

NORTHERN IRELAND: STORMONT, COLLUSION, AND THE FINUCANE INQUIRY

HEARING

BEFORE THE

COMMISSION ON SECURITY AND COOPERATION IN EUROPE

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

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AND THE FINUCANE INQUIRY**

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March 18, 2015

COMMISSION ON SECURITY AND COOPERATION IN EUROPE
WASHINGTON, DC

The hearing was held at 2:45 p.m. in room 2175, Rayburn House Office Building, Washington, DC, Hon. Christopher H. Smith, Chairman, Commission on Security and Cooperation in Europe, presiding.

Commissioners present: Hon. Christopher H. Smith, Chairman, Commission on Security and Cooperation in Europe; and Hon. Robert Aderholt, Commissioner, Commission on Security and Cooperation in Europe.

Members present: Hon. Brendan Boyle (R-13), a Member of Congress from the State of Pennsylvania; Hon. William Keating (D-9), a Member of Congress from the State of Massachusetts; and Hon. Joseph Crowley (D-14), a Member of Congress from the State of New York.

Witnesses present: Geraldine Finucane, Widow of Murdered Human Rights Lawyer Patrick Finucane; Professor Kieran McEvoy, Queen's University School of Law, Belfast, Northern Ireland; and Anne Cadwallader, Author, "Lethal Allies: British Collusion in Ireland."

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

Mr. SMITH. Good afternoon, and first of all, let me just say at the outset I apologize for the lateness in starting this hearing. We did have a series of votes on the floor preventing and precluding all of my colleagues and myself being here. So again, I thank you for your patience at the late start of the hearing.

I want to begin by welcoming everyone at this hearing today, especially our witnesses, all of whom are joining us from Northern Ireland. We thank you for giving us the opportunity to hear from you, to learn from you about ongoing efforts for accountability, justice and reconciliation in Northern Ireland.

This is the 15th congressional hearing that I've chaired on human rights in Northern Ireland—the first one was back in 1997—and many of my colleagues on the Commission with us today have joined us for these hearings. This is to say many of us in Congress deeply care about these issues, follow them regularly,

and will continue to do so. This is one of the most bipartisan issues on Capitol Hill. It has been, is, and will continue to be.

In December of 2014, the parties of the Northern Ireland Executive and the governments of the United Kingdom and the Republic of Ireland approved the Stormont House Agreement, with commitments for “dealing with the past”—that is, addressing crimes and the consequences of crimes of “the Troubles.” Other provisions address government reform and other controversial issues. And the British Government committed to funding new structured deal with conflict-related crimes and to assist the victims of “the Troubles.”

Today we look forward to hearing about steps to implement the Stormont House Agreement, and prospects for full, unfettered realization of processes to hold those who committed crimes accountable and finally provide a measure of justice to victims and to their families.

We also look forward to learning about increasing revelations of government collusion in crimes committed by paramilitaries. For years British officials denied collusion in crimes committed by the paramilitaries. In recent years, however, evidence has mounted that its security services enabled or had direct knowledge of a substantial number of paramilitary murders. We hope to find out what the British Government has done in response. Is it on track to holding itself accountable?

One particularly shocking instance of collusion was the 1989 murder of human rights defense attorney Patrick Finucane. The Good Friday Agreement of 1998—one of the most outstanding diplomatic achievements of recent decades—left a number of issues unresolved, including the issue of British collusion in paramilitary crimes. In 2001, however, the British and Irish Governments dealt with this in negotiations at Weston Park. There the British Government assumed a solemn obligation to initiate a full, independent, public judicial inquiry into the Finucane murder and five other crimes if so recommended by retired Canadian Supreme Court Justice Peter Cory.

On May 5th, 2004, Justice Cory did recommend a public inquiry in the case of Patrick Finucane. He released this recommendation at a public hearing of this Commission. To date, the Finucane murder remains the only case Judge Cory investigated where his recommendation has not—I repeat, not—been honored. This is deeply unsatisfactory for many reasons, but not the least of which because it is evidently the one where the British Government is probably the most culpable.

The Finucane murder is also a case in which—until the Prime Minister’s apology in December of 2011—there has been the greatest level of sustained official denial and obstruction by various state agencies. Obstruction went to such a point that, rather than provide the promised inquiry, in 2004, the British Government prepared new legislation governing inquiries. This would allow the government to withhold evidence from the inquiry process. Total subterfuge.

The Finucane family rightfully declined to accept such an inquiry. And Judge Cory wrote a letter to me in which he stated, and I quote in pertinent part: “The proposed new Act would make a

meaningful inquiry impossible. The commissions would be working in an impossible situation. For example, the Minister, the actions of whose ministry was to be reviewed by the public inquiry, would have the authority to thwart the efforts of the inquiry at every step. It really creates an intolerable Alice in Wonderland situation.” Close quote.

Though in 2012 Prime Minister Cameron acknowledged and admitted “shocking”—that’s his word—levels of collusion between the state and loyalist paramilitaries in the murder of Patrick Finucane, this does not substitute for the full exposition of the facts behind the British state’s involvement in the murder of Patrick. Rather, the steady increase in the amount of evidence being revealed publicly that senior officials in the British state colluded in the murder has made honoring that commitment more important than ever. There is no statute of limitations on getting to the truth.

The many previous denials and the time that has passed in the Finucane case has drained public confidence in the peace process and diminished respect for the rule of law in Northern Ireland. It must be said that there are those who oppose the peace process and their opposition is dangerous. The failure to address the case of Patrick Finucane in the manner promised by the British Government provides a readily available propaganda tool for those who would abuse it to further their own ends.

Let me just—before going to my colleagues, I just want to say, this is the ninth time that a Finucane family member—Geraldine, her 2 sons have testified at 9 of the 15 hearings. I can tell you that as chairman of the Human Rights [Sub]committee of the Foreign Affairs Committee, where I’ve held hearings on Northern Ireland and Pat’s case as well, as well as the Commission on Security and Cooperation in Europe, that we will not rest until the public inquiry is initiated and all the facts are laid bare, and those responsible for this heinous crime are held to account.

I’d like to now yield to my good friend, Mr. Boyle.

HON. BRENDAN BOYLE (R-13), A MEMBER OF CONGRESS FROM THE STATE OF PENNSYLVANIA

Well, thank you, Mr. Chairman. And I said in a previous committee, your personal work in this area of human rights is incredible and very admirable.

I am a new member of Congress, here only two and a half months, now representing Pennsylvania’s 13th Congressional District. But while I am new to Congress, I’m not new to this case. I’m so sorry for what you’ve had to go through. For many years as a private citizen, I have read everything that I could about this case, and now have this position as a member of Congress to join with a number of colleagues who have been working on this far longer than I have. But just want to lend my voice as one member of Congress who deeply cares about this specific case and these issues, and will not be shy about expressing that point of view and don’t plan on going anywhere anytime soon.

So again, I thank you, Chairman Smith. Really here to sincerely know what happened and why there continues to be these delays and stalling. As one of the witnesses will testify, it might be a police inconvenience to expose a certain fiction, but it is absolutely

the necessary work of truth and reconciliation that that fiction be exposed. Thank you.

Mr. SMITH. Thank you very much.

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

**HON. WILLIAM KEATING (D-9), A MEMBER OF CONGRESS
FROM THE STATE OF MASSACHUSETTS**

Well, thank you, Mr. Chairman, for holding this hearing.

I'd like to thank our panelists for being here, particularly Mrs. Finucane. I want you to know that your husband's life is not forgotten here, his loss is not forgotten, and your courage is greatly appreciated for coming here.

It's been more than 17 years since the Good Friday Agreement. In that time, courage, conviction and hard work have led to a more peaceful and more purposeful effort, as well as increased prosperity in Northern Ireland. Of course, there's still much to do. There's still too much tension and mistrust between Catholic and Protestant communities.

No one can dispute the importance of justice for victims of repression and their loved ones. Nor can we discount the role that tradition plays in shaping one's identity. As a former prosecutor, I understand the importance of truth and justice in criminal investigations, and especially one involving allegations of collusion. Bringing the facts of this case to light and holding perpetrators accountable is an essential part of grieving and can pave the way for reconciliation. It's also essential that investigations be independent and free of political influence. I also look forward to hearing from our witnesses in this regard.

And as we examine the importance of dealing with the past, I hope we'll also discuss the importance of looking forward. In doing so, we should look to the example of those who have set aside division and discord in favor of cooperation and compromise. What these men and women have in common is their commitment to building a brighter future, as well as their faith in the rule of law and in equal opportunity.

In that same spirit, I believe one area in particular merits close scrutiny: addressing the issues of segregation in both schools and housing is essential to future progress. Like the champions of segregation in America's not-too-distant past, many in Northern Ireland today argue that segregation is essential to maintaining peace and order. However, our own history shows that segregation only serves to feed fear and resentment. It reinforces stereotypes and it perpetuates inequality.

The United States played a key role in brokering the Good Friday Agreement. We have a responsibility to continue to help the process move forward. I'm concerned that, in the rush to balance the budget, we have ignored crucial programs like the International Fund for Ireland and other crucial programs that work to bring communities together. These programs have been at the forefront of efforts to confront segregation and promote reconciliation in Northern Ireland. Zeroing out U.S. funding sends exactly the wrong message at a pivotal moment in the Northern Ireland peace process. Further—and this is important—there is specific appropriations language in both the House and the Senate directing the

State Department to fund this program, yet there still seems to be a reluctance to do so in spite of that mandate.

