



CARIBBEAN COURT OF JUSTICE

**THE ADMINISTRATION OF JUSTICE IN MONTSERRAT AND THE
IMPACT OF THE VOLCANIC ACTIVITY**

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**A public lecture delivered at Brades, Montserrat, Caribbean, on 3 November
2005 at the invitation of the Montserrat Police Service during the annual Police
Week of Activities.**

Salutations

Let me first thank the Commissioner of Police, Mr. Douglas, the entire Police Service and in particular Superintendent Lee for inviting me to make this address this evening and for the wonderful arrangements that have been made for Marilyn and me. We do appreciate it. I have a special connection with Montserrat. Quite apart from the enjoyable times I spent here it is my service on this island (and in Anguilla) that provided the launching pad for my judicial career. I hope you don't mind if I use this opportunity to re-live some of the memorable occasions I experienced here in the Emerald Isle.

I actually commenced my judicial career here in Montserrat on Sunday 16th September, 1996. I was apprehensive, nervous, full of trepidation. It is truly amazing the difference a day makes. Just the day before, I was at work in the familiar surroundings of my own Barrister's Chambers in St. Vincent with a wonderful wife and two young children waiting for me when I should return home. I was my own boss, head of my Chambers. I could pick and choose my clients. I didn't have a single grey hair. But as the plane touched down at Blackburn Airport that Sunday, I felt all alone in an island that had an active volcano mis-behaving. I now had a Chief Justice to whom I had to report. But most of all I was in awe of and utterly humbled by the profound responsibility our constitutional democracy places on a High Court Judge. Knowing that with the stroke of a pen, the turn of a phrase, you have the power to deprive a person, perhaps a father with a wife and children, of his liberty, for years or, as is the case in other territories, sentence him to death, is truly a frightening power to invest in someone. I prayed for divine guidance.

I need not have been *so* anxious. At the airport I received a very warm welcome from Ms. Eulalie Greenaway, the Registrar. She and my efficient, business-like Police Orderly, Mr. Philip Mulcare, ensured that I was comfortable at the Vue Point Hotel where the Osbornes also really made me feel at home. The following day I paid official courtesy calls on the Governor, His Excellency Mr. Frank Savage, the then Chief Minister Mr. Reuben Meade and I also had an audience with the Attorney General Hon Gerthel Thom. As an aside, I believe you would all be pleased to learn that one of the last things I did when I acted as Chief Justice of the ECSC was to preside over the Judicial and Legal Services Commission that appointed Mrs. Thom as a High Court Judge. I was happy to endorse that appointment and I am sure that she will be a sound Judge.

The next day, Tuesday i.e., 18th September, 1996 I will always remember. It was the first day I sat in Court as a Judge. There were only three minor applications to deal with and before I started upon them I received another warm welcome from Lawyer David Brandt, whom I knew well when we were both UWI students in Barbados, and also from Jean Kelsick. But there was something else that was remarkable about that Tuesday.

How many of you recall Tuesday 18th September, 1996? I suppose subsequent events might have caused your memories to fade. But this was my third day in Montserrat and so I vividly remember. At about noon that day the volcano began really acting up. Even though I had witnessed something similar in St. Vincent in 1979, it was a sight to behold. These gigantic clouds of smoke and ash and gas and whatever else volcanoes spit out, sometimes white like flour, sometimes dirty grey in colour, silently mushrooming up and out climbing upon themselves as they reached for the heavens, then gently fanning outwards when they could ascend no further. There were dozens of them, one after the other. Sometimes a new one would merge in its ascendancy with one before it that had reached its zenith and had hung in the air uncertainly waiting for its marching orders from the wind. My fellow

guests at the Vue Point hotel gazed somberly at the swelling scene as we picked at our lunches, everyone hoping and praying that the inevitable heavy ash falls to come would spare us. And mercifully, they did, then.

