NORTHERN IRELAND HUMAN RIGHTS: UPDATE ON THE CORY COLLUSION INQUIRY REPORTS

HEARING

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NORTHERN IRELAND HUMAN RIGHTS: UPDATE ON THE CORY COLLUSION INQUIRY REPORTS

WEDNESDAY, MARCH 16, 2005

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON AFRICA, GLOBAL HUMAN RIGHTS
AND INTERNATIONAL OPERATIONS,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, DC.

The Subcommittee met, pursuant to call, at 2:02 p.m. in room 2172, Rayburn House Office Building, Hon. Christopher Smith (Chairman of the Subcommittee) presiding.

Mr. SMITH. The Subcommittee will come to order. We will be joined shortly by my friend and colleague, Don Payne, and other Members of the Subcommittee, but because our distinguished first panel, Mr. Reiss, does have a very, very limited amount of time I will start with the opening comments and then yield to my good friend for his opening statement and any questions the panel may have for him.

The purpose of today's hearing is to examine the action taken by the British and Irish Governments in order to comply with the Cory Collusion Inquiry Reports. The reports, completed in 2003, are the work of Judge Peter Cory, a preeminent retired Justice of the Supreme Court of Canada.

As part of the peace process in Northern Ireland, Judge Cory was appointed jointly by the British and Irish Governments to investigate allegations of state-sponsored collusion in six high-profile murders, including the 1989 murder of human rights attorney, Patrick Finucane. The two Governments agreed that in order to move forward in the peace process, past allegations of state-sponsored collusion had to be openly addressed.

Today's hearing is the 10th hearing I have chaired on the subject of human rights and policing reform in Northern Ireland. Each hearing has either focused upon or discussed in part the murder of Patrick Finucane. The case has widespread implications for the rule of law in Northern Ireland as Mr. Finucane, a defense attorney, was targeted simply because of the politics of his clients.

After extensive investigation, Judge Cory found enough evidence of collusion in five of the six murder cases and called for independent public inquiries into those five cases, including the murder of Patrick Finucane.

It is important to note that the Weston Park Agreement, an accord signed in 2001 to revive the faltering peace process, obligated

both London and Dublin to establish a public inquiry if recommended by Judge Cory. The precise wording of the agreement was, "will implement," not "may implement," or "should try to implement."

They all agreed that they would implement, yet nearly 18 months after Judge Cory submitted his report to the British Government it has yet to establish the requisite public inquiry into the Finucane case. And why not? After a year and a half of delays, exceptions and excuses, it is time for the British Government to comply with the Weston Park Agreement.

The success of the Northern Ireland peace process, struggling with its most difficult challenges to date, is predicated upon the full and faithful implementation of the obligations made by the two Governments at Weston Park when they made that agreement. If the citizens cannot count on the institutions of government to deliver on their commitment to secure equal justice for all, confidence will erode, and hope for a just and lasting peace could slip away.

Over the past 8 years, all of our witnesses at our hearings have stressed that justice and a civil society is turned on its head, is perverted, when government officials act with impunity and intimidate, harass and maybe even participate, as we think they did, in the murder of a defense attorney.

The Cory Report and its call for a public inquiry into allegations of state-sponsored collusion in Patrick Finucane's murder underscore the critical links between government accountability, public confidence in the rule of law and the prospects for a peaceful future.

In May 2004, here on Capitol Hill, Judge Peter Cory made the first public presentation of his finding in all six high-profile cases. At a session that I convened as Chairman of the Commission on Security Cooperation in Europe, Judge Cory painstakingly described evidence of possible collusion relating to the Finucane murder and activities of the Army Intelligence Unit, the FRU or Force Research Unit, and of the police force, particularly the Special Branch of the RUC.

Judge Cory reported that Mr. Finucane was a prime target of paramilitary forces for nearly a decade before his killing but that no steps were taken to warn him of the direct and imminent threat against his life. In his report, Judge Cory concluded, and I quote:

> "There is strong evidence that collusive acts were committed by the Army Force Research Unit, the RUC Special Branch and the Security Service. I am satisfied that there is a need for a public inquiry."

With regard to the British Army, Judge Cory focused on government-paid double agent Brian Nelson, who was a central player with the Ulster Defense Association or UDA. Nelson had direct influence over targeting operations, and the Cory Report stated, and I quote:

> "If Nelson is correct in stating that he told his handlers that Patrick Finucane was a target and no steps were taken by the FRU to either warn Patrick Finucane or otherwise intervene, then that would be capable of constituting a collusive act. Only a public inquiry can determine whether this occurred. The evi-

dence I have warrants the holding of a public inquiry on this issue."

With regard to the RUC, the Cory Report found, and I quote again:

"The Special Branch rarely took any steps to document threat or to prevent attacks by the UDA where proactive steps were routinely taken in connection with the PIRA and other Republican threats. The failure to issue warnings to persons targeted by the UDA often led to tragic consequences. The failure to act on information received by the RUC Special Branch both before and after the Finucane murder could be found to be indicative of collusion and should be the subject of public inquiry."

Given the volume of testimony that Congress had already received from human rights experts, the Finucane family, the U.N. Special Rapporteur on the Independence of Judges, and Lawyers in the United Kingdom who sat, Mr. Secretary, where you sit now, and others, as well as the compelling findings of the Cory Collusion Inquiry, it seemed that the establishment of a public inquiry into the Finucane case would be and should be a no-brainer.

Instead, it has been treated like a non-starter. First, the British Government argued that it could not hold a public inquiry while it continued to pursue the prosecution of Kenneth Barrett, the gunman charged with Finucane's murder. Judge Cory soundly rejected this when he said, and I quote:

"This is one of those instances where a public inquiry should take precedent over prosecution if there is to be peace in the community."

Since Judge Cory's testimony last year, Kenneth Barrett has been convicted of the murder of Patrick Finucane. However, it is widely understood that this criminal prosecution does little to address and/or resolve the concerns raised by Judge Cory regarding the possibility of state-sponsored collusion in the murder of Patrick Finucane. Nor does it enable the British Government to meet its responsibilities in the Weston Park Agreement.

Ironically, immediately following the prosecution of Barrett the British Government announced it would go forward with a public inquiry into the murder of Patrick Finucane. Six months later, no such inquiry has been established.

I say with deep sorrow, and I think many in this room are very aware of this, that yesterday marked the sixth anniversary of the brutal murder of Northern Ireland Solicitor, Rosemary Nelson. Rosemary, as we all will remember, sat right at that witness table and warned us that the RUC had made death threats against her and that she was fearful that her life would be taken.

She even made the statement while she stood here and gave her testimony, and I quote her:

"No lawyer in Northern Ireland can forget what happened to Patrick Finucane or dismiss it from their minds."

She was killed brutally 6 months later when assassins murdered her and blew up her automobile. We remember her and pray for

her and her family because it obviously was a terrible, terrible blow to her, her family and of course to the peace process.

Let me also point out if I could, and I will point out to my colleagues that without objection this statement will be made a part of the record as I do have a much lengthier statement, that Lord Saville, who chairs the Bloody Sunday Inquiry, when speaking on the issue of the Public Inquiries Bill, made the statement, and I quote him:

> "Such ministerial interference . . ." as I think most people know the language in that bill, "would convey to the ministers rather than to an independent body or judge the power to establish the commission and to work on the particulars of that commission to deny public and private or to determine publicly or privately what is to be included and what ought to be made public."

All of that will be done by the ministers if this legislation goes forward, which probably, and I would say almost assuredly, will lead to a situation where the Finucanes and many others will not believe, nor will this Member, that there was a free and fair and open and completely thorough scrutiny that a public inquiry ought to embody.

Let me also just say how pleased we are that Ambassador Reiss is here today to present testimony. I know that he has a very busy schedule with so many people from Ireland in town, but I thank you for being here, and again without objection my full statement will be made a part of the record.

Mr. Payne?

[The prepared statement of Mr. Smith follows:]

PREPARED STATEMENT OF THE HONORABLE CHRISTOPHER H. SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY AND CHAIRMAN, SUBCOMMITTEE ON AFRICA, GLOBAL HUMAN RIGHTS AND INTERNATIONAL OPERATIONS

TIME FOR FINUCANE PUBLIC INQUIRY. NO MORE DELAYS. NO MORE EXCUSES.

The purpose of today's hearing is to examine the action taken by the British and Irish governments in order to comply with the Cory Collusion Inquiry Reports.

The reports, completed in 2003, are the work of Judge Peter Cory, a preeminent, retired justice of the Supreme Court of Canada. As part of the peace process in Northern Ireland, Judge Cory was appointed jointly by the British and Irish governments to investigate allegations of state-sponsored collusion in six high-profile murders, including the 1989 murder of human rights attorney Patrick Finucane. The two governments agreed that in order to move forward in the peace process, past allegations of state-sponsored collusion had to be openly addressed.

Today's hearing is the tenth hearing that I will chair on the subject of human rights and policing reform in Northern Ireland. Each hearing has either focused upon or discussed in part the murder of Patrick Finucane. The case has widespread implications for the rule of law in Northern Ireland as Mr. Finucane, a defense attorney, was targeted simply because of the politics of his clients.

After an eighteen-month investigation, Judge Cory found enough evidence of collusion in five of the six murder cases and called for independent public inquiries into those five cases, including the murder of Patrick Finucane.

It is important to note that the Weston Park Agreement—an accord signed in 2001 to revive the faltering peace process—obligated both London and Dublin to establish a public inquiry if recommended by Judge Cory. The precise wording of the agreement was "*will* implement," not "may implement," or "should try to" implement. They said "they will."

Yet, nearly eighteen months after Judge Cory submitted his report to the British government, it has yet to establish the requisite public inquiry into the Finucane murder case.

And why not? After a year and a half of delays, exceptions and excuses, it is time for the British government to comply with the Weston Park Agreement. The success of the Northern Ireland peace process—struggling with its most difficult challenges to date—is predicated upon the full and faithful implementation of the obligations made by the two governments at Weston Park. If the citizens cannot count on the institutions of government to deliver on their commitment to secure equal justice for all, confidence will erode and hope for a just and lasting peace could slip away.

Over the past eight years, all of our witnesses have stressed that justice in a civil society is turned on its head—is perverted—when government officials act with impunity and intimidate, harass and maybe even participate in the murder of a defense attorney. The Cory Report and its call for a Public Inquiry into allegations of state-sponsored collusion in Patrick Finucane's murder underscore the critical links between government accountability, public confidence in the rule of law, and the prospects for a peaceful future.

In May 2004, here on Capitol Hill, Judge Peter Cory made the first public presentation of his findings in all six high-profile cases. At a session I convened as chairman of the Commission on Security and Cooperation in Europe, Judge Cory painstakingly described evidence of possible collusion relating to the Finucane murder and activities of the army intelligence unit (FRU: Force Research Unit) and of the police force, particularly the Special Branch of the RUC.

Judge Cory reported that Mr. Finucane was a prime target of paramilitary forces for nearly a decade before his killing, but that no steps were taken to warn him of the direct and imminent threat against his life. In his report Judge Cory concluded: *". . . there is strong evidence that collusive acts were committed by the Army (Force Research Unit), the RUC SB (Special Branch) and the Security Service. I am satisfied that there is need for a public inquiry."*

With regard to the British Army, Judge Cory focused on government-paid double agent Brian Nelson, who was a central player within the UDA (Ulster Defense Association). Nelson had direct influence over targeting operations. The Cory report stated, *"If Nelson is correct in stating that he told his handlers that Patrick Finucane was a target, and no steps were taken by FRU (the Army) to either warn Patrick Finucane or otherwise intervene then that would be capable of constituting a collusive act. Only a public inquiry can determine whether this occurred. The evidence I have seen warrants the holding of a public inquiry on this issue."*

With regard to the RUC, the Cory report found: *"SB (Special Branch) rarely took any steps to document threats or prevent attacks by the UDA, whereas pro-active steps were routinely taken in connection with PIRA and other Republican threats. The failure to issue warnings to person targeted by the UDA often led to tragic consequences . . . The failure to act on information received by RUC Special Branch, both before and after the Finucane murder, could be found to be indicative of collusion and should be the subject of public inquiry."*

Given the volume of testimony Congress had already received from human rights experts, the Finucane family, the UN Special Rapporteur on the independence of judges and lawyers in the United Kingdom, as well as the compelling findings of the Cory Collusion Inquiry, it seemed that the establishment of a Public Inquiry into the Finucane case would be a no-brainer. Instead it has been treated like a non-starter.

First, the British government argued it could not hold a public inquiry while it continued to pursue the prosecution of Kenneth Barrett, the gun man charged with Pat Finucane's murder. Judge Cory soundly rejected this when he said: *"This is one of the rare instances where a public inquiry should take precedent over a prosecution if there is to be peace in the community."*

Since Judge Cory's testimony last year, Kenneth Barrett has been convicted of the murder of Patrick Finucane. However, it is widely understood that this criminal prosecution does little to address and/or resolve the concerns raised by Judge Cory regarding the possibility of state-sponsored collusion in the murder of Patrick Finucane. Nor does it enable the British government to meet its responsibilities in the Weston Park Agreement.

Ironically, immediately following the prosecution of Barrett, the British government announced it would go forward with a public inquiry into the murder of Patrick Finucane. Six months later, no such inquiry has been established.

With deep sorrow we note that yesterday marked the sixth anniversary of the brutal murder of Northern Ireland Solicitor Rosemary Nelson. Following Judge Cory's recommendation, the British government recently established the public inquiry into her murder, and we look forward to hearing from one of our witnesses today about the status of that inquiry.

That said, however, we cannot help but remember that it was Rosemary Nelson, who gave one of the most riveting and compelling testimonies here in this very room calling for a public inquiry into Patrick Finucane's murder.

In September, 1998, as a witness at our third hearing, Rosemary Nelson bravely testified about the harassment, intimidation and threats made against her by RUC officers. She said she had been physically assaulted by a number of RUC officers and that she had received death threats. She made it clear she thought they would kill her.

She added, "No lawyer in Northern Ireland can forget what happened to Patrick Finucane, nor dismiss it from their minds." Six months after her testimony, Northern Ireland attorney Rosemary Nelson was—as she eerily predicted—murdered, killed by cowardly assassins in a vicious car bomb attack. We do not know what, if any role, any RUC officer may have played in Rosemary's death. Hopefully the public inquiry will shed light on the RUC's decisions to harass and intimidate her, as well as ignore the known death threats against her.

Even with three of its four required public inquiries underway, the British government continues to throw up roadblocks to the Finucane inquiry. It argues now that new legislation is needed before the inquiry can be established. Not surprisingly, its proposal for a new Inquiries Bill has already threatened the public perception and credibility of any investigation that comes after its enactment.

The fear is that the new bill will give the government additional powers and undermine the independence of the investigating commissioners. The commissioners would have no powers for setting the parameters of their inquiry. Instead of the parliament, government ministers would decide who will hold the inquiry, what the terms of reference will be, whether hearings will be held in public, whether evidence will be published, who will be called as a witness, if subpoena power is warranted, and whether the report will be published.

Judge Cory has stated that any inquiry conducted under these terms would not comply with the standards and recommendations of his report. Lord Saville, who chairs the Bloody Sunday Inquiry, has criticized the new bill and cautioned that "such ministerial interference" would be "unjustifiable".

Whether new legislation is passed or not, the British government has the power to set up a public inquiry into the murder of Patrick Finucane that is Cory-compliant. Congress has passed three separate bills that I have authored calling on the British government to establish an independent public inquiry into the murder of Patrick Finucane. The most recent of these, signed by President Bush, states US support for independent judicial public inquiries into the Finucane and Nelson murders as a way to instill confidence in policing in Northern Ireland.

Similarly, representatives of the Irish government, including Prime Minister Bertie Ahern, have repeatedly stated their strong support for a Public Inquiry into the Finuncane case. And on February 14, 2005, two dozen Members of the US Congress sent a letter to British Prime Minister Tony Blair calling for a Public Inquiry into the Finucane case.

In signing the Weston Park Agreement, the British government has also stated its commitment for public inquiries into certain high-profile murders. It's time to live up to that commitment. It's time to act.

No more exceptions, no more excuses.

Mr. PAYNE. Thank you very much, Mr. Chairman, for calling this very important hearing. I commend you for your long-time interest in the status of human rights in Northern Ireland, your consistent hearings that focus on attempting to have justice in the north of Ireland and certainly particularly looking into the Cory Collusion Report, which we all know is on the table, so to speak.

It is very good to see Mrs. Finucane, the wife of Patrick Finucane, here today, and I look forward to her testimony, as well as that of other witnesses.

As a longstanding supporter of the peace process in the north of Ireland, I have witnessed firsthand the efforts of the strong division between Catholics and Protestants in Northern Ireland in my numerous visits to that land.

Most recently, in 2003, I traveled to Dublin and Belfast to meet with a broad spectrum of Irish Government leaders, particularly political party officials and civil society representatives, to hear

their perspectives on the situation in Northern Ireland. In Belfast I met with both Protestant and Catholic community leaders and heard the pleas from both sides really wanting to see a solution.

I have also had the opportunity of course—when I visit Northern Ireland it is during the Orange Order parades. As we know, that has been such a point of contention for many, many years. I was at Drumcry staying right on Garverby Road 4 years ago when the long standoff occurred when the Orange Order wanted to march right through Drumcry, right through Garverby Road.

I think the Parades Commission has done a fairly good job of preventing parades from going through areas where tension would be created. I also, though, have concerns about the bonfires that go on because the height and the voracity of the bonfire right before the Orange Order parade can actually become dangerous. Unless they are more contained, some serious fires could be created by the very high stacks of lumber that is put up three- and four-stories high in some instances.