With that, I yield back. Thank you, Mr. Chairman.

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

We're joined by Joe Crowley, gentleman from New York.

**HON. JOSEPH CROWLEY (D-14), A MEMBER OF CONGRESS
FROM THE STATE OF NEW YORK**

Thank you. Thank you, Mr. Chairman. I'm pleased to be here today.

I want to thank Chairman Smith for organizing this important hearing today. Support on these issues is and has always been bipartisan, and that's the way it ought to be. There are lots of people to single out for their efforts at peace in the north of Ireland, and Chairman Smith is definitely one of them. So I thank you sincerely for all your efforts. He has used his position on the committee and on the Commission to champion these causes. And by holding a hearing like this today it gives the rest of us a forum to contribute as well. So thank you, Chris.

It's no secret that the past few years have caused considerable concern for those of us who support peace in the north of Ireland and want the parties to have the opportunity to pursue their goals through the ballot instead of through the use of the bullet. There can be no return to the past, and I sincerely believe there won't be. So it is important to keep the current conflicts in context.

When people fight for the welfare of the population and the use of the political process to do so, we here in the States think that's normal. That's the normal kind of conflict and disagreement that takes place in a legislature. Parties shouldn't be called intransigent just because they want to make a stand on helping the poor and the destitute, the people that they represent.

I'm also concerned about some of the issues of the past. I had a meeting earlier today with Geraldine Finucane. I love Geraldine very much. I've come to admire her and respect her, and she's a friend of mine. But I don't really want to meet her under these circumstances anymore. I would like to see a genuine inquiry into her case so that her family can get the closure that she deserves and that her family deserves, and so she doesn't have to come to the United States, to the House of Representatives, year after year and decade after decade to bring closure to this case.

What happened to her husband, Patrick, was wrong, and the government of Great Britain has acknowledged that through its Prime Minister. He apologized—and rightfully so—for that. But that action begs a further question: Why not take the next step and carry forward a real inquiry and reveal all that is known by the British Government? And until that happens, there'll be no closure in this case. I know that there are many, many cases on both sides of the divide that need to be brought about and have full disclosure on, but on a personal note I sincerely believe that this is one of the most outstanding cases that needs to have full closure.

So, Mr. Chairman, thank you again for having me participate and for doing all you do. You don't, I don't think, get the credit you deserve for all your years of input here. So thank you, Chairman.

Mr. SMITH. Well, I want to thank my friend from New York for his ongoing contributions to peace, justice and reconciliation in Northern Ireland. As he pointed out so aptly, this is a bipartisan issue, and it has been, is, and will continue to be. And I very much enjoy working with my friend from New York.

I'd like to now introduce our three distinguished witnesses, beginning first with Geraldine Finucane, who has for 26 years sought an independent judicial inquiry into British Government's collusion in the 1989 murder of her husband. She was herself wounded in that terrible crime. This will be the ninth time, as I mentioned a moment ago, that she or one of her sons have testified. And as Joe pointed out, we'd like to see you under different circumstances in the future, not making this plea, particularly to the British to finally honor their commitment. As she says in her testimony, the murder of Pat Finucane may well be in the past, but I do not believe it is irrelevant to the future. Past is prologue. How well a country honors its commitment, particularly in looking at the messiness and the collusion that occurred, is a harbinger of what a country will do with regards to other issues in the future. So I want to thank her for her unbelievable persistence, for her love for her husband, which is so clear and compelling over these many, many years, and now it's decades.

We'll then hear from Kieran McEvoy, who is a professor of law and fellow with the Institute for the Study of Conflict Transformation and Social Justice at the Queens University in Belfast. Professor McEvoy has a long history of scholarship and advocacy on behalf of human rights and conflict transformation. He served as a board member of the Committee on the Administration of Justice, or CAJ, for much of the last two decades, as well as being a founding member of the Community Restorative Justice Ireland. He is also an active member of Healing Through Remembering. So welcome, Professor. Thank you for being here.

And then we will hear from Ms. Anne Cadwallader, who is an experienced journalist originally from London who has devoted a substantial part of her career to reporting on Northern Ireland. She is the author of "Holy Cross: The Untold Story," published in 2004, and in 2013 of "Lethal Allies: British Collusion in Ireland." Since 2009, she has been an investigator and caseworker at the Pat Finucane Centre for Human Rights. And welcome to her as well. Geraldine, if you could proceed.

**GERALDINE FINUCANE, WIDOW OF MURDERED HUMAN
RIGHTS LAWYER PATRICK FINUCANE**

Mr. Chairperson, my fellow speakers, distinguished 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 Helsinki Commission—and

of 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. This is something I know from my own personal experience.

I am here today because of what happened to my husband, Patrick Finucane, who was murdered by loyalist paramilitaries in Belfast in 1989. As is now a matter of public record throughout the world, Pat was a lawyer practicing in Northern Ireland during the period of civil conflict that extended throughout 1968 to '94. He specialized in criminal defense work and developed particular expertise in defending people charged with offenses under emergency laws introduced by the British Government during the conflict.

As a result of his innovative approach to the work and the many successes that flowed from it, Pat became a target for loyalist paramilitaries who perceived him as partisan and an enemy of the state. As a result of his work, Pat was murdered by loyalist paramilitaries in February '89, with the active participation and collusion of British state and army agents. The false perception of Pat as being sympathetic to his clients' political beliefs and even that he engaged in unlawful activity on their behalf was fostered actively by the British Security Service, MI5, encouraged by the Royal Ulster Constabulary Special Branch and, I believe, the British Army's covert agency, the Force Research Unit.

This much has been known for some time as a result of certain incidents that took place during Pat's lifetime and some of the evidence that has been revealed since his murder. It is for this reason that my family and I have campaigned for the last 26 years for the establishment of an independent judicial inquiry into his murder. We believe that the circumstances surrounding the murder are sufficiently serious to warrant the establishment of such an inquiry. In this we are supported by the United Nations, Congress of the United States, President Barack Obama, the Irish Government, the British Labour Party, as well as a host of internationally recognized human rights NGOs. We have succeeded in litigating the issue against the British Government on several occasions at both domestic and international levels. Notwithstanding this, the British Government has refused to establish an inquiry into Pat's murder. It has blocked our efforts for years in an attempt to dissuade us from campaigning by means of constant delay. In recent years, we have seen them try to take advantage of this delay by claiming that the issue is now too old and should be confined to the past.

The murder of Pat may well be in the past, but I do not believe it is irrelevant to our future. Just five weeks ago, on the anniversary of Pat's murder, events were held in Belfast and Dublin to commemorate his death. Over 300 people attended the Belfast event, many of whom knew Pat or had worked with him during his lifetime.

However, it is not just Pat's friends and colleagues who continue to believe the need for an inquiry remains essential. Many people living in Ireland lack confidence in the establishment and are slow to accept that things have really changed. One of the examples that

is often pointed to as a reason for this mistrust of the establishment is the lack of an inquiry into Pat's case, despite the truly shocking revelations of several major investigations.

There is also the matter of the broken commitment by the British Government to establish an inquiry, as agreed by them with the Irish Government during negotiations at Weston Park in 2001. At that conference, the British and Irish Governments agreed to establish an inquiry into the case if an independent judge of international standing recommended there should be one. The judge appointed was Peter Cory, former justice of the Supreme Court of Canada. He recommended such a public inquiry in 2004.

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

Needless to say, the inquiry recommended by Judge Cory and promised by the British Government has never materialized. Instead, the current government, led by David Cameron, established a review of the case because, according to the prime minister, and I quote again, "the government's priority was to get to the truth in the best and most effective way." End of quote. In order to achieve this, he appointed a lawyer, Sir Desmond de Silva, to conduct a review of the papers in the case and to reach conclusions on foot of the materials he read.

Firstly, I would like to say something about Sir Desmond de Silva from the point of view of perception and on the issue of public confidence in the state.

Sir Desmond is a member of the British Conservative Party, the current party of government, and he has received a knighthood from the queen. He is also a privy councilor. Furthermore, he is a member of the Carlton Club in London, which describes itself as, and I quote, "the oldest, most elite and most important of all Conservative"—Party—"clubs." End of quote. Current members include John Major, Douglas Hogg, Boris Johnson and other Tory notables. Former members include Margaret Thatcher, Edward Heath and Winston Churchill.

Sir Desmond has also been referred to on the Conservative Home Web site—a party political site that describes itself as "the home of Conservatism"—as "a loyal Conservative who has excelled in his profession."

I make no comment on Sir Desmond personally or on his bona fides. However, I think it is stretching credulity to breaking point to suggest that appointing someone with such strong connections to the British establishment would inspire confidence in the Irish public when it comes to a case as sensitive and controversial as Pat Finucane.

Sir Desmond delivered his report to the government on the 10th of December 2012. At the time I labeled the report "a sham" and "a whitewash." I believe I was right to do so at the time, and since then, having had even more of an opportunity to consider the report in detail, I am convinced I was right.

