

# **DEVELOPMENTS IN NORTHERN IRELAND**

## **PART I: HUMAN RIGHTS AND POLICE REFORM**

## **PART II: IMPLEMENTATION OF THE CORY REPORTS AND IMPACT ON THE GOOD FRIDAY AGREEMENT**

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### **HEARINGS**

BEFORE THE

### **COMMISSION ON SECURITY AND COOPERATION IN EUROPE**

ONE HUNDRED EIGHTH CONGRESS  
SECOND SESSION

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MARCH 16, 2004

MAY 5, 2004

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**DEVELOPMENTS IN NORTHERN IRELAND**  
**PART I: HUMAN RIGHTS AND POLICE REFORM**

**MARCH 16, 2004**

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**DEVELOPMENTS IN NORTHERN IRELAND:  
PART I—HUMAN RIGHTS AND  
POLICE REFORM IN NORTHERN IRELAND**

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**MARCH 16, 2004**

**COMMISSION ON SECURITY AND COOPERATION IN EUROPE  
WASHINGTON, DC**

The Commission met in Room 2172 Rayburn House Office Building, Washington, DC, at 10 a.m., Hon. Christopher H. Smith, Chairman, Commission on Security and Cooperation in Europe, presiding.

*Commissioners present:* Hon. Christopher H. Smith, Chairman, Commission on Security and Cooperation in Europe; Hon. Frank R. Wolf, Commissioner, Commission on Security and Cooperation in Europe; Hon. Alcee L. Hastings, Commissioner, Commission on Security and Cooperation in Europe; and Hon. Robert B. Aderholt, Commissioner, Commission on Security and Cooperation in Europe.

*Other Member of Congress present:* Hon. Joseph P. Crowley, Member, U.S. House of Representatives.

*Witnesses present:* Mitchell Reiss, Director of Policy Planning Staff, U.S. Department of State; Nuala O'Loan, Police Ombudsman for Northern Ireland; Paul Mageean, Legal Officer, Committee on the Administration of Justice; Elisa Massimino, Director, Washington Office, Human Rights First; Jane Winter, Director, British Irish Rights Watch; and Brendan McAllister, Director, Mediation Northern Ireland.

**HON. CHRISTOPHER H. SMITH, CHAIRMAN,  
COMMISSION ON SECURITY AND COOPERATION IN EUROPE**

Mr. SMITH. The hearing of the Commission on Security and Cooperation in Europe will come to order.

Good morning. I want to welcome all of you to today's hearing.

To begin, the purpose of today's hearing is to examine progress made in establishing a human rights-based approach to policing in Northern Ireland and to explore remaining problems that must be addressed in order to secure maximum accountability and public confidence in the Police Service of Northern Ireland.

I would point out from the outset that this is the eighth hearing that I have chaired on Northern Ireland. A couple of those hearings were held by the International Relations Committee of which I served as chair of the International Operations Sub-Committee. We also held other hearings of the Helsinki Commission.

This Commission is made up of nine members of the House, nine members of the Senate, and three members of the executive branch.

The Helsinki Final Act was signed in 1975, and soon thereafter this Commission was established to monitor human rights issues in the OSCE countries, of which the U.K., Northern Ireland certainly, and the Republic of Ireland, and the United States and Canada, and countries of Eastern and Central Europe, and Russia, are a part.

I would point out at the outset as well that Tom Constantine, the Oversight Commissioner, in his December 3 report pointed out, and I quote briefly, "In fact, the institutions are doing very well in fulfilling the independent Commission's recommendation." He points out that, "All the institutions continue to make excellent progress in implementing a program of change in policing that may be the most sweeping and complex ever attempted in a modern society."

He does point out, however, "There is a lack of progress on some of," as he puts it, "these important recommendations." And he calls that "a serious concern."

And we will get into that as we proceed with this hearing.

We have with us today a representative—a distinguished representative, the point person if you will, from the U.S. Department of State and the Police Ombudsman from Northern Ireland. The head of the primary institution for police accountability is indeed a very important bit of progress.

Today's hearing is the eighth that I have chaired on human rights in Northern Ireland. At each hearing, policing and police reform have been a central theme. Each time we invited a representative from the State Department, and on a few occasions we invited representatives from policing institutions in Northern Ireland, and we have heard at times from very brave and heroic individuals, including Rosemary Nelson, Geraldine Finucane, Diane Hamill, Michael Finucane, Ian McGee, as well as Christopher Patten, a distinguished statesman and author of the—and Chairman of the Independent Commission on Policing Reforms for Northern Ireland.

So we are grateful that Dr. Reiss and Nuala O'Loan are with us today.

And I could just say as well that I think this is important and bears underscoring, these hearings provide a maximum of information—hopefully the best information we could possibly get—about the situation in Northern Ireland, but this is the point where we gather information and then we pivot.

I and my colleagues then work on policies relevant to policing and other aspects of Northern Ireland. The hearing is not an end in itself; it has always been, in my opinion, the beginning of whatever new work we can do to try to encourage the situation there. I also want to point out that David Trimble is here today.

Mr. Trimble, if you would not mind just being recognized.

He saw that we were holding this hearing and thought he would come by to see how we proceed.

And we are very grateful to have you here at this hearing today.

Let me also point out that in the most recent report submitted by Tom Constantine—I would ask without objection that portions of it be made a part of the record.

Clearly, much has improved since our first hearing back in 1997. At the time, there was no Ombudsman Office nor was there a Good Friday Agreement. The police seemed to act with impunity, arbitrarily arresting, detaining and intimidating those they suspected of politi-

cal crimes. Such suspects were held in detention centers, denied timely and appropriate legal counsel, often coerced into confessions and then denied the universally respected right to a trial by jury.

Shockingly, those attorneys who stepped forward to insist on a defendant's fundamental human rights and a fair trial often became subjects of police harassment and abuse themselves.

Police harassment of defense attorneys and their clients was a subject of our third hearing held on September 29, 1998. Param Kumaraswamy, the U.N. Special Rapporteur on the Independence of Judges and Lawyers, testified that after a yearlong investigation he found that police officers from the then-RUC [Royal Ulster Constabulary] had indeed "engaged in activities which constitute intimidation, hindrance, harassment or improper interference with criminal defense attorneys."

The Special Rapporteur made many recommendations, including a permanent shutdown of the so-called holding intimidation centers, and they are now gone; the reinstatement of the protection of the right to have an attorney present during police interrogation, now genuinely respected; the reinstatement of trial by jury and of the right of a criminal defendant to remain silent.

Of particular relevance to today's hearing, the Special Rapporteur also recognized the inadequacy of a police complaint system in which the then-RUC essentially investigated itself, subject to a supervisory Commission, the Independent Commission for Police Complaints.

The ICPC [Independent Commission for Police Complaints] could only make nonbinding recommendations for action—hardly a recipe for accountability. In fact, the Special Rapporteur reported—and I quote him—that, "Of the 16,375 complaints generally received by the ICPC through 1994, not one had resulted in any disciplinary action against any RUC officer."

The rapporteur strongly recommended that the Office of the Police Ombudsman, which was brand-new at the time, be given the human rights responsibilities and financial resources to carry out its mandate meaningfully, which will go a long way toward restoring public confidence in the police complaints procedure.

We are anxious to hear from Mrs. O'Loan on that point today. We are encouraged that the Ombudsman's Office has employed a variety of methods and outcomes for police complaints. And we note that her office has been more aggressive than the ICPC which preceded it.

In her testimony, Mrs. O'Loan reports that over the past 3 years of its existence, the Ombudsman's Office has referred 374 cases to the Department of Public Prosecutions [DPP] in which he recommended 40 cases for criminal prosecution. She reports further that the DPP has directed half of those for criminal charges.

She reports separately that through her direct recommendations to the Chief Constable, 119 officers have been subject to disciplinary action—a vast improvement over the ICPC. But we wonder, though, how well the DPP is doing with the recommendations, and that would be an area of inquiry later in the hearing.

As a means to enhance police accountability, the Special Rapporteur also strongly recommended an independent judicial inquiry into the case of Patrick Finucane, the defense attorney who was murdered in front of his wife—who is here today—and children in 1989 under circumstances suggesting possible collusion by officers of the RUC.

The Special Rapporteur was not alone in his recommendations. Testifying at that very same hearing as Mr. Cumaraswamy was Northern Ireland solicitor Rosemary Nelson. Rosemary Nelson testified in this very room about harassment, intimidation and threats against her by RUC officers simply because of the politics of her client. She said she had been physically assaulted by a number of RUC officers and that their harassment included—and I quote—“threats against personal safety, including death threats against her.”

As we all know, 5 years ago yesterday, Rosemary Nelson was murdered by individuals in Northern Ireland.

The parallels between her situation and that of Patrick Finucane were not lost on Rosemary Nelson. She said in this hearing room, “Although I have tried to ignore these threats, inevitably I have had to take into account the possible consequences for my family and staff. No lawyer in Northern Ireland,” she went on to say, “can forget what happened to Patrick Finucane nor dismiss it from their mind.”

It was clear that day that Rosemary Nelson was convinced the RUC would kill her. As I indicated 6 months after her testimony and exactly 5 years ago yesterday, she was murdered, killed by an assassin in a vicious car bomb attack.

We do not know what, if any, role any RUC officer may have played in Rosemary’s death, but we do know that they did harass her and threaten her, and they made death threats against her, and they did not protect her. The police culture of the time, a culture of impunity, was indeed a contributing factor.

Yet 5 years after Rosemary’s death, no one has been charged with her murder or held accountable for threats against her life. Fifteen years after Patrick Finucane’s murder the same is true.

Congress has tried to do its part. In 1999 Congress adopted my bill, H.Res. 128, which condemned Rosemary’s murder and called on the British Government to launch an independent inquiry into Pat Finucane’s murder, and an independent investigation into Rosemary Nelson’s killing.

In September 2002 Congress passed, and President Bush signed, my legislation—of Section 701 of Public Law 107–228, Policing Reform and Human Rights in Northern Ireland, stating U.S. support for an independent judicial and public inquiries into the murders of Pat Finucane and Rosemary Nelson, as a way to instill confidence in the Police Service of Northern Ireland.

In Rosemary’s memory, Congress also adopted my legislation, which suspended U.S. law enforcement training in exchanges with the RUC until vetting procedures were established to ensure that the programs did not include policemen who may have committed any human rights violations, including any role in the murder of Pat Finucane and Rosemary Nelson, or other violence against defense attorneys in Northern Ireland.

It was in this room as well, at a hearing on September 24, 1999, that Commissioner Chris Patten and Commissioner Maurice Hayes came to present the findings of *The Independent Commission on Policing Northern Ireland: 175 Recommendations for a New Beginning of Policing*, commonly referred to as the Patten Commission Report.

That report has been a benchmark for police reform in Northern Ireland, but many of us remain deeply disappointed by what was left out of the report, such as a vetting process to rid the new Police Service of those who were known to have committed human rights abuses.

The Patten Commission's inability to address the so-called bad apples underscores the continued reluctance on the part of some to be enthusiastic or confident about the sustained change in policing in Northern Ireland.

To help build more public support and deepen cross-community confidence, the British Government must release—and I would underscore this—*must* release and fully implement the recommendations of Judge Peter Cory, who led a recent investigation into the question of police collusion in six murders, including those of Rosemary and Patrick.

The Cory investigation was mandated, as we all know, by the Weston Park Agreement between the Irish and British Governments, as a means to resuscitate the stalled peace process in Northern Ireland. The Irish Government has already released two reports addressed to them, and announced it would, in accordance with Judge Cory's recommendation, establish an inquiry into one of those cases.

Remarkably, the British Government has refused to report the four cases which have been released to them. Recently, it was announced that the British Government will release the Cory Report before the end of the month. We hope.

That said, we anxiously await not just the publication of the report, but a timely implementation and compliance by the British Government to establish public inquiries where recommended by Judge Cory.

Anything less will surely undercut any progress made in convincing the public that their new institutions are better equipped than those of the past to hold human rights abusers accountable and to secure justice and the rule of law.

Six years into the Good Friday Agreement, policing reform continues to present the greatest opportunities and potentially the greatest pitfalls in the quest for a just and lasting peace in Northern Ireland.

Still difficult and still incomplete, a new beginning in policing has been set in motion. New institutions and practices are under way to enhance accountability.

Some of the old problems—unchecked Special Branch powers and unpunished collusion—hover like a storm cloud threatening a bright future. These problems must be forcibly addressed so that real policing reform can take hold and maybe even lead the way, regardless of delays or setbacks in political development in Northern Ireland.

I would like at this point to recognize Congressman Frank Wolf, who is Chairman of the Commerce, Justice and State Subcommittee of the Appropriations Committee and also a fellow Commissioner on the Commission for Security and Cooperation in Europe.

**HON. FRANK R. WOLF, COMMISSIONER,  
COMMISSION ON SECURITY AND COOPERATION IN EUROPE**

Mr. WOLF. Thank you, Mr. Chairman.

I have no statement other than to say I appreciate your holding the hearings and I also appreciate your faithfulness and staying very true and following this.

And with that, I yield back the balance of my time.

Mr. SMITH. Thank you, Mr. Wolf.

I would like to recognize Commissioner Hastings from the great state of Florida.

Mr. HASTINGS. I have no statement at this point, Mr. Chairman, but I look forward to hearing from the witnesses.

Mr. SMITH. Thank you very much, Commissioner Hastings.

Our first witness will be Dr. Mitchell Reiss, who is the director of the Office of Policy Planning at the U.S. Department of State since July 2003. Prior to his appointment, Dr. Reiss was Dean of International Affairs, Director of the Reves Center for International Studies, Professor of Law at the Marshall-Wythe Law School, and Professor of Government in the Department of Government at the College of William and Mary.

His previous government service includes positions in the National Security Council, and a consultant to the U.S. Arms Control and Disarmament Agency, the Congressional Research Service, as well as the Lawrence Livermore and Los Alamos National Laboratories.

With degrees from Williams College, the Fletcher School of Law and Diplomacy, Oxford University and Columbia Law School, Dr. Reiss has specialized in international security and arms control issues.

Dr. Reiss, we welcome you, and we look forward to your statement.

**MITCHELL REISS, DIRECTOR,  
OFFICE OF POLICY PLANNING, U.S. DEPARTMENT OF STATE**

Dr. REISS. Thank you very much, Mr. Chairman, for the opportunity to appear before you today.

At the outset, I would like to commend you and your colleagues on the Commission for your continuing interest over the years in the Northern Ireland peace process generally and your specific focus on the policing issue.

On policing, your Commission has been at the forefront in debates about human rights issues.

The Commission has also closely monitored the evolution of the reform efforts launched by the Patten Report on policing and the subsequent implementation process.

Your hearing today and the distinguished panel you've assembled is further evidence of this Commission's interest in supporting a better future for Northern Ireland.

I would also like to thank the members of the House and the Senate that have continued bipartisan support for our policy in Northern Ireland. I only recently took up responsibility for Northern Ireland and have already come to value the support and advice of you and your colleagues.

I would like to submit a formal written statement for the record and then make some brief oral remarks.

The Good Friday Agreement acknowledged police reform as one of the most difficult challenges of the peace process. Some have even suggested that police reform is actually more important than the other elements of the Agreement because policing goes to the core of civic stability and is perhaps the most fundamental relationship between citizens and the state.

Despite instability in the political process, the policing institutions have performed well over the past two years. The Police Service of Northern Ireland [PSNI] was established in November 2001. At the same time, the new Policing Board came into existence and that has functioned effectively since then with participation from political parties and independent public members.

In 2000, Police Ombudsman Nuala O'Loan started her work investigating allegations of wrongdoing by the police. She has succeeded in winning public confidence and providing a vital new accountability mechanism.

Last year, the District Policing Partnership boards were formed to facilitate community accountability of the police at the local level.

As is true in other regions, the end of armed conflict in Northern Ireland has coincided with increases in other types of crime, including Mafia-type activity and narcotics trafficking. There have also been occasional difficulties with crowd control during the annual marching season. Another problem is the increase in hate crimes against vulnerable immigrants as well as against long-established minorities who are a growing segment of the population, particularly in the Belfast area.

How is the PSNI coping with these challenges and with the reform program? By the standards established in the Patten Report, our view is that the PSNI is performing at a high level. I base this conclusion on numerous factors.

First, the evaluations provided regularly by the Office of the Oversight Commissioner headed by Tom Constantine.

With your permission, Mr. Chairman, I would like to quote from a statement the Oversight Commissioner made this past December when Mr. Constantine stated, "Areas where excellent progress has been made include a human rights-based approach to policing, a sophisticated and transparent system of accountability, the establishment of district command units and District Policing Partnerships, improved methods of public order policing, the creation of a more representative work force marked by the significant increase in the number of police recruits from the Catholic community, and the early completion of recommendations pertaining to changes to the name, badge and uniform."

Mr. Constantine's overall conclusion is that the PSNI is making excellent progress in implementing the program of change mandated by the Patten Report.

Another reason for our positive evaluation is that public attitudes toward the police have improved in the years since the establishment of the PSNI. In the late 1990s, Catholic confidence in the police, then known as the Royal Ulster Constabulary, was low. Fewer than one-third of Catholics believed that the RUC treated the two communities in Northern Ireland equally. In surveys conducted last year, however, over half of Catholic respondents now express confidence in the PSNI, and believe the police treat the two communities on an equal basis.

To be sure, we have continuing concerns about some elements of the reform process. The Oversight Commissioner has pointed out deficiencies, such as delays in completely reforming the Special Branch Division of the PSNI.

Although no one doubts the need of any Western police force to properly gather and properly use intelligence, the role of the Special Branch in fighting terrorism during the troubles, and the perception that this unit operated as "a force within a force," makes this reform particularly important for gaining confidence within the nationalist community.

Implementing the Patten Report's recommendations on the Special Branch should be a top priority. It's important to note that the Special Branch is already under new management, and important changes in how intelligence is managed and employed have already been introduced.

Other difficulties in policing are attributable to external factors. The fact that Sinn Fein, which is now the largest nationalist party in Northern Ireland, has refused to join the policing institutions has handicapped the effectiveness of the PSNI.

While we understand Sinn Fein's view that further work is needed to fully realize the vision of the Patten Report, we firmly believe that Sinn Fein should take up its seats on the Policing Board and influence the future of policing from within.

As a start, I would encourage Sinn Fein to begin a constructive dialogue on policing with Chief Constable Hugh Orde with a view toward having Sinn Fein join the Policing Board.

Another factor hindering effective policing is attempts to dissuade participation in policing by physical intimidation.

Thankfully, civic leaders, such as Policing Board Vice Chairman Denis Bradley, and members of the new District Policing Partnerships across Northern Ireland have not backed down in the face of thuggish attempts at bullying them and their families.

Mr. Chairman, American involvement in the process of change in Northern Ireland has been extensive. In my remaining time, I would like to recognize some of the individuals who have made contributions and discuss some of the programs the administration is supporting.

Two American criminal justice experts, Kathleen O'Toole and Gerard Lynch, served on the Patten Commission.

I have already mentioned the work of former DEA Director Tom Constantine. He deserves our thanks for his service as Oversight Commissioner.

The State Department has devoted considerable time and resources to sharing American experience on policing with the people of Northern Ireland. We are grateful that this Commission and other Members of Congress have generously supported these efforts.

In 2001, restrictions were lifted on FBI training for the PSNI. Since then, two officers have received training at the FBI Academy in Quantico and Chief Constable Hugh Orde begins executive training there this month.

Exchange programs have been the principal vehicle for transferring knowledge and experience on policing between Northern Ireland and the United States. In the last few years, we have sponsored eight exchange programs designed to work with the PSNI, its oversight bodies and communities in Northern Ireland on community policing and effective accountability of the police.

We have seen an excellent return on this investment. Policing Board members credit a visit to New York and Washington in late 2001 as helping them establish their expertise and developing a common civic vision. This proved invaluable as they faced several controversial issues in early 2002.

We have received excellent support from the chiefs of the New York and Boston Police Departments, both of whom have visited Belfast. American community workers have also been generous with their time.

American policing experts have spent several days with members of the Nationalist, Republican and Loyalist communities in Northern Ireland to exchange views and experiences on issues of community policing and accountability. In some cases, American specialists have had unique opportunities to bridge gaps in perceptions that exist on the ground in Northern Ireland.

After seeing the impact of the Policing Board programs, Congress urged us to put together a similar program for the newly formed District Policing Partnerships [DPP].

We are supporting this request with the cooperation of Boston College, which has used some of its earmarked money to run an exchange program for DPPs this past September.

Mr. Chairman, I look forward to working with you to continue the Bush administration's strong and sustained support for the police reform effort in Northern Ireland.

I also want to underscore the Administration's overall commitment to Northern Ireland. Our role continues to be that of honest broker, impartial adviser and strong advocate for the principles of the Good Friday Agreement.

With this in mind, I will be conducting consultations with the political parties and the governments this week to encourage progress in the ongoing review of the Agreement.

I will return to Belfast next month and again in June to continue this work, and will be available whenever needed to support the governments and the parties as they seek ways to overcome the current challenges to the peace process.

Thank you, Mr. Chairman, members of the Commission, and I look forward to your questions.

Mr. SMITH. Thank you very much, Dr. Reiss. I appreciate your testimony and the good work that you're doing.

You mentioned the importance of reform of the Special Branch as a top priority, and perhaps you might want to elaborate a little bit on it. The Constantine Report makes—like you, we have all come to see that it was a force within a force—but it makes the point that the restructuring in July 2003, the Chief Constable, Hugh Orde, had announced that reorganization of the Police Service would include the Special Branch and very importantly that all changes are scheduled to be in place by May 2004.

As far as you know, are those changes on track to be completed by May 2004?

Dr. REISS. I understand that the Special Branch, as I mentioned in my testimony, is under completely new senior management. Reforms are under way and we will be encouraging and supporting the work of the Chief Constable to meet that deadline.

Mr. SMITH. And perhaps Ms. O'Loan could elaborate on that as well, because our hope is that—you know, deadlines are important and if they slip, unless there is a good compelling reason why they slip, lead to a loss of some trust and belief.

On the issue of human rights training—again, I will ask Nuala O'Loan this as well—the Constantine Report makes a point that information about what is actually taught, curriculum, who are the trainers, was requested in September 2001 and as of September 30, which was the deadline for the report, the data calls for the report to be received, they had not received that information.

And I wonder—that was 2 years ago. It seems like it would be a simple, particularly in an information technology-oriented world, to just say, “This is what the curriculum is, here’s the deliverable, here’s what we are doing, have a look at it.”

Any reason that you know of why that was not given to Tom Constantine?

Dr. REISS. Mr. Chairman, I would like to investigate further and get back to you with a more detailed answer.

Mr. SMITH. OK, that would be great. We will make that a part of the record.

One of the changes in the Anglo-Irish Agreement Support Act which I proposed in a bill that has passed the House, H.R. 1208, which reauthorizes the International Fund for Ireland [IFI], would encourage the fund to “support programs that enhance relations between communities, and between the police and the communities they serve, promote human rights training for police, enhance peaceful mediation in neighborhoods of continued conflict, and promote training programs to enhance a new district partnership police board recommended by the Patten Commission.”

Our thought is that while we want to see both communities working on economic projects, there seems to be a niche, especially for the IFI, to get into the area of policing. How would you respond to that, and do you think it is helpful?

Dr. REISS. As you know, Mr. Chairman, the IFI receives funding through USAID, which consequently places restrictions on the provision of funding to foreign police forces based on Section 660 of the Foreign Assistance Act. USAID legal experts have determined that this restriction precludes the provision of any assistance by IFI to programs that would support the reform and/or other improvements to the PSNI.

Mr. SMITH. So, would the language in our bill accomplish that, and does the administration support that?

Dr. REISS. I think we very much would support it.

Mr. SMITH. OK. I appreciate that.

Let me just ask you about the exchanges. Two officers have been part of an exchange, have come to Quantico, and Hugh Orde, if I heard you correctly, will be coming as well.

Dr. REISS. That is right.

Mr. SMITH. Part of what we tried to do with that original legislation was to ensure that U.S. trainers in no way would be complicit with human rights abusers, past or present, and that in the future hopefully we would be training people who would come away with not only the best practices for police, but also with the human rights component as well.

You’re convinced that the two officers that were trained were in no way complicit in human rights abuses?

Dr. REISS. Yes, sir.

Mr. SMITH. In your view, was the law helpful that we enacted?

Dr. REISS. I think the law was helpful at the time, Mr. Chairman, but I think things have changed so significantly in Northern Ireland that I question whether it continues to be important for those underlying reasons.

Mr. SMITH. Mr. Hastings?

**HON. ALCEE L. HASTINGS, COMMISSIONER,  
COMMISSION ON SECURITY AND COOPERATION IN EUROPE**

Mr. HASTINGS. Thank you very much, Mr. Chairman.

And, Dr. Reiss, thank you very much for your reflection.

I bring to all of the experiences that I participate in Congress with and in the judiciary and as a lawyer before everything that has happened in my life. I continue to be optimistic.

I visited Ireland—I would imagine if I include stopovers in Shannon when it was flourishing at one point, went to Belfast and other places, Dublin—in the last 10 years perhaps as many as 10 times; three for substantive visits meeting with various factions. I participate very actively with my colleagues here in Congress.

I use that only to cite that I remain optimistic that solutions can be had. And why I feel that way is if I use a template of Vietnam and the United States and the rapprochement that has taken place in all of our lifetimes, then obviously there is hope for anybody if we could put aside many of our past grievances with each other.

Additionally, if I use South Africa as a template, I could see that, in Northern Ireland, there could be a significant change.

But focusing on just your remarks dealing with police, and having lived in America in the halcyon period of segregation, and realizing that here in America there still is a substantial mistrust of the police by blacks and others in minority stations—Latinos specifically—among the reasons for that and how some departments overcome it, interestingly enough, is to change at the top rather than to change at the bottom and train and bring up. The people that cause the problem sometimes remain, and that is my question to you.

Is the Special Branch, for example, directly involved?

When you say to Chairman Smith that our law allows that there would be no contact, if you did, in fact—not you, but if all of us trying to accomplish a positive end result have contact with the predecessors to the now existing police force, and if the Special Branch went into that police force, and if some, whether it is true or not, believe that the Special Branch may have had among its members persons that were anti-Catholic bigots and really full of sectarianism to the extent that maybe they could not be objective, then you might want—looking prospectively after answering my question—to do something a little bit different. Maybe you ought to bring some people from South Africa and Vietnam and some blacks from America and some Latinos who have police experience and have worked in sensitivity training to work with them.

I said humorously one day and took the air out of a very tense room in Belfast—gentlemen that sat across from each other—that it actually shocked each other and both of them survived I was in that room with them and I told them, I said, “You know I think I could solve the problems here if I just brought you all 100,000 blacks from Harlem, put them right in the middle of you, then you’d have something else that you could disagree with.”

So at least it added a little levity, but there might be some currency there. My point being that I think there are experts in this arena who are not from London or not necessarily Irish who could bring something to the mix that would add to things like the Constantine Report and the others that have succeeded.

I just offer that as a thought; nothing imperative. But I would like my question answered about the Special Branch.

Dr. REISS. Thank you, Congressman.

First, let me say that I share your optimism about the future of Northern Ireland. There has been remarkable progress across the board over the past decade, especially since the Good Friday Agreement in 1998.

You're really talking about two adjustments that need to be made. One is psychological: How do you restore trust in the community?

And again, I think that significant progress has been made, but it's something that we all need to tackle every single day. We are never going to get there, but we can certainly march toward that goal and we need to work hard every single day to make sure that we get closer.

The second challenge has to do with an organizational and legal challenge, regarding the presence of any residual violators of human rights or of human dignity by individuals in the Special Branch or within the PSNI as a whole. And you'll have an opportunity, I know, to talk with the Ombudsman afterwards—after my testimony.

I think she has been remarkably effective in providing a mechanism to try to go after individuals who have these sordid pasts. If there is anyone who has any information, any evidence of misbehavior, of past allegations, there are mechanisms and procedures that are currently in place to deal with that. So I think that, again, progress has been made; we still need to work hard to make it better.

In terms of your excellent point about lessons that people in Northern Ireland can learn from other conflicted areas around the world, I was talking earlier this week with some members of a nongovernmental organization that, in fact, has been doing that, to try and reconcile sectarian divides in Northern Ireland. They've been bringing people from South Africa, from Bosnia, from other areas of the world to try and share stories and to share lessons.

And so I think that some of that work has already been taking place and will continue to take place in the future.

Mr. HASTINGS. One additional question if I may, Mr. Chairman, as a follow-up to that.

Is Hugh Orde directly responsible, in the sense of making judgments in the Special Branch on a continuing basis?

Dr. REISS. He is the Chief Constable, and he is responsible for all of PSNI, including Special Branch.

Mr. HASTINGS. Right. I do not know him personally. I respect his reputation, but I also know that whether you are talking about him or Tony Blair, that some of them are known as having made bad judgments at some point in time. I am not suggesting by any stretch of the imagination that I buy into that, but it at least is something that is there.

The other thing that I know that you have experienced in trying to establish PSNI and to have it be stable is something that we did witness in the transition from an all-white police force to beginning to bring blacks and Latinos into the force. What I encouraged my local police chief to do—and he was a good man before his death—was to put them on a fast track, and to highlight them and give them larger roles than just dealing with vice.

And he did, and he moved two fellows that had made the rank of sergeant, and perhaps two of the best homicide investigators in the state of Florida—one is still alive and is still perceived that way by his peers—and he gave high-profile cases that did not necessarily involve their immediate concern and moved them quickly to lieutenant and captain to give them an offset to some of the kinds of things—put them at least in the room with some of the people that have been a part of the problem.

Again, I just offer that. I recognize we do not control it, but as we make suggestions it could perhaps be helpful to do something along those lines.

Thank you very much, Mr. Chairman.

Mr. SMITH. Thank you very much, Mr. Hastings.

The chair recognizes Commissioner Aderholt.

Mr. ADERHOLT. Thank you, Mr. Chairman.

I do not have anything right now, so I will just defer my time and maybe have a little bit on the next panel.

Mr. SMITH. Thank you very much, Mr. Aderholt.

Let me just ask one final question of Dr. Reiss. We understand that, pursuant to Judge Cory's recommendation, the British Government is likely to release the information about the four individuals, three of whom we have had actually family members testify in this room. But the key after release is implementation, which is the establishment of a public inquiry.

Is our government supportive of that public inquiry?

Dr. REISS. Thank you, Mr. Chairman, for raising that question.

I would like to share with you the fact that in every meeting I have held with British officials I have raised the Cory Report and urged them to follow through on their Prime Minister's commitment to release it.

Now, the Prime Minister is also on record that he will follow through with inquiries if that is what the report recommends.

Now, that said, let's remember that the goal here is a full, truthful and comprehensive accounting of exactly what happened to these four individuals. If it is possible that a more efficient way can be found to achieve this goal, if the information can be disseminated faster, more comprehensively, more fully to the families and to the community as a whole, then I think that should be considered.

The concern I have is that public inquiries sometimes stretch on for years and years, and I think that is a disservice to the families and to the entire community.

So, yes, the Prime Minister has made a public commitment to do that, but I just think that if a faster, more efficient, more expeditious way can be found, I think that should be considered. I think that would serve justice better.

Mr. SMITH. Thank you.

If my memory is correct though, in creating Judge Cory's mandate, the belief was that if he found sufficient evidence or reason to not only put together, as he did, a very voluminous—and I think, based on what I have heard from the families, they seem satisfied that his recommendation will be, that there be a public inquiry.

We have gone on record, as I indicated in my opening remarks, several times—I have offered the amendment to bills which were embraced by Democrats and Republicans here in the House to man-

date—I think at this point, most people would suggest that to deviate to a truth Commission or some other means would be less likely to achieve the goal, and that is to hold the perpetrators of these violent acts accountable. And that is the beginning of healing.

And so I would hope that we would robustly promote the idea of a public inquiry because I think then the page can be turned as a result of what would come out of that.

Dr. REISS. We wholeheartedly share the same goal, and we will encourage—as I have said, we have encouraged the British Government to release the report and to conduct the inquiries.

Mr. SMITH. I appreciate it. Thanks.

Do you have anything further to add, Dr. Reiss?

Dr. REISS. I did want to respond to a point that Congressman Hastings made, in terms of measures that the police might adopt to rectify past discrimination.

The Patten Report addressed this concern of the under-representation of the Catholic community in policing. And there is now a 50/50 recruiting process from Catholic and Protestant communities. Catholic representation on the PSNI has increased in the past three years, almost doubling from 8 percent to 14 percent.

This pace, while slower than some of us might like, is still well-ahead of the Patten Report's recommendations and targets. But they are trying to achieve a force that reflects the entire community. Policing would be strengthened if Sinn Fein decided to join. It would be strengthened if Sinn Fein actively encouraged members of republican communities to join the police force as the Patten Report recommended.

At the very least, Sinn Fein should meet with the Policing Board and meet with the Chief Constable, Hugh Orde; steps it has so far refused to take.

Mr. SMITH. Dr. Reiss, thank you very much for that.

I do have one final question. Tom Constantine, in his ninth report which was released in December, makes the point that he does not believe that the Oversight Commissioner ought to be a permanent position—although I think there is a recommendation that is being followed of one-year extension. Do we have any thoughts on that, on our side of the Atlantic? Whether or not—and I will ask Nuala O'Loan that same question—whether or not this ought to be extended.

Dr. REISS. As you and your colleagues have mentioned here this morning, trust is essential and it has to be established in the community. If the Patten Report's recommendations had all been implemented, you could argue that there would no longer be a need to have an Oversight Commissioner.

But it is not just the recommendations that need to be implemented. The goal here is larger than that. The goal is to restore, or perhaps to create, for the very first time, trust across all communities in Northern Ireland.

And so I think that is the broader context in which that question really needs to be discussed.

Mr. SMITH. Dr. Reiss, thank you very much for your testimony, and the additional answers will be made a part of the record—and any other information we deem necessary.

Dr. REISS. Thank you, Mr. Chairman.

Mr. SMITH. I would like to welcome to the witness table our second panelist, and we are very grateful that she has traveled from Belfast to be here, and that is Nuala O'Loan, who is the Police Ombudsman for Northern Ireland, who provides an independent and impartial look at the complaints system for people and police in Northern Ireland.

She is a qualified solicitor, and was the senior lecturer holding the Jean Monnet Chair in European Law at the University of Ulster. Mrs. O'Loan's previous service to Northern Ireland includes work with the police authority, the Northern Health and Social Services Board, and several positions related to consumer services.

Mrs. O'Loan, thank you for being here, and we look forward to your testimony.

**NUALA O'LOAN, POLICE OMBUDSMAN  
FOR NORTHERN IRELAND**

Ms. O'LOAN. Thank you, Chairman. I am very pleased to be here today to give testimony in relation to my office.

I know that your interests are wider than this and relate to policing in general, but I hope you will understand that I will talk only about my office. Others will and have addressed your more general matters.

I have provided to the Commission a statement in written form about the work we have done. I have documents to accompany that submission.

I am accompanied today by my Executive Director of Investigations, Mr. David Wood.

The office was established, as you know, on November 6 to investigate independently and impartially allegations of wrongdoing by the police in Northern Ireland. At that time, the RUC had 13,000 officers. Now the PSNI has some 9,500 officers.

We have received over 10,700 complaints since we opened. We have dealt with many other matters.

We employ 123 people. Fifty-eight percent of them are Protestant and forty-two percent are Catholic, and that largely represents the representation of the population.

We have investigators, complaints-handlers, lawyers, statisticians, researchers and corporate staff. To address Mr. Hastings point, we have former police officers from South Africa, from Hong Kong, and from Canada. We also have extensive international contacts and relationships which are addressed in the statement.

We have a budget of approximately £7 million and we are responsible for five Police Services. We have the PSNI, and we also have four smaller ones: the Ministry of Defense Police, who operate in Northern Ireland, and the airport and harbor services.

Now, the office which I run is accountable through an extensive range of reporting, review and stringent accountability mechanisms. Those include accountability to Parliament. The office was recently advised by Parliament that the Northern Ireland Affairs Committee is conducting an inquiry into the office.

In addition to this, there is provision for inspection by the Criminal Justice Inspector, by the Surveillance Commissioner; there is audit by the Controller and Auditor General; judicial review and other legal challenge; investigation by the Commissioner for Children and Young People. We are also, of course, subject to the Freedom of Information Commissioner.

If I might just, for a moment, address the issue of our independence. The independence of the office is crucial to the confidence in this system.

I think it has been demonstrated consistently by us. Our budget is not part of the PSNI budget, our staff are recruited, employed and managed only by the office, investigations are evidence-driven, and we have been open and transparent in publicly reporting the outcomes of investigation. I am demonstrably apolitical. For the past 2 years, in independent surveys 86 percent of the public stated that they believe the office is independent.

When you asked me to come here, you asked me to address three issues: the successes and challenges we have experienced, the level of cooperation we have received from the PSNI, and the contribution which we are making, or not making, to the peace process.

I want to contemplate for a moment the challenges that we have faced. They have been multiple. My duty, as you have said, is to provide an independent, impartial police complaint system in which people and police have confidence. It was not easy to persuade those parts of our people who had lived in fear of the police that the independence and impartiality was a reality. It had to be done.

The first challenge was to win community confidence in this system, and we did this by going to people at their request—I put out the feelers for meetings, but always waited for a request—and at the time that they wanted to see us. We explored with them what they wanted of the new complaint system, and we continued to consult right across the community, to ensure that what we provide meets the needs both of people and police.

We had also to consider those whom we were to investigate. Now, inevitably there was some resistance to my investigators as they went about their business, and I have to say that resistance was quite strong in the early days, in part because the police were not prepared for the commencement of the office.

The police called for and welcomed the creation of my office, but when it came, there was inevitably, in some quarters of policing, antagonism to what I had to do. But we worked hard to demonstrate that police officers who have done their job with integrity have nothing to fear.

There are parts of the police community with which we have experienced some difficulties.

You have already discussed the Special Branch. It was an integral part of the war against terrorism. There is no doubt that the activities of the Special Branch did save many lives.

But we have had difficult days insofar as there has been some reluctance in the Special Branch to give us material to which we are entitled because we have the right of access to all material. I think that is a very onerous responsibility.

We need the material for particular investigations, but things now are greatly improved. That follows, I think, the reconstitution of the Special Branch. We must ensure that any sensitive intelligence material we hold is kept safe and secure, and that is a challenge for us.

Another very significant issue for us, when we opened business, was what people expected of us. We must operate within the law, and the law does not give us power to investigate soldiers, for example, nor can we investigate police officers who have retired unless they

are suspected of a criminal offense. If they are not suspected of a criminal offense, it is their decision whether they talk to us. They have the right to refuse our questions.

We, in turn, must be evidence-driven and we must go only where the evidence takes us. We must do that without fear or favor. We must articulate the evidence so that people can know what is happening in policing in Northern Ireland.

My Omagh Report led to calls for my resignation, to cries that I was a suicide bomber and that I had outlived my usefulness. The significance of my Omagh Report was that it made it quite clear that when things were not done properly, then it would be necessary to say this and to do something about it. This has happened.

The Omagh Report has led to significant change in policing and to a new invigorated investigation which is producing results today.

You have asked me to speak about the level of police cooperation. I want to observe two important developments which I have seen. They are changes in culture in the Police Service which have become evident over the past 3 years.

In the first instance, there is a greater openness and a willingness to apologize where necessary. I think the leadership of Chief Constable Hugh Orde has been important in this context.

I cite, for example, my recent reports on the multiple failings into the investigation of the murder of Sean Brown. The Chief Constable immediately accepted the findings and apologized to the Brown family.

In addition to this, officers are now coming forward to inform me about wrongdoing and to give evidence against their fellow officers. Recently, for example, a police officer was convicted and sent to jail for perverting the course of justice following an investigation in which three of his colleagues gave evidence against him. This is the true face of modern policing.

There is a minority of corrupt and violent police officers in most forces, but there are also those who act justly and with integrity and with courage, and who are prepared to do what is right. Giving evidence against a colleague is never easy, and those who take that course display personal courage.

You have asked me, finally, about how my office contributes to the peace process. I would like to cite Mr. Tom Constantine in what he said about my office, and I do so with modesty.

But he says this: "The Office of the Ombudsman continues to demonstrate the professionalism and integrity required to meet the goal of a fully independent body, and is an important, effective mechanism for holding the police accountable to the law. By ably doing so, ensures that the Police Service is providing an effective policing service for all the citizens of Northern Ireland."

Now, there can be many outcomes to the kind of complaints that we receive. In some cases, as you have referred, there will be recommendations for prosecution and discipline. And in many cases there are recommendations for improvement in police policy and practice.

But in some cases there actually is no misconduct as such, but there is a clear need for officer retraining. We have identified significant deficiencies in training of officers, and a lot of work has been done by the Chief Constable to address that issue.

Our biggest challenge at the moment involves complaints about historic cases, some of them very old—10, 20, 30 years old. They relate to the murders of civilians, of police officers, and of soldiers. The allegations with which I am presented range generally from allegations that the police were involved in the murder, that the police allowed the murder to happen, or that following the murder the police did not investigate properly.

Those cases are enormously complex. The families come to me to seek the truth about what happened to the persons they loved. In some cases we can meet their needs, we can tell them what happened, and we can sometimes tell them what was done to investigate the crimes.

That can bring relief and understanding.

The more complex cases are currently under investigation.

The families have told me that for the first time in sad, endless years, they are able to sleep at night. They are able effectively to put their loved ones to rest.

Our society has suffered endlessly and deeply. It has sores and hurts which I believe will take generations to heal. But it must be done and it can be done.

I want to address police use of force, and I include here intimidation, harassment and assault I want to start, first of all, with the use of firearms.

Since I took office in 2000, we have had 37 live firearm incidents and 27 baton gun incidents. We have fully investigated them all. We had four live firearm injuries and one death in the three years. There have been multiple baton gun injuries. Over 260 rounds have been fired on occasion of public disorder. However, I am pleased to report the baton guns have not been used since September 2002.

Public confidence, Chairman, is eroded by disproportionate use of force. We have a routinely armed Police Service and community difficulties in relation to the police. I think the independent accountability provided by my office is a vital tool in maintaining and growing public confidence.

The police have needed and will continue to need both firearms and baton rounds for the situations which they police. The use of baton rounds particularly is controversial. But there are many situations in which live fire would be the only alternative to protect life.

As I said, we investigate every use of a firearm whether during a preplanned situation or a situation which erupts without warning. These investigations are not an obstruction to the police, they are an assistance to them. The Chief Constable has said that.

I want to look at the reduction in the number of occasions upon which this form of force has been used. We have seen a reduction in the use of live fire from 21 shootings in 2001 to 11 in 2002, and 5 in 2003. The number of complaints about other uses of firearms—and these would be things like “I was hit with a firearm”—have reduced from 40 in 2001 to 25 in 2002 and to 12 in 2003.

In the same period, complaints of baton assaults—I think maybe you call it a nightstick—have reduced from 419 to 240 and last year to 148.

Most importantly is the fact that this reduction in the level of use of force has been achieved without a corresponding increase in the use of firearms against the police. There has also been no increase in the level of injuries to the police.

In addition to this, police levels of detection of crime have increased significantly, and there has been a decrease in reported crime.

Many recommendations for improving policing have been identified during the investigations conducted by my office. The Chief Constable welcomes these recommendations, and they impact very much for the good on policy, procedure and training.

It is these processes of disciplinary and criminal action, taken where necessary against police officers, which has impacted on police behavior, and which, I believe, has reduced the level of complaints about abuse of force.

We have a Police Service which is changing, which is willing to change and which is grappling with the needs of society.

It is my honest hope that the work done by me and by my staff will continue to secure confidence in the police complaint system. This must inevitably lead to enhanced confidence that the police will provide the best possible service to all the people and will be held to account for their conduct. In this way, it is hoped that confidence in policing itself will be enhanced.

Policing is, of course, a key issue in the peace process. Thus, I hope we make our contribution to that process.

Thank you, Chairman.

Mr. SMITH. Mrs. O'Loan, thank you very much for your testimony, for the volumes of information you provided to us, which we will include in the record, that paints a picture of steady improvement, much of it largely attributable to you and to your 123-member staff, which all of us are very encouraged by. I want to say how much I respect the work that you do personally and the work that your office does, as well.

One of the things that Tom Constantine mentioned in his report, he called it "two external factors hindering police." The first was financial support, or the lack of it. And if I read your information correctly, your office operates on about £7 million, a little bit more than that. I am wondering if you can tell us whether or not that money is sufficient to the task.

We know that when we hear from our own different various bureaucracies and heads of those bureaucracies very often, a lot of good things go undone simply because of budgetary restraints. You might want to respond to that.

He also points out that the police academy, which the government had indicated would be up and running within 6 years, probably does not have any chance of being up and running within a 6-year time frame and would push it into 2007. He calls the status of the current site "deplorable." And it seems to me that if one wants to have a world-class training capability, a facility with trainers who are up to the task—and certainly money is very critical or key to that. You might want to speak to that as well because it seems to me that is an investment in the future, second to none.

It will also facilitate retraining. Obviously you need a venue, you need a place where retraining can occur in a very controlled environment.

And to pick up on, again, something that the Oversight Commissioner pointed out—and it is worth reading because I thought it was very telling that he could not get this information. Perhaps you have some insight into this.

Tom Constantine says, “However, as of the 30th of September 2003, the Police Service had not provided the information requested in September 2001, which would allow an evaluation and verification of actual progress, specifically a description of the content of human rights training being provided to recruits. In-service personnel and civilian staff was not provided. In addition, a human rights training resourcing plan, time lines for achieving training objectives and an account of the courses in which new human rights material had been incorporated were not provided.”

It seems to me that should have been a no-brainer, if that were available, to get that to the man who would be writing the report to determine whether or not progress in that area had been made.

Ms. O’LOAN. Thanks, Chairman.

First of all, the financial support for my office: When the office was established, a budget was calculated which was really predicated upon current policing issues. The budget which I have is adequate to meet the current policing situation and to meet, to a limited degree, the historic cases that I have to investigate.

The situation is that after the office was established, the law was changed, and Parliament imposed on me a duty to investigate historic cases in certain circumstances. Funding those investigations is very resource-intensive. We now have a queue of some 15 cases which are waiting for that kind of investigation.

Now, what I have to say to complainants in that situation, and I say it with great regret, is that when you come to me, we will make an initial scoping of the complaint which you brought to us. We will get your files; we’ll go through them. We will identify, for example, whether there is a clear police investigation which we can spend a little time on and we can reassure you.

But if we cannot, then what we have to do is put the matter into a queue and prioritize those cases. It is enormously difficult because the cases are really very resource-intensive.

We have one case at the moment which has I think 12 members of the staff working on it. Well, that is out of an investigative capacity of 90, and we have a lot of cases under investigation.

So I guess the answer is that for meeting today’s policing needs, it is adequate. For history, it is not adequate, but history needs to be dealt with. We cannot leave these people with this pain, because it will be like a sore that will fester under the skin of the new creation which we are trying to achieve.

Mr. SMITH. I appreciate it. Would it be possible or in terms of how requests are made for you to recommend that a short-term spike or plus-ups be provided to go back and to adjust those previous ...

Ms. O’LOAN. I have made that request to government.

As regards the police site, Garneville is an appalling place. It is Third-World. I lived in Kenya for 3 years, and it reminds me very much of the school in which I taught up-country in Kenya. It is not a good place to grow human rights compliant training.

But, all I can say really is that we make a very significant contribution to training. At least 250 hours of my staff time a year goes into police training, initial police training, probationer training.

We focus on the Code of Ethics. The Code of Ethics that was introduced in March 2003 requires police to police having reference to European human rights law and to international policing standards. They're all incorporated into it, and therefore officers' conduct is measured against those standards. I think that is the first important point.

As regards human rights and the incorporation of human rights training into the curriculum generally, I am not going to comment on that. I think there are others whom you might more properly ask that question to if you forgive me.

But I will say that the Policing Board for Northern Ireland has appointed a human rights consultant who is a very well-known human rights lawyer. He has produced a template, if you like, very similar in some ways to the Oversight Commissioner's report, which is going to enable him to measure the delivery of human rights training.

So I think it is work in progress, if I may say so, Chairman.

Mr. SMITH. I appreciate that. You mentioned in your testimony that some officers have given evidence against other officers. Do they tend to be the younger, more recently trained officers, or are they people who have been retrained, or are they just people who just have come forward and been on the force for a while?

Ms. O'LOAN. I think they would come from all categories, Chairman. I think they are courageous because police culture across the world is that you do not tell on your colleague.

Mr. SMITH. Let me just ask about the Special Branch, which I know you are very familiar with. Is it likely that, as was indicated in the Constantine Report, all changes are scheduled to be in place by May 4? You did indicate in your testimony reluctance with the Special Branch to give material. Do you have new powers to compel that information to come forward to you?

Ms. O'LOAN. Chairman, I am not going to comment on whether the changes to the Special Branch will be completed by 2004.

I think you have given me a question for the Chief Constable, and it is not for me to comment. As regards my powers to access information, yes, I do have a total power of access to all information and material held by the police. That does include the Special Branch material, and we do get it.

Mr. SMITH. On the early warning system concerning potential police abuse, is that up and running? The early warning system, if you could comment on that.

Ms. O'LOAN. Yes. We have a system where if an officer attracts more than three complaints in a year, then we automatically notify his District Commander and the Police Services Internal Investigations Branch. The question for the District Commander is: Why is this officer attracting these kinds of complaints? There are very few officers who seem to attract, for example, multiple complaints of assault or oppressive behavior.

But that process is not yet running as the Oversight Commissioner had recommended. But the process is up now and is running. The Police Service has a number of difficulties, not the least the fact that their computer networks, their IT communications network, is grossly deficient. That certainly has hindered communication between them all on many occasions.

But it is the case that officers who are subject to more than three complaints in a year are brought to the attention of the District Commander for action.

Mr. SMITH. Let me just ask you one final question before yielding to Mr. Hastings. Does current law enable your office to examine police operational matters? I mean, there are many that could be investigated, but the Holy Cross School certainly jumps out as an area that begs investigation.

Ms. O'LOAN. Yes, we have the power under Section 13 of the Police Act 2003 to investigate policy and practice. It is not retrospective. The Holy Cross situation was an enormously difficult situation. I do not know if you were able to visit it. But I did visit.

Mr. SMITH. I actually did visit, yes.

Ms. O'LOAN. Yes. We had a number of complaints, individual complaints in that context, from both sides of the community about police misconduct. It was a terrible situation. If you watch the pictures of those children walking up the road, you see the police officers that were wedged between the children and the protesters who were behind them. It was a situation in which an officer who turns around with his shield is quite likely to hit someone—those were the kinds of complaints.

Regarding the actual practice that was adopted to police Holy Cross, that practice changed on a daily basis as the police tried to find ways of dealing with it. Because of the timing of the legislation, we have not conducted a policy and practice investigation into that matter.

But we have, as I said, had a significant number of complaints in relation to it.

I guess the most important thing to me when I went up there was that this was not a policing problem; this was a community problem. The answer to this problem laid with the communities and in the communities. With both sides can help to make a difference, and that was what I said.

I gather there was a complaint to the Secretary of State about me interfering, but that was what I said.

Mr. SMITH. Appreciate that.

Mr. Hastings?

Mr. HASTINGS. Thank you very much, Mr. Chairman.

And, Ms. O'Loan, thank you very much. Your paper and your presentation are most impressive as it pertains to independent, accountability mechanisms. I am deeply appreciative of your testimony.

I would, because I simply do not know, ask the question: What are the general qualifications of a police officer today in Northern Ireland or in PSNI?

Ms. O'LOAN. Well, Mr. Hastings, that is quite a difficult question. It sounds like a simple question.

Mr. HASTINGS. That is why I asked it.

Ms. O'LOAN. But the process to which officers must go through is actually defined on the policing web site. In effect, they must have a minimum standard of education, but not necessarily ...

Mr. HASTINGS. Which is what?

Ms. O'LOAN. I do not think I can comment on that. I believe it is GCSE [General Certificate of Secondary Education], which is our 16-plus.

But I suppose what I would want to say is that there are those in our community who did not go through formal education because it just was not possible.

So the way in which police recruiting is now being conducted, is that people do a series of tests which test their competence now, not their competence when they were 16 and couldn't go to school. So they do competence tests and a number of other tests, and it is the results of those tests that determine whether they are acceptable for policing.

And people can join the Police Service, I believe, up to the age of 52.

So I am sorry that I do not know the exact number of GCSEs required, but I do know that it is based more on the testing process and what they can do now.

Mr. HASTINGS. That is helpful.

To the extent that you do know, is the salary commensurate with jobs that are on the same line with regard to requirements in the private sector or otherwise?

Ms. O'LOAN. Yes, Mr. Hastings, it is.

Mr. HASTINGS. OK.

One of my complaints in America—and I only offer it as an observation, not so much for a reply or comment—is one of the things that troubled me as a lawyer in my community in Florida: youngsters, no matter their color, that were just out of high school, could pass those tests. Let us say you send a 24-year-old to a domestic dispute with a 45-year-old man and his 41-year-old wife, and you are asking that kid to go in there and work with them.

I have always felt, among other things, that police officers ought to be trained extremely well, academically and psychologically and in addition thereto should make a lot of money. That would eliminate a whole lot of police officers in America who contribute a lot to that small group that taints the rest because they just simply do not have the equipment to be put on the streets to deal with people.

And I would imagine some residual exists from the old-line officers in Northern Ireland, and hopefully a lot of it will be eliminated over time with the new officers.

You spoke, Ms. O'Loan, about the evidence that comes to you and naturally the requirements of confidentiality and safeguarding that evidence and keeping it secure, you mentioned that it was a challenge I would imagine that it is. Can you explore further, expand further on that, the challenges and how you're meeting them?

Ms. O'LOAN. The information which we receive in connection with some of the investigations which we carry out is information about paramilitary activities, about involvement in serious crimes, about ongoing police investigations. The challenge and the very serious responsibility for me is to ensure that information is kept totally secure.

If the information were to leak, it is possible that in the first instance, lives could be risk. Because if someone is known to have a paramilitary connection, that makes him a much higher target for the alternative paramilitaries who may wish to be, or who may be, in competition with them almost.

So there is a risk to life. There is a risk to our ongoing investigations which will be compromised if information gets out, because that inhibits the way in which you can then develop your investigation. There may be a risk to ongoing police investigations of serious crimes. So it is a matter which we keep under constant review.

Mr. HASTINGS. Let me ask you about process, and then one more question.

If a person's grievance is being pursued in the court system, is there a requirement that your office cooperate with them, including in the statements that they have made that may become part of legal proceedings?

Ms. O'LOAN. Yes. I am assuming that what you're talking about here is civil actions compensation against government, yes?

The answer to that is that my duty of confidentiality contains an exception which relates to ongoing criminal and civil litigation. There are then processes which determine what material from my investigation can be disclosed for the purposes of such an investigation. A person's statement made to us in the course of the complaint about police conduct—we would give to that person for the purposes of civil action. Other material that we may have discovered, we will not give them unless ordered to do so by the judge.

We have very complex rules on the disclosure of evidence by police complaint systems in the United Kingdom. Most recently, there was a judgment of the House of Lords on the matter. So it is a matter, which again, I treat as a very delicate and sensitive issue.

Mr. HASTINGS. Thank you, Ms. O'Loan.

I have one final question, if you will permit me, Mr. Chairman. That is, you gave in your paper and your presentation statistics for referrals to the Director of Public Prosecution, DPP is the acronym. You have, today, identified 374 cases of complaints that you have referred to DPP. Forty criminal charges have been recommended by the Police Ombudsman in respect of 28 investigations. Today the DPP has directed 19 criminal charges, and directions are awaited in 17 cases.

What happens if DPP does not follow through? What, if anything, can you do or your office do where the director does not follow through? Quite honestly, those statistics just sitting on a cold piece of paper look fair. But something is askew in my mind as to whether or not that is sufficient, because I would think that when you have taken it upon yourself to refer it over there, you have pretty firm belief that something should be done about it. If nothing is done about it, then I am curious to know what you can do, etc.

Ms. O'LOAN. If I may explain the 374 cases?

The law states that in any case in which a police officer may have committed a criminal offense and there is evidence to support that suggestion, then I must send a file to the Director of Public Prosecutions. That file must be sent even if I am recommending no prosecution.

So in the majority of cases, I will be recommending no prosecution because the evidential tests clearly will not be met.

However, the director does not always agree with me when I recommend no prosecution. He will direct prosecution in cases in which I had not thought that it would be necessarily right to do so. However, the test is the director's, and he is an independent body. It is not for me to second-guess him.

The second thing you asked me was about what can we do when he does not follow through? The answer to that is that the director does not engage with us when we are in the process of investigation. However, when we send the file up to him, there is some discussion between his office and my office to ensure clarification on any points that are outstanding. We will provide as much clarification as the director needs to enable him to make his decision.

Once he has made his decision, it is his decision. It has nothing to do with me. I have no power to prosecute police officers. He does that.

Mr. SMITH. Thank you very much.

Mr. Aderholt?

**HON. ROBERT B. ADERHOLT, COMMISSIONER,  
COMMISSION ON SECURITY AND COOPERATION IN EUROPE**

Mr. ADERHOLT. Thank you, Mr. Chairman.

Ms. O'Loan, thank you for your testimony here today. I was looking over your written testimony, and it is very well set out in explaining your office and how it operates.

One question that I had, as I was reviewing over some written information that you submitted, was how the public views your office. I think more than 80 percent of the public view is independent. Of course, I know that is one way that you can gauge how effective your office is as far as how independent you are. But what are some other ways that you measure your office's success?

Ms. O'LOAN. Well, we measure this in a variety of ways. We do not measure success by whether officers are prosecuted or disciplined. That is the first thing I have to say.

We do measure success by whether we have carried out an investigation effectively. We measure our success, therefore, by a series of targets and performance indicators that we have set for ourselves in consultation with the people and with the police, which we measure at six-month intervals to see how we are performing again.

So we are looking at a huge range of things, from what people's experience of the complaint system has been, if it has been accessible to them. I mean, so many people cannot get access to the police complaint system simply because, not in Northern Ireland, but in other places, simply because they do not understand the mechanism. They are afraid of it.

So we have spent an enormous amount of time and energy making it accessible and going out to the people into the Chinese Welfare Association or the Women's Aid where we have got women who are subject to domestic violence, that sort of thing.

Those are the mechanisms that we have put in place. At six-month intervals, we measure our progress on the indicators that we have set.

If I could refer you to my annual report, a copy of which my Director has with him, you will see the long, list of targets in respect of when we meet people, how we meet them, how we deal with them,

how often we respond to them, how we keep them informed. There are circumstances where we do not get it all right. I have to say that, too. We have not kept police officers informed as we might have done.

We made an initial assumption that they would understand the policing process and that therefore it was not necessary to contact them on a six-weekly basis as we contact complainants, but more to contact them as things happened in the investigation.

That we have revisited because, although told that they could ring the investigator at any time, they actually wanted regular six-weekly updates. Even if these simply said, well, we are still waiting for documentation or something like that.

So I guess the answer to your question lies in the annual report, the targets and performance indicators set and the measurements against them.

Mr. ADERHOLT. So from your perspective, I would conclude then that you feel that you have been successful, by the criteria that you all have set up.

Ms. O'LOAN. I do not like the word "success," Mr. Aderholt. I think all I can say to you is that we strive to meet the targets, and we revisit them. We strive to do what we can to make sure our system meets the needs of people and police.

Mr. ADERHOLT. OK. Thank you. That is all I have, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Aderholt. Mr. Crowley?

**HON. JOSEPH P. CROWLEY, MEMBER OF CONGRESS**

Mr. CROWLEY. Thank you, Chairman. Mrs. O'Loan, it is good to see you again. We met a couple years ago in Belfast.

I just have a couple of questions, and I appreciate the questioning on the part of my colleagues, especially Mr. Hastings, regarding confidentiality of testimony and of complaints.

Just in regards to the use of plastic bullets, I know that you have the authority to investigate the use of that weaponry as it pertains to the police department of Northern Ireland, the Police Service of Northern Ireland. In regards to the military, do you have that authority? Has there been an increase in the use of plastic bullets by the military and a decrease by the policing service?

Ms. O'LOAN. Right. The situation is that there has been no use of plastic baton rounds since September 2002, by either the military or the police. That is point number one.

I do investigate the use of plastic baton rounds by the police, every time a baton round is discharged. Now in that process, if I may say, since 2000, we have tightened up very significantly the processes attaching to the use of baton rounds.

So if a police officer goes out, we know exactly how many baton rounds he has got. When he comes back, he gives a number back. That is accounted for, so we know how many he has fired.

That whole audit trail enables us to carry out effective investigation. It is not the case that police officers can fire more baton rounds than they account for, because there are, now, new processes to deal with that issue.

I have no remit at all in respect of the military. I know the suggestion has been made that the military are firing on behalf of the police. The only thing I would say: Although I have no remit, we have made

some inquiries. Certainly as far as we are aware there is no evidence of that, and particularly there is no evidence of that because none of them have been fired since September 2002.

Mr. CROWLEY. Let me ask a question. I am not an attorney, so I am not going to be guilty of asking questions I know the answer to; that is I think the rule of someone who is an attorney. But we have an expression here, "the Richter scale." On a scale of one to ten, your job is a job of back-and-forth and as a go-between. How would you rate the level of frustration during your time period in this position, on a scale of one to ten?

Ms. O'LOAN. Whose frustration are you referring to?

Mr. CROWLEY. Yours.

Ms. O'LOAN. It is an enormously complex question. I feel like I am ducking the question.

Mr. CROWLEY. I thought it was rather easy. I was just...

Ms. O'LOAN. It is not that I am ducking the question. I mean, there were times of extreme difficulty and extreme frustration and extreme tension. Those times have largely gone. I am still to a degree frustrated by the length of time it takes to extract material from the Police Service. In part that is because the RUC had—I think that the methods for storing and retrieving files and that sort of thing were somewhat outdated, so very often they have to go hunting for what we want. That can take time.

But there are other circumstances where it seems to take rather too long. That too is improving.

So I guess on the frustration scale at the moment, yes, there are elements of frustration, particularly around that area. But I think that the job we have is more important than my frustration, really. All that I can do is to try to get what I need to do the job that I want to do.

Mr. CROWLEY. Well, I appreciate the answer. But I will take it as somewhere around a five or a six.

Ms. O'LOAN. I make no comment.

Mr. CROWLEY. Just my observation.

What can be done, do you think, in terms of alleviating the level of frustration you're dealing with as to policing services and obtaining those files? Is there something that can be done, whether through Parliament or through executive or the assembly when it is reconstituted?

Ms. O'LOAN. Yes, to deal with matters that are causing concern between us and the Police Services, as we investigate them, we have a series of meetings.

I do not know if you know the British command structure of gold, silver and bronze. But we have a series of meetings at three levels, one of which is chief officer level, and one of which goes down to investigator level.

And in the course of those meetings, we have been addressing these issues.

The change in the structure of the Special Branch and the integration of the Special Branch into criminal investigation is beginning to improve matters I know, for example, that police officers investigating crimes have said to me that the level of information coming through to them from the Special Branch is much higher than it previously was.

So I suppose what I would say to you is, it goes back, to a degree, to what Mr. Constantine was talking about and the question the Chairman asked me about May 2004, which I cannot answer. But the answer is that when you are changing something as big as this, and when you have got to take into account the risks to life dependent upon it, it will take time.

It is my hope that things will speed up because it is holding up a number of my investigations. But we are working with the Police Service, and the Chief Constable is commissioned to ensuring this is happening.

Mr. CROWLEY. I thank you the gentle lady, and I yield back.

Ms. O'LOAN. Thank you.

Mr. SMITH. Just a few additional questions, Mrs. O'Loan. First, I had read your study on the treatment of solicitors and barristers by the police in Northern Ireland, March 2003. It made the point that there were, of the 2,034 lawyers, 1,458 responded, or 52 percent. Of those, 55 of the respondents said that there were threats, which would be a 3.8 percent of those who responded said that they had endured some kind of harassment. Then you go through some of the harassments, including life-threatening harassments.

One thing that, at least I learned that I think we learned it with Rosemary Nelson is, one, she was reluctant to ask for police protections because the very people that were intimidating her and saying—repeat some of the words she used—she was so frustrated by her predicament that she wanted to do right in terms of seeking due process and a fair trial. Meanwhile, she was under threat that she would be killed. When she testified right where you are sitting, a little more than 5 years ago, she had made the point: “They are going to kill me.” She probably would not have responded to a solicitation as to whether or not she was at risk, unless there was something—I mean, because the very people that put her at risk were asking.

But obviously that is absolutely not the case with you.

I was wondering if there is any thought, since that was done in June through October 2001, any thought of going back to resample, to see whether or not that situation has changed for the better or for the worse?

Was there any thought given to contacting, or finding some way of contacting, the 50 that responded with some fear and trepidation? And whether or not the other 1,400 or so who did not respond, who may have been reluctant, particularly at that time, given the track record of defense attorneys; as you point out in your report not all these people were defense attorneys. Obviously, many of them did normal lawyerly work including closing houses and other kind of defense work.

So if you could respond to that and whether or not there are any plans or you are thinking perhaps of going back.

Ms. O'LOAN. Well, going back on the sample, we did this report because of the level of articulation of threat to solicitors and because, in part, of the death of Rosemary Nelson.

But what I certainly would say to you is that when we got the results of the survey, the first thing we did—well, the first thing I did when I took office, was that I made complaints by solicitors about

allegations against the police high priority cases that must be dealt with at a high level. We have a high priority status process. That was point number one.

We then revisited the number of complaints that we had from solicitors, the nature of their complaints and the outcome from those. So if you like, we have been doing an ongoing analysis.

The reality is that most solicitors in Northern Ireland, even defense lawyers, will tell you that the situation has changed and that, although there has been occasional difficulties with the police, they can very often be difficulties between police officers wanting to ask clients a question and the solicitor thinks they should not be asked the question.

So we have gone back and revisited what is going on there and keep it under review.

Any thought given to contact those who responded? We did contact every single one of them. Some of them were prepared to talk to us more fully. Others of them said, "No, it happened, I do not want to talk about it anymore. I am getting on with my life." That was their right.

Any thought of contacting those who did not respond? I did contact a number of lawyers. I have had a number of meetings with groups of lawyers. I have asked them the question, "If you did not respond, I would be interested to know why." With a lot of them, it was quite simply, they had no contact with the police in their professional life.

I am not assuming therefore that all those who did not respond fell into that category, but certainly it is something that we do keep a very close watch on.

I cannot comment any further in relation to Rosemary Nelson herself, because I currently have a case on which I will report. It is a case which was brought to me by Mr. Martin O'Brien of the Committee on the Administration of Justice [CAJ]. The complaint was about police handling of information prior to the death of Ms. Nelson.

That case was the subject of a judicial review of me by the CAJ. The CAJ was seeking discovery, disclosure of certain documents. Those documents fell into the categories of sensitivity, which I have discussed previously. I made the decision that in the circumstances, particular categories of documents couldn't be disclosed. So that decision is under challenge.

We are waiting judgment. The case was actually heard in January 2003. We still do not have judgment, but I think in part that was because there was a major case on disclosure of documentation going through the House of Lords.

Secondly, the Cory Report still hasn't been published, and my guess is that maybe things are not ... I do not know, but we have not got that result.

Pending that, I cannot publish the results of my investigation into the material available to the police before Rosemary's death.

Mr. SMITH. You know, on the Cory Report, would you be in favor of not only publishing, but implementing its recommendations, which we understand would be for a public inquiry?

Ms. O'LOAN. I have not seen them. I would never say I would endorse anything I have not seen.

I have seen the Irish ones because they are on the web site.

I have written to the Secretary of State and asked for copies of them where they relate to investigations into the death of Robert Hamill and to Mr. Hamill's case. We took over supervision of those from the police, from the Independent Commission for Police Complaints. Since we took over that supervision, two people have been convicted of perverting the course of justice, and three people are currently on trial for perverting the course of justice.

So there is the Cory Report on Hamill, and we have not finished our work there yet. So I have an interest there. I have an interest, obviously, in Ms. Nelson's case. I have an interest in the case of Billy Wright, who was murdered in prison, because of the complaint I have. I have asked for those three; I have not yet got them.

Mr. SMITH. Let me ask you: you mentioned soldiers were not under your purview. Is there someone who has Nuala O'Loan's job within the military who does something akin to what you do? Or are they not being investigated if there is a problem, there is no oversight?

Ms. O'LOAN. If there is no injury, my understanding is that they are not investigated. We investigate everyone tried by the police whether there is injury or not. If there is an investigation into military use of batch rounds, it is carried out by the military police, and they report. If there is a criminal allegation, if for example a soldier were to shoot somebody and seriously injure them and there is an allegation that this was grievous bodily harm or something, that would be investigated by the police. So there are complex interactions there.

Mr. SMITH. Would you favor or do you think it would appropriate to expand the statute so that your office would have greater jurisdiction, especially since independence is the hallmark of your office? I do not know if that is the case when you talk about a military investigation.

Ms. O'LOAN. The military investigation is not independent.

I do not think it is for me, Chairman, with all due respect, to determine whether my remit should be expanded or not. That is a matter for Parliament.

Mr. SMITH. Let me just ask on the Oversight Commission: Do you think it would be wise to extend it, perhaps not permanently, but for some additional years?

Ms. O'LOAN. I think that it is very important that the indicators that Mr. Constantine has set are met. I think once that is done, the Oversight Commission has met its needs, its target.

Mr. SMITH. But has it? I mean, are we still...

Ms. O'LOAN. It is not finished yet, but I guess Mr. Hutchinson has a year. I hope we will see the completion by then.

Mr. SMITH. Any other further questions?

Mrs. O'Loan, thank you so much for your testimony here today, for providing this Commission and by extension the Congress and the Senate very valuable insights. I want you to know how deeply appreciative we are, and I speak collectively for both the House and the Senate as the Chairman of this Commission, for the great work that you are doing. Your independence is sacrosanct. It is recognized and applauded. The tenacity that you have brought to this job is also deeply appreciated and the integrity. Thank you so much.

Ms. O'LOAN. Thank you very much.

Mr. SMITH. I would like now to ask our third panel of witnesses to make their way to the witness table, beginning with Paul Mageean, who is the legal officer at the Committee on the Administration of

Justice. In 1995, he became the legal officer with responsibility for casework, as well as policy in relation to emergency laws, criminal justice and policing issues.

He also handles the committee's work with the United Nations. A qualified solicitor holding a master's degree in international human rights law, from Queens University in Belfast, Mr. Mageean also worked for a private human rights practice in Belfast and brought cases dealing with lethal force and collusion before the European Court for Human Rights.

Elisa Massimino has been the director of the Washington office, here in D.C., of Human Rights First, formerly the Lawyers' Committee of Human Rights. She has held other positions with organizations since 1991. She also worked as a litigation associate for Hogan and Hartson, focusing in particular on refugee immigration and human rights issues. Ms. Massimino received her J.D. from the University of Michigan Law School, and a master's degree in philosophy from Johns Hopkins University.

Then we will hear from Jane Winter, who has served since 1994 as the director of British Irish Rights Watch, an independent human rights organization offering services to victims of human rights violations in Northern Ireland. With a degree in social anthropology, Ms. Winter previously worked in two London social services departments, studying the needs of children, mentally ill and the elderly, before working as a case worker at a law center.

She also ran the Wandsworth Citizens Advice Bureau, and was project coordinator for Public Law Project.

Finally we will hear from Brendan McAllister, who is the founding director of the Mediation Northern Ireland in 1992, encouraging the practice of mediation as a tool for institutional change in Northern Ireland, especially in regard to policing. He previously worked as a probation officer with offenders and their families in various parts of Northern Ireland.

Paul, if you can begin your testimony.

**PAUL MAGEEAN, LEGAL OFFICER,  
COMMITTEE ON THE ADMINISTRATION OF JUSTICE**

Mr. MAGEEAN. Thank you, Chairman. Thank you for the invitation to testify today.

The Committee on the Administration of Justice, or CAJ, is an independent human rights organization that draws its membership from across the different communities in Northern Ireland. CAJ works on behalf of people from all sections of the community, and takes no position on the constitutional status of Northern Ireland.

In 1998, we were awarded the prestigious Council of Europe Human Rights Prize by the then 41 Member States of the Council of Europe in recognition of our efforts to place human rights at the heart of the peace process.

One reason for the success of this work has been the continued involvement of the United States. In this context, we would like to thank the honorable members of this Commission for this opportunity to raise these important issues and in particular, Chairman Chris Smith for his work in this area. Chairman Smith will, of course, know that I have testified before Congress before, and on one occasion had the honor of doing so with my colleague Rosemary Nelson. It is salutary

to note that the fifth anniversary of her death occurred yesterday. I also note that Geraldine Finucane, wife of Patrick Finucane, is present at the hearing today.

These hearings have been convened to consider the progress or lack of progress in implementing the various police reforms in Northern Ireland. Before addressing that specific topic, the CAJ would like, with your permission, to set the question of policing change against the wider context of human rights measures in the wake of the Belfast or Good Friday Agreements.

Just over a year ago, CAJ and a number of other human rights nongovernmental organizations active in Northern Ireland, some of which are represented today on this panel, issued a short statement calling on governments, political parties and broader civil society to commit themselves to developing concrete benchmarks against which progress and the advancement of human rights and equality could be delivered. I would be grateful to have that statement placed on the record.

In particular, the NGOs hold the necessary political commitment to developing, legislating for, and subsequently enforcing a strong and inclusive bill of rights for Northern Ireland. Unfortunately, a full year on, little progress can be reported. The Northern Ireland Human Rights Commission has not yet, 2½ years after publishing its draft bill of rights, produced another version, although we believe that is imminent.

We believe that the government has not given this matter sufficient priority. Given the enormous importance attached in the United States to its written Constitution and the Bill of Rights, it would be helpful if this Commission were to lend its support to current efforts to establish a round table process in Northern Ireland involving political parties and civil society and the elaboration of a bill of rights that would protect the rights of all.

Elsewhere in the statement, we allude to the failures to date in seriously addressing the agreement's proposals with regard to tackling socioeconomic inequalities, long-term unemployment, persistent differentials in employment, and sectarian and other divisions.

We argue that human rights language, concepts and principles have much to offer in this regard.

Human rights abuses feed and fuel the conflict, and if not addressed in a fundamental and consistent way, will fuel the terrible legacy of conflict.

Cycles of deprivation, alienation and social exclusion need to be broken if we are to develop a truly peaceful and just society.

The government has been given the tools to break this cycle by the agreement. In our view, they have shown themselves reluctant to use these tools, and they need to begin to do so.

The area of criminal justice and emergency laws is, of course, one that has been a constant source of concern, both in Northern Ireland and further afield. Significant changes were promised by the criminal justice review that arose from the agreement. But again, change has been slow in coming.

We will not be the final establishment of the new public prosecution service until the end of 2007, 7½ years after that recommendation was first made.

Like the debacle over Patten, we have had two major pieces of legislation purporting to implement the recommendations of the review, neither of which completely does so.

It is difficult to avoid the conclusion that there is an institutional resistance to many of the changes being proposed.

In addition, we now have a permanent emergency legislation at the very time when our emergency has ended. Ten years after the first cease-fires, non-jury Diplock courts still operate in Northern Ireland.

Nor can we seriously move ahead without addressing the past. Mechanisms need to be established to ensure accountability for past human rights abuses. The debate about the past needs to be led by the two governments, but involve wider society. It should not be used to undermined existing initiatives, such as the Cory proposals, which my colleague Jane Winter will address today.

We at CAJ are very concerned by recent proposals made by the chair and vice chair of the Policing Board—purportedly in their personal capacity—that run directly contrary to Judge Cory's proposals that inquiries be held into the murders of Pat Finucane, Robert Hamill, Rosemary Nelson, and Billy Wright. We would be grateful if a press statement issued by CAJ on this matter could be placed on the record.

CAJ believed that while its political accommodation may be difficult at this time, advances can be made on the human rights front. The focus should move from the problems that have arisen in the various institutions established by the agreement, to a focus on what change is being delivered and should be delivered.

To measure such change, we need to develop concrete benchmarks, and that is the work that we are currently engaged on.

Turning to the specific question of policing, our focus in the policing discussion is not on the new institutions per se, but whether they are delivering the change promised by the agreement and promised by the Patten Report. That, we believe, will be the test applied by citizens on the ground as to whether the new policing system is working.

There have been several advances in the policing arena, including the establishment of the Office of the Police Ombudsman, the transformation of the RUC into the PSNI, the introduction of measures to increase Catholic representation, and the creation of the Northern Ireland Policing Board and the local districts policing partnerships.

While there have been improvements, CAJ has continued to hear reports of heavy-handed raids, protection of informers involved in crime, the recruitment of children as police informers, the unnecessary and disproportionate practice of stopping and questioning people, and an intimidating approach to public order policing which tends to fuel rather than ease tension.

In addition, there are also continuing problems relating to the failure to implement aspects of Patten. Patten received many submissions describing the RUC Special Branch of the force within a force. He also said this view was shared by other police officers.

The Patten Commission stated that this description, whether real or perceived, is not healthy, and recommended several changes, including bringing Special Branch together with Crime Branch, reducing the number of officers engaged in security work, and requiring that district commanders are well briefed on security activities, and fully consulted before security operations are undertaken in their district.

In 2001, the Police Ombudsman published her report into the 1998 bomb that killed 29 people. The Ombudsman's report found that the Special Branch did not take sufficient action in response to intelligence received prior to the bombing, nor impart vital information to the team investigating the crime after it took place.

As a result, the Policing Board called for reports by Her Majesty's Inspector of Constabulary, Mr. Crompton, on the review of the Special Branch and Mr. Blakey on the murder inquiry.

Despite the board receiving these documents in November 2002 and June 2003, as well as additional recommendations from Sir John Stevens in April 2003, it is unclear what the current state of implementation of these recommendations is.

