

PROTECTING HUMAN RIGHTS
AND SECURING PEACE IN
NORTHERN IRELAND: THE VITAL
ROLE OF POLICE REFORM

HEARING
BEFORE THE
COMMISSION ON SECURITY AND
COOPERATION IN EUROPE

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SECOND SESSION

SEPTEMBER 22, 2000

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**PROTECTING HUMAN RIGHTS AND
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THE VITAL ROLE OF POLICE REFORM**

FRIDAY, SEPTEMBER 22, 2000

COMMISSION ON SECURITY AND COOPERATION IN EUROPE
WASHINGTON, DC

The Commission met at 10:00 a.m., in Room 2172 Rayburn House Office Building, Washington, DC, the Honorable Christopher H. Smith, Chairman of the Commission, presiding.

Commissioners present: Hon. Christopher H. Smith, Chairman; Hon. Harold Hongju Koh.

Members of Congress present: Hon. Benjamin A. Gilman (via telephone); Hon. Donald M. Payne.

Witnesses present: Gerald W. Lynch, President, John Jay College of Criminal Justice, The City University of New York; Brendan O'Leary, Professor, London School of Economics and Political Science; Martin O'Brien, Director, Committee on the Administration of Justice, Belfast; Elisa Massimino, Director, Washington Office, Lawyers Committee for Human Rights.

**OPENING STATEMENT OF HON. CHRISTOPHER H. SMITH,
CHAIRMAN**

Mr. SMITH. The Helsinki Commission will come to order, and good morning. The Helsinki Commission today examines the progress being made toward policing reforms in Northern Ireland as this issue relates to the protection of human rights and as a crucial step toward obtaining a just and lasting peace in Northern Ireland.

In the 1990 Copenhagen Document of the Organization for Security and Cooperation in Europe, the United Kingdom as an OSCE participating State expressed the conviction that the protection and promotion of human rights and fundamental freedoms is one of the basic purposes of government and reaffirmed that the recognition of those rights and freedoms constitute the foundation of freedom, justice and peace. This hearing will examine the fulfillment of this and other OSCE commitments by the British Government in the context of police reform in Northern Ireland.

This is the Commission's second hearing on Northern Ireland this year. As Chairman of the House Subcommittee on International Operations and Human Rights, I have also convened and chaired four hearings on human rights violations in Northern Ireland. Without ever overlooking the fact that approximately 300 RUC officers have been killed in the line of duty and that many of the police in Northern Ireland properly carry out their responsibilities, the hearings have also documented a long history of RUC involvement in human rights abuses. Regrettably, these offenses have included ill treatment of suspects for the purpose of obtaining confessions or information, collusion with loyalist paramilitaries, extrajudicial killings, and intimidation of defense attorneys—for which few, if any, RUC officers have been held accountable.

The research we have conducted and the testimony we have received has convinced me, and I know my fellow Commissioners, beyond a shadow of a doubt that if a just and lasting peace is to take hold in the north of Ireland, the Royal Ulster Constabulary, the RUC, must undergo root and branch reform, if not disbandment altogether.

As we know, tremendous strides have been made toward peace in Northern Ireland in the past few years. The cease-fire has been virtually intact for six years now. In 1998, the Good Friday Agreement was signed and strongly endorsed by public referendums in the Republic of Ireland and Northern Ireland. The parties to the Agreement recognize it as a blueprint for the future and specifically recognize the promise it offered to craft "a new beginning to policing in Northern Ireland." To make good on this promise, the Agreement called for an independent commission to recommend future policing arrangements in Northern Ireland that would create a police service capable of attracting and sustaining support from the community as a whole.

One year ago, the Independent Commission on Policing for Northern Ireland issued a report which contained 175 recommendations for change and reform. The Patten Commission's recommendations were the end product of 15 months of exhaustive study and outreach which included over 10,000 people participating in public meetings, 1,000 individuals speaking at those meetings, more than 3,000 written submissions and countless other small group meetings across Northern Ireland. In addition to hearing the views of the two communities in Northern Ireland, the Patten Commission also sought out expert advice of police services around the world.

The end result is a report that rightly acknowledged that, and I quote the report, "policing was at the heart of many of the problems politicians have been unable to resolve in Northern Ireland" and which stated the need to "reorient policing onto an approach based on upholding human rights."

Commissioner Patten and Commissioner Maurice Hayes came here themselves to present us the findings, and we had a meeting right in this room, and they provided a summary and the recommendations of that report. While I and many others expressed disappointment about what was left out of the report—such as a vetting process to rid the RUC of those who were known to have committed human rights abuses—we did take some comfort in Mr. Patten's very forceful comments that the recommendations they did make should be taken and implemented as a whole. No cherry picking. As a whole.

To its credit, the Patten Commission recognized that one of the RUC's most striking problems was its lack of accountability. In 1991, the U.K. agreed in the OSCE Moscow Document to "ensure that law enforcement acts are subject to judicial control, that law enforcement personnel are held accountable for such acts, and that due compensation may be sought, according to the domestic law, by the victims of acts found to be in violation of the above commitments." Despite that commitment, the RUC's complaint system has to date consisted of the RUC investigating itself with purported oversight by a toothless Independent Commission for Police Complaints.

The facts speak for themselves. Of the 16,375 complaints received by the Independent Commission for Police Complaints prior to 1994, not one single case resulted in any disciplinary action against an RUC officer. In 1996, 2,540 complaints were submitted to the ICPC and only one RUC officer was found guilty of abuse. In 1997, one person was dismissed from the RUC—one person out of 5,500 complaints in that year. There is just no accountability here.

To address the problems of accountability, the Patten Commission offered many recommendations such as replacing the Independent Commission for Police Complaints with a Police Ombudsman's Office that would have its own staff and its own investigative powers. The Commission also recommended a new Policing Board and an international Oversight Commissioner who would have the authority to help shape a new police force that would have the confidence of the community that it serves. Regrettably, a review of the Police Bill now making its way through Parliament does not fully reflect these and other recommendations.

For example, as currently drafted, the legislation limits instead of extends the powers of inquiry and investigation envisioned by Patten for the Policing Board and the Police Ombudsman. Incredibly, the Police Bill gives the Secretary of State for Northern Ireland a veto authority to prevent a Policing Board inquiry if the inquiry would "serve no useful purpose." It restricts the Ombudsman's access to past records on RUC officers and completely prohibits the Policing Board from looking into any acts that occurred before the bill is enacted. I see whitewash.

The bill also curtails the authority of the Oversight Commissioner that the Patten Commission recommended. Whereas the Patten Commission envisioned an international Oversight Commissioner to oversee implementation of the Patten Commission's 175 recommendations, the Police Bill instead limits the Commissioner to overseeing those changes in policing which are decided on by the British Government. Here we go again.

The Police Bill also rejects the Patten Commission's recommendation that all police officers in Northern Ireland take an oath expressing an explicit commitment to upholding human rights. This recommendation should have been the absolute floor for a new police service. The Patten report itself contained no procedure for vetting RUC officers who committed human rights abuses in the past—an omission for which I again, and others, had criticized the Commission—but the report at least recommended that existing police officers should affirmatively state a willingness to uphold human rights going forward. The British Government's bill guts even this minimalist recommendation and, sadly, there are even more shortcomings that our witnesses today will describe. These are just the most glaring omissions, I say to my fellow Commissioners. Suffice to say there are others.

To date, the U.K. Northern Ireland Office has simply not gotten the message that the Police Bill as it currently stands will not create the new beginning to policing in Northern Ireland that the Good Friday Agreement and the Patten Commission envisioned. Despite the fact that the first draft of the Police Bill incorporated less than two-thirds of the Patten recommendations, Secretary of State Peter Mandelson continues to argue that this bill is the implementation of Patten. We weren't born yesterday, Mr. Mandelson, and we're going to keep our scrutiny and focus on this unfortunate unfolding of this legislation.

The Good Friday Agreement offers the best chance for peace that Northern Ireland has had in the past 30 years. As we all know, voters from both communities supported the Agreement and all that it entailed, including radical police reform. The British Government must not lose this opportunity to create a police service capable of attracting and sustaining support from the community as a whole and to thereby secure the peace in Northern Ireland.

I hope and pray that the British Government will seize the promise of the Good Friday Agreement, to stop back-tracking, to create a police service that, in the words of the agreement, is "professional, effective

and efficient, fair and impartial, free from partisan political control; accountable, both under the law for its actions and to the community it serves; representative of the society it polices, and operates within a coherent and cooperative criminal justice system, which conforms with human rights norms." These standards are consistent with the U.K.'s commitments as a participating State of the OSCE and they are what the people of Northern Ireland deserve.

I am very pleased that we will hear the views today of U.S.-based, London-based, and Belfast-based human rights experts and from a member of the Patten Commission about whether the British Government's Police Bill represents full implementation of the Patten Commission's recommendations and, if not, what the implications of this bill could have on the peace process in Northern Ireland.

For the record, I also want to mention that several other people, including the Chairman of the Police Federation for Northern Ireland and the Chairman of the Human Rights Commission in Northern Ireland, were invited to testify today but declined to do so. We also invited the Ulster Unionist Party, the largest unionist party in Northern Ireland, to recommend a witness and she has faxed a written submission, but will not be here today.

Let me just finally say that in July I led a delegation to the OSCE Parliamentary Assembly in Bucharest and we drafted a resolution to put the other parliaments on record for protecting human rights advocates and defense attorneys in each of the OSCE countries. I'm sorry to say that during the course of the week there was a great deal of animosity between ourselves and the British delegation.

I'd like to yield to my good friend, Mr. Payne, who joins us today for any opening comments he might have.

OPENING STATEMENT OF HON. DONALD M. PAYNE

Mr. PAYNE. Thank you very much, Mr. Chairman. I have no real opening statement. I just first of all would like to commend you for the diligence and the continued interest that you've shown in this very important issue, this particular issue, but in the question of the North of Ireland in general. As you may know, I've been involved for some time also in trying to see the Good Friday Agreement be brought into implementation and certainly must commend the great senator, Senator Mitchell, for the diligence that he has put in, the time, the effort, the energy, and I think that he has the patience of Job and, without that, I doubt if the Good Friday accords could have moved forward.

There is no question that the RUC needs reform, and the Patten Commission came up with a number of recommendations but, as the Chairman said and I concur, I don't think that the recommendations scratched the surface. It's going to take almost a volcanic-type eruption to change the behavior and the view of the RUC. I've had the opportunity to be at the marching line, so to speak, on four or five occasions and I have seen the behavior many years ago of the RUC, very rude, would not give up information, would not allow you to know who the police officer was. And so I think there has to be total reform.

I think that the fact that we've heard testimony when the Chairman had Rosemary Nelson here who talked about the intimidation by RUC and almost predicted what would happen to her and, as we know, the tragic day when she was blown apart and 10 years previous with Pat Finucane and we can't forget Bloody Sunday back in '72. And so there's just a history that must be changed.

There has to be a re-evaluation. And we have to really, since we've come this far and we're near the finish line, to allow setbacks by not really going forward with a true implementation of reform. If you have question of a police unit, then there will be no justice and there will be no peace. You can't have peace without justice. You can't have justice without peace. And so the—as a matter of fact, the behavior of the military, of the British military, in the past marching season at Garvaghy Road where it was decided to use water cannons to use water to disperse the demonstrators. The demonstrators primarily this year with Johnny Adair being allowed to march with the Orange Order down in Drumcree I thought was disgraceful, but the fact that it was decided to use water that they brought in from Belgium to disperse crowds. Well, there would be many lives spared today if water was used rather than plastic bullets in the past.

The fact that the water was on the Ulster, the Orange Order, their supporters. It seemed that the behavior of the police authority was the way it should have been all along. The fact that they did not use plastic bullets, which we know have killed many people in the past, but they decided to change the tactics. Why? Because it was a different group. It was their side, so to speak, that were protesting and in order to avoid fatalities, water is a deterrent, but it is not a killer.

And so I think that we have a long way to go. I look forward to hearing the report and, once again, I compliment the Chairman, Mr. Smith from New Jersey, for his diligence and his persistence in this matter. Thank you very much, Mr. Chairman.

Mr. SMITH. Thank you very much. My friend from New Jersey, you, as well, have been indefatigable in pushing human rights in Northern Ireland. I want to thank you also for reminding us, as we often all of us say, Senator Mitchell did an outstanding job in helping to broker that peace. Again, one of the linchpins or what could be the Achilles heel—policing—undermines the peace process if the British Government does not step up to the plate. I think, again, the timeliness of this hearing is to try to admonish our friends on the other side of the pond to do the right thing.

As members and witnesses are aware, I'm sure, the Helsinki Commission is a unique structure in Congress. It is made up not only of House members and Senate members, but also Executive Branch members. We're very delighted to have a member of the Commission who often sits on that side as a witness, Secretary Harold Hongju Koh, who is the point person for the Administration on human rights and democracy, and I yield such time as he would like to use.

**OPENING STATEMENT OF HAROLD HONGJU KOH,
ASSISTANT SECRETARY OF STATE FOR DEMOCRACY,
HUMAN RIGHTS AND LABOR**

Sec. KOH. Thank you, Mr. Chairman. It's always more pleasant to be on this side of the podium. My presence here reflects our continuing concern about the process of securing both a lasting peace with human rights in Northern Ireland, and our concerns about the need to fully internalize into the ongoing work of the police the recommendations of the Patten report.

One of your witnesses here today, Martin O'Brien, was honored the other night at the Kennedy Center in a most moving ceremony which reflected not only his continuing work in this area, but also his critical role as a link in the network of trans-national human rights activists. I also congratulate your other witnesses for their work as lawyers, professors and human rights activists, in taking it to the next step, not simply

focusing on the symptoms of human rights abuse but thinking about how we can take human rights norms and internalize them into institutions to prevent abuses from recurring.

Mr. Chairman, I should just say up front that I will have to leave before the hearing is over to attend the dedication of the State Department building which is being named after President Harry S Truman. Since my name is also Harry, I can't afford to miss it. My departure will not reflect any concern about anything that was said by the witnesses. Members of my bureau are here and will stay here and continue to absorb all of the comments that are being made during the course of the morning. Thank you.

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

Let me introduce our four witnesses in the order that we would ask them to present their testimony, beginning first of all with Gerald Lynch who has been the President of John Jay College of Criminal Justice in New York since 1976. From 1998 to 1999, Dr. Lynch served with Christopher Patten as one of the eight Commissioners on the Independent Commission on Policing for Northern Ireland. Dr. Lynch is an internationally known expert and advocate for criminal justice education. He received his doctorate in clinical psychology from New York University.

Next we will hear from Brendan O'Leary who is a professor of political science and head of the Government Department at the London School of Economics and Political Science. Professor O'Leary is the co-author of the book *Policing Northern Ireland*, published last year, as well as numerous other books and articles on the conflict in Northern Ireland. From 1988 to 1995, Professor O'Leary served as a political advisor to the Labour Shadow Secretary of State for Northern Ireland, Mo Mowlam, and her predecessor, Kevin McNamara.

Next we will hear from Martin O'Brien, who is the Director of the Committee on the Administration of Justice, a non-sectarian human rights organization in Belfast. Mr. O'Brien is a tireless worker for civil liberties in Northern Ireland and has been involved with the peace movement there for more than 20 years. In 1985, he and a number of other individuals established a rural education center known as the Kilcranny House dedicated to healing the divisions between the people in Northern Ireland. Mr. O'Brien has been repeatedly honored for his human rights including the receipt last year of an honorary doctorate from Notre Dame College in recognition of his work to promote justice and peace in Northern Ireland and, as was just stated by Secretary Koh, was honored again just recently.

Elisa Massimino is the Director of the Washington Office of the Lawyers Committee for Human Rights. Ms. Massimino is responsible for advancing the Lawyers Committee's human rights agenda in Washington and is particularly involved with the committee's National Advocacy Program on Refugee and Asylum Matters. Ms. Massimino teaches international human rights law at the University of Virginia Law School and previously taught refugee and asylum law at George Washington University's Law Center.

Mr. Lynch, if you could begin.

**TESTIMONY OF GERALD W. LYNCH, PRESIDENT,
JOHN JAY COLLEGE OF CRIMINAL JUSTICE,
THE CITY UNIVERSITY OF NEW YORK**

Dr. LYNCH. Thank you, Mr. Chairman, and distinguished members of the Commission on Security and Cooperation in Europe. I want to thank you for the opportunity to present testimony regarding the work of the Independent Commission on Policing Northern Ireland, and I would also

like to discuss the policing bill which is before the British Parliament.

Upon being invited to testify, I recommended that Chris Patten indeed be invited, as he has been the most forceful and dedicated proponent of these reforms. He was unable to be here, he's in the Balkans, and did delegate to me the opportunity to discuss the Patten Commission with you today.

When I was introduced to then Secretary of State for Northern Ireland, Mo Mowlam, she said to me, How did you get Ted Kennedy and Ronnie Flanagan to agree on you and, of course, Ronnie Flanagan is the Chief Constable of the RUC. I told the Secretary that I believed they agreed on me because John Jay College has provided training around the world emphasizing human rights and human dignity. Moreover, John Jay College has had an exchange of police and faculty for 30 years with the British police through the British Police College at Bramshill, and for more than 20 years with the Garda Siochana of the Republic of Ireland, as well as for over 20 years with the RUC. Over that time there have been hundreds of meetings and interactions and visits among the British, Irish and American police and criminal justice experts. The continuing dialogue had generated an exchange of ideas and technology that was totally professional and totally nonpartisan. Many of John Jay's exchange scholars have risen to high ranks in Britain, Ireland and America. The current Commissioner of the Police of New Scotland Yard, Sir John Stevens, was the exchange scholar from Britain at John Jay for the fall of 1984.

I am honored to have been selected to be a member of the Patten Commission.

The Patten Commission states that, "The opportunity for a new beginning in policing in Northern Ireland with a police service capable of attracting and sustaining support from the community as a whole can not be achieved unless the reality that part of the community feels unable to identify with the present name and symbols associated with the police are addressed. Our proposals seek to achieve a situation which people can be British, Irish or Northern Irish, as they wish, and all regard the police service as their own."

We therefore recommend, "The Royal Ulster Constabulary should henceforth be named the Northern Ireland Police Service or the Police Service of Northern Ireland," which was the other version of that, "that the Northern Ireland Police Service adopt a new badge and symbols which are entirely free from any association with the British or Irish states. (We note that the assembly has adopted a crest acceptable to all parties, namely the symbol of the flax.)

We also recommended that "the union flag should no longer be flown from public buildings." We recommended "that on those occasions on which it is appropriate to fly a flag on police buildings, the flag flown should be that of Northern Ireland Police Service and it, too, should be free from association with the British or Irish States."

The Patten Commission worked for 15 months. We sought the best professional models and practices for policing a divided society in a democracy. We held meetings not only in Belfast, Dublin and London, but in New York, Washington, California, Canada, Belgium, Spain and South Africa. From the beginning, we met with the police, clergy, politicians, civil libertarians and community groups in Northern Ireland. We went to police headquarters. We visited every police substation in Northern Ireland. We literally talked to thousands of police officers.

We held 40 public hearings throughout Northern Ireland, the first and only time such a commission went directly to the public. These hearings were extremely tense. More than 10,000 people attended. More than 1,000 spoke, as you

indicated, Mr. Chairman. Emotions ran high as they described past cruelties and allegations of murder, torture and brutality on both sides.

We listened. We heard the pain. We felt the suffering. We understood the need to move on to a solution to help forge a future in Northern Ireland that involved more than endless recreations of the terrible past. We realized early in our deliberations that whatever we recommended would have to pass muster, not only in Britain and Ireland, but with police organizations throughout the world, not only the International Association of Chiefs of Police, but Interpol, Europol, the Police Executive Research Forum, American Association of Criminal Justice, the Association of Criminology and all the other organizations that have spoken very favorably about this report throughout the last year.

Chris Patten said of his work on the Commission, "It was the most difficult, painful and emotionally draining thing I've ever done or would ever wish to do." And I concur completely. The Patten Report provides a framework on which a police service built on the foundation of human rights can be achieved. Again, I quote, "We recommend a comprehensive program of action to focus policing in Northern Ireland on a human rights-based approach. Training will be one of the keys to instilling a human rights-based approach in both new recruits and experienced police personnel. We recommend that all police officers and police civilians should be trained in the fundamental principles and standards of human rights and the practical implications for policing. We recommend the human rights dimension should be integrated into every module of police training."

Another core issue which has not received the attention of the media is the Patten Commission's recommendation that a new police college be established in Northern Ireland, and we recommend that it be established in conjunction with either Queens or Ulster University and that whereas as much as possible the students should take classes together with the regular academic students of the universities to that the insularity of the RUC in the future and the Northern Ireland Police Service can be broken from the very beginning and they can be educated with all the other citizens of Northern Ireland who wish to have a higher education.

Central to any organization's ability to imbue its members with a focus on human rights is a facility at which to conduct the necessary work and appropriate curriculum. We believe an educated police officer is a better police officer.

The Report also stated, "As a matter of priority, all members of the police service should be instructed in the implications for policing of the Human Rights Act of 1998 and the wider context of the European Convention on Human Rights and the Universal Declaration of Human Rights. Human dignity training, along the lines of that offered by John Jay College of Criminal Justice in New York to the New York Police Department and police services from some 50 countries should also be provided. Like community awareness training, human rights and human dignity should not be seen as an add-on to training, but as a consideration affecting all aspects of training."

The John Jay College for the last six years has been invited by the FBI to conduct human dignity and human rights training at the International Law Enforcement Academy in Budapest, which was opened by Janet Reno and Louis Freeh, the head of the FBI. In the last 14 months, we have also conducted human rights and human dignity training in Bangkok, again under the auspices of the FBI and, starting next year, we will be working in Botswana with the same curriculum and we understand there is to be a fourth International Law Enforcement Academy somewhere in Latin America. And so we have also been pleased that, though there can be skepticism about the eagerness of police to have human rights training, the University of Virginia in Budapest evaluates every component of the eight week course and the human rights training has gotten the highest ratings

for the last six years of the 22 countries that have been trained and so that we have found a vehicle that has made very palatable the discussion of human dignity and human rights to police officers by their own admission because they vote over and over again that this almost gets full six out one of six whereas money laundering and all the other things of nuclear weapons and white slavery and everything else that is discussed in the curriculum gets less satisfactory ratings from the police officers. So we're very excited about that and believe it can be very effective.

The recommendations of the Patten Commission were unanimous. It is crucial that the recommendation not be cherry picked, as you mentioned, Mr. Chairman, but be implemented in a cohesive and instructive manner. It was clear that the politicians could not solve the issues of policing and put together the independent commission in order to implement the Good Friday Agreement and, as Chris Patten has said on numerous occasions, what did the politicians think we would do? If there was to be an independent commission that looked at the best practices throughout the world and came up with a blueprint for a new beginning, what did the politicians think we would do? Would we simply continue the present situation with some modifications? and, of course, the answer was resoundingly no.

The people of Northern Ireland deserve no less than this beginning for policing. Any significant modifications will deprive them of their long-awaited police service capable of sustaining support from the community as a whole.

Thank you, Mr. Chairman.

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

Mr. O'LEARY.

**TESTIMONY OF BRENDAN O'LEARY, PROFESSOR, LONDON
SCHOOL OF ECONOMICS AND POLITICAL SCIENCE**

Mr. O'LEARY. Thank you, Mr. Chairman, and distinguished members of the—

Mr. SMITH. Could you turn on your microphone, please?

Mr. O'LEARY. Thank you, Mr. Chairman, and distinguished members of the legislative and executive branches for your invitation to present testimony. I have a written statement that I would like to be part of the record, and my remarks will be a briefer variant on it.

Making the Belfast Agreement was always a major achievement. Implementing it was always going to be much more difficult. But as I deliver this testimony, just four confidence building items await full or effective beginnings in implementation. These are: 1) the decommissioning by republican and loyalist paramilitaries of their weapons, 2) the reform of the criminal justice system, 3) demilitarization and 4) policing reform.

These items are all mutually inter-linked. For example, decommissioning, the time table for which has been postponed by the agreement of the parties who made the Agreement, is seen in Irish Republican circles as conditional on the U.K. Government fulfilling its public promises to implement the Patten Report. The U.K. Government states that it is implementing the Patten Report in full. Indeed, its Prime Minister, the Secretary of State for Northern Ireland, and the explanatory notes issued by the Northern Ireland Office accompanying the Police Bill currently before the U.K. Parliament flatly declare their intention to give effect to the recommendations of the Patten Commission. That has not been true, and it is still manifestly not true.

In contrast, the U.K. Government often implies, usually in the off the record briefings, that it can not implement the Patten Report in full because of “the security situation.” This more honest position, albeit in dissembling contradiction with its official one, would have credibility if the necessary preparatory legislative and managerial steps to implement Patten in full when the security situation is satisfactory had been taken. They have not.

Mr. Chairman, in your statement before the House Committee on International Relations on September 4, 1999, you expressed the hope that the Patten Report would become “the starting point, the floor and not the ceiling, for policing reforms in Northern Ireland.” I regret that the report has yet to become either a ceiling or a floor. It remains an un-implemented plan and, in places, merely a poorly disguised facade. Policing, as we’ve heard from Dr. Lynch, has been so controversial in Northern Ireland that parties to the Agreement could not concur on future arrangements. The parties did, however, agree the terms of reference of an Independent Commission chaired by Mr. Patten. Policing arrangements were mandated to be: 1) impartial, 2) representative, 3) free from partisan political control, 4) efficient and effective, 5) infused with the human rights culture, 6) decentralized, 7) democratically accountable at all levels, and 8) consistent with the letter and spirit of the Belfast Agreement.

The Patten Commission, as you yourself have said, Mr. Chairman, engaged in extensive research and interaction with all the affected parties, interest groups and citizens, and published its report in September, 1999. It did not and could not meet the hopes or match the fears of all, but it undoubtedly met its explicit terms of reference. Its report was a thorough, careful and imaginative compromise between Unionists who maintain that the existing RUC already met the Patten Commission’s terms of reference and those Nationalists, especially Republicans, who maintained the RUC’s record mandated its disbanding.

The U.K. Government welcomed the Patten Report and promised to implement it. However, the bill presented to Parliament in the spring of 2000 was an evisceration of Patten and it was condemned as such by the SDLP, Sinn Fein, the Women’s Coalition, the Catholic Church, non-governmental and human rights organizations such as the Committee on the Administration of Justice. It was also criticized by the Irish Government, the U.S. House of Representatives, and a range of Irish-Americans including apparently President Clinton.

To demonstrate the veracity of the critics’ complaints, let me briefly compare some of Patten’s recommendations with the original bill.

To achieve impartiality, Patten recommended a neutral name, the Northern Ireland Police Service, and the display of the Union flag and the portrait of the Queen at police stations should go. Symbols, as Dr. Lynch has said, should be free from association with either the British or the Irish states.

The original bill, by contrast, proposed that the Secretary of State have the power to decide on the issue of names and emblems and thereby ignored Patten’s explicit recommendations.

To achieve representativeness, Patten recommended an affirmative action program of at least 10 years to change rapidly the proportion of cultural Catholics in the police. The original bill, by contrast, reduced the period in which the police would be recruited on a 50/50 ratio of cultural Catholics and cultural Protestants to three years, requiring the Secretary of State to make any extension, and it was silent on aggregation, Patten’s policy for shortfalls in the recruitment of suitably qualified cultural Catholics.

To achieve freedom from partisan political control, Patten proposed a Policing Board consisting of 10 representatives from political parties in pro-

portion to their shares on the Northern Ireland Executive and nine members nominated by the First and Deputy First Ministers. The original bill, by contrast, introduced a requirement that the Board should operate according to a weighted majority when recommending an inquiry. Given known political dispositions in the region, Mr. Chairman, this was tantamount to giving Unionist and Unionist nominated members a veto over inquiries, i.e. partisan political control, a direct violation of the terms of reference of the agreement. To achieve efficient and effective policing, Patten proposed a modest downsizing of the service, a strong Board to set performance targets, and enabling local District Policing Partnership Boards to engage in market testing of police effectiveness.

The original bill, by contrast, empowered the Secretary of State to set performance targets, made no provision for disbanding the police reserve, and deflated the proposed District Policing Partnership Boards.

To achieve a police infused with a human rights culture, Patten proposed that new and serving officers should have human rights training and re-training and appropriate codes of practice. The Commission held out international norms as benchmarks. I quote, "Compliance with international human rights standards are an important safeguard, both to the public and to police officers carrying out their duties."

Patten also proposed normalizing the police, for example, through dissolving the special branch into criminal investigations. The original bill parodied these proposals, Mr. Chairman. The new oath was to be confined to new officers. No standards of rights higher than those in the European Convention were to be incorporated into training and practice. The code of ethics was left to the Chief Constable. The bill excluded Patten's requirement that the oath of service "respect the traditions and beliefs of people." Normalization and demilitarization were left unclear.

To achieve decentralization, Patten envisaged enabling local governments to influence the Policing Board through their own District Policing Partnership Boards and giving the latter powers to purchase additional services from either the public or the private sectors.

The original bill, by contrast, centralized in several ways. The Secretary of State obtained powers that Patten had proposed for the First and Deputy First Ministers and the Board and powers to issue instructions to District Policing Partnership Boards and neither the bill nor the implementation plan unambiguously implemented the proposed experiment in community policing.

To achieve democratic accountability, Patten envisaged a strong, independent and powerful board to replace the existing and discredited Police Authority and required the board to interact with the Human Rights Commission, the Ombudsman, and the Equality Commission.

The bill radically watered down Patten's proposals, empowering the Secretary of State to oversee and veto the board's powers, empowering the Chief Constable to refuse to respond to reasonable requests from the Board, preventing the Board from making inquiries into past misconduct. In consequence, and quite amazingly, the discredited Policing Authority quite correctly condemned the bill, the first time I think it did its job properly in the public domain.

Patten's Report was consistent with the Belfast Agreement. The original bill was not, being incompatible with the parity of esteem and rigorous impartiality in administration promised by the U.K. Government. Manifestly, it could not encourage widespread community support.

What explains the radical discrepancy between the report and the original bill? The bill was drafted by the Northern Ireland Office's officials

under Secretary of State Mandelson's supervision. They appeared to forget that the terms of reference came from the Belfast Agreement and that Patten's recommendations represented a careful and rigorous compromise between Unionists and Nationalists. Indeed, they appeared to have treated the Patten Report as a Nationalist report which they should appropriately modify as allegedly benign mediators. The bill suggested that the U.K. Government was determined to avoid the police being subject to rigorous democratic accountability, deeply distrustful of the capacity of the local parties to manage policing at any level, and concerned to minimize the difficulties that the partial implementation of Patten would occasion for First Minister David Trimble and his party, the Ulster Unionists, by minimizing radical change and emphasizing the extent to which the new service would be a mere reform of the RUC.

Under pressure, the U.K. Government has since retreated. Whether to a position prepared in advance, only others can know, but skilled political management is not something I shall criticize it for in these hearings.

Mr. Mandelson promised to listen and to modify the bill. Indeed, the government was subsequently to accept over 60 SDLP-driven amendments to bring the bill more into line with Patten. But this, of course, demonstrated that its original bill and spin on that bill had been a lie.

The bill was improved in the Commons Committee stage, but insufficiently. The quota for the recruitment of cultural Catholics is now better protected. The Board has been given power over the setting of short-run objectives and final responsibility for the code of ethics. Consultation procedures involving the Ombudsman and the Equality Commission have been strengthened, and the First and Deputy First Ministers will now be consulted over the appointment of non-party members to the Board. The weighted majority provisions for an inquiry by the Board have gone, replaced by the lower hurdle of an absolute majority.

Yet, the modified bill is still not the whole Patten. If the first bill eviscerated Patten, the latest version presents a mostly bloodless ghost. On the crucial issues of police accountability and ensuring a new beginning, it remains at odds with Patten's explicit recommendations. As the bill recommences its progress through the Lords, the U.K. Government has started to shift its public relations. The new line is that the full Patten would render the police less effective, for example, in dealing with criminal paramilitarism. The implication is that anyone who disagrees with the government line is soft on crime and its paramilitary causes. The new line also lacks credibility. Patten provided a rigorous formula to ensure no trade-off between police effectiveness and accountability.

Let me identify just four of the outstanding respects in which the modified bill fails to implement Patten. I leave aside the human rights provisions because I believe that that will be eloquently analyzed by Martin O'Brien on my right.

Let's deal first with the Oversight Commissioner. Patten recommended an Oversight Commissioner to supervise the implementation of our—that is, Patten's—recommendations. If Mr. Mandelson and his colleagues were committed to Patten, they would charge the Commissioner with recommending now or in the future any legislative and management changes necessary for the full and effective implementation of the Patten Report. That Mr. Mandelson refuses to do so, in my view, speaks volumes. In addition, the Commissioner's role remains poorly specified.

2) Policing Board. Patten recommended a Policing Board to hold the police to account and to initiate inquiries into police conduct and practices. Mr. Mandelson has prevented the Board from inquiring into any

acts or omissions arising before the eventual Act applies. I believe this is tantamount to an undeclared amnesty for past police misconduct not proposed by Patten. As you have emphasized yourself, Mr. Chairman, the Secretary of State will now have the extraordinary power to prevent inquiries by the Board because they would, quote/unquote, “serve no useful purpose,” a power added at the report stage in the Commons and, needless to say, not in Patten. The government has therefore chosen to compensate itself for the concessions it made in the Commons Committee when it expanded the Board’s remit to be more in line with Patten, so what it has given with one hand on the grounds that it had been too cautious, it has now taken away with two clumsy feet.

The Secretary of State will additionally have the authority to approve or veto the person appointed to conduct any inquiry. The U.K. Government’s line, as far as I can tell, is roughly at the following nature. ‘Look how much we have done to implement Patten and look how radical Patten is by comparison with elsewhere.’ This spin is utterly unconvincing. The proposed arrangements would effectively seal off past, present and future avenues through which the police might be held to account for misconduct. They are recipes for leaving them outside the effective ambit of the law and of managerial scrutiny.

Patten is not radical, especially not by the standards of North America. Canada and the USA have long made their police democratically accountable and socially representative. Patten is only radical by the past standards of Northern Ireland.

Three: The Ombudsman. Patten recommended that the Ombudsman should have significant powers and should exercise the right to investigate and comment on police policies and practices whereas in the modified bill the Ombudsman may make reports but not investigate, so it is not a crime to obstruct her work. The Ombudsman is additionally restricted in her retrospective powers, once again circumscribing the police’s accountability for past misconduct.

Four: Name and symbols. Patten wanted a police rooted in both communities, not just one. That is why he recommended that the name of the service be entirely new, the Northern Ireland Police Service. The bill, as a result of a government decision to accept an amendment tabled by the Ulster Unionist Party, currently styles the service the Police Service of Northern Ireland (incorporating the Royal Ulster Constabulary.) That must be one of the longest names of a police service anywhere in the world, by the way. I haven’t thought of that until now.

The Secretary of State promised an amendment to define for operational purposes to ensure that the full title would rarely be used and that the parenthetic past generally be excluded. He broke this commitment for unexplained reasons at report stage. Secretary of State Mandelson has been mendaciously misleading in declaring that he is merely following Patten’s wishes that the new service be connected to the old and avoid suggestions of disbanding. This line is unfortunately a characteristic half truth. Patten proposed an entirely new and fresh name and proposed linkages between the old and new services through police memorials and not through the renaming proposed by Mr. Maginnis of the Ulster Unionist Party.

Patten, as Dr. Lynch emphasized, unambiguously recommended that the police’s new badge and emblems be free of association with the British or Irish states and that the Union flag should not fly from police buildings. The bill still postpones the resolution of these matters.

Why do these symbolic items matter? Simply because the best way to win widespread acceptance for police reform is to confirm Patten’s promised new beginning by following his proposed strategy of symbolic neutral-

ity. Full renaming and symbolic neutrality would spell a double message. The new police is to be everyone's police and the new police is no longer to be primarily a unionist police. This symbolic shift would mightily assist in obtaining representative cultural Catholic recruitment and in winning consent for the new order amongst nationalists as well as unionists. Not to follow Patten's recommendations in these respects would also spell a double message, that the new police is merely the old RUC retouched and remains a police linked more to British than Irish identity. That is to say, a recipe for the status quo ante.

Unless the U.K. Government makes provision for Patten to be fully implemented, disaster, Mr. Chairman, in my view, may come in two forms. Its weakest form is already taking shape. The SDLP, Sinn Fein and the Catholic Church are most unlikely to recommend that their constituents consider joining the police and may well boycott the Policing Board and District Policing Partnership Boards. That will leave the police entirely without Patten's promised new beginning, lacking full legitimacy with just less than half of the local electorate, an institutional time bomb.

We must not, of course, ever forget that over 300 police were killed in the current conflict, but we must also not forget that the outbreak of armed conflict in 1969 was partly caused by an unreformed, half legitimate police service responsible for seven of the first eight deaths. In its strongest form, disaster would decouple nationalists and republicans from the agreement and bring down its political institutions. Failure to deliver Patten will mean that Sinn Fein will find it extremely difficult to get the IRA to go further in decommissioning. The IRA will find it difficult to prevent further departures to the Real and Continuity IRAs except by refusing to budge on arms. In turn, that will lead to unionist calls for the exclusion of Sinn Fein from ministerial office and to a repeat of Mr. Trimble's gambit used earlier this year, 'decommission now or I'll resign now.'

The day before I flew to Washington, I was in Northern Ireland and I watched Mr. Trimble, in effect, repeat this threat in the Assembly under challenge from his hard line unionist opponents. If decommissioning does not happen because of Secretary of State Mandelson's failure to deliver fully on Patten, we can expect a resignation threat from the First Minister. In short, a second collapse of the Agreement's institutions looms. This vista, Mr. Chairman, and worse must be avoided.

Thank you, Mr. Chairman. I'm happy to answer any interrogation that conforms to best practice human rights standards. Thank you.

Mr. SMITH. Thank you very much, Mr. O'Leary, for that very comprehensive testimony and without objection your full statement will be made a part of the record.

I'd like to invite Martin O'Brien to present his testimony.