The de Silva report claims to be a comprehensive analysis of the circumstances surrounding Pat's murder and a definitive examination of what happened to him. I refuse to believe this. The review conducted by Desmond de Silva reveals a great deal of information for the first time, but it is nowhere near being a complete answer. The report is based on a reading of documents without any questioning of their authors. Indeed, only 11 witnesses were spoken to by de Silva and 12 written submissions were received. No politicians were interviewed, nor were a number of key intelligence personnel, including the former head of military intelligence in Northern Ireland in charge at the time of Pat's murder.

In this regard, Mr. Chairman, I would like to ask that an address by Pat's former law partner and colleague, Peter Madden, be added as an appendix to my testimony.

Mr. SMITH. Without objection, so ordered.

Mrs. FINUCANE. Thank you.

Perhaps most significant of all is the finding that the authorities had no advance knowledge of Pat's murder. I do not believe this finding has a credible foundation. I am amazed that a lawyer of the experience and knowledge of Sir Desmond could arrive as such a profound conclusion in such a cursory fashion.

Other analysts of Pat's murder have come to the opposite conclusion. John Stevens, former commissioner of the London Metropolitan Police, came to the conclusion that Pat's murder, and I quote, "could have been prevented," which suggests at the very least that there was advance knowledge of a plot to kill him.

Were the British Army or other state agencies aware of such a plot? Only a public inquiry could answer this question.

Judge Peter Cory, who published his report in 2004, also came to opposing conclusions in key aspects of the case. He believed that there was evidence to suggest that the British Army's Force Research Unit was aware of the plot to assassinate Pat. Sir Desmond deals with this crucial issue by saying, and I quote, "I must respectfully differ with inferences he draws in relation to the Force Research Unit's prior knowledge of the targeting of Pat Finucane." End of quote.

De Silva does not explain the basis for his conclusion. He does not say why he disagrees, merely that he does so.

Is this to be the last word on the case of Pat Finucane insofar as the British state is concerned? Are we supposed to be satisfied with the response that on the central issue of British state involvement in and prior knowledge of the murder of a lawyer, an officer of their own courts, they simply prefer this verdict rather than the last one?

It seems that the Cameron administration wants to pursue this line. It's not difficult to see why.

By the same token, if my family and the general public lack confidence in the organs of the state, it's not difficult to see why.

We have been presented with an obviously self-serving answer to a potentially damning question, and it is clear that the British Government is fighting against the prospect of a full and public accountability for its actions.

I have said before that I have no wish to be more in the past, nor does anyone else. But misrepresenting important past events and concealing state wrongdoings will never free us from it.

At the commemoration of Pat's murder in Belfast last month, one participant remarked that "when the Finucanes take a step forward, we all take a step forward." I think this exemplifies the common view of our case in particular and the issue of the past in general.

Proper examination of past issues does represent progress in contemporary society. It allows people to resolve the traumas in their lives and to lay to rest the ghosts that haunt them and society as a whole. It is not always necessary to punish or seek retribution. For many people—perhaps even most people—the truth about what happened is enough.

We have not yet learned the full truth of what happened to Pat, but I believe we are getting closer. And one day, hopefully soon, I very much hope I will be testifying before this committee about achieving that goal.

On behalf of my family, I ask for the support of this Commission to persuade the British Government to honor its longstanding promise to establish an independent public judicial inquiry into the murder of Pat Finucane.

Thank you very much for this opportunity.

Mr. SMITH. Geraldine, thank you very much for your very compelling and persuasive testimony.

Mr. Crowley does have to leave, but I'd like to yield to him before going to Professor McEvoy.

Mr. CROWLEY. If you don't mind, I just have a quick question for Geraldine, and I beg my colleagues' indulgence.

My colleague from Philadelphia, Mr. Boyle, has asked me a very profound question, I thought. He wanted to know, is there anything more that we could do as a government to investigate the de Silva report or the actions the British Government has taken so far? And I said, unfortunately, I don't think we can. I think the extent of what we can do is conduct hearings, as the Helsinki Commission is doing and as the Chairman does in his capacity on the Foreign Affairs Committee and elsewhere.

But I'm wondering, Geraldine—and this is not the Irish Government's responsibility. I know they—that this is not their work. But in inquiry to you in terms of whether or not you think, is there a role for the Irish Government here in terms of having a formal review of the de Silva report as it pertains to Patrick? And is your—do you have a sense of what they can—is there something that they could do in terms of bringing more focus and attention to this case?

Mrs. FINUCANE. Well, they were party to the agreement at Weston Park.

Mr. CROWLEY. Yes. Mmm hmm.

Mrs. FINUCANE. They are the other co-signatories. So it is vital—now that they have carried out their side of the bargain, I think it is vital that they push forward and hold the British Government to their side of the agreement.

Before Bloody Sunday was actually announced, the Irish Government analyzed the situation and drew up a very influential report

which was actually very strong in tipping the balance towards that inquiry taking place. It would be very helpful if they would do something similar in our case, analyzing the report to show—

Mr. CROWLEY.—its deficiencies. Mmm hmm.

Mrs. FINUCANE.—how lacking it is. And, you know, maybe the same thing can happen twice and that will tip the balance in our favor.

Mr. CROWLEY. Well, I appreciate it.

Maybe, Mr. Chairman, you and I and the others could put together a formal request to the Irish Government to do just that. I think it's a way in which we can be influential.

So thank you, Mr.—and thank you to all of you for your testimony today. Unfortunately I do have to run, but I will get it all.

Thank you, Chris.

Mr. SMITH. Thank you, Mr. Crowley.

Professor McEvoy.

PROFESSOR KIERAN McEVOY, QUEEN'S UNIVERSITY SCHOOL OF LAW, BELFAST, NORTHERN IRELAND

Members of Congress, ladies and gentlemen, I am honored to be addressing you today. I have been asked by the Commission to specifically address a number of issues concerning dealing with the past and the dealing with the past elements of the Stormont House Agreement, namely origins, substance, politics, implementation, opportunities for accountability and justice, and reconciliation and peace. I have submitted quite a lengthy report and some appendices, which I'd respectfully request be written into the record, and I'll try to summarize this in seven or eight minutes.

Mr. SMITH. Without objection, your full statement will be made a part of the record.

Mr. MCKEVOY. Great, thank you. Thank the Chairman.

So the origins to the Stormont House Agreement and the elements of it in terms of dealing with the past. The Good Friday Agreement, unlike other similar peace agreements, did not contain an overarching mechanism to deal with the past. There was no truth commission or similar body created as a result of that. The negotiators at the time thought that we probably weren't ready for it, and perhaps we weren't. What has happened in the interim is that a piecemeal range of measures focused on the past have emerged—a patchwork quilt, if you like, of measures focused on the past, namely: a number of public inquiries—although, as Geraldine has testified, not in the murder of Pat Finucane; the creation and the work of the Office of the Police Ombudsman, which addresses allegations of police malfeasance, including during the conflict; the work of the police-based Historical Enquiries Team; and inquests into conflict-related deaths.

The United Kingdom government has previously argued, particularly to the European Court of Human Rights, that these “package of measures,” as they're referred—this patchwork quilt—cumulatively mean that the U.K.'s legal obligations under Article 2 of the European Convention of Human Rights to establish prompt, effective and independent mechanisms to investigate conflict-related deaths are being satisfied. There's now compelling evidence that, in

fact, those legal obligations are not being satisfied under the “package of measures.”

So in terms of the substance of what’s in the Stormont House Agreement, it’s—the first thing to say is that the Stormont House Agreement is, in reality, “Heads of Agreement.” It is “Heads of Agreement.” The devil will be in the detail around the implementation of the Stormont House Agreement. The U.K. government plans to introduce legislation in Westminster in September/October of this year which—one Act which will contain all of the dealing with the past mechanisms. So the agreement itself only has five pages on dealing with the past, so the devil is in the detail.

What it proposes is the creation of a Historical Investigations Unit, to be overseen by the Northern Ireland Policing Board. The Historical Investigations Unit will incorporate the current work being done by the Office of the Police Ombudsman and that work that was being done by the Historical Enquiries Team. Decisions on prosecution arising from this will remain the responsibility of the Director of Public Prosecutions. So that’s the justice-focused elements of it.

It also provides for the establishment of an Independent Commission on Information Retrieval, which is modeled on the Commission for the Disappeared, which works on both sides of the border—people who were murdered and their bodies disappeared by the IRA. And so this model draws explicitly on that version, that model. And in particular what it does is it provides mechanisms for people to give information, to provide closure for families, but people will be given guarantees of non-prosecution for the information that is provided. Now, if evidence or information arises from other sources, people may still be liable to be prosecuted. But the idea is that any information that is provided to that Commission, that evidence can’t be used, so it’s a form of limited immunity.

The agreement also provides for the establishment of an Implementation and Reconciliation Group. Part of the responsibilities of that group will be to pull together themes arising out of the information that’s provided with regard to the past. And in previous sets of negotiations, some themes have been suggested that might be looked at. These have included issues such as collusion, for example, or whether or not the IRA was engaged in a policy of ethnic cleansing of Protestants along the border and a range of others. But it’ll be open to that group to decide what themes it wishes to examine.

An Oral History Archive.

There will be provision for some changes to legacy inquests. We’re not clear what those changes are likely to be.

And the document also says that in the context of the work of these other mechanisms, the U.K. and Irish Governments will consider statements of acknowledgement and would expect other actors to do the same.