The Oversight Commissioner stated in his last report in December 2003 that the Patten Commission recommendations relating to the Special Branch that were made some 4 years earlier have not been implemented, and progress in the area remains slow.

This is not simply an academic issue.

The Special Branch has been closely involved in a number of high profile raids and arrests that have not, at least of yet, resulted in conviction, and that some see to be politically motivated.

We respectfully request that this Commission write to the Chief Constable and to the Policing Board to inquire what progress has been made, so that the public knows whether the force within a force is being dismantled.

A related area of great concern to CAJ is the independence of the Forensic Science Agency. These concerns result from press reports describing the testimony of a forensic scientist who came to finger that police officers had tried to interfere with the agency's work for years by requesting the agency to test evidence that may have been contaminated.

Also a television spotlight program, which was aired on February 23, 2004, alleged that police officers investigating alleged dissident Irish Republican activity asked a forensic scientist to delete and revise part of his report. The program stated that the deleted information implicated another person who, it is alleged, is an informer, and that an official from the office of the Director of Public Prosecutions wanted this information removed from the file and therefore made it inaccessible to the defense.

Forensic scientists also described how soldiers had opened the bag of clothing from the suspect and rubbed a gloved hand over the clothing in an apparent attempt to plant forensic evidence.

The extent to which these matters are aggressively dealt with by the new institutions, both in the policing and criminal justice fields, will be a test of how far things have really changed in Northern Ireland.

Mr. SMITH. Without objection, it will be.

Mr. MAGEEAN. Thank you. Another issue of concern is the manner in which the PSNI deals with sectarianism. In its 1999–2000 report, Her Majesty's Inspector of Constabulary reiterated the need for the PSNI to monitor sectarian incidents. The PSNI has just recently, after 5 years, begun consulting on a definition of sectarianism, and is not currently monitoring this type of hate crime. It is also not clear how the PSNI is attempting to combat sectarianism within the service. A neutral working-environment policy has been introduced, but

the human rights Commission and the Oversight Commissioner have criticized the lack of progress in demonstrating adequate human rights and anti-sectarianism training for PSNI recruits.

We respectfully call on this Commission to help us ensure the quality of training for police recruits is as state of the art as the new police college itself will be.

Regarding the Policing Board, we believe it is much more accountable and powerful than the previously police authority. The fact that it is able to act and take decisions despite the diversity of opinions regarding policing on the board is commendable.

The code of ethics for the Police Service and the bonds for monitoring the human rights compliance of the PSNI are two major accomplishments.

We do, however, have serious concerns related to the board's transparency, level of engagement with statutory bodies, with the human rights community and the public, and its ability to bring about fundamental change within the police.

In our opinion, the board does not adequately cooperate with or seek the opinions of the various statutory bodies and human rights groups, community organizations and the public.

Likewise, important decisions, such as the board's endorsement of the acquisition of CS spray [2-chlorobenzylidene malononitrile, an incapacitant spray] by the police, continue to be made in private without the public knowing that the decision was even taking place.

There is good work that the board is performing, but if the public is not aware of such work, they will not be confident that the board is effectively holding the police to account.

Mr. SMITH. Without objection that, too, and all of the recommendations for inclusion in the record.

Mr. MAGEEAN. OK. Thank you, Chairman.

Mr. SMITH. So ordered.

Mr. MAGEEAN. I referred above to the intervention by the Chair and Vice Chair of the Policing Board in the discussion about how to deal with the past in Northern Ireland. It seemed to us that this intervention was designed to undermine the Cory process. Such interventions, even and perhaps especially when they are purportedly in the personal capacity of the individuals involved, not only damage the discussion around truth, but also undermine the credibility of the board.

In relation to the Office of the Police Ombudsman, CAJ warmly welcomes the creation of this office, which has shown itself to be able to assert its independence and seriously criticize the Police Service when warranted.

The Office of the Police Ombudsman is a massive improvement over the previous complaintants' body. But again, there are some areas of concern.

One is the power of the Police Ombudsman to investigate operational matters, policy and practice. 2003 Police Act gave the Police Ombudsman additional powers in this area. However, it is still not entirely clear what operational issues the Police Ombudsman will investigate and which will fall outside her remit.

Operational decisions are of such magnitude and have such impact on police-community relations that they must be subjected to independent scrutiny. If the Police Ombudsman regards some issues as outside her remit, then we need to be clear whose responsibility it is to investigate those matters.

As the Patten Commission stated, the Chief Constable has operational responsibility to take decisions without interference. But it should "never be the case" that such decisions be exempted from inquiry or review after the event.

It is not clear whether the Office of the Police Ombudsman has been able to substantiate more complaints than its predecessor, or whether the problems highlighted in complaints have been fed back into the Police Service in such a way as to effect changes on the ground.

According to the Police Ombudsman's latest report, one percent of the complaints concluded during the year were forwarded to the Police Service for disciplinary action, and five percent forwarded to DPP.

This 5 percent figure seems low, considering that it includes cases in which the Police Ombudsman believes prosecution is and is not warranted. The CAJ has also received reports of cases in which the Police Ombudsman has recommended the prosecution of officers, but the director of public prosecution has refused to bring the charges.

If this is a particular problem, it may be that the good work of the Ombudsman is being stymied by the resistance of another institution.

The CAJ has also been concerned over the years by the continued use of plastic bullets. While it is the case that the number of occasions in which such bullets have been fired has reduced significantly in recent years, we are concerned that the weapons continue to be deployed. Some commentators have attributed the reduction in the use of the weapon by the police to the investigation of the use of such weapons by the Ombudsman. We are concerned that the use of the weapon by the military in Northern Ireland is not subject to investigation by the Ombudsman and believe that this situation needs to be rectified.

In conclusion, Chairman, the human rights situation in Northern Ireland has improved dramatically over recent years. Human rights discourses are everywhere and employed by everyone. Expectations have been raised that change is on the way. If that change is not delivered, then those expectations will be dashed. To borrow a phrase from the U.S., government and its agencies in Northern Ireland are certainly "talking the talk" of human rights but they must now "walk the walk."

Thank you, Mr. Chairman.

Mr. SMITH. Thank you very much for your testimony.

Ms. Massimino?

**ELISA MASSIMINO, DIRECTOR,  
WASHINGTON OFFICE, HUMAN RIGHTS FIRST**

Ms. MASSIMINO. Thank you. Thank you very much for convening the hearing and inviting us to share our views with you.

Human Rights First's mission to protect and promote human rights is rooted in the premise that the world's security and stability depend on long-term efforts to advance justice, human dignity and respect for the rule of law in every part of the world.

I want to start, if I can, with a particular word of thanks to you, Chairman Smith, for your unwavering commitment to keeping human rights on the agenda of the U.S. Congress. People around the world who struggle against oppression and injustice have found a strong and stalwart ally in you. Your persistence in raising these issues and following through on them, as well as that of your staff, is something that we have all come to count on. We thank you very much for that.

That persistence is much needed with respect to Northern Ireland. While there has been important progress in the human rights situation since the Good Friday Agreement, nearly 6 years later, there is still strong and quite stubborn resistance in some quarters to implementing many human rights commitments made in the context of the Good Friday Agreement.

As has been the case over some years, the peace process in Northern Ireland is often beset with political crises that have tended to stall progress on important human rights reforms.

This, in turn, has tended to undermine support for the Agreement itself from those who are waiting to experience real change in their daily lives. We believe strongly that progress on human rights will sustain support for peace in Northern Ireland even during periods of political turmoil.

The United States has an important role to play in encouraging its close friend and ally, the United Kingdom, to overcome resistance to change and press ahead the agenda for reform in the areas of criminal justice, policing and accountability for human rights violations.

I would like to focus my remarks today, which are a summary of a written statement that I request be included in the record, on the criminal justice reform process and on continued emergency legislation.

I would like to commend to the Commission's attention a recent report released by the Association of the Bar of the City of New York which addresses many issues we are discussing today and from which I have drawn extensively for my testimony.

Fiona Doherty, senior counsel to Human Rights First, participated in a mission that culminated in this report and was one of the report's authors. I ask that the report itself be made part of the record of this hearing.

Structural reforms in the criminal justice system will be fundamental to achieving human rights progress in Northern Ireland. This is essentially the framework in which the reformed policing service must operate. If it is faulty, improvements in policing will ultimately be ineffective.

On June 27, 1998, a Criminal Justice Review Group was established—part government, part nongovernment—to look at a wide range of criminal justice issues. In March 2000, the Review Group published a report called "The Review of the Criminal Justice System in Northern Ireland," which included 294 recommendations for reform.

It was not until 18 months later that the British Government published an Implementation Plan and a draft justice bill for Northern Ireland that codified aspects of the Implementation Plan.

That plan made clear that the individual criminal justice agencies were supposed to carry out independently the reform measures that did not require further legislation. For example, the Plan supported human rights training for all criminal justice personnel, but left it to the specific agencies to decide when and how to carry out that training. The Plan itself did not discuss a mechanism for overseeing the proposed changes, nor did it set out a time table for their implementation.

The substance of the reforms, the 294 recommendations that were put forward by the Criminal Justice Review Group, are quite welcome and have the potential to enhance justice and accountability in Northern Ireland.

But it is striking how far behind criminal justice reforms are, judged against the pace of reform in other areas, such as policing. Nearly 6 years after the Good Friday Agreement, reform in the prosecution service, judicial appointments process and other criminal justice agencies is only just beginning.

One important development that I would like to note occurred in June 2003, when the U.K. Government published an updated Criminal Justice Implementation Plan. The 2003 Plan significantly revised the 2001 Implementation Plan. It actually set out a time table for previously agreed upon reforms.

The time table included the introduction of a new criminal justice bill in the fall of 2003, which has happened; the launching of a new public prosecution service in December 2003, but that is to be phased out over several years; publication of statements of ethics by criminal justice agencies were due by the end of 2003, but this has not yet occurred; and a review by the as-then not-yet-appointed Oversight Commissioner in 2003 in December, with the report to be published in January 2004.

The criminal justice bill was introduced in December, as planned, and is expected to become law after some revision in the coming months. It will make a number of important changes to better conform the law with the Criminal Justice Review Group's recommendations.

Notably, it will establish a Judicial Appointment Commission designed to secure a judiciary in Northern Ireland that reflects society. That is an issue that we have talked about many times before at previous hearings.

Another important development that I would like to note is the appointment of a Judicial Oversight Commissioner. After a long delay, in July last year, the British Government appointed Lord Clyde, a former Scottish law lord, to be Oversight Commissioner to monitor criminal justice reform. This position will play a similar role to that played by Tom Constantine on policing.

The appointment of the Oversight Commissioner provides an opportunity not only to monitor progress on criminal justice reforms, but to push forward the implementation of reforms. We encourage Lord Clyde to work proactively with the criminal justice agencies to increase the pace of reforms.

In this regard, it is important that Lord Clyde review the provisions of the new justice bill. We also recommend that the government codify the powers and duties of the Oversight Commissioner in statute and ensure that the office is sufficiently resourced, in light of the scope and importance of the job.

Grounding the powers in statute would create the same standing for the Justice Oversight Commissioner as is given to the Oversight Commissioner for policing. Providing the Commissioner with a statutory mandate would increase the public accountability of his office and help ensure the Commissioner receives full cooperation from the criminal justice agencies he is overseeing.

Regarding the ongoing use of emergency powers, I would like to note that the United States, which is now facing its own struggle against terrorist violence, can take a lesson from the United Kingdom about the longevity of its emergency laws.

These draconian provisions, which included authorization of detention without charge for up to seven days, warrantless searches and seizures, denial of access to an attorney for a successive 48-hour period, and trial in non-jury Diplock courts with lower standards for admissibility of evidence fostered in Northern Ireland an environment in which human rights were routinely violated. At the time, the government insisted that the laws were a temporary, targeted response to the specific threats posed by the paramilitaries.

But experience in Northern Ireland shows that these kinds of police powers are very hard to get rid of. Once enacted, they become embedded in the fabric of the criminal justice system.

In February 2001, the United Kingdom brought into force the Terrorism Act 2000, despite the Good Friday Agreement and the many years of paramilitary cease-fires. This law significantly expanded the definition of terrorism and put many supposed "emergency powers" on a permanent, U.K.-wide footing.

The Terrorism Act also included a special section on Northern Ireland, which, among other measures, authorized the use of non-jury Diplock courts. While the Northern Ireland provisions of the Act expire automatically if they are not renewed each year by order of the Secretary of State of Northern Ireland, so far they have been renewed every year.

Finally, a word on the situation of human rights defenders. As you will hear in detail from my colleague, Jane Winter, today's hearing comes at a critical moment in the long struggle for justice and accountability for the murders of human rights lawyers Patrick Finucane and Rosemary Nelson.

Having sought for years to put off the difficult process of uncovering the truth in these cases, the U.K. Government has finally come to the threshold of holding public inquiries into government collusion in the deaths of Finucane and Nelson.

Peter Cory, the international judge appointed to conduct investigations in these cases, has concluded in reports not yet made public that there should be public inquiries established in the Finucane and Nelson cases. Having already committed at the outset part of the negotiations leading to Cory's appointment to implement his recommendations, the United Kingdom Government should move quickly to do so.

Some have argued that focusing on redress for past wrongs will simply reopen old wounds, and mire society in the bitterness of a conflict that is now essentially over.

But this view ignores the violence done to the fabric of society by leaving such wounds to fester, as Mrs. O'Loan mentioned in her testimony. Public inquiries into government collusion and into the deaths of these two human rights lawyers is quite simply a prerequisite to breaking the cycle of impunity that continues to persist in Northern Ireland.

Until the government demonstrates a commitment to acknowledging the wrongs done in these cases, there will be a fundamental withholding of faith on the part of many in Northern Ireland that no amount of policing or criminal justice reforms will remedy.

While it is certainly true that the situation of human rights lawyers and activists in Northern Ireland has become less insecure over the last several years, there is an ongoing need for vigilance, particularly since the onset of the global war on terrorism, to ensure that irresponsible rhetoric does not once again create an environment in which attacks on human rights advocates is tolerated.

In this regard, Human Rights First is deeply troubled by public remarks made recently by David Trimble in which he described human rights organizations as "the great curse." Speaking at a conference on victims of terrorism in Madrid, Mr. Trimble charged that human rights groups "justify terrorist acts and end up being complicit in the murder of innocent victims."

We believe such remarks are inflammatory and reckless and can contribute to a climate in which governments and non-state actors feel little restraint in attacking human rights defenders who are critical of official action. Mr. Trimble's remarks were reminiscent of those made by Douglas Hogg in an address to the British Parliament on January 9, 1989. Hogg charged that unnamed solicitors in Northern Ireland "are unduly sympathetic to the cause of the IRA." Weeks later, Patrick Finucane was murdered.

We have written to Mr. Trimble expressing our concern about these remarks that he has said were "wrenched out of context" by the press, and we have asked that he publicly clarify those remarks. We urge this Commission to do the same. Thank you very much for the opportunity to share these views with the Commission.

Mr. SMITH. Thank you very much for that excellent testimony. Mr. Trimble was here earlier, and I am sure he will be in meetings both at the Speaker's Luncheon, and I will ask him about that myself. I hope some of my other colleagues will do so as well.

Ms. MASSIMINO. Thank you.

Mr. SMITH. The "great curse" comment is irresponsible at best, and certainly the human rights organizations—I have been in Congress now 24 years. It has been my experience that without the reporting—and this goes for my own government as well—that the human rights organizations steadfastly speak truth to power.

Had it not been for these organizations, so many of the weak, vulnerable and at-risk persons in every country would be that much further at risk, that much more vulnerable. So I applaud the work that the human rights groups do, very often at great expense and great risk to themselves, including their persons as well as to their careers. So that "great curse" statement is outrageous.

Ms. Winter?

**JANE WINTER, DIRECTOR,  
BRITISH IRISH RIGHTS WATCH**

Ms. WINTER. Thank you, Chair.

British Irish Rights Watch is an independent, nongovernmental organization that monitors the human rights dimension of the conflict, and these days, the peace process in Northern Ireland.

We welcome very much this opportunity to address the Commission concerning the investigation carried out by Judge Cory into whether there was collusion in six murders that took place in Northern Ireland and the Republic of Ireland. We thank this honorable Commission for their interest in this issue.

We particularly thank Chairman Smith for his continuing and sustained concern for human rights and the peace process in Northern Ireland.

This oral submission is a summary of a longer submission that I respectfully request be read into the record.

To deal with the Northern Ireland cases first, Belfast lawyer Patrick Finucane was murdered by the UDA [Ulster Defence Association] in 1989. In 2003, Sir John Stevens, the most senior police officer in the United Kingdom, publicly stated that there is strong evidence of collusion with the loyalists who killed the lawyer by both RUC officers and British Army intelligence. As you know, Mrs. Finucane is present here today.

Robert Hamill was a young Catholic man who was kicked to death by a loyalist mob in 1997 in the center of Portadown, despite the presence of armed RUC officers in a police Land Rover. The RUC later put out misleading press statements suggesting that Robert Hamill had been involved in a pitched battle between opposing factions and that RUC officers had been injured.

Following an investigation by the Police Ombudsman, former police officers and others have stood trials for perverting the course of justice by alerting suspects and telling them how to dispose of the evidence. Dissident loyalist leader Billy Wright was murdered in the Maze Prison in 1997. He was killed on his way to a visit by Republican INLA [Irish National Liberation Army] prisoners whom the prison authorities had housed in the same wing. They were able to smuggle weapons into the jail and to cut through a wire fence completely undetected. A prison officer was called away from a crucial watchtower just at the time of the murder. The murderers apparently had advanced warning that Billy Wright was due to receive a visit that morning.

Lurgan lawyer Rosemary Nelson was blown up in a car bomb by the LVF [Loyalist Volunteer Force] in 1999. She was threatened by members of the security forces before she died. Representations were made to the government concerning her safety by the United Nations and by NGOs, but she was offered no protection.

Five years after the murder, no one has been brought to book, despite a costly police investigation overseen by officers from outside Northern Ireland. Some of those suspected of involvement in her murder were police agents, and one was a serving soldier.

These cases had all received international attention with governments, the United Nations, and others calling for public inquiries. However, it was not until 2001, when collusion became an issue during negotiations designed to save the Northern Ireland peace process, that any kind of progress was made.

[Irish Prime Minister] Bertie Ahern persuaded British Prime Minister Tony Blair to call in an independent judge from outside the U.K. and Ireland to consider the issue of whether public inquiries were warranted into the six cases. The Weston Park Agreement referred to them as “a source of grave public concern,” and said that “in the event that a public inquiry is recommended in any case, the relevant government will implement that recommendation.”

They also provided for consultation with the relevant attorney general concerning any prosecutions arising out of the cases and for, and I quote again, “guidelines and facilities for ensuring that sensitive material is handled in a way which respects our own responsibilities in respect to national security and the privacy of individuals, including in respect to the right of life.”

Judge Cory started work in July 2002, and he finished his work very promptly by the October 7, 2003, when he delivered his reports to the two governments. The two reports addressed to the Irish Government concerned Lord Justice and Lady Gibson and Harry Breen and Bob Buchanan. Lord Justice Gibson, who was a high court judge, and his wife died when their car was blown up by the IRA in 1987 as they returned home from a holiday via the Dun Laoghaire ferry.

Although the judge had booked the ferry in his own name, the timing and location of the explosion, which happened during the handover between the Garda, the Irish police, and RUC escort on the border, had given rise to allegations of collusion by a Garda officer. Harry Breen and Bob Buchanan were RUC officers who were ambushed and shot by the IRA as they returned to Northern Ireland from a meeting with colleagues in the Republic in 1989. Garda collusion was also suspected in that case.

On the December 18, 2003, some 3 months after the judge had delivered his report, the Irish Government published their two reports. Judge Cory had recommended a public inquiry in the case of Bob Buchanan and Harry Breen, and the Irish Government announced that it would immediately establish such an inquiry. The Irish Government asked Judge Cory to make some minor changes to his report before publication, which the judge agreed to make.

These mainly involved the identification of certain persons.

The U.K. Government has yet to publish the full reports addressed to them, despite many appeals from the families of the victims. We understand that in contrast to the Irish Government, they have asked the judge to make many changes to his report, about many of which the judge is unhappy.

They have also insisted that everyone who is criticized in the report must be forewarned of that criticism, and are claiming that the Salmon Principles require them to do so. These principles were developed to give the right of rebuttal to persons facing criticism by public inquiries, and have never before been applied to private inquiries of the type undertaken by Judge Cory, so far as we know.

The U.K. Government has also argued that it needs to make changes to the report to protect the rights to life and privacy of persons mentioned in the report and on grounds of national security. However, Judge Cory has told us that he drafted the report so as to avoid the need for such changes, and the Irish Government does not appear to have needed to make them.

On January 12, 2004, Judge Cory took the unprecedented step of telling the four families concerned that he has indeed recommended public inquiries in all four United Kingdom cases, and he also confirmed this publicly. Two days later, the Finucane family lodged an action for judicial review in the High Court in Northern Ireland of the government's failure to publish Judge Cory's report. Rosemary Nelson and Billy Wright's families followed suit.

On January 20, the Finucanes were given leave to proceed. The judge who heard the leave application set a strict time table for the lodging of affidavits in the case, and set a date for the substantive hearing of Monday, March 1, 2004.

In what can only be described as a dirty trick, after close of business on Friday, February 27, 2004, the government invited the families to apply for a three-week adjournment in return for a vague promise that "it is expected that within a matter of weeks the arrangements for publications will be finalized."

When the families refused to apply for an adjournment, the government indicated that it would do so, and the judge granted their application.

During the hearing of arguments about whether the adjournment should be granted, counsel for the government revealed for the first time that copies or extracts from the report had been shown to the Police Service of Northern Ireland, the Ministry of Defense and the Director of Public Prosecutions. All of these agencies have been alleged to have been involved in collusion in one or all of the four cases.

On March 2, 2004, the Finucanes decided to make a fresh application for judicial review of the failure of the government to act on Judge Cory's recommendation that there should be a public inquiry into the murder of Pat Finucane. Rosemary Nelson's family has done the same.

On March 8, both cases were given leave to proceed. The full hearing was set for April 22. On March 11, the government informed the four families that they would publish the report by the end of March together with their response.

However, they gave no commitment to implement the judge's recommendations for public inquiries.

In his report into the Buchanan and Breen case, Judge Cory had this to say: "This case, like that of Finucane, Hamill, Wright, Nelson and the Gibsons, was specifically selected as one of those to be reviewed to determine if there was collusion and, if so, to direct a public inquiry. In light of this provision in the original agreement"—and he means the Weston Park Agreement—"failure to hold such an inquiry as quickly as possible might be thought to be a denial of the original agreement which appears to have been an important and integral part of the peace process. The failure to do so could be seen as a cynical breach of faith which could have unfortunate consequences for the Peace Accord," and I end my quote.

He also set out the parameters of any public inquiry held in response to his report. The four families are concerned that they will not be consulted about the terms of reference or the format of any public inquiry.

This honorable Commission is respectfully requested to urge the United Kingdom Government to disclose unexpurgated versions of Judge Cory's report to the families concerned, to consult the families about the terms of reference and format of the public inquiries, and to establish those public inquiries without further delay.

Thank you very much.  
 Mr. SMITH. Thank you very much for your testimony.  
 Mr. McAllister?

**BRENDAN MCALLISTER, DIRECTOR,  
 MEDIATION NORTHERN IRELAND**

Mr. MCALLISTER. Thank you very much, Mr. Chairman.

I would like to thank the Commission for the invitation to testify here today on the matter of human rights and police reform in Northern Ireland. On the eve of St. Patrick's Day, I wish to express my gratitude to you for your continuing commitment to the process of peace in Ireland and in particular your awareness of the centrality of policing to the health of our society.

I have submitted to you a written statement that gives you an account of the major activities of my organization in the field of policing since 1993 I would request that submission be included in the record of today's proceeding.

Mr. SMITH. That submission will be made a part of the record.

Mr. MCALLISTER. Thank you.

In 1993, Mediation Northern Ireland were asked by the RUC to design and introduce a program aimed at enhancing the sensitivity of police recruits toward the task of policing a divided society.

By 1996, we had established a Community Awareness Program in Foundation Training, but withdrew because we found ourselves at odds with the RUC over our work as mediators in the emerging Parades Conflict. However, we continued to be exercised by the idea of entering a dialogue with senior ranks of the RUC in anticipation of police reform.

So in 1997, we began the Policing our Divided Society Project, involving intensive dialogue with senior police officers. Our discussions centered on the philosophy of Community Oriented Policing, which the RUC were beginning to embrace, but which needed critical scrutiny when set against the realities of our divided society.

Over the next 3 years, our private dialogue within the RUC was supported by the State Department's Office of Citizen Exchanges, who financed three field trips with a group of senior officers to engage with American specialists who, in turn, helped us with follow-up workshops in Belfast.

With the publication of the Patten Report in 1999, the process of police reform took a massive leap forward. We advised members of the Patten Commission, during the course of their deliberations, especially on the matter of police culture. In 2001, we established a new program that concentrated on internal change within the new Police Service of Northern Ireland and, outside of the police, the promotion of the concept of placing as a civic endeavor shared between police officer and citizen.

We have been developing a program more recently on Policing and Reconciliation for student officers. Currently on their first three days of their time in the PSNI, the new recruits spend time with some of our practitioners more than three full days of a residential course, looking at the fact that the generation coming into the police now have lived in a very different relationship with the police and their background. We need to get them comfortable with each other, talking about these things, so that they can move forward together, able to cope and comfortable with the realities that are in their backgrounds, that are very often quite different from each other.

We are also facilitating a forum within the PSNI to promote reflection and critical dialogue among police officers about how their practice serves or hinders reconciliation in the community.

Over the past 3 years, we have benefited on two occasions from State Department funding to bring civic leaders, including politicians and most of the Policing Board, to the United States to spend time in the company of U.S. police executives, theorists and community activists.

Each U.S. trip has been followed up by a visit by American colleagues to Belfast. In relation to comments made by Mr. Hastings this morning perhaps it is useful to add that we have tried to use the U.S. experience of the police relationship with ethnic minorities.

In 1997, and again in 2001 in New York, we were looking at the NYPD relationships with the community in a city that has 171 ethnic communities. In 1998 in Atlanta, we were looking at policing and societal change, conscious that the Atlanta police department had been a largely white police force facing down largely black demonstrators during the civil rights era, but which by 1998 had a black woman chief and senior black officers.

We also worked with veterans of the civil rights movement throughout our years coming backward and forward to the States.

In 2000 in San Diego, we took a detailed look at citizen involvement in policing and particularly the relationship of policing to the Hispanic communities. Again in 2001 in New York, we looked in detail at the black community and a Jewish community in Crown Heights in Brooklyn, New York.

At the moment our study is focusing on Boston. We will have a number of people concerned with community relations in Boston in Belfast this May.

We are now developing a new three-year project due to begin this autumn, with the end of sustaining an agenda on Policing and Reconciliation within the PSNI. We also are assisting the Policing Board with a project for members of the District Policing Partnerships aimed at enhancing a sense of common purpose between DPP members and police commanders, developing their knowledge of the technical side of policing and developing methodologies for problem-solving with the police.

In addition, since the establishment of the Office of the Police Ombudsman, we have been providing support to staff development across that agency.

In our activities on the ground, we have interfaced with police commanders and personnel on contentious matters such as interfaith violence and the policing of parades. So in the context of all of this, let me make the following observation: The nature of policing will always reflect the character of the society it serves. Before the outbreak of the troubles in 1969, Northern Ireland was a segregated society, characterized by Unionist hegemony and nationalist ambivalence. The RUC had a Unionist or Protestant cultural dominance. The nationalist or Catholic community had no sense of ownership of it.

As an arm of a state that was prone to cyclical outbreaks of Republican violence, the RUC maintained a quasi-military tradition.

The Good Friday Agreement of 1998 ushered in a new era with new civic norms of pluralism, accommodating nationalist and Unionist traditions, partnership between them, and the ideal of a nonpartisan character to public institutions.

The Patten Commission in 1999 reflected the spirit of the Good Friday Agreement, introducing new civic norms within policing. Since then, change has begun on a number of levels that are worth naming here.

Structural change has involved the reconstitution and restructuring of the Police Service, the establishment of the Policing Board and the District Policing Partnerships. It is on the structural issues and the question of their sufficiency that most political dispute now rages.

However, from the point of view of Mediation Northern Ireland, change on a number of other levels is a more pressing concern to our work. An example is what I could call conceptual change. Let me point out that in many respects, PSNI's evolving professionalism is impressive and compares well with any Police Service I have encountered in the United States.

However, in my view, the PSNI have mentally signed up to the philosophy of community policing, but have a long way yet to go truly to embrace it and, indeed, fully understand its implications for the nature of policing on the ground in Northern Ireland.

In this regard, perhaps the biggest impediment is the prevalence of a police mindset bent on a form of professionalism that is paternalistic toward the community.

An example of how this mentality might be sustained will be found in new proposals for an alternative to the use of plastic baton rounds, which are due out this year. The question on this matter will be the degree of importance attaching to new technology compared to the greater emphasis that should be given to the development of better relationships with the community which are the best alternative to plastic baton rounds and are the true litmus test of the police-community relationship.

Another level of change is cultural. Here, again, much work remains to be done. Policing in Northern Ireland has been defined for so long by security and counterterrorism that the security mindset often seems to blinker police officers and inhibit their capacity to read the community. Within the Police Services, there is still a need to develop the kind of organizational diversity that enables the Unionist community to renew their confidence in the Police Service while also broadening its essential character to make it expressive of the nationalists' tradition, as well.

Thus far, the PSNI has acted conservatively by promoting a so-called organizational neutrality. Going further, I would add that they are not alone in this public service culture in Northern Ireland.

Another level of change that merits discussion here is communal. Since the creation of the PSNI, almost all of the attention has focused on the reform of the police. However while the entitlements of citizens are crucial to public confidence in police, the philosophy of policing with the community also confers responsibilities on the citizen.

When the Patten Commission proposed cutting the Police Service almost in half, it envisaged an era when citizens and communities would enter new partnerships with police officers in the detection of crime, the resolution of problems and the maintenance of order.

However, it seems to me that across our society, citizens are used to a kind of delegation of responsibility to professionals in the discharge of public service. Yet, this kind of delegation will not make for effective policing in this day and age.

As a policing philosophy, community policing requires a new kind of activism from the ordinary citizen because the knowledge and traditions of local communities must be brought to bear on the policing task if localized solutions are to be found in partnerships with police.

Moreover, this kind of civic vision presents a number of genuine challenges to those citizens and communities in our society who have an enduring mistrust of police.

I should finally like to comment on the effect of the political impasse on the character of policing in Northern Ireland.

In framing its reforms, the Patten Commission envisaged only one scenario of the immediate future for Northern Ireland, one in which the Good Friday Agreement would be implemented and a new political consensus would take hold in our society.

The collapse of the Executive and Assembly and the changed political landscape as a consequence of the recent assembly elections, suggests to me that there is no prospect of a renewed political settlement for a number of years.

History has shown that terrorism thrives in a political vacuum. Sporadic attacks on members of the District Policing Partnerships suggests that the new civic infrastructure of policing is viewed as a pressure point by those who remain wedded to the use of violence to achieve their ends.

On a positive note, there is a long-term likelihood that further sustained political engagement will produce a more definitive settlement than that reached in 1998.

However, the deepening political limbo into which Northern Ireland is now settling creates the danger of disillusionment and the loss of direction across our society. Already there are signs that discipline within sections of loyalism is fraying at the edges. There are plenty of situations that will test the confidence of citizens in a peace that has not yet fulfilled its promise.

In this context, unforeseen by Patten and his colleagues, the civic integrity of new institutions will be tested. The Police Service of Northern Ireland, the Policing Board and District Policing Partnerships and the Office of the Police Ombudsman are examples of new institutions that will feel the strain. The future of peace and reconciliation in Northern Ireland hugely depends on these institutions being affirmed and their civic integrity being sustained.

Finally, Mr. Chairman, I should add that I try to speak here as a mediator. Mediation Northern Ireland as a mediation agency believes that right relationships are at the heart of the work of justice and that reconciliation requires difficult things to be said. This can only be said effectively and heard properly in a strengthened relationship.

This work is cross-generational. Change takes time. Agents of change can feel the heat of resistance. In this regard, I wish to acknowledge the support we are receiving from the Chief Constable from the Policing Board and from U.S. officials in Belfast.

Mr. SMITH. Mr. McAllister, thank you for your testimony and for your extraordinary work, your strategic vision to be a bridge-builder. I saw it firsthand during one of my trips to Belfast, and I appreciated the insights you provided to our delegation in how you are trying to bridge that gap and, indeed, be a mediator. I was glad to hear you give the term "common purpose" a new definition, a brighter definition than the legal one that has been used in the past to incarcerate people who were simply on-site when something went wrong.

Having met some of those, like Sean Kelly, who was incarcerated for that, and then having spoken to Judge Carswell at length about that, it seemed to me that is a relic that needs to be—the whole concept of proximity being equal to guilt is contrary to every legal precept I know. But I thank you for your testimony, for your good work, for all of your good works.

I do have a couple of questions that I would like to pose.

Ms. Winter, I would like to ask you, since we have spent some time today talking about the release, or the hope for release, of the four Cory Reports if you could, or the four parts that make up the Cory Report, in addition to the two that have been released already by the Irish Government, what, in your view, would be the implications for the peace process in Northern Ireland if the British Government were to renege on its commitment to hold the public inquiry in any of these cases? How much substance is there to the government's claim that the reports raise an issue that you said, in your testimony, of right to life, privacy and national security interests? Perhaps you might want to touch on that a little bit further.

Ms. WINTER. Yes, Chairman. In terms of the implications for the peace process, there are immediate implications in relation to the four cases in Northern Ireland that Judge Cory has studied, because they have become, through no fault of the families concerned, emblematic cases. They are well known throughout Northern Ireland. They resonate in both communities, and they stand for cases where nobody is going to be paying as much attention to them and there is no chance of a public inquiry into those cases.

So, if Judge Cory's recommendation for public inquiries are not honored, there will be very many people in both communities who will feel deeply disappointed, deeply let down. That is obviously unhelpful at a time when the peace process itself is not progressing well and the situation is fairly unstable.

But there are further, wider, implications in my view, which is that these cases, as Judge Cory himself pointed out, were an integral part of the Weston Park Agreement. And if the government now backs off from one of the promises made in the Weston Park Agreement, then what is to stop them, or other parties to the agreement, backing off from other aspects which everybody assumed were a done deal.

That not only puts the Weston Park Agreement at risk, but I believe also puts the Good Friday Agreement at risk, and the whole thing could unravel.

And so the implications for the peace process, I believe, are very great, and the government must honor its promises.

In terms of the government's claims as to why it has delayed for so long and why it may have problems indeed in actually holding public inquiries, they have said that there are issues of the right to life, the right to privacy and national security involved.

On the right to life, what they are doing I think is putting the risk to perpetrators above the risk that the victims have already suffered and the price that they have already paid in losing their lives. Of course, people's right to life must be protected, but putting the idea about that the right to life is at risk by publishing this report suggests that somehow the families are about to go out and take revenge on the people who murdered their loved ones, whereas nothing could be further from the truth.

None of these families have ever expressed any interest in revenge or even in prosecutions. What they want is the truth. What they want is a situation where what happened to them can never happen to anybody else.

I think that an undue emphasis has been put on the right to life of those who are accused of having been perpetrators in these cases.

On the right to privacy, again, there needs to be a sensible balance. When something as serious as these murders has happened, then I think everybody's right to privacy must become contingent upon the need to find the truth.

And in terms of national security, well, I am afraid that all too often, that has turned out to be a convenient catchall for a cover-up in Northern Ireland. And it is very doubtful whether any of these four cases, old as they now are, unfortunately, really pose any real risk to national security in the current situation in Northern Ireland.

Mr. SMITH. Let me just ask, does it matter if the police and the Ministry of Defense who presumably might have some right to edit, of course in collaboration with Judge Cory who may say no, but it might happen anyway, does it matter if they get a look at this prior to these reports being made public?

Ms. WINTER. I think it matters very much indeed because people within those agencies have been accused of complicity in these murders and collusion. We know that, for example, John Stevens, who has been back three times now to look at the Patrick Finucane murder, was never told the truth on any of those occasions, even on the third occasion. Judge Cory managed to find material that John Stevens had never seen.

What we know is that those who have been accused of collusion are all too ready to cover up, to lie and to shred the evidence.

So it seems extraordinary that the very people who have been accused of collusion should be allowed to see these reports before the victims and their representatives get a chance to look at them.

Mr. SMITH. Well, earlier in her testimony, Mrs. O'Loan made a number of, I think, very encouraging comments about the reduction of allegations of use of force down 50 percent to 34 percent since the office opened. There has been a reduction in the number of allegations in misuse of batons, from 419 in 2001 to 148 in 2003.

There has been a reduction in the number of occasions in which live fire has been used by police officers, from 21 in 2001 to 5 in 2003.

The number of complaints about other use of firearms have reduced from 40 in 2001 to 12 in 2003—and has other data that shows a trend line in terms of complaints and other data that ought to be seen as very encouraging. Certainly I see it that way.

Do you think that is because the police force is improving? Is it because of the deterrent impact of her office that there is at least some accountability where heretofore there has not been? To what do we attribute this?

Whoever would like to go.

Mr. MAGEEAN. Perhaps I can address this, Mr. Chairman. I mean, I think those figures are very encouraging I think that probably the reason for the figures is slightly more complex. I think one of the reasons certainly is the fact that the Police Ombudsman's office exists I certainly think it is no coincidence that we have seen a massive reduction in the use of plastic bullets, for instance. The Ombudsman

referred to that earlier. The fact that they have not been fired in a year and a half is probably, I think, an indication of the fact that police officers now know that if they do fire plastic bullets that they will be subject to investigation.

I think it is also the case that the security situation has, of course, improved on the streets in Northern Ireland and, therefore, there is less likelihood of an automatic recourse to police using these methods.

I think thirdly—and it is perhaps more difficult to measure—but certainly we would not suggest there has not been an improvement in the quality of policing. I think, certainly, from our point of view, there has been an improvement. It is just difficult to measure the extent to which that improvement has taken place.

But nevertheless, certainly, the figures are very welcome.

Mr. SMITH. Let me ask, Mr. McAllister, in your contact with the police, have you seen any indicators that human rights training, the code of ethics, are making a substantial difference in how they treat people on the street?

Mr. McALLISTER. Chairman, again, human rights training is something that my organization is not involved in policing. But obviously we are aware that it is going on. We are also conscious that bodies which are concerned with human rights would like to see it strengthened and improved in police training.

However, that said, we can certainly detect a greater awareness among police commanders about their legal obligations under human rights. There is certainly signs in the discussions we have been involved in that it is beginning to seep into the culture more. In this respect, the police in Northern Ireland face a similar challenge to their colleagues throughout the United Kingdom and, indeed, in the United States. It is not something that is peculiar to them.

But as far as we can see, there is a growing awareness among people in command positions of the need to infuse ordinary officers with a greater understanding of human rights. But I think that culturally, it will be a long time before this kind of thinking becomes more firmly established, not just within PSNI, but within modern policing further afield.

Mr. SMITH. Yes.

Mr. MAGEEAN. I wonder, could I just add something to that, Chair? Just when you mentioned the issue about human rights training, obviously that is a matter that is very close to our hearts as human rights NGOs. And it is something that I think ultimately will result or has the capability to result in dramatic improvements in policing on the ground. That is where, of course, it is important that these changes be felt.

I think we were concerned recently with the publication of a report by the Northern Ireland Human Rights Commission, which monitored some of the human rights training that was being delivered to new recruits by the PSNI. That report, which was conducted by an observer who was present at training sessions noted that the trainer was instructing police officers as to how to carry out assaults on people who were in detention. That was very depressing because one wonders how bad the situation was, in fact, in terms of the training..

Mr. SMITH. You said “how to conduct assaults?”

Mr. MAGEEAN. In other words, the trainer was suggesting to recruits that they should deliver one solid punch, if you like, rather than a number of punches because that would count as only one assault as opposed to a number of assaults.

Our concern was if that was being said in the presence of an observer from the Northern Ireland Human Rights Commission, what was being said in training sessions when such an observer was not present? And our concern is also that we have not been able to definitively establish whether or not the trainer that was delivering those sessions is still in that position.

So I think that certainly again I think it is important that we acknowledge that there has been an improvement, that human rights training is taking place, and that there is an improvement, of sorts, on the ground. But of course the problem remains that there is a deep-seated culture of ambivalence at best toward human rights protection in the police in Northern Ireland I think that needs to be tackled.

Mr. SMITH. Is the identity of that trainer known?

Mr. MAGEEAN. Sorry?

Mr. SMITH. Is the identity of that trainer known?

Mr. MAGEEAN. Well it is certainly not known to us, but I think certainly the police are aware who the trainer is.

Mr. SMITH. Because that, obviously, would be outrageous. Particularly if that were the kind of training which—is there any sense that that is what is being taught?

Mr. MAGEEAN. I mean, it is difficult to say. This was a snapshot, if you like, of a particular session. So it is difficult to know if this is widespread, or if it is being replicated in other sessions. But certainly we would have thought that at the very minimum the police should have been publicly acknowledging that this is taking place and indicating that action had been taken against the particular person involved.

Mr. SMITH. Let me ask one question to whomever would like to take it. Tom Constantine, in his statement, said there were two external factors hindering policing. One, I mentioned earlier—but I think I might have mentioned both—was financial support, or the lack of it. The second was intimidation of persons involved in policing. Would any of you want to comment on that issue? Once, for example, a Catholic becomes part of the police force, there might be a retaliation against him or her for becoming part of the police force, do you have any insights on that?

Mr. MCALLISTER. Mr. Chairman, this is something that we have been talking to the Policing Board about, and which they would like to see as part of a curriculum for work with the District Policing Partnerships.

As the district policing partnerships take hold, the potential as a mechanism for creating changes in the nature of policing in Northern Ireland becomes more and more obvious. However, from the attacks on members of District Policing Partnerships, it is also clear that the confidence level of some DPP members has suffered at times, where people have become conscious that being involved in a District Policing Partnership can, in fact, put your life at risk.

Therefore, we are exploring the concept of civic leadership, by which we mean that when someone enters into the policing infrastructure who is not a police officer, that they are obviously getting involved in

an issue that it remains contentious in our society and that they must have a capacity to withstand the pressures that will come on them, usually from small numbers of people. Because the indications are that most people in Northern Ireland want the new policing reforms envisaged by Patten to succeed.

However, the challenge of civic leadership remains one that people still need to explore together in Northern Ireland. And in a sense District Policing Partnership members, coming from very different backgrounds, need to give each other strength to withstand any pressures that they might at times come under.

Mr. SMITH. Let me ask one final question on the issue of the Special Branch and your thoughts as to whether or not reforms of it are proceeding. Is there evidence that the reviews that were recommended or the restructuring, I should say, last July by Hugh Orde are in the process of being both made known and acted upon? And will that May 2004 deadline or target goal, be reached, to complete that?

Mr. MAGEEAN. I think that from our perspective this is unclear. Certainly I think it is something that both the Chief Constable and the Policing Board have told us is under way and that progress is being made. And it is very important, of course, that progress be made on this particular issue. And it is notable that this is the one issue or one of the few issues where the Oversight Commissioner has constantly expressed concern that progress remains slow.

And I think it is important that if progress is indeed being made, that it be public. One of the concerns that we would have about this particular aspect of the process is that the Policing Board has not made public the extent to which changes to the Special Branch are being implemented. We would encourage the Policing Board and the Chief Constable to make that progress public and to persuade people that, in fact, this force within a force is being properly addressed.

And then of course everyone acknowledges that the police need to use and need to obtain intelligence, but what we need to see is a change in the way that is used so that it is used in the future to prevent crime, unlike the way it has been used in the past.

Mr. SMITH. I do have one final question, and then any concluding comments any of you would like to make.

Tom Constantine has said that he does not want to see a permanent oversight position. What is your view on that? Should it continue for a year, 2 years, 3 years? Do you have any sense of how long that ought to stay in existence?

Mr. MAGEEAN. Well, I think, again, I seem to be holding the floor somewhat. But, I mean, I think from our point of view, the process of change is under way, there is no question about it, and that is something that we very much welcome.

But our experience in dealing with human rights in Northern Ireland and human rights progress in Northern Ireland over the course of the last 22 years of our existence is that the moment that external pressure is removed, progress begins to decline and decrease. Certainly I think therefore, from our perspective, that is why we have been particularly grateful to this Commission and to you as chair of this Commission for keeping the human rights situation in Northern Ireland under review.

And equally I think we feel that the presence of the Oversight Commissioner is another part of that external review. And it is certainly something that we would not wish to see ended in the very near future.

Mr. MCALLISTER. Chairman, could I add to what Mr. Mageean has said. Tom Constantine and his team developed a way of scrutinizing the PSNI and Policing Board and the whole new structure that was really relating to each of the 175 recommendations of Patten.

I know there is a view growing that it might be time now, as the Constantine—or as the Office of the Oversight Commissioner's work matures for them actually to take a cross-curricular theme approach to some of their future reports. In other words, instead of focusing on individual recommendations, that they look and see about issues, for instance as community policing, police culture, issues that cross a number of recommendations, in other words, so that they could start to look toward the end of their time at the bigger picture of policing, if you like, as opposed to very technical approach that they have adopted thus far, which has served very well.

Because I do not believe that there is a long-term need for the continuation of an independent Oversight Commissioner, because we have a Policing Board. Now we have District Policing Partnerships. Hopefully in a time ahead, the whole community politically will be represented on these structures and we can rely on the political leadership in Northern Ireland, civic leadership, other nonpartisan people, to make sure that scrutiny means something in our new policing structure.

Mr. SMITH. Thank you very much for that.

Mr. McAllister, let me ask you one question. Have you received any funding for your work on police-community relations from the IFI?

Mr. MCALLISTER. You would be aware from the comments of Mr. Reiss earlier, Mr. Chairman, that the view has been determined that the American legislation prevents the IFI from funding this kind of work in Northern Ireland. Therefore, we have not been able to benefit from it.

I should say that it is a pressing concern because at the moment, the induction course that we have begun with every new batch of recruits—and there is a new batch of recruits every 5 weeks; 50 percent Catholic, 50 percent Protestant. At the moment, we have a funding shortfall to sustain that course throughout this calendar year. We have not yet established funding for it in future years although we know that the Chief Constable wants that course to develop and grow.

Mr. SMITH. Thank you very much.

Hopefully from this hearing and from statements we heard earlier from Dr. Reiss, we can get some movement over on the Senate side for legislation I have introduced that would not only reauthorize the IFI at \$25 million—which last year, I believe, it was \$20 million that we actually appropriated—but perhaps even more important, would provide the legal wherewithal and the sanction to fund the kind of projects you are doing.

It seems to me that is one area where we need to go beyond, what as Dr. Reiss said in his testimony, the lawyers have advised cannot be done. It seems ludicrous in the extreme when there is a pressing need for that kind of cooperation and collaboration, so we do not fund it.

So our language in the bill passed about a year ago in the House will do just that where we have been trying ever since to get the Senate to take it up. But hopefully we can get some reinvigoration by the administration to do just that to get it down to Bush for signature.

Do you have any further comments?

Ms. Massimino?

Ms. MASSIMINO. I wanted to just, also, go back to another thing that Dr. Reiss had mentioned. That is in response to your question about what the administration's position is on the publication and implementation of the Cory Report. I sensed in his answer a bit of wavering in the position of the U.S. Government in terms of how strongly it is willing to push for the establishment of public inquiries in Finucane and Nelson and the other cases I just wanted to follow up on that.

It was very welcome hearing him say that he raises the issues of the Cory investigation and reports in every meeting with officials of the British Government. That is quite welcome. But I did hear him mention that, "Well, if there is a more efficient way to get at the truth, that we might be willing to support that position that the British Government might take as opposed to a public inquiry."

I just wanted to make the point that, in particular in the Finucane case where we have had three investigations by Stevens and many years of trying to get at the truth in a process that is not public, that is not open, that is not independent, that many more resources could be spent in a way that is not at all efficient trying to go at this a different way when we know what is really needed is a public and independent inquiry.

Ms. MASSIMINO. I just hope that we can make sure that is the solid position of the current administration.

Mr. SMITH. Your point is well taken, because I heard that as well.

As you know, and it should be very clear where I stand and where many of my colleagues on both sides of the aisle stand. We have backed it up with legislation in the past, believing that—and as I think, Paul, that you may have mentioned, maybe it was Ms. Winter, that when Judge Cory is able to unearth information that Mr. Stevens did not find in three previous attempts, that is disconcerting. A public inquiry hopefully will lead to transparency. For those who have lost loved ones, like Geraldine Finucane, it does not in any way mitigate the loss, but it certainly leads to some accountability so that the whole country and the individuals can move on.

I would like to thank our third panel for their tremendous work. The winter soldiers, if you will, of human rights, who very often get very little credit and very little notice for your dogged determination in making sure that these issues are front and center at all times. You care for the most at risk and the least and the vulnerable, and your work is greatly appreciated by this Commission.

The hearing is adjourned.

[Whereupon, at 2:20 p.m., the hearing was adjourned.]

**APPENDICES****MATERIALS SUBMITTED FOR THE RECORD  
BY HON. CHRISTOPHER H. SMITH, CHAIRMAN,  
COMMISSION ON SECURITY AND COOPERATION IN EUROPE****THE THIRD OFFICIAL REPORT  
OF THE OVERSIGHT COMMISSIONER  
FOR CALENDAR YEAR 2003*****INTRODUCTION BY THOMAS A. CONSTANTINE***

This report is the third official report of the Oversight Commissioner for calendar year 2003 and the ninth official oversight report in a series that began in 2001. In previous reports, the objective of the Oversight Commissioner was to provide a periodic, detailed and methodical evaluation of the progress that was being made in the implementation of the 175 recommendations made by the Independent Commission on Policing for Northern Ireland (the Patten Commission).

The 175 Patten recommendations are the product of an exhaustive research and consultation process, and were unanimously endorsed by the Independent Commission. In order to fulfil the intent of the Independent Commission, that their recommendations be implemented faithfully and comprehensively, they proposed that an independent Oversight Commissioner be appointed to ensure that all of the reforms be instituted. Since appointment in May 2000, the Oversight Commissioner has established a policy of rigorous and exacting evaluations. The critical foundation of the oversight review process is the 772 performance indicators, which are utilised to measure progress in implementing the 175 recommendations. The periodic evaluations are carried out by a team of policing experts, and details on how the oversight process is being conducted, and the outstanding qualifications of the policing experts assigned to the Office of the Oversight Commissioner, are set out both in previous oversight reports and our web site at: [www.oversightcommissioner.org](http://www.oversightcommissioner.org).

Since accepting the position of Oversight Commissioner in May 2000, I have provided reports in a format that was in essence a "snapshot in time," which provided the exact state of progress for each of the 175 recommendations as measured by the 772 performance indicators. The format of this, the ninth official report, differs somewhat from previous reports. The reason for the change in style and format of this report is that this will be my last report as Oversight Commissioner, although the oversight process will continue until May 2005. The objective of the current report is to provide a comprehensive summary of the results of 3½ years of overseeing the implementation of the reforms recommended by the Independent Commission.

It was apparent from the first day of accepting the position as Oversight Commissioner that if the research and ensuing official reports were to be of value, they must be conducted with integrity, objectivity and rigorous professionalism. In order for the oversight process to provide confidence that the recommendations of the Independent Commission are actually taking place as intended, the Office of the Oversight Commissioner must also remain fully independent from the Gov-

ernment, the Police Service of Northern Ireland, the Policing Board and political institutions. Simply put, if the reports of the Oversight Commissioner are not trusted or are seen to be influenced by external parties, there will be no confidence that the office is meeting the objectives set out for it by the Independent Commission. The Oversight Commissioner and his team have steadfastly defended this independence for the past 3½ years.

In the course of its detailed evaluations, the oversight team continues to be impressed by the extraordinary consultation and research conducted by the Independent Commission. In fact, with each passing oversight review it has become increasingly apparent that the Patten Commission not only identified the critical areas in need of reform, but proposed solutions that are clearly representative of “best practices” in policing. The recommendations of the Patten Commission and the success of the Police Service of Northern Ireland in implementing them are now being seen as models for many Police Services around the world. The Oversight Commissioner agrees with the judgement of Mr. Christopher Patten that the Independent Commission’s report was not a political compromise, but rather was developed and tested against policing benchmarks rather than political criteria. As a result, the objective of the Office of the Oversight Commissioner has been to conduct evaluations and produce official reports that meet the same quality of benchmarks that are representative of “best practices” in policing.

The Oversight Commissioner recognises that the scope, magnitude and complexity of the proposed reforms have created a series of tasks that would be an enormous challenge for any government agency or private institution. We also recognise that our own standards of rigorous oversight review have been very demanding for all of the institutions and individuals that are the subjects of the monitoring process. We make no apology for these demanding standards. It is our belief that these high standards will provide confidence to the citizens of Northern Ireland, that the recommendations of the Independent Commission are being implemented in the manner intended.

In the course of our numerous visits to Northern Ireland, we are often asked how the institutions involved in the policing of Northern Ireland, in particular the Police Service of Northern Ireland, the Policing Board, the Police Ombudsman and the District Policing Partnerships, are doing with respect to the policing reform process. As a result of the oversight team’s detailed and comprehensive evaluations that have been carried out for over three years, it is now possible to provide a reasoned and well-founded answer to this question: in fact, the institutions are doing very well in fulfilling the Independent Commission’s recommendations

All of the institutions continue to make excellent progress in implementing a programme of change in policing that may be the most sweeping and complex ever attempted in a modern society. However, the role of the Oversight Commissioner is also to point out those recommendations that remain unfilled. At this stage of the change programme, four years after the release of the Patten Report, the lack of significant progress on some of these important recommendations is of serious concern. Nonetheless, although there has been a lack of

progress on several recommendations, it is important to consider these shortcomings in the context of what can only be described as general and substantial progress.

A review of the reforms that either have already been implemented or are moving forward, at a pace we believe meets the Independent Commission's intent in a timely way, demonstrates the dramatic and positive changes that are taking place in the policing of Northern Ireland. The detailed explanation of this progress and, where appropriate, a discussion of the lack of progress is contained in the chapter summaries spelled out later in this report.

A review of recommendations that have already been implemented or are moving forward appropriately demonstrates the enormity of the changes that have already occurred. Individually, the completion of many of the recommendations in and of themselves would constitute a significant achievement. When the reforms are considered collectively however, it is clear that policing in Northern Ireland is moving steadily in the direction intended by the Independent Commission. The following is a brief overview of some important accomplishments that underlie our opinion that overall progress is excellent.

- The Policing Board and the Police Service of Northern Ireland have introduced a human rights-based approach to policing, a Code of Ethics which includes a new Oath, human rights training, appraisal and monitoring systems, and the hiring of a human rights lawyer to provide guidance to the Police Service, and a contracted human rights lawyer to provide advice to the Policing Board.
- A multi-layered system that increasingly holds the Police Service accountable to citizens. This includes the establishment of a Policing Board, Ombudsman and District Policing Partnerships, all of whom emphasise independence and rigorous accountability.
- The Police Service of Northern Ireland, with the support of the Policing Board, the District Command Units and the District Policing Partnerships, has established community policing as a core function including dedicated neighbourhood units, foot patrols and professional crime and complaint analysis.
- The Police Service has begun to initiate a strategy that places an emphasis on devolving authority from headquarters to a cadre of talented and dedicated District Commanders. The new strategy, which places a premium on local authority and responsibility, includes normalised patrol vehicles, less reliance on the military, documented controls on the use of emergency powers, state-of-the-art holding facilities for suspects which includes video surveillance, and inspections by lay custody visitors.
- Also in place are improved methods of public order policing, which include conditions for the approval of parades and research on less lethal alternatives to the plastic baton round. The Police Service has also established detailed standards for assignment, training, deployment and controls of less lethal force. The controls include an independent review by the Office of the Police Ombudsman, with the Policing Board receiving copies of all reports for additional scrutiny.

- Early on the Police Service of Northern Ireland established a sophisticated change management programme, which has continued. Additionally, a new appraisal system, improvements in sickness absence policy and supervision, and a substantial funding source for police widows and injured officers have been achieved.
- The Police Service has begun to make important progress on an information technology infrastructure that was virtually non-existent at the time of the Independent Commission's study.
- The Police Service moved quickly to establish the new District Command Units. The individuals who assumed command of the District Units have already demonstrated excellent leadership and, acting in concert with District Policing Partnerships, provide for the first time a formalised programme of citizen involvement and accountability. The leadership exemplified by the District Commanders, acting in co-operation with their respective District Policing Partnership, is a critical aspect of the policing with the community strategy.
- The severance programme and normal attrition has reduced the size of the Police Service. In addition, there is a time table and plan for phasing out the Full Time Reserve and steps are beginning to enlarge the Part Time Reserve and make it more representative of the whole community.
- The Police Service of Northern Ireland, in conjunction with the Policing Board and a private recruiting firm, has instituted a recruiting programme designed to increase the number of Catholic police officers. Efforts to make the Police Service more representative have received the support of most of the community leaders, political leaders, clergy and teachers. The recruiting programme has been very successful in recruiting talented young men and women to serve as police officers. The Gaelic Athletic Association (GAA) has repealed the rule which prohibited members of the Police Service from joining the GAA. A recruiting strategy for civilian employees utilises the same concepts as the recruitment programme for police officers.
- The Police Service of Northern Ireland has recruited and appointed a new Director of Training who has excellent academic and professional credentials. The Police Service has developed a new 21-week recruit training programme and a state-of-the-art tutor officer programme. The Policing Board has established a system of accountability that will be utilised to measure the Police Service training programmes.
- The culture, ethos and symbol changes that took place early in the change process fulfil the intent of the Independent Commission with respect to requiring a new name, badge, uniforms and a more neutral working environment. There is now also a garden of remembrance at the Police Service of Northern Ireland's Headquarters.
- Co-operation between the Police Service and the Garda Síochána has progressed with a formal agreement and legislative framework between the two governments. As well as cooperating operationally on criminal investigations, the Police Services held two joint policing conferences, as well as cross-border disaster exercises.

Although there is good reason for optimism that all of the Patten recommendations will be fully implemented within a reasonable time frame, there are still some important issues that have not been addressed. Because of the complexity of some of the recommendations, the oversight team recognises that the pace of progress will be impacted by factors beyond the control of the policing institutions, two of which are particularly significant: the first external factor that affects the progress on a number of important recommendations is the need for predictable and adequate financial support. This is an especially critical element in replacing many police facilities, including the existing training college, the condition of which can only be described as deplorable. Where a lack of appropriate financial support is determined by the oversight team to have adversely impacted the fulfillment of a specific recommendation, it will be noted as such in our official oversight reports. The second external factor that affects the pace of progress is the intimidation of persons involved in policing. The clearest examples are the attempts to use force and violence to deter citizens from becoming police officers, members of the Policing Board or the District Policing Partnerships. Equally destructive to the concept of policing with the community is a climate of vigilante justice, as evidenced by punishment shootings, punishment beatings and, in some cases, brutal executions. This climate of intimidation can only be countered by honest, courageous and committed community leaders, political parties and elected officials who support the rule of law. The ultimate objective of this strategy of intimidation is clear: to undermine the intentions of the Patten Commission to bring about policing with the community, by a Police Service representative of and accepted by the society it polices.

Despite progress there remain areas of concern. The recommendations of the Independent Commission were published in September 1999, and subsequently addressed in the Government's August 2001 Implementation Plan. Therefore, where there is a continuing lack of progress, in some instances four years after the release of the Independent Commission's report, it is noted as a cause for concern and spelled out in the sections of this report entitled: "Areas of Concern."

The Office of Oversight Commissioner has continued to request evidence of progress or completion on several unresolved recommendations, often without success. Although our reports continually specify that any lack of progress should be measured against an overall record of substantial progress in many areas, it is increasingly difficult to explain the lack of resolution in certain important recommendations. This lack of results can undermine the otherwise excellent progress that has been made on the vast majority of recommendations. The following is a brief summary of the most important unresolved issues:

- The conditions of many police stations in Northern Ireland are so seriously below standards for modern day policing that they are in need of immediate replacement. There has been little progress in establishing police facilities that are accessible to the public, congruent with a programme of policing with the community and safety for Police Service employees. Both the community being served and the officers serving in these deteriorating facilities deserve better. The Police Service of North-

ern Ireland still does not have a coherent short or long term strategy for addressing this need, and the Government has not provided an adequate funding source to remedy the problem.

- There is a continuing problem of not providing a significant number of District Commanders and their officers with all there civilian support staff. In addition, the Police Service's policy on devolution of authority is still not as clear as it should be. There has been a devolution of responsibility, but it has not always been accompanied by the authority and resources to make it work. The District Command Units acting in concert with the District Policing Partnerships are the key to the reforms of policing in Northern Ireland, which is why the support for this programme is so essential.
- One of the key strategies in dealing with complaints of police misconduct or brutality is the analysis of historical trends. These "early warning" systems allow police leaders to continually monitor the activity of police officers. Information from citizens, police supervisors and personnel records affords the Police Service the opportunity to intervene when the issues are relatively minor, rather than simply reacting to more serious events after the fact. The Office of the Ombudsman provides the Police Service with information that is adequate to support such an early warning system. The Police Service has conducted extensive research on the construction of such prevention systems. However, as of September 2003 the Police Service had yet to develop a concrete plan for the implementation of an early warning system on police conduct.
- The Independent Commission was very clear about the need to restructure Special Branch in order to make it part of the overall Police Service strategy of combating organised crime and drug trafficking, as well as terrorism. Subsequent studies and reports concerning the Police Service of Northern Ireland's Special Branch have been remarkably consistent with the Patten recommendation about the need for significant structural and policy reforms in Special Branch. Unfortunately, the initial Police Service of Northern Ireland proposal to address the intent of the Commission recommendation was inadequate. Although the Office of the Oversight Commissioner noted the inadequacy of the proposal in May 2002, there was little or no evidence of progress provided to our office as recently as our evaluation visit in September 2003. In the September visit, the Oversight Commissioner again stressed the need for the Police Service to provide a detailed plan that addressed the Independent Commission's intent, as well as a firm time line for implementation. However, on 14 November 2003 the Police Service provided us with a detailed plan. Although it was not possible within the time available to analyse this plan, it appears to be a well thought-out document that establishes firm time lines for the implementation of reforms designed to meet the Independent Commission's recommendations relating to Special Branch. The November 2003 plan is a first step and evidence of a good faith effort to fulfill the intent of the Independent Commission.

- The importance of the issues involving the structure of Special Branch are such that failure to implement the recommendations of the Independent Commission in a timely manner can significantly impact the perception of success in the overall programme of police reform.
- In view of the planned phase out of the Full Time Reserve, it is important for the Government and the Police Service to provide the members of the Full Time Reserve with appropriate severance and retraining to facilitate their transition to other careers. Understandably, members of the Full Time Reserve have considerable uncertainty about their future and it is critical that the Police Service ensures that employment counselling and retraining assistance is provided in a similar manner to that afforded to regular police officers.
- Although the recruiting programme for new constables has been very successful, there is still a need for complete and full support from the entire Northern Ireland community. The Policing Board recently released a community attitudes survey that demonstrates the adverse impact intimidation and fear can have on recruiting.
- The Police Service of Northern Ireland and the Policing Board will need to address the problem of attracting and retaining Catholics in the direct recruit civilian staff. The number of such direct recruit civilians went from 791 in 1999, which is 23.3 percent of total civilian support staff, to 1,704 in 2003, which is 48.8 percent of civilian support staff. However, as a percentage of all categories of civilian employees, this increase resulted in only a 1.4 percent rise in Catholics among all civilian employees, in other words from 12.3 percent in 1999 to 13.7 percent in July 2003. This pace of change will not achieve a representative and balanced civilian work force in the foreseeable future.
- The existing Police Training facilities at Garnerville and Sprucefield are inadequate by any reasonable standard. The Independent Commission recognised this problem and strongly recommended a new state-of-the-art facility. In May 2000 the Government stated it would take three to six years to build a new police training college. Now, over 3½ years later, it will be at least 2007 before the project is completed. There is no reasonable explanation for such a delay in providing the Police Service with a training facility it truly needs and richly deserves.
- There is a need for the Police Service's Training Branch to provide courses and programmes for the decentralised District Command Units. The Independent Commission recognised the need for local District Commanders to tailor programmes unique to their district. Operating under the concept that "one size does not fit all," the Independent Commission recommended Service Level Agreements for training. Unfortunately, there has been little or no progress and local commanders continue to express their disappointment in fulfilling local training needs.

In view of the fact that this ninth official report represents my last evaluation as Oversight Commissioner, I thought it important to publicly recognise all of those who have provided continued assistance to the oversight effort. Since accepting the position of Oversight Com-

missioner in May 2001, members of the Independent Commission have been extremely generous with their time and wisdom in providing the Office of the Oversight Commissioner with the context and rationale that were the basis for their 175 recommendations. I have also interacted with three Secretaries of State. Although each was unique in his relationship with the Office of the Oversight Commissioner, all were unfailing in their support of the oversight process and perhaps most importantly, each recognised the need for the process to be fully independent. This was further evidenced by the complete co-operation that was extended by the representatives of the Northern Ireland Office, in particular the Patten Action Team.

The position of Chief Constable in Northern Ireland is undeniably one of the most challenging positions in contemporary policing. The two chief constables that I have dealt with in my role as Oversight Commissioner have impressed me with their leadership skills as they faced the unprecedented challenge of initiating a series of reforms and changes in the policing of Northern Ireland. They both deserve proper credit and appreciation for leading the policing institutions through this very difficult period of change.

The unit of the Police Service of Northern Ireland responsible for managing the implementation of the Patten recommendations, and responding to our demanding requests for evidence of progress, is the Change Management Team. To my knowledge, there was no existing model of policing reform of this scale that this small team could adapt to their needs. Yet due to its talent and experience developed over time, this unit has developed a model for managed change that many police agencies throughout the world will be looking to emulate. The mid-level command staff of the Police Service of Northern Ireland has continued to impress the oversight team with its talent and dedication. This is especially true of the District Commanders, whose leadership and activities we have commented on positively in previous reports.

However, when all is said and done it is the effort and performance of rank and file constables and first line supervisors that will be needed to create a sense of confidence that there is a new era in the policing of Northern Ireland. In our evaluation visits to virtually every police facility in Northern Ireland, we have had the opportunity to meet with large numbers of these police officers. It is obvious that they find the many reforms that they are required to carry out on a daily basis to be unsettling and at times threatening. This is to be expected, but with proper leadership and state-of-the-art training resources, they should be able to carry out the required changes. Like police officers everywhere they have an underlying reason for entering the law enforcement profession, namely a desire to protect the innocent victim from the violent criminal. We should make no mistake, policing is an inherently dangerous occupation, and those who serve and have served in Northern Ireland have suffered great losses. In order for police officers throughout the Police Service to achieve their collective goal of serving and protecting the public, the support of every citizen and the entire community will be essential.

In each of my numerous visits to Northern Ireland, I have had the privilege of meeting with the leaders of all of the major religions. It is always humbling to be in the presence of individuals who believe so fervently in the principles of decency, in both a worldly and spiritual

sense. They have always provided me with excellent guidance, and their prayers on my behalf have given me a sense of strength in carrying out the challenging task of oversight. This was especially true during my visit in September 2001, when I learned that so many of my fellow countrymen and some close friends had been killed in the terrorist attack on the World Trade Center in New York. I will always recall the kindness extended to me by the clergy in Northern Ireland at this difficult time in my life and the life of my country.

As should be obvious from comments in my previous reports, I have been very impressed by the institutions of accountability that resulted from the recommendations of the Independent Commission. The Policing Board, the Office of the Police Ombudsman and the District Policing Partnerships have made outstanding progress in a relatively short period of time. The efforts of all who serve in these institutions of police accountability will be critical in developing the long-term confidence of the public in the professionalism of their Police Service.

Sadly, it has become common in many democratic societies for citizens to be critical of political parties and their leaders. My experiences in Northern Ireland, however, on the issues of policing lead me to a different opinion. As part of the oversight process, I routinely meet with key leaders of all of the major political parties. They all have an excellent grasp of the policing issues facing Northern Ireland and are intensely interested in the change programme. They have been very professional and reasoned in all of the oversight briefings, and each of them appears interested in the safety of all the citizens of Northern Ireland. In order for the policing reforms to really take hold in a manner envisioned by the Independent Commission, it is essential that all of these political leaders provide leadership and support to all of the changes recommended by the Independent Commission.

After close to four years serving as Oversight Commissioner, I think back to my first visit to Northern Ireland. When accepting the position in May 2000, I had only a superficial understanding of the complexities of the peace process and, in particular, the role that policing reform played in ensuring a permanent peace.

The difficult challenges inherent in such a massive change in the policing of Northern Ireland and the enormous responsibility of the Office of Oversight Commissioner were immediately apparent.

When I arrived in Belfast, the implications of the reforms required by the Patten Commission were the subject of intense and sometimes divisive debate. In my very first public appearances and private meetings, I was advised by some that I had accepted the "poisoned chalice" and that the oversight process was not adequately supported and doomed to failure.

However, it was clear to me that if the oversight evaluation was carried out in an independent, honest, objective and rigorous manner that was consistent with the spirit of the Patten recommendations, the Office of Oversight Commissioner could provide confidence that reforms were taking place as intended. The achievement of that rigorous standard of integrity and professionalism is in large part a result of the dedicated efforts of the team of policing experts who agreed to become part of the oversight team. They are an incredibly talented group of individuals who have dedicated themselves to overseeing the progress of policing reform.

Although they have been mentioned in previous reports, it is appropriate to identify them once again in this, my last report as Oversight Commissioner:

- David Bayley, former Dean of the School of Criminal Justice, State University of New York at Albany
- Roy Berlinquette, former Deputy Commissioner of the Royal Canadian Mounted Police
- Al Hutchinson, Chief of Staff to the Oversight Commissioner, and former Assistant Commissioner of the Royal Canadian Mounted Police
- Gil Kleinknecht, a former Director of the US Marshals Service and past treasurer of the IACP
- Robert Lunney, a past president of the Canadian Association of Chiefs of Police and a retired Chief of Police
- Mark Reber, Director of Research for the Oversight Commissioner and seconded from the Royal Canadian Mounted Police by Commissioner G. Zaccardelli
- Charles Reynolds, a past president of the IACP and a retired Chief of Police.

We often fail to sufficiently recognise the administrative and clerical staff who work so diligently to support our efforts. The oversight team includes a small group of dedicated professionals who provide the administrative, clerical and secretarial support so essential to our evaluations and the oversight process in general.

To further enhance the quality of our oversight reports, we were able to secure the guidance and support of the International Association of Chiefs of Police. The International Association of Chiefs of Police is the world's pre-eminent organisation of police executives representing 17,500 law enforcement executives from 96 countries. As a result, a number of leading police executives were part of an International Association of Chiefs of Police delegation that met with the oversight team in the capacity of a peer group review.

In the 44 months that have passed since accepting the position of Oversight Commissioner, it is now very clear that I definitely was not given a "poisoned chalice." Rather, I was provided an opportunity to be a part, no matter how small, of a peace process that is being watched closely by the entire world. During my tenure as Oversight Commissioner, I have witnessed progress in the implementation of the Patten recommendations at a pace which I would not have thought possible in such a relatively short time. Everywhere I travel the evidence of general progress is apparent, such as in the construction of new buildings, hotels and restaurants. I see the people who obviously feel free to move about on nights and weekends, and this further demonstrates a sense of confidence on the part of large numbers of citizens.

In December 2002, I advised the Secretary of State that the concept of a permanent Oversight Commissioner would not, in my opinion, be in the best interests of the citizens of Northern Ireland. However, since there were a number of recommendations that would not be completed by May 2003, I recommended the oversight position be extended for at least one year. I also advised the Secretary of State that I would not be able to serve past the end of 2003. The decision to leave

the position of Oversight Commissioner at the end of 2003 was a difficult one. I have grown very fond of the people of Northern Ireland, and they have always treated me with graciousness and hospitality.

However, as I have explained to many, my wife and I have a large family of six children and thirteen grandchildren. In the course of my 43 years in law enforcement, including 20 years as a senior executive, my family has made numerous sacrifices to allow me to serve. I have now reached the time to step back from major responsibilities. My successor, Al Hutchinson, a former executive in the Royal Canadian Mounted Police, is a talented and dedicated individual who, along with the team of policing experts who have agreed to continue to serve, is fully capable of carrying out the oversight process in a professional manner.

Although I have mixed emotions about leaving Northern Ireland, I will always have the memory of meeting and working with some of the finest people I have ever had the privilege of meeting. I feel privileged to have been able to work with them to create the prospect of a lasting peace and a Police Service that has the confidence and support of all of the citizens of Northern Ireland.

(Signed) THOMAS A. CONSTANTINE  
*Oversight Commissioner*  
*December 2003.*

**ABBREVIATIONS**

ACC	Assistant Chief Constable
ALR	Armoured Landrover
DCU	District Command Unit
DPP	District Policing Partnership
FTR	Full Time Reserve
HMIC	Her Majesty's Inspectorate of Constabulary
IACP	International Association of Chiefs of Police
IT	Information Technology
ICS	Information and Communications Services
NICS	Northern Ireland Civil Service
NIO	Northern Ireland Office
PBR	Plastic Baton Round
PTR	Part Time Reserve
RIPA	Regulation of Investigatory Powers Act
SECAPRA	Security, Ethics, Community/Client, Acquire/Analyse, Partnership, Respond, Assess
SLA	Service Level Agreements
TED	Training, Education and Development
TNA	Training Needs Analysis
UK	United Kingdom
VSSU	Voluntary Severance Support Unit

**THE THIRD OFFICIAL REPORT  
OF THE OVERSIGHT COMMISSIONER  
FOR CALENDAR YEAR 2003**

***HUMAN RIGHTS***

**Background**

Quoting the 1998 Belfast Agreement, the Independent Commission on Policing for Northern Ireland noted in its 1999 report that the fundamental purpose of policing should be “the protection and vindication of the human rights of all.” In order to achieve this goal, the Commission recommended that the police develop a “comprehensive programme of action to focus policing in Northern Ireland on a human rights-based approach” and that the performance of the Police Service in implementing such a programme be monitored closely by the Policing Board. The Independent Commission recommended several specific actions that the Police Service should take to bring about a greater emphasis on human rights in Northern Ireland policing. They were:

- promulgation of a new oath for all serving officers;
- development of a code of ethics;
- expansion of human rights training for all police officers, recruits as well as serving officers, and civilian staff;
- incorporation of human-rights awareness and practice in the performance evaluation of individuals; and,
- appointment of a lawyer to advise the Police Service about the human rights implications of its activities.

**Progress and Accomplishments**

By September 2002 the Police Service had continued to develop its human rights agenda with a demonstrated positive commitment. A human rights lawyer was appointed in October 2001 and advises the Police Service on the human rights implications of new policies, operations and training. A Code of Ethics was drafted by the Police Service and approved by the Policing Board in September 2002. An Assistant Chief Constable is responsible for the development of the human rights programme, and is assisted by a Human Rights Section. Human rights training for recruits has been expanded and incorporated into many of the simulations used by the Police College. Since September 2001, police recruits have also been administered the new oath at the Police College’s graduation exercises. The recruit training programme is supervised by the University of Ulster, with some of the human rights teaching being done by individuals outside the Police Service. Human rights are taught as a specific subject and integrated into recruit training modules like police-community relationships and criminal justice. The programme is the subject of an ongoing evaluation being conducted by the Northern Ireland Human Rights Commission. The Police College appointed an Audit Observations Team to support and help standardise human rights instruction throughout its programmes. The Police have sponsored three public human rights conferences in October 2001, October 2002 and March 2003.

By September 2003 the Police Service of Northern Ireland had circulated a comprehensive Human Rights Implementation Plan that was endorsed by the Policing Board. The Plan will be published after it has been reviewed by the Board's new human rights advisor. The Police Service has developed and distributed a Code of Ethics, which replaces the old disciplinary code. The Code of Ethics includes the new police oath to which new police officers attest. The Police Service has also obtained signed statements from serving police officers indicating that they understand the new oath. This will be subject to oversight verification. In April 2003 the Police Service also implemented a personnel appraisal system that incorporates a human rights component. Although the impact of these measures on behaviour will need to be assessed at regular intervals, interviews of police recruits and serving police officers conducted to date by the oversight team indicate that police personnel are familiar with the requirements of human rights legislation, and regularly bring them to bear in the course of their work.

The final human rights recommendation of the Independent Commission called for the Policing Board to develop and implement a plan for the on-going evaluation of the compliance of Police Service personnel with human rights legislation. A framework for such a plan has been developed by the Policing Board's human rights advisor. This was scheduled for approval by the Policing Board in early October 2003 and, subject to ongoing consultation and development; the plan will come into effect in December 2003.

#### **Areas of Concern**

Formative and ongoing training is the way in which police officers are brought to an understanding of their duties and obligations. Lessons once learned are reinforced throughout the organisation, and over time organisational cultures are moulded and adapted to changing circumstances. Human rights training is particularly critical to the Independent Commission's vision of a new beginning to policing in Northern Ireland, and the Police Service of Northern Ireland has made a great deal of practical progress in the area of human rights training, especially with respect to police recruits.

However, as of 30 September 2003 the Police Service had not provided the information requested in September 2001 which would allow an evaluation and verification of actual progress.

Specifically, a description of the content of human rights training being provided to recruits, inservice personnel and civilian staff was not provided. In addition, a human rights training resourcing plan, time lines for achieving training objectives and an account of the courses in which new human rights material had been incorporated were not provided. This information has been requested since September 2001. The oversight team also requires more information on plans for verifying the delivery of human rights training at an acceptable level, and a plan for evaluating the impact of human rights training on police personnel. Finally, we will continue to assess the pace at which members of the community and others are permitted to observe or participate in such training.

