THE PATTEN COMMISSION REPORT ON POLICING IN NORTHERN IRELAND

OPEN MEETING

BEFORE THE

SUBCOMMITTEE ON
INTERNATIONAL OPERATIONS AND HUMAN RIGHTS

OF THE

COMMITTEE ON
INTERNATIONAL RELATIONS
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

SEPTEMBER 24, 1999

Serial No. 106–103

Printed for the use of the Committee on International Relations

U.S. GOVERNMENT PRINTING OFFICE
64–523 CC WASHINGTON : 2000

COMMITTEE ON INTERNATIONAL RELATIONS

BENJAMIN A. GILMAN, New York, *Chairman*

WILLIAM F. GOODLING, Pennsylvania
JAMES A. LEACH, Iowa
HENRY J. HYDE, Illinois
DOUG BEREUTER, Nebraska
CHRISTOPHER H. SMITH, New Jersey
DAN BURTON, Indiana
ELTON GALLEGLY, California
ILEANA ROS-LEHTINEN, Florida
CASS BALLENGER, North Carolina
DANA ROHRABACHER, California
DONALD A. MANZULLO, Illinois
EDWARD R. ROYCE, California
PETER T. KING, New York
STEVE CHABOT, Ohio
MARSHALL "MARK" SANFORD, South Carolina
MATT SALMON, Arizona
AMO HOUGHTON, New York
TOM CAMPBELL, California
JOHN M. MCHUGH, New York
KEVIN BRADY, Texas
RICHARD BURR, North Carolina
PAUL E. GILLMOR, Ohio
GEORGE P. RADANOVICH, California
JOHN COOKSEY, Louisiana
THOMAS G. TANCREDO, Colorado
SAM GEJDENSON, Connecticut
TOM LANTOS, California
HOWARD L. BERMAN, California
GARY L. ACKERMAN, New York
ENI F.H. FALEOMAVAEGA, American Samoa
MATTHEW G. MARTINEZ, California
DONALD M. PAYNE, New Jersey
ROBERT MENENDEZ, New Jersey
SHERROD BROWN, Ohio
CYNTHIA A. MCKINNEY, Georgia
ALCEE L. HASTINGS, Florida
PAT DANNER, Missouri
EARL F. HILLIARD, Alabama
BRAD SHERMAN, California
ROBERT WEXLER, Florida
STEVEN R. ROTHMAN, New Jersey
JIM DAVIS, Florida
EARL POMEROY, North Dakota
WILLIAM D. DELAHUNT, Massachusetts
GREGORY W. MEEKS, New York
BARBARA LEE, California
JOSEPH CROWLEY, New York
JOSEPH M. HOEFFEL, Pennsylvania

RICHARD J. GARON, *Chief of Staff*
KATHLEEN BERTELSEN MOAZED, *Democratic Chief of Staff*

SUBCOMMITTEE ON INTERNATIONAL OPERATIONS AND HUMAN RIGHTS

CHRISTOPHER H. SMITH, New Jersey, *Chairman*

WILLIAM F. GOODLING, Pennsylvania
HENRY J. HYDE, Illinois
DAN BURTON, Indiana
CASS BALLENGER, North Carolina
PETER T. KING, New York
MATT SALMON, Arizona
THOMAS G. TANCREDO, Colorado
CYNTHIA A. MCKINNEY, Georgia
ENI F.H. FALEOMAVAEGA, American Samoa
EARL F. HILLIARD, Alabama
BRAD SHERMAN, California
WILLIAM D. DELAHUNT, Massachusetts
GREGORY W. MEEKS, New York

GROVER JOSEPH REES, *Subcommittee Staff Director*
DOUGLAS C. ANDERSON, *Counsel*
GGARY STEPHEN COX, *Democratic Staff Director*
NICOLLE A. SESTRIC, *Staff Associate*

CONTENTS

THE PATTEN COMMISSION REPORT ON POLICING IN NORTHERN IRELAND

Friday, September 24, 1999

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INTERNATIONAL
OPERATIONS AND HUMAN RIGHTS,
Committee on International Relations,
WASHINGTON, D.C.

The Subcommittee met, pursuant to notice, at 9:45 a.m. In Room 2172 Rayburn House Office Building, Hon. Christopher H. Smith (chairman of the Subcommittee) Presiding.

Mr. SMITH. Let me just begin by saying that the purpose of this public meeting is for the Subcommittee with primary jurisdiction over human rights to review the recent publication "A New Beginning: Policing in Northern Ireland," and to hear from its principal author, the Right Honorable Chris Patten. This report was released on September 9 by the Independent Commission on Policing for Northern Ireland which was established by the Good Friday Agreement in April 1998.

[Copies of the report are available by contacting the Subcommittee office.]

Mr. SMITH. Mr. Patten, welcome to the Congress and thank you for your generous commitment of time and talent in reviewing policing in Northern Ireland. We are grateful for your presence.

After 15 months of exhaustive study and outreach which included over 10,000 people participating in public meetings; 1,000 individuals speaking at those meetings; more than 3,000 submitting written reviews; and countless small group meetings, there is little doubt that the Commission moved comprehensively and aggressively to pursue its mandate for "a new beginning in policing in Northern Ireland with a police service capable of attracting and sustaining the support of the community as a whole.".

With over 175 recommendations for change and reform, it is our sincerest hope that the recommendations contained within the report become the starting point, the floor, and not the ceiling, for policing reforms in Northern Ireland. This report, promising because of the recommendations it contains, yet disappointing for the problems it chose not to tackle, must be a base from which the human rights and policing reforms are built, rather than a high-water mark that recedes over the next few weeks of public review.

I am encouraged by the Commission's own plea that "the essentials of our recommendations present a package which must be implemented comprehensively. We advise in the strongest terms against cherry-picking from this report." .

I am encouraged by the Commission's candid admission "that policing was at the heart of many of the problems that politicians have been unable to resolve in Northern Ireland and by the report's definition of policing as the protection of human rights." The Commission's stated desire to reorient policing onto an approach based on upholding human rights is a recognition that Northern Ireland's police force, the RUC, has failed at protecting human rights for Northern Ireland's citizens for years.

Today's public session is the fourth in a series of meetings held by this Subcommittee as it has focused on human rights abuses in Northern Ireland. In each of our previous proceedings, the subject of policing and human rights abuses by the RUC was central. In fact, next week will mark the 1-year anniversary of testimony we received from defense attorney Rosemary Nelson who told us that she feared the RUC, had been harassed by it, and even physically assaulted by RUC members. She received death threats, and she told us right from where you are sitting, Mr. Patten, that she literally feared for her life. We find it appalling that still not a single RUC officer has been disciplined for the death threats and other harassments that she endured.

I am disappointed that while the Commission acknowledged that the RUC has had several officers within its ranks over the years who have abused their position, it nevertheless declined to comment on a vetting mechanism to rid the force of those who have committed egregious acts of abuse and violence. It is worth noting with regret that the RUC officers who harassed Rosemary Nelson and perhaps were connected with her assassination are still on the job today. Even the police officers who beat David Adams while he was in detention at Castlereagh in 1994 have never been criminally prosecuted.

Last year, after meeting with Param Cumaraswamy, the U.N. Special Rapporteur on the independence of judges and lawyers—and he, too, came and spent some time with our Committee and spoke again from where you sit—I know that the Members of this Subcommittee wrote to the Commission asking that the Commission address the recommendations put forth by the Special Rapporteur regarding RUC harassment of defense attorneys and the establishment of a judicial inquiry in the allegation of collusion into the murder of defense attorney Patrick Finucane. Regrettably, the report fails to make recommendations that would curb the harassment of defense attorneys, and there is not a mention of the ongoing, still evolving implications of RUC-Special Branch complicity in Finucane's murder. Unless I missed something in the report, Special Branch, long tainted with allegations of collusion, will simply merge with the Crime Branch. Perhaps you can elaborate on that during your comments.

The Commission spent a great deal of time on recommendations for the reductions of the size of the force and trying to correct the imbalance, and I think that provides some very good recommendations that hopefully will be followed.

Let me just conclude by saying—and I would ask unanimous consent among my colleagues that my full comments be made a part of the record—we do have concerns about plastic bullets and we did note that you had recommended there be a diminution in their use

while other methods of crowd control are looked at. But it does strike me that they can be used in the rest of the U.K. The hope would be that these very lethal batons would be banned, as has been recommended by numerous bodies, including the United Nations.

We also take note that we would have hoped the Emergency Powers would have been done away with. You seemingly say that and recommend that, and yet some of the verbiage that follows seems to render that recommendation moot: Perhaps it ought to continue "as long as there is a problem." The Emergency Powers are one of the sources, we believe, of the continued problems or troubles in Northern Ireland, and we would hope that they would be eliminated as well.

[The prepared statement of Mr. Smith appears in the appendix.]

Mr. SMITH. I would like to yield to my good friend, the Chairman of the Full Committee, Mr. Gilman, for any comments he might have.

Mr. GILMAN. Thank you for putting together today's important and timely meeting regarding some very critical events in the history of Northern Ireland. I want to welcome now Commissioner Patten, former Chairman Patten of the Policing Commission, and Senator Maurice Hayes, a Member of the Commission, for their good work and constructive suggestions.

Mr. Chairman. Your tireless efforts to help put respect for human rights and the critical role of defense counsel on top of the agenda for the new North of Ireland are what we all want and expect under the Good Friday Accord to help bring a better understanding.

We also want to welcome Ambassador Heyman who is here with us from the European Union, and his good staff. We are indeed fortunate to have Chairman Patten, now newly confirmed Commissioner for Exterior Relations for the European Union, who recently rendered his final report and findings under the terms mandated by the Good Friday Accord for a new beginning for policing in Northern Ireland.

Few issues, day to day, impact more the lives of the people of the north, than their relationship with local police. Police can either serve to protect the people or be part of the problem, not the solution, in a divided community as in the north.

As our House Speaker Hastert said the day that the Patten report was issued, "Acknowledging that there is a problem is the first step in finding a solution to that problem," and the Patten report is useful for that purpose. It has many constructive proposals. I support the sentiments of the Speaker and have called the Patten report a good first step. The struggle for change in policing in the North is not over, its just begun. We now await the British Government's full and prompt implementation of all of the Commission's recommendations which should be just the beginning, not the end, of reform. I think its implementation will be whether or not this report will be successful in the long run.

The ultimate test and real change will come when the minority nationalist Catholic community can also call the police service its own and reflect that support by joining the new police service in representative numbers to its population in the community.

Today the RUC is a Protestant police force for one segment of the community. Change has to come, hopefully sooner rather than later. While Chairman Patten's mandate was part of a new beginning for policing in the north, one cannot in good conscience ignore the past history in the Royal Ulster Constabulary and its relationship with the minority nationalist community.

We will be hearing later today from witnesses from the north whose lives and families have been tragically impacted by the acts of the RUC. Whether through possible collusion in the murder and the making of threats to those defense attorneys merely charged with securing fair play and justice for their clients, the past history of the RUC is sadly checkered. Theirs are not the only families touched by the RUC in one way or other. Thousands of others have been hurt as well, including police officers and their families. We all heard case after case in our Full Committee hearings this past April on the RUC, and we need not recount them here today.

With that checkered past and the Patten Commission's first step to a new beginning to policing, we are calling on the British Government to move forward into the new and shared future of policing in the north. It can even do more. The Patten report leaves some serious gaps that will make the new future for policing in the north difficult: for example, not calling for weeding out the bad apples who have abused human rights in the past, and for new leadership at the top, these oversights will make the real reform hard to bring about.

In addition, not banning police membership in sectarian associations whose very purpose goes counter to fair, impartial and responsible community policing, will also make real concrete change very difficult.

We will be examining these and other proposals in our Committee, and I want to welcome Chairman Patten again and thank him for a very difficult but a well done job, along with his Commission. We look forward to hearing from you, Commissioner, and our other witnesses today.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Gilman appears in the appendix.]

Mr. SMITH. Mr. Patten, the floor is yours. We will have time for opening statements from all the Members later on. Commissioner Patten does have a very limited time here. We yield to him.

STATEMENT OF THE RIGHT HONORABLE CHRIS PATTEN, CHAIRMAN, INDEPENDENT COMMISSION ON POLICING FOR NORTHERN IRELAND; ACCOMPANIED BY SENATOR MAURICE HAYES

Mr. PATTEN. First of all, thank you very much for allowing Senator Hayes and me to attend this briefing and to spend at least some time with you this morning before I go back to what has just become my life as a Commissioner for the European Union.

I am delighted that Maurice is able to join me. Maurice was one of the 7 other Members of the Commission. Maurice has had a record of public service in Northern Ireland which is second to none. He was the ombudsman and he is now, among other things, a Senator in Dublin. After me, he will say a few words.

There were 7 other Members of the Commission. We had two Members from the United States, a distinguished police officer from Massachusetts and a distinguished police trainer and academic from New York, and they made a major contribution to our work, as did a number of police forces around the United States and indeed North America as a whole.

I hope you will forgive me for beginning on a rather personal note in talking about a report which has been denounced as wicked—as meaning that any police officer who is ever killed in the future in Northern Ireland should be on my conscience—denounced this morning in a newspaper in London called the Daily Telegraph as bringing an end to the rule of law.

This is the toughest job I have ever done, and I have done one or two which were not exactly pushovers. Tough for two reasons. The parties that were able to negotiate the Good Friday Agreement, providing a prospective peace and normality and democracy in Northern Ireland, were able to agree on the outlines of government. The one thing that they couldn't agree on was policing. So they called in 8 people from around the world to try to do the job for them.

Second, why tough? To some extent, we found ourselves operating like a truth and reconciliation commission in circumstances where sometimes—and it is understandable there seemed to be more demand for truth and reconciliation than there was supply. We held 40 public meetings around Northern Ireland. People said nobody is going to go to a public meeting. Nobody goes to public meetings these days. Well, over 10,000 people came to those public meetings. Over 1,000 people spoke at them.

I can remember a meeting in a little village cinema in Kilkeel, a fishing village in the shadow of the Mournes. Protestant fishing fleet, Catholic farmers in the hinterland. We had a noisy and quite a good meeting. At the end of it, I made the sort of speech that we all can make terribly well as politicians about reconciliation and healing and hope. At the end of it, after I had finished, to my consternation I saw a little lady at the back of the cinema getting up to say something. I sat down rather nervously. She said, "Well, Mr. Patten, I have heard what you say about reconciliation and I voted yes in the referendum campaign, but I hope you will realize how much more difficult that is for us here than it is for you, coming from London. That man there murdered my son," and it was true. On both sides of the community, that is the reality in Northern Ireland. Two stories, two sets of pain, two sets of anguish.

We had an evening which began on the Garvaghy Road. I remember Robert Hamill's sister talking to us about his murder, and the meeting was chaired with considerable integrity and skill, difficult meeting by Rosemary Nelson. We then went down the road to Craigavon, and we had four police widows, one after another, telling us their stories, ending with Mrs. Graham whose husband had the back of his head shot off, a community policeman, in 1997. Mrs. Graham finished her remarks by saying, "You know, my husband wasn't a Catholic, but he didn't regard himself as a Protestant. He tried to behave like a Christian." I have to say that I went back from those two meetings that night and had the largest drink I have ever had in my life.

Well, we did our best; and if anybody can do it better, welcome. We produced a report which is unanimous. But what were our terms of reference? To bring forward proposals to ensure that policing arrangements, including composition, recruitment, training, culture, ethos symbols are such that a new approach, Northern Ireland has a police service that can enjoy widespread support from and is seen as an integral part of the community as a whole.

I would be interested in how anybody could produce recommendations which came closer to meeting those terms of reference. At the center of our argument is a simple proposition derided by British newspapers like the Daily Telegraph and one or two others, people who are more extreme in what they say about the RUC than any serving RUC officer would ever be.

At the heart of our argument is that what has to happen in Northern Ireland is to take the politics out of policing and to take the police out of politics. To separate the police from what has been for decades the most contentious political argument, that is, the nature of the State itself. The whole basis of the Agreement does that.

What does the Agreement—what does the Agreement assert? It says that in return for Nationalists accepting that political change can only come through democracy, through the ballot box, establishing the primary loyalty of Nationalists and Republicans to the democratic process, in return for that, Unionists will recognize that Nationalists have other loyalties and are not obliged to demonstrate their primary loyalty to the institutions of the State which they want to see changed through the democratic process.

So when it came to establishing the Northern Ireland Assembly, to contemplating the establishment of the Northern Ireland Executive, no one has any difficulty agreeing that you can have an oath of office which doesn't have anything to do with loyalty to the State. Nobody argues about a logo, an emblem for the Northern Ireland Assembly, which has nothing to do with the contentious emblems of a contentious State, and yet people still insist that the police should be identified with the State in a way which is totally contrary to practice in liberal democracies. We don't regard in the rest of the United Kingdom the police as an arm of the State; we regard them as the upholders of the rule of law.

I think it is intolerable that some people should still seek to fix the police at the center of that political argument, should still insist that the police should be a political football in Northern Ireland. Political footballs get kicked; actually, worse still in Northern Ireland, political footballs get shot and blown up.

The best service we can do for all of the victims of violence in Northern Ireland is to end a situation in which those who should uphold the rule of law are directly related to the main contentious political argument. That is why we have said what we have said about name and emblems and so on.

Our argument is that policing is about the protection of human rights. Now, I have been amazed that some people have contested that proposition. But it is clearly the case that the police are there to protect individual people's human rights, to exercise their own powers in a way which recognizes other people's human rights.

Also we have to recognize that the police have human rights as well, which have to be protected.

We have suggested a whole structure for ensuring that there is democratic accountability for policing in Northern Ireland, though it will obviously depend crucially on what happens to the institutions of government proposed in the Good Friday Agreement.We have put forward imaginative and wide-ranging proposals on their management, on training and on structure.

Perhaps I can touch on two issues since you have mentioned them. One, the Special Branch; and two, public order policing.

On the Special Branch, we have argued that while it is very important that Northern Ireland that the police service in Northern Ireland—has an adequate counterterrorist capacity, we don't think that the present size of the Special Branch is easy to justify. We don't think that the structure of the Special Branch makes sense. We think that the Special Branch should be treated in the same way as happens in London or most British police forces, or the Garda, for that matter, and that Special Branch functions and capacities are brigaded with those involved in the fight against crime.

It is going to be particularly important because in a more peaceful, secure environment, which we will look forward to, I think Northern Ireland may well face bigger problems in the areas of organized crime and drug-running and so on.

The other thing that we have proposed is that there should be a senior judicial figure as a commissioner responsible for the oversight of all covert policing—surveillance, intercepts, use of informants—and that there should be a complaints tribunal to which people can go if they feel that their civil liberties have been infringed by covert policing operations.

That would put Northern Ireland ahead—though I think change will happen in Great Britain as well—ahead of the rest of the United Kingdom in ensuring that our position is entirely in line with the European Convention on Human Rights.

On plastic baton rounds. Well, we have, as you know, proposed a more restrictive regime for the use of plastic baton rounds, but much as we would have liked to have done so, we have not been able to argue that plastic baton rounds should be completely done away with. Why? Because during our hearings, a police officer was killed with a blast bomb by loyalist thugs in policing a public order demonstration. Why? because police officers have to contend with blast bombs and petrol bombs when they are policing public order demonstrations.

I totally accept, as I said, closer regulation of the use of plastic baton rounds, but when we said to some senior American police officers "What would you do if people threw petrol bombs at you? "They said we would use live rounds." I think it is important that there should be less lethal equipment available to policing before they have to do that.

We have argued for more investment in technology of other sorts of public order policing. We have argued for more investment in water cannons. But, alas, much as I would liked to have done so, I did not feel that I could put my name to a report which completely removed plastic baton rounds, and particularly as we were

writing within months of the police in the Netherlands, in Rotter Dam, when facing a football riot, using live rounds to cope with it.

I think that there are two other issues that I would like to touch on this morning before concluding my remarks:

The first. I think it is very important that the new police service in Northern Ireland should not be isolated, should not be cutoff from the rest of the world. We have said a good deal in our report about cooperation with the Garda Siochana and other police services. I have to say that I know that I am treading on controversial ground with distinguished Members of this Committee, but where foreign police services bring together Northern Ireland police officers and members of the Garda, I think they are doing the community in Northern Ireland a signal service.

Composition. We have put forward a lot of detailed proposals which would ensure that within a decade, about a third of the police service in Northern Ireland was Catholic, Nationalist, Republican. I think that the rate of change, the rate of progress we have suggested, is pretty much at the margins of the possible.

New York, for example, dealing with the problem of ethnic imbalance, the New York police moved from 12 percent ethnic minorities to 33 percent in 25 years. In comparison, the rate of progress which we are suggesting is pretty heroic, but I think it is achievable. What it is going to depend on is Catholic and Nationalist and Republican community leaders, and political leaders encouraging young men and women to become police officers.

I think we have opened the door and it is very important that others encourage Catholics to go through that door. I hope that, as some Nationalists have reacted in the last few weeks in a welcome way in Northern Ireland, others will follow.

Let me just say a word about implementation of the report. The British Government—and I don't speak for them, this has been an independent Commission—the British Government have said that they are going to consult on the report until November and then presumably begin the process of change.

We have suggested that in order to oversee change, there should be an Oversight Commissioner who would visit Northern Ireland regularly to establish that the report was being implemented, and that if in some areas change was taking place slowly, there was an adequate justification for that. Clearly the political situation and the security situation in some areas will affect the pace of change, although overall I think regardless of the political and security situation, much of what we propose could take place.

I wonder if I can ask Maurice to add a word.

Senator HAYES. Thank you, Mr. Chairman, and thank you for the honor to speak to the Committee. I know some of the Members from before, and your interest in the subject.

Chris was talking about the public meetings that we had. I remember the first one which was on Shankill Road in Belfast. After a very contentious meeting, there was an old lady who had not spoken all evening, and she came over to me and she said, "Son, you can only do your best." I thought she captured the sense of the difficulty of the task and the integrity of the people concerned. There was difficulty in finding a resolution between polar opposites, and

the likelihood that no one would thank us for it anyway. She has been right, I think, on most scores.

I took on this job out of admiration for those political leaders and their courage and vision and the historical compromise in the Good Friday Agreement, and I thought that no citizen could refuse to help under those circumstances. What we have done is deeply rooted in the Agreement. Our terms of reference were written for us in quite some detail by the framers of the Agreement. I think anybody applying a reasonable checklist will see that we have addressed all of them as thoroughly as we can. They did not equip us with subpoena powers. They did not equip us with an investigatory arm, and they did not equip us with a means of going over former cases or reviewing past events, and we could only assume that they wanted us to look forward.

The Good Friday Agreement itself is a forward-looking document. It does tend to draw a line on the past. It does base the whole future of society on mutual respect, on equality of respect for the different traditions in Northern Ireland. That is why we have looked forward.

We have informed ourselves of what went on in the past. We have read previous reports, but basically to ensure that the events which took place will not take place as far as can be prevented in the future.

It seemed to us that the spirit of the Agreement was one of looking forward, and it would seem odd under those circumstances, where you are letting prisoners out of jail, to be proposing to put policemen in. We didn't give anybody amnesty. There is nobody who is immune to the law, to the prosecution of cases; and some of the cases you mentioned are being investigated and may well lead to prosecution and appearances in the court. It would have been wrong for us, I think, to have become involved in that.

In addition to that, we have the position of the independent Police Ombudsman who we recommended should be able to review all records of officers and previous files.

I think this is largely a managerial document. It imposes its controls in a managerial way. It may not be melodramatic enough for people who wanted to see blood on the floor, but I can assure you that a careful reading of that will show you that accountability is intended for the establishment and the maintenance of professional policing practices.

There are a few themes running through the report. One is accountability; accountability at the political level, at the local level, accountability at the managerial level to ensure these professional standards.

The second is transparency. People know their rights in relation to the police. The police know what they can't do and must do.

The third is respect for human rights.

The fourth is community representativeness and effectiveness and efficiency.

The Holy Grail in all of this is the participation of young Catholic and Nationalist people in the police force.

The quest everywhere in the world is for community policing, community policing with the consent of the community being policed. Policing in harmony with the community and cooperation

with the community, by a police force which is itself representative of the community and which carries the respect of the community. It doesn't mean Catholic policemen to deal with Catholics and a Protestant police force to deal with Protestants, but a police force which commands the respect of the whole community. To do that, it has to be representative, and it was for that reason we had to take down the barriers which prevented young Catholics from adhering to the police, to get that percentage up from 8 percent to somewhere near the demographic balance.

A test of our recommendations will be that young Catholic and young Protestant youth can stand up at youth clubs in their own district and say "I am going to join the police", without being jeered out of existence or being kicked out. That is the test. I think it is a challenge, and I think we have created structures on which others can build. It is a dynamic process. It is indeed, as you say, a beginning, but I believe we made an honest and a decent beginning.

Mr. SMITH. Thank you very much.

Mr. SMITH. I think you and Commissioner Patten make your points extraordinarily well, and because time is limited and I have a number of questions, I will reduce mine to one.

I would ask you to help us to understand something. Senator Hayes, I think your point about being forward-looking is a very good one. But it also seems to me that a vetting process, especially in the Special Branch, but throughout the RUC, is not mutually exclusive of a forward-looking position; because if people who have committed egregious abuses in the past stay in the same jobs or work up the chain of command, your reform is only as good as your weakest link.

This Committee has met with the three individuals who did the Truth and Reconciliation Commission in El Salvador. We have looked at other efforts to try to look forward, and also at the present and past. Perhaps jail is not what everyone needs to look at for those offending police, but at least they need to be taken out of the positions where they can continue to do harm. I remember that it was said to those who committed atrocities in El Salvador: You can never run for office, you are finished. In terms of public performance, you are persona non grata. If those people are still in those positions undermining investigations, that could seriously erode reform as you go forward.

Senator HAYES. They will not necessarily be in those positions. One of the things that we have recommended is quite a serious program of training and retraining for everybody in the organization, one made necessary because of the incorporation of the European Convention on Human Rights into British domestic law. That has enormous impacts, and all of the police have to be trained for that.

Second, it is a police force which has been geared, for reasons which we all know, to the conflict situation for 25 years, and they are now having to move into a quite different style and culture of policing with the community in a peaceful society, and that requires retraining.

There will also be repostings. One of the things that we have suggested is tenure; that nobody should stay in a place like the

Special Branch or the special units for more than 5 years without going back to community policing.

The proportion of people who are in community policing at the moment is actually quite small. We are proposing that the center be community policing. That means people will be relocated. There is another important change actually in that, up to the present, policemen in Britain and Ireland could only be dismissed for gross misconduct or for crime, not for inefficiency, and we are asking every police officer to subscribe to a declaration of respect for human rights and human dignity and service to the community. That is what they are being judged against. It can be a constabulary offense not to be adaptable to change, and we think that in that way people will be moved around. People will be trained and some people might decide that this is not the sort of policing for which they joined.

Mr. SMITH. Would you support the police board or the ombudsman establishing a vetting process as the next step? Retraining is one thing, but there is this issue of justice and people being removed who have committed abuse or beatings in Castlereagh or anywhere else.

Senator HAYES. I know the problem that you raise, and it is a very difficult one to deal with, and I welcome any practical steps that can do it, but there is a difficulty between establishing a vetting process which is clear on the one hand, and a witch hunt on the other. The situation is very clear at the moment, and I would not want to destabilize it actually by increasing the uncertainty for the good and honorable policemen, of whom there are very many.

Mr. PATTEN. I am strongly in favor of vigorous management, making sure that those who are in the police service are living up to the oath that they would have taken. I am very much against witch hunts.

The other thing that I would add is that under our proposals for changing composition, for recruitment, for downsizing, within 10 years Northern Ireland would have not only about a third of a force which is Catholic and Nationalist and Republican, but would also have a 50 percent completely new force. Half the police service in Northern Ireland would be new, and I think in that sort of turnover in the police service in composition, it should be possible to deal with any bad apples.

Mr. SMITH. I can't let the one comment go by. I am opposed to a witch hunt as well, as is everybody; but every police force does have an internal affairs department and is continually vetting its own.

Mr. PATTEN. Absolutely. We are very strong about internal accountability and relating strong management to training and retraining. I don't think we would disagree with anything that is done in a decent police service in North America.

Mr. SMITH. Mr. Gilman.

Mr. GILMAN. Thank you.

Chairman Patten, we have seen in the past, British commissions have come and gone and many have left their reports on the shelf to gather dust, and we hope certainly that is not going to be the result here.

Do you believe that the British Government is fully committed to implementing your report?

Mr. PATTEN. A former British Prime Minister described royal commissions as taking minutes and wasting years, and I wouldn't like to think that Maurice and I and 6 of our colleagues had wasted our year, but I can't speak for the British Government, though I used to be able to until the electorate took another view.

I think the only person who can answer the question on implementation is Mo, the Secretary of State. But I think all of us have been grateful for the positive things which the British Government have said about our report.

I should add, I have been pleased about the positive things that police services around the world have said about our report, serving police officers here in North America, serving police officers in the rest of the United Kingdom, serving police officers in the Republic.

What Mo Mowlam has said, is that she is going to give people in Northern Ireland until November to comment on the report, and then she is going to announce what she is going to carry forward. Obviously I hope that nobody starts cherry-picking in this document, because I think it hangs together as a whole.

Some people have said that they are going to put forward their own proposals. The official Unionists who have opposed our report say that they are going to put forward their proposals. I hope they are able, if they do, to put forward proposals better than ours in ensuring that policing arrangements are such that Northern Ireland has a police service which can enjoy widespread support and an integral part of the community as a whole.

Mr. GILMAN. I have one more question. Chief Constable Flanagan indicated that membership in loyalist orders like the Orange Orders are totally inconsistent with building broad community support. In his statement he made before the House of Commons in March of this past year, Mr. Flanagan, in responding to a query of that nature and memberships, said, "I said it is more a matter of perception. But in giving my answer, Chairman, I think I recognize the importance of perception and I stress my personal preference that my offices should not be members of the organizations referred to," talking about these kinds of orders.