Later in the evening as I lay in bed reading the volcano exploded. Lightning lit up the sky as if it were Guy Fawkes or Old Years's night. I quietly got out of bed, put on a decent suit of clothes and my running shoes, placed two boxes of matches in my pockets and went outside in the porch to watch the fireworks. Soufriere Hills had become one angry, bellowing monster. I couldn't see the large plumes of smoke and ash that I knew must be in the air above, but the lightning was a terrific sight to witness. The air was rent by the crashing sounds of thunder and explosive activity. As one caller to the radio station said the following morning, it was like you were in the midst of a major war. And then, it began to rain, not water, but pumice stone and small pebbles. One of them struck my window so ferociously that I still can't understand why the window was not smashed. All the time I stood in my porch looking in the direction of the snorting giant. I noticed but chose to ignore some activity in the hotel lobby about fifty yards away in the opposite direction but I didn't feel inclined to go up there and get in anyone's way. Besides, I was simply intrigued by what was happening. I wasn't scared. I think I regarded the absence of earthquakes that I could feel as a reassuring feature. Then the lights went out and the phone went dead. Naively, I went to bed oblivious of the fact that the flurry of activity up at the hotel lobby represented the desperate efforts of some guests to evacuate the hotel in a panic. What a Welcome to Montserrat!!!

It goes without saying that the volcanic activity that has plagued Montserrat over the last ten years has affected every facet of life on this island. The justice system has been no exception. One of the serious challenges with which we had to cope was finding suitable premises for the Court. For the High Court, you need more than just an empty room. You need a raised Bench for the judge, a bar table for the lawyers, a prisoner's dock, a witness box, a place for the jury panel, Chambers for the Judge because some times the Judge has to hear some matters in Chambers. You need adequate space for the court office staff and their office equipment, you need a secure room in which the jury can deliberate in peace and enough seating space for jurors to wait for their names to be called. In the search for adequate premises, in only three years between 1996 and 1999 we occupied seven different venues. First we were at Ms. Gertrude Edwards' house. Then we came down to the spacious Conference room of the Vue Point Hotel. But then Olde Towne found itself at risk so we moved to Ms. Bernice Weekes' house and then to Mr. Bill James' house. Then the Catholic community allowed us the use of the St. Augustine Primary School but then we moved again, this time to the Bramble's house. But that house could not accommodate the major Barclays Bank robbery trial so we moved up to the Salem Primary School for that marathon. And finally the court came to rest in our new home in the Administration Buildings at the very scenic Brades site.

Such constant moving from one place to another presented a formidable challenge not just to the judicial officers but also to the court staff who did an admirable job securing relevant court records and equipment, protecting them as best they could from the omnipresent ash and making sure that the administrative work fully supported the work of the judge and the magistrate. In this regard, I wish to pay tribute to the Registrars with whom I worked during the five years I spent as the High Court Judge of Montserrat. These included Ms. Greenaway whom I have previously mentioned; Mr. Rhys Burriss who doubled as Magistrate for a brief period; Ms. Mary Taylor who really was a pillar of strength at times when I felt most stressed; Mr. Colin Meade whom I had the pleasure of admitting to practice, and Ms. Sonya Young who, pleasantly and professionally, did an amazing job as Registrar of the Supreme Court, building staff morale and devising important systems, methods and processes at the

Registry department. Each of these officers and their staff members must be stoutly commended for the huge effort to keep the administration of justice going in spite of the awful conditions which the whole island was experiencing.

Another area that was impacted seriously by the volcanic activity was the prison facilities. I had never visited the prisons in Plymouth but I am sure that that facility was adequate for its role. The evacuation of Plymouth meant that a new facility had to be found. Like the court, the prisons too moved from place to place. This again was a serious challenge not just for the authorities but moreso for the prisoners. Some people believe that an incarcerated person forfeits basic human rights; that prisoners can be treated in any manner because it is felt that they are the scum of society. Those are foolish and even dangerous views. The dislocation caused to the prison population by the volcanic eruptions caused a crisis in prison management and some prisoners were quite unable to cope with the circumstances in which they had to be confined. One or two actually filed constitutional motions against the State alleging inhuman treatment. Some of them were completely disoriented. There was one prisoner in particular who used to be a model prisoner when the Prisons were in Plymouth. He was frequently entrusted by the prison offices to take on small responsibilities in the prisons. However, in the cramped and barely tolerable conditions forced upon the prisoners as a result of the crisis, he became aggressive and rebellious and escaped several times. Each time he escaped and appeared before me I would be struck by the earnestness with which he complained about the prison conditions. He expected the State, and rightly so, to treat him much more humanely than he treated his fellow Montserratians..

