

**THE GOOD FRIDAY AGREEMENT AT
TWENTY YEARS: ACHIEVEMENTS
AND UNFINISHED BUSINESS**

HEARING

BEFORE THE

**COMMISSION ON SECURITY AND
COOPERATION IN EUROPE**

ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

MARCH 22, 2018

Printed for the use of the
Commission on Security and Cooperation in Europe

[CSCE 115-2-2]



Available via www.csce.gov

U.S. GOVERNMENT PUBLISHING OFFICE

WASHINGTON : 2018

29-384PDF

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March 22, 2018

COMMISSION ON SECURITY AND COOPERATION IN EUROPE
WASHINGTON, DC

The hearing was held at 9:30 a.m. in Room 2200, Rayburn House Office Building, Washington, DC, Hon. Christopher H. Smith, Co-Chairman, Commission on Security and Cooperation in Europe, presiding.

Commissioners present: Hon. Christopher H. Smith, Co-Chairman, Commission on Security and Cooperation in Europe; and Hon. Benjamin L. Cardin, Ranking Member, Commission on Security and Cooperation in Europe.

Member present: Hon. Brendan Boyle, a Member of Congress from the State of Pennsylvania (D-13).

Witnesses present: Brian Gormally, Director, Committee on the Administration of Justice; Judge James F. McKay III, President, Ancient Order of Hibernians; and Mark Thompson, Director, Relatives for Justice.

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

Mr. SMITH. The Commission will come to order. And good afternoon to everybody. I want to begin by welcoming our distinguished witnesses and everyone else in the room joining us for our hearing on the achievements, with a special focus on the unfinished business, of the April 10th, 1998 Good Friday Agreement. As most of you know so well, the signing of the Good Friday Agreement 20 years ago was truly historic, extraordinarily difficult to achieve, a remarkable framework for peace and the hope for beginning of reconciliation.

In its most important provisions, the agreement launched a series of challenging protocols, by which the leaders of the nationalist and unionist communities in Northern Ireland agreed to a better governance, and peaceful resolution of differences. Prisoner releases, new government structures, British demilitarization of the North, the decommissioning of paramilitary weapons and systemic police reform were achieved to varying degrees over the last 20 years. In the 30 years between 1969 to 1998, approximately 3,500 people were killed in political violence, while in the 20 years since the Good Friday Agreement fewer than 100 have lost their lives.

I have personally chaired 15, now 16 counting this one, congressional hearings and markups of legislation with a special focus on police reform and the need to establish a public, independent judicial inquiry into the state-sponsored collusion in the murder of human rights attorney and activist Patrick Finucane and others who were gunned down—or, in the case of Rosemary Nelson, killed by a bomb. I also offered legislation that was adopted by the House of Representatives that put the House on record condemning violence and promoting peace and justice in Northern Ireland and police reform. And I just recently introduced H. Res. 777 which, again, calls for a recommittal of the United States, the British, and all parties—including the Republic of Ireland—to the peace process.

The most contentious of my amendments over the year, one of which became law, resulted in suspending all U.S. support for and exchanges with the British police force in Northern Ireland and the Royal Ulster Constabulary (RUC) until standards were met to vet RUC officers who engaged in human rights abuses. Those new standards were set and eventually then-President Bush was able to certify, in accordance with my law, that human rights principles were part of police training going forward, both in the RUC and in its replacement police force, the Police Force of Northern Ireland, or PSNI. With the improvements, the police exchanges were resumed.

That is the good news. But as the 20th anniversary of the Good Friday Agreement milestone approaches, serious attention and effort to be paid to achieving the dream. First and foremost, the government in Northern Ireland seems unable to consistently function or even constitute itself. Also, after 20 years, despite many obvious successes and benefits of the Good Friday Agreement, and although no one wants to scrap it—and who would want to return to the killing—the reconciliation to some extent has stalled. One of the reasons is that the long-standing cases have not been resolved.

You know, we got testimony on numerous occasions—Geraldine Finucane and her son Michael have been here to testify. She has submitted testimony for today's hearing. And she points out, and I quote in part, "My family has campaigned for a public inquiry into Pat's murder, but the British Government has repeatedly failed to establish one. Instead, they have instigated one confined investigation after another, claiming to want to examine the facts or get to the truth, but always in a process conducted away from public view. One cannot but wonder at the pointlessness of conducting investigation after investigation that are doomed to fail, no matter how forceful the conclusions, because they lack the transparency required to attain public confidence."

As Geraldine points out further in her testimony, the 1998 agreement represent a new beginning that would mark a point with the new future for everyone in Ireland, north and south, could be launched. What was not acknowledged or appreciated, however, was the fact that moving forward also meant dealing with the past. And of course, that is something that this commission and my Subcommittee on Human Rights has tried to do for the last 20-plus years.

I would like to just point out too, in testimony that's been provided to us by the Committee on the Administration of Justice—

again, a very important quote from them, “In a highly disturbing development, and notwithstanding the reality that only a small number of legacy cases relate to British soldiers, a recent report of the Commons Defense Select Committee called for the enactment of a statute of limitations covering all troubles related to incidents involving members of the armed forces. This concept effectively means a selective amnesty for crimes committed by British soldiers.”

The committee also suggested that it be extended to the RUC and other security force members. This position is, of course, completely contrary to human rights standards and, if it were enacted, would probably be found unlawful by the courts. Nevertheless, the U.K. Government has said that it will include the proposed in a forthcoming consultation on the implementation of the Stormont House Agreement. That is a dangerous, I think, backtracking on the part of the British Government. And hopefully they will cease and desist in moving in that direction.

Without objection, my full statement will be made a part of the record. Geraldine Finucane’s statement will be made part of the record. We’re joined by the ranking member of the Helsinki Commission, Senator Ben Cardin.

HON. BENJAMIN L. CARDIN, RANKING MEMBER, COMMISSION ON SECURITY AND COOPERATION IN EUROPE

Mr. CARDIN. Well, first, let me thank Chairman Smith for convening this hearing. There’s a lot of lessons to be learned in regard to the Good Friday Agreement. And it’s particularly appropriate that the Helsinki Commission would hold this hearing on this 20th anniversary.

And I want to welcome our panelists, our guests, our witnesses for their testimony. And I’m going to apologize early. As you know, there’s been an agreement reached on the budget and we have a Finance Committee session on this in 20 minutes. So I apologize for having to leave. But I wanted to be here.

I was in Belfast, as I know Chairman Smith was in Belfast, during the troubled times. And what I saw in the early 1990s in Belfast was a segregated city that I have never seen the likes of which, where it was literally not safe to cross the street between the Protestants and the Catholics. The problems—and that’s what it was called, the Troubles—in Northern Ireland lasted 30 years of active conflict, where 3,500 people lost their lives. So we celebrated a framework for peace, the Good Friday Agreements, the Belfast Agreements, because it set us up with a way to end this bloody conflict. And it represented, I think, the best of the Helsinki principles for using democratic process for peaceful resolution of a conflict.

But as Mr. Smith has already laid out, there are still problems. Twenty years later we still have problems. Coming to terms with the past has not been easy. Providing justice for the victims has not been easy. And now we have Brexit, which changes the open borders between Ireland and the U.K., which very much complicates the implementation of the peace agreements. And we have a lack of developed government from Northern Ireland that can deal with a lot of these issues. So I do believe returning to Helsinki

principles is particularly important to make sure that the progress that was made 20 years ago is not lost. And therefore, I think this hearing is particularly important. And I wanted to stop by and just reinforce the work that's being done here and to thank our witnesses for being here.

Mr. SMITH. I want to thank my good friend and colleague Ben Cardin. We have worked side-by-side for decades, including on Northern Ireland. So I want to thank you for taking the time out and hope you're not late to your meeting. [Laughs.] Thank you.

I'd like to yield to Mr. Boyle.

**HON. BRENDAN BOYLE, DEMOCRATIC REPRESENTATIVE FOR
THE STATE OF PENNSYLVANIA**

Mr. BOYLE. Thank you. I'd like to thank Congressman Smith and Senator Cardin.

As a member of the Foreign Affairs Committee, some know, I for quite some time pushed to have a hearing on the consequences of Brexit, which we were able to have actually in this hearing room, because I am very concerned that this current Brexit process would yield the collateral damage of the Northern Ireland peace process which so many here in the United States and in Ireland and in the U.K. worked hard to create and foster.

Recently—let me take a step back. For about 19½ years of the last 20, the Good Friday Agreement has been accepted as the accomplishment in which we can all take pride, and the unquestioned gold standard moving forward. That was and is the position of Democrats and the Republicans here on Capitol Hill, the position of all of the political parties in Dublin, and was the position of all the political parties in the U.K. Very recently some in London have made comments about the Good Friday Agreement to the effect of, “this doesn't need to last, wasn't meant to be set up forever.” That is a very disturbing backsliding, the likes of which we have not heard for the previous 19½ years. Former Prime Minister John Major was right when he spoke out recently against such dangerous rhetoric.

So as we gather here to observe and celebrate the 20th anniversary of the Good Friday Agreement, we should be very loud in repeating the successes of this agreement. No, it's not perfect. I'm very disappointed about some of the aspects that have not yet been implemented. And I'm sure we're going to be talking about those. But to all of a sudden suggest that the Good Friday Agreement can just be ripped up and thrown out, as some irresponsible voices have said, is very disturbing. And I think that I speak for Democrats and Republicans on the Foreign Affairs Committee and, indeed, in Congress, that there is absolutely zero support in Washington, DC, for going back to the days of pre-Good Friday Agreement.

So with that, I thank you for your long-standing interest and activism on this issue, Chairman Smith. And happy to yield back.

Mr. SMITH. Well, we're very grateful to have a great, distinguished panel with us this morning, beginning with Brian Gormally, who is the director of the Committee on the Administration of Justice (CAJ), a leading human rights advocacy organization in Northern Ireland. For over a decade, before he was an independent consultant specializing in justice, human rights, and

equality issues, and has published and presented extensively on these issues—particularly on politically motivated prisoner release, victims of terrorism, dealing with the past and restorative justice. He has been involved in international peace-related work in South Africa, Israel, the Basque country, and Italy, and more recently in Colombia.

We'll then hear from Judge James F. McKay III, who is the national president of the Ancient Order of Hibernians [AOH], founded in 1836. The AOH is America's oldest Irish Catholic fraternal organization, with more than 80,000 members and has been active in supporting the peace process in Northern Ireland. Long active in Irish affairs, Judge McKay is an honorary counsel of Ireland in Louisiana, and serves as chief judge of Louisiana's 4th Circuit Court of Appeals.

We'll then hear from Mark Thompson, who is founder and member and CEO of Relatives for Justice, a human rights advocacy and support organization for survivors of the conflict in Northern Ireland. Mr. Thompson has decades of experience in proactively holding those responsible to account and ensuring that the needs and experiences of the victims of the conflict are identified and championed. He has made representation on families' behalf—at U.S. Congress, the United Nations, European Parliament, European Court, as well as to governments in both Britain and in Ireland.

Mr. Gormally, the floor is yours.

**BRIAN GORMALLY, DIRECTOR, COMMITTEE ON THE
ADMINISTRATION OF JUSTICE**

Mr. GORMALLY. Thank you very much, Mr. Chairman. And thank you for the invitation to give testimony to this commission, which is certainly famous in Ireland for keeping the issues about the peace and human rights in Ireland alive in this place. And we're very grateful for that.

We're honored to be giving evidence to this commission on the occasion of the 20th anniversary of the Belfast Good Friday Agreement. As has already been said from the podium, this agreement has given us 20 years of relative peace. Following a disastrous 30-year violent political conflict, that is something worthy of celebration. CAJ is an organization devoted to the protection and promotion of human rights. Since we know that violent conflict always involves a bonfire of human rights, protecting and promoting the peace settlement is our top priority.

The peace agreement was designed to create a political and geographical space which could be shared by those with different national aspirations and allegiances. To do this, it recognized the right of the whole people of the island of Ireland to self-determination, and the right of the people of the North to vote to join a united Ireland. It declared that it was the birthright of those born in Northern Ireland to be Irish or British or both and established a form of government that would mean that one community could not dominate the other. To underpin all of that, however, was an infrastructure of proposed legislation and institutions which would guarantee that the Northern Ireland of the future would be a rights-based society.

The commitments to protecting human rights in legislation included a promise to incorporate the European Convention of Human Rights into domestic law, a bill of rights for Northern Ireland, including additional rights, a Single Equality Act, an Irish Language Act, and a duty to be placed on public authorities to consider the equality impact of any policy. In addition, a series of acts will be required to implement the recommendations of the Patten Commission on a thorough reform of policing. Institutionally, the Agreement established a new Human Rights Commission with extensive investigative and legislative oversight power, and an equality commission to enforce the public equality duty.

The reality is that while huge advances have been made, and society in the North is now very different than that of 20 years ago, there are outstanding commitments and unfilled promises which weaken the peace process, which the written testimony I've given to the commission gives more details about.

Let me just look briefly at the question of policing. Policing is particularly important in establishing trust in institutions of society and in the rule of law. Huge progress has been made. In many respects, the police service of Northern Ireland tries to live up to the Patten Report's statement that the purpose of policing should be the protection and vindication of the human rights of all. There should be no conflict between human rights and policing. Policing means protecting human rights.

Our systems of accountability and oversight, especially the independent ombudsman with its own investigators, should be a model for democratic policing throughout the world. However, areas of concern remain. The unaccountable and secret security service, or MI5, has primacy for national security intelligence policing in the North, which is a huge gap in accountability. The Police Service of Northern Ireland (PSNI) is also obliged to support the activities of the U.K. border force and immigration enforcement, which have a history of human rights abuses and no local accountability. We also believe that there's prima facie evidence of the police unlawfully using counterterrorism powers in immigration enforcement.

Elements of the police are also responsible for some of the delay and obfuscation in dealing with the past, which we'll go into more detail later. The control of intelligence material by officers who served in the RUC Special Branch, its over-classification as top secret, and the willful failure to expedite the production of evidence to inquests and courts are all continuing problems. It's arguable, however, that the main area in which continuing human rights violations undermine society and threaten the peace process is one not properly covered by the peace agreement. That is the continuing search for impunity by the U.K. State for the action of its agents during the conflict.