Yet the Patten Commission report didn't recommend any ban on membership by police officers in those kinds of orders. Has the report therefore left a legacy in place that could erode the new police service?

Mr. PATTEN. No. I note what Sir Ronnie says about preferring that people weren't members, not just of the Loyal Orders, but of other similar institutions, even though they may have a different religious background. I think that we are looking at organizations including Masons, Loyal Orders, the Ancient Order of Hibernians, and others.

I think you have to draw a distinction if you believe in civil liberties and freedoms. I think you have to draw a distinction between what people may think and the way that they act. I think what we can expect from police officers is impartiality.

Now, none of our investigations suggested that there were many members of the Loyal Orders or the Ancient Order of Hibernians

in the police service in Northern Ireland, but we concluded that if you wanted a police service that reflected the whole community, it wouldn't be right, and it would certainly infringe against most of my civil libertarian instincts, to deny anybody the right to be a member of any of those orders.

What we have said is that membership of any institution should be declared and available to the police service and to the police ombudsman. Beyond that, I wouldn't wish to go, although I note what Sir Ronnie and other police chiefs have said about their preference. But there is a difference between asserting that preference and actually taking on a fairly fundamental civil liberties issues.

Mr. GILMAN. Thank you, Mr. Chairman.

Mr. SMITH. Mr. Gejdenson.

Mr. GEJDENSON. It seems that the British and the American Governments play a pretty strong role universally to press forward in human rights and the development of democratic and civil societies. At an earlier meeting this morning, we talked about trying to do that in the former Soviet Union. I wonder what you think that the British Government and the U.S. Government could do to accelerate the process in Northern Ireland. Senator Mitchell is over there now and we are hopeful that he will move the process forward.

It seems that in areas where we have very little historical bond, we are sometimes able to move things more rapidly than here in Northern Ireland. There are places that the British Government has been immensely helpful in resolving disputes, ethnic religious disputes. Here, at our doorstep, in a sense, we seem to be kind of floundering at this point.

Mr. PATTEN. I place on record our gratitude to not only the American members of our Commission for the contribution they made, but the contribution made by police services right across the United States to our deliberations. Similarly, anybody who is as passionately concerned about the future of Northern Ireland as I am has to feel a huge debt of gratitude to Senator Mitchell, who has done an extraordinary job.

What must be very frustrating for him is that I guess he felt, not unreasonably on Good Friday last year, that he had done the difficult bit, and that implementing what had been agreed should be fairly straightforward. He is now back trying to persuade local political leaders to implement it, with it still being the case that all of the opinion polls demonstrate substantial majority support for making a reality of the agreement. After all, what is the alternative?

I think you've been very helpful and I think we are getting to the stage where the future of stability and peace and prosperity in Northern Ireland is going to be self-evident and very plainly in the hands of political leaders in Northern Ireland, and I hope they won't let down those they represent who I think want, with a burning passion, this to succeed.

In relation to the policing issue, I think it is very similar. It has been very interesting that, for example, the press in Northern Ireland have been much more positive about our report than parts of the press in the rest of the country.

Mr. SMITH. Mr. King.

Mr. PATTEN. With great apologies, I am going to have to move on in a minute because I have got White House and other engagements. But if Maurice can stay—no, you have to leave, too. Perhaps a couple more questions.

Mr. SMITH. Mr. King.

Mr. KING. Mr. Patten, I would like to welcome you here today and commend you on the outstanding job that you have done. I also would like to welcome back Anthony Cary. It seems like only yesterday that you left.

I identify myself also with the remarks of Chairman Smith on the vetting issue and Chairman Gilman on the political will to implement the full Agreement, because I believe it would have to be implemented in full to have full significance.

I would like to ask you why, in view of the fact that there have been widespread allegations and evidence about RUC complicity or threats being made against Pat Finucane or Rosemary Nelson, why there is no reference made to either of those cases in your report?

Mr. PATTEN. There is no reference for the simple reason that we followed our terms of reference. We weren't set up as a judicial inquiry with the powers that an inquiry would have. For example, the inquiry that is now looking into the deaths in Derry. We weren't set up with those powers. But nevertheless, we sought to propose policing arrangements for the future, which would ensure that the sort of allegations that have been made about what happened in the past could not be true in the future—which would make it very difficult to do anything in the future such as is alleged to have taken place in the past. Because of legal issues I have to be careful how I put these things.

We thought that in order to put forward adequate arrangements for the future, we had to read the reports of what had happened in the past. We asked for and were given access to all those reports—Stalker, Sampson, Stevens—and we saw the authors of those reports.

What we say in our report reflects our study of those documents. As you know, Stevens is still going. As you know, there are ongoing at least one ongoing court case and conceivably others. But I want to assure you that what we have said about issues from covert policing to the future of the Special Branch and to the general issue of accountability and to the role of the policing board reflects what we saw and read.

Mr. NEAL. Commissioner Patten we can't get past the fact that Senator Mitchell is back for the review because the Unionists have said no to implementation of the Good Friday Agreement. Tomorrow the Grand Orange Order in Belfast is going to meet to oppose what it is that you have authored. You have received high marks throughout your career, and the study that you have undertaken here is a good start, and I think we would all acknowledge that.

But having said that, we have all shared one common experience, and that is that we have all seen architectural renderings that look marvelous and then we have seen the building, and oftentimes there is a difference.

Your report to be implemented is also going to have to go through stages of parliamentary action before it is fully implemented. How are we to be assured that this issue which cuts to the

core of many of the differences in the North of Ireland will ever be implemented in the manner in which you have recommended?

Mr. PATTEN. The main critics of our report in the media, and I suspect in politics as well, are people who don't really like the Agreement at all, are people who view the attempt to accommodate decent Nationalist aspirations as somehow a treachery. It is easy, isn't it, to criticize every attempt to show generosity of spirit, to argue for moderation; easy to criticize every such attempt as appeasement, as a surrender of the rule of law.

I repeat the point, what do these critics suggest should replace the Good Friday Agreement? What do they suggest should be done to ensure that police officers get the support right across the community which they deserve.

The answers to Northern Ireland's problems isn't to turn the clock back. The answer to Northern Ireland's problems isn't to remember every old feud and humiliation and tragedy. The answer is to try to move forward.

Now, I think our policing report is absolutely fundamental to moving forward. I hope that the government will conclude that after listening to views. I hope that the House of Commons will conclude that after debating our recommendations. I hope that the people of Northern Ireland will conclude that as well.

I don't think this report is going to look at all bad against the great sweep of events in Northern Ireland, but that is less important than whether it really does shape a policing service which the people of Northern Ireland deserve. Everybody, I hope, should regard this report as an opportunity for a new beginning, for a police service which everybody can sign up to, everybody can join, everybody can give their full-hearted consent to.

Maurice, do you want to add anything?

Senator HAYES. One of the most important recommendations we made is for an implementation supervisor, and the idea of this is for a figure of international standing and repute who could hold all parties to account, including governments and treasuries responsible for providing the money, and that is a key and integral part of the thing, to prevent the kind of outcome that Congressman Neal was referring to.

Mr. PATTEN. But after his heroic efforts, I strongly suspect that we can't anticipate Senator Mitchell volunteering for the job.

Mr. SMITH. Mr. Crowley.

Mr. CROWLEY. First, Mr. Patten, and Senator Hayes, thank you for your work on this long-awaited document. We had a recent meeting with members of the RUC—and this is just a quick statement. One of the questions I had was why is it that you cannot change the color of the uniform from green to blue. The answer, we were told by the RUC, was that green is an Irish color and we like that color as opposed to moving it from a military to a policing color.

I make that statement because of a concern of something so simple to do compared to what you are proposing, some 175 specific recommendations of change that will radically change the police department if it is imposed. My question is, why didn't we just start all over? Instead of 175 complex changes? Why not just throw the whole ball of wax out and start all over?

Mr. PATTEN. I don't know many people who seriously think in Northern Ireland that we could close down the police service tomorrow and somehow find a new one overnight. I just don't think that was ever a realistic option. Of course, one or two people argued it to us and we considered it; but I think that was as unrealistic an option as doing nothing at all, as finding even the uniform too difficult to contemplate.

I think we had to find proposals which were rooted in the real world, and I think our proposals are. I think we offer a transformed policing service in Northern Ireland, as transformed as policing services have been in some other communities, not the least in North America. I very much hope that when you visit Northern Ireland in the future, you will be able to see those police officers walking the streets everywhere, dealing with crime and difficulties in every neighborhood, and being welcomed in every neighborhood as well.

Mr. SMITH. Thank you. We would like to submit some written questions. Obviously some people here didn't get a chance to ask questions, and if you would be so kind to respond, it would help us.

Mr. PATTEN. Thank you very much.

Mr. SMITH. I would like to present the second panel, beginning with Michael Posner, Executive Director of the Lawyers Committee for Human Rights, since its inception in 1978. Mr. Posner who served on the board for Amnesty International, America's Watch, and the International League for Human Rights, has been a visiting lecturer at Yale law school and Columbia University law school and has provided testimony to this Subcommittee numerous times, and I can say without any fear of anyone contradicting me, this Committee greatly values your contributions.

Michael Finucane is an attorney and the eldest son of Patrick Finucane, a Belfast solicitor who was murdered in front of his family in 1989. In his work for the Pat Finucane Center, Michael has actively sought justice and full disclosure of the facts behind that heinous crime. We appreciated your previous testimony before the Committee and applaud you for your courage in the face of incredible hardship and sorrow and adversity in standing up for human rights in Northern Ireland.

Mr. SMITH. Michael, if you can begin.

STATEMENTS OF MICHAEL POSNER, EXECUTIVE DIRECTOR, LAWYERS COMMITTEE FOR HUMAN RIGHTS

Mr. POSNER. First of all, I want to thank you, Chairman Smith, for your longstanding interest and active involvement in these issues, and thank this Committee for being a forum for these discussions now and hopefully in the future.

First, I should say, we also share—and I have a written statement which I would like to make part of the record, but in it we say that the Lawyers Committee also appreciates the stellar work of Chairman Patten and the Commission on Policing. They took on an enormously difficult task and did it with great care and attention, and I think their report reflects that.

We particularly appreciate the focus that the report places on human rights and accountability, and those are themes that run

throughout the report. I think they do set in some respects a framework for what they call a new beginning, but certainly a moving forward in a very problematic area.

At the same time, we also were quite disappointed, as many of you have expressed, that the Commission in its report failed to grapple directly with the issue of impunity and of past violations, and I think in some respects the answer that Mr. Patten just gave with respect to that is in a sense presenting a paradigm that is not necessarily the only one. I don't think anybody here, or certainly we didn't expect that the Commission on Policing would undertake to investigate all of the past crimes of the last 30 years.

What we had hoped and what I think all of us now face is the prospect of dealing with what has really become a cycle of impunity and for dealing with the reality that the RUC is not at a new beginning. It has 11,000 or 12,000 people on active service, many of whom have been with the force for a long time, and too many of whom have been responsible for grave violations of human rights. The question is, what do you get to get some change.

Our view has been and continues to be that there has to be a targeted focus on specific egregious cases. I am here this morning in part to again reiterate our concerns about two of those cases, the Patrick Finucane and Rosemary Nelson cases, and then I just want to say a couple of words in closing.

I am going to defer to Michael on the Patrick Finucane case, except to say that for 10 years now we have followed and been very actively involved in that case. We are not satisfied or convinced that a third Stevens inquiry or participation is the way to address that. We would here again call and urge you to call for an independent inquiry. There are too many different strands and sensitivities and there is a need to get at the truth, both in terms of who ordered the killing, who knew about it, and who covered it up.

With respect to the Rosemary Nelson case, you all had an opportunity to see and hear her last year, almost a year to the day, and she came and testified that basically she was at risk and that she was receiving, on a regular basis, threats; threats delivered through her clients by members of the police.

Here we sit a year later, and we ask ourselves what is being done to address not only her horrible murder last March, but also what is being done to investigate the climate and the official tolerance of the kind of threats that in some way set an environment in which the horrible murder happened.

We have been troubled by the way that investigation has proceeded. We are now 6 months into the investigation of the Rosemary Nelson murder. A British policeman named Colin Port has been assigned as the officer in charge. He reports directly to Ronnie Flanagan, the chief constable of the RUC. His people are in Lurgan, an RUC office using RUC computers with RUC investigators part of that investigation.

We have—I have as part of the written submission that I have made, and I hope that you will make it part of the record, an exchange of correspondence with Mo Mowlam about the structure of that investigation, again in our view critically flawed. There needs to be a thoroughly independent investigation, with no participation

of the RUC except where the person in charge deems it absolutely essential and indispensable.

We feel that there are people who may have information about the Rosemary Nelson murder who are unwilling or reluctant to come forward because their perception is that this is just another RUC investigation that will go nowhere.

Two last comments. One thing in a broader sense that Maurice Hayes said that I agree with, a number of the recommendations in the Patten Commission report are managerial in tone and I think are very good recommendations with respect to training and structure. My colleagues on the next panel will deal with some of those in detail.

I would just make one general observation, which is that any manager has got to be thinking, once a plan, once a broad framework is in place, what is the operational plan to implement it. Timing, dollars or pounds, what is it going to take to do it practically? That is a problem here.

Second, there has to be a change in institutional culture, and I would say as a first element of that, coming back to the Nelson and the Finucane cases, there has to be a suggestion that the way things are in the future is fundamentally different than the way that they have been in the past. This report from the Patten Commission doesn't necessarily lead us there, and I think it is incumbent upon all of us to press the British Government and others to make sure that message is sent.

Finally, there needs to be a leadership of any institution internally that make those things happen. I think all of us have to ask ourselves, and British authorities have to ask themselves, is the current leadership of the RUC prepared fundamentally to take on the enormous task of making this plan, this framework of the Patten Commission operational? I question that. It seems to me that all of us have to be asking those questions.

Externally there are a number of things not in place, or at least proposed in the report, that aren't in place. An ombudsman, it is a good suggestion and there is no ombudsman.

The operational capacity, this transitional Oversight Commissioner, it has to be someone strong, with a lot of authority. A police board.

There are a number of—this is a blueprint with a lot of interesting ideas. I think we ought to push it to the limit. We ought to view it as a package, but we ought to view it as the beginning of the beginning and recognize now that the tough work of implementation begins, and I am for one not convinced that the British Government is going to operationalize this in a way that is going to really create a new beginning in terms of human rights.

Mr. SMITH. Thank you. Those submissions will be made a part of the record, without objection.

[The prepared statement of Mr. Posner appears in the appendix.]

Mr. SMITH. Mr. Finucane.

STATEMENT OF MICHAEL FINUCANE, SON OF PATRICK FINUCANE, SLAIN DEFENSE ATTORNEY

Mr. FINUCANE. Thank you, Mr. Chairman. I would like to preface my remarks by offering my sincere thanks on behalf of myself and my family for the invitation to speak today.

Mr. Chairman, Members of the Committee, my fellow speakers, ladies and gentlemen, I am Michael Finucane, the eldest son of Pat Finucane, the defense lawyer murdered in 1989. I testified before this Committee 2 years ago and I openly accused the British Government of ordering and arranging the murder of my father. I pointed to the powerful motivation of the British Government in silencing the embarrassing revelations of my father's human rights work. I listed the names of prominent international organizations that had up until then supported my family's call for a full, independent inquiry into his murder.

Upon hearing the accusations I had to make and the proof I had to offer, this Committee immediately pledged its support to my family's call for an independent inquiry. Many others have done the same since, including the Irish Government, the United Nations Special Rapporteur, Param Cumaraswamy, who has also been a witness before this Committee, the Law Society of Ireland, the Law Society of Northern Ireland, the Bar Council of Ireland, Northern Ireland, and England and Wales.

On February 12, this year, a petition was published in several national newspapers marking the 10th anniversary of my Father's death. It was signed by over 1,300 lawyers worldwide, clearly showing to the British Government an unprecedented level of international support for an independent inquiry into his murder.

On the same day, my family and I presented a confidential report compiled by the London-based NGO British Irish Rights Watch to the Secretary of State for Northern Ireland, Mo Mowlam. This report was based in part on classified information from British intelligence files. It clearly showed that military intelligence had clear advance knowledge of the plot to assassinate my father and that their agent, Brian Nelson, aided the assassins without hindrance.

I would very much like to be able to tell this Committee that all of these efforts and pledges of support have led to the establishment of an independent public inquiry. They have not. In the last 12 months, the British Government has ignored not only the calls of this Committee, but has also dismissed a second report of the United Nations Special Rapporteur and has refused to respond to the report of British Irish Rights Watch.

Added to this are the events that have unfolded in Northern Ireland in the last number of months, events disclosing highly sinister practices on the part of the RUC and the Director of Public Prosecutions for Northern Ireland in relation to the prosecution of those responsible for murdering my father.

In March 1999, the chief constable of the RUC, Ronnie Flanagan, recalled John Stevens to Northern Ireland. Mr. Stevens was the English police officer who first investigated collusion between the RUC and loyalist paramilitaries, and he had been instructed by the chief constable to reopen my father's murder investigation.

The chief constable is on record as having stated that previous investigations by Mr. Stevens had completely exonerated the RUC from any illegal involvement in the murder of my father. Mr. Stevens, however, began his duties by opening an initial press conference with the statement that he had never before investigated the case of Patrick Finucane, nor had he been asked to do so.

What, then, is the truth of this matter? Is the chief constable of the RUC lying about the investigation into my father's murder? Is he aware of wrongdoing or illegality on the part of his officers and has he sought to cover it up?

On June 23rd this year, Mr. Stevens charged a man named William Alfred Stobie with my father's murder. The first thing that Stobie said when formally charged was "not guilty of the charge that you have put to me tonight. At the time I was a police informer for RUC-Special Branch. On the night of the death of Patrick Finucane, I informed Special Branch on two occasions by telephone of a person who was to be shot. I did not know at the time of the person who was to be shot." .

When Stobie first appeared in court, his lawyer stated that his client was a paid Crown agent from 1987 until 1990 and that he gave the RUC information on two occasions before my father's murder which was not acted upon. In addition, Stobie's lawyer claimed that "as a result of this information at another trial involving William Stobie on firearms charges in 1991, the Crown offered no evidence and a finding of not guilty was entered on both counts. My instructions are that the bulk of the evidence here today has been known to the authorities for almost 10 years." .

Mr. Stobie has appeared before the courts on a number of occasions since then. More information has come to light showing that what his lawyer said in court is absolutely true.

In 1990, Mr. Stobie was charged with the possession of firearms found in his home. I can say from my personal legal experience that the evidence against him would have convicted any other person and that this was the logical outcome here. However, in this case, the charges were dropped because Stobie threatened to expose his role as an RUC agent. The chief prosecutor in this case, Jeffrey Foote, QC, is now a judge serving on the county court bench in Northern Ireland.

It has also emerged that Mr. Stobie confessed to his role in my father's murder while in police custody in 1990 and even the very existence of this confession was denied as recently as the 3rd of August this year. At a court hearing on that day, it was stated that the DPP had decided not to prosecute Stobie for my father's murder due to a lack of evidence. It was claimed that the evidence against him consisted solely of notes taken by a journalist during an interview in 1990 which until now had not been stated in evidential form capable of being used in a criminal trial. This decision not to prosecute Mr. Stobie was specifically stated to have been taken by the DPP's office at the highest level. This decision was made on the 16th of January, 1991, 7 days before the firearms charges were dropped against him.

The only reason my family are aware that Mr. Stobie made a confession is because it emerged at a later court hearing this year. The RUC are currently seeking to compel another journalist who

interviewed Mr. Stobie in 1990 to hand over his notes of interview. Mr. Ed Moloney, the journalist concerned, has refused to do so and has cited journalistic privilege. It was during a court hearing on this issue that an RUC chief inspector stated William Stobie had admitted supplying the weapons in my father's murder and recovering them after the killing. Stobie admitted this in police custody in 1990. He also admitted that he was a Special Branch agent.

All of these matters raise important questions for the various institutions and individuals concerned. Why was William Stobie not charged in 1990 when a confession was on record and in the hands of the RUC? Why did it take the recall of John Stevens, 9 years later, before charges were proffered? Furthermore, why did the DPP decide at the highest level not to prosecute Stobie, given the existence of a confession? Why was the very existence of this confession denied in court on August 3 this year?

Is the Office of the Director of Public Prosecutions complicity in concealing wrongdoing by members of the RUC as the chief constable Ronnie Flanagan has done? RUC officers have engaged in a persistent campaign of hostility, intimidation, and abuse of defense lawyers in Northern Ireland. They have uttered death threats against many lawyers, two of whom have been assassinated. None have been brought to account for their actions.

This is the glaring omission in the report of the Patten Commission and the fundamental error. While the report contains many welcomed proposals for a human rights-based police service with primary responsibility for the whole community, it shies away from key issues that quite simply must be addressed if the new police service as a whole is to succeed.

The Commission said they had no mandate to do so. I respectfully disagree. In the terms of reference of the Independent Commission on Policing for Northern Ireland, it is contained that the Commission should focus on policing issues but if it identifies other aspects of the criminal justice system relevant to its work on policing, including the role of the police in prosecution, then it should draw the attention of the government to those matters.

Surely the Commission does not suggest that the persistent and credible concerns concerning RUC threats and harassment of defense lawyers is not relevant to its work. The RUC has labeled lawyers as the enemy and has engaged in a systematic campaign to undermine their role. They have actively pursued a course that has put the lives of all defense lawyers at risk and they have colluded with those who are prepared to murder them. At the very least, any new service needs to be retrained in its approach toward dealing with defense lawyers who are, after all, simply carrying out the function which it is their duty to do. The lawyer who represents William Stobie, Joe Rice, stated to the Lawyers Committee for Human Rights in 1992 that if a lawyer rocks the boat too much, then like Patrick Finucane, he or she will be in trouble.

Threats have continually been made for many years by RUC officers against defense lawyers. As far back as 1984, a client of my father's was told, "Finucane would be like you, he'd be f————' blown away."

In 1988, Amnesty International recorded a statement from a man who been badly beaten while in RUC custody and who was

represented by my father. He said that the RUC told him, it would be better if he, Patrick Finucane, were dead rather than defending the likes of you.

Five weeks before my father was murdered, another man was told by an RUC officer that his solicitor was working for the IRA and would meet his end also. He asked me to give Mr. Finucane a message from him. He told me to tell him that he is a thug in a suit, a person trying to let on that he is doing his job, and that he, like every other fenian bastard, would meet his end.

These threats had continued unabated for so many years that many lawyers, my father included, came to view them as an occupational hazard. Now, when an RUC officer tells a detained person that his lawyer will be shot, that lawyer must regard the threat as real. Lawyers are also members of the community that the Patten report seeks to serve, and as such they are entitled to protection from such individuals. The reality that lawyers must live with is that, notwithstanding the fact that their lives are at risk from paramilitaries, they are also at risk from the RUC.

These issues are crucial. They are crucial because two very courageous lawyers have paid with their lives. Despite many submissions that specifically highlighted the existence of collusion in the murders of both my father and Rosemary Nelson, they are not addressed in any way in the report of the Patten Commission. The report of the Patten Commission makes specific mention, time and again, of RUC officers who were killed during their period of service and how their families should now be accommodated. But it does not recommend anything for the benefit of those who have been murdered either by the RUC or with the assistance and collusion of the RUC. Why is this? Does the report seek to distinguish between classes of victims?

The report also ignores the fact that the very officers who engaged in activities of intimidation and abuse are still serving with the RUC. Furthermore, the report proposes no mechanism for ridding the new police service of these officers. It does not even recommend that they should account for their years of serial abuse of human rights. I can categorically state that given the Patten report's absence of recommendations in this area, given the continued absence of effective government proposals, and given a complete lack of any commitment to stringent measures to deal with this problem, defense lawyers in Northern Ireland are still in trouble, the worst kind of trouble, their very lives are on the line.

In this very chamber 1 year ago, I sat in the audience and listened to a most remarkable lady, Rosemary Nelson, utter the now haunting words "No lawyer can forget what happened to Pat Finucane." Rosemary said she looked forward to a day when her role as a professional lawyer would be respected, and where she could carry out her duties without hindrance or intimidation. She did not live to see that day.

On March 15 this year, Rosemary Nelson was murdered. She had spoken publicly of the threats to her life that she had been forced to learn to cope with, hoping that by publicly highlighting the regime targeted against her, she could somehow protect herself and her family from harm. In identical circumstances to those of my father, she became a target, and consequently a victim.

To date, no one has been charged with her murder. The political circus that took place over simply trying to ensure that independent police personnel would investigate her murder speaks volumes about how little the British Government values the lives of people who are murdered for simply doing their job.

Is this to be always the way that the State and the police in Northern Ireland, by any name, deal with lawyers who ask uncomfortable questions, who take on contentious cases, who seek to uphold the rights of all people without fear or favor?

The RUC as a police force—and I use the word "force" very deliberately—bears total responsibility for the sins of its past. Whether by act or omission, each and every member of the force must face up to the fact that they bear some responsibility for what has happened. The victims of atrocities cannot deny nor forget what happened. Indeed, the generosity of spirit of many fortunate victims of RUC collusion puts those who are responsible to shame. These people are prepared to work hard for the future of Northern Ireland, both for their own sake and the sake of future generations. But they should not be asked to simply swallow their pain, they should not be asked to erase the memory of those they have lost, and they should not be asked to watch as those who have abused and killed and conspired to kill them and their loved ones are ushered into a new police service without being asked to render so much as an apology.

If we are truly to see a new police service for all of the community in Northern Ireland, then there must be courage underlying our convictions. We must be able to turn to those who are not capable of participating in a new police service based on tolerance and respect for others, and tell them that they have no place.

I do not deny that this is a difficult task. But in doing what must be done, we are acknowledging that wrongdoing of the most heinous kind has taken place and that there are some acts which cannot go unpunished. The dead have paid the ultimate price. I believe it is right and proper that those responsible should not escape without payment of any kind.

I thank you very much.

Mr. SMITH. Thank you very much, Mr. Finucane, for your excellent testimony. It was very comprehensive, very persuasive.

[The prepared statement of Mr. Finucane appears in the appendix.]

Mr. SMITH. Mr. Gilman has to leave, but did want to ask a question or two.

Mr. GILMAN. I want to thank Mr. Posner and Mr. Finucane for coming before our Committee and giving their valuable testimony.

Mr. Posner, what one thing can be done about the British inquiry into Rosemary Nelson's death truly independent so we all can have some confidence in its conclusion?

Mr. POSNER. I think the most important thing is to set up an independent inquiry into the murder. Right now, you have a hybrid with a British police officer, Colin Port, directing a mix of British and Northern Ireland RUC officials, and basically it taints the process.

Mr. GILMAN. Has a request of that nature been made?

Mr. POSNER. Repeatedly.

Mr. GILMAN. To whom?

Mr. POSNER. Attached to my testimony are a couple of letters that we have sent to Mo Mowlam. We have met with her.

Mr. GILMAN. Has she responded to that kind of request?

Mr. POSNER. The responses have been thus far that they are moving in the direction of trying to create safeguards within the current process, but we have not had a satisfactory response.

Mr. GILMAN. Mr. Finucane, the weapon used to kill your father was a British army revolver, I believe, and which initially was contended was stolen. In light of recent revelations of collusion with the security services, do you still believe or have any new evidence that that weapon was in fact stolen?

Mr. FINUCANE. Absolutely. The individual who stole the weapon from police barracks was prosecuted for the theft and sentenced to I think a term of 2 years imprisonment.

Mr. GILMAN. Did he admit the use of that weapon and that he stole the weapon?

Mr. FINUCANE. No. The individual who stole the weapon was serving in the Ulster Defense Regiment, a part-time sort of civilian militia which assisted the RUC in security operations. He was simply prosecuted for the theft of the weapon, and the weapon itself was never recovered. But it is clear, given the records of the weapon——

Mr. GILMAN. How did the killer obtain that weapon?

Mr. FINUCANE. It was passed to loyalist paramilitaries presumably by the person who stole it. But the reason that it could be identified as a State-held weapon was because of the ballistic markings on the bullets.

Mr. GILMAN. Which paramilitary was it given to?

Mr. FINUCANE. It was given to the Ulster Freedom Fighters.

Mr. GILMAN. I'm sorry?

Mr. FINUCANE. The Ulster Freedom Fighters. They are, and have been for many years, the paramilitary wing of an organization called the Ulster Defense Association, which is also now proscribed.

Mr. GILMAN. Thank you. Thank you, Mr. Chairman. I regret I have to go on to another hearing and I want to thank you both for being here today.

Mr. SMITH. Because the clock ran out, I would like to show some small courtesy to those members who were not able to ask questions in the last panel, and so we will go to them first.

Mr. Payne.

Mr. PAYNE. Thank you very much, Mr. Smith, and let me once again commend you for this fourth in a series of hearings that you've had. I think that with the persistence that you have shown on this, hopefully we will see some changes. We have already seen some come about, but we have a long way to go.

Unfortunately, Mr. Patten had to leave. I wanted to just ask him again about making an analogy between an investigation of misconduct by police as a witch hunt. I think a witch hunt is not an investigation of a police department. If the connotation of an investigation by internal or external forces of the RUC is in his mind a witch hunt, I just wanted to put that on the record.

Also, regarding the statement that he made regarding the use of, as he calls it, plastic baton rounds, or plastic bullets, I have legisla-

tion asking for a ban on the manufacture of plastic bullets in the U.S. and urging the RUC to cease using them.

I keep one of these on my desk, and each time we have a hearing I just bring it along, because he says there is no other alternative other than to simply use bullets or this. These have killed 17 people and when they hit young people, they just rip eyes out of their head and tear their bodies apart, sometimes using so many that the guns are too hot to hold. That is wrong and it is unnecessary and I still cannot understand why there is a resistance to stop using these lethal weapons as a means of crowd control.

Let me just say that in addition, I think to your investigation, the investigation of your father's death, I think that Bloody Sunday in 1972 needs to be reopened. That is something that is another whitewash of the government.