**TESTIMONY OF MARTIN O'BRIEN, DIRECTOR, COMMITTEE ON
THE ADMINISTRATION OF JUSTICE, BELFAST**

Mr. O'BRIEN. I'd like to begin by thanking you for the invitation to testify today and, in particular, to thank Chairman Smith for his sustained and ongoing interest in the situation in Northern Ireland. This is of great encouragement to us. I'd also like to thank Mr. Koh and Mr. Payne for their personal and continuing interest in the situation which again is very much appreciated.

The Committee on the Administration of Justice, CAJ, draws its membership from across the different communities in Northern Ireland and works for a just and peaceful society where the human rights of all are fully protected. In recognition of its efforts to place human rights at the

heart of the peace process, CAJ was awarded the Council of Europe's Human Rights Prize. We have a broad remit and are active on a wide variety of subjects.

Since our foundation in 1981, we have worked consistently on issues of policing and as early as 1995 we argued for an Independent International Commission to look into future policing in Northern Ireland. Accordingly, we worked hard to ensure that the establishment of such a body would be provided for in the Good Friday Agreement. We were fortunate in that we had earlier secured funding from the Ford Foundation and others to undertake a major comparative research project on good policing around the world. The findings arising from that study underpinned all our work with the Commission and were, we believe, from a reading of its recommendations, very useful to its work.

In testimony in September 1999 to Congress on the findings of the Patten Commission, we said, "CAJ believes that in general terms the Commission has made a very genuine and constructive effort to meet the difficult task imposed on it by the agreement. They have put forward many thoughtful and positive recommendations about the way forward. Most importantly of all, they have recognized, as did the agreement itself, that just as human rights must be at the heart of a just and peaceful society in Northern Ireland, they must also be at the heart of future policing arrangements."

We went on, however, to outline to the Committee some of the serious reservations we and other human rights groups had regarding the omissions from the Patten Report, and the Chairman has already referred to some of these. Amongst other things, we expressed concern as to the feasibility of bringing about real changes to policing if emergency powers are still retained, if plastic bullets are still deployed, and if officers known to have committed human rights abuses in the past remain as serving officers.

Despite these important shortcomings, however, the main thrust of our submission was to urge Congress to push for speedy implementation of the Commission's recommendations. Though Patten's recommendations did not address everything that was needed, in our view, they gave a clear framework within which change could occur and they pointed all those interested in fundamental change in the right direction.

Unfortunately, as we said in our earlier testimony, implementation is everything and in that context CAJ must report our profound disappointment at developments since the publication of the Patten Report. Our concerns are twofold. First, many of the changes Patten called for are long overdue, and speed is of the essence. Second and as important, a hesitant or unwilling approach to major change, which is what we are experiencing, feeds fears that change will be shortlived and undermined over the longer term.

One of the key findings of our earlier international research was that political will is always a determining factor in preventing or facilitating successful change. Initially, it seemed that the necessary political will did in fact exist within government for change. Yet since the publication of the Patten Report, the signs have been ominous.

Patten called for the speedy appointment of an Oversight Commissioner to oversee the peace and nature of change. The Commission said, "We believe that a mechanism is needed to oversee the changes required of all those involved in the development of the new policing arrangements and to assure the community that all aspects of our report are being implemented and being seen to be implemented." This recommendation was accepted by government, but Tom Constantine was only appointed on 31 May 2000, almost nine months after the Patten Report was published. This tardy appoint-

ment meant that the Commissioner was excluded from scrutinizing the draft legislation, played no part in the detailed implementation plan prepared by the existing policing establishment and has still to take on a public profile and produce his first report.

Given this delay, any change that has taken place to date has been dictated by those who have been responsible for policing over the last 30 years and to have resisted change in the past. Only a third or less of Patten's recommendations resulted in proposals for legislative change. The vast majority of the program of change has been left to the discretion of senior civil servants and the Chief Constable. Indeed, much of the change, whether in terms of police training, police reorganization or in terms of crucial decisions relating to special branch detention centers, the use of plastic bullets or the extent of stop and search activities lies largely at the discretion of the Chief Constable alone.

The slowness in appointing an external Oversight Commissioner has left government open to the charge that the nature and pace of change has been deliberately left in the hands of those who have so mismanaged policing in the past. This charge is not easily refuted. A study of the draft legislation, for example, seems to confirm the view that government is unwilling to put Patten's agenda into practical effect. The draft legislation first presented to the House of Commons in May was a very far cry from the Patten Report and, despite much lobbying and extensive changes in the course of the Parliamentary process to date, there is still a long way to go.

I would like, with the Chair's permission, to have read into the record a short CAJ briefing on the major outstanding concerns and the policing legislation and a detailed series of amendments which CAJ believes must be introduced if the legislation is to faithfully reflect Patten.

Mr. SMITH. Without objection, that submission will be made a part of the record.

Mr. O'BRIEN. Of course, to judge by official government statements, one would have thought that government was fulfilling Patten in its first draft legislative text in May. The same claim to be fulfilling Patten was still being asserted in July when, by its own admission, it had already made 52 substantive changes to bring the initial draft in line with Patten. Further amendments have also been promised, but CAJ understands that these will still not deliver the Patten agenda.

This is not a concern which is shared alone by us but as recently as yesterday the Police Authority for Northern Ireland, the existing board which manages policing affairs, has issued a strong statement which lays out their continuing concerns about the failings in the legislation. The chair of that body says, "The impact of sufficient—on reports and inquiries combined with the possible removal of the Board's power to audit police finances significantly reduces the Board's ability to hold the police service accountable."

He goes on to say, "By restricting the powers of the Board to call for reports on exceptional matters and reducing its ability to routinely see policing costs, government has created a situation where there will be the appearance of oversight without the real power to back it up. The overall result of the legislation as it stands is a less powerful Policing Board and a more powerful Secretary of State. This is exactly what Patten argued against. He wanted the people of Northern Ireland to have more say in the way they are policed through the new Policing Board. Instead, this bill makes the Board a poor relation to the Secretary of State in this regard. Government must ensure that the strong, independent and powerful Policing Board which Patten envisioned is created by addressing the deficiencies in this bill immediately." That's the end of that quote.

If government does want to implement Patten as it says it does, why is it still resistant to a whole range of important safeguards which Patten called for? Why is it impossible to get government agreement to include explicit reference in the legislation to a broad range of international human rights norms and standards? What reason can there be for the government denying any role to the Northern Ireland Human Rights Commission in advising on the police use of plastic bullets? Why are effective inquiry powers for the Policing Board consistently opposed? Why is the Secretary of State so adamant that the Police Ombudsman can not have the power to investigate police policies and practices, a power that Patten called for? Why was the appointment of the Oversight Commissioner so long delayed and why is his term of office curtailed in the legislation?

There will be some who claim that government can not move fast on certain issues because policing is a very divisive issue in Northern Ireland. While there are, of course, many contentious issues, the name and symbols, for example. None of the important issues listed above divide nationals and unionists. They do, however, clearly divide those who want to defend the status quo from those who want a police service that is impartial, representative, and accountable, able and willing to ensure that the rule of law is upheld.

Some of the obstacles to real change can be detected by a study of the parliamentary record. A government minister in the course of the debate resisted any amendments that sought to make policing subject to international human rights standards and norms. He said, "Some appalling human rights abuses take place around the world. Those low standards should not be compared with the past activities of the RUC. The RUC carried out a difficult job, often in impossible circumstances. Such comparisons as might be made in the light of the amendment could cause unnecessary offense. We might reasonably say that against the norms in question the RUC has a good record on human rights."

I think in this position one sees that the government appears to reject out of hand the many past reports of the United Nations and respected international nongovernmental organizations which criticize the RUC. This stance presumably explains the legislation's failure to address the legacy of the past, yet if government is unwilling to admit past problems, can the necessary change occur?

CAJ's fears about the place and nature of policing change are further heightened by the government's approach to the separate but complimentary criminal justice review also established as part of the Good Friday Agreement. The inter-relationship between policing and the criminal justice system is self-evident. Accordingly, it is extremely disturbing to have to report to Congress that CAJ has serious concerns about the nature and pace of change proposed in the criminal justice sphere also.

For example, a new appointment system for judges, changes to the prosecution service, and a revamping of the criminal justice system generally are long over-due change. The government time table clearly does not recognize any urgency. CAJ, however, feels that Northern Ireland can not afford any further delay.

Of course, change is inevitably difficult and change of the scale and nature required in Northern Ireland is particularly difficult. We urge the U.S. Congress to use its best endeavors to lend its support to the U.K. and Irish Governments as they work with local politicians to develop a more just and peaceful society in Northern Ireland. In particular, we hope that Congress would work, both directly and, as appropriate, in conjunction with the Administration, to urge the Prime Minister, Tony Blair, to amend the draft legislation to ensure that it reflects both

the letter and spirit of Patten and that the legislation conform in particular to Patten's exhortation that the fundamental purpose of policing should be, in the words of the agreement, "the protection and vindication of the human rights of all."

Congress should urge the U.K. and Irish Governments to recognize the importance of greater external oversight of the transition process and ask that the Oversight Commissioner be accorded the resources and remit necessary to this vital work. Congress should commit itself to monitoring developments closely in the coming months and urge the U.S. Administration to do the same. Congress may, for example, want to consider holding further hearings in due course to receive a progress report on developments. This particular Commission has an important role in continuing to raise concerns about policing in Northern Ireland in the OSCE forum and any further initiatives which the Commission can take in that regard would be very welcome.

To conclude, I don't need to remind Chairperson Smith that defense lawyer and CAJ executive member, Rosemary Nelson, testified before him and other members of Congress on issues of policing almost two years ago on the 29th of September, 1998. The concerns she raised in her testimony and her terrible murder a short while later remind us, if we need reminding, that policing change in Northern Ireland is not an abstract or intellectual debate. It is about the lives of real people. We must bring about policing change in Northern Ireland and we must ensure that that change is right. Whatever Congress and this Commission can do to help those of us on the ground secure such change will be greatly appreciated, and we thank you for your efforts to date. Thank you very much.

Mr. SMITH. Thank you very much, Mr. O'Brien, for your excellent testimony and, just for the record, as other members of the Commission are likely to know, it was in your office that I first met Rosemary Nelson. I was totally persuaded by the meeting and the information that was provided that she was doing her level best to promote due process rights among the accused. She said at that time that she feared for her life, and she said it right here in this room, that she feared that the RUC would assassinate her. As you pointed out, sadly there was a car bomb that took her life, an assassination, and very, very compelling questions remain as to who might have been complicit in that cowardly act. So we all remember her, and that ought to be further inspiration for all of us to get this right and to make sure that our friends in the Parliament in the United Kingdom get it right. You know, as a lawmaker and as a lawmaker for 20 years, I think all of us—and I know Mr. Payne will agree with this—we know that there are those who do engage in deceitful legislating, almost Orwellian-like, trying to suggest one thing when the legislation does precisely the opposite or, as was pointed out, is Patten-like but could lock in for a long time a very anti-reform perspective.

I'd like to yield, before going to Ms. Massimino, Secretary Koh does have to leave but, again, we're very grateful to have him here and for any questions he might have before he has to leave.

Sec. KOH. I'd like to commend all the witnesses for your excellent testimony, which I found very illuminating and clear. I wanted to also thank Ms. Massimino for her testimony, which I've read very closely now.

I have a specific question which picks up on the last point raised by the Chairman, which is about the current security situation for defense lawyers in Northern Ireland, in particular, the concerns about Rosemary Nelson's partner, Ms. Drinan. I'm wondering whether you have any specific comments on the general situation, and on Ms. Drinan's situation.

Mr. O'BRIEN. Yes. Thank you for raising this issue. The situation of defense lawyers in Northern Ireland remains a continuing concern. Patricia Drinan has taken on some of the cases which Rosemary was active in. She herself has experienced a number of threats and there have been incidents which threaten her safety. The government, in our view, needs to establish an independent public inquiry into the circumstances surrounding Rosemary's death.

We also continue to call for an independent inquiry into the circumstances surrounding Patrick Finucane's death, and we were involved in a recent meeting where members of the Finucane family met with Prime Minister Blair to raise these concerns. Maybe Elisa Massimino would like to say a little bit more about this, and it certainly remains our concern that the government still seems reluctant to take the measures and steps necessary to provide protection to defense lawyers and their response when complaints are raised is often tardy and almost of a begrudging nature.

Sec. KOH. But if you could just clarify, has any additional security been provided to Solicitor Drinan?

Mr. O'BRIEN. To the best of my knowledge, she has been able to secure some work to protect her home. I'm not entirely sure that that's being carried out to her complete satisfaction, and I think her concern has been that the authority's response to her complaints has been inadequate.

Ms. MASSIMINO. If I could just add briefly, the fact is that the situation is still quite precarious for defense lawyers in Northern Ireland. The problems that were laid out in the report by Mr. Param Cumaraswamy, the U.N. Special Rapporteur for the Independence of Judges and Lawyers persist. He recommended a number of steps that have not yet been taken. We have been told by many defense lawyers with whom we've met over the years and recently in trips over the last year that they continue to fear violence and do not feel secure. In many ways they looked to the situation of Rosemary Nelson and her complaints and how they were dealt with as a test case for whether or not they could use the complaint system and, as we heard many times and quite obviously from the facts, the investigation into those complaints was wholly inadequate. This continues to be a problem. It reinforces, I think, for all of us the importance of strengthening the oversight mechanisms suggested by Patten. If those mechanisms are not strengthened, these problems will not be solved.

Mr. SMITH. Secretary Koh, thank you very much for being here. I'd like to also thank Ms. Massimino for extending the courtesy of interrupting the regular order to accommodate the Secretary.

Ms. Massimino.

**STATEMENT OF ELISA MASSIMINO, DIRECTOR, WASHINGTON
OFFICE, LAWYERS COMMITTEE FOR HUMAN RIGHTS**

Ms. MASSIMINO. My pleasure, and I apologize for being late, Chairman Smith. One of my children was ill this morning and I had to take him to the doctor. I want to thank you again for inviting us to testify today. It is truly an honor for me to sit on a panel of such distinguished and knowledgeable colleagues and to testify before you and your colleagues who have done so much in the struggle for human rights and made it such a central part of your work.

Chairman Smith, you in particular have been a real champion of human rights in the Congress, and you and your dedicated staff have done so much to shine a spotlight on human rights abuses in Northern Ireland and around the world, and we just want to thank you very much for that.

The Lawyers Committee for Human Rights has been working to advance human rights in Northern Ireland since 1990. We've published a number of reports about the intimidation and murder of defense lawyers in Northern Ireland, with a particular focus on the two cases that we just heard about, Patrick Finucane and Rosemary Nelson. As you well know, the precarious situation of defense lawyers in Northern Ireland is closely associated to the emergency law system and to the conduct of the police.

For the last year and a half, we've paid special attention to the peace process in Northern Ireland and to the central issue of police reform. We appreciate the opportunity to be here today and share with you our views on the status of the British Government's efforts to implement the recommendations of the Patten Commission.

The Patten Commission's mandate was as ambitious as it was critically important to Northern Ireland's future. You've heard from the Lawyers Committee, as well as many of our colleagues that we were disappointed the Patten Commission didn't directly address some key issues, such as the continued use of emergency powers, which is the breeding ground for many of the human rights abuses that persist in Northern Ireland. But we believe on the whole that the Patten Commission successfully integrated human rights principles into its program for reform.

The Patten Commission Report provides a clear road map for building an effective and publicly supported police force. If the British Government were to fully implement the Patten Commission's recommendations, it could make Northern Ireland a model for other civil societies transitioning from conflict to peace. But, unfortunately, the British Government has taken a different path. Despite more than 50 substantive amendments, the bill now pending in Parliament that is meant to implement the Patten Commission recommendations, in our view, falls far short of doing so.

There are serious deficiencies in the legislation now under consideration, many of which have been discussed already in detail by my colleagues on this panel, including limitations on the Policing Board, the Police Ombudsman, and the Oversight Commissioner. In our written testimony and in a letter we sent to Peter Mandelson, the Secretary of State for Northern Ireland, we raised these issues in greater detail. I'd like to submit my written testimony and also a copy of that letter which is attached to my written testimony for the record.

Mr. SMITH. Without objection, so ordered.

Ms. MASSIMINO. Thank you.

I would like to just mention one issue of great concern to us that has also been mentioned by other panelists, and that is the lack of reference to international human rights standards in the Police Bill. Although the British Government has repeatedly asserted that it, "recognizes the importance of human rights," its ongoing resistance to inserting reference to international human rights standards into the language of the Police Bill raises serious questions. The conduct of police in Northern Ireland has been the subject of numerous reports by non-governmental organizations and U.N. bodies including Mr. Cumarswamy, the U.N. Special Rapporteur on the Independence of Judges and Lawyers, and many of these reports have concluded that police conduct in Northern Ireland violates internationally recognized human rights standards.

Chairman Patten in his statement accompanying the release of the Commission's report highlighted the central importance of human rights standards to the Commission's approach to police reform. He said, "We recommend a comprehensive program of action to focus policing in Northern Ireland on a human rights approach. We see the upholding of funda-

mental human rights as the very purpose of policing, and we propose that it should be instilled in all officers from the start, in the oath they take, in their training, and in their codes of practice and in their performance appraisal system.”

In light of this clear statement of the human rights foundations of the Patten Commission’s recommendations, the failure to incorporate reference to international standards into the Police Bill is quite striking. These failures, combined with the slow pace of other reform measures, have already led to an erosion of confidence in the ongoing process and doubts about the government’s intentions. Many who support reform have begun to wonder whether the government is abandoning its stated intention to fully implement the Patten Commission recommendations, and this perception obviously will have serious consequences for the longterm prospects for peace.

I wanted to cite just one example that we recently became aware of. Under the Patten Commission proposal, as you know, 600 police officers were supposed to volunteer to retire by the end of October. This proposal was based on the assumption that adequate compensation would be offered as an incentive to retire but, so far, out of those 600 planned retirements, only 91 officers have come forward to volunteer. According to a Police Federation spokesman quoted in a recent article in *The Daily Telegraph*, the government has stated that no officer should benefit beyond the sum they would earn if they remained on the force. When the Police Federation asked the government what incentive this would give officers to retire, they were not given a credible answer. I would ask that a copy of this September 10 article be entered into the record for this hearing.

Mr. SMITH. So ordered.

Ms. MASSIMINO. As so many societies transitioning from conflict to peace have learned, building a culture of human rights and accountability will require having a process for addressing past violations. Because we believe that future progress in developing a rights-sensitive police force in Northern Ireland depends on breaking the existing cycle of impunity, we urged the Patten Commission to make recommendations to the British Government in two specific cases: the 1989 murder of Patrick Finucane and the murder of Rosemary Nelson last year. We regret that the Commission’s report was silent with respect to these cases.

While we understand Mr. Patten’s conclusion that the Commission’s work was, “forward looking,” our own experience in situations such as these has been that societies can not reconcile until the legacy of past abuses is squarely confronted. Although it is clear that not all of these abuses can be addressed or rectified, there are certain cases that embody the most profoundly entrenched practices and problems that the peace process seeks to overcome. If a solid foundation for the future is to be laid, these cases must be addressed.

For this reason, we urge the Helsinki Commission to continue its vigilant attention to the Finucane and Nelson cases at the same time as it examines broader reforms recommended by the Patten Commission. Because I know you share our keen interest in these two cases, Chairman Smith, I will devote the remainder of my short testimony to summarizing the current status of those cases.

As Martin O’Brien just mentioned, now is a particularly critical moment in the struggle for justice in the Finucane case. As you know, the Lawyers Committee has done extensive research into the circumstances surrounding that murder and has concluded that there is compelling evidence to suggest that British Army intelligence and the RUC were complicit in the murder. Three weeks ago, Prime Minister Tony Blair met with the family

of Mr. Finucane. The meeting was brokered by Taoiseach Bertie Ahern who himself has endorsed an independent inquiry after meeting with the Finucane family in February.

During that meeting, Mr. Ahern was provided with a new report by British-Irish Rights Watch, with whom I know you are familiar, that details further credible evidence of collusion. Although the same report was provided to the British Government, there has yet to be a reply on the substance of the allegations in that report. Nonetheless, during the meeting this month with Prime Minister Blair, members of the Finucane family, along with Martin's colleague Paul Mageean from CAJ and Jane Winter from British-Irish Rights Watch, presented the new report and other information supporting the allegation of official collusion in the murder of Mr. Finucane. Mr. Blair appeared to be deeply concerned by the allegations and pledged that he would read and consider all the evidence. He conveyed to the Finucane family that he wants to know if the allegations are true and would put anyone guilty of collusion, quote, "out of a job."

On September 8 we wrote a letter to Prime Minister Blair to urge him to authorize an independent inquiry. As we stated in the letter, we firmly believe that such an inquiry will serve both to help learn the truth about the circumstances surrounding the murder and to publicly confirm the British Government's stated commitment to establishing official accountability.

We would ask that you would support that effort and do all you can to convince Prime Minister Blair to make the right decision. We've asked Secretary Albright to convey this message to President Clinton. I know Martin has also done the same thing. Whatever you can do at this critical moment would make a huge difference.

Mr. SMITH. Ms. Massimino, just for the record, we have a letter that we've written. We're circulating it now for member signatures, and we congratulate you on the recommendation as well as the work that's being done that. And your other submissions that you asked, as well as all the panelists, will be made a part of the record.

Ms. MASSIMINO. Thank you.

In addition to the Finucane case, the Lawyers Committee also believes that the British Government should authorize an independent inquiry into the murder of defense lawyer Rosemary Nelson. We view resolution of her case as essential to the success of new accountability mechanisms in Northern Ireland.

Prior to her death, as you're aware, Ms. Nelson received numerous death threats, including those made by RUC officers conveyed through her clients. Ms. Nelson never received government protection, despite many appeals made to the Northern Ireland Office and the RUC to protect her life, including those made by Mr. Param Cumaraswamy, United Nations Special Rapporteur.

During the time Ms. Nelson became a target of official harassment, she herself had become an outspoken of the RUC and, thanks to you, Chairman Smith, was able to bring her case all the way to the U.S. Congress. At that time, she expressed deep fear regarding her safety and that of her family.

The current criminal investigation of Ms. Nelson's murder is led by London Detective Colin Port and has been under way for almost a year and a half. To date, the investigation team has taken 1,700 statements, spoken to more than 7,000 potential witnesses and unearthed 7,000 lines of inquiry, but has yet to charge anyone in connection with the murder. Because Mr. Port's investigation is limited to the specific circumstances of Rosemary's murder, we do not believe that his team can effectively address the larger issue of who authored the crime and whether official collusion was involved.

Further, Mr. Port does not address the threats made against Ms. Nelson by RUC officers and, as I mentioned to Assistant Secretary Koh, this practice continues today.

In the past, we've expressed concern regarding the British government's inadequate response to Ms. Nelson's situation, not only regarding the failure to provide her protection but also to discipline those officers alleged to have harassed her. We believe that both of these issues must be addressed if the new accountability structures established by the Police Bill are to be effective.

Our deep concern regarding accountability mechanisms in Northern Ireland has intensified since we recently learned that another lawyer, Pdraigan Drinan, is under threat and has been the target of harassment and threats by the RUC.

To those who say we should focus on the future instead of the past, I'd like to emphasize today that the British Government still has the opportunity to avert another tragedy, but it must make sure that it learns lessons from past errors and uses them to correct a system that has completely failed to protect its citizens against police abuse.

Lasting peace can not take hold in Northern Ireland until the British Government demonstrates the willingness and ability to secure justice for the families of Rosemary Nelson and Patrick Finucane and a commitment to creating a representative and accountable police force for Northern Ireland's future. Thank you.

Mr. SMITH. Ms. Massimino, thank you very much for your testimony and for your work on behalf of human rights all around the world. You have been before our subcommittee in particular a number of times, and your words and your thoughts are always greatly valued.

I'd like to just pause for a moment. Chairman Gilman is on the line from Bear Mountain, New York, in the 20th district of New York. He could not be here physically with us but will be here by way of a telephone hook-up, and he has a few words he'd like to say to the Commission. Ben, you're on.

Mr. GILMAN. Hello.

Mr. SMITH. Ben, you're on the air.

Mr. GILMAN. Oh, Chris.

Mr. SMITH. Yes, thanks for calling in. We appreciate it.

**OPENING STATEMENT OF BENJAMIN A. GILMAN, CHAIRMAN,
HOUSE COMMITTEE ON INTERNATIONAL RELATIONS**

Mr. GILMAN. I want to thank the Helsinki Commission and Chris Smith for his leadership on this issue of policing reform in the North of Ireland. Can you hear me all right?

Mr. SMITH. Yes, we can. Excellent.

Mr. GILMAN. I'm sorry that I had to be up in the district. I'm speaking to you from our mobile office, and I want to commend our witnesses who are with you today, President Gerald Lynch of John Jay, Professor Brendan O'Leary and Director Martin O'Brien and Director Elisa Massimino.

The Good Friday Accord that we helped to establish created an international body chaired by Chris Patten to put forward recommendations for a new beginning for policing in Northern Ireland with a police service capable of attraction and sustaining support from the community as a whole, and that's a direct quote from the Patten Commission Report.

In September of '99, that report was rendered with more than 170 recommendations for change. The policing bill of the British Government to implement the Patten Report's important reforms regrettably greatly weakens

many of these most important recommendations. The President assured me that once the legislation at Westminster had been adopted and its impact evaluated, he would assess whether he can make certification on the Patten Report's full implementation, as we required in last year's State Department Authorization Bill. If not, if there's no accreditation of that report's implementation, there'll be no FBI training for any new police service in the North of Ireland, and that would be regrettable.

In its present form, the bill remains inadequate on many grounds. The politicization of the policing issue by the British Government and the emasculation of the Patten Commission's recommendations risks alienation of Catholics from the new police service of Northern Ireland. The Patten Report explicitly, and I quote, "warned in the strongest terms against cherry picking from this report or trying to implement some major elements of it in isolation from others." Close quote on that.

The British Government's action has been condemned by the SDLP, by Sinn Féin, by the Women's Coalition, by the Catholic Church, by the Committee on the Administration of Justice. We question, can they all be wrong? The existing police authority, the Irish Government, and many members of Congress on both sides of the aisle are also calling for change, as well.

I applauded the work of the Patten Commission when that report came out to reform the police authorities in Northern Ireland, and along with many of my colleagues, including Congressman Smith, we urge complete and full implementation of the Commission's recommendations. And that's why this hearing today is so important. Let's hope the House of Lords is going to react differently than the House of Commons, on the policing bill, where it now awaits action.

So thank you for giving me the opportunity of giving my thoughts by way of this telephone conference. Chris, congratulations again for doing this work.

Mr. SMITH. Chairman Gilman, thank you very much for taking the time and obviously this is an issue of highest priority to you, and we're very grateful and look forward to seeing you when you return.

Mr. GILMAN. Thank you, and have a good day, everybody. Good bye.

Mr. SMITH. Thank you, Ben.

Let me just ask a few opening questions and then I'll yield to my colleague and then perhaps we'll have a second round. You know, what's coming through very loud and clear and from all of my reading prior to this hearing and all of the work that all of us have been doing on the Commission as well as on our Subcommittee, the information and the sentiments that you express suggest that the situation is even more serious, that we're looking at the possibility of making permanent through that policing bill a very serious setback from the recommendations that were made by Chris Patten and the Patten Commission.

This will be, and I can assure you—Mr. O'Brien suggested additional hearings—I can assure you that we will have additional hearings, both in the Subcommittee as well as in the Helsinki Commission, but even more than that, just as we proved at the Bucharest Parliamentary Assembly, we will raise this issue to the highest possible levels. Good friends don't let good friends commit human rights abuses.

While we do have a good, strong strategic and cultural friendship with the U.K., that should not preclude us from being absolutely candid and frank and aggressive, if necessary, in promoting human rights. There are good people in Parliament, I'm sure, who would disagree with the way the Policing Bill is being manipulated in this process.

You know, one of the things that I find so discouraging in this business is the amount of deception. I think the way you put it, Mr. O'Leary, was "mendaciously misleading" with regards to one of the aspects of so-called reform that appears is not going to happen.

You know, again, we were critical, and I was critical personally, of the Patten Report, while recognizing the good work that the Commission did, that such things as vetting were not included. To grandfather in people who have committed abuse, it seemed to me, and continues to seem to me, means that the so-called bad apples, to use Mr. Patten's phrase, have the capability of, A) escaping justice, and B) committing, however covertly, additional acts of misdeeds and the like. We all know that somebody on the inside can do much to prevent progress and reform from going forward.

As you pointed out, Mr. O'Brien, earlier this week the Chairman of the existing Police Authority in Northern Ireland stated about the Police Bill, "The overall result of the legislation as it stands is a less powerful Policing Board and a more powerful Secretary of State." This is exactly what Patten was against, and I would just ask Mr. Lynch and perhaps other members if you agree with that. If that be the case, this is truly a facade, a charade, and again could lock in perpetuity, forever, a very, very serious flaw—Dr. Lynch, if you would respond to that.

Dr. LYNCH. The fundamental question which we believe had to be answered was: who polices the police?

Mr. SMITH. Right.

Dr. LYNCH. It's the eternal question raised by the Roman poet Juvenile and echoed through the centuries to see how does a civilization control its police, and we answered that it had to be policed by civilian police board which would have the power to hire and fire the Chief Constable and other senior officers, set policy, and be representative, both of elected and appointed people. We felt that the present police authority was too weak and that it should be strengthened with this new police board. It was the unanimous belief that for the long-range credibility of the police and accountability and transparency, that it had to be a strong police board. This is not true at the moment and, to go in the opposite direction would be, as you said, Mr. Chairman, exactly the opposite of what the Patten Commission believed.

We took testimony, as I mentioned, throughout Europe and North America and South Africa, and the refrain over and over again was, How do you police the police, and it's too important to leave to the police to police themselves. They simply aren't able to do the job, and I can just even make the recommendation by looking at New York City, we have a scandal every 20 years because we presently do not have a policing board, which the last Marlin Commission recommended, just like we recommended in this report. So I do agree that it was the absolute support of the Commission for a strong police board that could in fact bring credibility to the police to all parts of the community.

Mr. O'LEARY. I would like to echo what Dr. Lynch said and to emphasize that, in my view, one of the grave difficulties is that it seems to me that British legislative drafting has taken place in a context in which they fear that the experiment in devolution will not work and the habits of direct rule die very hard, and that's why there are so many emergency powers, oversight powers, veto powers, reserved to the Secretary of State rather than the Board. And this, in effect, is a vote of no confidence by the U.K. Government in the institutions of the Good Friday Agreement and bode ill for it.

That's why I think it's extremely vital that U.S. pressure and international pressure be brought to bear to ensure that the Oversight Commissioner is given the task of recommending the full implementation of Patten's report, including all of Patten's recommendations with regard to the Board's powers.

If we're looking for a compromise at this moment—and I don't think we should be looking for any fundamental compromise because Patten was the compromise—the only compromise we can look for is one over timing, and that's why the Oversight Commissioner's role offers that possibility. Even if all of Patten is not implemented now, if the Oversight Commissioner was given the role of recommending what needed to be done to implement Patten fully, that could ensure that in the future all of Patten would be implemented, including the necessary provisions for a strong and powerful board.

Mr. SMITH. Let me just note that—and this will lead to a question, again to Dr. Lynch—different context but perhaps the same idea. Last year, I chaired the International Operations and Human Rights Subcommittee. We have jurisdiction over the State Department. We were charged with embassy security and matters relating to diplomatic security. The Administration made a recommendation for a budget that bypassed fiscal year 2001 in terms of Admiral Crowe's commission's recommendations for an infusement of funds—\$1.4 billion annually for 10 years—to beef up our security after the terrible acts of terrorism that took place in Africa. But one year was missing, and that would be the year 2001, the next immediate year.

So we brought Admiral Crowe in, along with Assistant Secretary for Diplomatic Security, David Carpenter, and Admiral Crowe's testimony was so compelling that we were able to not only get the money for fiscal year 2001 but a five year authorization for \$5.9 billion. I put it in the bill. The bill sailed through the House and Senate and was signed by the President, whose own Administration originally recommended a leap year to bypass 2001. We hear there were problems at OMB, there were problems in this and problems of that, as to why 2001 was going to be overlooked, and when you're talking about diplomatic security and people at risk from terrorists around the world.

My point being—the credibility of the Patten Commission is sacrosanct. People do believe, as do I, it was a compromise, as Mr. O'Leary just mentioned a moment ago, but it also was a real first start, a beginning, a first step, and yet now we're seeing it pock-marked like Swiss cheese. The commitment to honestly go forward seems to be lacking seriously.

Dr. Lynch, is there a way for Mr. Patten and yourself and the other Commissioners, both as a group and as individuals, to bring to bear some of those other stakeholders with whom you were in contact who offered excellent advice during that process? I'm not trying to say more work for you, but it seems to me, to do all of that work and to have it undermined by ineffective and as mendaciously misleading in terms of implementation, would be a scandal. All of us have high hopes. The devil is in the details. The legislation itself and then its implementation has to be faithful to the great work that you did. So is there a way of doing that and conveying it to the Blair government?

Before you do that, I was struck when Ms. Massimino mentioned a moment ago that Tony Blair, on a personal level, was moved by the Patrick Finucane case. We were all moved years ago. Why did it take him so long? This legislation which is on a fast track, or a faster track, will lock in an amnesty potentially for people who have committed those kinds of crimes and many others. And kind of closing the book, sealing it and saying never again look back, look forward, but look forward with a jaundiced eye. So, Dr. Lynch, is there a way of doing that?

Dr. LYNCH. Well actually, the Commission was disbanded on September 9 when we issued the report so that we do not have any further legislative or administrative authority. Obviously, we felt very strongly about the recommendations. Felt strongly that obviously the politicians could

not solve the problem of a new beginning for policing and gave it to the police independent commission, and so it was expressed in the Good Friday Agreement and having all the moral authority of the very strong vote, both in the Republic and in the north. And so obviously I feel very strongly that we must implement the Patten recommendation as they are and it has so much support in the profession of policing. It's not an oddity or a radical thing. It is really the state of the art thinking of the best minds throughout the world as to how to proceed in a divided society which must have credibility, accountability and transparency and must be seen to have that so that to modify it as strongly as it seems to be modified would be a great regret to the Commission. But we do not have any further authority except the authority of speaking out again to urge everyone to stand behind the Patten Commission, to blame the Patten Commission, if necessary, for being too radical but at least to frankly use it as a cover politically and say that's what Patten said and go along with it rather than cherry picking it, which we really regretted.

Mr. SMITH. Do you think Prime Minister Blair and other key leaders in the government—Peter Mandelson is probably aware of your sentiments and that of Chris Patten—I presume he shares your views—and the other Commissioners, are they really aware of the unfaithfulness that they are exhibiting in implementing Patten?

Dr. LYNCH. I couldn't speak to that. I couldn't hypothesize, but obviously they're trying to weigh all the political issues here. But I think that it's too important an issue, and Chris Patten said at the very beginning when we started the Commission that it would come down to this Commission, that at the end it would be not decommissioning the issue. It would be the policing issue. I wasn't sure he was right. He was right, but the bullet has to be bitten, I think, and to move forward. It would be for naught, therefore, if Catholics did not join, and Catholics will not join, I believe, unless there is that neutral landscape that we tried to build of a professional police service without the trappings of either state and with an awareness that people from both traditions must feel at home in the police service and that the bottom line is will the Catholics join? If not, you're pre-Patten and all will have been, if not for naught, very disappointing.

Mr. SMITH. Let me ask all of our witnesses. Many police services voiced support for the Patten Commission's report. What response have these same police services had to the Policing Bill? Have they looked at it with any kind of scrutiny to see just how unfaithful it is and perhaps made recommendations?

Mr. O'BRIEN. I'm not aware of much international focus on this by other police services in other places. I think one of the difficulties here is very much that the devil is in the detail and the Secretary of State, Peter Mandelson has on occasion dismissed the criticisms by actually suggesting that there's an element of hysteria or that there's misrepresentation or hype or hyperbole and that really people need to focus on the detail of the bill. It's precisely when you focus on the detail of the bill that the problems arise and I think we in the evidence today have laid out those detailed problems.

Following on your earlier questions about what can be done to try to prevent this mistake being made. I think the presence of Mr. Koh and his comments about the importance which the Administration attaches to the internalization of the recommendations of Patten and to the implementation of those are very important. To the extent that this Commission, the individual Congress people, can impress directly upon the President the necessity to intervene on this issue with Prime Minister Blair in a direct

way would, I think, be very welcome. I mean this issue is at the heart of establishing a lasting peace and, given the very impressive and personal commitment which the President has shown to this issue, I would imagine that he will want to continue to ensure that an issue like this doesn't derail progress, and I think it does run that risk. A great deal of progress has been made, but it's essential that that be consolidated and anything which you and other members can do to impress the importance of this upon the President, although I think he's very well aware of it.

Mr. O'LEARY. I recently attended an international conference at the Catalan Police Academy in Barcelona and there the Patten Report was widely acknowledged as an exemplary statement of state of the art thinking in three domains: in the new public management, in thinking about democratic accountability in a more pluralistic environment, and lastly, in the domain of community policing. And it was widely acknowledged by scholars from all over western Europe and North America as state of the art thinking in these three domains.

But those scholars, as well as police academicians themselves, were fully aware of the extent to which the Patten Report is not being fully implemented, and that was a matter of some regret, not least because many of them saw the Patten Report as a model for application in their own societies.

Ms. MASSIMINO. Just a quick note: This is an anecdote in which you might be interested in terms of the reaction of other police forces to the Patten Commission Report. A couple of months ago I attended a session of the Police Executive Research Forum here in DC., a think tank on police issues and police reform, and there was a special panel on policing in Northern Ireland. The featured speaker was Chief Constable Ronnie Flanagan. He was introduced by the Commissioner of Police of Philadelphia as the central reform figure in policing in Northern Ireland, and he gave quite an impressive speech about the commitment of the RUC to reform.

There was also a member of the Patten Commission there making a presentation about the importance of the recommendations, but what was left out of the presentation, of course, is the gap between the Commission's recommendations and the actual implementation through the bill and also the non-legislative lack of implementation on the ground. Mr. Flanagan got quite a rousing round of applause at the end of his speech.

Mr. SMITH. That's an excellent point and very disturbing point. You know, it seems to me—and that's why we need to have Congressional hearings—I think the more scrutiny the better because Secretary Mandelson's spin withers under scrutiny and others who want to put the best face on this and then move on to something else and say, Oh, been there, done that, and got the t-shirt. So I'm very concerned that that's the kind of spin. We will do what we can to continue this scrutiny, I can assure. And this is one in a series of hearings.