## *ACCOUNTABILITY*

### **Background**

In September 1999 the Independent Commission on Policing for Northern Ireland devoted 35 of its 175 recommendations to providing oversight mechanisms designed to ensure the accountability of policing to the public and the law. Its recommendations cover the creation of a Policing Board, District Policing Partnerships, a Police Ombudsman, a commissioner and complaints tribunal for covert law enforcement operations, and the strengthening of financial accountability.

### **Progress and Accomplishments**

By September 2002 a number of important milestones had been reached, including the establishment of the Policing Board in November 2001. Appropriate legislation in the form of the Regulation of Investigatory Powers Act (RIPA), with oversight provisions, is in place to deal with Covert Law Enforcement on a uniform UK-wide basis. Associated Codes of Practice issued in August 2002 completed legislative accountability in relation to the Independent Commission's covert law enforcement recommendations. A Chief Surveillance Commissioner for Covert Law Enforcement is in place, and a complaints tribunal is in operation.

In addition, the Policing Board developed and published its first strategic plan for the Police Service for 2002–2005. The Policing Board also published a "Code of Practice for the Exercise of Functions by the District Policing Partnerships." The Board was able to deal with and respond in a professional manner to a number of controversial issues, including the Ombudsman's report on the 1998 Omagh bombing and the Chief Constable's response, by seeking an outside review by Her Majesty's Inspector of Constabulary. The Police Ombudsman for Northern Ireland is performing in all respects as recommended by the Independent Commission. The Ombudsman is notified of all complaints about police behaviour and supervises all investigations of them.

By September 2003 significant progress had been made on creating institutions that ensure the accountability of the Police Service of Northern Ireland. The Policing Board, constituted as called for by the Independent Commission, has developed annual as well as five-year strategic plans, including requests for necessary financial resources. It has created procedures for "holding the Chief Constable to account," including regular submission of reports, establishment of independent financial auditing, and development of "best practice" reviews. The Policing Board has also rigorously selected and appointed several senior officers, including the Chief Constable himself.

The Policing Board has successfully established District Policing Partnerships (DPPs), which are crucial to ensuring that the Police Service fulfils its commitment to policing with the community.

As of 30 September 25 of 26 DPPs had been established, the exception being the Dungannon DPP.

In consultation with local District Commanders, DPPs are beginning to prepare their own strategic plans, which will in turn be reflected in annual policing plans published by the Policing Board. The Policing Board has also provided for the initial training of DPP mem-

bers. Since their inception DPPs have shown a useful flexibility in adapting the format of their public meetings in order to facilitate the expression of community opinions.

Whereas the Policing Board and the District Policing Partnerships ensure that the Police Service is accountable to the community for achieving organisational goals, the Police Ombudsman for Northern Ireland investigates complaints made against police officers. As we have noted in the past the Police Ombudsman is performing her critical duties with professionalism, and the role is crucial to the accountability structure envisioned by the Independent Commission. The Ombudsman has striven to ensure that her Office provides an independent, impartial police complaints service in which both the police and the public can have confidence. Police accountability ultimately depends on the public and designated oversight bodies having extensive and reliable information about what the police are doing. Additionally, information-sharing about police complaints is a crucial first step toward the Police Service creating an "early warning system" about potential violations of the police oath and the Code of Ethics. The Ombudsman provides trend information to the public regarding complaints, and more specific information to the Police to allow them to fulfil their internal accountability responsibilities. The publication of the Police Service's Transparency Policy in April 2003 was also a critically important development in this direction.

#### **Areas of Concern**

The Independent Commission called for community accountability at two levels: the Policing Board and the District Policing Partnerships. Threats against members of the Policing Board and District Policing Partnerships continue to be a concern. Particularly troubling is the fact that threats are made against those members of the community who have courageously accepted the obligations of citizenship. Such threats and acts of intimidation are orchestrated attempts to undermine the fundamental concepts of police reform and community involvement, and if allowed to continue will have long-lasting and negative implications for policing. Unless the DPPs are supported and allowed to perform their crucial function, self-serving and violent criminal organisations will increasingly seek to determine the extent and degree to which policing will occur in Northern Ireland.

In future, particular attention will be paid to the development of the District Policing Partnerships, through visits to their public meetings and interviews with officers and members. Also of interest is the level of collaboration that will be achieved between the DPPs and the wide array of community associations interested in public safety, such as Community Police Liaison Committees, Community Safety Partnerships, and Consultative Forums. While Northern Ireland is fortunate to have so many interested citizens and active groups in this area, the managing and co-ordinating of the activities of these organisations to the community's collective benefit will require time and effort on the part of the Police Service and the DPPs.

## ***POLICING WITH THE COMMUNITY***

### **Background**

In September 1999 the Independent Commission recommended that policing with the community be the core function of the Police Service and of every police station. Crucial to the new beginning envisioned by the Independent Commission, the theme of policing with the community has implications for the structure of the Police Service, for its management, culture, recruitment and training. The long term goal is to deliver truly effective, locally-based policing that would not only address some of the current issues unique to Northern Ireland, but put it at the leading edge of policing in the United Kingdom, Ireland and internationally.

### **Progress and Accomplishments**

By September 2002 the Police Service had conducted research into the principles and practices of policing with the community and consulted broadly with representatives of all ranks within the Police Service. The Policing Plan 2002–2005 released in March 2002 committed the Policing Board and the Police Service to implementing policing with the community as the principal service delivery model. Formal commencement was in September 2002. District Commanders, Sector Inspectors and regular patrol officers must be commended for their risk taking in the cause of quality and community policing. The Police Service completed a number of significant community based crime prevention projects. Neighbourhood Policing Teams were established, and where local conditions and resources allow, officers are walking beats and providing an essential presence in town and city centres. The Police Service has developed a sound capacity for crime and complaint pattern analysis, and each District Command Unit now has the benefit of a professionally trained and qualified crime analyst, supported by appropriate computer technology. By September 2003 the Police Service has made significant gains in its transition from a police operation with an intense focus on security, to a policing with the community style as recommended by the Independent Commission. Observable changes include a devolved organisational structure based on 29 District Command Units, a proliferation of community and institutional partnerships, adoption of problem solving practices, higher visibility of police patrols in public places, increased numbers of walking beat patrols, the restoration of beat patrols in disputed urban neighbourhoods, and an evolving, state-of-the-art crime analysis programme.

The indicator for success is measurable progress against the objectives of the Policing Plan. Beat officers are conducting regular foot patrols on busy inner city streets during daylight hours. In neighbourhoods where support for the police is minimal, foot patrols are conducted in teams with vehicle back-up. For example, through the Get Home Safe campaign, developed co-operatively between the Police Service and operators of licensed premises in South Belfast, instances of public disorder at closing times were significantly reduced. Progress like this also led to the Police Service winning two of a possible three UK-wide Tilley Awards for Community Policing. This commendable success indicates an excellent beginning to the Police Service's evolution to a community-oriented policing organisation.

Those members of Neighbourhood Policing Teams interviewed during recent oversight visits express confidence in their ability to extend community policing services to all communities, regardless of challenging conditions in some. Some units are consciously promoting efforts to “brand” their services, through continuity and consistency of style, the building of trust with community members and displays of locality markings on uniforms and vehicles. Beat officers are authorised to speak with the media on local events, thereby heightening their individual profiles and also improving relationships with local newspapers. Consultative forums are flourishing and the Police Service is involved in a wide variety of partnerships with institutional partners including public safety agencies, social services and housing authorities. The newly created district partnerships are quickly establishing themselves as formidable bodies in the cause of public safety.

#### **Areas of Concern**

Goal setting in the manner recommended by the Independent Commission requires that District Commanders be responsive and accountable to the goals established by the Policing Board in consultation with the Chief Constable. Some DCUs have established integrated sets of goals, while others have yet to provide an opportunity for their community to collaborate in this process. Another factor, which impedes the policing with the community programme generally, is the lack of appropriate training for the police officers delivering the service. For example, of the approximately 300 police officers meant to undergo specific training in Neighbourhood Policing, only roughly 100 have completed the training course. In some instances courses are not filled to capacity, while in others officers in attendance are called back to duty without being allowed to complete the training course. Additionally, Districts are required on numerous occasions to divert recruit officers from the Neighbourhood Policing Teams they are assigned to following police training.

Although an inspection of problem solving folders afforded encouraging impressions of dedicated efforts to identify issues of concern to the community, there are issues of content and form that require attention. All folders examined were still hand written, which represents an outmoded and inflexible approach to information management. Now that all units have access to common terminals, the Headquarters policy centre has an opportunity to develop a standard problem solving folder format. Information sharing within neighbourhood policing teams appears to function well. Also, as of 30 September 2003 training for members of the community in problem solving had not been completed, however the Police Service did arrange for familiarisation training for DPP members on 20 November 2003.

Finally, despite repeated requests, Service Level Agreements (SLAs) have not been finalised between Training Branch and the District Command Units. The Independent Commission noted that different District Commanders would have variations in the skills that they require of their police officers. SLAs allow front line supervisors to identify both the type of training and how this training will be provided; particularly training aimed at first and second-line supervi-

sors. These individuals are critical not only with respect to the day-to-day functioning of the Police Service, but to the ultimate success of the Police Service's change programme as a whole.

### *POLICING IN A PEACEFUL SOCIETY*

#### **Background**

In September 1999 the Independent Commission on Policing for Northern Ireland made several recommendations covering the appearance of police stations, appropriate types of patrol vehicles, and the need to increase devolved authority to District Commanders. In addition, recommendations included those on Army support, the use of emergency powers, administration of detention facilities, and other issues affecting the ability of the Police Service to deliver the kind of law enforcement service a peaceful society would require.

#### **Progress and Accomplishments**

By September 2002 evidence of an increased usage of police cars in place of armoured Landrovers was provided. Considerable progress was made by the Police with the adoption and distribution of General Order 37/2001, The Terrorism Act 2000—Human Rights and Monitoring Issues. The Police Service provided information on persons stopped and searched, arrested or detained, premises entered or searched, and items seized under emergency powers. Similar information had been provided by the Army through the Police Service. The Police Service constructed a temporary custody suite at Lisburn DCU, pending the opening of a permanent 20-bed joint custody facility at Antrim DCU, and had extended the Lay Custody Visiting Scheme to include custody and interrogation suites. Lay Custody Visitors have received training for visiting detained terrorists suspects. Also, a pilot custody suite video recording project was undertaken at Musgrave Street station, with a view to providing the experience necessary to introduce video recording in other suites.

By September 2003 the Police Service continued to demonstrate progress on substituting armoured Landrovers (ALRs) with regular police cars, ordering 158 unarmoured and 80 armoured cars between April and August 2003. As a result, the number of ALRs transferred either to depots or strategic reserve has increased considerably.

The Police Service continues to make progress on re-branding and renovating station enquiry offices. Several enquiry offices have been completed and the Police Service has advanced additional business cases to the Northern Ireland Office for funding reviews on a case-by-case basis. The Police Service has also made progress on recruiting civilian Station Enquiry Assistants (SEA). The recruiting process is now being done by Grafton Recruitment, which completed its first recruitment campaign in June 2003. This campaign provided the Police Service with a merit pool of 227 qualified candidates for 60 SEA positions. 20 percent of applications came from Catholics. Although a timetable for completing the replacement of all 260 positions identified has not been provided, a limited plan for the DCUs was provided by the Police Service and covers 94 positions for 2003. In addition, the Police Service provided a policy document in early September 2003 which detailed how SEAs were to be utilised, and how a corresponding number of police officers might be redeployed to operational du-

ties following the successful civilianisation of enquiry office positions. Finally, a training programme for new SEAs has been developed to ensure they are equipped to deal with their new responsibilities.

#### **Areas of Concern**

In its 1999 report the Independent Commission noted that some police stations were visibly dilapidated, and that the police estate was generally in poor condition. It therefore recommended that police stations needed to be more accessible to the public and less fortress-like in appearance. Improving the appearance of police stations generally will support community policing goals, community involvement and recruiting. In addition, ensuring that all police stations meet minimum health and safety standards will have a positive impact on both the health and morale of police officers and civilians assigned to work there.

A key implementation measure is the development of a comprehensive strategy by the Police Service to address these issues. The Police Service provided a number of documents, which describe rebuilds, renovations, station closures and related appearance issues. However, these documents do not individually or collectively represent an organised plan that would fulfil the intent of the Independent Commission's recommendations on the police estate, nor do they represent a comprehensive strategy that addresses all relevant issues. In some instances the documents provided are both inconsistent and contradictory. For example, the police station at Kilkeel, County Down is simultaneously slated for interior refurbishment and expansion, but also for demolition and eventual replacement.

Another important aspect of a comprehensive estate strategy that remains unresolved as of 30 September 2003 was the Police Service's future detention requirements, with the final number of regular and super custody suites not yet determined. The Police Service currently operates 22 separate custody suites, but is considering reducing that number to 18, or possibly as low as eight. Also critical to progress in this area is ensuring that the Police Service is provided with the appropriate level of fiscal support from the Government. A three-year business plan for the installation of CCTV in 22 custody suites has been prepared, before the Police Service's actual need for custodial space has been conclusively established.

A number of past oversight reports have noted that the detention facilities at Castlereagh, Strand Road and Gough Barracks were closed. These closures were verified during evaluation visits in the autumn of 2002. Gough Barracks in particular was found to be in such a state of disarray that further use as a holding facility would clearly have been inappropriate. However, the Independent Commissioner for Detained Terrorist Suspects then reported that Gough Barracks had indeed been in use on 18-21 January 2003, following its re-designation by the Secretary of State. It was also in use on 1-2 September 2003, however without obtaining the necessary re-designation. The Police Service now considers Gough Barracks not as closed, but rather as a "mothballed" facility, and Gough is essentially equipped and ready to be re-opened on short notice. This not only fails to meet the Independent Commission's intent with respect to Gough, but also any standard definition of a "closed" facility.

## **PUBLIC ORDER POLICING**

### **Background**

In September 1999 the Independent Commission on Policing for Northern Ireland recognised that the public order policing experience of Northern Ireland's Police Service differed significantly from that of any other police force. It therefore saw the need for research into alternative tactical and strategic ways with which to address recurring public order situations. In addition, the Independent Commission made several recommendations that covered the role of the Army, the establishment of a parade partnership and marshal training, and for identifying equipment that might be utilised by the police to better deal with public order situations and other emergencies.

### **Progress and Accomplishments**

By September 2002 the Police Service had issued General Order 46/2000, Issue, Deployment and Use of Baton Rounds in Situations of Serious Public Disorder which includes directives to effectively manage and record the deployment and use of PBRs. In addition, an 18 member Steering Group set up by the Northern Ireland Office had prepared and distributed an excellent report in response to the Independent Commission's recommendations on public order equipment. The Policing Board and the Police Service developed an effective set of policies and procedures for accomplishing the many issues for dealing with public order situations.

This was followed up on 15 August 2002 when the Chief Constable distributed General Order 50/2002, Requirements for Early Reporting to the Policing Board, which requires the prompt reporting of the discharge of PBRs. The Police Service had limited the number of police officers authorised to fire the plastic baton gun, and a training component for Commanders, supervisors and police officers has been established to cover all aspects of effective PBR deployment. A report released in May 2002 by the Police Ombudsman detailed the investigation of seven incidents where the Police Service used PBRs in public order situations. The report concluded that the discharge of baton rounds in each case was fully justified and proportionate, as were the authorisations and directives given.

By September 2003 the NIO's Steering Group, which was formed to conduct research and identify a broader range of public order equipment in response to public order situations, had released its third report entitled: "A Research Programme into Alternative Policing Approaches towards the Management of Conflict." The NIO advises that a fourth report on the study of alternatives to the plastic baton round (PBR) will be released in December 2003. As the fourth report will conclude this research, it remains important that the Government and the Police Service work toward developing a definitive time line for reaching a final decision(s) on alternatives to the PBR.

Based on the research conducted by the Steering Group, the Police Service has purchased six vehicle-mounted water cannon similar to those on loan from the Belgian Federal Police for the marching seasons of 1999-2003. The six vehicles purchased for the Police Service were specifically designed for use in Northern Ireland. Two of the six vehicles have been delivered and are undergoing various tests. The

Police Service has prepared an operational policy and guidance for the deployment and use of water cannon in serious public disorder situations. This policy has been validated in order to ensure compliance with the provisions of the Human Rights Act 1998, the UN Basic Principles on the Use of Force and Firearms and the UN Code of Conduct for Law Enforcement Officials. The authority to deploy or use the water cannon will be the same or similar to the guidelines for the deployment of baton guns and PBRs. A small number of officers and supervisors have received interim training on how to operate the equipment, but the manufacturer will provide complete training when the two initial vehicles become operational in late 2003.

The way in which the Police Service has operationally addressed the deployment and use of baton rounds has improved considerably. The Police Service has provided good baton gun training, the numbers of police officers authorised to fire the baton round has been restricted, and there are now sound protocols in place for the deployment and authorisation of the use of baton rounds.

Police supervisors have also received training on PBR use, and all use is reported to the Police Ombudsman immediately, providing for both transparency and police accountability. The policy directives and training provided are in compliance with the intent of the Independent Commission. The NIO, Policing Board and Police Service continue to demonstrate progress in implementing the Independent Commission's recommendations for improving police performance during public order situations. General Order 50/2002 outlines in detail Police Service policy and mechanisms for providing early reports to the Policing Board on the discharge of all PBRs and/or incidents of public disorder. District Commanders are required to include detailed circumstances and justifications in their reports as to the need to discharge baton rounds. The Policing Board will be receiving, along with the reports, the Commanders' justification supporting use of the PBR. The Police Service reported that the number of public order arrests has decreased in 2003 as compared to previous years.

Documentation has been received demonstrating that the Policing Board actively monitors police performance in public order situations and when it deemed necessary has requested and received follow-up reports from the Chief Constable. A recent report provided by the Police Service indicates that no PBRs have been fired since September 2002.

Additional progress has been made by the Police Service in the establishment of an internal post-utilisation review of each incident involving the use of the PBR. An internal policy directive has established a committee, chaired by a senior police officer, to review all discharge of firearm reports sent to the Chief Constable by the Police Ombudsman under Regulation 20 of the RUC (Complaints etc.) Regulations 2000. After the Police Ombudsman forwards a report on a PBR incident, and provided there are no criminal or disciplinary proceedings pending, the Regulation 20 Committee reviews the findings contained in the report as well as any internal police reports. The review will determine if there are any policy, discipline, human rights or training matters that should be addressed. This is generally considered a best practice with respect to the use of lethal and less than lethal force.

### **Areas of Concern**

Our Report No. 3, released in December 2001, reported that the NIO stated that it would be the summer of 2002 before a decision was made on an alternative to the baton round. In April 2003 the Government then amended this target date, stating that a decision would be reached by the end of 2003. It remains important that the Government and the Police Service maintain this schedule so that this issue may be resolved as soon as possible.

## **MANAGEMENT AND PERSONNEL**

### **Background**

In September 1999 the Independent Commission on Policing for Northern Ireland called for extensive change to the management style of the Police Service, including devolving authority to district levels, enhancing the internal accountability structure, reducing lengths of tenure in specialised positions such as public order and security duties, and a more comprehensive sickness absence programme. Further recommendations proposed a rigorous programme of civilianisation to release uniformed police officers for patrol duties, as well as various other efficiency measures.

### **Progress and Accomplishments**

By September 2002 the Police Service had established a Change Management Team under the direction of a senior Assistant Chief Constable, with a mandate to direct, manage and support the change process in its initial stages. The Police Service also introduced a comprehensive Managing Attendance Policy in February 2001. The Change Management Team has engaged in a continuing process of renewal and launched an audit process to measure progress and identify issues in need of attention. The Police Service approved a new Annual Performance Review system consistent with the UK competency framework. A Professional Standards Committee, which is chaired by the Deputy Chief Constable, and includes representatives from the Ombudsman and the Policing Board, was created to monitor integrity issues. In July 2002 the Professional Standards Committee approved an Integrity and Professional Standards Strategy. A substantial fund was established by the Government to help injured police officers, injured retired officers and their families, as well as police widows. Finally, the Widows Association was provided with an office on police premises, and a source of finance adequate to run their organisation. By September 2003 responsibility for Change Management had devolved to the ACC Corporate Development. On balance the Police Service's change process has been successfully launched and well-managed to date. The creation of the 29 District Command Units is also a success. The devolution of decision making to District Commanders is one of the key aspects of the change programme recommended by the Independent Commission (see also Areas of Concern). In the period since April 2001, District Commanders have assumed leadership roles with their respective communities, re-structured sector boundaries, changed shift work patterns, determined the most effective use of static versus mobile patrols and modified call management practices and patrol methods. Progress to date

has been described by district command staff interviewed as a major cultural shift. However, this does not diminish the challenges that still exist in managing this kind of change.

Financial Service Level Agreements are in place, which govern the relationship and respective responsibilities of District Commanders and the seven branches of Finance Department. A comprehensive management system now provides detailed monthly reports and consolidations for all categories of expenditure. Consultation meetings with other Departments and District Commanders are held regularly. Finance Department operates a continuous consultation and feedback system. This has proven effective at both surfacing problems and finding solutions.

The Police Service issued three General Orders in July 2003, which provide updated and detailed guidance to Commanders, supervisors and officers on all features of the Police Service's sickness absence policy. The intent is to ensure greater managerial consistency across the organisation. Training for the roll out of sickness absence recording is linked to general computer training for DCU staff, scheduled for completion by late September 2003. A Managing Attendance Distance Learning Module and a Lesson Plan were released in July 2003 for the assistance of line managers.

As of 31 March 2003 the sickness absence figures for regular and Full Time Reserve officers were an average of 20.14 days lost per officer per year. Absence figures for the Police Service's civilian staff were 15.95 days lost per employee per year. These figures were above targets that had been set previously by the Policing Board, which were 18.5 days for police officers and 14 days for civilian staff. However, statistics on sickness absence compiled from 1 April 2003 to 30 September 2003 do reflect a downward trend. For example, the average working days lost per officer in the six month period to 30 September 2003 was just over eight days, compared to 10.76 for the same period in 2002. It will be important for the Police Service to ensure this trend is maintained. The Police Service reports a total of 273 conversions of police posts, including Full Time Reserve posts, to civilian status in the period 1 April 2000 to 16 September 2003. An updated list of posting opportunities for civilianisation and optimisation was produced by Human Resources in April 2003. Additional areas targeted for conversion to civilian status include 130 Station Enquiry Assistants, 24 Holmes Indexers, 20 Communications Officers and 15 Transport Assistants among others. Funding for an additional 300 civilian posts, out of an original target of 650 laid out in the Human Resources Planning Strategy, had not been secured as of 30 September 2003, however a funding bid has been submitted to the NIO.

#### **Areas of Concern**

The key process of devolving decision-making authority to District Commanders was impeded early on by a lack of established devolution mechanisms. In order to hold District Commanders fully accountable for results, there must be adequate policy and support mechanisms in place. As of 30 September 2003, Police Service had not revised or updated its temporary guidance policy on devolution for District Commanders.

Adequate specialised support is also required to enable District Commanders to effectively carry out their responsibilities. However, as of 30 September 2003 the 29 District Command Units had only 15 permanent civilian Business Managers and 17 permanent civilian Personnel Officers. This is a concern we have already noted on several occasions. The remaining DCU Business Manager and Personnel Officer positions have been filled through temporary arrangements such as acting appointments, or are covered by staff from Headquarters or from neighbouring DCUs. However, the lack of permanent, professional civilian staff in these positions does not allow for continuity or the kind of skills development that will ensure the effectiveness and efficiency of the District Commands Units.

Another concern is that, as of 30 September 2003 the Police Service had not developed an effective “early warning” system for managing complaints and tracking police officers with potential problems. As noted in our previous reports, the Independent Commission’s intent regarding these recommendations was to underscore the Police Service’s need for internal accountability mechanisms which would increase public confidence in the police and also provide for the better overall management of police personnel. The Independent Commission saw the use of trend information on public complaints and other indicators for police officers as an integral part of such a managerial accountability mechanism. Information produced by such systems allows police supervisors to intervene at an early stage if they feel that an officer requires assistance or guidance, or to determine whether administrative discipline proceedings are necessary.

It has already been determined that appropriate data are being provided to the Police Service by the Ombudsman, and it is difficult to understand why the Police Service has not yet achieved even a manual early warning system. Both the Ombudsman and the Police Service have agreed on the manner in which information on complaints against individual officers will be reported, and also on the way this information will be disseminated. Initial guidelines to District Commanders, describing procedures for tracking officers who may be having difficulty in their interactions with members of the public, were also provided, however meaningful progress on an early warning system is lacking.

Additional and more definitive policy, as well as coaching for managers and supervisors on how such a system is best employed, will be required before its advantages can be realised by the Police Service. Information Services has earmarked a budget for a more comprehensive case management system, with outsourcing anticipated.

Finally, despite some progress in managing down the incidence of sickness absence within the Police Service, levels continue to be relatively high compared to other parts of the UK, at 20.14 days per officer per year for the Police Service compared to a 2002 average of 11.8 in England and Wales. This represents a significant resource drain on the organisational and operational capability of the Police Service, which in turn impacts on its ability to provide front line operational policing services.

## INFORMATION TECHNOLOGY

### **Background**

In September 1999 the Independent Commission on Policing for Northern Ireland recommended an urgent, independent and in-depth strategic review of the use of information technology (IT) in policing. Ambitious and far-reaching objectives were proposed to devise a properly resourced plan that would place the Police Service at the forefront of law enforcement technology within 3 to 5 years.

### **Progress and Accomplishments**

By September 2002 the Police Service has completed a report entitled: "Information Systems Strategy 2000/01 to 2004/05," which documents its efforts to meet current and future IT needs. An independent validator was engaged and an initial report issued on 7 August 2001. A record of funding estimates was developed which forecast expenditures to 2003/04. A comprehensive list of objectives, along with detailed time lines, was also provided to the oversight team. An updated strategy list was then developed, and included as objectives, the widespread availability of word processing, e-mail, a Police Service intranet, an integrated Crime Information System reporting, and crime mapping tools for the Police Service.

By September 2003 implementation had focussed on the partial provision of IT infrastructure, for example personal computers for police officers, data and radio networks. The roll out of 3,388 personal, or common, computer terminals to the Regions and DCUs is now scheduled to be completed by early January 2004, bringing the grand total of installed terminals to 5,000 across the organisation. 3,000 e-mail accounts have been created on the new system, and the new police radio system is on schedule to go live in February 2004.

### **Areas of Concern**

By September 2003 the Independent Validator had reported serious concerns about the progress of implementing the original plan developed by the Police Service, to meet the requirements of a fully integrated technology system readily accessible to all staff, and taking advantage of the best available analytical and communications systems. While the plan had been endorsed with some reservations by the Validator in August 2001, his status report to the Policing Board in January 2003 raised significant concerns.

A further report from the Independent Validator in August 2003 outlined the critical issues and barriers to success more precisely. With a view to correcting problems and restoring confidence in the Police Service's Strategic IT Plan, the Validator advised that:

- the ICS (Information & Communications Services) function needed overhauling and reorganisation;
- the active and discerning involvement of senior users needed to be restored;
- the ICS Committee, chaired by the DCC, needed to be re-established; and,
- the cumbersome decision-making process applied to the project as a whole needed to be abandoned.

This required the Police Service's most senior managers to intervene on a regular basis and to give the project practical support. The Police Service presented a recovery plan that requires a major reorientation to the work programme and priorities. The original target date for the achievement of objectives was March 2005. However, the Police Service has had to advise the Policing Board that, under the circumstances, a revised target date of August 2006 was more realistic, some 1½ years after the original target, and some six years after the original recommendation by the Independent Commission.

Since the original release of the Strategic Plan in August 2001 major changes have been made to the objectives, priorities and business practices of operational users, and new demands are continuing to emerge. Putting the strategy back on track will require a new dialogue with operational managers, front line police officers and other partners. The emerging requirements of the Criminal Justice Review, particularly the Causeway Project, and the Schengen Convention for Information Sharing across the European Union, are crucial challenges to which the IT Strategy will need to respond.

Among other issues remaining to be addressed are securing funding for the project, the availability of specialised human resources, implementing the systems integration project, the calculation and monitoring of risk, and noting the critical interdependencies between the various implementation projects. With respect to the need for specialised human resources, the Police Service is addressing this by contracting to outside service providers as much of the work as possible. The Independent Validator had also expressed concerns regarding other aspects of the IT Strategy, including:

- the main grant not being aligned to the Independent Commission's recommendations, with the exception of the common terminal project, at £3 million;
- over 40 percent of the available time has elapsed against the original target date for completion;
- only 25 percent of financial resources have been applied;
- strategy implementation is significantly behind schedule;
- there remain 80 current vacancies in ICS.

A recovery plan that includes a strategy realignment component, the reorganisation of Information Services and a best practice governance system was proposed to the Policing Board in August 2003. Implementation is now proceeding, with the Board receiving bi-monthly update reports.

## **STRUCTURE OF THE POLICE SERVICE**

### **Background**

In September 1999 the Independent Commission on Policing for Northern Ireland recommended restructuring to encourage and facilitate policing with the community, including delayering of the operational command organisation and a slimmer structure for Headquarters.

Recommendations also called for the significant delegation of authority to District Commanders, including control over a devolved budget and all police resources within their district. Particularly im-

portant was the proposal of an amalgamated command for Special Branch and Crime Branch, in order to improve the organisation's ability to deal with rising levels of violent and organised crime.

Also recommended was a substantial reduction in the number of officers engaged in security work. Other recommendations proposed the phasing out of the Full Time Reserve and the concomitant enlargement of the Part Time Reserve.

### **Progress and Accomplishments**

By September 2002 the 29 District Command Units were in place and operating. The Chief Constable approved a restructuring and re-deployment plan within the context of the Human Resource Planning Strategy, one of his goals being to increase the number of regular police officers working in DCUs to 5,400 by March 2005. The Police Service began to implement the Independent Commission's recommendations on Special Branch by placing Special Branch and Crime Branch under the command of a single Assistant Chief Constable (ACC) in April 2001.

At this time the ACC in command of Crime Department had direct responsibility for six branches and a departmental support unit. A new system for briefing District Commanders had also been put into place, and District Commanders verified that the intelligence they now received was generally of a higher quality than had been the case in the past.

By September 2003 Special Branch had reduced in numbers by a total of 17 percent, although largely through severance and natural attrition. In July 2003 the Police Service initiated further organisational changes that proposed two new departments, Crime Operations and Criminal Justice, as well as two rather than three policing regions across the province. The new organisational structures were intended to address recommendations made in the HMIC, Stevens and Blakey reports. Approval of the new structure took place in November 2003 (see also Areas of Concern).

In its 1999 report the Independent Commission recommended that the Police Service's Full Time Reserve (FTR) be phased out over time, and that members of the FTR should have an opportunity to apply as regular police officers. The Policing Board and the Police Service agreed in November 2002 that the FTR will be retained until April 2005, at which time it would be phased out over an 18-month period, subject to the security situation. The Police Service also presented a plan for the deployment of 2,500 members of the new Part Time Reserve (PTR) in all 29 DCUs to the Policing Board. The Police Service contracted the Consensia Partnership, a private recruiting firm, to conduct the recruiting. In January 2003 Consensia began a pilot PTR recruitment competition in Banbridge, Coleraine, Lisburn and Newtownabbey DCUs (see also Areas of Concern).

The Police Service submitted a Business Case to the Northern Ireland Office in July 2003 seeking funding for costs associated with the new programme. The Business Case seeks £12-£13 million in order to recruit and appoint 1,569 members of the PTR over a 3-year period. As of March 2003, the actual strength of the existing PTR was 921 members.

### Areas of Concern

As of 30 September 2003 District Commanders do not have an updated policy that clearly defines the responsibilities and authorities for the allocation of resources and staffing in the new devolved decision making structure. While transitional policy in the form of General Order 13/2001, Transitional Arrangements for the Introduction of District Command Units, served to bridge the gap between the pre- and post-devolution Police Service, the General Order does not elaborate on the roles and responsibilities of the District Commander, and the specific limitations of the Commander's authority. The Independent Commission had recommended a greater delegation of decision-making authority to District Commanders, including control over devolved budgets and police resources within their district. However, as noted, interim directives in place have not been replaced with definitive new authorities for Regional ACCs and District Commanders.

While Headquarters staffing trends indicate a reduction in the total number of posts assigned to Headquarters activities this may result from the effects of recent severance initiatives and natural attrition, rather than a conscious effort on the part of the Police Service to reassign personnel to DCUs. However, anticipated changes to certain Headquarters functions, such as Criminal Intelligence, may work against the Police Service's stated intention of reducing the size of Headquarters.

In its 1999 report the Independent Commission noted that Special Branch has played a crucial role in countering security threats over the years and preventing terrorist attacks. It also noted that the Police Service must remain equipped to detect and deal with terrorist activity, and for this the police need a good intelligence capacity. However, the Independent Commission also noted that a decrease in paramilitary-related crime is frequently offset in a peaceful situation by a growth in other types of organised crime, often involving violence. The four recommendations made by the Independent Commission relating to Special Branch were based on the recognition that, in order to effectively combat increasingly violent organised criminal groups, Special Branch and Crime Branch be brought together, and more importantly that Special Branch focus on supporting criminal investigations as well as security matters.

As illustrated by the following chronology, progress in fully implementing the 1999 Independent Commission recommendations has been slow. The oversight team first identified in September 2001 the need for a strategy, plans and policies that would be utilised to achieve the amalgamation of Special Branch and Crime Branch. In April 2001, the Special Branch and Crime Branch had come under the command of one Assistant Chief Constable (Crime), who was responsible for six branches including Special Branch. In January 2002 the Police Service provided a proposed plan, however this plan was found to be inadequate and it did not meet the intent of the Independent Commission. A revised plan was therefore requested. In May 2002, the Police Service advised that they would not provide a revised plan until outside reviews relating to Special Branch (HMIC and Stevens reviews) were complete. The Policing Board agreed to a November 2002 delay. In November 2002, the HMIC (Crompton) review of Special Branch was completed and contained 11 recommendations, which were accepted by the Police Service and Policing Board. In April 2003, the

Police Service reported limited progress on the HMIC (Special Branch) recommendations. Additionally, the HMIC (Blakey murder enquiry structures) and Stevens (Special Branch enquires) recommendations had been released. Although there were differences in the recommendations of the three reports, there was also a core consistency with the recommendations of the Independent Commission. In July 2003, the Chief Constable announced a re-organisation of the Police Service structure, including Special Branch.

On 14 November 2003 the Office of the Oversight Commissioner received a detailed report from the Police Service explaining how they will deal with the implementation of the Independent Commission's recommendations relating to Special Branch, while also incorporating to the extent possible the recommendations from other outside reviews. Although the November 2003 report was received too late to allow for a thorough evaluation, it does appear that the Police Service's plan is a well-researched and considered attempt to address the recommendations relating to Special Branch. All changes are scheduled to be in place by May 2004. It will be important that the scheduled implementation occurs as planned, and our close monitoring will continue along with a full evaluation of the plan.

As noted by both the Independent Commission and on a number of occasions by the Oversight Commissioner, any modern Police Service needs a well-resourced, well-trained and fully supported intelligence capacity to deal with terrorist and other threats to national security. However, the Police Service must also balance this need with the need to combat organised and violent crime, and other crimes that victimise communities.

Although phase out plans for the Full Time Reserve (FTR) have been announced and negotiations between the NIO and the Police Federation regarding retraining and severance arrangements have commenced, considerable uncertainty remains among FTR members regarding their future. As of 30 September 2003 decisions to provide employment counselling, retaining, assistance with transition and entitlements similar to those of regular police officers leaving the Police Service, had not yet been finalised.

With the concurrence of the Policing Board the Police Service selected four sites to implement a pilot Part Time Reserve (PTR) recruitment programme, with initial appointments to take place in June 2003. The four sites were selected with the belief that recruitment efforts would be successful, and that the experience gained would then be used to strengthen a wider recruitment process. Upon review however, this initiative appears to fall short of the Independent Commission's recommendation for PTR recruitment, in that none of the four test sites could be categorised as areas where PTR members are currently under-represented. Unfortunately the Police Service's hiring programme for members of the PTR is not as successful at attracting Catholic candidates as its hiring programme for regular police recruits. Nonetheless, a merit pool of 268 applicants was established for 176 available positions. This will permit the enlargement of the PTR as recommended by the Independent Commission. 19 percent of applicants were Catholics and 45 percent of applicants were women. The Police Service will seek the participation of the Policing Board in selecting any future sites for recruitment in an attempt to achieve the Independent Commission's intent. It should be noted that

the 50:50 hiring criterion, applied to regular police recruits and civilian employee competitions of six or more posts, does not apply to the recruitment of PTR members.

By September 2003 there had been no appointments, and the Police Service has sought a legal opinion as to how it should progress with appointments. The NIO advised the Police Service that the PTR Business Case could not be finalised for transmission to the Treasury until the Chief Constable, in consultation with the Policing Board, reached a decision in relation to the long-term PTR recruitment exercise.

## **SIZE OF THE POLICE SERVICE**

### **Background**

In September 1999 the Independent Commission on Policing for Northern Ireland compared the strength of Northern Ireland's Police Service with those in the rest of the United Kingdom and Ireland, and recommended that if the security situation did not significantly deteriorate the Police Service be reduced in size over the next 10 years. The model proposed included an initial downsizing over three years through an early retirement or severance programme, and a phasing out of the Full Time Reserve (FTR).

### **Progress and Accomplishments**

By September 2002 the Police Service had implemented the proposed severance arrangements recommended by the Independent Commission, for both regular police officers and members of the Full Time Reserve (FTR). A complete set of policies, directives, documents and booklets has been employed by the Voluntary Severance Support Unit to assist in the administration of the severance programme. Following a report to the Policing Board by the Chief Constable regarding staff shortages, especially of experienced officers at all ranks, and associated impacts on service delivery, the Policing Board approved the suspension of the severance programme for one year. In order to improve on severance arrangements, the Northern Ireland Office also conducted a review of the first three years of the programme. In fulfilling its monitoring role, and recognising the priority of human resources issues and the urgent need to address patrol capacity, the Policing Board instructed the Police Service to: (1) review the number of officers and reservists assigned to security posts; (2) review the management of severance arrangements; (3) manage high levels of sick leave; (4) address civilianisation; (5) review the number of police officers assigned to Headquarters; (6) review ill health retirements and, (7) review the number of police officers on overseas secondments.

In response, the Police Service submitted an initial plan listing the following actions to be taken over the next 3 years: (1) reducing the sickness levels to 450 officers per day; (2) optimisation of 750 security posts; (3) civilianisation of 650 police positions; and, (4) short-term adjustment in the timing of officers leaving under the severance provisions.

By September 2003 significant progress had been made in achieving the 10-year plan recommended by the Independent Commission for the total number of regular police officers. The Commission recommended that the Police Service achieve a complement of 7,500 regu-

lar police officers, and the Policing Board agreed on a Human Resource Planning Strategy prepared by the Police Service to achieve this level of staffing by 2005. The Strategy incorporates the continued appointment of an equal number of Catholic and other than Catholic police recruits each year, and a modified severance programme that allows deferment of severance for certain police officers.

The Independent Commission projected that by fiscal year 2003/2004 the Police Service would have 7,221 regular police officers available for duty, once the Full Time Reserve (FTR) had been completely phased out. As of 27 August 2003 the Police Service had approximately 7,303 regular police officers and 1,721 members of the FTR at its disposal. This represents a total complement of 9,024 police officers. Contracts for members of the FTR have been extended until 31 March 2005, when the Police Service intends to phase out the FTR over an 18-month period.

The Independent Observer appointed to monitor the Human Resource Planning Strategy has also concluded that the revision of the severance scheme and recruitment of 540 police recruits per year should help achieve the target of 7,500 regular police officers within the planned time frame. The Strategy includes a plan to increase local police resources by deploying regular police officers from Headquarters, among other areas, to the District Command Units (DCUs), thereby increasing the number of police officers in DCUs from approximately 4,620 as of September 2003, to 5,400 by 2005.

As recommended by the Independent Commission, the Police Service successfully implemented its early retirement or severance programme of eligible police officers and Reserve members in January 2001. During the first four years of the severance programme a total of 2,119 regular and reserve police officers applied for voluntary severance or early retirement. The NIO has agreed to extend the severance programme to the year 2010, unless its objectives are met before then. The Voluntary Severance Support Unit (VSSU) was also established, to manage the implementation of the Independent Commission's recommendation on severance, and the administrative processes related to outplacement. In addition, steps will be in place to ensure that appropriate training will be provided for those filling posts vacated by officers leaving under the severance programme.

During Year Four of the severance programme the number of police officers leaving the Police Service was significantly reduced in order to retain officers with certain skills and to ease shortages. The Police Service has agreed with the Policing Board that any future severance plans will be organised in such a way as to reduce disruption. As severance continues, and assuming the recruitment of 540 recruits each year, the Police Service has agreed to permit around 380 officers to retire each year.

During the first four years of the voluntary severance program, 670 police officers were approved to participate in external training plans. Of this number 146 actually attended the training courses. This represents moderate progress toward providing measures for police officers seeking other employment. The Police Service plans to increase the role and usage of the Police Retraining and Rehabilitation Trust, in order to expand the availability for training and job placement.

### **Areas of Concern**

The decision to phase out the FTR over an 18-month period beginning in April 2005 has been communicated to each member of the Full Time Reserve by letter. As noted in previous oversight reports, all of the current reserve members need to be fully informed of the options that might be open to them.

The Police Service conducted a survey of reserve members in October 2001 to determine the degree of interest in employment with other Police Services in Great Britain. Of those responding, 51 percent indicated an interest in such employment. The Police Service reported that a new survey would be conducted to gauge interest in other Police Services, however by September 2003 no progress on this second survey initiative was reported to the oversight team. Now that the decision has been made with regard to the future status of the FTR, there is no reason why reserve members should not be allowed to seek new employment before their contract expires, however evidence of a detailed plan with time lines is still required. Finally, although negotiations with the Police Federation in regard to severance packages and retraining for members of the FTR are currently in progress, they too need to be concluded soon if reserve members are to make timely decisions critical to their future.

## **COMPOSITION AND RECRUITMENT**

### **Background**

In September 1999 the Independent Commission on Policing for Northern Ireland envisaged a Police Service that is representative of and supported by the community it serves. A key component of achieving a representative Police Service is a sound and successful recruitment programme that reaches, attracts and is supported by all segments of the population, especially those segments that are under-represented. Several recommendations address the various components of a sound recruitment programme that will attract, fairly test, objectively vet, and select applicants in a way that results in a diversified Police Service that is representative of, and can be supported by, the community.

### **Progress and Accomplishments**

By September 2002 the Northern Ireland Office, Policing Board and the Police Ombudsman had each established plans and practices to ensure that their staffs were diversified to the degree possible and consistent with applicable legislation. The Police Service, consistent with the legislative authority provided in the Police (Northern Ireland) Act 2000, contracted with the Consensia Partnership, an independent recruitment agency, in January 2001 for the recruitment of police officers. The recruitment programme is well designed, aggressive, and meets contemporary policing standards. The recruitment advertising scheme in each campaign has been extensive and designed to reach groups who are under-represented, with an objective of ensuring that the composition of the Police Service is representative of the community it serves.

The selection process, using job-related but stringent standards, has proven successful and is producing a merit pool of male and female applicants, from which an equal number of Catholics and non-Catholics are appointed to training. The Secretary of State appointed an independent assessor to validate disqualification decisions in cases where an applicant is aggrieved. The Police Service continued to organise work experience schemes in schools, and have career advisers attend career fairs seeking increased community support and long-term recruitment opportunities. The work experience programme in particular saw increasing interest. In addition, the Gaelic Athletic Association's removal of its ban on police officers from Northern Ireland becoming members was a positive development in meeting the Independent Commission's recommendation.

By September 2003 the recruitment programme has been operating with continued success.

The strength of the programme can be attributed to the professional skill of Consensia and the close working relationship that has developed between Consensia and the Police Service. Of particular note has been the persistence and subsequent success of Consensia in convincing newspapers in areas historically under-represented in the Police Service to accept police officer recruitment advertising. In addition the participation of carefully selected lay assessors who possess broad ranging experience has strengthened the selection process and is an essential component of the recruitment programme. The involvement of lay observers has proven to be a strength and has contributed to the overall success of the programme.

During the summer of 2002 Grafton Recruitment was selected for the recruitment of civilian support staff. Grafton's recruitment programme is also well designed and meets contemporary policing and human resources standards. Independent community observers check the testing facilities to ensure adequacy, and evaluate whether assessment processes follow established protocols. An external contractor has been engaged to monitor civilian recruitment and assessment procedures for quality assurance. Using information gained from focus groups, Grafton has developed an innovative and imaginative advertising strategy designed to reach groups who are currently under-represented in the Police Service. The strategy includes on-line and press advertising in specifically designated professional publications related to the positions being advertised. The strategy primarily covers Northern Ireland, but also includes the Republic of Ireland.

Grafton's programme, to the extent used by the Police Service, has proven to be successful.

Under the Police (Northern Ireland) Act 2000, the Police Service is required to recruit an equal number of Catholic and other than Catholic applicants according to the 50:50 principle, in each competition for six or more posts. By September 2003 Grafton completed eight competitions for civilian support staff that fall under the 50:50 requirement, however Grafton has also completed recruitment competitions which do not fall under the 50:50 requirement. Each of the competitions that falls under the 50:50 requirement, and for which applicants are entered into a merit pool, has been sufficient to meet the recruiting goal.

The most significant competition was for Station Enquiry Assistants, envisaged by the Independent Commission as replacing police officers assigned to enquiry desks. Following an internal trawl that produced 32 transfers, in February 2003 the Police Service requested that Grafton undertake a competition to fill a further 60 of these positions. Grafton received requests for 6,217 application packs, which resulted in 1,892 subsequent applications. A merit pool of 227 qualified applicants available for appointment has been provided to the Police Service. Grafton also completed competitions with sufficient merit pools of qualified applicants for appointment as Press Officers (6), IT Specialists (16), Driving Instructors (6), Trainee Police Analyst (10), Personnel Officers (14), Business Managers (14) and Telecommunications Engineering Technicians (14). The success of the recruitment programme for civilian support staff, similar to that for police officers, can be attributed to the professional skill of Grafton Recruitment and the close working relationship that has developed between Grafton and the Police Service. In addition, the careful review of each competition conducted by Grafton is used as the basis for making continued improvements in the selection process.

#### **Areas of Concern**

The Police Service is working closely with the Consensia Partnership and Grafton Recruitment to recruit police officers and civilian support staff from the entire community, and are making strides in that regard, particularly with the recruitment of police officers. However, future and continued success in attracting applicants representative of the community is dependent upon the encouragement of broadly based, cross-community support. Support has been forthcoming from many segments of the community, but has not been forthcoming from all, and in certain areas there have been refusals to accept, and requests to remove, recruitment advertising.

Potential recruits have been openly discouraged from joining the Police Service and new recruits have been discouraged from remaining with the Police Service. Of Catholics questioned as part of a Community Attitudes Survey recently published by the Policing Board, fully 72 percent cited fear of intimidation or attack on themselves or relatives as a reason for not joining the Police Service. It should be noted that the Police Service has generally acted in good faith to fulfil recommendations on its composition, and it is vital that all of the groups and institutions that have an interest in carrying out the required police reforms provide the support needed to realise the Independent Commission's vision of a new beginning for policing in Northern Ireland.

Although the Police Service is systematically making good progress in the recruiting of police officers, it appears that the recruitment of a representative civilian support staff remains a longer-term concern. Specifically, the Independent Commission's recommendations will not be achieved in the foreseeable future. In September 1999 the Independent Commission recommended that, similar to police staff, civilian staff of the Police Service be balanced and representative of the whole community in Northern Ireland. The Independent Commission noted that it would be illogical to argue for diversity among police officers: "while leaving civilian staff unchanged, especially if many jobs now held by officers are to be progressively civilianised." At the

time, the majority of Police Service civilian staff were either members of the Northern Ireland Civil Service (NICS) seconded to the Police Service, or members of the public directly recruited by the Police Service.

In 1999 civilian staff consisted of 2,601 civil servants and 791 direct recruits. The Independent Commission noted that at the time, 12 percent of civilian staff were Catholic. Since most civilian staff were members of the NICS, the Independent Commission suggested that it should be possible to effect "early and substantial change" by encouraging civil servants to transfer to other NICS Departments, and recommended that the NICS co-operate with the Policing Board and the Chief Constable to facilitate the transfer of civil servants out of the Police Service and into other Departments.

The Government's August 2001 Implementation Plan partially agreed with these recommendations, however committed the Northern Ireland Office, the Police Service and the Policing Board to developing a "package of measures" the cumulative effect of which would be the achievement of a more representative civilian workforce and one which would be more effectively integrated into the Police Service. Measures include the transfer of civil servants to other government jobs, civil servants converting to direct recruit status when accepting a promotion within the Police Service, and the hiring of direct recruits on a 50:50 basis for positions of six or more posts.

The numbers in the direct recruit category did rise significantly between 1999 and July 2003, from 791 (23.3 percent of the total civilian workforce) to 1,704 (48.8 percent of the civilian workforce). The engagement of Grafton Recruitment by the Police Service in June 2002 accelerated the increase of Catholics among direct recruits hired. Concomitant with the rise in direct recruits, the number of Northern Ireland civil servants with the Police Service fell between 1999 and July 2003, from 2,601 to 1,786. However, when the two categories are combined (i.e. civil servants and direct recruits together) representation of Catholics among civilian staff rose only 1.4 percent between 1999 and July 2003, from 12.3 percent to 13.7 percent. By contrast, in January 2002 Catholics made up 42.5 percent of the Northern Ireland Civil Service.

In our Report No. 7, released in May 2003, we noted that at the current pace of hiring, it was unlikely that civilian staff of the Police Service would be representative of the broader community in the near future. Our concern remains that the early and substantial change toward achieving a balanced and representative civilian workforce envisioned by the Independent Commission has not come about, nor is it likely in the near future.

The Police Service has prepared an update to a January 2003 business case to secure funding for 300 additional civilian support staff as part of their programme to civilianise a total of 650 posts over three years within the Police Service (i.e. posts presently staffed by police officers). However, the business case for the 300 additional civilian staff has not yet been approved. The recruitment of 260 Station Enquiry Assistants (SEAs), which is included in the Business Case, will represent progress toward a more representative civilian workforce and will also relieve police officers for crime control and community policing activities. Funding for the recruitment of an initial 60 SEAs has been approved and hiring is underway.

In September 1999 the Independent Commission recommended the registration of interests and associations. Citing a number of reasons, the Police Service did not begin to implement this recommendation until August 2003, when it announced that a policy requiring the registration of memberships by police officers in seven specific organisations was being implemented.

However, as of 30 September 2003 the Police Service had not communicated the requirements of this new policy directly to the police officers. During the evaluation visit conducted in September 2003 the Police Service advised the oversight team that Guidance Books would be sent to each police officer by 1 October 2003, and that preliminary registration data would be available for the oversight evaluation in December 2003.

## **TRAINING, EDUCATION AND DEVELOPMENT**

### **Background**

In September 1999 the Independent Commission on Policing for Northern Ireland addressed the subject of Training, Education and Development and focussed on the restructuring of this critical area as being pivotal for a successful transformation of the Police Service. The Independent Commission recommended the development of a Training, Education and Development (TED) Strategy for both the recruit and in-service training programs. The TED Strategy was to clearly demonstrate the inter-connection between the overall aims of the recommendations, and the objectives and priorities set out in the future policing plans of the Police Service and the Policing Board. The Independent Commission also emphasised the importance of a new state-of-the-art Police College as critical to the long-term success of the training programme and the transformation of Northern Ireland's Police Service. The new Police College was seen as the cornerstone to providing the recruit officer as well as seasoned police and civilian personnel with the environment conducive to modern learning and development techniques.

### **Progress and Accomplishments**

By September 2002 the TED Primary Reference Document had been approved by the Policing Board. This was an important first step in ensuring that a comprehensive Training Needs Analysis (TNA) could be undertaken by the Police Service. The recruit foundation-training programme had also been established and was well underway, as had the Tutor Officer programme.

By September 2003 the Policing Board, aware of the need for improved training programmes, had appointed a consultant to specifically monitor the ongoing implementation of the TED Strategy. The consultant was engaged in March 2003. The aims of the Policing Board's monitoring system include: ensuring the integration of the performance targets and the Independent Commission's recommendations in TED plans and activities, the establishment of the Policing Board's own performance indicators to ensure objective and accurate monitoring, and the validation of Police Service training budget forecasts and expenditures. The consultant has developed a comprehensive monitoring framework to achieve these objectives. The Policing Board is expected to approve its monitoring framework as the pri-

mary instrument for ensuring the efficiency and effectiveness of the Police Service's delivery of training, education and development. The Police Service had also engaged a new Director of Training, Education and Development, effective 1 April 2003. The Police Service had submitted a costed Training Plan to the Policing Board. This Plan was the first attempt to cost all TED activities covering fiscal year 2003/2004. Since this is the first such plan, the baseline it represents has yet to be validated against future expenditures. Following its review of the Costed Training Plan, the Policing Board endorsed the Plan in March 2003. In addition, the Training Needs Analysis has been outsourced with results scheduled for December 2003. These results will determine the organisation's comprehensive future training strategy.

Training Branch has developed a Registry System to track crucial information relating to training activities. No such system had existed in the past, making it extremely difficult to retrieve data on up to 259 learning programmes offered by four separate faculties, together delivering approximately 10,000 training days annually. The Registry will be linked to the organisational finance system, which will enable the production of accurate future expenditure forecasts and facilitate the provision of accurate and up-to-date training information to members of the public. As reported in our Report No. 8, released in September 2003, a Learning Advisory Council was established which provides the Police Service with input and involvement in training activities from community representatives, including individuals from academia, commerce, finance and other private and public sector areas. Training Branch has also developed partnerships with other police training facilities in the UK and Ireland, and also with a number of general educational institutions throughout Northern Ireland such as the Association of Northern Ireland Colleges, with a view to providing District Command Units with a range of non-police training and educational opportunities as recommended by the Independent Commission. However, structured agreements are not yet in place.

Training Branch has launched a new initiative to provide training to first and second level police and civilian supervisors under the "Leadership Grid" developed by a private firm from the United States. As of 30 September 85 staff had completed the training. In conjunction with the SECAPRA problem-solving model already adopted by the Police Service, the Grid Programme is intended to enhance employees' understanding and application of other problem solving techniques. Ongoing Leadership Grid training will eventually extend to members of District Policing Partnerships, other Police Service partners and members of the community.

Training Branch has established a Task and Steering Group to assist with the Civilian Development Programme. Early progress has been made in some areas, with joint police-civilian training taking place in communications and first aid training courses. The Police Service's Leadership for Life Programme, developed through the auspices of the Open University, is open to all civilian and police personnel at the managerial level. The Leadership for Life programme is fully accredited by the university and provides participants with contemporary leadership and development learning skills as recommended by the Independent Commission. To facilitate learning within

the Police Service it has renovated its Executive Leadership classrooms at Garnerville and technologically integrated them with the Open University's Resource Centre. Finally, the Foundation Faculty's Part Time Reserve training programme also provides for the inclusion of civilians in some aspects of the training.

#### **Areas of Concern**

The lack of an adequate training facility remains a serious concern, and has been extensively addressed in previous oversight reports. The Independent Commission noted the critical aspect of this recommendation in its 1999 report, and the Policing Board has also stated that a new Training College is one of the cornerstones of meaningful and long-lasting police reform in Northern Ireland, noting that: "the establishment of a new Police Training College is an absolute necessity in order to ensure that the Police Service of Northern Ireland has a world-class training facility for a modern, first-class Police Service." The need for a new training facility was underscored during a recent oversight visit, when existing Police Service training facilities were found to be in such dilapidated state that, in some instances, health and safety concerns rather than effectiveness had become the main issues. At present the target date for completion of a new college is 2007 which, given progress to date, seems optimistic. In the interim, the Police Service is bridging the gap by using temporary facilities, itself a significant cost. Arguably these funds would be better spent on a new Training College that would also facilitate the new beginning envisioned by the Independent Commission. It is critical that the construction of a new Police College not fall victim to systemic inertia, and the efforts of all parties involved in the selection and construction of a new facility should be focussed on making this critical objective a reality, including the provision of adequate funding by Government.

In its 1999 report the Independent Commission recognised that Service Level Agreements (SLAs) would be an important step in the devolution of authority to DCUs. Aside from allowing the Police Service to use its limited training resources rationally and based on need, SLAs would also permit District Commanders to structure their district-level training programmes according to the specific needs of their respective DCU. Moreover, now that DPPs are established and operating, ensuring a clear understanding of what Training Branch is expected to deliver to the districts becomes even more crucial. However, in its public response to our Report No. 8, released in September 2003, the Police Service noted that training efforts were concentrated in course creation and delivery, rather than on the administrative process of developing SLAs. Although we have requested evidence of SLAs from the Police Service since September 2001, no approved or final documentation had been provided as of 30 September 2003.

### **CULTURE, ETHOS AND SYMBOLS**

#### **Background**

Lead responsibility for the critical issues of name and symbols was assumed by the Northern Ireland Office, while the Police Service managed the detailed research and consultation challenges of designing and procuring new uniforms. The Police Service has responsibility for

defining a neutral working environment. The Policing Board has a critical role to play in interpreting community values and their expression in the change process.

#### **Progress and Accomplishments**

By September 2002 good planning by the Police Service, combined with diligent work on the part of the Policing Board, resulted in critical early successes to the new beginning envisaged by the Independent Commission. The change of name had come into effect in November 2001, with the badge and flags being changed in April 2002. The complete change of uniform was completed in a single day, 5 April 2002. A police memorial policy was established and a Garden of Remembrance was funded and under construction. In addition, policy had been developed to introduce a neutral working environment, with a follow-up audit of all police stations to monitor compliance.

By September 2003 General Order 7/2003, Neutral Working Environment, issued in April 2003, had formally mandated the maintenance of a neutral working environment. The new appraisal system introduced on 1 April 2003 required an evaluation of an individual's responsibility for maintaining standards. An audit of 11 DCUs by the Change Management Team in the first quarter of 2003 found police premises compliant with policy, with two minor exceptions, which were immediately corrected. Local maintenance is a command and supervisory responsibility.

Monitoring of the level of compliance with Police Service policy on the maintenance of a neutral working environment will continue. In addition, the Garden of Remembrance was officially opened by HRH The Prince of Wales on 2 September 2003. Maintenance of the Garden of Remembrance is the responsibility of the Board of Trustees of the Foundation.

#### **Areas of Concern**

Funding for the Museum project designed to complement the Garden of Remembrance was not in place as of 30 September 2003. Progress on final approval for funding will be monitored during upcoming oversight evaluations.

### **CO-OPERATION WITH OTHER POLICE SERVICES**

#### **Background**

The Independent Commission on Policing for Northern Ireland was asked to make proposals concerning the scope for structured co-operation with An Garda Síochána and other police forces. In September 1999 the Independent Commission discussion in this area recognised the excellent operational co-operation between the (then) Royal Ulster Constabulary and other police agencies around the world. However, it noted that co-operation could be improved. The Independent Commission also noted that the globalisation of crime required Police Services around the world to collaborate with each other more effectively, and that the exchange of best practice ideas between Police Services would help the effectiveness of domestic policing.

### **Progress and Accomplishments**

By September 2002 an Inter-Governmental Agreement was signed by representatives of the British and Irish Governments. This occurred on 29 April 2002 and the intent of this Agreement was to cover key aspects of policing co-operation. It was subsequently determined that both British and Irish legislative frameworks were required and work commenced in that regard, with a (then) projected completion date of the spring of 2003. A first annual conference between the Police Service of Northern Ireland and the Garda Síochána occurred in Templemore in the Republic of Ireland in April 2002. Protocols for short and long-term personnel exchanges were reported between the Police Service and the Garda. The first phase of joint disaster planning was completed with a 'table top' exercise between the two Police Services, and an actual exercise was planned for the spring of 2003. The Police Service was actively involved in peacekeeping missions. Secondments of police officers, generally at more senior ranks, were occurring from the Police Service to UK Police Services, however there have been limited results in acquiring secondments into the Police Service of Northern Ireland. Informal training links were being developed, although nothing structured was in place.

By September 2003, the 'live disaster' cross-border exercise had taken place at a border point, involving the Police Service, the Garda and other emergency responders. This occurred on 21 May 2003. The de-briefing report is awaited. A second annual Police Service-Garda Conference occurred in September 2003 near Belfast with a theme of 'Policing in Co-operation.'

While British and Irish legislation formalising co-operation had been completed, all regulations were not in place by September 2003. These are scheduled to be in effect by the end of 2003. Protocols for exchanges between the Police Service and the Garda are agreed. Good operational co-operation and success continues to be demonstrated between the Police Service and other Police Services, including the Garda Síochána. Outward secondments with UK policing continue, and as of June 2003 there remained 42 police officers on international peace keeping missions. This number will be reduced to six in central services in the UK by the end of the year, with no overseas assignments planned thereafter.

Apart from formal agreements between the Governments of the UK and the Republic of Ireland that cover generic aspects of co-operation, including training, specific agreements with other police training establishments in Ireland and the United Kingdom have not been developed. However, there are informal links and some ad hoc training is taking place, for example in the areas of crime and communications.

### **CO-OPERATION WITH OTHER POLICE SERVICES**

#### **Areas of Concern**

As noted in our Report No. 6, released in December 2002, the Police Service has established informal contacts with several police training facilities. However, by September 2003 the Police Service had not yet developed formal or systematic collaboration agreements with those

institutions, covering issues such as faculty exchanges and joint in-service training. As noted previously, one partnership agreement has been signed with Georgian College, Ontario, Canada.

However, specific plans for co-operation had not been formalised by September 2003. While the focus of the Independent Commission's recommendations on co-operation in training was to open the Police Service to other ideas, the lack of results in this area also reflects on training issues relating to collaboration and openness. While the development of a joint database with the Garda, and cross-border communications needs are understandably complex, results have not yet been achieved. Oversight will continue its monitoring of this area for demonstrated progress.

A longer-term concern relates to the strategic development of the Police Service's capacity to draw on the experience of policing from around the world, while at the same time developing and contributing Police Service experience to global policing issues. As of September 2003 there were only 2 exchanges into the Police Service from the UK, or elsewhere, and none from the Garda Síochána. The Police Service and the Policing Board have rightly focussed in the shorter term on reducing the international peacekeeping commitments of the Police Service, in order that it can deal better with domestic policing needs. For example, there were 42 police officers on UN or other overseas duty in June 2003, six are scheduled for 2004 and none for 2005. However, continued retrenchment and an ad hoc approach to the Independent Commission's broader intent of increasing the experience and capacity of the Police Service through North-South, UK and global exposure, is a longer term issue that remains for the Police Service and Policing Board to address. The Independent Commission's recommendation that the Northern Ireland police "should be ready" to participate in future UN peacekeeping operations and other exchanges will continue to be monitored by the oversight process.

Finally, despite the signing of an Inter-Governmental Agreement, legal advice was that legislation was required in both Northern Ireland and the Republic of Ireland, to give effect to the expressed intent. This is not expected until the end of 2003. It will be important to accomplish this so that all real or perceived barriers to formal co-operation are removed, and so the Police Service and the Garda can give some effect to the Independent Commission's recommendations.

## **OVERSIGHT COMMISSIONER**

### **Background**

It was the belief of the Independent Commission on Policing for Northern Ireland that an independent and eminent person, from outside the United Kingdom or Ireland, should be selected to oversee the implementation of its recommendations. The Governments agreed and Mr. Tom Constantine was selected, accepted the duty and was appointed in May 2000 for a three-year term. This was extended until 31 May 2005. Statutory backing is found in the Police (Northern Ireland) Act 2000, at sections 67 and 68, and in Schedule 4. Mr. Constantine will retire on 31 December 2003, at which time he will be replaced by Mr. Al Hutchinson as the new Oversight Commissioner for the remainder of the term.

**Progress and Accomplishments**

The Oversight Commissioner has established an office and small staff in Northern Ireland, along with a United States and Canadian team of experienced senior law enforcement and academic experts to evaluate and report on the progress of change. This is the third public report for 2003, and the ninth in a series of reports. Full details can be located on our web site at: <<http://www.oversightcommissioner.org>>

**Areas of Concern**

There are no concerns at the present time. Full co-operation from all agencies and organisations has been provided and is expected to continue. Adequate current resourcing and support have been received from the Government, along with respect for our complete independence.

Reports will continue to be submitted three times per year on an approximate schedule of May, September and December.

**PREPARED SUBMISSION OF  
HON. GORDON H. SMITH, COMMISSIONER,  
COMMISSION ON SECURITY AND COOPERATION IN EUROPE**

I appreciate the effort of the Commission on Security and Cooperation in Europe (CSCE) in holding this hearing to examine one of the most important issues in Northern Ireland. It has now been nearly six years since the Good Friday Agreement was signed—a moment of hope for all the people of Northern Ireland. The opportunities this Agreement offered, however, have not been fully realized for a variety of reasons, and I am hopeful that the CSCE can help raise awareness of all the issues surrounding this important question.

Police reform—creating a service that both Protestants and Catholics can rely upon for safety and security—is critical to ensure a lasting peace in Northern Ireland. I am pleased by the progress that has taken place thus far. Civilian oversight is well established, helped in large part by the admirable job being done by the Police Ombudsman who is here today. Additionally, the multi-party Policing Board evaluates the provision of Police Service and monitors all related human rights issues. Not all parties have elected to send representatives to the Policing Board, however, a situation that I hope will be rectified soon. Full participation would send an important signal that the Police Service has the political backing necessary to gain support among the population. Furthermore, young Catholics are being recruited to join the service after years of exclusion. This integration is important, both to establish confidence in the Police Service and to break down barriers between the two communities. I hope that all parties will urge their young men and women to consider joining the Northern Ireland Police Service.

Of course, the process of police reform is not complete. I am encouraged, however, that progress has been made.

Unfortunately, there remains a serious problem with escalating paramilitary activity in Northern Ireland. Abductions, beatings, and extortion continue to occur far too often. Paramilitary groups, particularly the IRA, still have weapons in hand that were supposed to have been turned in years ago. I am aware of the sensitivity surrounding the decommissioning of these weapons, but little progress has been made. There should be no uncertainty about this: a return to the violence of the past should be firmly and conclusively rejected. Concrete action, not just rhetoric, is necessary to move to the next stage. I hope that the IRA's political wing, Sinn Féin, will use its influence within the IRA to convince them that paramilitary activity must come to an end. Vigilante justice simply is not an option.

Thank you.

**PREPARED STATEMENT OF  
MITCHELL REISS, DIRECTOR,  
POLICY PLANNING, U.S. DEPARTMENT OF STATE**

Thank you for the opportunity to appear before you today.

At the outset, I want to commend the Chairman and his colleagues on the Commission for their continuing interest over the years in the Northern Ireland peace process generally and their specific focus on the policing issue. On policing, your Commission was at the forefront in debates about human rights issues. The Commission also closely monitored the evolution of the reform efforts launched by the Patten report on policing and the subsequent implementation process. Your hearing today and the distinguished panel you have assembled is further evidence of this Commission's interest in supporting a better future for Northern Ireland.

I would also like to thank members of the House and the Senate for their continued bipartisan support for our policy in Northern Ireland. I only recently took up responsibility for Northern Ireland and have already come to value the support and advice of you and your colleagues.

**CONTEXT**

I would like to focus my remarks this morning on policing in Northern Ireland. The Good Friday Agreement acknowledged police reform as one of the most difficult challenges of the peace process. Some have even suggested that police reform is actually more important than the other elements of the Agreement because policing goes to the core of civic stability and is perhaps the most fundamental relationship between citizens and the state. Before discussing the progress of the police reform effort, I would like to spend a few moments describing the current political context.

In Northern Ireland during the past few years, many analysts find it useful to distinguish between the peace process and the political process.

The peace process, which can be measured by the number of deaths caused by political violence and the level of violence on the streets, has been on a positive trajectory for several years. This is not to say that the people of Northern Ireland should be expected to tolerate any level of paramilitary violence. Paramilitary street violence and gang activity, including "punishment beatings," remain a problem, but the fact is that the number of deaths caused by paramilitary activities has declined steadily; for a population of over 1.6 million people, these figures are very low. Last summer was also the calmest in decades, with the historically contentious "marching season" passing without violence. We know that political leaders, including the leadership of Sinn Fein, worked long and hard to ensure that last summer was quiet, and we call on them to show the same powerful, positive leadership again this summer.

The political process refers to the success of the governmental institutions established by the Good Friday Agreement. This process has experienced serious difficulties in the past two years. The Northern Ireland Assembly and Executive have been suspended due to disagreements among the political parties. The election in November 2003 sharpened the differences by returning the Democratic Unionist Party

and Sinn Fein as the largest parties in the unionist and nationalist communities. Despite these difficulties, we remain optimistic that the people of Northern Ireland and their elected representatives are committed to the fundamental principles of the Agreement and that they will find a way to get the devolved institutions up and running again.

Despite instability in the political process, the policing institutions have performed well over the past two years. The Police Service of Northern Ireland (PSNI) was established in November, 2001. At the same time, the new Policing Board came into existence; it has functioned effectively since then with participation from political parties and independent public members. In 2000, Police Ombudsman, Nuala O'Loan, started her work of investigating allegations of wrongdoing by the police. By providing a vital new accountability mechanism, she has succeeded in winning public confidence. Last year, the District Policing Partnership Boards (DPPs) were formed by citizens and local councilors to facilitate community accountability of the police at the grass-roots level. The DPPs are a unique innovation of the Patten reforms that are designed to enhance community involvement in policing. Despite these early successes, there is understandable concern that a prolonged political vacuum could weaken public confidence and trust in these institutions.

Even in the best circumstances, policing is always a major challenge in post-conflict situations, whether we're talking about the Balkans, South Africa or East Timor. As is true in other regions, the end of armed conflict in Northern Ireland has coincided with increases in other types of crime, including mafia-type activity and narcotics trafficking. There have also been occasional difficulties with crowd control during the annual marching season. Another problem is the increase in hate-crimes against vulnerable immigrants, as well as long established minorities, who are a growing segment of the population, particularly in the Belfast area. During my first visit to Belfast earlier this year, I met with the Director of the Northern Ireland Council on Ethnic Minorities to discuss this issue and to encourage more attention to this problem by law-enforcement authorities.

#### GAUGING SUCCESS

How is the PSNI coping with these challenges and with the reform program? By the standards established in the Patten Report, our view is that the PSNI is performing at a high level. I base this conclusion on numerous factors. First, the evaluations provided regularly by the Office of the Oversight Commissioner, headed by Tom Constantine. With your permission, Mr. Chairman, I would like to quote at some length from a statement the Oversight Commission made in December. Commenting on his 44 months of work in Northern Ireland, Mr. Constantine stated:

Areas where excellent progress has been made include a human rights-based approach to policing, a sophisticated and transparent system of accountability, the establishment of District Command Units and District Policing Partnerships, improved methods of public order policing, the creation of a more representative work force marked by the significant increase in the number of police recruits from the Catholic community,

and the early completion of recommendations pertaining to changes to the name, badge and uniform. In addition, with the support of the Policing Board, the District Command Units and the District Policing Partnerships, the Police Service has initiated a crucial strategy which has seen the devolution of decision making authority to a cadre of talented and dedicated District Commanders, which in turn supports the Police Service's new philosophy of policing with the community.

Mr. Constantine's overall conclusion is that the PSNI is making excellent progress in implementing the program of change mandated by the Patten Report.

A second reason for our positive evaluation is that public attitudes towards the police have improved in the years since the establishment of the PSNI in 2001. In the late 1990s, Catholic confidence in the police, then known as the Royal Ulster Constabulary, was low. Fewer than one-third of Catholics believed that the RUC treated the two communities in Northern Ireland equally. In surveys conducted last year, over half of Catholic respondents now express confidence in the PSNI and believe the police treat the two communities on an equal basis. Unfortunately, the data still show a gap in the perceptions of the two communities towards the police, but the trends are moving in a positive direction. The new leadership, the recruitment from the Catholic community, the accountability mechanisms and the focus on community policing are clearly changing the nature of the relationship between the police and the citizens they serve.

A third indicator of the PSNI's success is its effectiveness. According to police data, this year has seen reductions in burglaries and vehicle crime as well as an increase in the number of drug seizures. While Northern Ireland is dealing with some unique post-conflict problems, its overall crime rate increasingly resembles the profile of other regions of the UK and Ireland.

#### CONTINUING CONCERNS

We have continuing concerns about some elements of the reform process. The Oversight Commissioner has pointed out deficiencies, such as delays in completely reforming the "Special Branch" division of the PSNI. Although no one doubts the need of any Western police force to properly gather and properly use intelligence, the role of Special Branch in fighting terrorism during the Troubles and the perception that this unit operated as a "force within a force" makes this reform particularly important for gaining confidence within the nationalist community. The Patten Report also stressed that in a post-conflict environment the skills of a reformed Special Branch should be put to use in fighting organized crime and narcotics trafficking. Implementing the Patten Report's recommendations on Special Branch should be a top priority. I think it important to note, however, that Special Branch is already under new management and important changes in how intelligence is managed and employed have been introduced. The new head of Special Branch is FBI National Academy

graduate Maggie Hunter, who was in charge of Belfast last summer, the quietest in three decades, and as the Patten recommended, Special Branch has been brought under the PSNI's Crime Branch.

Another area of concern is the lack of progress in promoting secondments of officers from the Republic of Ireland's police force, the Garda, to serve in the PSNI. Such placements would arguably help forces in both jurisdictions fight emerging cross-border threats, which include smuggling, distribution of counterfeit goods and property theft.

Other difficulties in policing are attributable to external factors. The fact that Sinn Fein, which is now the largest nationalist party in Northern Ireland, has refused to join the policing institutions has handicapped the effectiveness of the PSNI. In this respect I would point out to the Commission that the Patten Report made recommendations not only to the government; it also recommended that parties and other elements of civil society support the new beginning to policing, encourage the community to cooperate with the police and urge young people to consider joining. The Social Democratic and Labor Party, the Catholic Church, the Government of Ireland and the Gaelic Athletic Association have all accepted the challenge of the Patten Report and are playing a positive role. Sinn Fein's continued opposition has held back progress. While we understand Sinn Fein's view that further work is needed to fully realize the vision of the Patten Report, we firmly believe that Sinn Fein should do that work from the inside, by taking up its seats on the Policing Board and influencing the future of policing from within. As a first step, I would encourage the Sinn Fein leadership to meet with the Chief Constable to begin a constructive dialogue on policing, with a view to having Sinn Fein join the Policing Board.

Another factor hindering effective policing is attempts to dissuade participation in policing by physical intimidation. Again I refer to Tom Constantine's December report, in which he notes that the clearest examples of intimidation "are the attempts to use force and violence to deter citizens from becoming police officers, members of the Policing Board or the District Policing Partnerships. Equally destructive to the concept of policing with the community is a climate of vigilante justice, as evidenced by punishment shootings, punishment beatings and, in some cases, brutal executions." Thankfully, civic leaders such as Policing Board Vice Chairman Denis Bradley and members of the new District Policing Partnerships across Northern Ireland have not backed down in the face of thuggish attempts at bullying them and their families.

#### **U.S. ROLE**

Mr. Chairman, American involvement in the process of change in Northern Ireland policing has been extensive. In my remaining time I would like to recognize some of the individuals who have made contributions and discuss some of the programs the administration is supporting. Two American criminal justice experts, Kathleen O'Toole and Gerard Lynch, served on the Patten Commission, which spent over one year preparing a reform blueprint that is now widely recognized as the gold standard for modern, accountable policing practice. I have already cited the work of former DEA Director Tom Constan-

tine; he deserves our thanks for his service as Oversight Commissioner, playing a critical role in measuring the PSNI's performance against the yardstick of Patten.

Recognizing the pivotal importance of police reform in Northern Ireland's transition to normalcy, the State Department has devoted considerable time and resources to sharing American experience on policing with the people of Northern Ireland. Members of Congress have been forthcoming with their support for these efforts. In 2001, restrictions were lifted on FBI training for the PSNI. Since then, two officers have received training at the FBI Academy in Quantico, and Chief Constable Hugh Orde begins executive training there this month.

Exchange programs have been the principal vehicle for transferring knowledge and experience on policing between the United States and Northern Ireland. In addition to the FBI training, in the last few years we have sponsored eight exchange programs designed to work with the PSNI, its oversight bodies and communities in Northern Ireland on community policing and effective accountability of the police.

**WE HAVE SEEN AN EXCELLENT RETURN  
ON THIS INVESTMENT**

Policing Board members credit a visit to New York and Washington in late 2001 as helping them establish their expertise and to develop a common civic vision. This proved invaluable as they faced several controversial issues in early 2002.

We have received excellent support from the chiefs of the New York and Boston police departments, both of whom have visited Belfast. American community workers have also been generous with their time.

Our policing experts have spent several days with members of the nationalist, republican and loyalist communities in Northern Ireland to exchange views and experiences on issues of community policing and accountability. In some cases, American specialists have had unique opportunities to bridge gaps in perceptions that exist on the ground in Northern Ireland.

After seeing the impact of the Policing Board programs, members of Congress urged us to put together a similar program for the newly formed District Policing Partnerships. We are supporting this request with the cooperation of Boston College, which offered to use some of its earmarked money to run an exchange program for DPPs this past September.

