



Voices from the Rwanda Tribunal

Official Transcript: Dennis Byron (Part 1 of 10)



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| Role: | President and Judge |
| Country of Origin: | St. Kitts & Nevis |
| Interview Date: | 28 October 2008, 5 November 2008 |
| Location: | Arusha, Tanzania |
| Interviewer: | Robert Utter |
| Videographer: | Max Andrews |
| Interpreter: | None |

Interview Summary

Dennis Byron expresses satisfaction at the approach to reconciliation taken by the UN in Rwanda. He highlights the responsibility of Tribunal judges to ensure that justice is conducted fairly and impartially, and appears as such in both process and result. He notes that, in addition to delivering justice, the Tribunal also creates a factual record of events that occurred. He expresses frustration with the Tribunal for the unsatisfactory length of trials, inefficiencies in administration and infrastructure, and the extradition process of suspects.

The transcript of Part 1 begins on the following page.

Part 1

- 00:00** Robert Utter: Your Honor, I had the privilege of reading your biography and I'm fascinated by it. There's so many questions I have, not relating to the ICTR that it would take all day to work through those but if I may introduce myself first.
- 00:16** RU: I was Chief Justice of the Washington State Supreme Court, a state with about 7,000,000 people and approximately 25,000 lawyers. In our state we're in charge of the lawyers as well as the judges and so we have a great deal to keep us busy.
- 00:35** RU: I also chaired a national organization called the American Judicature Society. It dealt with merit selection and retention of judges and judicial education. I was fascinated to read this outline of your program for the next four or five days, 'cause it is identical to what we do, not just in the United States, but it's been my privilege to conduct programs like this throughout the world.
- 01:02** RU: I educated Iraqi judges for three years in Prague and we touched on almost exactly the principles that you speak of here, so I'd love to hear what your program will be. I was interested in the titles that are involved here. 'The Right Honorable,' I must say, you've earned. Tell me, what is that?
- 01:27** You know, we, we're still part of the British Commonwealth . . .
- 01:30** RU: Yes.
- 01:31** . . . and although St. Kitts is an independent state, it's a monarchy.
- 01:37** RU: Yes.
- 01:37** And the Queen of England is still the Head of State and from time to time she appoints members to her Privy Council and I had the privilege and honor to have been appointed as a member of Her Majesty's Privy Council.
- 01:58** So the phrase, 'Right Honorable' is a result of that appointment. Of course, because I, I am an overseas appointee, it's rather honorary, although I have attended a meeting of the Privy Council on one occasion but it is, I think, it's probably more honorary than functional.
- 02:27** RU: But it is a nice recognition of your ability, your stature and thank you for the explanation. There's one other thing I ran into in going through your biography and that is your assignment to the Maurice Bishop criminal trial. It was just mentioned in two lines in the biography I read but what was involved in that, sir?
- 02:49** Well you, you recall that in, in 1983 the US Government was involved in the invasion of the State of Grenada?
- 03:00** RU: Yes.

- 03:01 And that had to do with the end of the revolutionary government under Maurice Bishop's regime. It had come to an end when a faction of the government killed Maurice Bishop and a number of other persons and there were a number of trials arising out of that, including the trial for the murder of Maurice Bishop and ten other persons at the, one of the army headquarter sites in St. Georges, Grenada.
- 03:48 The, the persons who were accused were the members of the Central Committee of the governing party and some of the soldiers who affected the killing. I was assigned by the Eastern Caribbean to act as Chief Justice in Grenada for the purpose of conducting the trial and it lasted for approximately one year in 1986.
- 04:20 RU: And was that at all similar to the work you do here at the ICTR?**
- 04:26 Well, one can find a number of similarities but it, but it's different because I was representing, I was sitting in a domestic jurisdiction.
- 04:34 RU: Yes.**
- 04:35 I was a single judge with a jury. Here, we are conducting an in-, international tribunal. I sit on a panel of three judges, without a jury. The rules of procedure although similar, have significant differences. The security issues are much the same on, on both situations. There, there are similarities and, and, and differences.
- 05:07 RU: I would be interested in the procedural differences and similarities.**
- 05:14 Well, the, the, as you would imagine, the, St. Kitts has a common law system, (____), and which is very similar to that in the United States in the management of criminal trials with a jury.
- 05:35 And the criminal procedural rules here in the, in the ICTR combine many elements of the common law procedures but they also include some elements that are more common to the civil law practice and procedure. It's a bit of a hybrid system. So the, I think the, the, the first issue is that the process of, of issuing indict-, an, issuing the indictment includes the judge.
- 06:11 RU: Ah.**
- 06:13 When the Prosecutor has enough information to, to indict, he has to apply to the judge to confirm the indictment and he submits the supporting material, which informs the preparation of the indictment to the judge.
- 06:32 The judge has the opportunity to confirm it or to refuse to confirm it, or to direct amendments or, or further the investigations if he thinks it is necessary. So, so that's the first issue.
- 06:47 Then the, the second issue is the, the process of initial appearance. When the, an arrest is affected, the judge or a judge of the tribunal has to see the accused person at the

first convenient moment after the arrest and ensure basic guarantees of, of his rights have been, have been provided to him.

07:29 You know, we make enquiries of the provisions of a lawyer, the fact that his, he's received information in a language that he can understand and various things of that nature, and we take the plea.

07:45 Then there is a, a, a procedure which follows, which allows, which requires the prosecution to give detailed information to the accused of the cause of the charges against him and this involves serving all of the statements that are to be used in the trial 60 days before the commencement of the trial.

08:14 And, and during that pr-, process, the defense also has an opportunity to challenge the indictment or, and, or to, to apply for the court to, to, to assist in tightening the indictment up. And the tribunal has developed very, quite a significant body of jurisprudence on the, on the, on the indictment. We, we call this the vagueness of the indictment jurisprudence.

08:48 RU: Yes, yes.

08:50 Requiring the Prosecutor to be very precise, as precise as possible in identifying the nature and cause of the charges against the accused. So you, we have a, a, a pretty active pre-trial jurisprudence and process before the c-, trial actually commences.

09:11 Once the trial starts the, well, we have, I have this discussion with many people as to the, the, the, the interplay between the common law and the civil law processes and I, it's very interesting that even, I think that during that pre-trial phase, the rules allow the chamber to exercise many of the powers that one would associate with an investigative judge.

09:43 And, and it's been used to a great or lesser extent from time to time and by different chambers over the duration of the, of the tribunal. Once the trial starts, the actual hearing starts, the process is much more similar to the adversarial advocacy to which the common law jurisprudence are accustomed.

10:07 The, the, the Principle of Orality dominates the proceedings. The majority of evidence is given orally by the witnesses and the witnesses are led, in chief, by the side of the party which calls the witness and then there are rights of cross-examination.