Combating impunity is one of the foremost preoccupations of human rights activists throughout the world. The reasoning is simple: If impunity persists, there can be no justice or truth for victims, future perpetrators will be emboldened, and confidence in the rule of law weakened. These outcomes are exactly being produced with regard to continuing impunity for those who violated human rights during the conflict in Ireland. Victims are dying without seeing justice, or even serious attempts to achieve it. Torture and

other crimes have been carried out by U.K. security forces in other parts of the world, and faith in the rule of law is falling away.

The delays, obfuscations, and squeezing of resources by the U.K. authorities and local allies, which have been detailed year after year, can only be understood as designed to maintain an apparatus of impunity. The insistence of security agencies and ministers having a national security veto over what information is published is an insistence on impunity for their agents. That's why combating impunity is CAJ's top priority.

In August 2001, the European Court of Human Rights gave judgment in a number of cases detailing the investigative duty that comes under the "Right to Life." To this day, the U.K. has still not discharged its obligations. And the cases remain under the supervision of the Committee of Ministers of the Council of Europe, the body which oversees implementation of the judgments of the court.

In its decision of September the 21st, 2017, the Committee of Ministers noted with deep concern the lack of progress on implementing the Stormont House Agreement, which provides for four mechanisms to deal with the past, and that legacy inquests have not been funded. The exasperation of the committee with the procrastination of the U.K. Government is clear. More important is the hurt of the victim still denied justice, and the corrosive impact of the lack of institutions to deal with the past on the present trust in the institutions of state and the rule of law.

There are some signs of progress in the courts. Exactly a fortnight ago today the High Court in Belfast held that the decision of the then-First Minister Arlene Foster to prevent a request going the British Government to fund legacy inquests was unlawful. The so-called "hooded men" case, in which CAJ represents the daughter of one of the 14 men caught during 1971 and who died because of it, is being fast-tracked by the court of appeal, with the intention of getting a swift judgment from the Supreme Court in the application and investigative obligation in both right to life and torture cases.

However, there's been a negative development in jurisprudence. The judgment in the Irish application for the revision of the European court of human rights judgment in Ireland versus the U.K.—which in 1978 made the disastrous distinction between torture and inhuman and degrading treatment in respect of the hooded men—was delivered on the morning of Tuesday the 20th of March. This is a narrow and largely technical decision by the European Court of Human Rights, but it is hugely disappointing in that it leaves the unjustified distinction between "torture" and "inhuman and degrading treatment" intact. However, we should remember that the Article 3 prohibition on all such treatment, whatever the definition, is absolute. Those who have sought to justify brutal interrogation methods on the basis of the 1978 judgment are still wrong in law and barbaric in their practice.

For the last four years we've been expecting the U.K. Government to publish legislation to implement the Stormont House Agreement. We're now told the text will be published after Easter consultation. It remains to be seen whether this will be a good faith attempt to implement the agreement in a human-rights-compliant manner, or another way of delaying and denying truth with a blan-

ket national security veto on information to be released to families. The Chair has already read the piece of our evidence about the so-called statute of limitation called for by certain elements in the British establishment.

So let me move now onto the fact that it's impossible to continue a discussion on the status of the Good Friday Agreement without mentioning Brexit, the decision by the U.K. to leave the European Union. This will have a profound effect on the legal and constitutional underpinning of the present jurisdiction of Northern Ireland, its relations with the Irish State, and U.K.-Ireland bilateral relations. The U.K. and Ireland's common membership of the EU was an assumption in the Good Friday Agreement, and the U.K.'s adherence to EU law regulates the powers and legislative operations of the involved institutions.

The equal rights of Irish and British citizens, a principle of the Good Friday Agreement, in great part relies on the equal rights of both as having EU citizenship. The lack of significant border regulation is largely due to common membership of the EU, North and South, as well as the improved security situation. The U.K.'s clamp down on immigration after Brexit may turn Northern Ireland into one big border with enhanced enforcement and serial human rights abuses. Many equality and anti-discrimination provisions in Northern Ireland, which have particular importance in a divided society, rely on EU law.

Furthermore, the decision to leave the EU based on a U.K. referendum, in which Northern Ireland as well as Scotland voted to stay, is an affront to the principle of self-determination of the Irish people, which is a foundation stone of the agreement. All of these impacts could have a destabilizing effect on the constitutional, political, and legal settlement that, in the main, ended the political conflict which devastated the people of Northern Ireland and gravely affected those in the rest of the U.K. and Ireland.

While it's unlikely that any one particular effect of leaving the EU would destroy the peace settlement, the cumulative impact could begin to unravel it. In particular, any diminution in the protection of rights of the people living on the island could reduce trust in the Good Friday institutions. And any unraveling of the settlement would be disastrous for human rights. A continuing preoccupation of CAJ will, therefore, be the protection of the integrity of the peace settlement, and the various agreements that make it up.

We would like to commend this commission for holding this hearing and to support the resolution that has been put to Congress. The Good Friday Agreement is one of 20 years of relative peace, but the goal of making that peace permanent, based as it must be on a rights-based society, remains to be achieved.

Thank you, Chairman.

Mr. SMITH. Thank you very much for your testimony. Without objection, your full statement will be made a part of the record. And as usual, thank you—it's very thorough and, as always, full of recommendations.

I'd like to now yield to Judge McKay such time as he may consume.

JUDGE JAMES F. MCKAY III, PRESIDENT, ANCIENT ORDER OF HIBERNIANS

Judge MCKAY. Good morning Mr. Chairman and distinguished members of the commission. It is an honor to be here today to discuss the 20th anniversary of the Good Friday Agreement. In addition to my day job as chief judge of the Louisiana 4th Circuit Court of Appeal, I also serve as honorary counsel for Ireland to the State of Louisiana, as well as national president of the Ancient Order of Hibernians (AOH). It is in that role as president of the AOH that I testify before you today.

The Ancient Order of Hibernians is the oldest Irish Catholic fraternal organization in the United States and originally founded in 1836. And along with our sister organization, the Ladies' Ancient Order, we have almost 80,000 members throughout the United States. And not just in places like Boston, New York, and Philadelphia, but in less obvious places as well, such as Butte, Montana, Los Angeles, California, and in my hometown of New Orleans, Louisiana. There are an estimated 33 million people in the United States who claim Irish heritage.

The world figure is estimated to be around almost 70 million. That means that almost at least half the diaspora reside here in the United States. In fact, we often hear it said around St. Patrick's Day that there are only two kinds of people in the world—the Irish, and those who wish they were. And even though that's just a joke, there is no question that for a country roughly the size of the State of West Virginia, Americans do pay a great deal of attention to the Irish. And it is this connection between America and Ireland that organizations like the AOH continue to celebrate and foster.

Twenty years ago, a document that has come to be known as the Good Friday Agreement was signed by political representatives of the people of Northern Ireland and representatives of the British and Irish Governments. This historic agreement brought an end to the violence of the Troubles and introduced peace to a conflict where over 3,500 people had lost their lives in civil unrest.

One of the tenets of the AOH is a quote from Padrig Pearse which states, "Ireland unfree shall never be at peace." The Good Friday Agreement delivered peace only because it also promised freedom. The Good Friday Agreement promised freedom and reconciliation based on a parity of esteem for both sides of the divide. The successes of the agreement to date have been achieved through hard work, the commitment of members of all the local communities who suffered tragedies during the Troubles, and by requiring considerable courage from political leaders who faced hard consequences from their constituencies in making any concessions. What so many of us can all agree on, the important role of the United States in securing this historic deal.

The relationship between America and Ireland goes back to even before there was a United States. It was Ireland that first send aid to struggling American colonies seeking their own independence. George Washington once described Ireland as, "thou friend of my country in my country's most friendless days." While having Americans insert themselves into the politics and policies of Ireland was nothing new at the time, the commitment, leadership, and direct

engagement shown by the U.S. officials during this period was unprecedented.

In fact, I am not entirely sure that we would have had a Good Friday Agreement had it not been for the engagement of American officials like President Bill Clinton, Senator George Mitchell, Senator Ted Kennedy, Congressman Richard Neal, and Congressman Peter King, just to name a few. They refused to give up on a deal when tensions became too high or certain groups walked away from the negotiating table and ensured that the “Peace and Reconciliation Agreement” could be born.

The goals of the Good Friday Agreement were meant to give the future back to the people of Northern Ireland, unshackled from the legacy of the past. For the first time in a very long time, simple things like everyday grocery shopping, worshiping on Sundays, or taking family outings on holidays could be conducted without fear or trepidation. And during the past 20 years, a generation has grown up in the North without knowing the fears and anxieties that constant violence inflicts upon communities.

Further, we have come to learn that peace brings prosperity. The economy of the North has made significant advances since the Troubles. And despite setbacks from the global recession, the North of Ireland has seen a growth in tourism, a growth in foreign direct investment, and a commitment to increasing the private sector. On a personal note, it reminds me of the civil rights movement in our country. During those turbulent times, many sought delay and postponement of the initiatives. But because of their moral weight, they were achieved. Just as in Ireland, this is an ongoing mission and it must be worked at every day if success is to continue.

So, while we recognize the great strides that have been made in the last 20 years in all sectors, final peace has not yet been achieved in the North. We praise the efforts of Senator George Mitchell and other subsequent envoys of the U.S. to Northern Ireland. And we praise the work of all the politicians on the ground who made the Good Friday Agreement a reality. However, the GFA was merely the beginning of a process aimed at creating a fair and equitable society for all the communities of the North.

At an event just last week at the Library of Congress to commemorate the 20th anniversary of the Good Friday Agreement in a pre-recorded message for attendees, President Clinton told the audience that there is still significant work to be done in the North. He challenged us to seize this moment of memory and move into the future together. The AOH agrees with President Clinton. We believe the time is now for the United States to recommit itself to the principles of the Good Friday Agreement. In fact, the AOH has repeatedly requested that this administration fulfill its commitment to appoint a special envoy to Northern Ireland immediately.

This is an extremely critical time for the North. As political parties continue to attempt to form a sustainable government, while addressing the fears and anxieties of Brexit, we believe that America must reaffirm through the presence of a special envoy that the peace and well being of the community of the North is still a priority of the United States and America is willing to walk with the representative of those communities on the road to a lasting peace.

I believe that it is important to note that the AOH in America has been, and will be in the future, working for the unification of Ireland. The preamble of our AOH Constitution states that the purpose of our organization is to promote “friendship, unity, and Christian charity, and to aid and advance by all legitimate means the aspirations and endeavors of the Irish people for complete and absolute independence, providing peace and unity for all of Ireland.”

That being said, we understand that this cannot be accomplished overnight, and complete independence can only be achieved when a majority of the people on both sides of the border wish it to happen.

For over 30 years, the AOH has been engaged with a variety of organizations in the North and poured hundreds of thousands of dollars into organizations that provide assistance for charities and agencies to aid and advance, by all legitimate means, the aspirations and endeavors of the Irish people. We in our own way continue on the efforts of successive U.S. envoys to bridge the gaps of ignorance and mistrust. And our donations sent to Northern Ireland each year go to a variety of cross-appeal organizations.

Additionally, the AOH supports the promotion of the Irish language in Ireland, which has garnered much media attention as a cause, but not the only one, for the failure to restore the power-sharing government. It is incredulous that anyone would have an objection to the Irish language being taught and used in Ireland. We note that the acts supporting and promoting indigenous languages in other parts of the United Kingdom, specifically Scotland and Wales, have long been enacted. To those who ask if the study of language should be a barrier to forming a government we respond that if something as benign as the promotion of the Irish language cannot be resolved, then what hope is there to address more contentious issues? We believe that the issues of identity should always be on the table for discussion and can be addressed better if an impartial outsider, like an American envoy, chairs these discussions.

One of the many groups that we support monetarily on an annual basis is Relatives for Justice, who are certainly here with us today. This organization works for truth and justice for victims and survivors of the victims during the Troubles. Utilizing a third party—in this case, the U.S. envoy again—to help address some of these legacy issues is critical to finding a path forward. For example, the Stormont House Agreement was signed in 2014 and provides a comprehensive framework to address legacy issues and needs to be fully implemented. The AOH believes that many legacy issues should be handled with a third-party negotiator involved, to give credibility to the impartiality and transparency of the process.

In addition to addressing legacy issues, the people of Northern Ireland are now forced to deal with concerns surrounding Brexit and how the North may be impacted. Today the local people of Northern Ireland can cross the border multiple times in any given day for work, for school, for shopping, for life. The dissolution of the U.K.’s membership in the European Union has once again raised the specter of a “hard border” in which all affected communities are in rare unanimity.

To avoid this disastrous consequence of a hard border in Ireland, compromises will be needed by all parties. The AOH believes it's yet another excellent reason to appoint a special envoy who can impartially facilitate finding common ground to begin and exhibit trust in carving out the future. History has proven the majority of today can be the minority of tomorrow. And the blanket of protections enacted today will equally cover those who may feel they do not currently need them. There is no question that Senator Mitchell understood this fact 20 years ago, which is why it is so crucial to find an equitable path for all parties.

Certainly, one of the most respected members of government from the nationalist side was my friend Martin McGuinness. In fact, I don't think most people recognized his stature until after his death. What he believed in can be reduced to four basic principles: those of self-determination, respect, equality, and truth. The AOH in America fully supports these espoused principles and believe that they are in keeping with the best values of the organization—truth, respect, equality, and self-determination.

God only knows the future of Ireland. And we can only continue to do what we have done in the past. And that is to support the efforts and the principles of the Good Friday Agreement and continue to spread the word to all who will listen of the achievements that have been made to this date.

Thank you, Chairman.

Mr. SMITH. Judge, thank you very much for your very strong and eloquent statement and recommendations.

I'd like to now yield to Mr. Thompson.

MARK THOMPSON, DIRECTOR, RELATIVES FOR JUSTICE

Mr. THOMPSON. Thank you, Mr. Chairman. I'd like to take this opportunity to thank this very distinguished commission that has held quite a number of hearings since the Good Friday Agreement, assisting the progress of human rights, truth, and justice in our country. I'd also want to thank your staff and everyone involved in facilitating this hearing.