As we move ahead, I look forward to working with you, Mr. Chairman, to continue the Bush administration's sustained support to the police-reform effort in Northern Ireland. I also want to underscore the administration's overall commitment to Northern Ireland. Our role continues to be that of honest broker, impartial advisor and strong advocate for the principles of the Good Friday Agreement. With this in mind, I will be conducting consultations with the political parties and the governments this week to encourage progress in the on-going Review of the Agreement. I will return to Belfast next month and again in June to continue this work and will be available whenever needed to support the governments and the parties as they seek ways to overcome the current challenges.

**LETTER FROM CHAIRMAN CHRISTOPHER H. SMITH TO  
MITCHELL REISS, DETAILING QUESTIONS SUBMITTED FOR  
THE RECORD**

COMMISSION ON SECURITY AND COOPERATION IN EUROPE  
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May 17, 2004

Dr. Mitchell Reiss, Director  
Policy Planning Staff  
U.S. Department of State  
Washington, DC 20520

Dear Dr. Reiss:

I write to follow-up on the Helsinki Commission hearing of March 16, 2004, focusing on human rights and police reform in Northern Ireland.

At the hearing, you indicated that the United States has encouraged the United Kingdom Government to publish the reports it received on collusion in four high-profile murder cases in Northern Ireland, as well as to conduct public inquiries if recommended. As you know, these reports authored by former Canadian Supreme Court Justice Peter Cory were published on April 1. The Commission held a second hearing on Northern Ireland earlier this month, which featured The Honorable Peter Cory, as well as Geraldine Finucane, widow of lawyer Patrick Finucane whose 1989 murder was reviewed by Justice Cory.

The hearing records would be more complete if you could supplement your testimony with answers to the following questions:

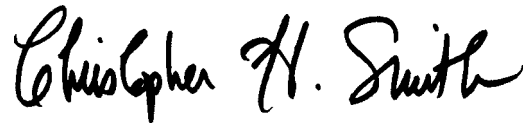
1. Why had information requested in 2001 by Oversight Commissioner Tom Constantine on human rights training for police officers—including the curriculum and background on the trainers—still not been given to him two years later, when the Commissioner needed to issue his report?
2. Would the language in H.R. 1208, the Northern Ireland Peace and Reconciliation Act of 2003, specifically Section 3 (c), authorize the U.S. contribution to the International Fund for Ireland to be used to assist the Police Service of Northern Ireland as intended? If not, what is required to overcome the hurdles to this assistance?
3. Describe in detail the procedure for reviewing the records and background of those from the Police Service of Northern Ireland who participate in U.S. training programs, in order to ensure that these officers have not engaged in human rights violations in Northern Ireland.

4. Does the Bush Administration support the holding of a public inquiry in the case of Patrick Finucane, as recommended by former Justice Cory in his report on that case? What is your response to the official British decision to "set out the way ahead" on this case only "at the conclusion of prosecutions?"

These questions, along with your responses, will be added to the official transcript of the March hearing.

Thank you for your cooperation. Achieving progress in Northern Ireland is a matter of tremendous interest to Members on the Helsinki Commission and in the U.S. Congress. Your participation in hearings designed to evaluate and encourage progress is, therefore, very much appreciated.

Sincerely,

A handwritten signature in black ink that reads "Christopher H. Smith". The signature is written in a cursive, flowing style.

Christopher H. Smith, M.C.  
Chairman

**RESPONSES TO QUESTIONS SUBMITTED FOR THE RECORD BY  
MITCHELL REISS**

The Honorable Christopher H. Smith, M.C.  
Chairman  
Security and Cooperation in Europe  
234 Ford House Office Building  
Washington, D.C. 205 15-6460



Dear Representative Smith,

Thank you for your letter of May 17 with follow-up questions to my testimony to the Helsinki Commission on March 16, 2004 on police reform in Northern Ireland. I appreciate your continuing interest in this subject and hope that we can find further ways for the United States to encourage more positive movement in policing in Northern Ireland.

With regard to your specific questions, I would like to submit the following responses for the record:

**Question.** Why had information requested in 2001 by Oversight Commissioner Tom Constantine on human rights training for police officers—including the curriculum and background on the trainers—still not been given to him two years later, when the Commissioner needed to issue his report?

**Answer.** The Office of the Oversight Commissioner (OOC) issues three reports each year assessing the success of the Police Service of Northern Ireland (PSNI) at implementing the Patten recommendations. As you note, the December 2003 report raised concerns about lack of progress on human rights training. Since the beginning of this year, the U.S. Consulate General Belfast has been in contact with both the PSNI and the OOC regarding this matter. According to the OOC, the PSNI has addressed the concerns raised in the December report by providing the information requested regarding human rights training plans, time lines, and courses containing human rights material. The OOC will evaluate this information for inclusion in its next report, which is scheduled to be released in September. Of particular interest to the OOC is assessing the actual impact of the PSNI human rights training. The Office of the Oversight Commissioner has told Consulate General Belfast that the OOC is satisfied with the cooperation it has received from the PSNI regarding human rights training.

In its formal April 2004 report, the OOC stated that—in reference to Patton Recommendation 4: Training in Human Rights—“All courses have now been audited for human rights content according to a standard provided to the oversight team individuals and institutions from outside the Police Service have been systematically involved in the delivery of training and in its accreditation. However, plans for evaluating instruction in human rights and its impact on behavior remain to be formulated, as well as plans for providing training to new human rights instructors.”

For its part, the PSNI has told Consulate General Belfast that the Police Service works closely with the OOC to resolve any outstanding concerns regarding human rights training. The Police Service is currently testing a mechanism to measure the effectiveness of PSNI human rights training.

The OOC plans to publish a special report examining various PSNI training programs, including those involving human rights, in September 2004.

**Question:** Would the language of H.R. 1203, the Northern Ireland Peace and Reconciliation Act of 2003, specifically Section 3 (c), authorize the LLS contribution to the International Fund for Ireland to be used to assist the Police Service of Northern Ireland as intended? If not, what is required to overcome the hurdles to this assistance?

**Answer:** The Administration fully shares your interest in ensuring that the U.S. contribution to the International Fund for Ireland (IPX) includes support for continuing police reform in Northern Ireland. However, Section 660 of the Foreign Assistance Act of 1961 (FAA) specifically prohibits any financial assistance for foreign law enforcement forces, including police training. Further, the Anglo-Irish Agreement Support Act of 1986 (Anglo-Irish Agreement Act), which authorizes U.S. contributions to the WI, specifically provides that FAA Section 660 applies to such contributions. Accordingly, after consultation with USAID, we would suggest that any legislative language that intends to enable U.S. Government contributions to the IFI be used for police reform in Northern Ireland, especially legislation that would amend the Anglo-Irish Agreement Act, should affirmatively state, in terms stronger than "it is the sense of Congress", that U.S. contributions for certain activities involving police forces (such as those described in Section 2(b) of ER. 1208), may be used in support of such activities "notwithstanding Section 660 of the Foreign Assistance Act of 1961, as amended."

Provided that new legislation effectively addresses the Section 660 issue, and that the In confirms that it could implement the proposed police-related activities under its current mandate, the Administration would ensure that these police-reform policy objectives are fully reflected in the grant agreements it concludes with the IFI. I look forward to working closely with you in the coming months to advance these goals.

**Question:** Describe in detail the procedure for reviewing the records and background of those from the Police Service of Northern Ireland who participate in U.S. training programs, in order to ensure that these officers have not engaged in human rights violations in Northern Ireland.

**Answer:** In reviewing the participation of members of the PSNI in USG-funded training programs, the Department of State has established the following procedures:

- An FBI criminal background check;
- A personal interview with a Consulate or Embassy officer;

- A letter from the PSNI's Chief Constable certifying that there are no substantial grounds for believing that the nominee has committed or condones violations of internationally recognized human rights;
- For any PSNI officer participating in FBI programs, review by the Embassy Legal Attaché Office of a detailed questionnaire completed by the nominee, which required responding directly to questions directly relevant to section 405 certification requirements;
- A name check against the Department of State's visa lookout system;
- A review by the Embassy or Consulate of the nominee's credentials and suitability for the proposed training;
- A review by the Embassy or Consulate of the nominee's curriculum vitae to confirm that the individual had not served in a unit suspected of having committed or condoned violations of internationally recognized human rights;
- For PSNI officers participating in DEA programs, a DBA NADDIS background check.

**Question:** Does the Bush Administration support the holding of a public inquiry in the case of Patrick Finucane, as recommended by former Justice Gory in his report on that case? What is your response to the official British decision to "set out the way ahead" on this case only "at the conclusion of prosecutions?"

**Answer:** We welcome the UK government's pledge, delivered by Secretary of State Paul Murphy to the House of Commons on April 1, 2004, to fulfill its commitments made at Weston Park regarding inquiries into the cases of Rosemary Nelson, Robert Hamill and Billy Wright. The inquiries should have the power necessary to get at the truth of what happened in these cases. Those involved should give full cooperation to the inquiries. The inquiries should also be conducted expeditiously and economically. Justice Cory has offered some suggestions on these matters.

The fourth case, that of the murdered solicitor Pat Finucane, is important for Northern Ireland on a number of levels. As demonstrated by successive investigations by Sir John Stevens, the case raises serious questions about possible collusion between the state and loyalist paramilitary groups. Moreover, the interest in getting to the truth through an inquiry has been identified as a confidence-building measure to advance the peace process, particularly during the Weston Park talks held in 2001. For these reasons, it is regrettable that an inquiry has not yet been announced.

We share the concerns that the decision to continue with court proceedings will further delay the start of a public inquiry. Therefore it is important that prosecutions be concluded as quickly as possible. Both Prime Minister Blair and Secretary of State for Northern Ireland Paul Murphy have publicly announced that the UK government stands by the commitments it made at Weston Park.

**PREPARED STATEMENT OF NUALA O'LOAN,  
POLICE OMBUDSMAN FOR IRELAND**

**THE ROLE OF THE POLICE OMBUDSMAN  
FOR NORTHERN IRELAND**

The Office of the Police Ombudsman for Northern Ireland (the Office) was established on 6 November 2000 under Part VII of the Police (NI) Act 1998. It did not emerge from the Report of the Independent Commission on Policing (Patten Report) or the Good Friday Agreement. It was the product of a Report compiled by Dr. Maurice Hayes on "A New Police Complaints System for Northern Ireland." The primary statutory duty of the Police Ombudsman is to establish an efficient, effective and independent complaints system, and secure the confidence of the public and of the police in that system. The remit of the Police Ombudsman covers the PSNI, and 4 other minor policing services. This Statement provides a brief outline of the work of the Office, and the published documents referred to have been provided simultaneously to the Commission.

The Police Ombudsman, Mrs. Nuala O'Loan took up Office in designate role in April 2000. Appointed by Royal Warrant she led a Project Team which secured premises, recruited and trained staff, developed transitional processes from the old to the new, consulted with the public and police and their needs of the system and agreed a financial structure.

Prior to the establishment of the Office, public complaints had been investigated by police, supervised in some 10 percent of cases, by the Independent Commission for Police Complaints (ICPC). The ICPC ceased to exist on 6 November 2000. 14 staff were transferred to the Office, along with liabilities, assets and a caseload of 2124 cases.

On 6 November 2000, the legislation creating the Office came into effect with all its consequential duties and responsibilities.

**THE POLICE OMBUDSMAN'S OFFICE**

The Office is in Belfast, in a central and neutral location with on street car-parking. For security, efficiency and financial reasons it was decided to have only one base. A 24 hour, 365 days a year "on call" investigation and public information facility is provided. The Office is open during normal working hours and complainants are seen with or without appointment. To facilitate maximum outreach, arrangements were made with a number of organisations, such as the Citizens Advice Bureau, the Chinese Welfare Association and Northern Ireland Women's Aid Federation for the use of rooms in their premises across Northern Ireland. This meant that the Police Ombudsman could meet complainants in a variety of locations throughout Northern Ireland. In addition to this, these arrangements provide for the needs of vulnerable complainants in places in which they feel safe and in which their special needs can be accommodated.

**BUDGET**

The budget is provided by HM Government through the Northern Ireland Office and in the current year it amounts to £7,370,000. Two Annual Reports have been published to date—the first covers the pe-

riod from November 2000 to March 2002, the second covers the period from April 2002 to March 2003. These Reports contain detailed financial information.

### **Staffing and Processes**

There are currently 123 staff in the Office. A census of staff in May 2003 established that 42 percent were Protestant, 34 percent were Catholic, 16 percent were no religion and 8 percent other. All staff are required to disclose any membership of any organisation which may be perceived to impact on their ability to deliver an independent and impartial service. They are also required to report immediately any conflict of interest which may arise during the course of their employment.

The Office has a Corporate Management Team, consisting of the Police Ombudsman, the Chief Executive and the Executive Director of Investigations. There is then a Senior Management Team which also includes the Directors of the four Directorates—Corporate Services, Investigations, Legal Services and Policy and Practice. Approximately 75 percent of the staff work directly on complaints and investigations. The remainder provide corporate and other support in terms of finance, administration, personnel and procurement; provide the media and information service, deliver legal advice, carry out quality assurance, conduct policy and practice research and development work. The research work also embraces all forms of statistical analysis of trends and patterns in complaints.

Among the 123 staff are 16 seconded police officers working as Investigators from various Police Services in England and Wales. Among the other Investigators are those who served formerly with Police Services such as the Hong Kong Police, The Royal Canadian Mounted Police, the South African Police Service, The Metropolitan Police Service, London and other investigative agencies such as HM Customs and Excise. The Office has also recruited Assistant Investigators from a variety of backgrounds. The directly appointed staff work alongside the experienced investigators, gaining valuable experience to meet the needs of the Office for the future. The seconding of officers from outside Northern Ireland also recognises the need to import best practice, and the need to acquire special investigative expertise as required.

Training for staff has been regarded as of the utmost importance since the Office opened. An extensive range of training opportunities has been provided. Most recently, in partnership with the University of Portsmouth, the Office has introduced an extensive university-provided Accredited Training Programme for its investigative staff.

The Office established and adapted its working processes over the period, to accommodate legislative and other changes. These have included the important area of financial rectitude and worldwide best practice in complaint handling and investigation. During the three years of its existence the Office has been the subject of some fifteen legislative changes.

The Police Ombudsman observes all relevant international principles and standards on policing and human rights. Most recently a draft Code of Ethics for all Office staff, to augment the existing Code of Conduct has been made available for consultation. As required by law an Equality Scheme was produced to the Equality Commission and the first Impact Assessment on two Office policies (equal oppor-

tunities and fairness) has been carried out. An extremely encouraging response was received from staff about their experience of working in the Office.

The Office has developed a programme of quality assurance in respect of the work of the Investigation Directorate and 10 further quality assurance exercises are planned for 2004-2005.

#### INDEPENDENCE

The independence of the Office is crucial to confidence in the new system. It has been demonstrated consistently by the Police Ombudsman and her staff. The Police Ombudsman's budget is not part of the PSNI budget. Staff are recruited, employed and managed only by the Office. Investigations are evidence driven and the Police Ombudsman has been open and transparent in publicly reporting outcomes of investigation. The Police Ombudsman is demonstrably apolitical. For the past two years, in independent survey, 86 percent of the public have stated that they believe the Office is independent.

Investigations are normally conducted entirely independently of the PSNI, but there are circumstances in which both organisations must work together or in parallel. A joint forensic strategy is formulated in such cases, and the results of the forensic recovery are shared as necessary. In a protocol with the PSNI it has been agreed that the agency investigating the most serious incident takes precedence. This protocol has been invoked regularly and has worked well. For example, a recent police car pursuit of a vehicle ended in a fatal accident between the car being followed and another vehicle, in which three innocent people were killed. The Police Ombudsman had to investigate whether the police had contributed to the fatal road traffic accident, and the police had to investigate causing death by dangerous driving. On that occasion the PSNI took precedence. More recently following two shootings, one of them fatal, by police, the Police Ombudsman had priority and the police took the secondary role in their investigation of alleged crime. Investigators of the Office also work very closely with Internal Investigations Branch (IIB) of the PSNI. The working relationship is very good.

#### ENGAGING WITH THE PUBLIC

The new police complaints service exists for the people and the police. Great care has been taken from the very beginning to engage the public in the development of the Office, and to try and ensure that the service provided met, and continues to meet, their needs.

It is vital too that people would know that the service is there for them when they need to complain about the police. Great effort has been made by all staff to contribute to public understanding of the Office. The Public Information Department manage the process. A step-by-step guide to the new police complaints process was produced in a booklet in "Plain English" form which is available across Northern Ireland. Other similar documents have also been developed. Details of the complaints system are available for people with disabilities through the web site, which conforms to the W3C Web Content Accessibility Guidelines, and are available on audiotape for people with sight difficulties. The web site also carries translations of the complaints process in Mandarin, Irish and Ulster Scots.

In Spring 2001 a magazine entitled "Early Days" was published. This gave details of the office, its structures, work and processes and explained what would happen on receipt of a complaint. It was distributed to the public and to advice giving agencies.

Annual Reports were published in July 2002 and July 2003. Corporate Plans and Annual Business Plans were published in 2001, 2002 and 2003. In November 2003, a summary of the Second Annual Report was produced in a magazine format and distributed as a supplement in Northern Ireland's evening newspaper, which has a circulation of 110,000.

Also available on the web site are Statements, under Section 62 of the Police (Northern Ireland) Act 1998, reporting on major investigations, including those into circumstances surrounding the death of Mr. Samuel Devenny and of Mr. Sean Brown. Mr. Samuel Devenny died in Derry in 1969, three months after police pursuing rioters entered his home and carried out a terrible attack on Mr. Devenny and some of his children. Mr. Sean Brown was murdered by Loyalists in 1997 and his family complained in 2001 that there had not been a proper investigation into his murder. The results of those investigations are reported on the web site. There are also reports of many investigations carried out after a referral from the Chief Constable or the Policing Board. Press releases and published documents are all available on the web site. The Office is determined to put as much information as possible into the public domain, so as to secure maximum transparency. More information on the police complaints system and the outcomes of its work is available on the Office web site than has previously been made available across the world.

Regional information about the police complaints process, and statistics applicable to particular areas, have been made available in a simple format on the web site. This initiative attracted more than 5,000 visitors to the site following its launch in January 2004.

Between 2002–2004 staff have visited more than 70 community groups and organisations. This has involved visits to areas in which there is interface conflict across the political divide, including 'Short Strand' and 'Tigers Bay' in Belfast, Ardoyne and Glenbryn in Belfast, and the Creggan and Waterside areas of Derry/ Londonderry.

Good working relationships have been formed with Government and Non Governmental Organisations, including the Equality Commission, the Northern Ireland Human Rights Commission, the NIO Community Safety Unit, The Committee for the Administration of Justice and the Pat Finucane Centre, and with victims organisations such as FAIR, FACT and WAVE.

During 2003, the Office gave presentations to 15 of the newly formed District Policing Partnerships, whose role is to monitor police delivery of services in their area and to consult with the police in relation to matters arising.

Increasing awareness and understanding among young people is a constant priority. 29 schools across the state, maintained and integrated sectors have been visited during 2003. The Office has also joined PSNI in several youth-related projects, a number of conferences, and the provision of information about the police complaints process for the 'Citizenship and Safety Key Stage Four' textbook. In conjunction with the Children's Law Centre, a leaflet on 'Young People and The Police' has been developed.

The Northern Ireland Statistics and Research Agency (NISRA) has carried out independent research, measuring the awareness and confidence of the public in this new institution over the three years. The most recent research demonstrates that 88 percent of Protestants and 82 percent of Catholics felt the Police Ombudsman was independent of police. 79 percent of Catholics and 70 percent of Protestants were either confident or fairly confident about the impartial nature of the Office when investigating complaints against police. 85 percent of Catholics and 73 percent of Protestants thought that the Police Ombudsman would "help the police do a good job." 65 percent of Catholics and 63 percent of Protestants thought that the complainant and the police officer would be treated equally. These figures have continued to rise over the three years from 2000-2003. Awareness levels are now at 86 percent. Belief in the independence of the office is also at 86 percent.

An interesting example of growing acceptance of the independence and impartiality of the Police Ombudsman occurred in March 2002. A dead baby girl was found in Carryduff near Belfast. The baby was named Baby Carrie and police were anxious to find her mother as there were concerns about her. Police wanted to conduct DNA sampling of women in the area to compare with Baby Carrie's DNA. Suspicion and resistance emerged in the community about what might be done with the DNA samples. The Police Ombudsman was asked by the PSNI to oversee the destruction of the samples and all associated documentation, and provide reassurance to the public. She agreed to do so, and staff ensured that every sample and record was destroyed. Women then cooperated with the process and when it was completed a statement was issued by the Police Ombudsman confirming that every sample taken and all associated records had been destroyed.

#### **Engaging with the Police**

Significant effort has gone into developing constructive operational arrangements with the PSNI. Processes have evolved covering a very wide range of issues, all of which have been designed to allow maximum operational efficiency for the PSNI and effective independent impartial investigation by the Office.

The Police Staff Associations were consulted extensively and were engaged in the creation of the Office. The Office must, in so far as it is possible, ensure that officer needs are recognised and cared for. This, with professional investigation, is vital to secure the confidence of the police in the system.

All of the publications referred to in the previous section are available to police officers. A special booklet has been published explaining officers' rights, duties and responsibilities under the police complaints system. A copy has been sent to each serving officer. Recognising, from the earliest days, the need to communicate effectively with PSNI and in particular with IIB of PSNI, and also with the Police Staff Associations, staff of the Office have made hundreds of presentations, for training and information purposes, to PSNI officers and recruits. Meetings with all parties take place on a regular basis. On the one hand the Police Ombudsman needed to articulate clearly the independence of her Office, yet on the other hand, close working relationships have been and remain vital to the effective functioning of both organisations.

Arrangements have been made with the Chief Constable with regard to mandatory immediate referral of deaths which may have resulted from the conduct of a police officer, and also in relation to immediate referral of other serious matters, in particular the firing of baton rounds, or live fire, and any situation involving a serious injury or allegation of a sexual offence.

#### **WORKING WITHIN THE CRIMINAL JUSTICE SYSTEM**

The Northern Ireland Policing Board (NIPB) was established on 4 November 2002. The Office has sought to work constructively with the NIPB, and has carried out one investigation referred by the NIPB, involving an allegation that the current Chief Constable acted under the influence of the Security Service (MI5) in taking action against an officer alleged to have acted wrongly. That rigorous investigation found no misconduct by the Chief Constable and clarified misinformation which had been placed in the public domain.

The Police Ombudsman has also forged good working relationships with the Director of Public Prosecutions, the Forensic Science Agency, HM Coroners, the Criminal Justice Inspector, Her Majesty's Inspector of Constabulary, the Surveillance Commissioner, the Justice Oversight Commissioner, the Social Services Boards and Trusts and more recently with the Commissioner for Children and Young People. This has ensured that obligations are complied with, whilst the independence of the Police Ombudsman is preserved in the interactions with the relevant agencies. In addition, the Office has provided training for a number of these bodies.

The Office has worked in close co-operation with the Patten Oversight Commissioner ensuring that accountability and governance mechanisms for Policing in Northern Ireland were strengthened as required by the Patten Report. The Reports of the Oversight Commissioner acknowledged and commended the Police Ombudsman for the contribution made in this central area of policing oversight.

#### **ACCOUNTABILITY MECHANISMS**

The Office is subject to an extensive range of reporting, review and stringent accountability mechanisms. These include accountability to Parliament from which 47 Parliamentary Questions have been received in two years. The Office was recently advised by the Northern Ireland Affairs Committee of Parliament that that Committee is conducting a Parliamentary Inquiry into the Office this year. In addition to this there is provision for inspection by the Criminal Justice Inspector and the Surveillance Commissioner, audit by the Comptroller and Auditor General, Judicial Review and other legal challenge, and investigation by the Commissioner for Children and Young People. The Information Commissioner has approved and oversees adherence to the Freedom of Information Act 2000.

In the first three years the Police Ombudsman has been subject to 20 Judicial Reviews, testing the new law and covering a wide spectrum of issues raised by both police officers and the public. These have included an action by the Police Association to quash a report, and an action to challenge a decision of the Police Ombudsman that three police officers under investigation must be interviewed simultaneously. The officers wanted to use the same lawyer, which would

have made simultaneous interview impossible and threatened to compromise the investigation. In another case a member of the public wanted access to sensitive documents which the Police Ombudsman had obtained during an investigation. To date the Police Ombudsman has not been found by the Court to have made a wrong decision. The report relating to the Police Ombudsman investigation into allegations that the police failed to deal appropriately with threats to the life of Rosemary Nelson cannot be published pending the receipt of judgement deciding whether the Police Ombudsman was correct not to disclose sensitive documentation to the complainant.

There has been one civil action, in which the Court found in favour of the Police Ombudsman with costs awarded. Two further civil actions have yet to come to court. There have been 13 industrial tribunal applications to date. Nine were dismissed, one was settled without admission of liability, three are ongoing.

#### DEVELOPING AN INTERNATIONAL REPUTATION

In terms of its resources, powers and role, the Police Ombudsman's Office is unique in the world. The establishment and initial work of the Office, as a means of providing independent investigation of police complaints, has attracted international attention. Between 2001-2003 the Office played host to 23 international delegations, many of whom are seeking to improve their own system of police accountability. In November 2003, more than 300 delegates from 20 countries visited Belfast to attend a conference on 'Policing the Police' organised by the Office. Members of staff have also spoken at major international forums on police accountability including in 2001 the 'Second Global Forum against Corruption' in the Hague, in 2000 and 2001 at the Canadian Association for Civilian Oversight of Law Enforcement Conference, and in 2002 at America's National Association for Civilian Oversight of Law Enforcement Conference. Most recently the Police Ombudsman addressed the African Police Accountability Conference in South Africa. During 2003 the Police Ombudsman visited and worked with the Governments of Brazil and Portugal. The Office has also been asked to assist the Governments of Macedonia and Argentina with similar matters.

In the United Kingdom, the Office has been closely involved in assisting the development of the new Independent Police Complaints Commission (IPCC) for England and Wales, which will start work in April 2004. At the invitation of the Home Office, the Police Ombudsman and her staff have made a significant contribution to the establishment of the IPCC. In addition to this, the Office has been consulted in relation to possible changes to the police complaints system in Scotland. There have also been contacts from the Republic of Ireland, which is proposing to introduce a similar system.

When developing the Office the Police Ombudsman was determined to make the complaints process as simple as possible. Members of the public can make a complaint in writing, fax, email or by telephoning the Office. They can call at the Office with or without an appointment. They can complain through their local police station. They can also contact the Office through their solicitor or other representative. The percentage made directly to the Office rose, in 2003, to 48 percent. 40 percent are made via the police. Many of these are complaints

arising during the course of detention and arrest. 12 percent are made through public representatives and solicitors. Complaints must normally be made within a year of the incident complained about.

The Office is becoming more efficient. For example, in 2002 the average time taken to deal with complaints was 142 days; by 2003 the average time was 99 days. Improved systems of investigation have been developed. Staff, on average, interview members of the public calling at the Office within four minutes of their arrival. 96 percent of complaints are acknowledged and action is taken within three working days. 77 percent of complainants are contacted by an Investigating Officer within three working days of complaints being referred for investigation.

On 6 November 2000 the Police Ombudsman took responsibility from the ICPC for 2124 "active" case files. With the exception of 29 case files, these files have now been processed and closed. Among these cases was the ICPC supervised investigation into the death of Robert Hamill. Since the Police Ombudsman assumed responsibility for the matter from the ICPC two people have been convicted of perverting the course of justice and three more people are to stand trial for perverting the course of justice.

The Office has received over 10,700 complaints and has also dealt with a total of 2425 files in respect of miscellaneous matters, civil claims and Compensation Agency queries. General enquiries on policing outside the remit of the Office also place a significant demand on the Office. All enquiries are responded to sympathetically.

Under Section 55 of the Police (NI) Act 1998 the Chief Constable, Policing Board and Secretary of State may refer matters, in the public interest, for investigation. This Section also empowers the Police Ombudsman to call matters in for investigation without complaint. This enables investigation in circumstances in which people are too afraid or reluctant to be seen to make a complaint.

The Chief Constable **must** refer to the Police Ombudsman, under Section 55, all deaths which may have resulted from the conduct of a police officer. The Office has investigated deaths by hanging, shooting, road traffic accidents, and all deaths occurring in police custody. In addition to this the Chief Constable refers every discharge of any firearm, including baton guns, to the office for investigation, because it is in the public interest that the use of lethal or potentially lethal force is independently investigated.

At the end of each Section 55 investigation, a report is sent, to the Chief Constable, the Secretary of State and Policing Board.

The Police Ombudsman has received 126 Section 55 Referrals. Many recommendations for improvements in policing have been made in the Reports submitted following the investigation of these referred matters. Summaries of many of these can be found on the web-site.

Legislation also requires that grave or exceptional allegations, not previously investigated (or where new evidence is forthcoming) shall be investigated, irrespective of when the incident occurred, if it is in the public interest to do so. The Office has received many of these historic allegations. They have come from ordinary people and from families of security force members who have been murdered. Some of them involve allegations that police officers were involved in murder by act or omission, or colluded by not investigating properly murders which had occurred. Some are deemed out of remit for a variety of

reasons, or are resolved to the complainant's satisfaction after preliminary enquiries. Some have been investigated and have resulted in either a referral back to the police for further investigation of a murder in which there was no police involvement, or a recommendation for disciplinary action against a police officer. Others, by law, do require investigation, but must be retained and prioritised to be dealt with as resources permit. These enquiries tend to be resource intensive and time consuming, made all the more difficult by the passage of time.

Although the results of such investigations may prove negative for the PSNI, experience has shown that for the families involved the opportunity to engage with the Office has proved positive. Closure and healing of distress and suspicion suffered for decades has proved to be an unexpected outcome of the Police Ombudsman's work. Such closure has emerged across the community, both in cases in which it has been established that the investigation was not properly carried out, and also in cases where long held suspicion is finally laid to rest, to the relief of the family concerned.

The Secretary of State has a power to request the Police Ombudsman to report under Section 61(1) of the Police (Northern Ireland) Act 1998. The NIPB has a power to request the Police Ombudsman to conduct an enquiry (as distinct from an investigation) under Section 60 of the Police (Northern Ireland) Act 2000. Neither of these powers have been exercised.

The Police Ombudsman has a new power to conduct an investigation into any current practice or policy by virtue of Section 60A Police (NI) Act 1998 (as amended by Section 13 Police (NI) Act 2003). The legislation is quite recent and to date only one such investigation has been conducted. This is an investigation instigated after several complaints were received concerning officers not displaying personal identification numerals at public order incidents. Previously the Police Ombudsman conducted research into policy and practice issues. Details of these can be found at Paragraph 65 et seq.

Once a complaint has been received further enquiries are conducted, or the complaint is referred for formal investigation. The Office also manages an Informal Resolution process. Informal Resolution provides an opportunity, in those matters which are considered less serious, for the complaint to be referred to the police for a senior officer to speak to the complainant and to the police officer separately in an effort to resolve the matter informally. This process can only occur with the consent of the complainant.

Where possible and appropriate every effort is made to resolve complaints without formal investigation.

#### **CARRYING OUT FORMAL INVESTIGATIONS**

Some complaints can be closed following initial investigation where, for example, it is possible to provide clarification about a matter, or to satisfy the complainant as to the circumstances which gave rise to the complaint which was made. An example of this would be where the conduct complained of was found to be lawful and authorised. The outcome will then be communicated to the complainant and any relevant police officer, and also to the PSNI.

Allegations requiring investigation range from incivility to collusion or involvement in murder. This presents a significant challenge for a small office. Some of the investigations are extremely complex. A fatal shooting by the police last year provides an example of the demands that can be placed on the Office - the complexity of the situation led to 38 staff being recalled to duty that evening. They worked through most of the night. Considerable resources were to be required for an extended period to investigate the incident. Another example is a current sensitive enquiry commenced by this Office in June last year which involves 19 investigative and 3 support staff. It is likely that the investigation will not conclude for another 12 months.

Two important changes of culture in the Police Service have become evident over the past three years. In the first instance there is greater openness and a willingness to apologise where necessary. The leadership of the Chief Constable, Hugh Orde, has been important in this context. When the Police Ombudsman reported on the multiple failings in the investigation into the murder of Sean Brown (see paragraph 20 above), the Chief Constable immediately accepted the findings, and apologised to the Brown family.

In addition to this, officers are now coming forward to inform the Police Ombudsman about wrongdoing, and to give evidence against their fellow officers. Recently a police officer was convicted of perverting the course of justice and sent to jail following an investigation during which three of his colleagues came forward to give evidence against him. This is the true face of modern policing. There is a minority of corrupt and violent police officers in most forces, but there are also those who act justly and with integrity and courage, and who are prepared to do what is right. Giving evidence against a colleague is never easy, and those that take that course display personal courage.

The investigation procedure is as follows:

- i. Investigations are conducted thoroughly in a 'search for the truth.'
- ii. Each investigator has full legal powers necessary to conduct investigations. This means that an Investigator has, for example, powers to arrest police officers, search premises, and to seize any property, including police equipment such as uniforms, boots, batons, firearms, notebooks, police logs, vehicles for the purposes of an investigation.
- iii. These law enforcement powers are used necessarily, proportionately, legally and sparingly. The overwhelming majority of investigations are completed with the co-operation of police officers and others involved. On 3 occasions in over 3 years, arrests have been executed without prior notice, and on other occasions, a total of 13 further officers have been arrested 'by appointment' as they had refused to co-operate and voluntarily attend a criminal interview. Whilst the powers are infrequently used, they are essential to ensure that investigations can be carried out effectively.
- iv. The Police (NI) Act 2000 and Regulations provide an unqualified right of access to any material held by the police which is

required for investigations. Some of the material required is extremely sensitive and secure arrangements have been made to ensure its safe handling within the Office. The Security and Law Enforcement Community have expressed confidence in the way such information has been handled by the Office.

- v. The Investigator will carry out the necessary search for witnesses and seek to explore each evidential opportunity whether it supports the officer or the complainant.
- vi. The PSNI are now moving towards real community based policing. Many of the investigations involve occasions of public disorder which are foreseeable and are the subject of pre-event planning. On those occasions, therefore, the Investigator will ask what community consultation was carried out and will write to all elected representatives to seek any assistance they might be able to give. In other cases where public disorder is protracted the Investigator will enquire whether efforts were made to involve community leaders in conflict resolution so as to obviate any necessity to use force.
- vii. The final recommendation for criminal or misconduct proceedings is based on available and admissible evidence. Investigation processes are based on best practice, and utilise relevant forensic, medical, technological and other expertise.
- viii. If an investigation indicates that a police officer may have committed a criminal offence the Police Ombudsman must make a recommendation to the Director of Public Prosecutions under s. 58 of the Police (NI) Act 1998. A recommendation may be that an officer should not be prosecuted, or that he/she should be prosecuted.
- ix. The Director of Public Prosecutions decides whether a police officer should be prosecuted. The Police Ombudsman does not make this decision.
- x. If the Director of Public Prosecutions does decide to prosecute then the officer will be prosecuted by the Crown and the evidence will be judged by a court. An officer facing prosecution is entitled to all the normal protection accorded by the law to those being investigated for criminal offences. If the officer is found guilty s/he has the normal rights of appeal.
- xi. If there is evidence to suggest that a police officer, from the rank of Constable to the rank of Chief Superintendent, may have acted in breach of the Code of Ethics (formerly the Code of Conduct) the Police Ombudsman must present a file to the Chief Constable containing recommendations as to whether the officer should face disciplinary charge. The Chief Constable then decides if he accepts the recommendations. If they are rejected the Police Ombudsman can direct that disciplinary proceedings take place.
- xii. The Police Ombudsman may recommend no charge. The Chief Constable may decide to charge.

- xiii. Disciplinary charges are heard by a Disciplinary Tribunal. The Police Ombudsman has no function in the tribunal. It comprises either police officers or independent members and hears and decides upon the culpability of the officer.
- xiv. An officer facing serious misconduct charges, where dismissal or reduction in rank is an option for the tribunal, is entitled to legal representation and to a colleague to assist him. The tribunal operates formally under the RUC (Conduct) Regulations 2000. There is a right of appeal under the RUC (Appeals) Regulations 2000. The Police Ombudsman has no role in this process.
- xv. If the Police Ombudsman recommends charges against a Senior Officer that recommendation will be made to the Policing Board. The Policing Board will then decide whether or not to accept the Police Ombudsman's recommendations. The Police Ombudsman has no further function once the recommendation is made. Any tribunal will be constituted by the Policing Board under the RUC (Conduct) (Senior Officers) Regulations 2000.
- xvi. Any senior officer has the normal right of appeal from a tribunal's decision under the RUC (Appeals) (Senior Officers) Regulations 2000.

Some investigation reports are, of necessity, critical of individual police officers whether retired or serving. In cases where public statements (see Paragraph 14) are being made which affect police officers, a protocol between Police Staff Associations, the PSNI and the Police Ombudsman defines the process by which individuals may comment on the draft text. Those comments are taken into account in formulating a final report. Individuals have not been named in such reports.

#### **COMPLAINT OUTCOMES**

There can be many different outcomes to complaints. In the majority of cases there is no recommendation that an officer be prosecuted or disciplined. In many cases however there will be an indication that police policy or practice could be improved. Recommendations are then made to the Chief Constable. In some cases it is clear that there has been police misconduct, but it is not possible to identify the officer responsible. This will be reported to the complainant and the police. Yet other cases indicate a need for officer training or retraining. Some cases are resolved by explaining why the police acted as they did (for example, where there has been a justified delay in responding to a call which was less urgent than the matter being dealt with).

#### **CRIMINAL PROSECUTIONS**

Statistics for referrals to the Director of Public Prosecutions (DPP) over the first three years reveal that:

- 374 cases of complaint have been referred to the DPP for direction.
- 40 criminal charges have been recommended by the Police Ombudsman in respect of 28 investigations.

- To date the DPP has directed 19 criminal charges, directions are awaited in 17 cases
- In 3 cases where Police Ombudsman did not recommend prosecution, DPP directed charges

The DPP has directed that officers be prosecuted for: assault occasioning actual bodily harm, common assault, careless driving, dangerous driving, causing death by dangerous driving, and perverting the course of justice.

10 officers have been found not guilty, 1 officer was the subject of a police caution and 2 officers subject of criminal conviction. The other cases have not yet been heard.

#### **DISCIPLINARY ACTION**

If an investigation by the Office demonstrates that a police officer has acted improperly, the Police Ombudsman may recommend that the Chief Constable should bring disciplinary proceedings against the officers involved. If the Police Ombudsman believes there are mitigating circumstances, or the relevant misconduct was not serious, she may recommend informal proceedings. Formal disciplinary sanctions range from dismissal to a reprimand. Informal sanctions include 'Advice and Guidance' and additional training.

Disciplinary action in varying formats has been recommended against 119 officers. In a further 23 cases it has been recommended that officers receive a management discussion.

#### **IMPROVING POLICE POLICY AND PRACTICE**

In every investigation there is a review of whether policy, practice or training issues were a factor in the incident. This has led to numerous recommendations to the PSNI (see paragraph 58). These have been welcomed by the Chief Constable. Such recommendations are made in Reports and, where an urgent matter is identified, the Chief Constable is notified forthwith.

Poor compliance by police officers with the Regulation of Investigatory Powers Act, 2000 was recently identified. This is being corrected following recommendations to the Chief Constable. There are many other examples of recommendations leading to improvements, including recommendations in relation to baton use, firearm use, the length of time on which officers remain on duty, first aid training of Custody Officers, safety features of custody suites and the display of personal identification numerals.

When weapons of any kind are utilised there may be an adverse response from the public. In Northern Ireland, with a routinely armed Police Service, and community difficulties in relation to the police, independent accountability for firearm use is a vital tool in maintaining and preserving public confidence in the police. Experience across the world has shown that public confidence in the police is eroded by disproportionate use of force and firearms.

There has been a significant reduction in the percentage of allegations of use of force (assault, intimidation and harassment) since the Office opened from 50 percent to 34 percent of all allegations. There has also been a noticeable reduction in the number of allegations of misuse of batons (truncheons) from 419 in 2001, to 240 in 2002, and to 148 in 2003. In 2001, on becoming aware of the very high levels of

allegation of misuse of batons, the Police Ombudsman notified the Chief Constable and began a research project which led to a number of recommendations.

Most importantly, there has been a reduction in the number of occasions on which live fire has been used by police officers in Northern Ireland from 21 in 2001, to 11 in 2002, and to 5 in 2003. The number of complaints about other use of firearms (such as assault by firearm) has reduced from 40 in 2001, to 25 in 2002 and to 12 in 2003. These reductions have been achieved through working with the PSNI on identifying problems during investigation. There has been no corresponding increase in injuries caused to police officers and no corresponding increase in the use of firearms by criminals against the police during this period. Combined with the fact that there has been an overall drop in the volume of complaints from 3590 in 2001 to 3340 in 2002, and to 2954 in 2003, this constitutes a major shift in the pattern and nature of complaints. In the past year there has also been a noticeable decrease in reported crime and an increase in detected crime.

#### **PROVIDING MANAGEMENT INFORMATION**

The Office must compile statistical information on trends and patterns in complaints against the police, and supply this to the PSNI and the NIPB. Protocols which are under constant review, have been agreed with the PSNI and the NIPB as to the statistical and other information to be supplied and the frequency of its delivery.

On a quarterly basis detailed statistical information as to trends and patterns in complaints is published on the Office web-site.

Data on incoming complaints, including summary information on volume of complaints trends and patterns in complaints and on complaint outcomes, are supplied to the PSNI on a monthly basis so that District Commanders can access this information at a local level and carry out their own analysis.

Information on multiple complaints recorded against individual officers is provided to the PSNI as recommended by the Patten Commission. District Commanders and IIB are able to use this information to identify officers of potential concern, and to deal with them through management intervention.

#### **CARRYING OUT RESEARCH TO INFORM AND IMPROVE POLICING POLICY AND PRACTICE**

The Office is committed to carrying out research and consultation in order to improve the quality and effectiveness of the police complaints system, to inform the public about its powers of independent investigation, and to contribute to the improvement of policing in Northern Ireland. The following research reports have been produced.

#### **PUBLIC AND POLICE ATTITUDE SURVEYS**

The Office has commissioned a series of questions in the Northern Ireland Statistics and Research Agency (NISRA) Omnibus Survey on five occasions since October 2000. Findings from these surveys are published, and have shown a considerable growth in public awareness of and confidence in the Office. The information obtained helps target outreach activities towards groups within the community in which awareness or confidence levels are lowest.

To assess police attitudes towards the Office, survey questionnaires were distributed to all members (9000) of the PSNI in January 2003. The forms were collated and the data analysed independently by NISRA. A summary report of the findings is being produced, whilst some issues have already been addressed. A Joint Working Committee of PSNI, the Police Staff Associations and the Police Ombudsman is to be set up in order to address other issues coming from the study.

#### **STUDY OF ATTITUDES OF YOUNG PEOPLE TO THE POLICE**

This project, carried out by the Institute for Conflict Research, was jointly funded by the Office and the NIPB. Over 1,100 young people were interviewed and 31 focus groups of young people were convened during the course of the study, making it the most extensive and authoritative study of its kind, as well as the first to explore the attitudes of young people to the reformed policing arrangements in Northern Ireland. A full report of the work was published independently by the Institute for Conflict Research in April 2003.

#### **STUDY OF THE TREATMENT OF SOLICITORS AND BARRISTERS BY THE POLICE**

Following reports of intimidation, harassment and/or threats made towards solicitors and barristers by police officers, the Police Ombudsman initiated a research study of the treatment of solicitors and barristers by the police. This project was supported by both the Law Society for Northern Ireland and the Northern Ireland Bar Council. The research found that 55 solicitors and barristers had experienced intimidation, harassment or threats from the police. A full Report was published in March 2003 detailing the findings of this research.

#### **STUDY OF COMPLAINTS INVOLVING THE USE OF BATONS BY THE POLICE**

A study was carried out of complaints involving baton use by the police. It looked at the number and nature of these complaints and the circumstances in which they arose, and then compared the frequency of these complaints in Northern Ireland with figures for other police forces in England and Wales. Officers in Northern Ireland were 40 times more likely to be the subject of baton complaints than officers in England and Wales. They were 6 times more likely to be injured. Multiple recommendations for change in policy and practice emerged from this Report.

#### **STUDY OF BATON ROUND USE BY THE PSNI**

A Report published in May 2002 summarised the Regulation 20 Reports provided to the Secretary of State, the PBNI and the Chief Constable concerning the discharge of baton rounds by police officers during 2001 and 2002. The Report summarises graphically the context of each discharge. Situation in which baton rounds were used involved the use of force threatening to life against civilians and the police. That use of force took the form of gunfire, petrol bombs, blast bombs, acid bombs and missiles of varying kinds. In all the incidents examined the Police Ombudsman concluded that the discharge of the baton rounds was fully justified and proportionate, to save or protect life, as were the authorisation and directions given. However, a number of recommendations were made about police policy and practice.

### CONCLUSION

The purpose of this short paper is to demonstrate, briefly, the nature and importance of the independent accountability mechanism for complaints against the police which has now existed in Northern Ireland for three years.

The vision of the Police Ombudsman and her staff is that they will “strive for excellence in providing an independent impartial police complaints system in which the public and the police have confidence.” The final part of the Mission of the Office is “to improve and inform the policy and practice of policing.” The Office is used by all sections of society. In the last Annual Report the community background of complainants was recorded as follows: 38 percent Catholic, 49 percent Protestant, and 13 percent other religion or none. Complainants come from every part of Northern Ireland. There is no postcode area which is unrepresented. Confidence figures in the independence, impartiality and fairness of the Office are high across both Catholic and Protestant communities. Working relationships with the PSNI are good. There is inevitably constructive tension. Many recommendations have been made and implemented by the PSNI. Confidence in the independent police complaints service can only contribute to a sense that the police are accountable, and that therefore there is justification for increasing levels of confidence in the police themselves. It is hoped that the Office has made, and will continue to make a contribution to the Peace Process by the work it does.

**ANNUAL REPORT  
OF THE POLICE OMBUDSMAN FOR NORTHERN IRELAND  
FOR APRIL 2002-MARCH 2003**

**(FOREWORD, INTRODUCTION,  
AND EXECUTIVE SUMMARY)**

**FOREWORD**

Dear Secretary of State

I have pleasure in submitting to you my second Annual Report on the work of the Office of the Police Ombudsman for Northern Ireland covering the period 1 April 2002 to 31 March 2003.

I set a vision with my staff back in 2000 that we would strive for excellence in providing an independent, impartial police complaints service in which the public and the police have confidence. We are making steady progress towards that vision and I believe my Report with the supporting information in Sections 2, 3 and 4 demonstrates significant achievements in the last 12 months.

I am pleased that we have been able to include in Section 5 of my Report a detailed Statement of Accounts which will be subject to audit by the Northern Ireland Audit Office. I would also ask you to note in Section 6, the Corporate Business Plan, which will underpin the operations and activity of the Office for the next twelve months in line with goals for the next three years.

We now have a police complaints system which is an integral part of the policing framework here in Northern Ireland and we are continuing to establish a high level of public confidence. We have also over the past year continued to build a firm professional working relationship with the Police Service of Northern Ireland and we have had excellent cooperation from the Chief Constable.

I commend this Report to Parliament as a true and fair account of the functioning of this Authority as required by Section 61 of the Police (NI) Act 1998.

**NUALA O'LOAN**  
*Police Ombudsman for Northern Ireland*  
*June 2003*

**SECTION 1—POLICE OMBUDSMAN'S REPORT****POLICE OMBUDSMAN'S INTRODUCTION TO THE ANNUAL REPORT 2003****Making progress**

The year 2002-2003 was a year of rapid development, of consolidation of staffing levels, process and systems, and a year in which we continued to progress. Our commitment to working in and with the community continued unabated. We were determined to do all we could to ensure that the service which we provided would be what both the Community and the Police asked of us, so that there would be trust in the independence and impartiality of the Office. Such trust continues to grow. This Office continues to make a most important contribution to trust in ensuring the accountability of the PSNI, which is essential for the proper policing of the whole community.

**Building Public Confidence**

A third independent survey of the public was carried out in January 2003. The results have been received and are now published. We have high levels of public awareness of the Office and of its independence - both 86%. Almost three quarters (74%) of survey respondents had confidence in my Office's impartiality, with confidence within the Protestant community rising significantly (from 51% to 70%). 79% felt that they would be treated fairly if they made a complaint, and nearly two-thirds (64%) believed that complainants and police officers would be treated equally. Overall, over three-quarters of respondents (78%) thought my Office would help the PSNI do a good job.

**Building Police Confidence**

I have attached great importance to the work which my staff and I have done with officers of all ranks and with the Police Federation, the Superintendents' Association and the Chief Officers' Association. When my Office was established there were no protocols as to how interactions between the RUC and my Office should proceed. Work was done very rapidly and many officers responded magnificently to the challenges of making the new system work. I wish to pay tribute particularly to the work of those officers who act as 'efriends' to police officers under investigation. They have played an important part in helping officers under investigation understand that whilst an investigation must be conducted, my staff will at all times respect the dignity of all officers, and every effort will be made by my staff to minimise the effects of the investigation both for members and for their families. I am aware too that we must ensure that police officers are kept better informed of the progress of an investigation and of the cause of any delay.

My staff and I have been pleased to meet all Chief Officers and virtually all the District Command Units during the year. We know that where officers have had an opportunity to talk with us we can deal with many of the myths and misunderstandings which exist about my Office. We held two successful conferences for District Command-

ers and Chief Officers in conjunction with the PSNI. I have also appreciated the opportunity to contribute to a question and answer column in the Police Gazette.

#### **Survey of Police Officers**

We have surveyed the public on a number of occasions about the Office. It always seemed to me that we must also survey the police to establish what their views and experiences of the Office are. The Chief Constable facilitated such a survey during the reporting year and it was conducted independently. The survey, which closed at the end of March 2003, is now being analysed and will provide bench marks against which we can assess police experience of us, and also police attitudes to complaints and complainants. Some 40% of those surveyed responded and the results will be published soon. We look forward to using those results to build stronger working relationships and greater understanding of the police complaints system among police officers.

#### **Complaints**

Our Complaints Office continues to be extremely busy. The service to the public which they offer involves far more than receiving actual complaints against the police. People call us with a huge variety of questions, issues and comment, all of which must be dealt with professionally and fully. The issues which come through the Complaints Office involve complaints requiring informal resolution; matters which the law does not empower us to deal with because they are out of time, or because they are purely operational matters such as a request for additional patrolling; matters involving compensation claims against the police, and claims for criminal injuries compensation, which may relate to a complaint with which we are dealing; and many other incidental matters. In dealing with all these matters our complaints officers make a real contribution to the recognition of the realities and process of policing in our community. I am pleased to be able to assist the community in this way.

#### **Investigations**

During the year the Investigations Directorate has initiated investigation into a number of very complex matters, such as deaths which may have resulted from police conduct, allegations of perverting the course of justice, allegations of grievous bodily harm and allegations of serious sexual assault. We have also received multiple complaints and queries in relation to the police investigations of unsolved murders and attempted murders. Many of these cases date back to the early 1970s although some are more recent. There are tests which I must apply in deciding whether to exercise my retrospective investigative powers. If the tests prove positive then the law states that I "shall investigate" and it gives me no discretion. I have accepted a small but significant number of historic cases for investigation. Such cases require extensive resources.

#### **Timely and full investigation**

European Human Rights Law has imposed upon the state the obligation, in relation to deaths involving allegations of collusion by the security forces, that investigations must be effective, prompt and con-

ducted with reasonable expedition. This requires resources which are greater than those which I require to carry out ordinary police misconduct investigations. I therefore had to make an application to the Secretary of State for further investigative resources. That matter remains under consideration.

#### **Need for closure**

One common factor for many families in Northern Ireland is that they have not been kept informed about the progress of investigations into the murder or attempted murder of their relatives. In my Omagh Report I recommended that the PSNI should carry out a review of all unsolved terrorist murders. I knew that this would be a very onerous task for the PSNI. In many cases it emerges, on enquiry by my Office, that there was appropriate investigation, but the failure by the police was simply that they did not tell people what they had been able to find out in the course of an investigation and they did not explain why it was not possible to continue investigating. In other cases there were investigative opportunities which could have been explored but were not. I therefore very much welcomed the establishment by the Chief Constable of the Murder Review Unit.

We will continue to carry out our work and will refer appropriate cases to that unit.

#### **Special Referrals and Other Matters**

The Secretary of State and the Policing Board have the power to refer matters to my Office. The Policing Board has referred one case which is currently under investigation. The Chief Constable can, and in some cases must, refer cases for investigation by my Office. I received 38 such matters during the year. Many of these referrals involve deaths in custody, police use of live firearms and baton rounds, and road traffic accidents, leading to casualties, involving the police. In all these cases full investigation ensues and a Special Report is made to the Secretary of State, the Chief Constable and the Policing Board. I am pleased to report that there was no police misconduct which contributed to any death in custody. I also have power to initiate investigation without a complaint if it appears to me to be desirable and in the public interest. I did so on 5 occasions only. Cooperating to secure timely investigation

Approximately 30% of our complaints lead to full investigation. These may involve allegations of criminal behaviour by police officers or of misconduct. The process of investigation is inevitably lengthy. Forensic analysis and the acquisition of specialist evidence can be time-consuming. The Office has attempted at all times to facilitate the delivery of service to the public by the police, and to acknowledge the difficulties of officers who are on sick leave. However, because of this it can take months to arrange interviews with a group of officers who are in some way involved in an investigation. I have also noted that appointments for interviews are frequently cancelled by the officers for a variety of reasons, such as change of duty rosters, appearances in court, sickness and inability to find a 'friend' or a solicitor to accompany them to interview. Finally investigation can be delayed by the length of time which it takes the police to supply materials and information. I hope that new technology and further efficiencies within

the PSNI will lead to more rapid transfer of necessary information and documentation, and more speedy availability of officers for interview.

#### **Transferred Complaints from the ICPC**

When my Office was established on 6 November 2000 some 2124 complaints were under investigation by the RUC. The responsibility for these cases transferred to me. Only 69 remain open. Cases investigated by the RUC were scrutinised by Mr Brian McClelland, the former Chief Executive of the ICPC, who has done an excellent job in dealing with these matters. One of the most significant cases which came under supervision by my staff was the investigation into matters surrounding the death of Mr Robert Hamill. During 2002 two people pleaded guilty to perverting the course of justice in relation to the investigation of Mr Hamill's death. The Director of Public Prosecutions has now directed that a former police officer and three civilians should also be prosecuted for perverting the course of justice in this case. Improving police policy and practice One of the major contributions made by the Office is to the improvement of police policy and practice. As cases are investigated trends and patterns in police activity and process become obvious. Particular practices are highlighted which are not consistent with best practice. On examination, Force Orders and policies may be ambiguous and this may lead to an inadequate service to the community. Officers may be inadequately trained and equipped. All these matters may emerge naturally in the course of investigation and as they do, relevant recommendations are made to the Chief Constable, with an explanation as to why they are being made.

A significant number of recommendations have been made to the Chief Constable in the course of the year, many of them to improve policing. I have been pleased to see the acceptance of recommendations made.

#### **Action by the Director of Public Prosecutions**

If an allegation or investigation of any matter indicates that a police officer may have committed a criminal offence then a criminal investigation file must be prepared for the Director of Public Prosecutions. This year 185 such files were sent. The file may indicate that there is no evidence to support the allegation, in which case I will recommend no prosecution. If the evidence indicates that an officer has committed a particular offence then I will make an appropriate recommendation for prosecution. It is then for the Director to make a decision as to whether to prosecute. Any prosecution is then the responsibility solely of the Director. At the end of the reporting year the Director has directed the prosecution of 18 officers for 20 offences.

#### **Action by the Chief Constable**

When an investigation has been completed it is necessary for me to determine whether disciplinary action is required against an officer the subject of that investigation. If the evidence supports a recommendation for disciplinary action then I make such recommendation to the Chief Constable. I have made some 41 such recommendations in the current year. A significant number of files, involving criminal

allegations, are awaiting decision by the Director of Public Prosecutions. Once he has made his decisions and taken any necessary action, those files return to me for disciplinary consideration.

#### **The New PSNI Code of Ethics**

On 14 March 2003 a new Code of Ethics for police officers in Northern Ireland was introduced. The Code of Ethics is one of the outcomes of the Patten Report, and contains the wording of the oath taken by all new recruits. The content of this oath is now binding on every officer in the PSNI. The Code of Ethics articulates an officer's duties in a positive and clearer way and, most importantly, it imposes a new duty to supervise and manage staff on those officers who have a management role. This is an important new development for the PSNI.

#### **New publications**

I have a statutory duty to monitor trends and patterns in complaints and every quarter I publish and place on our web site ([www.policeombudsman.org](http://www.policeombudsman.org)) a report on such issues. We also provide monthly detailed statistics to the PSNI and the Policing Board. In addition to this we will provide any management information in our possession to the PSNI or the Policing Board as requested. In this context specific detailed information on particular issues has been provided to District Commanders. During the year I have published two significant research reports—one on "The Treatment of Lawyers by the Police," and the other on "Complaints about Baton Use."

#### **Informing the Public and the Police**

We receive many invitations to speak about our work in Northern Ireland. We provide a speaker on every occasion on which we are asked in Northern Ireland, and have been pleased to speak to a wide range of organisations and groups during the year. This also gives us another opportunity to ensure that what we are providing meets the needs of those whom we serve. My staff and I also speak at, and participate in, meetings and conferences of many professional organisations. We also met, on two occasions, with the Complaints Monitoring Committee of the Policing Board for Northern Ireland, and with the Chairman and Deputy Chairman. Clearly discussion between all interested parties is in the interests of the community and of policing. I am pleased that we are already receiving invitations from some of the new District Policing Partnerships and I look forward to working with those involved in this important development.

#### **The Omagh Report**

In January 2003 the Police Association withdrew all allegations of errors, omission and unwarranted assumptions in relation to my Report on the Investigation into the Omagh Bomb Explosion. The Judicial Review which the Police Association had brought was withdrawn by the Police Association and subsequently dismissed by the Judge on 29 January 2003. It is important to note that the Police Association have now accepted that the Report stands in its entirety. Progress has now been made in many fields as a consequence of my Omagh

Report. The legal challenge to the Report required energetic and lengthy responses, and diverted very significant resources from the normal work of the Office.

The Office of the Oversight Commissioner Mr Tom Constantine has spent almost three years overseeing the implementation of the Patten Report on Policing. We have been pleased to work with Mr Constantine, Mr Al Hutchinson and their colleagues to ensure that we comply with our obligations under the Patten Report. The process of identifying indicators for compliance and assessing progress has facilitated change and enhanced much of the work which we do with the PSNI.

#### **Our staff**

Since the Office opened we have all worked hard to provide a service which will win the confidence of the people and of the police. We all recognise that every member of staff plays a vital role in this process. Some members of staff play a more public role than others. Those who meet people who come directly into our offices or who go to receive complaints from those who are unable to get here are the first point of contact for the public. They are the public face of the Office. Those who respond in the middle of the night to serious situations at the request of the Chief Constable are seen to be carrying out an important function by the public. However such staff could not function without the support of the others - the corporate services staff, the legal advisers, the researchers, the information and media advisers and the secretarial staff. All have a part to play to enable the Office to function. Recognising this, training is an important matter for the Office, and we have, this year, embarked on a process of accreditation, by the University of Portsmouth, of our Complaints and Investigation training programme. This will lead to certificate and degree level awards for our staff, and will ensure that they are taught by recognised experts in policing. This is an important development in our training infrastructure.

#### **Looking ahead**

During the year we have seen further legislative change and now have a power to investigate police policy and practice. It is also anticipated that my Office will take responsibility for the investigation of complaints against other persons working with police powers for the PSNI in the future.

#### **Conclusion**

This has been a challenging and demanding year for my Office. In publishing this Annual Report I would like to express my thanks to all those who have worked with us and assisted us during the year. I wish to acknowledge particularly the contribution of the Chief Constable and his staff, the Policing Board and the staff of the Northern Ireland Office. Finally I wish to thank my staff for all that they have done to create such high levels of public confidence in the Office during the past year.

NUALA O'LOAN  
*Police Ombudsman for Northern Ireland*

## SECTION 2—EXECUTIVE SUMMARY

### **Reporting Period**

This second Annual Report of the Police Ombudsman covers the period 1 April 2002 to 31 March 2003. The report provides information and detail of a police complaints system now operating effectively and efficiently within the public domain.

### **New Duties**

During the course of the year the Police (NI) Act 2003 was passed. The Police Ombudsman was consulted in respect of additional responsibilities in relation to the investigation of policy and practice and taking on the complaints functions in relation to police support personnel.

### **Resources and Staff**

The Office has succeeded in operating within its budget approved by the Northern Ireland Office and achieved efficiencies of almost 5%, largely due to a number of vacancies which could not be filled within the reporting period. Recruiting and training the necessary complaints and investigative staff continued to be a challenge with no less than 20 new appointments during the 12 months. While the complement of staff directly recruited by the Office has now been achieved, 9 seconded staff who came to the Office 2 years ago to help us initiate our work have now returned to their police forces in England and Wales. The pressure on police forces to increase their effective strength in England and Wales has made it more difficult to attract seconded officers.

### **Audit and Accounts**

During the period of this report the Director of Corporate Services, Jim O'Hagan, and his staff prepared and presented the inaugural statement of accounts, for the Police Ombudsman's Office, in line with HM Treasury guidance: Executive Non-Departmental Public Bodies Annual Reports and Accounts Guidance. Also during the year the closing accounts for the Independent Commission for Police Complaints (ICPC) were submitted and Mr O'Hagan with the assistance and cooperation of Mr Brian McClelland (former Chief Executive of the ICPC) were able to close all residual matters in relation to that Authority. Both sets of accounts were audited by the Comptroller and Auditor General, were certified, and have been ordered by the House of Commons to be printed. The unaudited statement of accounts for this financial year is included at Section 5 of this report. The Audit Committee met regularly and the internal audit service continued to be provided by the Southern Internal Audit Service, a trading body of the Southern Health and Social Services Board.

### **Managing Workload**

We have been able to see significant achievement throughout all functions within the Office. We are now experiencing a much steadier pattern of workload. Our directly recruited staff are gaining experience in the range and complexity of complaints they must handle, so there is good progress in the level of complaints which can be closed

following inquiries. In the initial 17 months of the work of the Office the activity or outcome of the work of the Complaints and Investigations Teams was not typical, but we are now seeing the full span of work and processes involved in complaints and allegations. Some complaints result necessarily in referrals to the Director of Public Prosecutions or to the Chief Constable and this means the overall time to complete investigations is very long in some cases.

#### **Changing Patterns and Trends**

The performance of the Office should never be and will never be measured by the extent to which police officers are sanctioned or disciplined. Ultimately the effectiveness of any complaints system is the extent to which an organisation can use the essence of genuine complaints to help improve service delivery or the practice of its staff. Likewise, the overall volume of complaints and allegations against police officers is not in itself an indicator of performance or success of a complaints system. It has nevertheless been important to note a steady decrease in complaints over the past 12 months. Some part in the fall of complaints must be due to the general decrease in the number of police officers. However, the nature of the decrease in complaints and some particular trends and patterns provide reassurance to the PSNI, that practice, conduct and accountability processes are continually improving.

#### **Securing Confidence**

We continue to work at the important objective of securing the confidence of the public and also of police officers. This report has again provided an indication of the increasing level of awareness of, and the confidence which the public would appear to have in, the general operation of this complaints system. It has also been important to see that, across the community, the perceptions of Protestants and Catholics in relation to the Office are converging. This is also evidenced very much by the fact that the use being made of the complaints system reflects the composition of the community. We have worked also in building constructive working relationships and confidence with police officers.

#### **Satisfaction policy**

A satisfaction policy agreed by the JNCC has been approved to enable complaints and positive comment to be made about this Office.

#### **Northern Ireland Act 1998**

As an Office we have continued to work towards full compliance with the requirements of the Northern Ireland Act 1998. After extensive consultation with the community our Equality Scheme was approved by the Equality Commission. Our key policies, as set out in our Equality Scheme, must now be assessed in terms of the impact that they have on the different groups identified within the Act, and this will be a major challenge over the next 2 years. Freedom of Information Act 2000 We have prepared, and had approved, our publication scheme under the Freedom of Information Act.

**Table 1: Complaints Received 2000-2003**

Period 1 2000-2002 17 months	Period 2 2002-2003 12 months	Period 3 2003-2004 12 months
Complaints Transferred from ICPC 2124	Complaints Carried Forward 1430 330 (ICPC)	Complaints Carried Forward 1211 69 (ICPC)
New Complaints 5129	New Complaints 3193 allegations	
Closed Complaints 3700 1794 (ICPC)	Closed Complaints 3412 261 (ICPC)	

### Performance and Achievement

Since the opening of the Office we have established and continue to develop a framework of goals, objectives and targets against which to measure performance of the Office as an Executive Non-Departmental Public Body. There are very wide-ranging expectations impacting on the Office from the public and the police, from Government, the Policing Board, Politicians, Assembly Members and Councillors. We have consulted extensively with as wide a range of these people as is possible. Such consultation helps us focus and refocus our objectives and targets. The achievement in relation to objectives and targets for this past year is outlined in Section 4 of this Report.

**PREPARED STATEMENT OF  
PAUL MAGEEAN, LEGAL OFFICER,  
COMMITTEE ON THE ADMINISTRATION OF JUSTICE (CAJ)**

Thank you for the invitation to testify today. The Committee on the Administration of Justice (CAJ) is an independent human rights organisation which draws its membership from across the different communities in Northern Ireland. CAJ works on behalf of people from all sections of the community and takes no position on the constitutional status of Northern Ireland. In 1998, CAJ was awarded the prestigious Council of Europe human rights prize by the 41 member states of the Council of Europe in recognition of its efforts to place human rights at the heart of the peace process. One of the reasons for the success of our work on the peace process has been the continued involvement of the United States. In this context we would like to thank the honourable members of this Commission for this opportunity to raise these important issues and in particular the Co-Chairman Chris Smith for his work in this area. Co-Chairman Smith will of course know that I have testified before Congress before and on one occasion had the honour of doing so with my colleague Rosemary Nelson. It is salutary to note that the fifth anniversary of her death occurred yesterday.

These hearings have of course been convened to consider the progress or lack of progress in implementing the various police reforms in Northern Ireland. Before addressing that specific topic, however, the Committee on the Administration of Justice (CAJ) would like, with your permission, to set the question of policing change against the wider context of human rights measures in the wake of the Belfast or Good Friday Agreement.

Just over a year ago, CAJ and a number of other human rights nongovernmental organisations (NGOs) active on Northern Ireland, some of whom are represented today on this panel, issued a short statement calling on governments, political parties and broader civil society to commit themselves to developing concrete benchmarks against which progress in the advancement of human rights and equality could be delivered. I would be grateful to have that statement placed on the record.

In particular, the NGOs called for the necessary political commitment to developing, legislating for, and subsequently enforcing a strong and inclusive Bill of Rights for Northern Ireland. Unfortunately, a full year on, little progress can be reported. The NI Human Rights Commission has not yet, 2½ years after publishing its draft of a Bill of Rights, produced another version although we believe that is imminent. We believe that the government has not given this matter sufficient priority. Given the enormous importance accorded in the United States to its written Constitution and its codified Bill of Rights, it would be helpful if this Commission were to lend its support to current efforts to establish a round table process involving political parties and civil society in the elaboration of a document which would protect the rights of all.

Elsewhere in the statement, the NGOs allude to the failures to date in seriously addressing the Agreement's proposals with regard to tackling socio-economic inequalities, long-term unemployment, persistent differentials in employment, and sectarian and other divisions. We

argue that human rights language, concepts and principles have much to offer in this regard. Human rights abuses fed and fuelled the conflict, and—if not addressed in a fundamental and consistent way—will fuel the terrible legacy of conflict. Cycles of deprivation, alienation and social exclusion need to be broken if we are to develop a truly peaceful and just society. The government has been given the tools to break this cycle by the Agreement. In our view they have shown themselves resistant to use them. They need to start.

The area of criminal justice and emergency laws is of course one that has been a constant source of concern both in Northern Ireland and indeed further afield. Significant changes were promised by the Criminal Justice Review, which arose from the Agreement, but again change has been slow in coming. We will not see the establishment of the new Public Prosecution Service until at the end of 2005, 5½ years after that recommendation was made. Like the debacle over Patten we have had two major pieces of legislation purporting to implement the recommendations of the Review, neither of which completely does so. It is difficult to avoid the conclusion that there is institutional resistance to many of the changes being proposed. In addition, we now have permanent emergency legislation at the very time when our emergency has ended. Ten years after the first cease-fires non-jury Diplock courts are still operating in Northern Ireland.

Nor can we seriously move ahead without addressing the past. Mechanisms need to be established to ensure accountability for past human rights abuses. The debate about the past needs to be led by the two governments and involve wider society. It should not be used to undermine existing initiatives such as the Cory proposals which my colleague Jane Winter is addressing today. We were recently concerned at proposals made by the Chair and Vice Chair of the Policing Board, purportedly in their personal capacity, which run directly counter to Judge Cory's proposals that inquiries be held into the murders of Pat Finucane, Robert Hamill, Rosemary Nelson and Billy Wright. We would be grateful if a press statement issued by CAJ on this matter could be placed on the record.

CAJ believes that whilst political accommodation may be difficult at this time, advances can be made on the human rights front. The focus should move from the problems that have arisen in the various institutions established by the Agreement (including the failures of the NI Human Rights Commission and the Equality Commission), to a focus on what change is being delivered and should be delivered. To measure such change, we need to develop concrete benchmarks, and that is the work on which human rights NGOs are currently engaged.

Now I will turn to the specific question of policing. Our focus in the policing discussion is not on the new institutions per se, but whether they are delivering the change promised in the Agreement and subsequently in the Patten Commission report. That, we believe, will also be the test applied by citizens on the ground in Northern Ireland as to whether the new policing system is working.

There have been several advances in the policing arena, including the establishment of the Office of the Police Ombudsman for Northern Ireland; the transformation of the Royal Ulster Constabulary into the Police Service of Northern Ireland; the introduction of measures to increase Catholic representation; and the creation of the Northern Ireland Policing Board and the local District Policing Partnerships.

While there have been improvements in the quality of policing, CAJ has continued to hear reports of heavy-handed raids; the protection of informers involved in crime; the recruitment of children as police informers; the unnecessary and disproportionate practice of stopping and questioning people on the street; and an intimidating approach to public order policing, which tends to fuel rather than ease tensions.

In addition there are also continuing problems relating to the failure to implement important aspects of the Patten report. Patten received many submissions describing the RUC Special Branch as a "force within a force." He also said this view was shared by a number of police officers. The Patten Commission stated that this description, whether real or perceived, is not healthy and recommended several changes, including bringing Special Branch together with Crime Branch; reducing the number of officers engaged in security work; and requiring that district commanders are well briefed on security activities and fully consulted before security operations are undertaken in their districts. In 2001, the Police Ombudsman published his report into the 1998 Omagh bomb, which killed 29 people. The Ombudsman's report found that Special Branch did not take sufficient action in response to intelligence received prior to the bombing nor pass vital information to the team investigating the crime after it took place. As a result, the Policing Board called for reports by Her Majesty's Inspector of Constabulary Mr. Crompton on the review of Special Branch and Her Majesty's Inspector of Constabulary Mr. Blakey on the review of murder inquiries. Despite the Board receiving these documents in November 2002 and June 2003, as well as additional recommendations related to Special Branch made by Sir John Stevens in April 2003, it is unclear what the current state of implementation of these recommendations is. The Oversight Commissioner stated in his last report, in December 2003, that the Patten Commission recommendations relating to Special Branch, which were made some four years earlier, have not been implemented and progress in the area has been slow. This is not simply an academic issue. Special Branch has been closely involved in a number of high-profile raids and arrests which have not, at least to date, led to convictions and which are seen by some to be politically motivated. We respectfully request that this Commission write to the Chief Constable and the Policing Board to inquire what progress has been made in this area so that the public knows whether the "force within a force" is being dismantled.

A related area of great concern to CAJ is the independence of the Forensic Science Agency. These concerns result from press reports describing the testimony of a forensic scientist who claimed that senior police officers had tried to interfere with the agency's work for years, by requesting the agency to test evidence that may have been contaminated. An Ulster Television Spotlight programme, which was aired on the 23<sup>rd</sup> of February 2004, alleged that police officers investigating alleged dissident (i.e. anti peace process) Irish Republican activity asked a forensic scientist to delete and revise part of his report. The programme stated that the deleted information implicated another person, who it was alleged is an informer, and that an official from the office of the Director of Public Prosecutions wanted this information removed from the file and therefore made inaccessible to the defence team. The forensic scientist also described how British

soldiers had opened a bag of clothing from the suspects and rubbed a gloved hand over them in an apparent attempt to “plant” forensic evidence. The extent to which these matters are aggressively dealt with by the new institutions in the policing and criminal justice fields will be a test of how far things have really changed in Northern Ireland. I would be grateful if a transcript of the programme could be placed on the record of the Commission.

Another issue of concern is the manner in which the PSNI deals with sectarianism. In its 1999-2000 report, Her Majesty’s Inspectorate of Constabulary reiterated the need for the PSNI to monitor sectarian incidents. The PSNI has just recently, after five years, begun consulting on a definition of sectarian and is not currently monitoring this type of hate crime. It is also not clear how the PSNI is attempting to combat sectarianism within the service. A neutral working environment policy has been introduced, but the Human Rights Commission and the Oversight Commissioner have criticised the lack of progress in demonstrating adequate human rights and anti-sectarianism training for PSNI recruits. We respectfully call on this Commission to help us ensure that the quality of the training is as state of the art as the police college itself will be.

Regarding the Policing Board, we believe it is much more accountable and powerful than the previous Police Authority and the fact that it is able to act and take decisions despite the diversity of opinions regarding policing on the Board, is commendable. The Code of Ethics for the Police Service and the Board’s plan for monitoring the human rights compliance of the PSNI are two major accomplishments. We do, however, have serious concerns relating to the Board’s transparency, level of engagement with statutory bodies, human rights and community organisations and the public, and its ability to bring about fundamental change within the PSNI. In our opinion, the Board does not adequately cooperate with, or seek the opinions of, the various statutory bodies and human rights groups, community organisations and the public. Likewise, important decisions, such as the Board’s endorsement of the PSNI’s acquisition of CS Spray, continue to be made in private without the public knowing that the decision was even taking place. There is good work that the Board is performing, but if the public is not aware of such work, they will not be confident that the Board is effectively holding the police to account. CAJ has recently written a commentary on the work of the Policing Board, and I would like to request that this publication be placed on the record. I referred above to the intervention by the Chair and Vice Chair of the Policing Board in the discussion about how to deal with the past in Northern Ireland. It seemed to us that this intervention was designed to undermine the Cory process. Such interventions, even and perhaps especially when they are purportedly in the personal capacity of the individuals involved, not only damage the discussion around truth but also undermine the credibility of the Board.

In relation to the Office of the Police Ombudsman, CAJ also warmly welcomes the creation of this office, which has shown its ability to assert its independence and seriously criticise the Police Service. The Office of the Police Ombudsman is a massive improvement over the previous complaints body, but again there are some areas of concern. One is the power of the Police Ombudsman to investigate operational matters, policy and practice. The 2003 Police Act gave the Police Om-

budsman additional powers in this area. However, it is still not entirely clear what operational issues the Police Ombudsman will investigate and which will fall outside her remit. Operational decisions are of such magnitude and have such impact on police-community relations that they must be subjected to independent scrutiny. If the Police Ombudsman regards some issues as outside her remit then we need to be clear whose responsibility it is to investigate those matters. As the Patten Commission stated, the Chief Constable has operational responsibility to take decisions without interference, but it should "never be the case" that such decisions be exempted from inquiry or review after the event by anyone.

It is not clear whether the Office of the Police Ombudsman has been able to substantiate more complaints than its predecessor or whether the problems highlighted in complaints have been fed back into the Police Service in such a way as to effect changes in police behaviour on the ground. According to the Police Ombudsman's latest annual report, 1% of the complaints concluded during the year were forwarded to the Police Service for disciplinary hearings and 5% were forwarded to the Director of Public Prosecutions. This 5% figure seems low considering that it includes cases in which the Police Ombudsman believes prosecution is and is not warranted. CAJ has also received reports of cases in which the Police Ombudsman has recommended the prosecution of police officers but the Director of Public Prosecutions has refused to bring the charges. If this is a particular problem, it may be that the good work of the Ombudsman is being stymied by the resistance of another institution.

CAJ has also been concerned over the years by the continued use of plastic bullets. While it is the case that the number of occasions on which such bullets have been fired has reduced significantly in recent years, we are concerned that the weapon continues to be deployed. Some commentators have attributed the reduction in use of the weapon by the police to the investigation of the use of such weapons by the Police Ombudsman. We are concerned however that the use of the weapon by the military in Northern Ireland is not subject to investigation by the Police Ombudsman. This situation needs to be rectified.

The human rights situation in Northern Ireland has improved dramatically over the course of the last few years. Human rights discourse is everywhere and employed by everyone. Expectations have been raised that change is on the way. If it is not delivered, these expectations will be dashed. To borrow a phrase from the United States, government and its agencies in Northern Ireland are certainly "talking the talk" of human rights but they must now "walk the walk."