Since 1990 I have participated in commemorations in Northern Ireland. I have seen a gradual shift of attitudes there. Things seem to have been moving, although gradually, in the right direction. The people of Northern Ireland want peace as we know, and there have been some strides toward peace in the past.

However, the Good Friday Accords were signed in 1998, and, as we know, they have not been fully implemented. We must get the Good Friday Accords and to bring the Government that came about because of Senator Mitchell's great work on the Good Friday Accords. They must be fully implemented.

There is indeed mistrust on both sides with the Unionists and Nationalists. The Unionists worry over the process of decommissioning, while the Nationalists remain concerned about the slow process of demilitarization, police reform and parliamentary activities.

The other major obstacle to peace is violence. Since 1969, more than 3,200 people have died as a result of political violence in the north of Ireland. The murders, whether commissioned by Catholics against Protestants, Catholics against Catholics, or Protestants against Catholics, must stop.

Sinn Fein leader, Gerry Adams, as you know, was not invited to the White House, and the IRA has come under more pressure to address crime and violence perpetrated in Northern Ireland. Pressure has come about in response to the December 2004 bank robbery in Belfast that is alleged that the IRA was involved.

However, I think that allegations are not enough. I think that there should be concrete evidence before we have allegations and concrete evidence. The fact that we have to continue to have dialogue, and I do not believe that isolating leadership of any group is helpful because once you get isolation, tension grows, and I do not think that is a move in the right direction.

The recent murder of Robert McCartney of course certainly has created concern, and it certainly is not helpful in the peace process, but I do think that it is as wrong to attempt to isolate Sinn Fein. They must be at the table, and they must continue to move forward.

All this goes back to 1921, as we know, with the division of Ireland and the British grant of independence to most of Ireland, leaving the northern part under the U.K. The focus of today's hearing, the Cory Collusion Report, is very timely and important because of Pat Finucane's case and other such cases. There certainly has been and continues to be a growing distrust for the police in Northern Ireland over the involvement in some cases with proxy gangs, murders and extrajudicial killings. This trust must be addressed.

In October 2003, Judge Peter Cory of Canada submitted six reports which investigated collusion of the British or Irish security forces in eight murders in Northern Ireland and the Republic of Ireland. Six of those cases are under U.K. jurisdiction.

One of those cases was the murder of Pat Finucane in 1989 for which collusion between the RUC, the U.K. Army and lawless paramilitary forces has already been claimed. Another case is the death of Rosemary Nelson, who testified, as the Chairman said, before this Committee before her death in 1999.

For the peace process to move forward in Northern Ireland, these cases and public inquiries which were recommended must be carried out in order to hold those responsible to account. We cannot only condemn what is accused on the side of Sinn Fein and allow the Government, the RUC and all to go on.

On Good Friday, the Good Friday Accords will be 7 years old, yet very little has been implemented. All sides would benefit from the full implementation of the Good Friday Accords, and I encourage both sides to cooperate and to see if we could move toward justice in the north of Ireland.

Mr. SMITH. Thank you, my good friend.

I would like to introduce our distinguished——

Mr. SHERMAN. Mr. Chairman?

Mr. SMITH. I would just say to my friend if he has an opening statement we can do it right after. Unfortunately, Ambassador Reiss has to return.

Mr. SHERMAN. Can I have 30 seconds?

Mr. SMITH. We have four votes, so he will have no time to give his opening, but afterwards without a doubt.

Ambassador Reiss, let me just say how pleased we are to have you here. I will put your full bio into the record, but will just note that you are the President's Special Envoy for Northern Ireland. You have also served as Director of Policy Planning for the U.S. Department of State and are currently Dean of International Affairs and a Law Professor at William & Mary Law School. Welcome.

STATEMENT OF THE HONORABLE MITCHELL REISS, SPECIAL ENVOY OF THE PRESIDENT AND THE SECRETARY OF STATE FOR NORTHERN IRELAND, U.S. DEPARTMENT OF STATE

Ambassador REISS. Members of the Committee, I am very pleased to appear before you today to discuss the case of Patrick Finucane and continuing efforts to answer all of the questions surrounding his murder on February 12, 1989.

As is common in countries emerging from periods of intense civil conflict, Northern Ireland is now grappling with the difficult issues of how to deal with its past in a manner that consolidates the gains

that have been achieved during the peace process and contributes to a just future characterized by mutual respect.

As I will discuss in detail, the U.S. Administration has long recognized the symbolic importance of the Finucane case and the importance of establishing a public inquiry to examine all the allegations of collusion.

The question of how to deal with crimes committed during civil conflict is one of the most vexing problems facing societies in post-conflict periods. There is no standard method to deal with these matters. What is appropriate for South Africa differs from what should be used in the Balkans.

In Northern Ireland over the past decade there have been numerous discussions about possible ways forward. Ideas discussed have included amnesties, the release of government information, the creation of an archive of victims' stories, the establishment of a truth commission and issuance of public apologies. It is for the people of Northern Ireland, particularly those who suffered losses during the Troubles, to design a process or a combination of processes that meets their needs.

In parallel with these discussions, the British Government has initiated independent inquires into a number of high-profile cases in which there are allegations of wrongdoing by state officials. Among these cases is the inquiry into the events of Bloody Sunday in 1972, which was established in 1998.

In a separate initiative, last month Prime Minister Blair publicly apologized for the injustice caused to 11 individuals wrongfully imprisoned following the IRA bombings in Guilford in 1974.

In 2001, the British Government also agreed to conduct an inquiry into the murder case of Pat Finucane provided that Judge Peter Cory concluded that such an inquiry was justified by well-grounded indications of collusion between the Government and the perpetrators.

Judge Cory also considered five other cases involving allegations of collusion, three in Northern Ireland and two in the Republic of Ireland. The British Government has established inquiries into the cases of Rosemary Nelson, Robert Hamill and William Wright.

The Cory process was one of the outcomes of the Weston Park talks, as you have mentioned, Mr. Chairman, which were a significant milestone in the peace process because they paved the way for the SDLP to give its support to the new policing institutions.

Mr. Chairman, in your capacity as a Member of this Committee and as Co-Chairman of the Helsinki Commission, you have brought the Finucane case to the attention of the American people with a series of hearings and briefings over several years. Your hearing last year included testimony from Judge Cory, who discussed the material that he collected on this extremely complex case.

His report detailed the activities of the British military and police intelligence agencies in Northern Ireland during the period of Finucane's murder. It also discussed the possible links to the murder of Brian Nelson and William Stobie, both of whom worked as Government agents within the Ulster Defense Association, the loyalist paramilitary organization that claimed responsibility for Pat Finucane's murder.

Based on this material, Judge Cory concluded, and I quote:

> "Some of the acts summarized in this report are in and of themselves capable of constituting acts of collusion. Further, the documents and statements I have referred to in this review have a cumulative effect. Considered together, they clearly indicate to me that there is strong evidence that collusive acts were committed by the Army, the RUC Special Branch and the Security Service. I am satisfied that there is a need for a public inquiry."

The U.K. Government accepted this recommendation in principle, but deferred establishing an inquiry due to concerns over compromising prosecutions in the case. The Finucane family expressed disappointment over this delay, arguing that a public inquiry should take precedence over prosecutions.

In his report, Judge Cory recognized the tension between society's obligation to bring those suspected to justice through the courts and the public's interest in establishing an inquiry to examine allegations of collusion.

In September 2004, the suspected gunman, Ken Barrett, confessed to the Finucane murder and is now serving a sentence of 22 years. Following Barrett's conviction, Secretary of State for Northern Ireland, Paul Murphy, announced that the British Government would establish an inquiry into the death of Patrick Finucane. He also announced, however, that the inquiry would be established on the basis of new legislation governing inquiries.

This new legislation, the Inquiries Act, is currently being considered by the U.K. Parliament. The Finucane family, as well as several human rights organizations, have raised concerns about provisions of the proposed Inquiries Act. There is concern that as it is currently drafted, the act could reduce the independence and transparency of an inquiry into the Finucane murder.

It is for the Parliament of the U.K. to debate and decide on matters related to this draft legislation. Whatever legislative instrument is used, my concern is that the inquiry have the necessary legal powers to establish the truth of what happened in the Finucane case and that the process have the confidence of the people of Northern Ireland.

To gain that confidence, I believe the Chairman of the inquiry will need to be a person of unimpeachable integrity and international standing. The Chair and other members of the inquiry should be fully satisfied that the terms of reference will provide them with the authority necessary to establish the truth and to examine thoroughly the allegations of collusion that have been highlighted by Judge Cory.

Public confidence also requires as much transparency as possible within the constraints of protecting lives and considerations of national security. Judge Cory's report is eloquent on this point:

> "Without public scrutiny, doubts based solely on myth and suspicion will linger long, fester and spread their malignant infection through the Northern Ireland community."

In my remaining time, Mr. Chairman, I would like to detail our Government's actions to support the goals articulated by Judge Cory. At the outset, I want to state my belief that the British Government officials with whom I have worked on this issue, including

Prime Minister Blair and Secretary Murphy, share the desire to establish this inquiry in a manner that achieves the goals of establishing the truth and securing public confidence. This is consistent with Prime Minister Blair's unstinting support for achieving the goals of the Good Friday Agreement.

The American role in the peace process has been to support the efforts of the British and Irish Governments. Our approach to Northern Ireland reflects core American values, the primacy of the rule of law, protection of human rights and safeguarding equality of treatment. Our advocacy for a Finucane Inquiry is consistent with this vision. We believe that resolution of this case will advance the peace process in Northern Ireland.

Since my appointment as Special Envoy for the Northern Ireland Peace Process last January, I have traveled to the region four times, including to participate in the negotiations at Leeds Castle last September. During these visits I have met with the Prime Minister, Secretary Murphy and Prime Minister Blair's Chief of Staff, Jonathan Powell.

I have also met regularly with senior officials of the Northern Ireland Office and with representatives of the British Embassy in Washington. In each of these meetings, without exception, I have raised the Finucane case and emphasized the importance of an inquiry that follows the principles articulated by Judge Cory.

I have also met with the Finucane family both in Belfast, and most recently yesterday here in Washington, DC, and have been in contact with Mr. Peter Madden, the solicitor for the family and Patrick Finucane's former law partner.

I have shared with the Taoiseach and senior members of the Irish Government my discussions and actions regarding this case. My recent meetings have included detailed discussions on the draft Inquiries Act and its potential impact on this case. This dialogue and my efforts are ongoing.

Thank you very much.

[The biography and prepared statement of Ambassador Reiss follows:]

BIOGRAPHY AND PREPARED STATEMENT OF THE HONORABLE MITCHELL REISS, SPECIAL ENVOY OF THE PRESIDENT AND THE SECRETARY OF STATE FOR NORTHERN IRELAND, U.S. DEPARTMENT OF STATE

BIOGRAPHY

Dr. Mitchell B. Reiss was appointed as Director for Policy Planning by Secretary of State Colin L. Powell on July 21, 2003. Prior to his appointment, Dr. Reiss was Dean of International Affairs, Director of the Reves Center for International Studies, Professor of Law at the Marshall-Wythe Law School, and Professor of Government in the Department of Government at the College of William and Mary, Williamsburg, Virginia.

Prior to his service at William and Mary, Dr. Reiss helped establish KEDO (the Korean Peninsula Energy Development Organization), a multinational organization created to address weapons proliferation concerns in North Korea. His responsibilities there included serving as Chief Negotiator and as General Counsel. His government service includes positions in the National Security Council at the White House, and as a Consultant to the U.S. Arms Control & Disarmament Agency, the State Department, the Congressional Research Service, the Lawrence Livermore and Los Alamos National Laboratories. Dr. Reiss has also been a Guest Scholar at the Woodrow Wilson International Center for Scholars and worked as an attorney at Covington & Burling.

Dr. Reiss is the author of Bridled Ambition: Why Countries Constrain Their Nuclear Capabilities and Without the Bomb: The Politics of Nuclear Non-proliferation.

He has contributed to nine other volumes and written over 50 articles on international security and arms control issues.

Dr. Reiss has degrees from Williams College, the Fletcher School of Law and Diplomacy, Oxford University, and Columbia Law School.

PREPARED STATEMENT

Mr. Chairman, members of the Committee, I am pleased to appear before you today to discuss the case of Pat Finucane and continuing efforts to answer all of the questions surrounding his murder on February 12, 1989. As is common in countries emerging from periods of intense civil conflict, Northern Ireland is now grappling with the difficult issues of how to deal with its past in a manner that consolidates the gains that have been achieved during the peace process and contributes to a just future characterized by mutual respect. As I will discuss in detail, the U.S. Administration has long recognized the symbolic importance of the Finucane case and the importance of establishing a public inquiry to examine the allegations of collusion.

The question of how to deal with crimes committed during civil conflict is one of the most vexing problems facing societies in post-conflict periods. There is no standard method to deal with these matters. What is appropriate for South Africa differs from what should be used in the Balkans. In Northern Ireland over the past decade there have been numerous discussions about possible ways forward. Ideas discussed have included amnesties; the release of government information; the creation of an archive of victims' stories; the establishment of a truth commission; and issuance of public apologies. It is for the people of Northern Ireland, particularly those who suffered losses during the Troubles, to design a process or a combination of processes that meets their needs.

In parallel with these discussions, the British government has initiated independent inquiries into a number of high-profile cases in which there are allegations of wrong-doing by state officials. Among these cases is the inquiry into the events of Bloody Sunday in 1972, which was established in 1998. In a separate initiative, last month Prime Minister Blair publicly apologized for the injustice caused to 11 individuals wrongfully imprisoned following the IRA bombings in Guilford in 1974.

In 2001, the British government also agreed to conduct an inquiry into the murder case of Pat Finucane provided that Judge Peter Cory concluded that such an inquiry was justified by well-grounded indications of collusion between the government and the perpetrators. (Judge Cory also considered five other cases involving allegations of collusion; three in Northern Ireland and two in the Republic of Ireland.) The Cory process was one of the outcomes of the Weston Park talks, which were a significant milestone in the peace process because they paved the way for the SDLP to give its support to the new policing structures.

Mr. Chairman, in your capacity as a member of this committee and as co-chairman of the Helsinki Commission, you have brought the Finucane case to the attention of the American people with a series of hearings and briefings over several years. Your hearing last year included testimony from Judge Cory, who discussed the material that he collected on this extremely complex case. His report detailed the activities of the British military and police intelligence agencies in Northern Ireland during the period of Finucane's murder. It also discussed the possible links to the murder of Brian Nelson and William Stobie, both of whom worked as government agents within the Ulster Defense Association, the loyalist paramilitary organization that claimed responsibility for Finucane's murder. Based on this material, Judge Cory concluded:

> Some of the acts summarized [in this report] are, in and of themselves, capable of constituting acts of collusion. Further, the documents and statements I have referred to in this review have a cumulative effect. Considered together, they clearly indicated to me that there is strong evidence that collusive acts were committed by the Army (FRU), the RUC SB and the Security Service. I am satisfied that there is a need for a public inquiry.

The UK government accepted this recommendation in principle, but deferred establishing an inquiry due to concerns over compromising prosecutions in the case. The Finucane family expressed disappointment over this delay, arguing that a public inquiry should take precedence over prosecutions. In his report, Judge Cory recognized the tension between society's obligation to bring those suspected to justice through the courts and the public's interest in establishing an inquiry to examine allegations of collusion.

In September 2004, the suspected gun-man, Ken Barrett, confessed to the Finucane murder and is now serving a sentence of 22 years (although he may be eligible for early release under the terms of the Good Friday Agreement).

Following Barrett's conviction, Secretary of State for Northern Ireland, Paul Murphy, announced that the British government would establish an inquiry into the death of Pat Finucane. He also announced, however, that the inquiry would be established on the basis of new legislation governing inquiries.

This new legislation, the Inquiries Act, is currently being considered by the UK Parliament. The Finucane family, as well as several human rights organizations, have raised concerns about provisions of the proposed Inquiries Act. There is concern that, as drafted, the Act could reduce the independence and transparency of an inquiry into the Finucane murder.

It is for the Parliament of the UK to debate and decide on matters related to this draft legislation. Whatever legislative instrument is used, my concern is that the inquiry have the necessary legal powers to establish the truth of what happened in the Finucane case and that the process have the confidence of the people of Northern Ireland. To gain that confidence, I believe the chairman of the inquiry will need to be a person of unimpeachable integrity and international standing. The chair and other members of the inquiry should be fully satisfied that the terms of reference will provide them with the authority necessary to establish the truth and to examine thoroughly the allegations of collusion highlighted by Judge Cory. Public confidence also requires as much transparency as possible, within the constraints of protecting lives and considerations of national security. Judge Cory's report is eloquent on this point: "Without public scrutiny, doubts based solely on myth and suspicion will linger long, fester and spread their malignant infection through the Northern Ireland community."

In my remaining time, Mr. Chairman, I would like to detail our government's actions to support the goals articulated by Judge Cory. At the outset, I want state my belief that the British government officials with whom I have worked with on this issue, including Prime Minister Blair and Secretary Murphy, share the desire to establish this inquiry in a manner that achieves the goals of establishing the truth and securing public confidence. This is consistent with Prime Minister's Blair's unstinting support for achieving the goals of the Good Friday Agreement.

The American role in the peace process has been to support the efforts of the British and Irish governments. Our approach to Northern Ireland reflects core American values: the primacy of the rule of law, protection of human rights and safeguarding equality of treatment. Our advocacy for a Finucane inquiry is consistent with this vision. We believe that resolution of this case will advance the peace process in Northern Ireland.