Dealing with the past, in which multiple harms and egregious human rights violations have occurred—not least systemic abuses that had official government sanction—is a prerequisite of any post-conflict transformation. Righting the wrongs of the past, truth seeking, and accountability, are an imperative to individual and societal recovery and healing, the restoration of human dignity, and the promotion and protection of human rights. No one community has a monopoly on the human heartache that was our conflict. We all suffered. However, in terms of accountable justice there exists a huge deficit for those affected by state violence and collusion. And it is no coincidence that these families face innumerable barriers to justice.

There is powerful resistance to a process that addresses the past in the North of Ireland, in an openly transparent, legally compliant, and, above all, independent way. The resistance emerges from people within the police, the military, some institutions, political unionism, and the British Government, who are not neutral.

They all seek to maintain a false narrative of the past and about their true role and extent in the conflict. This position, therefore,

necessitates the denial of rights and ultimately accountable justice. Moreover, this position is unsustainable if there is to be meaningful change and the full implementation of all envisaged in the Good Friday Agreement.

Two weeks ago in the Belfast High Court, Justice Paul Garvin ruled that former First Minister Arlene Foster acted illegally and with improper political motive when she blocked attempts by the North's foremost legal representative, the Lord Chief Justice Sir Declan Morgan, to secure funding for legacy inquests into 55 cases involving 97 killings, inquests where families have waited up to four decades to hear.

At the same time, in an adjoining courtroom, Justice Bernard McCloskey finally removed himself from a hearing in which the former head of RUC Special Branch, Raymond White, challenged the police ombudsman's powers and findings into the Loughinisland massacre, which evidenced RUC collusion.

He delivered a scathing preliminary judgment against the police ombudsman, but it was then discovered that he had previously acted for the police and the head of Special Branch when they challenged the police ombudsman report into the 1998 Omagh bomb, in which Nuala O'Loan, then police ombudsman, was highly critical of the Special Branch. Her criticisms included prior intelligence about the planned attack from an agent within the organization responsible, which might well have prevented it. The McCloskey judgment, upheld strikingly similar submissions advanced by the same judge acting as a lawyer for the same former head of the RUC Special Branch Raymond White on that occasion. The case will now be held afresh.

As a consequence, the police ombudsman is only able to publish several major reports into killings involving collusion until the court case concludes. This rear-guard action by the former of RUC Special Branch is also designed to stall and frustrate the process of accountability. With appeals and challenges, it may take several years to conclude, which is time families don't have. The current police ombudsman, who has the confidence of families, has approximately 15 months left to serve as head. The objective is, we believe, to remove him.

More recently, in the same High Court, the PSNI chief constable, George Hamilton, was found to be in contempt by Justice Ben Stephens for refusing to provide disclosures in a civil case taken by John Flynn in respect to a series of murder bids on Mr. Flynn by the notorious Mount Vernon-based Ulster Volunteer Force (UVF), a sectarian criminal gang in which multiple gang members worked for the RUC Special Branch. Police Ombudsman Nuala O'Loan, who testified before this commission on more than one occasion, produced a report entitled "Operation Ballast," which detailed the activities of this group.

At the same time, in an adjacent criminal court, families who had loved ones killed by the UVF gang based on Mount Vernon observed as its leader Gary Haggerty was being sentenced for a series of criminal activities, including murder. Haggerty, himself a Special Branch agent throughout his reign of terror, had become an assisting offender in 2009. As an assisting offender, Haggerty spent seven years providing evidence on all of his activities and accom-

plices, including his Special Branch handlers who directed his activities and who covered up his actions—evidence which the courts accepted as credible.

Families accepted that Haggerty would get a reduced sentence as an assisting offender, but this was mitigated somewhat in that they would also see his Special Branch handlers in the dock as well as his fellow loyalists as part of this process. None of this happened, despite promises by the PSNI and the Public Prosecution Service throughout. The matter is now subject to a judicial review by the McParland and Monaghan families, who lost loved ones. It is suspected that the reasoning behind the deliberate failure to disclose evidence in the Flynn case is to protect the same group of agent handlers within RUC Special Branch also involved with Haggerty and shield them from prosecution.

These matters bring into sharp focus the independence of the PSNI, where a cabal of former RUC officers who transferred over to the PSNI now hold senior positions and now control dealing with the legacy of the past. Astonishingly, this stranglehold on legacy involves some of the 20 percent of former RUC who took the incentivized redundancy retirement package to leave and to enable change and fresh faces to come into place, but they simply returned as consultants and civilian workers the following week. Astonishingly, in this civilianized capacity, former RUC within the PSNI are not subject to the oversight powers of the independent police ombudsman, a loophole that the U.K. and political unionism refused to rectify.

Taken together with the overall position of the PSNI on legacy, this has had a corrosive effect on nationalist confidence in policing, which is now at an all-time low.

The 2009 offer to Haggerty came—strangely or not—from MI5, the PSNI, and the Public Prosecution Service. The blurring of boundaries and interference in due process calls into question, at the very least, the very institutions of justice, and of course this is nothing new.

The trial of British Army Force Research Unit (FRU) agent Brian Nelson in 1992 saw the then-British Attorney General Patrick Mayhew direct the prosecution against him following interventions by the U.K. Government in a bid to protect Nelson from taking the witness stand and disclosing his full activities, including murder. A deal was struck for Nelson's silence. And in return, 20 counts were removed from the indictment, including 2 of murder.

1988, the same attorney general told the British Parliament that it would not be in the public interest to proceed with prosecutions against RUC officers from a specialist unit known as E4A involved in a series of deliberate shoot-to-kill incidents of unarmed republicans. The collusive activities of the FRU and RUC Special Branch were the subject of three major inquiries by the then-U.K.'s most senior police officer, Sir John Stevens. These took place from September 1989 until April 2003.

His inquiries found collusion and he recommended that 25 members of the FRU and RUC Special Branch be prosecuted. This was never acted upon. Sir John Stevens later told the British parliamentary committee that of the 210 people he arrested during his inquiries—that is, not members of the police and the military—of

those 210, 207 were working inside paramilitary organizations for the British State.

And so we see a pattern where accountability is thwarted and prevented when involving state killings, its agents operating inside illegal paramilitaries involved in murder, and those agent handlers directing and protecting them. It is about shielding British State conflict policy and practices of wrongdoing on a massive scale that, if uncovered, would completely tilt the conflict narrative.

It is about protecting the reputational damage this would inflict on the U.K. also. It is also about where this leads to in London and, importantly, to whom. Who sanctioned all of this? It is precisely why there exists so much opposition to addressing the legacy of the past.

The pattern of insulating and protecting against such situations of exposure can also be seen across a range of institutions and proposed mechanisms to deal with the past. Take, for example, the agreement reached in December 2014 at Stormont House to address the past. Post the agreement, the U.K. Government arbitrarily inserted a “national security” veto into draft legislation, enabling the retention and nondisclosure of information and material in any case they deemed to be necessary. Charlie Flanagan, who is the minister who negotiated the agreement on behalf of the Irish Government, described this as a “smothering blanket” of national security that was completely “unacceptable.”

More recently in correspondence to Relatives for Justice, the British secretary of state for the North said that any consultation on the implementation of the Stormont House Agreement mechanisms to address the past would also include a statute of limitations for British soldiers, an amnesty. This would be unacceptable and illegal.

One of the main arguments proffered for systemic delays in addressing legacy is a lack of resources and funding. This has dramatically impacted the police ombudsman office and the inquest courts, with budgetary cuts despite the increasing caseload. It is no coincidence, therefore, that these also happen to be the only two functioning mechanisms that currently contain the potential to deliver the truth and accountability for families. Now their capacity is hampered.

By contrast to the resource argument, the PSNI and other agencies have paid out tens of millions of pounds in a range of civil cases in order to forgo having to disclose information about collusion. So the argument is false. It is in this overall context that resistance by the U.K., supported by political unionism, to addressing the legacy of the past in a meaningful, constructive, independent, and legally compliant way must be viewed.

As a signatory to the European Convention on Human Rights, the U.K. are legally obligated to conduct thorough and independent investigations in accordance with Article 2 of the Convention, the Right to Life. Under the Convention, states must take measures where life is potentially under threat, ensuring safety, and where life is taken then they must ensure investigation meets the above standards.

In truth, the U.K., through its security and intelligence agencies, issued threats to citizens, denied them protection, and assisted in

every conceivable way those they then sent to kill them. This is the conclusions of the Stevens inquires, the De Silva Review, and the Police Ombudsman. It is why the former U.K. Prime Minister David Cameron apologized to the Finucane family. In short, Article 2 must govern and be at the heart of any future mechanism to address the past. This legal obligation, it would appear, has proven hugely problematic for the U.K. authorities. Hence, the national security veto, the proposed statute of limitations, and the general circling of wagons.

This is best illustrated in the powerful European body, the Committee of Ministers to the Council of Europe. Following the May 2001 European Court on Human Rights ruling in the McKerr group of cases, where the U.K. domestic investigative procedures were unanimously found to have been deliberately prohibitive to establishing the facts and holding to account the perpetrators in respect to state killings, including collusion, the court passed a judgment to the Committee of Ministers for supervision. The role of the Committee of Ministers is to assist the offending state to remedy the violations by way of ensuring the proper investigative procedures, legally compliant with the Convention, are put in place.

Since May 2001, the Committee of Ministers has refused to sign off on their supervision of the U.K., having not been satisfied that the U.K., through its action plans, has fulfilled its legal obligations. That is 17 years. Families want truth, the right to know who precisely were behind the murders of their loved ones, and accountability for it. It is not acceptable that the U.K. State, rather than meet its legal obligations to investigate, would prefer first to deny the truth, then when evidence is revealed, delay processes to secure justice and accountability, all in the hope that relatives may simply die off—which is happening.

But other relatives are picking up the baton, continuing the fight, newer generations. And so families will never give up. As I said at the outset, accountability for human rights violations are central to healing and recovery. It enables the victim to recover that sense of disempowerment often associated with a wrong committed. Righting that wrong is therefore ethically, morally, and above all legally imperative, not least when the finger—the evidential trail—points and leads directly to those in power—the police, the military and the government, who carry the duty to protect and prevent wrongdoing but who, instead, engaged in the practice of murder and cover up.

In such situations, the necessity to ensure justice and accountability is, arguably, all the more. Implicit in this testimony, there has been no police reform when it comes to dealing with the legacy of the past, only obfuscation. Implicit, families are actively to the fore in public discourse, engaged in litigation and other forums, seeking truth and accountability for past violations, having to challenge a state standing in their way. The work by families is about historic clarification, the dignity of truth and healing. The families we are humbled to work with, the families engaged in all of this work, are the real heroes of the Irish peace process.

Finally, I want to put on the record the crucially important international forum these hearings provide to families and NGOs engaged in the promotion and protection of human rights and to se-

cure justice. These hearings, even 20 years after the peace accord, are necessary in assisting and encouraging a rights-based approach within the context of our still-developing peace process. A lot has been achieved, but the reality is, we are not there yet. Your influence, vigilance, and scrutiny therefore have real meaning and impact in the work still to be completed. In particular, I want to acknowledge Congressman Smith for your consistent and dedicated work over the two decades in seeking to consolidate and build upon the peace process.

On behalf of the families, we thank you.

Mr. SMITH. Thank you very much, Mr. Thompson, for your extraordinary testimony—incisive, pointing out the coverup. You know, resource-starving of the police ombudsman is one way of creating even more of a sense of impunity. And chapter and verse, you have laid it out so effectively. I continue to be amazed at both some of the ruling parties and certainly the British Government don't seem to understand the dishonor that this continued obfuscation, denying resources so that the police ombudsman can do its work, produce reports and, of course, above all, bring prosecutions for those who have committed high crimes, especially murder, and the collusion that led to those murders brings nothing but dishonor to the British Government.

And my hope would be that—we have a resolution, which, again, recognizes the achievements of the Good Friday Agreement but also, simultaneously, points out that there are shortfalls.

And in this area—and I misspoke before when I said this was my 16th hearing. This is my 17th. We actually had a hearing—and I think you will find this very interesting, Judge—we had Edward Wallace and Mary Paglione, who were the presidents of the AOH and the AOH Ladies back in 1997—and I remember well their testimony.

And, Mr. Gormally, we also had Martin O'Brian, one of many times that he was here. Matter of fact, it was in Belfast in a meeting with Martin O'Brian and Rosemary Nelson when she had multiple death threats made against her by the RUC that we decided to bring her here. And she testified. And about a half-year later she was killed in a terrible, terrible assassination. Her words were haunting. She was warned. And that sense of impunity and that sense of violence, collusion at the highest levels of government continues to this day.

We do have some votes, so we will take a brief respite—four votes are on the floor. But I do have a number of questions I would like to ask each of you. I would like to start with one. The statute of limitations issues. In this country, in any civilized country, there are no statutes of limitations on murder. And, Judge, as you know, some of our old civil rights cases that go back to the 1960s, when compelling information would be brought forth, those who have committed those crimes can be brought to prosecution. And to think that this is being hid under the table, covered up, systematically.

I think something that you said, Mr. Thompson, was very—taken together, the position of the PSNI on legacy has had a coercive effect on nationalist confidence in policing, which is now—and this is really a powerful statement—at an all-time low. And that it has

been very low in the past. To think that it's at an all-time low is frightening.

So if you could just speak to that as soon as we resume our sitting. And again, I thank you for your testimonies.

[Recess.]

Mr. SMITH. The Commission will resume its hearing. And again, I apologize for the rather long recess. We did have four votes, and they took a little while to get through.

Let me just ask, if I could, some opening questions. I did begin to set up the question about the statute of limitations. If you could speak to that as being—you know, in terms of jurisprudence, in terms of law, it seems to me that that is an aberration in the extreme.

So, Mr. Gormally, you might want to speak to that first.

Mr. GORMALLY. Thank very much, Chairman.

I think the first thing to say is that the idea of a statute of limitations is foreign to U.K. law anyway. Though there are certain limitations on occasion in terms of timing, in civil cases and things like that. But in criminal—serious criminal cases, anyway, there's no such thing as statute of limitations. So it's a concept that's been plucked out of the air, really, in order to avoid the word amnesty, because that is, in effect, what it would be. And again, an amnesty for a serious crime, except in certain circumstances of post-conflict resolution and so on, is completely contrary to international law. It's highly likely as well it would fall afoul of the Human Rights Act, the European Convention of Human Rights, even in terms of discrimination. You can't say that certain categories of people will be exempt from the application of the law and others won't be, just on an arbitrary basis.