Generally I tried to hand down lenient prison sentences when I sat in Montserrat. This accounts for the bank robbers being given by me terms of imprisonment that really were extremely low. Among the matters I took into account in doing so was the fact that I felt it was no use further overcrowding the makeshift building used as a prison thereby risking the exacerbation of already difficult conditions.

The justice system also suffered heavily from absenteeism. The civil justice system was particularly hampered by the mass exodus of Montserratians following the eruptions. At times it was almost impossible to fix trial dates because either the parties to the action or vital witnesses of theirs might be abroad. Sometimes it was the lawyers too who might be off island. This resulted in aggravating the delays in the hearing of cases. It didn't seem to me fair and just to strike out a case because a litigant or an important witness was forced to leave the island to earn a livelihood and so here again I tended to be liberal about granting adjournments, a practice that in other circumstances might be frowned upon.

The criminal justice system in a small island like Montserrat operates under severe constraints. I recall giving a Paper about this a few years ago. For a start, very serious crime is unusual. The infrequency of serious crime makes a rape or a murder, for example, a hot conversation topic throughout the entire society for days on end. By the time the alleged offender is to be tried by a jury, all the circumstances surrounding the crime have been thoroughly ventilated. It is therefore almost impossible to empanel a jury whose members have not previously formed a view on the matter.

The closely knit character of the society produces some undesirable but unavoidable results. It is not unusual for there to be some contact outside of the courtroom between Counsel and one or more of the jurors. During the Barclays bank trial, one Monday morning just before the trial resumed, Ms. Weekes, the Montserratian born prosecutor who had practiced all her life in England, gathered the defence counsel and approached me in Chambers. She was in a state of some agitation. She announced to me with great regret that over the weekend she had unfortunately communicated with one of the

empanelled jurors. It was all quite innocent she quickly added. A gentleman showed up at her house to clean her swimming pool and while he was at it they exchanged Hellos before to her horror, she recognized him as a juror in the case. She said in her 18 years of practice she had never had such an encounter. In England she would have been obliged to report the matter instantly to the judge who would have taken a very serious view of it. So there she was in front of me wringing her hands and looking anxiously askance at defence Counsel. I smiled to myself because the previous day, while at Father Larry's Mass, I was only two pews away from sharing the sign of peace with two of the accused in the same trial.

One of the things that I found here in Montserrat was that an accused Montserratian had to be really really guilty before a Montserrat jury would convict him or her. I recall quite a few instances where I thought that an accused was guilty but the jury evidently thought otherwise. What is important and laudable though is that I never came across the converse. I don't recall an occasion where I thought the jury should have acquitted and instead, they convicted.

I believe that notwithstanding these difficulties, one of the great strengths of the Montserrat judicial system is that it is an integral part of a wider, a regional judicial system, namely the Eastern Caribbean Supreme Court. In this regard, Montserrat and its leaders over the years must be heartily commended for their foresight in maintaining firm and strong regional links. As part of the ECSC, the Montserrat judicial system has been part and parcel of the many reforms introduced by Chief Justice Byron. These reforms have accounted for the modernization of the courts throughout the Eastern Caribbean resulting in greater efficiency and effectiveness in the administration of justice.

When I was appointed as a Judge in 1996, I never received any form of judicial orientation. In matters such as judicial ethics and sentencing, you followed your conscience and your best understanding of what you thought was required of you. Sometimes that was not enough to guarantee the best results and you really ended up learning the hard way, by dint of your own personal experiences. In the nine years I have been on the Bench, thanks to Chief Justice Byron's reforms, we have moved towards a more focused and purposeful approach to judicial education. Judges now learn consciously, systematically, from our collective experience and also from the experiences of judges and courts the world over. We have a judicial education training institute that is dedicated to gearing judicial officers for their role in a reformed justice system. The Institute ensures that every new judicial appointee is given a full orientation before embarking on his/her duties. The Institute also organizes special programmes for judges, magistrates, registrars and support staff to enhance their competency levels and render them more efficient and effective. Justice Creque, Mr. Warner, Mr. Carney Osborne, Ms. Dorsette and many if not all of the support staff have all benefited immensely from the programmes put on by the judicial education institute. The ECSC judges also now have a written code of ethics to guide them.