Since my appointment as Special Envoy for the Northern Ireland Peace Process last January, I have traveled to the region four times, including to participate in the negotiations at Leeds Castle last September. During these visits, I have met with the Prime Minister Tony Blair, Secretary Murphy, and with Prime Minister Blair's Chief of Staff, Jonathan Powell. I have also met regularly with senior officials of the Northern Ireland Office and with representatives of the British Embassy in Washington. In each of these meetings, without exception, I have raised the Finucane case and emphasized the importance of an inquiry that follows the principles articulated by Judge Cory.

I have also met with the Finucane family, both in Belfast and here in Washington and have been in contact with Mr. Peter Madden, the solicitor for the family and Pat Finucane's former law partner. I have shared with the Taoiseach and senior members of the Irish government my discussions and actions regarding this case. My recent meetings have included detailed discussions on the draft Inquiries Act and its potential impact on this case. This dialogue is ongoing.

Thank you.

Mr. SMITH. Ambassador Reiss, regrettably we have four votes in succession, and they are on the budget resolution rule. My question is how much time do you have?

Ambassador REISS. I think we have until about 2:50.

Mr. SMITH. Okay. Let me ask a very few brief questions. We will keep the record open, and my chief of staff will receive that because I am not sure we will be able to get back before you have to leave.

Mr. PAYNE. Mr. Chairman, I will yield all the time to you because we do not have that much time.

Mr. SMITH. Okay. Thank you. I will have to do this quick too, unfortunately, or I will miss the vote.

Judge Cory wrote us a letter that he faxed to the Committee today, and I think we have given you a copy of that. He makes the point:

> "First, it must be remembered that when the Weston Park Accord was signed the signatories could have only had one concept of a public inquiry . . ."

based obviously on the 1921 Public Inquiry Act. Judge Cory also makes the point further on in the letter that:

> "It seems to me that the proposed new Act would make a meaningful inquiry impossible. The commissions would be working in an impossible situation. For example, the minister, the actions of whose ministry would be reviewed by the public inquiry, would have the authority to thwart the efforts of the inquiry at every step."

He goes on to say that:

> "This creates an intolerable Alice in Wonderland situation."

It does to this Member seem to beg the question why a new law is needed after this agreement had been agreed to by both parties that would vest the power in terms of reference and virtually every other aspect into the hands of the minister, as opposed to the hands of a judge. You yourself pointed out that Lord Saville has been highly critical of this and others.

I do have other questions, but have to run. We will leave the hearing record open. If you could respond to that?

Ambassador REISS. Mr. Chairman, let me just say I am happy to answer any and all questions, and I can submit them for the record afterwards.

To respond to that particular question, let me just say that based on my conversations with British officials, it is my understanding that there was a general concern over the time and expense of inquiries under the 1921 legislation.

Therefore, they expressed to me a sense that economies could be saved, time could be saved, by drafting new legislation that would govern future inquiries. It was on that basis, they told me, that the new legislation was drafted.

Now, as the Chairman has said, there are concerns that have emerged from Judge Cory and from others about how this new law, if it is passed, would apply to this particular case. Again to repeat the themes from my statement, I think everyone recognizes that public confidence is absolutely essential in any inquiry here; that it needs to be conducted by a person of unimpeachable integrity with as much transparency as possible.

That result, that goal, is what the United States has been urging in all the discussions that I have had with British officials on this point.

Ms. MCDERMOTT NOONAN. I do not know if I am acting out of order here, but if it is okay with you I will just read the following question, and you can answer that as well, or you can submit it for the record.

Ambassador REISS. Sure, if that is okay.

Ms. MCDERMOTT NOONAN. As a follow-up to that, we were wondering, If the Inquiries Bill does go through, do you believe that any public inquiry into the Finucane murder can be Cory-compliant as the bill is written now? And what specific parameters of the inquiry would be needed to be met so that they would actually then comply with Judge Cory's envision of what a public inquiry was as far as subpoena powers, as far as who sets up, who can be interviewed if there is public information?

Ambassador REISS. Well, I think that the new inquiry would need to have some of the powers that you have just articulated, as well as some others, but I should say that my belief is that the senior at the very top of the British Government, including Prime Minister Blair, everyone has a sincere interest to bring this matter to a resolution in a way that enjoys public confidence.

There is an understanding that public confidence is absolutely crucial to having successful inquiry no matter how the legislation is drafted. Again you get back to the independence of the judges that are involved, their subpoena powers, their ability to conduct a wide-ranging investigation and to make as much information available to the public as possible.

Again, the legislation has not passed yet. It is possible it may be amended so I would like to see it in its final form before passing any final verdict. But I think there are certain elements that everybody recognizes need to be included for this to achieve the goal, which is to try and get to the bottom of this terrible murder so many years ago.

Ms. MCDERMOTT NOONAN. Do you think an inquiry can enjoy the public confidence if the Finucane family does not participate or does not accept the parameters that are set up?

Ambassador REISS. Well, really it is not for me to say. I think it is best for you to address that to the Finucane family sitting behind me. Since they will be up next, I would like to defer that question to them.

Obviously their opinion is absolutely essential in shaping public opinion, and indeed I think that is one reason why the British Government is trying to be solicitous of their views and is willing to meet and talk with them about this legislation, but I would like to leave it to them to answer the question.

Ms. MCDERMOTT NOONAN. Okay. I thank you for indulging me. I apologize for the schedule of the House Floor, but we have no control over that.

We stand in recess until the Members return.

Ambassador REISS. Thank you very much. Again, I am happy to answer any further questions you might want to submit for the record.

Ms. MCDERMOTT NOONAN. Thank you.

Ambassador REISS. Thank you.

[Recess.]

Mr. SMITH. The Subcommittee will resume its sitting, and I do want to apologize to our witnesses for the lengthy delay attributed to those votes. I am sorry.

Let me begin by welcoming you and thanking you so much for your testimony and for your leadership on this extremely important human rights issue.

Obviously, Geraldine, just to express my, and on behalf of the Committee, our continued sympathy for your enormous loss. I would like to introduce you formally. Geraldine Finucane is the wife of Patrick Finucane. He was, as we all know, murdered in his Belfast home in front of Geraldine and their three children in 1989.

Mrs. Finucane herself, who was injured by what was likely a ricochetted bullet, has spent the subsequent 16 years seeking answers in regard to her husband's case and serving as a symbol of courage for other victims of senseless violence.

Her perseverance and her faith, despite numerous obstacles, has led to much progress in the area of human rights. Though overall progress has been unsatisfactorily slow, I believe it is progress that may not have taken place at all had it not been for her courageous efforts. Mrs. Finucane has testified before the Helsinki Commission twice in the past.

We will then hear from Elisa Massimino, who is no stranger to this Committee. She is the Director of the Washington Office for Human Rights First, formerly known as the Lawyers Committee on Human Rights. In the past she has also worked as a litigation associate for Hogan & Hartson focusing in particular on refugee immigration and human rights issues.

Ms. Massimino received her J.D. from the University of Michigan Law School and Master's Degree in Philosophy from Johns Hopkins University.

We will then hear from Ms. Jane Winter, Director of British Irish Rights Watch. Since 1994, Jane has served as the Director of the British Irish Human Rights Watch, an independent human rights organization offering services of human rights violations in Northern Ireland.

With a degree in Social Anthropology, Ms. Winter previously worked in two social services departments where she studied the needs of children, the mentally ill and the elderly, before working as a case worker at a law center. She also ran the Wadsworth Citizens Advice Bureau and was project coordinator for the Public Law Project.

I would just say parenthetically that Ms. Winter has also been a great friend of this Subcommittee and the Helsinki Commission in providing very useful and accurate and very timely documentation to the committees on human rights in Northern Ireland or the lack of it, so I do thank you, Ms. Winter, for that.

Then we will hear from Ms. Maggie Beirne, who is the Director of the Committee on Administration of Justice. Maggie Beirne has served since 1995 on the Administration of Justice, CAJ, a cross-community group based in Belfast.

Before that, Ms. Beirne worked for 17 years as the International Secretariat of Amnesty International and was a member of the Amnesty senior management team. Recently she was also selected to be a member of the Police Reform Commission in Guyana, South America, based on a model of the Patten Commission.

I would also say parenthetically as well that the CAJ has also provided this Committee and this Member a tremendous amount of information. My first trip to Belfast I will never forget. We met with Martin and others and you. The information you provided led

to the first hearing that we convened in the Subcommittee, so I thank you for that as well.

Geraldine, the floor is yours.

STATEMENT OF MS. GERALDINE FINUCANE, WIFE OF SLAIN HUMAN RIGHTS ATTORNEY PATRICK FINUCANE

Ms. FINUCANE. Mr. Chairman, Members of the Committee, my fellow speakers, ladies and gentlemen, as you know, my name is Gerald Finucane. My husband was Patrick Finucane, the Belfast solicitor murdered by loyalist paramilitaries in 1989.

My family and I have campaigned since Pat's murder for a fully independent judicial public inquiry into that murder. We have done so because of the existence of compelling evidence that Pat's murder was part of an approved policy of widespread collusion between the British State and loyalist paramilitaries that included state-sponsored assassination.

The campaign that I have conducted for the establishment of a public judicial inquiry into Pat's murder has lasted for over 16 years. I have had only one objective from the outset: To discover and uncover the truth behind Pat's murder.

From the very night Pat was shot dead by the UDA in February 1989, I knew that the authorities had been involved in some way, but I did not know the details, who was involved or who had ordered the murder. I did know that Pat had been subjected to death threats for many months before he was murdered. These threats came from the Royal Ulster Constabulary, the RUC. Less than 3 weeks before he was killed, a Government minister, Douglas Hogg, made a statement in the British Parliament that marked Pat and other solicitors for murder.

In the immediate aftermath of Pat's death I started to ask questions about the circumstances surrounding the murder. I demanded to know what was being done about the threats made to his life by the RUC. I wanted to know why Douglas Hogg said what he did in Parliament. I wanted to know if there was any truth in the allegation that the RUC and the Army were colluding with loyalists to kill people. I demanded to know if one of those people was Pat. I got no answers from anyone, not the RUC, not the Army, and certainly not the British Government.

I called for a public inquiry immediately to get to the truth, and I was not the only one. Local political leaders and senior clergy called for an inquiry and demanded the resignation of Douglas Hogg. As time went on, international bodies such as the United Nations, the European Parliament, and the Congress of the United States also called for a public inquiry.

Indeed, this is the third time I have testified here in Washington, and other members of my family have testified here also. Pat's friend and law partner, Peter Madden, has also testified here. Rosemary Nelson, another lawyer murdered by a loyalist, testified here, and our family too remembers that yesterday was her anniversary.

After 16 years and much deliberate delay, the British Government eventually announced that an inquiry would be held. This is a result of the agreement made between the British and Irish Governments at Weston Park in 2001. The British Government said it

would comply with the terms agreed by the two Governments at Weston Park. They agreed to appoint an international judge that would review Pat's case and, if evidence of collusion was found, a public inquiry would be recommended.

I was not involved in the West Park talks. I did not agree to the appointment of Judge Cory. This was not because I doubted his credibility or integrity, but because I knew that I had enough information to warrant a public inquiry without the need for the appointment of the Judge. However, I had no choice but to wait patiently for him to produce his report. The British Government agreed that they would implement Judge Cory's recommendations.

Judge Cory did recommend an inquiry into Pat's case, and he said in his report, and I quote:

> "The documents and statements I have referred to in this review have a cumulative effect. Considered together, they clearly indicate to me that there is strong evidence that collusive acts were committed by the Army (FRU), the RUC Special Branch and the Security Service. I am satisfied that there is a need for a public inquiry."

When his report was published, after even more deliberate delay by the British Government, it was revealed that Judge Cory had stated that any appointed commission should have all powers normally associated with a commission of inquiry. The most important power is that a commission decides itself what matters should be considered and what should be made public.

The British Government has stated on many occasions since the publication of the Cory Report that a new law is required to conduct the inquiry into Pat's murder. The Secretary of State, Paul Murphy, said on the 23rd of September 2004, and I quote:

> "The Government has taken into account the exceptional concern about this case. Against that background, the Government has concluded that steps should now be taken to enable the establishment of an inquiry into the death of Patrick Finucane . . . In order that the inquiry can take place speedily and effectively and in a way that takes into account the public interest, including the requirements of national security, it will be necessary to hold the inquiry on the basis of new legislation which will be introduced shortly."

He later explained that this was necessary because, and I quote again:

> "Much of the material that would have to be examined in this inquiry is highly sensitive to national security issues. For example, many of the operational techniques that would be discussed in the inquiry would be used currently in the war against terror."

These operational techniques were described by the former Commissioner of the London Metropolitan Police, Sir John Stevens, in this way, and I quote:

> "My Enquiries have highlighted collusion, the willful failure to keep records, the absence of accountability, the withholding of intelligence and evidence, and the extreme of agents being in-

> volved in murder. These serious acts and omissions have meant that people have been killed or seriously injured."

It is not difficult to understand why the British Government should wish to keep those sorts of operational techniques to itself. Even the limited amount of information that has come to light thus far in the case of my husband's murder and other murders has been sufficient to raise widespread concern among the international community. But it is the repeated assertion of the British Government that the inquiry will be capable of getting to the truth by using this new legislation that is most perplexing. It is an assertion that does not stand up when scrutinized in detail.

If the Inquiries Bill becomes law in its current state, it will prevent the tribunal of inquiry from acting independently. This new legislation forces any tribunal, no matter how independent or credible or reputable, to comply with decisions made by Government ministers. The tribunal's hands will be tied by restrictive orders that can be served at any time during the inquiry.

These orders, issued by a Government minister—someone with the same status Douglas Hogg once had—will prevent material from being made public and order private hearings even if the tribunal itself does not think that it is necessary to do so.

I am firmly against the holding of an inquiry into Pat's murder under the Inquiries Bill. I have made it clear that I will not participate in an inquiry that is not what I have asked for: A public judicial inquiry composed of international judges like Peter Cory who are fully independent of the British Government and seen to be so.

I have made this clear repeatedly. I made it clear the very day the Inquiries Bill was published. It was not a position I took lightly or without due consideration, but it was a decision I was able to make quickly because the bill was such an obvious departure from what Judge Cory had recommended.

If the inquiry into Pat's murder is held under this law, it will constitute a breach of the Weston Park Agreement. The Prime Minister of Ireland, An Taoiseach Bertie Ahern, has personally assured me that not only does he reject the bill under the terms of the Weston Park Agreement, but that he and his Government will insist that the terms of that agreement are complied with. He said there would be no compromise on this issue.

Judge Cory made it clear that he also does not consider the Inquiries Bill to be compliant with what he recommended. On Sunday, the 13th of March this year, he made his views on the bill public, and I quote:

> "There was only one standard for a public inquiry at the time of the Weston Park accord. . . . If this Act had been in place at the time to set up an inquiry I don't think that there is a judge who would take it on. Its provisions are too restrictive. Independence would be impossible."

These views are shared by senior members of the British judiciary, including Lord Saville, who chaired the Bloody Sunday Inquiry. He has stated recently that he, and I quote:

> "Would not be prepared to be a member of an inquiry if at my back was a minister with power to exclude the public or evidence from the hearings."

Lord Saville, whose concerns are also shared by Lord Woolf, the Lord Chief Justice, and other judges, recently told *The Times* newspaper, and again I quote:

> "I take the view that this provision makes a serious inroad into the independence of any inquiry. It is likely to damage or destroy public confidence in the inquiry and its findings, especially in any case where the conduct of the authorities may be in question."

I do not believe there could be any stronger criticism of this proposed law than having the most senior judicial figures in Britain state that they would not participate in its operation.

In addition, what more blatant example could there be of the conduct of the authorities being in question than a case like that of Pat Finucane? Is there a more serious allegation that could be made against Britain than willful collusion in the murder of its own citizens?

I believe the seriousness of the allegation and the weight of evidence supporting it is the real reason for the introduction of this new law; not to expose the truth, but to ensure that it is buried deeply and buried forever.

I have said for many years that the circumstances surrounding the murder of my husband are about much more than the killing of one man. They are a high profile example of what could have happened to anyone and what did happen to many that were not so fortunate.

This new law is a worrying development for anyone, whether they are actively seeking the truth, as I am, or whether they simply believe that the truth is important. This new legislation will apply to every inquiry in the future. It should be of concern to everyone because it will affect everyone. In this way, I think that one of the fundamental things about Pat's murder is highlighted once again, the extent to which it affected us all and continues to affect us all.

Everyone in Ireland knows the victims of collusion. They were our husbands, our brothers, our sisters, our friends and colleagues. I believe that because we were all so affected we all have a stake in the outcome of this inquiry just as we have a stake in the outcome of the peace process. If there were any doubts about this before now, the British Government has removed that doubt by trying to change the law of the land that governs everyone.

I will fight to resist this proposed law because I want to know the truth about the murder of my husband. I refuse to allow the British Government to take away that truth as easily as it took away Pat's life.

Thank you very much.

[The prepared statement of Ms. Finucane follows:]

PREPARED STATEMENT OF MS. GERALDINE FINUCANE, WIFE OF SLAIN HUMAN RIGHTS ATTORNEY PATRICK FINUCANE

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

My name is Geraldine Finucane. My husband was Patrick Finucane, the Belfast solicitor murdered by Loyalist paramilitaries in 1989. My family and I have campaigned since Pat's murder for a fully independent, judicial public inquiry into his murder. We have done so because of the existence of compelling evidence that Pat's murder was part of an approved policy of widespread collusion between the British State and loyalist paramilitaries that included state-sponsored assassination.

The campaign that I have conducted for the establishment of a public judicial inquiry into Pat's murder has lasted for over 16 years. I have had only one objective from the outset: to discover and uncover the truth behind Pat's murder.