In all fairness, however, I think one has to say that this proposal comes from certain elements of the military, of the conservative party and only certain elements of the Democratic Unionist Party [DUP], for example, because other people—it would negatively affect other people who are constituents. For example, those who see themselves as so-called innocent victims, as opposed to other people. The perpetrators might be caught by a general amnesty because the only real way you could make it legal in terms of discriminating between different categories would be to make it broader. Now, even that might be against international law, depending. So it's a kind of an idea that's come from certain particularly reactionary and blinkered members, I think, of political society.

And probably isn't even majority-favored by the U.K. Government. And so I think that the idea that it would be in a consultation—a formal consultation—allegedly this was negotiated out with the side agreement, so-called, that Sein Fein had with the British Government. I mean, we don't know this, it's only what the parties have said. And we don't know if it will be back in the consultation if and when it comes out. But we don't even know when the consultation's going to come out. We've been promised it year after year and it's never yet happened. So we'll have to see.

But what it is, is a rather distressing kind of reminder of the mindset of people who will put the rule of law at risk for a narrow

view of history on the one hand, and a desire for impunity for certain sections of society on the other.

Mr. SMITH. Mr. Thompson.

Mr. THOMPSON. Yes, well, I concur fully with what Brian says in respect to it being wrong in terms of human rights and there being no precedent for it. I think in some senses, there has been a de facto impunity that has existed during the course of the conflict in which members of the police and the British army killed people. The majority killed were unarmed civilians, over 60 children—that is, people age 18 and under—women, priests aiding the injured. Two priests were murdered in west Belfast—one during Ballymurphy, and the following year another priest in Springhill, where another three children and another man were killed along with that priest.

I think the sense of it was that the investigative processes were deeply flawed. We uncovered a secret document out of the official British records from July 1972 in which the then-secretary of state for the North of Ireland, the senior military general officer commanding the commander of land forces, the police constable, and other senior Tory politicians in Britain had a conversation that was noted in which they said it would important to indemnify soldiers from prosecution as they went into areas and conducted their activities. And in some senses, that document sets the basis for the de facto impunity.

Therefore, the domestic investigative processes were deliberately flawed in holding to account and punishing police officers and soldiers. But it went beyond that, also the agents that they had secreted into paramilitary organizations and who were directed. So all of that clandestine activity, any proper investigation would uncover it. So, therefore, the investigative system was deeply flawed. It was not what was practiced elsewhere in the jurisdiction, for example. Police investigated themselves. Royal military police investigated soldiers. The RUC overall conducted what were perfunctory investigations, resulting in no prosecutions.

The public prosecutor would never make public how he or she arrived at determinations not to prosecute where prima facie evidence existed that would have warned of prosecutions. And thus what happened was that the cases were long-fingered and sent to an inquest, a colonial process, to which juries could not return findings of unlawful killing. They were restricted. And the whole circumstances pertaining to the killings were not allowed to be discussed. So really what they were, were a sham process.

So in 1998 Relatives for Justice, along with the Committee on the Administration of Justice and Families and lawyers gathered to discuss the impact this had, why in a court in Belfast could we not get to the facts and we couldn't establish them? So the investigative process itself was put on trial in the Article 2 case in 2000 that went to Europe, with the unanimous decision in May 2001 that the investigative processes at play, particularly pertaining to state killings and whether there was collusion, were not compliant legally with the U.K.'s obligations under the convention.

And that has been the problem for 17 years. The Committee of Ministers has refused to give a clean bill of health to the U.K. Government. So Article 2 has presented a huge problem for the British

Government. And any independent process with transparency that examines these issues will inevitably get to the bottom of it. So the national security veto, the statute of limitations, the denial of funding to the coroner's courts, the denial of funding to the police ombudsman is circumventing all of these processes, is really designed both to stall and to prevent the exposure of what really went on.

And that's what's behind us really. It is the U.K. Government that is stalling and dragging its heels, supported by political unionism and a cabal of very powerful former police officers and intelligence people that have influenced the Tory party around the statute of limitations. As one person would say to me, a family—they told us for 40 years they never did anything wrong. Why now do they want an amnesty?

Mr. SMITH. Does the coalition government in the U.K. have any bearing on this issue? Does it affect Theresa May's perspective in terms of trying to deal with impunity?

Mr. THOMPSON. Well, of course, the U.K. Government, they're holding on with a slender majority, of which 10 DUP MPs keep them in power. And we—you know, there are a number of the—three DUP MPs have signed the motion for the amnesty, the statute of limitations in the U.K. Parliament. But as Brian pointed out, there's a little bit of tension within that party, insofar as its leader, Arlene Foster, who herself is a lawyer, had told her party colleagues that if you go down this route and you seek an amnesty, what will in effect eventually emerge, if it were to emerge, is that the amnesty would be general to cover all the actors to the conflict.

And in her constituency, quite a number of people have been harmed and affected by other actors in the conflict. And that amnesty then would impact, if it were to be a general amnesty, right across the board. And they would feel that at the electoral count, if you will. So there's mixed messages. What they really want is, they want an amnesty for state forces and not for anyone else. And that's not possible.

Mr. SMITH. Over the years we've had every special envoy testify at these hearings. Above all, having a presence in Ireland and Belfast certainly has been a game-changer. Our resolution, as you know, calls for the establishment of that envoy. I raised it with Secretary Tillerson in meetings some time ago, six months ago or more, as well as with the special envoy on combating antisemitism.

Could you detail for us what you think would be the positives, so that we can obviously bring that to the State Department, bring it to President Trump and Vice President Pence, why that's so important right now to re-establish a special envoy—

Judge MCKAY. Congressman, I think—oh, I'm sorry.

Mr. SMITH. Please, Judge.

Judge MCKAY. I certainly think timing is important. And it's so—I see it in the legal field every day that more things are going to mediation and arbitration from a practical standpoint, that people who, like on each side of the legal argument, can't stand to be in the same room with each other sometimes. And it's always nice to have someone go take their request, that's not coming from one of the parties, one of the litigants.

So I think practically speaking and conceptually speaking, it's made to order. And we've already seen the results 20 years ago

when it worked so well. So I do think that a trusted third-party participant sitting down with the litigants is very, very important.

Especially since there's no government that—Stormont is dead in the water. And somebody has to take the impetus, and nobody's willing to move. And I think timing is everything. And I think, you know, if they tell me in five years, well five years is too late. Five months may be too late.

Mr. SMITH. Gentlemen?

Mr. THOMPSON. Yes. I would agree there needs to be an impetus to move things forward. I think that, you know, there—the U.K. likes to present itself as a neutral player in this situation, or a facilitator. And that's quite disingenuous. That's anything but the truth of the matter. So therefore intervention, as has always been from President Clinton, the bipartisan approach, Senator George Mitchell, the involvement of Senator Haass, and other envoys and other people that have tried to assist the process has always been a useful and very worthwhile process.

I spoke in my testimony about the all-time low of confidence from the nationalist republican community in policing, given the position and stance on legacy by the PSNI. I'd probably like to maybe just illustrate this, because it's probably important that you hear it in a very human way. My brother was murdered by the British army. He was unarmed. He was shot 13 times by two soldiers in quite appalling circumstances in West Belfast in January 1990. He was killed along with two other men. And I have a cousin who was a republican who was killed in the conflict too.

Now, the example of how this is probably—if my mother and my aunt went out in Belfast this evening and, God forbid, their handbag was stolen or their car was broken in and taken, the response by the on-the-ground PSNI is markedly different and completely transformed to when it was the RUC. There's no question about that. A lot of the problems aren't coming from ordinary guys and police officers, male and female, on the ground.

If my mom and my aunt were to go to the police tonight, or go anywhere and ask about, "we want to know what happened to our children," there is no change whatsoever. It is exactly the same. And that is where the problem is. It's about the unwillingness to deal with these matters. So by virtue of the PSNI on the front line, and the cabal of officers that I referred to, and the stranglehold on legacy, because we must remember former RUC Special Branch officers are now in the PSNI as civilian workers, unaccountable to the police ombudsman, who are determining what evidence—

Mr. SMITH. And how many—

Mr. THOMPSON. Twenty percent of the RUC went back into the PSNI as civilianized workers. Many of them are former leading members of the Special Branch. They designed the process of disclosure to the courts around legacy. And they are dictating the pace of what is and is not disclosed. They are people who in which the organization they were part of is being examined in those very same courtrooms. That is not acceptable. A national security veto to bury the sins of what you were involved in is not acceptable. None of this is acceptable. And it doesn't comply with the U.K.'s domestic and international legal obligations. And Article 2 will gov-

ern whatever emerges. And that's what they're trying to prevent. That's really where this is at.

Thank you.

Mr. SMITH. Just a couple of final questions. On the Finucane case, what do you see? Where will we be in a year, five years? Are they, just like other cases, just covering it up?

Mr. THOMPSON. Well, of course. And the family have been——

Mr. SMITH. I know the answer, but I want to get you on the record.

Mr. THOMPSON. Yes, the Finucane family have been a marvelous inspiration to the other families. They are beacon of hope. I think Geraldine in particular, in her leading of this family, the campaign by the family to achieve the inquiry—many families look to her because the inquiry by virtue of it will vindicate what they claim.

But it also will look at the policy of collusion that affected many, many hundreds of people across the community. The U.K., as you know, committed, along with the Irish Government of Weston Park to hold an inquiry. And then they changed the legislation around government inquiries and brought in the legislation that prevented involvement of the British minister to determine what——

Mr. SMITH. Well, you recall we protested that profoundly, robustly.

Mr. THOMPSON. Yes.

Mr. SMITH. I mean, I couldn't believe that they would give that kind of veto power to the ministers. It was a sham.

Mr. THOMPSON. Totally. And then gave the review by Sir Desmond de Silva QC into the murder of Pat. In itself, it wasn't what was required. Much more is required. In all, the de Silva review threw up quite fascinating facts. For example, the organization, the Ulster Defence Association (UDA), that killed Pat Finucane, 85 percent of its intelligence—and remember, it killed several hundred people—over 600, almost 700 people—85 percent of the intelligence involved in those murders came from either secret service MI5, British army military intelligence, or RUC Special Branch. And that's an indictment in itself.

So the failure to hold the inquiry was challenged. And it will be at the supreme court in the next number of weeks, where the family went to London to challenge the failure to implement the—what was an internationally binding agreement between two governments to hold the inquiry. And I think that illustrates in a microcosm the broader macro problem that exists in respects to dealing with past when it concerns the British Government.

Judge MCKAY. There seems like two standards of engagements. One in London and one in Belfast. This is—you know, it reverts back to, they want to have a statute—in a way, the statute of limitations in Belfast and not in London.

I'm sure if Pat Finucane were murdered on the streets of London in the same manner, this would have been headlines and inquiries going on within three or four months. But because it involved the North of Ireland, well, that's a separate set of rules that they have. And this is what we hope that envoys and involvement in other Helsinki groups, the hearing that we're having today, will have some effect on that in the future.

Mr. GORMALLY. Yes, I think the Finucane case is emblematic, clearly, of the failure to properly investigate. And it's emblematic almost because of the seriousness with which, paradoxically, the U.K. Government has actually taken the issue, that it was one of those that was subject to the Tory report which the Canadian judge who was brought in to look at a number of cases. And the commitment was to hold an inquiry if he recommended inquiry. And he did, and they didn't.

And the reality is that even with the 2005 Act—which you're quite right was an appalling Act deliberately designed around this case to prevent whatever it is coming out—but even then the agreement between Geraldine's lawyers and the government's lawyers was that they would have a so-called Bahamuza [ph] thing. This was an Iraqi inquiry under the Act, but where the government in advance promised, you know, publicly not to use the powers to intervene in the inquiry process. And Geraldine was prepared to accept that. And when they went to Downing Street that time, they fully expected that that was going to be announced by the prime minister. And according to those who were at the meeting, in fact, what he said, there are people around here who won't let me have an inquiry.

And one has got to ask oneself, as Mark just said, the revelations that were in the review of the papers—so-called—were actually quite startling in themselves. So there's something else still that remains hidden. And you really do have to ask yourself: What is it in this case?

We know there was collusion. The prime minister of the U.K. apologized in Parliament for it. But we don't know the character of that, how far it went upwards or across. You know, to what extent was this an authorized policy, or was this murder politically sanctioned? There must be something of that character.

And that's one of the reasons why the Finucane case is so emblematic. It's so serious at the one level. And so extraordinary have been the permutations and convoluted kind of exercises to avoid a full public inquiry that it points to something deeply dark and deeply rotten in human-rights terms.

Mr. THOMPSON. Just for the record, in respect to the decision not to hold an inquiry as the U.K. had promised, the most senior British civil servant sent a communication to David Cameron and between other civil servants, and it's a matter of record in the court case, in which he said: I don't get this. I don't understand it. This is much worse than anything in Iraq or Afghanistan. Why aren't we holding the inquiry?

So even within the civil service there seem to be—and as Brian rightly alluded to—when the signaling of the buildings around here, what was really that was about was Whitehall. That's the establishment itself, the political-military establishment that are implicated and who have questions they themselves they ask.

Mr. SMITH. Well, I would say an apology without justice is no apology at all. It is beyond shallow.

Thank you. Yes. Thank you so very much. If you have anything you'd like to add, like where we might be in the next six months if there's not a concentrated refocus on this—

Judge MCKAY. I'm sure they do. But I would like, on behalf of the Ancient Order of Hibernians, to thank you for your House resolution. And anything that we can do in this country to get our folks mobilized to add any backing that you need we certainly offer. And thank you personally for what you do for the Irish.

Mr. SMITH. Well, certainly a letter to the speaker to make sure it comes up. I mean, we're trying, and I think it will come up. And any additional language you think might make it stronger, more clear, or anything along those lines because it's—you know, introduction is only the first part of the process. It'll have to be marked up in committee and then go to the floor. So if you have any thoughts on that, please.