Finally, I just want to say that I agree with other speakers that the RUC needs to be disbanded totally. It makes no sense to have so many technical changes. I can use the situation in Haiti. I was there 2 weeks ago. They had a police department in Port-Au-Prince run by a member of the military, a fellow named Francois Mishon. The army did the rest of the policing run by General Raoul Cedras. What they did in Haiti was to disband the army and disband the Port-Au-Prince Police Department. They have started from scratch with new recruits, with a brand new police department. Now they are struggling and they are moving along, but in my opinion, that is what has to happen to the RUC.

You cannot reform, talking about 10 years from now, 50 percent. How can you have the RUC patrolling in Derry where you have 90 percent Catholic and you have got a 95 percent Protestant military? That will never work. So I think that there are examples of places in other parts of the world that can be looked at and studied to see how you go about having a new police unit there.

Finally, there is the tension that is built during the marching season. I have been down in lower Armagh Road, I have stayed right on Garvaghy Road 2 years ago, right on the road itself, my three or four trips there during the marching season. I think that the Parades Committee does not do the job that it should do. In the last year, they have tended to acquiesce, but I am looking toward the future. They refuse to meet with the community groups as it is in the protocol of the Parades Committee, and the agitation continually of the marchers which creates the tension is really something that I think needs to be restudied carefully by the Parades Committee.

The fact that the tension still remains is something that I believe is a major issue as we move forward. I have no questions, Mr. Chairman. I just wanted to make those several statements.

Once again, I commend you and of course Mr. Posner and Mr. Finucane for coming. Thank you.

Mr. SMITH. Thank you very much.

Mr. POSNER. Could I just react to one? The first thing you said I think is important with respect to the inquiry. Some of our colleagues are going to talk about the absence of a vetting procedure and the Commission report. Chairman Smith, you mentioned it. I think we have to recognize the report is what it is now. The question is how to move forward.

It seems to me that the most critical element here is you have to, rather than saying all right, there's this whole big mass of cases, we have to start somewhere, there has to be right now at a very early stage here, before things get adrift, there has to be pressure to say, in the Finucane case, in the Nelson case, and half a dozen others that we all know, there has to be a change here. Because if there isn't a change and there isn't some sense of accountability, personal accountability, criminal accountability, then you are never going to get the change culture and you are never going to get young Catholic kids to decide they want to be part of the police. All these things are linked together.

But I think the Patten Commission have put together a very ambitious plan, but a critical element is missing. It is for us, all of us who are concerned about these issues and particularly you all, to keep the pressure up, to keep saying this is too critical a moment to abandon the effort to really get at accountability. I appreciate your comment.

Mr. SMITH. Mr. Delahunt.

Mr. DELAHUNT. Thank you very much. I appreciate your testimony today. I was going to ask a question similar to the statement posed by my colleague from New Jersey, Mr. Payne.

There is much that is positive within the report. I think we have heard your concerns regarding the vetting process, regarding individual cases that certainly have great validity and legitimacy. But my fundamental concern is the pace of the change. The reality is that we know that the RUC is not going to be disbanded. That clearly was the conclusion of the Commission.

But as Mr. Payne pointed out, it has been less than 3 years since the Haitian National Police have been constituted absolutely from the beginning. We had the disbanding of the military. I would suggest that the goals that have been established, a third within 10 years, are simply not satisfactory. First, from the perspective of a third, clearly within 10 years presumably, that will not be reflective of the community at large. I dare say by then the religious breakdown will be close to 50 percent. Again I am not suggesting that these are quotas, and I don't think that is how we should approach the issue, but if we are going to have a change in the culture, am I correct in concluding that until there is an appropriate reflection of the composition, that culture will never change, or at least the confidence of the community at large will simply not exist?

He made the analogy with the fact that it took decades in New York City, but that is an analogy I don't think that really stands up to close analysis. Here we have a situation where it is clear that it is a political issue, as Mr. Patten indicated himself, and that was an issue that was deferred. I think he described it as really one of the core issues in terms of the hopes for peace in Northern Ireland.

That certainly wasn't the case in New York City or any other major American city. So is it really a question of political will? Is it lack of resources? But that is a concern that I have. Someone raised the issue, I think it might have been Chairman Smith, in terms of membership in various orders, and he drew the analogy with the Order of Hibernians and the Orange Order. I am sure we don't have to be concerned about members of the Hibernians in the

RUC. There are only about 6 percent Catholics to begin with. I don't know what we can do about it. But clearly I think 10 years is unacceptable. That composition and that change which I think is so important in terms of the confidence of again the community at large, can occur within a matter of several years if the political will and the resources that are necessary are available. I would be interested in your comments.

Mr. POSNER. In March I traveled in Northern Ireland with Robert McGuire, who is a former police commissioner of New York, and we spent several hours speaking with Mr. Flanagan and about 20 people in the RUC. We had just this discussion. I think the thing that we stressed to them, and I believe very strongly, is that there needs to be a very dramatic shift so that there is a critical mass within the police that in effect begins to change the culture. When you talk to people, Catholics, who are contemplating being in the police, one of the things they say, and it makes sense, is, "I don't want to be the only one," or, "I don't want to be one of a few." .

So I agree with you. I think the direction here of the report is right but it is a very cautious, slow, and I think too slow approach. I also think, even if you take a more aggressive approach with numbers, those numbers are going to be fictitious unless you do change the underlying assumptions of this force. It is operated almost as an armed force, an army, more than a police force. It has been unaccountable on a variety of levels which are spelled out in the report.

Mr. DELAHUNT. I think that is accurate. The fact that it has shifted, if you will, to an understanding that it is not an instrument of the State, but there to protect the civil liberties and the human rights of each citizen is very positive; but that, in and of itself, the mission statement is not going to change until you have implemented it, I believe, with a force that is more reflective again of the entire community. But 10 years?

In my previous career, I was the elected chief prosecutor in the metropolitan Boston area. Given the resources that are available now and given what hopefully exists in terms of the political will at least that has been expressed by the British Government and others, that that 10 years can be reduced to several years, and it is important now to aggressively recruit from the Nationals community, from the Catholic community.

Mr. PAYNE. If the gentleman will yield, the other fallacy is simply this: If you bring in new people at the bottom, then those who are members of the RUC at this time will be in control for the next 5 or 6 decades. They will be pushed up, they will be in control, and the leadership of the RUC will not reflect the new people coming in. It cannot work. It will be the same culture at the top as they move up to the top, as they bring in new people. They will be controlling all of that. We have the same situation as some other police units. You have to just disband. I know it is a radical thing, but that is the only thing, in my opinion, that will truly work.

Mr. FINUCANE. Mr. Chairman, I would please just like to add, one of the things Mr. Patten said this morning when commenting on his report was that the 30 percent composition of Catholic officers was the outside margin of his projection, it was the best case scenario and a change of 50 percent, I assume, coming with a

greater influx of female officers, which are also lacking in the force at the moment.

But the problem here is that if you have new officers being recruited, even aggressively recruited from Catholic and Nationalist areas, they are going to be instructed by the older officers, who are not officers who have practiced their trade, as it were, with any thoughts of human rights. In fact, it has been completely the opposite. It is my view that what they will be passing on is not techniques of how to respect other people and to achieve results through tolerance and understanding, but basically to instruct people as to what they can get away with. Past case evidence has shown that they are capable of getting away with everything from murder down.

I would also like to say that the change in the RUC is not just a question of political will. It has to happen anyway, from simple kinds of efficiency—the force is unworkable—right down to fundamental distrust and rejection by large sections of the community where there has to be root and branch reform at every level.

There also needs to be an external catalyst. It is my view that an independent inquiry into harassment of lawyers on the murders of my father and Rosemary Nelson could very well provide that catalyst. Over the last 10 years, it has always been the approach of my family when seeking support, not to overtly try to persuade persons in influential positions, but simply to present them with the evidence. Without exception, they have all come back with exactly the same conclusions that we have reached.

Given that that is the case and given you really can't go any further, if I may be slightly sycophantic for a second, than Congress or the U.N. In seeking support, and we have got the support of both those institutions, I see no reason why the British Government, if they don't want to take my word for it or my family's word for it, then they really ought to take the word of this institution or the United Nations and institute an inquiry. Because not only will it deal with the problem and bring to light all of the facts that are emerging piecemeal, but it will have a tumultuous effect on the confidence of Nationalists in the will of the State to reform its own institutions and to face up to the wrongdoing that has been done.

That need not necessarily involve criminal prosecutions, but the acknowledgment has to be there, as was seen in the truth and reconciliation hearings in South Africa.

Mr. SMITH. Let me just ask you, you answered my earlier questions of Commissioner Patten and Senator Hayes on the whole issue of vetting. Frankly, as I read the report, and I read it twice, once with a pen in my hand, it was filled with markings, and the next time with a yellow highlighter. I seemed to underline all the same things. It is the glaring omissions as well, as you have pointed out so well, that are probably the most troubling. Why weren't defense attorneys included? That is an issue that we have raised, we have had resolutions passed in Congress, we have had linked it to RUC training with the FBI, a proposal which is still in conference with the Senate. I had offered that. It was a bipartisan effort. Mr. King and I, and many of us were behind that, making future training contingent on whether or not there is an independent inquiry into Patrick Finucane's murder and Rosemary Nelson's. Yet

we still seem stuck. Are they afraid as to where it might go in terms of how high into the structure?

I was struck by Senator Hayes's comment about being forward thinking. I tried to convey back to him, as you probably heard, that in order to go forward, you need to look back. Past is prologue. If you have, as they call it in the report, "bad apples" within the system, particularly if they are in the Special Branch in a higher proportion than anywhere else, simply offering a golden parachute, which is suggested here, might get the good people to leave, while the others who cling to power and to abuse of power are perhaps more likely to stay without a vetting process.

I am glad, Mr. Payne pointed out, as I tried to do at the moment it was mentioned by Mr. Patten, that to suggest in any way, shape, or form that this is a witch hunt is nonsensical. This is an effort, as we have in our own police forces here in the United States, to track down those who abuse, those who beat, those who do horrific things against innocent people, or even accused people who may end up being convicted. They still are entitled to due process rights as well as an absolute freedom from beatings and torture and all the other things that are employed.

These missing elements really concern me. As I said to the British Ambassador when we met several weeks ago, which was the genesis of this hearing when we made the request that Commissioner Patten testify, I am also concerned about this being the high bar or a ceiling, and then as we go through the process in the Parliament, things get left out, things don't get included in the legislation; and then everyone says we have done that, we have got the T-shirt, and we move on. That would be a major, major problem.

I can assure you, Mr. Finucane, that we will be ever vigilant on this Committee, we will be bipartisan in to keeping the call for an independent inquiry into your father's death alive. We will increasingly link it to other things, even as this process goes forward, because you cannot move forward if you still have this terrible taint and these horrible things in the background.

It reminds me of a cancer, if I may use a health metaphor. If you don't get it all, it comes back to haunt you. No matter how good the operating surgeon is, he has got to be sure to get it all; then to pile on with the chemotherapy and radioactive efforts to try to kill it.

We need to have a vetting process that gets at this, those so-called bad apples, as they continually refer to them as, and do it once and for all. There is international precedent for it. I tried to convey that to Commissioner Patten. We will continue to do so, because again it is a serious omission. But why was it left out? Was it for consensus purposes?

Mr. POSNER. I am not privy to the internal conversations, but it was clearly a lot of inferences in the report that were never explicitly said. The references to accountability throughout the report I think reflect the fact that this has been a largely unaccountable institution on every level. It is not just human rights cases. It has been a bloated, inefficient and unaccountable institution.

We were given a report by the chief constable. In 1997, there were 5,500 complaints made to the police about their force. That year, one person was dismissed from the force—5,500 complaints.

We asked, How could that be. They said, We have an excellent force. Well, the answer is there is no internal discipline. We have got to assume here that the Patten Commission knew that and that the code of accountability says there has to be some internal process to change that. It is not going to happen unless there is external pressure. That is why we need an ombudsman, we need this Oversight Commissioner to be tough and strong.

It is critical for you, Congressman, and others here to keep putting the pressure on because this is going to be a hard fight.

Mr. SMITH. I was struck by the comment—Mr. Finucane, did you want to comment?

Mr. FINUCANE. Just to say, Mr. Patten said this morning that you couldn't really cherry-pick the report. I agree. I also agree with him when he says it hangs together very well.

But I must also, with some disappointment, agree with an earlier comment that was made here today, that you now have to take the report as it is. The fact is, no vetting mechanism has been proposed. Therefore, there has to be, unless the recommendations are augmented in Parliament, then there has to be an external mechanism. Certainly one thing that I believe is crucial, and not just for my own or my family's purposes, is clearing up this issue of harassment of defense lawyers and collusion as a whole, because in relation to the reasons why the Patten Commission perhaps didn't address this is because, yes, it goes to the very top, it goes right through everything. On the one hand, you have an argument that every single person in Northern Ireland killed by Loyalists was probably the victim of collusion, to the other end of the spectrum, where the argument is that perhaps not all persons were victims of collusion, or their killings involved collusion but there were very many people who were specifically targeted by the government and the RUC to be removed because they were undesirables. Those are the spectrums of the argument: everybody or a few selective individuals. So it exists. It is undeniable that it exists.

While the RUC personnel and the intelligence personnel were using this network, there was a network in place. I don't think the Patten Commission were prepared to take that on quite simply.

Mr. SMITH. In a sense, they have cherry-picked the fundamental issue. They are asking that the report not be cherry-picked, but they have left aside some of the key issues that should have been addressed.

Plastic baton rounds, according to the report, were fired 56,000 times, resulting in, according to their numbers, 16 deaths, although I often hear 17 deaths and 615 injuries. Interestingly, it is pointed out in the report that they are available for use in other UK police services. Although there have been some close calls, it continues, they have never actually been used. Fifty-six thousand times they have been used in the north of Ireland, never been used anywhere else. It does raise an issue almost like you said, Mr. Posner, about only one police officer paying a consequence for abusive behavior.

How do you respond to the comments that Mr. Patten made earlier, that rather than using live rounds, this is something that his Commission has concluded should still be available for use?

Mr. POSNER. I know that Jane Winter is going to speak to this directly. We recommended in our submission to the Patten Com-

mission that plastic bullets be eliminated. We did that after talking to a number of police people, including some of the people who run crowd control for the New York City police, and they said, very simply, when you pose this as an option, then these are going to be used a lot more frequently and a lot less discriminantly, and there are going to be the kinds of eyes taken out and killings that we have seen.

So I think you can say, yeah, let's tighten up the use, but in reality they shouldn't be used at all. They are not used anywhere else in Western Europe, they are not used here. There are alternatives to crowd control. This is about crowd control in very dangerous situations. Let's not minimize it, but at the same time let's recognize that police deal with dangerous crowds all over the world and they don't use plastic bullets.

Mr. FINUCANE. I would echo those comments very strongly and also point to the fact that the very name of the weapon, plastic bullet, really ought to be off the landscape in Northern Ireland once and for all, because not only is it capable of inflicting the injury that we have seen but it carries a very haunting ring for just about everybody. It is a cross-community issue, because they have been used against both communities. They quite simply need to be eradicated. There are alternatives. Those alternatives ought to be used.

There are crowd control—Mr. Patten—the report itself takes a lot of guidance from police practice in Britain, while police forces in Britain have to deal with crowd control situations, too, and they don't deploy plastic bullets or PBR's or whatever they want to call them in Britain. So they shouldn't be deployed in Northern Ireland.

Mr. SMITH. I was struck in reading the report, the recommendation is to close the three detention centers but not to lift the powers that are vested in the police that make those centers infamous. Do you think that was some kind of compromise on the Commission's part? The statement, like I said in my opening comments, looks good on its face about emergency powers, but then in parentheses, they almost carte blanche suggest that well, let's just keep records and see what Parliament does.

Mr. POSNER. Again, I know one of our colleagues is going to speak to this in a few moments, but I think unanimously the human rights groups that made submissions to the Commission said the Commission ought to call for an end of emergency powers, emergency legislation. It is part of the framework that allows the police to operate as an army. If you are going to say this is a normal situation, a situation where law and rights prevail, then you operate according to law and it ought not to be emergency law. I think it is a missed opportunity.

Mr. CROWLEY. Mr. Chairman, just some housekeeping. Not being a Member of the Subcommittee, I just would ask unanimous consent to have my opening statement and questions entered into the record.

Mr. SMITH. Without objection.

Mr. CROWLEY. Thank you.

Let me thank you, first of all, for holding this Subcommittee hearing today. I am honored to be in the presence of the son of Patrick Finucane. I didn't have the opportunity to meet your father but I feel as though I have known him for many years, having been

involved in the issue of Northern Ireland, first in the State legislature of New York and now here in Congress.

Let me just make one other point about the cherry-picking issue again. I don't think a report of this magnitude, so detailed and in depth in the reconstruction of the Royal Ulster Constabulary could go without the expression of legitimate concerns by all sides, and that means Unionists, Loyalists, Catholic, Protestant and Nationalist.

With all respect to Mr. Patten, I think this was a difficult task. I don't think this was an easy job to begin with. I didn't mean to be flippant by any means, and time was short, in making reference to the fact that—I made note of 175 recommendations tantamount, in essence, of totally reconstructing the RUC without actually stating that—without actually going back to the drawing board in ways that have been accomplished in other regions like Haiti and other countries in the world. I believe that this report is a beginning, as was mentioned earlier by Chairman Smith.

I do think, though, that in order for there to really be peace with justice in the north of Ireland, vetting will have to be a component at some point. Whether it comes about because of criticism in this report, at some point in the history of Northern Ireland, vetting will have to be addressed. Truth and reconciliation will have to be addressed. It is unfortunate that it was not in this report. I am hopeful that in the future that it will happen.

In light of the fact that I have just read The Committee, and again a book that has not gone without its criticisms, aside from your father's murder, there are a number of murders that are mentioned in that book, one of a police officer in the north of Ireland who was executed apparently, supposedly, by members of the RUC, his brothers and sisters whom he worked with on a daily basis, solely because he was Roman Catholic, presumably of the Nationalist community.

Until individuals of that character and nature are rooted out of the police force in the north of Ireland, it will not be a legitimate police force.

I will add again, Commissioner Patten made reference to the fact that we, a number of Members on this panel and this Committee have problems with the RUC working closely with the Garda. I myself was outspoken when the PBA of the New York City Police Department invited the Garda to a boxing match, and the Garda in turn invited the members of the RUC to participate in that match. I was critical and was attacked by members of the RUC for not being sensitive to what they were trying to do in bridging the police forces.

When I countered that I believe that it is an illegitimate police force and we should not be, in this country, legitimatizing them. I really believe that is what they are trying to do, to make themselves a legitimate force by participating in these charitable events, to put a rosier picture on their past, I don't think they can do that simply by boxing, but I would not be a part of that, nor Mr. King nor Mr. Smith.

I come from New York City. I come from a police department that has known problems throughout its history, quite frankly; none, more recently, than we have seen in the Bronx this year and

last year. We in New York City are not above saying that we have problems with our police department. We can argue whether it is enough. We do have a civilian complaint review board. We have a process by which the police department is investigated both within and outside the department.

It is just incredible that that doesn't exist in Northern Ireland to the degree it ought to, given the fact that there is such a divide within that province. It is just incredible and unconscionable that it is not being moved forward at this point in time.

I want to thank, again, Chairman Smith and I want to thank you both for your testimony today.

[The prepared statement of Mr. Crowley appears in the appendix.]

Mr. SMITH. We are joined by Congressman Kucinich from Ohio, who is not a Member of this Committee but is very interested in these issues and once was a Member of the Committee.

Mr. KUCINICH. Thank you very much, Mr. Smith, Mr. Crowley.

Mr. Smith, I have appreciated your longstanding commitment to human rights all over the world. This hearing continues to reflect that commitment that you have, a commitment that I share. In reviewing elements of the report and hearing the testimony of Mr. Finucane and Mr. Posner, the thing that occurs to me is that while there is much that is praiseworthy with respect to advocating human rights-based police service, there seems to be an inherent contradiction here. That is, as the report depends for its success on human rights-based police service, a mechanism for enforcement of those high principles would rely not simply on hoped-for improvements in the system, but it seems to me structurally it would rely on a willingness of this system as we hope to see it evolve to tolerate challenges to its deficiencies. It is a structural question here.

Human rights attorneys challenged a system prior to this kind of a report. Ten years ago, Patrick Finucane met a very unjust and unfortunate end as a result of challenging a system that wasn't working and at that point the system hadn't promised anything. Ten years later, while people are talking about doing something about this system, Rosemary Nelson was killed.

Now, it seems to me that unless—that first of all, because this report ignored the issue of what happened to the attorneys who were human rights advocates, and because the report does not recommend any external mechanisms for enforcement, no matter how well-intentioned the sentiments may be, the report is going to have difficulty being able to be effective, it would seem, because here you have a system where human rights attorneys and advocates have to worry for their safety; because that hasn't been addressed, and categorically there is a reason to wonder if all of this is really going to happen and will result in an improvement of human rights, which is what the report says it wants to do.

So the fact that Mr. Posner mentions 5,500 reports, one person called to accountability, where is the mechanism? There is an inherent contradiction. I wanted to point that out, because we all want to see human rights-based police service. But there has got to be something in this system that tolerates the calling of where the system falls short, and it is not there. Unless I missed something, it doesn't seem to be there.

That is where I think this Committee, and the Chair's insistence on finding vehicles for pressing the issue, is very important. Your report has some good things, but we want to make it work.

Mr. POSNER. Can I react to that very quickly? I share your sentiments exactly. It does seem to me that there are some again almost code phrases in the report that we ought to be picking up on. One relates to the internal structure and responsibility of the force and of the chief constable. They use a phrase here, they say that the chief constable should go from what he has called operational independence to operational responsibility. I don't know exactly what those phrases mean. It is code for something. It suggests he is less independent than he once was. He has less responsibility, but it is not spelled out in any concrete way.

I think one of the challenges here is going to be when there is a lack of responsibility or when something goes wrong, what happens? Who says what to who and what happens next?

Mr. KUCINICH. You could look at it another way; that is, notwithstanding the fact that Mr. Patten did condemn in very strong terms the murder of Rosemary Nelson—that has to be noted for the record again—notwithstanding that, it seems to me it would be easy to hold up the report to the RUC and say, "Hey, boys, there's nothing in here." .

Mr. POSNER. Those are exactly the conversations that we have to be most afraid of now. Externally, I think the pressure has got to come from here, it has got to come from the U.N. and from elsewhere. People have got to say, the proof is in the pudding. We have to see results. That is really where we are today.

Mr. KUCINICH. We also want to make it possible for attorneys who want to stand up for human rights now to let them know that more efforts are going to be made. Human rights attorneys, it would seem to me, in reading this report, couldn't take much comfort from the fact that they can keep doing their work. The report doesn't make it very easy for them to have some comfort when it doesn't mention that some people have had to pay with their lives, and it doesn't advocate doing anything about that.

I don't think anyone could even comprehend the kind of suffering your family has gone through, but let it be said that there are those of us on the other side here who want to make sure that we learn from those tragedies and try to help the condition improve, so that people's human rights can really be protected, not just with a report. Thank you.

Mr. SMITH. I thank you very much, Mr. Kucinich. Do either of you have anything to add? Mr. Finucane?

Mr. FINUCANE. Just in very brief response to Mr. Kucinich's last comment, I think it is absolutely right that the people who would probably be most relieved when this report came out were the people who feared, with good reason, that their jobs might be on the line. The reason Rosemary Nelson was eventually murdered was because, within a force that had contempt for the rule of lawyers and the work that they did and the people that they represented and the misidentification of lawyers with the cases that they were working on, was fostered within the institution as a whole and tacitly condoned by the government, both in the Northern Ireland office and in Westminster.

If that atmosphere is to be broken and the responsibility to come down to the individual officer and back up the chain to the chief constable that on an individual basis we will not tolerate human rights abuses or abusers, and on that basis it needs to be made the responsibility of every police service officer to take human rights as their personal responsibility.

There are many ways that this can be dealt with, both through peer pressure—and there was a suggestion of immunity or protection for those who were prepared to come forward and give details or testimony on that, fellow officers who were guilty of the most egregious human rights abuses. But the whole focus here and certainly in terms of defense attorneys and in terms of human rights abuses as a whole is that these things must never be allowed to happen again. That was the focus of certainly my work and the work of everybody else here. Sadly we couldn't protect Rosemary. But the people who can and should have protected her are still there. The government that should have protected her is still in office, and they can't be let off the hook. They have responsibilities. They said they would do this. The force, if you believe the public pronouncements, is prepared and willing to change. Let's call them up on that and keep the pressure on. Thank you.

Mr. SMITH. Thank you very much.

Mr. Finucane, Mr. Posner, thank you.

I would like to ask our third panel if they would proceed to the table.

Maggie Beirne has served since 1995 as the Research and Policy Officer to the Committee on the Administration of Justice, CAJ, a cross-community group based in Belfast. Before that, Ms. Byrne worked for 17 years at the International Secretariat of Amnesty International and was a member of the Amnesty senior management team.

Julia Hall is Northern Ireland Researcher and Counsel to Human Rights Watch. Ms. Hall earned her J.D. At the State University of New York at Buffalo school of law and holds a certificate of international law from the Hague Academy of International Law and has been a great source of accurate and timely information about human rights to this Subcommittee for years. We do thank her for that.

Jane Winter is the Director of the British Irish Rights Watch. Prior to her work with that organization, she was the Project Coordinator for the Public Law Project. Her past experience includes work on welfare rights, employment and immigration issues for both the Battersea Law Center and the Citizens Advice Bureau in the United Kingdom.

Mr. SMITH. Ms. Beirne, if you could begin.

STATEMENT OF MAGGIE BEIRNE, COMMITTEE ON THE ADMINISTRATION OF JUSTICE, BELFAST

Ms. BEIRNE. Mr. Chairman, I would like to first thank you for your invitation to testify today. We would also like to join with many of the other speakers in thanking this Committee for their excellent scrutiny that it has given to concerns about human rights in Northern Ireland and the bipartisan approach that you have taken. The CAJ, as you know, is an independent human rights or-

ganization based in Northern Ireland. We work across a wide range of human rights and civil liberties concerns and have been working on policing since 1981.

As early as 1995, CAJ argued for an independent international Commission to look into future policing in Northern Ireland, and we worked to ensure that reference to such a body was included in the Good Friday Agreement. We welcomed the broad terms of reference given to the Commission by the Agreement and sought to work constructively with the Commission as soon as it came into being under the leadership of Chris Patten.

We were fortunate enough to have secured earlier funding from the Ford Foundation and others to undertake a major comparative research project into good policing practice in a variety of jurisdictions around the world.

The findings arising from that study have underpinned all our work with the Commission. In fact, we relayed some of those findings to your Committee earlier this year. We believe that they have proved useful to the Commission in its work. This shouldn't be surprising, since we think that the policing problems in Northern Ireland differ in degree rather than nature from those faced by many other countries around the world. In fact, some of those analogies have been already made this morning.

As you know, the Patten Commission worked for over 15 months, studied well over 2,000 written submissions, held hundreds of meetings and received personal testimony from a wide variety of people. CAJ attended many of the meetings and studied the submissions of the political parties and other key social partners. What was apparent to us was that despite the difficulties and disagreement, there was also a surprising level of consensus across the political divide about key aspects of the way forward.

In order to buildupon that consensus, we organized a conference in February of this year which brought together a very diverse audience of statutory groups, the police, government bodies, local party politicians, voluntary groups and community activists across the Republican and Loyalist communities.

On the basis of those exchanges, we developed a series of human rights benchmarks for policing change, and we would like to have those benchmarks read into the record, if that is acceptable.

Mr. SMITH. Without objection, they will be made part of the record.

Ms. BEIRNE. Thank you. Those benchmarks go into some more detail—but as a minimum, we would propose major recommendations in the area of dealing with under representation of Catholics, Nationalists, women and ethnic minorities, issues of accountability to the law, the overhaul of police training, the creation of a neutral working environment, the creation of new structures, and developing greater democratic accountability.

Overall, the whole package of change should be tested against its ability to deliver policing arrangements, which would mean that you would never again have to listen to the testimony you heard this morning from Michael Finucane about the death of his father, or a case that is very close to you, that of Rosemary Nelson whom you heard from just last year—and that we in Northern Ireland never have to experience such abuses again.

In general terms, we think the Commission has made a very genuine and constructive effort to meet the difficult task imposed on it by the Agreement. They have addressed all of the issues that we have referred to above and put forward many thoughtful and positive recommendations about the way forward. Most importantly, they have recognized, as did the Agreement, that just as human rights must be at the heart of a just and peaceful society in Northern Ireland, it must be at the heart of future policing arrangements.

In spite of these positive comments, we still nevertheless have some important reservations. Other colleagues will refer to major concerns we all share with regard to the failure of the Commission to put in place a mechanism to deal with officers who have committed human rights abuses in the past. This issue has already been addressed several times this morning, and Julia Hall will be talking to it directly, but it is obviously a concern that we share. Also, their failure to end the use of plastic bullets and, particularly relevant again to much of the testimony you received this morning, the Commission's failure to lend its voice to the importance of defense lawyers being intimidated or even killed in carrying out their work.

This particular testimony, while sharing the concerns of those who preceded or will follow us, will concentrate on two specific issues that perhaps have had less attention in the debate so far. One is Emergency Powers and the other is accountability.

Emergency Powers have been a feature of life in Northern Ireland since the 1920's. The legislation allows the police to stop and search without reasonable suspicion, initially to hold detainees for 48 hours and then, with further authorization, up to a total of 7 days, and to deny access to a solicitor for the first 48 hours and for periods thereafter. Combining this with the removal of the right to silence, the removal of the right to jury trial, the weight which can be placed on confession evidence alone and the absence, until recently, of video- or audio taping of interrogations, such powers lead to serious human rights abuses, including serious ill treatment of detainees and the abuse and intimidation of defense lawyers.