Professor O'Leary, you pointed out that there were four aspects: decommissioning by republican and loyalist paramilitaries, the reform of the system of criminal justice, demilitarization and reform, that they were all interconnected. Do other panelists share that view that you can't have one without the other and that policing reform is right there as a linchpin?

Ms. MASSIMINO. As you know from our prior testimony, the criminal justice system and the need for reform of the emergency law system is, we think, inextricably linked to the problems of police abuse in the past in Northern Ireland and needs to be changed.

Mr. O'BRIEN. Professor O'Leary is a very eminent political scientist and is able to comment on the politics of these issuers. From our perspective, the issue of resolution of policing and the transformation of the criminal justice system are at the heart of establishing a lasting peace. The remit of the committee doesn't allow it to get into the broader discussion of the politics but I would not disagree with Professor O'Leary. These are some of the concerns and fears of different groups in Northern Ireland and the things which will either make for progress or inhibit progress and, in that sense, these issues are very intimately linked.

Mr. SMITH. Doctor.

Dr. LYNCH. I do think he's right to say they are related, but I think fundamentally if there's not seen to be a real police reform, the rest could stumble and fail.

Mr. SMITH. Let me ask with regards to the Policing Board and the Ombudsman which I think are two extremely important offices that need to be adequately authorized, empowered, and adequately staffed. It seems to me that the draft bill allowing the Secretary of State to prevent inquiries by the Board because they would "serve no useful purpose" renders that an impotent facade, a bogus panel where people will be far less likely to go, simply because they know that there's no real power and the Secretary of State could exercise that option. I mean it kills any kind of check and balance which is so important.

And then the second point, about the Ombudsman, that the Ombudsman may make reports but not investigate—totally contrary to the Patten Commission's recommendations. Just go and put yourself in the shoes of anybody realistically who feels they've been harmed by the police going to some paper tiger who has no authority, can make reports. The reports almost could put a further target on your back as opposed to having any ability to bring an accountability to the police. These two aspects are radical shams and I would be interested in perhaps any elaboration on the part of the witnesses as to whether or not you agree with that, or am I missing something?

Mr. O'BRIEN. Well, I do think very much at the heart of the recommendations of the Commission new mechanisms to secure police accountability. The Patten Commission came up with those mechanisms but this Bill subverts them and I think the point that you make is echoed in the recent statement by the Chair of the Police Authority who says it will be extremely damaging for the new Board if the public believes it actually has these powers and is merely shying away from their use when the reality is it is being prevented from applying them at all.

Much has been made in this debate to date about whether Nationalists would take their seats on the Police Board. I think that any self-respecting person from many community in Northern Ireland would be highly unlikely to take seats on a public body which could have every aspect of its work determined by the Secretary of State and have its decisions and actions overturned by the Secretary of State in the way that this bill provides. So I think much has been made of the concerns of Nationalists about this bill, but I think in this respect of accountability and having a board that can actually do its job, I think you are going to have real problems getting people of substance who are willing to sit on the board unless these issues are addressed.

A particular concern which we have is that the Secretary of State has made it very clear that he thinks that the new Police Ombudsman should not have the power to investigate patterns and policies but should only be able to investigate individual complaints. Now Patten placed a great

deal of emphasis on this wider question of being able to investigate patterns and policies. The Secretary of State has firmly said he is against that and in a recent meeting with him showed no prospect of changing his position on that. That seems to us to strike really at the heart of what Patten was about which was about securing accountability and, without that, I think you face very serious problems.

Mr. SMITH. Mr. Payne? Would others—

Ms. MASSIMINO. I just wanted to add one quick point on that last point about accountability and the authority to investigate policies and practices. That, in our view, is one of the central problems with the current arrangement. The ability to investigate specific past abuses is one thing. That deals with accountability. It's the after-the-fact kind of approach to dealing with human rights problems. But empowerment to investigate policies and practices allows you to prevent abuses and, without that, I really can't see how this body can have credibility.

Mr. O'LEARY. I think if we seek politically to interpret what has happened, the evidence compels us to come up with two interpretations of the first bill and I think the charitable interpretation of the first bill is that it was drafted in circumstances where neither Mr. Mandelson nor his officials believed that the devolved government would be restored and, in consequence, they were full of the expectation that direct rule would continue and, therefore, that the other elements, demilitarization, decommissioning, were unlikely to occur and, therefore, they were consequently more reluctant to engage in radical police reform. That's the charitable interpretation.

The alternative interpretation is that if we look closely at the first bill and we look now very closely at the modified bill, there are two domains where quite clearly change is being wholly resisted. One is in the domain of symbolic changes and the other is in the area of democratic accountability. What can account for this? It seems to me obvious that the reluctance of the government wholly to implement Patten's recommendations on the symbolic front are to do with the government's desire to, as they see it, protect the precarious and exposed position of David Trimble and the Ulster Unionist party.

But that does not account for the deep unwillingness of the government to accept Patten's recommendations on democratic accountability. It seems to me we are obliged by the evidence to interpret this in only one way. The government has basically accepted the lobbying and recommendations of people attached to the security services who are deeply loathe, either to have accountability about the past or about the future. Their motives are mixed. Their motives may be to avoid embarrassing scandals from being revealed. But more importantly, I think their motives are likely driven by their long professional experience of not having accountability and not wanting to experience it in the future and, in consequence, I think we're driven to the conclusion that the government is in effect giving us a bloodless version of Patten, Patten light, because it has surrendered to the vested interests of the security services and because it is, in my view, making a political misjudgment that it must make concessions to the Ulster Unionists in the symbolic domain for the purpose of protecting the wider agreement. I think in both instances the government deserves to be criticized.

Mr. SMITH. Mr. Payne.

Mr. PAYNE. Thank you very much. Thank you for this very intense discussion on the Patten point. I think this is probably one of the most thorough ones that we've had. I really appreciate the distinguished panel

with the 170 recommendations. We've certainly seen the Police Bill weaken many of these recommendations.

Incidentally, we did write a letter to the President to which he responded on June 27. Many of us were signatures to it. Also, the President did say that he would be in touch with both Tony Blair and Bertie Ahern, that they are aware of his strong interests in the issue of the full implementation of the Patten Report recommendations, and that the President assured us that once the legislation at Westminster had been adopted and its impact evaluated, he will assess whether he can make this certification in the annual State Department's authorization bill, and so perhaps, Chairman, we need to perhaps write another letter to the President maybe asking him to take another look at where we stand at this time because, as it indicated in the Good Friday Accords, that this was supposed to be a new beginning to policing in Northern Ireland with a police service capable of attracting and sustaining support from the community as a whole, and the way that we're moving is certainly not in that direction.

Now, there have been some concerns, as we always hear, about people saying if you go too fast, it's going to create problems. And I wonder if, first of all, maybe generally any one of you or all of you, if you could kind of predict your feelings of what might happen if the Patten recommendations are not fully implemented. What state do we find ourselves at, even in addition to just the composition of the new police but just the general overall feeling in the north of Ireland?

Dr. LYNCH. This was, of course, an independent and international commission which did tackle the big issues and, should this be not implemented, I think the consequences, and the Patten Commission felt, too, the consequences could be very, very severe because a lot of the parts of the community that are moving forward could stop moving forward and, in fact, there could be a return to pre-Patten where the police were isolated from the immunity. And this was a real chance and the impression the Commission had frankly at the beginning was that this was going to be accepted and there was much discussion from the government of Great Britain that they were going to accept Patten, from which flowed, I believe, some of the movements on some of the other parts, that they felt if Patten was going to be in, they could afford to move forward and to do things that they hadn't been willing to do, and I think the disappointment would be severe, I believe—and I'm hypothesizing here—that there was a sense that it was going to go forward and, therefore, progress could be made on other fronts.

Mr. O'LEARY. I think in the absence of the full implementation of Patten, as I indicated in my statement, we're likely to see a stalling on the possible progress in decommissioning minimally and maximally, if one wanted to think of a provocation most likely to send hard line Republicans back into full scale conflict, one could think of no better choice of policy than the failure to implement the Patten report. And I don't think that in making those remarks I'm either trying to put thoughts into the heads of others or to issue some kind of threat.

What I am saying is that the republicans who made this Agreement will find it, particularly those republican paramilitaries who supported this Agreement, will find it very difficult within their own constituency to sustain their commitment to that agreement if Patten isn't implemented, and I would predict either that the IRA will take a more obstructive line on decommissioning or, alternatively, that large numbers of IRA personnel will go into the Real and Continuity IRAs to resume fully armed conflict with all that that entails.

So in short, I think disaster can follow. It's not absolutely guaranteed, but disaster certainly can follow and may well follow from the failure to implement Patten fully.

Mr. PAYNE. Thank you. On the other hand, we hear people from the British Government indicate that if we go too fast too far, they say if we do implement all 170 recommendations of Patten, then it would create problems for David Trimble and that he could possibly lose leadership of the Ulster Unionist Party, and that scenario tends to lurk out there about not going too far too fast, as they say. What is your read on that, any of you who might want to respond to it?

Mr. O'LEARY. I think it is a genuine concern of the British Government. I think it is sincerely held. I think they have grounds for being concerned about the future of Mr. Trimble. But that said, I don't think that the British Government or the Irish Government or any other government can unilaterally alter provisions of the Agreement at the behest of any particular party. If they get the support of other parties to the agreement for any modification of the pace of change in the agreement, that's fine. That would be within Agreement change. But to inhibit the work of any of the commissions established under the Agreement, whether the Human Rights Commission or the Equality Commission, the Criminal Justice Administration Commission or the Patten Commission, at the behest of any one particular party is to allow that party to renegotiate the Agreement and is fundamentally wrong.

It's sometimes forgotten that policing is a non-devolved function so that it is the central responsibility of the U.K. Government at present to implement anything to do with policing and to propose any legislative changes. In the future, of course, policing may become a devolved function. Because it is entirely a U.K. legislative responsibility, I think it's incumbent upon them to implement the recommendations of the Patten Commission, no matter how uncomfortable that may be for some of the local Northern Irish parties.

In addition, it is my own political judgment—this may be wrong, but it is my political judgment—that the unionists who made the agreement did so for one primary reason. They believed that by making the Agreement it was much more likely that nationalists would be reconciled to the continuation of the Union, and they knew in setting up the terms of reference for the Independent Commission on Policing that it was very likely to deliver proposals such as those which materialized in the Patten Commission. For that reason, it's my judgment that pro-Agreement unionists know that they can live with a world in which the Patten Report is fully implemented because it's in that kind of world that nationalists are most likely to be reconciled to the Agreement.

Mr. O'BRIEN. I think, just to add to that, it is undoubtedly the case that Ulster Unionists are very prominently involved in the debate about the name and symbols of the police. It's certainly not the case that the government's reluctance to give the Policing Board powers to hold inquiries or to give the Ombudsman the power to investigate patterns and polices or to put human rights at the heart of policing. Unionists have not been lobbying the government to go back on the commitments in that area, and it seems to us that the government are hiding behind the concerns of unionists when they fail to move on these other issues. I think it's much more the case, as Professor O'Leary pointed out, that this is not to satisfy concerns of unionists. It's rather to satisfy the concerns of people within the policing establishment who don't want change and they don't want the spotlight shown on their past activities and on their future activities, so that you

have two different forces at work, and the great bulk of the deficiencies in this policing bill are, I think, there because of pressure from the existing policing establishment rather than pressure from Ulster Unionists.

Mr. PAYNE. Thank you very much.

I have a question. I understand that recent recruitment data from the RUC indicates that, while the number of applicants from Catholics have increased substantially, the number actually hired, is not keeping pace with the increase in the applications so, therefore, I guess it suggests there is something still seriously wrong with the selection or the hiring practices. Can any of you shed any light on that or do you know about any real increases in the applications and what proportion of those applicants have been brought on?

Dr. LYNCH. I've seen some data to that effect which suggests that there is something going on in the selection process which reduces, I think it was 22 or 23 applications down to a single digit. It does seem, just looking at that data quickly, that there are some other explanations than just random chance that this would happen, and there are many questions that it raises which have to be answered. We were very eager. We spent a great deal of time on the kind of recruitment device, the kind of recruitment effort and the mechanism to do it. We probably spent more time on that than almost anything else and, therefore, feel strongly that the process has to be examined openly, again transparently. Who are the people giving the interviews and what is the expectation? We discussed prior criminal record and that that should not necessarily be a deterrent. It depended on what the record was. And so we were trying to make as sophisticated as possible the selection procedure so that we would get equal numbers in each year.

Mr. PAYNE. Also, I understand that the RUC has increased its human rights training for existing RUC officers. I've seen that happen here in the United States, too, but sometimes the results did not show very much. As a matter of fact, in 1966 we had a very extensive training of the police in the city of Newark, New Jersey where there was a big federal grant which was very extensively done. That was in 1966. In 1967 a cab driver was beaten almost unmercifully by the police right in front of police headquarters in a civil disorder in Newark, New Jersey where 28 people were killed, all civilians, of course, occurred. So I've had first hand knowledge of so-called human rights training and the results.

Do you think there's much improvement with these, the increase in the human rights training with the existing RUC officers or any way to gauge that, Dr. Lynch?

Dr. LYNCH. I really wouldn't have a way to gauge that. We did specifically indicate the program at John Jay, which is on human dignity and the police, as an effective one throughout the world, as I mentioned earlier. The very fact that all of these countries asked other people to come in to do the human rights training is significant, I think, in that the FBI is not leaving it up to the FBI to do the training. They've asked John Jay to do it. They asked the University of Virginia to do it. I think, therefore, the example is that you need outside people who can evaluate it and can be sure to be talking truth to power and not just making nice or saying that you've made improvements, so that I think the example that might be used is to have—and, in fact, the RUC was at John Jay, a delegation of 22 of them about a year ago, and we did a whole day of human dignity training and they were very enthusiastic about it, as are police elsewhere.

But I think the only way, again, we'll have accountability, credibility and transparency is if it's done independently of the police themselves. I

think that Queens or Ulster University could very well provide that kind of expertise and outside independence, as could other institutions.

Mr. O'BRIEN. If I could just endorse the comments which Dr. Lynch has made in relationship to police training. We were recently consulted by the RUC on a new training development strategy which they had produced and the response which we felt we had to make to that was that the success of training and of developing an effective training model, particularly in the field of human rights, is dependent on the extent to which you involve people external to the police in its design from the outset and that, rather than consulting us after the police themselves have developed the strategy, that they needed to begin to think about how they get people from outside the police involved in a discussion with the police about how training should be done because that was really the only way in which you would get a more effective training program.

We were very pleased to see the importance which the Patten Commission placed on police training. We felt that it was very important that that take place within the context of internationally agreed human rights standards and, again, there has been a reluctance in the bill to put any detail or place any requirements on the overall way in which training should be carried out, and we think that that's unfortunate.

Ms. MASSIMINO. If I could just add quickly to that. Another key feature—something that we find whether we're looking at the need for police reform in Mexico or in Turkey or Northern Ireland or elsewhere—is that when the police come around to the view that training is something that they need and embrace and want, what we frequently find is a corresponding reluctance to have as part of that training system a monitoring of the impact of the training, and that needs to be built into any kind of training program: how do you measure the effects on the ground. Many police officers are keen to engage in exchange programs and to learn from their colleagues, but without that feature of measuring the impact of the training, it's difficult. I think that's really the question.

Mr. PAYNE. I couldn't agree with you more that the monitoring. I just have another inquiry. As you may recall, in the Truth and Reconciliation Commission in South Africa, there was a, as you know, the forum where people could admit to former crimes and if they admitted that they created a crime or did some illegal activity, that generally the Truth and Reconciliation Commission, if they admitted it and apologized, that they would be allowed to go free. There was also a situation that maybe is similar to in the North of Ireland where persons convicted of political crimes were allowed to go free, and I understand that that was a part of Good Friday agreement. But my question, I guess, is in Good Friday is there the same kind of truth and reconciliation? For example, the question of former—for example, the opening of Bloody Sunday, for example, or the opening of Pat Finucane's case, where does that stand? Are people immune if indeed there is a truth and reconciliation type situation or was that a part of Good Friday? To my knowledge, I don't recall it being a part. Where does that—does anyone know?

Dr. LYNCH. Yes. Specifically, we're not a Truth and Reconciliation Commission. This was discussed at every single public hearing, and the remit of the commission was not to be a Truth and Reconciliation. It was deeply hurtful to many people that we were not, but that was not in the Good Friday Agreement and, therefore, we could not move into that direction since it was not specifically recommended that we do so. Again, disappointing to both sides, but it was not the remit of the commission.

Mr. PAYNE. Thank you. My last, I guess, comparison, you know, there are different points of view—I'm just speaking for myself from New Jersey, not my colleague from New Jersey—that we have a policing problem in New Jersey, too, with our New Jersey State Police and for a long period of time, the same way that RUC—and, as I indicate, I've been during the marching season three or four times in Darian and three times staying right on Londonderry Road with my friends the past time just this past July 4th. But the attitudes that we've seen with the New Jersey State Police where they say they're profiling, which would be very similar to the Protestant, the RUC's treatment of Catholics, where people of color are simply stopped and brought over and then you almost had to be—you were guilty until you proved yourself innocent and, of course, if you pulled every car over, you're probably going to find that the proportion of people who are violators of law will probably be about the same throughout whatever the grouping is. But we're finding difficulty, even in reforming New Jersey State police, because the promotions have gone forward, even with the tremendous allegations against the State Police. As a matter of fact, the superintendent resigned because they did admit racial profiling existed, but there were two promotions since that time that the allegations became clear now—0 percent of the New Jersey, 95 percent of New Jersey State Police are Caucasian—that the promotion then is going to push those who have been in the service up to the top, therefore making it almost impossible for—once diversity begins, which it has not started—and the other thing is monitoring, as you mentioned. The New Jersey State Police was under a consent decree back in 1973 to 1983 and during that time they did go out and recruit. They moved their numbers up from 10 to 15 percent of minorities, women, Hispanics and so forth, and when the federal monitors left in the middle '80s, the 15 - 18 percent that they had moved with women, minorities, dropped right back down to six or seven percent. Once the federal government stopped its monitoring, it went back to business as usual. So you run into a number of problems. 1) if you push up in this new police group the ones who are there, therefore, it's going to be almost impossible to get the new recruits to work their way up so you're looking at a decade or more before you can even get any officers in the RUC or whatever it will be and so even if all things happen in the Patten Commission, all 170 recommendations had occurred, there's still a tremendous number of problems. I'm not being pessimistic but realistically speaking.

And so I think it's that much more incumbent upon us to see that—and you definitely need a police civilian review board. That's one of the problems in New York now. They've never had it. Los Angeles doesn't have it. Policeman's conduct is very, very real here and I know it's even that much more compounded there.

So I just appreciate the indulgence of the chairman to allow me to get on a personal privilege problem that exists right here. Thank you very much.

Dr. LYNCH. May I just comment on that? We did believe it would take a decade. It would take a decade if everything was implemented to have 35 percent of the force be Catholic, and we did believe that it had to take that long and therefore, again, Patten said we should be on this for a decade, not just for three years as the policing bill apparently restricts it.

Mr. O'LEARY. They have changed that.

Mr. O'LEARY. I share the concerns that you so rightly express. One of the things that the Patten Commission recommended and that the U.K. Government has promised is to permit lateral entry from the Garda Síochána in the Republic of Ireland to help change the composition of the

service at senior level. I think it would be a vital part of monitoring effective reform to ensure that that lateral entry does take place on a significant scale and indeed, that entry into the service takes place from police personnel from outside of the island of Ireland.

Mr. SMITH. Thank you, Mr. Payne. Let me just ask a few final questions and then John Mackey, counsel, has a couple of questions he'd like to pose. I recently came across David Trimble's speech given on September 8 of this year to the British-Irish Association Conference in Oxford. He makes these following points, "The Ulster Unionist Assembly Party reflects the best interests of the broader Unionist community and the basic decency of the majority of the people of the province. However, these instincts and the decency of that community, were put on the rack by the Patten Report. It was an intellectually shoddy document: a product of third-rate academic theorizing about the best model for achieving a politically correct police force, regardless of the result in terms of police morale and effectiveness. Its political objective seemed to be to give republicans, who lost their war to end partition, a symbolic victory over the RUC as compensation. The simple fact that today, a year on, the fallout from Patten continues to threaten the survival of the Agreement, justifies our original caustic response."

He points out that the measures "would balkanize and politicize policing, reducing radically the police's ability to deal with the real dangers of the development of a mafia state." He points out further, and this is also in testimony from the UUP—we had asked for a witness from the UUP and we did get a submission by Lady Sylvia Hermon—he makes the same point, as does she—this is Lady Hermon talking, although it's identical to what Mr. Trimble has said, "It's all too rarely pointed out that the low percentage of Catholics currently serving in the RUC—about eight percent—is not caused by discrimination in recruitment. On the contrary, the major reason preventing young Roman Catholics coming forward to join the RUC is the fear of violence which would be offered towards them and to members of their family from Republican terrorists."

And the way Mr. Trimble puts it, "Young Catholics' biggest worry is that they and their families will be harassed and driven out of their homes by paramilitary bully boys."

Finally, in Lady Hermon's submission she says, "The voice of Americans joining the chorus for full implementation of the Patten Report indicates a worrying lack of detailed knowledge of its actual content."

On that matter, let me make very clear that I find that insulting, deeply insulting. I have read, as have members of our commission, as have staff, as have Harold Koh, the Assistant Secretary for Human Rights for the Clinton Administration, and have not only read, dissected, read again, had hearings. This, as I indicated earlier, is our sixth hearing. We're looking for justice and human rights. The members of the Patten Commission who served so honorably and at great incumbrance to their personal lives are insulted by that kind of statement that somehow—and again, this is coming from Mr. Trimble himself—politicizes policing. Please, give me a break.

This underscores, I think, the nature and the severity of the problem that is faced in Northern Ireland and I would, if any of you would like to comment—I mean we want to see both sides get together, have a friendship and to hopefully bury the hatchet. Hopefully justice—past, present and future—will not be neglected in the process, but to suggest that the reason for the lack of recruitment is bully boys, as Mr. Trimble has pointed out, I mean I find his words insulting as well to the Patten Commission, which again I think was made up of a diverse group of people who were seeking to do the right thing for all parties.

Would any of you like to comment on that?

Dr. LYNCH. May I say that the majority of the comments have been, if anything, almost embarrassingly complimentary. Chris Ryder, who wrote the book on the RUC, called it eloquent. Others have called it elegantly written and clear, so that this is clearly a very small minority who have called it shoddy.

Mr. SMITH. Again, this is David Trimble and it's as recently as just a few weeks ago which is very discouraging.

Mr. O'LEARY. The Patten Commission included representatives of the unionist community within its ranks. The Patten Commissioners, so far from being third rate academic minds, included some of the most distinguished criminologists in the world, notably Professor Clifford Shearing and, of course, Dr. Lynch himself is an outstanding police academician. I think it's merely insulting to call the work intellectually shoddy and I think only those who know what an intellectually shoddy academic life is like should feel free to speak in this particular domain.

I would emphasize that Lady Hermon is *partis pris* as the wife of a former Chief Constable of the Royal Ulster Constabulary—and for that reason, her remarks need to be partially discounted. But to look at the substance, it's absolutely untrue that the Patten Commission proposed the balkanization of the police service. Indeed, the Patten Commission rejected the proposals of some people like myself and my co-author who argued for a more thorough going two tier, decentralized policing service, partly because they—that is to say, the Patten Commissioners—were opposed to balkanization.

Secondly, it's rather rich to suggest that the non-reform will prevent the development of criminal mafioso limits in Northern Ireland when it's patently the case that the existing police service has prevented the development of existing mafiosi, para-military worlds.

Thirdly and perhaps most importantly, it's vital to reply to the argument about intimidation. It is, of course, true that one of the reasons why there is a low proportion of cultural Catholics in the police service is because of historic intimidation by republicans. But that is not the whole story. There are a whole range of reasons why cultural Catholics do not join the Royal Ulster Constabulary and they did not do so even in times when the IRA was incapable of intimidating anybody. Therefore, it is a misleading political argument to suggest that intimidation is the fundamental obstacle to achieving a widely representative and legitimate police service.

I think that these remarks, Lady Hermon's remarks and Mr. Trimble's remarks, must be understood entirely in the context of deep divisions within the Ulster Unionist community about the meaning of the Agreement and I think in an error of judgment Mr. Trimble has chosen to appease anti-Agreement sentiment within his own community rather than to continue with the bold leadership he exercised in making the Agreement and supporting it in the referendum.

I think that if Patten is implemented and if decommissioning and the other confidence building measures take place fully, I think we will hear a very different tone from Mr. Trimble in the future, and I hope so at any rate.

Mr. SMITH. Let me ask one final question, and this would be to you, Mr. O'Leary. Will a failure to fully implement the Patten recommendations, in your view, lead to a return to violence and, in the absence of every detail of the Patten Report being included in the bill, is there anything, especially with the House of Lords action eminent, that could be done to fix it?

Mr. O'LEARY. We have to be realistic. There will be some low-level violence in any scenario that were to unfold from today. It is my judgment, as I've said earlier in my testimony, that if the Patten Report is not fully implemented, that will be a provocation in republican circles. Minimally, I

would expect it to lead to delays in effective decommissioning. Maximally, I would expect it to produce the return to violence on the part of some republicans. So it's an extremely serious scenario that might unfold.

If you're asking me, Mr. Chairman, my political judgment of where to go forward given that we have a U.K. Government apparently reluctant fully to implement Patten and a wide range of Irish civil society organizations and political parties demanding that Patten be implemented, the only conceivable compromise that I can see is this. If it were to be the case that the U.K. Government charged the Oversight Commissioner with full scale responsibility for making legislative and managerial changes necessary to implement Patten in full, then that would be a holding operation. On the one hand, nationalists could say that Patten is not dead. Patten will be implemented later. On the other hand, unionists could say that we have prevented the full and immediate implementation of Patten. Provided the Oversight Commissioner's terms of reference were unambiguous and free-ranging and wide-ranging, I think it's possible that that might create grounds for a compromise.

But I wouldn't be confident that that statement would win the support of all the critics of the dilution of the Patten Commission's proposals. I myself would be reluctant to see that path be followed. I would prefer to see the full and comprehensive implementation of Patten, as I believe is mandated by any reasonable interpretation of the agreement.

Mr. SMITH. Thank you. I'd like to yield to John Mackey, who is the Chief Investigative Counsel for the International Relations Committee and a former FBI Special Agent with a long history in international police training and fighting against international terrorism. He has a few questions he'd like to pose.

Mr. MACKEY. First of all, Mr. Chairman, this was an excellent panel. I can not remember a better analysis of the current political situation and the Patten Commission reforms in all the time we've spent on this committee on policing in Northern Ireland.

Let me address this question to Professor O'Leary. You talked about the argument "soft on crime" and Patten is not an effective policing strategy. Do you believe that new community policing which could win the broad support of the community on both sides of the divide in Northern Ireland would not in fact undercut the validity and appeal of the paramilitaries, whether they be on the republican side or on the loyalist side. Patten to me looks like a part of the solution, not part of the problem in Northern Ireland policing.

Mr. O'LEARY. I agree entirely with the thrust of your question. I think Dr. Lynch might be asked to comment, but my understanding of the Patten Commission's intentions was precisely the view that by embarking on a radical experiment in community policing, they stood a very good chance of extirpating support for paramilitaries in both republican and loyalist districts.

One of the fundamental problems in Northern Ireland is that there is demand for, "private policing services," from the paramilitaries precisely because of the lack of legitimacy and effectiveness of the existing police service. So only when we get legitimate community policing rooted in both communities and amongst others will we see the disappearance and dilution of para-military influence and control.

Mr. MACKEY. Dr. Lynch.

Dr. LYNCH. Yes. I think the vote on the Good Friday Agreement showed the majority in both places to support the moving forward of the Patten Commission and, therefore, I think that it would be a terrible mistake to not

do it and there be no political will to have another Patten Commission. There would be no way that I think anyone would serve on another Patten Commission if in fact this one was dismissed and I think, therefore, we would be in abeyance on how to move forward for the foreseeable future and that would be my worst fear because I think anyone asked to serve would say, Why? I think they might say, There are not too many ways of improving that. What exactly do you want us to do? That would be my opinion.

Mr. MACKEY. On the argument of going too far too fast, I have a Belfast paper here from August of 1985. SDLP was calling for change on the name and some fundamental reasonable police change as far back as 1985. Seamus Mallon on the front page called for change. Going too far too fast, hardly. So we've got a long way to go, and we've got to go a little faster.

But let me finish up with a couple questions for the whole panel. Kind of short yes/no questions and you can respond beyond that if you'd like. Was the September 1999 Patten Commission report in fact a compromise?

Dr. LYNCH. Yes, it very much was. We had every extreme. We had every proposal known to man, it seemed often, that we had to come to a compromise. I had some very big struggles on compromising my own feelings about some of the 175 recommendations. It was a compromise par excellence, I would say.

Mr. MACKEY. Is that the consensus of the panel?

Mr. O'LEARY. Yes. Not only was it a compromise, but according to Maurice Hayes, one of the Commissioners, every single one of the 175 recommendations was advocated by at least one serving police officer.

Mr. MACKEY. In effect, is the policing bill now before the Parliament then a "compromise of a compromise?"

Dr. LYNCH. Yes. I see that.

Mr. O'LEARY. Yes, it's a dilution of the original compromise

Mr. MACKEY. Martin, do you agree?

Mr. O'BRIEN. Yes. I mean it's hard to see it as a compromise because it's such far departure from what was already the compromise.

Ms. MASSIMINO. That's a charitable description.

Mr. MACKEY. Does the British Government's approach of putting so much power into the hands of the Secretary of State as opposed to the Police Board, the Ombudsman, the international observer, as Patten recommended, not—in effect—put more politics back into policing, where Patten's goal was to get politics out of policing?

Dr. LYNCH. Yes. I think so. I think, too, I would agree with Professor O'Leary that I think the proposal was based on an assumption that there wouldn't be forward movement in a number of other areas and that all would come from Westminster and there would be no devolution to storm on. And I think that to an American, I probably shouldn't comment but I will, that it does seem so authoritarian and no checks and balances as we are so used to and, therefore, would be absolutely against what Patten had recommended.

Mr. O'LEARY. I agree. It's against both the text and the spirit of the Patten recommendations and indeed it's against the spirit of the devolved elements of the Belfast Agreement.

Mr. MACKEY. Our other panelists both agree?

Mr. O'BRIEN. If you study this piece of legislation and in particular the relationship between the Secretary of State and the Policing Board, I don't think I've ever seen any public body established in Northern Ireland which has its powers and abilities to act so constrained. I'm not aware of any other body which is meant to be independent where there is this degree of restrictions with clauses and powers for the Secretary of

State to effectively to lay down the way in which the Policing Board should carry out its work. It's quite exceptional.

Mr. MACKEY. Ms. Massimino.

Ms. MASSIMINO. I have nothing to add. I totally agree with that.

Mr. MACKEY. My final question is if the Secretary of State indicates that he is in fact implementing the Patten Commission, why then is the Catholic Church, Sinn Fein, SDLP, the Women's Coalition, the Irish Government, our committee on both sides of the aisle, the President, what are we all missing? Is there something of a breakdown here in communications? We all speak the same language. We are all looking at the same text of the bill. What are we missing on this level of criticism, in effect, a united nationalist front against this policing bill?

Dr. LYNCH. I think it is very hard to credibly understand what is being said is happening to say they're implementing Patten. We who've studied Patten, wrote Patten, can not see that happening and, therefore, the question of communication is certainly lacking.

Mr. O'LEARY. Mr. Mandelson has access to a unique epistemology that only he can fully explain to others.

Mr. MACKEY. Martin.

Mr. O'BRIEN. I think it goes well beyond a united nationalist front. I think we have to take very seriously that the existing body charged with police accountability in Northern Ireland is saying that this won't work and it's saying that this is unacceptable. That body is not one which has been noted in the past for its vigorous defense of accountability and I think when a body like that makes these comments along with a very diverse group which, as I say, goes well beyond nationalist opinion, we have to seriously question why the Secretary of State is embarking on this. One does get the impression that there is a sense that if I assert this often enough to be the case, people will believe it.

Ms. MASSIMINO. Yes. This does appear to be sort of dialogue of the deaf. We heard this same assertion from Mr. Mandelson in his response to our letter which I supplied for the record in which we cited the ways in which the Patten Commission recommendations are not being implemented and he wrote back to say, but yes, they are, and we wrote back to say, but no, they're not in these ways. I don't know what more we can say.

Mr. MACKEY. Martin, on the Policing Authority, we ought not to reject wisdom, even if it comes late. So we ought to accept it, and I think you add this coalition of people with concerns and there's a lot of work to do. But I thank you for coming. It was very helpful.

Mr. SMITH. Thank you. Mr. Payne.

Mr. PAYNE. I just have one other point. I think the point you raise on community policing is really a way to go. I do believe that that is an answer if you have community policing. That has started to work in our communities, and also I was just looking at my date book and the march this year was on the 8th and the 9th in Drumcree because I recall on the 10th at 4:00 the unionists and loyalists decided that they were going to close the country down and I was in Belfast and I know we had to try to get where we were going out of town before 4:00.

Now you talk about the fear of people. When the loyalists decided that they wanted to demonstrate and they just told everyone, by 4:00 everyone needs to be out of the cities and you should see the people scurrying at 2:00 and 3:00. Government buildings were closed because, once again, we always hear about the republican or the nationalist side but then when we see—and decommissioning—but we hear very little discussed about the paramilitaries, on the unionists and the loyalist side. I think that there has to be a balance in this talk about decommissioning and,

as we push for decommissioning of the IRA, we have to continually talk about the ones that are never talked about. There would have been no reason for people to rush to be off the streets and deserted before 4 p.m. on July 10th. I was on my way down to Dublin by that time. But you could see the fear in people saying I don't want to be caught out there by myself. Tires were being put out in the streets to start the fires. The same thing that occurred when I was there when several days later the three little boys were burned to death in the middle of the night in their home because they were Catholic living in a Protestant area.

But my question is that there was a move that there was supposed to be the reduction of prisoners, of barracks, of the presence of the police and they had this as a part of Good Friday accord. They were going to de-militarize and remove these fortress looking barracks. Has that occurred? Some of the people that I was talking to in the north said that there's been very little change in the military presence, that that was supposed to happen but it's not happening, that there are still listening posts, that there are still helicopters that come over, that there are still cameras on the roads, that they're watching people. Can anyone comment on that issue?

Mr. O'LEARY. Only in a very general way, and I'm very happy to be corrected by Martin O'Brien or by Dr. Lynch if I'm incorrect. There has been partial de-militarization. Some forts and barracks have been demolished. There has been much more police patrolling without access to weaponry. But recent inter-loyalist feuding and dissident activity by some republican paramilitaries has meant that progress on this front has been stalled to a greater extent than most would have liked.

Mr. SMITH. Thank you very much. Without objection, we will also include a submission by the British Government for today's hearing. Just having read it and now re-reading it, just underscoring what Ms. Massimino was talking about, when there's this continued assertion that something's being done when it's not, that Patten is being fully implemented when it is not, and I do think the essence of any lie, especially the big lie, is repetition. Say it enough, and news media, even parliamentarians, especially parliamentarians on either side of the Atlantic may say, "well, where's the beef"? They're saying it. They wouldn't say it if it wasn't true. They wouldn't print it in a newspaper unless it were true.

For example, the British Government's submission says the Policing Board will be different from existing community accountability body in several ways. Here it is again, we gave it, we take right back. We'll also give the Board power to conduct reviews of any of the Chief Constable's functions with the agreement of the Chief Constable. So that's like me saying to someone, you can investigate something I'm working on with my agreement. If not, you cannot investigate. To me, that is veto power and undermines. This runs throughout the entire bill, as we all know.

Is there anything else our very distinguished panel would like to add in conclusion? And I, too, want to join Mr. Mackey and Don Payne and others who are here in saying this is an extraordinary panel.

We are very, very grateful, not just for your presence here and your very articulate and well thought commentary on the events as it relates to policing in Northern Ireland, but for your ongoing commitment to human rights and the rule of law. The Helsinki Commission is very, very grateful. Without you and others like you—but you are really front line warriors—this work does not get done. So I again want to thank you for being here. We look forward to working with you in the future. And this hearing is adjourned.

(The hearing was adjourned at 1:00 p.m.)

APPENDICES

PREPARED STATEMENT OF HON. BENJAMIN A. GILMAN,
CHAIRMAN, HOUSE COMMITTEE ON
INTERNATIONAL RELATIONS

I want to thank Chairman Chris Smith for his leadership on this issue of policing reform in the north of Ireland.

The Good Friday Accord established an international body, chaired by Chris Patten to put forward recommendations for "a new beginning to policing in Northern Ireland with a police service capable of attracting and sustaining support from the community as a whole."

In September, 1999 that report was rendered with more than 170 recommendations for change. The policing bill of the British government to implement the Patten Report's important reforms greatly weakens many of the most important recommendations.

There are a number of core issues of concern in the Police Bill, such as the powers of the Policing Board, the appointment of its members, the name change, the powers of the Police Ombudsman, and a statutory basis for the work of the International Oversight Commissioner to oversee all 175 changes not just what the British government desires. These issues, as outlined in the Patten report, need to be mirrored in the legal framework and applied in practice.

I have urged the President to encourage and work closely with the British government to ensure the full and complete implementation of the Patten commission policing reforms. President Clinton responded to these calls on 27th June, 2000, by letter, in which he made clear to me that both Tony Blair and Bertie Ahern, of the British and Irish governments respectively, are aware of his strong interest in this issue of the full implementation of the Patten report recommendations.

The President assured me that once the legislation at Westminster has been adopted and its impact evaluated he will assess whether he can make the certification on the Patten's implementation as we required in last year's State Department authorization bill. If not, there will be no FBI training for any new police service in Northern Ireland.

In its present form the Bill remains inadequate on numerous grounds. Dr. Gerald W. Lynch, distinguished president of John Jay College of Criminal Justice of the University of the City of New York, was appointed to the Patten Commission by the British Government.

Like this committee, he believed that the people of Ireland, north and south, had voted for a new beginning for policing in Northern Ireland.