From the very night Pat was shot dead by the UDA in February 1989, I knew that the authorities had been involved in some way but I didn't know the details, who was involved or who had ordered the murder. I did know that Pat had been subjected to death threats for many months before he was murdered. These death threats came from the RUC. Less than 3 weeks before he was killed a Government Minister, Douglas Hogg MP, made a statement in the British Parliament that marked Pat and other solicitors for murder.

In the immediate aftermath of Pat's death I started to ask questions about the circumstances surrounding his murder. I demanded to know what was being done about the threats made to his life by the RUC. I wanted to know why Douglas Hogg said what he did in Parliament. I wanted to know if there was any truth in the allegation that the RUC and the Army were colluding with Loyalists to kill people. I demanded to know if one of those people was Pat. I got no answers from anyone, not the RUC, not the Army, and certainly not the British Government.

I called for a public inquiry immediately to get to the truth. I was not the only one. Local political leaders and senior clergy called for an inquiry and demanded the resignation of Douglas Hogg. As time went on, international bodies such as the United Nations the European Parliament and Congress of the United States called for a public inquiry. Indeed, this is the third time I have testified here in Washington and other members of my family have testified here also. Pat's friend and law partner, Peter Madden, has also testified here. Rosemary Nelson, another lawyer murdered by Loyalists, testified here.

After 16 years and much deliberate delay, the British Government eventually announced that an inquiry would be held. This is a result of the agreement made between the British and Irish governments at Weston Park in 2001. The British Government said it would comply with the terms agreed by the two governments at Weston Park. They agreed to appoint an international judge that would review Pat's case and if evidence of collusion was found, a public inquiry would be recommended.

I was not involved in the Weston Park talks. I did not agree to the appointment of Judge Cory. This was not because I doubted his credibility or integrity but because I knew that I had enough information to warrant a public inquiry without the need for the appointment of the Judge. However, I had no choice bit to wait patiently for him to produce his report. The British Government agreed that they would implement Judge Cory's recommendations.

Judge Cory did recommend an inquiry in Pat's case. He said in his report that ". . . the documents and statements I have referred to in this review have a cumulative effect. Considered together, they clearly indicate to me that there is strong evidence that collusive acts were committed by the Army (FRU), the RUC SB and the Security Service. I am satisfied that there is a need for a public inquiry." [1]

When his report was published (after even more deliberate delay by the British Government), it was revealed that Judge Cory had stated that any appointed commission should have all powers normally associated with a commission of inquiry. The most important power is that a commission decides *itself* what matters should be considered and what should be made public.

The British Government has stated on many occasions since the publication of the Cory report that a new law is required to conduct the inquiry into Pat's murder. The Secretary of State, Paul Murphy, said on 23rd September 2004:

"[T]he Government has taken into account the exceptional concern about this case. Against that background, the Government has concluded that steps should now be taken to enable the establishment of an inquiry into the death of Patrick Finucane . . . In order that the inquiry can take place speedily and effectively and

[1] Cory Collusion Inquiry Report: Patrick Finucane, para 1.293 (House of Commons, London) 1st April 2004

in a way that takes into account the public interest, including the requirements of national security, it will be necessary to hold the inquiry on the basis of new legislation which will be introduced shortly."

He later explained that this was necessary because, ". . . much of the material that would have to be examined in this inquiry is highly sensitive to national security issues. For example, many of the operational techniques that would be discussed in the inquiry would be used currently in the war against terror, for instance . . ."

These 'operational techniques' were described by the former Commissioner of the London Metropolitan Police, Sir John Stevens, in this way:

"My Enquiries have highlighted collusion, the willful failure to keep records, the absence of accountability, the withholding of intelligence and evidence, *and the extreme of agents being involved in murder*. These serious acts and omissions have meant that people have been killed or seriously injured." [2] (Emphasis added)

It is not difficult to understand why the British Government should wish to keep those sorts of operational techniques to itself! Even the limited amount of information that has come to light thus far in the case of my husband's murder and other murders has been sufficient to raise widespread concern among the international community. But it is the repeated assertion of the British Government that the inquiry will be capable of getting to the truth by using this new legislation that is most perplexing. It is an assertion that does not stand up when scrutinized in detail.

If the Inquiries Bill becomes law in its current state it will prevent the tribunal of inquiry from acting independently. This new legislation forces any tribunal, no matter how independent, or credible, or reputable, to comply with decisions made by government ministers. The tribunal's hands will be tied by "restriction orders" that can be served at any time during the inquiry. These orders, issued by a government minister—*someone with the same status Douglas Hogg once had*—will prevent material from being made public and order private hearings *even if the tribunal itself doesn't think that it is necessary to do so.*

I am firmly against the holding of an inquiry into Pat's murder under the Inquiries Bill. I have made it clear that I will not participate in an inquiry that is not what I have asked for: a public judicial inquiry composed of international judges like Peter Cory, who are fully independent of the British Government and seen to be so. I have made this clear repeatedly. I made it clear the very day the Inquiries Bill was published. It was not a position I took lightly or without due consideration but it was a decision I was able to make quickly because the Bill was such an obvious departure from what Judge Cory had recommended.

If the inquiry into Pat's murder is held under this law, it will constitute a breach of the Weston Park Agreement. The Prime Minister of Ireland, An Taoiseach Bertie Ahern, has personally assured me that not only does he reject the Bill under the terms of the Weston Park agreement but that he and his Government will insist that the terms of that Agreement are complied with. He said there would be no compromise on this issue.

Judge Cory made it clear that he also does not consider the Inquires Bill to be compliant with what he recommended. On Sunday, 13th March 2005, he made his views on the Bill public: "There was only one standard for a public inquiry at the time of the Weston Park accord . . . If this Act had been in place at the time to set up an inquiry I don't think that there is a judge who would take it on. Its provisions are too restrictive. Independence would be impossible." [3]

These views are shared by senior members of the British Judiciary, including Lord Saville, who chaired the bloody Sunday Inquiry. He has stated recently that he, ". . . would not be prepared to be a member of an inquiry if at my back was a minister with power to exclude the public or evidence from the hearings." [4]

Lord Saville, whose concerns are shared by Lord Woolf, the Lord Chief Justice, and other judges, recently told The Times newspaper, "I take the view that this provision makes a serious inroad into the independence of any inquiry. It is likely to damage or destroy public confidence in the inquiry and its findings, especially in any case where the conduct of the authorities may be in question." [5]

I do not believe there could be any stronger criticism of this proposed law than having the most senior judicial figures in Britain state that they would not participate in its operation.

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[2] Stevens Enquiry: Overview & Recommendations, 17 April 2003, para. 1.3

[3] "Attempt to limit Finucane inquiry criticised", *The Irish Times* (Dublin) 14 March 2005

[4] "Closing Doors: Ministers need to show greater regard for due process" (The Times) London, 26 February 2005

[5] Ibid.

In addition, what more blatant example could there be of the conduct of the authorities being in question than a case like that of Pat Finucane? Is there a more serious allegation that could be made against Britain than wilful collusion in the murder of its own citizen citizens? I believe the seriousness of the allegation and the weight of evidence supporting it is the real reason for the introduction of this new law; *not to expose the truth, but to ensure that it is buried deeply and buried forever.*

I have said for many years that the circumstances surrounding the murder of my husband are about much more than the killing of one man. They are a high profile example of what could have happened to anyone and what did happen to many that were not so fortunate. This new law is a worrying development for anyone, whether they are actively seeking the truth, as I am, or whether they simply believe that truth is important. This new legislation will apply to every inquiry in the future. It should be of concern to everyone because it will affect everyone. In this way, I think that one of the fundamental things about Pat's murder is highlighted once again: the extent to which it affected us all and continues to affect us all.

Everyone in Ireland knows the victims of collusion. They were our husbands, our brothers and sisters, our friends and colleagues. I believe that because we were all so affected, we all have a stake in the outcome of this inquiry, just as we have a stake in the outcome of the peace process. If there were any doubt about this before now, the British Government has removed that doubt by trying to change the law of the land that governs everyone.

I will fight to resist this proposed law because I want to know the truth about the murder of my husband. I refuse to allow the British Government to take away that truth as easily as it took away Pat's life.

Thank you very much."

Mr. SMITH. Mrs. Finucane, thank you so much for your testimony.

It just occurred to me listening to your testimony that in your mind the Inquiries Bill equals coverup. I think we need to begin being bold, and you certainly are bold in your statement, that there are reasons, as I said in my opening statement, that beg the question as to why a new set of rules are being proffered right as the time comes to establish the commission.

I do thank you for your candor and for your courage.

Ms. Winter?

STATEMENT OF MS. JANE WINTER, DIRECTOR, BRITISH IRISH RIGHTS WATCH

Ms. WINTER. Thank you, Mr. Chairman. British Irish Rights Watch is an independent non-governmental organization that monitors the human rights dimension of the conflict and the peace process in Northern Ireland. We welcome this opportunity to address this honorable Subcommittee concerning the legislation that the United Kingdom Government is introducing to replace public inquiries.

We also thank Chairman Chris Smith for his continuing focus on the Cory process in Northern Ireland, which has significant repercussions not just for the Finucane family and the other families involved, but for many others who desire and deserve inquiries, but will never attain one.

The Inquiries Bill was introduced into Parliament on the 25th of November 2004 without prior consultation and before the publication of the report of the Public Affairs Select Committee on its investigation called Government By Inquiry. When that report was published it was highly critical of the bill.

The Parliamentary Joint Committee on Human Rights has also published a critical report. That committee concludes that several provisions of the Inquiries Bill may not be compliant with article

2 of the European Convention on Human Rights, which protects the right to life. In cases involving violations of the right to life, such as the Finucane case, the provisions of the Inquiries Bill could inhibit an effective investigation, which is required by article 2.

The Inquiries Bill is being rushed through Parliament at a rate that does not reflect the magnitude of the changes it seeks to impose on the way that major matters of public importance are enquired into in the United Kingdom. If passed, responsibility for inquiries will pass from independent Chairs, usually judges or independent experts, to Government ministers.

Those ministers will decide whether there should be an inquiry; what its terms of reference should be; whether the inquiry will be held in public; whether the evidence put before the inquiry will be made public; and whether the final inquiry report will be made public.

The bill will repeal the 1921 Tribunals of Inquiry (Evidence) Act, and there will be no longer any substantive role for Parliament to play in inquiries. It has the potential for undermining public confidence in the ability of the British Government to investigate matters that engage the public interest or to put right things when they have gone badly wrong.

This bill will effectively mean an end to public inquiries called by Parliament and reporting back to Parliament rather than to the Executive. When ministerial or departmental conduct is at issue, the Government will be in a position to investigate itself—or not, as it chooses. The potential for coverup is obvious. In cases where serious wrongdoing such as collusion is alleged, such a degree of ministerial control is highly undesirable and could undermine the fabric of democracy itself.

This bill will affect all future inquiries. No one wants or expects to find themselves involved in a public inquiry. Plane crashes, train crashes, a doctor working in the National Health Service who is a serial murderer, hospitals who remove children's body parts for research purposes without seeking the parents' permission, the collapse of a football stadium, child abuse: Those are all personal tragedies which have been the subject of inquiries in the United Kingdom in recent years.

Anybody could have the misfortune to find themselves caught up in such circumstances. When it happens, the most important thing is that the inquiry should get at the truth and that there should be a public accounting so that a repetition can be avoided. If the inquiry that follows a tragedy is not full, fair and independent, and seen to be so, then the pain is made worse and public confidence is lost.

It is no coincidence that the bill is being hurried onto the statute books now. As Geraldine Finucane has explained, the Government intends to use the bill's provisions to deprive her and her family of a proper public inquiry.

It may help to bring the bill into focus if I explain how it would affect an inquiry into Patrick Finucane's murder, which, as we know, involved collusion by the police, the Army and the intelligence service and was made possible by Government policies which placed intelligence gathering above its obligation to protect the right to life.

In the first place, once the bill becomes law the Secretary of State for Northern Ireland will be the only person who can decide whether there should be an inquiry into the Finucane case at all. He could, if he so chooses, simply refuse to hold an inquiry. We doubt that he would in fact do so, given the international pressure for an inquiry and given the clarity of Judge Cory's recommendations.

So on the assumption that there is an inquiry, the Secretary of State will decide its terms of reference. The only person he needs to consult about the terms of reference is the Chair of the inquiry, whom he appoints. He need not consult the Finucane family or Sir John Stevens, who conducted the police investigation, nor Judge Cory.

The Finucane case involved many Government agencies and policies. It is complex. While some of the events that led to the lawyer's murder are specific to him, many of them have wide ramifications. Patrick Finucane was not the only person to die because of the actions of those agencies and the effects of Government policies. We expect that if an inquiry under the Inquiries Act is held into the Finucane case, the Secretary of State will draw the terms of reference as narrowly as possible, with the result that many salient facts will not come to light.

The Secretary of State will appoint the inquiry's panel members. He must ensure that the panel has the necessary expertise, but persons with a direct interest in the matter under inquiry or a close association with an interested party can be appointed so long as doing so could not, and I quote: "reasonably be regarded as affecting the impartiality of the inquiry panel."

Once again, the minister need not consult anyone about who to appoint to chair the inquiry and need only consult the Chair about the appointment of other panel members. We have no doubt whatsoever that only safe pairs of hands from the point of view of the Government would be appointed to chair any Finucane Inquiry.

The minister has other sweeping powers in relation to inquiries. He can alter the terms of reference, suspend the inquiry or terminate it. The only person he is bound to consult before taking any of these actions is the Chair, but the Chair has no power to stop him.

One of the minister's strongest powers is his ability to issue a restriction notice. Such a notice can determine whether all or part of the inquiry should be held in public. In theory, an inquiry could be held entirely behind closed doors.

The Secretary of State has already said that much of any Finucane Inquiry would have to be held in private. It is possible that the Finucane family themselves and even their lawyers would not be allowed to be present during some of the hearings, nor would it be possible for independent human rights groups such as British Irish Rights Watch to send observers to place any inquiry under independent scrutiny.

A restriction notice can also determine whether evidence placed before an inquiry can be disclosed or published. We anticipate that many crucial documents relating to the Finucane case will not be made public on the grounds that they deal with sensitive intelligence matters.

Finally, the Secretary of State will decide how much, if any, of the inquiry's final report will be made public. We have already heard that Lord Saville, who chairs the Bloody Sunday Inquiry, and other British judges, and Judge Cory himself have been extremely critical of these very restrictive provisions which would make it virtually impossible for any decent judge to hold a fully independent inquiry.

The Government will argue that even though the Inquiries Bill gives the minister so much power to control and direct the inquiry, the Secretary of State will still be able to hold an inquiry that meets the criteria set out by Judge Cory.

Those criteria were that there must be an independent commissioner or panel of commissioners; that the tribunal should have the full power to subpoena witnesses and documents, together with all the powers usually exercised by a public inquiry; that the tribunal should select its own counsel, who should have all the powers usually associated with a public inquiry; that the tribunal should be empowered to engage investigators such as police officers to carry out further investigation if necessary; that the hearings should be held to the extent possible in public; and that the findings and recommendations of the inquiry should be in writing and made public.

Given the terms of the Inquiries Bill, many of these stipulations could not be guaranteed. It must not be forgotten that the Government, its agencies and servants all stand accused of collusion not only in Patrick Finucane's murder, but many other deaths.

The Government is not a disinterested party. Any inquiry which is designated and controlled by the Secretary of State for Northern Ireland or any other Government minister is simply not acceptable not only to the Finucane family, but to any objective observer.

Had it not been for the introduction of the Inquiries Bill, the Government would have had no option but to hold the Finucane Inquiry under the Tribunals of Inquiry (Evidence) Act of 1921. That act will be repealed when the bill passes into law, but as I speak it remains in force.

If the Government had the political will to fulfill the commitment it gave in the Weston Park Agreement, it could announce an inquiry tomorrow and guarantee not to use the power contained in the Inquiries Bill to convert inquiries set up under other legislation into an inquiry as set out in the bill.

Since it is unlikely that the Government will do that, it is important that those who wish to see an independent inquiry into the Finucane case recognize that the Government is not bound to use the Inquiries Bill. It can establish an extra statutory inquiry on the basis that it is necessary to do so in order to fulfill the terms of the Weston Park Agreement, which is an intergovernmental agreement in some ways akin to an international treaty. The Government would need to legislate to provide such an inquiry with the powers to subpoena witnesses and documents, but that could be simply achieved.

Patrick Finucane was a very able human rights lawyer who fought tenaciously for the rights of his clients. It is both ironic and distressing that in the attempt to deny a proper inquiry into his murder, the Government is depriving everyone who needs such an inquiry from access to justice.

The Inquiries Bill removes in one fell swoop the notion of independent scrutiny over the actions of Government and Government departments and agencies. Without the independent scrutiny provided by a public inquiry, accountability is also lost. Such developments can only erode public confidence in government and ultimately undermine democracy.

I thank this honorable Subcommittee for its concern and I ask you to do all in your power to impress upon the United Kingdom Government the need to establish a fully independent and impartial inquiry into all the circumstances surrounding the murder of Patrick Finucane.

Thank you.

[The prepared statement of Ms. Winter follows:]

PREPARED STATEMENT OF MS. JANE WINTER, DIRECTOR, BRITISH IRISH RIGHTS WATCH

British Irish RIGHTS WATCH is an independent non-governmental organisation that monitors the human rights dimension of the conflict and the peace process in Northern Ireland.