It is clear that if these abusive powers are not removed, the risk is very high that officers, even in a new police service with a new uniform, a new oath and better training, are likely to continue to abuse human rights. This, anyway, is the experience around the world, so we have no reason to think that Northern Ireland would be any different.

Yet in the Policing Commission's report, this fundamental issue gets two paragraphs. They cite academics McGarry and O'Leary (John McGarry also testified to you earlier this year) that much of the dissatisfaction with policing, in both Loyalist and Republican areas, stems from the use of Emergency Powers. Our own belief, shared by all the other human rights organizations present, is that the Commission should have recommended the immediate repeal of emergency laws, and argued for a reliance on the ordinary criminal law. Certainly the logic of their emphasis on international human rights standards would suggest that frequent U.N. Calls for the repeal of emergency legislation should have been heeded.

Again to pick up on some of the earlier comments, the language on respect of rights has to then be explored in terms of formal recommendations. The failure to make such a recommendation is all the more inexplicable when looking at the current security situation in Northern Ireland, which it could be argued poses a much smaller risk to the average person living in London or Manchester and probably a lot less than Washington, D.C.

The second issue I would like to focus on is that of accountability. Of all the topics tackled, this is probably the one where Patten responded most effectively to the oft-repeated concerns of the general public about the need for greater accountability. There are many positive recommendations.

However, at least two important problems remain. Patten endorses all the proposals about a more effective complaints system included in an earlier report by Dr. Hayes and urges that those findings be implemented. It is clear, therefore, that the Commission intended that the authorities tackle the unacceptably high standard of proof required in complaints against the police. Yet no specific recommendation is made to this effect, and there is a risk, obviously, if there is no specific recommendation, that it will be overlooked and that we won't get a really credible complaint system.

Another concern under the rubric of accountability is the role that is envisaged for democratic control at the local level. It appears to us that the recommendation to establish district policing partnership boards which are merely—and I quote from the report—advisory, explanatory and consultative, will have little or no greater powers than their largely disparaged predecessors.

Despite these concerns and the others raised by my colleagues, I want to emphasize again that we found much of great value in the Commission's work.

It is for this reason that this submission will conclude with a number of specific requests to this congressional Subcommittee.

Firstly, CAJ believes, along with our human rights colleagues, that many of these policing changes are long overdue. Many of them have been urged on the government for years by various U.N. Bodies and its own independent assessors. While the Patten report doesn't deliver everything that we had hoped and indeed think necessary to real change, people concerned about the protection of human rights certainly cannot settle for anything less. The Secretary of State has suggested a period of consultation, and following that there is no excuse for further delay.

Congress should urge the U.K. Government to move rapidly to implement the various positive recommendations in Patten's report.

Second, implementation is everything, as I said in my last testimony before Congressman Gilman's International Relations Committee. We argued that Patten's report couldn't be allowed to gather dust and warmly welcome the proposal to establish an Oversight Commissioner to report publicly and regularly on progress achieved. This proposal is all the more important given the early emphasis placed by the Chief Constable on the need to implement any eventual changes only as and when the improving security situation allows it. In fact, the logic of Patten is that human rights

abuses have fed and fueled the conflict and that human rights protection, and therefore policing change, must be at the heart of a just and fair society.

Apart from being important in and of itself, it is this goal which will most effectively undermine violence. It is therefore vitally important that Congress continue to keep a watching brief on developments and monitor closely the process of implementation.

Third, there will be no or little effective change in policing if the criminal justice system itself does not change. If judges continue to be unrepresentative of society as a whole, if the prosecution system doesn't operate in a sufficiently transparent and independent way, and if there is a remarkable predisposition on the part of the judicial system to always rely on the testimony of police officers, changes elsewhere will be undermined.

The significance of the criminal justice review, which will be reporting in a few weeks' time, cannot be overstated. In this regard I would ask to have read into the record material from the journalist Ed Moloney in relation to his harassment in the Pat Finucane case and the role of the Director of Public Prosecutions. We would ask that Members monitor this case and the criminal justice review very closely and make representations to government accordingly.

The U.S. Congress has kindly, particularly in recent years, devoted much time and energy to the problems of Northern Ireland. If we have one message to give, it is that your work isn't over just yet. Peace processes are difficult and dangerous things, with the ability to fail as well as succeed. Securing good policing will be a crucial building block for long-term stability and true peace and justice in Northern Ireland.

We are moving in the right direction, but continued vigilance will be necessary if we are to be ultimately successful. We hope that human rights groups, local as well as international, can continue to look to you for your support around our concerns.

On the impending anniversary of Rosemary Nelson's testimony to this meeting, it seems the least we can all do is commit ourselves to trying to make sure that the policing problems she testified about to your Committee are effectively remedied for the future.

[The prepared statement of Ms. Beirne appears in the appendix.]

Mr. SMITH. Ms. Beirne, thank you very much for your excellent testimony and for the good work that CAJ does.

On my trip to Belfast a couple of years ago, you and Martin O'Brien and others were extraordinarily helpful in helping us to understand in our fact-finding mission, the reality as divorced from the multiple fictions that are out there. I do thank you for that. The fact that you see Protestants and Catholics alike, it does not matter, all that you care about is human rights, just makes your work all the more credible and we are very grateful for it.

Mr. SMITH. Ms. Hall.

STATEMENT OF JULIA HALL, NORTHERN IRELAND RESEARCHER, HUMAN RIGHTS WATCH

Ms. HALL. Thank you, Chairman Smith, for inviting Human Rights Watch here again to participate in this very important

meeting. So very much has been said already about vetting in Northern Ireland's police force, but I will try my best to keep my comments both relevant and brief.

First let me say that we recognize the enormity of the task presented to the Patten Commission and that the final report does indeed contain many progressive proposals for fundamental change. We are particularly pleased that the Commission proposes a new human rights- based approach and makes many recommendations toward that end.

However, Human Rights Watch fears that, in the end, the Commission may have undermined its own handiwork by failing to include critical recommendations in the report regarding accountability mechanisms for past human rights violations committed by the RUC. As you know from my testimony last April before the International Affairs Committee, Human Rights Watch recommended to the Patten Commission that an independent vetting unit be established to screen out currently serving RUC officers with poor human rights records. Indeed this was perhaps the single most important issue in any of the submissions that Human Rights Watch made to the Commission. We proposed a model for such a unit and listed primary and secondary source material that could be evaluated by a vetting unit for evidence of abusive police conduct. We also recommended, quite importantly, that all officers enjoy the full range of procedural safeguards established under international law to protect their fundamental due process rights.

One might ask why we proposed such a process. As a matter of fact, more than one member of the Policing Commission told us that such a proposal would be politically explosive. Of course, we understand this. But we believe that Chairman Patten's stated primary goal of depoliticizing policing, as he said this morning, should begin from the beginning.

To be frank, most change in Northern Ireland terms is seen as politically explosive, and while it is important for the Patten Commission report to be considered on its merits by all sides of the community, politically expedient positions should not have been part of the Commission's mandate. If Northern Ireland is to finally enjoy membership in the community of peaceful, democratic nations, and indeed take a genuine human rights-based approach to policing, it must be prepared to engage in what is an emerging global norm toward international justice. That is, the people, political leaders, police and the community at large, must consider embracing the notion that impunity for human rights violations has no place in a society governed and policed by democratic principles.

The trend toward international justice, holding accountable those State actors who have committed egregious human rights abuses, is illustrated by the Pinochet case, the ongoing work of the ad hoc tribunals on the former Yugoslavia and Rwanda, and the vetting of the police force in post conflict Bosnia, upon which our model for vetting in Northern Ireland was itself based. The message is clear that human rights abusers must be held accountable, not as a matter of revenge or retribution, but as a matter of justice. We believe that such accountability forms the bridge between the past and the future and builds confidence in new peacetime structures and arrangements.

Human Rights Watch welcomes the Patten Commission's observations in chapter 5 of the report that proper accountability for police misconduct has not been achieved in Northern Ireland. We have argued this point repeatedly with the RUC, as I know you have, and with the government for a number of years. The rote response from both law enforcement and government officials has been that there are numerous safeguards built into the system and that the RUC already is the most scrutinized police force in Europe.

We are deeply, deeply disappointed, however, that despite the unequivocal recognition that the RUC has not been committed to human rights-based policing in the past and has not been held accountable for its actions, the Patten Commission makes no recommendations regarding vetting. A mechanism for accountability for past human rights violations would lay a firm foundation for the future policing arrangements that the Commission has so carefully contemplated. It would send a strong message that human rights abuse will not be tolerated in the new service and would have provided a fair mechanism by which chronic and other violent abusers would be made to answer for egregious violations committed with impunity.

Interestingly, the Patten Commission readily accepts the position put forward by Human Rights Watch and many other human rights groups in the course of the consultation process that abusive police conduct, tolerated by the RUC as an institution, has, in fact, occurred in the past, which makes its omission, the omission of this issue in the report, all the more striking. I quote very briefly from the Commission's report:

"we are in no doubt that the RUC has had several officers within its ranks over the years who have abused their position. Many supporters of the RUC and both serving and retired officers have spoken to us about 'bad apples.' it is not satisfactory to suggest, as some people have, that one should somehow accept that every organization has such bad apples. They should be dealt with.

"it is not simply individual officers who have been at fault here. We are not persuaded that the RUC has in the past had adequate systems in place to monitor and, when necessary, act upon complaints against officers." .

Now, despite such strong and unequivocal language, the Patten Commission itself fails to provide a mechanism by which such bad apples can be dealt with, and the RUC can be held accountable for institutional tolerance, if not outright complicity, in the Commission of past human rights violations. In the absence of a screening process to weed out and exclude those officers with abusive records, the bad apples and the RUC as an institution are effectively offered a grant of amnesty by the Patten Commission.

This is unacceptable and it clearly violates the international norm that every person whose rights have been violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity. Such a grant of amnesty for past abuses also violates the international norm that perpetrators of human rights violations shall be brought to justice.

A profoundly disturbing aspect of the Commission's failure to provide such an accountability mechanism lies in the naive assumption that Catholics and Nationalists will join the new policing service based solely on the promise of forward-looking arrangements. The commissioners urge the people of Northern Ireland to forget the past and embark on a fresh start with respect to policing. Claiming that Northern Ireland voted overwhelmingly in 1998 to turn its back on the politics of revenge and retaliation, the Commission confuses retribution with justice and revenge with upholding the rule of law.

The Patten Commission report claims too much when it equates approval of the Good Friday Agreement with a desire and willingness to forget past human rights violations. Indeed, during the consultation process, commissioners were inundated by both written submissions and oral testimony offered at community meetings by people who have suffered violations at the hands of the RUC and are still seeking effective redress.

If the people of Northern Ireland wanted to forget the past, they would not have wasted valuable time and emotional energy informing the Commission that it is justice for violations suffered that will lay a firm foundation for their acceptance of any new policing structures and arrangements.

Thus, the Commission has failed to lay the necessary groundwork for one of its most critical recommendations, that, and I quote, "All community leaders, including political party leaders and local counselors, should take steps to remove all discouragements to Members of their communities applying to join the police, and make it a priority to encourage them to apply."

We fear that it is highly unlikely, given the evident requirement of many people that abusive officers be held accountable, particularly in the Catholic and Nationalist communities wherein a disproportionate number of such abuses occurred, that a large segment of the population will ever have the confidence to join a new policing service that retains officers responsible for well-documented egregious human rights violations.

Ms. HALL. I would like to offer very briefly two examples of how the absence of a screening process could undermine recommendations made in the policing report. With respect to the holding centers, Human Rights Watch welcomes the Commission's recommendation to close them. However, the Patten Commission fails to acknowledge in any part of the report that the reason appropriate for closure has been sustained and gained momentum over the years is that conditions in the centers, supported by provisions of emergence of legislation, create the environments conducive to the physical and psychological abuse of detainees.

The United Nations Committee Against Torture has repeatedly called for the closure of the holding centers for this very reason. There is in fact a small cadre of easily identifiable RUC detectives who have been responsible for conducting abusive interrogations in the centers for many, many years.

According to the Commission's "forget the past philosophy," these detectives would now be appointed to serve in regular police stations where political suspects will be held after the centers are closed, or perhaps they will be placed in the general policing popu-

lation to gain experience at community policing. They will, in effect, be offered amnesty for their abusive practice.

It is very difficult to expect potential new recruits to serve side by side with officers so easily identified as human rights violators in the holding centers. I would just draw your attention again to the case of David Adams, a man who was brutally assaulted in Castlereagh in 1994, and in 1998 he was given the highest award of damages ever made against the RUC and just last month we understand that the DPP has called for no criminal prosecutions for actions that truly amount to torture.

Now, those officers will have not been critically prosecuted, have not been disciplined by the RUC, and continue to serve in posts in the RUC and over other detainees. Under the Patten formula, we see no way out in terms of their officers. They are in. They will be included in the new policing service. They will be given opportunities to, so called, change and advance, despite what is an egregious, egregious action against David Adams.

Second, I would just like to point very quickly to the issue of Special Branch and then close up.

Much could be said about the violations that have occurred as a result of Special Branch practices. Credible allegations of collusion with loyalist paramilitaries have consistently plagued the branch, and the recent startling revelations about Special Branch complicity in the murder of Patrick Finucane, as we heard this morning, have simply refueled urgent calls for the government to establish an independent inquiry into the killing; yet there is no recommendation in the Patten report that Special Branch be evaluated to determine past abusive practices or, more significantly and something that we had called for, for the branch—for that particular piece of RUC to be disbanded and for it to be replaced with a more accountable unit.

This is highly, highly problematic given the controversial nature of the policing undertaken by Special Branch in the past.

To close, under the Patten Commission's imperative to forget the past, the police officers in these examples, potentially responsible for human rights violations as egregious as to the prohibition against taking the right to life and the prohibition against torture, are offered amnesty for abusive conduct and to remain on active service in the police. This is an insult to the concept of justice and it threatens to undermine extremely worthy efforts recommended in the report.

Therefore, we urge the Patten Commission and the Government of the U.K. To reconsider—we are truly asking them to do something quite significant, and that is to reconsider the consequences of this omission and we urge the Subcommittee and others with a genuine interest in entrenching the rule of law into Northern Ireland to advocate urgently for some kind of mechanism to be included into this report during the consultation process.

Thank you very much.

[The prepared statement of Ms. Hall appears in the appendix.]

Mr. SMITH. Thank you very much for your testimony and for the good work that you have done for many years on this.

We do have a vote on the floor. As a matter of fact, we have four of them. I would like to recess briefly. If you have to leave, I cer-

tainly understand it. It may take as long as about 35 to 40 minutes before any of us can return, if that is OK with you, because you have come across from London to be with us and we do want to hear what you have to say, Ms. Winter. We will be in temporary recess. If you have to go, we will submit questions to you in writing.

[Recess.]

Mr. SMITH. The Subcommittee will resume its sitting. I want to apologize for the long delay because of the voting on the floor, but Ms. Winter, your comments will be disseminated through the hearing record, and I thank you in advance for your patience.

STATEMENT OF JANE WINTER, DIRECTOR, BRITISH IRISH RIGHTS WATCH

Ms. WINTER. Thank you, Mr. Chairman, and thank you to this honorable Committee for inviting me to speak today, and particularly, Mr. Chairman, to you for your consistent concern about human rights issues in Northern Ireland.

We join with our colleagues in welcoming the Patten report and its many positive recommendations. However, we also share the concerns that our colleagues have expressed today.

I would like to concentrate if I may on just one aspect of the report, which is the use of plastic bullets. I would ask that the full report that we have submitted be read into the record.

Mr. SMITH. Without objection your full report will be made a part of the report.

Ms. WINTER. British Irish Watch is opposed to the deployment of plastic bullets because we regard them as a lethal weapon that should have no place in policing in a democratic society at the end of the 20th Century.

Rubber bullets were introduced in Northern Ireland in 1970, and continued to be used until 1975. Plastic bullets were introduced in 1973. Mr. Payne has already graphically illustrated the size and weight of plastic bullets which are made of a much harder substance than rubber bullets. A plastic bullet fired at 50 yards distance can be fatal or cause very serious injury. Most plastic bullets are in fact fired at much closer range, even sometimes at point-blank range, and the guidelines for their use recommend a minimum distance of only 20 yards.

Problems have occurred with the manufacture and use of plastic bullets. Batches of them have been found to be too fast or too heavy for safety, and independent observers have observed the guns that are used to fire the bullets jamming and overheating when they are used repeatedly. Although intended as a non-lethal weapon of riot control, 17 people have died as a result of the use of rubber and plastic bullets.

Rubber bullets have resulted in 3 deaths, and plastic bullets in 14. The ratio of deaths to bullets fired shows that plastic bullets are more than 4 times as deadly as rubber bullets, even though they were intended to be more safe.

Of the 17 people killed by plastic bullets, there are a number of startling factors that come to light. All but one of the victims were Catholic. Nine of the 17 were age 18 or under, the youngest being only 10 years old. Only 5 of the victims were aged over 21. The ma-

jority of the victims were not involved in rioting at the time that they were shot. Many of the victims were shot at much too close a range and were struck in the head or the upper body in contravention of the guidelines then in force. Six of the victims did not die immediately, but lingered for between 1 and 15 days. They are a horrific weapon.

According to the report of the Patten Commission, 615 people have been injured by plastics bullets since 1981. The report does not give the origin of this figure but we believe that it is almost certainly an underestimate.

The fact that the last fatality caused by a plastic bullet happened in 1989 does not indicate that plastic bullets are used less often, nor does it mean that they are any safer. A solicitor in Northern Ireland put in a submission to the Patten Commission concerning his professional experience of dealing with cases of injury caused by plastic bullets. By June 1998 he had settled 17 out of 24 cases arising out of the disturbances around the marching seasons of 1996 and 1997. None of those cases went to court, and yet he attained the sum of 428,000 pounds, nearly half a million pounds, in damages for his clients.

The cases that he represented involved very serious injury, including two people who had each lost an eye, fractured jaws, other eye injuries, and injuries to the back, chest, and abdomen.

The guidelines for plastic bullets say that they should be fired so as to strike the target in the lower part of the body. It is obvious that in the majority of these cases, those guidelines were not followed. Several of the injuries were life-threatening and have resulted in permanent maiming and scarring. It is simply a matter of luck that nobody was killed.

In April 1999 a group of five senior doctors published their findings concerning people who have been injured in a single week between the 8th and the 14th of July 1996 by plastic bullets. During that week 8,165 plastic bullets were fired throughout Northern Ireland. They treated 155 patients who had sustained between them 172 injuries. Forty-two patients had to be admitted to hospital, 3 of them to intensive care. The age of the patients ranged between 14 and 54 years, most of them being young men.

Those doctors' findings show that at least 39 percent of the injuries sustained were to the upper part of the body, in contravention of the guidelines and they were all life-threatening injuries. So although it is a matter of rejoicing that nobody has been killed since 1989; it is not a matter of judgment, it is a matter of luck.

The domestic law on the use of lethal force falls short of the international standards set by the European Convention on Human Rights. Despite the fact that the guidelines for the use of plastic bullets have been flouted on a number of occasions, no member of the security forces has been prosecuted for causing a death in such circumstances. The use of plastic bullets is also contrary to the spirit and intention of the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, to which the United Kingdom Government subscribes. There has been much domestic and international concern expressed about plastic bullets.

In May 1982 the European Parliament voted to ban the use of plastic bullets throughout the European Community. In 1995, the

United Nations Committee Against Torture mentioned plastic bullets as a matter of concern, and in 1998 they recommended the abolition of the use of plastic bullet rounds as a means of riot control.

There also has been concern in the U.S. Mr. Payne has spoken of his bill. In 1995, the Honorable John Shattuck, who was then the Assistant Secretary of State for Democracy, Human Rights and Labor called for the elimination of such deadly security measures as the use of plastic bullets for civilian crowd control. In January 1996, the international body charged with considering decommissioning in Northern Ireland chaired by former Senator George Mitchell called for a review of the situation with respect to the use of plastic bullets.

In 1996, the CAJ organized systematic independent observation across Northern Ireland of the way that the RUC policed the summer marching season, and they were able to publish an authoritative report which highlighted a number of serious concerns about the RUC's actions, including their excessive use of plastic bullets, and the fact that again in a single week between the 7th and 14th of July that year, more than 8 times as many plastic bullets were used against Nationalists as were used again Unionists.

Following the publication of the report, the government asked the body that inspects police services in the U.K. To make a particularly close study of the way in which the RUC deployed plastic bullets. Their report expressed concern about the training, the command structure, and the reporting system for plastic bullets, and highlighted the weaker guidelines for their deployment which pertained in Northern Ireland.

Until August 1997, the guidelines for use of plastic bullets were not publicly available. When they were finally made public, it became apparent that the guidelines issued to the RUC and those issued to the army were not the same, despite the fact that both arms of the security forces frequently fired plastic bullets together at the same event. Although plastic bullets have never been used in England and Wales, guidelines for their use there were much more restrictive than those pertaining until very recently in Northern Ireland, where 17 people have died.

On the 1st of August, following a review of the use of plastic bullets by the Association of Chief Police Officers, new rules were brought in that will apply across the board. Although this tightening of the rules is welcome, it is no substitute for the banning of plastic bullets altogether. Moreover, it opens up the possibility that this lethal weapon will now be deployed in England and Wales as well as Northern Ireland, only months after the United Nations recommended the abolition of their use.

There is another worrying aspect of the new guidelines. They define the lower part of the body as being below the rib cage. This does not take account of the medical evidence which suggests that injuries to the abdomen can be equally life-threatening.

On average, just over 1,000 plastic bullets were fired each year between 1982 and 1995. In 1996, however, 8,165 plastic bullets were fired in a single week during the Drumcree crisis. In 1997, some 2,500 plastic bullets were fired during the equivalent week. In 1998, 823 plastic bullets were fired. In 1999, according to the

RUC, only one plastic bullet was fired. Furthermore, the use of plastic bullets has decreased each year since 1996, although that decrease must be seen in the context of a sharp increase in the period 1996–1998 over the previous 7 years.

Obviously the decrease in the use of bullets is to be welcomed, but there are many reasons in the current situation which can account for that decrease. They include the growing domestic and international concern about the use of plastic bullets, the relative increase in the level of Unionist protests and the decrease in Nationalist protests. This has been particularly marked since 1998 when, for the first time, the Orange Order was prevented from marching down the Garvaghy Road.

The improving climate in which civil unrest has occurred, as the cease-fires, imperfect as they are, have endured, and with the strong public support for the Good Friday Agreement, sustained political efforts to reach accommodation of the contentious marchers have helped to defuse the situation. It has also been the review of guidelines for the use of plastic bullets by the Association of Chief Police Officers, and not least of all, the setting up of the Patten Commission which put the RUC under the closest scrutiny that it has ever experienced. It is not surprising that we have seen a decrease in the use of these plastic bullets.

The Patten Commission has expressed concern that the government, the police authority and the RUC have collectively failed to invest more time and money in a search for an acceptable alternative to plastic bullets. However, they have felt unable to recommend that they should no longer be used but instead have recommended that a search for an alternative should be intensified. They have recommended tougher guidelines and more accountability for their use.

In our view, this is a disappointing stance. Plastic bullets have never been deployed for riot control in England and Wales despite the occurrence over the years of a number of serious and violent riots, including race riots. English police forces have been able to police these riots without recourse to plastic bullets, and although police officers, demonstrators, and members of the public have all been injured on occasion, they have still not resulted in loss of life or anything like the number of injuries that have been caused by plastic bullets. It is simply not the case that the RUC would have no other means at its disposal than hand-held batons or live ammunition were it to abandon the use of plastic bullets. Indeed, its claim to have fired only one plastic bullet during the week of Drumcree this year shows that the RUC is capable of policing some situations of serious public unrest without resorting to plastic bullets.

In conclusion, in our opinion, once plastic bullets are available to a police force, their use becomes inevitable; and once they are used, experience shows that abuse also becomes inevitable. Although physically different than live ammunition, both in form and effect, the firing of plastic bullets from a weapon has the same psychological effect on police officers as the use of an actual firearm. They give the police officer concerned such a disproportionate advantage over an unarmed civilian, however riotous his or her behavior, that the officer is very likely to resort to it as a means of self-protection

that can be operated at a relatively safe distance from any opponent. This may also mean that the police officers will fail to make use of any opportunity that may exist or arise for diffusing violent situations by less draconian means that might be attempted by unarmed officers.

We recognize that however well trained police officers may be, and however tight the guidelines under which they operate, in the heat of the moment and especially in fear of their own safety or that of their colleagues, they are likely to overreact. Furthermore, the use of plastic bullets, especially if it appears to be indiscriminate, may provoke an already riotous crowd to become even more violent.

A weapon that has caused so many fatal and serious injuries during its history is unsuitable for use in any civilized democracy.

Finally, I would like, if I may, to honor the memory of Rosemary Nelson and Patrick Finucane, who have been mentioned so many times today, and say that we would like to see the Patten report implemented in its entirety, without cherry-picking. But as you said this morning, Mr. Chairman, we do not regard it as a ceiling, we regard it as a beginning, and we hope that in implementing it, it will be possible to introduce improvements such as abolishing the use of plastic bullets. Thank you very much for your time and attention.

Mr. SMITH. Thank you for the excellent testimony and the good work that you do in Northern Ireland and elsewhere.

[The prepared statement of Ms. Winter appears in the appendix.]

Mr. SMITH. Mr. Tancredo, the gentleman from Colorado, has joined us.

Mr. Payne.

Mr. PAYNE. In my concluding remarks, I certainly appreciate the three of you coming over and your testimony. As you know, I was there in 1996 when so many of them were shot. I went to Derry and was in Belfast and spoke to RUC people and it just—the attitude is really something when they won't answer questions, they won't give you their names or the badge number, they have very short answers. They were very rude and intimidating to the people that I traveled with.

Plastic bullets should be banned. I am reintroducing my legislation again. We are going to urge the manufacturers in the United States to stop manufacturing them. We are going to urge the British Government to stop using them. There are other alternatives to riot control other than shooting people with real bullets or shooting people with plastic bullets. Those are extremes, and there are many other ways to deal with crowd control, and I think that the RUC needs to get into the 21st century.

I appreciate the Chairman for calling this very important hearing again. Incidentally, I met with Rosemary Nelson in 1996 when I was there—either 1995 or 1996, I am not sure—but we had a meeting on people being detained without charges and so many things. I was here when she testified, and so we certainly have her memory and keep the memory of Pat Finucane alive. Also I keep saying that the Bloody Sunday incident of 1972 needs to be reopened and there should be a comprehensive restudy of that, reinvestigation of that situation. Thank you, Mr. Chairman.

Mr. SMITH. Thank you. Let me ask a couple of final questions and one on behalf of Mr. Gilman. He is asking how many of the 17 killed in Northern Ireland were engaged in throwing petrol bombs,as referred to by Chairman Patten. In the actual report, it says the unique problem which has explained their use in Northern Ireland is the widespread use of petrol bombs, glass bombs, and firearms in riot situations. Were the people who got killed throwing bombs? Do we know?

Ms. WINTER. The majority of them were not. As I have said, 8 of them were children, and I think some of the circumstances are disputed, but it seems that only 2 of the 17 can certainly be said to have been involved in rioting. To the best of my knowledge they were throwing stones not petrol bombs. So the fatalities are not linked to petrol bombing, as far as I know.

I wonder if I can make one brief comment in response to what Mr. Payne said with regard to identification. That is one recommendation, that all police officers in riot situations in Northern Ireland must wear clear identification. I recalled that Rosemary Nelson was assaulted on the Garvaghy Road in 1996 by police officers wearing no identification, and she spoke publicly about that incident and she said that she had never been so frightened in the whole of her life.

Mr. SMITH. Let me ask, have any of you heard comments—as you probably know, we have an amendment that passed that links cooperation and training between the FBI and the RUC with independent investigations into the murders of Pat Finucane and Rosemary Nelson and also, generally speaking, to stepped-up protections for defense attorneys. It is in conference now. It is on my bill, but we are running into some flak from the administration as well from a few Senators.

Would that amendment be helpful? Does it send a clear message? There is a mechanism by which the President would certify that these conditions have been met and then such a sharing of personnel—particularly their personnel coming here, mostly to Quantico, Virginia—would go forward.

Ms. HALL. I was actually very struck by Chairman Patten's first point this morning about calling on all of you not to isolate the RUC, and I said that is an interesting place to put the burden, on the Committee as opposed to the RUC itself for creating the very conditions which led to you all coming up with the amendment.

From the Human Rights Watch perspective, it is the RUC that is responsible for activities that have led to these types of sanctions and these types of proposals. Not just by yourselves; there have been other Western governments and other European bodies that have also come out with very strong statements against these activities.

So I would switch the onus back onto the RUC and say given the egregious number of violations, given the mounting evidence of State-sponsored collusion in these cases, you feel that it is incumbent upon you and you simply have no recourse but to say, as does the Leahy amendment in other circumstances, that this government simply will not tolerate these types of violations without some kind of effective remedy for the families.

So, I think from our perspective we support this resolution and we find it to be a very interesting and new way of approaching RUC abuses.

Mr. PAYNE. One other area that I note in the past, and I don't know about present, but the soldiers that would be sent to the north of Ireland were generally young, unseasoned chaps who probably were frightened by tales and stories. I also thought that that was a bad practice, to put in inexperienced persons, who are not properly trained.

Another incident is the fact that some officers, either police or military, who have created some questionable behavior in Great Britain, were transferred to the north of Ireland and integrated into the force there, which is also I think makes no sense, if you have a tense situation, to bring in people who have a history of bad behavior.

Finally, the vehicles—I have never seen vehicles like that anywhere but in the north of Ireland. They are enough to be intimidating as they ride with their low running boards and the dragging near the ground. It reminded me of vehicles that the South Africans created called caspers; no other place you saw a vehicle like that. This vehicle is almost coming to tell you, "We are here, we are tough, you can't bother us or we will roll you over". Those are psychological intimidations to people, and they should be stopped.

Mr. SMITH. One final question and then I would make a comment.