**MATERIALS SUBMITTED FOR THE RECORD  
BY PAUL MAGEEAN, LEGAL OFFICER,  
COMMITTEE ON THE ADMINISTRATION OF JUSTICE**

**HUMAN RIGHTS IN NORTHERN IRELAND: AN OPPORTUNITY  
FOR FURTHER PROGRESS**

*A STATEMENT ON BEHALF OF AMNESTY INTERNATIONAL,  
BRITISH IRISH RIGHTS WATCH, COMMITTEE ON THE ADMINIS-  
TRATION OF JUSTICE, HUMAN RIGHTS WATCH, IRISH COUNCIL  
FOR CIVIL LIBERTIES, LAWYERS COMMITTEE FOR HUMAN  
RIGHTS, LIBERTY, AND THE SCOTTISH HUMAN RIGHTS CENTRE.*

Given the prospect of renewed political negotiations in Northern Ireland, we urge that human rights issues be at the heart of such discussions. We believe that it is appropriate at this juncture to restate the human rights concerns that we think deserve particular attention. Our eight organisations have consistently argued that human rights abuses have fed and fuelled the conflict in Northern Ireland. We believe that the conflict, and the human rights abuses associated with it, have also had a significant negative impact on the protection of civil liberties throughout Britain and Ireland.

Peace cannot be permanently secured without addressing the long-term protection of everyone's human rights and, despite the advances in recent years, obstacles have been placed in the way of change. Much still remains to be done to effect real change on the ground. Accordingly, we call on governments, political parties and broader civil society to commit themselves to developing concrete benchmarks against which progress in the advancement of human rights and equality in Northern Ireland and all neighbouring jurisdictions can be delivered.

In particular, we call for:

1. political commitment to the process of developing, legislating for, and subsequently enforcing a strong and inclusive Bill of Rights for Northern Ireland.
2. the establishment of mechanisms for dealing with Northern Ireland's legacy of past human rights abuses. Mechanisms are needed to ensure accountability for human rights abuses, with a view to ending impunity, and such mechanisms must operate in accordance with international human rights principles.
3. the repeal of emergency legislation, which undermines rather than ensures people's security.
4. guarantees to ensure that the outcome of any devolution of policing and criminal justice responsibilities in Northern Ireland be compliant with human rights norms. Consideration should be given to establishing an expert independent commission with international human rights expertise to advise on these issues.
5. compliance with recommendations by human rights treaty bodies, most recently the UN Committee on the Rights of the Child.
6. the building on and advancing of efforts to mainstream human rights and equality considerations into all policy making, in particular the Assembly and its scrutiny committees, the Executive, the public service, and—of particular importance also to the other jurisdictions—the North-South Ministerial Council, the British-Irish Council and the British-Irish Inter-Gov-

ernmental Conference.

7. the carrying out of independent reviews into the work of the statutory bodies created explicitly to further the human rights and equality agenda in Northern Ireland—the Human Rights Commission and the Equality Commission. The reviews should assess what further powers, resources, and changes are needed for these bodies to enhance their capacity to conform to best international practice for such work.
8. a renewed effort to resource local community and participatory initiatives to address deep social divisions, including sectarianism and other forms of discrimination, segregation, and continuing high levels of violence in Northern Ireland. Detailed programmes of action must be urgently developed to address problems such as racism, violence in the home, and particularly sectarianism. Human rights language, concepts and principles have much to offer to tackling these problems.
9. tackling socio-economic inequalities and long term unemployment, much more effectively than has been the case to date. The political will to set clear targets and timetables for change, and then to bring those targets about, is vital.
10. a re-visiting of several of the human rights concerns addressed in the Agreement which have received relatively little attention. The concerns there around language, cultural diversity, the importance of women participating in public life, unemployment differentials, the needs of victims, of ex-prisoners, of young people, and the need to promote efforts at reconciliation and greater tolerance, require re-visiting and receiving more priority than has been the case to date.

This programme focuses on Northern Ireland, since that is largely the focus of the current political discussions. However, the conflict has had an impact on the neighbouring jurisdictions; it is our fervent hope that human rights advances made in Northern Ireland will have an impact throughout these islands. The Irish Government has already committed itself in the Agreement to ensuring in the Republic at least an equivalent level of human rights protection as prevails in Northern Ireland. Realisation of this commitment will contribute significantly to advancing an environment for progress.

We believe that, in conformity with their international obligations, both the UK and Irish Governments should ensure effective protection of human rights throughout these islands.

We hope that you find it useful for your deliberations.

Telephone contact details for each of the organisations is also included herewith.

Contact details for sponsoring groups:

Amnesty International  
0208 413 5675 (media)

British Irish Rights Watch  
0208 772 9161

Committee on the Administration of Justice  
02890 961122

**Human Rights Watch**  
00 1 716 885 1995

**Irish Council for Civil Liberties**  
00 353 1 878 3136

**Lawyers Committee for Human Rights**  
00 1 212 845 5200

**Liberty**  
0207 403 3888

**Scottish Human Rights Centre**  
0141 332 5960

**TEXT OF A PRESS RELEASE OF THE  
COMMITTEE ON THE ADMINISTRATION OF JUSTICE**

**CORY MUST BE IMPLEMENTED IN FULL**

*18TH FEBRUARY 04*

The Committee on the Administration of Justice (CAJ) today called for the government to publish the reports of and fully implement the recommendations of Judge Peter Cory.

Paul Mageean, Acting Director of CAJ said that the British and Irish governments had given commitments to the families involved in the Cory process, as a result of the Weston Park Agreement, to publish the reports and implement their recommendations. "It would be unthinkable for the government to abandon these commitments," Mr Mageean said. "The families involved in this process have campaigned for many years to achieve public inquiries. That effort is likely to be undermined by the public comments of the Chair and Deputy Chair of the Policing Board which may well have the effect of letting the government off the Cory hook. There is of course a need for a public debate on how we deal with the past but that should be led by the two governments and not lead to the abandonment of current initiatives."

CAJ also expressed surprise that the two most senior officers of the Policing Board could issue a statement with significant implications for the policing debate but claim to do so in their personal capacity.

For further information contact CAJ 028 90961122

**PREPARED STATEMENT OF  
ELISA MASSIMINO, WASHINGTON DIRECTOR,  
HUMAN RIGHTS FIRST**

**INTRODUCTION**

Chairman Smith and members of the Helsinki Commission, thank you for convening this hearing today and for inviting me to share the views of Human Rights First, formerly the Lawyers Committee for Human Rights. Human Rights First's mission to protect and promote human rights is rooted in the premise that the world's security and stability depend on long-term efforts to advance justice, human dignity, and respect for the rule of law in every part of the world. Since our inception in 1978, we have worked both in the United States and abroad to support human rights activists who fight for basic freedoms and peaceful change at the local level; to protect refugees in flight from persecution and repression; to help build strong national and international systems of justice and accountability; and to make sure human rights laws and principles are enforced.

Human Rights First has been working to advance human rights in Northern Ireland since 1990. We have published a number of reports about the intimidation and murder of defense lawyers in Northern Ireland, with particular focus on the cases of solicitors Patrick Finucane and Rosemary Nelson. As you know well, the situation of defense lawyers in Northern Ireland has been closely linked to the criminal justice and emergency law system and to the conduct of the police.

I would like to say a particular word of thanks to you, Chairman Smith, for your unwavering commitment to keeping human rights on the agenda of the United States Congress. People around the world who struggle against oppression and injustice have in you a strong and stalwart ally. Your persistence in raising these issues—and following through on them—is something we have all come to count on over the years.

That persistence is much needed with respect to Northern Ireland. While there has been important progress in the human rights situation since the Good Friday Agreement, nearly six years later there is still strong and quite stubborn resistance in some quarters to implementing many of the human rights commitments made in the context of the Agreement. As has been the case over some years, the peace process in Northern Ireland is often beset with political crises which have tended to stall progress on important human rights reforms. This in turn has tended to undermine support for the Agreement itself from those who are waiting to experience real change in their daily lives. We believe strongly that progress on human rights will sustain support for peace in Northern Ireland, even during periods of political turmoil. The United States has an important role to play in encouraging its close friend and ally, the United Kingdom, to overcome resistance to change and press ahead with the agenda for reform in the areas of criminal justice, policing and accountability for human rights violations.

My colleagues Jane Winter and Paul Mageean will speak in detail on the issues of accountability and policing, so I will focus my remarks today on the criminal justice reform process and on continued emergency legislation. I would like to commend to the Commission a report released last week by the Association of the Bar of the City of

New York which addresses many of the issues we are discussing today and from which I have drawn extensively for my testimony. Fiona Doherty, Senior Counsel at Human Rights First, participated in the mission which culminated in that report, and was one of the report's authors. I would ask that the report be made a part of the record of this hearing.

#### THE CRIMINAL JUSTICE REFORM PROCESS

Structural reforms in the criminal justice system will be fundamental to achieving human rights progress in Northern Ireland. This is the framework in which the reformed policing service must operate; if it is faulty, no improvements in policing will ultimately be effective. The Good Friday Agreement recognized this in its call for a review of the criminal justice system, and on June 27, 1998 a Criminal Justice Review Group was established to look at a wide range of criminal justice issues, excluding policing (which was subject to a separate review) and emergency legislation (which was excluded altogether from independent review). The Criminal Justice Review Group was composed of four government representatives and five independent experts. Its mandate was to produce recommendations on reforms to increase the accountability, equity, and efficiency of the criminal justice system, as well as to consider the possibility of devolving criminal justice powers from the British Government to the local Northern Ireland Assembly. In March 2000, the Review Group published a report, *the Review of the Criminal Justice System in Northern Ireland* ("the Review"), which included 294 recommendations for reform.

It was not until eighteen months later that the British Government published an Implementation Plan and a draft Justice (Northern Ireland) Bill in response to the Review. The Bill, which received Royal Assent in July 2002 and became the Justice Act 2002, codified aspects of the Implementation Plan. The Act's provisions did not, however, take immediate effect. Many provisions were contingent on the devolution of criminal justice powers from London to Belfast, but the Act established no timetable for devolution.

The Implementation Plan also made clear that the individual criminal justice agencies were supposed to carry out independently the reform measures that did not require further legislation. For example, the Plan supported human rights training for all criminal justice personnel, but left it to the specific agencies to decide when and how to carry out that training. The plan itself did not discuss a mechanism for overseeing the proposed changes, nor did it set out a timetable for their implementation. In light of these deficiencies, it is not surprising that, three years later, criminal justice agencies are only just beginning to initiate significant reforms. Those reforms that had been implemented within the prosecution service and other agencies are only now beginning to be systematically monitored, and they have not been well-publicized, so the public is barely aware of these developments.

After much delay, and following significant pressure from nongovernmental organizations and political parties, a Justice Oversight Commissioner was finally appointed in July 2003. The Justice Oversight Commissioner will play a role similar to that of the Oversight Commissioner for Policing Reform. The appointment of a Justice Oversight Commissioner earlier in the process could have helped to ad-

dress problems of transparency and delay, and pushed the sluggish criminal justice reform process forward. While the substance of the reforms recommended by the Criminal Justice Review Group are welcome and have the potential to enhance justice and accountability in Northern Ireland, it is striking how far behind criminal justice reforms are, judged against the pace of reform in other areas, such as policing. Nearly six years after the Good Friday Agreement, reform in the prosecution service, judicial appointments process, and other criminal justice agencies is only just beginning.

## RECENT DEVELOPMENTS IN CRIMINAL JUSTICE

### 1. The Joint Declaration

In a Joint Declaration published in April 2003, the British and Irish Governments laid out a series of proposals intended to realize more fully the promises made in the Good Friday Agreement. With respect to criminal justice reforms, the Declaration announced that the British Government would introduce a second Criminal Justice bill to speed up the creation of a Judicial Appointments Commission and to “make further provision to promote a human rights culture in the criminal justice system.” The Declaration also made clear that the government “accepted the desirability of devolving policing and justice” within the lifetime of the next Northern Ireland Assembly, as long as this was done with the broad support of Northern Ireland’s political parties. The Declaration did not specify which responsibilities would be devolved, but it did make clear that the British Government would retain control over issues such as the armed forces and national security.

In order to pave the way for devolution, the Declaration also proposed four possible models for the local administration of devolved justice powers: (1) the creation of a single justice department headed by one minister; (2) the creation of a single justice department headed by two ministers, in order to “strengthen cross-community accountability” by requiring both ministers, presumably from different communities, to agree on decision-making; (3) handing over responsibility for criminal justice matters to the Office of the First and Deputy First Ministers; and (4) the creation of two separate departments, for example policing and justice, headed by ministers from different communities. These different models raise questions about the relationships that will exist between the ministers in charge of the department(s) as well as the relationships between these officials and the local executive, the judiciary, the Attorney General, and policing officials. But the goal of local control over criminal justice and policing is an important one that we believe will help to address human rights concerns about the current system.

The process for arriving at the appropriate model for local control of criminal justice issues should include wide public consultation and should begin immediately, so that once the Assembly is reinstated, devolution of criminal justice can occur with minimal delay.

## 2. Updated Implementation Plan and New Legislation

In June 2003, the United Kingdom Government published an updated Criminal Justice Implementation Plan. The 2003 Plan significantly revised the 2001 Implementation Plan and set out a timetable for previously agreed-upon reforms. Most importantly, the new Plan committed the government to introducing new Criminal Justice legislation. The timetable included:

- Introduction of the new Criminal Justice bill in the fall of 2003;
- Launching of the new Public Prosecution Service in December 2003, to be phased in over three years;
- Publication of statements of ethics by criminal justice agencies by the end of 2003 (this has not been accomplished to date); and
- A review by a (not then appointed) Oversight Commissioner in December 2003, with a report to be published in January 2004.

The new Criminal Justice bill (“Justice Bill 2003”) was finally introduced in December 2003 and is expected to become law, after revisions, in the spring or summer of 2004. It will make the following changes to the Justice Act 2002:

- The Judicial Appointments Commission (“JAC”) will be established prior to devolution, with a key objective being to secure a judiciary in Northern Ireland that is reflective of society, consistent with merit requirements. Both the lay and legal membership of the JAC will be required to be reflective of society, insofar as possible.
- The Prime Minister will appoint the Lord Chief Justice and Lord Justices of Appeals “taking into consideration” the recommendation made by the local First Minister and Deputy First Minister, and the JAC will advise the ministers on the procedure for these appointments.

In contrast, the 2003 Implementation Plan had promised that such appointments would be made “based on” the recommendation of the local leaders, and the government has not provided an explanation for this shift in weight given to the recommendation of local leaders. We recommend that the language of the 2003 Plan be implemented instead, giving local ministers more influence in the appointments process.

Criminal justice agencies must have regard to guidance issued by the Attorney General for Northern Ireland regarding “the exercise of their functions in a manner consistent with international human rights standards.” The 2003 Plan was more straightforward, committing the government to include a provision in the new bill whereby criminal justice agencies would have due regard to human rights standards. We recommend use of the Plan’s language. Also, in the proposed legislation, it was not clear if the referral to the “Attorney General for Northern Ireland” meant that the provision would await devolution and the appointment of that post, or if the current Attorney General for the United Kingdom and Northern Ireland would issue the guidance. This point should be clarified before the bill is enacted.

The Director of Public Prosecutions for Northern Ireland (“DPP”) shall refer to the Police Ombudsman matters that appear to the DPP to indicate that a police officer “may have committed a criminal of-

fence; or may, in the course of a criminal investigation, have behaved in a manner which would justify disciplinary proceedings” unless the Ombudsman is already aware of the issue.

This revised legislation more closely reflects the Criminal Justice Review team’s recommendations than did the Justice Act 2002. As noted above, however, the legislation falls short of some important commitments made in the government’s 2003 Implementation Plan. We recommend, on those issues, that the bill be amended to track the language of commitments in the Implementation Plan

### **3. Justice Oversight Commissioner**

On July 18, 2003, the British Government appointed Lord Clyde, a former Scottish law lord, to be Oversight Commissioner to monitor criminal justice reforms. The appointment of an Oversight Commissioner provides an opportunity not only to monitor progress, but also to push forward the implementation of reform, and we encourage Lord Clyde to work proactively with the criminal justice agencies to increase the pace of reform. In this regard, it is important that Lord Clyde review the provisions of the new Justice Bill. We also recommend that the government codify the powers and duties of the Oversight Commissioner in statute and ensure that the office is sufficiently resourced in light of the scope and importance of the job. Grounding the powers in statute would create the same standing for the Justice Oversight Commissioner as is given to the parallel Oversight Commissioner for Policing. Providing the Commissioner with a statutory mandate would increase the public accountability of his office and help ensure that he receives full cooperation from the criminal justice agencies he is overseeing. We recommend that these provisions be added to the Justice Bill 2003 before it is enacted.

### **EMERGENCY POWERS**

The United States, now faced with its own struggle against terrorist violence, can take a lesson from the United Kingdom experience with emergency laws. These draconian provisions, enacted in response to political violence in the 1970s, fostered an environment in Northern Ireland in which human rights were routinely violated. The laws gave the security forces in Northern Ireland expansive powers to stop, question, search, arrest, detain, and interrogate persons suspected of terrorist activity. Some of the more draconian provisions included authorization of detention without charge for up to seven days warrantless searches and seizures, denial of access to an attorney for successive 48 hour periods, and trial in non-jury “Diplock” courts with lower standards for the admissibility of evidence. At the time, the government insisted that the laws were a temporary, targeted response to the specific threat posed by paramilitaries.

Experience in Northern Ireland shows that these kinds of police powers are very hard to get rid of, once enacted. Rather, they become embedded in the fabric of the criminal justice system. In February 2001, the United Kingdom brought into force the Terrorism Act 2000, despite the 1998 Good Friday Agreement and the many years of paramilitary cease-fires. This law significantly expanded the definition of terrorism and put many of the supposedly “emergency” powers on a permanent, UK-wide footing. Under the Act, for example, suspects

anywhere in the United Kingdom can be arrested without a warrant, detained for up to 7 days without charge (with judicial authorization after the first 48 hours), and denied all access to an attorney for 48 hours following arrest. The Act also includes a special section on Northern Ireland which, among other measures, explicitly authorizes the use of non-jury Diplock courts. While the Northern Ireland provisions of the Act expire automatically if they are not renewed each year by order of the Secretary of State for Northern Ireland, so far, they have been renewed each year. Unfortunately, the British Government specifically excluded emergency laws from the remit of the Criminal Justice Review. The Joint Declaration indicated, however, that the British Government intended to repeal these provisions by April 2005 if there was a "continuing enabling environment."

We are concerned that the Terrorism Act 2000 defines terrorism too vaguely and that its provisions allowing the use of Diplock Courts, the possibility of 48-hour detention without access to a lawyer, and warrantless arrest violate international human rights law. The U.N. Human Rights Committee has expressed its concern about Diplock Courts and 48-hour detention. The Northern Ireland Office has not reported the number of Diplock trials in recent years, but statistics indicate that there were 149 offenses heard before Diplock courts in 2002. Although we welcome the decreased reliance on Diplock trials over the last several years, it is difficult to understand why the special procedures are used at all, or for that matter, why they are still on the books. We believe the Northern Ireland provisions of the Terrorism Act are unnecessary and should be revoked. In addition, the Northern Ireland Office should publish clear statistics on past and present use of Diplock courts.

**HUMAN RIGHTS DEFENDERS:  
PATRICK FINUCANE AND ROSEMARY NELSON**

Today's hearing comes at a critical moment in the long struggle for justice and accountability for the murders of human rights lawyers Patrick Finucane and Rosemary Nelson. Having sought for years to put off the difficult process of uncovering the truth in these cases, the United Kingdom Government has finally come to the threshold of holding public inquiries into government collusion in the deaths of Finucane and Nelson. Peter Cory, the international judge appointed to conduct investigations in these and four other contested cases, has concluded in reports not yet made public that there should be public inquiries established in the Finucane and Nelson cases. Having already committed at the outset, as part of negotiations leading to Cory's appointment, to implement his recommendations, the United Kingdom Government should move quickly to:

- Disclose Judge Cory's reports in their entirety to the families of the victims concerned;
- Publish the reports immediately;
- Consult with the families about the terms of reference of the public inquiries; and
- Establish those inquiries without delay.

Some have argued that focusing on redress for past wrongs will simply reopen old wounds and mire society in the bitterness of a conflict that is now essentially over. But this view ignores the violence done to the fabric of society by leaving such wounds to fester. As so many societies transitioning from conflict to peace have learned, building a culture of human rights and accountability will require having a process for addressing past violations. Public inquiries into government collusion in the deaths of these two human rights lawyers is quite simply a prerequisite to breaking the cycle of impunity that continues to persist in Northern Ireland. Until the government demonstrates a commitment to acknowledging the wrongs done in these cases, there will be a fundamental withholding of faith on the part of many in Northern Ireland that no amount of policing or criminal justice reforms will remedy.

While it is certainly true that the situation of human rights lawyers and activists in Northern Ireland has become less insecure over the last several years, there is an ongoing need for vigilance, particularly since the onset of the global "war on terrorism," to ensure that irresponsible rhetoric does not once again create an environment in which attacks on human rights advocates is tolerated. In this regard, Human Rights First was deeply troubled by public remarks made recently by David Trimble, leader of Northern Ireland's Ulster Unionist Party, in which he attacked human rights organizations as a "great curse." Speaking at a conference on victims of terrorism in Madrid, Mr. Trimble charged that human rights groups "justify terrorist acts and end up being complicit in the murder of innocent victims." We believe such remarks are inflammatory and reckless and can contribute to a climate in which governments and non-state actors feel little restraint in attacking human rights defenders who are critical of official actions. In fact, Mr. Trimble's remarks were reminiscent of those made by Douglas Hogg in an address to the British Parliament on January 9, 1989. Hogg charged that unnamed solicitors in Northern Ireland "are unduly sympathetic to the cause of the IRA." Weeks later, Patrick Finucane was murdered. We have written to Mr. Trimble expressing our concern about these remarks, and we urge this Commission to do the same.

Thank you for the opportunity to share our views with the Commission.

**MATERIAL SUBMITTED FOR THE RECORD  
BY ELISA MASSIMINO**

**NORTHERN IRELAND:  
A REPORT TO THE ASSOCIATION OF THE BAR  
OF THE CITY OF NEW YORK  
FROM A MISSION OF THE COMMITTEE ON  
INTERNATIONAL HUMAN RIGHTS<sup>1</sup>**

**BY GERALD P. CONROY, FIONA DOHERTY, SAM SCOTT MILLER, MARNY  
REQUA, BARBARA PAUL ROBINSON AND SIDNEY H. STEIN**

**I. INTRODUCTION**

**A. Background**

The Committee on International Human Rights of The Association of the Bar of the City of New York (“ABCNY”) has been periodically monitoring adherence to international human rights standards in Northern Ireland for the past 17 years. As part of this work, the Committee sponsored missions to Northern Ireland in 1987 and 1998 to examine issues surrounding the administration of justice.<sup>2</sup> We covered the criminal justice system, the use of emergency laws and, in the 1998 mission, the implementation of the Good Friday Agreement.

The Committee undertook a third mission in May 2003 to continue our dialogue with practitioners and officials in Northern Ireland regarding ongoing efforts to reform the criminal justice system. The mission examined issues pertaining to the Justice (Northern Ireland) Act 2002 (“Justice Act 2002”); the transformation of the public prosecution service; new procedures for judicial appointments; human rights training; compliance with the European Convention on Hu-

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<sup>1</sup> The members of the mission, which was chaired by Sam Scott Miller, partner in the law firm of Orrick, Herrington & Sutcliffe, were Judge Sidney H. Stein of the United States District Court for the Southern District of New York; Barbara Paul Robinson, partner in the law firm of Debevoise & Plimpton and former president of The Association of the Bar of the City of New York (“ABCNY”); Gerald P. Conroy, Deputy Commissioner of the office of the Special Commissioner of Investigation for the New York City School District and former Assistant District Attorney of the New York County District Attorney’s Office; Fiona Doherty, Senior Associate at the Lawyers Committee for Human Rights; and Marny Requa, student in Fordham Law School’s Crowley Program for International Human Rights. A list of those who generously took the time to meet with us and make this report possible is set forth in Appendix A. We thank Scott Horton, former Chair, and Peter W. Tomlinson, former Secretary, as well as current Chair Martin Flaherty, of the Committee on International Human Rights for their support. We thank the H. N. Wilson Foundation for its generous contribution to the Committee on International Human Rights that provided funding for the mission.

<sup>2</sup> For reports of these missions, see William E. Hellerstein, Robert B. McKay and Peter R. Schlam, *Criminal Justice and Human Rights in Northern Ireland: A Report to the Association of the Bar of the City of New York* (“1987 ABCNY Report”), 43 REC. ASS’N B. CITY N.Y. 110 (1988), and Peter G. Eikenberry, Gerald P. Conroy, Barbara S. Jones, Barbara Paul Robinson, and Sidney H. Stein, Committee on International Human Rights, *Northern Ireland: A Report to the Association of the Bar of the City of New York from a Mission of the Committee on International Human Rights* (“1999 ABCNY Report”), (ABCNY June 1999).

man Rights; the intimidation of defense lawyers; and the status of the investigations into the murders of lawyers Patrick Finucane and Rosemary Nelson.

Remarkable changes have occurred in Northern Ireland over the past 17 years. Members of our 1987 mission found Belfast a divided city, symbolized by military check points surrounding the city center and signs of violence in many neighborhoods. In contrast, the 1998 mission “encountered a growing sense of optimism” among those interviewed—due in large part to the signing of the Good Friday Agreement on April 10, 1998, and its subsequent ratification by voters in Northern Ireland and the Republic of Ireland on May 22, 1998. The Agreement affirmed the parties’ commitment to “the civil rights and the religious liberties of everyone in the community,” along with certain internationally recognized civil and political rights,<sup>3</sup> and called upon those in authority to pledge to “serve all the people in Northern Ireland equally.”<sup>4</sup> The Agreement contemplated the establishment of a new Northern Ireland Human Rights Commission and a new Equality Commission, along with two other important bodies: a Policing Commission to recommend reforms in the Northern Ireland police force (subsequently known as the “Patten Commission,” after its chair, Chris Patten), and a Criminal Justice Review Body to recommend reforms in the criminal justice system.<sup>5</sup>

In the wake of our 2003 mission, which included three members of the 1998 mission, the Committee is even more hopeful about the prospects for lasting peace in Northern Ireland. In the five years since our last visit, there has been a transformation of public life in Belfast. Gone are heavily armed police in armored vehicles; gone are boarded-up windows and empty streets. In their place are new glass-walled buildings with many others under construction—vibrant restaurants and a bustling street life in the center of Belfast.

The last five years have also been marked by significant political change. Local administrative powers were devolved from the British Government to the Northern Ireland Assembly in December 1999, as outlined in the Good Friday Agreement. The Assembly, composed of 108 elected members, has full legislative and executive authority over all matters devolved from Westminster. To carry out its executive functions, the Assembly elects a First Minister and Deputy First Minister, who stand for election jointly and can only be selected with cross-community support. The First and Deputy First Ministers lead an Executive Committee of Ministers, who are appointed by the individual political parties in proportion to their relative showings in the Assembly elections.

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<sup>3</sup> Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland (“Good Friday Agreement”), Apr. 10, 1998, Rights, Safeguards and Equality of Opportunity, Human Rights ¶ 1. A list of the documents reviewed by us is attached as Appendix B.

<sup>4</sup> *Id.* Strand One, Democratic Institutions in Northern Ireland, Annex A, Pledge of Office at (c).

<sup>5</sup> *Id.* Rights, Safeguards and Equality of Opportunity, Human Rights ¶¶ 5–6; Policing and Justice ¶ 3, ¶ 5.

Despite the pivotal roles of the Assembly and the Executive, they have been suspended four times in the past four years—twice for only 24 hours—in periods of political instability. The local government is in fact currently suspended and has been since October 2002. During suspension, the Secretary of State for Northern Ireland, the head of the British Government’s Northern Ireland Office (“NIO”), assumes responsibility for the administrative activities of the Executive.

The suspensions represent steps backward and are frustrating, considering the widespread public support for the Assembly and the flourishing civil society in Northern Ireland.<sup>6</sup> Despite local support for devolution, however, elections held on November 26, 2003, signaled a polarized electorate, with the anti-Agreement Democratic Unionist Party (“DUP”) gaining seats from the Ulster Unionist Party (“UUP”) and, on the nationalist side, the moderate Social Democratic and Labour Party (“SDLP”) losing seats to Sinn Fein.<sup>7</sup> Although negotiations among local political leaders and the Governments of Ireland and the United Kingdom are ongoing, it is unclear how long the suspension of the Executive and the Assembly might continue, considering that the DUP has said it will not share power with Sinn Fein. A review of the Good Friday Agreement by the British and Irish Governments, in which the Northern Ireland political parties were participating, began on February 3, 2004.<sup>8</sup>

It is important to note that the devolution of administrative powers is distinct from the devolution of criminal justice. The Good Friday Agreement envisioned local governance over health, education, social services, local budgets, agriculture, and development. Regarding devolution of policing and justice issues, the Agreement was hopeful but noncommittal, stating that the British Government was “ready in principle” to devolve these areas with the Abroad support of the political parties” and after consultation with the Irish Government.<sup>9</sup> In

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<sup>6</sup> An article in the *New York Times* published shortly after the suspension of the Assembly described the people in Northern Ireland as frustrated with the political impasse but confident that the violence of the past would not return. Some of those interviewed said the public had moved ahead of the politicians in trusting the peace process. Warren Hoge, *The Troubles in Ulster Shift from Street to the Assembly*, NEW YORK TIMES, Oct. 14, 2002.

<sup>7</sup> The term “unionist” refers to those whose goal is to maintain Northern Ireland’s unity with the United Kingdom. “Loyalists” are also loyal to the British Crown, but there is an implication that at least some of them would support the use of physical force for that political goal. “Nationalist” generally refers to those who desire a reunification of Ireland. “Republicans” also have a united Ireland as their main goal, but historically the term implies the support by some of their members of physical force to achieve that end.

<sup>8</sup> The scope of the review is itself being debated. The DUP would like to renegotiate the Agreement, while the other parties have called for a limited review.

<sup>9</sup> Good Friday Agreement, Policing and Justice ¶ 7.

practical terms, this means that in order to devolve justice issues, the Assembly must be reinstated, the British Government must commit to a local institutional model with responsibility for justice and policing, and it must authorize devolution to that institution.<sup>10</sup>

We are dismayed that the local power-sharing government is suspended, because in addition to other concerns, certain criminal justice reforms depend on the devolution of both administrative and criminal justice powers. We hope all involved will ensure that restoration occurs at the earliest date feasible.

#### **B. Focus of the 2003 Mission**

In the 2003 mission, our Committee concentrated on the current state of the criminal justice system and the debate surrounding devolution of criminal justice to the local government. Although the new Police Service of Northern Ireland (“PSNI”) is unquestionably part of the criminal justice system, the Patten Commission’s report on policing was carried out separately from the Criminal Justice Review, which evaluated all other criminal justice agencies and made recommendations for reform. We decided to focus predominantly on the latter reforms as the Patten Commission’s recommendations were generally consistent with our earlier recommendations and, in comparison, little international attention has been given to the Criminal Justice Review.

During the mission, we found considerable consensus on the shortcomings of the criminal justice system as well as on the steps required to remedy these shortcomings. Most individuals we met with emphasized that political issues should not be used to forestall the implementation of reforms, as they often have been in Northern Ireland. Indeed, one of the greatest frustrations, repeatedly expressed, was with the slow pace of the implementation process. Although we recognize that it is not a simple task to overhaul government structures while dealing with the legacies of a divided society, we agree that the implementation of the reforms has been unnecessarily and repeatedly delayed. Heartened by the changes that have been instituted to date, however, we believe that the promise of the Criminal Justice Review can and should be fully honored.

Many of those we spoke with believed it was necessary to address the violence of the past and unsolved deaths on both sides of the political divide, in a way that does not jeopardize future stability. From this perspective, reforms to the criminal justice system are one aspect of a larger goal—to ensure a just society for everyone in Northern Ireland and find a way to address divisions of the past and the pain that endures, while strengthening participation in public life.

A central goal of our Committee is to maintain a dialogue with lawyers and officials in Northern Ireland and elsewhere, in order to promote respect for and compliance with human rights norms through-

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<sup>10</sup> As described below, the British Government has committed to devolve justice issues within the lifetime of the next Assembly, which has a term of five years once the winners of the November 26, 2003, elections take office. See section III(B)(1), “The Joint Declaration.”

out the world. As we in the United States struggle with the challenges terrorism poses to our own human rights values, we have repeatedly urged our government to ensure that measures taken to increase security do not compromise the rights of the accused, recognizing that we all lose if we disregard the fundamental protections central to our constitutional system.<sup>11</sup> While our Committee has come to better understand the tension between security and liberty in light of our own experiences, we also recognize that experience in Northern Ireland is unique and we have tried to keep Northern Ireland's distinct history in mind when making recommendations.

The delegates on our May 2003 mission interviewed a long list of individuals with specialized knowledge of Northern Ireland's criminal justice system in a series of meetings in Belfast, London, and New York. We met with officials from the Northern Ireland Office, the Office of the Director of Public Prosecutions, the Northern Ireland Court Service, the Police Service of Northern Ireland, the Northern Ireland Human Rights Commission and the Police Ombudsman's office, as well as representatives from the Republic of Ireland, academics and legal practitioners. We also met with three nongovernmental organizations, each known internationally for its work in promoting human rights protections in Northern Ireland: the Belfast-based Committee

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<sup>11</sup> The ABCNY has argued against civil liberties restrictions and potential human rights violations by the federal government in furtherance of the "war on terrorism." See, e.g., *Brief for Amicus Curiae Association of the Bar of the City of New York in Support of Jose Padilla* (ABCNY), July 29, 2003 (arguing that the government's assertion of its right to detain Padilla indefinitely, without charge or process, is both unlawful and unprecedented, and that Padilla has a fundamental and undeniable interest in the assistance of counsel); Committee on Immigration and Nationality Law, *Letter to Immigration and Naturalization Service, re: INS No. 2171-01 Custody Procedures*, 66 Fed. Reg. 48334 (ABCNY), Sept. 20, 2001 (protesting interim rule that would extend the time in which the INS must make a determination in the event of an arrest without warrant); Committee on Military Affairs and Justice, *Inter Arma Silent Leges: In Times of Armed Conflict, Should the Laws be Silent? Report on The President's Military Order of November 13, 2001* (ABCNY), Dec. 2001 (criticizing the military order establishing military commissions); Committee on Communications and Media Law, *The Press and the Public's First Amendment Right of Access to Terrorism on Trial: A Position Paper* (ABCNY), Feb. 2002 (urging that trials of suspected terrorists be made accessible to the media and the public, citing historic precedent); Committee on Professional Responsibility, *Statement Regarding the United States Department of Justice Final Rule Allowing "Eavesdropping" on Lawyer/Client Conversations* (ABCNY), March 2002 (arguing that the federal rule allowing the Attorney General to authorize eavesdropping on attorney/client communications upon a finding of "reasonable suspicion" of "terrorism" strikes at the core of the adversarial system of justice); and Committee on Military Affairs and Justice, *Letter to Department of Defense Re: Enemy Prisoners of War and Other Detainees* (ABCNY), Apr. 18, 2003 (urging that Guantánamo detainees be afforded the right to a formal determination of their status). See generally ABCNY, 57 THE RECORD No. 1-2 (Winter/Spring 2002). The ABCNY also served as a signatory on *Brief of Amici Curiae Bipartisan Coalition of National and International Non-Governmental Organizations in Support of Petitioners, Rasul v. Bush and Odah v. U.S.*, 321 F.3d 1134 (D.C. Cir. 2003), cert. granted, 124 S. Ct. 534 (Nov. 10, 2003) (arguing that jurisdiction of U.S. courts over Guantánamo detainees is proper).

on the Administration of Justice (“CAJ”); the London-based British Irish Rights Watch (“BIRW”); and the Derry/Londonderry<sup>12</sup>-based Pat Finucane Center (“PFC”).<sup>13</sup>

During previous ABCNY missions, our delegates did not meet with representatives of Northern Ireland’s political parties. In light of the political developments since our last visit, we thought it would be beneficial to discuss criminal justice issues with the parties that were elected to participate in the now suspended Assembly and will share responsibility for justice issues if and when devolution occurs. In that vein, we met with the justice spokespeople for many of the political parties in Northern Ireland.<sup>14</sup> We are respectful of the role local political parties continue to play in the peace process, the devolved government, and strengthening local institutions.

## II. EXECUTIVE SUMMARY

### A. Summary

The Committee on International Human Rights of the Association of the Bar of the City of New York sponsored a mission to Northern Ireland in May 2003. This mission, which focused on ongoing efforts to reform Northern Ireland’s criminal justice system, followed up on the Committee’s two previous missions to Northern Ireland, in 1987 and 1998 respectively. The 2003 mission examined issues pertaining to the Justice Act 2002; the transformation of the public prosecution service; new procedures for judicial appointments; human rights training; compliance with the European Convention on Human Rights; the intimidation of defense lawyers; and the investigations into the murders of lawyers Patrick Finucane and Rosemary Nelson.

While we were impressed by the significant changes that have occurred in the five years since our last mission to Northern Ireland—a flourishing civil society, the establishment of the new Policing Service, and the growth of domestic human rights jurisprudence, to name a few—it is frustrating to find that five years after the Good Friday Agreement and three years after the Criminal Justice Review, numerous agreed upon reforms had not been fully implemented or in some cases even initiated. Planned changes to the prosecution service and the judicial appointments process, which could do much to engender public confidence in the criminal justice system, are two examples of reforms that are only now coming about.

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<sup>12</sup> Although the official name of the city is Londonderry, the city council changed its name to the “Derry City Council” in 1984. Nationalists refer to the city as Derry, while Loyalists generally refer to it as Londonderry, and local politicians are seeking to have Parliament officially change the name to Derry.

<sup>13</sup> For a full list of individuals interviewed during the mission, see Appendix A.

<sup>14</sup> Unfortunately, we were unable to meet with members of the two main unionist parties, the Democratic Unionist Party (“DUP”) and the Ulster Unionist Party (“UUP”). The DUP declined to meet with us, although it has subsequently agreed to meet with us in New York, and the UUP cancelled a scheduled interview. We researched the policy positions of both parties and met with representatives of the leading nationalist, republican, and cross-community parties.

The Committee feels strongly that political issues should not be used to forestall the implementation of reforms, as they often have been in Northern Ireland. With the reduction in violence and diminishing need for a heavily armed security presence, delays that once may have been practical necessity now seem more like political leveraging. Although we recognize that it is not a simple task to overhaul government structures while dealing with the legacies of a divided society, we agree with many of our interviewees that the implementation of the reforms has been unnecessarily held back.

One exception to this has been the reform of Northern Ireland's policing service. International and local scrutiny ensured that policing reforms—such as the establishment of the Police Ombudsman's office, the appointment of an Oversight Commissioner, and the drafting of new human rights codes—happened relatively quickly, with opportunity for public consultation and debate on significant issues. Although the process has not been without shortcomings, the pace and transparency of policing reforms has been striking in comparison to reforms of other criminal justice agencies.

For example, the Office of the Director of Public Prosecutions is only now implementing the process of creating its own successor agency, the Public Prosecution Service ("PPS") for Northern Ireland. The PPS will be phased in gradually over the next three years. It will prosecute all crimes (currently lesser offenses are prosecuted by police officers), and its caseload is expected to grow to 75,000 cases from the 10,000 cases currently handled by the Office of the DPP. The number of lawyers in the office will increase from 40 to 150.

Although hiring has already begun—there were 70 lawyers on staff by the time of our visit—information about recruitment and hiring has not been made public and the prosecution office has yet to publish even a draft of a promised code of conduct for the service. The slow pace of reform was cited by many we met with as a source of frustration, as was the lack of transparency in the reform efforts to date.

It will take time to complete the far-reaching changes contemplated for the PPS, and we recognize the importance of gradual increases in staff, offices, and caseload. We do not see any obstacles, however, to initiating some of the reforms immediately, particularly those that improve transparency, accountability, and public confidence. These include public consultation on codes of ethics and practice, issuing annual reports, speeding up the introduction of an independent complaints mechanism, and publishing information about the hiring process and staff demographics.

In another example, we are concerned by the government's failure to implement several important judgments of the European Court of Human Rights that directly impact Northern Ireland's criminal justice system. The European Court has criticized the prosecution service and other criminal justice agencies in a number of recent cases, finding violations of the right to life because of the government's failure to properly investigate the state's use of lethal force. As most of these cases stem from incidents that occurred in the 1970s, the European Court was rightly concerned about delays in investigation and prosecution. Since the judgments, the government has not re-investigated any of the cases or enacted legislation to address the shortfalls signaled in the decisions. This delay further undermines any investigation that the state may be able to conduct.

A related concern is the lack of progress in resolving the cases of Patrick Finucane and Rosemary Nelson, two Northern Ireland solicitors murdered in 1989 and 1999 respectively. Both solicitors represented defendants arrested under Northern Ireland's emergency laws, and both of their cases involve allegations that members of the security forces assisted in the killings. A four-year police investigation of the Finucane case was completed last year. A short public summary of the investigation report made clear that members of the security forces had indeed colluded in Finucane's murder, but the full report, which also documents obstruction of the investigation itself, has not yet been published. In the Nelson case, almost five years after her death, the police investigation is still ongoing, although there have been no prosecutions. A former soldier and police informer are reportedly among the primary suspects.

In January 2004, a judge appointed to review the evidence of collusion in the Finucane and Nelson cases made clear that he had recommended public inquiries into both cases in October 2003. The U.K. Government had yet to act on the recommendations, however. We are deeply frustrated with these delays and continue to call on the government to establish immediate public inquiries in these two cases.

Many of those we spoke with believe it is necessary to address the violence of the past and the large number of unsolved killings on both sides of the political divide, in a way that does not jeopardize future stability. From this perspective, reforms to the criminal justice system are one aspect of a larger goal—to ensure a just society for everyone in Northern Ireland and find a way to address divisions of the past and the pain that endures, while strengthening participation in public life. We recognize that traditional criminal investigations many years after deaths present difficulties in terms of cost, delay, and preservation of evidence, and may not be realistic options in many of the cases. We call on the Law Society and Bar Council to help propose alternative means of seeking justice in these cases and, in general, would like to encourage public dialogue on possible options.

It is important to note that, despite incomplete reform of individual criminal justice agencies, there has been progress in the system's regard for human rights in recent years. In addition to policing reform and the review of the criminal justice system, the adoption of the U.K.-wide Human Rights Act incorporating the European Convention on Human Rights into domestic law, and civic activism on criminal justice issues have contributed to increased awareness and compliance with human rights norms. Furthermore, shortly following our return from Belfast, publication of an updated Criminal Justice Review Implementation Plan, together with detailed plans and timetables for the continuing implementation process and the subsequent Justice Bill 2003 marked movement toward implementation of the criminal justice aspects of the Good Friday Agreement. Given this recent progress, we have confidence that promised reforms will be carried out. We believe they must be, if the criminal justice system is to become a cornerstone of a peaceful Northern Ireland society.

While the heads of individual agencies have a great deal of control over the speed and depth of reforms, ultimate responsibility for these agencies rests at the ministerial level: the Northern Ireland Secretary of State, the highest official in the Northern Ireland Office, has general responsibility for criminal justice and policing matters in

Northern Ireland; the Attorney General for the United Kingdom and Northern Ireland oversees the Director of Public Prosecutions; and the United Kingdom's Lord Chancellor is responsible for the Northern Ireland Court Service, management of the courts, and judicial appointments. We believe that it is the duty both of agency personnel and of ministerial figures to ensure that promises made in the Good Friday Agreement are fully realized, and we call on them to do so.

#### **B. Committee on International Human Rights Central Recommendations**

##### *Overview of the Criminal Justice Reform Process*

- It is discouraging to discover that five years after the Good Friday Agreement, reform in the prosecution service, judicial appointments process, and other criminal justice areas has just begun to be implemented and lags far behind policing reforms. Overall we welcome the substance of the reforms recommended in the March 2000 Criminal Justice Review, but are concerned by this delay and the reported lack of transparency in the process.
- Likewise, the long delayed appointment of Oversight Commissioner is welcomed as it signifies an important step toward meaningful change. We recommend that this post be grounded in statute, believing that this would increase the public accountability of the Oversight Commissioner's office and help ensure that he receives full cooperation from the criminal justice agencies he is overseeing. We also believe the office should be provided sufficient resources.
- Regarding devolution, we believe that local control over criminal justice and policing is a laudable and obtainable goal that will help address human rights concerns. We take no position on the best institutional model for local control, but we strongly believe that there should be public consultation on devolution options. It would be best to start this process right away, so that once the Assembly is reinstated, devolution of criminal justice can occur with minimal delay. (Most of the reforms we discuss in this report, however, are not dependent on devolution.)
- We were pleased that the Justice Bill 2003 was finally issued, but we recommend it be amended before it is enacted to require criminal justice agencies to have due regard to international human rights standards, as promised in the Implementation Plan 2003, and recommend that it codify the powers and duties of the Justice Oversight Commissioner. (Additional desirable amendments to the bill are proposed in the Judiciary and Police Ombudsman sections of our report.)

##### *The Incorporation of International Human Rights Law*

- Human rights law is given significantly more weight in Northern Ireland five years after the Good Friday Agreement: it is on the government agenda and that of the Law Society, the Bar Council, and criminal justice agencies, and it is invoked in domestic case law and lobbying efforts by nongovernmental organizations and political parties.

- We would encourage lawyers and judges to further develop Northern Ireland's jurisprudence under the European Convention—a powerful tool in defending rights—in domestic cases. In addition, we recommend that all judges, prosecutors, lawyers, and law students be trained in human rights law and that such curricula be evaluated by the Northern Ireland Human Rights Commission.
- Recent decisions by the European Court of Human Rights pointed to long-standing weaknesses in the Northern Ireland criminal justice system. To comply with these judgments, the government should properly investigate the cases in question and amend its regulations and procedures to prevent future violations. Relevant reforms would include implementing procedures for the investigation of the use of force by security personnel, as well as allegations of security-force collusion with paramilitaries; ensuring that these investigations are independent from the forces implicated and conducted expeditiously; updating and monitoring the inquest system; and establishing guidelines for the giving of reasons for the failure to prosecute. We strongly urge the government to address the European Court judgments in a more cohesive and comprehensive manner.

#### *The Prosecution Function*

- We support the creation of the PPS, and measures that will require the PPS to prosecute all crimes. Although we realize that these significant changes cannot take place overnight, we regret that the reforms were only recently initiated and will be introduced over the course of three years. We recommend that the timetable of reforms be accelerated where feasible and that the implementation of reforms be a top priority.
- Publishing a code of ethics should also be a high priority for the office of the DPP, and we regret that it has been delayed. At this stage, we recommend publishing a draft code for public comment forthwith.
- Reform efforts have only recently been publicized, and it is difficult to know what changes have been made to date and what steps have been taken to prepare prosecutors for the new service. Publication of a prosecution-specific implementation plan and a detailed timetable could help to address public concerns. (The 2003 Implementation Plan sets out only general markers for reform to the prosecution service.) We strongly urge the Office of the DPP to issue a detailed annual report next year in order to publicize the status of its reform efforts.
- In general, the Office of the DPP should maintain a higher level of transparency during the reform process than it has to date. There is no need to wait for devolution or full implementation of the PPS to inform the public of prosecution reforms via regular reports, timetables, and a web site.
- We recommend that the Northern Ireland Human Rights Commission monitor and lend its expertise in the human rights training of prosecutors.

- The Office of the DPP should publish information about the composition of the prosecution staff and support equality monitoring of the recruitment process. It should ensure that new hires are reflective of society in Northern Ireland and should aim to hire at all levels of the service.
- The recommendation made in the Criminal Justice Review regarding a diversion program for youthful offenders warrants high priority by the DPP as it will enhance public confidence in the prosecutor's office.
- Regarding the DPP's giving of reasons in controversial cases, we believe that the presumption should be shifted toward giving reasons for not prosecuting and that the Office of the DPP should clarify its policy in this regard.

#### *The Judiciary*

- The appointment of the Commissioner for Judicial Appointments was a step forward, despite the Commissioner's limited authority.
- We welcome the recent news that the Judicial Appointments Commission will be established prior to devolution, and believe it should be established expeditiously, as should the final procedures for its operation.
- Before the JAC is established, we recommend the Court Service of Northern Ireland accept the recommendations of the Commissioner for Judicial Appointments regarding reform of the current process.
- New criminal justice legislation (the Justice Bill 2003) provides that both legal and lay members on the JAC will be appointed with a view toward making the JAC as reflective of the community as possible. We welcomed this aspect of the legislation, believing a commission whose members are reflective of Northern Ireland society as a whole will most easily gain the confidence of the entire community in its recommendations.
- We were discouraged, however, that the bill only provides that the Prime Minister would take into consideration the recommendation of the local First Minister and Deputy First Minister in appointing the Lord Chief Justice and Lord Justices of Appeals. We recommend that such appointments be made "based on" the recommendation of the local ministers, as proposed in the 2003 Plan.
- We strongly urge the JAC to engage in active outreach to the community in seeking qualified members, and we urge the requirement of ten years' service as a barrister or solicitor for High Court appointments and seven years' service for County Court appointments not to be retained.
- We believe that every effort should be made to appoint qualified women to the bench and to ensure that the applicant pool is representative of all segments of society.

*The Police and Police Ombudsman*

- We are heartened by the numerous and significant reforms made to the policing service in the last five years: the establishment of the PSNI and a generally representative Policing Board; human rights training of officers and the publication of a police code of ethics that relies on the European Convention on Human Rights; and the closing of special detention facilities. We also commend the PSNI for instituting the audiotaping of police interrogations.
- We were disheartened to hear that there continue to be complaints about police treatment of residents of working class areas, as well as by reports that Catholics who join the PSNI have been intimidated by members of dissident republican groups. Great effort should be made to improve confidence in the policing service and ensure that every community has a voice in ongoing reforms to the PSNI.
- We recommend that training of current PSNI officers and staff in constitutional and human rights issues be expanded beyond the current two-day course. In addition, human rights training of PSNI personnel should be routinely evaluated.
- We recommend that all police misconduct (including noncriminal conduct subject to disciplinary action) should be referred to the Police Ombudsman to ensure independent scrutiny of the evidence. We recommend the government consider amending the Justice Bill 2003 to limit the Office of the DPP discretion in making referrals. Such a reform would be more in line with the language of the new Implementation Plan. We also believe that sufficient resources should be allocated to the office to support the increased caseload and to handle investigations into past cases which were recently re-instigated.
- We were relieved to learn that police harassment of lawyers was less of a concern for defense lawyers today than it was five years ago, but even the small percentage of lawyers who are still harassed is unsettling. We recommend that the Police Ombudsman's office investigate such complaints aggressively and that it continue to survey lawyers concerning their experience with police, consulting with the Human Rights Commission and others as appropriate on methodology. We also recommend that it regularly publicize its availability to barristers and solicitors throughout Northern Ireland so they will come to the Ombudsman's office in case of intimidation.
- We believe the Police Ombudsman's office should maintain consistent communication with complainants, police officers, and their representatives regarding pending cases.

*Emergency Powers and Interrogation*

- While we were pleased that in the years since our last visit, Diplock Courts—non-jury, single-judge trials—have been utilized less often, we strongly recommend they be eliminated and we repeat our past calls to do so.

- We believe that emergency measures, now codified in the Terrorism Act 2000, are unnecessary and should be revoked. The Act significantly widens the definition of terrorism, and in a special section relating only to Northern Ireland, extends the use of non-jury Diplock Courts and the authority to conduct warrantless arrests and searches and seizures. The Terrorism Act also allows for 48-hour detentions without access to counsel. We recommend the repeal of these provisions.
- The Northern Ireland Office should publish clear statistics on past and present use of Diplock Courts.

*The Patrick Finucane and Rosemary Nelson Cases*

- We continue to believe that public inquiries are necessary in these cases, and we are discouraged that almost five years after Rosemary Nelson's death and 15 years after Pat Finucane's, the cases are unresolved and public inquiries have not been held.
- We urge the government to publish Judge Peter Cory's reports on these and other cases forthwith and move quickly to establish public inquiries. We also recommend it publish the full Stevens III report.

*The Law Society and Bar Council*

- We commend the Law Society and Bar Council for its role in calling for a public inquiry in the Finucane case, and urge them to remain vocal on his case as well as the case of Rosemary Nelson.
- We welcome the increasing number of women in the legal profession, but would like to see more women and people from other under-represented communities become Queen's Counsel.
- We encourage members of the Law Society and Bar Council to play an even stronger role and to speak publicly on issues such as judicial appointments, reform of the prosecution system and Police Service, support of the Police Ombudsman, and greater regard for human rights in Northern Ireland.
- Regarding human rights training, we believe the legal organizations should have a greater role in insuring that these programs include appropriate materials and encouraging their members and law students to attend human rights-focused training sessions. We also believe that both groups should help to educate the public on these issues.
- We call upon the Law Society and the Bar Council to help propose alternatives to criminal investigations regarding unsolved deaths from the violent years of the conflict, in order to help bring a sense of justice and closure to these many unsolved cases.

### III. AN OVERVIEW OF THE CRIMINAL JUSTICE REFORM PROCESS

#### A. The Criminal Justice Review and the Justice (NI) Act 2002

The Criminal Justice Review Group was established on June 27, 1998, under the auspices of the Good Friday Agreement, which called for "a wide-ranging review" of the criminal justice system.<sup>15</sup> The Re-

<sup>15</sup> This phrase does not refer to emergency legislation or policing. Review of emergency powers was excluded from the Review's mandate and policing was considered separately in the Good Friday Agreement.

view Group—composed of four government representatives and five independent experts—was to recommend specific reforms to increase accountability, equity, and efficiency within the system. The members of the Group were also to consider the possibility of devolving criminal justice powers from the British Government to the local Northern Ireland Assembly. After almost two years of research, consultation, and evaluation, the Review Group published a report, the Review of the Criminal Justice System in Northern Ireland (“the Review”), with 294 recommendations in March 2000.

In November 2001, the British Government published its Implementation Plan and a draft Justice (Northern Ireland) Bill in response to the Review. The Bill, which received Royal Assent in July 2002 and became the Justice Act 2002, codified aspects of the Implementation Plan.<sup>16</sup> The Act’s provisions did not, however, take immediate effect. Many were contingent on the devolution of criminal justice powers—although the Act established no timetable for devolution. Among the reform provisions that would have to await devolution were the establishment of a post for a new Northern Ireland-specific Attorney General and the establishment of a Judicial Appointments Commission to ensure a more representative judiciary, as recommended in the Review.

The Implementation Plan also made clear that the individual criminal justice agencies were to carry out independently the reform measures that did not require further legislation. The Plan supported human rights training for all criminal justice personnel, for example, but left it to the specific agencies to decide when and how to carry out that training. Human rights organizations criticized the Implementation Plan for not contemplating a mechanism for overseeing the proposed changes, for not laying out a timetable for their implementation, and for not ensuring transparency in the process.<sup>17</sup>

Indeed, although our mission occurred more than three years after the publication of the Review’s recommendations, it seemed that criminal justice agencies had only just begun to initiate significant reforms. Those reforms that had been implemented within the prosecution service and other agencies were not being systematically monitored or publicized, making it hard to give credit where credit might well have been due. Happily, at the time of our trip, the British Government was interviewing for the post of an Oversight Commissioner to oversee the implementation of the criminal justice reforms. (The Justice Oversight Commissioner was appointed in July and is to play a role similar to that of the Oversight Commissioner for Policing Reform, who was appointed in May 2000 to oversee the implementation of the Patten reforms.) The appointment of a Justice Oversight Commissioner earlier in the process could have helped to address problems of transparency and delay, and pushed the justice reform process forward.<sup>18</sup>

<sup>16</sup> Justice (Northern Ireland) Act 2002 (“Justice Act 2002”), c. 26.

<sup>17</sup> Committee on the Administration of Justice (“CAJ”), *Comments from the Committee on the Administration of Justice (CAJ) on the Implementation Plan for the Criminal Justice Review and the Justice (Northern Ireland) Bill*, Dec. 2001; and British Irish Rights Watch (“BIRW”), *Comments on the Justice (Northern Ireland) Bill and the Implementation Plan for the Criminal Justice Review*, Dec. 2001.

<sup>18</sup> See subsection III(B)(3), “Justice Oversight Commissioner.”

Our Committee welcomed the substance of the reforms recommended in the March 2000 Review and we continue to believe that they will significantly enhance justice and accountability in Northern Ireland if fully implemented. Nonetheless, the members of our 2003 mission were disappointed to discover that five years after the Good Friday Agreement, reform in the prosecution service, judicial appointments process, and other criminal justice agencies is really just beginning and has lagged far behind the policing reforms. Nonetheless, we can report some positive recent developments in the next section.

## **B. Recent Developments in Criminal Justice**

### *1. The Joint Declaration*

In a Joint Declaration published in April 2003, the British and Irish Governments laid out a series of proposals intended to realize more fully the promises made in the Good Friday Agreement. The Declaration announced that the British Government would introduce a second Criminal Justice bill to speed up the creation of a Judicial Appointments Commission and to “make further provision to promote a human rights culture in the criminal justice system.”<sup>19</sup> The Declaration also made clear that the government “accepted the desirability of devolving policing and justice” within the lifetime of the next Northern Ireland Assembly, as long as this was done with the broad support of Northern Ireland’s political parties.<sup>20</sup> The Declaration did not specify which responsibilities would be devolved, but it did make clear that the British Government would retain control over issues such as the armed forces and national security.

In order to pave the way for devolution, the Declaration also proposed four possible models for the local administration of devolved justice powers: (1) the creation of a single justice department headed by one minister; (2) the creation of a single justice department headed by two ministers, in order to “strengthen cross-community accountability”<sup>21</sup> by requiring both ministers, presumably from different parties, to agree on decision-making; (3) handing over responsibility for criminal justice matters to the Office of the First and Deputy First Ministers;<sup>22</sup> and (4) the creation of two separate departments, for example policing and justice, headed by ministers from different communities.<sup>23</sup> These potential models raise questions about the relationships that will exist between the ministers in charge of the department(s) as well as the relationships between these officials and the local executive, the judiciary, the Attorney General, and policing officials.

We believe that local control over criminal justice and policing is a laudable and obtainable goal that will help to address human rights concerns about the current system. Although we take no position on

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<sup>19</sup> Joint Declaration by the British and Irish Governments April 2003 (“Joint Declaration”), ¶ 24 (May 2003).

<sup>20</sup> *Id.* ¶ 20.

<sup>21</sup> *Id.*, Annex 2 ¶ 16.

<sup>22</sup> The First Minister and Deputy First Minister are the top executive positions in the Assembly, “elected into office by the Assembly voting on a cross-community basis.” Good Friday Agreement, Strand One, Democratic Institutions in Northern Ireland ¶¶ 14–15.

<sup>23</sup> Joint Declaration, Annex 2 ¶¶ 14–19.

the best institutional model for local control, we strongly believe that there should be public consultation on devolution options and a transparent evaluation of them. This process should be started right away, so that once the Assembly is reinstated, devolution of criminal justice can occur with minimal delay.

## 2. Updated Implementation Plan and New Legislation

A further positive development, which occurred shortly after our mission, was the June 2003 publication of an updated Criminal Justice Implementation Plan. The 2003 Plan significantly revised the 2001 Implementation Plan and set out a timetable for previously agreed-upon reforms. Most importantly, the new Plan committed the government to introducing new Criminal Justice legislation.

On July 2, 2003, shortly after the issuance of the updated Plan, the Irish and British Governments published a timetable for the implementation of the governments' new short-term commitments.<sup>24</sup> The timetable included:

- Introduction of the new Criminal Justice bill in the fall of 2003;
- Launching of the new Public Prosecution Service in December 2003, to be phased in over three years;<sup>25</sup>
- Publication of statements of ethics by criminal justice agencies by the end of 2003;<sup>26</sup> and
- A review by a (not then appointed) Oversight Commissioner in December 2003, with a report to be published in January 2004.

The new Criminal Justice bill ("Justice Bill 2003") was finally introduced in December 2003 and is expected to become law, after revisions, in the spring or summer of 2004. It will make the following changes to the Justice Act 2002:

- The Judicial Appointments Commission ("JAC") will be established prior to devolution, with a key objective being to secure a judiciary in Northern Ireland that is reflective of society, consistent with merit requirements.<sup>27</sup> Both the lay and legal membership of the JAC will be required to be reflective of society, insofar as possible.<sup>28</sup>

<sup>24</sup> *Annex: Joint Declaration Commitments—Deliverables in the near Term July 2003*, Joint Communiqué, July 2, 2003, available at <http://www.nio.gov.UK/press/030702a.htm>.

<sup>25</sup> See section V(A), "A New Public Prosecution Service."

<sup>26</sup> As of February 2004, the statement of ethics for the prosecution service had not been published.

<sup>27</sup> Justice (Northern Ireland) Bill [HL] ("Justice Bill 2003"), § 3 (Dec. 4, 2003). Ultimate responsibility for the Judicial Appointments Commission will be transferred to the Secretary of State of NIO through this bill. *Id.* sched. 1. The British Government "intends to devolve responsibility for judicial appointments alongside other justice functions[;]" upon devolution, responsibility would presumably shift to the First Minister and Deputy First Minister of the Northern Ireland Assembly. Criminal Justice System Northern Ireland, Northern Ireland Office ("NIO"), *Criminal Justice Review Implementation Plan Updated June 2003* ("2003 Implementation Plan"), at 56, recommendations 73–4, 76.

<sup>28</sup> Justice Bill 2003 § 2. See also 2003 Implementation Plan at 58.

- The Prime Minister will appoint the Lord Chief Justice and Lord Justices of Appeals taking into consideration the recommendation made by the local First Minister and Deputy First Minister, and the JAC will advise the ministers on the procedure for these appointments.<sup>29</sup> In contrast, the 2003 Plan had promised that such appointments would be made “based on” the recommendation of the local leaders,<sup>30</sup> and the government has not provided an explanation for this shift in weight. We recommend that the language of the 2003 Plan be implemented instead, giving local ministers more influence in the appointments process.
- Criminal justice agencies must have regard to guidance issued by the Attorney General for Northern Ireland regarding “the exercise of their functions in a manner consistent with international human rights standards.”<sup>31</sup> The 2003 Plan had been more straightforward, committing the government to include a provision in the new bill whereby criminal justice agencies would have due regard to human rights standards.<sup>32</sup> We recommend use of the Plan’s language. Also, in the proposed legislation, it was not clear if the referral to the “Attorney General for Northern Ireland” meant that the provision would await devolution and the appointment of that post, or if the current Attorney General for the United Kingdom and Northern Ireland would issue the guidance. This point should be clarified before the bill is enacted.
- The Director of Public Prosecutions for Northern Ireland (“DPP”) shall refer to the Police Ombudsman matters that appear to the DPP to indicate that a police officer “may have committed a criminal offence; or may, in the course of a criminal investigation, have behaved in a manner which would justify disciplinary proceedings” unless the Ombudsman is already aware of the issue.<sup>33</sup>

Our Committee welcomes this revised legislation. Its provisions more closely reflect the Criminal Justice Review team’s recommendations than did the Justice Act 2002. As noted above, however, there are significant discrepancies between the new bill and the commitments made in the 2003 Plan. For all of the matters cited, we believe the promises made in the 2003 Plan are the better course of action, and we urge that the bill be so amended.

### *3. Justice Oversight Commissioner*

The British Government agreed to appoint an Oversight Commissioner to monitor criminal justice reforms in late 2002 and filled the post on July 18, 2003, with the appointment of Lord Clyde, a former

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<sup>29</sup> Justice Bill 2003 § 4.

<sup>30</sup> 2003 Implementation Plan at 57.

<sup>31</sup> Justice Bill 2003 § 8.

<sup>32</sup> 2003 Implementation Plan at 11.

<sup>33</sup> Justice Bill 2003 § 6(3).

Scottish law lord.<sup>34</sup> Despite the long delay in establishing this post, we welcome the appointment and believe it signifies an important step toward meaningful change. As previously mentioned, we believe that the appointment of the Oversight Commissioner provides an opportunity not only to monitor progress, but also to push forward the implementation of reform, and we encourage Lord Clyde to work proactively with the criminal justice agencies to increase the pace of reform. In this regard, it is important that Lord Clyde review the provisions of the new Justice Bill.

We also recommend that the government codify the powers and duties of the Oversight Commissioner in statute and ensure that the office is sufficiently resourced in light of the scope and importance of the job. Grounding the powers in statute would create the same standing for the Justice Oversight Commissioner as is given to the parallel Oversight Commissioner for Policing. Providing the Commissioner with a statutory mandate would increase the public accountability of his office and help ensure that he receives full cooperation from the criminal justice agencies he is overseeing. We recommend that these provisions be added to the Justice Bill 2003 before it is enacted.

#### IV. THE INCORPORATION OF INTERNATIONAL HUMAN RIGHTS LAW

##### A. Background of the Human Rights Act

The reform of the criminal justice system can only be properly understood against the backdrop of broader developments in human rights law and practice over the past few years. In the Good Friday Agreement, the British government pledged to complete the incorporation of the European Convention for the Protection of Human Rights and Fundamental Freedoms (“the European Convention”) into Northern Ireland’s domestic legal system.<sup>35</sup> The government fulfilled this commitment when it enacted the 1998 Human Rights Act (“HRA”), which applies across the United Kingdom and came into force in October 2000. The HRA incorporated most of the provisions of the European Convention, but it did not incorporate Article 13, which requires national governments to provide an “effective remedy”<sup>36</sup> for violations of Convention rights. As a result, those who don’t obtain what they or the European Court of Human Rights (“European Court”) would consider to be an effective remedy after a domestic trial must still apply to the European Court for a determination of relief.

<sup>34</sup> At the same time, Kit Chivers, the Chief Inspector of the Magistrates’ Courts Service, was appointed as Chief Inspector of Criminal Justice in Northern Ireland, to oversee the establishment of a Northern Ireland Inspectorate, an office created by the Justice Act 2002 to improve the efficiency and effectiveness of the criminal justice agencies.

<sup>35</sup> Good Friday Agreement, Rights, Safeguards and Equality of Opportunity, Human Rights ¶¶ 1–4; Constitutional Issues ¶ 1; and Strand One, Democratic Institutions in Northern Ireland ¶ 5.

<sup>36</sup> Article 13 of the European Convention provides that “[e]veryone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.” Under the U.K.’s Human Rights Act (“HRA”), upon a finding of a violation, a court “may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate.” Human Rights Act 1998 (“HRA”), c. 42, § 8(1) (enacted Oct. 2, 2000).

The HRA allows individuals to file suit in domestic courts for the enforcement of Convention rights and allows domestic courts to review legislation for compatibility with the Convention.<sup>37</sup> As public authorities, courts cannot “act incompatibly” with the Convention.<sup>38</sup> Although the judgments of the European Court are not binding on them, domestic courts must take them into account in their own decisions. Before the enactment of the HRA, domestic courts did not recognize the Convention. Individuals in the United Kingdom could enforce their Convention rights only by filing suit before the European Court in Strasbourg, a step possible only after they had exhausted all their domestic remedies.

Although it is not yet common for judges in Northern Ireland to invoke the Convention independently, the use of the Human Rights Act has increased over time and courts are increasingly incorporating its provisions into domestic case law. The government has also encouraged the training of judges, prosecutors, and lawyers in human rights law.<sup>39</sup> It is an exciting development that Northern Ireland’s legal community is increasingly relying on human rights law, and that these rights are on the agenda of the government, the Law Society, the Bar Council, and criminal justice agencies. We hope that lawyers and judges will work to further develop Northern Ireland’s jurisprudence under the European Convention—a powerful tool in defending rights—in domestic cases.

#### **B. Influence of the European Convention on Criminal Justice**

Indeed, the European Convention has already exerted a strong influence on the Northern Ireland criminal justice system. In May 2001, the European Court found that the British Government had violated Article 2 of the European Convention (the right to life) by failing to investigate properly the state’s use of lethal force in four important cases: *Kelly v. U.K.*, *Jordan v. U.K.*, *McKerr v. U.K.*, and *Shanaghan v. U.K.*<sup>40</sup> In these cases, the Court found that the investigations lacked the requisite independence from the forces under investigation, were characterized by unnecessary delays in gathering evidence, suffered from problematic inquest procedures,<sup>41</sup> and were hampered by the

<sup>37</sup> Legislation can be read to avoid violation of a Convention right, or courts can make a declaration that a statute is incompatible with the Convention. HRA § 3–4.

<sup>38</sup> *Id.* ¶ 6.

<sup>39</sup> Currently judicial training is conducted in-house, and the curriculum is not public. Human rights training of prosecutors and other lawyers is dealt with elsewhere in this report.

<sup>40</sup> *Kelly v. U.K.*, 2001 Eur. Ct. H.R. 30054/96; *Jordan v. U.K.*, 2001 Eur. Ct. H.R. 24746/94; *McKerr v. U.K.*, 34 Eur. H.R. Rep. 20 (2002) (decided 2001); and *Shanaghan v. U.K.*, 2001 Eur. Ct. H.R. 37715/97, *all available at* <http://www.echr.coe.int/eng>.

<sup>41</sup> In the United Kingdom, inquests are public hearings conducted by coroners in order to ascertain, certify, and conduct preliminary investigations into the cause of deaths. We decided against investigating the inquest system—a subject unto itself—in order to focus on other aspects of the criminal justice system. It is important to note, however, that the inquest system in Northern Ireland has been criticized by human rights groups, families of victims, as well as the European Court. In lieu of criminal proceedings, an inquest may be the only opportunity for the families of victims to have access to information about their deaths. The government is currently conducting a review of the inquest system throughout the U.K., in anticipation of reform.

prosecutor's refusal to give reasons for failure to prosecute. In *Shanaghan*, the European Court also found that allegations of collusion between members of the security forces and loyalist paramilitaries had not been adequately investigated. Similar findings under Article 2 were issued in two subsequent cases, *McShane v. U.K.* (May 28, 2002) and *Finucane v. U.K.* (July 1, 2003).<sup>42</sup> A recent House of Lords decision, relying on *Jordan et al.*, incorporated into domestic law the right to an effective investigation of a death resulting from either the use of force by state agents or the negligence of state officials.<sup>43</sup>

To comply with these judgments, the government must properly investigate the cases in question and amend its regulations and procedures to prevent future violations. Relevant reforms would include implementing procedures for the investigation of the use of force by security personnel, as well as allegations of security-force collusion with paramilitaries; ensuring that these investigations are independent from the forces implicated and conducted expeditiously; updating and monitoring the inquest system; and establishing guidelines for the giving of reasons for the failure to prosecute.

The cases mentioned have yet to be re-investigated,<sup>44</sup> and the Committee of Ministers of the Council of Europe, which supervises the execution of European Court judgments, has yet to verify that the United Kingdom has taken adequate measures in these cases. Even so, the European Court's decisions have already helped shape some of the most important criminal justice reforms. As a result of the 2001 decisions, for example, the U.K. Attorney General, Lord Goldsmith, was questioned in Parliament about the policy of the DPP on the giving of reasons for non-prosecution in controversial cases. Lord Goldsmith replied that the criminal justice reform process would "meet the concerns" of the European Court. He announced that following policy would be followed:

The policy of the [DPP]...is to refrain from giving reasons other than in the most general terms. The Director recognises that the propriety of applying the general practice must be examined and reviewed in every case where a

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<sup>42</sup> *McShane v. U.K.*, 35 Eur. H.R. Rep. 23 (2002); *Finucane v. U.K.*, 37 Eur. H.R. Rep. 29 (2003).

<sup>43</sup> *R v Sec'y of State for the Home Dep't, ex p Amin*, [2003] U.K.H.L. 51 (Oct. 16, 2003). A recent Northern Ireland High Court decision reportedly extends Article 2 protection to cases in which the death was caused by private actors. *In re McIlwaine* (J. Kerr, High Ct. Nov. 21, 2003) (unpublished).

<sup>44</sup> The government has not re-opened the cases, arguing that much time has passed since the deaths occurred and investigations would be extremely difficult. In contrast, the claimants believe that the government must investigate the cases in order to comply with the judgments. Complainants in the *Jordan* and *McKerr* cases have brought judicial reviews against different government entities in the aftermath of the European Court rulings. These cases are currently working their way through the domestic court system. The House of Lords is also expected to issue a decision on retroactivity of the HRA in the *McKerr* case; the government argued that *McKerr* is not entitled to an effective investigation because the HRA was not in force at the time of his death. *See also* footnote 57 of this report.

request for the provision of detailed reasons is made. ... [In light of the European Court cases,] there may be [exceptional] cases in the future ... where an expectation will arise that a reasonable explanation will be given for not prosecuting where death is, or may have been, occasioned by the conduct of agents of the State. Subject to compelling grounds for not giving reasons, including his duties under the Human Rights Act 1998, the Director accepts that in such cases it will be in the public interest to reassure a concerned public, including the families of victims, that the rule of law has been respected by the provision of a reasonable explanation. The Director will reach his decision as to the provision of reasons, and their extent, having weighed the applicability of public interest considerations material to the particular facts and circumstances of each individual case.<sup>45</sup>

We address the DPP's policy on the giving of reasons for non-prosecutions more thoroughly in the next section of this report, where we argue that there should be a new presumption toward the giving of reasons in controversial cases.

As a general matter, however, we believe that the government should address the European Court judgments in a more cohesive and comprehensive manner. We recognize the difficulties that arise in investigating cases in which the evidence may be very old, but believe that, considering the seriousness of the cases, the government should reopen the investigations to the greatest extent possible, in order to comply with Article 2 of the Convention. We regret that the government has not yet initiated investigations in any of the cases or enacted legislation to address the shortfalls identified by the decisions. We urge the government to do so without further delay.

## V. THE PROSECUTION FUNCTION

### A. A New Public Prosecution Service

The Office of the DPP is in the process of creating its own successor agency, the Public Prosecution Service ("PPS") for Northern Ireland, as recommended by the Review and approved in the 2001 and 2003 Implementation Plans.<sup>46</sup> The new service will be phased in gradually, and will completely replace the Office of the DPP by 2006.<sup>47</sup>

Currently, the Office of the DPP reports to the Attorney General for the United Kingdom and Northern Ireland. After devolution of criminal justice, an Attorney General responsible solely for Northern Ireland is to be appointed by the First Minister and Deputy First Minister of the Northern Ireland Assembly. The chief prosecutor and deputy chief prosecutor of the planned PPS will be appointed by the new Northern Ireland Attorney General.

<sup>45</sup> 631 PARL. DEB., H.L., Part No. 98, WA 259–260 (Mar. 1, 2002).

<sup>46</sup> Criminal Justice System Northern Ireland, NIO, *Criminal Justice Review Implementation Plan* Nov. 2001 ("2001 Implementation Plan"), at 19, recommendations 17, 58.

<sup>47</sup> 2003 Implementation Plan at 30.

The creation of the PPS coincides with the adoption of another significant recommendation of the Review: All crimes are to be prosecuted by the new service. Currently, lesser offenses are prosecuted by police officers. This reform will help ensure that the investigation and arrest of each criminal suspect receives review independent of the PSNI. It also removes a potential for conflict of interest by placing responsibility for arrest and prosecution decisions within separate entities. Furthermore, under the new agency, PPS lawyers will intervene in each case between the time of arrest and a suspect's initial court appearance. This welcome development ensures earlier scrutiny of arrest charges by lawyers trained in human rights and criminal law.

The ABCNY's 1999 Report recommended that in cases involving serious crimes, prosecutors should be involved to assist the police at the investigation stage. The PSNI and the Office of the DPP have differing views on this point. The police favor assigning officers to PPS offices and also believe that this would assist in speedier disposition of cases.<sup>48</sup> The Office of the DPP voiced caution concerning association with the police, and opposes "co-location" of prosecutors in police stations, which it believes could compromise public support for the prosecution service because of historic distrust of the police in many communities.

The Review recommended a diversion program for juveniles, a further enhancement of prosecutorial discretion.<sup>49</sup> The program is comparable to policies in state and federal prosecutors' offices in the United States, and allows the prosecutor to dismiss lower-level charges against first-time juvenile offenders who comply with specific conditions. This will enable a youthful offender who complies with the conditions to avoid a criminal record and its stigma. The Office of the DPP has yet to implement this recommendation. It warrants high priority as it will enhance public confidence in the prosecutor's office.

Because of the shift in prosecution responsibilities from the police to professional lawyers, the PPS's caseload is expected to increase to 75,000 cases from the 10,000 cases currently handled by the Office of the DPP. The number of lawyers on the prosecutor's staff will increase accordingly, from 40 to 150. (Seventy lawyers were on staff by the time of our visit.)

Newly hired lawyers for the PPS undergo six months of training, including courses in human rights law. According to the DPP, veteran staff lawyers also receive training in human rights law and ethics. An official of the Northern Ireland Human Rights Commission ("NIHRC")<sup>50</sup> said that he is "reasonably satisfied" with the human

<sup>48</sup> The PSNI is planning to establish organized crime task forces, including lawyers, independent of the Office of the DPP / PPS.

<sup>49</sup> Criminal Justice Review Group, *Review of the Criminal Justice System in Northern Ireland* ("Review"), Mar. 2000, at 422, recommendation 179. See generally *id.* at 421-3, recommendations 169-180.

<sup>50</sup> The Northern Ireland Human Rights Commission, established in the Northern Ireland Act 1998 which codified elements of the Good Friday Agreement, is charged with reviewing the Adequacy and effectiveness of law and practice relating to the protection of human rights," advising the Secretary of State and the Assembly on human rights protection, and promoting understanding and awareness of human rights in Northern Ireland. It may bring legal proceedings related to the protection of human rights. Northern Ireland Act 1998, c. 47, § 69.

rights training described to him by the Office of the DPP. However, the Commission would prefer that it be allowed to monitor the training.

The new PPS will be located in five regional offices throughout Northern Ireland, in addition to its Belfast office, which has been the sole location of the Office of the DPP. The PPS pilot scheme began in South Belfast in December 2003.<sup>51</sup> The five regional offices were to be opened one at a time through 2006.