Mr. THOMPSON. Just a thought. We have a political vacuum.

Mr. SMITH. Yes.

Mr. THOMPSON. We have the unfulfilled promises around the Finucane case. We have the unfulfilled promises for thousands of families across the community to implement an Article 2-compliant investigative process that examines the past, which has been agreed to by all the executive parties when the executive was functioning and both the governments. The U.K. needs to be urged to join the rest of us—the international community, the human rights NGOs, the families, the majority of the political parties on the island—to get over on the right side of the line with the Unionists and do the right thing. An envoy would certainly contribute immensely to that.

But we also have Brexit coming, so we have a situation where there's a political vacuum, there is confidence at an all-time low on policing because of what we've spelt out collectively, and Brexit and the border. All of those contain the potential for six months, or in a year's time to further undermine the political institutions of the Good Friday Agreement and what was envisaged within it.

So I do think that it would be timely to have a U.S. intervention.

Mr. SMITH. Thank you.

Mr. Gormally?

Mr. GORMALLY. Thank you, Chair. Well, let me echo the thanks of my co-contributors to you and the commission for continuing to keep the spotlight on Northern Ireland and human rights in Northern Ireland. And it is very, very, very strongly welcomed and supported back in Ireland.

In terms of where we are going forward, as Mark has suggested, we are in a situation of many unknowns. It's a situation of flux. It's probably the most unstable time in many ways since the Good Friday Agreement was made, and we really do not know what's happening. There is a perfect storm, in a sense, of the institutions no longer up and running, Brexit coming along, an unstable political alliance at Westminster with one faction of Northern Ireland politics having a disproportionate influence on the U.K. Government. So we're in a dangerous place, there's no doubt.

All I can say from our perspective is that the real lodestar, the guiding principle before and since the Good Friday Agreement, is to implement human rights standards. The extent to which that has been done is the extent to which the Good Friday Agreement has succeeded in bringing us relative peace. The extent to which those commitments are unfulfilled is the extent to which our peace

is unstable and has not been made permanent. And we have yet to achieve the rights-based society which is the promise of the agreement.

Mr. SMITH. I thank you so very much. You know, Peter Cory testified before our Commission in 2004. He couldn't have been clearer that resolving those cases, starting with Pat Finucane, were the lynchpin to Stormont. And, you know, he was himself incredibly frustrated. He spoke for about an hour without a single note, he was so focused on the issue. And, you know, so many people continue to be disappointed in the beyond-lackluster performance by the British Government and by other parties that have, I believe, been part of a massive coverup.

I thank you again. The hearing's adjourned.
[Whereupon, at 11:37 a.m., the hearing ended.]

APPENDIX

PREPARED STATEMENTS

PREPARED STATEMENT OF HON. CHRISTOPHER H. SMITH

Mr. Speaker, on March 22 I chaired a hearing at the Helsinki Commission on the achievements—with a special focus on the unfinished business—of the April 10th, 1998 Good Friday Agreement. As Members know so well, the signing of the Good Friday Agreement 20 years ago was truly historic, extraordinarily difficult to achieve, a remarkable framework for peace, and the hope for beginning of reconciliation.

In its most important provisions, the agreement launched a series of challenging protocols, by which the leaders of the nationalist and unionist communities in Northern Ireland agreed to a better governance, and peaceful resolution of differences. Prisoner releases, new government structures, British demilitarization of the North, the decommissioning of paramilitary weapons and systemic police reform were achieved to varying degrees over the last 20 years. In the 30 years between 1969 and 1998, approximately 3,500 people were killed in political violence, while in the 20 years since the Good Friday Agreement fewer than 100 have lost their lives.

I have personally chaired 16 congressional hearings and markups of legislation on human rights issues in Northern Ireland, most of them with a special focus on police reform and the need to establish a public, independent judicial inquiry into State-sponsored collusion in the murder of human rights attorney Patrick Finucane and others who were gunned down or, in the case of Rosemary Nelson, killed by a bomb. I also offered legislation that was adopted by the House of Representatives that put the House on record condemning violence and promoting peace and justice in Northern Ireland and police reform. And I just recently introduced H. Res.777 which calls for a recommittal of the United States, the British, and all parties—including the Republic of Ireland, to the peace process.

The most contentious of my amendments over the years, one of which became law, resulted in suspending all U.S. support for and exchanges with the British police force in Northern Ireland, the Royal Ulster Constabulary, or RUC, until standards were met to vet RUC officers who engaged in human rights abuses. Those new standards were set and eventually then-President Bush was able to certify, in accordance with my law, that human rights principles were part of police training going forward, both in the RUC and in its reformed successor, the Police Service of Northern Ireland, or PSNI. With the improvements, the police exchanges were resumed.

That is the good news. But as the 20th anniversary of the Good Friday Agreement milestone approaches, serious attention and ef-

fort needs to be paid to achieving the dream. First and foremost, the government in Northern Ireland seems unable to consistently function or even constitute itself. Also, after 20 years, despite many obvious successes and benefits of the Good Friday Agreement, and although no one wants to scrap it—no one would want to return to the killing?—the reconciliation to some extent has stalled. One of the reasons is that long-standing cases have not been resolved.

Geraldine Finucane, widow of murdered human rights lawyer Patrick Finucane, submitted testimony for my March 22d hearing. And she points out, and I quote in part, “My family has campaigned for a public inquiry into Pat’s murder, but the British government has repeatedly failed to establish one. Instead, they have instigated one confined investigation after another, claiming to want to examine the facts or get to the truth, but always in a process conducted away from public view. One cannot but wonder at the pointlessness of conducting investigation after investigation that are doomed to fail, no matter how forceful the conclusions, because they lack the transparency required to attain public confidence.”

As Geraldine points out further in her testimony, “the 1998 agreement represent a new beginning that would mark a point from which the new future for everyone in Ireland, north and south, could be launched. What was not appreciated or acknowledged, however, was the fact that moving forward also meant dealing with the past.” And of course, that is something that this Commission and my Subcommittee on Human Rights has tried to do for the last 20-plus years.

I would like to just point out too, testimony that’s been provided to us by the Committee on the Administration of Justice—again, a very important quote from them, “In a highly disturbing development, and notwithstanding the reality that only a small number of legacy cases relate to British soldiers, a recent report of the Commons Defense Select Committee called for the enactment of a statute of limitations covering all troubles related to incidents involving members of the armed forces. This concept effectively means a selective amnesty for crimes committed by British soldiers.” The Commons Defense Select Committee also suggested that it be extended to the RUC and other security force members. This position is, of course, completely contrary to human rights standards and, if were enacted, would probably be found unlawful by the courts. Nevertheless, the U.K. government has said that it will include the proposed in a forthcoming consultation on the implementation of the Stormont House Agreement. That is a dangerous backtracking on the part of the British government. Hopefully it will cease and desist in moving in that direction.

PREPARED STATEMENT OF BRIAN GORMALLY, DIRECTOR, COMMITTEE
ON THE ADMINISTRATION OF JUSTICE

The Committee on the Administration of Justice (CAJ) is honoured to be giving evidence to this Commission on the occasion of the 20th anniversary of the Belfast Good Friday Agreement. This Agreement, and the subsequent agreements of different kinds designed to implement it, has given us 20 years of relative peace; following a disastrous, thirty year violent political conflict that is something genuinely worthy of celebration. CAJ is an organisation devoted to the protection and promotion of human rights. Since we know that violent conflict always involves a bonfire of human rights, protecting and promoting the peace settlement is our top priority.

The peace agreement was designed to create a political and geographical space which could be shared by those with different national aspirations and allegiances. To do this it recognised the right of the whole people of the island of Ireland to self-determination and the right of the people of the North to vote to join a united Ireland. It declared that it was the "birthright" of those born in Northern Ireland to be Irish or British or both and established a form of government that would mean that one community could not dominate the other. To underpin all of that, however, was an infrastructure of proposed legislation and institutions which would guarantee that the Northern Ireland of the future would be a rights based society.

CAJ, along with others, made substantial efforts to ensure human rights were mainstreamed into the peace settlement and the Agreement itself. There was considerable success. A cursory search of the text of the Agreement shows that the words 'right' or 'rights' appears 61 times. The then U.N. High Commissioner for Human Rights, Mary Robinson noted ". . . the Good Friday Agreement is conspicuous by the centrality it gives to equality and human rights concerns." The range of subsequent international Agreements between the two sovereign governments to implement and take forward the settlement also contained a number of human rights commitments (although unfortunately no dispute resolution mechanism to assist implementation).

The commitments to protecting human rights in legislation included a promise to incorporate the European Convention of Human Rights into domestic law, a Bill of Rights for Northern Ireland including additional rights, a Single Equality Act, an Irish Language Act and a duty to be placed on public authorities to consider the equality impacts of any policy. In addition, a series of Acts would be required to implement the recommendations of the "Patten Commission" on a thorough reform of policing. Institutionally, the Agreement established a new Human Rights Commission with extensive investigative and legislative oversight power and an Equality Commission to enforce the public equality duty.

CAJ has long pressed for enforcement to ensure that the elements of the peace settlement which do protect human rights are, and continue to be, implemented. It is important to stress that these provisions were not mere manifesto commitments by governments now out of office but rather provisions which were enshrined

into bilateral (UK-Ireland) treaties and international agreements between them which are binding in international law.

The reality is that, while huge advances have been made and society in the North is now very different to that of 20 years ago, there are outstanding commitments and unfulfilled promises which weaken the peace process. Concern has been expressed by CAJ and other human rights organisations for some years that there has been and continues to be persistent attempts at a ‘rollback’ by the State, or elements within its institutions, of the human rights provisions of the Agreements. This includes commitments made as part of the settlement which have never been implemented and areas where institutional and policy gains were made which are now being undermined.

There are unimplemented commitments to legislate for a Bill of Rights and Irish Language Act and to introduce an anti-poverty strategy; the statutory equality duties have not been properly implemented and there are unfulfilled commitments to repeal emergency law. There is even a threat to the European Convention on Human Rights and its incorporation into Northern Ireland law. Some commitments like the ‘right of women to full and equal political participation’ and to supporting young people from areas affected by the conflict have never had a delivery mechanism to take them forward.

There has been regression in commitments to victims’ services, a drift away from commitments to tackle inequality on the basis of objective need, and to remove employment barriers for ex-prisoners. There has been a slow pace of some justice reform and the undermining of the independence of key peace settlement institutions such as occurred during the tenure of the second Police Ombudsman. Policing also has seen regression from the Patten blueprint—most notably in the 2007 transfer of the most controversial area of policing (‘national security’ covert policing) away from the PSNI and all the post-Patten oversight bodies to the Security Service MI5.

Policing is particularly important in establishing trust in the institutions of society and in the rule of law. Huge progress has been made. In many respects the Police Service of Northern Ireland tries to live up to the Patten Report’s Statement that the purpose of policing should be “the protection and vindication of the human rights of all . . . There should be no conflict between human rights and policing; policing means protecting human rights.” Our systems of accountability and oversight, especially the independent Ombudsman with its own investigators, should be a model for democratic policing throughout the world. However, areas of concern remain.

The unaccountable and secret Security Service or MI5 has primacy for national security intelligence policing in the North, which is a huge gap in accountability. They run agents with no system—that we know of—for limiting their engagement in criminality. The PSNI also run secret informants but at least an Assistant Chief Constable has to sign off on any criminal activity. The PSNI is also obliged to support the activities of the UK Border Force and Immigration Enforcement—which have a history of human rights abuses and no local accountability. We believe that there is *prima facie*

evidence of the police unlawfully using counter-terrorism powers in immigration enforcement.

Elements of the police are also responsible for some of the delay and obfuscation in dealing with the past which we detail below. The control of intelligence material by officers who served in RUC Special Branch, its over classification and the wilful failure to expedite the production of evidence to inquests and courts are all continuing problems.

It is arguable, however, that the main area in which continuing human rights violations undermine society and threaten the peace process is one not properly covered by the peace agreement. That is the continuing search for impunity by the UK State for the actions of its agents during the conflict.

Combating impunity is one of the foremost preoccupations of human rights activists throughout the world. The reasoning is simple—if impunity persists there can be no justice or truth for victims, future perpetrators will be emboldened and confidence in the rule of law is weakened. Those outcomes are exactly being produced with regard to continuing impunity for those who violated human rights during the conflict in Ireland. Victims are dying without seeing justice or even serious attempts to achieve it, torture and other crimes have been carried out by UK security forces in other parts of the world and faith in the rule of law is falling away.

The delays, obfuscations and squeezing of resources by the UK authorities and local allies, which have been detailed year after year, can only be understood as designed to maintain an apparatus of impunity. The insistence on security agencies and ministers having a “national security” veto over what information is published is an insistence on impunity for their agents. This is why combating impunity is CAJ’s top priority.

In August 2001, the European Court of Human Rights gave judgment in a number of cases from Northern Ireland known collectively as the “McKerr group of cases.” These were cases involving deaths in which UK security forces were involved; CAJ was the legal representative in three of them. Other judgments followed in 2002, 2003 and 2013. All said that the UK was in breach of its obligation under Article 2 of the Convention (“Right to Life”) to properly investigate these crimes. To this day, the UK has still not discharged its obligations and the cases remain under the supervision of the Committee of Ministers of the Council of Europe, the body which oversees implementation of the judgments of the Court.

In its decision of September 21st 2017, the Committee of Ministers:

“noted with deep concern that the Historical Investigations Unit (HIU) and other legacy institutions agreed upon in December 2014 [the Stormont House Agreement] have still not been established because of a failure to reach agreement on the legislation required; “considered it imperative that a way forward is found to enable effective investigations to be conducted particularly in light of the length of time that has already passed since these judgments became final, and the failure of previous initiatives to achieve effective, expeditious investigations; called upon the authorities to take all necessary measures to ensure that the planned public consulta-

tion phase regarding the HIU is launched and concluded within a clear timescale to ensure that the legislation can be presented to Parliament and the HIU established and made operational without any further delay;”

It went on to say that it:

“deeply regretted that the necessary resources have not been provided to allow effective legacy inquests to be concluded within a reasonable time; strongly urged the authorities to take, as a matter of urgency, all necessary measures to ensure both that the legacy inquest system is properly resourced and reformed in accordance with the Lord Chief Justice of Northern Ireland’s proposals and that the Coroners’ Service receives the full co-operation of the relevant statutory agencies to enable effective investigations to be concluded.”