I continue to believe, and I think you do as well, that the lack of vetting is probably the Achilles heel of the report and does have to be approached and handled by a future or present body and by the government.

What is your take on Chris Patten's statements earlier, especially his "witch hunt" statement?

Ms. HALL. I suspect that many people were taken aback by that, as I was. It is not only a poor analogy, it is very misplaced and very melodramatic. We must remember that most of the witches were innocent.

What we are talking about in terms of a vetting process is something that is guarded by all of the due process rights that are guaranteed to every person under international law. To make sure that those safeguards are in place makes that analogy completely inappropriate.

I think that really both Dr. Hayes and Mr. Patten need to be continually reminded of the inappropriateness of that, and the fact that vetting mechanisms as suggested by ourselves and the groups at this table are in place and have been in place in other regions of the world and other jurisdictions.

When we met with the Patten Commission yesterday in New York, we told them that the one weak link in every single peace agreement that Human Rights Watch has looked at is the absence of an effective vetting mechanism. It is the one thing that has brought down future arrangements for policing or rearrangements in military relations in almost every jurisdiction. We see it as a critical problem in the Israeli-Palestinian issue and with South Africa with the 5-year amnesty for police officers.

So I think the empirical evidence of other jurisdictions not having this mechanism, coupled with a very respectful but firm analysis of why the analogy is inappropriate, should really force them to drop that language from their justification for not vetting.

Mr. SMITH. Ms. Winter.

Ms. WINTER. I agree very much with my colleague, and I would also add that to describe calling to account people who have abused the human rights of others as a witch hunt is clearly inappropriate, and I think to make special pleading for the RUC, I believe in any society we get the police that we deserve, and we should keep our own police under the most intense scrutiny because we give them extraordinary powers that ordinary citizens are not allowed to have.

For the RUC to say we are immune from scrutiny, we can get away with it, is to offer us a police service that we do not deserve, and I think the Patten Commission has left them far too much leeway in this respect.

I hope in the review process that is coming up, the government will take the opportunity to improve upon what is in the Patten report and rethink this vetting issue.

Ms. BEIRNE. First, on the screening process and the vetting, I think it is absolutely crucial; accountability is at the heart of getting policing right in Northern Ireland. This is the focus of my testimony, the last half of it, of my testimony to the International Relations Committee.

This issue of dealing with past human rights abuses is at the heart of the issue of accountability. It ties into how do we make fundamental change. How can you attract Catholics, Nationalists, under represented groups, if there is a sense of impunity for past abuses? What if Michael Finucane's family believes that the people who colluded in the death of his father are still in the police service? Yet at the same time, people are being left in the new police service who we know have been involved in very, very serious human rights abuses.

Mr. SMITH. On Emergency Powers—go ahead.

Ms. BEIRNE. A couple of other points. Thus on plastic bullets and the extent they have been solely used as a response to petrol bombs—as Jane said concerning the actual incidence of people having been killed by plastic bullets: very few of them were involved in riotous behavior and very few were involved in petrol bombing.

This year we were in correspondence with the Chief Constable about the firing of plastic bullets in the Drumcree area when there were absolutely no petrol bombs being thrown. There was minor rioting by young children. Plastic bullets were being fired, with young children in the immediate area, and they were ricocheting off garden walls. So I question the offered statistic that was mentioned, and that they have only been used in cases where the security force is under serious attack.

Mr. Payne's point about the Land Rovers and the general militarism of the police force. Patten has addressed it in part. The report refers to the total inappropriateness of RUC buildings their accessibility and the fact that they are like military installations. The whole force is a very militarized force, and it operates with Emer-

gency Powers—Emergency Powers, around the world, lend themselves to abuse of human rights.

We feel that unless the issue of police powers is tackled, there is a very serious risk that whatever changes are made to policing, it is not going to change fundamentally. Patten has obviously not convinced us and we have not convinced him, so we have to convince government in the forthcoming consultation process. In the criminal justice review that is taking place, we will push (and we would hope that the Subcommittee would push) to ensure that Emergency Powers is on the agenda and that is addressed very directly.

As I said, Patten devoted two paragraphs to this question. There is absolutely no attempt to justify their stance. With plastic bullets there is at least some suggestion that they have considered other options, but Emergency Powers, are taken as a given. Yet if you don't tackle these abusive powers, you are left with very little change fundamentally in policing.

Mr. SMITH. I too was struck by how briefly they dealt with emergency powers. As I said in my opening, they recommend that the law in the North of Ireland should be the same as that in the rest of the U.K., and then they go on to completely undo that. Does this record keeping that they recommend amount to anything to you? If someone is committing abuse, they are not going to write it up.

Ms. BEIRNE. At the moment we are very clear from anecdotal evidence that people in Nationalist areas are more likely to be subject to the stop-and-search procedures, but we have no hard data to measure that. So hard data would be an improvement. Obviously also it is an improvement that we get rid of Castlereagh and the holding centers which the United Nations and other bodies have been pushing for some time.

But Patten didn't follow through the logic of his commitment to the assertion that policing should be based on the fundamental protection of human rights. That is what policing is about. Yet here at the heart of this are these Emergency Powers which all international experience says is not going to work. You can arrest people and deny their access to their solicitors and it is not surprising that ill treatment occurs. We have seen in the past.

Mr. SMITH. One final question that Mr. Gilman asked. Is there a civil right to be a policeman, as Mr. Patten suggested, so it is inappropriate to exclude members of the Orange Order from the police force? Basically if you belong to an Orange Order, should that preclude you from being a member of the police?

Ms. WINTER. In our submission to the Patten Commission, we argued that membership of any organization which discriminated against a certain section of society would be inappropriate for a police officer who must take an oath to serve the whole of the community without fear or favor.

The Orange Order is clearly problematic in this respect. Therefore we felt that it would be incompatible to be a member of the Orange Order, and I understand that the chief constable himself has expressed reservations about that. So merely having a register of interests is not enough and we would like to see a situation where any police service, particularly the new Northern Ireland Po-

lice Service, is sensitive to the incompatibility of membership of certain groups with being an impartial police officer.

Ms. BEIRNE. One thing to add there. One of the building blocks in Patten's report is the new oath that new and existing officers are to take—i.e. a commitment to uphold human rights of everyone within society. Yet one must at least question whether, given the oath that members of the Orange Order have to take, they can simultaneously take an oath to protect equally the traditions of the whole community. It is interesting that there wasn't an engagement in the report with that potential contradiction. Indeed, quite the reverse, given that the key argument given in the report for allowing members of the Orange Order was the fact that to deny them would be to deny access to a very large proportion of the population. But, in fact, that doesn't seem an overly convincing argument. As I said there was no discussions as to whether the Patten Commission itself saw any contradiction between these two oaths, the oath to the orange and the oath to uphold equally the traditions of everyone within the community.

Mr. SMITH. Would it be possible for you to get us a copy of that oath for it to be included in the record?

Ms. BEIRNE. Yes.

Mr. SMITH. Again, I want to thank you for your excellent testimony. We will continue to work with you and we are greatly benefited by your insights, your counsel, your wisdom and your courage. The hearing is adjourned.

[Whereupon, at 2 p.m., the Subcommittee was adjourned.]

A P P E N D I X

SEPTEMBER 24, 1999

Statement of Representative Chris Smith
Chairman, Subcommittee on International
Operations and Human Rights

The purpose of this public meeting is for the Subcommittee with primary jurisdiction over human rights to review the recent publication "A New Beginning: Policing in Northern Ireland" and to hear from its principal author, the Rt. Honorable Chris Patten. This report was released on September 9th by the Independent Commission on Policing for Northern Ireland which was established by the Good Friday Agreement in April, 1998.

Mr. Patten, welcome to the Congress and thank you for your generous commitment of time and talent in reviewing policing in Northern Ireland. We are grateful for your presence.

After 15 months of exhaustive study and outreach which included over 10,000 people participating in public meetings; 1000 individuals speaking at those meetings; more than 3,000 submitting written reviews; and countless small group meetings, there is little doubt that the Commission moved comprehensively and aggressively to pursue its mandate for "a new beginning in policing in Northern Ireland with a police service capable of attracting and sustaining the support of the community as a whole."

With over 175 recommendations for change and reform, it is my sincerest hope that the recommendations contained within the report become the starting point, the floor -- and not the ceiling -- for policing reforms in Northern Ireland. This report -- promising because of the recommendations it contains, yet disappointing for the problems it chose not to tackle -- must be a base from which human rights and policing reforms are built, rather than a high water mark that recedes over the next few weeks of public review. I am encouraged by the Commission's own plea that "the essentials of our recommendations represent a package which must be implemented comprehensively...We advise in the strongest terms against cherry-picking from this report."

In other words, the report must be implemented in its entirety, and even this will be just a beginning. Much more remains to be accomplished.

I am encouraged by the Commission's candid admission "that policing was at the heart of many of the problems that politicians have been unable to resolve in Northern Ireland" and by the report's definition of policing "as the protection of human rights." The Commission's stated desire to "reorient policing onto an approach based on upholding human rights" is a recognition that Northern Ireland's police force, the Royal Ulster Constabulary (RUC), has failed at protecting human rights for Northern Ireland's citizens for several years.

Today's public session is the fourth in a series of meetings held by this Subcommittee as it has focused on human rights abuses in Northern Ireland. In each of our previous proceedings, the subject of policing and human rights abuse by the RUC was central. In fact, next week will mark the one year anniversary of testimony we received from defense attorney Rosemary Nelson, who told us that she feared the RUC; had been harassed and physically assaulted by RUC members; and that she had even received death threats from some of these members. She feared for her life, and with good reason -- she was murdered six months later, the victim of a car bomb. Subsequent reports by the Independent Commission on Police Complaints substantiated Rosemary's complaints. Yet not a single RUC officer has been disciplined for the death threats and other harassment she endured.

Thus I am disappointed that while the Commission acknowledged "that the RUC has had several officers within its ranks over the years who have abused their position," it nevertheless declined to recommend a vetting mechanism to rid the force of those who have committed egregious acts of abuse and violence. It's worth noting with regret that the RUC officers who harassed Rosemary Nelson -- and perhaps were connected with her assassination -- are still on the job today. Even the police officers who beat David Adams while he was in detention at Castlereagh in 1994 have never been criminally prosecuted.

Last year, after meeting with Param Cumaraswamy [Pah-RAM koo-mar-ah-SWAH-mee], the U.N. Special Rapporteur on the independence of judges and lawyers, I and other members of this subcommittee wrote to the Commission asking that the Commission address the recommendations put forth by the Special Rapporteur regarding the RUC harassment of defense attorneys and the establishment of a judicial inquiry into the allegations of collusion into the murder of defense attorney Patrick Finucane. Regrettably, the report fails to make recommendations that would curb the harassment of defense attorneys and there is not a mention of the ongoing, still evolving implications of RUC-Special Branch complicity in the

Finucane murder. As a matter of fact, unless I've missed something, Special Branch, long tainted with allegations of collusion, will simply merge with the Crime Branch. While it is clear that the Commission asserts it had no obligation to "make judgements about the extent to which the RUC may or may not have been culpable in the past," the harassment of defense attorneys and the continuing failure to examine the role of the RUC in the Finucane murder are regrettably current events. Perhaps it is not too late to recommend, as the UN Special Rapporteur did, a new judicial inquiry.

The Commission spends a great deal of time on recommendations for a reduction in the size of the Police force and how to address the "imbalance between the number of Catholics/Nationalist and Protestants/Unionists which is the most striking problem in the composition of the RUC". While the Commission recommends ways to ensure that new recruits are limited to those who have a genuine appreciation of human rights, there is no direction given on how to properly ensure that those who have committed human rights abuses in the past will actually be the ones to go through the early retirement packages recommended by the Commission. Indeed, the Commission concedes that the RUC indeed has "bad apples" and concludes that "they should be dealt with". But it gives no suggestion about how to deal with them. I think it is naive to expect that the RUC itself, which has denied the existence of bad apples in the past, will suddenly propose its own ways to get rid of them now.

This lack of a vetting procedure --- a way to ensure that it is indeed the 'bad apples" who leave, rather than cling to their seats of power and abuse, is the most troubling omission of all. It is our hope that though the discussion this morning we may learn that either the newly recommended oversight commissioner, or perhaps the new 19 member Police Board , has been empowered with this critical vetting authority. The reforms proposed throughout the report could be severely undermined in the near and immediate term if the "bad apples" are permitted to continue their service to the force.

The Commission's failure to recommend an immediate ban on plastic bullets is deeply troubling especially in view of the 16 fatalities and the 615 injured acknowledged in the report.

And on the issue of Emergency Powers, I was, at first glance, glad to see the commission's recommendation that "the law in Northern Ireland should be the same

as that in the rest of the UK". But, this recommendation seems to be rendered moot by the next line in the report which reads in part: "In the event that the threat of terrorism in Northern Ireland continues to require special provisions..." Continues to require? Sounds like an endorsement of emergency provisions to me.

In conclusion, I must note that the 175 recommendations --- which include a call for a name change, new badge, new symbol, new human rights-based oath of office for new recruits, new police board with new investigative authorities, more community based policing, and tangible assistance for RUC widows and officers disabled in the line of duty, just to name a few --- are all positive steps that I applaud. I am anxious to hear how quickly these changes might become law and how those not addressed through the report may still be advanced so that policing in Northern Ireland will truly be accepted and sustained by the whole community.

NEWS International Relations Committee

U.S. House of Representatives * Benjamin A. Gilman, Chairman * 2170 RHOB * Washington, D.C. 20515

DATE: *September 24, 1999* *FOR RELEASE: Immediate* 999-
CONTACT: *Lester Munson, Communications Director, 202-225-8097, Fax 202-225-2035*

GILMAN COMMITTEE MEETS WITH PATTEN

WASHINGTON (September 24) – U.S. Rep. Benjamin A. Gilman (20th-NY), Chairman of the House International Relations Committee, made the following statement today at a committee meeting with the Rt. Hon. Chris Patten, the European Union Commissioner for Foreign Relations and Chairman of the Independent Commission on Policing for Northern Ireland:

"Mr. Chairman, thank you for putting together today's important and timely hearing on some very critical events in the history of Northern Ireland. Your tireless efforts have served to help put respect for human rights and the critical role of defense counsel at the top on the agenda for the new north of Ireland, which we all want and expect under the Good Friday Accord.

"We are indeed fortunate today to have with us Chairman Patten, who recently rendered his vital report and findings under the terms mandated by the Good Friday Accord for a new beginning to policing in Northern Ireland. Few issues day to day impact more on the lives of the people of the north, or any community for that matter, than their relationship with local police. The police can either serve to protect all of the people, or be part of the problem, not the solution in a divided community, as is Northern Ireland.

"As our House Speaker Denny Hastert said on the day the Patten policing report was issued, 'Acknowledging that there is a problem is the first step in finding a solution to that problem, and this report is useful for that reason.'

"I echoed those sentiments of the Speaker, and called the Patten report a 'good first step.' The struggle for change in policing in the north is not over. It has just begun. We now await the British government's full and prompt implementation of all of the commission's recommendations. It should be just the beginning, not the end of reform of the RUC.

"The ultimate test and real change will come when the minority nationalist Catholic community can also call the new police service its own, and reflect that support by joining the new police service in representative numbers to its population in the community. Today the RUC is a Protestant police force for one segment of the community. Change has to come, sooner rather than later.

"While Chairman Patten's mandate was one of a new beginning for policing in the north, one cannot in good conscience ignore the past history of the Royal Ulster Constabulary (RUC) and its relationship with the minority nationalist community.

"We will hear later today from witnesses from the north, whose lives and families have been tragically impacted by acts of the RUC. Whether through possible collusion in the murder or the making of threats to those defense lawyers merely charged with securing fair play and justice for their clients, the past history of the RUC is checkered.

(more)

"Their's are not the only families touched by the RUC in one way or another. Thousands of others have been hurt as well, including police officers and their own families. We all heard case after case at our full committee hearing this past April. I need not recount them here today.

"So with that checkered past and the Patten Commission's good first step to a new beginning to policing, I challenge the British government to move forward into the new and shared future of policing in the north. It can even do more. The Patten report leaves some serious gaps that will make that new future for policing in the north difficult. For example, not calling for weeding out of bad apples who have abused human rights in the past, and for new leadership at the top, will make the real reform hard to bring about.

"In addition, not banning police membership in sectarian associations whose very purpose goes counter to a fair, impartial and responsible community policing, will also make real concrete change hard.

"We will examine these and other proposals before us today. I want to welcome Chairman Patten. Thank him for a difficult but well-done job. I look forward to hearing him and our other witnesses today. Thank you."

- I would like to congratulate Mr. Patten and his Commission for accomplishing a very difficult task. You and your fellow commission members should be very proud to have composed such a historic document.

- I believe the report, by itself is a good start. But it is only the beginning. The question now is, do the people of Northern Ireland, the Republic of Ireland and the British Government have the capability to come together and implement this agreement? I believe they do, because it is too important not to.

- A key factor in achieving a lasting peace in Northern Ireland will be a police force that has the respect and trust of the entire population. The importance of police reforms in Northern Ireland can not be overstated. In fact, if there was one thing I could wish for places like Kosova, Haiti and even Northern Ireland, its an effective police force with the trust of the local population. People need to be able to call the police and have them to carry out police functions, not serve as an occupying army.

Questions:

1) In reviewing your report, I was pleased to see some very specific recommendations about how to de-politicize the RUC. Recommendations to remove Union flags, a new oath and even new symbols all suggest the appearance of a new and different force.

> What was the Commission's rationale for not recommending the creation of an entirely new force? With 175 specific recommendations, wouldn't it have been easier to start over?

2) As you know, about 92% of the RUC force is Protestant.

> Given the history of mistrust for the RUC by Catholics, do you think they will ever seek to join the force in numbers great enough to balance out Protestant recruits – even with a name change and your other recommendations to de-politicize the force? What do you directly recommend to implement an affirmative action plan for Catholics in the new police force?

3) From the reports that I have seen, it looks like it will take a long time to implement many of the reforms in your report.

> What are the next steps toward implementation? How long do you anticipate it will be before the majority of the Commission's recommendations are implemented? What

do you believe will be the major obstacles to complete or near complete implementation?

SUBMISSION TO THE UNITED STATES CONGRESSIONAL

SUB-COMMITTEE ON INTERNATIONAL OPERATIONS AND HUMAN RIGHTS

SEPTEMBER 24TH 1999

"Mr. Chairman, Members of the Committee, fellow speakers, ladies and gentlemen:

I am Michael Finucane, the eldest son of Patrick Finucane, the defence lawyer murdered in 1989.

I testified before this Committee two years ago and openly accused the British Government of ordering and arranging the murder of my father. I pointed to the powerful motivation of the British Government in silencing the embarrassing revelations of my father's human rights work. I listed the names of prominent international organisations that had up until then supported my family's call for a full independent inquiry into his murder.

Upon hearing the accusations I had to make and the proof I had to offer, this Committee immediately pledged its support to our call for an independent inquiry. Many others have done the same since, including:

- the Irish Government
- the United Nations Special Rapporteur, Param Cumaraswamy, also a witness before this Committee
- the Law Society of Ireland
- the Law Society of Northern Ireland
- the Bar Council of Ireland
- the Bar Council of Northern Ireland
- the Bar Council of England and Wales

On February 12th this year, a petition was published in several national newspapers to mark the tenth anniversary of the murder of my father. It was signed by over 1300 lawyers world-wide, clearly showing to the British Government an unprecedented level of international support for an independent inquiry into my father's murder.

On the same day, my family and I presented a confidential report compiled by the London based non-governmental organisation British Irish Rights Watch to the Secretary of State for Northern Ireland, Mo Mowlam. This report was based on classified information from British Intelligence files. It clearly showed that Military Intelligence had clear advance knowledge of the plot to assassinate my father and that their agent, Brian Nelson, aided the assassins without hindrance.

I would very much like to be able to tell this Committee that all of these efforts and pledges of support have led to the establishment of an independent public inquiry. They have not. In the last 12 months, the British Government has ignored not only the calls of this Committee, but has also dismissed a second report of the United Nations Special Rapporteur and has refused to respond to the report of British Irish Rights Watch.

Added to this are the events that have unfolded in Northern Ireland in the last number of months - events that have disclosed highly sinister practices on the part of the RUC and the Director of Public Prosecutions for Northern Ireland in relation to the prosecution of those responsible for murdering my father.

In March 1999, the Chief Constable of the RUC, Ronnie Flanagan, recalled John Stevens to Northern Ireland. Mr. Stevens was the English Police officer who first investigated collusion between the RUC and loyalist paramilitaries, and he had been instructed by the Chief Constable to re-open my father's murder investigation.

The Chief Constable is on record as having stated that previous investigations by Mr. Stevens had completely exonerated the RUC from any illegal involvement in the murder of my father. Mr. Stevens, however, began his duties by opening an initial press conference with the statement that he had never before investigated the case of Patrick Finucane, nor had he ever been asked to do so.

What, then, is the truth of this matter? Is the Chief Constable of the RUC lying about the investigation into my father's murder? Is he aware of wrongdoing or illegality on the part of his officers and has he sought to cover it up?

Since the prior reports of Mr. Stevens are still being suppressed in the public interest, we are still unable to discover the truth of this matter.

On 23rd June of this year Mr. Stevens charged a man named William Alfred Stobie with the murder of my father. The first thing that he said when formally charged was: **"Not guilty of the charge that you have put to me tonight. At the time I was a police informer for [RUC] Special Branch. On the night of the death of Patrick Finucane I informed Special Branch on two occasions by telephone of a person who was to be shot. I did not know at the time of the person who was to be shot."**

When Stobie first appeared in court, his lawyer stated that his client was a **"paid Crown agent"** from 1987 until 1990 and that he gave the RUC information on two occasions before the my father's murder, which was not acted upon. In addition, Stobie's lawyer claimed that, **"As a result of this information at another trial involving William Stobie on firearms charges on 23rd January 1991, the Crown offered no evidence and a finding of "not guilty" was entered on both counts. My instructions are that the bulk of the evidence here today has been known to the authorities for almost 10 years."**

Mr. Stobie has appeared before the courts on a number of occasions since then. More information has come to light, showing that what his lawyer said in court is absolutely true.

In 1990, Mr. Stobie was charged with the possession of firearms found in his home. I can say from personal experience that the evidence against him would have convicted any other person, and that this was the logical outcome here. However in this case, the charges were dropped, because Stobie threatened to expose his role as an RUC agent. The chief prosecutor in the case, Jeffrey Foote QC, is now a judge serving on the County Court bench in Northern Ireland.

It has also emerged that Mr. Stobie confessed to his role in my father's murder while in police custody in 1990 and even the every existence of this confession was denied as recently as 3rd August this year. At a court hearing on that day, it was stated that the Director of Public Prosecutions had decided not to prosecute Mr. Stobie for my father's murder, due to a lack of evidence. It was claimed that the evidence against him consisted solely of notes taken by a journalist during an interview in 1990, which, until now, had not been stated in evidential form capable of being used in a criminal trial. This decision not to prosecute Mr. Stobie was specifically stated to have been taken by the DPP's office **"at the highest level"** on 16th January 1991 - seven days before the firearms charges were dropped against him.

The only reason my family are aware that Mr. Stobie made a confession is because it emerged at a later court hearing. The RUC are seeking to compel another journalist who interviewed Mr. Stobie in 1990 to hand over his notes of this interview. Mr. Moloney has refused to do so and has cited journalistic privilege. It was during a court hearing on this issue that an RUC Chief Inspector stated William Stobie had admitted supplying the weapons in my father's murder and recovering them after the killing. Stobie admitted this in police custody in 1990. He also admitted that he was a Special Branch Agent.

All of these matters raise important questions for the various institutions and individuals concerned. Why was William Stobie not charged in 1990, when a confession was on record and in the hands of the RUC? Why did it take the recall of John Stevens, 9 years later, before the charges were proferred? Furthermore, why did the DPP decide, *at the highest level*, not to prosecute Stobie given the existence of a confession? Why was the very existence of this confession denied in court on 3rd August this year? Is the office of the Director of Public Prosecutions complicit in concealing wrongdoing by members of the RUC, as the Chief Constable Ronnie Flanagan has done?

RUC officers have engaged in a persistent campaign of hostility, intimidation and abuse of defence lawyers in N.I. They have uttered death threats against many lawyers, two of whom have been assassinated. None have been brought to account for their actions.

It is a glaring omission in the report of the Patton Commission and it is a fundamental error. While the report contains many welcome proposals for a human rights based, police service with primary responsibility to the whole community, it shies away from

key issues that quite simply must be addressed if the new police service as a whole is to succeed.

The RUC has labelled lawyers as "the enemy" and has engaged in a systematic campaign to undermine their role. They have actively pursued a course that has put the lives of all defence lawyers at risk and they have colluded with those who were prepared to murder them. At the very least, any new service needs to be retrained in its approach toward dealing with defence lawyers who are, after all, simply carrying out the function which it is their duty to do. The lawyer who represents William Stobie, Joe Rice, stated to the Lawyers Committee for Human Rights in 1992 that if a lawyer rocks the boat too much then, like Patrick Finucane, he or she will be in trouble.

Threats have continually been made for many years by RUC officers against defence lawyers. As far back as 1984, a client of my father's was told, **"[Finucane] would be like you; he'd be fuckin' blown away."**

In 1988, Amnesty International recorded a statement from a man who had been badly deaten while in RUC custody and who was represented by my father. He said that the RUC told him, **"It would be better if he [Patrick Finucane] were dead than defending the likes of you."**

Five weeks before my father was murdered, another man was told by an RUC officer that that his solicitor was **"[W]orking for the IRA, and would meet his end also. He asked me to give Mr. Finucane a message from him...He told me to tell him that he is a thug in a suit, a person trying to let on he is doing his job, and that he, like every other fenian [Catholic] bastard, would meet his end."**

These threats had continued unabated for so many years that many lawyers, my father included, came to view them as an occupational hazard. Now, when an RUC officer tells a detained person that his lawyer will be shot, that lawyer must regard the threat as real. Lawyers are also members of the community that the Patton report seeks to serve, and as such they are entitled to protection from such individuals. The reality that lawyers must live with is that notwithstanding the fact that their lives are at risk from paramilitaries, they are also at risk from the RUC.

These issues are crucial. They are crucial because two very courageous lawyers have paid with their lives. Despite many submissions that specifically highlighted the existence of collusion in the murders of both my father and Rosemary Nelson, they are not addressed in any way in the report of the Patton Commission.

The report of the Patton Commission makes specific mention time and again of RUC officers who were killed during their period of service and how their families should now be accomodated. But it does not recommend anything for the benefit of those who have been murdered either by the RUC, or with the assistance and collusion of the RUC. Why is this? Does the report seek to distinguish between "classes of victims?"

The report also ignores the fact that the very officers who engaged in activities of intimidation and abuse are still serving with the RUC. Furthermore, the report proposes no mechanism for ridding the new police service of these officers. It does not even recommend that they should account for their years of serial abuse of human rights.

I can categorically state that, given the Patton Report's absence of recommendations in this area, given the continued absence of effective Government proposals, and given a complete lack of any commitment to stringent measures to deal with this problem, defense lawyers in Northern Ireland are still in trouble, the worst kind of trouble -- their very lives are on the line.

In this very chamber, one year ago, I sat in the audience and listened to a most remarkable lady, Rosemary Nelson, utter the now haunting words "No lawyer can forget what happened to Pat Finucane." Rosemary said she looked forward to a day when her role as a professional lawyer would be respected and where she could carry out her duties without hindrance or intimidation. She did not live to see that day. On March 15th this year, Rosemary Nelson was murdered.

Rosemary had spoken publicly of the threats to her life that she had been forced to learn to cope with, hoping that by publicly highlighting the regime targeted against her, she could somehow protect herself and her family from harm. In identical circumstances to those of my father she became a target, and consequently, a victim. To date, no-one has been charged with her murder. The political circus that took place over simply trying to ensure that independent police personnel would investigate her murder speaks volumes about little the British Government values the lives of people who are murdered for simply doing their job.

Is this to always be the way the State and the police in Northern Ireland - by any name - deal with lawyers who ask uncomfortable questions, who take on contentious cases, who seek to uphold the rights of all people without fear or favour?

The RUC as a police force – and I use the word "force" very deliberately – bears total responsibility for the sins of its past. Whether by act or omission, each and every member of the force must face up to the fact that they bear some responsibility for what has happened.

The victims of their atrocities cannot deny nor forget what happened. Indeed, the generosity of spirit of many of the victims of RUC collusion puts those who are responsible to shame. These people are prepared to work hard for the future of Northern Ireland, both for their own sake and the sake of future generations. But they should not be asked to simply swallow their pain. They should not be asked to erase the memory of those they have lost. They should not be asked to watch as those who have abused and killed and conspired to kill them and their loved ones are ushered into a new police service without being asked to render so much as an apology.

If we are to truly see a new police service for all of the community in Northern Ireland then there must be courage underlying our convictions. We must be able to turn to those who are not capable of participating in a new police service based on tolerance and respect for others, and tell them that they have no place. I do not deny that this is a difficult task. But in doing what must be done, we are acknowledging that wrongdoing of the most heinous kind has taken place, and that there are some acts which cannot go unpunished. The dead have paid the ultimate price – I believe it is right and proper that those responsible should not escape without payment of any kind.

I thank this honourable Committee for its time."

STATEMENT OF MICHAEL POSNER

EXECUTIVE DIRECTOR
LAWYERS COMMMITTEE FOR HUMAN RIGHTS

MEETING ON

"THE PATTEN COMMISSION REPORT ON POLICING IN NORTHERN IRELAND"

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON INTERNATIONAL RELATIONS
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS
AND HUMAN RIGHTS

SEPTEMBER 24, 1999

1. Introduction

Chairman Smith and members of the Subcommittee, thank you for inviting me to testify. We appreciate your longstanding interest in human rights issues in Northern Ireland, and for giving us the opportunity to share our perspective on these important matters.