Although the establishment of the PPS is not dependent on devolution of criminal justice, as are some reforms recommended by the Review, the pace of implementation appears slow, especially when compared to the establishment of the PSNI. The Office of the DPP has defended this gradual approach. Its officials emphasize that the creation of the PPS is a large undertaking in a divided society and that the government only has “one shot to get it right.” According to Sir Alasdair Fraser, the DPP, the Crown Prosecution Service in England—which also shifted responsibility for minor offenses from the police to the prosecutor—was introduced too rapidly, with terrible administrative consequences. By using South Belfast as a pilot project for planning the structure of the regional PPS offices, the DPP hopes to “tease out” problems before they might affect the entire service.

While it is wise to conduct reforms at a gradual pace, we regret that the process is only now being initiated. The Office of the DPP should ensure that the implementation of reforms is its top priority. Given that most reforms in the prosecution service are not dependent on devolution, they should not be slowed in any way by political considerations. Where feasible, we strongly recommend that the timetable of reforms be accelerated.

The Office of the DPP was to publish a draft code of ethics and a draft code of practice for the new PPS in December 2003; as of February 2004, neither of the codes had been announced. The government’s 2003 Implementation Plan promised that “these draft Codes will be revised and developed during the course of the pilot scheme and publication will follow the experience of the scheme.”<sup>52</sup> The DPP informed us that the draft ethics code is based on procedures of the International Association of Prosecutors and the “human rights community,” an approach we very much welcome. As it currently stands, the code may not be final until after the completion of the pilot scheme in 2006.<sup>53</sup> (In contrast, the PSNI published a final code of ethics in February 2003.) We are frustrated that the Office of the DPP has not yet published the draft code and that its intended timetable for a final code is so protracted. In the short term, publishing the draft code of ethics for public comment would be a positive step toward furthering public awareness of the prosecution service reforms.

## **B. Transparency and Accountability**

An overarching concern, expressed by many, was a lack of transparency in the reform efforts to date. We discovered that even those most engaged in the criminal justice debates lacked any real sense of

<sup>51</sup> *Annex: Joint Declaration Commitments—Deliverables in the near Term July 2003*, Joint Communiqué, July 2, 2003, available at <http://www.nio.gov.UK/press/030702a.htm>.

<sup>52</sup> 2003 Implementation Plan at 18–19.

<sup>53</sup> *Id.*

what exactly the Office of the DPP was doing—including the experts who had served as independent members of the Criminal Justice Review. The lack of a detailed public prosecution implementation plan was of particular concern.

In this vein, we believe the Office of the DPP should issue an annual report next year in order to publicize the status of its reform efforts. The Justice Act 2002 requires the Director of the new PPS to prepare a report after the end of each financial year.<sup>54</sup> The current office has indicated it will not publish a report until transition to the PPS is complete—December 2006 at the earliest. This restrictive interpretation of the requirement undermines the office's efforts to be more open and publicly accountable and to address public concerns about the process.

As the Alliance Party, the largest cross-community political party, emphasized in its response to the Criminal Justice Review, “[i]t is most important that in a deeply divided society like Northern Ireland, fairness and independence of the prosecution should not only exist but be clearly seen to exist.”<sup>55</sup> The human rights groups and many of the political party representatives told us that by failing to expose the current reform efforts to public view, the Office of the DPP had missed this central point. Many also expressed concern that the retention of senior DPP officials in the new PPS undermined the Review Group's promise of “a fresh start.” In contrast to the PSNI and other criminal justice bodies, the Office of the DPP has not replaced top personnel or introduced new officials to augment the existing leadership.

We believe that these concerns make it even more critical that the implementation of the prosecution reforms be as transparent as possible. We see no need to wait for devolution or full implementation of the PPS to inform the public of prosecution reforms via regular reports, timetables, and a web site. Allowing the Northern Ireland Human Rights Commission to monitor and lend its expertise in the human rights training of prosecutors would also help to gain critical community support.

The Office of the DPP did hold a public meeting several months after our mission. As part of this meeting, the DPP distributed a short explanation of key reforms and provided a time line for some of its activities. These kinds of public initiatives will help build confidence in the system and should be considered an important part of the reform process. They should be repeated often throughout the implementation period, reaching as wide an audience as possible. We commend the Office of the DPP for holding this public event and hope that this and future events will help respond to the frustration expressed by many of those we interviewed in Belfast regarding the lack of transparency in the reform process.

To address concerns about staffing, the Office of the DPP should also publish information about the composition of the prosecution staff and support equality monitoring of the recruitment process. Although a significant number of new staff members have been hired, the hiring process has not received public scrutiny. Circulating information about hiring efforts could aid in attracting lawyers from under-repre-

<sup>54</sup> Justice Act 2002 § 39(1).

<sup>55</sup> Alliance Party, *Criminal Justice Review: Response of the Alliance Party*, Sept. 2000.

sented sectors of society and those with backgrounds in criminal defense and human rights law. We urge the DPP to take these steps and believe the newly appointed Oversight Commissioner, Lord Clyde, could play a role in monitoring the office's hiring to ensure that it is as open and competitive as possible. Aside from the transparency aspect of recruiting, the Office of the DPP should ensure that new hires are reflective of society in Northern Ireland and should aim to hire at all levels to signal a substantively new service.

It will take time to complete the far-reaching changes contemplated for the PPS, and we recognize the importance of gradual increases in staff, offices, and caseload. We do not see any obstacles, however, to initiating some of the reforms immediately, particularly those that improve transparency, accountability, and public confidence. These include holding a public consultation on codes of ethics, issuing annual reports, speeding up the introduction of an independent complaints mechanism (which is being developed in conjunction with other office reforms), and publishing demographic information about current staff members.

### **C. The giving of reasons for non-prosecution**

The British Government rejected a recommendation by the Criminal Justice Review concerning public statements by the DPP in instances where controversial crimes are not prosecuted. The Review recommended that in such cases, the presumption should shift towards the giving of reasons for non-prosecution to those with a proper interest in the case, if this can be done without harming the interests of justice or the public interest.

We agree with the Review, which described the proposal as “an important accountability issue.”<sup>56</sup>

The policy set out in the 2003 Implementation Plan mirrors that outlined by the Attorney General, Lord Goldsmith, in March 2002, as discussed in Section IV(B). In response to *Shanaghan v. U.K.* (a 2001 European Court decision which criticized the policy that the DPP would continue to refrain from giving reasons for declining to prosecute), Lord Goldsmith allowed that exceptions may be made in the future in instances in which a victim's death may have been occasioned by agents of the state, leaving it to the DPP to weigh the

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<sup>56</sup> Criminal Justice Review Group, *Review of the Criminal Justice System in Northern Ireland: A Guide*, Mar. 2000, at 7.

public interest considerations in each case.<sup>57</sup> The DPP advised us that he has not had occasion to apply this policy since it was announced by the Attorney General. Notably, the DPP has not subsequently provided explanations in any of the cases in which the European Court criticized his office for not giving reasons for decisions not to prosecute. Although the 2003 Implementation Plan promised that the government would continue to develop its position on this issue, it did not provide any guidelines for doing so.

We recognize that in some cases, articulating reasons for non-prosecution may taint persons not charged with any offense, or compromise subsequent efforts by the police and prosecutors to charge those responsible for a crime. However, in the past, the non-prosecution of soldiers or police officers who were involved in controversial killings deepened community mistrust of the Office of the DPP, and of criminal justice in general. While the giving of reasons will not be appropriate in all cases, we believe that the presumption should be shifted toward giving reasons and that the Office of the DPP should clarify its policy in this regard, particularly for controversial cases.

## VI. THE JUDICIARY

### A. Background

In our 1999 Report, the Committee called for greater openness and transparency in the process of selecting judges and urged that efforts be made to involve a broad spectrum of society in that process. The result, we hoped, would be to increase the number of judges from

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<sup>57</sup> In *Jordan v. U.K.*, a case released at the same time as *Shanaghan*, the European Court found that the circumstances of the death of Pearse Jordan, who was killed by a police officer, “cried out for an explanation,” and that although the DPP is not required to give reasons in every case, in controversial cases it may be necessary to foster public confidence and provide information to the family of the victim in order to comply with Article 2 of the European Convention. In this case, the victim’s right to life was violated in part because of the DPP’s failure to give reasons. *Jordan v. U.K.*, 2001 Eur. Ct. H.R. 24746/94, ¶¶ 122–124, 142–145. (According to this and other cases, the right to life, set out in Article 2 of the Convention, requires an effective official investigation when individuals have been killed as a result of the use of force by, *inter alios*, agents of the state. *Id.* ¶ 105 (citing *McCann v. U.K.*, 21 Eur. H.R. Rep. 97 ¶ 161 (1996) and *Kaya v. Turkey*, 28 Eur. H.R. Rep. 1 (1999) (decided 1998))). Jordan’s family subsequently sought judicial review in domestic court of the DPP’s decision not to give reasons, and Justice Brian Kerr found that the DPP would have been required to give reasons for his decisions not to prosecute in this case but for the timing of the DPP’s action: when he made the decisions in 1993 and 1995, the HRA was not yet enacted and it is not retroactive. *In re Jordan*, [2003] NIQB 1 (June 2003). The decision is currently being appealed. (On retroactivity, an English Court of Appeal recently found that Article 2 applied in the case of a death that occurred prior to the enactment of the HRA, because of the fundamental nature of the right to life. *R. (on the application of Khan) v. Sec’y of State for Health*, 4 All E.R. 1239 (2003), ¶¶ 83–85. *See also* footnote 44 of this report.)

under-represented groups, including women, and to increase the degree of confidence the public has in judicial appointments. Progress has been made since 1999, although certain areas lag behind, especially the selection of women for judicial posts.

The Northern Ireland judiciary continues to deserve considerable credit for its courage and determination to uphold the rule of law under difficult conditions. Judges were targeted and killed because of their official positions during the conflict. There have been no physical attacks on judges since we were last in Northern Ireland, insofar as we could learn. We hope that the day is approaching when judicial officers will not need the protection of armed police officers.

The criminal courts in Northern Ireland are divided between the Crown Court, which presides over indictable offenses, and the County Courts and Magistrate Courts, which hear lesser offenses.<sup>58</sup> Judges of the High Court and the County Court are still appointed by the Queen upon the recommendation of the Lord Chancellor of the United Kingdom following advice from the Lord Chief Justice of the High Court in Northern Ireland. Barristers and solicitors with 10 years' practical experience are eligible for appointment to the High Court, but only barristers who are Queen's Counsel ("QCs")—senior-ranked barristers—have traditionally been considered. Solicitors or resident magistrates may be appointed to the County Court in certain circumstances; there is a seven-year experience requirement for these posts. Women judges remain rare. In 1999, none of the High Court justices were women; of the 15 judges on the County Court, only one was a woman; and of the 17 magistrate judges only three were women. The comparable figures in 2003 are: no women on the High Court out of a total of eight justices; of 17 judges on the County Court, two are women; of four district judges, two are women;<sup>59</sup> and of the current 19 magistrate judges, three are women, resulting in a net gain of three women in the judiciary.<sup>60</sup>

Traditionally, the process for judicial appointments in Northern Ireland was cloaked in mystery. It reportedly involved the Lord Chief Justice consulting with his judicial colleagues and select barristers before arriving at his advice for appointments to the bench. In our 1999 report, we criticized this veiled process, concluding that the process would be more credible if there were more openness, public participation, and accountability. We suggested that a nominating commission, such as that used in New York State in connection with appointments to the New York Court of Appeals, would allow for greater public participation without compromising quality. We suggested that such a commission should include lawyers and non-lawyers and represent a broad spectrum of society. We felt that by actively soliciting applications from a variety of sources, checking

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<sup>58</sup> Crown Court offenses may be heard by High Court judges and County Court judges, as well as the Lord Chief Justice and Lord Justices of Appeal.

<sup>59</sup> District judges hear certain civil cases within County Courts.

<sup>60</sup> For recent statistics, see Centre for Advancement of Women in Politics, *Women Members of the U.K. Judiciary*, July 2003, available at <http://www.qub.ac.uk/cawp/UK%20htmls/judges.htm>. Also see Statistics and Research Branch, NIO, *Gender and the Northern Ireland Criminal Justice System*, Mar. 2002.

references, and interviewing leading candidates, the commission would help ensure that attorneys of diverse backgrounds were given full consideration for appointment. We also suggested that statistical reporting in which the need for confidentiality was respected would increase transparency and public accountability.

### **B. The Commissioner for Judicial Appointments**

We were, accordingly, heartened when the Criminal Justice Review recommended a similar mechanism—a new Judicial Appointments Commission (“JAC”), discussed in detail below. But until the JAC was up and running, the Review recommended that the government appoint an individual as Commissioner for Judicial Appointments to oversee and monitor the fairness of the existing appointments system.<sup>61</sup> Happily, the government did make this appointment.

The first Commissioner for Judicial Appointments, John Simpson, took office in January 2002. He was appointed for a five-year term that runs until December 2006, subject to review when the JAC comes into existence. The Judicial Appointments Commissioner audits the current procedures for appointing judges and QCs and handles complaints that may arise out of the application of those procedures. Indeed, Commissioner Simpson informed us that he had monitored the eight judicial appointments made in the year prior to our visit. He also has the power to recommend changes to those procedures to the Lord Chancellor, and he publishes an annual report.

Commissioner Simpson’s first report auditing the process, completed in February 2003 and followed by an annual report in October, recommended in part that the Court Service immediately develop an adequate monitoring system for the entire judiciary, that all candidates for appointment should make a formal application, and that the Court Service make a formal commitment to diversity.<sup>62</sup> Unfortunately, the Court Service did not unequivocally agree to these recommendations—it agreed to monitor applicants but not the whole judiciary, without specifying a date; it affirmed the requirement of formal applications only up to and including the level of County Court judges (although the Court Service has since followed this procedure for High Court judges); and stated that the recommendation regarding a formal commitment to diversity “requires further consideration.”<sup>63</sup> We believe the Court Service should follow Commissioner Simpson’s recommendations on these matters.

The appointment of the Commissioner—who is independent of the judiciary although he reports to the Lord Chancellor—is a salutary step in the direction of increasing transparency in the process of selecting judges and in diversifying the bench. By itself, however, it is insufficient to make significant change possible, since the Commissioner’s authority is limited to monitoring and recommend-

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<sup>61</sup> Review at 413, recommendation 95.

<sup>62</sup> Commissioner for Judicial Appointments for Northern Ireland, *Audit Report*, Feb. 2003.

<sup>63</sup> Commissioner for Judicial Appointments for Northern Ireland, *Annual Report, 21 January 2002 to 31 March 2003*, Oct. 2, 2003, App. 3 ¶¶ 5.5.21, 3.5.11, 5.4.3.

ing rather than having a direct role in appointing judicial officers or in implementing reforms. For significant change, an active JAC is needed.

### C. The Judicial Appointments Commission

We believe that an effective JAC will address the credibility issues identified in our 1999 Report, and very much regret that it has not yet been established. In this regard, we welcome government commitments since May 2003 that the creation of the JAC is to be accelerated and established before devolution.<sup>64</sup> The 2003 Implementation Plan states that the government intends to devolve responsibility for judicial appointments alongside other justice functions.<sup>65</sup>

The 2003 Implementation Plan and the Justice Bill 2003 do contain significant movement toward the implementation of the Review recommendations on judicial appointments. The Bill adopts the position that the power to appoint the Lord Chief Justice and the Lord Justices of Appeal will be vested in the Prime Minister, taking into consideration joint recommendations by the First Minister and Deputy First Minister.<sup>66</sup> We believe that the stronger language included in the 2003 Plan was more appropriate—that the Prime Minister make appointments based on the recommendation of the local ministers—and further believe that the Prime Minister should be required to accept that recommendation.<sup>67</sup> The Justice Bill also states that the government is fully committed to the objective of securing a judiciary that is as reflective of Northern Ireland society, in particular by community background and gender, as can be achieved consistently with the overriding requirement of merit, and requires that the JAC so far as it is reasonably practicable, secure that a range of persons reflective of the community in Northern Ireland is available for consideration.<sup>68</sup>

The Justice Bill 2003 also provides that both legal and lay members on the JAC will be appointed with a view toward making the JAC as reflective of the community as possible. Although the exact division of positions between legal members (from the judiciary, the Bar, and the Law Society) and lay members has not been decided upon, we take no specific position on that issue, other than to recommend that there be a meaningful degree of lay participation. Most importantly, we believe that a commission whose lay and legal members are reflective of Northern Ireland society as a whole will most easily gain the confidence of the entire community in its recommendations. We strongly recommend that the JAC engage in active outreach to the community in seeking qualified members. We recommend as well that

<sup>64</sup> Joint Declaration ¶ 24 and 2003 Implementation Plan at 54, recommendation 69. *See generally* Justice Bill 2003 §§ 1–5.

<sup>65</sup> 2003 Implementation Plan at 56, recommendations 73–4.

<sup>66</sup> Justice Bill 2003 § 4.

<sup>67</sup> 2003 Implementation Plan at 57, recommendation 75. According to the text accompanying the recommendation, “the First Minister and Deputy First Minister acting jointly will make recommendations to the Prime Minister, who in turn will recommend appointments on that basis.”

<sup>68</sup> Justice Bill 2003 § 3. *See also* 2003 Implementation Plan at 54, recommendation 69.

the requirement of ten years' service as a barrister or solicitor for High Court appointments—and seven years' service for County Court appointments—not be retained.<sup>69</sup> Every effort should be made to appoint qualified women to the bench, considering the gender imbalance that continues in the Northern Ireland judiciary.

With the new Implementation Plan and Justice Bill 2003, the government has now put its imprimatur on a program of action and outreach to stimulate interest in becoming a judge, especially from sections of the community where historically applications have been disproportionately low, and has announced that the requirements for recruitment to all levels of the bench will not differentiate between barristers and solicitors. We believe the government should move quickly on these reforms, strongly agreeing that the establishment of the JAC should not await the devolution of other justice functions to the Northern Ireland executive. The JAC should be established expeditiously, as should the final procedures for its operation. Political responsibility and accountability for the judicial appointments process can then be transferred to the First Minister and Deputy First Minister after the Northern Ireland Assembly and Executive have been restored.

## VII. THE POLICE AND POLICE OMBUDSMAN

### A. The New Policing Service

The policing reform process has been the most expansive of the criminal justice reforms since the 1998 ABCNY mission and has received the most international scrutiny.

The Independent Commission on Policing for Northern Ireland—the Patten Commission—was established pursuant to the 1998 Good Friday Agreement. For 15 months this international commission took testimony at public hearings throughout Northern Ireland, and studied the most effective means of reforming the Royal Ulster Constabulary (“RUC”), the composition of which was disproportionately Protestant and Unionist. In response to the Patten Commission's recommendations, a new Police Service, the PSNI, was established with a new governing authority, the Northern Ireland Policing Board (“Board”).

The Board, comprised of nineteen members, first met in November 2001. Ten of the Board's seats are filled by previously elected members of the suspended Northern Ireland Assembly, proportionate to their parties' representation in the Assembly, with the exception of Sinn Féin members, who have declined to take seats on the Board.<sup>70</sup>

<sup>69</sup> In a recent newspaper article, two Queens Law School professors suggest that communications skills and a broad understanding of society, in addition to legal knowledge and courtroom experience, might be valuable qualities in a judge. Stephen Livingstone & Kieran McEvoy, *The Challenges Facing Ulster's New Top Judge*, BELFAST TELEGRAPH, January 13, 2004. The publication of their study on how judges and lawyers deal with transition is forthcoming. See Stephen Livingstone, Kieran McEvoy & Rachel Rebouche, *JUDGES AND LAWYERS IN TRANSITION: HUMAN RIGHTS AND LEGAL CULTURE* (Human Rights Centre, Queens University School of Law forthcoming 2004).

<sup>70</sup> Currently, four Board members are representative of the UUP, three of the DUP, and three of the SDLP.

(This composition has remained in place during the suspension of the Northern Ireland Assembly.<sup>71</sup>) The remaining nine members of the Board—including the current Chairperson and Vice Chairperson—are selected by the Secretary of State for Northern Ireland following an open competition. Only two Board members are women, and only one is a member of an ethnic minority group.

Operational responsibilities of the PSNI, launched in April 2002, are overseen by the Chief Constable, who reports directly to the Board. In September 2002, the Board appointed Hugh Orde, formerly a lead investigator on the Patrick Finucane case and a former Deputy Assistant Commissioner of the London Metropolitan Police, to this position. The Board conducts at least ten public meetings per year, produces an annual report and, pursuant to the Police (Northern Ireland) Act 2000, publishes a policing plan each year. The plan sets forth annual performance targets for the PSNI and strategic planning for succeeding years. The Chief Constable prepares the plan, which is subject to the approval of the Board and the Secretary of State.

The Patten Commission recommended a code of ethics for police officers, and the Policing Board published the Code of Ethics for the Police Service of Northern Ireland in February 2003.<sup>72</sup> The PSNI drafted the ethics code in consultation with human rights groups, including the Northern Ireland Human Rights Commission, as part of a wide consultation exercise. It is modeled on a code promulgated by the International Association of Chief Police Officers. The PSNI ethics code states in its preamble that among its intentions is “to make police officers aware of the rights and obligations arising out of the European Convention on Human Rights.”<sup>73</sup> It cites the Convention and European Court decisions as source authority five times throughout its thirteen pages and specifically directs that “[a]rrest and detention shall only be carried out in accordance with the provisions of Article 3, 5 and 6 of the [Convention], relevant legislation and associated Codes of Practice.”<sup>74</sup> We applaud the PSNI’s emphasis on Convention rights and its interaction with human rights bodies in drafting the code.

The PSNI has also established a two-day training course in ethics, human rights issues, and the new constitutional framework, which the Chief Constable described to us as “unique in the United Kingdom.” It is compulsory for all police officers and civilian staff of the PSNI. The Oversight Commissioner for Policing Reform, a post established in 2000, was supportive of the PSNI’s effort in establishing the training, but criticized it for not being adequate considering the complexity of the topics, particularly in relation to teaching the new constitutional arrangements; for not integrating human rights into all

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<sup>71</sup> When the Assembly was suspended, the Secretary of State re-appointed the incumbent Assembly members of the Board in order to keep it active.

<sup>72</sup> Code of Ethics for the Police Service of Northern Ireland (Northern Ireland Policing Board Feb. 2003), *available at* <http://www.psni.police.UK/nipbcodeofethics.pdf#xml>.

<sup>73</sup> *Id.*, preamble § (d)(2).

<sup>74</sup> *Id.*, art. 5.1. The Code notes that the referenced “Codes of Practice” include the Terrorism Act 2000, which allows detention of certain suspects for up to 48 hours without access to counsel.

aspects of police training, as recommended by the Patten Commission; and for not providing a plan for the evaluation of the training.<sup>75</sup> CAJ and other groups were disappointed that the PSNI did not consult with outside organizations on the content of the training material. The Northern Ireland Office was in the process of auditing the training program at the time of our visit, but a report on the topic has not been published. We concur with the Oversight Commissioner: two days is insufficient to train law enforcement personnel in a broad range of constitutional and human rights issues.

Members of the Policing Board informed us that the PSNI is on target with respect to the Patten Commission's recommendations on shifting the composition of the PSNI to better reflect the community. To meet the Patten requirements both to reduce the overall numbers of police and to ensure a more representative force, incentives were given to encourage the pool of (primarily Protestant) senior police officers to retire. Recruits are appointed from a merit pool on a 50 percent Catholic/50 percent non-Catholic basis. Currently, Catholics constitute 36 percent of applicants to the PSNI, and women constitute 37 percent of applicants.<sup>76</sup> At the start of 2003, Catholic officers made up about 12 percent of the regular PSNI and women about 15 percent.<sup>77</sup> In addition to community background and gender, efforts are being made to address the low numbers of members of ethnic minorities, disabled persons, and other under-represented groups in the PSNI. While we realize there is still a long way to go before the PSNI is truly representative of Northern Ireland society, we were impressed by the policies of the PSNI leadership and by their recruitment efforts.

Despite improvements in the Police Service, Sinn Fein, the largest republican political party, has declined to take its allotted seats on the Policing Board. We met with a Sinn Fein representative, who explained that his party believes that the "spirit of the Patten Report has not been lived up to" by the Board and the PSNI. He said that there was no constituent support for his party's participation on the Board, and that Sinn Fein still views the police as a political institution. Other observers with whom we spoke, not politically affiliated, agreed that there was still distrust of the police in the republican and nationalist communities, but that the new Police Service was moving in the right direction. The participation of Sinn Fein would, of course, demonstrate and help to institutionalize further community support of policing reforms.

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<sup>75</sup> Oversight Commissioner for Policing Reform, *Overseeing the Proposed Revisions for the Policing Services of Northern Ireland*, Seventh Report, May 6, 2003, at 19–20, 102.

<sup>76</sup> Oversight Commissioner for Policing Reform, *Overseeing the Proposed Revisions for the Policing Services of Northern Ireland*, Eighth Report, Sept. 16, 2003, at 11.

<sup>77</sup> Northern Ireland Policing Board, *Annual Report 2002–2003*, tables A & B, available at [www.nipolicingboard.org.uk/publications/annual\\_report03.htm](http://www.nipolicingboard.org.uk/publications/annual_report03.htm). Catholic membership was reported to be just over 13 percent in fall 2003. Taking into account full and part-time reserve members of the PSNI, the percentage of Catholics is about 10 percent. BIRW, *Submission to the NIO on the Renewal of the 50/50 Recruitment Policy*, Oct. 2003.

As a general matter, we were discouraged to hear that there continue to be complaints about police treatment of residents of working class areas, as well as by reports that Catholics who join the PSNI have been intimidated by members of dissident republican groups.<sup>78</sup> There have also been attacks on members of the Policing Board and the District Policing Partnerships, who act as police/community liaisons, to try to intimidate them from serving. We deplore such acts and are disheartened by the difficulties they create in the recruiting and reform process. We are cognizant that change—in a policing service and society—cannot happen overnight, but we believe that great effort should be made to improve confidence in the policing service and ensure that every community has a voice in ongoing reforms to the PSNI.

## **B. The Police Ombudsman**

### *1. Background on Office and Powers*

The Office of the Police Ombudsman was still in the planning stages during our last mission to Northern Ireland. This new office investigates complaints of police misconduct brought by the public or at the Ombudsman's own initiative. The office may make referrals to the Chief Constable or to the Policing Board for disciplinary action, or to the Office of the DPP for criminal prosecution. Nuala O'Loan, who met with members of the 2003 mission, was appointed as the first Police Ombudsman by the Northern Ireland Secretary of State in November 2000. Her office is accountable to the British Parliament through the Secretary of State and is independent of the Policing Board and the Chief Constable of the PSNI.

Many of the officials and practitioners we met in Northern Ireland shared respect for Ombudsman O'Loan as well as a consensus that she had brought credibility to the position. A nationalist elected representative with whom we met described the Police Ombudsman as "very effective—the most effective of all police reforms." Chief Constable Orde said that the Police Ombudsman has "a good team" of investigators. We are very supportive of Ombudsman O'Loan's activities and are impressed by the progress of her newly established office.

There has been, however, some political and institutional resistance to the new office. David Trimble, leader of the UUP and the First Minister of the Northern Ireland Assembly before its suspension, called for a "review" of the Police Ombudsman's office in 2001 to reconsider its powers. Other unionists also called for a review of the office. Reviews that audit and evaluate the effectiveness of a government entity are undertaken as a matter of course at five-year intervals. We can see no reason to accelerate this process during this critical formative period as the Police Ombudsman strives to gain the confidence of a divided community. In what may be a backhanded compliment to the

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<sup>78</sup> According to a survey conducted by the Policing Board, 72 percent of the Catholics who were questioned cited fear of intimidation or attacks as reasons that Catholics might be deterred from joining the PSNI. Northern Ireland Policing Board, *Community Attitudes Survey 2002*, Mar. 19, 2003, at 6. In the same survey, 13 percent of Protestants and 30 percent of Catholics felt that the police did not deal fairly with everyone. *Id.*, table 3.

effectiveness of the Police Ombudsman, the office was subjected to three judicial reviews, or lawsuits challenging its authority. The Police Ombudsman prevailed in all three reviews. The union representing police officers withdrew one such suit on the eve of the initial hearing.

The DPP's office is currently obligated to report evidence of criminal conduct by the police to the Police Ombudsman's office for investigation and referral, as appropriate, for prosecution. The new Justice Bill 2003 directs the Office of the DPP to refer all cases to the Police Ombudsman where it "appears to the Director to indicate" that a police officer "may have committed a criminal offense; or may, in the course of a criminal investigation, have behaved in a manner which would justify disciplinary proceedings."<sup>79</sup> We believe that all police misconduct (including non-criminal conduct subject to disciplinary action) should be referred to the Police Ombudsman to ensure independent scrutiny of the evidence and recommend the government consider amending the Justice Bill 2003 to limit the Office of the DPP's discretion in making referrals. Such a reform would be more in line with the language of the new Implementation Plan.<sup>80</sup>

Our 1999 report expressed concern that the Police Ombudsman's office was inadequately funded at three million pounds, or less than half the budget of the investigatory agency it was designed to replace. The office was subsequently funded at seven million pounds, and has a staff of 125, which its director described to us as "adequate." At the time of our visit, O'Loan said that she had approached the NIO for more resources to investigate a number of past cases, but her request had been denied. BIRW criticized the Ombudsman's office for delaying investigation of controversial past cases, arguing that she should spread the resources she has among both old and new cases and pointing out that these cases were most at risk of evidence being lost. Recently, the Ombudsman's office re-instigated investigations into past cases, a development we support. We call on the government to ensure that sufficient resources are allocated to the office to support both this effort and the office's increased caseload as a result of the Justice Bill.

After returning from Belfast, we were told by human rights groups that some legal representatives of both complainants and police officers had complained about treatment by the Police Ombudsman. Specifically, the office was criticized for not keeping complainants, solicitors, and/or NGOs informed about cases and for objecting to representative attendance at meetings. The Police Ombudsman has stated that it is the policy of the office not to exclude solicitors from meetings. We believe the office should maintain consistent communication with complainants, police officers, and their representatives.

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<sup>79</sup> Justice Bill 2003 § 6.

<sup>80</sup> 2003 Implementation Plan at 33. According to the text accompanying the recommendation, A[t]he Government has given a commitment to bring forward fresh legislation to place a requirement on the Director to refer to the Police Ombudsman all cases where a member of the police force may have committed an offence or behaved in a manner which would justify disciplinary proceedings." CAJ has argued that an objective test would be more reliable in referring incidents of misconduct than the subjective language used in the Justice Bill 2003.

The Ombudsman is currently empowered to investigate active police officers. Because large numbers of police officers have recently retired as part of the Patten process on securing a police force more reflective of the community, the Police Ombudsman's inability to compel cooperation from these retirees in her investigations of past cases presents a limitation on the office's investigatory powers in the near term.

## *2. Survey of Barristers and Solicitors*

In a recent publication, released in March 2003, the Police Ombudsman reported on the results of a survey of Northern Ireland barristers and solicitors regarding their treatment by the police.<sup>81</sup> Police harassment of criminal lawyers, sometimes in the form of threats communicated via the lawyers' clients, was a grave concern of the members of the 1998 mission and remains so. According to the Ombudsman's report, slightly more than half the surveyed lawyers responded. Of those, 55 respondents (3.8 percent of those who responded) said that they had received intimidation, harassment or threats from the police. About 60 percent of those who reported harassment chose not to make a complaint at the time, in many cases because they said they believed that the police would not do anything about the matter. According to the report, the majority of the incidents reported occurred before the establishment of the Police Ombudsman's office, although dates of incidents were not included in the survey results.

The Police Ombudsman's office interviewed a sample of the respondents who reported harassment. The five lawyers interviewed characterized the incidents they experienced as relatively minor. They discussed various areas of concern in their interviews and described the incidents of harassment as: (1) defamation of character; (2) delay in access to clients; (3) being treated in the same way as the alleged criminals; and (4) intimidation during interviews.<sup>82</sup> Other lawyers who complained of harassment in the survey but were not interviewed reported physical threats, sectarian abuse, and threats that officers would pass their information to paramilitary organizations. Although the number of lawyers reporting harassment was low, the majority of those who did so reported three or more incidents, signaling that certain lawyers seem to have been "frequent targets," according to the study. From past experience, we know this to be true: a small group of lawyers regularly carries out paramilitary defense work in Northern Ireland, and they have been the targeted lawyers.

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<sup>81</sup> Police Ombudsman for Northern Ireland, *A Study of the Treatment of Solicitors and Barristers by the Police in Northern Ireland* ("Ombudsman's report"), Mar. 2003.

<sup>82</sup> *Id.* at 7.

The NIHRC and other observers have criticized the methodology of the Ombudsman's report because the dates of the incidents of harassment were not specified in the results, making it difficult to know if the situation improved in recent years. BIRW was also critical of the report, commenting that the nature of the survey underestimated the number of lawyers involved, the depth of the problem, and the effect harassment has had on the legal profession in Belfast.<sup>83</sup>

Despite these questions on methodology, we were relieved to learn that police intimidation is clearly less of a concern for defense lawyers today than it was five years ago, a finding that correlates with a reduced number of terrorism cases. Most of the respondents to the Ombudsman's survey said that they viewed "the establishment of the Police Ombudsman's Office as a positive development and expected there to be an improvement in the way complaints against the police would be dealt with."<sup>84</sup> We hope the trend away from intimidation by police holds if there is ever any resurgence in terrorism cases, but recent history demonstrates that there must be constant vigilance against police harassment of lawyers. The Office of the Police Ombudsman is the logical agency to investigate such complaints. We recommend that it do so aggressively and that it continue to survey lawyers concerning their experience with the police, consulting with the Human Rights Commission and others as appropriate on methodology. We also recommend that it regularly publicize its availability to barristers and solicitors throughout Northern Ireland so they will come to the Ombudsman's office in case of intimidation.

#### VIII. EMERGENCY POWERS AND INTERROGATION

In our 1999 report, we questioned the government's continued reliance on emergency powers in the wake of the Good Friday Agreement. In particular, we were critical of the Prevention of Terrorism Act 1989 ("PTA"), which entitled the police to detain terrorism suspects for up to seven days without charge and hold them for 48 hours without access to counsel. We were also critical of the continued use of non-jury "Diplock" courts, originally introduced in 1973 to prevent "perverse verdicts and juror intimidations" in terrorism cases.<sup>85</sup> In our 1999 report, we advocated "an immediate return to the jury trial,

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<sup>83</sup> BIRW, *Comments on the Research Conducted by the Police Ombudsman for Northern Ireland into the Treatment of Lawyers by the Police*, Apr. 2, 2003. BIRW has conducted its own research on police harassment of lawyers, finding that "almost all lawyers who acted for clients detained under emergency laws came in for abuse from the police," and that such abuse "has become a thing of the past," although loyalist paramilitary intimidation of lawyers still occurs. *Id.*

<sup>84</sup> Ombudsman's report at 7.

<sup>85</sup> 1999 ABCNY Report, citing Lord Diplock, *Report of the Commission to Consider Legal Procedures to Deal with Terrorist Activities in Northern Ireland*, (Dec. 1972).

a right enjoyed by all citizens of the United Kingdom not being tried for alleged terrorist offenses in Northern Ireland,"<sup>86</sup> noting that in 1998 the government had committed to returning as rapidly as possible to jury trials for all offenses.<sup>87</sup>

Unfortunately, the British Government specifically excluded emergency laws from the remit of the Criminal Justice Review, and many of the emergency powers were placed on permanent, U.K.-wide footing in the Terrorism Act 2000, adopted more than two years after the Good Friday Agreement.<sup>88</sup> Under the new law, which went into force in February 2001, the police can detain any person they suspect of terrorism for up to 48 hours without charge or access to counsel; the detention can be extended for a further five days with judicial authorization. The Act significantly widens the definition of terrorism, and in a special section relating only to Northern Ireland, extends the use of non-jury Diplock Courts and the authority to conduct warrantless arrests and searches and seizures.<sup>89</sup> The Northern Ireland provisions of the Act expire automatically if they are not renewed each year by order of the Secretary of State for Northern Ireland. So far, they have been renewed each year.<sup>90</sup> The Joint Declaration indicated, however, that the British Government intended to repeal these provisions by April 2005 if there was a "continuing enabling environment."<sup>91</sup>

We are concerned that the Terrorism Act 2000 defines terrorism too vaguely and that its provisions allowing the use of Diplock Courts, the possibility of 48-hour detention without access to a lawyer, and warrantless arrest violate international human rights law. The U.N. Human Rights Committee has expressed its concern about Diplock Courts and 48-hour detention<sup>92</sup> and other human rights groups have criticized the Act.<sup>93</sup>

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<sup>86</sup> 1999 ABCNY Report, "Trials in Diplock Court" section.

<sup>87</sup> Secretary of State for the Home Department and Secretary of State for Northern Ireland, *Legislation Against Terrorism: A Consultation Paper*, Dec. 1998 ¶ 13.5.

<sup>88</sup> In a separate development, the British Government enacted the Antiterrorism, Crime and Security Act 2001, after September 11, 2001. Similar to its U.S. counterpart, the USA PATRIOT Act of 2001, this legislation is most criticized for allowing indefinite detention without charge. In order to enact the law, the U.K. derogated from Article 5(1) of the European Convention, which "guarantees the right to liberty and prohibits detention without trial." Philip A. Thomas, *9/11: USA and U.K.*, 26 *FORDHAM L. REV.* 1193, 1216–1219 (2003).

<sup>89</sup> Terrorism Act 2000, c. 11, pt. VII.

<sup>90</sup> The Secretary of State recently decided to renew most of the Northern Ireland provisions of the Act because of "the current security situation." Northern Ireland Office, *Temporary Northern Ireland Provisions of the Terrorism Act 2000 to be Renewed for a Further Year*, Jan. 15, 2004, available at <http://www.nio.gov.uk/press/040115a.htm>.

<sup>91</sup> Joint Declaration, Annex 1 ¶ 9.

<sup>92</sup> *Concluding Observations of the Human Rights Committee: United Kingdom of Great Britain and Northern Ireland*, U.N. Doc. CCPR/CO/73/UK (Dec. 6, 2001).

<sup>93</sup> Amnesty International ("AI"), *Terrorism Act 2000 (United Kingdom)*, Feb. 20, 2001.

Many of the practitioners and officials we talked to in Belfast, however, said that the Northern Ireland provisions of the Act are rarely used. The Northern Ireland Office has not reported the number of Diplock trials in recent years, but statistics indicate that there were 149 offenses heard before Diplock courts in 2002. (The number of trials was significantly less, in that defendants in each case are likely to have been charged with multiple offenses.)<sup>94</sup> Although we are pleased that Diplock trials are no longer used as frequently as in the past, it is difficult to understand why the special procedures are still on the books and used to the extent that they are. We criticized these courts and other emergency powers in 1987 and again in 1999, and we believe that reduced violence and the small number of terrorism arrests signal that there is even less justification for them on national security grounds now. We believe the Northern Ireland provisions of the Terrorism Act are unnecessary and that revocation should occur before April 2005, the date proposed in the Joint Declaration. In addition, the Northern Ireland Office should publish clear statistics on past and present use of these courts.

With regard to interrogations, our 1999 report applauded the then-recently established practice of audiotaping police interrogations of detained suspects in Northern Ireland. The taping of such interviews had been a long-standing police practice in England and Wales at the time. According to Chief Constable Orde, audiotaping and videotaping of suspect interrogations is now standard practice in Northern Ireland as well. We support this development, believing that accurate records of these interviews will help to ensure that police have complied with European Convention standards in their treatment of suspects. We were also pleased to note that the notorious holding centers for detained suspected terrorists—little used by the time of the 1998 mission—are now officially closed.

#### IX. THE PATRICK FINUCANE AND ROSEMARY NELSON CASES

Our Committee has long been pressing for public inquiries into the murders of Patrick Finucane and Rosemary Nelson—two lawyers who were killed for their work in representing individuals detained in those holding centers. Both Finucane and Nelson represented people arrested under Northern Ireland's emergency laws and took on other high-profile terrorism cases. Shortly before his death, for example, Patrick Finucane brought a case to the European Commission on Human Rights, challenging the government's seven-day detention powers and its derogation from the European Convention. According to many sources, both lawyers were told repeatedly by their clients that police officers had issued threats against them during interrogation sessions at the holding centers (during which lawyers were not allowed to be present).

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<sup>94</sup> According to recent statistics, at least 111 offenses in 2001 and 149 in 2002 were not "certified out of the scheduled mode of trial by the Attorney General" after defendants applied for certification, meaning that these offenses were heard in Diplock trials. See D. Lyness & M. Carmichael, NIO, *Northern Ireland Statistics on the Operation of the Terrorism Act 2000: Annual Statistics 2002*, RESEARCH AND STATISTICAL BULLETIN, Sept. 2003, table 10 (titled "Number of instances in Northern Ireland for which offences are certified out of the scheduled mode of trial by the Attorney General").

Patrick Finucane was murdered on February 12, 1989, when masked gunmen broke into his Belfast home and shot him 14 times in front of his wife and three children. Although the Ulster Defense Association, a loyalist paramilitary group, claimed responsibility for the killing, strong evidence has emerged linking members of the British security forces to the murder. In April 2003, Sir John Stevens, the Chief Commissioner of the London Metropolitan Police, delivered a report on the case to PSNI Chief Constable Hugh Orde. The report, known as “Stevens III,” was the result of a four-year investigation. A summary of the report was published, making clear that members of the security forces, both the police and the army, had actively colluded with loyalist paramilitaries in the murder. Stevens also reported that the authorities could have prevented Finucane’s murder and that the original investigation into his death should have led to early arrests.<sup>95</sup> In addition, the Stevens III report documented obstruction of the investigation, including a fire in his team’s office, which the Stevens team believes “was a deliberate act of arson.”<sup>96</sup> Chief Constable Orde—who ran the investigation’s day-to-day operations before his current position—is charged with implementing the recommendations and deciding whether to make the entire report public.<sup>97</sup> As of February 2004, the report had not been published.

Rosemary Nelson established her own law practice shortly after Patrick Finucane’s murder, taking on a handful of high-profile terrorism cases along with a regular caseload. We met with Nelson during our 1998 mission, and she told us of the many threats on her life—including the reports of police threats against her at the holding centers. Nelson was murdered on March 15, 1999, less than six months after we met with her, when a booby-trapped bomb exploded under her car as she drove from her home to her office. A loyalist paramilitary group called the Red Hand Defenders claimed responsibility for her murder. Nearly five years later, the police investigation into the murder is still ongoing, but there have been no prosecutions in the case. In September 2003, members of her family released a statement revealing that the investigating officers had informed them that among those implicated in the murder were a former soldier and an informer for the Police Service.<sup>98</sup>

In May 2002, the British and Irish Governments jointly appointed Judge Peter Cory, a retired justice of the Supreme Court of Canada, to investigate the evidence of security force collusion in the murders of Patrick Finucane and Rosemary Nelson, along with four other controversial cases—two from Northern Ireland<sup>99</sup> and two from the Republic of Ireland.<sup>100</sup> In each of the six cases, the judge was given the power to recommend the establishment of a public inquiry, and the governments pledged to abide by his recommendations.

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<sup>95</sup> Sir John Stevens, *Stevens Enquiry 3. Overviews & Recommendations* (“Stevens 3”), Apr. 17, 2003.

<sup>96</sup> Stevens 3 ¶ 3.4.

<sup>97</sup> On July 1, 2003, the European Court found that Finucane’s right to life under Article 2 of the European Convention was violated because the state failed to promptly and effectively investigate the evidence of collusion in his murder. *Finucane v. U.K.*, 37 Eur. H.R. Rep. 29 (2003).

<sup>98</sup> Steven McCaffery, *Soldier Is Suspect in Murder of Solicitor*, THE IRISH NEWS, Mar. 13, 2003, at 1.

<sup>99</sup> These two cases are the murders of Billy Wright and Robert Hamill.

<sup>100</sup> These are the cases of Lord Justice and Lady Gibson and Chief Superintendent Harry Breen and Superintendent Bob Buchanan.

Human rights groups, as well as U.N. Special Rapporteur Dato' Param Cumaraswamy, expressed concern that the Cory investigation might unduly delay the process, as they had long argued that there was already sufficient evidence for public inquiries in the Finucane and Nelson cases.<sup>101</sup> But Judge Cory worked promptly and delivered reports to the British and Irish Governments in all six cases in early October 2003. The governments were expected to make the reports public in December 2003, and on December 18, 2003, the Irish Government did publish its two reports. The British Government has yet to release its four reports, however, maintaining that they are still under review by government lawyers. Judge Cory was dismayed by the delay in regard to the British cases, and on January 12, 2004, independently informed the families— including the Nelson and Finucane families—that he has recommended a public inquiry in each case.

The Finucane, Nelson, and Wright families filed suit in an effort to force the British Government to publish the reports. In early March 2004, the British Government announced that it would publish Cory's reports by the end of the month and at the same time "disclose their intentions for following up the reports."<sup>102</sup> As a result, the High Court in Belfast agreed to a three-week adjournment of the families' suit. On the same day the Finucane family filed an additional suit to compel the government to set up a public inquiry immediately<sup>103</sup> and on March 8 the High Court granted the family leave to apply for judicial review in the matter, setting a hearing date for April 22.<sup>104</sup>

Now that it is clear that Judge Cory has recommended public inquiries in these cases, we urge the government to publish his reports forthwith and move quickly to establish public inquiries. No more delay can be permitted. Indeed, our Committee has been discouraged that almost five years after Rosemary Nelson's death and 15 years after Patrick Finucane's, the cases are unresolved and inquiries have not been held. The British Government should abide by its May 2002 commitment and move to implement Judge Cory's recommendations.

## X. THE LAW SOCIETY AND BAR COUNCIL

### A. Background

The Law Society and Bar Council seem invigorated by their recent roles in criminal justice and policing reform, and the contrast between the concerns of lawyers today and five years ago is impressive. In Northern Ireland, the legal profession is bifurcated into two segments,

<sup>101</sup> United Nations, Econ. & Soc. Council, Comm'n on Human Rights, *Civil and Political Rights, Including the Questions of Independence of the Judiciary, Administration of Justice, Impunity. Report of the Special Rapporteur on the Independence of Judges and Lawyers, Dato' Param Cumaraswamy*, U.N. Doc. E/CN.4/2003/65 ¶ 51 (Jan. 10, 2003); *Lawyers Committee for Human Rights ("LCHR"), Lawyers Committee Calls for Public Inquiry into the Murder of Rosemary Nelson on the Third Anniversary of Her Death*, Mar. 15, 2002; CAJ, *CAJ Continues to Lobby Internationally for Public Inquiries*, JUST NEWS, Apr. 2002, at 1.

<sup>102</sup> Brian Walker, *Cory Reports "Out Later This Month," THE BELFAST TELEGRAPH*, Mar. 3, 2004.

<sup>103</sup> *Blair's Pledge on NI Killings Report*, UTV, Mar. 3, 2004.

<sup>104</sup> *Green Light for Finucane Review*, BBC NEWS, Mar. 8, 2004.

the solicitors who advise and counsel clients, and the barristers who appear in court on their behalf; all solicitors admitted to practice must belong to the Law Society and all barristers to the Bar Council.

The Law Society and Bar Council historically had relatively few women members. Women now constitute over 25 percent of the membership of the Bar Council and a greater percentage of the Law Society.<sup>105</sup> Despite this progress, thus far only five women have become Queen's Counsel, out of a total of 50 QCs. Since QCs are the most likely source of candidates for appointment to the highest positions in the judiciary, we hope that these numbers will continue to improve.

The legal organizations historically avoided activism but, as noted in our 1999 Report, the Law Society, which includes lawyers who are the first line of defense for those accused of crimes, held what they describe as an "historic meeting" to decide whether to publicly acknowledge the Patrick Finucane and Rosemary Nelson cases on May 11, 1999. Called by petition by some of its members, the meeting threatened to divide the Law Society into two different Societies. To the surprise of some, a consensus emerged at that meeting that the Law Society should call for a public inquiry into the murder of Finucane and an independent investigation into that of Rosemary Nelson.<sup>106</sup> The majority of the Law Society's members recognized their shared responsibility to defend lawyers representing clients, including unpopular clients, without being identified with or threatened because of their clients' alleged activities. The Bar Council's Human Rights Committee had already called for a public inquiry into the Finucane case in February 1999 and expressed outrage at the Nelson murder in March of that year.<sup>107</sup> Both the Law Society and the Bar Council now have Human Rights Committees involved in addressing the recent incorporation of the European Convention into domestic law through conferences and training among their members. While the organizations have become more proactively engaged in issues of law reform and the restructuring of the justice system to reflect human rights, both are still reluctant to speak out forcefully and publicly on issues that might divide their memberships. We applaud their progress and urge their ongoing and more proactive involvement in the promotion of reforms supporting a greater regard for human rights in the domestic legal system. We particularly applaud the Bar Council for its support of fellow members who wished to become QCs but refused to take the declaration to the sovereign of the United Kingdom, because it demonstrates that the Council is representative of all barristers regardless of their political allegiances.<sup>108</sup>

<sup>105</sup> According to the NIO, 26 percent of barristers were women in 2000 and 36 percent of solicitors were women. Statistics and Research Branch, NIO, *Gender and the Northern Ireland Criminal Justice System*, Mar. 2002.

<sup>106</sup> *North Solicitors Call for Independent Inquiry into Finucane Matter*, RTE NEWS ONLINE, May 11, 1999, available at <http://www.rte.ie/news/1999/0511/solicitors.html>.

<sup>107</sup> The Bar Council, *Bar Human Rights Committee Outraged by Murder of Rosemary Nelson*, March 16, 1999. The Bar Council repeated its call for an independent judicial inquiry in the Finucane case in 2002 and 2003.

<sup>108</sup> *High Court Rules Against Declaration*, SUNDAY BUSINESS POST, May 7, 2000, available at <http://archives.tcm.ie/businesspost/2000/05/07/story289726.asp>.

Since our 1998 mission to Northern Ireland, we have been pleased to find that many of the problems identified in our 1999 report are no longer significant issues for the legal profession. Both the Law Society and the Bar Council confirmed that harassment of lawyers defending unpopular clients—particularly those accused of acts of terrorism—has been significantly reduced.<sup>109</sup> The notorious detention centers have been closed, all police interviews of those accused of crimes are now taped with the option to have a defense lawyer present, lawyers have prompt access to their clients and there are generally speedier hearings. When there is geographical difficulty in accessing clients in detention, lawyers often gain access to distant jails by means of video communication. From the perspective of the United States, suddenly faced anew with the difficulty of protecting national security while upholding the rights of those accused, we appreciate how difficult it has been in Northern Ireland. As we in the United States are more directly tested, it is heartening to see the increased respect the Northern Ireland legal system has for the rights of the accused under trying circumstances.

#### **B. Role in the Criminal Justice Reforms**

The Law Society and the Bar Council have viewed their roles as consultative regarding the Criminal Justice Review and subsequent implementation efforts. Importantly, both submitted comments and recommendations to the Review Group,<sup>110</sup> and one member of the Bar Council served on the Review body, but both continue to be true to their tradition of playing quiet roles. Both acknowledge support for the reform of the judicial appointments process, as a departure from the closed door “tap on the shoulder system” which had been the style for appointments in the past. Both have high regard for the Police Ombudsman and her role in the reform of the policing system and oversight of complaints about police misconduct. Both support the strengthening of an independent prosecution service and the critical role of an independent judiciary, but their voices have been muted by traditional reluctance to speak out forcefully on these issues. We commend the Law Society and the Bar Council for their positions, but urge them to play an even stronger and more public role on these issues.

The Law Society and the Bar Council do provide some education for their members and the broader public on issues of criminal justice and human rights.<sup>111</sup> But in Northern Ireland, unlike New York City, they do not provide ongoing continued legal education programs, which are currently required for members of the Law Society but not members of the Bar Council. At present, independent providers offer these services.

<sup>109</sup> Even so, while *police* harassment of lawyers has been virtually eliminated, complaints are still made regarding lawyers' details being found on loyalist hit lists, resulting in reluctance by lawyers to take on high-profile cases.

<sup>110</sup> Review, App. A. For the complete Law Society submission, see The Law Society of Northern Ireland, *The Society's Submission to the Criminal Justice Review*, 2000, available at [http://www.lawsocni.org/cjr\\_review.htm](http://www.lawsocni.org/cjr_review.htm).

<sup>111</sup> The Criminal Justice Review considered human rights protections central to the criminal justice system and the Implementation Plans have endorsed human rights training. Criminal justice agencies, including the NIO, the Office of the DPP, the PSNI and the Court Service, provide training for their staff. 2003 Implementation Plan at 11.

We would hope there might be a greater role for both the Law Society and the Bar Council in insuring that these programs include appropriate materials on human rights issues, whether by offering their own programs or through advice to and cooperation with independent providers, and encouraging their members and law students to attend human rights-focused training sessions.<sup>112</sup> In addition, we believe that both legal organizations should help educate the public at large on these issues.

One of the great challenges facing the Northern Ireland criminal justice system in the aftermath of political conflict is the need to address the unsolved deaths of hundreds of people,<sup>113</sup> on both sides of the divided community. While we continue to call for public inquiries into the murders of Patrick Finucane and Rosemary Nelson because there is substantial evidence supporting the conclusion that their deaths were motivated in large part by their role as lawyers acting in defense of their clients, we recognize that many others in Northern Ireland lost family members during the political conflict, including many members of the police force. There is a need for accountability, but we recognize that traditional criminal investigations many years after deaths present difficulties in terms of cost, delay, and preservation of evidence, and may not be realistic options. We call upon the Law Society and the Bar Council to help propose alternatives that might help bring a sense of justice and closure to these many unsolved cases. Other societies have struggled with alternatives, and none offer a perfect solution. The Law Society and the Bar Council can and should play a valuable role in exploring and crafting alternatives helpful to the particular needs of Northern Ireland.

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<sup>112</sup> While human rights issues are increasingly included in legal training modules, they are a minor part of law school curricula in Northern Ireland.

<sup>113</sup> Chief Constable Orde has estimated that there are more than 1800 unsolved deaths. Charles M. Sennott, *To move on, a call for 'total truth'*, THE BOSTON GLOBE, July 8, 2003. The figure does not include deaths caused by state actors or collusion.

## APPENDIX A

## CHRONOLOGY OF MEETINGS

*New York**Wednesday, September 18, 2002*

- Sir Joseph Pilling, Permanent Under-Secretary of State Northern Ireland Office

*Friday, March 21, 2003*

- Paul Mageean, Legal Office (current Acting Director) Committee on the Administration of Justice
- Jane Winter, Director British Irish Rights Watch

*July 25, 2003*

- Lord Goldsmith, Attorney General for the United Kingdom and Northern Ireland

*Wednesday, October 8, 2003*

- Justice Brian Kerr, QC, High Court (incoming Lord Chief Justice)

*London**Friday, May 9, 2003*

- Jane Winter, Director, British Irish Rights Watch

*Belfast**Sunday, May 11, 2003*

- Kieran McEvoy, Professor of Law and Transitional Justice
- Stephen Livingstone, Professor of Law and Director, Human Rights Centre, Queen's University Belfast School of Law
- Martin O'Brien, Director
- Paul Mageean, Legal Officer (current Acting Director), Committee on the Administration of Justice

*Monday, May 12, 2003*

- Kevin Winters, Solicitor Kevin R. Winters and Co.
- Monica McWilliams, former member of the Northern Ireland Legislative Assembly ("MLA") Northern Ireland Women's Coalition
- Dr. William Lockhart, Chief Executive and former member of the Criminal Justice Review

*Extern*  
*Tuesday, May 13, 2003*

- Alban Maginness, former MLA  
Social Democratic and Labour Party
- Gerry Kelly, former MLA and policing and criminal justice  
spokesperson
- Kathy Stanton, former MLA
- Sam Porter, Policy Advisor, Sinn Fein
- Sir Joseph Pilling, Permanent Under-Secretary of State,  
Northern Ireland Office
- Paul Priestly, Head of Criminal Justice Reform Division
- Kirsten McFarlane, Human Rights and Equality Unit
- Maura Quinn, Criminal Justice Review Implementation Team
- Stephen Leach, Director, Criminal Justice, Northern Ireland  
Office
- John Simpson, Commissioner for Judicial Appointments,  
Office of the Commissioner for Judicial Appointments for  
Northern Ireland
- Professor Brice Dickson, Chief Commissioner,
- Angela Stevens, Acting Caseworker, Northern Ireland Human  
Rights Commission

*Wednesday, May 14, 2003*

- Nuala O'Loan, Police Ombudsman
- Sam Pollock, Chief Executivem Office of the Police Ombuds-  
man for Northern Ireland
- Eamonn McKee, Counsellor, Anglo-Irish Division
- Máire Flanagan, First Secretary, Anglo-Irish Division  
Department of Foreign Affairs, Republic of Ireland
- Justice Brian Kerr, QC, High Court (incoming Lord Chief  
Justice), Royal Courts of Justice
- David Lavery, Director
- Sandra Moore, Northern Ireland Court Service
- Professor Desmond Rea, Chair
- Denis Bradley, Vice Chair
- Lorraine Calvert, Acting Head of Press and Public Relations  
Branch
- Sinead Simpson, Head of Policy and Accountability Branch,  
Northern Ireland Policing Board
- John Jackson, Professor of Law, Queens University Belfast,  
and former member of the Criminal Justice Review
- Professor Eugene Grant, QC, former Chair, Bar Council of  
Northern Ireland and former member of the Criminal Justice  
Review
- Colm Owens, solicitor
- Family members of Rosemary Nelson

*Thursday, May 15, 2003*

- Sir Alasdair Fraser, C.B., QC, Director of Public Prosecutions
- Roy Junkin, Deputy Director of Public Prosecutions
- James Scholes, Senior Assistant Director, Royal Courts of  
Justice
- Hugh Orde, Chief Constable

- J.A. Kearney, Chief Inspector, Police Service of Northern Ireland
- Paul O'Connor, Pat Finucane Center
- Joseph A. Donnelly, President
- John Bailie, Chief Executive and Secretary
- Kevin Delaney, Assistant Secretary and Chair of Human Rights Committee
- Peter O'Brien, Assistant Secretary
- Elliott Duffy Garrett
- Pierce McDermott, Law Society of Northern Ireland
- Brian Fee, QC, Chair, Human Rights Committee and former Chair of the Bar Council
- Brendan Garland, Chief Executive, Bar Council of Northern Ireland

*Friday, May 16, 2003*

- Stephen Farry, General Secretary, Alliance Party of Northern Ireland
- John McAtamney, solicitor, Trevor Smyth & Co.
- Peter Madden, solicitor, Madden & Finucane
- Sean McCann, solicitor, McCann & McCann
- Noel Phoenix, solicitor

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**PREPARED STATEMENT OF  
JANE WINTER, DIRECTOR,  
BRITISH-IRISH HUMAN RIGHTS WATCH**

British Irish Rights Watch is an independent nongovernmental organisation and registered charity that monitors the human rights dimension of the conflict and the peace process in Northern Ireland. Our services are available to anyone whose human rights have been affected by the conflict, regardless of religious, political or community affiliations, and we take no position on the eventual constitutional outcome of the peace process.

We welcome this opportunity to address the Commission on Security and Cooperation in Europe concerning the investigation carried out by Judge Peter Cory into the question of whether there was collusion in four murders which took place in Northern Ireland, those of Patrick Finucane, Robert Hamill, Billy Wright, and Rosemary Nelson, and two which happened in the Republic of Ireland, those of Lord Justice and Lady Gibson and two police officers, Superintendent Bob Buchanan and Chief Superintendent Harry Breen. We thank the members of this honourable Commission for their interest in this matter.

To deal first with the Northern Ireland cases, Belfast lawyer Patrick Finucane was murdered by the UDA in 1989. In 2003 Sir John Stevens, the Commissioner of the Metropolitan (London) Police, who had been investigating collusion since 1989, stated publicly that there is strong evidence of collusion with the loyalists who killed the lawyer by both RUC [the Northern Ireland police force, since renamed as the PSNI] officers and British army intelligence.

Robert Hamill was a young Catholic man who was kicked to death by a loyalist mob in 1997 in the centre of Portadown despite the presence of armed RUC officers in a police Land Rover. The RUC later put out misleading press statements suggesting that Robert Hamill had been involved in a pitched battle between opposing factions and that RUC officers had been injured. Following an investigation by the Police Ombudsman, former police officers and others have stood trial for perverting the course of justice by alerting suspects and telling them how to dispose of forensic evidence.

Dissident loyalist leader Billy Wright was murdered in the Maze prison in 1997. He was killed on his way to a visit, by republican INLA prisoners whom the prison authorities had housed in the same wing. They were able to smuggle weapons into the jail, and to cut through a wire fence completely undetected. A prison officer was called away from a crucial watch tower just at the time of the murder, and there is evidence to suggest that the murderers had advance warning that Billy Wright was due to receive a visit that morning.

Lurgan lawyer Rosemary Nelson was blown up in a car bomb by the LVF in 1999. She was threatened by members of the security forces before she died. Representations were made to the government concerning her safety by the UN and by NGOs, but she was offered no protection. Five years after the murder, no-one has been brought to book, despite an extremely expensive police investigation overseen by officers from outside Northern Ireland. Some of those suspected of involvement in her murder were police agents, and one was a serving soldier.

These cases had received international attention. As long ago as 1998 the United Nations' Special Rapporteur on the independence of judges and lawyers, Dato' Param Cumaraswamy, called for a public inquiry into the murder of Patrick Finucane, following an official mission to Northern Ireland in 1997. In his report on that visit, he was extremely critical of RUC practices, concluding that "... the RUC has engaged in activities which constitute intimidation, hindrance, harassment or improper interference" with lawyers. He determined that intimidation and harassment of defence lawyers in Northern Ireland was "consistent and systematic." Following the murder of Rosemary Nelson, whom he had met during his visit and whom he found to be at great risk, the Special Rapporteur immediately called for a public inquiry into her death also. Various committees here in Congress had also examined the case of the two lawyers and that of Robert Hamill, and had also called for public inquiries, as had the Irish Government and other United Nations officials and committees.

The United Kingdom Government, however, proved very resistant to holding public inquiries. It was not until 2001, when collusion became an issue during negotiations designed to save the Northern Ireland peace process, that any kind of progress was achieved. The Irish Taoiseach (Prime Minister), Bertie Ahern, persuaded the British Prime Minister, Tony Blair, to call in an independent judge from outside the UK and Ireland to consider the issue of whether public inquiries were warranted into the deaths in the four cases, all of which arose in the United Kingdom, and two other cases which arose in the Republic of Ireland. The commitment made by the two governments was published in the Weston Park Agreement in the following terms:

"18. Both Governments want the new policing arrangements now being established to focus on the future. But they also accept that certain cases from the past remain a source of grave public concern, particularly those giving rise to serious allegations of collusion by the security forces in each of our jurisdictions. Both Governments will therefore appoint a judge of international standing from outside both jurisdictions to undertake a thorough investigation of allegations of collusion in the cases, of the murders of Chief Superintendent Harry Breen and Superintendent Bob Buchanan, Pat Finucane, Lord Justice and Lady Gibson, Robert Hamill, Rosemary Nelson and Billy Wright.

19. The investigation of each individual case will begin no later than April 2002 unless this is clearly prejudicial to a forthcoming prosecution at that time.

Detailed terms of reference will be published but the appointed judge will be asked to review all the papers, interview anyone who can help, establish the facts and report with recommendations for any further action. Arrangements will be made to hear the views of the victims' families and keep them informed of progress.

If the appointed judge considers that in any case this has not provided a sufficient basis on which to establish the facts, he or she can report to this effect with recommendations as to what further action should be taken. In the event that a Public Inquiry is recommended in any case, the relevant Government will implement that recommendation.”

The judge was jointly appointed by the UK and Irish Governments. The UK Government dragged this process out, but eventually in April 2002 Peter Cory, a distinguished former member of the Canadian Supreme Court, was appointed to examine all six cases. His letter of appointment set out the following terms of reference:

“Your task will be to:

- review all the relevant papers in each case, including the records of earlier investigations;
- interview anyone you think can assist your examination;
- establish the facts so far as is practicable and subject to the law of the respective jurisdictions;
- keep, in reasonable manner, the relevant government informed of progress;
- submit reports as soon as practicable, including in circumstances where there was not a sufficient basis to establish the facts in a particular case; your reports will include any recommendation(s) you decide to make for further action including, if you consider it necessary, the holding of a Public Inquiry.

In the event that a Public inquiry is recommended in any case the relevant Government will implement that recommendation.

There is a need to avoid any action which would be clearly prejudicial to any forthcoming prosecution. The relevant Attorney General (following consultation with the relevant DPP [Director of Public Prosecutions], as appropriate) will discuss with you any issues related to the safeguarding of prosecutions.

Your reports will be to the Prime Minister or the Taoiseach as appropriate.

The relevant Government will publish the final reports (but not the documents on which they are based) subject only to any necessary adjustments to ensure that the privacy and right to life of individuals is protected, and that the relevant Government’s obligations in relation to ensuring justice and protecting national security are maintained.

You will wish to hear the views of the victims’ families and to keep them informed of progress, if that is their wish. The two Governments stand ready to assist in this as appropriate.

The two Governments are keen to see rapid progress. To this end, we shall make the relevant material available to you as soon as possible. It is the Governments' policy that public servants should cooperate fully and provide full access to all the papers. In order to ensure that the examination of each case can be properly supported we shall be establishing secretariats with individuals from our own jurisdictions. Their task will be to assemble all the material which you need and to provide whatever additional assistance you, your legal assistant and support staff require. We are each prepared to arrange for independent legal advice to be available directly to you as required within our separate jurisdictions. We shall also meet any other reasonable costs incurred in the course of the investigation.

The investigation will involve you and your legal assistant being granted access to very sensitive material. Each secretariat will have the necessary guidelines and facilities for ensuring that such material is handled in a way which respects our own responsibilities in respect of such matters as national security and the privacy of individuals. It is essential that these guidelines are observed, not least because they bear on the obligations which the two Governments have under the European Convention for the Protection of Human Rights, including in respect to the right of life, under Article 2 [which protects the right to life].

Judge Cory started work in July 2002 and he finished his work by 7 October 2003, when he delivered two reports to the Irish Government and four reports to the UK Government.

The two reports addressed to the Irish Government concerned Lord Justice and Lady Gibson, and Harry Breen and Bob Buchanan. Lord Justice Gibson, who was a High Court judge, and his wife died when their car was blown up by the IRA in 1987 as they returned home from a holiday via the Dun Laoghaire ferry. Although the judge had booked the ferry in his own name, the timing and location of the explosion, which happened during the handover between the Garda and RUC escorts on the border, had given rise to allegations of collusion by a Garda officer. Harry Breen and Bob Buchanan were RUC officers who were ambushed and shot by the IRA as they returned to Northern Ireland from a meeting in the Republic in 1989. Garda collusion was also suspected in their case.

On 18 December 2003, the Irish Government published the two reports addressed to them. Judge Cory had recommended a public inquiry in the case of Bob Buchanan and Harry Breen, and the Irish Government announced that it would immediately establish such an inquiry. The Irish Government asked Judge Cory to make some minor changes to his report before publication, which the judge agreed to make. These mainly involved the identification of certain persons.

The UK Government has yet to publish the four reports addressed to them, despite many appeals from the families of the victims. We understand that, in contrast to the Irish Government, they have asked the judge to make many changes to his reports, about many of which he is unhappy. They have also insisted that everyone who is criticised in the reports must be forewarned of that criticism, and are claiming that the Salmon Principles require them to do so. The Salmon Principles were developed in order to give the right of rebuttal to persons

facing criticism by public inquiries, and have never before been applied to private enquiries of the type undertaken by Judge Cory, to the best of our knowledge. The UK Government has also argued that it needs to make changes to the reports in order to protect the right to life and privacy of persons mentioned in the reports and on grounds of national security. However, Judge Cory has told BIRW that he drafted the reports in such a way as to avoid the need for such changes, and the Irish Government does not appear to have needed to make such changes.

On 12 January 2004, Judge Cory took the unprecedented step of telling the four families concerned that he has indeed recommended public inquiries in all four UK cases, and he also confirmed this publicly. He decided to tell the families because he felt that natural justice and common humanity demanded that they should not be kept waiting any longer for a decision, and to allay the families' fears that they might never be told the outcome of his investigations.

On 14 January 2004, the Finucane family lodged an action for judicial review in the High Court in Northern Ireland of the government's failure to publish Judge Cory's report. Rosemary Nelson's family followed suit, and so did the family of Billy Wright. On 20 January the Finucanes were given leave to proceed. The judge who heard the leave application set a strict timetable for the lodging of affidavits in the case and set a date for the substantive hearing which was only six weeks away, on Monday 1 March 2004.

In what can only be described as a dirty trick, after close of business on Friday 27 February 2004 the government invited the families to apply for a three-week adjournment in return for a vague promise that "it is expected that within a matter of weeks the arrangements for publication will be finalised." When the families refused to do so, the government itself applied for an adjournment, which the judge granted. During the hearing of argument about whether the adjournment should be granted, Counsel for the government revealed for the first time that copies or extracts from the reports had been shown to the Police Service for Northern Ireland (the new name for the RUC), the Ministry of Defence, and the Director of Public Prosecutions. All of these agencies have been alleged to have been involved in collusion in one or all of the four cases.

On 2 March 2004 the Finucanes decided to make a fresh application for judicial review of the failure by the government to act on Judge Cory's recommendation that there should be a public inquiry into the murder of Patrick Finucane. Rosemary Nelson's family has already followed suit. On 8 March both cases were given leave to proceed. The full hearing was set for 22 April. On 11 March the government informed the four families that they would publish the reports at the end of March, together with their response. However, they gave no commitment to implement the judge's recommendations for inquiries.

In his report into the Buchanan and Breen case, Judge Cory had this to say:

"2.167 This case, like that of Finucane, Hamill, Wright, Nelson and the Gibsons was specifically selected as one of those to be reviewed to determine if there was collusion and, if so, to direct a public inquiry. In light

of this provision in the original agreement failure to hold such an inquiry as quickly as possible might be thought to be a denial of the original agreement, which appears to have been an important and integral part of the peace process. The failure to do so could be seen as a cynical breach of faith which could have unfortunate consequences for the Peace Accord.”

Given their record so far, the families fear that the UK Government will not set up proper public inquiries into the murders of their loved ones. Judge Cory has set out in the Buchanan and Breen report the following parameters for such an inquiry:

“2.165 When I speak of a public inquiry, I take that term to encompass certain essential characteristics. They would include the following:

- An independent commissioner or panel of commissioners.
- The tribunal should have full power to subpoena witnesses and documents together with all the powers usually exercised by a commissioner in a public inquiry.
- The tribunal should select its own counsel who should have all the powers usually associated with counsel appointed to act for a commission or tribunal of public inquiry.
- The tribunal should also be empowered to engage investigators who might be police officers or retired police officers to carry out such investigative or other tasks as may be deemed essential to the work of the tribunal.
- The hearings, to the extent possible, should be held in public.
- The findings and recommendations of the commissioners should be in writing and made public.

We have reason to believe that he has included identical recommendations in the four UK reports.

The families are also concerned that they will not be consulted about the terms of reference or format of any public inquiries, as is their right under Article 2 of the European Convention on Human Rights, which protects the right to life. Judgments of the European Court on Human Rights in the cases of *Jordan v UK*, *McKerr v UK*, *Kelly & Ors v UK*, and *Shanaghan v UK*, and a decision of the House of Lords in *Amin*, have established that, where the state is or may have been responsible for a death, the family has the right to an effective investigation and to be involved in that investigation.

This honourable Commission is respectfully requested to urge the United Kingdom Government to:

- disclose unexpurgated versions of Judge Cory’s reports to the families concerned;
- consult the families about the terms of reference and format of the public inquiries; and
- establish those public inquiries without further delay.

**PREPARED STATEMENT OF  
BRENDAN MCALLISTER, DIRECTOR,  
MEDIATION NORTHERN IRELAND**

Mediation Northern Ireland originates in the late 1980s, when a group of individuals from such diverse fields as Education, Criminal Justice, Community Development, Social Work, the Churches and the peace movement came together around a common belief in the potential of mediation as a method of improving social stability and promoting peace.

We are governed by a Board of Trustees, drawn from across the community and have a core staff team of 13. We engage the services of 25 Associate Practitioners from the Community Relations field who work part-time for us.

We also have a Monitors Group of 60 volunteers who assist us with work on sectarian interfaces.

We are a nonprofit, charitable organization which is funded by the Northern Ireland Community Relations Council, the International Fund for Ireland, the European Union and a number of charitable trusts. We have previously received assistance from the Rockefeller Foundation, the American Ireland Fund and the United States Institute of Peace.

Since 1997, the U.S. State Department's Office of Citizen Exchanges has funded five exchange programmes on policing, though most of our funds for work on policing derive from the British Exchequer, through the Northern Ireland Office.

**MAIN AREAS OF WORK.**

- Neighbourhoods and Communities.
- The Public Sector.
- Local Government.
- Policing.
- Integrated Education.
- The Churches.
- Community Cohesion in the United Kingdom.
- International networking on Conflict Intervention.

**THE CONCEPTUAL BASIS OF OUR WORK.**

The term 'mediation' describes a range of activities and methodologies. However, *the essence of mediation involves the presence of an impartial person (or body) in a situation of conflict, assisting people to resolve or manage differences in ways which promote human dignity and mutual respect.*

Mediators behave as 'outsiders', maintaining a 'critical distance' from those in dispute.

Acting in collaboration with those in dispute, *mediators design strategies* for improving contentious situations and uphold arrangements for the implementation of those strategies.

*The intention of mediation* is to effect positive change.

Mediation has five principal functions:

- To assist communication.
- To improve understandings.

- To support creative thinking.
- to explore accommodations.
- To facilitate agreements.

*Societal conflict is systemic*, in that it goes beyond differences between individuals and is expressed throughout society: between neighbourhoods and communities; across cultural traditions and within institutions.

*Mediation's civic task* is twofold:

- **To sustain peace**, by intervening in disputes and helping people to address deeper conflict.
- **To build good relations**, by assisting people with efforts towards reconciliation and mutual respect.

#### MEDIATION AND HUMAN RIGHTS

Human Rights and Justice are inextricably linked.

The concept of 'Human Rights' involves the setting and maintenance of standards which should govern behaviour between citizens, towards citizens and between societies.

The concept of 'Justice' underpins the exercise of human rights by striving for *right relationships* between individuals, groups and institutions.

Mediation works as an instrument of justice when it assists the development of right relationships.

#### DIMENSIONS OF PEACE IN NORTHERN IRELAND

In our view, the process of peace in Ireland has four key dimensions:

- The effort towards **political consensus**. This is an area of huge dysfunction at present.
- **Economic development** to strengthen our economy, raise living standards and give people the dignity of work.
- **Social progress**, on issues such as education, health and community cohesion.
- **Agreed law and order**, involving a system of justice and a Police Service which command the respect of the whole community.

The work of **reconciliation** stretches across the above strands of peace. Chief among its properties is the activity of building and rebuilding relationships.

Mediation Northern Ireland believes that mediation must make a contribution in all of the above dimensions by infusing the civic imagination with greater knowledge of 'the Other', enabling the influence of compassion and encouraging inclusive thinking.

#### MEDIATION NORTHERN IRELAND'S WORK ON POLICING

Since 1993, we have been assisting with the long-term task of reforming the police relationship with the community in Northern Ireland. We have addressed the issue in three ways:

- Promoting internal change within the Police Service.

- Assisting civic participation in policing.
- Critically engaging Public Order policing.

#### **THE EVOLUTION OF MEDIATION WITHIN POLICING.**

##### **The Community Awareness Programme, 1993–1996.**

In 1993, Mediation Northern Ireland was invited by the R.U.C. to design and introduce a programme, within the Police training centre, aimed at enhancing the sensitivity of recruits towards the task of policing a divided society.

We developed a curriculum which included subjects such as

- Personal and Professional Awareness.
- Diversity in History and Politics.
- Cultural traditions.
- The Churches and the Troubles.
- Social and Economic Awareness.
- Policing a Divided Society.
- Perspectives on the R.U.C.
- Living with conflict.
- Community Relations and the Police contribution.

By 1996, the Community Awareness Programme had become established within police training and because Mediation Northern Ireland were now active within the emerging parades conflict we felt the need to withdraw from involvement in police training.

##### **The Policing Our Divided Society Programme, 1997–2000**

By 1997 we believed that a new mediative task had evolved:

- to promote dialogue within senior ranks in anticipation of police reform.

We believed that an important contribution to change would involve a critical engagement of 'capacity builders' within the R.U.C. and, with agreement from the Chief Constable, we established a 'Development Group' of 15 middle rank and senior officers to engage with a Working Group from Mediation Northern Ireland in a dialogue which was intended to last for three years.

We were joined in our Working Group by colleagues from 'Future Ways', a Community Relations team based within the University of Ulster, who have provided invaluable partnership to this day.

The Development Group included five Catholic officers and four women and tackled subjects which had hitherto been viewed as taboo issues within the R.U.C., such as personal disclosure of political and religious views; reflection on the contribution of the R.U.C. to conflict in Northern Ireland; the relationship between the R.U.C. and the unionist, nationalist and republican traditions; unionist and Protestant cultural dominance within the R.U.C.; the concept of Community Policing and the potential contribution of the Police to reconciliation.

The State Department, through the Office of Citizen Exchanges, provided important support to our work by funding study trips to the United States in partnership with various American academic institutions and with cooperation from police departments, policing theorists and thinkers on societal change within the United States.

In 1997, we led R.U.C. officers on a Field Trip to New York and Washington to study community-oriented policing. In 1998, we undertook a similar visit to Atlanta to study policing and societal change and Restorative Justice.

Some months after each Field Trip, American colleagues travelled to Belfast to help us reinforce new conceptual awareness within the R.U.C. and to begin introducing politicians and civic leaders to new ideas about policing.

In the light of our experience, Mediation Northern Ireland and our colleagues in Future Ways were invited on a number of occasions to advise the Patten commission during their deliberations on police reform.