He stated, "We believed it was necessary to have a beginning, not a continuation, not just to skip a beat and to do the same thing...." Dr. Lynch said that if the Patten proposals were not fully implemented, it would be "back to square one" and the number of Catholics would remain at low levels in an already 93 percent Protestant police service. The bill proposed by the British Government would discourage Catholics from joining the new police force, and defeat the intention of the Patten to create a police service capable of "attracting and sustaining support from the community as a whole."

There exists, for the first time, the opportunity to create a Police Force that is acceptable to both sides of the divide in Northern Ireland. The Policing Bill, as drafted sadly undermines the Patten Report and the Good Friday Agreement. The chance for change can be lost, but ought not to be. Let us hope Parliament can still get it right.

The politicization of the policing issue by the British Government and the emasculating of the Patten Commission recommendations risks alienation of Catholics from the new Police Service of Northern Ireland. The Patten report explicitly “warned in the strongest terms against cherry-picking from this report or trying to implement some major elements of it in isolation from others.”

The British government’s action has been condemned by the SDLP, Sinn Fein, the Women’s Coalition, the Catholic Church, the Committee and the Administration of Justice, can they all be wrong? The existing police authority, the Irish government and many members of congress on both sides are calling for change as well. I am at one with these bodies in my condemnation of the Policing Bill and I urge the Parliament in London to rectify this fundamental breach of the Good Friday Agreement.

I applauded the work of the Patten Commission to reform the police authorities in Northern Ireland and urge complete and full implementation of the commission’s recommendations. I congratulate Chairman Smith for calling today’s session and his dedication to the cause of lasting peace and justice in the North of Ireland. Thank you.

RUC Recruitment Analysis re. 30 Nov.-17. Dec. 1998 Competition									Weighted for Labor Availability*			
Job Category	#P+C	C%	Catchment area	%C in Area	Expected #C	Actual #C	Z	C or P Underrep. ?**	%C in Category**	Expected #C	Z	C or P Underrep. ? **
Total Applicants	3061	24.5%	NI	39.9%	1221.3	750	17.40	C (99%)	33.2%	1016.3	10.22	C (99%)
Total hires	128	14.1%	NI	39.9%	51.1	18	5.97	C (99%)	33.2%	42.5	4.60	C (99%)
<p>* Provincewide census figures used. **Confidence level in brackets. Z=number of standard deviation units from the mean.</p> <p>Conclusions: There is less than a one percent chance that the Catholic representation of 24.5 percent among applicants and 14.1 percent among hires would occur, all other things being equal. Thus, there is a 99 percent statistical certainty that something other than random error produced the result. These figures exclude the "other/non-determined" applicants and hires, as is standard procedure in examining work force data. The 10.4 point spread between applicants and hires shows that while the RUC has been quite successful in attracting more Catholic applicants, its selection methods need to be examined for potential bias—an obvious point given the history of the police force in Northern Ireland. How do the figures break down at different stages in the selection process? How many Catholics were invited to initial interviews? How many were shortlisted? How many were among the pool of final candidates considered? How many were offered jobs? Data on each stage of the process could pinpoint more clearly where work is needed and change the current results that leave Catholics much less likely to be selected than Protestants.</p>												

PREPARED STATEMENT OF HON. JOSEPH CROWLEY

I want to commend Chairman Smith for holding this hearing on police reform in Northern Ireland. The implementation of the Good Friday agreement is of paramount concern to members of my constituency, as well as to me personally. The Helsinki Commission has been instrumental in keeping the world abreast of the progress being made in Northern Ireland. I would like to thank Chairman Smith, for his tireless efforts highlighting issues of peace and justice in Northern Ireland.

A key factor in achieving a lasting peace in Northern Ireland will be a police force that has the respect and trust of the entire population. The importance of police reforms in Northern Ireland cannot be overstated. In fact, if there was one thing I could wish for places like Kosovo, Haiti and even Northern Ireland, it's an effective police force with the trust of the local population. The average citizen, regardless of race, religion or nationality, should be able to call the police and have them to carry out its functions, not serve as an occupying army.

Earlier this week, I had the honor of meeting with Foreign Minister Cowen from the Republic of Ireland. During our meeting, he was kind enough to share his assessment of police reform in Northern Ireland, and I in turn, would like to relay that message to all of you here today. People can talk all they want about how to accomplish true police reform. Unfortunately, dialogue has its limitations. True reform requires action. Foreign Minister Cowen suggested that the only way we can accurately measure police reform in Northern Ireland, will be the day when a young Nationalist walks into a police station in Belfast, submits an application, and subsequently displays conduct that is honorable, ethical and enthusiastic for the people of Northern Ireland without fear of favor.

I believe we still have a long road ahead before we can accomplish the scenario of which the Foreign Minister speaks. I submit that the road to success starts here. That is why this hearing is so important.

I am concerned by the British government's recent approach of picking and choosing parts of the Patten Commission as if it was an a-la-carte offering. I have had the opportunity to meet with Mr. Patten, so I know the countless hours he put into a proposal that could be a blueprint for a new force. This process was fair and open to all sides. To make changes at this point to a plan that was so carefully crafted will not serve anyone well. This report and this commission would not have been needed if there was not an injustice to correct. I urge the British government to follow the spirit of the Good Friday Agreement and uphold their commitment.

The recent delays in implementation by the British government will only serve to give opponents of peace the opportunity to further stifle the process.

I join my colleagues in Congress to call for the full implementation of the Patten Commission report, to further the development of a police force acceptable to and representative of all the citizens of Northern Ireland.

PREPARED SUBMISSION OF GERALD W. LYNCH

Mr. Chairman and distinguished members of the Commission on Security and Cooperation in Europe. I want to thank you for the opportunity to present testimony regarding the work of the Independent Commission on Policing for Northern Ireland, commonly known as the Patten Commission. I would also like to discuss the Policing Bill which is before the British Parliament.

When I was introduced to the then Secretary of State for Northern Ireland, Mo Mowlam, she said to me: "How did you get Ted Kennedy and Ronnie Flanagan to agree on you? (Sir Ronnie Flanagan is the Chief Constable of the Royal Ulster Constabulary.) I told the Secretary that I believed they agreed on me because John Jay College has provided training around the world emphasizing human rights and human dignity. Moreover, John Jay has had an exchange of police and faculty for 30 years with the British police, and for more than 20 years with the Garda—as well as an exchange with the R.U.C. for over 20 years. Over that time there had been hundreds of meetings and interactions among British, Irish and American police and criminal-justice experts. The continuing dialogue had generated an exchange of ideas and technology that was totally professional — and totally non-partisan.

Many of John Jay's exchange scholars have risen to high ranks in Britain, Ireland and America. The current Commissioner of the police of New Scotland Yard, Sir John Stevens, was the exchange scholar at John Jay for the Fall of 1984. I am honored to have been selected to be a member of the Patten Commission. The Patten Report states that:

"the opportunity for a new beginning to policing in Northern Ireland with a police service capable of attracting and sustaining support from the community as a whole.... cannot be achieved unless the reality that part of the community feels unable to identify with the present name and symbols associated with the police is addressed...our proposals seek to achieve a situation in which people can be British, Irish or Northern Irish, as they wish, and all regard the police service as their own.

We therefore recommend:

- The Royal Ulster Constabulary should henceforth be named the Northern Ireland Police Service
- that the Northern Ireland Police Service adopt a new badge and symbols which are entirely free from any association with either the British or Irish states (We note that the Assembly adopted a crest acceptable to all parties, namely, the symbol of the flax)
- that the union flag should no longer be flown from police buildings
- that, on those occasions on which it is appropriate to fly a flag on police buildings, the flag flown should be that of Northern Ireland Police Service, and it, too, should be free from association with the British or Irish states".

The Patten Commission worked for 15 months. We sought the best professional models and practices for policing a divided society in a democracy. We held meetings not only in Belfast, Dublin, and London but in New York, Washington, California, Canada, Belgium, Spain and South Africa. From the beginning, we met with the police, clergy, politicians, civil-libertarians and community groups. We went to police headquarters. We visited every police sub-station in Northern Ireland. We literally talked to thousands of police officers.

We held 40 hearings throughout Northern Ireland—the first and only time such a commission went directly to the public. These hearings were extremely tense. More than 10,000 people attended. More than 1,000 spoke. Emotions ran high as they described past cruelties and allegations of murder, torture and brutality on both sides.

We listened. We heard the pain. We felt the suffering. We understood the need to move on to a solution to help forge a future in Northern Ireland that involved more than endless re-creations of the terrible past.

We realized early in our deliberations that whatever we recommended would need to pass muster not just in Britain and Ireland but with police organizations worldwide.

Chris Patten said of his work on the Commission: “It was the most difficult, painful, and emotionally draining thing I have ever done or would ever wish to do.” I concur completely.

The Patten report provides a framework on which a police service built on a foundation of human rights can be achieved. Again I quote,

“We recommended a comprehensive program of action to focus policing in Northern Ireland on a human rights-based approach.

Training will be one of the keys to instilling a human rights-based approach into both new recruits and experienced police personnel. We recommend that all police officers, and police civilians, should be trained ...in the fundamental principles and standards of human rights and the practical implications for policing....We recommend the human rights dimension should be integrated into every module of police training.”

Another core issue which has not received the attention of the media is the Patten Commission’s recommendation that a new police college be established in Northern Ireland. Central to any organization’s ability to imbue its members with a focus on human rights is a facility at which to conduct the necessary work and an appropriate curriculum. An educated police officer is a better police officer.

The Patten Report stated:

“as a matter of priority, ... all members of the police service should be instructed in the implications for policing of the Human Rights Act 1998, and the wider context of the European Convention on Human Rights and the Universal Declaration of Human Rights. Human dignity training, along the lines of that offered by John Jay College in New York to the New York Police Department and police services from some fifty countries, should also be provided. Like community awareness training, human rights and human dignity should not be seen as an add-on to training, but as a consideration affecting all aspects of training.” (Chapter 16.21) The recommendations of the Patten Commission were unanimous. It is crucial that the recommendations not be cherry picked but be implemented in a cohesive and constructive manner. The people of Northern Ireland deserve no less than this new beginning for policing. Any significant modifications will deprive them of this long awaited police service capable of sustaining support from the community as a whole.

**PREPARED SUBMISSION OF BRENDAN O'LEARY,
LONDON SCHOOL OF ECONOMICS AND POLITICAL SCIENCE**

The Belfast Agreement of April 10 1998 was a major achievement (O'Leary 1999a). Novel institution-building was flanked by peace and confidence-building processes involving cease-fires by paramilitary organisations, the release of their incarcerated prisoners, and commitments to protect human rights, entrench equality, demilitarise the region, assist in decommissioning by the proxies of paramilitaries, and the reform of the administration of justice and policing.

Implementing the Agreement was always going to be difficult. But as I deliver this testimony just four items, all in the domain of confidence-building, await full or effective beginnings in implementation. These are:

1. decommissioning by republican and loyalist paramilitaries;
2. the reform of the system of criminal justice;
3. demilitarization; and
4. policing reform.

These items are inter-linked. Full demilitarization and full decommissioning are mutually interdependent. Decommissioning—the timetable for which has been postponed by the agreement of the parties who made the Agreement—is seen in republican circles as conditional on the UK government fulfilling its public promises to implement the Patten Report. A specific promise is said to have been given to that effect in Spring 2000 -amidst negotiations that linked police reform, decommissioning and the lifting of the suspension of the Agreement's institutions unilaterally imposed by the UK Secretary of State in February (a measure that in many eyes breached international law).

The UK government states that it is implementing the Patten Report in full. Indeed its Prime Minister, the Secretary of State for Northern Ireland, and the Explanatory Notes issued by the Northern Ireland Office accompanying the Police Bill currently before the UK Parliament, flatly declare their intention to give effect to the recommendations of the Patten Commission. That has not been true, and is still manifestly not true.

In contrast the UK government often implies, usually in off-the-record briefings, that it cannot implement the Patten Report in full because of the 'security situation.' This more honest position, albeit in dissembling contradiction with its official one, would have credibility if the necessary preparatory legislative and managerial steps to implement Patten in full when the security situation is satisfactory had been taken. They have not (see endnote 1).

**WHY THE PATTEN REPORT WAS NECESSARY,
AND ITS RECOMMENDATIONS.**

Policing has been so controversial that the parties to the Agreement could not concur on future arrangements (McGarry and O'Leary 1999). The former Irish prime minister, Dr. Garret FitzGerald, has described policing in Northern Ireland as having the status of Jerusalem in the Israeli-Palestinian peace process (FitzGerald 2000). The parties did agree the terms of reference of an Independent Commission on policing, eventually chaired by Christopher Patten, a former Conservative minister in the region and now a European Commissioner.

To have effective police rooted in, and legitimate with, both major communities was vital to the new settlement. It would persuade all citizens that law enforcement would be applied impartially, help extirpate

that species of paramilitarism that is becoming an exclusively criminal enterprise, and foster a law-abiding climate in which to conduct business.

Eight criteria for policing arrangements were mandated in the Belfast Agreement. They were to be

1. impartial;
2. representative;
3. free from partisan political control;
4. efficient and effective;
5. infused with a human rights culture;
6. decentralised;
7. democratically accountable 'at all levels'; and

8. consistent with the letter and the spirit of the Belfast Agreement.

The Patten Commission engaged in extensive research and interaction with the affected parties, interest groups and citizens, and published its report in September 1999. It did not, and could not, meet the hopes, or match the fears, of all; but the Commissioners, a distinguished and representative array of domestic and international personnel, undoubtedly met the terms of reference of the Agreement (O'Leary 1999b).

The Patten Report was a thorough, careful and imaginative compromise between unionists who maintained that the existing RUC already met the terms of reference of the Agreement and those nationalists, especially republicans, who maintained that the RUC's record mandated its disbanding. The Report was not, however, simply designed to address the concerns of policing Northern Ireland. It applied state-of-the-art managerial and democratic thinking in its recommendations (O'Leary 1999b).

The UK Government welcomed the Patten Report and promised to implement it. However the Police Bill presented to Parliament in the Spring of 2000 was an evisceration of Patten, and condemned as such by the SDLP, Sinn Fein, the Womens' Coalition, the Catholic Church, non-governmental and human rights organisations, such as the Committee on the Administration of Justice. It was also criticised by the Irish Government, the US House of Representatives (H. Res 447, 106th Congress), and a range of Irish Americans, including, apparently, President Clinton (see endnote 2).

To demonstrate the veracity of the critics' complaints let me briefly compare some of Patten's recommendations with the original Bill.

IMPARTIALITY

Patten recommended a neutral name, the Northern Ireland Police Service.

The Royal Ulster Constabulary was not a neutral title so it was recommended to go, period. Patten also recommended that the display of the Union flag and the portrait of the Queen at police stations should go—symbols in his view should be 'free from association with the British or Irish states.' These recommendations were a consequence of Patten's terms of reference, and of the Agreement's explicit commitment to establishing 'parity of esteem' between the national traditions, and the UK's solemn commitment to 'rigorous impartiality' in its administration.

The original Bill proposed that the Secretary of State have the power to decide on the issues of names and emblems, and thereby ignored Patten's explicit recommendations.

REPRESENTATIVENESS

Patten recommended affirmative action to change rapidly the proportion of cultural Catholics in the police, and envisaged a programme of at least ten-years. Even critics of affirmative action recognised the need to correct the existing imbalance—in which over 90 per cent of the police are local cultural Protestants.

The original Bill reduced the period in which the police would be recruited on a 50: 50 ratio of cultural Catholics and cultural Protestants to three years, requiring the Secretary of State to make any extension, and was silent on ‘aggregation,’ Patten’s proposed policy for shortfalls in the recruitment of suitably qualified cultural Catholics.

FREEDOM FROM PARTISAN CONTROL

Patten proposed a Policing Board consisting of 10 representatives from political parties, in proportion to their shares of seats on the Executive, and 9 members nominated by the First and Deputy First Ministers. These recommendations guaranteed a politically representative board in which neither unionists nor nationalists would have partisan control.

The original Bill introduced a requirement that the Board should operate according to a weighted majority when recommending an inquiry. Given known political dispositions this was tantamount to giving unionist and unionist-nominated members a veto over inquiries, i.e. partisan political control, and therefore a direct violation of Patten’s terms of reference.

EFFICIENT AND EFFECTIVE POLICING

Patten avoided false economies when recommending a down-sizing of the service, advocated a strong Board empowered to set performance targets, and proposed enabling local District Policing Partnership Boards to engage in the market-testing of police effectiveness.

The original Bill empowered the Secretary of State, not the Board, to set performance targets, made no statutory provision for disbanding the police reserve, and deflated the proposed District Policing Partnership Boards—apparently because of assertions that they would lead to paramilitaries being subsidised by tax-payers.

HUMAN RIGHTS CULTURE

Patten proposed that new and serving officers should have knowledge of human rights built into their training, and re-training, and their codes of practice. In addition to the European Convention, due to become part of UK domestic law, the Commission held out international norms as benchmarks: “compliance ... with international human rights standards ... are... an important safeguard both to the public and to police officers carrying out their duties” (Patten, 1999, para 5.17). Patten’s proposals for normalising the police—through dissolving the special branch into criminal investigations—and demilitarising the police met the Agreement’s human rights objectives.

The original Bill was a parody of Patten. The new oath was to be confined to new officers. No standards of rights higher than those in the European Convention were to be incorporated into police training and practice. Responsibility for a Code of Ethics was left with the Chief Constable. It explicitly excluded Patten’s proposed requirement that the oath of service ‘respect the traditions and beliefs of people.’ Normalisation and demilitarization were left unclear in the Bill and the Implementation Plan.

DECENTRALIZATION

Patten envisaged enabling local governments to influence the Policing Board through their own District Policing Partnership Boards, and giving the latter powers 'to purchase additional services from the police or statutory agencies, or from the private sector,' and matching police internal management units to local government districts.

The original Bill, by contrast, maintained or strengthened centralisation in several ways. The Secretary of State obtained powers that Patten had proposed for the First and Deputy First Ministers and the Board, and powers to issue instructions to District Policing Partnership Boards; and neither the Bill nor the Implementation Plan contained clear plans to implement the proposed experiment in community policing.

DEMOCRATIC ACCOUNTABILITY

Patten envisaged a strong, independent and powerful Board to hold the police to account, and to replace the existing and discredited Police Authority (Patten, 1999: para 6.23), and recommended an institutional design to ensure that policing would be the responsibility of a plurality of networked organisations rather than the monopoly of a police force. The police would have 'operational responsibility' but be held to account by a powerful Board, and required to interact with the Human Rights Commission, the Ombudsman and the Equality Commission.

The Bill radically watered down Patten's proposals, empowering the Secretary of State to oversee and veto the Board's powers, empowering the Chief Constable to refuse to respond to reasonable requests from the Board, preventing the Board from making inquiries into past misconduct, and obligating it to have a weighted majority before inquiring into present or future misconduct. Astonishingly this led the existing discredited Policing Authority, correctly, to condemn the Bill, a response that no one could have predicted when the UK Government welcomed Patten.

MATCHING THE AGREEMENT?

Patten was consistent with the terms of reference and spirit of the Belfast Agreement. The original Bill was not, being incompatible with the 'parity of esteem' and 'rigorous impartiality' in administration promised by the UK Government. Manifestly it could not encourage 'widespread community support' since it fell far short of the compromise that moderate nationalists had accepted and that Patten had proposed to mark a 'new beginning.'

WAITING FOR EXPLANATIONS

What explains the radical discrepancy between Patten and the original Bill?

The short answer is that the Bill was drafted by the Northern Ireland Office's officials under Secretary of State Peter Mandelson's supervision. They appeared to 'forget' that the terms of reference came from the Belfast Agreement, and that Patten's recommendations represented a careful and rigorous compromise between unionists and nationalists. Indeed they appear to have treated the Patten Report as a nationalist report which they should appropriately modify as benign mediators.

Even though Patten explicitly warned against 'cherry-picking' the Secretary of State and his officials believed that they had the right to implement what they found acceptable, and to leave aside what they found unacceptable, premature, or likely to cause difficulties for pro-Agreement unionists or the RUC.

The Bill suggested that the UK government was:

- determined to avoid the police being subject to rigorous democratic accountability,
- deeply distrustful of the capacity of the local parties to manage policing at any level, and
- concerned to minimise the difficulties that the partial implementation of Patten would occasion for First Minister David Trimble and his party, the Ulster Unionists, by minimising radical change and emphasising the extent to which the ‘new’ service would be a mere reform of the RUC.

Under pressure the UK Government has retreated: whether to a position prepared in advance only others can know, but skilled political management is not something I shall criticise it for.

FROM EVISCERATION TO ‘PATTEN LIGHT’

Accusing its critics of ‘hype,’ ‘rhetoric’ and ‘hyperbole’ the UK Government promised to ‘listen’ and to modify the Bill. Mr Mandelson declared that he might have been too cautious in the powers granted the Policing Board. Indeed the Government was subsequently to accept over 60 SDLP-driven amendments to bring the Bill more into line with Patten. This, of course, demonstrated that its original ‘spin’ had been a lie. Since the Bill was so extensively modified—as the Government now proudly advertises—it confirms that the original Bill was radically defective in relation to its declared objectives, for reasons that remain unexplained.

The Bill was improved in the Commons Committee stage, but insufficiently. The quota for the recruitment of cultural Catholics is now better protected. The Policing Board has been given power over the setting of short-run objectives, and final responsibility for the police’s code of ethics. Consultation procedures involving the Ombudsman and the Equality Commission have been strengthened, and the First and Deputy First Ministers will now be consulted over the appointment of non-party members to the Board. The weighted majority provisions for an inquiry by the Board have gone, replaced by the lower hurdle of an absolute majority.

Yet any honest external appraisal of the modified Bill must report that it is still not the whole Patten. If the first draft eviscerated Patten, the latest version of presents a mostly bloodless ghost. The modified Bill rectifies some of the more overt deviations from Patten, but on the crucial issues of police accountability and ensuring a ‘new beginning’ it remains at odds with Patten’s explicit recommendations(3).

As the Bill is about to recommence its progress through the Lords, the UK Government has started to shift its public relations. The new line is that the ‘full Patten’ would render the police less effective, e.g. in dealing with criminal paramilitarism. The implication is that anyone who disagrees must be soft on crime (and its paramilitary causes). The new line lacks credibility: Patten combined ‘the new public management’ and democratic values in a rigorous formula to ensure no trade-off between effectiveness and accountability.

Let me identify just some of the outstanding respects in which the modified Bill fails to implement Patten.

OVERSIGHT COMMISSIONER

Patten recommended an Oversight Commissioner to ‘supervise the implementation of our recommendations.’ The UK Government has—under pressure—put the commissioner’s office on a statutory basis, which it did not intend to do originally, but has confined his role to overseeing

changes ‘decided by the Government.’ If Mr Mandelson and his colleagues were committed to Patten they would charge the Commissioner with recommending, now or in the future, any legislative and management changes necessary for the full and effective implementation of the Patten Report. That he refuses to do so speaks volumes. In addition the Commissioner’s role currently remains poorly specified. Since the Commissioner is a former US policeman American government pressure might appropriately be directed towards explicitly giving his office the remit that Patten envisaged.

POLICING BOARD

Patten recommended a Policing Board to hold the police to account, and to initiate inquiries into police conduct and practices. Mr Mandelson has prevented the Board from inquiring into any act or omission arising before the eventual Act applies (clause 58 (11) of the Bill). I believe that this is tantamount to an undeclared amnesty for past police misconduct, not proposed by Patten. Personally I would not object to an open amnesty, but this step is dishonest, and makes it much less likely that ‘rotten apples’ will be rooted out, as promised.

The Secretary of State will now have the extraordinary power to prevent inquiries by the Board because they ‘would serve no useful purpose,’ a power added at the Report stage in the Commons — needless to say not in Patten. The only rational explanation for this power is that the Government has chosen to compensate itself for the concessions it made in the Commons Committee when it expanded the Board’s remit to be more in line with Patten. So what it has given with one hand, on the grounds that it had been too cautious, it has taken away with two clumsy feet.

The Secretary of State will additionally have the authority to approve or veto the person appointed to conduct any inquiry (clause 58 (9)). And he intends having powers to order the Chief Constable to take steps in the interests of economy, efficiency, and effectiveness, whereas Patten envisaged this role for the Board.

The UK Government suggests its critics are petty. Its line is ‘Look how much we have done to implement Patten, and how radical Patten is by comparison with elsewhere.’ This ‘spin’ is utterly unconvincing. The proposed arrangements would effectively seal off past, present and future avenues through which the police might be held to account for misconduct; they are recipes for leaving them outside the effective ambit of the law, and of managerial scrutiny.

And be it noted: Patten is not radical, especially not by the standards of North America. Canada and the USA have long made their police democratically accountable and socially representative. Patten is only radical by the past standards of Northern Ireland.

OMBUDSMAN

Patten recommended that the Ombudsman should have significant powers (Patten, 1999, para 6.42) and should ‘exercise the right to investigate and comment on police policies and practices,’ whereas in the modified Bill the Ombudsman may make reports, but not investigate (so it is not a crime to obstruct her work). The Ombudsman is additionally restricted in her retrospective powers (clause 62), once again circumscribing the police’s accountability for past misconduct.

NAME AND SYMBOLS

Patten wanted a police rooted in both communities, not just one. That is why he recommended that the name of the service be entirely new: The Northern Ireland Police Service.

The Bill, as a result of a Government decision to accept an amendment tabled by the Ulster Unionist Party, currently styles the service 'The Police Service of Northern Ireland (incorporating the Royal Ulster Constabulary).' The Secretary of State promised an amendment to define 'for operational purposes'—to ensure that the full title would rarely be used, and that the parenthetic past generally be excluded. He broke this commitment at Report Stage.

Secretary of State Mandelson has been mendaciously misleading in declaring that he is merely following Patten's wishes that the new service be connected to the old and avoid suggestions of disbanding. This line is a characteristic half-truth: Patten proposed an entirely new and fresh name, and proposed linkages between the old and new services through police memorials, and not the re-naming proposed by Ken Maginnis, MP, Security Spokesman for the Ulster Unionist Party.

Patten unambiguously recommended that the police's new badge and emblems be free of association with the British or Irish states, and that the Union flag should not fly from police buildings. The Bill postpones these matters.

Why do these symbolic issues matter? Simply because the best way to win widespread acceptance for police reform is to confirm Patten's promised new beginning by following his proposed strategy of symbolic neutrality(4). Full re-naming and symbolic neutrality would spell a double message: that the new police is to be everyone's police, and the new police is no longer to be primarily the unionists' police. This symbolic shift would mightily assist in obtaining representative cultural Catholic recruitment and in winning consent for the new order amongst nationalists as well as unionists. Not to follow Patten's recommendations in these respects would also spell a double message: that the new police is merely the old RUC re-touched, and remains a police linked more to British than Irish identity, i.e. a recipe for the status quo ante.

CONSEQUENCES OF FAILING TO IMPLEMENT PATTEN IN FULL

Unless the UK Government makes provision for Patten to be fully implemented, there will be grave consequences.

Disaster may come in two forms. Its weakest form is taking shape. The SDLP, Sinn Fein and the Catholic Church are most unlikely to recommend that their constituents consider joining the police, and may well boycott the Policing Board and District Policing Partnership Boards. That will leave the police without Patten's promised 'new beginning,' lacking full legitimacy with just less than half of the local electorate, an institutional booby-trap.

We must not forget that over three hundred police were killed in the current conflict, but we must also not forget that the outbreak of armed conflict in 1969 was partly caused by an unreformed, half-legitimate police service, responsible for seven of the first eight deaths.

In its strongest form disaster would de-couple nationalists and republicans from the Agreement, and bring down its political institutions. Failure to deliver Patten will mean that Sinn Fein will find it extremely difficult to get the IRA to go further in decommissioning. The argument will be: 'The UK Government has reneged on a fundamental commitment under the Agreement so why should republicans disarm and leave people to be policed by an unreformed service?' In turn that will lead to

unionist calls for the exclusion of Sinn Fein from ministerial office, and to a repeat of Mr Trimble's gambit used earlier this year: 'decommission now or I'll resign now.'

The day before I flew to Washington I was in Northern Ireland and watched Mr Trimble in effect repeat this threat in the Assembly under challenge from his hard-line unionist opponents. If decommissioning does not happen because of Secretary of State Mandelson's failure to deliver fully on Patten, the SDLP will not be able or willing to help prioritise decommissioning, unless it prefers electoral suicide. The IRA will find it difficult to prevent further departures to the Real and Continuity IRAs, except by refusing to budge on arms. In turn that will at some stage prompt a resignation threat from the First Minister. In short, a second collapse of the Agreement's institutions looms.

This vista and worse can and must be avoided.

FINAL THOUGHTS AND ANSWERS.

It may be thought: "Is this analysis partisan?"; and "Is not Mr Mandelson's conduct designed to help Mr Trimble who in a precarious position?"

My answer to the first question is 'no.' I have a long record of advocating bi-national resolutions of the conflict that are fair to both nationalists and unionists.

The answer to the second question must be a very qualified 'yes.' 'Saving David Trimble' may account for Mr Mandelson's tampering with Patten's proposals on symbolic matters. But it does not account for his evisceration of the efforts to have a more accountable and human-rights infused service—here the Secretary of State has succumbed to lobbying by security officials.

Another answer to the second question is more straightforward: Mr Mandelson must not unilaterally abandon or re-negotiate the Agreement or the work of Commissions sent up under the Agreement at the behest of any party.

A third answer I would propose is that pro-Agreement unionists can, eventually, accept the full Patten, because they know that a legitimate and effective police is necessary to reconcile nationalists to the continuation of the Union—the reason they signed the Agreement.

Lastly, I believe that the Patten Report is not only what Mr Mandelson should fully implement under the Agreement as proof of rigorous impartiality in his administration, but also what he should implement even if there were to be no Agreement.

ENDNOTES

1 As a matter of fact, and despite the Omagh atrocity of 1998, the key indicators of political violence demonstrate that the security situation has been radically better in the period since 1995 than it was in the period running up to 1994, and significantly so by comparison with the entire period of fully active conflict which preceded the first IRA ceasefire (i.e. 1969–1993). For example, the death-toll during 1995–99 more than halved by comparison with 1990–94.

The IRA's recent 'confidence-building measure,' facilitating international scrutiny of some its arms dumps and materiel, helped resolve a crisis of executive stability, but substantive decommissioning by this organisation has been postponed. Loyalist paramilitaries have failed to reciprocate the IRA's measure and are currently involved in violent internal feuds.

2. I described it as betraying Patten's 'substantive intentions in most of its thinly disguised legislative window-dressing' (O'Leary 2000a).

3. Its defects in the domain of human rights protection I leave to the witness who is testifying on behalf of the Committee on the Administration of Justice whom I imagine will address this issue. For the defects in the Bill and the accompanying implementation plan with regard to community policing I refer the Committee to an article by Professor Paddy Hillyard of the University of Ulster (Hillyard 2000).

4. An alternative path, legitimate under the Agreement, would have been to pursue a fully bi-national symbolic strategy (McGarry and O'Leary 1999). However even if the police were to have both an English and Irish title in each case the name should be neutral: Northern Ireland Police Service or C oras S och an  Thuaisceart  ireann.

**PREPARED SUBMISSION OF MARTIN O'BRIEN,
COMMITTEE ON THE ADMINISTRATION OF JUSTICE, BELFAST**

Thank you for your invitation to testify today. The Committee on the Administration of Justice (CAJ) is an independent human rights organisation which draws its membership from across the different communities in Northern Ireland. CAJ works for a just and peaceful society where the human rights of all are fully protected. In recognition of its efforts to place human rights at the heart of the peace process, CAJ was awarded the 1998 Human Rights Prize by the then 40 Member States of the Council of Europe. We have a broad remit which covers many conflict-related issues such as prisoners, emergency law, miscarriages of justice, and also issues such as fair employment, the rights of women and children, people with disabilities, and the need for effective government action to prevent racial discrimination.

Since our foundation in 1981, we have worked consistently on issues of policing and, as early as 1995, CAJ argued for an independent international commission to look into future policing in Northern Ireland. Accordingly we worked hard to ensure that the establishment of such a body would be provided for in the Good Friday Agreement. We welcomed the broad terms of reference given to the Commission by the Agreement, and sought to work constructively with the Commission as soon as it came into being, under the chairmanship of the Chris Patten. We were fortunate in that we had earlier secured funding from the Ford Foundation and others to undertake a major comparative research project into good policing around the world. The findings arising from that study underpinned all our work with the Commission and were, we believe—from a reading of the recommendations -useful to the Commission in its work.

In testimony in September 1999 to Congress on the findings of the Patten Commission, we concluded that: "CAJ believes that, in general terms, the Commission has made a very genuine and constructive effort to meet the difficult task imposed on it by the Agreement. They have put forward many thoughtful and positive recommendations about the way forward. Most importantly of all, they have recognised (as did the Agreement itself) that just as human rights must be at the heart of a just and peaceful society in Northern Ireland, it must be at the heart of future policing arrangements."

CAJ went on, however, to outline for Congress, some of the serious reservations we, and other human rights groups, had regarding the omissions from the Patten report. Amongst other things, we expressed concern as to the feasibility of bringing about real changes to policing if emergency powers are still retained, if plastic bullets are still deployed, and if officers, known to have committed human rights abuses in the past, remain as serving officers.

Despite these important shortcomings, however, the main thrust of our submission at that time was to urge Congress to use its best offices to push for speedy implementation of the positive recommendations arising from Patten. Though Patten's recommendations did not address everything that was needed for genuine change, they gave a clear framework within which change could occur, and they pointed all those interested in fundamental reform in the right direction.

Unfortunately, as we said in our earlier testimony "implementation is everything", and in that context, CAJ must report to Congress our profound disappointment at developments since the publication of the Pat-

ten report. Our concerns about implementation are twofold. First, many of the changes Patten called for are long over-due, and speed is of the essence. Second, and as important, a hesitant or unwilling approach to major change—which is what we are experiencing—feeds fears that change will be short-lived, and indeed will be under-mined over the longer term.

One of the key findings of our earlier international research was that political will is always a determining factor in preventing or facilitating successful change. Initially, it seemed to observers that the necessary political will did in fact exist within government for change. Yet, since the publication of the Patten report, the signs have been ominous.

Patten called for the speedy appointment of an Oversight Commissioner to oversee the pace and nature of change. The Commission said “we believe that a mechanism is needed to oversee the changes required of all those involved in the development of the new policing arrangements, and to assure the community that all aspects of our report are being implemented and being seen to be implemented.” This recommendation was accepted by government, but Tom Constantine was only appointed on 31 May 2000—almost nine months after the Patten report was published. This tardy appointment meant that the Commissioner was excluded from scrutinising the draft legislation, played no part in the detailed Implementation Plan prepared by the Northern Ireland Office and the policing establishment, and has still to appoint staff, take on a public profile, and produce his first report.

Given this delay, any change that has taken place to date has been dictated by those who have been responsible for policing over the last 30 years and who have resisted change in the past. Only a third or less of Patten’s recommendations resulted in proposals for legislative change, so that the vast majority of the programme of change has been left to the discretion of senior civil servants, and the Chief Constable. Indeed, much of the change—whether in terms of police training, police re-organisation, or in terms of crucial decisions relating to Special Branch, detention centres, the use of plastic bullets, or the extent of stop-and-search activities—lies largely at the discretion of the Chief Constable alone. Only with the appointment of a new Policing Board (the political composition of which is as yet uncertain), and/or an active and high profile Oversight Commissioner, will people outside the policing establishment be able to influence or assess the extent of real change underway.

The slowness in appointing an external Oversight Commissioner has left government open to the charge that the nature and pace of change has been deliberately left in the hands of those who have so mis-managed policing in the past. This charge is not easily refuted. A study of the draft legislation, for example, merely seems to confirm the view that government is unwilling to put Patten’s agenda into practical effect. The draft legislation first presented to the House of Commons in May was a very far cry from the Patten report, and despite much lobbying, and extensive changes in the course of the parliamentary process to date, there is still a long way to go. (I would like, with the Chair’s permission, to have read into the record two commentaries on the legislation. One is a short CAJ briefing on the major outstanding concerns in the policing legislation, and the other is a detailed series of amendments which CAJ believes must be introduced if the legislation is to faithfully reflect Patten).

Of course, to judge by official government statements, one would have thought that government was fulfilling Patten in its first draft legislative text in May. The same claim—to be fulfilling Patten—was still being asserted in July (when, by its own admission, it had already made 52 substantive changes to bring the initial draft in line with Patten). Further amendments have again been promised in the next few weeks, prior to the House of Lords debate. However, on the basis of CAJ's understanding to date, the changes that are to be offered will still not deliver the Patten agenda.

If government does want to implement Patten, as it says it does, why is it still resistant to a whole range of important safeguards which Patten called for? Why is it impossible to get government agreement to include explicit reference in the legislation to a broad range of international human rights norms and standards? What reason can there be for the government denying any role to the NI Human Rights Commission in advising on the police use of plastic bullets? Why are effective inquiry powers for the Policing Board consistently opposed? Why is the Secretary of State so adamant that the Police Ombudsperson cannot have the powers to investigate police policies and practices that Patten called for? Why was the appointment of the Oversight Commissioner so long delayed, and why is his term of office so curtailed in the legislation?

There will be some that claim that government cannot move fast on certain issues, precisely because Northern Ireland is divided, and policing is a very divisive issue. While there are, of course, many contentious issues (the name and symbols, for example), none of the important issues listed above divide nationalist and unionist. They do, however, clearly divide those who want to defend the status quo, from those who want a police service that is impartial, representative, and accountable—able and willing to ensure that the rule of law is upheld.

Some of the obstacles to real change can be detected by a study of the parliamentary record. A government minister, in the course of the Commons debate, resisted any amendments that sought to make policing subject to international human rights and standards. He said: "Some appalling human rights abuses...take place around the world. Those low standards should not be compared with the past activities of the RUC...The RUC carried out a difficult job, often in impossible circumstances. Such comparisons as might be made in the light of the amendment could cause unnecessary offence. We might reasonably say that, against the norms in question, the RUC has a good record on human rights". Government appears to reject out-of-hand the many past reports of the United Nations, and respected international non-governmental organisations, which criticised the RUC. This stance presumably explains the legislation's failure to address the legacy of the past. Yet, if government is unwilling to admit past problems, can the necessary change occur?