The Lawyers Committee for Human Rights has been actively involved in issues relating to Northern Ireland since 1990. In 1993, the Lawyers Committee issued a detailed report entitled "Human Rights and Legal Defense in Northern Ireland: The Intimidation of Defense Lawyers, the Murder of Patrick Finucane." A follow-up report, published in 1995, was entitled "At the Crossroads: Human Rights and the Northern Ireland Peace Process." It examined emergency laws in Northern Ireland, recommending an end to Emergency Law Provisions.

In 1997 I testified before this Subcommittee that:

"The denial of human rights has been and continues to be at the heart of the conflict. By the same token, it is only by reasserting the centrality of rights that peace can be achieved. By addressing longstanding human rights concerns such as the repeal of emergency legislation, the authorities in Northern Ireland can build confidence on both sides. By taking concrete measures to build an independent legal system, and by strengthening the rule of law, both Nationalists and Unionists will see tangible benefits associated with the peace process."

The Good Friday Agreement, adopted last year, included a number of specific references to human rights. It called for establishment of a number of mechanisms, including the Policing Commission aimed at addressing human rights concerns in the context of the peace process agenda.

In July of this year, we published a detailed submission to the Commission on Policing for Northern Ireland. It was based, in part, on two Lawyers Committee missions to Northern Ireland in February and March. I participated in the latter of these missions, along with Robert McGuire, a former Commissioner of Police for New York, Alice McGillion, a former First Deputy Commissioner of Police for New York, and Kenneth Feinberg, a Washington lawyer who previously served as Staff Counsel to the U.S. Senate Judiciary Committee.

We welcome the publication of "A New Beginning: Policing in Northern Ireland", the report of the Independent Commission on Policing for Northern Ireland. My colleagues on the next panel will address some of the specific recommendations contained in that report. I want to commend Chairman Patten and his colleagues for their extraordinary efforts over the last 15 months and for their very thoughtful assessment and recommendations. Through Chairman Patten's leadership, The Commission on Policing spent months attending public hearings on Northern Ireland, hearings to which more than 10,000 people attended. Responding to their obvious openness to outside ideas and recommendations, more than 2,500 individuals and organizations, including the Lawyers Committee, made written submission to the Commission. We have attached a copy of our submission to the Commission on Policing, and ask that it be included in the record of these hearings.

In his statement accompanying the release of the report, Mr. Patten outlined nine major elements. The first two elements he discussed are Human Rights and Accountability.

With respect to human rights he said:

> "We recommend a comprehensive programme of action to focus on policing in Northern Ireland on a human rights-based approach. We see the upholding of fundamental human rights as the very purpose of policing, and we propose that it should be instilled in all officers from the start—in the oath they take, in their training, and in their codes of practice and in their performance appraisal system."

With respect to accountability, he said in part:

> "For matters of covert policing [which every police service needs] we recommend legislation that is fully compliant with the European Convention on Human Rights, the same for Northern Ireland as for the rest of the United Kingdom, and an independent commission for covert law enforcement in Northern Ireland as well as a complaints tribunal.
>
> On complaints more generally, we endorse fully the recommendations made by my colleague, Dr. Maurice Hayes, in his 1996 report concerning a police ombudsman, and we make some proposals as to how the new office should work to best effect."

Human Rights. Accountability. We applaud Chairman Patten's decision to stress these two elements. We fully support the Commission's recommendations with respect to the Police Ombudsman, especially that the Ombudsman should have the power to initiate inquiries of investigations even if no specific complaint has been received, and that he or she should have access to all past reports on the RUC. If these and similar recommendations are implemented, they will help establish greater police accountability in future cases.

Building a culture of human rights and accountability in the future will also require some process for addressing past violations. In our submission to the Commission on Policing we suggested that, "It may wish to recommend the creation of some form of Truth and Reconciliation Commission, or other reconciliation forum, as a long-term objective." We cited a proposal by Amnesty International to create "a process open to all members of the community to acknowledge the legacy of abuses throughout the conflict, and provide mechanisms for investigation, justice and redress in individual cases."

We also recommended that the Commission on Policing make recommendations to the UK government in two specific cases, the 1989 murder of Patrick Finucane, and the murder earlier this year of Rosemary Nelson, both of whom were distinguished human rights lawyers. We regret that the cmmission's report is silent with respect to these cases.

We believe that future progress in developing a rights-sensitive police force in Northern Ireland depends on breaking the existing cycle of impunity. We understand Mr. Patten's contention that his has been "a forward looking exercise and that this is a forward looking report," and the stance

he has taken that the Commission was "not set up to make judgments." At the same time, our own experience in situations such as this, where societies are in transition, demand that the legacy of past abuses be squarely confronted if a solid foundation for the future is to be laid. It is clear that not all of these abuses can be addressed or rectified. It is our experience, however, that there are certain cases that embody the most profoundly entrenched practices and problems that the peace process aspires to overcome.

For this reason, we urge this Subcommittee to continue its vigilant attention to the Finucane and Nelson cases, at the same time that it examines broader reforms proposed by the Patten Commission's report. I devote the remainder of my testimony to summarizing the current status of both cases.

2. The Patrick Finucane Case

There have been a number of important developments in recent months relating to the investigation of the 1989 murder of Patrick Finucane.

In February, British Irish Rights Watch presented a new report on the Finucane case to the governments of the United Kingdom and Ireland, and to the UN Special Reporter on the Independence of Judges and Lawyers. It contains credible new evidence relating to the issue of official collusion. Jane Winter, the author of that report, is testifying here today, and would, I am sure, be happy to provide more detail.

In April, the UK government reopened the police investigation of the Finucane case. The Chief Constable of the RUC appointed Mr. John Stevens to lead it. Mr. Stevens, who has recently been appointed Chief of the London Metropolitan Police, has conducted two previous inquiries related to the Finucane murder. These two inquiries, of 1990 and 1995 were conducted confidentially, and the reports of their findings have never been made public, The exact terms of reference of these inquiries have never been clear. Mr. Stevens and the Northern Ireland Office (NIO) have issued conflicting and contradictory statements in this regard, which have compounded the confusion. In our view the new Stevens inquiry is not a substitute for an independent inquiry in the Finucane case, an action we have consistently proposed since 1992.

On June 22, a former police informer, William Stobie, was arrested and charged in connection with the Finucane murder. At his arraignment Mr. Stobie's lawyer suggested that both the RUC and the Director of Public Prosecution had been in possession for some time of the information on which the charge is based.

When the charge was read out in Belfast Magistrates Court, Mr. Stobie said, "Not Guilty of the charge that you have put to me tonight. At the time I was a police informer for Special Branch. On the night of the death of Patrick Finucane, I informed Special Branch on two occasions by telephone of a person who was to be shot. I did not know at the time of the person who was to be shot."

The clear implication of Mr. Stobie's statement is that his contacts in the special branch could have taken steps to prevent the murder. According to a news article published in the Dublin-

based *Sunday Tribune* on June 27, Mr. Stobie told journalist El Maloney in 1990 about his involvement in the killing so that if he ever feared that his life was in danger, his story would be made public. According to Mr. Maloney's article, in February 1989 Mr. Stobie gave the RUC Special Branch the following information:

> "That an Ulster Defense Association (UDA) 'hit' against a high-level target was planned, that the identity of the UDA commander in charge of the operation was known, and that there was full official awareness of the precise route through which the UDA gang was going to get the murder weapons."

Shortly after the article was published, Mr. Maloney was asked by the RUC to provide them with the notes of his 1990 interview with Mr. Stobie. When Mr. Maloney refused, the RUC sought and received a court order compelling him to turn over his work product. The case is now in the courts. If he loses, Mr. Maloney faces a fine and up to five years in prison.

We find it sadly indicative of misplaced judicial priorities that today the only judicial activity on the Finucane case is the prosecution of an aggressive reporter who is seeking to get at the truth, and the legal proceeding against William Stobie.

These and other recent events underscore the need for a full independent inquiry into all aspects of the murder of Patrick Finucane including allegations of official collusion. Some UK authorities have recently suggested that the current criminal investigation, led by Mr. Stevens, precludes such an independent inquiry. We disagree. At a minimum, there is nothing that prevents UK authorities from announcing the establishment of an independent inquiry, or from appointing members to such an inquiry. The time is long overdue for such an independent inquiry to be put into place.

As we wrote to the Commission on Policing in July:

> "In order for the process of creating a new beginning for policing in Northern Ireland to go forward, certain aspects of past policing practice must be brought into the open. If official responsibility is found [in the Finucane case] a degree of accountability must ensue. This would signal a break in the cycle of impunity, thereby playing an important role in encouraging support for the police force from the communities."

3. The Rosemary Nelson Case

Lurgan Solicitor Rosemary Nelson was killed on March 15, the result of injuries sustained when a bomb exploded under her car. A dissident loyalist paramilitary group, The Red Hand Defenders, has claimed responsibility for the killing. But, to date, no one has been publicly arrested or charged with the murder.

One year ago, on September 29, 1998, Ms. Nelson appeared before this Subcommittee. As many of you will remember, she testified that:

> "Since I began to represent such clients [detained under emergency laws] and especially since I became involved in a high profile murder case, I have begun to experience difficulties with the RUC. These difficulties have involved RUC officers questioning my professional integrity, making allegations that I am a member of a paramilitary group, and, at their most serious, making threats against my personal safety, including death threats."

According to Ms. Nelson's testimony, these threats by members of the RUC were conveyed to her through her clients during interrogation, which routinely occurs without counsel under the emergency laws.

An RUC inquiry into a formal complaint of harassment and intimidation was considered so inadequate by a supervisory body, the Independent Commission for Police Complaints (ICPC), that it took the unprecedented step of recommending to the RUC that the London Metropolitan Police take over this inquiry.

According to an ICPC statement:

> "By the conclusion of the investigation it was satisfactory, but...there were aspects of the earlier stages that gave rise to serious concerns as to its proper conduct."

The ICPC statement goes on to conclude:

> "Throughout the investigation the [ICPC] Supervising Member consistently raised concerns about its conduct and the behavior and attitudes displayed by police officers in the course of interviews. Unfortunately she concluded that the accumulated effects of these shortcomings was such as to be seriously damaging to the investigation itself."

Finally the ICPC's Supervising Member concluded:

> "The investigation of the alleged threats to Mrs. Nelson by officers of the RUC was unacceptable...because...the ill disguised hostility to Mrs. Nelson on the part of some police officers was indicative of a mindset which could be viewed as bordering on the obstructive."

On March 30, the Chief Constable of the RUC announced the appointment of Mr. Colin Port as officer in overall command of the Rosemary Nelson investigation. Mr. Port is the Deputy Chief Constable of the Norfolk Constabulary in England.

We welcomed Mr. Port's appointment and have never questioned his professionalism, his integrity or his desire to conduct a full, fair investigation. However, we continue to be concerned that the structure of this investigation has been, and continues to be, seriously deficient.

We have communicated these concerns to UK authorities including, most recently, in a letter to Dr. Marjorie Mowlam, the Secretary of State for Northern Ireland. I have attached a copy of our letter, dated September 15, 1999, and ask that it be made part of the record of these hearings.

In that letter we note that Mr. Port's team is working out of an RUC station in Lurgan. While this may have the advantage of convenience, it also creates a major disincentive for many potential witnesses or for those with information to come forward.

We also note that while the UK government says that witness statements can be made confidentially to officers based in England, the options of confidentiality are not widely known, and are rarely if ever made the subject of a public broadcast in Northern Ireland, other than through RUC channels.

While Mr. Port has set up three different databases, and has authority to decide who has access to what, we also remained concerned that any RUC officer may have access to this material. In our view, this possibility further impairs the effectiveness of the investigation.

As we wrote to Dr. Mowlam last week, our concern is that people who may have important information are not coming forward because of the RUC's central involvement in this investigation, and because of their possible access to sensitive information. In the context of recent events in Northern Ireland, such concerns are not unreasonable, and must be addressed more definitively than they have been to date. In sum, we believe that the investigation into Rosemary Nelson's murder must be conducted by an authority that is fundamentally independent, and one that is seen to be independent of the RUC.

4. Conclusion

The challenge now facing the authorities, following the publication of the Patten Report, is to take all necessary steps to implement fully its proposals to ensure that future policing arrangements in Northern Ireland are based squarely on the principles of human rights and accountability. As the Patten Report makes clear, the problems that must be overcome are deeply ingrained. We recognize that it may take some time for the human rights dimension of the report's recommendations to become a reality for policing in Northern Ireland. But we believe that the focus of the report, and its "new approach" to longstanding problems, have made the task a more achievable one.

Thank you.

DISCLOSURE STATEMENT UNDER HOUSE RULE XI

The Lawyers Committee for Human Rights has not received any federal grant, contract, or subcontract in the current or preceding two fiscal years.

Michael Posner has been the Executive Director of the **Lawyers Committee for Human Rights** since 1978. Mr. Posner has represented the Lawyers Committee at the United Nations General Assembly and the UN Commission on Human Rights, the Organization of American States and its Inter-American Commission on Human Rights. He has testified before numerous Congressional committees on human rights and refugee law matters. In addition, he has participated in human rights missions on behalf of Amnesty International, the American Bar Association and the Association of the Bar of the City of New York and the Lawyers Committee. He has traveled extensively for the Lawyers Committee in all regions of the world.

Since 1984 Mr. Posner has been a visiting lecturer at Columbia Law School and from 1981-84 he was a visiting lecturer at Yale Law School. He has written extensively on human rights and foreign policy issues for numerous publications and is a member of the Council on Foreign Relations.

He was educated at the University of Michigan and the University of California, Berkeley Law School (Boalt Hall) and is a member of the Bar in California and Illinois.

LAWYERS COMMITTEE
FOR HUMAN RIGHTS

333 Seventh Avenue, 13th Floor
New York, New York 10001-5004
USA

Telephone (212) 845 5200
Facsimile (212) 845 5299
E-mail: nyc@lchr.org
http://www.lchr.org

Washington, D.C. Office:
100 Maryland Avenue, N.E.
Suite 500
Washington, D.C. 20002-5625

Telephone (202) 547 5692
Facsimile (202) 543 5999
E-mail: wdc@lchr.org

The Rt. Hon. Dr. Marjorie Mowlam, MP
Secretary of State for Northern Ireland
Stormont Castle
Upper Newtonards Road
Belfast BT4 3ST
United Kingdom

BY FAX: 44 1232 528 201

September 15, 1999

Dear Dr. Mowlam:

Thank you for your letter of July 16 concerning the investigation into Rosemary Nelson's murder. I appreciate your taking the time to address a number of the issues I raised in my letter of June 14, 1999.

As you know, the Lawyers Committee's primary objective is for there to be a full and independent investigation that will result in successful prosecution of those involved in this crime. As almost six months have passed since Mrs. Nelson's murder, we are increasingly frustrated by the lack of success with this investigation, a frustration we imagine you share.

In your letter you say that while the police did know about the threats against Mrs. Nelson, they did not have information "to substantiate" such threats. You also say that the police had "no information to indicate a specific threat against Rosemary." These distinctions miss the point. The threats against Rosemary Nelson were serious, repeated and well known. These threats were reported by human rights groups and by Mrs. Nelson herself.

We wrote to you in October 1997 expressing serious concern about Mrs. Nelson's safety. In that letter, we detailed a number of threats she had received. We also noted that these threats occurred in the context of a longstanding pattern of official harassment and attacks against lawyers who represent clients arrested, charged and detained under emergency legislation.

On September 29, 1998, Mrs. Nelson testified before the International Operations and Human Rights Subcommittee of the U.S. House of Representatives. In her testimony, Mrs. Nelson stated that:

"[s]ince I began to represent such clients [detained under emergency laws] and especially since I became involved in a high-profile murder case, I have begun to experience difficulties with the RUC. These difficulties have involved RUC officers questioning my professional integrity, making allegations that I am a member of a paramilitary group and, at their most serious, making threats against my personal safety, including death threats."

As you know, these threats also were the subject of a formal review by the Independent Commission for Police Complaints (ICPC) prior to Mrs. Nelson's murder. According to the ICPC statement,

"'the investigation...was satisfactory, but...there were aspects of the earlier stages that gave rise to serious concerns as to its proper conduct." Thus, "[t]hroughout the investigation the [ICPC] Supervising Member consistently raised concerns about its conduct and the behavior and attitudes displayed by police officers in the course of interviews. Ultimately she concluded that the accumulated effect of these shortcomings was such as to be seriously damaging to the credibility of the investigation itself."

The Supervising Member of the ICPC observed, *inter alia*, that "the investigation of the alleged threats to Mrs. Nelson by officers of the RUC was unacceptable ...because ... the ill disguised hostility to Mrs. Nelson on the part of some police officers was indicative of a mind set which could be viewed as bordering on the obstructive."'

The subsequent Commentary (April 1999) by ICPC Chairman Paul Donnelly on the review of the RUC investigation by Commander Mulvihill of the London Metropolitan Police raises questions as to whether there was ever an adequate substantive investigation into Mrs. Nelson's complaints against the RUC.

Despite these clear signals of imminent danger, you say that the police did not believe that these threats had "some weight behind them." If anything, this underscores the need for a fundamental change in the entire structure and approach of the police in Northern Ireland.

With respect to Mr. Port's role in the investigation, you stress that, though he reports directly to the chief constable of the RUC, he is nonetheless fully independent. We have never questioned Mr. Port's professionalism, his integrity or his desire to conduct a full, fair investigation. Our concern, as expressed to you in June, is that the structure of the investigation is seriously deficient.

To this day, Mr. Port's team is working out of an RUC station in Lurgan. While this may have the advantage of a convenience, as you suggest, it also creates a major disincentive for many potential witnesses or those with information to come forward.

Likewise, while you say in your letter that "witness statements ... can be made to GB officers" and that "it has also been the case that if someone requests that their details be kept confidential, then this will happen," it is my understanding that these options of confidentiality are not widely known, and are rarely if ever made the subject of a public broadcast – unless issued through RUC channels.

And while Mr. Port has set up three different databases, and has authority to decide who has access to what, the fact that any RUC officers may have access to this material is, in our view, further impairing the effectiveness of the investigation.

As I wrote to you in June, our concern is that people who may have important information are not coming forward because of the RUC's central involvement in this investigation and because of their possible access to sensitive information. In the context of recent events in Northern Ireland, such concerns are not unreasonable, and must be addressed much more definitively than they have been to date.

Thus, although we appreciate the progress that has been made, we urge you, as you review Mr. Port's role in the next phase of this investigation, to consider our outstanding concerns. In sum, these are:

1. That, in effect, no substantive investigation has taken place of the complaints Mrs. Nelson lodged against the RUC just prior to her killing;
2. That the RUC's continuing belief that threats against Mrs. Nelson had "no weight behind them" indicates an attitude that should preclude RUC officers from playing any authoritive role in the investigation – either in relation to bringing her killers to justice or in relation to the collusion aspect of the investigation;
3. That every effort needs to be made to encourage those with information useful to the investigation to come forward:
   - Mr Port and his team should operate out of headquarters that are outside the control and presence of the RUC;
   - Guarantees of confidentiality should be publicly broadcast.

I look forward to hearing from you and thank you again for your attention to these important matters.

Sincerely

Mike Posner

Michael Posner
Executive Director

NORTHERN IRELAND OFFICE
11 MILLBANK
LONDON
SW1P 4QE

JUL 28 1999

SECRETARY OF STATE
FOR
NORTHERN IRELAND

Michael Posner Esq
Executive Director
Lawyers Committee for Human Rights
333 Seventh Avenue
13th Floo
New York
NEW YORK 10001-5004
USA

16 July 1999

Dear Michael,

Thank you for your letter of 14 June about the investigation into the Rosemary Nelson murder. As with our previous contacts, I appreciate the constructive and helpful approach you are taking.

I apologise for not replying before now but I needed to raise with Colin Port some of the points you made, to get his view on them. I was not surprised to find that he was aware of the concerns you were expressing, and where he had found it sensible and appropriate to act he had done so.

Before getting into the detail on these points, however, I think it is important to correct the impression you have that the Chief Constable did not know about the threats to Rosemary Nelson. The Irish Times and Irish News newspapers did run stories about threats to Rosemary Nelson and included in these extracts from a letter which Adam Ingram's Private Secretary sent to the Committee on the Administration of Justice, who wrote to us about Rosemary's security.

The NIO wrote to the police about a leaflet circulating in Portadown and we asked them to take steps to assess its background and any threat or increased threat to the security of the individuals mentioned in it. Rosemary Nelson's name was included. The police response was that they had looked into Rosemary's security and, as an RUC press statement of 27 May states (copy attached) "the RUC itself did not have information to substantiate a threat to Mrs Nelson's life before her murder" (my emphasis).

It is important to understand the difference between threats of the kind in the leaflet, which no doubt caused great concern to the individuals mentioned, and threats which the police believe have some weight behind them, possibly because of intelligence information that they have. These are often referred to by the police and Government as "specific" threats. The police wrote to us in September stating that they had no information to indicate a specific threat against Rosemary.

I am not sure it adds anything, but I am enclosing a copy of the letter that Adam Ingram sent to the CAJ as I think it is better for you to see it in its entirety, rather, perhaps, than in snippets in the Irish Times.

Turning to the specific concerns you have and the suggestions you make in your letter, you express concern that Mr Port is obliged to report directly to the RUC Chief Constable, Sir Ronnie Flanagan. Legally this is how it has to be. Nevertheless, those who have met Colin Port have been impressed by his independence and by the way he is conducting the investigation. To all intents and purposes it is his investigation, he calls the shots, and he determines what resources he wants, and what lines of enquiry he wishes to pursue.

You suggested that Mr Port and his team should be given headquarters outside the "control of the RUC". We raised this point with Mr Port and, as I mentioned, he was aware of concerns about this. Nevertheless, he feels that he is best placed in Lurgan, close to the scene of the incident and the majority of witnesses. He emphasised that his team were isolated from other operational officers at Lurgan.

Another suggestion is that Colin Port should have final decision-making authority as to when and how to use RUC expertise. He has this. It is up to him to decide which officers to put into which posts and to deploy on which tasks. He keeps the structure of his investigation under review and is aware of public concerns. The team investigating alleged collusion continues to operate under a GB Superintendent and no longer includes RUC officers as part of the team.

Linked to this, and dealing with your last suggestion, his team have three different databases. One dealing with the murder investigation material, one dealing with intelligence material and a third dealing with sensitive collusion aspects. Colin Port has determined the access to these systems and obviously there are significant restrictions on the second and third.

Finally, you mention the situation concerning witness statements. It has always been the case that these can be made to GB officers. It has also been the case that if someone requests that their details be kept confidential, then this will happen. The detail of their statement will be put on the murder inquiry database, but their personal details will be held separately and securely.

I consider that Colin Port has shown himself to be an extremely professional officer who has recognised and acted to assuage public concerns where he sees this as in the interests of the investigation.

MARJORIE MOWLAM

The Rt. Hon. Dr. Marjorie Mowlam, MP
Secretary of State for Northern Ireland
Stormont Castle
Upper Newtonards Road
Belfast BT4 3ST
United Kingdom

Fax: 44 1232 528 201

June 14, 1999

Dear Dr. Mowlam,

On June 15, it will have been three months since Rosemary Nelson was killed. No one has yet been charged with her murder, and we write to express our continuing concerns about the structure of the current investigation.

When we met on March 26, in Belfast, my colleagues and I expressed our concerns about RUC involvement in the investigation. These concerns are based on the allegations of RUC threats and harassment made by Mrs. Nelson before her death, as well as the inadequacy of the RUC's investigation into her complaints, as documented by the ICPC Supervising Member's report. In addition, we were concerned that people from her community would not go to RUC officers with information concerning the killing. We stated at that time our belief that, to be effective, the investigation into Mrs. Nelson's murder had to be conducted by an authority fundamentally independent of the RUC.

On April 2, I wrote to you seeking clarification of the Norfolk Deputy Chief Constable, Mr. Colin Port's, autonomy as the newly appointed Officer in Overall Command of the murder investigation. I was encouraged by Mr. Port's appointment, yet continued to be concerned about the level of RUC involvement. On April 18, you replied, assuring me, in the words of the RUC Chief Constable, that there would be "no limit or constraint whatsoever" placed on Mr. Port in the discharge of his functions, and that he would have complete access to police resources.

It is the Lawyers Committee's view that, despite the progress made towards addressing the independence of the investigation, its structure is still deficient for the following reasons:

- Mr. Port, while Officer in Overall Command of the Investigation, is still obliged to report directly to the RUC Chief Constable, Sir Ronnie Flanagan;

- Although Mr. Port has brought in a team of investigators from outside Northern Ireland to work on the investigation, they are working out of the RUC station in Lurgan, and indeed, use the RUC database to which RUC officers have access;

- There continue to be RUC officers working on every aspect of the murder investigation, including on the team which investigates the allegations of collusion.

It is our firm belief that these deficiencies are continuing to hamper the investigation. Our concern that people will not come forward with important information because of the RUC's central involvement in the investigation has not been addressed or alleviated. Such people do not have a guarantee as to the confidentiality of any information they produce. In addition, the sharing of premises and databases greatly undermines the appearance of independence that, we submit, is needed for this investigation to gain any respect, or indeed, result. Finally, the fact that RUC officers sit on the collusion team seriously compromises its ability to get such information.

The RUC's reputation with regard to the investigation has been further compromised by recent statements by the RUC Chief Constable. An Irish Times article of June 3, cites the minutes of a Police Authority meeting in April, where Mr. Flanagan claims that "prior to her murder the RUC did not have information to suggest that she was the subject of a specific terrorist threat." Such an assertion is at odds with our own experience, and my own conversation with Mr. Flanagan in Belfast in June 1998. At that meeting I explicitly told the Chief Constable about the threats against her. The Committee on the Administration of Justice (CAJ) has told us that it forwarded a copy of a handwritten death threat against Mrs. Nelson to the Northern Ireland Office, in August 1998. The CAJ was assured, in response, that the threat would be forwarded to the RUC for full investigation.

In order for the investigation to make progress, and for any finding on the collusion question to be respected by interested parties, particularly Mrs. Nelson's family, we offer the following suggestions:

- Mr. Port and his team of outside investigators should be given operational headquarters in Northern Ireland that are outside the control of the RUC;
- They should, of course, consult with RUC officers who have useful knowledge, contacts and experience to aid the investigation. This should be done, however, on an as-needed basis, with Mr. Port having the final decision-making authority as to when and how this expertise will be used;
- The team within the investigation that is looking at the collusion allegation should not contain any RUC members;

- Mr. Port and his team of outside investigators, while continuing to have complete access to RUC files and databases, should create their own, confidential database for the duration of the investigation.

I appreciate your taking the time to consider the Lawyers Committee's concerns, and strongly urge you to mark the three-month anniversary of Mrs. Nelson's killing by effecting the structural changes to the investigation as outlined above. I look forward to hearing from you with respect to these important matters.

Sincerely,

Michael Posner

Submission to the Commission on Policing For Northern Ireland

July 1999

Lawyers Committee for Human Rights

Lawyers Committee for Human Rights

Since 1978 the Lawyers Committee for Human Rights has worked to promote international human rights and refugee law and legal procedures in the United States and abroad. The Chair of the Lawyers Committee is Norman Dorsen; Michael H. Posner is its Executive Director. Stefanie Grant is Director of Program and Policy. George Black is Research and Editorial Director.

Copies of this report are available from:

Lawyers Committee for Human Rights
333 Seventh Avenue, 13th floor
New York, NY 10001 USA
tel: (212) 845-5240
fax:(212) 845-5299
e-mail: comm@lchr.org

100 Maryland Avenue, NE
Suite 500
Washington, DC 20002 USA
tel: (202) 547-5692
fax:(202) 543-5999
e-mail: wdc@lchr.org

http://www.lchr.org
http://www.witness.org

ORAL SUBMISSION TO THE HOUSE COMMITTEE ON INTERNATIONAL RELATIONS' SUBCOMMITTEE ON INTERNATIONAL OPERATIONS AND HUMAN RIGHTS

PLASTIC BULLETS: A LETHAL WEAPON

SEPTEMBER 1999

INTRODUCTION

British Irish RIGHTS WATCH is an independent non-governmental organisation that has been monitoring the human rights dimension of the conflict, and latterly the peace process, in Northern Ireland since 1990. Our services are available, free of charge, to anyone whose human rights have been violated because of the conflict, regardless of religious, political or community affiliations. We take no position on the eventual constitutional outcome of the conflict.

We are opposed to the deployment of plastic bullets because we regard them as lethal weapons that should have no place in the policing of a democratic society at the end of the twentieth century.

PLASTIC BULLETS – A LETHAL WEAPON

Rubber bullets were introduced in Northern Ireland in 1970 and continued to be used until 1975. Plastic bullets were introduced in 1973. The version currently in use is 4 inches long, 1.5 inches wide, and weighs 5 ounces. Plastic bullets are made of a much harder substance than rubber bullets.

A plastic bullet fired at 50 yards distance can be fatal or cause serious injury. Most plastic bullets are fired at much closer range than that, sometimes at point blank range. The guidelines for their use recommend a minimum distance of only 20 yards.

Problems have occurred with the manufacture and use of plastic bullets. In 1997 a batch of the bullets had to be withdrawn after they were found to have muzzle velocities in excess of the recommended upper limit. A second batch were subsequently found to be heavier than the permitted limit. Independent observers monitoring the situation during the summer marching season in Northern Ireland in recent years have observed the guns used to fire plastic bullets jamming and overheating when used repeatedly.

Although intended as a non-lethal weapon, seventeen people have died as a result of the use of rubber and plastic bullets. Rubber bullets have resulted in 3 deaths, and plastic bullets in 14. The ratio of deaths to bullets fired shows that plastic bullets are more than four times as deadly as rubber bullets.

FATALITIES CAUSED BY PLASTIC AND RUBBER BULLETS

Of the 17 people killed by plastic bullets:

- All but one of the victims were Catholics.
- Nine of the seventeen victims were aged 18 or under, the youngest being 10 years old. Only five of the victims were aged over 21.
- Many of the victims were not involved in rioting.
- Many of the victims were shot at much too close a range and were struck in the head or upper body, in contravention of the guidelines then in force.
- Six of the victims did not die immediately but lingered for between one and fifteen days.