#### **THE POLICING PROGRAMME OF MEDIATION NORTHERN IRELAND, 2001-2004.**

In the light of the publication of the Patten Report, Mediation Northern Ireland negotiated a new three-year programme in 2001 with the Chief Constable, the Northern Ireland Office, the Police Ombudsman and the Secretary of State, aimed at assisting the emergence of a fair and agreed policing order in the service of reconciliation in Northern Ireland.

This programme has four projects:

##### **The Police Ombudsman's Project.**

**Purpose:** to assist the organizational development of the Police Ombudsman's Office.

**Themes:** the *Civic Integrity* of the Office of Police Ombudsman.

**Engaging the Police:** developing the most effective ways to engage the Police Service.

**Relating to the community:** developing a credible relationship across the community in Northern Ireland.

**Mediation and Associated Disciplines:** developing the use of mediation in the informal resolution of complaints against police.

##### **The Civic Project.**

**Purpose:** to assist politicians, citizens and civic institutions in their contribution towards a fair and agreed policing order as envisaged in the Patten Report.

Themes.

**Self Awareness:** reflecting on one's formation as a citizen in a divided society.

**Community Awareness:** enhancing one's understanding of the diversity of Northern Ireland.

**Peace and Reconciliation:** considering the challenges of living with enduring division and the legacy of the Troubles.

**Community Policing:** the concept applied to Northern Ireland.

Within this project, Mediation Northern Ireland organized three further exchange trips to the United States: One to San Diego in December, 2000, in partnership with San Diego State University and

San Diego Police Department; one in partnership with Rutgers University to New York, New Jersey and Washington for a group in December, 2001, with a follow-up visit by American colleagues to Belfast in May, 2002.

The study group included nine of the newly appointed members of the Policing Board, senior police officers, a Human Rights Commissioner, the Police Ombudsman and members of the Northern Ireland Assembly.

More recently, in September, 2003, we organized a study visit to Boston, in conjunction with Boston College and Boston Police Department. On that occasion, the group included Policing Board members, Chief Executives of District Councils, District Policing Partnership managers, the Police Ombudsman, senior police officers and leaders of two voluntary sector agencies.

A visit to Belfast is planned for early May, 2004 by a team which will include the Commissioner for Public Safety for Massachusetts, a senior officer from Boston Police Department and two community leaders from Boston.

We are now exploring the possibility of further exchange work with Boston College over the next two years, involving community activists and police officers at ground level in Northern Ireland and Boston.

#### **The Training Project.**

**Purpose:** to ensure that police training addresses the needs of community relationships in Northern Ireland.

#### **Themes.**

**A segregated past:** addressing the fact that, with each intake of student officers, the Police Service of Northern Ireland is being reconstituted, for the most part, with citizens who have been formed in a divided society.

**An uncertain present:** enabling critical dialogue among students and trainers regarding the effect of current political, communal and organizational changes and uncertainties.

**A pluralist future:** envisioning the role of police in serving a society which is evolving towards consensus between the unionist and nationalist traditions and which is more culturally diverse.

#### **The Forum Project.**

**Purpose:** to develop and sustain critical dialogue within the Police Service of Northern Ireland regarding a fair and agreed policing order.

#### **Themes:**

- **Community Policing:** applying the abstract concept to the Northern Ireland context.
- **Community Relationships:** reflecting on the state of relationships between police and the various communities they serve.
- **Reconciliation:** applying the challenge of reconciliation to the operation of policing in the community.

**THE EMERGING CONTRIBUTION OF MEDIATION TO POLICING:  
THE POLICING AND RECONCILIATION PROGRAMME**

Mediation Northern Ireland is currently developing proposals for a new three-year programme of work on policing. This would involve two broad projects which we believe will address the emerging realities of change within Northern Ireland:

**THE POLICING AND RECONCILIATION PROJECT**

This project will concern all of the work which we propose to do **within** the Police Service of Northern Ireland, such as

- The development of an **Induction Course on Policing and Reconciliation** for individuals aspiring to become police officers. This three-day residential course takes place in a non-Police venue and is currently being administered by Mediation Northern Ireland to each batch of recruits before they commence their Foundation Training course. It is reinforced by a further two days of workshops within the Training Centre. The course addresses their formation as citizens in a divided society; challenges them to critically reflect on their backgrounds; to meet their prospective colleagues within a spirit of genuine enquiry about the different cultural traditions from which they come and to approach the police organisation in a way which enhances its diversity rather than maintains the myth of neutrality. Mediation Northern Ireland supports the Chief Constable's view that the integrity and credibility of this course would be enhanced by funding which is independent of the Police budget. However, no independent funding has yet been acquired to support this course during the crucial years of 50%–50% Protestant / Catholic recruitment in accordance with the Patten reform programme.
- Developing a mediative contribution to **Community Relations training** within the wider **Diversity** programme of the Police Service of Northern Ireland. In this regard, we will build on work done within the Policing and Reconciliation induction course by developing a curriculum and methodology for use within the formal training regime of the Police Service. It would also involve training police trainers to help them become more personally and professionally competent with these matters. Mediation Northern Ireland intend to create further opportunities for reflection by police officers on their contribution to reconciliation in our society. Our proposed mechanism will be a **Forum on Reconciliation and Policing** which will bring strategically placed officers together to consider the ideal of policing and reconciliation against current operational realities and police behaviour.

**THE CIVIC PROJECT ON POLICING.**

This project continues our theme of policing as a civic endeavour shared between police officer and citizen. It concerns anyone who is involved in policing (or aspires to get involved) and who is not a police officer. Mediation Northern Ireland views the Policing Board as the primary partner in such work. We are currently in discussion with

the Policing Board regarding a training programme for the District Policing Partnerships which now exist across Northern Ireland as part of the Patten reforms. We have identified a number of themes:

**Common Purpose:** to assist DPPs and PSNI District Commanders to maintain a shared vision about their work together.

**Technical Awareness:** to improve DPP understandings of the operational dimensions of policing.

**Community Awareness:** to enhance police understandings of the community they serve.

**Civic Leadership:** to enable DPPs and police officers to reflect on the challenges of leadership in local policing.

**Citizen Participation:** to consider how local citizens can improve their participation in policing.

We expect to run an initial series of training days for all 25 existing District Partnerships between May and December of this year and to engage with the Policing Board and the Police Service regarding the design of a longer term development plan to assist the ordinary citizen to play a role in policing.

In all of this we have been informed by what we have learned about the evolution of policing theory internationally, in particular by such renowned theorists as Professor George Kelling of Rutgers University, New Jersey, who has assisted us with study trips to the United States and has conducted seminars for us in Belfast.

The concept of Community-Oriented Policing was also advanced within the Patten Commission by members such as Professor Clifford Shearing of the University of Toronto; Dr. Gerard Lynch, President of John Jay College, New York; Kathleen O'Toole, now Commissioner of Police in Boston and Sir John Smith, former Deputy Commissioner of the Metropolitan Police in London.

We believe that Policing with the Community, if taken seriously, will advance a profound change in the nature of policing in Northern Ireland, helping us move away from an approach to policing which has been preoccupied with security, counter-terrorism and public order and towards a service ethos in which the police will reflect the full diversity of the community they serve, within their ranks, through the quality of their relationships with the community and by the nature of policing practice which prioritizes partnership and joint problem-solving with citizens.

We will continue to provide support to the Office of Police Ombudsman as a contribution to upholding its civic integrity.

**PREPARED SUBMISSION OF  
BRENDAN MCALLISTER, DIRECTOR,  
MEDIATION NORTHERN IRELAND**

**ASSISTANCE TO MEDIATION NORTHERN IRELAND  
FROM STATE DEPARTMENT**

**December, 1997: Field Trip to New York** with 15 middle rank and senior R.U.C. officers.

**Theme:** Community Oriented Policing.

**Partners:** Conflict Management Group, Harvard; Citizens Committee for New York City; New York Police Department; John Jay College of Criminal Justice, New York.

**March, 1998: Return Visit to Belfast** by Michael Clark, President, Citizens Committee for New York City; Chief Joseph Dunne, NYPD.

**Activities:** seminars with police; dialogue with politicians.

**Overall Budget:** \$78,000.

**December, 1998: Field Trip to Atlanta** with 21 middle rank and senior R.U.C. officers.

**Theme:** Policing and Societal Change.

**Partners:** Eastern Mennonite University, Virginia; Atlanta Police Department.

**May, 1999: Return Visit to Belfast** by David Brubaker (Organizational Change); Dr. Ron Kraybill (Community Relationships) and Professor Howard Zehr (Restorative Justice), Eastern Mennonite University; John Hart (Office of Community Oriented Policing, U.S. Dept. of Justice).

**Activities:** seminars with police; dialogue with politicians and clergy.

**Overall Budget:** \$100,000.

**December, 2000: Field Trip to San Diego** with 14 middle rank and senior R.U.C. officers and 4 civic commentators.

**Theme:** Policing, Community and Reconciliation.

**Partners:** San Diego State University, California; San Diego Police Department.

**March, 2001: Return Visit to Belfast** by Chief John Welter, San Diego Police Department; Gerry Sanders, former Police Chief, San Diego; Rana Sampson, formerly of NYPD;

**Activities:** Seminars with police; seminar with cross party group of Assembly members; dialogue with community activists.

**Overall Budget:** \$130,000.

**December, 2001: Field Trip to Newark, New York and Washington D.C.** with 9 members of the Policing Board; 4 senior PSNI officers; the Police Ombudsman; a member of the Northern Ireland Human Rights Commission; a member of the Patten Commission; 3 civic commentators.

Theme: Policing as a Civic Endeavour.

**Partners:** Rutgers University, New Jersey; Citizens Committee for New York City; the Urban Institute, Washington D.C.

**May, 2002: Return Visit to Belfast** by Professor George Kelling; Dr. Bill Sousa (Community Policing), Rutgers University; Dr. Jeremy Travis (Crime and Societal Division) The Urban Institute; Chief James McShane (NYPD); Paul Evans, Commissioner, Boston Police Department; Rabbi Bob Kaplan, New York Council for Jewish Community Relations.

**Activities:** conference for the Policing Board; police seminars; community conference; dialogue with politicians.

**Overall Budget:** \$ 149,000.

**September, 2003: Field Trip to Boston** with 4 members of the Policing Board; 2 Policing Board officials; Chief Executives and officials from 6 District Councils; 6 District Police Partnership managers; the Police Ombudsman; the Chief Probation Officer for Northern Ireland; 2 NGO leaders.

**Theme:** Policing as a Civic Endeavour; Policing and Reconciliation.

**Partners:** Boston College; Boston Police Department.

**May, 2004: Return Visit to Belfast** by Ed Flynn, Commissioner for Public Safety, Massachusetts; Superintendent Robert Dunford, Boston Police Department; Bill Walczak, Dorchester Community Health Centre; Rev. Eugene Rivers, Azusa Church, Boston.

**Activities:** District Policing Partnership conference; District Council Chief Executive seminar; Policing Board seminar; Police seminar; rural community seminar; voluntary sector seminar; dialogue with politicians.

**Overall Budget:** \$90,000. (\$50,000 from State Dept. \$40,000 from European Union).

**Grand Total, 1997—2004:** \$507,000 funding from State Department.

**PREPARED SUBMISSION OF THE  
NORTHERN IRELAND HUMAN RIGHTS COMMISSION**

**INTRODUCTION**

The Northern Ireland Human Rights Commission is grateful for this opportunity to submit evidence to the inquiry conducted by the U.S. Helsinki Commission into human rights and police reform in Northern Ireland. In this submission we focus on explaining the contribution the Commission has been trying to make to improving the record of the police and related bodies in Northern Ireland as regards adherence to internationally recognised human rights standards. Our overall assessment is that the Police Service has made great strides in the field of human rights since it was first created. Although it has still some way to go in a few respects, it is clearly heading in the right direction. There appears to be a firm commitment on the part of senior officers to make the Service into one of the most human rights compliant policing organisations in the world

**WHO WE ARE AND WHAT WE DO**

The Northern Ireland Human Rights Commission is a statutory body established as a result of the Belfast (Good Friday) Agreement 1998. Its duties and powers are laid out in section 69 of the Northern Ireland Act 1998. We are answerable directly to the UK Parliament at Westminster, through the Secretary of State for Northern Ireland. One of the Commission's duties is to promote understanding and awareness of the importance of human rights in Northern Ireland. In furtherance of this duty we have devoted a considerable portion of our resources to monitoring compliance by the police (first the Royal Ulster Constabulary, then the Police Service of Northern Ireland) with international human rights standards. In our early days we supplied the police with a bound copy of all the internationally recognised standards on human rights which affect policing.

The Commission has also undertaken a great deal of work in consulting and deliberating on a Bill of Rights for Northern Ireland—more particularly in identifying the scope for defining rights for the people of Northern Ireland that are supplementary to those in the European Convention on Human Rights. We issued a set of proposals in September 2001, a summary of the subsequent submissions made to us in August 2003, and a further set of proposals in April 2004. We have also organised a large number of conferences and meetings on various aspects of the proposed Bill of Rights and have consistently urged the political parties of Northern Ireland to sit together around a table to discuss what might be contained in such a document. So far we have found it relatively easy to engage with the nationalist parties and with the Alliance Party and the Women's Coalition; it has been more difficult to engage with the unionist parties. The latter seem unwilling to join with the former group in sitting around a table to discuss a Bill of Rights.

**GENERAL WORK ON POLICING**

The Commission responded to the Patten Report in late 1999 and issued briefing papers on the Bill which then sought to implement that Report's recommendations, the Police (NI) Bill 2000. In that same

year we also produced briefings on the Terrorism Bill and submitted our views on the operation of the juryless Diplock courts. In subsequent years we provided Parliamentarians at Westminster with information concerning the human rights implications of what became the Anti-terrorism, Crime and Security Act 2001, the Justice (NI) Act 2002, the Police (NI) Act 2003 and the Access to Justice (NI) Order 2003. Like most of the rest of our work these reports are available through our web site, <http://www.nihrc.org>.

In 1999 the Human Rights Commission facilitated a visit to Northern Ireland by the Council of Europe's Committee for the Prevention of Torture. The Committee's report was published in May 2001. The Commission itself has visited several places of detention in Northern Ireland, including the two juvenile justice centres (there is now just one, at Rathgael), the Young Offenders' Centre and the prisons at Maghaberry and Magilligan. We are currently in dispute with the Northern Ireland Office over access to the Rathgael Centre and are on the point of initiating judicial review proceedings to establish our power of entry to that establishment.

In 2000 the Commission initiated a formal investigation into the way in which the policing of parades has affected individuals and communities in Northern Ireland. Because of local sensitivities at the time we decided to downscale this work into a research report, which was published in 2001. It is entitled *Parades, Protests and Policing: A Human Rights Framework*.

The Commission has submitted responses to a large number of policing-related consultation papers issued by government departments and the police themselves. We have commented to the Police Service on documents such as the draft Code of Ethics, the draft General Order on the Role of Defence Lawyers, the draft Force Order on Handling Threats, the draft policy on Transparency and the draft policy on Notifying Membership of Organisations. We assisted the human rights adviser to the Policing Board, Mr. Keir Starmer, QC, to develop a plan for monitoring human rights compliance by the police, a plan which is now operational. We will be meeting him within the next week or so to review progress with that monitoring.

We have agreed Memoranda of Understanding with the Police Service and with the Police Ombudsman. We have established a working relationship with the Policing Board, even though the Board was unwilling to agree a Memorandum of Understanding. Meetings with the Police Ombudsman and the Pp occur from time to time. We meet every three months or so with representatives of the Police Service, including their "Human Rights Champion" (currently Assistant Chief Constable Judith Gillespie) and their Human Rights Adviser (Ms. Andrea Hopkins). Those meetings give each organisation a good opportunity to exchange views and information. The agendas are agreed in advance and formal minutes are prepared and circulated. From time to time the Commission has separate meetings directly with the Chief Constable on specific issues.

#### **KILLINGS AND VIOLENCE**

By meeting with the investigating teams and/or the families and legal representatives, we have kept a watching brief on the investigations into the murders of Belfast solicitor Patrick Finucane in February 1989 and of Lurgan solicitor Rosemary Nelson in March 1999. We

have also been involved in efforts to review the murder of LVF leader Billy Wright in 1997. We intervened in the case of Paul McIlwaine, killed by Loyalist paramilitaries, to ensure that an investigation was conducted that fully complied with Article 2 of the European Convention on Human Rights. We also intervened in an application by Mr. Scappaticci against the Northern Ireland Office, again to make Article 2 points. We are currently supporting two applicants in their court proceedings against the police (and the government) for alleged failure to protect them against threats from paramilitaries.

We have undertaken research into the current state of the law on inquests in Northern Ireland and will be publishing a report on that topic within the next few months. We are liaising with the Council of Europe's Committee of Ministers to ensure that the UK Government adequately responds to the decisions of the European Court of Human Rights in May 2001 dealing with the right to have killings thoroughly investigated (*Jordan v UK*, *Kelly v UK*, *McKerr v UK* and *Shanaghan v UK*). We had intervened in those cases to give the European Court the benefit of our perspective. To date we have been dissatisfied with the Government's response to the judgments. In 2003 we successfully applied to intervene in two (English) cases in the House of Lords on what standards should be applied to the investigations of deaths occurring in custody (particularly relevant to the Billy Wright case). We intervened again, this year, in the case of *Re McKerr*, but were unsuccessful in arguing that Article 2 compliant investigations should be conducted even into deaths occurring before the European Convention became part of the domestic law of Northern Ireland on 2 October 2000. After a meeting with the Chief Constable in August 2003 the Commission has prepared a paper on the human rights standards relevant to the investigation of killings and has submitted a draft of this to the head of the PSNI's Serious Crime Review Team, which is charged with reviewing all the files on unsolved killings in Northern Ireland (of which there are approximately 2,000). The Commission is due to meet with Assistant Chief Constable Sam Kinkaid on this issue within the next few weeks.

Over a two year period the Commission conducted a Victims' Rights Project to examine the rights of victims of violence, including violence by non-state actors such as paramilitary organisations. Our report on this matter, *Human Rights and Victims of Violence*, was published in July 2003. In 2001 the Commission held three meetings on so-called "punishment attacks" with (a) representatives of the voluntary and community sectors, (b) representatives of the statutory sector and (c) representatives of political parties. In our annual report for 2002-2003, and in our report for 2003-2004 which is still being drafted, we have highlighted paramilitary abuses as being the main source of human rights violations in Northern Ireland at present. This, of course, challenges the conventional view that it is only states that are capable of such violations in so far as they alone assume obligations under human rights treaties.

The Commission is currently considering the restorative justice schemes operating in Northern Ireland, in particular their compatibility with internationally recognised human rights standards. We approve of such schemes in principle but are anxious to be reassured

that in their operation they respect rights such as the right to a fair trial, the right to a private and family life and the right not to be discriminated against.

#### **POLICE EQUIPMENT**

The Commission has conducted research into the use of plastic bullets (or baton rounds) in Northern Ireland, focusing on the methods employed by the police for recording the firing of such bullets and on the safety of the bullets. Reports were issued in 2001 and 2003. After the first of these we called for the police to stop using plastic baton rounds as a method of crowd control. The second report highlighted what we considered to be safety problems with the "new" baton round introduced in June 2001. More recently the Commission has been carefully observing the work of the Northern Ireland Office's committee which is looking for possible alternatives to plastic baton rounds. We have witnessed the police's training in the use of the weapon and have been briefed as to the possibility of using, instead, an Attenuated Energy Projectile and / or a Dissipated Irritant Projectile. We are currently conducting research into the way in which soldiers of the British army are trained to use baton rounds; at a recent meeting with the General Officer Commanding Northern Ireland we were invited to observe that training. We have recommended that the powers of the Police Ombudsman for Northern Ireland should be expanded so as to allow that office to investigate every firing of a baton round by a soldier. Soldiers do, after all, act in support of the police in Northern Ireland and should therefore be subjected to the same scrutiny procedures.

The Commission has registered its objections to the manner in which the Policing Board agreed to purchase CS sprays for use by the Police Service. We are not convinced that these sprays are as safe as the government claims them to be.

#### **POLICE TRAINING ON HUMAN RIGHTS**

In 1999-2000 the Human Rights Commission observed and reported on the training programme put in place by the Royal Ulster Constabulary to train their officers on the Human Rights Act 1998 (the Act which makes the European Convention part of the law of all parts of the United Kingdom). We then conducted a study of the human rights training provided to the new student officers of the Police Service of Northern Ireland, publishing a report in November 2002. In April and May 2004 we published two further reports - on the human rights aspects of the first part of the training provided to probationer constables and on the police's Course for All. A fifth report is in the course of being prepared. It is on the second part of the training provided to probationer constables. The Police Service has been very co-operative in allowing these studies to be conducted and we believe that the Commission has contributed significantly to an improvement in the police's human rights training.

The Commission has critiqued the Diploma in Police Studies offered by the University of Ulster for all members of the new Police Service of Northern Ireland and has attempted to keep a watching brief on the Police Service's Training, Education and Development Strategy. Although we have sought to have training issues discussed

at these meetings this has not always proved possible due to the non-attendance of the key responsible individuals within the Police Service.

#### LITIGATION INVOLVING THE POLICE

In 2000 the Commission applied to intervene in the inquest into the Omagh bomb of 1998. We wanted to argue that the scope of the inquest should be enlarged so as to take into account the actions of the police on the day. Unfortunately the coroner refused to allow us to intervene, ruling that we had no power to make such interventions. We challenged this ruling through the courts, losing in the High Court and the Court of Appeal of Northern Ireland but succeeding in the House of Lords. We have since intervened in a number of other court and tribunal cases.

In 2001 we supported a parent who wished to take a case against the Police Service for not adequately protecting her child's rights when attending the Holy Cross Girls' Primary School in Ardoyne, North Belfast. Although the Commission was unable to determine at the outset that there was inadequate policing of the disgraceful protests at the school, it has considered the issue so important that it has devoted almost £100,000 to funding the parent's application. The case was heard in September 2003 and judgment is still awaited.

Last year we tried again to halt the broadcasting of a BBC programme which filmed the rescue of a man who had attempted to commit suicide by drowning. We succeeded in persuading the BBC to pixellate the image, thereby reducing the likelihood of the man being identified.

From 2001 to 2003 the Commission part-funded another case in the House of Lords (*Cullen v. Chief Constable of the RUC*) which dealt with whether damages are payable whenever a person has been wrongfully denied access to a solicitor during police detention. The appeal was narrowly lost and damages were denied. Earlier this year the Commission decided to call upon the British government to pay an *ex gratia* award of compensation to an individual who had been arrested and detained in the 1980s, along with the so-called UDR Four, but who was later released without being tried. On the back of this case we are conducting a review of the law as it affects people who are arrested by the police.

Professor BRICE DICKSON

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**PREPARED SUBMISSION OF  
THE IRISH AMERICAN UNITY CONFERENCE**

Thank you for calling this hearing to review the policing situation in Northern Ireland. We commend you for your diligence and continuing interest in this little province's struggle to establish democracy, equality and human rights for all its citizens.

The Irish American Unity Conference believes that a fair and impartial Police Service is the keystone without which democracy cannot exist. A just government needs an accountable Police Service, representative of the community and dedicated to providing protection and law enforcement of all segments of society. Without a credible Police Service, there can be neither trust nor belief in the justice system. Northern Ireland has never enjoyed such a service. We in the Irish American community had hoped that following the signing of the Good Friday Agreement such a service would be created. We have watched closely for significant changes and have been disappointed. The Police Service of Northern Ireland (PSNI) remains the same bigoted, unreformed and violent service it has been since its creation in 1922.

After signing the Good Friday Agreement, the British Government, with great flair, commissioned Christopher Patten to chair a study group charged with reviewing the Police Service in Northern Ireland and recommending changes which would bring about a meaningful reform of that service. The Patten Commission conducted hearings throughout the province on the history thereof and the needs of its people. Most statements presented by the Irish side of the province set forth incident after incident of abuse, violence and misuse of the law by the Police Service, then named the Royal Ulster Constabulary (RUC). The Patten Commission's recommendations ignored, for the most part, complaints of past abuse and concentrated on the future of the Police Service. However, Patten recommended ending the notorious "Special Branch," a violent and bigoted reserve unit. Other recommendations were to begin a program of recruiting Catholics and other minorities into the service and to achieve accountability through a process of civilian review.

Nearly six years later, we hear of broken promises and minimal change. Northern Ireland still has the same Police Service with a different name and a new Chief Constable. The Special Branch still exists. There is little accountability and the Chief Constable continues the political agenda of the past. Plastic bullets are still being used indiscriminately against the Irish, indicating that the police choose to serve and protect one side of the society to the disservice of the other. The Irish tend to call the Police Service for any needs requiring a trusted civil authority. An example of one-sided policing would be the violence directed toward the little girls of Holy Cross School. The police line with weapons drawn faced the little girls and their parents rather than the attacking unionists. If the police had turned around and acted swiftly, the attacks would have stopped but through their actions the police indicated their priority of protecting the rights of the protestors. An example of the political nature of the police would be the much-heralded Stormont "spy" raid, which had the effect of bringing down the shared government while demonizing the leading

Irish political party. The “spying” charges were later dismissed for lack of credible evidence, but not before maximum political capital had been extracted for the unionists and London.

The long anticipated Cory report on the murders of Patrick Finucane, Rosemary Nelson, Robert Hamill and Billy Wright has been blocked by the British Government until later this month, long after they might be of use in this hearing. Retired Canadian Judge Peter Cory’s report examines allegations of collusion by British security forces in a number of the most controversial killings during the Northern Ireland Troubles. Justice Cory’s findings were presented to the British Government last October with the intention of their being released to the families before Christmas.

The British have once again failed the Irish. Therefore, the Irish American Unity Conference expresses its disappointment and lack of confidence in the Prime Minister’s commitment to the peace process. A greater disappointment though is the failure of the Irish Government (Dublin) to insist upon implementation of all aspects of the Good Friday Agreement. The Irish Government signed the Agreement and the majority of the Irish people from both the North and South of Ireland voted in its favor. Irish Americans, weary of broken promises and empty words from the British and Irish Governments, support the Helsinki Commission’s efforts toward the credible and representative Police Service essential to the democratic process in Northern Ireland.

“WORKING FOR JUSTICE AND PEACE IN A *RE-UNITED IRELAND*”

**DEVELOPMENTS IN NORTHERN IRELAND:  
PART II—NORTHERN IRELAND UPDATE:  
IMPLEMENTATION OF THE CORY REPORTS  
AND IMPACT ON GOOD FRIDAY AGREEMENT**

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**MAY 5, 2004**

**COMMISSION ON SECURITY AND COOPERATION IN EUROPE  
WASHINGTON, DC**

The Commission met in Room 334, Cannon House Office Building, Washington, DC, at 11:30 a.m., Hon. Christopher H. Smith, Chairman, Commission on Security and Cooperation in Europe, presiding.

*Commissioners present:* Hon. Christopher H. Smith, Chairman, Commission on Security and Cooperation in Europe; Benjamin L. Cardin, Ranking Member, Commission on Security and Cooperation in Europe; Hon. Hillary Rodham Clinton, Commissioner, Commission on Security and Cooperation in Europe; and Robert B. Aderholt, Commissioner, Commission on Security and Cooperation in Europe.

*Members of Congress present:* Hon. Peter T. King, Member of Congress; Hon. Richard E. Neal, Member of Congress; Hon. Donald M. Payne, Member of Congress; and Hon. Joseph P. Crowley, Member of Congress.

*Witnesses present:* Judge Peter Cory, former Canadian Supreme Court Justice; Geraldine Finucane, wife of slain human rights Attorney Patrick Finucane; Elisa Massimino, Washington Director, Human Rights Watch.

**HON. CHRISTOPHER H. SMITH, CHAIRMAN,  
COMMISSION ON SECURITY AND COOPERATION IN EUROPE**

Mr. SMITH. This hearing of the Commission on Security and Cooperation in Europe will come to order. Good morning to everyone.

The purpose of today's hearing is to review the report of Judge Peter Cory, a highly distinguished retired justice of the Canadian Supreme Court, who was selected by the British and Irish Governments to investigate the question of state collusion in six murder cases, two in the Republic of Ireland and four in the north of Ireland.

This hearing is the ninth hearing that I have chaired on the subject of human rights in Northern Ireland. The Cory investigation, like our hearings, underscores the critical links between public confidence in the rule of law, government accountability and the prospects for a peaceful future.

Mandated in the 2001 Weston Park Agreement by the Irish Government and the British Government, the Cory investigation was and is a key component of an accord reached solely to breathe fresh life into the stalled peace process. Recognizing that a peaceful future can only be built on a truthful past and present, the two governments stated in the Agreement, and I quote: "Certain cases from the past remain a source of grave public concern, particularly those giving rise to serious allegations of collusion by the security forces in each of our jurisdictions.

"Both governments will therefore appoint a judge of international standing to undertake a thorough investigation of allegations of collusion in the cases of the murders of Chief Superintendent Harry Breen, Superintendent Bob Buchanan, Pat Finucane, Lord Justice and Lady Gibson, Robert Hamill, Rosemary Nelson and Billy Wright."

The two governments also stipulated in the Weston Park Agreement that, and I quote again: "In the event that a public inquiry is recommended in any case, the relevant government will implement that recommendation."

I would like everyone to take note that the Agreement obligated both London and Dublin to establish a public inquiry if recommended. The precise wording of the Agreement was "will," not "may."

Twenty-three months after Judge Cory began his investigation—and it was thorough, and it was certainly complete, some 500 pages long—7 months after he submitted his final reports to the respective governments, we are not surprised that he has recommended the establishment of independent public inquiries into five of the six cases he investigated, for we, too, had investigated the allegations of collusion, especially in the cases involving harassment, physical threats and the murder of defense attorneys.

At our third hearing, held in September 1998, Northern Ireland Solicitor Rosemary Nelson asked the Congress to support an independent public inquiry into the murder of Solicitor Patrick Finucane. Mrs. Nelson bravely testified about the harassment, intimidation and threats made against her by the RUC simply because of the politics of her clients. She said that she had been physically assaulted by a number of RUC officers and that she had received death threats.

The parallels between her situation and the murder of Patrick Finucane were chilling and not lost on Rosemary Nelson herself. She said, and I quote again: "Although I have tried to ignore these threats, inevitably I have had to take into account the possible consequences for my family and my staff."

She added: "No lawyer in Northern Ireland can forget what happened to Patrick Finucane, nor dismiss it from their minds."

She made it clear that she thought the RUC would kill her and continue to abuse other defense attorneys if the issue of state complicity was not properly investigated and dealt with through a public inquiry. Six months after her testimony, Northern Ireland attorney Rosemary Nelson was murdered, killed by cowardly assassins in a vicious car bomb attack. We do not know what, if any, role any RUC officer may have played in Rosemary's death, but we do know that they did harass her, they made death threats and they did not protect her.

Having heard her riveting and deeply moving testimony here in Congress, we are, indeed, very grateful that Rosemary's case, as well as that of Robert Hamill, Billy Wright, and RUC officers Harry Breen

and Bob Buchanan, pursuant to the admonishments of the distinguished judge, who will testify momentarily, will now be the subject of independent inquiries on both sides of the Irish border.

That said, we remain perplexed that we have not seen what should have been a no-brainer: a decision by the British Government to immediately and without hesitation implement Judge Cory's recommendation for a public inquiry into the murder defense attorney Pat Finucane.

At our very first hearing on human rights in Northern Ireland in June 1997, Michael Finucane, the eldest surviving son of Pat, shared his eyewitness account of the brutal murder of his father. Michael told us: "My father was a human rights lawyer practicing in Belfast who was shot to death in front of me, my younger sister Catherine, who was 12, and my younger brother John, who was 8. My mother, Geraldine, was also shot. We were sitting down to our Sunday evening meal when the assassins kicked in our front door and shot my father 14 times in front of us all.

"My father was not a member of the IRA, he was not a political activist, nor was he a member of any political party. He was a solicitor who vigorously represented his clients within the law. He sought the protection of the British justice for his clients. He represented anyone who needed his expertise from both side of the community."

Michael added: "My mother said that such was his dedication and professionalism that he would have defended the very people who murdered him."

Judge Cory said in his report, and I quote, "there is nothing in the IEC files that indicates that Patrick Finucane was a member of the PIRA [Provisional Irish Republican Army], the IRA or the INLA [Irish National Liberation Army]."

He points out that the senior police investigation officer and coroner concurred, and I quote Judge Cory's report in brief, "The police refute the claim that Mr. Finucane was a member of the IRA. He was just another law-abiding citizen going about his professional duties in a professional manner. He was well-known both inside and outside the legal profession. He was regarded in police circles as a very professional attorney who discharged his duties with vigor and professionalism."

Geraldine Finucane, who is here with us today, will also testify about the ordeal her family has endured in seeking justice for her murdered husband. She has bravely fought for honesty and transparency in a new Northern Ireland.

Geraldine, you can certainly be proud of Michael, whose articulate testimony continues to motivate us to work for justice for your husband and others in Northern Ireland. Please know how much admiration and respect that I and we have for you. You are indeed a remarkable woman and an inspiration for justice, reconciliation and truth.

Judge Cory's report in the Finucane case is replete with evidence of possible collusion relating to activities of the army intelligence unit, the FRU [Force Research Unit], and to the actions of the police force, particularly the special branch of the RUC.

I will cite just two brief examples in his voluminous report.

With regard to the army, the report focuses on government-paid double agent Brian Nelson, who was a central player within the UDA [Ulster Defense Association]. Nelson had direct influence over targeting operations.

Judge Cory reports, "If Nelson is correct in stating that he told his handlers that Patrick Finucane was a target and no steps were taken by the FRU to either warn Patrick Finucane or otherwise intervene, then that would be capable of constituting a collusive act. Only a public inquiry can determine whether this occurred. The evidence I have seen warrants," the judge went on to say, "the holding of a public inquiry on this issue."

With regard to the IEC, Judge Cory states—and again, this is out of a very thick and voluminous document—"The Special Branch rarely took any steps to document threats or prevent attacks by the UDA or as proactive steps were routinely taken in connection with the PIRA and other Republican threats.

"The failure to issue warnings to a person, talking about the UDA often led to tragic consequences. The failure to act on information received by the RUC Special Branch, both before and after the Finucane murder, could be found to be indicative of collusion and should be the subject of a public inquiry."

Finally, let me say, in 1999, the House adopted a resolution that I offered, H.Res. 128, that condemned Rosemary's murder and called on the British Government to launch an independent inquiry into Pat Finucane's murder, and an independent investigation into Rosemary Nelson's murder. The vote was overwhelming: 421 to 2.

In September 2002, Congress passed and President Bush signed legislation, Section 701, stating U.S. support, again, for an independent judicial public inquiry into the murders of Pat Finucane and Rosemary Nelson as a way to instill confidence in the new police service of Northern Ireland.

The Agreement at Weston Park, with its mandated investigations and commitment to follow the recommendation of Judge Cory's report, had the same goal.

Now, inexplicably, the British Government says that no movement can be made on the Finucane inquiry until the completion of the case against Ken Barrett, an accused trigger-man in the case.

Unfortunately, this prosecution, if ever completed, will not get to the larger compelling issues of state collusion and complicity, and it begs the question of cover-up to suggest that the two investigations cannot co-exist.

For the process of peace and reconciliation to flourish in Northern Ireland, I believe the festering sores, the grave public concerns about collusion, need healing balm that only public inquiry can provide.

We owe it to the memory of those slain, to their families and to every person in Ireland who cherishes justice to see to it that the British Government immediately commences the public inquiry, as promised in the Weston Park Agreement; no exceptions, no excuses.

I yield to my good friend and colleague Ben Cardin for any opening comment he might have.

**HON. BENJAMIN L. CARDIN, RANKING MEMBER,  
COMMISSION ON SECURITY AND COOPERATION IN EUROPE**

Mr. CARDIN. Well, first, let me thank Chairman Smith for holding this hearing and for his commitment to the human rights dimension in regards to what is happening in Northern Ireland and what is happening throughout the OSCE region.

One of the proud traditions of the OSCE and the Commission on Security and Cooperation in Europe, is that we scrutinize the conduct in all the countries in the OSCE region, including our friends and allies, as well as our own conduct.

Mr. Chairman, since this is our first meeting since the revelation of what has happened in Iraq prisons, let me tell you that all of us are outraged by what has happened in Iraq under U.S. watch and that we need to hold all people accountable for their actions.

It does not reflect the tradition or the beliefs of our nation, and we have to make sure that that is made clear because it clearly affects not only some of the other issues, but affects the work of this Commission.

In regards to the hearing today, I agree with the statement that had been made by the Chairman. I want to welcome my colleague, Richie Neal from Massachusetts who has been one of the true leaders in this Congress in trying to seek a just and fair conclusion to the problems in Northern Ireland. It is a pleasure to have you before the committee.

Justice Cory, we thank you very much for your leadership in this area. You have credibility to a solution to a problem, and we very much appreciate your dedicated leadership in this regard.

We are pleased to see that your report has been received, has been acknowledged in both Ireland and in the United Kingdom. But that is the beginning. That is the beginning, not the end—and will be judged by the way that the countries follow up on your report, your conclusions and your recommendations. That will be the real test as to whether we have the resolve to make it clear that these human rights violations cannot be tolerated and those responsible must be held accountable.

To Mrs. Finucane, I want to thank you for your courage, for your leadership, for your willingness to come forward.

Clearly, this inquiry would not have taken place without your leadership, without your willingness to come forward and be a principal person in bringing this about.

So, Mr. Chairman, we now really start the second phase—the next phase—and that is how we will respond to the work of Justice Cory.

I look forward to this Commission's continuing another tradition, and that is we do not just speak about a problem, we watch it and follow up to make sure action is taken. I can assure you that this Commission will do just that. Thank you.

Mr. SMITH. Thank you very much, Mr. Cardin.

The chair recognizes Senator Clinton.

**SENATOR HILLARY RODHAM CLINTON, COMMISSIONER,  
COMMISSION ON SECURITY AND COOPERATION IN EUROPE**

Sen. CLINTON. Thank you, Mr. Chairman. I will submit a longer statement, if I could, for the record.

I do want to thank Justice Cory for being with us.

Mrs. Finucane, thank you once again for carrying this torch that is important not only in memory of your husband, but on behalf of human rights and the continuing struggle for justice in Northern Ireland and throughout our world.

We sent, Mr. Chairman, a letter about two weeks ago to Prime Minister Blair expressing our concern about his government's decision in the wake of the Cory report not to hold a public inquiry into the Finucane case. We pointed out that we welcomed the inquiries into the Hamill, Wright and Nelson cases, which made the decision not to hold an inquiry into the Finucane case even harder to understand.

So I would also ask consent to have this letter to Prime Minister Blair included in the record.

I thank you, Mr. Chairman, for holding this ongoing situation to public light as part of the Helsinki Commission's work I thank you and Congressman Cardin for your leadership on this.

Mr. SMITH. Thank you very much, Senator Clinton.

The chair recognizes Peter King, gentleman from New York.

**HON. PETER T. KING,  
MEMBER OF CONGRESS**

Mr. KING. Thank you, Mr. Chairman.

On a humorous note, I should say I feel like I am back in New York, always following Hillary Clinton.

But seriously, this is a very important hearing. I want to thank you for calling it today. I thank Congressman Cardin and Senator Clinton for being here.

Most important, I want to thank Justice Cory for the job that he has done in putting together this report. It really is something that had to be done. It is something that addresses an underlying issue in the Northern Ireland society that, unless it is fundamentally addressed, is going to have consequences for years to come. There can never be any lasting agreement or reconciliation in the north of Ireland so long as these cases remain unaddressed.

The job that you have done I think is extremely important, and it goes to really—it serves a monumental public good. Of course, I see my good friend, Congressman Neal, is going to be here. No one has done more over the years as far as bringing about peace and justice in Northern Ireland than Congressman Neal. All of these cases are important. I am going to make my statement abbreviated, but I have a personal interest in the case of Pat Finucane who was a good friend of mine and who—Pat, going back I guess in 1980, 1981, in Northern Ireland, in Belfast and in New York, and was really a true human rights hero, a person who knew what risks he was taking, but always stood up and did what had to be done. He really showed incredible courage.

The fact that Geraldine is here today again is testament to the strength and loyalty of the Finucane family, not just to each other and not just to their own cause, but to the higher cause of human rights and justice.

So, Mr. Chairman, I look forward to the testimony today I really would call upon the British Government to reconsider its decision not to go ahead with the inquiry in the Finucane case. To me, so long as that case remains under wraps, so long as all the details do not come out as to the collusion that existed between paramilitaries, police,

military intelligence, counterintelligence, so long as that remains unresolved and remains hidden from the public eye, there is really no chance of a lasting reconciliation in the north of Ireland.

I yield back.

Mr. SMITH. Mr. King, thank you very much.

Mr. Neal?

**HON. RICHARD E. NEAL,  
MEMBER OF CONGRESS**

Mr. NEAL. Thank you very much, Mr. Chairman. I want to thank you for holding the hearing. I want to thank you for your perseverance. I want to thank you for your continued commitment.

Like Congressman King and others, it is certainly my pals, the Clintons, who advanced this argument far beyond what any of us imagined a few years ago, Peter King and Jim Walsh and others prove once again that this is a bipartisan issue here in the Congress of the United States.

Let me, by way of institutional memory, remind the committee, as well as my friend Mr. Cardin here, many of us have been involved in these cases for a long, long period of time: Birmingham, Gibraltar, Joe Doherty, the Finucane case, the Nelson case.

Even in this city, a few years ago, there was a rush to judgment about the FARC case. The suggestion was made that these folks were guilty before they'd even gone to trial.

Now we find the Colombian Government has exonerated them on the serious charges that were offered against them.

Again, it becomes very difficult from the court of public opinion, however, to prevail.

But it is the American dimension that continues with people like Judge Cory and their honor to bring these cases to life.

Without exception, members of this Congress were almost universally correct on all of the cases that we were told the nationals were guilty of. Once these cases were put under the magnifying glass of critical analysis, the discovery was very simple. The charges didn't stand up to the political question that was being raised.

So hopefully we'll have a chance to shed some light in hearings like this on the cases that are before us.

Let me also speak personally before I read a letter that Mr. King and Mr. Walsh have agreed to sign as well. The Finucanes are my friends. I made a commitment to Geraldine Finucane, as well as members of the Finucane family, a long time ago that we would see this case through, much the same as we have seen these other cases through that I have just referenced. It is very important for reconciliation across both communities to shed light, particularly on this issue.

I hope in the Wright case, and I hope in the Hamill case, and in many of the others that have been raised, that we are also going to have an opportunity to delve into the details of precisely what happened.

There is a new day dawning in the north of Ireland, changes that nobody would have believed possible a few years ago.

I understand, you cannot go back and revisit every single case that has been brought. However, there is ample opportunity here I think to examine and to re-examine the Finucane case.

If you could bear with me for a couple of minutes, this is the letter that Mr. King and Mr. Walsh and I are going to be sending along:

“We’re writing to express our profound disappointment that the British Government has decided to further delay a public inquiry into the killing of Belfast solicitor, Patrick Finucane, our friend. This decision directly contradicts the recommendations of retired Canadian judge, Peter Cory, who was appointed by the British and Irish Governments in 2002 to investigate allegations of security force collusion in several controversial murders in the north of Ireland.

“And it represents human rights groups such as Amnesty International and the Committee on the Administration of Justice had suggested a failure of the British Government to honor commitments that they made at Weston Park in August 2001.

“After waiting 15 years, the family of Pat Finucane is entitled to learn the truth about his shocking death by the UDA in 1989. As Judge Cory himself concluded in his report, further delay will make it, quote, ‘more difficult to hold a significant and helpful public inquiry.’”

“A vague promise by the British Government last month to set out the way ahead on this case at some point in the future is simply not satisfactory.

“An independent judicial investigation needs to be established immediately. In my opinion, Geraldine Finucane and her family should not have to wait for the truth any longer.

“While there have been setbacks in the process of peace in the north of Ireland, we remain fully committed to the full implementation of the Good Friday Agreement. This historic accord is the only way forward toward truth and reconciliation on the island of Ireland.

“A timely public inquiry into the death of Pat Finucane will bring us one step closer to that important goal.”

Just to close on this note, in a similar vein to the manner I opened—Mr. Chairman, the media is here today. They know what these other cases were like that I cited earlier. Once they were peeled back and the disinfectant of sunlight shined upon them, it was an opportunity to examine all the questions that had been put forward. Almost universally the position of the members of this Congress as we have sought more information has proved to be true.

So I thank all of you today for doing this.

I want to thank Judge Cory, as well as those who have this continued interest in seeing this process through.

Thank you very much.

Mr. SMITH. Thank you very much, Mr. Neal.

It is now a very distinct pleasure and honor to welcome Judge Peter Cory, the author of the report in question.

Following service as a pilot in the Royal Canadian Air Force, former Justice Cory received a law degree from Osgood Hall Law School in 1960. Since then, he has had an amazing legal career in Canada, culminating in an appointment to the Supreme Court of Canada in 1989.

Former Justice Cory's retirement in 1999, however, only led to new paths of service, including work on commissions studying various aspects of the Canadian justice system.

In April 2002, as we all know, the Governments of the United Kingdom and of Ireland, in search of a distinguished and well-respected jurist, appointed former Justice Cory to investigate and report on the six murder cases that had so much significance to the parties involved in the peace process in Northern Ireland.

He delivered these reports in October 2003.

At present, he is mentoring at the Federal Department of Justice in Canada and conducting arbitration and mediation work.

Again, Judge Cory, it is a distinct honor to welcome you to the Commission on Security and Cooperation in Europe, and please proceed however you would like.

**JUDGE PETER CORY,  
FORMER CANADIAN SUPREME COURT JUSTICE AND AUTHOR  
OF THE CORY REPORT I AND II**

Judge CORY. It always has been and it will always remain a bit of a mystery how I was appointed to this. The two charming people, the British High Commissioner and the Ambassador of Ireland, I am sure in another life they were experienced and magnificent con-artists. They convinced me with very little trouble that all my sins would be forgiven me, as long as I undertook this inquiry.

At a certain age, you have accumulated a good many sins. So the prospect of atonement was certainly one that I welcomed.

The first case that I looked into, right at the outset, it probably raised questions of my competence. The first case, I had to go to look at sensitive documents; it was at New Scotland Yard. To get into New Scotland Yard, you have to know the three-number code for the elevators. When you get to the secure floor, you have to have a four-number code to get in. When you get to the office, it is another four-number code. To get into the vault where the documents were, is a six-number code.

And Scotland Yard doesn't allow the writing down of any numbers. You're tested rigorously. I was able to scrape through for the day.

But at the end of the day, 6:30 to 6:45, when I went home and I could not stand the thought of buying another pre-cooked dinner and cooking for myself, I went to the tea shop. Before I could go there, I had to go to the bank machine. My friendly bank machine refused me. I could not remember my PIN number. I tried four times and I could not get the number right, and the people in the line behind me were getting restless and suspicious, and it was a very difficult beginning to the inquiry.

Mr. Chairman, you have outlined the sad facts with regard to the tragic murder. All that I can add to that is that the documents that I reviewed indicated that there is evidence that would warrant the holding of a public inquiry. They break down into three categories. They're referred to in the report.

One, an agent of the British Army Intelligence Unit, that was called FRU, or Force Research Unit, engaged an agent by the name of Brian Nelson who had been a member of the British Army. He had been discharged. He had worked for the British Army as an agent for a year and a half. There are some noisome aspects of it.

In any event, he left again and went to Germany. The army followed him to Germany, and, if there is such a word, re-recruited him as an agent and persuaded him to come back to Belfast with his family.

There are aspects of the work that are worrisome. First, it was apparent that the agent was not complying with the law of the land. Later on, in 1990, he entered a plea of guilty to 20 terrorist-related offenses, five of which included conspiracy to commit murder or attempted murder.

The army research unit that, based on the documentation, knew or ought to have known, from what was said or done that this was happening. They kept records, like all armies. These seem to be meticulous.

There are two types. One, called a CF, was the contact form, which was the briefing or debriefing of the agent. Second, there was the telephone contact form that set out what took place over the telephone.

There are other aspects that are worrisome with regard to testimony given by the commanding officer of this unit at the trial of Nelson, obviously seeking a lenient sentence on the basis of his work, which was alleged to have saved hundreds of lives.

There are other documents that indicate that known to others that that was not correct, indeed it was false. There are matters of evidence, for instance it is alleged by a high-ranking police officer of the London police, that he was giving evidence according to a script. The commanding officer denied that.

But there is other evidence that indicated in the document that that might have been the fact.

All of this is worrisome and indicates that there appears to be evidence that warrants the holding of a public inquiry.

I could not make findings of fact. I was not empowered to subpoena witnesses or to conclude findings of fact. I was not there as a trial judge. So the work and indeed what I understood it to be was to review the documents, sensitive documents, and determine if there was evidence that warranted the holding of a public inquiry.

That evidence alone with regard to the work of Brian Nelson in my view warranted the holding of a public inquiry. The work of the police (then called the Royal Ulster Constabulary, particularly Special Branch). They had recruited an agent by the name of Stobie.

I must say, Mr. Chairman, if you're in Northern Ireland long enough, you must almost come to the conclusion that 90 percent of the population is an agent for one side or another, and indeed often an agent for both sides.

But in any event, what happened with regard to Stobie was this: He was a former quartermaster, a weapons expert, in the British army. He was recruited then by special branch to report to them with regard to the workings of a Protestant paramilitary organization.

There are aspects of the Stobie work that I cannot get into. They were the subject of editing by the British Government, quite appropriately, on the basis of their interpretation of the need to protect national security.

Suffice it to say that there is evidence with regard to Stobie and his work with regard to weapons, the dispersal of weapons, the collecting of weapons and what was done and not done with regard to those weapons that leaves worrisome aspects. It certainly could be considered to be collusive acts that warrant the holding of a public inquiry.

To a lesser extent, there is the aspect of the security agency known as Security Services.

They didn't run agents. They were available for consultation and overview with regard to the work of some of the agents, and what is worrisome there on the documentation as early as 1981, and again in 1985, and again in 1989 before this murder, there are indications that Patrick Finucane was a target, that he was in imminent danger.

The troubling aspect is that Patrick Finucane was not warned in light of this of the danger that existed to him for the purpose of protecting the identity and the safety of the agent. That in itself is evidence with regard to collusion. It warrants the holding of a public inquiry on that aspect.

Mr. Chairman, there were four cases that were referred to the British Government. The next one I had nothing to do with the choice of the murders. They were presented to me as the ones that I was going to review.

The next one has to do, a man by the name of Billy Wright. Billy Wright was a violent man. He was convicted at 15 of a terrorist act. Been in and out of prison from that age. Obviously he had talent. He was a leader and he influenced people to follow him. When he thought that other Protestant sects were not militant enough, he formed his own and gathered a band of militants about him.

He was articulate. He was an able public speaker.

He was imprisoned in the Maze Prison. The Maze Prison was a peculiar institution. Those that were there considered themselves to be prisoners of war, and they dealt with the prison authorities through their commanding officer in the jail.

The facilities consisted of a series of H huts. That is to say there were two sides to the H, and in each side prisoners were retained. The bar across for the H was where the guards were located. There is no doubt that the prisoners ran that institution.

By the time Billy Wright was murdered, 28 guards of that prison had been killed. Other guards and families had been threatened. It was not a place where you would get a good rating with a life insurance agency if you were working as a guard.

Billy Wright had been in prison before he was transferred to the Maze at a prison called Maghaberry. I do not know why it is called Maghaberry, because if you spell it out, it says "Maccaberry." But in any event, it is their place in Northern Ireland, and if they want to call it Maghaberry, it should be called Maghaberry.

But there are all sorts of peculiar pronunciations that are unique to Northern Ireland, I discovered.

The point of this is, that at Maghaberry, to the knowledge of jail officials, three members of INLA, Irish Nationalist Liberation Army, attempted to kidnap Billy Wright and to execute him. That was an unsuccessful attempt, but it was known to the prison authorities.

Wright sought a transfer to the Maze Prison, thinking it would give him greater political standing and status and that he and members of his militant band would be together there.

It was granted, and at the same time, a transfer was granted to members of INLA. INLA prisoners had said that they were going to kill Billy Wright.

When they were transferred, they were then placed, INLA and the LVF, the band of Billy Wright, in opposite wings of the H hut, a building with a 9-foot ceiling. Even I was able to climb when I inspected it within 30 seconds. There they were, these two sworn enemies, two groups who had to sign or to recognize the accord that was then in effect with regard to violence.

On December 27, three members of INLA cut a hole in the fence in the exercise yard because the guards had no control over the exercise yard, climbed over the roof into the van where Billy Wright was waiting to be driven to his visitors on Saturday, and shot him.

The band members surrendered to the authorities immediately after the shooting, took responsibility for the shooting, and there it was. In light of their pleas of guilty, the facts never really came out. How did they get to weapons? How were they able to cut the hole in the wire? And a number of other things: One, the guard who would watch that portion of the prison twice that morning had been asked to stand down. It is denied by a governor who was on duty at the time, so it is a matter of finding of fact. What cannot be discounted is the guard was stood down twice on the morning of the killing. Two, the surveillance cameras that overlooked this portion of the Maze Prison had been out of order for at least a week before the killing, and no explanation why or anything with regard to repairs.

There are other aspects—something called the prisoners' list, that was usually only given to prisoners of a particular unit. On this occasion, the prisoners' list was given to INLA at the same time that it was given to Billy Wright's band, that would tell them the time of the prisoners' visitors and when he would be leaving.

Earlier documents indicated that they wanted to separate him from his colleagues, that he would be an easier target at that time.

Why worry about Billy Wright, prisoner, a violent man, perhaps a murderer? And I suppose you have to say if you believe in democracy, you believe, no matter what, in the unique dignity of every individual and the right that that be recognized.

Secondly, it was a state prison, thus the state responsibility for the safety of Wright.

There is no doubt in my mind that the material indicated actions that would constitute collusion I didn't make it up, the definition. I simply took the definition of collusion that appears in both the Oxford and the Webster dictionaries.

The most frequently used synonym is connivance, to turn a blind eye, to cooperate secretly, and there is evidence in all of these cases that meets with that definition.

The next case, in order of chronology, was Robert Hamill. Robert Hamill was 25 years old. He was a construction worker. He and his partner had two children, beautiful little boys, four and two, and another child on the way.

On Saturday night, in Portadown, it was known to the police that there was an intersection that was known as a hotspot. Prior to Hamill's murder and over the past six months, there had been incidents on Saturday nights on no less than 17 occasions, incidents worthy of reporting.

It comes about in this way: At the intersection of two streets, south on the northside street is St. Patrick's Hall, where the Catholic young people would gather for an evening of drinking, dancing and a good time. Hamill was there with two of his cousins, Girvan girls and the husband of one of them.

The Protestant youth usually gathered at rugby clubs. They are taken by bus to the west of Portadown and then came back to Portadown. They would go west. The Irish young people would go north. Often enough, they met at the intersection. There was regularly brawling at the intersection.

I suppose that in the words of an American general, it depended who got there firstest with the mostest, who outnumbered whom on a particular evening.

But it is tragic to think that young people were getting into a regular Saturday semi-riot. This Saturday was no different. As Hamill and his cousins headed north, they saw on the intersection an RUC armored Land Rover that were used by the police informally. In Northern Ireland, they had to be armored.

They placed their Land Rover at the north side of the intersection, but unfortunately not in a place where they could see the crowd coming from St. Patrick's Hall.

Someone who was passing by, rapped on the door of the RUC—and the officers agree with this—told them that they should move the position of the van so they could see the young people coming north, because also there was a group of Protestants from the bus station coming west.

They moved it, but again, not in a very good position—climbed in and drove to that intersection in a Land Rover. Because of the armor, there is a slit for the front windshield, very narrow windows, little tiny squares, 6 inches on each side, similar to one of the back, so that the vision isn't good. Because of the armor plating, it is difficult to hear.

That leads to a point, because what happened was this: When the young people, Hamill ... [inaudible] ... to there, there was a larger group, perhaps four to one, of Protestants arriving there. The two men, Robert Hamill and his companion, one of the two cousins, were knocked down. They were both rendered unconscious. There is no doubt that on evidence Hamill was kicked in the head a number of times while he was down.

The question is: Should the police have intervened? Should they have been able to see? What then is the evidence of collusion in this case?

First, the senior officer—and there are groups of four always in these Land Rovers—the senior officer in the Land Rover did this: He phoned the father of a young man who was seen at the scene of the killing by a number of independent witnesses and, according to one witness, said: “Get rid of his clothes, burn his clothes, get rid of them.”

There hasn’t been evidence. Assume that officer will deny that. That, in itself, would be evidence of collusion, the attempt to destroy evidence that was vital to a murder inquiry.

It went further. The officer persuaded two friends to say that they were at his house that evening and that it was they who called the boy’s parents.

The leader recanted, entered pleas of guilty to obstruction of justice, and the husband did six months. The wife, because she was expecting a baby, was given suspended sentence.

That would be an indication again of the collusive act.

There were other aspects: A man, who was identified as being right at the scene and probably kicking Hamill in the head, was taken into custody by the officers and then released. *Why* has never ever been explained. If it turns out that was what happened, and the independent statements appear to indicate that, it is something that would have to be investigated—a public inquiry, as would be the speed with which the four officers in the van responded to the cries for help for the two Girvan women and to the riot that broke out, and this was the first aspect of it.

That was the basis for the recommendation. This is a very rough, very short summary.

The next case was that of Rosemary Nelson. When she was murdered, as she was not quite a year older than Patrick Finucane, she too was very active in the community. Like Patrick Finucane, she had clients on both sides of the divide. Like Patrick Finucane, she was very proud that she had that ability to act for people on both sides.

Now, the aspects that are worrisome in her case do not arise from the investigation that was carried out of her murder. In that case, the investigation was carried out thoroughly, without regard to expense and without regard to the very long hours put in by police teams.

The investigation was imaginative, thorough, complete and no expense was spared, no time was spared of officers. The problems that arise come about as a result of a failure to provide protection for Rosemary Nelson. She was obviously a very brave woman.

She had acted for and gained the acquittal of, a man alleged—well, admitted, to being a member of the IRA, Colin Duffy, who was accused of the murder of two RUC officers. She had a number of other prominent cases. She acted for the Garvaghy Road residents and their complaint of the Orange Parade passing through their district. She took up the case on their behalf.

What, then, were the aspects that indicated that there is evidence of collusion that should be investigated at public inquiry?

First, there was reports from clients of hers of statements made by RUC officers, for instances, to this effect, in one that is quoted in the report: “You shouldn’t have her as your lawyer, she is going to be dead.” Other remarks that were demeaning, crude and revolting, if they were made.

Her clients reported those threats to her and eventually, as a result of her complaint, there was an investigation with regard to them, a difference of opinion with regard to the effectiveness of the investigation.

Finally, the investigation really turned on whether the first investigation was proper, not whether or not the remarks were made. If they were, there was evidence of an attitude within the RUC, and perhaps more than an attitude, demonstrated an attitude that could be taken as more than collusive but of encouraging others to violence with regard to her.

There were as well reports of both threats and abuse when she appeared in front of the police at the Garvaghy Road.

Again, those aspects—because there is conflicting evidence—need to be explored at a public inquiry or findings of fact be made.

Then there are two written threats. One is contained in a pamphlet, “Man Without A Country,” that refers to her in a way that, certainly by independent of service, could be taken as threatening.

Next, there was on June 3 a letter written to her that was a direct death threat. That is June 3, 1998. She was murdered on March 15, 1999.

There were numerous independent agencies that spoke to the Northern Ireland Office and to the RUC with regard to the threats that she had received.

They seemed to have been ignored.

The Northern Ireland Office took the position there was no direct threat. Yet, we have this sad situation. The Northern Ireland Office wrote to the RUC saying, “We need a threat assessment. There you are. We would like to have it as soon as we could.” But they didn’t enclose—although they purported to—the letter of June 3.

That might be simply a careless error. Or it might be found to be something a little more worrisome and could constitute a collusive act.

The RUC received a letter, and although they saw the reference, they apparently made no effort to get hold of the June 3 letter.

Then you have evidence that could be found to be a collusive act, both on the part of the Northern Ireland Office and the RUC with regard to failure to provide the RUC with this material, because then you would have a proper death threat assessment made.

The Northern Ireland Office refused to take action on the basis that there was not direct death threat and that there hasn’t been sufficient in the assessment.

Suffice to say that the evidence indicated that it was material to say evidence that could constitute conducive acts that warranted the holding of the a public inquiry in the case of Rosemary Nelson.

Those were the four cases for the Irish Government. There were of course the two cases in connection with—or for the English Government, the two cases involving the Irish Government.

Those two involved, first, the murder of Justice Gibson and his wife. That was the earliest point of time, it would have occurred in 1987. Justice Gibson had served a number of years as a senior judge of the Northern Ireland Court and sat on a number of high-profile cases.

It was thought in one case that he had, by his actions or his words, in passing sentence on the acquittal of two RUC officers charged with the murder of IRA members, who had failed to stop at a checkpoint, that he was endorsing the shoot-to-kill policy.

When he learned that, he issued an immediate statement that that hadn't been his intention, and that he was opposed to it.

He was taking a holiday in the spring of that year. He had been warned by both the RUC and the Garda in Southern Ireland that he should take all proper precautions for his home security.

He had built a place as a holiday home for himself and his wife in Donegal, by the coast. That home had been burnt. There was an arson. There was a sad scene in a way—all of these murders were so tragic, and they tear you apart. But when they were torching the house, the last men told Justice Gibson and his wife to leave. Justice Gibson's wife said, "Can I do the dishes first?" They said, "No." As they drove away, they saw the flames of their home.

However, he did not pay attention to security when he took the holiday in England. By this time he was 74. He could have retired, but he felt that it was his duty to go on sitting. He made all of the arrangements in his own names as Justice Gibson. When he was coming back, he changed the ferry from Liverpool to Belfast to Liverpool to Dublin. When he got to Liverpool for the Dublin ferry, he had them put his car first so he would be first off.

He was a Commissioner for the Boy Scouts in Northern Ireland. His wife, who had served in the British military as a decoder, telegraph operator for the British Navy, was Commissioner for the ... [inaudible]; she did the driving. They got off the boat first. They were met by four Garda officers who led them out of Dublin.

When they got to the border, Justice Gibson got out of the car to go and thank the Garda officers, and shook hands with them. They crossed the border. A quarter-mile across the border, a car bomb was triggered as the Gibsons went by. Really, it was like looking at an X-ray to read the autopsy report. There was no means of identification apart from the dental records.

As in all the sites, I went to where it was. For a radio bomb, it has to be sight-triggered. I think I must have climbed the pole that they climbed. The car bomb was left on the side of the road only 30 minutes before the Gibsons arrived there. It was triggered and away it went.

However, as I say, there was no evidence of collusion other than the manner in which the bomb itself was set off and what would have to be done to setting it off. There was no evidence of outside collusion by members of the Garda or any government agency of Ireland.

The next is the murder of the two superintendents, Chief Superintendent Breen and Superintendent Buchanan. Superintendent Buchanan was the border officer, the chief border officer, for the RUC in the border country. That was a tough job, but he was a man who said, well, we have joint policing problems. Somebody has to see that we can work together. He drove his own little red car—and it was readily identifiable along the border—and made frequent trips across the border, usually twice a week.

On one occasion, because of a matter that was of interest to both police forces and important to both police forces, north and south, he and his immediate superior, Chief Superintendent Breen attended at Garda offices on the south side of the border. They had two routes home after the meeting, one was a main road and one was a side road.

They took the side road. The ambush took place in a place that could not be seen by any observation post. It is just ... [inaudible].

The two groups that set up the ambush by placing of cars that were coming north and south so that only one line of traffic could get through from the south going north, very slowly. When the car came containing the two officers, a van that had been following it, four men got out and shots were fired at the officers' car. I think as many as 27 shots entered the car.

Superintendent Buchanan was killed instantly. Chief Superintendent Breen thought because of the camouflage uniforms that it was an army patrol. He staggered out. At that time, according to the autopsy, he had a bullet in his right lung that had collapsed. His right arm had a comminuted fracture with the bone showing through the clothing, and bleeding from that wound and a number of lesser wounds.

He staggered out. The gun men came up to three feet from him and pulled the trigger and—I guess the autopsy said 18 inches—and that was the death of Breen and Buchanan.

There was evidence in the documents that indicated that there could be found to be collusion between a member of the Garda and the killers, that would account for the careful timing in the time that they took to set up the other and the fact that they were followed from the police office itself to the other side of the border.

Those, then, were the six cases, and those were the collusive acts in very summary form that gave rise to the finding that there was in the five cases evidence of collusion that should be pursued at a public inquiry.

That is it as far as cooperation.

Sometimes organizations needed reminding that I had this warrant to explore. As long as I pushed, the other documents were made available. It was a matter of pushing in order to get everything, and often one document led you to another, and to another, and another, to get the whole picture.

The Irish Government made their report public before the Christmas of the year I gave it to them. Both governments received the report on October 7—I have forgotten—October 5 or October 7, last year.

The British Government made the report public April 1 of this year.

They tabled the report in the House.

There it is.

The sadness of it is the beauty of the country and the beauty of the people, the depth of suspicion that is there on both sides, and the hatred that appears to be there on both sides.

For instance, in the Patrick Finucane case, I did say in the report that this was one of the rare instances where a public inquiry should take precedence over a prosecution if there is to be peace in the community.

In light of the suspicion that is there, the inquiry must be open. If it isn't, then the suspicion grows like a cancerous sore and will grow greater and greater until the exploration is made. Then people can get on with living and living together as a community.

I think that is about all the help I can give to you, unless there are questions.

As a final word of warning: If a British High Commissioner and an Irish Ambassador come calling, say you're out ...

[Laughter.]

... that you are feeling unwell and would just as soon not talk to them.

Mr. SMITH. Judge Cory, we're certainly glad that you were in and took the call and took up this challenge. Because I think, as your statement is extraordinarily comprehensive and fact-filled, buttressed by your full report, which I hope every member of this Commission and every interested member of Congress, House or Senate, will read. He says this cost a few lines up. It is extraordinarily fact-filled. It shows the incredible diligence you poured into this endeavor to ensure that no stone was left unturned.

You really made the point—and perhaps you might want to respond to this—you noted your indebtedness to Sir John Stevens and his team for providing you unfettered access.

You might want to comment on two things with regards to access and then final product, and that would be: Do you have any sense that perhaps some of the information that you requested was not forthcoming, perhaps due to document shredding or destruction?

The report—were there edits made that perhaps you felt were unwarranted?

Then, you might want to comment on a statement that many of us read with sadness when Secretary of State Paul Murphy and his parliamentary statement in the Commons, point number 17 said, "I recognize that the requirement in the Finucane case to wait until criminal proceedings are complete will cause disappointment to some"—that is the understatement of the year.

"But public interest demands that prosecution should be pursued to their conclusion and wrongdoers punished," he goes on to say. "As Justice Cory says, society must be ensured that those who commit a crime will be prosecuted, and if found guilty, punished."

That quote, and having read your statement, seems alarmingly out of context with what not only you have said today but also with what you have written.

I mean, obviously it goes without saying that prosecution and punishment of the guilty is important.

But the remainder of what you said in your report itself was left out. Omission can be very misleading. I think Secretary of State Paul Murphy has made a glaring omission there. Perhaps you might want to comment on those two points.

Judge CORY. I did, of course, say what he quoted, but in that same section, I did go on to say that in light of the years that had passed, in light of the fact that memories dim, in light of the fact that we have, one, Brian Nelson has died, two, Stobie has been murdered, it is going to be more and more difficult as time goes by to proceed properly and completely with the public inquiry.

But this was one of those rare times when the public inquiries should take precedence over the prosecution.

I did try to put that position forward in the reports, and I think the two go together in the same section, and are not separated by more than a paragraph or so.

Mr. SMITH. If you could touch on the possible document shredding. Do you think you got all that was there to get? Was there reluctance?

I mean, I have been in Congress 24 years now, and when you meet with certain intelligence agencies and others, if you do not ask the right question and have the precise document request in a way, you do not get it.

I am wondering if there was a sense of cooperation—that even if the question was not asked, that you got all that you needed to do. I mean, even with what you got, obviously what is in this report is devastating and makes it ...

Judge CORY. I saw the documents that of course had been collected by John Stevens and his team. They were necessary for me to read and to use those that were relevant to my inquiry. I think from my search, because as I said, you can go from document to document, but I discovered other aspects, other documents, that I in turn reported to John Stevens, that may be of use to their team in connection with the prosecution and investigations.

I made that information available to him. But John Stevens and his team, I would like to mention particularly, Vince McFadden, went out of their way to be extremely helpful. Obviously, when I was there or counsel was there, or both of us there, they had long days. Because they would pick me up at 8:30 and wherever it was, New Scotland Yard or Teddington, that was a secure police place with bars on the windows and bars on the door and mostly documents inside I would work through until 6:30 quarter to 7:00, put the documents away and go home.

So someone always had to be there to monitor the out-flow of documents and sign them back in again, and never a complaint and nothing but utmost cooperation.

Now as far as documents from various other organizations, before I went I said anything that is relevant to—perhaps you do a search with regard, for example, to Patrick Finucane or Rosemary Nelson or whatever the name was over the years when his name or her name appeared in your files. As I say, sometimes I found that the document led you to another.

The military was slower. I think that is—I do not know.

From a wealth of ignorance, part of a military makeup, the left hand isn't quite sure what the right hand or what the people down the hall are doing. Once I pressed, I got it.

Now, I had to add an extension or a supplement to the Finucane report. Although I would have been asking for everything, and they signed off—because I always send a letter saying, “have you given me everything that is relevant to this case,” and had them sign back, “yes, we have presented you with all the material that we have that is relevant to this,”—they discovered some more papers. They were significant. They're referred to in the supplement. They will be significant to those conducting the public inquiry. That is why I mentioned them in the notes to the supplement.

But, yes, as far as cooperation goes in that way, yes, it was there. No, I saw no evidence of shredding wherever I went, whether it was the prison authorities in Northern Ireland, whether it was RUC in Portadown or the RUC in Lurgan where Rosemary Nelson was murdered—the records seemed to be complete as far as I could see and tell. Certainly the significant I think that I saw enough documents that convinced me that there was evidence that warranted the holding of a public inquiry.

Mr. SMITH. Can I ask you two final questions or one: Why was the public inquiry into Patrick Finucane's murder denied? Were you given any explanation? I mean, the very short and cryptic statement that the prosecutions ought to proceed—well, there is a prosecution, certainly ongoing, with Rosemary Nelson.

As later witnesses point out in some similar testimony—Human Rights First will point out—the idea of judges trying the case, not juries, makes it less likely that any evidence that might be gleaned and made public through a public inquiry should not have any adverse affect on the integrity of criminal prosecution.

Have they given you any explanation?

Judge CORY. No, nothing other than the prosecution.

Mr. SMITH. Do you think that is a valid explanation?

Judge CORY. Well, that is difficult for me to say. I think it would probably be inappropriate for me to comment on that. I have stated what I thought was appropriate—that this was one of those rare situations where the public inquiry should take precedence. Because of the unfortunate situation in Northern Ireland and the fact that these cases are tried by a judge alone, that is another factor to take into account.

Mr. SMITH. So you stand by your report, obviously?

One other question had to do with the public inquiries themselves, those that are proceeding. Do you have a sense of confidence that they will be held, that evidence can be compelled in such a way that a lot of the documentation can be made public in a proper manner?

There was concern expressed by British Human Rights Watch and others regarding the possibility that even the public inquiry might be circumvented and tighter parameters put around those inquiries so that they're less than full and complete.

Judge CORY. I think you have to wait and see what happens. Now, there might legitimately be situations where they have to go into *in camera* hearings on the basis of the security of the nation. But that would not affect the outcome of the public inquiry. It will at least be, first of all, for those conducting the public inquiry and then for a reviewing court to see if it was appropriate to hold it *in camera*.

Mr. SMITH. Judge Cory, thank you so much.

I would like to yield to Mr. Crowley, the gentleman from New York. We were joined by Mr. Payne of New Jersey as well, who, I think, went on to another hearing.

But, Mr. Crowley?

**HON. JOSEPH P. CROWLEY,  
MEMBER OF CONGRESS**

MR. CROWLEY. Thank you, Chairman Smith.

Let me thank you probably for your work not only on this issue, but as Chairman of the Helsinki Commission here, for all of the work that you are engaged in, in terms of human rights throughout the world, but especially in Northern Ireland. I think it needs to be noted that your personal interest in this issue is second to none, especially with the relationship to Rosemary Nelson.

Justice Cory, thank you for coming before us today. I should note for the record that Senator Clinton, before she left—she had to go to another hearing—made a point to take my arm and say to me that the deliberate nature of your delivery really helps to make your arguments so convincing.

So she was complimenting your testimony and the way in which you delivered that testimony today. At this point, you might personally want to know that, that she had said that to me.

At the end of your comments, you made reference to, and I want to clarify because I know that they had been in jest, but I want to know if that is the case. Were you at any time asked not to testify before this Commission by any party?

Judge CORY. Oh, no, no.

MR. CROWLEY. No. You are here freely and of your own free will.

I know you made reference in answering a question to Chairman Smith, but let me ask again—and I was not here for your full testimony, if you have covered this—did you find any attempt to stonewall your investigation? Was it either deliberate or maybe not deliberate—just the nature of business—that you felt that people were stonewalling you?

Judge CORY. I do not really believe so.

Now there were times, as I have said, when it appeared to me that there must be more documents in light of a document that I was reading. I invariably got those with pushing.

So I do not think that I was just stonewalled at all. I think that I got everything in time. Now as I said, for instance, the military knew when I was finishing the report. The letter had been sent out a few weeks before as to the date. There was still nothing, but it is perhaps an indication that they were trying to assist. But even though it was late, and after the report had been completed and I had to make a supplement to the report, that they said: Yes, we have found further documents. I considered them significant documents.

So it may be just as much in evidence of good faith as anything else.

What I did is this, and I explained to the families that I would be doing this at the outset: as each case was finished, I would notify everybody. That is to say, the families, the NGOs, and the two governments that I would finish this and named the next case that I was turning to.

So everybody knew, and they knew when I was finished. But they did come through with further documents that were relevant, important and detrimental to their position.

So I must commend them even though it was late in getting those documents to me.

Perhaps it was the second letter, because I always started out with a letter saying I have to have everything, at the end saying, "Will you confirm now, please, so that it is on the record of my hearings," or my work, "that I have received all relevant documents and been shown all relevant documents."

Some documents were so sensitive you could not leave the room with them. It was like going back to kindergarten. I could not go to the washroom without an attendant going with me.

But it was a necessary part.

If the documents are indeed that sensitive, I have no quarrel with them acting in that way. But by golly, I saw them. I made the notes with regard to them, and I have documented in the report the document itself.

MR. CROWLEY. Just so we understand, I think your report is a courageous report, and I believe sets up the opportunity, I hope, for a further public inquiry into all the depths that you recommend for public inquiry.

It is interesting to me to note that an entity that may have been involved in collusion and cover-up would be forthright in giving information.

So you're not necessarily saying that it is the overall institution itself or individuals that played a part in that institution that were responsible for the cover-up. Is that what you're testifying to?

Is it systemic? Did you find that, is basically what I am asking.

Judge CORY. That is a touch word, now, isn't it? It is such a buzz word now. Everything is systemic with regard to things, and some things stem from individuals.

It is an opinion. I am not an expert on it. But I think it is systemic that security services, that the military are reticent about forthcoming with documents that they consider to be sensitive. I suppose that is natural.

I do not see anything evil about it as long as they do come forward with the documents. There may always be the idea in the military or in the government security agencies that something is so sensitive that the public shouldn't know about it or we'll have problems with regard to security.

We're now all too aware of security problems and how important they are.

So it may not be anything to do with an evil intent or ill will or even a desire to cover up, just their belief that they know what is best for the rest of us, whether it is right or wrong.

MR. CROWLEY. If I could ask one more question, Chairman Smith?

Some have suggested that your report is laying the foundation for a possible creation of a truth commission to investigate these murders. One, do you think that is true, that there will come a day that that will take place? Will be it 30 years out, like we see what is happening with the Bloody Sunday inquiry?

You have already mentioned at least two of the key witnesses have already passed, one by murder, one by natural causes.

The longer this continues to be postponed, the more likelihood that fewer and fewer witnesses may be available to give testimony.

Others have argued that—and it is made, I think, quite clear by similar testimony as well, that the concern about any public inquiry will only further to separate the two sides here.

What is your sense on that? Will it lead to, hopefully, a public inquiry?

Judge CORY. There are, perhaps, three aspects to this: one, with regard to Bloody Sunday, I have put in the report that there are ways of controlling it, both regard to the time involved and the commitments that are required, the cost and everything else, it can be done. Sometimes whoever is doing it has to become a little unpopular.

In connection with a man wrongfully convicted of murder, you have to take in the investigation what went wrong with the police, what went wrong with the prosecution, and should compensation be, but you can put time limits on things, and you can push and put in a good long week. If it is a matter of hearing an expert, sometimes it means hearing them on Saturday and getting the report out when it still means something to the community.

So that you can control public inquiries. Sometimes, a public inquiry, I think, is the only way of dealing with something that concerns a community if it concerns an organization that is vital to the community, whether it is a hospital, the police force, an army.

You have a right to know what goes on, to restore faith.

Now, the next thing: with regard to Northern Ireland, it may not be possible to hold, what? 4,000 inquiries? relating to the murders of people that result directly from the troubles. If that be so, then what else can be done? I try to suggest some things in the report.

One, you may in some instances say, yes, this happened. It happened in the crisis of the times. It was wrong. We apologize. The payment of compensation to these people.

That may serve in a great many cases.