So there are a number of interacting elements to the thing.

I’ve been asked to talk about the politics of it all. So, as I said, the first thing to say is that it’s a political achievement to get an agreement even on the “Heads of Agreement” with the limitations that that means. We have been struggling with trying to find an overarching mechanism or series of mechanisms to deal with the

past since the Good Friday Agreement. So even to get to where we're at is, from my perspective, a political achievement, and I think the negotiators deserve credit for that.

Second, as I detailed in my paper and in another appendix, which is this document, the Apparatus of Impunity, which is a meticulous piece of work done by the Committee on the Administration of Justice [available at <http://www.caj.org.uk>], it is clear that there are elements of the state—and Geraldine has spoken very eloquently about this—which are determined to undermine, to frustrate and to delay efforts to deal with the past. The bona fides or otherwise of the other actors—the nonstate actors, the paramilitary organizations—has yet to be tested. We don't know. I mean, the only mechanism thus far where the bona fides of the paramilitaries has been tested has been the Commission for the Disappeared, and the staff of the Commission for the Disappeared speak very positively about the engagement of the IRA and the Republican movement with that process. But we don't really know whether the bona fides of the nonstate actors—we have to test it.

Related to that, it's important to say that one element that's been missing from the Stormont House Agreement—unlike, for example, the Good Friday Agreement—is there has been on sustained effort to engage with and sustain the engagement of the loyalist paramilitaries or political actors close to the loyalist paramilitaries. Those political parties were heavily involved in the negotiations for the Good Friday Agreement, but they don't have a member of our local legislative assembly. And so we need to be creative and find ways of engaging the loyalists as well, because they too will be required to come forward and provide information retrieval and so forth.

So that's the broader politics of it. As I say, in terms of implementation, legislation will be tabled in September. It depends what's in it.

On the accountability focus mechanisms, the historical investigations unit, a number of points to make on that. First of all I think all of us have to be very responsible with victims not to oversell the potential for successful prosecutions. There are significant evidential and other difficulties associated with achieving historical prosecutions—lack of forensics, eyewitness evidence, the involvement of informers in lots of cases, which then ruins the potential for a prosecution.

And in fairness to the former Chief Constable Sir Hugh Orde when he established the Historical Inquiries Team, he was very frank with victims about precisely that point, not overselling the potential for prosecutions. There have been a handful of non-state actors, but as the Committee on the Administration of Justice detailed in this—in the Apparatus of Impunity, there have been no successful prosecutions of state actors since 1998. So that's—we shouldn't be overselling the product.

The second thing to stress is that even if a successful prosecution is achieved under the terms of the Good Friday Agreement, people will only serve a maximum of two years, so—regardless of the severity of the offense. So we have to be very careful about managing expectations, particularly when we're engaging with victims.

Following the discrediting of the Historical Inquiries Team, the PSNI have established what they term a legacy investigations branch, albeit with a smaller budget and smaller personnel. So this is police-led—another version of a police-led effort to deal with the past.

As the joint House of Lords/House of Commons all-party Committee on Human Rights concluded last week, the legacy investigations branch cannot of itself satisfy the requirements of Article 2 and with the European Convention of Human Rights because of its lack of independence from the police force. So it's a new version of HIT with less budget and less personnel. And it is not independent and therefore it will fail to satisfy the requirements of Article 2.

How do we deal with the issue on independence with regard to Historical Inquiries Team? I have come to the conclusion personally that we can only do this by keeping the former members of the RUC and PSNI completely away from this new structure.

I was supportive of the Historical Inquiries Team. The model of the Historical Inquiries Team essentially was that you could have a police-led inquiry but create firewalls within the structures of the Historical Inquires Team and particularly in cases where there were allegations of collusion or state malfeasance and that you could protect the institution that way.

And in fairness to the people who worked at the HIT, they did some excellent work—some excellent work, and brought some closure to some families. But the problem was that the structure of the firewall system did not work and it corroded public confidence in the Historical Inquiries Team. So in terms of the HIU for me, a redline issue is that we need to create a structure that doesn't involve the PSNI or the RUC personnel.

There are a number of other aspects that are flagged in the Stormont House Agreement that I might go into in questions and answers about whether or not cases—how the mechanism about which cases that have been reviewed by the HIT can be opened and other details around former decisions that were made during the conflict on prosecutions and whether or not those can be looked at with new evidence.

And another crucial issue I think on this that runs across these mechanisms is that, as has been documented, and again by my colleagues in the Committee on the Administration of Justice, there have been systemic efforts to destroy evidence, to obfuscate, to delay, to deny access through the inquest system, for example. And if we're serious about trying to stop that culture, we need to create sanctions within the legislation for the destruction of evidence or for people not properly maintaining the information.

With regard to the Independent Commission for Information Retrieval, that element, there's very sparse detail in the Stormont House Agreement about that. And so again, the devil will be the detail on the legislation. What one would expect to see in that, however, the legislation will have to guarantee its independence from political interference, there is very little in the Stormont House Agreement about what powers this body would have and whether—how it would match Article 2 requirements.

The central issue for me about its effectiveness, however, will be the robustness of the guarantees of non-prosecution. And people

are not going to come forward to provide information if they think they're liable to be prosecuted. So the robustness of the guarantees of non-prosecution, I think, for me, is the central issue anon.

And so in conclusion—as I say, I can pick up some of these in Q&A—this is—it is formidable political achievement, the Stormont House Agreement and the past-related elements therefore in particular. And the devil will be in the detail, but if there is good—if there is sufficient political will and that is translated into robust legislation designed to maximize the effectiveness of these different mechanisms, then for me the Stormont House Agreement does provide a road map for making significant progress in dealing with the past.

Thank you, Mr. Chairman.

Mr. SMITH. Thank you very much, Professor McEvoy.

Ms. Cadwallader.

ANNE CADWALLADER, AUTHOR, "LETHAL ALLIES: BRITISH COLLUSION IN IRELAND "

Ms. CADWALLADER. [Off mic.] Good start. [Chuckles.] My name is Anne Cadwallader, and I'm a staff member of the Pat Finucane Centre. The focus of our work is investigating past British Government policy through the study of declassified archived documents and, equally as important, advocating for and assisting bereaved families as they search for the truth and seek accountability through engagement with official bodies, such as the Police Ombudsman and through the courts.

As you are hearing, I am English, but I have lived and worked on both sides of the border in Ireland since 1981. I covered the conflict in Ireland and then the peace process on both sides of the border, first for the BBC in Belfast, then for the Irish Press, RTE, Reuters and many other media organizations.

When I began working for the Pat Finucane Centre five years ago, the bulk of the research on which the book we published last year, "Lethal Allies: British Collusion in Ireland," [available at the Pat Finucane Centre, <http://www.patfinucanecentre.org>.] which I offer to the Committee for putting on the record, had been completed. I pay tribute to my colleagues in the PFC, particularly to Alan Brecknell whose own father was one of those killed, and to Justice for the Forgotten in Dublin, for their disciplined, determined and intelligent work over the 15 years it took to reveal the facts on which the book is based.

Last week, I sat beside a woman in County Armagh who had been blinded in one eye in a loyalist bomb explosion. She had been chatting to a friend about her upcoming marriage when the bomb exploded. But at least it spared her life and that of the unborn son she was carrying. Alas, he also became a random victim of violence, shot dead at the age of 17 during a break in his studies in Armagh City. Nearly 20 years separate the two events, but they have the policy of collusion in common.

The same bomb explosion also killed a young mother of three boys, Elizabeth McDonald. Her four-year-old son was blown out of his cot and found in the rubble crying over her body. Across the street, another mother was cradling a dying son, Gerard

McGleenan, age 23. His heart had been pierced by a long, sharp piece of the shattered bomb car.

What makes these heartbreaking stories different is that we can show definitively that the bomb was made, transported and detonated with the active involvement of members both of the Royal Ulster Constabulary, the police, and the British Army. We know this because investigators have found a paper trail that establishes it without a shadow of a doubt. To this day, though, no one in authority has ever gone to any of the bereaved families or the injured to acknowledge the state's involvement in these horrific crimes.

When officers, selected for their independence of the RUC in the Historical Inquiries Team, found the paper trail and finally informed the families—three decades on—you can imagine their deep shock. Since we first published the details in “Lethal Allies,” however, there's been the most deafening silence from London about these and 120 other murders in the same series perpetrated in both jurisdictions in Ireland.

Two days ago, Crown lawyers failed to meet a deadline to respond to lawyers acting for some of the bereaved families. Those in authority in London would be well-advised to reconsider because the families are not going away, and neither are their lawyers. Truth delayed is truth denied. We, along with other human rights NGOs in Ireland—including Justice for the Forgotten, Amnesty International, the Committee on the Administration of Justice and Relatives for Justice—now demand that London learn that facing up to the truth is the right thing to do.

The British Prime Minister David Cameron apologized for the British Army's shooting of 14 people on Bloody Sunday. The sky did not fall in. The Irish Government acknowledge, albeit on the basis of very scanty evidence, that the Irish police force, the Garda, colluded with the IRA murders of two RUC officers, Robert Buchanan and Harry Breen, in 1989. But for the families we represent, there has been no acknowledgement, no truth—just an enduring silence.