The exasperation of the Committee with the procrastination of the UK Government is clear—more important is the hurt of the victims still denied justice and the corrosive impact of the lack of institutions to deal with the past on the present trust in the institutions of State and the rule of law.

There are some signs of progress in the courts. Exactly a fortnight ago, the High Court in Belfast held that the decision of the then First Minister, Arlene Foster, to prevent a request going to the British government to fund legacy inquests was unlawful (*Hughes Case*). The judgment was partly based on the finding that each part of government has to take into account the Article 2 duty to investigate past deaths and to ignore that responsibility is unlawful. The so-called “hooded men” case, in which CAJ represents the daughter of one of the 14 men tortured in 1971 and who died because of it, is being fast tracked by the Court of Appeal with the intention of getting a swift judgment from the Supreme Court on the application of the investigative obligation in both right to life and torture cases.

The judgment in the Irish application for revision of the European Court of Human Rights judgment in *Ireland v. UK*—which in 1978 made the disastrous distinction between torture and inhuman and degrading treatment in respect of the hooded men—was delivered on the morning of Tuesday 20th March. This is a narrow and largely technical decision by the European Court of Human Rights. It considered that the new evidence was not sufficient to show that, had it been taken into account by the original court, it would have been decisive in changing the original judgment. This is hugely disappointing in that it leaves the unjustified distinction between “torture” and “inhuman and degrading treatment” intact. However, we should remember that the Article 3 prohibition on all such treatment, whatever the definition, is absolute. Those who have sought to justify brutal interrogation methods on the basis of the 1978 judgment are still wrong in law and barbaric in their practice.

For the last 4 years we have been expecting the UK Government to publish legislation to implement the Stormont House Agreement (SHA). We are now told the text will be published after Easter for consultation. It remains to be seen whether this will be a good faith attempt to implement the SHA in a human rights compliant man-

ner or another way of delaying and denying truth with a blanket national security veto on information to be released to families.

In a highly disturbing development, and notwithstanding the reality that only a small number of legacy cases relate to British soldiers, a recent report of the Commons Defence Select Committee called for the enactment of a “statute of limitations” covering all Troubles-related incidents involving members of the Armed Forces. This concept effectively means a selective amnesty for crimes committed by British soldiers. The Committee also suggested that it be extended to the RUC and other security force members. This position is, of course, completely contrary to human rights standards and, were it enacted, would probably be found unlawful by the courts. Nonetheless, the UK Government has said that it will include the proposal in the forthcoming consultation on the implementation of the Stormont House Agreement.

It is impossible to conclude a discussion on the status of the Good Friday Agreement without mentioning “Brexit,” the decision by the UK to leave the European Union. This will have a profound effect on the legal and constitutional underpinning of the present jurisdiction of Northern Ireland, its relations with the Irish State and UK-Ireland bilateral relations. The UK and Ireland’s common membership of the EU was an assumption in the Belfast Good Friday Agreement (GFA) and the UK’s adherence to EU law regulates the powers and legislative operations of the devolved institutions. The equal rights of Irish and British citizens, a principle of the GFA, in great part relies on the equal rights of both as having EU citizenship. The lack of significant border regulation is largely due to common membership of the EU, North and South, as well as the improved security situation. The UK clamp down on immigration after Brexit may turn Northern Ireland into “one big border” with enhanced enforcement and serial human rights abuses. Many equality and antidiscrimination provisions in Northern Ireland, which have particular importance in a divided society, rely on EU law. Furthermore, the decision to leave the EU, based on a UK referendum in which Northern Ireland (as well as Scotland) voted to stay, is an affront to the principle of self-determination of the Irish people, which is a foundation stone of the Agreement.

All of these impacts could have a destabilising effect on the constitutional, political and legal settlement that, in the main, ended the violent political conflict which devastated the people of Northern Ireland and gravely affected those in the rest of the UK and Ireland. While it is unlikely that any one particular effect of leaving the EU would destroy the peace settlement, the cumulative impact could begin to unravel it. In particular, any diminution in the protection of rights of the people living on the island could reduce trust in the GFA institutions and any unravelling of the settlement would be disastrous for human rights. A continuing preoccupation of CAJ will therefore be the protection of the integrity of the peace settlement and the various agreements that make it up.

We would like to commend this Commission for holding this hearing and to support the resolution that has been put to Congress. The Good Friday Agreement has won us 20 years of relative peace but the goal of making that peace permanent, based as it must be on a rights based society, remains to be achieved.

PREPARED STATEMENT OF JUDGE JAMES F. MCKAY III, PRESIDENT,
ANCIENT ORDER OF HIBERNIANS

The Ancient Order of Hibernians (AOH) is the oldest Irish Catholic fraternal organization in the United States, originally founded in 1836. Along with our sister organization, the Ladies Ancient Order of Hibernians, we have over 80,000 members throughout the United States, and not just in places like Boston, New York, and Philadelphia—but in less obvious places as well, such as Butte, Montana; Los Angeles, California; and New Orleans, Louisiana. According to the most recent U.S. Census, there are an estimated 33.3 million people in the U.S. who claim Irish heritage.¹ The world figure is estimated to be around 70 million,² which means at least half of the Irish diaspora resides in the United States. In fact, we often hear it said around St. Patrick's Day that there are only two kinds of people in the world—the Irish, and those who wish they were. Even though that's just a joke, there is no question that for a country roughly the same size as the State of West Virginia, Americans do pay a great deal of attention to the Irish, and it is this connection between America and Ireland that organizations like the AOH continue to celebrate and foster.

Twenty years ago, a document that has come to be known as the Good Friday Agreement was signed by political representatives of the people of Northern Ireland and representatives of the British and Irish governments. This historic agreement brought an end to the violence of the Troubles, and introduced peace to a conflict where over 3,500 people had lost their lives in civil unrest, proportionately one of the deadliest in history.³

One of the tenants of the AOH is a quote from Padrig Pearse which states, "*Ireland Unfree Shall Never Be At Peace.*" The Good Friday Agreement delivered peace only because it also promised freedom. The Good Friday Agreement promised freedom and reconciliation based on a parity of esteem for both sides of that divide. The successes of the Agreement to date have been achieved through hard work, the commitment by members of all the local communities who suffered tragedies during the Troubles, and by requiring considerable courage from political leaders who faced hard consequences from their constituencies in making any concessions.

Countless books and articles have been written on the topic of the Good Friday Agreement, and we have seen a number of recent celebrations of the 20-year milestone in both Ireland and the United States. And one of the topics that so many of us can all agree on is how important the United States was in securing this historic deal known as the Good Friday Agreement. The relationship between America and Ireland goes back to even before there was a United States. It was Ireland that first sent aid to struggling American colonies seeking their own independence. George Washington once described Ireland as, "*thou friend of my country in my*

¹ U.S. Census Bureau (<http://factfinder.census.gov/bkmk/table/1.0/en/ACS/13—1YR/B04003/0100000US>)

² "Global Irish: Ireland's Diaspora Policy," Department of Foreign Affairs and Trade, March 2015.

³ <https://docs.google.com/spreadsheets/d/1hRidYe3-avd7gvlZWWi1YZB7QY6dKhekPS1I1kbFTnY/edit#gid=0>

country's most friendless days," and concluded with, "May the God of Heaven . . . cause the sun of Freedom to shed its benign radiance on the Emerald Isle." While having Americans insert themselves into the politics and policies of Ireland was nothing new at the time, the commitment, leadership, and direct engagement shown by U.S. officials during this period was unprecedented. In fact, I am not entirely sure we would have even had a Good Friday Agreement, had it not been for the engagement of American officials like President Bill Clinton, Senator George Mitchell, Senator Ted Kennedy, Congressman Richie Neal, and Congressman Peter King—to name just a few, who refused to give up on a deal when tensions became too high or certain groups walked away from the negotiating table. These representatives of the American people helped build a bridge over the dark chasms of mistrusts, providing an impartial ear to the concerns of all parties and provided an incubator where the Good Friday Agreement, sometimes called the "Peace and Reconciliation Agreement" could be born.

This Good Friday Agreement, and subsequent agreements such as the St. Andrews Agreement in 2006, the Hillsborough Agreement in 2010, and the Stormont Agreement in 2014, was anchored on the fundamental principles of basic human dignity and rights that are the foundation of our own government. The goals of the Good Friday Agreement were meant to give the future back to the people of Northern Ireland unshackled from the legacy of the past. For the first time in a very long time, simple things, like everyday grocery shopping, worshipping on Sundays, or taking family outings on holidays could be conducted without fear or trepidation. And during the past 20 years, a generation has grown up in Northern Ireland without knowing the fears and anxieties that constant violence inflicts upon communities.

Further, we have come to learn that peace brings prosperity. The economy in Northern Ireland has made significant advances since the Troubles, and despite setbacks from the global recession, the North of Ireland has seen a growth in tourism, a growth in foreign direct investment, and a commitment to increasing the private sector. In fact, Northern Ireland's Gross Domestic Product has grown slightly in the four quarters ending in September 2017, and the unemployment rate is currently 3.9 percent, which is lower than the UK average at 4.4 percent, the Irish average at 6.3 percent, and the EU average at 7.3 percent.⁴ Additionally, the gap in unemployment rates between members of the Catholic and Protestant community is near parity.

So while we recognize that great strides have been made in the last 20 years in all sectors, final peace has not yet been achieved in Northern Ireland. We praise the efforts of Senator George Mitchell and other subsequent envoys of the United States to Northern Ireland, and we praise the work of all the politicians on the ground in Northern Ireland who made the Good Friday Agreement a reality. However, the Good Friday Agreement was merely the beginning of a process aimed at creating a fair and equitable society for all the communities of the North of Ireland.

⁴Northern Ireland Statistics and Research Agency, *Northern Ireland Labour Market Report*, February 2018.

At an event just last week at the Library of Congress to commemorate the 20th anniversary of the Good Friday Agreement, in a pre-recorded message for attendees, President Clinton told the audience that there is still significant work to be done in the North of Ireland. He noted that the Good Friday Agreement is still not finished and he challenged all of us, “*seize this moment of memory to move into the future—together.*”⁵ As President Clinton pointed out, there are still ongoing hurdles in Northern Ireland. These challenges exist at every level of civil society and address basic issues such as dealing with the past with justice and respecting the history and culture of all communities with mutual respect and parity of esteem. These are difficult and tough discussions to be had, but these are conversations that must take place.

The Ancient Order of Hibernians agrees with President Clinton; we believe the time is now for the United States to recommit itself to the principles of the Good Friday Agreement. In fact, the AOH has repeatedly requested that this Administration fulfill its commitment to appoint a Special Envoy to Northern Ireland immediately. This is an extremely critical time for Northern Ireland, and as political parties continue to attempt to form a sustainable government while addressing the fears and anxieties of Brexit, we believe that America must reaffirm through the presence of a Special Envoy that the peace and well-being of the community of the North of Ireland is still a priority to the U.S., and America is willing to walk with the representatives of those communities on the road to a lasting peace.

I believe that it is important to note that the Ancient Order of Hibernians in America has been and will be in the future, working for the unification of Ireland. The Preamble of our AOH Constitution States that the purpose of our Organization is to promote:

Friendship, Unity and Christian Charity: and to aid and advance by all legitimate means the aspirations and endeavors of the Irish people for complete and absolute independence providing peace and unity for all Ireland.

That being said, we understand that this cannot be accomplished overnight and complete independence can only be achieved when a majority of people on both sides of the border wish it to happen.

For over 30 years, the Ancient Order of Hibernians has been engaged with a variety of organizations in the North of Ireland, and poured hundreds of thousands of dollars into organizations that provide assistance for charities and agencies to aid and advance, by all legitimate means, the aspirations and endeavors of the Irish people. We in our own way continue on the efforts of successive U.S. envoys to bridge the gaps of ignorance and mistrust. Our donations sent to Northern Ireland each year go to cross-appeal organizations such as Holy Cross Trust of Ardoyne, Belfast, Omagh Community Youth Choir, St. Patrick’s Centre, Downpatrick, and Conway Mill Trust Inc., just to name a few.

Additionally, the AOH supports the promotion of the Irish language in Ireland, which has garnered much media attention as a

⁵ Forum Marking the 20th Anniversary of the Good Friday Agreement (3/13/17)<https://www.youtube.com/watch?v=VC-RlOteG1s>

cause, but not the only one, for the failure to restore the power sharing government in the North of Ireland. It is incredulous that anyone would have an objection to the Irish language being taught and used in Ireland. We note that acts supporting and promoting indigenous languages in other parts of the United Kingdom, specifically Scotland and Wales, have long been enacted. The Irish language is one of the ten oldest languages still spoken in the world today; it is a treasure that all communities of Ireland should be proud of. To those who ask if the study of language should be a barrier to forming a government, we respond that if something as benign as the promotion of the Irish language cannot be resolved, then what hope is there to address more contentious issues. We believe that these issues of identity should always be on the table for discussion and can be addressed better if an impartial outsider, like an American Envoy, chairs the discussions.

Finally, one of the many other groups that we support monetarily on an annual basis is Relatives for Justice, which works for truth and justice for victims and survivors of victims during the Troubles. Utilizing a third party, in this case, the U.S. Envoy, to help address some of these “legacy issues” is critical to finding a path forward. For example, the Stormont Agreement was signed in 2014 and created agencies such as the IRG (The Implementation and Reconciliation Group), the OHA (Oral History Archive), the ICIR (The Independent Commission on Information Retrieval) and the HIU (Historical Investigative Unit). These agencies were created to address human rights violations of the past and to attempt to achieve some type of closure and justice when possible. Not all of these agencies have gone into full effect yet because although the Good Friday Agreement has been enabled, it has not been fully implemented. The AOH believes the many legacy issues should be handled with a third-party negotiator involved to give credibility to the impartiality and transparency of the process.