CAJ's fears about the pace and nature of policing change are further heightened by the government's approach to the separate but complementary Criminal Justice Review (also established as part of the Good Friday Agreement). The inter-relationship between policing and the criminal justice system is self-evident. Accordingly, it is extremely disturbing to have to report to Congress that CAJ has serious concerns about the nature and pace of change proposed in the criminal justice sphere also. A new appointment system for judges, changes to the prosecution service, and a re-vamping of the criminal justice system generally, are

long-overdue changes. The government timetable clearly does not recognise any urgency; CAJ, however, feels that Northern Ireland cannot afford any further delay.

Of course, change is inevitably difficult; and change of the scale and nature required in Northern Ireland is particularly difficult. We urge the US Congress to use its best endeavours to lend its support to the UK and Irish governments as they work, with local politicians, to develop a more just and peaceful society in Northern Ireland. In particular, we hope that Congress would work, both directly, and—as appropriate—in conjunction with the US Administration, to:

1. Urge the Prime Minister, Tony Blair, to amend the draft legislation to ensure that it reflects both the letter and spirit of Patten. Urge that the legislation conform, in particular, to Patten's exhortation that "the fundamental purpose of policing should be, in the words of the Agreement, the protection and vindication of the human rights of all". Congress should make it clear that future US-UK policing cooperation is dependant to a large extent on Patten's recommendations being fully implemented.
2. Congress should urge the UK and Irish governments to recognise the importance of greater external oversight of the transition process, and ask that the Oversight Commissioner be accorded the resources and remit necessary to this vital work.
3. Congress should commit itself to monitoring developments closely in the coming months, and urge the US Administration to do the same. Congress may, for example, want to consider holding further Hearings in due course to receive a progress report on developments.

To conclude, I hardly need to remind the Chairperson that, defence lawyer and CAJ executive member, Rosemary Nelson, testified before him and other members of Congress on issues of policing almost two years ago—on the 29 September 1998.

The concerns she raised in her testimony, her terrible murder a short while later, and the subsequent police investigation, remind us—if we need reminding—that policing change in Northern Ireland is not an abstract or intellectual debate. It is about the lives of real people. We must bring about policing change in Northern Ireland; and we must ensure that that change is right.

Everything that the US Congress can do to help those of us on the ground secure such change will, as always, be greatly appreciated.

Thank you.

**PREPARED SUBMISSION OF ELISA MASSIMINO,
DIRECTOR, WASHINGTON OFFICE, LAWYERS COMMITTEE FOR
HUMAN RIGHTS**

I. INTRODUCTION

Chairman Smith and members of the Commission, thank you for inviting me to testify today. You have been a true champion of human rights in the Congress, and you and your dedicated staff have done so much to shine a spotlight on human rights problems in Northern Ireland and around the world. Your leadership on these issues has made a real difference. We want to take this opportunity to commend you for this important work, and to thank you.

The Lawyers Committee for Human Rights has been working to advance human rights in Northern Ireland since 1990. We have published a number of reports about the intimidation and murder of defense lawyers in Northern Ireland, with particular focus on the cases of solicitors Patrick Finucane and Rosemary Nelson. As you know well, the precarious situation of defense lawyers in Northern Ireland is closely linked to the emergency law system and to the conduct of the police. For the last year and a half, we have paid special attention to the peace process in Northern Ireland and, in particular, the central issue of police reform. We appreciate the opportunity to be here today to share with you our views on the status of efforts by the British Government to implement the recommendations made by the Patten Commission.

**II. THE PATTEN COMMISSION RECOMMENDATIONS AND THE
PENDING POLICE BILL**

The Patten Commission's mandate was as ambitious as it was critically important to Northern Ireland's future. The Good Friday Agreement called on the Commission to propose a new structure for policing in Northern Ireland that would make the police service accountable, representative of the society it polices and reflective of principles of human rights. (The Agreement, Policing and Justice, para. 2)

Although we were disappointed that the Patten Commission did not directly address some key issues, such as the continued use of emergency powers, which provides the breeding ground for many of the human rights abuses that persist in Northern Ireland, we believe that, on the whole, the Patten Commission successfully integrated human rights principles into its program for reform. The Patten Commission Report provides a clear roadmap for building an effective and publicly-supported police force. If the British Government were to fully implement the Patten Commission's recommendations, it could make Northern Ireland a model for other civil societies transitioning from conflict to peace.

But unfortunately, the British Government has taken a different path. Despite more than 50 substantive amendments, the bill now pending in Parliament that is meant to implement the Patten Commission recommendations falls far short of doing so. There are serious deficiencies in the legislation now under consideration, many of which have been discussed in detail by my colleagues on this panel. But I would like to highlight three issues regarding the Police Bill that are of particular concern to the Lawyers Committee for Human Rights because they directly undermine the central principles of accountability and human rights around which the Patten Commission recommendations revolve.

Last month in a letter to Peter Mandelson, the Secretary of State for Northern Ireland, we raised these and other concerns in detail. I would like to submit a copy of that letter, dated August 16th, for your review and for the record.

A. LIMITATIONS ON THE POLICING BOARD AND POLICE OMBUDSMAN

The Policing Board and the Police Ombudsman are entities intended to be responsible for monitoring police conduct. The current Police Bill, however, places crippling limitations on these bodies that would significantly reduce their effectiveness. For example, the Bill would undermine the Policing Board's ability to conduct reviews of ongoing police operations. Likewise, the Bill fails to clearly provide the authority for the Police Ombudsman to investigate police practices and policies, in addition to allegations of past abuse. A credible system of investigation and inquiry into alleged abuses and abusive practices is one of the best guardians against such practices. But if the Police Bill is approved in its current form, with significant limitations on the powers of the Policing Board and Ombudsman, the capacity for creating such a system will be severely limited.

B. THE OVERSIGHT COMMISSIONER

Implementation of the Patten Commission reforms was thought by no one to be a simple task, which is why the position of Oversight Commissioner was viewed as so important. But the long delay in appointing an individual to serve in that post, and the limitations that have been placed on his mandate, create formidable barriers to his effectiveness. In part due to the delay in his appointment, the Oversight Commissioner has played no role in the process of drafting the Police Bill. The British Government published its Implementation Plan before the Oversight Commissioner was even appointed; the RUC likewise came up with its own "Programme for Change" with no input from the Oversight Commissioner. These two documents, which purport to guide the implementation of the Patten Commission recommendations, appear now to be the measuring stick by which the Oversight Commissioner intends to judge implementation. And yet these plans - the Government's and the RUC's - do not themselves fully implement the Patten Commission recommendations. This seems to us to relegate the role of the Oversight Commissioner to that of making sure that the police follow through on the changes they decide they want to undertake - a far cry from ensuring that the Patten Commission reforms are truly implemented.

C. REFERENCE TO INTERNATIONAL HUMAN RIGHTS STANDARDS

Although the British Government has repeatedly asserted that it "recognizes the importance of human rights," its ongoing resistance to inserting reference to international human rights standards into the language of the Police Bill raises serious questions. The conduct of police in Northern Ireland has been the subject of numerous reports by non-governmental human rights organizations and UN bodies, including by Dato' Param Cumaraswamy, the UN Special Rapporteur on the Independence of Judges and Lawyers. Many of these reports have concluded that police conduct in Northern Ireland violates internationally recognized human rights standards. Chairman Patten, in his statement accompanying the release of the Commission's report, highlighted the cen-

tral importance of human rights standards to the Commission's approach to police reform: "We recommend a comprehensive programme of action to focus on policing in Northern Ireland on a human rights-based approach. We see the upholding of fundamental human rights as the very purpose of policing, and we propose that it should be instilled in all officers from the start - in the oath they take, in their training, and in their codes of practice and in their performance appraisal system." In light of this clear statement of the human rights foundations of the Patten Commission's recommendations, the failure to incorporate reference to international human rights standards into the Police Bill is striking.

The failure of the British Government to adequately address these concerns with the Police Bill, combined with the slow pace of other reform measures, has already led to an erosion of confidence in the ongoing process and doubts about the Government's intentions. Many who support reform have begun to wonder whether the Government is abandoning its stated intention to fully implement the Patten Commission recommendations. This perception will have serious consequences for the long-term prospects for peace. For example, under the Patten Commission proposals, 600 police officers were supposed to volunteer to retire by the end of next month. This proposal was based on the assumption that adequate compensation would be offered as an incentive to retire. But so far, only 91 officers have come forward to volunteer. According to a Police Federation spokesman quoted in a recent article in the Daily Telegraph, the Government has stated that no officer should benefit beyond the sum they would earn if they remained on the force. When the Police Federation asked the Government what incentive this would give officers to retire, they were not given a credible answer. I would ask that a copy of this September 10th article be included in the record of this hearing.

III. BREAKING THE CYCLE OF IMPUNITY

As so many societies transitioning from conflict to peace have learned, building a culture of human rights and accountability will require having a process for addressing past violations. Because we believe that future progress in developing a rights-sensitive police force in Northern Ireland depends on breaking the existing cycle of impunity, we urged the Patten Commission to make recommendations to the British Government in two specific cases: the 1989 murder of Patrick Finucane and the murder of Rosemary Nelson last year. We regret that the Commission's report was silent with respect to these cases. While we understand Mr. Patten's conclusion that the Commission's work was "forward-looking," our own experience in situations such as these has been that societies cannot reconcile until the legacy of past abuses is squarely confronted. Although it is clear that not all of these abuses can be addressed or rectified, there are certain cases that embody the most profoundly entrenched practices and problems that the peace process seeks to overcome. If a solid foundation for the future is to be laid, these cases must be resolved.

For this reason, we urge the Helsinki Commission to continue its vigilant attention to the Finucane and Nelson cases, at the same time as it examines broader reforms proposed by the Patten Commission. Because I know you share our keen interest in these two cases, Chairman Smith, I will devote the remainder of my testimony to summarizing the current status of those cases.

A. PATRICK FINUCANE

Now is a critical moment in the struggle for justice in the Finucane case. As you know, the Lawyers Committee has done extensive research into the circumstances surrounding the murder and has concluded that there is compelling evidence to suggest that British Army intelligence and the RUC were complicit in the murder. Three weeks ago, Prime Minister Tony Blair met with the family of Mr. Finucane. The meeting was brokered by Taoiseach Bertie Ahern, who himself endorsed an independent inquiry after meeting with the Finucane family in February. During that meeting, Mr. Ahern was provided with a new report by British Irish Rights Watch (BIRW) that details further credible evidence of collusion. Although the same report was provided to the British Government, there has yet to be a reply to the substance of the allegations in the report.

Nonetheless, during the meeting this month with Prime Minister Blair, members of the Finucane family, along with Paul Mageean from CAJ and Jane Winter from BIRW, presented the BIRW report and other information supporting the allegation of official collusion in the murder of Mr. Finucane. Mr. Blair appeared to be deeply concerned by the allegations and pledged that he would read and consider all the evidence. He conveyed to the Finucane family that he “personally” wants to know if the allegations are true and would put anyone guilty of collusion “out of a job.”

On September 8th, we wrote a letter to Prime Minister Blair to urge him to authorize an independent inquiry. As we stated in the letter, “We firmly believe that such an independent public inquiry will serve both to help learn the truth about the circumstances surrounding the murder and to publicly confirm [the British] government’s commitment to establishing official accountability for human rights abuses.” I have included a copy of our letter to Prime Minister Blair with my testimony and ask that it be included in the record.

Establishment of an independent inquiry would be a significant breakthrough, and we urge you, Chairman Smith, and your colleagues in the Congress to do all you can to encourage Mr. Blair to make this decision.

A look at the current status of the Stevens investigation reveals how desperately necessary such an independent inquiry is in this case. The current 18 month-long inquiry is the third such investigation by Mr. Stevens, who began the first of these investigations in 1990.

As we have testified previously, we believe the Steven’s investigation is inadequate and lacks the capacity to uncover the truth about allegations of official collusion in the murder. As you may recall, we reported to you last March that Mr. Steven had arrested and brought murder charges against William Stobie, a former UDA quartermaster who worked for RUC Special Branch, in June 1999. At Mr. Stobie’s bail hearing, lawyer for the Crown told the high court that recent statements made by journalist Neil Mulholland led to Stobie’s arrest. However, Mr. Stobie’s lawyer revealed at the bail hearing that Stobie had been interviewed in 1990 for more than 40 hours by members of the RUC Special Branch. These interviews, which included Stobie’s confession to supplying the weapons used in the murder, were transcribed and have been available to the authorities since 1990. Among other things, these notes identify the names of the members of the RUC Special Branch who had been warned about the murder. At that time, the authorities never charged Stobie with murder, and the Director of Public Prosecutions dropped unrelated firearms charges against him in 1991.

Since the last congressional hearing into these matters, the charges against Mr. Stobie have been lessened to aiding and abetting murder. We have also learned that a key witness in the prosecution of Mr. Stobie may no longer be available and the charges against Mr. Stobie may be dropped entirely. If brought to trial, Mr. Stobie reportedly intends to reveal the full extent of the RUC's involvement in the murder of Mr. Finucane.

This past August, Mr. Stevens' team, now directed by Commander Hugh Orde, seized thousands of intelligence documents from British army headquarters revealing new evidence of Loyalist and military collusion in the murder of Mr. Finucane that reportedly will be used to arrest new suspects. This new development contrasts with the 1995 decision of the Director of Public Prosecutions not to prosecute anyone from the military. This decision was reached despite evidence of collusion arising out of information relating to Brian Nelson, a double agent recruited by British Army Intelligence while he served as chief intelligence officer for the Ulster Defense Association. The recent discovery of these intelligence documents also suggests the involvement of Brigadier John Gordon Kerr. Mr. Kerr, now a British military attache in Beijing, oversaw agent Brian Nelson at the time of the Finucane murder and allegedly gave testimony during the inquest of Mr. Finucane under the pseudonym Colonel J.

Despite compelling evidence that appears to suggest the identities of the intellectual authors of the murder, the Stevens inquiry continues to drag on. Establishment of an independent inquiry would finally ensure that the allegations of official collusion in the murder are squarely addressed.

B. ROSEMARY NELSON

In addition to the Finucane case, the Lawyers Committee also believes that the British Government should authorize an independent inquiry into the murder of defense lawyer Rosemary Nelson. We view resolution of her case as essential to the success of new accountability mechanisms in Northern Ireland.

As you are aware, Mr. Chairman, Loyalist paramilitaries claimed responsibility for the murder of Rosemary Nelson, who was killed by a car bomb on March 15, 1999. Prior to her death, Ms. Nelson received numerous death threats, including those made by RUC officers relayed through her clients. Ms. Nelson never received government protection despite many appeals made to the Northern Ireland Office and the RUC to protect her life, including those made by Dato' Param Cumaraswamy, United Nations Special Rapporteur on the Independence of Judges and Lawyers. During the time that Ms. Nelson became a target of official harassment, she herself became an outspoken critic of the RUC, and, thanks to you Chairman Smith, was able to bring her case all the way to the U.S. Congress. At that time, she expressed deep fear regarding her safety and that of her family.

The current criminal investigation of Ms. Nelson's murder is lead by London detective Colin Port and has been underway for almost a year and a half. To date, the investigation team has taken 1,700 statements, spoken to more than 7,000 potential witnesses and unearthed 7,000 lines of inquiry, but has yet to charge anyone in connection with the murder. Because Mr. Port's investigation is limited to the specific circumstances of the murder, we do not believe that his team can effectively address the

larger issue of who authored the crime and whether official collusion was involved. Furthermore, Mr. Port does not address the threats made against Ms. Nelson by RUC officers, and this practice continues today.

In the past we have expressed concern regarding the British Government's inadequate response to Ms. Nelson's situation, not only regarding the failure to provide her protection but also to discipline those officers alleged to have harassed her. We believe that both of these issues must be addressed if the new accountability structures established by the Police Bill are to be effective.

In particular, the new Police Ombudsmen office must be able to have full power and independence to investigate complaints against the new police force. As we have shared with you in previous testimonies, the RUC's investigation into Ms. Nelson's complaints were found to be inadequate and unsatisfactory by the Independent Commission for Police Complaints (ICPC). The file sent to the Director of Public Prosecution failed to provide sufficient evidence to support prosecution or discipline and these officers still serve as police officers. Colleagues of Ms. Nelson viewed hers as the "test case," and Ms. Nelson allegedly filed her complaint to test the adequacy of the system. To be effective, the new Ombudsman will have the added challenge of proving to those subject to police harassment that they can place their confidence in the investigation mechanism.

Our deep concern regarding accountability mechanisms in Northern Ireland has intensified since we recently learned that another lawyer was under threat and has been the target of harassment and threats by the RUC. Solicitor Pdraigan Drinan was Rosemary Nelson's colleague and took on some of Ms. Nelson's cases after her death. To those who want to focus on the future, I would like to emphasize that today that the British government still has the opportunity to avert another tragedy. But it must make sure that it learns the lesson from past errors and uses them to correct a system that has completely failed to protect its citizens against police abuse.

IV. CONCLUSION

Lasting peace cannot take hold in Northern Ireland until the British Government demonstrates the willingness and ability to secure justice for the families of Rosemary Nelson and Patrick Finucane and a commitment to creating a representative and accountable police force for Northern Ireland's future. Thank you.

PREPARED SUBMISSION OF THE BRITISH GOVERNMENT
IMPLEMENTATION OF THE REPORT OF THE INDEPENDENT
COMMISSION ON POLICING FOR NORTHERN IRELAND: NOTE
BY THE BRITISH GOVERNMENT FOR THE INFORMATION OF
THE CSCE

The British Government welcomes this opportunity to provide a brief to this Commission on Security and Co-operation in Europe hearing.

Before turning to specific points, it may be helpful to set out the brief background and the Government's overall position.

1. The terms of reference for the Independent Commission on Policing, chaired by Chris Patten, were contained in full as part of the Good Friday Agreement. Flowing from that, Patten used the following tests to test whether each proposal would:

- promote effective and efficient policing;
- deliver fair and impartial policing, free from partisan control;
- provide for accountability, both to the law and to the community;
- wake the police more representative of the society they serve;
- protect and vindicate the human rights and human dignity of all.

2. The British Government accepted the Patten Report as the basis for creating a new beginning to policing in Northern Ireland. Indeed, the Government wholly shares Patten's vision of a radically different police service. It is committed to the most comprehensive reform of policing arrangements ever adopted in a developed country. It recognises that policing, as the Patten Report put it (paragraph 1.2) "... is at the heart of many of the problems that politicians have been unable to resolve in Northern Ireland ..." and it wants to (work to) resolve these.

3. In May the Government introduced a Bill to give effect to the Patten Report, and in June it published an implementation Plan setting out more fully how the Report's recommendations would be implemented. Both before, and subsequently, there has been extensive consultation with a wide range of interested parties. The Bill itself has been amended significantly. It will be subject to further consideration in the House of Lords in October. A revised version of the implementation Plan will be published following the Bill's enactment, later this year.

4. As the Government has repeatedly made clear, it has wholly accepted virtually all of the 175 recommendations in the Patten Report although, inevitably, the implementation of a number of recommendations (about 15) is subject to continued improvements in the security and public order situation in Northern Ireland. The Patten Commission explicitly recognised that "the pace of change in some areas will depend on the security situation" (paragraph 7. 19).

5. Many of the changes reflect the way that policing services worldwide are developing. But the new Police Service of Northern Ireland will be leading the way in a number of key areas. In particular the Bill will provide openness, accountability and representativeness that are unmatched in Europe or North America.

6. The Commission have specifically asked about human rights, and accountability structures, in particular those for investigating allegations against the police.

7. To deal first with Human Rights, the Bill provides for a police service with a very clear and important human rights focus. There will be:

- a new human rights based oath that recruits must swear, which the Chief Constable must bring to the attention of existing officers and in accordance with which they must carry out their duties;
- there will be a new Code of Ethics, which will, as Patten states, “integrate the European Convention on Human Rights into police practice”;
- the new Code of Ethics, will be issued by the independent Policing Board after consultation with, for example, the Northern Ireland Human Rights Commission and the Police Ombudsman;
- the Chief Constable must ensure that officers have read and understood the Code;
- the Secretary of State is obliged to ensure that the contents of the Code are reflected in the code of conduct for police officers against which they are subject to disciplinary action;
- the integration of human rights into every module of police training;
- the statutory monitoring of the service’s compliance with the Human Rights Act 1998 by the Board.

8. The Government, therefore, has accepted all of the recommendations in the human rights chapter save that it is not requiring existing officers to take the new oath, and even there an alternative arrangement is included in the Bill (as mentioned above). Northern Ireland will have unprecedented arrangements for the protection and incorporation of human rights. As Patten himself recognised his report was not a detailed blueprint and was not to be implemented mechanistically —“we do not contend that every recommendation in our report is correct in every particular” (paragraph 19.2).

9. Second, the legislation makes unique arrangements for holding the Police Service to account. There are several key elements. Both a new Policing Board with a majority drawn from the Northern Ireland Assembly and a Police Ombudsman, with statutory powers unprecedented in Western Europe, have key roles to play. Moreover at local district¹ level, new District Policing Partnerships will be created.

10. The Policing Board will be different from the existing community accountability body in several, important ways.

As noted above the majority of the Policing Board will—for the first time in Northern Ireland—be drawn from elected representatives who are Members of the Assembly. Patten sees such democratic accountability as “key to a new beginning for policing and to involving the community as a whole in policing” (paragraph 4.8).

It will have a new statutory duty to hold the Chief Constable to account.

The Board will have greater power to require reports from the Chief Constable on the performance of the police service.

The Board is also being given powers, to set up an inquiry into any matter connected with policing, subject to safeguards outlined by the Patten Report. The power represents an exceptional and powerful tool for the Board and one not seen elsewhere in the United Kingdom or

¹ There are 26 districts in Northern Ireland

Ireland. The provision has been debated at length, and the British Government has already accepted a number of amendments to the Bill, and is committed to making others to meet concerns.

The Board will have the final say in the annual planning process and over the Service's training and education strategy.

The Bill will also give the Board a power to conduct reviews of any of the Chief Constable's functions, with the agreement of the Chief Constable.

It will have powers in relation to the appointment and dismissal of chief officers and senior civilians in the police service,

11. So an empowered and democratically representative Board is being created. It will be able to hold the Chief Constable to account and the Government expects that it will use its considerable statutory powers to do so.

12. The Ombudsman, whose office will be operational in November, has far-reaching powers:

- The Ombudsman is unique and independent, having directly employed staff that are responsible to her for the conduct of investigations into complaints against the police and cases where there is no complaint, but the Ombudsman feels any incident should be investigated in the public interest.
- The investigators have relevant experience and a number have been recruited from overseas. They will be investigating allegations of criminal and of disciplinary breaches and will have police investigative powers under the Police and Criminal Evidence (Northern Ireland) Order.
- It will be the Ombudsman, rather than the Chief Constable as at present, who makes recommendations about prosecution to the independent Director of Public Prosecutions.
- The Ombudsman has unfettered access to information and documents required in the exercise of her functions. The Ombudsman may report to the Chief Constable and the Board on any police practice or policy that comes to her attention when exercising those functions.
- The Government has provided that the Ombudsman may deal with allegations of police misconduct. Where the act or omission occurred in the 24 months prior to November 2000, she may also deal with earlier cases than this if a crime is alleged, or if the circumstances are grave or exceptional or there is new evidence, unless the case has been dealt with before.

13. The Ombudsman will have powers not seen in the UK or Ireland or in most other jurisdictions. We have no doubt that the Ombudsman would confirm this, and that she is content with those powers.

14. New District¹ Policing Partnerships (DPPs) are being created:

- The majority of their members will be representatives elected for the district.
- Police Commanders will be required, under law, to consult the DPPs and take account of views expressed before issuing local policing plans.

¹ Based on the 26 district council areas in Northern Ireland

- DPPs will monitor the performance of the police locally and obtain the views of the public on district policing matters.
- They will meet in public, and provide annual reports to their district council and the Policing Board.

15. There are a large number of other aspects of Patten, the Police Bill and the Government's Implementation Plan that should further enhance police accountability. For example, a range of recommendations aimed at closer policing with the community.

16. The Government sees radical new appointment arrangements as crucial to changing the composition of the police service. This will result in a more representative service. The Bill provides for the police to change at an unprecedented rate, with new recruits brought in under unique arrangements:

- The legislation makes provision for positive discrimination.
- Appointment will be on the basis of 50% Catholics and 50% non-Catholics from a merit pool; over a ten-year period, the proportion of Catholics in the Service should be quadrupled. As Patten said, paragraph 14.10, "this is a very substantial increase within a reasonable timeframe (by comparison it took New York Police Department 25 years to move from 12% ethnic minority officers in 1974 to 33% in 1999)".
- An external agency will be contracted to carry out recruitment and there will be independent lay involvement in the process.
- The Government has also accepted Patten's recommendation for a much enlarged Part Time Reserve in the police service with recruitment on a local basis.

17. The Patten Report recommended the appointment of "...an eminent person, from a country other than the United Kingdom or Ireland, ... as an oversight commissioner with responsibility for supervising the implementation of our recommendations." (Paragraph 19.4). He also recommended that the government, police, and the Policing Board should provide the oversight commissioner with objectives and that they should report on progress at periodic review meetings. The commissioner would report publicly 3 or 4 times a year commenting on any failures or delays.

18. Again, and uniquely, the Police Bill addresses this. It provides for a Commissioner to oversee the implementation of the Government's published Implementation Plan. The bodies mentioned by Patten (and others) are to report to him and his reports will be published. A Commissioner, Tom Constantine, the former head of the US Drugs Enforcement Administration and Chief of New York State Police, was appointed in May and his appointment has been well received. He and his team are currently in Northern Ireland.

19. The Government believes that together these arrangements meet Patten's vision for a new beginning to policing and should provide very great assurance not just about the human rights basis for the Police Service of Northern Ireland, but also about its accountability. The arrangements are, as far as we are aware, unmatched in Europe or North America.

20. The Government takes the view that its radical measures will make Northern Ireland a world leader in both the safeguarding of human rights and police accountability.

PREPARED SUBMISSION OF THE IRISH GOVERNMENT

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19 September 2000
The Honorable Christopher H. Smith
2370 Rayburn House Office Building
WASHINGTON DC 20515

Dear Mr Smith,

**HELSINKI COMMISSION HEARINGS ON POLICING REFORM IN
NORTHERN IRELAND**

I would like to thank you for your invitation to outline to the Helsinki Commission the position of the Government of Ireland in relation to policing reform in Northern Ireland. Policing reform is a crucial part of the new dispensation we are striving to create in Northern Ireland through the full implementation of the Good Friday Agreement. All sides of the community want to see an effective, accountable and acceptable policing service—one in which they could have complete confidence and trust, one which young people would feel comfortable about joining, irrespective of their background or beliefs.

The Agreement envisaged a new beginning to policing in Northern Ireland and the Patten Report set out how that could be achieved. It is of critical importance that the legislative proposals currently before the British Parliament, together with the revised Implementation Plan, deliver that outcome.

We recognise that substantial improvements have been made to the Bill since it was introduced in the House of Commons last May. However, important issues remain to be resolved if the Policing Bill, in its final form, is to truly reflect Patten. Our objective is to achieve the full and faithful implementation of the Patten Report.

I enclose, for your information, relevant extracts from the most recent speech by the Minister for Foreign Affairs, Mr Brian Cowen, together with a copy of a speech given by the Minister of State, Mary Hanafin, at the recent British-Irish Association conference in Oxford.

I would also like to take this opportunity to thank you once again for your continued interest in this most important issue for the peace process in Northern Ireland.

Yours sincerely

Sean O'Huiginn
Ambassador

BRITISH-IRISH ASSOCIATION CONFERENCE, OXFORD SPEECH
BY MINISTER OF STATE MARY HANAFIN, TD

SATURDAY 9 SEPTEMBER 2000

Ladies and Gentlemen

It's a pleasure and a privilege for me to participate in this Conference. Its achievement over many years in bringing together such a diverse attendance is remarkable. I'm sure I speak for everyone here in acknowledging the unique blend of efficiency and charm with which the Conference is organised, and in paying tribute to everyone who works so hard each year to make it a success.

Peter Mandelson said last night that the advent of the BIA is always a sure sign that the summer is over and that it's time to get back to work. As a teacher, I'm well used to that back-to-school feeling: the main difference being that people look forward to the BIA.

In politics, it's rare that we get a chance to reflect, or to look at issues in a wider perspective. One of this Conference's great strengths is that it gives us that opportunity. We look ahead to a busy and perhaps in some ways a difficult autumn. But we should also pause for a moment and remind ourselves just how far we've come. A few anniversaries underline the point.

It's just six years since the first IRA ceasefire was declared. It's three years this month since serious negotiations got under way at Castle Buildings. And, one year ago, the two Governments turned to George Mitchell and asked him—maybe more in hope than in confidence—to help to find a way through the impasse over devolution and decommissioning. At times progress has been tortuously slow. They've been numerous setbacks along the way, and future difficulties may lie ahead. But, all in all, there's a lot to be thankful for. If I can quote Al Gore and ask "Are we better off today than we were eight years ago?" The answer has to be a resounding yes.

First and foremost, the number of deaths and serious injuries -while still unacceptable—is a fraction of what it was. The Irish Government takes very seriously the threat posed by dissident republicans, and we are absolutely determined to do everything possible to ensure that they do not destroy the peace. Likewise, the continuing feud within loyalism is deplorable, as is the continuation, on either side, of so-called punishment attacks. We cannot afford complacency. But overall the situation has been radically transformed. And that is continuing to improve the daily lives of the people of Northern Ireland, and to strengthen the economic confidence vital for prosperity.

Secondly, the Good Friday Agreement continues to take root. The Executive and Assembly have made an impressive start and are starting to demonstrate just how important it is to have locally accountable political leaders making the decisions which make a difference on the ground. I applaud the leadership given by David Trimble and Seamus Mallon, and the constructive roles being played by their UUP, SDLP and Sinn Féin colleagues, and by the other pro-Agreement parties.

The North/South institutions are also working very well. In fact, a deeply controversial aspect of the negotiations during the talks has now become almost matter-of-fact. This is partly because the structures which were agreed contain within them safeguards, checks and balances, which

offer assurance to all involved that we must proceed by agreement and for our mutual benefit. We in the Irish Government believe that there is potentially a vast number of joint initiatives capable of meeting that mutual benefit test. But no institution can succeed unless there's a will there to make them work. And on behalf of the Irish Government I would like to pay a particular tribute to the pragmatic and businesslike way in which Northern Ministers from all of the pro-Agreement parties have approached the Council.

The British-Irish Council is also an important part of the institutional jigsaw, and the Irish Government looks forward to hosting the next plenary, which will take place in Dublin next month.

There've been many other important developments over the past year. For example, we've enacted major human rights legislation to provide for a Commission with a remit which exceeds international standards for best practice. The Human Rights Commission is now in the course of appointment.

And the breakthrough on arms which was achieved immediately after Hillsborough was of immense significance, as was the IRA confidence-building measure verified in June by Martti Ahtisaari and Cyril Ramaphosa. We are looking, of course, for further progress, and we want to see the issue resolved and put behind us once and for all. But perhaps there's been a tendency to downplay or overlook the importance of what has already happened, which was quite unprecedented.

The implementation of the Agreement, therefore, is well advanced. But, as we have continually argued, that implementation must be full and complete. We all know that probably the most difficult issue facing us this autumn is the Policing Bill, which has already caused so much controversy. This is not the time or the place to rehearse the detailed arguments. But I would like to put the essence of the Irish Government's position on the record once again.

What we want to see is, very simply, a police service which belongs to and serves everyone in Northern Ireland, one which both communities fully support. We want to see a police service which young nationalists and republicans will enthusiastically apply to join, alongside their unionist neighbours. A police service which can operate effectively everywhere in Northern Ireland, and which can effectively tackle all criminal activity, including paramilitary-related gangsterism and punishment attacks. A police service administered by a Policing Board on which nationalist and unionist public representatives will sit together. We will strongly urge all nationalists and republicans in Northern Ireland to play their full part in such a service. But it is the new police service's full acceptability to all sides in Northern Ireland itself which will be the ultimate test of whether the current legislation has succeeded in its goal.

The Government recognises the very substantial improvements made in the Policing Bill since its introduction in May, and we very much appreciate the efforts made by the British Government in this regard. But there are still important aspects of the Patten Report which many believe are not adequately reflected in the legislation as it stands, and we would be failing in our duty if we did not seek to rectify that. It would be in nobody's interests if so major a piece of legislation, so major a piece of the Agreement, failed to achieve its objective.

Nationalists attribute a particular importance to a new beginning in policing, alongside other issues such as security normalisation and criminal justice reform. Nor can we underestimate or ignore the critical im-

portance for nationalists of issues relating to symbols and emblems, as the reaction to the proposals on flags published by the Secretary of State yesterday shows. In this respect, the fundamental test that has to be passed is that set down in the Agreement—that the power of the sovereign government with jurisdiction in Northern Ireland shall be exercised with rigorous impartiality on behalf of all the people in the diversity of their identities and traditions and shall be founded on the principles of parity of esteem and of just and equal treatment for the identity, ethos and aspirations of both communities.

But unionists too must believe that the Agreement is working for them. I acknowledge that opinion within the unionist community remains sharply divided. There may be a substantial minority which cannot for now be reconciled in the Agreement. But we all have a duty to do what we can to persuade the middle ground that they should keep faith with the project. That task is of course primarily for the leaders of unionism. But the rest of us, too, must demonstrate that the pain of change—and I recognise the reality of that pain—is worth it: that the new beginning can deliver prosperity and stability, a Northern Ireland at peace and at ease with itself.

And we will achieve that goal, not by watering down the Agreement, but by ensuring that it is implemented in full by all sides, and that its ethos of partnership and reconciliation can genuinely heal divisions and prevail over the pursuit of partisan advantage.

The Agreement has already had a profoundly beneficial effect on these islands and the relationships within them. In the detailed work of giving all of its aspects full effect, we must also sustain its generous spirit. That is a demanding challenge. But it is one which all of us, within this hall and outside it, must continue to take up.

Thank you.

STATEMENT BY MR. BRIAN COWEN, T.D.,
MINISTER FOR FOREIGN AFFAIRS, DURING THE GENERAL
DEBATE AT THE FIFTY-FIFTH SESSION OF THE GENERAL
ASSEMBLY OF THE UNITED NATIONS

14 September, 2000

CHECK AGAINST DELIVERY

I am particularly pleased therefore to be able to report that in the past year, in the face of many difficulties, we have made real progress towards the full implementation of the Good Friday Agreement.

The new political institutions are up and working well.

In Northern Ireland there is an Executive on which all parts of the community—nationalist, unionist and republican—are represented as of right, and where Ministers are working constructively together to improve the quality of life for all of the people. The North/South Ministerial Council—which brings together Ministers from both jurisdictions on the island—and the Implementation Bodies which it oversees, are developing new ways of working together, delivering tangible benefits in areas of mutual importance and interest. In the British-Irish Council, we are forging new relationships, including with the devolved administrations in Scotland and Wales.

We are firmly committed to ensuring that all other aspects of the Agreement are implemented in full.

Policing reform is a vital part of the new dispensation we are striving to create in Northern Ireland. All sides of the community want to see an effective, accountable policing service to which they can give allegiance and which young people, whatever their background, can join. The Agreement promised a new beginning in this area and the Patten Report set out how it can be achieved. It is now crucially important that the legislative proposals, currently before Parliament at Westminster, secure that outcome.

The Agreement also contains extensive commitments in the area of human rights and we are working to ensure that they are delivered. My Government has established an independent Human Rights Commission with a mandate and remit that surpass the standards set in the Paris Principles. We are in the process of appointing its members. We look forward to the Commission working closely with its counterpart in the North for the protection and promotion of human rights throughout the island of Ireland.

We also need to see continued progress towards security and justice arrangements appropriate to a society in which peace will become the norm, and to see the question of arms resolved for all time. To this end, we have made great strides forward in recent months.

Our task in the peace process has always been more than the putting in place of a new set of institutions and arrangements, important though they undoubtedly are. We are endeavouring to create a new beginning for what has been a deeply divided society—a new beginning where the divisions of the past are overcome. The task which the Irish Government has set itself is to work with others in peace, partnership and in a spirit of mutual tolerance and respect, building together a better future for all of the people of Ireland. This demands patience, persistence and perseverance. A great deal remains to be done.

STATEMENT FOR THE RECORD SUBMITTED BY SINN FÉIN

I respectfully submit the attached statement of Sinn Féin's analysis of the Police (NI) Bill for the record of the Helsinki Commission hearing on September 22nd.

This statement outlines the effects of the amendments, which have been accepted to the Police (NI) Bill.

Gerry Kelly, MLA

**POLICING: A NEW BEGINNING?
SEPTEMBER 2000. THE CURRENT SITUATION**

*A SUBMISSION BY: GERRY KELLY, MLA; MICHELLE GILDERNEW, MLA;
ALEX MASKEY, MLA, SINN FÉIN MEMBERS OF THE NEW ASSEMBLY IN
THE NORTH OF IRELAND.*

We welcome the ongoing interest and attention by the Congress of the United States of America to the peace process in Ireland and in particular to the vital issue of policing.

As publicly elected officials we especially welcome this opportunity to place on the record our shared assessment of British Government legislation in regards the benchmark for a new beginning to policing which was mandated by the Independent International Commission on Policing, established by the Good Friday Agreement.

We regret that our assessment clearly shows that what is being proposed by the British Government falls far short of what Sir Christopher Patten, the British Government appointed Chairman of the commission requires.

At the launch of the Commission's report Sir Christopher Patten said:

"The recommendations for a package which we firmly believe needs to be implemented comprehensively. We counsel strongly against cherry picking from the report or trying to implement some major elements of it in isolation from others."

The British Government's current legislation does not meet this requirement.

Below we outline the gap between the Patten requirements and current British Government proposals. As members of Sinn Féin's Subcommittee on Policing we have submitted these findings to the Sinn Féin Ard Comhairle (National Executive) with the recommendation that they be adopted as the party's position on the current state of play on the vital issue of policing.

INTRODUCTION

This paper presents Sinn Féin's view of the current state of the policing legislation being processed in the British Houses of Parliament.