Collusion is a word that has sometimes been used as a political battering ram, but it was a tactic used by the RUC and British military intelligence to manipulate and control both sides throughout the recent conflict. It has many forms. In 1972, the worst year of the conflict, the general officer commanding the British Army in Northern Ireland, while recognizing the UDA sectarian threat, nevertheless said soldiers should ignore UDA patrolling and barricading of Protestant areas, which could be almost entirely secured, he said, by a combination of UDA, Orange volunteers and RUC. The military, he said, could turn a blind eye to UDA arms when confined to their own areas.

After the Dublin/Monaghan bombings, in which 34 people including an unborn child perished, it took the form of the British Government deciding not to share information on the bombers with the Irish Government, as it could embarrass the Crown. After the 1971 bombing of McGurk's Bar in which 15 died, collusion took the form of a dishonorable attempt by the police and British Army to blame the victims, a claim that the bomb was an IRA own-goal.

There's hard evidence that the gang who attacked a bar in Loughinisland, shooting dead six men as they watched Ireland play

Italy in New York during the 1994 World Cup, included at least one informer whose identity was protected. The RUC destroyed the getaway car, thus disposing of vital forensic evidence. The Police Ombudsman in Northern Ireland has reported that the RUC used members of a hardened UVF gang in North Belfast responsible for at least 20 murders as informers.

Each and every bit of the truth is being dragged out piece by piece. Collusion was not restricted, though, to the manipulation of loyalists. British intelligence agencies used republican informers, such as Freddie Scappaticci, allowing them to murder at will to maintain their cover within their paramilitary ranks. London is refusing, so far, to admit its role, in our view, because if it does it will tear aside the polite fiction that successive British governments were merely neutral umpires during 35 violent years.

The excuse is sometimes made privately that in the face of a determined and bloody armed insurrection, such as that mounted by the IRA, impartial administration of the rule of law has to be compromised. We contend that at a time of civil strife, it is even more important that the law be upheld without fear or favor, and that the principle that no one is above the law is implemented in full. Once you tailor the means to meet the ends, no matter how laudable, you're on a slippery slope.

We contend that London went down that slippery slope during the 35-year civil conflict in Northern Ireland, and that this rendered the British state culpable for at least part of the loss of life, the grief, the waste, the agony that the people of Northern Ireland suffered.

The nature of the collusion the PFC examined over the last 15 years, that of the 1970s, was of a less structured and targeted nature than the same policies during the '80s and '90s, when British double agents and others imported arms into Northern Ireland, substantially increasing the loyalist kill rate, and murdering Pat Finucane amongst others. The recent review by Sir Desmond de Silva into his murder concluded that 85 percent of all the intelligence available to loyalists came from within the police or the military.

Collusion fueled the conflict, leading to the deaths also of many police officers and soldiers, as well as civilians both Protestant and Catholic. Collusion was a no-win policy—illegal, unethical and ineffective. My colleagues and I have discovered hundreds of documents in the British National Archives which establish beyond any reasonable doubt that London knew from a very early stage that in setting up the Ulster Defense Regiment, the UDR, it was establishing a pool of trained killers with access to an unlimited source of modern and deadly weapons.

In the murders we examined in "Lethal Allies," the aim seems to have been to terrorize the Catholic nationalist community into lowering its political, constitutional and economic aspirations. With one exception, all those targeted in the series of murders we examined were civilian non-combatants. They were shopkeepers, publicans, farmers, small businessmen. Nine were members of the moderate SDLP and many had close links to the Gaelic Athletic Association.

We are, today, placing on the record here at Congress some of the declassified documents we've uncovered from the British and Irish National Archives [available through the Pat Finucane Centre, <http://www.patfinucanecentre.org>]. We invite members of Congress to read them. Mrs. Thatcher, for example, even before she was elected prime minister, was quite clearly informed that the largest regiment in the British Army, the UDR, was heavily infiltrated by loyalists and that in a crisis could not be relied upon to follow orders. We know from the words of a secret British document that the UDR was the sole source of the heavy-duty modern weapons used to orphan so many children. And London accepted that between 5 and 15 percent of the entire regiment were active loyalists.

Most of the families for whom we advocate realize that seeing anyone brought to court for the crimes described here is beyond their reach. With a few exceptions, they are not what I would call bitter or recriminatory. They are, however, full of a steely determination that the truth should be told, that the shadowy figures whose names they don't know and probably never will should be held at least collectively accountable.

We thank Congress for its continuing interest and hope by this time next year there'll be progress towards reconciliation in Ireland. It may even be that these and other revelations will show both sides they have more in common than they thought. Thank you.

Mr. SMITH. Thank you very much for your testimony, Ms. Cadwallader.

And I'd like to begin the questioning, first to you, Professor McEvoy. In her testimony just a few moments ago, Geraldine Finucane pointed out that the de Silva's review—she called it a sham and a whitewash.

But she pointed out that the report is based on a reading of documents without any questioning of the authors. Only 11 witnesses were spoken to by de Silva and 12 written submissions were received. Amazingly, no politicians were interviewed, nor were a number of key intelligence personnel, including the former head of military intelligence in Northern Ireland in charge at the time of Pat's murder. He wasn't interviewed either.

It seems to me that if you want to get a report that leads to a conclusion that is preordained, you simply don't interview the men and women who either had a direct role or had knowledge of Pat Finucane's murder. That's a whitewash. What is your view on that?

Mr. McEVoy. I mean, I agree, Mr. Chairman. I think that the difficulty is that in any kind inquiry into the truth, you need to be able to cross-examine the individuals concerned. So a review of the paperwork is simply not going to deliver truth because we—you need to be able—that is why we have the tradition of cross-examination. Cross-examining the individuals involved is the route to truth recovery. So I agree very strongly with Geraldine's critique of the de Silva review.

Mr. SMITH. How well-protected—this would be to all of you or anyone who would like to take it—how well-protected and preserved or at risk is the physical evidence concerning the details, in-

cluding collusion, in the assassination of Pat Finucane? I mean, has it all been shredded by now, deleted, burnt?

Ms. CADWALLADER. There is an RUC secure archive outside the town of Carrickfergus kept under lock and key. We don't know if anyone is managing to get access to it. What's happening in there is one of the key concerns we have. We also have concerns about any role that the RUC/PSNI might have in being a gatekeeper to that information. Will any new hopefully independent Historical Investigations Unit have some barrier, some gatekeeper between its wish to find out the truth and those who have control over that archive outside Carrickfergus? We don't know.

We do know that many documents were held in Gough Barracks in Armagh and were destroyed because of a problem allegedly with asbestos, although when I phoned up three different companies in London, in Britain, and asked all of them independently if they were capable of cleaning documents contaminated with asbestos, all three companies immediately told me indeed they were and could have done so. Alas, they will never get the chance because the documents have already been destroyed. And many families now will never find the truth about their loved ones as a result.

Mr. SMITH. Professor McEvoy, you said that the Stormont House Agreement may constitute a significant historical achievement, but the devil was in the details. How will the establishment of the HIU contribute to unearthing the information concerning Pat Finucane's murder?

Mr. McEVOY. I mean, I simply don't know at this stage, Mr. Chairman. I think that all we can do at this stage is to seek to maximize the independence and the effectiveness of the HIU in terms of the legislation. What myself and colleagues at the Committee on the Administration of Justice are doing, as I said earlier, the British Government put on the table legislation in September. They will have a draft bill available in June.

What we are doing is we're going to draft our own bill and use that as a tool for public conversation. And if there are gaps around the robustness, for example, of the HIU and its independence, then at least people will see what those gaps are on the Finucane case. Geraldine herself may have a comment on that. It's very hard to judge at this stage whether it can make a significant contribution on that. The obvious way to make a significant contribution in finding out the truth about what happened to Pat Finucane is to have the public inquiry that was promised at Weston Park.

Mr. SMITH. Are there any sanctions in law? Are they enforced against the obstruction of justice, the destruction of physical evidence?

Mr. McEVOY. That's exactly one of the things—one of the sections we want written into the new legislation.

Mr. SMITH. So there isn't currently?

Mr. McEVOY. It's not sufficiently covered at the moment. And there is space for exactly—I mean, the excuses answered around Gough Barracks. That should never, ever have happened, obviously. And so what any society that's trying to take truth recovery seriously does is, you create proper criminal sanctions for the destruction or failure to maintain evidence. So that's got to be written into the new legislation.

Mr. SMITH. The U.K. Parliament's own Joint Committee on Human Rights issued a report that acknowledges progress, but warned that the failure to carry through on obligations and international commitments, including investigations into lethal force cases that occurred in the 1980s and 1990 is, quote, tarnishing U.K.'s international reputation. Let me just add exclamation points behind the tarnishing.

I have been amazed—I have been in Congress 35 years and spend much of my time working on human rights issues everywhere in the world, including in Northern Ireland. I brought up the issue of collusion at a parliamentary assembly. Robert Aderholt is the vice president of the OSCE Parliamentary Assembly. I serve as special representative on human trafficking.

Well, several years ago I brought up a resolution. And the U.K. members of parliament were outraged that they would be held to account in a public fora, like the OSCE PA, on that issue. I want the issue to be clearly stated: The reputation is already tarnished and will continue to be so, so long as the information that is desperately needed and required to say who knew what, when, and what did they do about Pat Finucane's assassination.