INJURIES CAUSED BY PLASTIC BULLETS

According to the report of the Patten Commission 615 people have been injured by plastic bullets since 1981. The report does not give the origin of this figure, but it is almost certainly an underestimate.

The fact that the last fatality caused by a plastic bullet happened in 1989 does not indicate that plastic bullets are used less often, nor does it appear that they have become any safer.

A solicitor in Northern Ireland put in a submission to the Patten Commission concerning his professional experience of dealing with cases of injury caused by plastic bullets during the disturbances surrounding the marching season in the summers of 1996 and 1997. By June 1998 he had settled 17 of his 24 such cases, none of which went to court, and had obtained the sum of £428,204 in damages for his clients.

The cases involved very serious injuries, including two people who each lost an eye, fractured jaws, other eye injuries, and injuries to the back, chest and abdomen.

The guidelines for the use of plastic bullets say that they should be fired so as to strike the target in the lower part of the body. It is obvious that in the majority of these cases that the guidelines were not followed. Several of these injuries were life-threatening, and have resulted in permanent maiming and scarring. It is simply a matter of luck that no-one was killed.

In April 1999 a group of five senior doctors who had treated people injured by plastic bullets during the period 8th to 14th July 1996 in six different hospitals published their findings. During that week, 8,165 plastic bullets were fired throughout Northern Ireland. They treated 155 patients who had sustained 172 injuries. 19% of these injuries were to the head, face or neck; 20% were to the chest or abdomen; and 61% were to limbs. 42 patients had to be admitted to hospital, three of them to intensive care. The age of the patients ranged from 14 to 54 years. 28 of those injured were aged 20 or under; 66 were aged between 21 and 30; the rest being older. 16 of the victims were women.

Their findings show that at least 39% of injuries were sustained to the upper body, in contravention of the guidelines. They also show that young men were overwhelmingly likely to be the targets of plastic bullets. After reviewing other medical studies of the effects of plastic bullets, the doctors concluded that, whereas the previous standard for deeming such injuries to be life-threatening had been injury to the diaphragm or above, a more appropriate measure would be injuries to the abdomen or above. By that measure, 39% of all the cases they treated involved life-threatening injuries.

DOMESTIC AND INTERNATIONAL LAW ON THE USE OF PLASTIC BULLETS

Domestic law on the use of lethal force forces short of the international standards set by the European Convention on Human Rights. Despite the fact that the guidelines for the use of plastic bullets have been flouted on many occasions, no member of the security forces has ever been prosecuted for causing a death in such circumstances.

The use of plastic bullets is contrary to the spirit and intention of the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, to which the United Kingdom government subscribes.

DOMESTIC AND INTERNATIONAL CONCERN ABOUT PLASTIC BULLETS

In May 1982 the European Parliament voted to ban the use of plastic bullets throughout the European Community.

In 1995 the United Nations Committee Against Torture mentioned plastic bullets as being a matter of concern. In 1998, the Committee recommended "the abolition of use of plastic bullet rounds as a means of riot control".

In 1995 the Honorable John Shattuck, US Assistant Secretary of State for Democracy, Human Rights and Labor, also expressed concern about plastic bullets in an address to a conference organised by human rights groups, calling for "the elimination of such deadly security measures as the use of plastic bullets for civilian crowd control". In January 1996 the International Body charged with considering the decommissioning of weapons in Northern Ireland, chaired by former Senator George Mitchell, called for " a review of the situation with respect to... the use of plastic bullets".

In 1996, CAJ organised systematic independent observation across Northern Ireland of the way that the RUC policed the summer marching season, and were able to publish an authoritative report which highlighted a number of serious concerns about the RUC's actions, including their excessive use of plastic bullets and the fact that between 7th and 14th July that year more than eight times as many plastic bullets were used against nationalists as were used against unionists.

Following the publication of CAJ's report, the government asked Her Majesty's Inspector of Constabulary (HMIC), the body that inspects police services in the United Kingdom, to make a particularly close study of the way in which the RUC deployed plastic bullets. HMIC's report expressed concern about the training, command structure, and reporting system for plastic bullets in Northern Ireland, and highlighted the weaker guidelines for their deployment that pertained in Northern Ireland.

THE GUIDELINES FOR USING PLASTIC BULLETS

Until August 1997, the guidelines for the use of plastic bullets were not publicly available. When they were finally made public, it became apparent that the guidelines issued to the RUC and those issued to the army were not the same.

despite the fact that both arms of the security forces frequently fired plastic bullets together at the same event.

Although plastic bullets have never been used in England and Wales, guidelines for their use there were much more restrictive than those pertaining until very recently in Northern Ireland, where 17 people have died.

On 1st August 1999, following a review of the used of plastic bullets by the Association of Chief Police Officers, new rules were brought in that will apply across the board. Although this tightening of the rules is welcome, it is no substitute for the banning of plastic bullets altogether. Moreover, it opens up the possibility that this lethal weapon will now be deployed in England and Wales as well as Northern Ireland, only months after the United Nations recommended the abolition of their use.

There is another worrying aspect of the new guidelines: they define the lower part of the body as "below the rib cage". This does not take account of the medical evidence which suggests that injuries to the abdomen can be life-threatening.

FIRING RATES

On average, just over 1,000 plastic bullets were fired each year between 1982 and 1995. In 1996, however, 8,165 plastic bullets were fired in a single week during the Drumcree crisis. In 1997 some 2,500 plastic bullets were fired during the equivalent week. In 1998, 823 bullets were fired during Drumcree, and in 1999, according to the RUC, only one plastic bullet was used.

Furthermore, the use of plastic bullets has decreased each year since 1996, although that decrease must be seen in the context of a sharp increase in 1996 – 1998 over the previous seven years.

THE RECENT DECREASE IN THE DEPLOYMENT OF PLASTIC BULLETS

There are a number of reasons for the very recent decrease in the deployment of plastic bullets. They include:

- the growing domestic and international concern about the use of plastic bullets, as set out above.
- the relative increase in the level of unionist protest and the decrease in nationalist protest. This has been particularly marked since 1998, when for the first time the Orange Order was prevented from marching down the Garvaghy Road.
- the improving climate in which civil unrest has occurred. As the ceasefires, imperfect though they are, have endured, and with strong public support for the Good Friday Agreement, sustained political efforts to reach accommodation over contentious marches has helped to defuse the situation.
- the review of the guidelines for the use of plastic bullets by the Association of Chief Police Officers

- the setting up of the Patten Commission under the Good Friday Agreement, which put the RUC under the closest scrutiny it has ever experienced.

THE PATTEN COMMISSION AND PLASTIC BULLETS

The Patten Commission has expressed concern that the government, the Police Authority and the RUC have collectively failed to invest more time and money in a search for an acceptable alternative to plastic bullets. However, they have felt unable to recommend that they no longer be used, but have said that the search for an alternative must be intensified. They have also recommended tougher guidelines and more accountability for their use.

This is a disappointing stance. Plastic bullets have never been deployed for riot control in England and Wales, despite the occurrence over the years of a number of serious and violent riots, including race riots and riots against the poll tax and, earlier this year, against capitalism. English police forces have been able to police these riots without recourse to plastic bullets, and - although police officers, demonstrators and members of the public have all been injured on occasion – without loss of life or anything like the number of injuries caused by plastic bullets. It is simply not the case that the RUC would have no other means at its disposal than hand-held batons or live ammunition were it to abandon the use of plastic bullets. Indeed, its claim to have fired only one plastic bullet during the week of Drumcree this year shows that the RUC is capable of policing some situations of serious public unrest without resorting to plastic bullets.

CONCLUSION

In our opinion, once plastic bullets are available to a police force, their use becomes inevitable, and once they are used, experience shows that abuse also becomes inevitable. Although physically different from live ammunition, both in form and effect, the firing of plastic bullets from a weapon has the same psychological effect on police officers as the use of an actual firearm. They give the police officer concerned such a disproportionate advantage over an unarmed civilian, however riotous his or her behaviour, that the officer is very likely to resort to it as a means of self-protection that can be operated at a relatively safe distance from any opponent. This may also mean that police officers will fail to make full use of any opportunity that may exist or arise for defusing violent situations by less draconian means that might be attempted by unarmed officers. We recognise that, however well-trained police officers may be, and however tight the guidelines under which they operate, in the heat of the moment and especially when in fear for their own safety or that of their colleagues they are likely to over-react. Furthermore, the use of plastic bullets, especially if it appears to be indiscriminate, may provoke an already riotous crowd to become even more violent. A weapon that has caused so many fatal and serious injuries during the history of its deployment is, we argue, unsuitable for use in crowd control in any civilised democracy.

SEPTEMBER 1999

Committee on the Administration of Justice
45/47 Donegall Street, BELFAST BT1 2FG
Telephone (01232) 232394 Fax 246706
International 44 1232 232394 Fax 246706
Website: http//ourworld.compuserve.com/homepages/Comm_Admin_Justice/

Statement of Maggie Beirne

Committee on the Administration of Justice, Belfast

Before the US Congress regarding human rights in Northern Ireland

Friday, 24 September 1999

Statement of Maggie Beirne

Committee on the Administration of Justice, Belfast

Before the US Congress regarding human rights in Northern Ireland

Friday, 24 September 1999

Thank you for your 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 for a just and peaceful society where the human rights of all are fully protected. CAJ was awarded the 1998 Council of Europe Human Rights Prize in recognition of its efforts to place human rights at the heart of the peace process. We have a broad remit which covers many conflict-related issues such as prisoners, emergency law, and miscarriages of justice, and also concerns such as fair employment, the rights of women and children, people with disabilities, and the need for effective government action to prevent racial discrimination. Since our foundation in 1981, we have worked consistently on issues of policing, and the rest of this submission relates to that topic.

As early as 1995, CAJ argued for an independent international commission to look into future policing in Northern Ireland, and accordingly we worked hard to ensure that reference to such a body would be included in the Good Friday Agreement. We welcomed the broad terms of reference given to the Commission by the Agreement, and sought to work constructively with the Commission as soon as it came into being under the leadership of Chris Patten. We were fortunate enough to have earlier secured funding from the Ford Foundation and others to undertake a major comparative research project into good policing practice in a variety of jurisdictions around the world. The findings arising from that study have underpinned all our work with the Commission. We also believe that they have proved useful to the Commission in its work. This should not be surprising since the policing problems in Northern Ireland differ in degree rather than nature from those faced by many other countries around the world.

The Patten Commission worked for over fifteen months; studied well over 2000 written submissions; held hundreds of meetings in public and private; travelled around Northern Ireland, and abroad, to receive personal testimony from a wide variety of people. CAJ attended many of the meetings and studied the submissions of the political parties and other key social partners. What was apparent to us was that, despite the difficulties and disagreement, there was also a surprising level of consensus across the political divide about key aspects of the way forward.

Indeed, to assess and to build upon the consensus, CAJ organised a conference in February of this year. It brought together a very diverse audience consisting of statutory groups, the police, government bodies, local party politicians, voluntary groups and community activists from both republican and loyalist communities. On the basis of those exchanges we developed a series of "human rights benchmarks for policing change", and we would like to have those benchmarks read into the record.

It seemed to us that the Patten Commission report should - as a minimum - propose major changes in six different areas. The Commission should make major recommendations to:

- urgently improve the **under-representation** of Catholics, nationalists, women, and ethnic minorities. Such proposals should include screening, affirmative action, outreach, good redundancy packages, and most importantly the setting of ambitious but realistic targets and timetables for change in composition

- ensure that policing was fully **accountable in law**. Emergency powers should be ended, the Chief Constable's "operational independence" needs to be defined more closely, policing legislation should refer to international human rights standards, and the Police Ombudsman who will look into complaints against the police should be given greater resources and greater powers.

- completely overhaul police **training**, ensure much greater civilian involvement in the design, delivery and evaluation of training, and make human rights central to to the training process rather than an optional extra

- develop a **neutral working environment** and accordingly make recommendations about the external symbols and internal ethos of policing which would make it more attractive to under-represented groups

- create new **structures** which could be measured against their capacity to provide effective accountability, strong community partnership arrangements and more civilian involvement

- develop greater **democratic accountability** with the civic oversight bodies having greater powers, being more representative and themselves democratically accountable.

Overall, the whole package should be tested against its ability to deliver policing arrangements which would mean that you never again have to listen to the sad testimony you heard this morning, and we in Northern Ireland never have to experience such abuses again.

CAJ believes that, in general terms, the Commission has made a very genuine and constructive effort to meet the difficult task imposed on it by the Agreement. They have addressed all of the issues above, and have put forward many thoughtful and positive recommendations about the way forward. Most importantly of all, they have recognised (as did the Agreement itself) that just as human rights must be at the heart of a just and peaceful society in Northern Ireland, it must be at the heart of future policing arrangements.

In spite of these positive comments, we still, nevertheless, have some important reservations. Other colleagues will speak about the major concerns we all share with regard to the failure of the Commission to put in place a mechanism to ensure that the new police service does not retain officers who have committed human rights abuses, their failure to call for an end to the use of plastic bullets, and - of particular relevance given the earlier testimony - the Commission's failure to lend its voice to the defence of lawyers intimidated or killed because they were doing their job effectively.

This particular testimony, while sharing the concerns of the others who have preceded or who will follow will concentrate on two specific issues: emergency powers and accountability.

Emergency powers have been a feature of life in Northern Ireland since the 1920s. The legislation allows police to stop and search without reasonable suspicion, initially hold detainees for 48 hours and then, with political authorisation, for up to a total of seven days, and to deny access to a solicitor for the first 48 hours and for periods thereafter. Combined with the removal of the right to silence, the removal of the right to jury trial, the weight which can be placed on confession evidence alone, the absence until recently of video or audio taping of interrogations, such powers lead to serious human rights abuses, including serious ill-treatment of detainees and the abuse and intimidation of defence lawyers.

It is clear that if these abusive powers are not removed, the risk is very high that officers, even in a new police service with a new uniform, with a new oath, and with better training, are likely to continue to abuse human rights. This, anyway, is the experience around the world, so why should Northern Ireland be any different?

Yet in the Policing Commission's report, this fundamental issue merits two paragraphs, even though they themselves, citing academics McGarry and O'Leary, note that "much of the dissatisfaction with policing, in both loyalist and republican areas, stems from the use of emergency powers". Our own belief, shared by all the other human rights organisations present, is that the Commission should have recommended the immediate repeal of emergency laws, and argued for a reliance on the ordinary criminal law. Certainly the logic of their emphasis on international human rights standards would suggest that frequent UN calls for repeal of emergency legislation should have been heeded. The failure to make such a recommendation is all the more inexplicable when looking at the current security situation in Northern Ireland, which it could be argued poses a much smaller risk to the average person than living in London or Manchester, and probably a lot less than Washington DC!

The second issue I would like to focus on is that of accountability. Of all the topics tackled, this is probably the one where the Patten Commission responded most effectively to the oft-repeated concerns of the general public about the need for

greater accountability. There are many positive recommendations. However, at least two important problems remain. Patten endorses all the proposals about a more effective complaints system included in an earlier report by Dr Hayes and urges that those findings be implemented. It is clear that the Commission intended therefore that the authorities tackle the unacceptably high standard of proof required in complaints against the police. Yet no specific recommendation is made to this effect, and there is a risk that if no specific recommendation is made, it will be overlooked despite its significance to ensuring a really credible complaints system.

Another concern under the rubric of accountability is the role that is envisaged for democratic control at the local level. It appears to us that the recommendation to establish District Policing Partnership Boards which are merely (and I quote) "advisory, explanatory and consultative", will have little or no greater powers than their largely disparaged predecessors.

Despite these concerns, and the others raised by my colleagues, I want to emphasise again that we found much of great value in the Commission's work.

It is for that reason that this submission will conclude with a number of specific requests to this Congressional sub-committee.

Firstly, CAJ believes, along with our human rights colleagues, that many of the policing changes proposed are long over-due. Many of them have been urged on the government for years by various UN bodies and its own independent assessors. While the Patten report does not deliver everything that we had hoped - and indeed think necessary - people concerned about the protection of human rights certainly cannot settle for anything less. The Secretary of State has suggested a period of consultation, and following that there is no excuse for further delay. Congress should urge the UK government to move rapidly to implement the various positive recommendations in Patten's report.

Secondly, implementation is everything. As I said in my last testimony to US Congress, before Congressman Gilman's International Relations Committee, too many previous reports have been allowed to gather dust. We argued that Patten's report could not be allowed to do so and we very warmly welcome the proposal made by the Commission to establish an "Oversight Commissioner", to report publicly and

regularly on progress achieved. This proposal is all the more important given the early emphasis placed by the Chief Constable on the need to implement any eventual changes only as and when the improving security situation allows it. In fact the logic of Patten is that human rights abuses have fed and fuelled the conflict, and that human rights protection - and therefore policing change - must be at the heart of a just and fair society. Apart from being important in and of itself, it is this goal which will most effectively undermine violence. It is therefore vitally important that Congress continue to keep a watching brief on developments and monitor closely the process of implementation.

Thirdly, there will be little effective change in policing if the criminal justice system itself does not change. Thus, if judges continue to be unrepresentative of society as a whole; if the prosecution system does not operate in a sufficiently transparent and independent way; and if there is a remarkable pre-disposition on the part of the judicial system to always rely on the testimony of police officers - changes elsewhere will be undermined. The significance of the Criminal Justice Review, which will be reporting in a few weeks' time, cannot be over-stated. We would ask that members keep a watching brief in this area and make representations to government accordingly.

The US Congress has kindly, particularly in recent years, devoted much time and energy to the problems of Northern Ireland. If we have one message to give - it is that your work is not over just yet. Peace processes are difficult and dangerous things, with the ability to fail as well as succeed. Securing good policing will be a crucial building block for long term stability and true peace and justice in Northern Ireland. We are moving in the right direction but continued vigilance will be necessary if we are to be ultimately successful. We hope that human rights groups, local as well as international, can continue to look to you for your support around our concerns.

On the impending anniversary of Rosemary Nelson's testimony to this meeting it seems the least we can all do is commit ourselves to trying to make sure that the policing problems she testified about to your Committee are effectively remedied.

Thank you.

HUMAN RIGHTS WATCH

STATEMENT

OF

JULIA A. HALL

COUNSEL
NORTHERN IRELAND RESEARCHER
EUROPE AND CENTRAL ASIA DIVISION

HUMAN RIGHTS WATCH

24 SEPTEMBER 1999

CONGRESS OF THE UNITED STATES
HOUSE COMMITTEE ON INTERNATIONAL RELATIONS
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS AND HUMAN RIGHTS

350 Fifth Avenue, 34th Floor
New York, NY 10118-3999
TEL (212) 290-4700
FAX (212) 736-1300
E-MAIL: hwnyc@hrw.org

1630 Connecticut Ave, N.W.,
Suite 500
Washington, DC 20009
TEL (909) 612-4321
FAX (202) 612-4333
E-MAIL: hrwdc@hrw.org

33 Islington High Street
London N1 9LH UK
TEL (44171) 713-1995
FAX (44171) 713-1800
E-MAIL: hrwatchuk@gn.apc.org

15 Rue Van Campenhout
1000 Brussels, Belgium
TEL (322) 732-2009
FAX (322) 732-0471
E-MAIL: hrwatcheu@gn.apc.org

Web site: http://www.hrw.org

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave subject line blank).

Thank you, Mr. Chairman and members of the Subcommittee for inviting Human Rights Watch here today to participate in this very important open meeting.

As you all know, Human Rights Watch made a number of submissions to the Independent Commission on Policing for Northern Ireland, which I will refer to here as the Patten Commission, during the course of the commission's work. We contributed a lengthy original submission that focused on a range of human rights issues and policing in Northern Ireland (September 8, 1998); a detailed letter of concern regarding the consultation process (November 2, 1999); and—most significantly—a detailed briefing paper that proposed a vetting process for screening out police officers with abusive records from a peacetime policing service (January 16, 1999). In addition, we provided the commission with all of the primary research on human rights violations by the Royal Ulster Constabulary (RUC), Northern Ireland's police force, that has been conducted by our organization since 1991. In January 1999, representatives of Human Rights Watch met with the commission in New York to emphasize the importance of international human rights to its work and to present the briefing paper on vetting the force. A follow-up meeting held just yesterday, September 23, 1999, in New York allowed both the commission and representatives of Human Rights Watch to discuss the strengths and weaknesses of the completed report. Thus, we feel that we have invested quite a bit of time and intellectual energy in the final report of the commission and we thank the commission for remaining open and accessible to us throughout the process. We look forward to monitoring the report's implementation.

First, let me say that we recognize the enormity of the task presented to the Patten Commission and that the final report contains many progressive proposals for fundamental change in policing in Northern Ireland. We are particularly pleased that the commission proposes a new, "human rights-based approach" to policing and makes many recommendations toward that end.

However, Human Rights Watch fears that, in the end, the commission may have undermined its own handiwork by failing to include critical recommendations in the report regarding accountability mechanisms for past human rights violations committed by the RUC. As you know from my testimony last April before the International Affairs Committee, Human Rights Watch recommended to the Patten Commission that an independent vetting unit be established to screen out currently serving RUC officers with bad human rights records. We proposed a model for such a unit and listed primary and secondary source material that could be evaluated by a vetting unit for evidence of abusive police conduct. We also recommended that all officers enjoy the full range of procedural safeguards established under international law to protect the fundamental due process rights of every officer.

One might ask why we proposed such a process. As one of the members of the Patten Commission told us, such a proposal would be "politically explosive." Of course, we understand this. But we believe that the commission's stated primary goal of de-politicizing policing should begin from the beginning. To be frank, most change in Northern Ireland terms is seen as "politically explosive" and while it is important for the Patten Commission report to be considered on its merits by all sides of the community, politically expedient positions should not have been part of the commission's

project. If Northern Ireland is to finally enjoy membership in the community of peaceful, democratic nations, and indeed, take a "human rights based approach" to policing, it must be prepared to engage with what is an emerging global norm toward international justice. That is, the people, political leaders, police and the community-at-large must embrace the notion that impunity for human rights violations has no place in a society governed and policed by democratic principles. The trend toward international justice—holding accountable those state actors who have committed egregious human rights abuses—is illustrated by the Pinochet case, the ongoing work of the *ad hoc* tribunals on the former Yugoslavia and Rwanda, and the vetting of the police force in post-conflict Bosnia. The message is clear: human rights abusers must be held accountable not as a matter of revenge or retribution but as a matter of justice. We believe that such accountability forms the bridge between the past and the future and builds confidence in new, peacetime structures and arrangements.

Human Rights Watch welcomes the Patten Commission's observation that proper accountability for police misconduct has not been achieved in Northern Ireland (5.5). We have argued this point repeatedly with RUC and government officials for a number of years. The rote response from both law enforcement and government officials has been that there are numerous safeguards built into "the system" and that RUC officers are, in fact, the most scrutinized police force in Europe.

We are deeply disappointed, however, that despite the unequivocal recognition that the RUC has not committed to human rights-based policing in the past and has not been held accountable for its actions, the Patten Commission makes no recommendation regarding a vetting process to screen out and exclude from the force those officers with a past history of abusive conduct. A mechanism for accountability for past human rights violations would lay a firm foundation for the future policing arrangements that the commission has so carefully contemplated. It would have sent a strong message that human rights abuse will not be tolerated in the new policing service and would have provided a fair mechanism by which chronic and other violent abusers would be made to answer for egregious violations committed with impunity.

Interestingly, the Patten Commission readily accepts the proposition, put forward by Human Rights Watch and many other human rights groups in the course of the consultation process, that abusive police conduct, tolerated by the RUC as an institution, has, in fact, occurred in the past:

> *Although we were not a commission of inquiry, and had no powers to investigate specific allegations, we took seriously a number of allegations concerning past police performance, some of which are still under investigation (5.18).*
>
> *...we are in no doubt that the RUC has had several officers within its ranks over the years who have abused their position. Many supporters of the RUC and both serving and retired officers have spoken to us about "bad apples." It is not satisfactory to suggest, as some people have, that one should somehow accept that every organisation has such "bad apples." They should be dealt with (5.19).*
>
> *It is not simply individual officers who have been at fault here. We are not persuaded*

that the RUC has in the past had adequate systems in place to monitor and, when necessary, act upon complaints against officers and civilian claims awards (5.20).

Despite such strong language, the Patten Commission *fails* to provide a mechanism by which such "bad apples" can be dealt with and the RUC can be held accountable for institutional tolerance, if not outright complicity, in the commission of past human rights violations. In the absence of a screening process to weed out and exclude those officers with abusive human rights records, the "bad apples" and the RUC as an institution are effectively offered a grant of amnesty by the Patten Commission. This is unacceptable and clearly violates the international norm that every person whose rights have been violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity (*see Universal Declaration of Human Rights, Article 8; International Covenant on Civil and Political Rights, Article 2; European Convention on Human Rights, Article 13*). Such a grant of amnesty for past abuses also violates the international norm that perpetrators of human rights violations shall be brought to justice (*see Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary, and Summary Executions, Principle 18; U.N. Convention Against Torture; Statutes of the International Criminal Tribunals for the former Yugoslavia and Rwanda).*

A profoundly disturbing aspect of the commission's failure to provide an accountability mechanism for past abuses by the RUC lies in the naive assumption that Catholics and nationalists will join the new policing service based solely on the promise of forward-looking arrangements. The commissioners urge the people of Northern Ireland to forget the past and embark on a "fresh start" with respect to policing. Claiming that "Northern Ireland voted overwhelmingly in 1998 to turn its back on the politics of revenge and retaliation," the commission confuses retribution with justice and upholding the rule of law. The Patten report claims too much when it equates approval of the Good Friday Agreement with a desire and willingness to forget past human rights violations. Indeed, during the consultation process commissioners were inundated by both written submissions and oral testimony offered at community meetings by people who have suffered violations at the hands of the RUC and are still seeking effective redress. If the people of Northern Ireland wanted to "forget the past" they would not have wasted valuable time and emotional energy informing the commission that it is justice for violations suffered that will lay a firm foundation for their acceptance of any new policing structures and arrangements. Thus, the commission has failed to lay the necessary groundwork for one of its most critical recommendations—that "all community leaders, including political party leaders and local councillors, . . . should take steps to remove all discouragements to members of their communities applying to join the police, and make it a priority to encourage them to apply." We fear that it is highly unlikely—given the evident requirement of many people that abusive officers be held accountable for past violations, particularly in the Catholic and nationalist communities wherein a disproportionate number of such abuses occurred—that a large segment of the population will have the confidence to join a new policing service that retains officers responsible for well-documented, egregious human rights violations.

I would like to offer two brief examples of how the absence of a screening process could undermine recommendations made in the Patten Commission report:

1) **With respect to the holding centres,** Human Rights Watch welcomes the commission's recommendation to close all the special detention facilities—that is, holding centres—for political suspects in Northern Ireland. However, the Patten Commission fails to acknowledge that the reason pressure for closure has been sustained and gained momentum over the years is because conditions in the centres—supported in large part by provisions of the emergency legislation—created environments conducive to the physical and psychological ill-treatment of detainees. The U.N. Committee Against Torture has repeatedly called for the closure of the holding centres for this very reason. Thus, there is a small cadre of easily identifiable RUC detectives who have been responsible for conducting abusive interrogations in the centres, many of which have resulted in coerced confessions from detainees, some of these confessions, in turn, leading to miscarriages of justice. According to the commission's "forget the past" philosophy, these detectives would now be appointed to serve in regular police stations where political suspects will be held after the centres close or perhaps placed in the general policing population to gain experience at community policing. They will, in effect, be offered amnesty for their abusive practices. It is difficult to expect potential new recruits—which the Patten Commission hopes will come in large numbers from the ranks of the Catholic and nationalist communities—to serve side-by-side with officers easily identified as human rights violators from the holding centres. We draw your attention yet again to the case of David Adams. Mr. Adams was brutally assaulted by RUC detectives upon arrest and while in detention in Castlereagh Holding Centre in 1994. In February 1998, the Belfast High Court awarded Adams the highest payment of exemplary damages ever ordered against the RUC for the injuries he suffered which included a punctured lung, broken ribs, and a broken leg—which Adams claimed he suffered after the officers took running, martial arts-style kicks at him in Castlereagh. The accused police officers either claimed that they did not inflict these injuries on Adams or that any physical contact with him was due to the fact that he "struggled" with the officers. The judgment in the civil court action, however, rendered by Mr. Justice Kerr, stated that "not only are the injuries consistent with the plaintiff's [Mr. Adams'] account but they cannot be explained if the police account is accepted." Mr. Justice Kerr went on to conclude that he had "substantial reservations about the truth and accuracy of the evidence of police officers at the scene" and that "the plaintiff was assaulted in Castlereagh in the manner alleged by him." On the strength of evidence submitted by a couple at the scene of the arrest, which recounted that the accused police officers called Adams "a Fenian bastard" and one officer shouted, "I hope he chokes on his own blood," Mr. Justice Kerr also concluded that Adams "was subjected to sectarian abuse." Indeed, the court ruled that "all of the principal injuries suffered by the plaintiff were the result of assaults by police officers and that these were not occasioned or contributed to by resistance on his part." The court awarded Adams £30,000 in damages.

The Adams case is unique because the civil action was not settled out of court. Thus, there is a complete record of testimony and evidence publicly available that details the assault upon him. Moreover, there is an unequivocal judgment finding the presentation of evidence by the accused RUC officers "untruthful" and the RUC liable for Adams' injuries. Such public findings have been virtually unheard of in the past as the RUC has routinely claimed exemption from court proceedings—and having its officers testify in court—by requesting a Public Interest Immunity Certificate (PIIC). The issuance of PIICs has denied the public a full accounting of alleged police

abuse in hundreds of cases. In the Adams case, however, no such immunity for police officers in "the public interest" was claimed. Thus, it is all the more extraordinary that in August 1999, despite the civil judgment meticulously detailing the abuse Adams suffered and finding that RUC officers perjured themselves before the court, the director of public prosecutions ordered that no criminal charges be leveled against the officers.