Sinn Féin President, Gerry Adams, MP recently said:

"What is required is a new civic policing service which is representative of the community as a whole, democratically accountable, working in partnership with all citizens and upholding international standards of human rights. "The Patten report, if fully implemented, may give us the opportu-

nity to do that. The current Mandelson policing bill does not. This can be redressed. It must be redressed. "Sinn Féin wants a new policing service. The peace process requires one. None of us can afford to settle for anything less." All of the parties to the Good Friday Agreement accepted the need for policing which was 'professional, effective and efficient, fair and impartial, free from partisan political control; accountable, both under the law for its actions and to the community it serves; representative of the society it polices, and (that) operates within a coherent and co-operative criminal justice system, which conforms with human rights norms'. The Sinn Féin contribution to the Patten Commission comprehensively demonstrated the importance we attach to this particular issue. We stated that 'nationalists and republicans will judge the effectiveness of this peace process for removing the causes of conflict, and bringing about real change, by the way it tackles issues like policing'. This remains our position. We believe that opinion is widely shared within nationalist opinion in Ireland as a whole and beyond.

As a party we were deeply concerned, both with many of the 175 recommendations subsequently made by Patten and his colleagues, and with a number of important issues their report did not address. We were dismayed at the retention of plastic bullets as a 'public order' weapon in a context where repressive legislation remained an integral part of the apparatus of state repression. We were thwarted in our real desire for the creation of an unarmed police service, in the immediate term, and we were outraged at the suggestion that serving members of the existing RUC could be retained within a reformed policing structure. These were very bitter pills to swallow. Republicans and nationalists have a very precise knowledge of bad policing. We have been on the receiving end of it for the last 80 years. Sectarianism, pogroms, torture, shoot-to-kill and human rights abuses of all kinds have been integral parts of that package.

It is for these reasons that Sinn Féin's concerns on the policing issue focus on a range of vital and important issues beyond the Patten recommendations which also clearly need resolution. Sinn Féin will continue to relentlessly pursue this. These include:

- the creation of an unarmed policing service;
- the banning of lethal plastic bullets as a weapon of 'public order';
- the use of repressive legislation;
- effective inquiries into the murders of human rights lawyers Pat Finucane and Rosemary Nelson, the Brian Nelson affair involving British Military Intelligence, and multiple allegations of collusion between British forces and loyalist paramilitaries;
- the root and branch reform of the justice system.

One obvious consequence of this negative experience is a republican and nationalist demand for and commitment to an acceptable, representative policing service. In September 1998, Sinn Féin wrote that 'nationalists in the north want a policing service. The nationalist people, like all sections of our people, are law abiding, decent people who want a policing service they can trust and respect'. Sinn Féin, accept that we

have a responsibility to carefully consider the possibilities afforded by the Patten Report—despite the clear difficulties outlined above. When the Report was finally published we urged caution, preferring to wait until we were clearer about British Government intentions in relation to the entire Patten package. And with good reason. It was clear from an early stage, for example, that the RUC were unilaterally allowed to retain absolute control over the implementation of many key aspects of the Patten proposals. Our caution was vindicated. When the proposed Police Bill was published in May 2000, closely followed by the British Government's Implementation Plan in June, it was obvious that Patten's proposals had been so thoroughly eviscerated that it was impossible to recognise the Patten Report, in the British Government proposals.

Peter Mandleson, the British Secretary of State, attempted to sell the Bill and Implementation Plan as a faithful representation of Patten. Sinn Féin's analysis—"Policing; A New Beginning?"—systematically exposed this claim as empty rhetoric. Of the 175 Patten recommendations, 89 were not adopted. Only 11 were to be implemented. It proved impossible to qualitatively comment on the remaining 75 recommendations. The deliberately vague and imprecise nature of the Bill and Plan prevented this. More worryingly, of the 75 recommendations we judged to be of most importance to the future of policing in the North, 65 were not adopted and it proved impossible to be definitive on the remaining 15. Not one of these core areas—relating to accountability (33 recommendations); demilitarisation (11); decentralisation (5); depoliticisation (6); human rights (5); recruitment (7); community policing (4) and change (4)—was implemented.

Patten had recommended the appointment of an independent Oversight Commissioner as a means to ensure implementation and build nationalist confidence. The person eventually chosen—by the British themselves—has not been allowed to perform this key role. In a manner typical of the British approach to date, the Commissioner was appointed after the publication of the Implementation Plan, and after control over the direction and pace of change had already been ceded to the Northern Ireland Office (NIO) euphemistically named "Patten Action Team" and the "Royal Ulster Constabulary's" (RUC) 'Change Management Team'. As a result the Oversight Commissioner is, in effect, performing the task of implementing the British Government proposals as opposed to the Patten Recommendations as he can only operate to terms of reference dictated to him by the British Secretary of State, Peter Mandleson. The potential strength of the role of the Oversight Commissioner has been successfully sidelined as a consequence.

Criticisms of the British approach have come from a wide spectrum of sources including Sinn Féin, the SDLP, the Committee on the Administration of Justice (CAJ), the Catholic Church, the Irish Government, Irish America, Washington, the Police Authority, the Ombudsman, British Labour Party MPs and from members of the Patten Commission itself. In response to this the British Government attempted to shift the focus of the debate on policing to a debate about the merits of Patten—as opposed to their Bill—as it proceeded through the British parliament. To some extent this diversion succeeded in creating a false impression that the debate was now about the extent to which Patten could be implemented.

For Sinn Féin, the Patten recommendations represent the 'floor' of a new beginning to policing, not the 'ceiling'. Implemented in full they represent a start and a start only. Full implementation might offer an

opportunity to influence policing in a way that has never been possible in the past—but only in a context where Patten is fully and faithfully adhered to in all of its diverse elements. But since last Spring the British government has been disingenuously attempting to locate compromise as being somewhere between their proposals and the Patten recommendations when many nationalists have made clear that, for them, Patten is the compromise. In recent times the spin has become ridiculous. We have recently heard absurd talk from the British Secretary of State of absolutist nationalist demands in this regard. Absurd allegations that nationalist demands for the full implementation of Patten are a threat to the peace process. Absurd because what suggests is that Sir Christopher Patten, the high Tory, the former British Governor of Hong Kong, is the creator, champion and advocate of absolutist nationalist demands. For it is Christopher Patten who initially demanded that the Patten recommendations be implemented in full—with no “cherry-picking”—in order to provide the required new beginning to policing.

We need to be very clear on this matter.

Any threat to the peace process comes from the status quo and those who resist the change that has been agreed. The status quo is not an option.

At this point in the process the initial bill has gone through many changes. This has reflected the vigorous nature of the approach to the issue by the widespread opposition. Sinn Féin has played a full part in that opposition both publicly and privately. With both governments and through our information and lobbying exercises at Westminster and in Washington. There have been a number of improvements in the Bill. But there remain deep-seated problems. These are dealt with in detail in the body of this paper.

In preparing the paper, we have consulted widely; we have examined other analyses and proposals both from critics of the Bill as well as the arguments of the British government. We have also reviewed the amendments we proposed and considered whether further amendments are necessary. We are, finally, also mindful and critical that many of the issues of most concern to us can only to be addressed at a future date. That is, on the publication of codes of practice and regulations in relation to the Police Board, the District Policing Partnerships, a new Code of Ethics, Symbols, Emblems and Flags and policing objectives. We are obliged to await their publication before a final assessment of the effect of legislation can be provided. In the interim we are also obliged to be both cautious and vigilant about the final direction of the legislation. Much more needs to be done if we are to obtain the goal our society is entitled to as required by the Good Friday Agreement.

The British government has turned the policing issue into a political battleground. It didn't need to be like that. It doesn't need to be like that. It is still possible to secure a policing service that attracts and embraces republicans, nationalists and unionists. This is our goal. It should also be the goal of the British Government. It is their stated public objective. But to this point they have, instead, bowed to the combined demands of the UUP and the securocrats of the NIO who together seek to thwart the change required by the Good Friday Agreement, British Government commitments to ‘fully and faithfully implement Patten’ are not being met. Recent claims by the British Secretary of State, Peter Mandelson, that the Policing Bill has ‘struck a balance’ that reflects the wishes of the Patten Commission are clearly empty rhetoric. If the Brit-

ish Government is to achieve its stated objective Mr. Blair will have to face up to the securocrats and turn around his own system. There is no other way.

We will test the good faith of the British Government by their response to the amendments we have formulated, in the context of the Patten recommendations. This document is being published in conjunction with “Policing: A New Beginning. Amendments to bring the Police Bill into line with the Patten Report” which deals with detailed and specific amendments to the disparate clauses of the current Bill and the associated limited number of Schedules that have been published. If adopted by the British Government these would, in our view, bring the Bill into line with Patten.

However, the comprehensive British Government response to the Patten recommendations will only be visible when all Code and Regulations associated with the Bill and a new British Government Implementation Plan, which is due this month, have been published.

PART I—NAME OF THE POLICE SERVICE

***CLAUSE 1—NAME OF THE POLICE**

The name should be strictly in line with that recommended by Patten. The bad faith political manoeuvrings on this issue between 5th May and 12th July 2000, by Peter Mandelson and the British Government, fly in the face of the agreement and, as with so much else in the British Government’s approach to the policing issue, do not reflect Patten or the new beginning required.

*(Please note that references to Part and Clause numbers etc. relate to the Bill as introduced to the House of Lords on 13th July 2000)

PART II—THE POLICING BOARD

CLAUSE 3—THE FUNCTIONS OF THE BOARD

The powers of the Board in regards its functions need strengthened. There needs to be provision which enables the Board to take action suggested by its monitoring operation. There is little point in monitoring and being informed unless action can be taken on the basis of results of the monitoring.

Sinn Féin concurs with the Patten recommendation that the ‘performance of the police as a whole in respect of human rights, as in other respects, should be monitored closely by the Policing Board’ (para 4.12). Accordingly there should be reference in the legislation to international human rights norms and standards as well as the Human Rights Act.

The Board is required to assess the effectiveness of the code of ethics. Sinn Féin believes that the Board should be required to assess police compliance with the code of ethics. There needs to be legal provision for this.

Some functions of the Board recommended by Patten do not appear on the face of the Bill. Sinn Féin supports the view that these should be added in regards:

- arrangements for inspecting all custody and interrogation suites
- make arrangements to actively monitor police performance in public order situations, and monitoring the training, education and development strategy of the police service.

CLAUSE 4—POLICE SUPPORT STAFF

Sinn Féin has proposed that provision be made to allow employees of the Board coming under the direction and control of the Chief Constable to appeal to the Board in the event of a dispute with the Chief Constable. We continue our support for this addition. The purpose of this is to ensure that any prejudice of current senior officers will not prevent potential recruits from nationalist and republican areas from receiving a fair hearing. Proposals for lateral entry to senior positions which will ensure that there is a new approach as senior levels are yet to be made public. This could prove to be a safeguard of vital importance as well as a matter to help generate nationalist confidence. That said, we are mindful that other commitments by British Government spokespersons have failed to materialise.

CLAUSE 5—PROVISION AND MAINTENANCE OF BUILDINGS AND EQUIPMENT

Sinn Féin has previously proposed that the Board and not the Chief Constable be in the ascendancy in regards matters of buildings and equipment. This is for obvious reasons of democratic accountability. Specifically we have proposed that the powers in regards these matters are exercised on behalf and in the name of the Board, as opposed to the Chief Constable.

The current state of the Bill is flawed and requires amendment to make this happen. There is a clear need for this democratic safeguard. It is also a matter of public confidence and especially among nationalists.

CLAUSE 12—ACCOUNTS AND AUDIT

The powers of the British Secretary of State remain too wide in the Bill. Sinn Féin proposed that these be curbed so that relevant matters in regards the statement of accounts have to be determined in consultation with the Board.

Others have been very critical of the Bill in this area because the responsibility for keeping financial records and maintaining accounts lies with the RUC Chief Constable, and not with the Police Board. In public confidence terms it is damaging to the credibility of the new Police Board in that it removes 'a crucial investigatory and oversight function' from the Board. The Board should retain overall responsibility for police expenditure. The day to day record keeping and production of accounts should be delegated to the Chief Constable. This is an appropriate division/allocation of power and responsibility in line with Patten's concepts of democratic accountability.

PART III—DISTRICT POLICING PARTNERSHIPS**CLAUSE 14—ESTABLISHMENT OF DISTRICT POLICING PARTNERSHIPS (D.P.P.S)**

Sinn Féin has proposed that there be a statutory timeframe of 6 months for the formation of the DPPs. This underpins the provisions in the Bill in regards a default of a district council on this matter. Furthermore, the only way in which the implementation of Patten's recommendations on district and community policing arrangements can be fulfilled, is if the Police Bill is amended to make the establishment of four sub-groups cor-

respond to four police districts in Belfast. Clearly, the logic of Patten requires that these have the status and functions of DPP. The Bill needs amendment to give effect to this element of the Patten report.

CLAUSE 15—DEFAULT OF COUNCIL

The Bill makes provision for establishing a DPP in the event that a local government council is in default in regards its obligations in this matter.

It gives the British Secretary of State a discretionary power to declare a Council in default and to make an order to empower the Board, to “such extent as appears to him expedient or necessary”. This requires significant change to rebalance the power and independence of the Board. The amendment we propose helps to correct the imbalance in powers between the Board and the British Secretary of State in the Police Bill. In addition, the present formulation imposes the costs of securing the establishment of the DPP upon the Board, with only one quarter of the costs incurred recoverable by the Board from the Council. Conceivably, the costs could be so prohibitive as to interfere with the ability of the Board to exercise its duties. The costs incurred under an order by the British Secretary of State empowering the Police Board to secure the establishment of a DPP from a Council which is in default should, therefore, be met by the British Government.

CLAUSE 16—GENERAL FUNCTIONS OF DISTRICT POLICING PARTNERSHIPS

The capacity to facilitate enhanced community based policing by allowing an additional 3p in the pound levy on local rates was specifically raised in the Patten report. Sinn Fein has proposed that provision be made in the to enable this. In addition, the “bridge” role that the District Policing Partnership is intended to play between the police and the local community is clearly important. Accordingly, this clause need amended to incorporate the elements of Paten currently omitted from the Bill. The powers of the DPP should be enhanced to allow them to obtain such information as may be relevant to their functions in relation to monitoring the police at local district level.

This is not provided for in the Bill. Examples of such information may include, trends and patterns of crime, road blocks, stop and search and arrest statistics. That is, monitoring information which clearly enhances the capacity of the DPPs to influence community policing at district level.

CLAUSE 18—REPORTS BY DISTRICT POLICING PARTNERSHIP TO BOARD

The emphasis in this clause of the Police Bill is very heavily upon the DPP submitting reports on request to the Board. However, it ought to be within the remit of the DPP to initiate reports to the Board about any local policing matter which the DPP feels may require greater attention by the Board. Communications between the District Policing Partnerships and the Policing Board should be a ‘two way street’ to accord with Patten. The power for taking such initiatives should not lie only in the hands of the Board. Provision for this two way street needs to be made to allow for such initiatives by the DPP as opposed to response upon request only.

CLAUSE 19—CODE OF PRACTICE FOR DISTRICT POLICING PARTNERSHIPS

Sinn Féin proposes several amendments to maximise the transparency and accountability of policing to the local community. Other amendments should be made to rebalance the influence of the British Secretary of State upon the Code of Practice to be issued by the Board for DPPs, and to make consultation on the Code of Practice more inclusive. There should be a duty to hold all meetings of the district policing partnership in public.

Members of the public as well as members of the DPP should be enabled to question the police service on the discharge of their functions and operations in the district.

The Code of Practice should be the product of a meaningful and inclusive consultation led by the Board.

It is vital that the District Policing Partnerships live up to their title and that they engage in genuine partnership with police and community. It is important to encapsulate the concepts outlined in Patten (eg. Para. 6.29) in the Code of Practice. This requires that provision be made for the making of arrangements for consulting with non-governmental organisations and community groups concerned with safety issues, as well as statutory groups that have an interest in policing.

CLAUSE 20—POLICE DISTRICTS

The Police Bill implies that a police district may be more than a district council. If this is the intention of the British government, then it represents a threat to the practice and policy of local accountability and community policing discussed and recommended by Patten. The definition of a 'police district' in the Bill has other statutory consequences and more importantly impinges on the Patten recommendations. This must, therefore, be amended to facilitate, rather than undermine, the new approach to district and community policing arrangements recommended by Patten.

Moreover, the Police Bill does not stipulate, as recommended by Patten, the creation of four sub-groups for Belfast. Rather it makes four the maximum number of sub-groups and provides that 'there shall be such number of police districts (not exceeding four) as may be determined by the Chief Constable; and each police district shall consist of such areas as may be so determined'

This is not Patten. Firstly, the Chief Constable has the power to determine the number of police districts, and hence the number of sub-groups and the areas to which each district relates. Presently, there are four police divisional commands in Belfast. Practical problems have been visible along interfaces such as the Springfield Road, where the RUC on one side of the interface have claimed that they are unable to apprehend loyalists attacking Catholic homes because the attackers had strayed into a separate RUC sub-divisional command. The manner in which the British government has drafted these provisions in the Police Bill represents a subversion of Patten's concept and policy of district and community policing arrangements and emasculates the influence of the DPP model upon policing in Belfast.

An additional deficiency is evident in that the Chief Constable is given sole authority for designating the district commander. This undermines the DPP, and fuels the danger that the district commander, who will

play a key role in the new structures, will not have the attributes to work in partnership with the DPP. The present deficiencies need to be remedied to bring the Bill into line with Patten.

CLAUSE 21—DISTRICT POLICING PARTNERSHIP SUB-GROUPS FOR BELFAST

A new Clause in the Police Bill provides for the creation of sub-groups in Belfast, corresponding in number and area to the police districts determined by the RUC Chief Constable. Some of the deficiencies have already been addressed. However, an outstanding problem is the fact that the sub-groups have been afforded barely any of the functions outlined for every DPP.

The Patten report recommended “four sub-groups” for Belfast but did not envisage these sub-groups being the substandard bodies provided for within the Police Bill. This subversion of Patten was well rehearsed in the Committee Stage debate where once again, those who have long been opponents of decentralisation and community-based policing, let it be known that they would not allow such concepts to take root in any new policing structures for Belfast. In contrast, there was no suggestion in the debate at Committee Stage that the police districts in Belfast be substandard or that the district commanders in each of those police districts be relieved of some of the responsibility given to district commanders in districts outside Belfast. There is no logic to the proposal that local communities living in different police districts in Belfast have less of a role in, or less of a right to, structures of local accountability in police districts outside Belfast. Moreover, such an approach is anathema to Patten.

The only remedy to this violation of Patten’s philosophy and policy of local accountability and community policing is to make provision in the Police Bill for four sub-groups in Belfast and that each of these sub-groups has the same functions as every other DPP. It must be noted that Patten specified the need for each police district to be co-terminous with a D.P.P. Since there should be provision for four sub-groups in Belfast, there should also be provision for each of the police districts in Belfast to be co-terminous with its corresponding sub-group of the Belfast D.P.P.

CLAUSE 22—THE LOCAL POLICING PLAN

Sinn Féin proposed an amendment making provision to require the district commander to “have due regard for” the comments of the D.P.P. on the local policing plan, before it would be issued or revised. The current Bill is insufficient to require that the consultation by the District Commander be effective and binding, as proposed by Sinn Féin. As the Bill stands, the local policing plan remains the prerogative of the District Commander. Sinn Féin proposes this be amended to make the issue or revision of the local policing plan the outcome of a proper consultation.

CLAUSE 23—OTHER COMMUNITY POLICING ARRANGEMENTS

It is ironic that a DPP is being required to secure the approval of the Board to make arrangements to facilitate consultation with any local community when that is one of the primary functions of the DPP, under the provisions of the Police Bill. Also, Patten envisaged that the DPPs should provide a “focus of public consultation at district level for the annual NI Policing Plan”, and should “be encouraged to see policing in its widest sense, involving and consulting non-governmental organisations and community groups”. In line with the requirements of Patten, provision is required to ensure that a District Policing Partner-

ship shall, in accordance with the Code of Practice issued by the Board, make arrangements for facilitating consultation on local policing arrangements.

PART IV—POLICING OBJECTIVES, PLANS AND CODES OF PRACTICE

CLAUSE 24—THE BRITISH SECRETARY OF STATE’S LONG TERM POLICING OBJECTIVES

The Patten Report recommended that the British Secretary of State should be concerned with determining long-term objectives for policing. The Bill goes further in handing the British Secretary of State the supreme authority to determine and revise objectives for policing. In this he/she would be obliged only to consult with the Board, the Ombudsman and the Chief Constable. This clearly undermines the role of the Board, the chief mechanism for democratic accountability. This is incompatible with the independent and robust Policing Board required by Patten. And while subsequent provision is made for the Board to set its own objectives, the Bill makes clear, these must be “so framed as to be consistent with the objectives” set by the British Secretary of State. In line with Patten the Bill needs amended to ensure that the British Secretary of State may not determine or revise any objectives under this section without the agreement of the Board, and after consultation with the public, the Chief Constable, the Ombudsman, the Human Rights Commission and the Equality Commission.

CLAUSE 25—THE BOARD’S POLICING OBJECTIVES

Changes to the Bill are required to give the Board the power to assess the performance of the police service against defined targets. These provisions would be sensible and would and should accord with Patten’s vision of a strong and effective Policing Board.

CLAUSE 26—THE BOARD’S POLICING PLAN

The Police Bill provides for the contents of the Board’s policing plans to include “such statements and give particulars of such matters as may be prescribed” by the British Secretary of State. This provision affords the British Secretary of State an overbearing influence upon the policing plan of the Board, challenging the independence of the Board required by Patten. Moreover, the provisions go further, requiring that the Board consult the British Secretary of State before issuing a policing plan. The Patten Commission (para.6.4) proposed a simplification of the planning process with the British Secretary of State assuming responsibility for setting long term objectives; the Policing Board devising medium term objectives; and the police service employing the ‘short-term tactical plans for delivering those objectives’.

CLAUSE 27—CODES OF PRACTICE ON EXERCISE OF FUNCTIONS

Sinn Fein has publicly expressed serious concern at the failure by the British government to release all codes and regulations pertaining to the Police Bill and the Implementation Plan so as to permit a full and open assessment to be made of the British government response to the Patten report. Clause 27 of the Police Bill deepens those concerns. The provisions in this Clause give an unfettered code-making power to the British Secretary of State which has the potential to impinge on the “discharge by the Board of any of its functions”. The excessive scope of this provision and the potential harm which may be done to the independence of the Board if the

British Secretary of State chooses to avail of this provision flies totally in the face of both the letter and spirit of Patten and the Good Friday Agreement.

This provision would seem to allow the British Secretary of State to issue a Code of Practice to govern any conduct by either the Board, or the Chief Constable acting on behalf of the Board. This would be a very broad power. This clause seriously undermines the concept of an independent Board.

Sinn Féin proposes that the Board issue the codes of practice relevant to its own functions, and, crucially, to the functions of the Chief Constable exercised on behalf of the Board, so long as the Oversight Commission agrees. This requirement for agreement may lapse after the stipulated 10 year oversight role of the Commissioner is no longer relevant. But, consultation with the Ombudsman, the Human Rights Commission and the Equality Commission will remain a key function of their offices in relation to codes of practice for the Board.

PART V—ECONOMY, EFFICIENCY AND EFFECTIVENESS

CLAUSE 28—ARRANGEMENTS RELATING TO ECONOMY, EFFICIENCY AND EFFECTIVENESS

In all of these matters the British Secretary of State again seeks to give himself the role of policing the Policing Board by requiring the Board to “make such arrangements as the Secretary of State may by order specify to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness”. Apart from the potential for this power to be wielded in a vexatious and repetitious manner to curtail any functions of the Board not deemed by a British Secretary of State to be in the interests of ‘economy, efficiency and effectiveness’, this provision further skews the imbalance between the Board and the British Secretary of State. Progress on the implementation of the Patten report, including the functioning of the Policing Board should be a matter for the Oversight Commissioner. It should also be a matter for the Oversight Commissioner to ensure that the benchmarks of economy, efficiency and effectiveness are consonant with the meaning and intent of Patten. And that these matters are not reduced to notions of financial auditing or any attempt by the British Secretary of State to exert disproportionate influence upon the policing plan which is to be done by the Policing Board each year.

The British Secretary of State may believe that the Police Board, and the Chief Constable, should report subserviently to him/her. However, Patten made no such recommendation. Patten referred to the need for a whole variety of mechanisms if the police were to be held to account for being “effective, efficient, fair and impartial” (para 5.4).

That is why current provision on these matters should be amended, to ensure that the making of any order by the British Secretary of State on grounds of economy, efficiency and effectiveness, firstly has been requested by the Oversight Commissioner, as the person responsible for monitoring the progress of implementation; and secondly, permits the Board to hold the Chief Constable to public account, as required by Patten, for matters of economy efficiency and effectiveness in respect of training, education and development, human rights, and a focus on community policing.

Current provision should also be amended to ensure that the Chief Constable is accountable to the Board, and not to the Secretary of State in relation to ‘best value’. The Board is already charged with the duty to ensure that the police service is effective and efficient. It would be consis-

tent to extend the Board's requirement for economy, efficiency and effectiveness to Clause 28. If the Board has no sub-accounting responsibility (Clause 12) and has no role to play in Best Value it is difficult to see how it can fulfil its responsibility for maintaining an effective and efficient police service.

The major concern here is that "economy, efficiency and effectiveness" are being interpreted solely in financial and planning terms. Insofar as finance and planning are concerned the recommendations of the Patten Commission are quite clear and at odds with the Bill. Patten said "The memorandum setting out the financial relationship with the Policing Board should be so formulated as to ensure that there is no blurring of these responsibilities, and that the government does not, as in the past, become involved in what is properly the business of the Board; to determine the allocation of the budget to the Chief Constable and to hold him/her responsible for the efficient and effective use of resources." (para. 6.17)

PART VI—THE POLICE: GENERAL FUNCTIONS

CLAUSE 32—GENERAL FUNCTIONS

Sinn Féin has proposed that something as crucial to the future operation of policing as the code of ethics should appear on the face of the legislation. This remains our view. The wording is already available from the Patten report. There is no good reason for further delay in this matter; no good reason for the delay to this point.

There needs, too, to be provision to ensure that members of the police service respect and protect human dignity and maintain and uphold the human rights of all persons.

We believe that the legislation should be strengthened from the current requirement to "have regard to" the Code of Ethics to one of having to "comply with" the code of ethics. In addition, a breach of the code should be explicitly referred to as a disciplinary offence.

Sinn Féin has already proposed that the text in Clause 32(5) be amended to include the Patten report's emphasis on and formulation of the centrality of community orientation for the new policing dispensation. Accordingly the Patten recommendations on this should prevail. That is, "Policing with the community shall be the core function of every member of the police service."

The amended Bill has moved closer towards this position, but on a highly conditional basis. The inclusion of the term 'as far as practicable' has the potential to render any change meaningless.

CLAUSE 33—GENERAL FUNCTIONS OF THE CHIEF CONSTABLE

Patten envisaged the involvement of the Oversight Commissioner as a means to ensure a smooth transition from a paramilitary, unrepresentative police force to a representative, democratically accountable policing service which enjoys the support of the community as a whole. This is what the Good Friday Agreement required. We welcome the fact that the Oversight Commissioner has now been put on a statutory footing. This is overdue. But much planning has already taken place, driven by senior RUC officers and NIO securocrats. It is vital that the independent guarantee envisaged by the Patten Commission—in the Oversight mechanism—be given force.

Sinn Féin has proposed an amendment to strengthen the requirement that the Chief Constable to comply with the policing plan generated primarily by the Board. We believe that the requirement on the Chief Constable to 'have regard

to the Policing Plan should be strengthened. The amendment would require that, in discharging his functions, the Chief Constable would have to adhere to the policing plan except with the prior approval of the Policing Board.

The Chief Constable should be bound by the Code of Ethics. It would be preposterous if he is not obliged to take up this basic obligation. The revised definition of “operational responsibility” proposed by the Patten Commission is not to be found anywhere in the Bill. Accordingly, mitigating the Chief Constable’s discretion at every possible point is of fundamental importance. Otherwise we will revisit the mistakes of the past. It is for this reason that the Board’s powers in relation to reports and inquiries need to be as robust as possible.

CLAUSE 35—APPOINTMENT AND REMOVAL OF SENIOR OFFICERS

Sinn Féin believes that the RUC Chief Constable is unsuited to the role of heading up a new policing service on the lines proposed by the Patten Commission. In any event, it should be the new Board which selects the Chief Constable of the new service. The Board should have the power to, at its first meeting, and subject to the approval of the Secretary of State appoint a Chief Constable.

This is designed to ensure a new beginning and break with the failed policies and practices of the past. The appointment of a new Chief Constable is required to obtain a measure of confidence in the new policing service.

CLAUSE 37—APPOINTMENT TO THE POLICE RESERVE

Sinn Féin addressed the issue of the disbanding of the RUC full-time reserve in its comments on the Implementation Plan. We noted that Patten called for the scrapping of the Full-Time Reserve without qualification. Current provision allows for indefinite stalling and prevarication on the issue and places the decision making on this issue entirely in the hands of the RUC Chief Constable. This needs amended to place a time limit on the life-span of the existing Full-Time Reserve and provision for a part-time reserve only.

CLAUSE 38—ATTESTATION OF CONSTABLES

Patten recommended that every officer should take the new oath and not simply new officers as prescribed by Peter Mandelson in the Bill. This is a critical element of the new beginning. Current provision in the Bill results from pressure from British securocrats and their resistance to change. The new oath and the requirement that it be taken by all officers is the mechanism whereby the compromise between disbandment and undifferentiated continuation of the RUC was struck by the Patten Commission. It is vital that a new start be made for every former RUC officer up to Chief Constable level. The Bill needs to make provision requiring every member of the Police Service, within a period of six months of the enactment of the legislation to take the oath prescribed by Patten.

While the requirement for every officer to take the new oath is imperative to honour the compromise between disbandment and undifferentiated continuation of the RUC, Patten offered at least two other compelling reasons for this requirement.

“First, the importance of human rights as the very purpose of policing should be instilled in every officer from the start.” (para. 4.7)

This reasoning is all the more compelling because there has been no process whereby human rights abusers could be screened out of a new police service.

Furthermore, Patten did not ban members of the new police service from holding membership of secret societies or organisations like the Masonic Order or sectarian organisations like the Orange Order. However, Patten stated that the allowance made for members of a new police service to hold membership of such organisations was contingent on all officers swearing the new oath.

“Provided it is clear that an officers primary and overriding loyalty must be to the police service and to the values of that police service, we do not believe that membership of any legal organisation should render someone ineligible to join the police. All officers should in our view swear to ‘accord equal respect to all individuals and to their traditions and beliefs’. This undertaking should have precedence over any oaths or qualifications associated with other organisations to which an officer may belong.” (para. 15.15)

CLAUSE 39–42—APPOINTMENT OF POLICE TRAINEES, POLICE RESERVE TRAINEES, STATUS OF TRAINEES AND POLICE CADETS

These relevant sections of the Bill all contain references to regulations and terms and conditions. They have still not been published. Transparency and assessment require that they are published now.

A limited number of regulations have been published. These, and commentary on them, are contained at the back of this submission. It will be shown that regulations have a significant capacity to impact in substantive ways on such vital matters as the powers of the Board and reports and inquiries. It is important therefore that the British Government publish all relevant codes and regulations without further delay. It is obvious by now that no good purpose is served by the delay to date and that there is no good reason for this tardiness.

CLAUSE 43—CONTRACTING OUT CERTAIN RECRUITMENT FUNCTIONS OF THE CHIEF CONSTABLE

The issue of regulations, as yet unpublished, is again pertinent. In addition, Patten asserted that the recruitment of new police officers should be carried out independently. Current provision allows for this but does not require it. Accordingly, the Bill should be amended to ensure that the Chief Constable shall, in accordance with regulations made by the Secretary of State, appoint an independent body to exercise prescribed functions in connection with the recruitment of persons other than senior officers and members of the police support staff

CLAUSE 44—RECRUITMENT ARRANGEMENTS

The Bill requires the British Secretary of State to make regulations covering recruitment arrangements. This should not simply be a matter for the British minister. Rather, regulations should be completed in association with the Board. Provision should be made requiring the British Secretary of State to consult the Board on these matters.

CLAUSE 45—DISCRIMINATION IN APPOINTMENTS

Current provision takes no account of Patten’s requirements on balanced political and religious representation. It deals only with Catholics, not nationalists and republicans. The RUC currently has a small percentage of Catholics in its ranks, all unionists. The new policing service will not work unless there is sufficient account taken of political opinion in the representation of the service.

In addition the 50:50 provision, in that it concentrates solely on Catho-

lics and non-Catholics, will disadvantage other under-represented groups such as ethnic and religious minorities. It is important that monitoring of other under-represented groups take place.

CLAUSE 46—EXPIRY, RENEWAL AND REPEAL OF TEMPORARY PROVISIONS

The period for the retention of special recruitment arrangements was to have been altered to 10 years. It remains at 3 years.

3 years is not a sufficiently long time, in our view, to begin to make a serious dent in the skewed make-up of the policing service. The timeframe should be ten years.

It is important that legislation ensures that temporary provisions designed to ensure a more balanced police service are given ample opportunity to actually make some inroads into under-representation of nationalists and Catholics.

CLAUSE 49—REGISTRATION OF ASSOCIATIONS

The Chief Constable should have no role in the collation and maintenance of registrable information. This should fall under the remit of the office of the Ombudsman and should include information pertaining to all senior officers. Current provision allows the Chief Constable to avoid this obligation.

The prescription that the information be destroyed after one year needs amending. One year is too short a period. This information should be kept in line with other personnel-related information. The possibility that such information might be relevant to a court action makes it appropriate that information about registrable associations should be treated the same as other personnel-related information. The information, therefore, should be kept for a period of not less than 3 years.

CLAUSE 50—CODE OF ETHICS

The British government and the NIO have sought to divert attention from their refusal to implement the Patten recommendations on a new oath for all officers by attempting to fix political and popular attention on a new Code of Ethics. This is an important but separate matter. We have already dealt with the oath. The inadequate alternative they proffer is an amendment to the initial Bill which makes provision for “reading and understanding” the code by every police officer. Sinn Féin points out, again, that Patten recommended that every member of the police service swear a new oath. This needs to be adopted as a vital element of a new beginning to policing. That major issue to the side for the moment it is of course appropriate that we deal with the Code of Ethics as a separate and important issue. The new provisions in this clause on the Code of Ethics are welcome. But it depends on what the Code looks like. Reference to international human rights standards should be explicitly mentioned in the Code.

Furthermore it is important that officers not only read and understand the Code of Ethics but that they are legally obliged to abide by the code. Consultation with the Police Association should not be placed on a statutory footing.

CLAUSE 51—GUIDANCE AS TO THE USE OF PUBLIC ORDER EQUIPMENT

Sinn Féin has consistently called for the banning of plastic bullets. We maintain that position. In the absence of the banning of plastic bullets this should be a matter for the Board. Accordingly, Sinn Féin has proposed that

provision should be made empowering the Board to issue guidance on the use by members of the police force of equipment for use in public order.

Consultation on this matter should include the Police Ombudsman, District Policing Partnerships, the Human Rights Commission, the Equality Commission, the Police Association, and any other person or body appearing to the Board to have an interest in the matter”.

This must not be allowed to drag on forever. It is too important an issue to be left vague. It is self-evidently a matter of lethal force, of life and death, of human rights. A timeframe of three months should be attached to the statutory requirement of the Board to issue guidance.

CLAUSE 52—FLAGS AND EMBLEMS

Patten was clear that there should be no scope for the British Union flag or for the old RUC emblems to be associated with the new police service on its buildings. This needs to be adhered to. Current provision in the Bill does not conform with this.

We cannot emphasise strongly enough how important this issue is for the new beginning required to policing. The fact that there has been so much dissimulation by the British Secretary of State over the issue of the new name has created a huge lack of trust in relation to other issues of symbol and substance. This is reinforced by the British Secretary of State’s handling of the issue of the flying of flags at government buildings. All government buildings, and this includes the offices of the new policing service, must be user friendly. The Union flag and the symbols and emblems of the RUC are not user friendly to nationalists or most Catholics.

The requirement to consult with the police association should not be placed on a statutory footing.

CLAUSE 53—IDENTIFICATION OF POLICE OFFICERS

In line with Patten legal provision needs to oblige the Chief Constable to ensure that the number assigned to a police officer is so displayed on his uniform as to be clearly visible at all times when he is on duty and in uniform.

Current provision attaches a conditional ‘as far as practicable’ to this requirement. This is a dilution of the Patten recommendations on this matter. It should be removed as it mitigates against the principles of community orientation, transparency and accountability as envisaged by Patten.

PART VII—REPORTS AND INQUIRIES

CLAUSE 55—ANNUAL AND OTHER REPORTS

The human rights aspects of the current Bill should be tightened by including references to international standards other than those proposed by the Human Rights Act 1998 so as to include compliance with international human rights norms and standards.

Currently the Board are required to report on “the co-operation of the public with the police in preventing crime”. This once again appears to put the onus on the public to co-operate rather than on the police to win the co-operation. That is, to turn the Patten concepts and recommendations in this regard on the head. This should be amended to emphasise and report on the effectiveness of the police in working co-operatively with the public.

CLAUSE 57—GENERAL DUTY OF THE CHIEF CONSTABLE TO REPORT TO BOARD.

The Patten Report is quite clear in relation to reports. “The Board should have the power to require the Chief Constable to report on any issue pertain-

ing to the performance of his functions or those of the police service. The obligation to report should extend to explaining operational decisions. The grounds on which the Chief Constable might question this requirement should be strictly limited to issues such as those involving national security, sensitive personnel matters, and cases before the court.” (para. 6.22)

Current provision seeks to make an exception of ‘sensitive personal’ as opposed to ‘sensitive personnel’ issues. This should be rectified in line with the Patten recommendations.

CLAUSE 58—BOARD INQUIRIES

This clause was amended at committee stage to include the provision that the British Secretary of State had a period of one month in which to make his/her decision and to remove some of the grounds on which the RUC Chief Constable could refer an inquiry to the Secretary of State—on the grounds that a matter was already under investigation by a statutory body, and that the inquiry would prejudice the administration of justice.

Sinn Féin also proposed the deletion of the exception which prevents inquiries into incidents which have occurred in the past. Our position on this has not changed. Here, again, per Patten provision needs to refer to personnel as opposed to personal issues.