In addition to addressing legacy issues, the people of Northern Ireland are now forced to deal with concerns surrounding Brexit and how Northern Ireland may be impacted. After the Good Friday Agreement was initially implemented in 1998, not only was the “hard border” of military checkpoints and concertina wire demolished, but also the psychological borders that separated two people on a tiny island. All that was left was the memory of those trying days trying to get back and forth across the border. Today, the local people of Northern Ireland can cross the border multiple times in any given day—for work, for school, for shopping—for life.

The dissolution of UK’s membership in the European Union has once again raised the specter of a “hard border” in which all affected communities are in rare unanimity. Yet, no feasible, detailed means of avoiding a “hard border” have yet been identified. Much has been made of “commitments” and “desires” to avoid a hard border, but the devil is in the details. To avoid the disastrous consequences of a hard border in Ireland, compromises will be needed by all parties. The AOH believes this is yet another excellent reason to appoint a Special Envoy to Northern Ireland who can impartially facilitate finding common ground and begin to exhibit trust in carving out the future.

If the current demographics of Northern Ireland at 48 percent Protestant and 45 percent Catholic continue,⁶ this trend would indicate a Catholic majority in five to 10 years, or perhaps even less. In attempting to obtain reconciliation and justice, these figures cannot be ignored. The majority of today can become the minority of tomorrow and the blanket of protections enacted today will equally cover those who may feel they do not need them today. There is no question that Senator Mitchell, who forged this Agreement 20 years ago, knew of these facts when he espoused them during his mediations in 1998, which is why it is so crucial to find an equitable path forward for all parties.

Certainly one of the most well respected members of government from the Nationalist side was Martin McGuinness. In fact, I don't think most people recognized his stature until after his death. What he believed in has been reduced by some of our Irish organizations in this country, the AOH included, to four basic principles: those of self-determination, respect, equality and truth.

(1) SELF-DETERMINATION

A BORDER POLL TO AFFIRM IRISH SELF-DETERMINATION

“The imposition of Brexit, despite the vote of the people of the north to remain (in the European Union) underlines the undemocratic nature of partition . . . There is a democratic imperative to provide Irish citizens with the right to vote in a Border poll to end partition and retain a role in the EU.”

“A border poll is part of the process of building a modern and dynamic New Republic on this island—an agreed Ireland achieved by peaceful and democratic means.”

—Martin McGuinness.

(2) RESPECT

FULL STATUTORY EQUALITY FOR THE IRISH LANGUAGE

“Successive British Governments . . . have totally failed to meet their obligations . . . to protect the rights of the Irish language community.”

—Martin McGuinness

(3) EQUALITY

THE ENACTMENT OF A BILL OF RIGHTS

“We have pressed consistently for the establishment of a Bill of Rights in the North and an all-Ireland Charter of Rights.”

—Martin McGuinness

⁶“Two tribes: A divided Northern Ireland,” The Irish Times (4/1/2017) (<https://www.irishtimes.com/news/ireland/irish-news/two-tribes-a-divided-northern-ireland-1.3030921>)

(4) TRUTH**EQUAL JUSTICE FOR VICTIMS OF THE CONFLICT AND THEIR FAMILIES**

“Dealing with the legacy of the past remains one of the key outstanding challenges of our peace process. Unless it is dealt with in a comprehensive manner then the essential process of healing and reconciliation cannot gain momentum.”

—*Martin McGuinness*

The Ancient Order of Hibernians in America fully support these espoused principles and believe that they are in keeping with the best values of our organization, i.e., Truth, Respect, Equality, and Self-Determination. Only God knows the future for Ireland and we can only continue to do what we have done in the past, and that is to support the efforts and principles of the Good Friday Agreement and continue to spread the word to all who will listen of the achievements that have been made to date.

PREPARED STATEMENT OF MARK THOMPSON, DIRECTOR, RELATIVES
FOR JUSTICE

‘Dealing with the past’: *including accountability for past abuses and collusion, the need of surviving family members for justice & closure, and reform of policing*

May I first take this opportunity to thank the Committee, Chairman Senator Wicker, and CoChair Congressman Smith, your staff, and all involved in facilitating and convening this hearing.

Dealing with the past in which multiple harms and egregious human rights violations have occurred—not least systemic abuses that had official government sanction—is a perquisite of any post-conflict situation.

Righting the wrongs of the past—truth seeking and accountability—are an imperative to individual and societal recovery and healing, the restoration of human dignity, and the promotion and protection of human rights. They are central to the correction and rebuilding of the institutions of governance post-conflict not least criminal justice agencies.

No one community has a monopoly on the human heartache that was our conflict. We all suffered.

However, in terms of accountable justice there exists a huge deficit for those affected by State violence and collusion and it is no coincidence they face innumerable barriers to justice—barriers erected by those who are charged with ensuring justice—those accused in the first instance of violation.

There is huge and powerful resistance to enabling a process that addresses the past in an openly transparent, legally compliant, and above all independent way. This resistance emerges from within the police, the military, some institutions, political unionism, and the British government—who are not neutral.

They all seek to maintain a false narrative of the past and about their true role in the conflict. This position necessitates the denial of rights and ultimately accountable justice. Moreover, this position is unsustainable if there is to be meaningful change.

Families actively using the law & courts, asserting their rights, seeking accountability for past violations

Two weeks ago in the Belfast High Court Justice Paul Girvan ruled that former First Minister Arlene Foster acted illegally and with improper political motive¹ when she arbitrarily blocked attempts by the North’s foremost legal representative the Lord Chief Justice (LCJ) Sir Declan Morgan, and the then Justice Minister David Ford, to secure funding for legacy inquests into 55 cases involving 97 killings; inquests where families have waited up to four decades to hear.²

¹ <https://www.judiciary-ni.gov.uk/sites/judiciary-ni.gov.uk/files/decisions/soj-In-re-Brigid-Hughes.pdf>
<http://relativesforjustice.com/inquest-funding-judicial-review/>
<http://relativesforjustice.com/4089>
<http://relativesforjustice.com/4089>
<http://relativesforjustice.com/4089-2/>
<http://www.bbc.com/news/uk-northern-ireland-43330861>
² <http://www.bbc.com/news/uk-northern-ireland-0941165119>

At the same time in an adjoining courtroom Justice Bernard McCloskey finally recused himself from a hearing in which the former head of RUC special branch, Raymond White, challenged the Police Ombudsman's powers and findings into the Loughinisland massacre, which evidenced RUC collusion.³ Having delivered a scathing judgment against the Police Ombudsman it had been discovered that there was a lack of candour in disclosing to the court that as a lawyer Justice McCloskey had previously acted for the same applicants, White et al, when they unsuccessfully challenged the Police Ombudsman's report into the 1998 Omagh bomb in which Nuala O'Loan was highly critical of special branch.⁴ These criticisms included prior intelligence about the planned attack from an agent within the organisation responsible, which might well have prevented it. The McCloskey judgment was strikingly similar to his failed legal submission when acting for the former head of RUC special branch on that occasion. The case will be held afresh.

As a consequence the Police Ombudsman is unable to publish several major reports into killings involving collusion until the court case concludes.⁵ This rearguard action by the former head of special branch is also designed to stall and frustrate accountability. With appeals and challenges it may take several years to conclude which is time families don't have. The current Police Ombudsman, who has the confidence of families, has approximately 15 months left to serve.

More recently in the same High Court the PSNI chief constable George Hamilton was found to be in contempt, not once but several times by Justice Ben Stephens, for refusing to provide disclosures in a civil case taken by John Flynn in respect to a series of murder bids on him by the notorious Mount Vernon UVF, in which multiple members of this sectarian and criminal gang worked for the special branch.⁶

Police Ombudsman Nuala O'Loan's report Operation Ballast detailed the activities of this group.⁷

The disclosures were relevant to establishing a quantum for damages in the case.

At the same time in the adjacent criminal court families who had loved ones killed by the Mount Vernon gang observed as leading UVF figure Gary Haggarty was being sentenced for a series of

³ <https://relativesforjustice.com/mr-justice-bernard-mccloskey-finally-leaves-the-building/>

⁴ <https://www.irishtimes.com/news/ireland/irish-news/loughinisland-families-welcome-judge-s-stepping-down-from-case-1.3370081>
<https://www.irishnews.com/news/northernirelandnews/2018/01/26/news/relatives-welcome-judge-s-move-over-loughinisland-massacre-challenge-1242804/>
<https://www.belfasttelegraph.co.uk/news/northern-ireland/loughinisland-drama-as-judge-told-to-withdraw-from-police-ombudsman-collusion-report-case-36506937.html>

⁵ <http://www.irishnews.com/news/northernirelandnews/2018/02/08/relatives-call-for-ombudsman-reports-to-be-published-1251470?ref=sh>

⁶ <https://relativesforjustice.com/ombudsman-forced-to-delay-publication-of-collusion-reports/case-1-7841475>
<https://www.newsletter.co.uk/news/police-ordered-to-reveal-files-in-loyalist-agent-collusion-case-1-7841475>
<https://rm.coe.int/168073e17d>

⁷ <https://www.belfasttelegraph.co.uk/news/northern-ireland/police-given-five-week-extension-to-disclose-files-on-loyalist-informer-in-collusion-case-36516257.html>
www.belfasttelegraph.co.uk/news/northern-ireland/judge-refuses-psnis-high-court-appeal-for-disclosure-of-loyalist-informer-files-36068766.html

⁷ <https://policeombudsman.org/Investigation-Reports/Historical-Reports/Operation-Ballast-investigation-into-the-circumsta>

criminal activities including murder.⁸ Haggarty, a special branch agent throughout his reign of terror, had become an assisting offender in 2009.⁹ As an assisting offender Haggarty spent seven years providing evidence on all his activities and accomplices including his special branch handlers who directed his activities, evidence which the court accepted as credible. Families accepted that Haggarty would get a reduced sentence as an assisting offender but this was mitigated somewhat in that they would also see his special branch handlers in the dock as well as his fellow loyalists as part of this process. None of this happened despite promises by the PSNI and Public Prosecution Service (PPS) throughout. The matter is now subject to judicial review by the McParland and Monaghan families.¹⁰

It is suspected that the reasoning behind the deliberate failure to disclose evidence in the Flynn case is to protect the same group of agent handlers within the special branch also involved with Haggarty—shielding them from prosecution.

Policing reform—certainly not when it comes to dealing with the past

This brings into sharp focus the whole matter of the independence of the PSNI, where a cabal of former RUC officers who transferred over and now hold senior positions, including those who took the incentivised redundancy/retirement package to leave¹¹ but who through a loophole returned as ‘consultants’ and ‘civilian workers’ and who now control legacy.¹² Further in this ‘civilianised’ capacity they are not subject to the oversight powers of the Police Ombudsman.

Taken together with the position of the PSNI moreover on legacy this has had a corrosive effect on nationalist confidence in policing, which is now, at an all time low.

The 2009 offer to Haggarty it was revealed came—strangely or not—from MI5, the PSNI and the PPS.¹³ The blurring of boundaries and interference in due process, politically and from the intelligence agencies involved in the conflict and whose activities are highly questionable if not directly illegal, is nothing new. It was and continues to be wrong.

Impunity

The trial of British Army Force Research Unit (FRU) agent Brian Nelson in 1992 saw the then British Attorney General (AG), Patrick Mayhew, direct the prosecution case against him following interventions by the UK government in a bid to prevent Nelson from taking the witness stand and disclosing his full activities in-

⁸ <http://www.irishnews.com/news/northernirelandnews/2018/01/30/haggarty-victims-hit-out-as-loyalist-supergrass-has-35-year-jail-termcut-to-six-and-half-1244832/?ref=sh>

⁹ <http://www.bbc.com/news/uk-england-40379903>

¹⁰ <http://www.bbc.com/news/uk-northern-ireland-42428270>

¹¹ <http://www.thedetail.tv/articles/rehiring-in-the-police-the-full-story>

¹² <http://www.bbc.com/news/uk-northern-ireland-16600069>

¹³ Minutes of 21st January 2010 Policing Board meeting on file with RFJ & judgment in Haggarty case page 1, para 1; <https://www.judiciaryni.gov.uk/sites/judiciary-ni.gov.uk/files/decisions/R%20v%20Haggarty%20%28Gary%29.pdf>

cluding murder. A deal was struck with Nelson and 20 counts were removed from the indictment including two for murder.¹⁴

In 1988 the same Attorney General told the British parliament that it would not be in the public interest to proceed with prosecutions against RUC officers, from a specialist unit known as E4A, involved in a series of shoot-to-kill incidents of unarmed republicans.¹⁵

The collusive activities of the FRU and RUC special branch were the subject of three major enquiries by the UK's most senior police officer, Sir John Stevens, from September 1989 to April 2003. His enquiries found collusion¹⁶ and he recommended that 25 members of the FRU and special branch be prosecuted.¹⁷ This was never acted upon. Sir John Stevens later told a British Parliamentary Committee that of the 210 people he arrested during his enquiries—that is non-military and police—207 were agents working for the State.¹⁸

And so we see the pattern where accountability is thwarted and prevented when involving State killings, its agents operating inside illegal paramilitaries involved in murder, and those agent handlers directing and protecting them.

It is about protecting British State conflict policies and practices of wrongdoing on a massive scale that uncovered would completely tilt the conflict narrative. It is about protecting the reputational damage this would inflict on the UK. It is all about where this leads to in London and importantly—to whom.

Moving the goal posts—British bad faith

The pattern of insulating and protecting against such situations of exposure can also be seen across a range of institutions and proposed mechanisms. Take for example the agreement reached in December 2014 at Stormont House to address the legacy of the past.¹⁹ Post the agreement the UK government arbitrarily inserted a 'national security' veto into draft legislation enabling the retention and non-disclosure of information in any case they deemed necessary. Charlie Flanagan, who as minister negotiated the agreement on behalf of the Irish government, described this as 'a smothering blanket' that was 'unacceptable'.²⁰

More recently in correspondence to RFJ the British Secretary of State for the North said that any consultation on the implementation of any proposed mechanism to address the past would also in-

¹⁴ The North's shadow Labour spokesperson Kevin McNamara MP would later raise the matter in a parliamentary debate where he questioned the motives of that government intervention: *"I was not happy when the (British) Attorney-General took control of that prosecution and I was dubious about his reasons for deciding to drop charges. Those reasons remain undisclosed."* <https://publications.parliament.uk/pa/cm200203/cmhansrd/vo030514/halltext/30514h01.htm>> Column 73WH

¹⁵ <http://hansard.millbanksystems.com/commons/1988/jan/25/royal-ulster-constabulary-stalker>

¹⁶ <http://relativesforjustice.com/wp-content/uploads/2016/11/Stevens-3-Inquiry-Report.pdf>

¹⁷ Letter from PPS on file with RFJ & Stevens public statement re same

¹⁸ <https://www.youtube.com/watch?v=q9LFp95CCHo>

¹⁹ <https://relativesforjustice.com/?s=stormont+house+agreement>

²⁰ <http://www.irishnews.com/news/2015/11/27/news/flanagan-critical-of-national-security-smothering-blanket--334991/>

clude a ‘statute of limitations’²¹ for British soldiers—an amnesty. This would be unacceptable.