It is bewildering how a mature democracy like the United Kingdom could be so obstinate in not letting this information out, unless it goes so high that people would be implicated that would be at the very top echelon of the government of that country. So I am very concerned. It is already being tarnished and I hope that they will take a cue. We're not going to let up on this Commission. The Foreign Affairs Committee, the Congress—the House and Senate—will not let up until all of the information is laid bare, clear and unmistakable, and people are held to account.

Mr. BOYLE. Well, thank you. I just have a comment and then two specific questions. First, as you may have heard and might notice, there isn't too much on Capitol Hill that unites Democrats and Republicans in this building. It is really striking that this issue is one of those things that unites Republican members and Democratic members. And I think that should be noticed in London, in Dublin, in Belfast and in Brussels.

As for my questions—first, I'm a great admirer of your work over many years. And I know in the legal profession you certainly could be taking on cases that would be easier and far more profitable. So it's a testament to who you are that you would take on this work for so many years.

I wanted to ask you specifically in the Finucane case and more broadly, what does the evidence in the archives show, specifically about the very top in the 1980s when, as you pointed out, it seemed as if there was more structured collusion than the 1970s? Margaret Thatcher was British prime minister during that entire time. What does the record show specifically in this case or in others about what she knew and authorized?

Ms. CADWALLADER. Well, we have a problem inasmuch as there's a 30-year rule. So we don't get access to the papers until they're released. There is also—

Mr. BOYLE. We're up to about 1985 then at this point.

Ms. CADWALLADER. Yes. There is another problem, which is that—and it's a very familiar one—which is that we work in Bel-

fast. And if we want to go to London to look at the papers in the National Archives in queue, we have to pay for our airfares and our sustenance in London. And I have to say, it is only thanks to American organizations such as the AOH and the Irish-American Unity Conference and other private donations from Americans—and it is largely Americans—that allows us to do this important work.

And we do go across and we photograph as fast as we can as many documents as we can. And then we bring them back to Belfast and Derry and we try to analyze them and learn from them. There is—we haven't been able to go for the last maybe two years, I think, we haven't been able to afford to go over to London to do that work. It simply is not being done at the moment. And if we don't do it, I don't know who else will. But we are—obviously we would hope to do that. And we would be very interested to find out what was going on during the 1980s.

Another problem, of course, is that eventually there won't be any more paper records. They'll all be digitalized. And it's so much easier to press a button and destroy information on a computer than it is to go around and pick up all the copies that were sent round to various departments and destroy all of them. Even when we do go across to London, despite the amazing and shocking revelations that we have managed to uncover, there are some documents that are—have either been destroyed or are under a 50- or a 75-year rule.

So we are limited in what we can do. But I can assure you we take it very seriously because we are interested in facts, not in speculation or rumor. And we will continue to do as much as we can with the resources at our disposal. And I—it doesn't answer your question, but I'm sorry it's all I can say.

Mr. BOYLE. That was the answer, yeah.

My next question—actually, last question before a final comment—is I'm wondering what specifically—you referenced the apology that current Prime Minister David Cameron gave on the floor of the House of Parliament with respect to Bloody Sunday. I was wondering what specifically the Prime Minister has said to you or any senior British officials may have said to you.

Mrs. FINUCANE. When the Prime Minister invited us over to London, we had been conducting a series of meetings between legal teams. And during those meetings, which were to try and decide how we could both move forward together, there was a suggestion made by the government's team that our inquiry could follow along the lines of an inquiry that did take place under the new Inquiries Act of Baha Mousa, who was a worker in Iraq that was killed by soldiers.

Now, prior to that inquiry taking place, a protocol was put in place whereby the government agreed not to interfere with the panel. We said we could go with that. That is exactly what we wanted, an independent panel whereby we could have a fair chance of getting to the truth. That was the last meeting we had. It was in May. We were asked to come to Downing Street in September/October. And the Prime Minister told us that we would be happy with what we would hear. And that was when he announced that there would be a review of the papers. Now, something happened

between the last meeting when they were offering us an inquiry and the announcement that there would be another paper review.

Totally unsatisfactory—a closed shop, no cross-examining, no witnesses, no participation—nothing. And the Prime Minister apologized for the collusion, which we welcomed. He stood up in Parliament and apologized. But as my son said to me at the time, it's like you coming to me and saying, I want to apologize to you. And I say, what do you want to apologize for? And you'd say, well, I can't tell you. It's very serious, but I can't tell you. Believe me, I'm really, really sorry. And that's a very simple explanation of the whole situation.

Mr. BOYLE. You—your last comment there pre-empted almost verbatim what I was going to say. I can't ever remember giving someone an apology where I said I can't exactly tell you all that I'm apologizing for, but believe me I'm really sorry.

Mrs. FINUCANE. Yeah.

Mr. BOYLE. Oh, what's that? You want more information? Oh, that would be too embarrassing. Did he at least apologize for not giving you more information? What that also part of the apology, or was—

Mrs. FINUCANE. [Chuckles.] No. We didn't get even that far.

Mr. BOYLE. Well, I would just say in closing, as a member of this committee and a member of Congress, and one with—as has been pointed out to me by a few folks this week, a pretty identifiably and proudly so Irish surname, I take no great joy in asking these questions. Britain is an important ally to the United States, is with us on so many things.

So it gives me no joy or pleasure to point out some of the disgraceful facts as it relates to collusion between successive British governments and the paramilitaries in Northern Ireland. And I think that it is incumbent upon them to fully come clean and finally set the record straight so that we can finally, all of us, move forward in a future that is full of peace and justice for all. Thank you.

Mr. SMITH. Boyle, thank you very much. I'd like to yield to Mr. Aderholt.

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

Well, thank you, Mr. Chairman. And as the Chairman and I were talking on the floor during the votes—I know we were supposed to start this hearing then, so y'all were sort of in a holding period there for a while. And we apologize for some way the schedules work here and we go between meetings and—committee meetings constantly. So I apologize for my being late here this afternoon.

But I did want to just ask one question in particular. Of course, last fall I think many of us here in Washington and probably other parts of the United States watched with real interest the referendum in Scotland and what the outcome would exactly be. It was very fascinating to try to predict what that was going to be. But did the referendum in Scotland have any impact on the dialogue about Northern Ireland's future in terms of the debate that is encouraged throughout the country? And did the potential for

major change in the United Kingdom occur? Just any one of you. I'll just open it up for your thoughts on that.

Mr. McEVOY. I think one of the consequences—I mean, the debate in Scotland was followed very closely by people in Northern Ireland. And I think one of the consequences were that it made members of the unionist community in particular quite nervous, because at one stage it looked, the way the polls were going, like you were looking at a breakup of the United Kingdom.

And that made some of the negotiations more difficult because members of the unionist community and therefore unionist politicians—that nervousness was reflected, I think, in the local politics. So certainly I think a lot of—for members of the unionist community who hold the union dear and were hugely relieved at the turnaround and the fact that the—that the U.K. remained intact. But it did have an impact, certainly, Congressman, in the local negotiations and in making some of our unionist politicians more nervous.

Mr. ADERHOLT. What—you know, of course, there's numerous criticism by people in Northern Ireland on the performance of the U.K. government, as we've talked about here this afternoon. But how do people elsewhere in the U.K. feel about these issues?

Ms. CADWALLADER. If you asked a hundred people on the streets of Britain what was the role of their country during the conflict in Northern Ireland, I'm not a gambling person, but I would bet about 95 percent, possibly more, would say that their government acted honorably and acted as an impartial mediator between two sectarian, irrational, warring religiously—religious tribes. That is the extent of the lack of knowledge—

Mr. ADERHOLT. You said on the streets of London if you asked this question? What about in other parts of the U.K.?

Ms. CADWALLADER. I would say the same in other parts of the U.K.

Mr. ADERHOLT. Same thing?

Ms. CADWALLADER. I have family obviously still living in England. I travel across from time to time. And I'm afraid that such is the failure of the British press to inform their people about the true nature of the conflict in Northern Ireland that 95 percent would say that their country—successive governments acted honorably as impartial arbiters between two sectarian, warring tribes. It gives me no pleasure to say that.

Mr. ADERHOLT. Yeah.

Mr. McEVOY. I think, Congressman—one of the points I think that's important to stress is we talked rightly—and Chairman Smith talked rightly about the relationship between truth and relationship between Irish people and British people and also within the communities. But the process of seeking truth about what happened during the conflict in Northern Ireland isn't simply an esoteric or an academic exercise.

It actually has important consequences for British democracy because what we see is that techniques that were utilized in Northern Ireland by the British Army were also then used in Iraq and Afghanistan. And you know, institutions—unless you have a process—an organized process of truth recovery and of looking at how things went awry or how things were planned and went awry, and you repeat the same errors. You repeat the same mistakes. So it's

not—it actually has significant consequences for the nature of British democracy to have a grown-up conversation about what went on in the conflict in Northern Ireland. I think Anne is right, a lot of British people don't know.

So part of—and on a good day, when I'm feeling optimistic—part of what I hope will come out of the past-focused mechanisms in the Stormont House Agreement will be a grown-up conversation amongst British people themselves about what went on, and how was that happening on our doorstep as part of the United Kingdom? How did we not know? So it's not just important for us. It's not just important for Irish people. It's actually important for British people and British democracy as well, I think.