A final area of concern relates to the costs of inquiries. These are likely to be substantial and unpredictable. The requirement that the Board should have to pay all the costs could be fatally restrictive and should be removed if the Board is to have any meaningful role in this area at all. The British government should accept responsibility for the costs of inquiries.

Generally, the powers of the Board in this matter should be preserved as recommended by Patten. In that context Sinn Féin has proposed a number of other amendments relating to the British Secretary of State and the Chief Constable.

PART VIII—THE POLICE OMBUDSMAN

CLAUSE 60—REPORTS BY THE OMBUDSMAN

The subversion of Patten’s recommendations in respect of the power to initiate inquiries by the Ombudsman remains in the Police Bill. Patten recommended that the “The Ombudsman should take initiatives and not merely react to specific complaints received” (recommendation no.28). Presently, the Police Bill requires a specific complaint to be received before the Ombudsman can take any initiatives.

The declared opposition of the British Secretary of State to Patten’s requirements on the Ombudsman was categorical when he declared at Committee Stage: “I believe I am right to resist the suggestion that the Ombudsman should also have powers to review the policies and practices of the police service.” Accordingly, in confluence with his securocrats agenda of resistance to change, and especially in regards powers of inquiry. He has undermined Patten on this important matter.

This is wholly contrary to the Patten recommendations. Patten foresaw the role of the Ombudsman as being an essential one for modifying police behaviour. It is essential that this section of the Bill ensures that. Unless the functions of the Ombudsman specifically make provision for investigations and initiatives to be undertaken, then subsequent provisions such as Clause 63 of the Police Bill, will have more harmful implications for the Ombudsman. The amendments proposed by Sinn Fein accord with the rationale outlined for giving the Ombudsman the power to investigate, as envisaged by Patten.

CLAUSE 61—SUPPLY OF INFORMATION BY OMBUDSMAN TO THE BOARD

The unnecessary limitation of provisions to require the Ombudsman to supply “such statistical information” as the Board requires, is at odds with the analysis provided of Clause 60 and the consequential amendments proposed. There should be a further amendment made to this Clause which stipulates that the Ombudsman supply information to the Board on the pattern of complaints against individual police officers. There should be provision that the Ombudsman compile, and supply the Board with information pertaining to the pattern of complaints made against individual officers.

CLAUSE 62—TIME LIMIT FOR COMPLAINTS & REFERENCES TO OMBUDSMAN

This is another example of the excessive powers which the British Secretary of State has afforded himself in the Police Bill. This provision gives him/her the authority to prevent any retrospective inquiries being made by the Ombudsman. Patten made no such recommendation. On the contrary, Patten provided that the Ombudsman “should have access to all past reports on the RUC”. Since the existing provision in the Police Bill militates against the independence of the Ombudsman and subverts Patten’s requirements, Sinn Fein repeats its recommendation that this provision be eradicated from the Bill. It is proposed that this clause should be deleted in full to bring this section of the Bill into line with the Patten recommendations.

PART IX—MISCELLANEOUS & SUPPLEMENTARY

CLAUSE 64—THE COMMISSIONER

This Clause was introduced to the Bill during the Committee Stage following strong criticism of the British government for making no reference to the Oversight Commissioner in the Police Bill. However, the British government appears to have ignored both the substance of the representations which were made, and the recommendations of the Patten report on the role of the Oversight Commissioner.

Patten specifically directed that there should be an Oversight Commissioner appointed “with responsibility for supervising the implementation of our recommendations” (recommendation 172).

The provisions in the Police Bill subvert Patten’s recommendations on the Oversight Commissioner in several notable respects. For instance, the Bill directs that “the general function of the Commissioner is to oversee the implementation of changes in policing of Northern Ireland described in his terms of reference.” (Clause 64(3)). The terms of reference for the Oversight Commissioner are not sufficient to meet Patten’s requirements, and to override the duties currently being performed by the RUC’s Change Management Team to undermine the Patten report through progressing the unpublished ‘Programme for Change’ of the RUC.

Furthermore, Patten recommended that “The Oversight Commissioner should be appointed for a term of five years” (recommendation 175). Patten also stated that “whether there is a need for a further appointment beyond that time will depend on the progress made”. And clearly, Patten was referring to the progress made in the “implementation of our recommendations” as specified in the Patten report.

In subverting this the Police Bill affords the Oversight Commissioner a greatly diminished role, implementing something which bears little resemblance to Patten’s recommendations, and over a term of 3 as opposed to 5

years which will only to be extended at the discretion of the British Secretary of State. Patten is not recognisable in provisions for the Oversight Commissioner in the British government legislation.

CLAUSE 65—REPORTS BY THE COMMISSIONER

The primary function of the reports by the Oversight Commissioner as recommended by Patten was to provide “more than a stocktaking function. The review process would provide an important impetus to the process of transformation. We recommend that the Oversight Commissioner should in turn report publicly after each review meeting on the progress achieved, together with his or her observations on the extent to which any failures or delays are the responsibility of the policing institutions themselves or due to matters beyond their control” (paragraph 19.5, Patten report).

Patten recommended that the Oversight Commissioner be the interface between the public and the implementation of Patten’s report. The Police Bill subverts this role by providing that the British Secretary of State shall decide on the arrangements for publishing the Commissioner’s report. Whilst it may be that the British Secretary of State shall lay each report by the Commissioner before the British parliament, it should be for the Commissioner to determine the content and format of any report by him. Provision should also be made to ensure that there is a duty on the Commissioner to make these reports public.

CLAUSE 67—THE RUC GC FOUNDATION

Quite clearly, the British government cherishes the legacy of the RUC and wishes to accede to uncompromising Unionist demands for this legacy to be venerated. The inclusion of this Clause is but one of the ways in which the British government has venerated the legacy of the RUC within the Police Bill.

Nationalists and republicans, too, know much about the legacy of the RUC. It is a legacy of sectarianism, torture, intimidation, violence, collusion and murder. It is not a legacy which should be venerated and not a legacy which could be identified with the “new beginning to policing” required by Patten. The inclusion of this Clause is at once, a generous gesture to unionists, a calculated insult to nationalists, and a gross distortion of Patten. The British government has not sought to establish in this Bill a foundation to assist the victims of the RUC. Indeed, there is little evidence that the British government accepts that there are any victims of the RUC. Therefore, the British government can most easily rectify this fault in the Bill by deleting the Clause.

SCHEDULE 1—THE POLICING BOARD

This schedule outlines details of the membership of the Board and arrangements for its running.

PARAGRAPH 3—MEMBERSHIP DURING SUSPENSION OF DEVOLUTION

Given the emphasis on democratic accountability in Patten, it is vital that the Board accurately reflects the community served by the new police service. Sinn Féin therefore proposed the deletion of the phrase ‘as far as is practicable’ in Schedule 1 3(3) which relates to the British Secretary of State’s duty to ensure that the Board be representative of 6 County society. This has not occurred.

Sinn Féin also proposed an amendment to Schedule 1, paragraph 3(4) to ensure that there is no delay in appointing the Board.

Sinn Fein has suggested an amendment to paragraph 3(9) in order to ensure that the Board rather than the British Secretary of State elects its office bearers.

It remains our view that all these amendments strengthen the Board as envisaged by Patten.

PARAGRAPH 4—TERM OF OFFICE

Sinn Féin proposed that Schedule 1, paragraph 4(5)(a) should be amended to ensure that former political prisoners cannot be excluded from participation in the Board. It is vital, in the context of conflict resolution that former POWs are not banned from participation in new institutions.

PARAGRAPH 9—REMOVAL OF MEMBERS FROM OFFICE

In order to ensure that former political prisoners are not barred from independent membership of the Board, Sinn Féin proposed that Schedule 1, paragraph 9(1)(a) be amended so that only conviction for a criminal offence while in position should lead to disqualification.

PARAGRAPH 18—INQUIRIES UNDER CLAUSE 58

Sinn Féin completely rejects the detailed hurdles which have to be negotiated before inquiries under Clause 58 can be instigated. They are contrived barriers to the required transparency of a new beginning. In particular, a simple majority of members present should be sufficient to initiate an inquiry provided that notice has been given. The prospect exists that a boycott by some members could prevent the prosecution of legitimate Board business. Accordingly, we wish to see Paragraph 18(6) should be deleted.

SCHEDULE 3—DISTRICT POLICING PARTNERSHIPS

PARAGRAPH 5—THE COUNCIL'S NOMINATIONS

The rationale, in this, for requiring the Council to nominate twice the number of appointments to be made of independent members of a DPP is unclear. It, certainly, has not been explained. Patten made no such recommendation. Patten specified that "independent members [are] to be selected by the Council with approval of the Board" (para.6.26). Providing this selection process reflects the requirements of Patten, that "Taken as a whole, each DPPB should be broadly representative of the district in terms of religion, gender, age, and cultural background."(para.6.26). In this context, the provision that independent members are to be selected by the Board is procedurally cumbersome and detracts from the DPP's independence as recommended by Patten.

PARAGRAPH 6—CODE OF PRACTICE ON APPOINTMENT OF INDEPENDENT MEMBERS

As with previous provisions this increases the imbalance between the Board and the British Secretary of State by affording the latter the unfettered authority to issue and revise a Code of Practice which shall govern the selection of independent members to a DPP by the Council and the Board. To redress this flaw, it is necessary to specify that the British Secretary of State may issue or revise the Code of Practice governing selection of independent members to a DPP only with the agreement of the Board.

PARAGRAPH 8—DISQUALIFICATION

Sinn Fein has consistently challenged the provision that ex-prisoners are to be excluded from becoming independent members on a DPP. As with many provisions made by the British government in the Police Bill the logic of the British government, in making this discriminatory provi-

sion, is hard to reconcile with a credible process of conflict resolution. The exclusion of ex-prisoners from being independent members of a DPP has no support in the Patten report. In counter-point, Patten stated that “There must be no predisposition to exclude candidates from republican backgrounds”(para.15.13) from participation in new policing structures. In addition, as already referenced, Patten specifically directed that a DPP should reflect the make-up of the local community from which it is drawn. With so many members of the nationalist and republican community having been convicted of an offence because of the persecution of the nationalist and republican community by the RUC, the retention of this provision for disqualifying anyone “who has had passed on him a sentence of imprisonment (whether suspended or not).” is excessive, unjust and irreconcilable with Patten. This disqualification should be removed.

PARAGRAPH 16—JOINT PARTNERSHIPS

The provision that the British Secretary of State “may by order provide that two or more councils may by agreement establish a single DPP for their districts” is an infringement of Patten in two significant respects. Firstly, this provision makes no reference to the Board, which has responsibility for maintaining accountability with DPPs. Secondly, it specifically contravenes the recommendation by Patten that “All DPPBs...should be coterminous with a police district.”(para.6.28). The provision that the British Secretary of State may authorise the establishment of a DPP which overlaps once or more police districts is a subversion of the very framework for a new beginning to policing within which Patten proposed that all DPPs would perform a critical function. In the eventuality of the number of district councils being reduced, Patten has specified that the number of DPPs and police districts should be reduced in tandem. This logical projection safeguards the framework proposed by Patten, and the role played by DPPs. However, that projection is hypothetical at this point. The salient issue is the requirement by Patten that the existence of any DPP must be coterminous with a police district. The provision for joint partnerships ordered by the British Secretary of State clearly contests that requirement and the model of policing to which it is linked in the Patten report. Therefore, Paragraph 16, Schedule 3, should be deleted.

SCHEDULE 4—OVERSIGHT COMMISSIONER

PARAGRAPH 1—APPOINTMENT ETC. OF THE COMMISSIONER

For the reasons outlined earlier, when the provisions under Clauses 64 and Clause 65 were discussed and changes proposed, consequential amendments must also be made to this Schedule. As already stated, Patten required that the appointment of be the Oversight Commissioner be for a term of five years, that it be renewable at five yearly interval, with appointees for a maximum of two consecutive terms. “The Oversight Commissioner should be appointed for a term of five years.” (Para 19.6). Patten also stated that “Whether there is a need for a further appointment beyond that time will depend on the progress made” in the “implementation of our recommendations”.

PARAGRAPH 2—TERMS OF REFERENCE

Following on from the amendments proposed to Clauses 64 and 65, changes are required to ensure that the Board approves the written terms of reference for the Oversight Commissioner which the British Secretary of State may introduce. In particular, these terms of reference must be premised on the function the Oversight Commissioner is to perform in

respect of the implementation of the Patten report. The minimum requirement of any claim by the British government that the Police Bill is being faithful to Patten, will require that the Oversight Commissioner as prescribed by Patten reports on Patten's implementation.

PARAGRAPH 4—STAFF

The Commissioner must not be handicapped in performing his/her functions by a shortage of staff or other resources. The provision that the Commissioner may employ staff only after the number of staff and other terms and conditions of service have been approved by the British Secretary of State, manifestly undermines the independence of the Commissioner. Such a provision may also potentially hamper the Commissioner depending upon conditions and restrictions on staffing the British Secretary of State choose to impose. Therefore, provision should be made that requires decisions on this matter to be made after consultation with the Board and the Secretary of State rather than, as current provision requires, with the approval of the British Secretary of State.

SCHEDULE 7—AMENDMENTS

Repeal of Section 39 of the Police (NI) Act 1998

The Patten report (para.6.18) highlights the unacceptability of Section 39 of the Police (NI) Act 1998. This provides that the British Secretary of State may issue guidance to the police as to the exercise of their functions. This power is unique to the north of Ireland. The Patten report challenged the justification offered for the provision:

“It has been suggested to us that guidance under the section would not be binding and that, therefore, it does not empower the Secretary of State to direct the police. We are not persuaded that this is so or, at any rate, that such guidance would be so perceived by recipients. We do not believe that the Secretary of State or a future minister in the Northern Ireland Executive should even appear to have the power to direct the police. We recommend that this provision of the Police Act be repealed.” (para.6.18)

This is another important recommendation by Patten which the British government has chosen to flagrantly disregard. Most probably this is to safeguard the power this provision assures the British Secretary of State and the Securocrats of the ‘Northern Ireland Office’ over the exercise by a police service of its functions. Undoubtedly, the independence and authority of the Board is profoundly compromised whilst this provision remains extant. Therefore, in accordance with the Patten's particular recommendation on this provision and in light of the deleterious effect of this provision upon the creation of the effective, independent Policing Board, it is proposed that a new Paragraph be added to Schedule 7 which repeals Section 39, of the Police (NI) Act, 1998.

**PREPARED SUBMISSION OF LADY SYLVIA HERMON
ON BEHALF OF THE ULSTER UNIONIST PARTY**

**THE PATTEN REPORT ON POLICE REFORM IN NORTHERN
IRELAND—A UNIONIST PERSPECTIVE**

“The Royal Ulster Constabulary has been at the center of the fight against terrorist violence over the past 30 years. In the course of their duty the officers of the RUC have borne the brunt of the danger and many have lost their lives or suffered horrific injuries. Although the RUC has served the public with distinctive courage under conditions that have sometimes seemed next to impossible, it has also been the focus of controversy”. House of Commons N. Ireland Affairs Committee Report, “Composition, Recruitment and Training of the RUC.” July 1998.]

Whether criticism of the RUC is justified or not, it remains the case that as part of the Belfast (Good Friday) Agreement the Patten Commission was established to inquire into policing in Northern Ireland. Unfortunately, those in America, who have joined the incessant clamour of local Nationalist and Republican politicians, demanding the ‘full’ implementation of the Patten Report by the British Government, fail to address two crucial issues.

First, the Patten Commission singularly failed to fulfill its own Terms of Reference as stipulated by the Belfast Agreement. When the original Report was so intrinsically flawed, the British Government would be at best careless, and at worst negligent, to incorporate such blatant flaws in legislative form in the Policing (N. Ireland) Bill.

Any examination of the Patten Report should begin with careful consideration of the Patten Commission’s own Terms of Reference as laid down by the Agreement. The very first paragraph of those Terms of Reference obliged the Commissioners ... “to bring forward proposals for future policing structures and arrangements including *means of encouraging widespread community support for those arrangements.*”

The Patten Commission had, therefore, a very clear duty imposed upon it by the Agreement to make recommendations for police reform which encouraged support from both the Nationalist and Unionist communities in Northern Ireland.

It obviously follows that, by making a series of recommendations which discouraged widespread support throughout the majority Unionist community in Northern Ireland, the Patten Commission failed to comply with its Terms of Reference. In other words, it failed to uphold both the spirit and the letter of the Belfast Agreement.

The golden opportunity for winning widespread Unionist support for police reform has been completely squandered, particularly by the Patten Commission’s recommendations to change the name and badge of the Royal Ulster Constabulary, to remove the flag of the country from all police buildings and impose religious discrimination against Protestants in the recruitment process.

Secretary of State, Peter Mandelson’s, insistence upon changing the RUC’s title to the “Police Service of Northern Ireland” merely compounded the Patten Commission’s failure to bring forward proposals on the name that would have commanded widespread support.

If the Secretary of State had shown wisdom and sensitivity by opting for the additional title of the “Police Service of Northern Ireland” alongside that of “the RUC”, much Unionist opposition to the Patten Report could have been reduced. Instead, he has managed to further exacerbate the level of that opposition by declaring, in Armagh on 25th July 2000, his intention that “the new name ... [the Police Service of Northern Ireland] ...and that name *alone*—be used in all the police’s dealings with the public”.

As well as the Patten Commission’s failure to secure support from the Unionist community, another equally crucial issue has come to the fore. It relates to the peculiar meaning now attached to the “full” implementation of the Patten Report. As Mr Alex Attwood of the SDLP quite rightly says:

“The Patten Report is a critical document and it is vital that it is subject to rigorous examination by the public”. [*The Irish News*, 1st Sept. 2000.]

A rigorous examination by any fair-minded member of the public would show the sheer hypocrisy of the SDLP and Sinn Fein who demand the “full” implementation of the Patten Report—but only those parts of it which suit them.

It is perfectly obvious to Unionists that Republicans and Nationalists have adopted Humpty Dumpty’s approach to the meaning of “full”. According to Humpty Dumpty, “When I use a word ... it means just what I choose it to mean—neither more or less”. Although “full” is defined in any standard dictionary as meaning “complete, comprehensive and entire”, the SDLP’s and Sinn Fein’s definition of “full” has become “just what they choose it to mean”. Consequently, the voices of Americans joining the chorus for “full” implementation of the Patten Report indicate a worrying lack of detailed knowledge of its actual content.

To illustrate this “Humpty Dumpty” approach, let’s look at some of the most obvious examples.

On recruitment into the new police service, the Patten Report specifically recommended that “every effort” should be made to recruit from ethnic minorities in Northern Ireland. In the Policing Bill, however, one half of recruits “shall be persons who are treated as Roman Catholic”, and the other half “shall be persons not so treated”. Therefore, members of the Chinese, Indian and other ethnic groups in Northern Ireland will be treated as “non-Roman Catholics”. This legislative provision clearly contradicts the Patten Report. Do we hear the SDLP or Sinn Fein clamouring for Patten’s “full” implementation for the benefit of ethnic minorities? Of course not.

Similarly, the Policing Bill now lists eight specific organisations—including the Ancient Order of Hibernians, the Orange Order and the Masonic Order—and makes it a *criminal offence* for a police officer to give false information when asked to declare his/her membership of any of these for inclusion in a compulsory register of interests.

Again, this is in total contradiction to the Patten Report, which did not list any specific organisations and certainly did not make non-disclosure of such membership a criminal offence. Nevertheless, Nationalist and Republican politicians insist upon maintaining this distortion of the Patten Report in the Policing Bill, while at the same time publicly demanding the Report’s “full” implementation.

Their Humpty Dumpty approach to the Report is further highlighted by their complete silence on the need for the removal of the G.A.A.'s Rule 21. The Patten Report could not have been more explicit. It stated:

“We specifically recommend that the Gaelic Athletic Association should repeal its Rule 21, which prohibits members of the of the police in Northern Ireland from being members of the Association. The continued existence of this rule in light of our recommendations can only be a deterrent to the recruitment of Catholics, or a factor in separating those Catholics who do join the police from an important part of their culture”. [para. 15.2]

Although the Patten Report was published over a year ago on 9th September 1999, Rule 21 still remains. Why are the voices of Nationalists and Republican politicians so silent on this issue, whilst simultaneously calling for the “full” implementation of the Patten Report?

Moreover, as the members of the Patten Commission themselves recognized

“... the key to the successful implementation of nearly everything in this report is that leaders of communities now actively encourage their young people to apply to join the police service. We, therefore, recommend that all leaders, including political party leaders and local councillors, bishops and priests, schoolteachers and sports authorities, should take steps to remove *all* discouragements to members of their communities to join the police, and make it a priority to encourage them to apply. *We cannot stress this recommendation too strongly*”. [para 15.2.]

It is worth repeating that Patten could not stress that recommendation “too strongly”. Nevertheless, since the day and hour the Patten Report was published this particular recommendation has been consistently and conveniently ignored by Nationalists and Republican politicians and, most regrettably, by the Catholic Church.

These are but a few examples of where, in terms of the Patten Report itself, the worst of all evils has been committed. Although Patten attempted to prohibit “cherry-picking” from the Report, the SDLP and Sinn Fein have now chosen to cherry-pick it whenever it suits their own particular agenda.

Their approach to the implementation of Patten in the Policing Bill has undoubtedly shaken previous support from within the Unionist community for the Belfast Agreement. The British Government is also not without blame for the withering of this support. In particular, the Government's acceptance of Patten's recommendation for recruitment of 50% Catholic: 50% non-Catholic has caused enormous offence amongst the Unionist community.

It is all too rarely pointed out that the low percentage of Catholics currently serving in the RUC—about 8%—is not caused by discrimination in recruitment. On the contrary,

“...*the major reason* preventing young Roman Catholics coming forward to join the RUC is the fear of violence which would be offered towards them and to members of their family” from Republican terrorists. [para. 35, House of Commons N. Ireland Affairs Committee Report, “Composition, Recruitment and Training of the RUC”. 1998.]

Not only does the proposed 50:50 recruitment procedure offend Unionists, but by adopting it the British Government also manages to thwart its obligations under the Belfast Agreement. In the chapter on “Rights, Safeguards and Equality of Opportunity”, the British Government specifically pledged itself

“... to create a statutory obligation on public authorities in Northern Ireland to carry out their functions with due regard to the need to promote equality of opportunity in relation to religion ...”

By stubbornly persisting with the 50:50 recruitment procedure in the Policing Bill—where recruits will be selected not on merit, but religion—the British Government is, therefore, turning its back on its clear commitment under the Belfast Agreement.

In addition, the 50:50 recruitment procedure will be contrary to European Union law in two years time. At the end of December 2002, two E.U. Directives will come into force prohibiting positive discrimination on grounds of religion and also ethnic origin. Since the most notable characteristic of European Union law is of course its supremacy, these Directives will prevail over all domestic legislation of the U.K.

Consequently, Peter Mandelson’s recent assertion that the 50:50 recruitment procedure “will continue for as long as is necessary” clearly sets the Policing Bill on a collision course with the law of the European Union. The Secretary of State will learn that, in cases of conflict like this, European Union law always wins.

Although the Patten Commission purported to put a “human rights-based approach” at the core of its Report, the Commissioners had no hesitation in recommending discrimination on grounds of religion when selecting new recruits. Freedom to practice one’s religion without discrimination is a basic human right which should have been adhered to by Patten.

Once selected on the basis of religion, the Patten Commissioners then compounded their absurd contradiction by obliging police officers to swear a new Oath ... “to uphold fundamental human rights and accord equal respect to all individuals ...” It is simply impossible for the Patten Commissioners to face both ways simultaneously—either human rights are truly at the core of policing with principles of equality and non-discrimination maintained, or they are not.

In the case of the Patten Report, human rights norms were clearly not maintained. Sadly, the same is true of the Policing Bill. By virtue of a most unfortunate amendment in the House of Commons, it is now possible under the Bill for the Secretary of State to make an order redressing any imbalance in recruitment in the preceding three years. Therefore, any shortfall in the number of Catholic recruits could result in the Secretary of State ordering 100% Catholic recruitment into the new po-

lice service. Legislative provision for such blatant religious discrimination is totally unacceptable to Unionists, and should be equally repugnant to those in America who rightly emphasize respect for human rights.

The Secretary of State would do well to heed his predecessor's advice on positive discrimination in the police service. In 1998, when giving evidence to the House of Commons Northern Ireland Affairs Committee, Mo Mowlam declared

... "I am not a strong supporter of positive discrimination. I do not think it will work ... I think positive discrimination would be a mistake". ["Composition, Recruitment and Training of the RUC" Report p.226 para 822.]

Having failed to comply with its own objective of putting human rights at the core of policing, it should come as no surprise to learn that the Patten Commissioners also failed to achieve their other main goal of "depoliticisation of the police". They proposed "to take politics out of policing" by recommending two major changes to current police structures.

First, they recommended the creation of a new Policing Board to replace the existing Police Authority for Northern Ireland. This new Policing Board ... "should have 19 members, 10 of whom should be Assembly Members drawn from the parties that comprise the new Northern Ireland Executive". [para. 6.11]. So, in order "to take politics out of policing", the Patten Commission believed that a majority of local politicians should be placed on the new Policing Board!

Secondly, the Patten Commission recommended the establishment of "District Police Partnership Boards", the title of which has now been shortened in the Policing Bill to "District Police Partnerships" (DPPs). As it is presently drafted, the Bill includes a sure recipe for putting politics into, rather than out of, policing. The majority of member of the DPPs will be local councillors and they in turn have the power to nominate the so-called "independent" members. Only these "independent" members are disqualified from membership of a DPP if they have a conviction: the electoral mandate of the political members is obviously expected to cause amnesia amongst the general public.

In addition, the functions of these DPPs are surrounded with uncertainty through the inclusion of a most ambiguous clause—the Policing Bill provides that: "The functions of a district policing partnership shall be ... such other functions as are conferred on it by any other statutory provision."

Consequently, the composition and functions of DPPs continue to give rise to considerable concerns within the Ulster Unionist Party. Amendment of these provisions will obviously be sought as the Policing Bill completes its passage through the Westminster Parliament.

There is still much work to be done on the Policing Bill and it helps no one—least of all the new policing service—when those who should how better adopt a Humpty Dumpty approach. After all, Humpty Dumpty had a great fall.

Submitted on behalf of The Ulster Unionist Party.
22nd September 2000.

LETTER OF AUGUST 16, 2000, TO PETER MANDELSON,
SECRETARY OF STATE FOR NORTHERN IRELAND, FROM
LAWYERS COMMITTEE FOR HUMAN RIGHTS

August 16, 2000

The Rt. Hon. Peter Mandelson
Secretary of State for Northern Ireland
Northern Ireland Office
Stormont Castle
Belfast BT43ST
Northern Ireland
Fax: 44 1232 528137/528201

RE: Northern Ireland Police Bill

Dear Mr. Mandelson,

Thank you for your July 4 response to our May and June letters concerning the proposed Northern Ireland Police Bill. We were pleased to learn that the Government has endorsed significant amendments made to the Bill at the Committee Stage. These changes help to align the Bill more closely to the original Patten Recommendations. Despite these positive advances in the legislation, we still believe that significant inconsistencies remain between the Bill and some key recommendations made by the Patten Commission. For this reason, we write to express our continued concern and to urge the Government to consider additional changes to the Bill.

In reference to the Police Ombudsman, you assure us that the Ombudsman enjoys powers under the 1998 Act to comment on police policies and practices. We do not believe that this power is adequately set forth in the 1998 Act. We urge you to make sure that the Bill explicitly provides the Ombudsman with the power to not only comment but also investigate police policies and practices. This explicit authority will reinforce the overall goal of establishing a credible system of accountability set forth in the Good Friday Agreement and the Patten Report.

In response to our concerns regarding the Policing Board's breadth of power, you indicate that the Government continues to view the Board's power of inquiry to be an "extreme one". Based on a careful reading of the original Patten Recommendations, we do not find language which supports this conclusion nor your assertion that Patten equated this extreme power with the ability to call on the Chief Constable to retire. On the contrary, the Patten Report explicitly recommends that the Board have the power to require the Chief Constable to report "on any issue pertaining to the performance of his functions or those of the police services."

This obligation also extends to "explaining operations decisions." (Rec. 6.22) Recommendation 6.23 further provides that the Board should be able to initiate an inquiry as a follow up to the Chief Constable's report into "*any* aspect of the police service or police conduct" [italics added] with the limited exceptions of issues related to national security, sensitive personnel matters and cases before the court. The Patten Commission's proposal calls for a system of an ongoing but thorough review of police operations and not the one-time, dramatic inquiry that would result in a call for the Chief Constable's retirement.

We believe that once implemented, your interpretation of the Board's power would freeze the Board's ability to function properly, especially since the availability of only one draconian remedy would block investigations of operations and policies that do not absolutely rise to the most egregious level of malfeasance. Coupled with the Police Ombudsman's inability to investigate police policy and practices, these limitations would mean, in effect, that there would be no independent agency monitoring ongoing police practices and policies, a process that we believe is necessary to hold the police publicly accountable. The Patten Commission's vision rests upon the understanding that accountability is necessary to establish a democratic system of policing, as set forth in the Good Friday Agreement (see Patten Comm. Rec. 6.15).

We also reiterate our concern that the role of Oversight Commissioner is only a shadow of the full vision presented by the Patten Commission. The Bill defines the Commissioner's role as overseeing the "implementation of changes in the policing of Northern Ireland described in his terms of reference". We view the present terms of reference as unacceptably vague since they only direct the Commissioner to oversee changes in the "context of the Patten Report", and not the implementation of the Recommendations themselves. The Government's attempt to streamline the role of the Commissioner is most evident by publication of the Implementation Plan before the Commissioner was even appointed.

Finally, we question the extent to which the Government "recognises the importance of human rights" in light of ongoing resistance to inserting reference to international human rights standards in the language of the Bill. While the implementation of the Human Rights Act in October signals an important development in human rights protections, we note that this law will have an impact on all police officers in the UK. The unique challenges in Northern Ireland require something above and beyond what is applied as a general norm in the United Kingdom.

Thank you for your attention to these concerns. We would welcome the opportunity to meet with you or your representatives to discuss them further. We would appreciate hearing from you with respect to the points raised in this letter and will continue to closely monitor the development of the Bill.

Sincerely,

Michael Posner
Executive Director

LETTER OF SEPTEMBER 8, 2000, TO PETER MANDELSON,
SECRETARY OF STATE FOR NORTHERN IRELAND, FROM
LAWYERS COMMITTEE FOR HUMAN RIGHTS

LAWYERS COMMITTEE FOR HUMAN RIGHTS
333 Seventh Avenue, 13th Floor
New York, New York 10001-5004
Telephone (212) 845 5200
Facsimile (212) 845 5299

September 8, 2000

The Rt. Hon. Tony Blair, MP
Prime Minister
10 Downing Street
London SW1
United Kingdom

Dear Prime Minister Blair:

For the last decade, the Lawyers Committee for Human Rights has closely followed the investigation of the 1989 murder of Belfast solicitor Patrick Finucane. We understand that you met earlier this week with members of the Finucane family and that you are considering establishing an independent inquiry into the Finucane case.

We write to strongly encourage you to initiate such an independent inquiry as expeditiously as possible. After closely examining the case in late 1992 and early 1993, we found credible evidence suggesting collusion between elements within the security forces and loyalist paramilitaries in the murder of Mr. Finucane. Specifically, we found substantial evidence suggesting the British Army's complicity in the Finucane murder and evidence pointing to the involvement of the RUC in the form of knowing acquiescence or perhaps even instigation. I enclose a copy of our 1993 report that provides in greater detail the basis for these findings.

Needless to say, we did not make these assertions without careful examination and consideration of the available evidence. Nothing we have learned about the case in the last seven years has caused us to change our view. We recognize the seriousness of these assertions, and the sensitivity with which they are viewed within the security forces.

We are convinced that proper resolution of this case, with an independent public inquiry, is essential to advancing the broader peace process. We firmly believe that such an independent public inquiry will serve both to help learn the truth about the circumstances surrounding the murder and to publicly confirm your government's commitment to establishing official accountability for human rights abuses. For these reasons, we strongly urge you to establish an independent public inquiry in the murder of Patrick Finucane.

Sincerely,
Michael Posner
Executive Director

**“RUC OFFICERS RESIST REDUNDANCY” REPRINTED FROM
THE DAILY TELEGRAPH, SEPTEMBER 10, 2000**

**“RUC OFFICERS RESIST REDUNDANCY”
BY DAVID BAMBER AND ALAN MURRAY**

The Government is facing a crisis in its attempt to reform the Royal Ulster Constabulary because officers are refusing to volunteer for redundancy.

Under the Patten Commission proposals for the province's Protestant-dominated police force, 600 officers were supposed to volunteer by the end of next month. Only 91 officers have put themselves forward so far, however, and few more are expected to do so.

Many senior officers have refused to retire after studying the severance pay package outlined by Peter Mandelson, the Northern Ireland Secretary, in June. Besides this, the peace process has given them the best working conditions for 30 years—with little threat of violence.

A spokesman for the Police Federation, which represents rank-and-file officers, said: “The Government has stated that no officer should benefit beyond the sum they would earn if they remained in service. What then is the incentive to leave? We asked them that and they couldn't give us a credible answer.”

One superintendent said: “When the final package details are worked out, and the obligatory deductions are made, what is left isn't generous compared with what one can earn. Serving for another six years at a minimum £50,000 salary is much more attractive.” A sergeant eligible for redundancy said: “I'm happy doing my job. I'm not under attack from terrorists every week now and I'm still fit. So why would I want to go and take a big drop in earnings?”

The Patten reform proposals envisaged a reduction of 2,500 in the 8,500-strong RUC complement and the disbanding of the 2,500-strong reserve over the next five years. As retiring officers left, a smaller number of new, mainly Catholic recruits were to be taken on.

The crisis is especially acute for the Government because few in senior posts have volunteered to quit. The promotion of Catholics into higher positions has been seen as essential to the recruitment of more people from this community.

Ministers may now be forced to make large numbers of Protestant officers compulsorily redundant while recruiting Catholics—a move which would be resented by the unionist community.

**CAJ BRIEFING NOTE—MAJOR PROBLEMS WITH THE POLICE
(NORTHERN IRELAND) BILL (AS OF SEPTEMBER 2000)**

The Committee on the Administration of Justice (CAJ) has prepared a separate detailed list of amendments which it is hoped will be tabled at the Lords Committee Stage of the debate on the Police (NI) Bill. The following document is a short briefing note on the problems which CAJ considers most important and which remain outstanding in the draft legislation (HL Bill 102).

BACKGROUND

Secretary of State Mandelson, in introducing the initial legislation to the Commons at Second Reading, expressed some disappointment at the “rhetoric and hyperbole” that had surrounded the debate to date. He expressed the hope that as people “turned from generalisations to the detail of our proposals...they will recognise that, in spirit as well as letter, we are implementing the (Patten) report”.

In very few instances has the government formally indicated disagreement with the Patten report, and it has consistently claimed to be fulfilling the promise of the Patten Commission findings. Suffice it to say, that despite these oft-repeated assertions, hundreds of amendments have been moved and accepted by government in the course of Second Reading in an attempt to bring the legislation more in line with Patten. Government itself cited 52 substantive ways in which the legislation had changed in the course of debate in the Commons to allow it now to claim to fulfil its pledges on Patten.

In language reminiscent of the Second Reading, the Secretary of State again in a TV interview of 18 July expressed concern at the “hype and mis-representation” surrounding the latest version of the legislation. CAJ believes that its detailed list of amendments will highlight just how far the legislation submitted to the Lords still has to change if it is to meet Patten’s programme for change. Below we only highlight the most obvious discrepancies which remain to be rectified if policing in Northern Ireland is to get the “new beginning” promised in the Good Friday Agreement.

1. HUMAN RIGHTS

Patten asserted that “policing means protecting human rights” (Patten, para 4.1). Yet, despite many amendments to try and integrate onto the face of the Bill a reference to “international human rights norms and standards” in line with Patten, government resisted all such measures. In the initial legislation, there were three references to human rights, one in the oath, and two to the Human Rights Act. CAJ notes that with the exception of adding the NI Human Rights Commission as a consultee on some (albeit restricted) occasions, the legislation as amended to date is not much different. CAJ urges that the legislation be changed to explicitly refer to the importance of human rights, and the relevance of international human rights standards and norms to future policing arrangements.

To take just one example of the limited attention which has been given to human rights, it is worth looking at the issue of plastic bullet usage. Patten said (para 9.14) “In view of the fatalities and serious injuries resulting from PBRs (plastic baton rounds), and the controversy caused by their extensive use, we are surprised and concerned that the government, the Police Authority and the RUC have collectively failed to invest

more time and money in a search for an acceptable alternative". Further to parliamentary exchanges on the issue of plastic bullets, Minister of State Adam Ingram wrote to an MP indicating the terms of reference for a UK-wide Steering Group which is to look into alternatives into plastic baton rounds. This Steering Group is, despite Patten's criticism of past inaction by government and the reference to the "controversy" surrounding plastic bullet use, to be chaired "by a senior NIO official" rather than by independent experts. Moreover, no reference is made in the terms of reference to the relevance of international human rights standards to this debate, nor to the specific recommendation from the UN Committee Against Torture regarding "the abolition of plastic bullet rounds as a means of riot control" (November 1998). Indeed in the Hansard discussion, the government resisted strongly the suggestion that the NI Human Rights Commission be consulted on the matter of public order equipment (Hansard, col; 372, 29 June).

2. INQUIRY POWERS OF THE POLICING BOARD

Patten thought that the inquiry powers of the Policing Board were vital (see para 6.23). The Secretary of State noted at the Second Reading that government might have taken their "safeguards too far and set too many limitations on the use of (the inquiry) power" (Hansard, col 181), and were accordingly willing to strike a different balance. A number of changes have been agreed in the course of the Commons debate, but CAJ still has very important reservations.

The Secretary of State has the authority to approve or veto the person appointed to hold the inquiry (clause 58(9)).

Inquiries into past "acts or omissions" are explicitly prohibited (clause 58(11))

There is an astonishing new proposal that the Secretary of State can over-rule the Board if he/she determines that an inquiry "would serve no useful purpose" (clause 58(5)(a)).