It is of grave concern that these RUC officers have won effective immunity from prosecution for conduct amounting to torture and, moreover, that they remain on active duty in the RUC in positions in which they may have other detainees in their care. Thus, closing the holding centres is not enough. Many of the detectives who operated therein, like those in the Adams case, have extremely poor human rights records and should be held accountable for them.

2) **With respect to RUC Special Branch,** the Patten Commission recommends that Special Branch and the Crime Branch "be brought together under the command of a single Assistant Chief Constable." Human Rights Watch is particularly concerned that this recommendation leaves the status of Special Branch unclear. Credible allegations of Special Branch collusion with loyalist paramilitaries have consistently plagued the RUC and recent startling revelations about Special Branch complicity in the murder of Belfast solicitor Patrick Finucane in 1989, as we heard this morning, have fueled urgent calls for the British government to establish an independent inquiry into the killing. Yet, there is no recommendation in the Patten report that Special Branch be evaluated to determine past abusive practices or for the unit itself to be replaced with a more accountable specialty unit. It appears from the report recommendation that Special Branch will remain intact with absolutely no appraisal of its dodgy human rights record. This is unacceptable given the controversial nature of the policing undertaken by Special Branch in the past.

Under the Patten Commission's imperative to "forget the past," the police officers in the examples above, potentially responsible for human rights abuses as egregious as violations of the right to life and the prohibition against torture, are to be offered amnesty for their abusive conduct and permitted to remain on active service in the new Northern Ireland Policing Service. This reality is an insult to the concept of justice and threatens to undermine other, extremely worthy reforms recommended in the report. Thus, we encourage the Patten Commission and the government of the United Kingdom to reconsider the consequences of omitting an accountability mechanism to address past human rights violations by the RUC in the new reforms and we urge this subcommittee and others with a genuine interest in entrenching the rule of Northern Ireland to advocate urgently for excluding human rights abusers currently serving in the RUC from the new policing service.

Thank you.

Congress of the United States

Washington, DC 20515

July 8, 1999

Mr. Chris Patten
Chairman.
Independent Commission on Policing for Northern Ireland
20-24 York Street
Belfast, Northern Ireland BT15 1AQ

Dear Chairman Patten,

We are pleased to enclose a transcript of the testimony and other submissions from the hearing on "New and Acceptable Policing in Northern Ireland" before the House International Relations Committee on Thursday, April 22, 1999. We respectfully submit this to your Commission in the belief that this hearing covered most, if not all, of the relevant issues on new policing in Northern Ireland.

The sad history of Northern Ireland demonstrates that there has never truly been a police service that was acceptable to the Catholic/Nationalist community – and the testimony of our witnesses abundantly confirmed that fact.

If the peace process is to fulfill its great potential, there must be – as the Good Friday Agreement itself calls for – "a new beginning to policing in Northern Ireland."

The historic anti-Catholic/Nationalist ethos of current policing in the north of Ireland must be totally eradicated, and a new police service must be strictly impartial, truly representative of the whole community, and fully accountable to all of its citizens.

A police service that does not attract the support and allegiance of the Catholic/Nationalist community will fail, just as the RUC has failed since its inception in 1922.

We, therefore, sincerely hope that the Patten Commission will achieve its crucially important mandate and give Northern Ireland a police service that will be the pride of all of its people, and that will protect the human and civil rights of each and every citizen.

For our part, we pledge to maintain our deep interest in this central issue, because in our minds there is simply nothing more important for a just and lasting peace in Northern Ireland than a new, acceptable, and fair police service.

We look forward to your Report, and we would be grateful if you would please send us a copy. Thank you.

Sincerely,

J. DENNIS HASTERT
Speaker of the House

BENJAMIN A. GILMAN
Chairman, House International Relations Committee

Richard A. Gephardt
Democratic Leader

Christopher H. Smith
Chairman, Subcommittee on International Operations and Human Rights

James T. Walsh
Chairman, Friends of Ireland

Sam Gejdenson
Ranking Democratic Member, House International Relations Committee

Robert Menendez
Vice-Chair, Democratic Caucus

Peter King
Co-Chair, Ad Hoc Committee for Irish Affairs

Richard E. Neal
Co-Chair, Ad Hoc Committee for Irish Affairs

Joseph Crowley
Co-Chair, Ad Hoc Committee on Irish Affairs

Donald Payne
Member of Congress

Thomas W. Ewing
Member of Congress

Nancy Pelosi
Member of Congress

CIRO D. Rodriguez
Member of Congress

cc: Members of the Commission
cc: Members of the Northern Ireland Assembly

[Mr Browne *Cont*]

(Mr Flanagan) That is right, Chairman.

753. So whether officers are in the RUC Reserve or in the RUC proper——

(Mr Flanagan) Full time Reserve Constables have been given the benefit of this through Divisional training programmes, Chairman.

754. Could you describe in a few sentences how many hours are involved and what that training involves as far as those officers are concerned?

(Mr Flanagan) What I will do is get for the Committee's benefit a precise breakdown indeed of the programme and the content of that programme, but it involves again external contributors, contributors from a very diverse range of traditions, cultures and viewpoints within the Province and those contributors coming along to Divisional training classes to give officers the benefit of their perception, to give officers a high degree of this importance of respect for individuals' diversity, of respect for people from differing traditions. In that internal way we see great benefits in that, Chairman. We see that if we operate internally as an organisation whose members respect that individual dignity, that individual diversity and I think we are taking the lead in this regard in the Province. I think other organisations could learn from what we are doing in this regard and if we operate on this basis internally then of course we will operate on that basis in terms of those who are most important to us, those who are the consumers of the policing service, those whom we exist to serve. That is what really counts for us.

755. When you are providing us with the detailed information, Chief Constable, can you provide us also with information as to how many of your officers up to the rank of Inspector, if that is the rank that it goes to, have actually had some experience of this training and how many hours of training they have undergone?

(Mr Flanagan) Absolutely, Chairman.

Mr McWalter

756. I would like to focus my questions really on the general problem about the relative disaffection of still a very significant number of people in the nationalist community and how they perceive the RUC. When you last gave us evidence you answered a series of questions about perceptions by some members of the nationalist community that there were a significant number of RUC officers who were very strongly associated with organisations like the Orange Lodge and other such loyalist organisations and you at that stage took the view that what someone believed in their private life was one thing, as long as when they then acted as an RUC officer—in, if you like, their professional life—they put that private belief into a kind of abeyance or some other sort of locker and then acted as a professional in the difficult circumstances that many officers have to deal with. Is that still your view?

(Mr Flanagan) What I think I made clear, Chairman, what I sought to make clear in my original evidence was a personal preference that members of my organisation should not be members of the organisations described, of the Orange Order. I said that it would be unlawful to attempt to preclude, to ban such membership and I said, I think, that what was important for us was how officers behaved and we had some description, I think, through other questions during that session in terms of how some officers had, in fact, been disciplined in terms of how they had behaved. I said what was important was how they behaved and how they performed their duty, but I did recognise that what was important—perhaps more important in Northern Ireland than anywhere—is people's perception and there can be a perception that if a police officer is a member of some of the organisations to which you refer then some people have a perception that there is a difficulty in terms of how they impartially deliver the policing service. I think it is a problem of perception rather than of reality, but I recognise that perception. Now I think what I should know, as the employer if you like, is exactly what percentage of officers belong to what organisations and quite frankly I cannot tell the Committee that because I do not know. What I am exploring now is ways of determining that. The Committee will be well aware of the Home Secretary's intention in relation to members of the Masonic Order and the requirement whereby new members would register that membership and whereby existing members would do so voluntarily. I am working currently with my staff associations to determine the best way that we could do something similar in relation to membership of a range of organisations in Northern Ireland. It had been my hope to work in tandem with colleagues in the Association of Chief Police Officers in Great Britain in this regard but I think the decision to legislate and to propose to legislate has brought about a position whereby an agreed Association of Chief Police Officers' view is not immediately on hand and there are a range of approaches through different police forces in Great Britain. So we, I think, need to move independently in Northern Ireland. There are, of course, dangers from a security point of view and people do have rights. People have a right to belong to organisations, but I have a right and we require through very strict codes of conduct that officers' private lives should not impinge on their ability to impartially deliver policing in a professional manner. What I want to do is to determine how we can have an officer register that interest so that I know exactly what percentage of officers we are talking about. I guess the sort of percentages that are being bandied about are actually grossly exaggerated but I am not in a position empirically to say that that is the case.

757. At the beginning of that long reply, you mentioned that this was a problem of perception. So if members of the nationalist community think that they are treated differently, they are treated, say, less well or perhaps the police presence in their communities is more militaristic or whatever, that that is simply a matter of perception and they are actually wrong so to think. Is that your view?

(Mr Flanagan) I said it is more a matter of perception, but in giving my answer, Chairman, I think I recognised the importance of perception and I

[Mr McWalter *Cont*]
stressed my personal preference that my officers should not be members of the organisations referred to.

758. But you presumably also do agree, for good reasons perhaps, that nationalist communities pose often more of a threat to members of the RUC than some other communities——

(Mr Flanagan) I do not accept that at all.

759. —— and they have to take special operational decisions in the light of that threat?

(Mr Flanagan) I think it is true to say that my officers have faced threats in nationalist areas. To say that nationalist communities pose a greater threat to my officers than other communities is something that I would not accept.

760. Okay. Well, given that your view is that nevertheless you recognise that people from nationalist communities have something of a problem in the way they relate to the police, hence the police have something of a problem in the way they relate to those communities. Whatever the precise relationships with Mediation Network, I am rather strongly of the view that what is happening in Garnerville at the moment is highly commendable. I think you owe a great debt to that organisation and like my colleague, in so far as I understood part of what he was suggesting, I would like to see that kind of expertise entrenched and developed and not discarded, but that is another matter. The fact is though that the keynotes to what was going on at Garnerville and the community relations side of the training was precisely that people were being asked to address their private beliefs, they were being asked to address their covert prejudices, they were being asked to reflect on the style of treatment that they meted out to other people. I was immensely impressed by the fact that they had, apparently unlike you, identified that it was vital for police officers to confront their fundamental beliefs about members of other communities. I would suggest to you, Chief Constable, that in some ways the course is good enough to merit the attendance of both your most senior officers and your good self so that you could learn what your officers are doing at Garnerville to enable you properly to understand that you cannot separate private belief from public functioning in the way that you suggested to us the last time you saw us?

(Mr Flanagan) Chairman, in making that separation the last time it was specifically in response to the question about membership of the Orders which you describe and only in that specific context. I think if you examine my evidence the last time the preponderance of my emphasis was on the fact that the police service had realised and I certainly realise—and if you have any doubt about me confronting my own prejudices please remove that; I have certainly done that and continuously do that—but the preponderance of my emphasis was on a move, certainly in terms of the Royal Ulster Constabulary, from a position where we used to think that once you became a police officer suddenly magically we were all the same—it did not matter whether you were black, white, protestant, catholic, man or woman—to a position where we realised, thank God, actually we are all different and that is not something to fear. That in fact is something to celebrate. I am very aware of what my officers do through the Cultural Awareness programme. I know it intimately. I was involved with it, I continue to be involved with it and I appreciate your commendation of its value and I can assure you it will be extended, strengthened and developed.

761. May I address the repercussions of that, I think, these difficulties of perception in the nationalist community and I am aware of some of the figures you gave earlier? It would be foolish to deny that there is still a continuing and major problem about those perceptions of the extent to which the RUC can be regarded by members of the nationalist community as, as it were, their police?

(Mr Flanagan) Chairman, I do not deny that difficulty, but I think we should operate on the basis of empirical research. We should not operate on the basis of just a feeling of how extensive this problem is and I quoted extensive research, empirical research, which is the most recent of which I am aware. So of course there is a problem, but let us discuss it from the basis of knowing what empirically the problem has shown to be.

762. I am coming from a background—I mean, I am the Member of Parliament for Hemel Hempstead, so I am coming from a background in which 98 per cent of my community are very strongly supportive of the police, of the way they carry out their functions. There is a tremendous sense of commitment to the way the police do their work and even criminals often have quite a strong respect and regard for the police. So policing is, from your point of view, probably fairly easy, but the fact is that in your community the figure of people who suffer significant alienation from the whole concept of being policed by the RUC is very much higher and that is why we are interested in composition, that is why we commend the community awareness dimension of the training programme and so on. But one thing that this Committee has done is to go to various other communities to see how they cope with that alienation by a significant number of people from its police force. For instance, we have been to Spain, to the Basque country where, for instance, the history of the Spanish national police was one of torturing people for speaking Basque. There was a very strongly militaristic police, the Civil Guard and they sought to set up a different and parallel police force which was much more responsive to the community. Could I make one suggestion to you and just run it past you and I heard what you said earlier? Might one solution to the problems of policing in Northern Ireland actually be to have an additional tier of policing in a way which people of the Basque country and other places have achieved so that where there are significant groups who feel they do not have a sense of ownership of the police that we have some sort of parallel system and the Ertzaintza Civil Guard in Spain did it in terms of initially highway functions and other such things? To have a second tier of police whether it has a greater emphasis on community policing, whether it has a greater emphasis upon certain basic functions of policing which currently perhaps people are estranged from, to bite that bullet and accept that maybe we might need more police, we

irish
american
unity
conference

National Office:
National Press Building
529 14th Street N.W., Suite 837
Washington, D.C. 20045
1-300-947-4282
Phone: 202-662-8830
Fax: 202-662-8831

September 20, 1999

Honorable Christopher Smith
Chairman of the Subcommittee on Human Rights
Washington, D.C.

Dear Congressman Smith:

On behalf of the Irish American Unity Conference, I submit Part Two of a three part Study on Policing in Northern Ireland. We submitted our preliminary report to the House of Representative's Committee on International Relations on April 22, 1999. Our panel of experts includes judges, attorneys and law enforcement experts from across the United States.

Part One of our study provided an overview of the Northern Ireland criminal justice system and gave a brief list of our criticisms of the current system.

With Part II, the Irish American Unity Conference is now entering the debate required by the publication of the British Independent Commission on Policing for Northern Ireland Report (Patten Report). This IAUC report is the second of a three-part study on policing in Northern Ireland. We have submitted the full version of Part II to the committee,but provide this brief summary for inclusion into the congressional record.

Our panel of experts, including judges, attorneys, and law enforcement experts, have read books, reviewed human rights reports from international organizations, and listened to the testimony of personal experiences about the Northern Ireland legal system. We are presenting some of our advisors' opinions in the report to focus attention on the Royal Ulster Constabulary's record and the future of policing in Northern Ireland. Our advisors will be issuing a final report after they have had fully reviewed and discussed the Patten Report and the forthcoming Criminal Justice Review Group's report.

In brief, we have concluded that:

- The RUC is in need of **complete and total reform**, starting from the top down.
- The RUC officers need to be retrained based on **international human rights standards** governing criminal justice and law enforcement. The new training should include sensitivity training, diversity training and courses that teach non-judicial resolution of local community disputes.
- The new police force should be **reduced in proportion to the population levels** consistent with those of other European police forces and **commensurate to the level of threat.**
- The new force should closely **resemble the demographic composition** of the community.
- Only those RUC personnel who have proven to be **morally, professionally and ethically suitable** should be granted commissions within the new police force.
- Early retirement of senior officers should be encouraged so that **Catholic officers** will be able to attain **higher-level positions** in a timely fashion.
- An Independent Internal Affairs Unit should be established with **equal representations of both traditions.**
- **Prohibition of police officer membership** in **secret societies**
- **A system for evaluating personnel performance** needs to be established.

- All **emergency legislation** needs to be **repealed**.
- There needs to be **independent investigations** into the assassinations of **Patrick Finucane** and **Rosemary Nelson**. The **Stalker, Stevens** and **Sampson** reports should be **released**.

We wish to commend Christopher Patten and his Commission members for a comprehensive study and plan for a future police force in Northern Ireland. The report outlines the necessity for the respect of human rights and for an equitable balance of Catholics and Protestants on a new police service. We are surprised at the absolute rejection of the report by the Ulster Unionists in the context of the Good Friday Agreement, which they signed. Their reaction was immediate, unmeasured and unhelpful.

We assert that this report's recommendations, if implemented by the British Government, can lead to our goal for peace and justice in this part of Ireland. Although the IAUC will present a more complete analysis of the Patten Commission's report in our third part of our study, we would like to provide a brief response to the Patten Report's recommendations at this time.

The Patten Report sets forth a plan for increasing Catholic representation in the police force from the current level of less that 8% to 30% within ten years. Although we support a target of at least 40%, we acknowledge that, in the prevailing political environment, a goal of 30% Catholic representation by 2009 is a major step in the right direction.

We are concerned that the stated methods that the Patten Report proposes will not achieve this goal. Patten suggests that the force should be reduced to 7,500 full time officers and continued recruitment should be undertaken on a 50/50 basis from both communities. If this scheme is followed, we will not see even a gradual move toward equitable representation until the base of 7,500 officers is reached. This could take more than twenty years and, given the present climate of repression and prejudice, may be too long a period.

The IAUC contends that R.U.C. reform must be immediate and sweeping. The record of past abuses by the R.U.C. has been well established, but has never been corrected. In the Patten plan, many of the 7,500 officers of a police force that used unnecessary violence, fired lethal plastic bullets without accountability, tortured people in detention centers, and conspired to murder people by collusion with loyalist death gangs will remain as a core of the police force. There does not seem to be any suggestion for investigation of past malfeasance, from the top to the bottom of the existing RUC. The IAUC submits that no one who has been involved in any extra-legal or human rights abuses should be retained and allowed to undermine the credibility of a new police force.

The Irish-American community finds that this recognition of past abuse and assessing responsibility is so important that we now release this interim report.

We have observed the R.U.C. beating unarmed nationalists in Derry, Belfast and Drumcree as recently as this August. We have witnessed the catalogue of innocent

nationalists murdered due to RUC complicity or inaction at best. Patrick Shanaghan, Paul Thompson, Pat Finucane and Rosemary Nelson are names that immediately spring to mind.

We have listened to the perjured police evidence presented in Diplock Courts. We have reviewed other human rights investigations into torture and murder in Northern Ireland. We are convinced that the Royal Ulster Constabulary was never a credible police force and that a significant number of RUC officers were guilty of the most heinous crimes.

The Royal Ulster Constabulary's history cannot be forgotten and swept aside. We must all learn to forgive and move ahead, but in order to forgive, we must know what we are forgiving. The Irish people have never been given a complete record of what abuses were perpetuated upon the nationalist community by the RUC. The British people have never been informed what was done in their name. We must all know what mistakes were made to ensure that they are not repeated.

The public has a right to know whom in the RUC were the perpetrators, who committed these killings, who gave the orders, and how these crimes were covered up.

In Aryeh Neirer's book, War Crimes, he makes the following statement:

> "Truth is a powerful weapon. Wherever it is lacking, it is essential that it should be provided. The identities of the victims and perpetration, the crimes committed and the attempts made to explain them away or cover them up should be revealed. Following a period of massive abuses, an essential part of the process of assessing

> responsibility and of demonstrating respect for those who suffered is the official disclosure of truth and acknowledgment of culpability. But a truth process derives much of its strength from exposure of deception and the refutation of falsehood when it does not strive these ends, more is required".

Aryeh Neirer, War Crimes. Times Books 1998, at 55.

We urge the British Government to implement the Patten Report and to incorporate its suggestions into legislation immediately to create a credible police force. We urge the British Government to release the Stalker, Sampson and Stephens Reports on the "shoot to kill" policies and collusion activities of the Royal Ulster Constabulary with loyalist paramilitaries.

We recommend that the British Government begin a truth and reconciliation forum to identify the crimes and the criminals who committed human rights abuses in Northern Ireland. We firmly request that public interviews be held with Collin Wallace, Fred Holroyd, Brian Nelson, Bobby Philpott, Jim Sands, Sean Mc Philemy, and John Oliver Weir. We also recommend that full disclosure is made of all internal reports and the investigation conducted into the Robert Hamill death.

We urge the Irish Government to continue aggressively to pursue implementation of the Patton Report and, by extension, the Good Friday Agreement. The Irish Government became a full partner in this peace process by that agreement. When the British

Government struggles, we ask the Irish Government to maintain the pressure toward peace and justice in Northern Ireland.

We insist that both the Irish Government and the British Government take immediate and forceful efforts to stop the loyalist pogrom directed against the nationalist people particularly in the northeast of the six counties. This violence has escalated, unchecked, since the two cease-fires. The R.U.C. has been unwilling or unable to prevent these attacks. If peace is to continue, action must be swift.

We submit this report to our President William J. Clinton with our thanks for his great assistance. We also thank him for allowing Senator George Mitchell to return and continue his efforts to force all parties to respect the promises they made when they signed the agreement.

We submit this report to the United States Congress, particularly the House of Representatives International Relations Committee, chaired by Congressman Benjamin Gilman and the Human Rights Subcommittee chaired by Congressman Christopher Smith. We add our thanks to Congressman Benjamin Gilman, Congressman Peter King, Congressman Joseph Crowley, Congressman Richard Neal, Co-chairs of the Ad-Hoc Committee on Irish Affairs, as well as Congressman Donald Payne and all the other members of Congress who have so honorably maintained their interest in Irish peace and justice.

The IAUC applauds your efforts to protect human rights and to encourage the development of a fair and just policing system in Northern Ireland. We hope that this submission will assist your hearings.

Sincerely,

Andrew L. Somers
National President
Irish American Unity Conference

THE BREHON LAW SOCIETY
52 Duane Street
New York, New York 10007
Phone: (212) 571-7100
Fax: (212) 571-7124

SUBMISSION TO THE HOUSE OF REPRESENTATIVES COMMITTEE ON INTERNATIONAL RELATIONS

HEARING ON THE NEED FOR A NEW AND ACCEPTABLE POLICE FORCE IN THE NORTH OF IRELAND

September 24, 1999

History says, *Don't hope*
On this side of the grave.
But then, once in a lifetime
The longed-for tidal wave
Of justice can rise up,
And hope and history rhyme.

So hope for a great sea-change
On the far side of revenge.
Believe that a further shore
Is reachable from here.

from Seamus Heaney's "The Cure at Troy."

The Brehon Law Society of New York made two detailed submissions to the Patten Commission on Policing in Northern Ireland and our members met on two separate occasions with Commission members. The Commission's proposals deserve careful and thorough examination by any responsible organization committed, as ours is, to the furtherance of human rights and equal justice. They do not deserve the knee-jerk summary rejection which they have received at the hands of many political figures who purport to speak for the Unionist community.

We congratulate the Commission on its outstandingly thorough approach. The North of Ireland has seen British Government commissions come and go. Some have been simply ineffective, others, like the Diplock Commission, have left a disastrous legacy. Never before there been a Commission with the integrity to pursue its mandate by mounting full-scale consultations with all sections of the community. Never before has one appeared so committed to making a new beginning.

1. A Truly New Beginning

The Brehon Society applauds the Report's commitment to a "human rights-based approach" to policing, and a new Code of Ethics, strictly conforming with the European Convention on Human Rights. If fully implemented, these would form the basis for a truly new beginning to policing.

2. Accountability to the Community

The proposals on accountability to the community are well-intentioned and laudable. However, the first problem the Patten Report runs into is no fault of the Commission itself. It results from the political context in which it emerges. It was to have been published after more than a year of a ten-member executive running an agreed Northern Ireland. Instead, Unionist politicians have fought tooth and nail to prevent any steps toward equality or power-sharing. Their arbitrary rejection of the Report suggests that its implementation will be highly problematic. The Unionists' reaction cannot inspire confidence in the proposed new police service among Nationalists.

While Patten proposes to "take politics out of policing," the report would vest control in a Police Board of nineteen members. Ten are to be members of the Assembly. Given Unionist politicians' hostility to implementing the equality agenda, they are almost certain to seek to block the appointment of District Police Partnership Boards and most other changes proposed by Patten. In effect, Patten's well-intentioned proposals could hand oversight to those same politicians whose hostility to any form of change made it necessary to create the Patten Commission in the first place.

3. Badges and Indicia of Oppression

We agree that the name, insignia, and public ethos of the RUC needs to be changed. However, on their own, such changes do nothing to reassure the Nationalist community. As some ex-prisoners have pointed out, changing the name of Long Kesh to the Maze didn't stop them being political prisoners. Of greater concern is the Report's failure to address RUC membership in secret sectarian organizations that promote bigotry, such as the Orange Order. Quite simply, membership in such organizations is incompatible with Patten's stated commitment to a human rights ethos.

4. Special Branch and Accountability for Past Abuses

The Report is right to recommend measures to address the perception of Special Branch as a "force within a force." We further agree that Castlereagh, Gough and Strand Interrogation Centres should be closed immediately. However, failing to tackle the long history of human rights abuses committed there will only undermine the attempt to create confidence in *both* communities. Many of those who committed or tolerated those abuses now occupy very senior ranks in the force. Their reputations for abuse will actively discourage many in the Nationalist population from seeking to join the new force.

Human Rights Watch (HRW) has already expressed its profound disappointment that the commission failed to address accountability by the RUC. The Brehon Society agrees with Holly Cartner, Executive Director of HRW's Europe and Central Asia Division, that "past abuses cannot be swept under the rug," and that "impunity for human rights violations will seriously undermine confidence in whatever 'new' force is created."

Recommending, as the Report does, that the Special Branch and Crime Branch units be merged under the command of a single Assistant Chief Constable, may make sound administrative sense. However, it misses entirely the point that in order to create public confidence in the policing service, former Special Branch officers, including the present Chief Constable, must be evaluated to determine their accountability for past abusive practices. The Brehon Society agrees with Human Rights Watch that an independent vetting process should be established to weed out currently serving police officers with abusive records.

5. The Role of Lawyers

Allegations of Special Branch collusion with loyalist paramilitaries, particularly in the 1989 murder of human rights lawyer Patrick Finucane, have fueled urgent calls from the Irish Government, the European Parliament, the United States Congress and the international human rights community for the British government to establish an independent RUC-free inquiry into the killing of Pat Finucane as well as the disturbingly similar assassination of Rosemary Nelson in March of 1999.

Solicitors stand in the front line of defending the community from human rights abuses and, in view of the findings of U.N. Special Rapporteur Param Cumaraswamy and others concerning threats to lawyers, the Brehon Society is shocked that the Patten Commission not only failed to mention these two extremely important cases, but that they failed completely to address the role of lawyers and the need to protect human rights defenders from murder, threats and harassment, whether by members of the security forces or others.

6. Emergency Legislation

Another serious shortcoming is the Report's failure adequately to address emergency legislation. The Brehon Society believes firmly that no police force can gain community acceptance if part of their job is to enforce laws which violate basic norms of human rights. Emergency legislation has long been recognized by the international human rights community to be a major *cause* of, rather than an effective remedy for, political violence and conflict in the North of Ireland.

Instead of dealing squarely with this continuing hindrance to the peace process, the Report glosses over it in two glib paragraphs, noting merely that the British Government has introduced a consultative paper on legislation against terrorism, and recommending that "the law in Northern Ireland should be the same as that in the rest of the United Kingdom." This ignores the fact that the last three decades have seen a progressive erosion of civil liberties, with laws initially enacted for the North of Ireland alone -- *e.g.* increased powers of detention for interrogation and abolition of the right to silence -- spreading with viral deadliness to erode human rights standards throughout the entire United Kingdom.

7. Policing the Peace

Noting the Good Friday Agreement's provision that the police service, "in a peaceful environment, should be routinely unarmed," Patten reluctantly concludes "we do not believe that it is possible to recommend now that there should be a general disarmament of the police." Furthermore, the Report notes that: "In view of the fatalities and serious injuries resulting from [plastic bullets], and the controversy caused by their extensive use, we are surprised and concerned that the government, the Police Authority and the RUC have collectively failed to invest more time and money in a search for an acceptable alternative."

However, for reasons that the Brehon Society finds less than compelling, the Commissioners conclude, as if wringing their hands and at the same time washing them of this troublesome topic:"In common with many groups that gave us submissions, we would like to see the use of [plastic bullets] discontinued as soon as possible. All of us began our work wanting to be able to recommend that they be dispensed with straight away. But we do not wish to see a situation in which the police would have no choice but to resort to live rounds, sooner than would be the case today."

The long record of deaths and disfigurement caused by deliberate misuse of these weapons, as well as their disproportionate use against the Nationalist community makes this another point on which confidence in the new police service will be harder to establish.

8. Not Just A Question of Numbers, But . . .

All are agreed that increasing Catholic representation is a precondition to creating confidence in the Nationalist community. However, the goal of 29-30% over ten years is unlikely to send new Catholic recruits running to join the new force, particularly when that slowly rising percentage is almost certain to be bottom-heavy within the force's overall structure, with few rising to senior levels during that period. A commitment to 43% (the current demographic) over five years *within all ranks and within all departments* would present a far more realistic encouragement to the Nationalist community. Ranking officers from police forces outside the North of Ireland should be recruited, whether from the Irish Republic, Britain, Canada, the U.S. or elsewhere, to assist in the drive toward greater diversity and equality of representation at all levels in the new police service.

9. Conclusion

The Brehon Society believes the Patten Report to be an honest and genuine endeavor to treat an almost intractable problem. To those with their eyes fixed on the future, the report offers many constructive proposals. Those who wish to remain mired in the past have already rejected it without reading and heaped gratuitous insults on its authors in the attempt to forestall the inevitable.

It is only by the concerted determination of the governments of Britain, Ireland and the United State -- acting together to implement the Good Friday Agreement in full -- that the positive aspirations of the Patten Report can be turned into a reality which both traditions in the North of Ireland can embrace. The shortcomings analyzed above cannot be ignored if those governments are to honor their commitment to bring peace, justice and equality to the North of Ireland. Together, they and we have the power to create Seamus Heaney's "great sea-change."