Mr. ADERHOLT. Well, thank you. And I—as has been said here this afternoon, you know, the U.K. has been a great friend to the United States, but I think it's certainly important for us to hear from you and to understand this. And I thank the Chairman for having this hearing.

Mr. SMITH. Thank you very much, Chairman.

Let me—just before I go to a couple of final questions, I do want to acknowledge and thank a number of local Irish-American leaders from my district who have been for decades—multi-decades working to promote peace, reconciliation and especially justice in the north of Ireland. And they're here today. That's Michael Glass, Jim McFarlane, Malachy McAllister, Sean Pender—who, Ms. Cadwallader, is the president of the New Jersey AOH—and Kevin Meara, a Hamilton Township councilman.

They have played a pivotal role. We have met for years, decades. They have provided me and this Commission tremendous insights and direction. And I want to thank them publicly for their leadership over these many years. They have been absolutely tenacious in insisting on justice, including and especially in Pat Finucane's case.

If I could ask a question—last year we heard testimony, including from Eugene Devlin, now living in New Jersey, about murders committed by an out-of-uniform British unit called the MRF. Former MRF members admitted shooting innocent people in order to terrorize the Irish population. That was in 1972. One of those that they shot was Eugene Devlin, who survived that attempt on his life. How has the British Government investigated the on-camera admissions of its former soldiers? Ms. Cadwallader.

Ms. CADWALLADER. Well, again, I'm sorry to say, it gives me no pleasure to tell you, that this new branch that has been set up within the Police Services of Northern Ireland, the Legacy Investigation Branch, which as Kieran McEvoy has so eloquently pointed out has absolutely no status—independent status. It has taken over investigating the MRF cases.

The families of those victims, of course, are very unhappy that the LIB, the Legacy Investigation Branch, has taken it over because they want an independent investigation into the programs, into Panorama—BBC Panorama programs, revelations about the MRF. And so they're very unhappy. It's worse than nothing. They would rather nobody investigated than the PSNI investigated. They would want the new Historical Investigations Unit, which hopefully

will be set up, to be able to look at it independently. So it's worse than nothing.

Mr. MCEVOY. Can I just come in that one as well, Mr. Chairman?

Mr. SMITH. Yes, of course.

Mr. MCEVOY. One of the concerns that a number of us have is that the Legacy—if the LIB does its work and then in front of Commons closes a case, and not to the satisfaction of the family, what's the mechanism by which—and we might have the hopefully properly independent Historical Investigations Unit reopen a case where families are unhappy about a non-Article 2 compliant style of investigation.

So that again is a very important redline issue in terms of the legislation. How do we reopen cases because, I mean, we don't know what's going to happen. What we don't want is an unseemly rush of LIB cases getting processed before the HIU gets up and running because that they will undermine the credibility of the HIU before it even begins to work. So it's a very important aspect of the case.

Mr. SMITH. Is there anything any of you would like to add before we conclude?

Well, again, I want to thank you for, again, your courage. Geraldine Finucane, I mean, to be face-to-face with the prime minister, be told that the information was going to bring some sense of closure only to be disappointed again—very few people would then publicly and so courageously tell the world of that disappointment. Most people, I think, would say, well, they did what they could and now we're turning the page. You know they didn't do all that they could do. There's much in the files that needs to be revealed. And justice delayed is justice denied. This has been delayed for almost three decades and now it's time.

So I want to just recommit myself, this Commission, the Commission on Security and Cooperation for Europe. You heard from my colleagues on the other side of the aisle. There is good, strong bipartisanship here. We are not going to let up. And of course, the way the Pat Finucane case is resolved finally and people held to account will really reveal how all the others will be dealt with as well. And it's about time the British Government came clean on this and ended the sham—the whitewash, as you put it so eloquently, Ms. Finucane. And we will not cease in our efforts here in Washington to get to the truth.

So I want to thank you again. The hearing is adjourned.

[Whereupon, at 4:07 p.m., the hearing was adjourned.]

APPENDIX

PREPARED STATEMENTS

PREPARED STATEMENT OF HON. CHRISTOPHER H. SMITH, CHAIRMAN, COMMISSION ON
SECURITY AND COOPERATION IN EUROPE

Welcome to everyone joining us today, especially our witnesses, all of whom are joining us from Northern Ireland. We thank you for giving us the opportunity to hear from you about ongoing efforts for accountability, justice, and reconciliation in Northern Ireland.

This is the 15th hearing I have chaired on human rights in Northern Ireland—the first one was in 1997—and many of my colleagues on the Commission and with us today have joined us for many of these hearings. This is to say—many of us in Congress care deeply about these issues, follow them regularly, and will continue to do so.

In December 2014, the parties of the Northern Ireland Executive and the governments of the United Kingdom and the Republic of Ireland approved the “Stormont House Agreement,” with commitments for “dealing with the past”—that is, addressing crimes and the consequences of crimes of “the Troubles.” Other provisions address government reform and other controversial issues. And the British government committed to funding new structures deal with conflict-related crimes and assist victims of “the Troubles.”

Today we look forward to hearing about steps to implement the Stormont House Agreement, and prospects for full, unfettered realization of processes to hold those who committed crimes accountable and finally provide a measure of justice to victims and their families.

We also look forward to learning about increasing revelations of government collusion in crimes committed by paramilitaries. For years British officials denied collusion in crimes committed by paramilitaries. In recent years evidence has mounted that its security services enabled or had advance knowledge of a substantial number of paramilitary murders. We hope to find out what the British government has done in response. Is it on track to holding itself accountable?

One particularly shocking instance of collusion was the 1989 murder of human rights lawyer Patrick Finucane. The Good Friday Agreement of 1998—one of the outstanding diplomatic achievements of recent decades—left a number of issues unresolved, including the issue of British collusion in paramilitary crimes. In 2001 the British and Irish Governments dealt with this in negotiations at Weston Park. There the British Government assumed a solemn obligation to initiate a full, independent, public, judicial inquiry into the Finucane murder and five other crimes if so recommended by retired Canadian Supreme Court Justice Peter Cory.

On May 5, 2004, Justice Cory did recommend a public inquiry in the case of Patrick Finucane. He released this recommendation at a public hearing of this commission. To date, the Finucane murder remains the only case Judge Cory investigated where his recommendation has not been honored. This is deeply unsatisfactory for many reasons but not least because it is evidently the one where the British Government is most culpable.

The Finucane murder is also the case in which—until the Prime Minister’s apology in December 2011—there has been the greatest level of sustained official denial and obstruction by various state agencies. Obstruction went to such a point that, rather than provide the promised inquiry, in 2004 the British government prepared new legislation governing inquiries. This would allow the government to withhold evidence from the inquiry process.

The Finucane family rightfully declined to accept such an inquiry. And Judge Cory wrote a letter to me in which he stated: “The proposed new Act would make a meaningful inquiry impossible. The commissions would be working in an impossible situation. For example, the Minister, the actions of whose ministry was to be reviewed by the public inquiry would have the authority to thwart the efforts of the inquiry at every step. It really creates an intolerable Alice in Wonderland situation.”

Though in 2012 Prime Minister Cameron admitted to “shocking” levels of collusion between the state and loyalist paramilitaries in the murder of Patrick Finucane, this does not substitute for a full exposition of the facts behind the British State’s involvement in the murder. Rather the steady increase in the amount of evidence being revealed publicly that senior officials the British State colluded in the murder has made honoring that commitment more important than ever.

The many previous denials and time that has passed in the Finucane case have drained public confidence in the peace process and diminished respect for the rule of law in Northern Ireland. It must be said that there are those who oppose the peace process and their opposition is dangerous. The failure to address the case of Patrick Finucane in the manner promised by the British Government provides a readily available propaganda tool for those who would abuse it to further their own ends.

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

I want to commend the Chairman for convening today's hearing. Developments related to the peace process in Northern Ireland have been of deep and ongoing concern to the United States of America, and we want to see continued progress. Our historic bonds to the peoples of Britain and Ireland, I believe, will ensure that we will remain actively engaged, encouraging all parties to find the will and resources to achieve true, self-sustaining peace. The Stormont House Agreement of December 2014 is the latest step to be taken, and focus should now be on its implementation. I look forward to the views of our witnesses on this matter.

At the Commission's first hearing of the year, last month with the Serbian Foreign Minister serving as the 2015 OSCE Chair-in-Office, I noted that the work of this Helsinki Commission is often about raising individual cases. In that context, I raised the lack of justice for the three Albanian-American Bytyqi brothers, who were murdered, execution-style, by Serbian Interior Ministry forces in 1999. The clear lack of justice in that case not only perpetuates the hurt felt by surviving friends and family. It also denies Serbia the ability to confront a dark time in its history and to put the past behind it. It allows a degree of distrust between neighboring communities and peoples to linger. It is a single case, but one which reverberates.

In that same sense, as well as in the senseless brutality of the crime, the lack of a public inquiry in the 1989 murder of lawyer Patrick Finucane—in his home, in front of his wife and children—is strikingly similar. A key promise, that of the British Government to conduct public inquiries into recommended cases where collusion is suspected, has yet to be fulfilled in regard to the Patrick Finucane murder.