We welcome this opportunity to address this honourable Sub-Committee concerning the legislation that the United Kingdom government is introducing to replace public inquiries. We also thank Chariman Chris Smith for his continuing focus on the Cory process in Northern Ireland, which has significant repercussions not just for the Finucane family and the other families involved, but for many others who desire and deserve inquiries but never attain one.

The Inquiries Bill was introduced into Parliament on 25th November 2004, without prior consultation and before the publication of the report of the Public Affairs Select Committee on its investigation, "Government By Inquiry". When that report was published, it was highly critical of the Bill. The parliamentary Joint Committee on Human Rights has also published a critical report. That Committee concludes that several provisions of the Inquiries Bill may not be compliant with Article 2 of the European Convention on Human Rights, which protects the right to life. In cases involving violations of the right to life, such as the Finucane case, the provisions of the Inquiries Bill could inhibit an effective investigation, which is required by Article 2..

The Inquiries Bill is being rushed through Parliament at a rate that does not reflect the magnitude of the changes it seeks to impose on the way that major matters of public importance are inquired into in the United Kingdom. If passed, responsibility for inquiries will pass from independent chairs—usually judges or independent experts—to government ministers. Those ministers will decide:

- whether there should be an inquiry;
- what its terms of reference should be;
- whether the inquiry will be held in public;
- whether evidence put before the inquiry will be made public; and
- whether the final inquiry report will be made public.

The Bill will repeal the 1921 Tribunals of Inquiry (Evidence) Act and there will no longer be any substantive role for Parliament to play in inquiries. It has the potential for undermining public confidence in the ability of the British government to investigate matters that engage the public interest or to put things right when they have gone badly wrong.

This Bill will effectively mean an end to public inquiries, called by Parliament, and reporting back to Parliament rather than to the Executive. When ministerial or departmental conduct is at issue, the government will be in a position to investigate itself—or not, as it chooses. The potential for cover-up is obvious. In cases where serious wrong-doing, such as collusion, is alleged, such a degree of ministerial control is highly undesirable and could undermine the fabric of democracy itself.

This Bill will affect all future inquiries. No-one wants or expects to find themselves involved in a public inquiry. Plane crashes, train crashes, a doctor working in the National Health Service who is a serial murderer, hospitals who removed children's body parts for research purposes without seeking the parents' permission, the collapse of a football stadium, child abuse—these are all personal tragedies which have been the subject of inquiries in the UK in recent years. Anybody could

have the misfortune to find themselves caught up in such circumstances. When it happens, the most important thing is that the inquiry should get at the truth, and that there should be a public accounting so that a repetition can be avoided. If the inquiry that follows a tragedy is not full, fair, and independent—and seen to be so—then the pain is made worse and public confidence is lost.

It is no coincidence that the Bill is being hurried onto the statute books now. As Geraldine Finucane has explained, the government intends to use the Bill's provisions to deprive her and her family of a proper public inquiry. It may help to bring the Bill into focus if I explain how it would affect an inquiry into Patrick Finucane's murder, which involved collusion by the police, the army, and the intelligence service and was made possible by government policies which placed intelligence-gathering above its obligation to protect the right to life.

In the first place, once the Bill becomes law the Secretary of State for Northern Ireland will be the only person who can decide whether there should be an inquiry into the Finucane case at all. He could, if he chooses, simply refuse to hold an inquiry. We doubt that he will in fact do so, given the international pressure for an inquiry and given the clarity of Judge Cory's recommendations.

On the assumption that there is an inquiry, the Secretary of State will decide its terms of reference. The only person he needs to consult about the terms of reference is the chair of the inquiry, whom he appoints. He need not consult the Finucane family, or Sir John Stevens, who conducted the police investigation, nor Judge Cory, who enquired into the case at the joint request of the British and Irish governments. The Finucane case involved many government agencies and policies. It is complex. While some of the events that led to the lawyer's murder are specific to him, many of them have wide ramifications. Patrick Finucane was not the only person to die because of the actions of these agencies and the effects of government policies. We expect that, if an inquiry under the Inquiries Act is held into the Finucane case, the Secretary of State will draw the terms of reference as narrowly as possible, with the result that many salient facts will not come to light.

The Secretary of State will appoint the inquiry's panel members. He must ensure that the panel has the necessary expertise, but persons with a direct interest in the matter under inquiry, or a close association with an interested party, can be appointed so long as doing so could not "reasonably be regarded as affecting the impartiality of the inquiry panel". Once again, the Minister need not consult anyone about who to appoint to chair the inquiry, and need only consult the chair about the appointment of other panel members. We have no doubt whatsoever that only safe pairs of hands from the point of view of the government would be appointed to chair any Finucane inquiry.

The minister has other sweeping powers in relation to inquiries. He can alter the terms of reference, suspend the inquiry, or terminate it. The only person he is bound to consult before taking any of these actions is the chair, but the chair has no power to stop him.

One of the minister's strongest powers is his ability to issue a restriction notice. Such a notice can determine whether all or part of the inquiry should be held in public. In theory, an inquiry could be held entirely behind closed doors. The Secretary of State has already said that much of any Finucane inquiry would have to be held in private. It is possible that the Finucane family themselves, and even their lawyers, would not be allowed to be present during some of the hearings. Nor will it be possible for independent human rights groups such as British Irish RIGHTS WATCH to send observers to place any inquiry under independent scrutiny.

A restriction notice can also determine whether evidence placed before an inquiry can be disclosed or published. We anticipate that many crucial documents relating to the Finucane case will not be made public on the grounds that they deal with sensitive intelligence matters.

Finally, the Secretary of State will decide how much, if any, of the inquiry's final report will be make public.

Lord Saville, who chairs the Bloody Sunday Inquiry into events in January 1972 (when the army killed and wounded unarmed demonstrators against internment without trial in Derry in Northern Ireland) has publicly voiced his criticisms of the Inquiries Bill, and in particular of restriction notices. He has told the government, "As a judge, I must tell you that I would not be prepared to be appointed as a member of an inquiry that was subject to a provision of this kind." He added that such ministerial interference with a judge's ability to act impartially and independently of government would be unjustifiable. Lord Norton, who is Professor of Government at the University of Hull, said during parliamentary debate about the Bill, "Given the powers vested in a Minister, one has to wonder who would accept appointment to serve on an inquiry if independence were not guaranteed." Given the very conten-

tious nature of the Finucane case, it is difficult indeed to imagine who would chair such an inquiry with their hands so firmly tied behind their back.

The government will argue that, even though the Inquiries Bill gives the minister so much power to control and direct the inquiry, the Secretary of State will still be able to hold an inquiry that meets the criteria set out by Judge Cory. Those criteria were:

- that there must be an independent commissioner or panel of commissioners;
- the tribunal should have full power to subpoena witnesses and documents together with all the powers usually exercised by a commissioner in a public inquiry;
- the tribunal should select its own counsel who should have all the powers usually associated with counsel appointed to act for a commission or tribunal of public inquiry;
- the tribunal should also be empowered to engage investigators who might be police officers or retired police officers to carry out such investigative or other tasks as may be deemed essential to the work of the tribunal;
- the hearings, to the extent possible, should be held in public; and
- the findings and recommendations of the Commissioners should be in writing and made public.

Given the terms of the Inquiry Bill, many of these stipulations could not be guaranteed. It must not be forgotten that the government, its agencies and servants, all stand accused of collusion not only in Patrick Finucane's murder but many other deaths. The government is not a disinterested party. Any inquiry which is designed and controlled by the Secretary of State for Northern Ireland, or any other government minister, is simply not acceptable, not only to the Finucane family, but to any objective observer.

Had it not been for the introduction of the Inquiries Bill, the government would have had no option but to hold the Finucane inquiry under the Tribunals of Inquiry (Evidence) Act 1921. That Act will be repealed when the Bill passes into law, but as I speak it remains in force. If the government had the political will to fulfil the commitment it gave in the Weston Park Agreement, it could announce an inquiry tomorrow and guarantee not to use the power contained in the Inquiries Bill to convert inquiries set up under other legislation into an inquiry as set out in the Bill.

Since it is unlikely that the government will do that, it is important that those who wish to see an independent inquiry into the Finucane case recognize that the government is not bound to use the Inquiries Bill. It can establish an extra-statutory inquiry on the basis that it is necessary to do so in order to fulfil the terms of the Weston Park Agreement, which is an inter-governmental agreement in some ways akin to an international treaty. The government would need to legislate to provide such an inquiry with the powers to subpoena witnesses and documents, but that could be simply achieved.

Patrick Finucane was a very able human rights lawyer who fought tenaciously for the rights of his clients. It is both ironic and distressing that in the attempt to deny a proper inquiry into his murder the government is depriving everyone who needs such an inquiry from access to justice.

The Inquiries Bill removes in one fell swoop the notion of independent scrutiny over the actions of government and government departments and agencies. Without the independent scrutiny provided by a public inquiry, accountability is also lost. Such developments can only erode public confidence in government and ultimately undermine democracy.

I thank this honourable Sub-Committee for its concern and ask you to do all in your power to impress upon the United Kingdom government the need to establish a fully independent and impartial inquiry into all the circumstances surrounding the murder of Patrick Finucane.

March 2005

Mr. SMITH. Ms. Winter, thank you very much for your very thorough and very well-researched testimony and, above all, for the good work you do on a daily basis.

Ms. Massimino?

STATEMENT OF MS. ELISA MASSIMINO, DIRECTOR, WASHINGTON OFFICE, HUMAN RIGHTS FIRST

Ms. MASSIMINO. Thank you. Thank you, Mr. Chairman, and thank you so much for convening this hearing and inviting me to share the views of Human Rights First on this important issue.

I would like to say a particular thanks to you, Chairman Smith, for your unshakable resolve to keep this issue and all human rights issues on the agenda of the United States Congress. People around the world who struggle against oppression and injustice know they can count on you as a tenacious ally in that fight.

They turn to you time and again—we all do—because we know you share our commitment that every human being has inherent value and inalienable rights and the determination not to quit until those rights are secured. We are so grateful to you and your unbelievably hard-working staff for that commitment to human rights.

You have asked me today to touch on the other cases besides the Finucane case that Judge Cory investigated. There are five other cases involving allegations of collusion that were investigated by Judge Peter Cory following the agreement between the Irish and British Governments at Weston Park in 2001.

In three of those cases—the murders of Robert Hamill, Billy Wright and Rosemary Nelson—there is evidence of collusion by British State agents in the killings. In the other two cases—the murders of Lord Justice and Lady Gibson and of police officers Harry Breen and Bob Buchanan—collusion by the Irish police was alleged.

The Weston Park Agreement referred to all these cases as "a source of grave public concern." The British and Irish Governments agreed that "in the event a public inquiry is recommended in any case, the relevant government will implement that recommendation." The commitment made by the Governments in the Weston Park Agreement could not have been more clear.

Judge Cory had completed his work by October 7, 2003, when he delivered two reports to the Irish Government and four reports, including the Finucane report, to the U.K. Government. On December 18, 2003, the Irish Government published the two reports addressed to them. Judge Cory had recommended a public inquiry in the Buchanan and Breen case, and the Irish Government announced that it would immediately establish such an inquiry.

The British Government took a different approach. It held up publication of Judge Cory's reports into the Hamill, Wright, Nelson and Finucane cases for many months. Finally, on January 12, 2004, frustrated with the U.K. Government's delay which kept the families in suspense about his conclusions, Judge Cory took the unusual step of independently notifying the four families concerned that he had recommended public inquiries in all four cases. He made those recommendations public at that time as well.

Still the U.K. Government stalled. On April 1, 2004, the U.K. finally published Judge Cory's reports and announced that it would hold public inquiries in three of the cases, all except that of Patrick Finucane. But it was not until November 16, 2004, 13 months after Judge Cory first delivered his reports to the U.K. Government, that the Government announced the terms of reference for the public inquiries in the Hamill, Wright and Nelson cases, along with the

names of the chairmen and other panel members who would hold the hearings. The Finucane family, as we all know, is still waiting.

The handling of this process by the U.K. Government is discouraging, but not all that surprising. The long delays—between completion of the Cory reports and their publication, between the announcement that public inquiries would be held in three of the cases and any movement toward establishing those inquiries—underscores both the low priority the U.K. Government placed on this effort and its ongoing resistance to uncovering the truth in these cases. The strategy so far seems to have been one designed to alleviate pressure on the Government in small increments while holding progress to a snail's pace.

Each of these cases is emblematic of much broader problems involving institutionalized sectarianism, lack of faith of all communities in the criminal justice system and the vilification of defense lawyers. A lot of progress needs to be made still on all of these issues, but I will just briefly address each of the cases if I can, and I ask that my full statement be entered into the record.

Mr. SMITH. Without objection. It will be made a part.

Ms. MASSIMINO. In the case of Robert Hamill, a young Catholic man who was kicked to death by a loyalist mob in 1987 while armed police officers sat in a Land Rover nearby, the Secretary of State of Northern Ireland announced the establishment of a public inquiry in November of last year under section 44 of the Police (North Ireland) Act of 1998.

This is a provision that would be repealed once the new Inquiries Bill is enacted, but will remain in force governing this inquiry and the other inquiries that have been now announced.

The terms of reference of the inquiry are this, and I quote:

> "To inquire into the death of Robert Hamill with a view to determining whether any wrongful act or omission by or within the Royal Ulster Constabulary facilitated his death or obstructed the investigation of it, or whether attempts were made to do so; whether any such act or omission was intentional or negligent; whether the investigation of his death was carried out with due diligence; and to make recommendations."

Panel members have now been named in the inquiry. The inquiry has established offices in London and is in the process of setting up its Web site and determining which procedures will govern it.

There are some concerns about the manner in which the inquiry has gone forward so far, including the fact that, despite assurances from the Northern Ireland office to the Hamill family that they would have the opportunity to meet with the Chair of the inquiry before the terms of reference were announced, that meeting did not happen, and there has been no adequate explanation for that.

One of the results I think is that the terms of reference fail explicitly to mention the concept and term collusion. This is a common failing amongst all of the terms of reference of the inquiries that we are talking about here today.

While we think that the terms of reference are certainly broad enough to incorporate that concept, and clearly the Cory Inquiry was all about collusion, this is not an inquiry simply into the

deaths of these people, but into the collusion by the Government in their deaths and the coverup that each of these inquiry panels must examine. That is largely the point of doing them.

In the case of dissident loyalist leader Billy Wright, who was murdered in the Maze prison in 1997 by Republican prisoners whom the prison authorities had housed in the same wing of the prison, similarly the U.K. Government announced an inquiry in November, and that was established under section 7 of the Prison Act 1953, also a law that would be repealed by the Inquiries Bill.

The terms of reference in that inquiry are:

> "To inquire into the death of Billy Wright with a view to determining whether any wrongful act or omission by or within the prison authorities or other state agencies facilitated his death, or whether attempts were made to do so; whether any such act or omission was intentional or negligent; and to make recommendations."

Panel members have been appointed, and the inquiry is in the process of setting up its offices and appointing additional staff.

As with the Hamill Inquiry, Mr. Wright's father, David Wright, was told he would have the opportunity to meet with the inquiries' Chair before the terms of reference were announced, and that meeting did not happen. So it is very important that we monitor these inquiries carefully and we insure that the terms of reference are not used as a way to restrict investigation into the key component here, which is collusion.

In the case of Rosemary Nelson, who, 6 years ago yesterday was killed in a car bomb explosion. She was 40 years old, leaving three young children and a husband. She sat here right where we are sitting 6 months before her death and recounted the harassment and intimidation and death threats she was receiving, including an assault on her by RUC police officers.

Despite that, she continued to represent her clients, including the family of Robert Hamill, as best she could under increasingly difficult circumstances.

Six years after her death, despite a lengthy police investigation, no one has been charged in her murder. Some of those suspected of involvement in the crime were police agents, and one was a serving soldier.

The announcement of the terms of reference of the inquiry into official collusion in her death were announced in November 2004, as were the others. The Chair and other panelists have been named. Counsel has been appointed. A secretary and other staff have been hired, and there is a Web site now.

This is the inquiry that is furthest along. It will hold an opening hearing next month on April 19 at which the Chair will introduce the panel and set out details about how he intends to conduct the inquiry. Following that, it will begin to gather evidence for full hearings, which are expected to commence early next year.

The Nelson Inquiry is established under section 44 of the Police (Northern Ireland) Act of 1998. Its terms of reference are, and I quote:

> "To inquire into the death of Rosemary Nelson with a view to determining whether any wrongful act or omission by or within

the Royal Ulster Constabulary or Northern Ireland Office facilitated her death or obstructed the investigation of it, or whether attempts were made to do so; whether any such act or omission was intentional or negligent; whether the investigation of her death was carried out with due diligence; and to make recommendations."

Her family likewise was told it could consult with the Chair of the inquiry prior to announcement of the terms of reference. That meeting did not happen. We are quite concerned that in particular in this inquiry, the possible collusion by the Army be looked at by the inquiry, and that is something that we will be following up with you and with the inquiry to make sure happens.

After so many years of obstruction and delay, progress being made in all three of these inquiries is very welcome. We are going to be watching the progress and monitoring the development, and we encourage you and other Members of Congress to scrutinize these inquiries as they progress and raise our concerns about the terms of reference with the British Government.

The U.K. Government has assured us that none of these three inquiries will be in any way governed by the new Inquiries Bill once it is passed into law. Given the significant deficiencies that you have heard already today about that bill, holding the Government to that commitment is critical.

I have to say in closing that the hope engendered by signs of progress in these cases is largely overshadowed by the U.K. Government's ongoing failure to move ahead with a public inquiry into official collusion in the murder of Patrick Finucane.

Worse even than the many years of inaction, the U.K. Government now seems poised to foreclose the possibility of a credible inquiry into this case altogether. That would be devastating not only for the Finucane family, but for the cause of peace and reconciliation in Northern Ireland for years to come.