Another is the aspect of the truth and reconciliation general hearing. There is no doubt of the tremendous success of that process in South Africa. But, its success is due to two extraordinary men, I think. One, Bishop Tutu, a bishop of the Anglican Church, and Nelson Mandela. Both those men have the trust and confidence of the entire nation and were able to make a truth and reconciliation work.

So there are other ways up the hill. What is appropriate is going to depend on the circumstances, although I do think that there are so many instances in Northern Ireland that it would be appropriate to think of acknowledgment, apology, compensation, as a means of rectifying the situation as best as is humanly possible. Because you can imagine what the cost and the impossibility of holding a thousand public inquiries.

But there are times, as I have said—and when I get repetitious and more boring than usual—when the only way to get at things is by way of the public inquiries, so everybody sees what happened; it is transparent again, and restores confidence in that public organization.

MR. CROWLEY. Thank you.

Thank you, Mr. Chairman.

Mr. SMITH. Thank Mr. Crowley. We thank you for your good work and for your kind remarks and for being here today.

I would like to conclude, Judge Cory, with one of the things that we have raised as a Commission, we have done it in the International Relations Committee, many of us have raised it, is this ongoing demonization—it was certainly more acute and spiked in earlier years—of defense attorneys.

There was even a study done that showed scores of attorneys who responded to a survey said, yes, they were, indeed, subjected to intimidation tactics. One of the reasons why, in addition to truth and

accountability, and to determine to what extent collusion occurred in Pat Finucane is case, was that, if you're going to have a due process right, you need the ability—and as a devotee yourself, life-long, to due process rights, I am sure you would want to comment on this, how absolutely important it is to the administration of justice to have the ability of a defense attorney to represent whoever, whenever, on whatever charge, without that defense attorney being targeted the way so many have, especially Rosemary and Patrick.

If you wanted to comment on that, because I know that in our earlier conversations and in reading this, that comes through very clearly how you prize that, the importance of that kind of ability.

Judge CORY. Yes, I tried to say something about that. Ideally, a justice system often works best if you think of it as a triangle with the judge, for example, then the prosecutor and defense counsel. They are three equal sides of an equilateral triangle. That is the surest way of achieving a just and true result.

Now, all aspects are important. Whenever there is a crisis, it is particularly important that there be brave, courageous defense counsel. It is important that the bar—by that I mean lawyers—undertake the representation of unpopular clients and unpopular causes.

So soon as you no longer have due process, society is the poorer and that particular society will not long survive.

There has to be a basis for resolution of disputes, disputes between individual and individual and disputes between the state and individual. Between the state and individual is often the criminal prosecution. That is when it is so essential that you have skilled, courageous attorneys who willingly undertake the unpopular cause and the unpopular client.

It is essential that that exists. You also have to have a crown or a prosecutor who again may have to fly in the face of one faction or another of society, to proceed with the prosecution, and again, must courageously put everything before the court.

You have to have an independent, fair-minded man or woman acting as the judge, to see that only relevant evidence goes in and that the whole proceeding is conducted fairly.

Every civilization wants a fair trial and a fair administration of justice. But it is fundamentally important that you have all of those aspects and that you have that independent and courageous defense bar. You obviously had two examples of that in Patrick Finucane and in Rosemary Nelson.

They should be just as entitled to the adequate protection or all of the protections the state can give as the judge and the prosecutor. That is the only way eventually that people of the community are going to be satisfied that there was a fair process and that there was due process.

Mr. SMITH. Judge Cory, thank you so much for your testimony, your eloquence, for doing this enormous public service for peace and reconciliation in Northern Ireland.

Our hope is that on all of the recommendations you have made, that they be followed to in both spirit and letter of how you have done those, including Patrick Finucane.

We're very, very grateful for your testimony and for your being here. Thank you.

I would like now to ask our second panel if they would make their way to the witness table. Our second panel features Geraldine Finucane, the wife of Patrick Finucane, who was murdered in his Belfast home in front of Geraldine and their three children in 1989. Mrs. Finucane, who was injured herself by what was likely a ricocheted bullet, has spent the subsequent 15 years seeking answers in regard to her husband's case and serving a symbol of courage for other victims of senseless violence.

Her perseverance and faith over numerous obstacles has led to progress by so much human rights work. This progress has been unsatisfactory, and it certainly has been slow, but I believe it is progress that may not have taken place at all had it not been for her courageous effort.

Part of her work has included previous testimony for this Commission in March 2000. So we welcome you back Geraldine to the Commission on Security and Cooperation in Europe.

Joining Geraldine Finucane at the witness table is Elisa Massimino. Mrs. Massimino has been the director of the Washington Office of the Office of Human Rights First, formerly the Lawyers Committee of Human Rights, since 1997, and has held other positions with the organization since 1991.

She has also worked as a litigations associate for Hogan & Hartson, focusing particularly on refugee, immigration, and human rights issues. Mrs. Massimino received her J.D. from the University of Michigan Law School and a master's degree in philosophy from Johns Hopkins University.

She most recently testified before the Helsinki Commission on March 14 on human rights and police reform in Northern Ireland.

Geraldine, please proceed.

**GERALDINE FINUCANE,  
WIDOW OF PATRICK FINUCANE**

Mrs. FINUCANE. Mr. Chairman, members of the Commission on Security and Cooperation in Europe, fellow speakers, ladies and gentlemen, my name is Geraldine Finucane. My husband was Patrick Finucane, the Belfast solicitor murdered by loyalist paramilitary in 1989.

My family and I have campaigned assiduously since Pat's murder for a fully-independent judicial public inquiry into his murder. We have done so because of the existence of compelling evidence that Pat's murder was part of an approved policy of widespread collusion between the British state and loyalist assassins that included state-sponsored assassination.

I am very grateful for the opportunity I have been given to speak here today. I am grateful but not happy that I have to do so. It is not the first time I have testified before an international committee. I have done so on numerous occasions in the past, as have other members of my family.

The opportunity to testify before committees of international weight and standing has been an important facet of our struggle to highlight the circumstances surrounding the murder of my husband.

Such committees are internationally recognized and carry weight; however they are only a means to an end. It is the end that becomes ever more difficult to achieve in this case. That end is a full, independent, judicial public inquiry into Pat's murder. It is a deplorable paradox of my family's campaign that the more committees I appear be-

fore, the more testimony I give, the more the name of Patrick Finucane becomes known around the world, the farther away an end to this process is pushed.

There is a simple explanation for this paradox: the persistent efforts of the British Government to avoid a public inquiry at all costs. It is not difficult to understand the motivation for this when one examines the evidence, for it is both compelling and damning in the extreme.

Throughout the many years of campaigning that my family and I have been engaged in, the British Government has never denied that they colluded with loyalist paramilitaries in the murder of my husband. They have simply avoided dealing with the case by employing one ruse after another.

They have shifted the goal posts so many times that it is sometimes difficult to know where the playing field is.

The all-consuming objective of the British Government has been to delay the possibility that a public inquiry might have to be established within any kind of meaningful time frame; again, it is not difficult to understand the motivation for this.

Indeed, it has been a very successful strategy for the British Government. Two key witnesses have died in the last 15 years. Vital documentary evidence is missing. Recollections are fading fast and will continue to do so.

Every day that passes makes it all the more likely that the adage "justice delayed is justice denied" will be all too apt in my husband's case.

My family and I have just witnessed the conclusion of one process of delay in our case. It is the process that gives rise to this hearing today, and is a clear example of the type of delaying tactic adopted by the British Government.

I, of course, refer to the investigation carried out by another of today's speakers, Judge Peter Cory.

Judge Cory was appointed under the terms of an Agreement reached in July 2001 during political negotiations at a crucial point in the Northern Ireland peace process.

The British and Irish Governments agreed during these negotiations that they would jointly appoint a judge of international standing from outside both jurisdictions to undertake a thorough investigation of allegations of collusion in the murder of my husband, as well as five other controversial cases, which the judge went into in detail today.

The two governments stated specifically that if the judge recommended a public inquiry in any of the six cases, the relevant governments would implement that recommendation.

Neither my family, nor indeed any other family, was consulted in advanced about the governments' proposals. We did not agree that a review of the evidence was necessary, even by a judge of international standing. It was nothing more than a further-delaying tactic by the British Government to avoid establishing a public inquiry in the case.

Judge Peter Cory was appointed to the task of reviewing the six cases after considerable negotiations between the two governments about the choice of judge. The appointment was supposed to be filled no later than April 2002. This did not happen on time, and Judge Cory was not appointed until a month after the agreed deadline.

My family met with Judge Cory shortly before he began his work. At our first meeting with him, we explained our view that his investigation was unnecessary. I made it clear that although I took no issue with him personally, I could not accept his appointment because it was just another instance of British Government delay.

My family and I were already in the process of grappling with another delaying process: the futile police investigation being conducted by Sir John Stevens, 15 years after the murder. I feared that the exercise of right to be undertaken by Judge Cory would be the same as that undertaken by Stevens: unaccountable, unnecessary and unwelcome.

Given that he had only just been appointed to the job, Judge Cory accepted our position with an admirable degree of composure. He even went so far as to say that if he were in our shoes, he would probably feel the same.

However, the governments had decided upon this mechanism, and as such, we were all of us stuck with it.

Judge Cory promised that he would conduct as thorough a review as possible, in a short a time as possible. He said he would begin with Pat's case as it was the largest. He said that he would complete all cases before revealing his finding.

He said he would insist that the commitment the two governments have made to him would be honored and that he would not stand for any renegeing on their agreements. This was reassuring, but of little comfort. Judge Cory was still, after all, an appointee of the British Government.

Judge Cory began his work in August 2002. He completed his work in all six cases in October 2003, several weeks ahead of schedule.

He informed my family at all times of the progress of his work. He met with us on a number of occasions and answered our questions about his work insofar as he could without compromising his position.

He told us what he would do and has done it.

To date, Judge Cory is the only person in any way connected with the British Government who has kept his word to my family and me as regards his involvement in my husband's case.

My family and I did not know who he was at the time of his appointment. But he was recommended by those who did as a person possessed of a first-rate mind and an abundance of independence and integrity.

In every instance of our dealings, Peter Cory has more than fulfilled his recommendation. The British Government, on the other hand, has renegeed on its commitments at every opportunity. Wherever possible, it has changed the conditions of those commitments.

One of the original terms of Judge Cory's appointment was that his reports would be made public as soon as possible after completion. He submitted his reports to the British Government at the end of October 2003.

Some of the contents of the reports have been leaked to the Northern Ireland press. Speculation was rife among sections of the media about what Judge Cory's recommendations were.

Some thought no inquiry had been recommended, others said four had been recommended, while the rest mused over every possible permutation in between.

The number of theories was seemingly endless, but some reached between all of these newspaper hype, the families of murder victims who had no idea what was happening.

Judge Cory was constrained by his terms of appointment and could not tell us. The British Government would not tell us.

We now know that at this time, the British Government was engaged in a behind-the-scenes exercise of consultation with the agencies of the state that Judge Cory had investigated. The family of Pat Finucane, Rosemary Nelson, Billy Wright, and Robert Hamill could not be permitted to know what exactly had been recommended about the murder of their relatives.

But the British State Bureau responsible for each murder was fully consulted and asked for its views. This process took another six months to complete.

In that time, Judge Cory made a number of representations about the disclosure of the reports to the families concerned. He asked that if the reports could not be disclosed in their entirety, that the recommendations in each one not be disclosed.

The answer to this basic humanitarian request was no.

In the end, Judge Cory decided that he was not prepared to simply await the outcome of the British Government negotiations, and he contacted my family directly to tell us that he had recommended that a public inquiry be established in my husband's case.

I thank him for that publicly at this point.

In the meantime, my family also decided not to wait for the British Government to deign to tell us what we would be permitted to know and when. In February 2004, I launched an action in the courts to compel the British Government to publish Judge Cory's report. It was only after this action had been instigated that the British Government confirmed that it would publish the report of Judge Cory on April 1, 2004.

On that date, Mr. Paul Murphy, member of Parliament and the secretary of state for Northern Ireland, made a statement in the House of Commons. He confirmed that Judge Cory had recommended inquiries in all four cases that he had investigated in Northern Ireland.

The secretary of state said the British Government proposed to establish inquiries in three of the cases immediately. In the case of Rosemary Nelson and Robert Hamill, these would be established under the Police Northern Ireland Act 1998. In the case of Billy Wright, the inquiry would be held under the authority of the Prisons Northern Ireland Act 1953.

In the case of my husband, the British Government proposed that it would, and I quote: "Set out the way ahead at the conclusion of prosecutions," end of quote. No inquiry of any kind was mentioned.

The British Government's response to Judge Cory's report was simply to say, the way ahead would be set out later. No commitment to a public inquiry was given at the time of publication, nor has one been offered since.

I believe that the reason the British Government has avoided committing itself to an inquiry is because it cannot face such an appalling prospect. The evidence in my husband's case shows clearly that the British state pursued a policy of state-sponsored assassination, using Loyalist paramilitaries as its proxy killers.

In pursuing this policy, the British were no better than the many despotic regimes around the world today that are condemned for their appalling human rights record.

In seeking to cover up what they did for so many years, the British Government continues its policy. Those responsible were rewarded at the time and they're now protected in the aftermath. The policy of the British Government centers on delaying an inquiry for as long as possible. It clearly believes that if delayed long enough, it will perhaps be possible to avoid an inquiry altogether.

I am now engaged in another court case against the British Government to compel them to commence a public inquiry into the murder of my husband, as recommended by Judge Cory.

I should not have to do this. The British Government made a commitment to implement the recommendations of Judge Cory I believe that they are breaking that commitment by delaying the commencement of an inquiry.

Again, it is not difficult to understand the motivation. The British Government is trying to postpone the day when it will be exposed to the world as having engaged in the murder of its own citizens. It has delayed the establishment of an inquiry for 15 years, despite calls from distinguished individuals and organizations worldwide that such an inquiry is necessary.

Every domestic and international NGO that concerns itself with human rights in Northern Ireland has called for a public inquiry into my husband's case. The Northern Ireland Human Rights Commission has also done so. Every law society and bar council in England, Wales, Northern Ireland and the Republic of Ireland has done the same, as have a number of international bar associations.

The former United Nations special rapporteur on the independence of judges and lawyers, Dr. Param Cumaraswamy, has called for public inquiry on four occasions. His successor, Mr. Leandro Despouy, has continued this call.

The U.N. Special Representative on Human Rights defenders, the U.N. Special Rapporteur on Torture and the U.N. Human Rights Committee, have all supported my family's call for a public inquiry.

On the 10th anniversary of Pat's murder, over 1,000 lawyers around the world signed a petition supporting the call for a public inquiry. The U.S. House of Representatives has called for an inquiry. The Government of Ireland has repeatedly called for an inquiry through the Taoiseach, Bertie Ahern, and the Minister for Foreign Affairs, Brian Cowen.

This was recently repeated by the Irish Government in a statement on the floor of the United Nations. I ask that this statement be included in the written record of today's hearing.

A full list of those who have supported the call for a public inquiry is attached to this testimony, and I ask that this also be included in the written record of today's hearing.

I have spent the last 15 years fighting to expose the truth behind the murder of my husband. I believe that the truth will remain hidden until a full, independent, judicial inquiry is established to investigate all of the circumstances.

I would very much like to be able to tell this committee that the end was in sight, but I cannot. I can only see delay and obstruction ahead of the British Government continues its policy of postponement.

I will not stop until I achieve my goals, but I do hope that one day I will be able to stop because I will have done what I set out to do.

The campaign that my family and I have engaged in is not an end in itself. It is a means to an end. The end I seek to achieve is a public, independent, judicial tribunal of inquiry that will fully examine all of the evidence.

There are those who seek to aid the British Government in avoiding an inquiry. Some public figures have sought to besmirch the name of my late husband by branding him a terrorist and a criminal without a shred of evidence in support.

They do so because he is not here to defend himself and to further their own twisted ends.

There are also those who would suggest that an inquiry should be foregone, because it would be damaging to the common good. As someone who has directly experienced the brutality of what a government can consider to be the common good, I would not agree.

I believe that the common good is best served in the opposite way; instead of further concealment, I say there should be openness and accountability. These principles should be the bedrock of our new society, not delay and defeat.

I hope not to have to go on forever in my campaign, but I hope that the new society that we are building will survive forever. If that society is to have any chance of survival, it must know the complete truth of its past so that it can learn all the necessary lessons to provide a stable future.

I ask for the support and assistance of this committee to make that hope a reality.

I thank the committee, too, for its time and this opportunity to testify.

Mr. SMITH. Mrs. Finucane, thank you very much for your eloquent testimony, for your tenacity. I can assure you we will draft still another resolution and collect, what I know will be a large number of co-sponsorships—Democrats and Republicans—to again call on the government of the United Kingdom, to establish a public inquiry into the case of Patrick Finucane, pursuant to Judge Cory's recommendations and as you pointed out repeatedly, information about Kumaraswamy, who testified before our own Commission, or committee, I should say, made that case as did virtually every human rights organization that I know of.

So you mentioned that you will not cease, you will not stop, nor will we. We will continue to admonish our friends in England to do what is right and proper and to go wherever the evidence takes that a public inquiry would permit and facilitate, I should say.

So, that you again for your courage. Your stick-to-it-ness is inspiring and astonishing.

Ms. Massimino.

**ELISA MASSIMINO, WASHINGTON DIRECTOR,  
HUMAN RIGHTS FIRST**

Ms. MASSIMINO. Thank you.

Thank you very much for convening this hearing, Chairman Smith and also for your leadership on, not only this human rights issue, but every human rights issue that we find ourselves working on, we look up at the front and find you there. We're very grateful for that, whether

it is confronting anti-Semitism in Europe, looking for justice and accountability in Northern Ireland and many, many other places around the world.

We take great inspiration from your leadership and from the courage of Geraldine Finucane and her family in continuing to work for justice in Northern Ireland.

We have been working on these issues for many years, campaigning for a long time for public inquiries into both the murders of Patrick Finucane and Rosemary Nelson.

As you know, we have published a number of reports about the intimidation and murder of defense lawyers in Northern Ireland and with a particular focus on these two cases. We have documented how the situation of defense lawyers there is closely linked to the criminal justice and emergency law system and the conduct of the police.

Despite the government's delay in releasing the Cory reports, we welcomed the April 1 announcement that inquiries would be forthcoming in the Nelson as well as those of Robert Hamill and Billy Wright.

We were, however, extremely disappointed about the results in the Finucane case. As I know you understand well, further delay in this case is incredibly painful for Geraldine Finucane and her family.

But the delay also prolongs the achievement of truth and accountability at a time when Northern Ireland is struggling to reform its police service and other criminal justice agencies and instill greater public confidence in government institutions.

The evidence of collusion, as reported by Judge Cory in his report on the Finucane case, simply cannot be left unscrutinized.

Judge Cory's recommendation to hold a public inquiry in the Finucane case has substantial support in the international community and inside the United Kingdom.

Many of those who have called for an inquiry into the Finucane case urged this action long before Judge Cory's investigation. But in committing itself to following Judge Cory's recommendation, the British Government agreed to abide by a particular process. This is a critical moment in what has become a 15-year struggle to uncover the truth.

We urge this Commission to reiterate its call on the British Government to establish a public inquiry in this case.

We're disappointed that Dr. Reiss from the State Department isn't here today as we are quite keen to get more clarity on what the administration is doing to encourage the British Government to move ahead on this without delay.

But there is no lack of clarity about what the commitments of the two governments, the British and Irish Governments, were in the Weston Park Agreement. The two governments "accepted that certain cases from the past remain a source of grave public concern particularly those giving rise to serious allegations of collusion by the security forces."

They agreed that "in the event that a public inquiry is recommended, in any case a relevant government will implement that recommendation." I think that is pretty clear.

Public inquiries might seem somewhat exotic to Americans, but they are really not uncommon in the United Kingdom. In the past, inquiries have been held in the United Kingdom in cases of public disasters, racist murders, financial misconduct by state actors and allegations of police brutality among others.

Upon release of Mr. Cory's recommendations, contrary to its pledge in the Weston Park Agreement, the British Government failed to commit to a public inquiry in the Finucane case, instead saying, "We will set out the way ahead at the conclusion of prosecutions."

In his statement, Secretary of State Murphy did not explain the shift in the British Government's position, that now appears to be that the establishment of inquiries in the cases was contingent on the completion of prosecutions.

When the British and Irish Governments agreed in 2001 to the appointment of an international judge, they clearly stated that a recommendation for a public inquiry would be implemented.

In his report, Judge Cory discussed the possible conflict that might arise if new prosecutions were to proceed in the Finucane case. But he pointed out that this may be one of the rare situations where a public inquiry will be of greater benefit to a community than prosecutions, and that in light of his finding that there is sufficient evidence of collusion to warrant public inquiry, the community might prefer a public inquiry over a prosecution even if it means that some witnesses must receive exemption from prosecutions.

Now certainly it is an exceptional case where a public inquiry is preferable to prosecutions, but the Finucane case is such a case for a number of reasons.

For example, strong evidence has emerged that first the murder was committed with the knowledge of three U.K. intelligence agencies, including divisions of the local police and the national army and through the actions of government agents.

Two, the inquest in initial police investigations were inadequate, blocked and lacked independence.

Finally, scrutiny by the chief Commissioner of the London Metropolitan Police, Sir John Stevens, was obstructed by both the army and the police force during three separate investigations related to the Finucane case and by a fire in one of the investigation team's offices, which Sir Stevens believes was a deliberate act of arson.

Every independent observer of the Finucane case, including Sir Stevens, the United Nations, my own organization and most recently Judge Cory, have found evidence of collusion. There is yet to be a public accounting of this.

In Judge Cory's conclusion, he found that "if public confidence is to be restored in public institution, in some circumstance such as those presented in this case, a public inquiry is the only means of achieving that goal."

To be clear, we do not believe that a public inquiry into the Finucane case would interfere with any prosecution.

We also believe that prosecutions cannot address the wider institutional problems that this case highlights, nor promote the kind of institutional improvements that extend beyond the specifics of this case.

Given the British Government's poor track record over the past 15 years in the Finucane case, the loss and destruction of important evidence, the unavailability of key witnesses and others so many years after the fact, prosecutions also present the prospect of further delay without any likelihood of ultimate success.

In contrast to this uncertainty, a public inquiry would allow the community to judge if current and future reforms to the criminal justice system are accurately targeted. A public inquiry would help to ensure that current policies, procedures and structures are likely to withstand future prospects of institutional conflict and corruption of the kind that Northern Ireland has experienced in the past, and it would go a long way toward instilling long-needed trust in the rule of law.

Finally, I would like to say a word about the ongoing impact of the failure to achieve accountability in this case.

Upon the release of the Cory Reports on April 1, Mr. David Trimble spoke in the House of Commons and publicly accused Patrick Finucane and Rosemary Nelson of having a "clear terrorist connection," and raised questions about "how people such as Mr. Finucane operated and about the nature of his associations and contacts."

These comments are strikingly reminiscent of those made by Douglas Hogg in an address to the British Parliament on January 9, 1989, in which he charged that unnamed solicitors in Northern Ireland are "unduly sympathetic to the cause of the IRA."

Weeks later, Patrick Finucane was murdered.

On April 6, we wrote to Mr. Trimble to convey our concerns that his remarks were without foundation, dangerous and incendiary. We asked him to offer a formal apology to the Nelson and Finucane families and to retract these statements. We are not aware of any such response, and we urge this Commission to continue to raise this issue with Mr. Trimble.

In the aftermath of these comments, Chief Constable Hugh Orde reiterated that there was no evidence to link Mr. Finucane to the IRA. And Judge Cory, who thoroughly reviewed the police documentation in the case, said that there can be no doubt that it was his role as a solicitor that led to his murder.

He said the same about Rosemary Nelson.

Mr. Trimble's comments are, thus, directly at odds with the positions of a number of senior officials who are intimately familiar with both the Finucane and Nelson cases.

Coming on the heels of disparaging remarks Mr. Trimble made about human rights advocates in Madrid in late January 2004 at an international conference of victims of terrorism, where he attacked human rights organizations as "one of the great curses of this world," and asserted that they justify terrorist acts and end up being complicit in the murder of innocent victims, these comments raise profound concerns about Mr. Trimble's apparent willingness to contribute to a climate in which governments and non-state actors feel little restraint in attacking defense lawyers and other human rights defenders who may be critical of official actions are working to uphold the rule of law.

Mr. Trimble's inflammatory statements to me underscore the consequences of the ongoing denial of justice in the Finucane case. A lack of accountability for a murder committed 15 years ago makes it pos-

sible for prominent officials like Mr. Trimble to perpetuate such unsubstantiated claims, coming as Judge Cory issued his report documenting the brutality of the murder and the evidence of state culpability to a point with a laser-like clarity to the need for a full public inquiry to uncover the truth in this case.

Thank you very much for your longstanding interest in these issues and consideration of our views.

Mr. SMITH. Ms. Massimino, thank you very much for your testimony and for your work personally and that of your organization. It does greatly assist our help.

I, too, saw those comments by Mr. Trimble and was appalled by them. I think it is not only untrue but, as you pointed out, it is incendiary and it is very dangerous to the cause of the peace and reconciliation, respect of due process rights and human rights in general.

As Justice Cory's document clearly indicates, Patrick Finucane was not a member of the IRA and that he did represent people accused of crimes from both side of the divide, Protestant and Catholic. It would seem to me that as a winner of the Nobel Peace Prize, Mr. Trimble certainly ought to rise to a higher level and certainly should not issue statements that are demonstrably false.

It does nothing but hurt and retard peace and reconciliation.

So I think your point was very well taken. We will undertake, as a Commission, to follow up on those comments he has made, both regarding the Madrid and the comments with regards to Patrick Finucane.

I would like to yield to my good friend and colleague, fellow Commissioner, Mr. Aderholt, for any comments he might have.

**ROBERT B. ADERHOLT, COMMISSIONER,  
COMMISSION ON SECURITY AND COOPERATION IN EUROPE**

Mr. ADERHOLT. Thank you, Mr. Chairman. I do not really have any questions. I want to say, again, thank you for your testimony here this morning before our Commission and for your bringing attention to this issue. Certainly we want from the Commission's standpoint to be of help and to try to bring this to light and to try to help any way we can.

But, again, we thank both of you for being here today and for your testimony.

Mr. SMITH. Thank you very much, Mr. Aderholt.

I, too, want to thank you again, and pledge to Mrs. Finucane that we will draft still another resolution—this will be the third—calling on the British Government to initiate, establish a public inquiry in the murder of your husband.

I do have one very brief question: Has the House of Commons at any point had you as a witness?

Mrs. FINUCANE. No. Never.

Mr. SMITH. It would, I think, behoove the House of Commons, our colleagues in London, to hear directly from you. I know at times you have spoken to individual politicians and law-makers, which has to have been helpful.

But to allow you to testify, I think, would advance their knowledge base and sensitivity to this issue greatly. It is something that we will certainly try to see if they would be willing to hear you.

Nothing shatters myths more effectively than to do your due diligence, do your homework, for them to hear from the principals themselves and to look you in the eye, to see, again, the integrity that you represent and are as a person. I would hope that our friends in Westminster would avail themselves of that opportunity.

My colleagues—have you ever testified before the Irish Government?

Mrs. FINUCANE. No.

Mr. SMITH. That, too, I think, would be a very useful exercise as well. We will suggest that to them as well.

Thank you again. We will do everything humanly possible in regard to this inquiry and obviously as we have in the past to promote human rights in Northern Ireland. Thank you.

The hearing is adjourned.

[Whereupon, at 2:10 p.m., the hearing was adjourned.]

**APPENDICES****PREPARED STATEMENT OF  
HON. BENJAMIN L. CARDIN, RANKING MEMBER.  
COMMISSION ON SECURITY AND COOPERATION IN EUROPE**

The Helsinki Commission and its members have long been dedicated to the promotion of respect for human rights, including in the broader sense of democratic governance and adherence to the rule of law. In this effort, we have a certain obligation to look at all countries in the OSCE region, including our own and our closest friends and allies. We also have an interest, because a consistent approach to human rights enhances our credibility in all countries of concern.

I am, therefore, very interested in our focus today on the investigations of former Canadian Supreme Court Justice Peter Cory into six prominent murder cases relating to Northern Ireland. While these cases and the way in which they are most appropriately resolved may differ from other cases we confront, like the war crimes which occurred in the Balkans, for example, two words are common to them all—truth and justice.

Former Justice Cory, I want to thank you for your dedication to truth and justice, which is evident in the reports on the investigations you undertook. They reveal that truth and justice is essential not just for governments, not just for courts, but for people to realize and understand, regardless of whether they are the perpetrators, the victims or the larger society in which these crimes took place. I hope that the UK and Irish Governments, and all political players in Northern Ireland, will act upon your conclusions and recommendations, and allow truth and justice to prevail.

I also welcome the fact that the wife of one of the murder victims, Geraldine Finucane, will testify today. In my view, the wishes of surviving family members are of paramount importance. I also want to thank you, Ms. Finucane, for your courage and dedication to truth and justice over what have been difficult years for you personally and for Northern Ireland. If not for you, and people like you, it is doubtful that former Justice Cory would have received his appointment and mandate. You helped keep the issue of these murder cases on the table.

Of course, the long-awaited, completed investigation and delivery of the reports last October, and their publication by the Irish Government last December and the UK Government about one month ago, do not mean this matter has come to an end. A new phase now begins. Public inquiries need to be organized and effectively carried out. Another common characteristic of our work on the Helsinki Commission is to ensure that agreements are implemented and that follow-up actions are taken, and I believe the Commission will work to encourage implementation and action in these cases, as we have in so many other issues which confront us in our work.

**PREPARED STATEMENT OF  
HON. HILLARY RODHAM CLINTON, COMMISSIONER,  
COMMISSION ON SECURITY AND COOPERATION IN EUROPE**

As a member of the Helsinki Commission, I am grateful for the testimony of Former Justice Peter Cory and Mrs. Geraldine Finucane. On April 23, 2004, I, and my colleagues in the U.S. Senate, sent a letter to Prime Minister Tony Blair expressing our deep concerns about the British Government's decision against holding a public inquiry into the death of slain lawyer Patrick Finucane who was murdered in his home in 1989. This decision is disturbing given the public inquiries held in the Hamill, Wright, and Nelson cases.

I applaud Justice Cory for completing his investigation into the six murders—four in Northern Ireland and two in the Republic of Ireland—ahead of schedule on October 7, 2003. Justice Cory had a very difficult task and I commend him for his passion, conviction, and persistence in pursuing a thorough investigation. He is a passionate advocate. Mrs. Finucane has been coping with the death of her husband and she, and her children, deserve a public inquiry. Mrs. Finucane continues to carry the torch in memory of her husband and for all those concerned with human rights.

Once again, I call on the British Government to hold a public inquiry into the Finucane murder based on Justice Cory's recommendation. The peace process must remain strong for all the people of Northern Ireland and I believe a public inquiry will help ensure that peace is lasting.

I applaud the work of the Helsinki Commission, my colleagues, and all those working to keep the peace agreement strong. With continued efforts and attention on these important matters we can ensure that there is hope for future generations.

**PREPARED STATEMENT OF  
PETER CORY, AUTHOR OF INDEPENDENT INVESTIGATIVE  
REPORTS REQUESTED BY THE IRISH AND BRITISH  
GOVERNMENTS AS PART OF THE  
WESTON PARK AGREEMENT ;  
AND FORMER CANADIAN SUPREME COURT JUSTICE**

Remarks as delivered:

It always has been and it will always remain a bit of a mystery how I was appointed to this. The two charming people, the British high commissioner and the ambassador of Ireland, I'm sure in another life they were experienced and magnificent con-artists. They convinced me with very little trouble that all my sins would be forgiven me, as long as I undertook this inquiry.

And at a certain age, you've accumulated a good many sins. So the prospect of atonement was certainly one that I welcomed.

The first case that I looked into, right at the outset, it probably raised questions of my competence. The first case, I had to go to look at sensitive documents; it was at New Scotland Yard. To get into New Scotland Yard, you have to know the three-number code for the elevators. When you get to the secure floor, you have to have a four-number code to get in. When you get to the office, it's another four-number code. And to get into the vault where the documents were, is a six-number code.

And Scotland Yard doesn't allow the writing down of any numbers. You're tested rigorously. I was able to scrape through for the day.

But at the end of the day, 6:30 to 6:45, when I went home and I couldn't stand the thought of buying another pre-cooked dinner and cooking for myself, I went to the tea shop. Before I could go there, I had to go to the bank machine. And my friendly bank machine refused me. I couldn't remember my PIN number. I tried four times and I couldn't get the number right, and the people in the line behind me were getting restless and suspicious, and it was a very difficult beginning to the inquiry.

Mr. Chairman, you've outlined the sad facts with regard to the tragic murder. All that I can add to that is that the documents which I reviewed indicated that there is evidence which would warrant the holding of a public inquiry. They break down into three categories. They're referred to in the report.

One, an agent of the British Army Intelligence Unit, which was called FRU, or Force Research Unit, engaged an agent by the name of Brian Nelson who had been a member of the British Army. He had been discharged. He had worked for the British Army as an agent for a year and a half. There are some noisome aspects of it.

In any event, he left again and went to Germany. The army followed him to Germany, and, if there is such a word, re-recruited him as an agent and persuaded him to come back to Belfast with his family.

There are aspects of the work that are worrisome. First, it was apparent that the agent was not complying with the law of the land. Later on, in 1990, he entered a plea of guilty to 20 terrorist-related offenses, five of which included conspiracy to commit murder or attempted murder.

The army research unit that, based on the documentation, knew or ought to have known, from what was said or done that this was happening. They kept records, like all armies. These seem to be meticulous.

There are two types, one called a CF, which was the contact form, which was the briefing or debriefing of the agent. Second, there was the telephone contact form which just set out what took place over the telephone.

There are other aspects that are worrisome with regard to testimony given by the commanding officer of this unit at the trial of Nelson, obviously seeking a lenient sentence on the basis of his work, which was alleged to have saved hundreds of lives.

There are other documents that indicate that known to others that that was not correct, indeed it was false. And there are matters of evidence, for instance it's alleged by a high-ranking police officer of the London police, that he was giving evidence according to a script. The commanding officer denied that.

But there is other evidence that indicated in the document that that might have been the fact.

All of this is worrisome and indicates that there appears to be evidence that warrants the holding of a public inquiry.

I couldn't make findings of fact. I wasn't empowered to subpoena witnesses or to conclude findings of fact. I wasn't there as a trial judge. And so the work and indeed what I understood it to be was to review the documents, sensitive documents, and determine if there was evidence which warranted the holding of a public inquiry.

That evidence alone with regard to the work of Brian Nelson in my view warranted the holding of a public inquiry.

The work of the police which was then called the Royal Ulster Constabulary, particularly special branch. They had recruited an agent by the name of Stobie.

I must say, Mr. Chairman, if you're in Northern Ireland long enough, you must almost come to the conclusion that 90 percent of the population is an agent for one side or another, and indeed often an agent for both sides.

But in any event, what happened with regard to Stobie was this: He was a former quartermaster, a weapons expert, in the British army. He was recruited then by special branch to report to them with regard to the workings of a Protestant paramilitary organization.

There are aspects of the Stobie work which I cannot get into. They were the subject of editing by the British government, quite appropriately, on the basis of their interpretation of the need to protect national security.

Suffice it to say that there is evidence with regard to Stobie and his work with regard to weapons, the dispersal of weapons, the collecting of weapons and what was done and not done with regard to those weapons that leaves worrisome aspects. It certainly could be considered to be collusive acts that warrant the holding of a public inquiry.

To a lesser extent, there is the aspect of the security agency known as Security Services.

They didn't run agents. They were available for consultation and overview with regard to the work of some of the agents, and what is worrisome there on the documentation as early as 1981, and again in 1985, and again in 1989 before this murder, there are indications that Patrick Finucane was a target, that he was imminent danger.

The troubling aspect is that Patrick Finucane was not warned in light of this of the danger that existed to him for the purpose of protecting the identity and the safety of the agent. That in itself is evidence with regard to collusion. It warrants the holding of a public inquiry on that aspect.

Mr. Chairman, there were four cases that were referred to the British government. The next one I had nothing to do with the choice of the murders. They were presented to me as the ones that I was going to review.

The next one has to do, a man by the name of Billy Wright. Billy Wright was a violent man. He was convicted at 15 of a terrorist act. Been in and out of prison from that age. Obviously he had talent. He was a leader and he influenced of people to follow him. When he thought that other Protestant sects were not militant enough, he formed his own and gathered a band of militants about him.

He was articulate. He was an able public speaker.

He was imprisoned in the Maze Prison. The Maze Prison was a peculiar institution. Those that were there considered themselves to be prisoners of war, and they dealt with the prison authorities through their commanding officer in the jail.

The facilities consisted of a series of H huts. That's to say there were two sides to the H, and in each side prisoners were retained. The bar across for the H was where the guards were located. There's no doubt that the prisoners ran that institution.

By the time Billy Wright was murdered, 28 guards of that prison had been killed. Other guards and families had been threatened. And it was not a place where you would get a good rating with a life insurance agency if you were working as a guard.

Billy Wright had been a prison before he was transferred to the Maze at a prison called Maghaberry. I don't know why it's called Maghaberry, because if you spell it out, it says "Maccaberry." But in any event, it's their place in Northern Ireland, and if they want to call it Maghaberry, it should be called Maghaberry.

But there are all sorts of peculiar pronunciations that are unique to Northern Ireland, I discovered.

The point of this is, that at Maghaberry, to the knowledge of jail officials, three members of INLA, Irish Nationalist Liberation Army, attempted to kidnap Billy Wright and to execute him. That was an unsuccessful attempt, but it was known to the prison authorities.

Wright sought a transfer to the Maze Prison, thinking it would give him greater political standing and status and that he and members of his militant band would be together there.

It was granted, and at the same time, a transfer was granted to members of INLA. INLA prisoners had said that they were going to kill Billy Wright.

When INLA and the LVF (the band of Billy Wright) were transferred, they were then placed, in opposite wings of the H hut, a building with a 9-foot ceiling that even I was able to climb, when I in-

spected it, within 30 seconds. There they were, these two sworn enemies, two groups who had to sign or to recognize the accord that was then in effect with regard to violence.

On the 27th of December, three members of INLA cut a hole in the fence in the exercise yard because the guards had no control over the exercise yard, climbed over the roof into the van where Billy Wright was waiting to be driven to his visitors on Saturday, and shot him.

The band members surrendered immediately after the shooting to the authorities, took responsibility for the shooting and there it was. In light of their pleas of guilty, the facts never really came out. How did they get to weapons? How were they able to cut the hole in the wire and a number of other things: One, the guard who would that portion of the prison twice that morning had been asked to stand down.

It's denied by a governor who was on duty at the time, so it's a matter of finding of fact. What cannot be discounted is the guard was stood down twice on the morning of the killing. Two, the surveillance cameras that overlooked this portion of the Maze Prison had been out of order for at least a week before the killing, and no explanation why or anything with regard to repairs.

There are other aspects of the — something called the prisoners' list, which was usually only given to prisoners of a particular unit. On this occasion, the prisoners' list was given to INLA at the same time that it was given to Billy Wright's band, which would tell them the time of the prisoners' visitors and when he would be leaving.

Earlier documents indicated that they wanted to separate him from his colleagues, that he would be an easier target at that time.

Why worry about Billy Wright, prisoner, a violent man, perhaps a murderer? And I suppose you have to say if you believe in democracy, you believe, no matter what, in the unique dignity of every individual and the right that that be recognized.

And secondly, it was a state prison, thus the state responsibility for the safety of Wright.

There's no doubt in my mind that the material indicated actions that would constitute collusion. And I didn't make it up, the definition. I simply took the definition of collusion that appears in both the Oxford and the Webster dictionaries.

The most frequently used synonym is connivance, to turn a blind eye, to cooperate secretly, and there's evidence in all of these cases that meets with that definition.

The next case, in order of chronology, was Robert Hamill. Robert Hamill was 25 years old.

He is a construction worker. He and his partner had two children, beautiful little boys, four and two, and another child on the way.

On Saturday night, in Portadown, it was known to the police that there was an intersection that was known as a hotspot. Prior to Hamill's murder and over the past six months, there had been incidents on Saturday nights on no less than 17 occasions, incidents worthy of reporting.

And it comes about in this way: At the intersection of two streets, south on the northside street is St. Patrick's Hall, where the Catholic young people would gather for an evening of drinking, dancing and a good time. Hamill was there with two of his cousins, Girvan girls and the husband of one of them.

The Protestant youth usually gathered at rugby clubs. They are taken by bus to the west of Portadown and then came back to Portadown. They would go west. The Irish young people would go north. And often enough, they met at the intersection. And there was regularly brawling at the intersection.

I supposed that in the words of an American general, it depended who got there firstest with the mostest, who outnumbered whom on a particular evening.

But it's tragic to think that young people were getting into a regular Saturday semi-riot. This Saturday was no different. As Hamill and his cousins headed north, they saw on the intersection an RUC armored Land Rover that were used by the police informally. In Northern Ireland, they had to be armored.

And they placed their Land Rover at the north side of the intersection, but unfortunately not in a place where they could see the crowd coming from St. Patrick's Hall.

Someone who was passing by, rapped on the door of the RUC—and the officers agree with this—told them that they should move the position of the van so they could see the young people coming north, because also there was a group of Protestants from the bus station coming west.

And they moved it, but again, not in a very good position—climbed in and drove to that intersection in a Land Rover. Because of the armor, there's just a slit for the front windshield, very narrow windows, little tiny squares, 6 inches on each side, similar to one of the back, so that the vision isn't good. And because of the armor plating, it's difficult to hear.

That leads to a point, because what happened was this: When the young people, Hamill (inaudible) to there, there was a larger group, perhaps four to one, of Protestants arriving there. The two men, Robert Hamill and his companion, one of the two cousins, were knocked down. They were both rendered unconscious. There's no doubt that on evidence Hamill was kicked in the head a number of times while he was down.

And the question is: Should the police have intervened? Should they have been able to see?

What then is the evidence of collusion in this case?

First, the senior officer—and there are groups of four always in these Land Rovers.

The senior officer in the Land Rover did this: He phoned the father of a young man who was seen at the scene of the killing by a number of independent witnesses. And according to one witness, said: Get rid of his clothes, burn his clothes, get rid of them.

There hasn't been evidence. Assume that that officer will deny that. That, in itself, would be evidence of collusion, the attempt to destroy evidence that was vital to a murder inquiry.

It went further. The officer persuaded two friends to say that they were at his house that evening and that it was they that called the boy's parents.

The leader recanted, entered pleas of guilty to obstruction of justice, and the husband did six months. And the wife, because she was expecting a baby, child, was given suspended sentence.

That would be an indication again of the collusive act.

There were other aspects of it. A man who was identified as being right at the scene and probably as kicking Hamill in the head, was taken into custody by the officers and then released. Why has never, never been explained. And if it turns out that was what happened, and the independent statements appear to indicate that, it is something that would have to be investigated, a public inquiry, as would be the speed with which the officers, four officers in the van, responded to the cries for help for the two Girvan women and to the riot, which broke out, and this was the first aspect of it.

And that was the basis for the recommendation. This is a very rough, very short summary.

And the next case was that of Rosemary Nelson. When she was murdered, as she was just not quite a year older than Patrick Finucane, she too was very active in the community. And like Patrick Finucane, she had clients on both sides of the divide. And like Patrick Finucane, she was very proud that she had that ability to act for people on both sides.

Now, the aspects that are worrisome in her case, do not arise from the investigation that was carried out of her murder. In that case, the investigation was carried out thoroughly, without regard to expense and without regard to the very long hours put in by police teams.

The investigation was imaginative, thorough, complete and no expense was spared, no time was spared of officers. The problems that arise come about as a result of a failure to provide protection for Rosemary Nelson. She was obviously a very brave woman.

She had acted for and gained the acquittal of a man alleged—well, admitted to being a member of the IRA, Colin Dalphy (ph), who was accused of the murder of two RUC officers.

She had a number of other prominent cases. She acted for the Garvagi (ph) Road residents and their complaint was of the Orange Parade passing through their district. And she took up the case on their behalf.

What, then, were the aspects that indicated that there is evidence of collusion that should be investigated at public inquiry?

First, there was reports from clients of hers of statements made by RUC officers, for instances, to this effect, in one that's quoted in the report: You shouldn't have her as your lawyer, she's going to be dead.

Other remarks that were demeaning, crude and revolting, if they were made.

Her clients reported those threats to her and eventually, as a result of her complaint, there was an investigation with regard to them, a difference of opinion with regard to the effectiveness of the investigation.

And finally, the investigation really turned on whether the first investigation was proper, not whether or not the remarks were made. If they were, there was evidence of an attitude within the RUC, and perhaps more than an attitude, demonstrated an attitude that could be taken as more than collusive but of encouraging others to violence with regard to her.

There were as well reports of both threats and abuse when she appeared in front of the police at the Garvagi Road (ph).

Again, those aspects—because there is conflicting evidence—need to be explored at a public inquiry or findings of fact be made.

Then there are two written threats. One is contained in a pamphlet, "Man Without A Country," which refers to her in a way that, certainly by independent of service, could be taken as threatening.

Next, there was on the June the 3rd a letter written to her which was a direct death threat. That's June the 3rd of 1998. She was murdered on the 15th of March 1999.

There were numerous independent agencies that spoke to the Northern Ireland Office and to the RUC with regard to the threats that she had received.

They seemed to have been ignored.

The Northern Ireland Office took the position there is no direct threat. And yet, we have this sad situation.

The Northern Ireland Office wrote to the RUC saying, "We need a threat assessment. And there you are. We'd like to have it as soon as we could." And they didn't enclose—although they purported to—the letter of June the 3rd.

That might be simply a careless error. Or it might be found to be something a little more worrisome and could constitute a collusive act.

The RUC received a letter, and although they saw the reference, they apparently made no effort to get hold of the June the 3rd letter.

And then you have evidence that could be found to be a collusive act, both on the part of the Northern Ireland Office and the RUC with regard to failure to provide the RUC with this material, because then you would have a proper death threat assessment made.

The Northern Ireland Office refused to take action on the basis that there was not direct death threat and that there hasn't been sufficient in the assessment.

Suffice to say that the evidence indicated that it was material to say evidence that could constitute conducive acts that warranted the holding of the a public inquiry in the case of Rosemary Nelson.

Those were the four cases for the Irish government. There were of course the two cases in connection with—or for the English government, the two cases involving the Irish government.

Those two involved, first the murder of Justice Gibson and his wife. That was the earliest point of time, it would have occurred in 1987. Justice Gibson had served a number of years as a senior judge of the Northern Ireland court and sat on a number of cases, high-profile cases.

It was thought in one case that he had, by his actions or his words, in passing sentence on the acquittal of two RUC officers charged with the murder of IRA members, who had failed to stop at a checkpoint, that he was endorsing the shoot-to-kill policy.

When he learned that he issued an immediate statement that that hadn't been his and that he was opposed to it.

He was taking a holiday in the spring of that year. He had been warned by both the RUC and the Garda in Southern Ireland that he should take all proper precautions for his home security.

He had built a place as a holiday home for himself and his wife in Donegal, by the coast. That home had been burnt. There was an arson. And there was a sad scene in a way—all of these murders were so tragic, and they tear you apart.

But when they were torching the house, the last men told Justice Gibson and his wife to leave. Justice Gibson's wife said, "Can I do the dishes first?" They said, "No." And as they drove away, they saw the flames of their home.

However, he did not pay attention to security when he took the holiday in England. He, by this time was 74. He could have retired, but felt that it was his duty to go on sitting.

He made all of the arrangements in his own names as Justice Gibson. When he was coming back, he changed the ferry from Liverpool to Belfast to Liverpool to Dublin. And when he got to Liverpool for the Dublin ferry, he had them put his car first so he would be first off.

He was a commissioner for the Boy Scouts in Northern Ireland. And his wife, who had served in the British military as a decoder, telegraph operator for the British Navy, was commissioner for the (inaudible), she did the driving.

They got off the boat first. They were met by four Garda officers who led them out of Dublin.

When they got to the border, Justice Gibson got out of the car to go and thank the Garda officers, shook hands with them. And they crossed the border. And a quarter mile across the border, a car bomb was triggered as the Gibsons went by. And really, it was like looking at an X-ray to read the autopsy report. There was no means of identification apart from the dental records.

As in all the sites, I went to where it was. For a radio bomb, it has to be sight-triggered. I think I must have climbed the pole that they climbed. And the car bomb was left on the side of the road just 30 minutes before the Gibsons arrived there. It was triggered and away it went.

However, as I say, there was just no evidence of collusion other than the manner in which the bomb itself was set off and what would have to be done to setting it off. There was no evidence of outside collusion by members of the Garda or any government agency of Ireland.

The next is the murder of the two superintendents, Chief Superintendent Breen and Superintendent Buchanan. Superintendent Buchanan was the border officer, the chief border officer, for the RUC in the border country. That was a tough job, but he was a man who said, well, we have joint policing problems. Somebody has to see that we can work together. And he drove his own little red car—and it was readily identifiable along the border—and made frequent trips across the border, usually twice a week.

On one occasion, because of a matter that was of interest to both police forces and important to both police forces, north and south, he and his immediate superior, Chief Superintendent Breen attended at Garda offices on the south side of the border. They had two routes home after the meeting, one was a main road and one was a side road.

They took the side road. And the ambush took place in a place that couldn't be seen by any observation post. It's just (inaudible).

And the two groups that set up the ambush by placing of cars that were coming north and south so that only one line of traffic could get through from the south going north, very slowly. And when the car came containing the two officers, a van that had been following it, four men got out and shots were fired at the officers' car. I think as many as 27 shots entered the car.

Superintendent Buchanan was killed instantly. Chief Superintendent Breen thought because of the camouflage uniforms that it was an army patrol. And he staggered out. At that time, according to the autopsy, he had a bullet in his right lung that had collapsed. His right arm had a comminuted fracture with the bone showing through the clothing, and bleeding from that wound and a number of lesser wounds.

And he staggered out. And the gun men came up to three feet from him and pulled the trigger and—I guess the autopsy said 18 inches—and that was the death of Breen and Buchanan.

And there was evidence in the documents that indicated that there could be found to be collusion between a member of the Garda and the killers, which would account for the careful timing in the time that they took to set up the other and the fact that they were followed from the police office itself to the other side of the border.

Those, then, were the six cases, and those were the collusive acts in very summary form that gave rise to the finding that there was in the five cases evidence of collusion that should be pursued at a public inquiry.

And that is it as far as cooperation.

Sometimes some organizations needed reminding that I had this warrant to explore. And as long as I pushed, the other documents were made available. And it was just a matter of pushing in order to get everything, and often one document led you to another and to another and another to get the whole picture.

The Irish government made their report public before the Christmas of the year I gave it to them. Both governments received the report on the 7th of October—I've forgotten—5th or 7th of October of last year.

And the British government made the report public the 1st of April of this year.

They tabled the report in the House.

And there it is.

The sadness of it is the beauty of the country and the beauty of the people, the depth of suspicion that is there on both sides, and the hatred that appears to be there on both sides.

For instance, in the Patrick Finucane case, I did say in the report that this was one of the rare instances where a public inquiry should take precedence over a prosecution if there is to be peace in the community.

In light of the suspicion that is there, it must be open. And if it isn't, then the suspicion grows like a cancerous sore and just will grow greater and greater until the exploration is made. And then people can get on with living and living together as a community.

I think that's about all the help I can give to you, unless there are questions.

As a final word of warning: If a British high commissioner and an Irish ambassador come calling, say you're out...

(LAUGHTER)

... that you're feeling unwell and just as soon not talk to them.

**PREPARED STATEMENT OF  
GERALDINE FINUCANE, WIFE OF SLAIN HUMAN RIGHTS  
ATTORNEY PATRICK FINUCANE**

Mr. Chairman, Members of the Committee on Security and Co-Operation in Europe, fellow speakers, ladies and gentlemen:

My name is Geraldine Finucane. My husband was Patrick Finucane, the Belfast solicitor murdered by Loyalist paramilitaries in 1989. My family and I have campaigned assiduously since Pat's murder for a fully independent, judicial public inquiry into his murder. We have done so because of the existence of compelling evidence that Pat's murder was part of an approved policy of widespread collusion between the British State and loyalist assassins that included state-sponsored assassination.

I am very grateful for the opportunity I have been given to speak here today. I am grateful, but not happy that I have to do so. It is not the first time I have testified before an international committee; I have done so on numerous occasions in the past, as have other members of my family. The opportunity to testify before committees of international weight and standing has been an important facet of our struggle to highlight the circumstances surrounding the murder of my husband. Such committees are internationally recognised and carry weight. However, they are only a means to an end and it is the end that becomes ever more difficult to achieve in this case. That end is a full independent judicial public inquiry into Pat's murder.

It is a deplorable paradox of my family's campaign that, the more committees I appear before, the more testimony I give, the more the name of Patrick Finucane becomes known around the world, the farther away an end to this process is pushed. There is a simple explanation for this paradox: the persistent efforts of the British Government to avoid a public inquiry at all costs. It is not difficult to understand the motivation for this when one examines the evidence, for it is both compelling and damning in the extreme.

Throughout the many years of campaigning that my family and I have been engaged in, the British Government has never denied that they colluded with Loyalist paramilitaries in the murder of my husband. They have simply avoided dealing with the case by employing one ruse after another. They have shifted the goalposts so many times that it is sometimes difficult to know where the playing field is. The all-consuming objective of the British Government has been to delay the possibility that a public inquiry might have to be established within any kind of meaningful time frame. Again, it is not difficult to understand the motivation for this. Indeed, it has been a very successful strategy for the British Government. Two key witnesses have died in the last fifteen years. Vital documentary evidence is missing. Recollections are fading fast and will continue to do so. Each day that passes makes it all the more likely that the adage, "justice delayed is justice denied", will be all too apt in my husband's case.

My family and I have just witnessed the conclusion of one process of delay in our case. It is the process that gives rise to this hearing today and is a key example of the type of delaying tactic adopted by the British Government. I refer to the investigation carried out by another of today's speakers, Judge Peter Cory.

Judge Cory was appointed under the terms of an agreement reached in July 2001 during political negotiations at a crucial point in the Northern Ireland peace process. The British and Irish Governments agreed during these negotiations that they would jointly appoint “a judge of international standing from outside both jurisdictions to undertake a thorough investigation of allegations of collusion” in the murder of my husband, as well as five other controversial cases.<sup>1</sup> The two Governments stated specifically that, if the judge recommended a public inquiry in any of the six cases, the relevant Government would implement that recommendation.

Neither my family nor any other family was consulted in advance about the Governments’ proposals. We did not agree that a review of the evidence was necessary, even by a judge of international standing. It was nothing more than a further delaying tactic by the British Government to avoid establishing a public inquiry in the case.

Judge Peter Cory was appointed to the task of reviewing the six cases after considerable negotiation between the two Governments about choice of judge. The appointment was supposed to be filled no later than April 2002. This did not happen on time and Judge Cory was not appointed until months after the agreed deadline.

My family met with Judge Cory shortly before he began his work. At our first meeting with him, we explained our view that his investigation was unnecessary. I made it clear that, although I took no issue with him personally, I could not accept his appointment because it was just another instance of British Government delay. My family and I were already in the process of grappling with another delaying process, the futile police investigation being conducted by Sir John Stevens fifteen years after the murder. I feared that the exercise about to be undertaken by Judge Cory would be the same as that undertaken by Stevens: unaccountable, unnecessary and unwelcome.

Given that he had only just been appointed to the job, Judge Cory accepted our position with an admirable degree of composure. He even went so far as to say that if he were in our shoes, he would probably feel the same. However, the Governments had decided upon this mechanism and, as such, we were all of us stuck with it. Judge Cory promised that he would conduct as thorough a review as possible in as short a time as possible. He said that he would begin with Pat’s case, as it was the largest. He said that he would complete all cases before revealing his findings. He said that he would insist that the commitments the two Governments had made to him would be honoured and that he would not stand for any renegeing on their agreements. This was reassuring but of little comfort: Judge Cory was still, after all, an appointee of the British Government.

Judge Cory began his work in August 2002. He completed his work on all six cases in October 2003, several weeks ahead of schedule. He informed my family at all times of the progress of his work. He met with us on a number of occasions and answered our questions about his work, insofar as he could without compromising his position. He told us what he would do and has done it. To date, Judge Cory is the only person in any way connected with the British Government who has kept his word to my family and me as regards his involvement in

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<sup>1</sup> The other cases are the murders of: (1) Rosemary Nelson; (2) Robert Hamill; (3) Billy Wright; (4) Lord Justice and Lady Gibson; and (5) Chief Superintendent Harry Breen and Superintendent Bob Buchanan.

my husband's case. My family and I did not know who he was at the time of his appointment, but he was recommended by those who did as a person possessed of a first rate mind, abundant in independence and integrity.

In every instance of our dealings, Peter Cory has more than fulfilled his recommendation. The British Government, on the other hand, has reneged on its commitments at every opportunity and where possible it has changed the conditions of those commitments.

One of the original terms of Judge Cory's appointment was that his reports would be made public as soon as possible after completion. He submitted his reports to the British Government at the end of October 2003. By Christmas 2003, they remained unpublished. Some of the contents of the reports had been leaked to the Northern Ireland press. Speculation was rife among sections of the media about what Judge Cory's recommendations were. Some thought no inquiries had been recommended, others said four inquiries had been recommended, while the rest mused over every possible permutation in between. The number of theories was seemingly endless but sandwiched between all of this newsprint hype were families of murder victims who had no idea what was happening. Judge Cory was constrained by his terms of appointment and could not tell us. The British Government would not.

We know now that, at this time, the British Government was engaged in a behind-the-scenes exercise of consultation with the agencies of the State that Judge Cory had investigated. The family of Pat Finucane, Rosemary Nelson, Billy Wright and Robert Hamill could not be permitted to know what exactly had been recommended about the murders of their relatives, but the British State bureaux responsible for each murder was fully consulted and asked for its views. This process took another six months to complete. In that time, Judge Cory made a number of representations about the disclosure of the reports to the families concerned. He asked that, if the reports could not be disclosed in their entirety, could the recommendation in each one not be disclosed? The answer to this basic, humanitarian request was, "no." In the end, Judge Cory decided that he was not prepared to simply await the outcome of the British Government negotiations and contacted my family directly to tell us that he had recommended a public inquiry be established in my husband's case.

In the meantime, my family also decided not to wait for the British Government to deign to tell us what we would be permitted to know and when. In February 2004, I launched an action in the courts to compel the British Government to publish Judge Cory's report. It was only after this action had been instigated that the British Government confirmed that it would publish the reports of Judge Cory on 1st April 2004.

On 1st April 2004, Mr. Paul Murphy MP, the Secretary of State for Northern Ireland, made a statement in the House of Commons. He confirmed that Judge Cory had recommended inquiries in all four cases that he had investigated in Northern Ireland. The Secretary of State said that the British Government proposed to establish inquiries in three of the cases immediately. In the cases of Robert Hamill and Rosemary Nelson, these would be established under the Police (Northern Ireland) Act 1998. In the case of Billy Wright, the inquiry would be held under the authority of the Prisons (Northern Ireland) Act 1953. In the case of my husband, the British Government pro-

posed that it would “set out the way ahead at the conclusion of prosecutions.” No inquiry of any kind was mentioned. The British Government’s response to Judge Cory’s report was simply to say that “the way ahead” would be set out later. No commitment to a public inquiry was given at the time of publication, nor has one been offered since.

I believe that the reason the British Government has avoided committing itself to an inquiry is because it cannot face such an appalling prospect. The evidence in my husband’s case shows clearly that the British State pursued a policy of state-sponsored assassination, using Loyalist paramilitaries as its proxy killers. In pursuing this policy, the British were no better than the many despotic regimes around the world today that are condemned for their appalling human rights record. In seeking to cover up what they did for so many years, the British Government continues its policy. Those responsible were rewarded at the time and are now protected in the aftermath. The policy of the British Government centres on delaying an inquiry for as long as possible. It clearly believes that, if delayed long enough, it will perhaps be possible to avoid an inquiry altogether.

I am now engaged in another court case against the British Government to compel them to commence a public inquiry into the murder of my husband, as recommended by Judge Cory. I should not have to do this. The British Government made a commitment to implement the recommendations of Judge Cory and I believe that they are breaking that commitment by delaying the commencement of an inquiry. Again, it is not difficult to understand the motivation for this. The British Government is trying to postpone the day when it will be exposed to the world as having engaged in the murder of its own citizens. It has delayed the establishment of an inquiry for fifteen years, despite calls from distinguished individuals and organisations worldwide that such an inquiry is necessary.

Every domestic and international NGO that concerns itself with human rights in Northern Ireland has called for a public inquiry into my husband’s case. The Northern Ireland Human Rights Commission has also done so. Every Law Society and Bar Council in England & Wales, Northern Ireland and the Republic of Ireland has done the same, as have a number of international bar associations. The former United Nations Special Rapporteur on the independence of judges and lawyers, Dato Param Cumaraswamy, has called for a public inquiry on four occasions. His successor, Mr. Leandro Despouy, has continued this call. The UN Special Representative on human rights defenders, the UN Special Rapporteur on torture and the UN Human Rights Committee have all supported my family’s call for a public inquiry.

On the tenth anniversary of Pat’s murder, over one thousand lawyers around the world signed a petition supporting the call for a public inquiry. The US House of Representatives has called for an inquiry. The Government of Ireland has repeatedly called for an inquiry through the Taoiseach, Bertie Ahern, and the Minister for Foreign Affairs, Brian Cowen. This was recently repeated by the Irish Government in a statement on the floor of the United Nations. I ask that this statement be included in the written record of today’s hearing. A

full list of those who have supported the call for a public inquiry is attached to this testimony and I ask that this also be included also in the written record of today's hearing.

I have spent the last fifteen years fighting to expose the truth behind the murder of my husband. I believe that the truth will remain hidden until a fully independent public judicial inquiry is established to investigate all of the circumstances. I would very much like to be able to tell this committee that the end was in sight, but I cannot. I can only see delay and obstruction ahead as the British Government continues its policy of postponement.

I will not stop until I achieve my goal but I hope that, one day, I will be able to stop, because I will have done what I set out to do. The campaign that my family and I have engaged in is not an end in itself. It is a means to an end. The end I seek to achieve is a public, independent judicial tribunal of inquiry that will fully examine all of the evidence in my husband's case.

There are those who seek to aid the British Government in avoiding an inquiry. Some public figures have sought to besmirch the name of my late husband, by branding him a terrorist and a criminal without a shred of evidence in support. They do so because he is not here to defend himself and to further their own twisted ends.

There are also those who would suggest that an inquiry should be foregone because it would be damaging to the common good. As someone who has directly experienced the brutality of what a government can consider to be "the common good", I would not agree. I believe that the common good is best served in the opposite way. Instead of further concealment, I say that there should be openness and accountability. These principles should be the bedrock of our new society, not delay and deceit.

I hope not to have to go on forever in my campaign, but I hope that the new society we are building will survive forever. If that society it is to have any chance of survival, it must know the complete truth of its past, so that it can learn all the necessary lessons to provide a stable future. I ask for the support and assistance of this committee to make that hope a reality.

I thank the Committee for its time and this opportunity to testify.

**PREPARED STATEMENT OF  
ELISA MASSIMINO, WASHINGTON DIRECTOR,  
HUMAN RIGHTS FIRST**

Chairman Smith, and members of the Helsinki Commission, thank you for convening this timely hearing and for providing Human Rights First this opportunity to share our perspectives with the Helsinki Commission concerning the importance of a public inquiry into the 1989 murder of Patrick Finucane.

We welcomed the chance to present testimony to the Commission at your March 16 hearing on Human Rights and Police Reform in Northern Ireland, and appreciate that you have now convened this hearing, and have invited both Judge Peter Cory and Geraldine Finucane to testify, in the wake of the release of Judge Cory's report and the failure of the British government to establish a public inquiry in the Finucane case.

The core mission of Human Rights First, formerly the Lawyers Committee for Human Rights, to protect and promote human rights is rooted in the premise that the world's security and stability depend on long-term efforts to advance justice, human dignity, and respect for the rule of law in every part of the world. Since we were established in 1978, we have worked both in the United States and abroad to support human rights activists who fight for basic freedoms and peaceful change at the local level; to protect refugees in flight from persecution and repression; to help build strong national and international systems of justice and accountability; and to make sure human rights laws and principles are enforced.

Human Rights First has been working actively for many years to advance human rights in Northern Ireland and has long been campaigning for public inquiries into the murders of both Patrick Finucane and Rosemary Nelson. We have published several reports about the intimidation and murder of defense lawyers in Northern Ireland, with particular focus on these two cases, and have documented how the situation of defense lawyers there is closely linked to the criminal justice and emergency law system and to the conduct of the police.

Despite the British government's delay in releasing the Cory reports, we welcomed the April 1 announcement that inquiries would be forthcoming in the Nelson case, as well as those of Robert Hamill and Billy Wright. We were, however, extremely disappointed about the results in the Finucane case. Further delay in the case is especially painful for Geraldine Finucane and her family. More broadly, it prolongs the achievement of truth and accountability at a time when Northern Ireland is struggling to reform its police service and other criminal justice agencies and instill greater public confidence in government institutions. The horrible evidence of collusion, as reported by Judge Cory in his report on the Finucane case, cannot be left unscrutinized.

Judge Cory's recommendation to hold a public inquiry in the Finucane case has substantial support in the international community and inside the United Kingdom. On April 16, 2004, the government of the Republic of Ireland made a statement at the United Nations in which it expressed disappointment in the British government's decision to delay action on Judge Cory's recommendation. Param Cumaraswamy, former UN Special Rapporteur on judges and lawyers, also criticized the decision, as did numerous others.

Many of those who have called for an inquiry urged this action long before Judge Cory's independent investigation. But in committing itself to follow Judge Cory's recommendation, the British government agreed to abide by a particular process. This is a particularly crucial moment in what has been a fifteen-year struggle to uncover the truth in the Finucane case. We urge the Commission to reiterate its previous call on the British government to establish a public inquiry. We also hope the testimony of Dr. Mitchell Reiss of the Department of State at today's hearing will help clarify the U.S. government's position on the case.

#### **PUBLIC INQUIRIES: OVERVIEW**

In August 2001, the British and Irish governments agreed to appoint an independent, international judge to investigate allegations of collusion in four British cases, including the Finucane case, and two Irish ones. In reaching that Weston Park agreement, the two governments "accept[ed] that certain cases from the past remain a source of grave public concern, particularly those giving rise to serious allegations of collusion by the security forces." They agreed that "[i]n the event that a Public Inquiry is recommended in any case, the relevant Government will implement that recommendation."

Various statutes in the United Kingdom allow for the establishment of inquiries into serious public matters or allegations of misconduct. The Tribunals of Inquiry Act of 1921, under which the Bloody Sunday inquiry was constituted, provides for public inquiries—with the power to compel evidence—into matters of "urgent public importance." In the past, inquiries have been held in the United Kingdom in cases of public disasters, racist murders, financial misconduct by state actors, and allegations of police brutality, among others.

Following his appointment, and after thoroughly investigating the six cases under his terms of reference, Judge Cory recommended public inquiries in all of the cases. His characterization of "public inquiries," as he explained in the Finucane report, is consistent with many of the provisions specified in the Tribunals of Inquiry Act, including that such tribunals have the power to subpoena witnesses and documents and to utilize investigators. According to Judge Cory, the inquiries should be independent and held in public to the extent possible, with "findings and recommendations ... in writing and made public."

In his April 1 statement upon the release of Cory's reports, Northern Ireland Secretary of State Paul Murphy explained that inquiries into the Nelson, Hamill, and Wright cases will have the same powers as those set up under the Tribunals of Inquiry Act. The Nelson and Hamill case inquiries will be established under the Police (Northern Ireland) Act of 1998, which provides for a public or private inquiry into "any matter connected with policing" at the Secretary of State's direction. The Wright case is to be set up under a similar provision of Northern Ireland's Prison Act of 1953.

Under the Police and Prison Acts, the Secretary of State has discretion regarding the public nature of the inquiries and publication of their findings, and we hope that the decision to utilize them is not used as an excuse to narrow the inquiries' powers or the need for a

public and independent investigation. We also hope that in the Nelson case, the inquiry will examine the shortcomings in the police investigation after her death.

During the same April 1 Parliamentary hearing, the British government failed to commit to a public inquiry in the Finucane case, saying that “we will set out the way ahead at the conclusion of prosecutions.” In his statement, Secretary of State Murphy noted that there were no outstanding prosecutions in the Wright or Hamill cases and that in the Nelson case, the Chief Constable of Northern Ireland had advised the government that a public inquiry would not prejudice the investigation.

Secretary Murphy, however, did not explain the shift in the British government’s position: that the establishment of inquiries in these cases was contingent on the completion of prosecutions. He also did not clarify why an inquiry in the Finucane case was not possible at the same time as a prosecution, or why it might be more prejudicial than in the other cases— saying only that there was one prosecution ongoing and the potential for others, and that public interest demanded the conclusion of prosecutions.

When the British and Irish governments agreed in 2001 to the appointment of an international judge, they clearly stated—as noted above—that a recommendation for a public inquiry would be implemented. Their agreement acknowledged prosecutions, saying that that the international judge’s inquiry would begin no later than April 2002, unless such an investigation would be “clearly prejudicial to a forthcoming prosecution at that time.” The commitment made no such condition regarding implementation of the judge’s recommendations after the investigation was undertaken.

In his report, Judge Cory discussed the conflict that might arise if new prosecutions were to proceed in the Finucane case, noting that it is the duty of the Attorney General to balance relevant factors and decide if prosecutions must be brought as a result of recently discovered evidence. But he pointed out that “[t]his may be one of the rare situations where a public inquiry will be of greater benefit to a community than prosecutions” and that, in light of his “finding that there is sufficient evidence of collusion to warrant a public inquiry, the community might prefer a public inquiry over a prosecution even if it means that some witnesses must receive exemption from prosecution.”

Certainly it is an exceptional case where a public inquiry is preferable to prosecutions. Yet the Finucane case is just such a case for a number of reasons. For example, strong evidence has emerged that:

- The murder was committed with the knowledge of three U.K. intelligence agencies, including divisions of the local police and the national army, and through the actions of government agents;
- The inquest and initial police investigations were inadequate, blocked, and lacked independence; and
- Scrutiny by the Chief Commissioner of the London Metropolitan Police, Sir John Stevens, was obstructed by both the army and the police force during three separate investigations related to the Finucane case,<sup>1</sup> and by a fire in one of the investigation team’s offices, which Stevens believes was a deliberate act of arson.

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<sup>1</sup> The Finucane case was included in the terms of reference of only the last of Stevens’s three investigations.

Every independent observer of the Finucane case, including Sir Stevens, the United Nations, Human Rights First, and most recently Judge Cory, has found evidence of collusion. Despite fifteen years of a government investigation, there have been no convictions of the killers or their handlers, or official determinations of government misconduct. There has yet to be a public accounting for the strong evidence of government action and complicity in Finucane's death.

Last year, the European Court of Human Rights found that Patrick Finucane's right to life had been violated because the investigation into his death "failed to provide a prompt and effective investigation into the allegations of collusion by security personnel." The Court did not, however, call for a fresh investigation, finding that it could not be assumed that a future investigation would be carried out usefully or provide redress to the family or the public at large. In such circumstances, there is a necessity for accountability in a transparent way. In Judge Cory's conclusion, he found that "[i]f public confidence is to be restored in public institutions then in some circumstances such as those presented in this case a public inquiry is the only means of achieving that goal."

As the British government acknowledged when it pledged to appoint an international judge, this is a case of "grave public concern." As a matter of "urgent public importance," a public inquiry is not only appropriate, but necessary.

To be clear, we do not believe in any regard that a public inquiry into the Finucane case would interfere with any prosecution. But the central issue here remains that prosecutions cannot address the wider institutional problems that this case highlights, nor promote the kind of institutional improvements that extend beyond the specifics of this, or any other, individual case. Given the British government's poor track record over the past fifteen years in the Finucane case, the loss and destruction of important evidence, and the unavailability of key witnesses and others so many years after the fact, prosecutions also present the prospect of further delay without the likelihood of any ultimate success.

In contrast to this uncertainty surrounding prosecutions, a public inquiry would allow the community to judge if current and future reforms to the criminal justice system are accurately targeted. A public inquiry would help to ensure that current policies, procedures, and structures are likely to withstand future prospects of institutional conflict and corruption of the kind Northern Ireland experienced in the past. And it would go a long way toward instilling long-needed trust in the rule of law.

While the British government may claim that an inquiry could prejudice prosecutions, its own defense of emergency measures provides a strong argument for concurrent proceedings. If the purpose of prosecutions without juries is to promote impartiality, then the judges in those trials should not be influenced by a public inquiry, keeping their decision-making to evidence presented in court and admitted into the record. In addition, in narrow circumstances tribunals of inquiry have the power to limit public access to certain evidence or aspects of the proceedings; an independent tribunal could make such decisions if a situation arose that could jeopardize a fair prosecution.

Finally, in the past the British government has not found public inquiries to be inconsistent with ongoing criminal investigations and possible prosecutions. For example, in the Lawrence Inquiry, which

looked into the death of Steven Lawrence, a public inquiry was not viewed as preventing criminal prosecutions. As noted, this recognition was also reflected in the August 2001 agreement by the governments of Ireland and the United Kingdom that led to Judge Cory's appointment.

In its statement last month, the British government did not explain whether either the Attorney General or Chief Constable had determined that a public inquiry would be prejudicial to the current prosecution in the Finucane case. Nor has it provided a full explanation for its failure to call an inquiry in the case. In short, the government's invocation of a conflict with the criminal proceedings, after it had committed itself to abide by Judge Cory's recommendations, is the source of great frustration and heightened concerns about its commitment to see justice done. We therefore believe that the British government should now abide by its 2001 commitment and call for a public inquiry into the Finucane case.

#### **THE NEED FOR ACCOUNTABILITY:**

##### **DAVID TRIMBLE'S STATEMENTS AND THEIR IMPLICATIONS**

The broader context surrounding the issues discussed above has also been impacted by what Human Rights First regards as inflammatory statements made in the House of Commons by MP David Trimble. Upon the release of the Cory reports on April 1, Trimble spoke in the House of Commons and publicly accused both Patrick Finucane and Rosemary Nelson of having "a clear terrorist connection" and raised questions about "how people such as Mr. Finucane operated and about the nature of his associations and contacts." He subsequently defended these statements, telling a journalist that "I don't think anybody thought [Mr. Finucane] was simply a lawyer."

These comments are strikingly reminiscent of those made by Douglas Hogg in an address to the British Parliament on January 9, 1989. Hogg charged that unnamed solicitors in Northern Ireland "are unduly sympathetic to the cause of the IRA." Just weeks later, Mr. Finucane was murdered. In recent weeks, the Chairman of the Criminal Bar Association in Northern Ireland and the Chief Executive of the Law Society said that Trimble's comments may put the lives of other human rights lawyers at risk.

On April 6, Human Rights First Executive Director Michael Posner wrote to Trimble to convey our deep concerns that his remarks were without foundation, dangerous and incendiary. He asked Trimble to offer a formal apology to the Nelson and Finucane families and to retract the statements. We are not aware, however, of any such response in the aftermath of the incendiary statement and our correspondence, and urge the Commission to continue to closely monitor the situation.

In the aftermath of Trimble's comments, Chief Constable Hugh Orde emphasized that there was no evidence to link Mr. Finucane to the IRA, an assertion that the RUC had made in 1989. Judge Cory, who has thoroughly reviewed the police documentation in the case, said that "[t]here can be little doubt that it was his role as a solicitor that led to his murder." He said the same about Rosemary Nelson's murder. Regarding Mr. Finucane, Judge Cory noted further that "there is nothing in the RUC files which indicates that Patrick Finucane was a member of PIRA, the IRA or the INLA."

Those statements buttressed earlier ones by several former senior police officials. For example, following Ms. Nelson's murder in 1999, Chief Constable Ronnie Flanagan described both Finucane and her in the Northern Ireland press as "highly professional solicitors doing nothing more than their professional best to represent the interests of their clients." At Mr. Finucane's inquest, the Senior Investigating Officer said: "The police refute the claim that Mr. Finucane was a member of PIRA. He was just another law-abiding citizen going about his professional duties in a professional manner. He was well known both inside and outside the legal profession. He was regarded in police circles as very professional and he discharged his duties with vigour and professionalism."

Trimble's comments are thus directly at odds with the positions of a number of senior officials who were intimately familiar with both the Finucane and Nelson cases. Coming on the heels of disparaging remarks he made about human rights advocates in Madrid in late January 2004 at an international conference of victims of terrorism, where he attacked human rights organizations as "one of the great curses of this world" and asserted that they "justify terrorist acts and end up being complicit in the murder of innocent victims," they raise profound concerns about Trimble's apparent willingness to contribute to a climate in which governments and non-state actors feel little restraint in attacking defense lawyers and other human rights defenders who may be critical of official actions or working to uphold the rule of law.

#### CONCLUSION

David Trimble's recent remarks underscore the consequences of the ongoing denial of justice in the Finucane case. The lack of accountability for a murder committed fifteen years ago makes it possible for prominent officials to perpetuate unsubstantiated claims. Coming just as Judge Cory issued his report documenting both the brutality of the murder and the evidence of state culpability, they point to the ongoing need for a full public inquiry to uncover the truth.

The Finucane case demands a further inquiry that can promote genuine accountability. Four years after the Helsinki Commission held a hearing that led to a call for public inquiries on the Finucane case and others, there can be no further justification for any additional postponement and delay. The interests at stake—from the friends and family of Patrick Finucane to lawyers and other human rights defenders to the broader community in Northern Ireland seeking to promote the rule of law—compel a full accounting for what happened a decade and a half ago.

Thank you for your longstanding interest in these issues and your consideration of our views.

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