
one of the things that I also got out of the LRC is, I spent a month in West Africa and
another month in Tanzania, which was fabulous, especially as a white South African,
we never had the opportunity to travel in Africa.

Sure. Were these for conferences...?

Ja, the one was to go and address a conference for Bongani, that was the West Africa
one, and then I did a...in Tanzania...I was mainly on Zanzibar, actually, I did a...that
was an exchange, I worked in an advice office there for a month, ja.

Gosh! And how was that experience, how did it compare to the South African...?

Look, I mean, legally, I did absolutely nothing at all, there was nothing happening,
but, just the whole...just the experience was fabulous, from my point of view. I wrote
two manuals for them because I really couldnâ\200\231t find anything else and they couldnâ
\200\231t
find anything else for me to do. I donâ\200\231t know whether theyâ\200\231ve been of any b
enefit to
man or beast.

Iâ\200\231’m sure, (laughter) theyâ\200\231ve been of benefit. I wondered whether we could
end the
interview by you sharing a particular memory that you might have of all your time in
the LRC, I note that youâ\200\231re still friends with Tim Bruinders, and that goes way bac
k to
1984, but, even if itâ\200\231s a case, a particular client, that you really treasure, as p
art of
your experience of the LRC and doing Public Interest Law?

Phew! I wonder. I...ja...I mean, I donâ\200\231t know, maybe thatâ\200\231s not an answer t
o your
question, maybe Iâ\200\231’m a bit superficial, maybe I can end off on a light-hearted note
.
(Laughter). One thing I remember at Arthurâ\200\231s (Chaskalson) farewell and Madiba got
invited to speak, and he came along and said, well, heâ\200\231s now been listening for...a
ll
night to what a great lawyer Arthur Chaskalson is, he said: but, I have only had
occasion to make use of his services once. And I got twenty-seven years. (Laughter).

Thatâ\200\231s wonderful. (Laughter). Thank you, Mark. You do a very good Mandela impersonation. (Laughs).

I do a good George (Bizos), too.

Oh, could you do that?

Oh well, Mark, I think we scored with that point.

(Laughs). Thank you very much.

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DOCUMENT DETAILS:

Document ID:- AG3298-1-043

Document Title:- Mark Euijen Interview

Author:- Legal Resources Centre South Africa (LRC)
Document Date:- 2008