One of the biggest reforms effected by Chief Justice Byron has been the overhaul of the civil justice system. Throughout the Eastern Caribbean, civil cases used to take forever before they were tried. There were horrendous delays and a huge backlog of cases clogged up the system. Judicial time was inefficiently utilized because on the morning of a trial the lawyers might suddenly announce that they had arrived at a settlement which meant that the judge now had nothing else to do for the remainder of that day. The lawyers were also allowed to engage in what some call "trial by ambush". In other words you kept your cards close to your chest, you never disclosed the names of your witnesses or what they were coming to court to say or the points of law you intended to take until the day of the trial all so

that you could derive a tactical advantage by the element of surprise. We did away with that when new civil procedure rules were introduced in 2001.

We employed two new judicial officers, called “Masters” to oversee the flow of the cases. The Judge, the Master and the Registry staff now control the case flow. In particular, before a case is tried by the Judge, the Master has a conference with the lawyers and the litigants and discusses the case with them. Many cases are actually settled at that stage. If the parties cannot settle at that stage then they can mediate their dispute because the court has trained a number of mediators in Montserrat. Another area in which Montserrat has made major strides is in keeping up with information technology. In line with other ECSC states the Montserrat Court has also computerized its operations thereby enhancing its efficiency.

There is no way that I can end this address without speaking about the Caribbean Court of Justice (CCJ). After all, Montserrat is a full member of CARICOM. The CCJ will have two jurisdictions, an original and an appellate. Firstly, in order for the CARICOM Single Market and Economy (CSME) to function effectively, there is need for a single tribunal to interpret and apply the revised treaty of Chaguaramas. That tribunal will be the CCJ. When the CCJ plays this role it will be discharging its *original* jurisdiction. Secondly, the CCJ will replace the Privy Council as the court of final appeal in civil and criminal matters for those English speaking CARICOM countries that so desire. This will be the *appellate* jurisdiction of the CCJ.

Throughout the Caribbean region, there has been tremendous debate regarding the desirability of establishing the CCJ. Most of the discussion has centred on the appellate jurisdiction of the court since most observers recognize the need for the CCJ, or at least a body of a similar nature, to perform the role that the CCJ will perform in its original jurisdiction.

Regrettably, in some quarters the idea of a Caribbean court to replace the Privy Council has become embroiled in the death penalty controversy. The truth is that long before this controversy arose, the notion of a regional final court of appeal was recognized. All of the former British colonies that once used the Privy Council have gone on to establish their own final court.

The CCJ is funded by a Trust Fund capitalized at US\$100 million. That money has been raised by the Caribbean Development Bank and the fund is to be administered by an independent Board of Trustees. The investment of the fund will yield sufficient sums of money to take care of the expenses of the CCJ for the foreseeable future.

The CCJ is more than just a court of original and appellate jurisdiction for the Caribbean region. It is a body that can assist in fostering a Caribbean jurisprudence, a role that the Privy Council could never perform. The CCJ can also play a significant role in forging broader and deeper ties between regional states. The judiciary comprises one of three branches of Government. To continue consciously to entrust to a foreign court of law, and to judges with no emotional or spiritual connection with the region, the responsibilities that go with the highest rung on the judicial ladder is to surrender a vital aspect of one’s sovereignty. It is my hope that at some point Montserrat will be able to join the court in its appellate jurisdiction. I believe this can only further strengthen the justice system here and of course if that happens during my tenure on the Court, I would have had the privilege of serving the people of this country at every rung on the judicial tier.

I have taxed your patience enough. I wish to reiterate my thanks to the Police Service for giving me this opportunity to be here and I also want to thank Ms. Mary Gerald and the current staff of the Court office for refreshing my memory on certain details. Marilyn and I are very pleased to be here and we do wish you all the very best.