Under these new proposed rules, I do not believe that an inquiry in the Finucane case could be public, could be independent, and in our view it would not be worth doing.

Thank you.

[The prepared statement of Ms. Massimino follows:]

PREPARED STATEMENT OF MS. ELISA MASSIMINO, DIRECTOR, WASHINGTON OFFICE, HUMAN RIGHTS FIRST

INTRODUCTION

Chairman Smith and members of the Subcommittee, thank you for convening this hearing and for inviting me to share the views of Human Rights First on this important issue. I would like to say a particular word of thanks to you, Chairman Smith, for your unshakable resolve to keep human rights on the agenda of the United States Congress. We are deeply grateful for your principled and persistent leadership on this and so many other critical human rights issues. People around the world who struggle against oppression and injustice have found time and again that they can count on you as a tenacious ally in that fight. They turn to you because they know you share both their conviction that every human being has inherent value and inalienable rights, and their determination to persist until those rights are secured. We are all grateful to you and your incredibly hard-working staff for your unwavering commitment to human rights.

Human Rights First's mission—to protect and promote human rights—is rooted in the premise that the world's security and stability depend on respect for human dignity and the rule of law in every part of the world. Since our inception in 1978, we have worked both in the United States and abroad to support human rights ac-

tivists who fight for basic freedoms and peaceful change at the local level; to protect refugees in flight from persecution and repression; to help build strong national and international systems of justice and accountability; and to make sure human rights laws and principles are respected and enforced.

For the last fifteen years, Human Rights First has worked to advance human rights in Northern Ireland. Since 1990, we have undertaken numerous missions and published a series of reports focused on the intimidation and murder of defense lawyers in Northern Ireland, with particular focus on the cases of solicitors Patrick Finucane and Rosemary Nelson. These courageous lawyers were killed for doing their jobs. There is substantial evidence of official collusion in their murders. Human Rights First believes strongly that peace and reconciliation in conflicted societies like Northern Ireland will come only once there is official recognition of and accounting for the wrongs of the past. Unless citizens from all sectors of society believe that their rights are respected, peace in Northern Ireland will never take strong root.

BACKGROUND ON THE CORY INVESTIGATIONS

The cases that Judge Cory examined pursuant to the Weston Park Agreement and recommended for public inquiry are, each in their own way, emblematic of the breakdown in the relationship between the state and its citizens during a time of crisis. Exposing the truth about what happened in these cases is essential to building a foundation for the culture of respect for rights and transparency in government on which the future of Northern Ireland depends. Progress, however slow, is finally being made in some of these cases, and we appreciate the opportunity to brief the Committee on the status of that progress today.

In addition to the Finucane case, about which we have heard such eloquent testimony from Geraldine Finucane, five other cases involving allegations of collusion were investigated by Judge Peter Cory following agreement between the Irish and the British governments at Weston Park in 2001. In three of these cases—the murders of Robert Hamill, Billy Wright and Rosemary Nelson—there is evidence of collusion by British state agents in the killings. In the other two cases—the murders of Lord Justice and Lady Gibson, and of police officers Harry Breen and Bob Buchanan—collusion by the Irish police was alleged. The Weston Park Agreement referred to all of these cases as "a source of grave public concern." The British and Irish Governments agreed that, "[i]n the event that a Public Inquiry is recommended in any case, the relevant Government will implement that recommendation." The commitment made by the governments in the Weston Park Agreement could not have been more clear.

Judge Cory had completed his work by October 7th 2003 when he delivered two reports to the Irish government and four reports (including the Finucane report) to the UK government. On December 18th 2003, the Irish government published the two reports addressed to them. Judge Cory had recommended a Public Inquiry in the Buchanan and Breen case, and the Irish government announced that it would immediately establish such an inquiry.

The British government took a different approach. It held up publication of Judge Cory's reports into the Hamill, Wright, Nelson and Finucane cases for many months. Finally, on January 12th 2004, frustrated with the UK government's delay, which kept the families in suspense about his conclusions, Judge Cory took the unusual step of independently notifying the four families concerned that he had recommended Public Inquiries in all four cases. Judge Cory made his recommendations public as well. Still the UK government stalled. On April 1st 2004, the UK finally published Judge Cory's reports and announced that it would hold Public Inquiries in three of the cases—all except that of Patrick Finucane. But it was not until November 16th 2004, thirteen months after Judge Cory first delivered his reports to the UK government, that the government announced the terms of reference for the Public Inquiries in the Hamill, Wright and Nelson cases, along with the names of the chairmen and other panel members who would hold the hearings. The Finucane family is still waiting.

The handling of this process by the UK government is discouraging, but not surprising. The long delays—between completion of the Cory reports and their publication, between the announcement that Public Inquiries would be held in three of the cases and any movement towards establishing those Inquiries—underscores the low priority the UK government placed on this effort, as well as its ongoing resistance to uncovering the truth in these cases. The strategy seems to have been one designed to alleviate pressure on the government in small increments, while holding progress to a snail's pace.

UPDATE ON PROGRESS TOWARDS PUBLIC INQUIRIES IN THE CORY CASES

In addition to the Finucane case, the importance of the Hamill, Wright and Nelson cases in Northern Ireland cannot be overstated. Each of them is emblematic of much broader problems involving institutionalized sectarianism, lack of faith of all communities in the criminal justice system, and the vilification of defense lawyers. While some progress has been made in addressing these problems in Northern Ireland, a great deal of work remains to be done. The establishment of public inquiries into the Hamill, Wright and Nelson cases is therefore of great significance, and the effective functioning and conclusion of these inquiries could contribute greatly to consolidating the rule of law and entrenching a climate of respect for basic human rights.

ROBERT HAMILL

Robert Hamill was a young Catholic man who was kicked to death by a loyalist mob in 1987 in the center of Portadown, despite the presence of armed police officers in a police Land Rover nearby. His attackers did not know him, but they could tell by the direction in which he was walking that he was a Catholic. There is little dispute that this was a purely sectarian murder. After the murder, the RUC (Royal Ulster Constabulary, the former name for the police in Northern Ireland) put out misleading press statements suggesting that Robert Hamill had been involved in a fight between opposing factions and that police officers had been injured in the fray. Following an investigation by the Police Ombudsman, former police officers and others were charged with perverting the course of justice by alerting suspects and telling them how to dispose of forensic evidence. Only one of Hamill's assailants was ever convicted, and of only a minor offense in relation to the murder.

On November 16th, 2004, the Secretary of State for Northern Ireland announced the establishment of a Public Inquiry into the murder of Robert Hamill under section 44 of the Police (Northern Ireland) Act 1998. (This provision will be repealed by the new Inquiries Bill when it is enacted, but will remain the basis for the Robert Hamill inquiry even after the Inquiries Bill comes into force). The terms of reference of the inquiry are:

"To inquire into the death of Robert Hamill with a view to determining whether any wrongful act or omission by or within the Royal Ulster Constabulary facilitated his death or obstructed the investigation of it, or whether attempts were made to do so; whether any such act or omission was intentional or negligent; whether the investigation of his death was carried out with due diligence; and to make recommendations."

A retired High Court Judge, Sir Edwin Jowitt, will chair the inquiry and will be assisted by Sir John Evans, a former police chief constable, and Reverend Baroness Kathleen Richardson of Calow, a former moderator of the Free Churches' Council of England and Wales. Counsel to the inquiry has now been appointed, along with a solicitor, secretary and other staff. The inquiry has established offices in London and is in the process of setting up its website and determining the procedures that it will adopt.

While all of these developments are welcome, there remain some concerns about the terms of reference for the inquiry and the lack of consultation with the Hamill family prior to the finalization of those terms of reference. At a meeting in July 2004, senior Northern Ireland Office officials assured the Hamill family that they would have the opportunity to meet the chair of the inquiry and discuss the terms of reference before they were finalized. This meeting never took place. There is some suggestion that this failure to meet with the family may have been the result of a conclusion by officials in the Northern Ireland Office that family members were to be seen somehow as "parties" in the Inquiry and that it would be improper for the chair to meet privately with them in advance to discuss the terms of reference. There seemed to be no such compunction, however, about Inquiry officials interacting directly with the Northern Ireland Office, arguably more a "party" to the Inquiry into official collusion than the victim's family.

Despite the fact that the inquiry is a direct result of Judge Cory's Collusion Investigation, the terms of reference make no explicit mention of collusion. Judge Cory viewed his primary task as determining whether there was evidence of official collusion. In Robert Hamill's case, he found such evidence. It is, therefore, crucial that the public inquiry has the remit to look into the question of collusion. Despite the failure to use the term "collusion," there can be no doubt that the terms of reference are broad enough and should be construed to encompass what is, after all, at the heart of the inquiry: collusion.

BILLY WRIGHT

Dissident loyalist leader Billy Wright was murdered in the Maze prison in 1997. He was a leader of the Loyalist Volunteer Force (LVF) and was regarded as an impediment to the peace process. While on his way to a prison visit, he was shot and killed by republican INLA prisoners whom the prison authorities had housed in the same wing of the prison. They were able to smuggle weapons into the jail, cut through a wire fence and climb on to the prison roof completely undetected. A prison officer was called away from a crucial watch tower just at the time of the murder, and there is evidence to suggest that the murderers had advance warning that Billy Wright was due to receive a visit that morning. The prison authorities received repeated warnings from prison staff and from intelligence officials that Billy Wright was a target for murder; they even knew the names of the murderers and the methods they would employ. But these officials did nothing to protect Billy Wright, a prisoner whose safety was in their charge.

The UK government announced on November 16, 2004 that it would hold a Public Inquiry into the murder of Billy Wright. This inquiry was established under section 7 of the Prison Act (Northern Ireland) 1953 (a provision that will be repealed by the Inquiries Bill when passed). Its terms of reference are: "To inquire into the death of Billy Wright with a view to determining whether any wrongful act or omission by or within the prison authorities or other state agencies facilitated his death, or whether attempts were made to do so; whether any such act or omission was intentional or negligent; and to make recommendations."

The inquiry will be chaired by Lord MacLean, a recently retired senior Scottish judge. Other panel members will be Professor Andrew Coyle, director of the International Centre for Prisons Studies at King's College, London, and the Right Reverend John Oliver, a retired English bishop. The inquiry is in the process of setting up its offices in Edinburgh and appointing the necessary staff.

As with the Hamill inquiry, the terms of reference for the Billy Wright inquiry are somewhat deficient and, despite government assurances to the victim's father, David Wright, that he would have the opportunity to meet the inquiry chair and discuss the terms of reference before they were finalized, this meeting did not transpire. Like the Robert Hamill inquiry, the terms of reference for the Billy Wright inquiry make no explicit mention of collusion. Nor do they make any mention of the various investigations that took place after Wright's death, including the police investigation, the inquest, and internal prison investigations. And, the terms of reference do not specifically permit an examination of the basis for Billy Wright's arrest in the context of Northern Ireland's Peace Process. As Judge Cory identified, there is a great deal of evidence to suggest that Billy Wright's murder could have been prevented, which points to many acts of potential collusion before his death, as well as evidence to suggest an attempted cover-up after the murder. Failure to examine the events leading up to Billy Wright's murder, as well as what transpired afterwards, will mean that only a partial truth will emerge.

ROSEMARY NELSON

Six years ago yesterday, Lurgan lawyer Rosemary Nelson was killed when a bomb set by the LVF exploded under her car. She was 40 years old, the mother of three young children. Six months before her death, she sat before you in this hearing room and recounted the harassment, intimidation and death threats she was receiving, including an assault on her by RUC police officers. Despite these threats, Rosemary Nelson continued to do her job as a lawyer, seeking justice for her clients, including the family of Robert Hamill, as best she could under increasingly difficult circumstances. As you know, Mr. Chairman, representatives of the United Nations, NGOs and Members of the United States Congress raised concerns with the UK government about her safety, but she was offered no protection. Six years after her death, despite a lengthy police investigation overseen by officers from outside Northern Ireland, no one has been charged with her murder. Some of those suspected of involvement in the crime were police agents, and one was a serving soldier.

Following the announcement of the terms of reference of the inquiry on November 16th 2004, and of the chair and other panel members, the inquiry established its office in London, appointed counsel, a solicitor, secretary and other staff, and now has its own website (www.rosemarynelsoninquiry.org). The inquiry is chaired by Sir Michael Morland, a retired member of the High Court of England and Wales. The other panel members are Sir Anthony Burden, a former Chief Constable of South Wales police and Dame Valerie Strachan, vice chair of a big lottery fund and former chairman of the Board of Customs and Excise.

The inquiry will hold an opening hearing on April 19th, at which the chair will introduce the panel and set out details about how he intends to conduct the inquiry.

Following the opening hearing, the inquiry will begin gathering evidence for the full hearings, which are not expected to commence until early next year. These hearings will be public and are likely to take place in Belfast or Lurgan. Should the inquiry consider it necessary to hold some sessions in private or to protect the identities of some witnesses, it will disclose its reasons for such decisions.

The inquiry will accord the status of "full participant" to a small group of individuals and organizations, including Rosemary Nelson's husband, her mother, the Police Service of Northern Ireland and the Northern Ireland office. These individuals and groups will be entitled to legal representation throughout the course of the inquiry, and their legal costs may be met from public funds. They will also be granted access to written copies of all witness statements given to the inquiry.

The Nelson inquiry is established under section 44 of the Police (Northern Ireland) Act 1998. Its terms of reference are: "To inquire into the death of Rosemary Nelson with a view to determining whether any wrongful act or omission by or within the Royal Ulster Constabulary or Northern Ireland Office facilitated her death or obstructed the investigation of it, or whether attempts were made to do so; whether any such act or omission was intentional or negligent; whether the investigation of her death was carried out with due diligence; and to make recommendations."

Members of Rosemary Nelson's family met in July 2004 with senior Northern Ireland Office officials who assured them that they would be given the opportunity to meet with Sir Morland before the terms of reference were finalized. As with the Hamill and Wright cases, however, this meeting never took place. The terms of reference for the Nelson inquiry are likewise deficient in that they make no explicit reference to collusion, nor do they reference the possible involvement of the army in the murder. While Judge Cory did not find evidence of collusion on the part of the army in this case, his investigation concentrated largely on the failure of the police and the Northern Ireland office to act on death threats against Rosemary Nelson before she was murdered, and did not examine the potential role of two serving soldiers in the murder. We urge the chair of the inquiry to interpret its terms of reference broadly enough to encompass these concerns.

After so many years of obstruction and delay, progress being made in all three of these inquiries is welcome. Human Rights First, British Irish Rights Watch, CAJ and other NGOs will continue to monitor their development closely. We encourage members of Congress to scrutinize these inquiries as they progress and to raise our concerns about the terms of reference with the British government. The UK Government has assured us that none of the three inquiries will be in any way governed by the new Inquiries Bill once it is passed into law. Given the significant deficiencies in this bill, holding the government to this commitment is critical.

BUCHANAN AND BREEN

Finally, a word about the Irish cases. Harry Breen and Bob Buchanan were RUC officers who were ambushed and shot by the IRA as they returned to Northern Ireland from a meeting in the Republic in 1989. Collusion by the Irish police in the killings was suspected, and evidence of such collusion was found by Judge Cory, who recommended to the Irish government that it establish a public inquiry to examine the case. The Irish government announced that it would hold an inquiry, but it was not until earlier this month that it announced that the chair of the Inquiry will be Justice Peter Smithwick, the President of the District Court. The inquiry will be held under the Irish Tribunal of Inquiries (Evidence) Acts 1921–2002, although its terms of reference have not yet been published. The Inquiry will be discussed in the Irish Parliament beginning next week, and the terms of reference are to be published at that time.

THE CASE OF PATRICK FINUCANE AND THE NEW UK PUBLIC INQUIRIES BILL

The hope engendered by signs of progress in these cases, unfortunately, is largely overshadowed by the UK Government's ongoing failure to move ahead with a Public Inquiry into official collusion in the murder of Patrick Finucane. Worse even than inaction, the UK government is poised to foreclose the possibility of a credible inquiry in this case altogether. This would be devastating, not only for the Finucane family, but for the cause of peace and reconciliation in Northern Ireland for years to come.

Specifically, we are alarmed by the UK Government's plans to conduct an inquiry in the Finucane case under new rules that seem designed to ensure that the truth remains hidden. Under the bill currently pending in the Parliament:

- The power to commence and supervise an inquiry is taken away from Parliament and placed solely in the hands of a single Minister.

- Only the Minister who initiates the inquiry can set the terms of reference and appoint a chairperson. This gives the Minister control over which facts and issues will be investigated. The appointed chairperson of the inquiry will have no power to change these terms of reference even if doing so is necessary to fully investigate the facts and produce a balanced report.
- The Minister who initiates the inquiry can prevent public access to some or all of the hearings and can also decide to stop evidence and information, including the final report, from reaching the public.
- The Minister can exercise this right to restrict public access to hearings and information when it is deemed that such restriction is "necessary in the public interest." The public interest could include such elastic terms as "damage to the economic interests of the United Kingdom", "damage to national security", or "additional cost."
- The Minister can order an end to an inquiry without providing any reason for doing so.

An inquiry conducted under these rules could be neither public nor independent, and the amendments to existing law go far beyond any legitimate concern to protect classified information. Our concerns about these new rules, which will apply across the board to all future public inquiries, are magnified greatly in relation to the Finucane case. An inquiry into official collusion in Patrick Finucane's murder conducted under these rules would have virtually no chance of uncovering the truth and, in our view, would not be worth doing.