The ‘lack of resources’ excuse exposed

One of the main arguments proffered for systemic delays in addressing legacy is a lack of resources and funding. This has dramatically impacted the office of the Police Ombudsman and the inquest courts with budgetary cuts despite the increasing caseload.²² It is no coincidence that these also happen to be the only functioning mechanisms that have the potential to deliver for families. Now their capacity is hampered. By contrast the PSNI and other agencies have paid out tens of millions of pounds in a range of civil cases in order to forgo having to disclose information about collusion.²³

It is in this overall context that resistance by the UK, supported by political unionism, to addressing the legacy of the past in a meaningful, constructive, independent and legally compliant way must be viewed.

Families using the international courts to assert their rights

As a signatory of the European Convention on Human Rights²⁴ (ECHR) the UK are legally obligated to conduct thorough and independent investigations in accordance with Article 2 of the Convention, the Right to life. Under the Convention States must take measures where life is potentially under threat ensuring safety, and where life is taken then they must ensure investigation meets the above standards.

In truth the UK, through its ‘security’ and intelligence agencies, issued threats to citizens, denied them protection, and assisted in every conceivable way those they then sent to kill them. That is the conclusions of the Stevens Enquiries, the De Silva Review and the Police Ombudsman. It is why former UK Prime Minister David Cameron apologised to the Finucane family.

In short Article 2 must govern and be at the heart of any future mechanism to address the past.

This legal obligation—it would appear—has proven hugely problematic for the UK authorities—hence the ‘national security’ veto, the proposed statute of limitations, and general circling of the wagons. And we know precisely why.

This is best illustrated in the powerful European body the Committee of Ministers to the Council of Europe (CoM/CoE).

Following the May 2001 European Court on Human Rights ruling in the McKerr²⁵ group of cases, where the UK domestic investigative procedures were unanimously found to have been deliberately prohibitive to establishing the facts and holding to account the perpetrators in respect to State killings including collusion, the Court passed the judgment to the CoM/CoE for supervision.

²¹ Letter on file with RFJ— <http://www.irishlegal.com/9509/irish-government-criticises-uk-government-statute-of-limitations-plan/>

²² Police Ombudsman caseload is currently 420 cases where police misconduct in investigations and possible collusion exists

²³ <https://www.theguardian.com/uk/2008/oct/24/danny-morrison-northern-ireland>; <http://republican-news.org/current/news/2012/09/britain—admits—miscarriage—of.html>

²⁴ <https://www.echr.coe.int/Documents/Convention—ENG.pdf>

²⁵ <https://search.coe.int/cm/Pages/result—details.aspx?ObjectID=09000016805c212a>

The role of CoM/CoE is to assist the offending State to remedy the violations by way of ensuring that proper investigative procedures, legally compliant with the Convention, are put in place.²⁶

Since May 2001 the CoM/CoE has refused to sign off on their supervision of the UK having not been satisfied that the UK, through its action-plans, has fulfilled its legal obligations. That is 17 years.

This is testament to what the families face on one level but they also take hope in this vindication of their rights by the CoM/CoE.

The need for surviving family members for justice enabling them to move forward

Families want truth, the right to know who precisely were behind the murders of their loved ones—the recovery of historic memory.

It is not acceptable that the State, rather than meet its legal obligations to investigate, would prefer to first deny the truth, then when evidence is revealed delay processes to secure justice and accountability all in the hope that relatives might simply die off—which is happening. But other relatives are picking up the baton, continuing the fight, newer generations, and so families will never give up.

As I said at the outset accountability for human rights violation is central to healing and recovery; it enables the victim to recover that sense of disempowerment often associated with a wrong committed—righting that wrong is therefore ethically, morally and above all legally imperative not least when the finger—the evidential trail—points and leads directly to those in power—the police, military and government—who carry the duty to protect and prevent wrongdoing but who instead engaged in the practice of murder and cover-up.

In such situations the necessity to ensure justice and accountability is, arguably, all the more.

Implicit in this testimony—there has been no police reform when it comes to dealing with the past—only obfuscation—only Perfidious Albion.

Implicit—families are actively to the fore in public discourse, engaged in litigation and other forums seeking truth and accountability for past violations—having to consistently challenge a State standing in their way.

This work by families is about historic clarification, the dignity of truth, and healing.

The families we are humbled to work with—the families engaged in all this work—are the real heroes of the Irish peace process.

Finally I want to put on record the crucially important international forum these hearings provide to families and NGO's engaged in the promotion and protection of human rights.

These hearings, even 20 years after the peace accord, are necessary in assisting and encouraging a rights based approach within the context of our still developing peace process.

²⁶ <http://www.europewatchdog.info/en/structure/committee-of-ministers/supervision-execution-judgments/>

A lot has been achieved but the reality is we are not there yet. Your influence, vigilance and scrutiny therefore have real meaning and impact in the work still to be completed.

In particular I want to acknowledge Congressman Smith for his consistent and dedicated work over two decades in seeking to consolidate and build upon the peace process.

Thank you—*Go raibh maith agaibh*

PREPARED STATEMENT OF GERALDINE FINUCANE

THE GOOD FRIDAY AGREEMENT 1998: UNFINISHED BUSINESS AND
THE PUBLIC INQUIRY INTO THE MURDER OF PAT FINUCANE

Thursday, 22 March 2018

Mr. Chairman, Members of the Committee, Fellow Speakers, Honoured Guests, Ladies and Gentlemen . . .

On behalf of my entire family, I would like to thank you for this invitation to speak today and to testify before this Commission. I would especially like to thank the Chairman, Mr. Smith, for his continued interest in the case of Patrick Finucane, my husband, in particular, and the issue of human rights in Northern Ireland in general. As many people will know, Mr. Smith has been a keen supporter of, and advocate for, the development and enhancement of human rights in Northern Ireland throughout the peace process. His work and that of the US Congress in general has proved invaluable to the people of Ireland in maintaining and developing our peace initiative. I think the topic we are discussing is one of the most important aspects of the peace process in Ireland, namely, how we approach our past, how we deal with it and how we move beyond it, without forgetting it or worse still, pretending it did not happen.

I am particularly honoured to be able to address you in this 20th anniversary year since the signing of the Belfast Agreement on Good Friday, 10th April 1998. This momentous event took place some 10 years after the murder of my husband, Pat Finucane, a solicitor who practiced law in Belfast in the law firm he co-founded with his friend and business partner, Peter Madden. Pat was murdered by Loyalist paramilitaries, in our home, on Sunday, 12 February 1989, in front of myself and our three children.

I would like to say that the passing of the years has made Pat's death easier to bear but his would not be true. In fact, the more time that passes, the more difficult it is to bear his loss. This is partly because of how much we all miss him as a person but it is also because of what we now know about the circumstances surrounding his murder. We know, beyond any doubt, that Pat was murdered with the active assistance and participation of the former NI police force, the RUC, the British Army and the British State.

There was a time when we did not know as much as we do now and the claim that Britain was involved produced scepticism in many quarters. Politicians in government and officials in State positions at home and abroad disbelieved our suspicions entirely. Some even poured scorn on our allegations of State collusion and said the ideas were fanciful. Pat's case was merely one more killing in the midst of so many. One more case to be archived and forgotten. However, Pat's case was not forgotten, nor were the very many others. The 1998 Agreement represented a new beginning that would mark a point from which the new future for everyone in Ireland, north and south, could be launched. What was not appreciated or acknowledged, however, was the fact that moving forward also meant dealing with the past. In this respect, the greatest number of difficulties have been encountered by people like me who

seek to hold the British State to account for its actions during the conflict period.

My family has campaigned for a public inquiry into Pat's murder but the British Government has repeatedly failed to establish one. Instead, they have instigated one confined investigation after another, claiming to want to 'examine the facts' or 'get to the truth' but always in a process conducted away from public view.

One cannot but wonder at the pointlessness of conducting investigation after investigation that are doomed to fail, no matter how forceful the conclusions, because they lack the transparency required to attain public confidence.

For example, in April 2003, the newly appointed Commissioner of the London Metropolitan Police, John Stevens, announced the findings of his investigation with the following remarks:

"My enquiries have highlighted collusion, the wilful failure to keep records, the absence of accountability, the withholding of intelligence and evidence, and the extreme of agents being involved in murder. These serious acts and omissions have meant that people have been killed or seriously injured."

One year after this, in April 2004, the former Canadian Supreme Court Judge, Peter Cory, announced the findings of his investigation. The concluding paragraph of his report reads as follows:

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

In December 2012, the Prime Minister, David Cameron, addressed the House of Commons with a speech on the findings of a report by Sir Desmond de Silva, a barrister tasked with conducting a review of State papers dealing with collusion. Mr. Cameron's conclude his speech with the following remarks:

"The collusion demonstrated beyond any doubt . . . , which included the involvement of State agencies in murder, is totally unacceptable. We do not defend our security forces, . . . by trying to claim otherwise. Collusion should never, ever happen. So on behalf of the Government, and the whole country, let me say again to the Finucane family, I am deeply sorry."

This outcome took 11 years and four visits to Downing Street to meet two different Prime Ministers. This is all too typical of the response by Britain to accusations of collusion, namely, to deny as long as possible and then, ultimately, to hide as much as possible.

It has been clear to many people for many years that the legacy of conflict would have to be addressed. The Good Friday Agreement represents a step in the journey toward achieving the goal of creating a peaceful society that has been permanently transformed. However, it is a means to an end, not an end in itself. It is supposed to represent a break from the methods of the past that undermine public confidence in government and the rule of law. Many

questions remain about the murder of Pat Finucane. Many questions remain unanswered about the murders of many other people.

Rather than participating in a public inquiry process, as the British Government once promised us, my family has been forced to take legal action to force the State to fulfil its obligations.

The first stage of this process took place in the High Court in Belfast and was heard by Mr. Justice Ben Stephens, who delivered his ruling on 26 June 2015. In the opening paragraphs of his judgment, he said the following:

“[Geraldine Finucane] ... was convinced from the beginning that servants or agents of the State were involved in the murder of her husband. The government has accepted that there was State involvement and has apologised for it. It is hard to express in forceful enough terms the appropriate response to the murder, the collusion associated with it, the failure to prevent the murder and the obstruction of some of the investigations into it. Individually and collectively they were abominations, which amounted to the most conspicuously bad, glaring and flagrant breach of the obligation of the State to protect the life of its citizen and to ensure the rule of law. There is and can be no attempt at justification.”

Sadly, Mr. Justice Stephens concluded that the decision of the British Government not to hold a public inquiry was not unlawful and so he was unable to order them to establish such an inquiry. I appealed this decision to a higher court but the Northern Ireland Court of Appeal ruled against us. However, notwithstanding the fact that we were unsuccessful but we have sought and been granted permission to appeal to the UK Supreme Court. The hearing is scheduled for June 2018.

Where, then, does the case for a public inquiry into the murder of Pat Finucane rest? The courts have concluded that they cannot order an inquiry. The British Government has determined it *will* not hold one.

Perhaps all that can be done has been done already ... ?

Perhaps the murder of Pat Finucane is simply, ‘old news’ ... ?

I do not think that the controversy surrounding the murder of Pat Finucane has been properly resolved. I believe I am right in this, not just because of a broken promise by the British Government but because of the unanswered questions that arise from Pat’s murder and the fact that no-one within the British establishment has ever been made accountable for it.

Most of all, I believe I am right because of the unwavering support my family and I have had from the people of Belfast and beyond for the last twenty-nine years.

Many people have stood with us for all of those three decades, helping us, encouraging us, willing us on. I meet them often, sometimes at organised events or just when I am out and about my daily business. I am constantly approached by people who wish me and my family well. They tell me we are doing great work. Some people even tell me that they have known tragedy in their lives but were unable to follow through on it, for various reasons. But they gain comfort and some degree of closure by knowing that someone is holding the British State accountable for their actions.

But everyone ends by telling me the same thing: “*Keep going. It’s important.*”

This is why my family and I do what we do. This is why we keep going even though it isn’t easy. It is also why many people keep searching for the truth behind the killing of their relatives and friends, despite the resistance they encounter from Britain and its government. The constant reply from the State is that there can be no investigations and that we should look to the future because that is what is important. However, what the British Government cannot or will not acknowledge is that until we know everything about our past then we cannot possibly equip ourselves to build a solid future.

It is true that the recent past in Northern Ireland was characterised and marred by violence. But it was also marred by a lack of transparency in government, the absence of proper accountability and the serial abuse by the State of our human rights. The violence may have ceased but it is hard to acknowledge improvement in other aspects until the State demonstrates change in a real way. One way of demonstrating that the change is real would be to establish a public inquiry into the murder of Pat Finucane.

There are so many people, who, like us, want to find out the truth behind Pat’s murder. It is unfinished business for them. It is unfinished business for us.

We want to know, *why*. We want to know, *how*. We want to know, *who*.

We want to ask our own questions and to hear the answers for ourselves. We want to be able to read the documents and understand the frameworks.

Most of all, we want to be able to show them to the entire world so that everyone can know and learn what can be done by governments in the name of the people if we are not vigilant.

The British Government likes to describe those of us who demand answers as people who are stuck in the past and who lack an understanding of democracy. On the contrary: I believe those who are committed to holding the State to account for past actions understand democracy the best of all.

Thank you very much.



This is an official publication of the
**Commission on Security and
Cooperation in Europe.**

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This publication is intended to document
developments and trends in participating
States of the Organization for Security
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