Schedule 1 requires that if the Board is considering causing an inquiry to be held that (a) at least 3 members make a written request calling for a Board meeting to discuss the proposal; (b) that the chair shall notify all Board members of the meeting and of its purpose; and (c) that no agreement can be reached without the support of a clear majority of *all* members of the Board, rather than a simple majority of those "present and voting" which is what is the threshold for most other decisions.

CAJ believes that government's continued insistence on such limitations suggests a deep unwillingness to give effective inquiry powers to the Board. The government has consistently referred to the Board's inquiry powers as "extreme" which was certainly not Patten's perspective. The Patten Commission argued that inquiry powers were necessary if the Board was not to be "dependent on reports from the Chief Constable with no effective follow-up capacity. It would therefore be powerless against a recalcitrant chief constable..." (para 6.23). Without effective inquiry powers, it is CAJ's belief that the Board will not be sufficiently credible to attract suitable candidates.

3. POLICE OMBUDSMAN

CAJ welcomes the amendments agreed in the Commons bringing the legislation more in line with Patten in a number of respects. However, we still have a number of very important outstanding concerns:

Patten asked for the Ombudsperson to have access to past reports and did not put any timetable on her activities. The legislation clearly restricts her retrospective powers (clause 62).

Patten asked for the Ombudsperson as appropriate (and the Board) to actively monitor police performance in public order situations. This role does not appear on the face of the legislation, either here or in the clauses referring to the powers of the Police Board (see CAJ proposed amendment to clause 3(3) re Board)

Patten said that “the Ombudsman should exercise the right to investigate and comment upon police policies and practices where these are perceived to give rise to difficulties even if the conduct of individual officers may not itself be culpable and should draw any such observations to the attention of the CC and the Policing Board” (para 6.42). The Secretary of State has made it clear from Second Reading that he felt he was “right to resist the suggestion that the Ombudsman should also have powers to review the policies and practices of the Police Service although if, in the course of investigating individual complaints, she wishes to raise wider issues she may do so”. This position has not changed in the committee stage of the Bill, and dramatically reduces the authority of the Ombudsman from that envisaged by Patten (see CAJ, new clause 60).

CAJ believes that in resisting amendments which would allow the Ombudsman to comment on trends in patterns of complaints (beyond individual complaints), to report to the Police Board on general trends and, most importantly, to investigate police policies and practices, the government is undermining the thrust of Patten. After all, Patten said “we cannot emphasise too strongly the importance of the office of Police Ombudsman”.

4. OVERSIGHT COMMISSIONER

Despite the unjustifiable delay in appointing an Oversight Commissioner (Patten had recommended in September 1999 that this appointment be made “as soon as possible”), CAJ welcomes the fact that the post is now to be given a statutory basis. Such a statutory basis is however only worthwhile to the extent that the role, powers and functions of the post-holder are clearly enumerated.

It is surprising that government did not, either in the legislation or in the detailed Implementation Plan, address the need for the Oversight Commissioner to set clear targets and timetables for changes in policing. Equally disturbing is the legislative provision determining that six years (two terms of three years) is the maximum period that the post can be retained. Patten clearly did not want this to be a permanent position second-guessing others with direct responsibility for policing (para 19.6), but gave no formal time-limit, and certainly not one of six years, when elsewhere in the text a minimum of ten years is envisaged for the transitional phase.

Indeed, the Oversight Commissioner is noticeable for his absence throughout the Implementation Plan. Apart from the Patten recommendations explicitly referring to the post, the Commissioner is only given a formal role in the Implementation Plan in relation to encouraging community leaders, etc. to encourage Catholics and nationalists to join. To suggest that the Oversight Commissioner will play little more than a ‘public relations’ function for the new policing arrangements is to do a dis-service to the post-holder and to the crucial role envisaged for the Commissioner by Patten. It would be vital in the promised re-working of the Implementation Plan, that clear and frequent references are made to the role of the Commissioner—not least in those elements of the Plan which deal with civilianisation, downsizing, training etc.

The Terms of Reference for the Commissioner seem to suggest that he will be consulted about the appointment of his assistants, but will not be making the appointments himself. The Oversight Commissioner must be and be seen to be an independent overseer of the process of change.

**PROPOSED CAJ AMENDMENTS TO POLICE
(NORTHERN IRELAND) BILL, HOUSE OF LORDS
COMMITTEE STAGE
(HL BILL 102)**

SEPTEMBER 2000

CLAUSE 1

CAJ, as a human rights organisation, has not taken an active stance on the appropriate name of the new police service, and recognises that this is highly political and deeply contentious. We cannot offer specific amendments but we do believe that whatever is agreed, it must be in line with Patten's proposals to create a neutral working environment for staff and users of the service. CAJ believes that the Lords should consider carefully the argument that "the new beginning cannot be achieved unless the reality that part of the community feels unable to identify with the present name and symbols associated with the police is addressed" (para 17.6). Moreover, it is important to ensure that the police are seen to be independent of the state and of any political party or political tradition, so CAJ welcomes Patten's requirement that policing symbols should be "entirely free from any association with either the British or Irish states" (para 17.6). Alternatively, the new policing arrangements could have an association with both states, but CAJ feels that such a move would be problematic since it would ignore the increasingly multi-ethnic nature of Northern Irish society.

CLAUSE 3

Patten recommended that the "performance of the police as a whole in respect of human rights, as in other respects, should be monitored closely by the Policing Board" (para 4.12). CAJ believes that this responsibility is not sufficiently met by the Policing Board being asked to monitor the performance of the police's compliance with the Human Rights Act 1998. While welcoming the explicit reference to the Human Rights Act on the face of the legislation, one might argue that it adds little. It is already a function of the current Police Authority to ensure the police uphold the law, and the HRA is (or will shortly be in its entirety) part of domestic legislation.

Amendments to include on the face of the bill reference to international human rights norms and standards were consistently resisted by the government throughout the Commons committee stage. This is contrary to Patten who said that "Procedures to secure compliance with the law and *with international human rights standards and norms* (our emphasis) are thus an important safeguard both to the public and to the police officers carrying out their duties" (para 5.17).

In an attempt to facilitate a more positive attitude, CAJ has withdrawn some suggestions which might—albeit indirectly—have amounted to "incorporation by the back door" of certain international human rights standards. The changes we propose in this document do not pose any such 'risk' (if risk it is) and should be accepted if government is to give due weight to Patten's human rights emphasis. Accordingly, CAJ proposes an additional phrase at the end of 3(2):

**CLAUSE 3(2), PAGE 2, LINE 7, DELETE "AND EFFECTIVE" AND
INSERT "EFFECTIVE AND COMPLIANT WITH INTERNATIONAL
HUMAN RIGHTS STANDARDS AND NORMS"**

CLAUSE 3(3)(B) - (E)

See comments under 3(2). It is insufficient to limit the Board's monitoring of human rights standards to the Human Rights Act alone.

CLAUSE 3(3)(B), PAGE 2, AT THE END OF LINE 15, AFTER "1998", INSERT "AND INTERNATIONAL HUMAN RIGHTS STANDARDS AND NORMS"

Government indicated at the committee stage that they consider the Code of Ethics to be an extremely important document and made a change to make explicit reference to it in the work of the Board. Unfortunately, however, clause 3(3)(d)(iv) is somewhat ambiguous. It suggests that if there is a discrepancy between the Code of Ethics and police behaviour, the Board can amend the Code of Ethics but not necessarily respond to any inappropriate behaviour. CAJ proposes the following:

CLAUSE 3(3)(D)(IV), PAGE 2, LINE 40, LEAVE OUT "THE EFFECTIVENESS OF" AND INSERT "POLICE PERFORMANCE AS AGAINST"

In line with Patten's emphasis on a partnership of police and public (see chapter 7), and the need for pro-active efforts by the police to work in close collaboration with the community policed, the clause (3(3)(e)) should be amended to place the emphasis on the police (rather than the Policing Board) to obtain public co-operation as follows:

CLAUSE 3(3)(E), PAGE 2, LINE 41, LEAVE OUT "MAKE ARRANGEMENTS" AND INSERT "ASSIST THE POLICE IN MAKING ARRANGEMENTS"**NEW SUB-CLAUSES 3(3) (F), (G) AND (H)**

There were some additional Patten recommendations about the functions of the Policing Board which do not appear explicitly in the legislation (see recommendations 64, 73, and chapter 16). Government argues that several of these functions are covered since they are encompassed by regulations, clause 32 which lists the general function of the police (eg to preserve order), or the planning process. CAJ believes however that these functions are sufficiently important to be explicitly included in their own right within the functions of the Board.

On page 2, line 42, insert:

"(f) *make arrangements for inspecting all custody and interrogation suites*

On page 2, line 42, following on from previous amendment insert:

(g) *make arrangements to actively monitor police performance in public order situations*

On page 2, line 42, following on from previous amendments insert:

(h) *monitor the training, education and development strategy of the police service".*

(The Police Authority has raised detailed concerns about other clauses in this Part which CAJ would commend to the attention of the Lords).

CLAUSE 15

CAJ believes that it should be the Policing Board, not the Secretary of State, which intervenes to ensure that Councils meet their obligations to establish a District Policing Partnership. However, we assume that there may be a valid reason for retaining the formal power with the Secretary of State, given the important statutory basis of District Councils. To meet these somewhat competing requirements, we propose that the clause read as follows:

Clause 15(1), page 8, line 9, after “Schedule 3” leave out “he may, after consulting the Board” and replace with “he/she* may, at the request of the Board” (*CAJ believes that non-sexist language should be used throughout the text).

CLAUSE 16

To highlight the “bridge” role that the District Policing Partnership is intended to play between the police and the local community, and to mirror the earlier amendment relating to the Policing Board (see proposed new 3.3.e), CAJ proposes the following amendments:

Clause 16 (1) (c), page 8, line 39, leave out lines 40-44, and insert—

“(c) to make arrangements for obtaining the views of the public about matters concerning the policing of the district;

(d) to assist the police in making arrangements for obtaining the co-operation of the public in the prevention of crime”

CLAUSE 18

To emphasise that communications between the District Policing Partnerships and the Policing Board should be a ‘two way street’ and that the power for taking initiatives lies not only in the hands of the Board, the clause should be amended:

Clause 18(1), page 9, line 19, after “shall” insert “at its own initiative or”

This would require consequential amendments:

Clause 18(1), page 9, line 20, after “report on any”, leave out “such”, and after “its functions”, on line 21, leave out to end of line

Clause 18(2)(a), page 9, line 23, leave out “the” and insert “any”

Clause 18(2)(b), page 9, line 25, after “date on which” leave out “that” and insert “any”

CLAUSE 19

The issuing of a Code of Practice for the District Policing Partnerships is important and should, accordingly, be a matter for consultation with all relevant parties. CAJ does not see why the Secretary of State, should have to ‘consent’ to the issuing of such a code, which is a further example of restricting the Board’s independence. Obviously, however, he/she should be one of the consultees. CAJ proposes the Clause be amended to read:

Clause 19(1), page 9, line 30, leave out “may, with the consent of the Secretary of State” and insert “shall”.

Clause 19(2), page 9, leave out lines 35-36 and insert:

- (a) district councils;
- (b) district policing partnerships;
- (c) the Secretary of State;
- (d) the Chief Constable;
- (e) the Police Ombudsman
- (f) the Northern Ireland Human Rights Commission;
- (g) the Equality Commission; and
- (h) such other persons as the Board shall determine.”

CAJ also thinks that it is vital that the district policing partnerships live up to their title and that they engage in genuine partnership with police and community. Patten gave a number of pointers about the kinds of work they would be expected to do (see, for example, para 6.29). CAJ thinks it would be important to encapsulate these concepts in the Code of Practice. Accordingly, CAJ recommends:

Clause 19(3), page 10, line 15, after “the Board”, insert an additional sub clause 19(3)(i)—

**(I) THE ARRANGEMENTS FOR CONSULTING WITH NON-GOV-
ERNMENTAL ORGANISATIONS AND COMMUNITY GROUPS
CONCERNED WITH SAFETY ISSUES, AS WELL AS STATUTORY
GROUPS THAT HAVE AN INTEREST IN POLICING.**

CLAUSE 20

It is our understanding that the Commons debate on this clause focussed essentially on the arguments for and against Patten’s proposals regarding the appropriate structures for Belfast—ie the creation of one or more police districts for Belfast, the nature of any sub-groups etc. The legislation as it now stands however seems to CAJ unsatisfactory since it leaves it entirely to the discretion of the Chief Constable as to the number of police districts to be created. Accordingly, CAJ recommends:

Clause 20(2), page 10, line 22, after “by the” insert “the Board in consultation with the”

CLAUSE 22

To strengthen the input of the local community, we propose:
Clause 22, page 11, at line 18, after “be appropriate” insert,

“(5) When publishing the local policing plan, the district commander should indicate what representations were made to him/her by the district policing partnership, and the extent to which those views have been taken into account in the final plan”.

CLAUSE 23

CAJ is unsure why a district policing partnership has to secure the “approval of the Board” to allow it to facilitate local community/police cooperation, since this is presumably one of their primary purposes. Also Patten envisaged that these partnerships provide a “focus of public consultation at district level for the annual NI Policing Plan”, and should “be encouraged to see policing in its widest sense, involving and consulting non-governmental organisations and community groups”. Accordingly—

Clause 23(1), page 11, line 20, leave out lines 20-22 and insert—

“(1) A district policing partnership shall, in accordance with the Code of Practice issued by the Board, make arrangements for facilitating consultation on local policing arrangements”

CLAUSE 25

The Police Authority has indicated that its power to set “performance targets” for policing (article 15 of the Police (NI) Act 1998) is an important one which should not be removed. Patten certainly gave no indication of wanting to water down the powers of the Policing Board when the Commission asked for a simplification of the current police planning process. CAJ concurs that such a power is important for the new Policing Board and believes that this is entirely consonant with Patten’s vision of the way the Board would work.

Clause 25, page 12, at the end of line 18, insert—

“(4) The Board shall establish levels of performance (“performance targets”) to be aimed at in seeking to achieve the objectives under this section”.

(It is worth noting in this context that the government has made provision—see Clause 28(3)(a) and 28(3)(b)—for the Board to be measured against performance indicators and standards. It seems only appropriate that the Board should have a similar responsibility to measure police performance).

CLAUSE 26

The Patten Commission made clear recommendations to simplify the overly complex planning arrangements. They argued that the “Secretary of State (should) set long term governmental objectives or principles; the Policing Board should set medium term objectives and priorities; and the police should develop the short term tactical plans for delivering those objectives” (para 6.4)

The Bill now provides for the Secretary of State to devise long term objectives for policing (clause 24.1), for these objectives to be respected by the Board when they devise their policing objectives (25.2), and for the Board’s policing plan to follow regulations made by the Secretary of State (26.2). Accordingly, CAJ sees no additional need for consultation with the Secretary of State with regard to the contents of the policing plan *per se*.

Clause 26(5), page 12, line 31, leave out lines 31-32, and insert—

“(5)The policing plan shall be consistent with the objectives for policing referred to in sections 24 and 25”

CLAUSE 27

We are concerned by this provision which would seem to allow the Secretary of State to issue a Code of Practice to govern any conduct by either the Board, or the Chief Constable acting on behalf of the Board. This seems to be a very broad power and we wonder what other public bodies would be subject to such all-encompassing powers on the part of the Secretary of State? This clause in its breadth seriously undermines the concept of an independent Board.

CAJ would propose the deletion of this clause:

Clause 27, page 12, leave out lines 35-41; page 13, leave out lines 1-6.

Some reassurance was provided in the Commons debate (Hansard col 248) that the codes would be advisory only and probably relate essentially to financial matters.

However, Minister Ingram also said that “if a code was issued that touched on equality or human rights issues, I cannot envisage circumstances in which they (*the NI Human Rights Commission*) would not be consulted”. Despite this commitment, the government explicitly resisted any obligation to consult with the Human Rights Commission about guidance on public order equipment (see clause 51). This is not a reassuring beginning.

If the proposal to delete this clause entirely is not supported, the Lords in debate may want to get further assurances from the government that this power is not intended to be a “back-door” way for the government of the day to control the Board. What sort of issues are likely to be covered in such a code of practice, and how do these issues differ from material in other codes of practice referred to elsewhere in the text?

Even with a more restricted regulating-making power, it would be essential that clearer limitations be imposed on the exercise of this power by the Secretary of State, and we would propose at least the following amendment:

CLAUSE 27(2)(B), PAGE 13, AT END OF LINE 4, INSERT:

- (c) the Equality Commission
- (d) the Human Rights Commission
- (e) the Police Ombudperson
- (e) the District Policing Partnerships
- (f) and such other persons as the Secretary of State thinks fit.

CLAUSES 28-31

We understand that this segment of the draft legislation is an area of some concern to the current Police Authority as well.

CAJ would be very concerned if “economy, efficiency and effectiveness” were interpreted solely in financial and planning terms, which seems to be the current focus. We believe that there would be a great value in exploring the concepts of “Efficiency and Effectiveness” beyond their narrow financial meanings and indeed, Patten referred to the need for a whole variety of mechanisms if the police were to be held to account for being “effective, efficient, fair and impartial” (para 5.4). Accordingly, amendments relating to the important role that training, education and development, human rights, and a focus on community policing, would all need to be included, and draft clauses are included below.

Clause 28(1), page 13, line 12, after “efficiency” leave out “and effectiveness” and insert “fairness, impartiality, and effectiveness, in conformity with international human rights norms and standards”

Clause 28(5), page 13, leave out lines 41-43 (This will require consequential amendments to leave out subsequent references to the Chief Constable—see Patten para 6.17 in this regard)

After Clause 31, page 16, after line 17, A NEW CLAUSE should be inserted.

“(1) The Board, in securing continuous improvement in the way the functions of the police service are exercised, shall issue, and from time to time, revise:

- (a) a police training, education and development strategy which conforms to international human rights standards and norms;

(b) a strategy to implement local community partnership policing arrangements which will secure widespread acceptance.

(2) Before determining or revising any strategies under this section,

the Board shall consult:

- (a) the Secretary of State
- (b) the Chief Constable
- (c) *the Equality Commission*
- (d) the Human Rights Commission
- (e) the Police Ombudperson
- (e) the District Policing Partnerships
- (f) and such other persons as the Board thinks fit.”

CLAUSE 32(4)

Clearly Patten envisaged the Code of Ethics as being more than a ‘procedural’ code and saw it as a mechanism for “integrating the European Convention on Human Rights into police practice” (para 4.8). It could prove an extremely important tool for holding existing officers and new recruits to account for ensuring that they meet their individual responsibilities to protect human rights and uphold the rule of law.

Clause 32(4), page 16, line 40, after “shall”, leave out to end and insert “comply with the code of ethics under section 50. Failure to comply with the Code of Ethics will constitute a disciplinary offence under articles 25 and 26 of the Police (NI) Act 1998”.

CLAUSE 33

The inability of anyone to define the limits of the Chief Constable’s “operational independence” has been a consistent concern of human rights groups. Currently, the only limitations on the Chief Constable’s exercise of discretion lies with the plan (which the Chief Constable drafts and is only amended by the Board after consultation with him), and the section 27 Code of Practice which relates almost entirely to his/her financial and managerial obligations. CAJ believes that this is insufficient and proposes that Clause 33(2) should also be amended to read:

Clause 33(2), page 17, line 6, after “section 27”, insert—

“(c) any policing objectives set by the Secretary of State under section 24;

(d) such revised policing objectives as determined by the Board under section 25;

(e) and the Code of Ethics under section 50”.

CLAUSE 37

Patten envisaged the ending of the Full Time Reserve, but proposed the retention and indeed expansion of the Part Time Reserve. CAJ believes that the following amendments should be made:

Clause 37, page 18, line 22, after “Reserve”, insert new sub-clause, 37(2) “Any person appointed to the Northern Ireland Reserve shall serve on a part-time basis only”.

CLAUSE 38

Patten recommended that a new oath be taken by new and serving officers and that “*the importance of human rights as the very purpose of policing should be instilled in every officer from the start*” (para 4.7). CAJ feels that the ideal arrangement would be for every officer to render explicit the commitment that is meant to be inherent in the new policing arrangements. Accordingly, we would recommend:

Clause 38, page 18, line 31, after “shall” leave out “on appointment”

Clause 38(2), page 18 leave out lines 41-43, and page 19, lines 1-2

Secondly, pursuant to a debate in the Commons, government determined that it would introduce an explanatory clause relating to the term “traditions and beliefs”. According to clause 38(3), the police need not accord respect to traditions and beliefs which are incompatible with the rule of law. It is unclear to CAJ what this clause contributes, since police officers clearly already have a duty to uphold the rule of law, and therefore must respond to people who *act* in a way that is incompatible with the rule of law. However, the current formulation would seem to require police to be disrespectful of people’s beliefs (however those are to be determined), rather than their actions. Surely a person’s *beliefs*—however unacceptable to the majority—are personal and are by-and-large irrelevant to the police. Only when those beliefs and traditions are put into practice and conflict with the rule of law, should the police be involved. We understood Patten’s requirement for police officers to respect people’s beliefs and traditions was essentially a call for them to respect the fact that people have different beliefs and traditions and that—unless the beliefs entail criminal behaviour—people are entitled to hold whatever beliefs and traditions they want.

CAJ recommends deletion of clause 38(3)—

Clause 38(3), page 19, leave out lines 3-4

CLAUSE 43

Patten recommended that the police “should contract out the recruitment of police officers and civilians into the police service” (recc.117). Clause 43(1) should be amended to comply with this recommendation:

Clause 43(1), page 20, line 11, leave out “may” and insert “shall”.

Clause 43(1), page 20, line 12, leave out “person,” insert “independent body”

Given the enormous importance of effective outreach measures and a pro-active recruitment strategy to recruit from under-represented groups in society, CAJ also proposes that the regulations governing this work should be a matter for wider consultation and debate.

Clause 43(2), page 20, at the end of line 22, insert:

- (e) District Policing Partnerships;
- (f) the Oversight Commissioner;
- (g) the Human Rights Commission, and
- (h) such other persons as the Secretary of State thinks fit”.

CLAUSE 44

There are a number of concerns which Patten raised in this regard which are not in the legislation. Thus, Patten raised concerns around the eligibility criteria currently used in Northern Ireland being much more stringent than in Britain; the need for more localised recruitment

and outreach; the value of extending the Part Time Reserve, and the beneficial effect this might have on creating a service which was more representative on grounds of gender.

CAJ accordingly proposes a series of amendments here.

Clause 44(1), page 21, line 3, after “Secretary of State”, insert “after consultation with the Board”

Clause 44(3), page 21, leave out line 16, and at the end of line 15 insert

- (a) the nature and extent of advertising of vacancies;
- (b) the nature and extent of localised recruitment measures;
- (c) the measures to be introduced to ensure the suitability of candidates;

and re-number other paragraphs consequentially.

CLAUSE 49

Given the possibility that information on registrable associations might be relevant to a court action, it is necessary to ensure that the Chief Constable is not obliged to destroy information which might be later required by the courts.

Clause 49, page 25, line 38, leave out “destroy the information within one year” and insert “not destroy the information for a period of at least three years”.

CLAUSE 50

The Code of Ethics is an extremely important document, both internally and externally, assuring police and the general public that human rights principles will be at the core of the new policing arrangements. This segment should be strengthened:

Clause 50(1), page 26, line 32, after “laying down” insert “international human rights norms and standards applicable to policing”

Clause 50(7), page 27, line 9, after “steps as” leave out “he considers”

Clause 50(7)(a), page 27, line 11, after “read” insert “undertaken to abide by”

CLAUSE 51

Patten proposed that the Policing Board (and the Ombudsperson) should “actively monitor police performance in public order situations” (para 9.19). The Commission also argued that any firing of plastic bullets be justified in reports to the Policing Board (para 9.17). No reference is made to our knowledge in the Patten chapter on public order (save in a critical reference to past oversight functions) to a role for government. Last but not least the Commissioner recommended that “guidance governing the deployment and use of PBRs should be soundly based in law, clearly expressed and readily available in public documents” (recc 74). Accordingly, CAJ proposes amending clause 51.1.

Clause 51(1), page 27, line 19, leave out “The Secretary of State may” and insert “The Board shall”

Consequentially

Clause 51(2), page 27, line 22, leave out “The Secretary of State” and insert “the Board”.

Similar consultees should be involved as for the Code of Ethics.

Clause 51(2), page 27, leave out lines 24-26, and insert

“(a) the Secretary of State

- (b) the Chief Constable
- (c) the Police Ombudsperson
- (d) District Policing Partnerships
- (e) the Human Rights Commission
- (f) the Equality Commission
- (g) the Police Association, and
- (h) any other person or body appearing to the Board to have an interest in the matter”.

Clause 51(3), page 27, line 27, leave out “The Secretary of State” and insert “The Board”

(Note that the House of Lords should be made aware of the fact that the government specifically resisted a previous amendment which required consultation with the NI Human Rights Commission. CAJ finds this incomprehensible given the serious human rights concerns arising from certain kinds of public order equipment and sincerely hopes that the Lords will secure a change in this regard- see Hansard, col. 372 of Standing Committee B - 29 June).

CLAUSE 53

In response to concerns about police officers not wearing IDs, and therefore not making themselves amenable to a complaint, Patten recommended that “officers’ identification numbers should be clearly visible on their protective clothing, just as they should be on regular uniform” (para 9.18). Accordingly, CAJ proposes:

CLAUSE 53(2), PAGE 28, LINE 5, AFTER “THAT” LEAVE OUT “AS FAR AS PRACTICABLE”

CLAUSE 55— REPORTS

Members of the Lords may be aware that this Clause in the Bill was extensively criticised in the immediate wake of the Bill being laid before parliament, and in subsequent debate. Patten clearly considered that the power of the Board to call for reports and to initiate inquiries was an important one, but the Bill proposes serious weakening of the provisions. The government has in the interim made certain changes, but important deficiencies remain.

In line with earlier proposed amendments, and Patten’s recognition that the concern to place human rights at the heart of policing could not be co-terminus with work on the Human Rights Act (see para 4.5), CAJ proposes:

Clause 55(2)(a), page 28, leave out line 21, and insert—

- (ii) complying with international human rights norms and standards and the Human Rights Act 1998;

Clause 55(2)(a), page 28, at end of line 22, insert—

- (iv) the extent to which police policies and practices comply with existing international human rights standards and norms applicable to policing

Clause 55(2), page 28, insert NEW SUB-CLAUSES (to comply with changes already proposed to clause 3), after line 42:

- (j) *the arrangements made for inspecting all custody and interrogation suites;*

- (k) the arrangements for actively monitor police performance in public order situations;
- (l) the arrangements for monitoring the training, education and development strategy of the police service”.

If the Board is to monitor the police’s cooperation with the public, and not just that of the public with the police, then the following amendment is required:

Clause 55(2)(i)(ii), page 29, line 41, after “public” leave out “with” and insert “and”.

If the annual report of the Policing Board is to be given the same status as the annual report of the Chief Constable (see clause 56.4), the following amendment is required

Clause 55(3)(b), page 29, at the end of line 4, insert “to lay before both Houses of Parliament”

The Board should have the authority to take the initiative to submit a report to the Secretary of State and not be dependent upon a request for a report.

Clause 55(4), page 29, line 5, after “shall”, leave out “whenever”, and insert “on its own initiative, or whenever so”

Consequently,

Clause 55(5), page 29, line 9, after “subsection 4” insert

“made at the request of the Secretary of State”

CLAUSE 57

Patten proposed that “the Board should have the power to require the Chief Constable to report on any issue pertaining to the performance of his functions or those of the police service. The obligation to report should extend to explaining operational decisions. The grounds on which the Chief Constable might question this requirement should be strictly limited to issues such as those involving national security, sensitive personnel matters, and cases before the court”. (para 6.22).

Given the limited exceptions Patten proposed, the reference in the Bill to exceptions being made for issues of a “sensitive personal nature” is unjustified and could, in CAJ’s view, leave itself open to very wide interpretation. For example, would this mean that future incidents of individual deaths in contentious circumstances (as in the cases of Pat Finucane, Rosemary Nelson, Robert Hamill and Billy Wright, to name but a few in the past) would be ruled out of consideration since they might be considered as relating to “an individual and (being) of a sensitive personal nature”(clause 57(3)(b))?

Accordingly, CAJ proposes:

Clause 57(3)(b), page 28, line 40, after “individual” insert “personnel issue” and delete to end of clause

CLAUSE 58

The public unease expressed in many quarters at the limitations imposed by the draft legislation on the inquiry power of the Board led the Secretary of State to accept in the Second Reading debate that “in the Bill as drafted, I have probably gone too far in the limitations that I seek to impose on the policing board” (col.182, Hansard, 6 June 2000). Unfortunately, while the government did make some adaptations to the legislation on its passage through the Commons stage, there was at least one change made which exacerbates rather than improves the situation. To comply with Patten, CAJ proposes a series of amendments

Firstly, since the Chief Constable has already had an opportunity to appeal to the Secretary of State against the preparation of a report on a variety of specified grounds, CAJ is not convinced that a second appeal mechanism is required if an inquiry is decided upon by the Board. However, if such a mechanism is thought necessary, clause 58(3)(b) should mirror exactly the provisions in 57(3)(b). That is, it should be amended to read:

Clause 58(3)(b), page 30, line 32, after “individual” insert “personnel issue” and delete to end of clause

The Secretary of State has a number of grounds on which he/she can determine not to agree to an inquiry. One might even have concerns that the term “national security”, in the absence of a clear legal definition, can serve as a broad catch-all category. However, in a new change, which in CAJ’s opinion extends the Secretary of State’s power entirely unacceptably, government now wants to give the Secretary of State power to overrule the Board if he considers that an inquiry “would serve no useful purpose”. This must be deleted if the Board’s inquiry powers, on which Patten set great store, are to have any credibility at all.

Clause 58(5), page 30, line 45, after “subsection (3)” delete to end of clause, that is, including line 1 on page 31.

CAJ sees no reason why it is still proposed that the Secretary of State should “approve” of the person appointed to conduct the inquiry (except in the case of those officers cited in clause 58(6)). This power runs entirely counter to the idea of the Board acting independently. We can however see some value in the Board consulting the Secretary of State, and indeed even the Chief Constable.

Clause 58(9), page 31, line 10, leave out “with the approval of the Secretary of State” and insert “after consulting with the Secretary of State and the Chief Constable”

While the new Policing Board may choose to mark the new beginning to policing by determining not to inquire into past behaviour attributed to the RUC, this option should not be denied to it. Patten explicitly asked that the Ombuds-person have access to past RUC reports, and there may be important policy issues which she determines, on the basis of these reports, that require being brought to the attention of the Policing Board. Indeed, even some inquiries into future incidents may have roots in the past, and the current formulation would unduly hamper the work of the Board. For example, if an inquiry were to be held into the use of plastic bullets at some future public order event, it would be illogical not to compare and contrast the problems with past incidents and studies into this weapon.

Clause 58(11), page 31, leave out lines 15-17

(Note also additional procedural obstacles to the inquiry powers in SCHEDULE ONE. For all the reasons articulated above, CAJ proposes amending paragraph 18, Schedule One, as follows:

Para 18(1)(a), on page 45, line 20 after “considering”, leave out lines 21-23 and insert “causing an inquiry to be held under section 58 and”

Para 18(5), page 45, line 34 after “approved by” insert “a majority of” and leave out lines 36-41).

CLAUSE 60

If changes are not made in this part of the Bill, the Ombudsperson will only be able to report to the Chief Constable and the Board on police policies and practices relating to individualised complaints. This fact is confirmed by the Secretary of State's statement during the Second Reading wherein he said "I believe I am right to resist the suggestion that the ombudsman should also have powers to review the policies and practices of the police service—although if, in the course of investigating individual complaints, she wishes to raise wider issues, she may of course do so." The problem with this formulation is that the Ombudsperson will always require an individual complainant pursuing a complaint against an individual police officer to raise any broader issues.

Thus, for example, plastic bullet firing at loyalists in the field at Drumcree in 1998 was not amenable to an individualised complaints system—few if any people were willing to take a complaint, and there were no identifiable officers to complain about. Yet allegations of the security forces taking "pot shots" in the dark at drunks in the crowd should be a cause of concern and should be something that the Ombudsperson could investigate and report on to the Policing Board in the course of Patten's request to her to "actively monitor police performance in public order situations".

Without a power for the Ombudsperson to initiate inquiries, it is clear that Patten's recommendation that "The Ombudsman should take initiatives and not merely react to specific complaints received" (recc 38) is not being complied with. It is essential if the Ombudsperson is to comment knowledgeably to the Police Board and the Chief Constable, as envisaged by Patten, she must be given the power to investigate and not rely solely on issues arising by way of individualised complaints. Patten foresaw the role of the Ombudsperson as being an essential one for modifying police behaviour and it is important that this section of the Bill is adequate to ensure that.

Accordingly, CAJ proposes:

Clause 60, page 32, at end of line 19, insert a NEW CLAUSE

"The Ombudsman should have the power to investigate police policies and practices where he/she perceives these to give rise to difficulties. The Ombudsman may draw the attention of the Chief Constable and the Board to any observations arising from such an investigation"

CLAUSE 62

This clause is drawn up to prevent any retrospective work on the part of the Ombudsperson. If an incident took place before a prescribed time (which we understand from the Implementation Plan to be 24 months maximum) she/he may not (a) investigate complaints against individual police officers (b) investigate any reports made by the Chief Constable at the request of the Board or (c) commence a formal inquiry. While one can entirely understand that there must be a time limitation, if interpreted widely, this could undermine an enormous potential of the Ombudsperson's work. For example, could this be interpreted as excluding her from dealing with complaints about cases that are 'old' but are still ongoing, for instance the continuing controversies surrounding the murder of Belfast solicitor Pat Finucane.

Clause 62, page 32, leave out lines 35-44

Clause 62, page 33, leave out lines 1 -7

CLAUSE 63

Changes were made to this Clause in earlier parliamentary debate and CAJ welcomes the fact that it will be the Ombudsperson who decides on access to information. However, the use of terminology suggesting that the Ombudsperson can only access information which is “require(d) for the exercise of, or in connection with, the exercise of any of his functions” makes it essential that the legislation clearly state that her functions extend to investigating and reporting upon policies and practices and not merely complaints as they relate to individuals (see proposed amendments to clauses 60 and 61).

CLAUSE 64

This clause was added to the Bill during Committee stage. There are at least three problems with the proposals regarding the Oversight Commissioner, when comparing the text to the role envisaged by Patten.

Firstly, on timescales, Patten recommended that the appointment be made for five years initially and “whether there is a need for a further appointment beyond that time will depend on the progress made”. The government has decided that the post will be created for a three year period and that it can be extended once more for a further three year period ie the maximum period allowed by law will be six years. While, with Patten, CAJ would hope that it would be possible in the short rather than the long term future for this important function to be “vested entirely with the people of Northern Ireland where it belongs”, we see no advantage in tying government hands so explicitly in this way. Amendments are proposed to change the timescales.

Secondly, Patten was quite clear that the primary function of the Oversight Commissioner was to provide “*more than a stocktaking function. The review process would provide an important impetus to the process of transformation...We recommend that the Oversight Commissioner should in turn report publicly after each review meeting on the progress achieved, together with his or her observations on the extent to which any failures or delays are the responsibility of the policing institutions themselves or due to matters beyond their control*” (para 19.5). In the legislation, however, the Oversight Commissioner will report to the Secretary of State who will be responsible for reporting to parliament and deciding on the arrangements for publishing the Commissioner’s report. This, in our view, places obstacles at least to the perception of the Commissioner’s independence, if not the reality. The published report should be the Commissioner’s not the Secretary of State’s.

Last but not least, reference is made in the legislation to the “terms of reference” (clause 64(3)). The Commons debate suggested that the terms of reference would be re-validated (as indeed would the position of the incumbent) once the legislation was approved. The Lords may want to comment on the Terms of Reference—and reassure themselves that the Commissioner has the authority to appoint his own assistants and to comment comprehensively on follow-up to the Patten report.

Clause 64(5), page 33, line 23, after “shall” insert “be renewable at five-yearly intervals”, and leave out to end, and delete lines 25-28

LETTER OF SEPTEMBER 11, 2000,
TO U.S. CONSULATE GENERAL IN BELFAST
FROM ROYAL ULSTER CONSTABULARY
DEPUTY CHIEF CONSTABLE COLIN CRAMPHORN

BROOKLYN
KNOCK ROAD
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NORTHERN IRELAND BT5 8LE

COLIN CRAMPHORN LLB AKC MSc
DEPUTY CHIEF CONSTABLE
Our ref: CS/00/0268/1
11 September 2000

Dear Mr. Green,

**RUC RECRUITMENT COMPETITION—
30 NOVEMBER–17 DECEMBER 1998**

You will recall, that during the course of our meeting on 25 August 2000 with John Mackey and Maureen Walsh, that we touched on the subject of RUC Recruitment. In particular we discussed the most recent recruitment competition, which was held between 30 November and 17 December 1998. You specifically requested information regarding the 'community background' of the officers that had been recruited as a result of this competition. I spoke to you on this matter from memory giving you approximate figures for the competition but I agreed to supply you with a full statistical breakdown for your information. I have now been able to liaise with the RUC Equal Opportunities Unit and obtain this information for you.

A statistical analysis of the process has shown that a total of 3359 applications were received for this competition. Of these applications 68.8% were perceived as Protestant, 22.3% were perceived as Roman Catholic, and 8.8% were perceived as being of another denomination or faith/no denomination. At the end of the recruitment process from the 3,359 applications, a total of 133 people were successfully recruited. Of those who were successfully recruited 82.7% (110 recruits) were perceived as Protestant, 13.5% (18 recruits) were perceived as Roman Catholic, and 3.8% (5 recruits) were perceived as being of another denomination or faith/no denomination.

You will also recall that we touched upon the requirements of equal opportunity legislation in Northern Ireland, which only permits an employer to either ask the question—what is your religion?—or infer from an employee's school attendances, as to his or her community background. At the time this competition occurred RUC policy was to determine what a potential employee's perceived community background was by utilising the information they provide on schools they have previously attended. It is therefore not an 'exact science' and indeed some members of a Roman Catholic background may not be included. We have, however, since changed policy and now ask the direct question.

I trust this information fully meets your needs following our meeting. If you feel I am able to help you in any other way please feel free to contact me.

Yours Sincerely,
Colin Cramphorn

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