CONCLUSION

The peace process in Northern Ireland is often beset with political crises which have tended to stall progress on important human rights reforms. This in turn has tended to undermine support for the peace agreement itself from those who are waiting to experience real change in their daily lives. We believe strongly that progress on human rights will sustain support for peace in Northern Ireland, even during periods of political turmoil. But invariably, during these times of turmoil, we hear the refrain from many in the political process that the time is not right to talk about human rights. We join you Chairman Smith, in rejecting this short-sighted approach. The United States has an important role to play in encouraging its close friend and ally, the United Kingdom, to live up to its commitments under the Weston Park Agreement and announce immediately that it will hold a public inquiry into government collusion in the murder of Patrick Finucane under the inquiry rules that were in existence when these commitments were made.

There are always those who argue that focusing on redress for past wrongs will simply reopen old wounds and mire society in the bitterness of a conflict that is now essentially over. But this view ignores the violence done to the fabric of society by leaving such wounds to fester. As so many societies transitioning from conflict to peace have learned, building a culture of human rights and accountability depends on having a credible process for addressing past violations. Public inquiries into government collusion in these emblematic cases are quite simply a pre-requisite to breaking the cycle of impunity that persists in Northern Ireland. Until the government demonstrates a commitment to uncovering and acknowledging the wrongs done in these cases, there will be a fundamental withholding of faith on the part of many in Northern Ireland that no amount of policing or criminal justice reforms will remedy. The time in which the UK government can finally demonstrate a commitment to transparency and accountability with respect to the murder of Patrick Finucane is running out. We thank you and your colleagues in the House for your efforts to convey this sense of urgency to Prime Minister Blair. We urge you to do all you can now to ensure that President Bush sends the same message.

Thank you for the opportunity to share our views with the Committee.

Mr. SMITH. Ms. Massimino, thank you very much for your testimony and for your kind words. The feeling is mutual, whether it be on Northern Ireland or any other human rights issue. You are always right there in the middle of it and working on behalf of the disenfranchised and oppressed. Thank you for your leadership.

Ms. Beirne?

STATEMENT OF MS. MAGGIE BEIRNE, DIRECTOR, COMMITTEE ON THE ADMINISTRATION OF JUSTICE

Ms. BEIRNE. Thank you, Mr. Chair, and can I reiterate those remarks about your perseverance and commitment and thank the Committee also for its continuing attention to human rights in Northern Ireland.

If it is acceptable, given the pressure of time, if I could submit my fuller statement to be——

Mr. SMITH. Without objection. Your full statement will be made a part of the record——

Ms. BEIRNE. Thank you very much.

Mr. SMITH [continuing]. And that of all of our witnesses and any attachments you would like to make a part of the record.

Ms. BEIRNE. Thank you. Essentially I have been asked to concentrate on those cases, the many, many cases that in fact will not qualify for any kind of inquiry and to focus particularly on the recent announcement that has been made by the Secretary of State for Northern Ireland, where a Serious Crime Review Team will be created within the Police Service of Northern Ireland, a ring-fenced unit created by the Chief Constable, that will be looking into cases of deaths during the course of the conflict.

The press release that refers to this unit indicates that it will be served by a mix of serving and retired police officers from the PSNI and British police forces; that there will be disclosure of appropriate information to families of victims; that there will be a dedicated intelligence team working in the Review Unit; and complaints about actions by the PSNI, including seconded officers, will be subject to investigation by the Police Ombudsman, but this would not extend to agency staff, and there is some question also about retired PSNI officers.

We believe, according to media reports, that something in the range of £30 million over a 6-year period is envisaged for this unit, so we should start off by welcoming the fact that government is trying to engage in some way with the legacy of the past. The Good Friday Agreement was very much looking forward and did not address the legacy of the past, and this is the beginnings of an attempt to do so.

I suppose we want to particularly emphasize that this is really just a part. It would be unacceptable if this were seen as an engagement and a comprehensive initiative aimed at addressing the past. It would be totally unacceptable that the Government would be in sole measure responsible for engagement with the past, but the Serious Crime Review Initiative is an important part of addressing the past, and to that extent we welcome it.

We are, however, concerned about the terminology that is already being used in the course of explaining this new Serious Crime Review Team. The press release talks of the review looking at 1,800 murders, and the key word here is murders. Death at the hands of security forces are not considered murders in any official statistics. If taken at face value, that might suggest that the review will only be looking at deaths caused by paramilitary groups and not deaths caused by Army or police personnel.

The Committee on the Administration of Justice (CAJ) and others have received assurances from the Police Service that that is

not the correct interpretation and that they will be looking at, "1,876 unsolved incidents of murder, some with multiple victims, and a further 400 deaths related to the security situation." But again you see there is quite a clear linguistic distinction being made.

Since the review is in the hands of the Police Service of Northern Ireland, it would be deeply unfortunate that there be any suggestion at the outset that there is an inherent bias toward the exoneration of alleged state abuses.

However, the problem is obviously not one just of terminology, but the fact that the review is a Police Service of Northern Ireland review. That would create real and perceived problems of impartiality. Obviously it is very welcome that the Northern Ireland Office is talking about a ring-fenced unit, but we are very concerned that this should in fact be the case and that the unit is run in such a way that independence is at its core.

Certainly its success will be very much dependent on how independent it is seen to be, and we would hope that the Subcommittee might follow this particularly closely. We and others will be looking to see and asking questions such as, What are the lines of accountability and responsibility from the unit to the Chief Constable?

Are the lines of authority direct, or are they mediated through PSNI officers who served previously in the RUC who may be expected to retain some loyalty to that institution and to former colleagues? What proportion of officers are being recruited or seconded from outside the jurisdiction, and how broad is that pool?

There is talk of PSNI and British officers, but there is no reference to drawing on police expertise from other jurisdictions, including the Republic of Ireland or other parts of the world. How public and transparent will the process be? How involved with the Policing Board be?

Will the Police Ombudsman have jurisdiction over retired PSNI officers? In particular, how will they handle particularly problematic cases such as those handled by the Royal Military Police in the early 1970s where no police investigation was undertaken?

There are key issues of transparency here. One of the key things that we would want to look at is the learning that comes out of the reexamination of old cases. I think it is particularly important to emphasize that three of the four cases that we have focused on in this panel have been relatively recent murders, 1997 to 1999, so clearly these are recent system failings, and we want to learn from the past to make sure that these cannot be repeated in the future.

We also want to learn lessons for the broader criminal justice agencies. It is very clear and we have very serious reservations about actions in the past of the Director of Public Prosecution's Office and their failure to give reasons when they choose not to prosecute particular cases. And it may well be that in many of these cases we discover the problems may not have been related to the police investigation, but rather arose when the case arrived with the Director of Public Prosecutions or other stages in the criminal justice process. Those are things that we would like to be able to learn some lessons from and insure cannot be repeated in the future.

Just to conclude, our concerns and I think the concerns that are shared by other human rights groups are that the Serious Crimes Review Team cannot be and should not be seen as a panacea or a comprehensive response to the past.

It does need to command the necessary level of public confidence, and if it is to do that then it must meet basic human rights principles of accountability, transparency, respect for human dignity, impartiality and fairness. Of course, as an earlier panelist said, it must comply with article 2 under the European Convention, the right to life level investigation.

Very importantly, if confidence is to be secured, it cannot be seen as a police driven response. The review is unique, but it requires broad consultation across society so that we develop a broader ownership of the process.

Just to conclude, I focused very much in this submission on the Serious Crime Review, but the human rights agenda in Northern Ireland is much broader. Again, we really encourage the Subcommittee to keep the spotlight on this.

We have been campaigning for many years for a bill of rights in Northern Ireland. That has reached a certain level of stagnation in public debate. We also act actively on the broad debate around equality and nondiscrimination, and yet all the social indicators still show very high levels of Catholic disadvantage.

Many issues broader than the religious and political dimension within the conflict need to be addressed, and although there are advances being made in criminal justice and policing, there are still many concerns. Just recently the Policing Board decided to discuss a new form of plastic bullet, but to hold those discussions behind closed doors.

Our most recent institution created to look into human rights and equality is the Northern Ireland Human Rights Commission. We had requested that a natural criteria should be that all members of the new incoming commission would have at least a commitment to upholding human rights.

That was not accepted as one of the criteria for the Human Rights Commission. The decision is to be announced next week. I am not quite sure why the delay, but it is to be announced next week who the new commissioners will be. I hope that you will be watching that very closely and ensuring that our new institutions, institutions set up by the agreement in order to promote and uphold human rights and equality, do precisely that.

Just to finish, it has been extremely, extremely important for us in Northern Ireland that the United States has continued to keep its interest and spotlight on human rights abuses and particularly the work of this Committee, and really urge you to maintain that. If anything, it is more important now than it may have been in earlier decades.

Thank you very much indeed.

[The prepared statement of Ms. Beirne follows:]

PREPARED STATEMENT OF MS. MAGGIE BEIRNE, DIRECTOR, COMMITTEE ON THE ADMINISTRATION OF JUSTICE

Thank you for the invitation to testify today. The Committee on the Administration of Justice (CAJ) is an independent human rights organisation that draws its membership from across the different communities in Northern Ireland. CAJ works

on behalf of people from all sections of the community and takes no position on the constitutional status of Northern Ireland. In 1998, CAJ was awarded the prestigious Council of Europe human rights prize by the member states of the Council of Europe in recognition of its efforts to place human rights at the heart of the peace process. One of the reasons for the success of our work on the peace process has been the continued involvement and interest of the United States. In this context we would particularly like to thank the honourable members of this Sub-Committee for this opportunity to raise these important issues and in particular the Chairman Chris Smith for his work in this area. Chairman Smith will of course know that I and other CAJ colleagues have testified before Congress before. On one occasion my colleague Paul Mageean sat here before you alongside Rosemary Nelson, an executive committee member of the organisation, and I could not let this occasion pass without noting that yesterday was the sixth anniversary of her murder.

My colleagues have spoken of a number of cases which are, or should be, the focus of public inquiries. However, bearing in mind that there are many cases in Northern Ireland deserving of a public inquiry where such an inquiry is unlikely to be established, I will focus on other mechanisms. One recent and very relevant development is the establishment of the Serious Crime Review Team.

CAJ has long been concerned with the issue of the state's use of lethal force, issuing reports into specific incidents and campaigning for changes in policing and in the inquest system, and urging appropriate mechanisms for oversight and accountability. In this context, we successfully took a number of cases to the European Court of Human Rights. The Court found in our favour, concluding that the State had violated article 2 of the Convention (the right to life provisions) by not adequately investigating the incidents that led to the loss of life. Compensation and costs were ordered against the government. These cases (six in total) were concluded between 2001 and 2003 but as recently as last month (February 2005) the Committee of Ministers, which as the highest political organ of the 46-member Council of Europe, determined to keep an active watching brief on the cases. In an Interim Resolution (which CAJ would like, with permission of the Chair, to have read into the record), the Committee of Ministers explicitly stated that *"there is a continuing obligation to conduct (article 2 compliant) investigations inasmuch as procedural violations were found"*.

In seeking to answer the concerns of the Committee of Ministers, the UK government had relied heavily on the fact that it was establishing a Serious Crime Review Team to examine all historic cases. The argument was made that this Review Team would be given resources to ensure appropriate investigations or re-investigations of all unsolved cases, and that this would in large part respond to the requirement of the European Court, and the Committee of Ministers, in complying with the judgments handed down against the UK government.

CAJ and other human rights groups following this debate closely have a number of concerns that they would like to share at this stage. We would respectfully suggest that this Sub-Committee conveys its interest in this issue to the appropriate British and Irish authorities, as co-guarantors of the Agreement, asking to be kept informed of developments.

Firstly, by way of background, the Secretary of State for Northern Ireland, Paul Murphy, announced the creation of a new unit within the Police Service of Northern Ireland (PSNI) to review unresolved deaths and provide bereaved families with answers to questions they have about the loss of their loved ones. He said *"We believe that Northern Ireland needs a tailored approach to deal with the pain, grief and anger associated with its past. Part of this approach is the need to address, in a systematic and comprehensive way, all of the unresolved deaths that took place during the Troubles"*.

The statement goes on to explain that the Serious Crime Review will be *"a new ring fenced unit created by the Chief Constable"* and headed up by recently retired Metropolitan Commander, Dave Cox. Mr Cox will be assisted by a head of investigations, who has been seconded from the Metropolitan Police—Detective Superintendent Phil James. Both men previously worked on the Steven's team inquiring into the murder of Pat Finucane.

The Northern Ireland Office press release goes on to explain that the Unit will be served by a mix of serving and retired police officers from the PSNI and British police forces; that a key part of the process will involve the disclosure of appropriate information to families of victims; that the PSNI will create a dedicated intelligence team working in the Review Unit and some mechanism to ensure an effective review process and public confidence. All complaints about actions by the PSNI (including seconded) officers attached to the Unit will be subject to investigation by the Police Ombudsman in the normal way, though this would not extend to agency staff as they will not be exercising police powers. Media reporting of the establish-

ment of the new Unit suggest that government is financing this measure to the tune of £30m over a six year period.

Before elaborating some of the concerns or reservations that CAJ and others have with regard to the Serious Crime Review Team, let me start by welcoming the fact that government is trying to engage in some way with the legacy of the past. Human rights violations have fed and fuelled the conflict in Northern Ireland but—for all its powerful commitment to a more just and peaceful and human rights compliant society in the future—the 1998 Agreement said little about the past. There is, in the preamble, a passing reference to the fact that *"the tragedies of the past have left a deep and profoundly regrettable legacy of suffering"*.

The Agreement also addresses very positively the changes (political, institutional, legal, social, cultural and economic) that are needed. But it says little about how to address the past, and this is increasingly being recognised as inadequate.

The establishment of a Serious Crime Review Team is a small part of the overall jigsaw of responses that is needed if Northern Ireland is to successfully address its past and turn its legacy of pain into a positive agenda for "the way forward".

But this is CAJ's first reservation about the announcement of the Serious Crime Review Team. This initiative must not be seen as in any sense a comprehensive response to the legacy of the past. That would be quite unacceptable. Government does, in its press release, state that the Review is "part" of a response, and we would wholeheartedly endorse that. Unfortunately, major initiatives such as this, particularly involving a fairly high level of staffing and public resources, can consciously or unconsciously fill a void, and over time become seen as "the" answer. This would be entirely wrong for several reasons. Firstly, the UK government alone, as one of the parties in dispute, cannot be the sole provider of any vehicle for an assessment of the past, and any attempt for it to do so would undermine all hope of its success. Secondly, whilst it is true that Northern Ireland needs a "tailored" response to the legacy of the past, it is clear from all other societies in transition that an array of different measures and responses are needed, and no single initiative—however widely it is 'owned'—will prove sufficient.

A second reservation that we and other human rights groups share relates to terminology, since terminology can be extremely important in societies in conflict, and especially at times of transition. The NIO press release talks of the Review looking at "some 1800 murders". The key word here is "murders". Deaths at the hands of security forces are not considered "murders" in any official statistics. If taken at face value, this might suggest that the Review will not be looking at any of the deaths caused by army or police personnel. CAJ and others have received assurances from the Police Service of Northern Ireland that no such interpretation should be placed on this formulation, and that the Review will examine *"1876 unsolved incidents of* **murder** *(some with multiple victims) and a further 400* **deaths** *related to the security situation in Northern Ireland"* (our emphasis).

While welcome that all unsolved cases, regardless of the perpetrator, will be examined, it is still problematic that a linguistic distinction is retained between "murders" and "deaths". The Review is in the hands of the PSNI so it would be deeply unfortunate to use terminology which from the very outset implies an inherent bias towards the exoneration of alleged state abuses.

The problem, however, is clearly not one solely of terminology. As noted, the Review is a PSNI Review. This will create real and perceived problems of impartiality when the PSNI is responsible for investigating allegations that police or army officers were directly or indirectly involved in criminal acts. It is very welcome that the Northern Ireland Office talks of a "ring-fenced" Unit, and has introduced senior managerial and detective officers from outside of the jurisdiction to take the work forward. The issue of independence however is crucial to the success of this enterprise, and government should be asked to comment in more detail on how it intends to ensure an independent process.

If the process is to be independent and seen to be independent, human rights non-governmental groups will be asking questions such as—What are the lines of accountability and responsibility from the Unit to the Chief Constable? Are the lines of authority direct or are they mediated through PSNI officers who served previously in the Royal Ulster Constabulary who may be expected to retain some loyalty to that institution and to former colleagues? What proportion of officers are being recruited or seconded from outside the jurisdiction, and how broad is this pool of independent investigators? The NIO press release talks of PSNI and British officers, for example: why not draw also on police expertise from other European (including Irish) jurisdictions, and from other parts of the world? How public and transparent will the whole process be? How closely will the Policing Board be involved in civilian oversight of the process and the policy lessons that arise in the course of the Review? Will the Police Ombudsman have jurisdiction over retired

PSNI officers who join the team? How will the Review Team handle particularly problematic but grouped cases—such as all those cases that were handled by the Royal Military Police in the early 70s, where no police investigation was undertaken.

An obvious way of ensuring greater public confidence in the independence of the process is to ensure that there are a series of safeguards built in. One of those safeguards would be the principle of transparency. Clearly, investigations into murders and collusion are going to uncover a great deal of sensitive information. Families have a right to know what happened to their loved ones, but the police have a duty to protect the safety of all; they cannot divulge information in a way that would put others at serious risk. So, a careful balance will have to be struck. However, it is vital that to the extent possible, the needs of victims and of the wider public are met and that they are kept apprised of the approach being taken, and of the progress in the Unit's work.

It is particularly important that the public, and the specialised policing oversight bodies, are kept abreast of the learning that is arising from the re-examination of old cases. It is evident, even before the Unit formally starts work, that the investigative practices of the past are likely to be found seriously wanting—however, one of the key questions is whether all of the possible lessons have yet been learnt. It seems unlikely. The Cory report into the cases of Robert Hamill, Rosemary Nelson and Billy Wright—all of whom died in the period leading up to and after the peace agreement (1997–1999)—highlighted relatively recent 'system' failings. Those charged with ensuring policing and criminal justice change must examine whether the various reforms introduced in recent years have in fact been adequate to respond to those failings, or whether further change is needed. Again, this 'learning from the past for the future' underlines the importance of keeping the process as independent as possible from those individuals and institutions closely involved in past failings—it is unlikely that such people and bodies will think that they have much to learn.

Alongside the reporting process, there needs to be a system of evaluation. The NIO press release talks of *"some mechanism to ensure an effective review process and public confidence"*, but no details are given. Will there be a process of independent evaluation and validation of the work of the Review Team and the learning therefrom?

Of very great importance is the learning that should arise from the case review regarding the operation of other criminal justice agencies. It is likely, for example, that many cases will be found to have been investigated by the police to a certain point, but to have failed to convince the Director of Public Prosecutions (DPP) to pursue the case in court.

The Criminal Justice Review arising from the Agreement argued that in future there should be a presumption in favour of the DPP giving reasons for their decision not to prosecute cases. The failure to give reasons for their decisions in the past has led to a serious lack of confidence in the institution, and may well now mean that many individual case reviews will come to an inexplicable halt because of uncertainties at the stage of transfer from the police to the prosecution stage. But families will want to know why the DPP chose not to prosecute, or secure some reassurance as to the justification for that decision. Even if that cannot happen in all cases, those involved will want reassurance that past practices of the DPP in this regard have changed. Many of the most serious concerns around past investigations lie not with police investigation, or not alone with the police investigation, but with subsequent action or inaction by the DPP and/or the judiciary.

This Sub-Committee is aware of the criticisms of the human rights community of the Criminal Justice Review process, which was less independent, international and far-reaching in its work than the equivalent work carried out by the Patten Commission into policing. Despite these weaknesses, the final report provided an interesting blueprint for change but, as with policing, these proposals were not warmly embraced by those responsible for introducing the necessary legislative change. Two separate pieces of legislation were needed to give effect to the recommendations (the first being far from satisfactory), and CAJ and others are now monitoring those changes that are being put into effect. The Justice Oversight Commissioner in his most recent report urged, with regard to the new Prosecution Service that *"as the new service unrolls it is to be expected that an increasing degree of openness and transparency in the service should become evident"*. A measure of any such move to greater openness and transparency should be seen in the willingness of the Prosecution Service to respond positively to any lessons brought to its attention as a result of the work of the Serious Crime Review Team.

While the focus of the Review will be on 'unsolved' cases, and therefore any failings in the court system and by the judiciary are less likely to be apparent, there

may nevertheless be some relevant experiences to be captured. The judiciary, like the other criminal justice agencies, and indeed even the police service, was *not* subjected to a major compositional change. Proposals from the Criminal Justice Review about monitoring the criminal justice workforce, and monitoring the impact of the criminal justice system on different individuals and groups in society, are amongst those that are being implemented quite slowly. Accordingly, it would be of great assistance to the agencies to learn as much as possible about the attitudes to and experiences of their work in the past, with a view to learning for the future.

The conclusion from the above is that the Serious Crime Review Team could provide some people with answers to important questions about the past. It will not be, and should not be, seen as a panacea or a comprehensive response to the past. Moreover, it will not even provide bereaved family members with answers to their questions if the Review does not command the necessary level of public confidence. That confidence can only be secured if the Review complies with basic human rights principles of accountability, transparency, respect for human dignity, impartiality and fairness for all involved. To avoid censure—again—at the level of the European Court of Human Rights, all investigations must ensure that they comply with the standards of independent investigation set out in the Court's jurisprudence for the upholding of article 2 (right to life) compliant investigations.

Confidence will also only be secured if the whole process is not seen as police-driven. The Review is probably unique and is certainly going to raise enormous complexities; there needs to be broad consultation across society to develop an ownership of the process, and the victims need to be placed centre-stage in all deliberations..

This submission has focused on the Serious Crime Review. Needless to say, the human rights agenda for Northern Ireland is much broader than this Review alone. CAJ is actively campaigning for written constitutional guarantees for human rights in a Bill of Rights for Northern Ireland; we are working to turn the equality duty created by the Agreement into something meaningful that will challenge the deep rooted legacy of discrimination and inequalities in our society; and we are working to deliver criminal justice and policing systems that will deliver justice and fairness to all. At the very time when there are advances in some areas, the Policing Board is discussing introducing a new form of plastic bullet, and is holding its discussions on this contentious issue of public order and weaponry behind closed doors. As public institutions embrace the language and rhetoric of human rights, and indeed in some cases were created with the explicit purpose of upholding these principles, they occasion simultaneously fail to comply with the spirit of those principles.

The United Nations Secretary General Kofi Annan, visiting Northern Ireland in October 2004 noted that *"nearly half of all peace processes collapse within 5 years. Others fall into a sort of limbo of no war, no peace. In the life of almost every peace process, there comes a time—usually three to seven years out—when disillusionment is high, when the wheels seem to be turning without any real forward movement. Fatally this often coincides with the waning of outside interest. Political engagement and financial support are reduced, just when the process needs a second wind. . . . Hard won agreements on human rights and the reform of justice are often eroded once domestic and international attention diminishes".*

This statement rings true for Northern Ireland, particularly at this sensitive time in the political process. Let me thank you once again, Mr Chair and Committee members, for your continuing interest and commitment to human rights in Northern Ireland.

We need that interest and commitment more than ever.

Mr. SMITH. Ms. Beirne, thank you very much for your testimony and for your fine work.

Just to begin the questioning, let me note at the outset that if an independent commission was established in the United States to look at egregious behavior—and certainly collusion is egregious behavior—the notion that a member of the President's cabinet, be it Democrat or Republican, with sweeping control and powers, especially when it comes to the issuance of restriction orders, or notices, I should say, authoring the terms of reference, such an inquiry frankly would be laughed out of town. It would be seen as an engraved invitation to fraud, an engraved invitation to cover up.

I would think, knowing what I know and as we grow in our knowledge about this legislation, this legislation ought to be called the Public Inquiry Coverup Act of 2005 because that is precisely

what we are talking about. This is an ongoing effort, as far as I can tell, to get it wrong.

There must be something that is hidden. There must be something that is being covered up to have such an effort expended so that the truth cannot come out. So long as it does not come out, I respectfully submit to our friends in the U.K. Parliament, we will have a situation where this issue continues to fester.

You cannot have reconciliation until you have the truth. And this inquiry, if it is constituted under this new Public Inquiries Coverup Act of 2005, will lead to just that—misinformation and a lack of information.

I do have a couple of questions. Are there any MPs that you have been in contact with, whether they be in Tony Blair's party or in the opposition or any other party in the Parliament, who have looked at these provisions and expressed discontent; that they do not want to be part of a farce either?

Let me ask as well. Where has the British, the Irish and the United States press been particularly as it relates to editorials? Sometimes when the human rights issue is strung along there is human rights fatigue, not unlike compassion fatigue that we see in humanitarian places where people just get fed up with the famine or whatever it might be, and they want to move on to other things.

While delay is denial, although I can assure you this Committee, this Chairman, and I am joined by many Members on both sides of the aisle, will not let up until we get the truth on this.

I would without objection put into the record that 24 Members of Congress, including myself, sent a letter to Tony Blair on February 14. In the opening paragraph of that letter:

> "We are writing to express our strong support for the immediate establishment of a public inquiry into the murder of defense attorney Patrick Finucane. On behalf of the Finucane family and several international human rights activists, we urge you to push forward under current law without the controversial changes embodied in the Inquiries Bill pending in the Parliament."

I would also ask that without objection a letter from Peter Cory to me as Chairman, but to the Committee, dated today, which we received by fax, that is an indictment of where the British seemingly—or not seemingly—intend to take this public inquiry. I will read the letter very briefly—it is not long—in its entirety:

> "Dear Chairman Smith: The proposed legislation pertaining to the public inquiries is unfortunate to say the least. First, it must be remembered that when the Weston Park Accord was signed the signatories would have had only one concept of the public inquiry, namely that it would be conducted pursuant to the 1921 Public Inquiry Act.
>
> "Indeed, as an example, the inquiry would have commenced its work as a public inquiry by that time. The families of the victims and the people of Northern Ireland would have felt that if a public inquiry would have been directed it would be brought into existence pursuant to the 1921 Public Inquiry Act.
>
> "To change the ground rules at this late date seems unfair. It seems as though a necessary sense of security of the realm

would be insured the courts when the issue arose in a true public inquiry. My report certainly contemplated a true public inquiry constituting and acting pursuant to the provisions of the 1921 Act.

"Further, it seems to me that the proposed new Act would make a meaningful inquiry impossible. The commissions will be working in an impossible situation. For example, the minister, the actions of whose ministry was to be reviewed by the public inquiry, would have the authority to thwart the efforts of the inquiry at every step. It really creates an intolerable Alice in Wonderland situation.

"There have been references in the press to an international judicial membership in the inquiry. If the new Act were to become law, I would advise all Canadian judges to decline an appointment in light of the impossible situation that they would be facing. In fact, I cannot contemplate any self-respecting Canadian judge accepting the appointment to the inquiry constituted under the new proposed Act."

This letter is absolutely devastating, and I hope that this is circulated throughout Congress, the Parliament in London, and everywhere else where it might have some influence, when the man who was charged pursuant to an agreement with London and with the Irish Government comes out with this indictment about where the process is now poised to be headed. I would hope that this would get a maximum circulation.

If you could answer those questions. Ms. Winter, I think I picked up that you would like to begin the answers.

Ms. WINTER. Thank you, Mr. Chairman. Yes, certainly Judge Cory's letter is a devastating indictment, and we are grateful to him for having put himself on the record in this way. We hope that his letter will be on our Web site tomorrow and will be in the hands of MPs in the next couple of days.

There have been members of Parliament and members of the House of Lords who have expressed grave reservations about the Inquiries Bill. The difficulty is that they are in the minority. The Government has a huge majority in the House of Commons and is able to pass any piece of legislation that it wishes to do so. It is clearly determined to do so.

It has just announced an accelerated timetable for the passage of the bill before the demise of the current Parliament and the next general election, which we believe to be imminent, so they are determined to push this through despite the genuine and heartfelt concerns of many members of Parliament and the House of Lords.

In terms of the press, I regret to say that the Government introduced this bill at the same time as a number of other very controversial issues, including new prevention of terrorism provisions which caused a furor because they included the possibility of house arrest for U.K. citizens, which has never been proposed in the United Kingdom before.

There was also legislation on identity cards, which is a very contentious issue in the United Kingdom, and I am afraid the press voted with their feet and went for the issues that seemed to them to be of more interest to their readers than the constitutional ins and outs of how public inquiries are held.

The timing has been both carefully chosen by the Government to make sure that very little attention would be paid to the bill, and also the whole thing has been produced in such a rush that it has been difficult for those who have a genuine interest to keep up with the progress of the bill.

Nonetheless, we have done our best to bring it to the attention of our legislators, and we will be making sure that they hear about the testimony today at the earliest opportunity.

Mr. SMITH. When you say, or it was suggested, that passage is imminent, what does imminent mean? How quickly are we talking about?

Ms. WINTER. I understand that they intend to have the bill passed into law by the 24th of March.

Mr. SMITH. Without amendment? As it is currently written?

Ms. WINTER. Amendment is still possible. Amendments have already been made in the House of Lords, although to be honest they were not particularly strong amendments, but there is still the possibility for amendment within the House of Commons.

The difficulty for those trying to bring forward amendments is that they are unable to command a majority.

Mr. SMITH. Ms. Massimino?

Ms. MASSIMINO. I just wanted to add that given how quickly this train is moving in the U.K. Parliament, that it is particularly important to be expressing in all avenues available reiteration of this letter, but also to the extent that President Bush would be willing to express to Prime Minister Blair the importance of leaving open the possibility—we think the imperative—of holding this inquiry apart, completely apart from the rules that are adopted under this bill.

That is really important in this space of time to make sure that that space is created, because if we are not able to see a bill adopted that is acceptable, and it is certainly not looking that way, we do not want to be in a situation where all inquiries, including the Finucane Inquiry, have to pass through that.

Mr. SMITH. Mrs. Finucane, you mentioned earlier that Bertie Ahern has said or suggested that there is no compromise. How effective has his intervention been with Tony Blair and his Government?

Ms. FINUCANE. At this particular time, the Taoiseach stated to us that he may be flexible on other issues, but he is determined to remain firm on this one and that he will make no compromises.

I think it is vital that he remain strong and puts as much pressure as possible on the British Government to uphold their part of the agreement that was made during the Weston Park Accord.

Mr. SMITH. Do you think the British Government understands how this undermines their credibility to have made all of these agreements with the Irish Government, to assumingly have been forthright about this, but then delay, and then to have this rush under cover of something that might be equivalent to the U.S. Patriot Act with other provisions thrown in like identity cards crowding out focus and scrutiny that the press might ordinarily bring?

You know, it has been my experience over these last 25 years as a Member of Congress that when legislation is rushed through, it is either haste makes waste and you get a very shoddy piece of leg-

islation, or somebody has been working the night oil and into the morning hours writing something that is designed to prevent and to obstruct. And it would seem, given the long delay since when we thought the public inquiry would be created, that this is a much more sinister situation where information will not be forthcoming.

I hope to be shown to be totally wrong on this, but it certainly is very suggestive that we have a coverup in the making.

Ms. FINUCANE. I certainly agree with your second suggestion, that they have been working long and hard to design a bill that will hide the truth and prevent it from coming out, make it impossible to get to the truth.

I think it is a contradiction in terms for Tony Blair to say that he is eager that the truth of this matter is exposed and then turn around and try and hand us a bill that is designed to do exactly the opposite.

Mr. SMITH. Yes. Ms. Winter?

Ms. WINTER. You mentioned earlier, Mr. Chairman, that there must be more that is being hidden that we do not know about in the Finucane case. I think that must be right.

A very clear indication of that is the fact that we actually have not seen the full Cory Report. It is full of redactions. Even one of his recommendations has been redacted.

Perhaps one thing that this Committee could call on the United Kingdom to do is to publish that report in full so at the very least we can see what it was that Judge Cory was concerned about and what he recommended.

Mr. SMITH. Yes. Ms. Beirne?

Ms. BEIRNE. Just to add, I was very interested when Ambassador Reiss explained his understanding on the basis of talking to Attorney Blair and senior officials, but the main reasons that were being given for not pursuing this was a matter of time and expense.

Clearly this does not hold water, and I would really encourage that further clarification be sought from the Government on this with regard to certainly all of the views. This is a coverup, and clearly the particular case of Pat Finucane offers an awful lot. We need to learn if we are going to make improvements for the future.

Mr. SMITH. Excellent point.

Dr. Boozman?

Mr. BOOZMAN. Thank you, Mr. Chairman. I really do not have any questions, but I do want to thank you and the Ranking Member for having this hearing. It certainly is a very, very important subject, and we so appreciate you all coming and telling your story and things.

Again, thank you very much, Mr. Chairman.

Mr. SMITH. Thank you very much, Dr. Boozman.

Ms. Watson?

Ms. WATSON. I want to thank you for having this hearing. I want to apologize for being late because when you are late you miss something.

Did any one of the witnesses ever kind of just summarize what is in that bill? You know, we call it a coverup, but maybe you can point out some of the provisions.

Ms. WINTER. Yes. I did testify earlier as to the bill, and really what it boils down to is that the running of inquiries will be taken

away from independent chairmen or women who are usually judges or independent experts and given into the hands of Government ministers, sometimes when those ministers are themselves or their departments under investigation.

Ms. WATSON. I see.

Ms. WINTER. That is it in a nutshell.

Ms. WATSON. I see. I heard you say it is going to pass because the votes are there. Is there anything that can be done? And I heard it suggested that maybe a letter could be sent.

You know, you need independent investigations on this kind of thing because I think the tentacles might go deep within the Government. You miss so much when you are late. What are you suggesting that could be done?

Ms. WINTER. I think we have all been suggesting that the Committee could perhaps call on the United Kingdom Government to hold an inquiry into Pat Finucane's case which is completely outside this new Inquiries Bill. They have the power to do that, and that is really the only way to remedy the mess that they have now caused by legislating in this way.

Ms. WATSON. Mr. Chairman, since we are holding this hearing it might be incumbent on us to send a letter along the lines that have just been suggested, and I would say to our witnesses here that you could build ground support outside of the legislative body, you know, holding demonstrations and massive e-mails and faxes and mail and so on going in there might be very helpful, but I think we could send a letter of inquiry and a letter of support.

Thank you, Mr. Chairman.

Mr. SMITH. Thank you, Ms. Watson. We have done one letter, but I think it is time to expand that, and I would welcome your support for it.

For the record, we have done two resolutions and one bill that was signed into law by the President calling for an independent—truly independent—inquiry. I know because I sponsored it.

Ms. Watson, anything further?

Ms. WATSON. No, I do not.

Mr. SMITH. Is there anything further our panelists would like to add?

[No response.]

Mr. SMITH. Again, I want to thank you so much. I hope there is still time to avert what will be a disaster, I think, in terms of the truth.

I can assure you we will do everything we can from our point of view to press the British Government and to press our own Government to play its proper role.

Thank you so much. The hearing is adjourned.

[Whereupon, at 4:19 p.m. the Subcommittee was adjourned.]

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