Going back to the original recommendation of the internationally respected jurist and former Canadian Supreme Court Justice Peter Cory, who testified before this Commission in 2004, the decision not to proceed with a Public Inquiry is more than a source of enormous frustration to the Finucane family. It reverberates throughout Northern Ireland, leading some to question London's true commitment to peace and reconciliation. All the other positive steps taken in the past two decades make me believe the answer to that question is "yes," but it is understandably difficult for those whose trust London must still win to be confident about this when faced with such a glaringly deliberate avoidance of the truth. I therefore stand with them.

In my view, if London agreed to abide by a recommendation, and if the recommendation was for a formal Public Inquiry, then nothing falling short of that will ever prove adequate. If there are reasons why a Public Inquiry is such a serious challenge to conduct, those very reasons may themselves make it not just a recommendation, but a necessity for the United Kingdom itself, to conduct such a Public Inquiry.

If one looks at the Helsinki Commission's record over time, I believe a sincere attempt emerges to advocate human rights, democracy and the rule-of-law in U.S. policy as even handedly as possible, toward the closest friend, the most dangerous foe, and everyone in between. The fact that the United Kingdom is a close friend and a critical ally should not keep us from raising an injustice when it occurs. The Commission, indeed, takes seriously the heartfelt concerns of many in Europe, including our British colleagues, regarding the United States record, be it the Guantanamo Bay detention facility, capital punishment, our electoral process and lingering manifestations of racism and discrimination. Many of us, in fact, share some of those same concerns. We want action, too.

I believe that we need to remain consistent in our approach to human rights, criticizing not only the United Kingdom but other friends and some NATO allies that are falling short on their OSCE commitments, in some recent cases increasingly more so. I similarly hope that the British Government will consider the concerns raised in this hearing as credible and genuine, and that it will respond in a way that should bring greater satisfaction to all.

PREPARED STATEMENT OF SECRETARY OF STATE JOHN KERRY

October 21, 2014

Senator Gary Hart to Play Diplomatic Role for State Department

I have asked Senator Gary Hart, one of our country's most respected and accomplished senior statesmen, creative and strategic thinkers, and my longtime friend who has been working with the State Department for close to two years, to also play a direct, on-the-ground diplomatic role.

Whether it's through his 12 years in the Senate, or his work on the U.S. Commission on National Security in the 21st Century, Gary is known as a problem-solver, a brilliant analyst, and someone capable of thinking at once tactically, strategically, and practically. He's been engaged already in the intellectual side of our government's foreign policy during this Administration, whether as chairman of the State Department's International Security Advisory Board, or as chairman of the Threat Reduction Advisory Council at the Department of Defense. Now we're fortunate that he's agreed to devote some additional time to engage in the tough and patient work of diplomacy as my Personal Representative, including on issues related to Northern Ireland. He does so with my confidence and trust.

Senator Hart has spent many weeks in Ireland and Northern Ireland over the past 30 years. He has listened and spoken to the people of Northern Ireland, and he knows many of the leaders. I've asked Senator Hart to support the parties in Northern Ireland as they enter a new round of talks to achieve a lasting peace. We welcome these new talks, supported by the United Kingdom and Ireland. I am confident Senator Hart will help the parties strengthen the institutions and economy of Northern Ireland, as well as reinvigorate efforts to promote a shared society. Our Consul General in Belfast Greg Burton will serve as Senator Hart's deputy for his Northern Ireland work. Senator Hart expects to visit Belfast before the end of the month.

December 23, 2014

Success of Northern Ireland Talks

The United States warmly welcomes that announcement today of an agreement among Northern Ireland's political parties, facilitated by the UK and Irish governments.

This is statesmanship, pure and simple, and leadership by all parties to break a political impasse and avoid a fiscal crisis by resolving complex budgetary and welfare issues. The agreement reforms institutional arrangements, which will improve governance in Northern Ireland, and advances Northern Ireland's peace process by establishing new institutions to deal with the often divisive legacy of the past - including a Historical Investigations Unit, an Independent Commission for Information Retrieval, an Implementation and Reconciliation Group, and an Oral History Archive. The agreement on legacy issues is based largely on negotiations led last year by former Special Envoy for Northern Ireland Richard Haass.

I commend the parties for working together through some very contentious issues—and finding solutions that will promote a more peaceful and hopeful future for the people of Northern Ireland. The agreement will now go through party structures for endorsement.

The UK Government also played a critical role in the talks' success by agreeing to provide financial support, including new funding to implement the arrangements for dealing with legacy issues and to promote shared and integrated education. I applaud the parties and the two governments for securing this agreement and pledge America's full political support for the new arrangements. I'm also particularly grateful to my Personal Representative, Senator Gary Hart, and his Deputy Greg Burton, whose deep engagement helped ensure the success of the talks. I know Senator Hart looks forward to continuing his efforts next year in support of a peaceful and prosperous Northern Ireland, and I am very lucky to have Gary devoting his time to this effort.

March 12, 2015

U.S. Government Statement on Stormont House Agreement

Former U.S. Senator Gary Hart, the Personal Representative of Secretary of State John Kerry stated: "The United States Government continues to strongly support the Stormont House Agreement of 23 December 2014 and urge all parties to reach an understanding on the scope of the Agreement as it applies to welfare payments to citizens of Northern Ireland so that a successful series of meetings planned for St. Patrick's Day can go forward as planned in Washington."

PREPARED STATEMENT OF GERALDINE FINUCANE

Mr. Chairperson, my fellow speakers, distinguished 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 Helsinki Commission—and of 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. This is something I know from my own personal experience.

I am here today because of what happened to my husband, Patrick Finucane, who was murdered by Loyalist Paramilitaries in Belfast in 1989. As is now a matter of public record throughout the world, Pat was a lawyer practising in Northern Ireland during the period of civil conflict that extended throughout 1968–1994. He specialised in criminal defence work and developed particular expertise in defending people charged with offences under emergency laws introduced by the British Government during the conflict.

As a result of his innovative approach to the work and the many successes that flowed from it, Pat became a target for Loyalist paramilitaries who perceived him as partisan and an enemy of the State. As a result of his work, Pat was murdered by Loyalist paramilitaries in February 1989, with the active participation and collusion of British State and Army agents. The false perception of Pat as being sympathetic to his clients' political beliefs and even that he engaged in unlawful activity on their behalf was fostered actively by the British Security Service (MI5) encouraged by the Royal Ulster Constabulary Special Branch (RUC SB) and, I believe, the British Army's covert agency, the Force Research Unit (FRU).

This much has been known for some time, as a result of certain incidents that took place during Pat's lifetime and some of the evidence that has been revealed since his murder. It is for this reason that my family and I have campaigned for the last 26 years for the establishment of an independent, judicial inquiry into Pat's murder. We believe that the circumstances surrounding the murder are sufficiently serious to warrant the establishment of such an inquiry. In this we are supported by the United Nations, Congress of the United States, President Barack Obama, the Irish Government and the British Labour Party, as well as a host of internationally recognised human rights NGOs. We have succeeded in litigating the issue against the British Government on several occasions at both domestic and international level.¹ Notwithstanding this, the British Government has refused to establish an inquiry into Pat's murder. It has blocked our efforts for years in an attempt to dissuade us from campaigning by means of constant delay. In recent years, we have seen them try to take advantage of this delay by claiming that the issue is now too old and should be confined to the past.

The murder of Pat Finucane may well be in the past but I do not believe it is irrelevant to our future. Just five weeks ago, on the anniversary of Pat's murder, events were held in Belfast and Dublin to commemorate his death. Over 300 people attended the Belfast event, many of whom knew Pat or had worked with him during his lifetime.

However, it is not just Pat's friends and colleagues who continue to believe the need for an inquiry remains essential. Many people living in Ireland lack confidence in the establishment and are slow to accept that things have really changed. One of the examples that is often pointed to a reason for this mistrust of the establishment is the lack of an inquiry in Pat's case, despite the truly shocking revelations of several major investigations.

There is also the matter of the broken commitment by the British Government to establish an inquiry, as agreed by them (with the Irish Government) during negotiations at Weston Park in 2001. At that conference, the British and Irish Governments agreed to establish an inquiry into the case if an independent judge of international standing recommended there should be one. The judge appointed to assess the case was former justice of the Supreme Court of Canada, Peter Cory. He rec-

¹ *Finucane v. United Kingdom* (2003) 37 EHRR 13

ommended a public inquiry in 2004, following the publication of his comprehensive report. In it, he concluded:

“[T]he 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.”²

Needless to say, the inquiry recommended by Judge Cory and promised by the British Government, has never materialised.

Instead, the current Government, led by David Cameron, established a “review” of the case because, according to the British Prime Minister, **“...the government’s priority was to get to the truth in the best and most effective way...”** In order to achieve this, he appointed a lawyer, Sir Desmond de Silva QC, to conduct a review of the papers in the case and to reach conclusions on foot of the materials he read.

Firstly, I would like to say something about Sir Desmond de Silva from the point of view of perception and on the issue of public confidence in the State.

Sir Desmond is a member of the British Conservative Party, the current party of Government, and he has received a knighthood from the Queen. He is also a privy councillor. Furthermore, he is a member of the Carlton Club in London, which describes itself as **“the oldest, most elite and most important of all Conservative [party] clubs.”** Current members include John Major, Douglas Hogg, Boris Johnson and other Tory notables. Former members include Margaret Thatcher, Edward Heath and Winston Churchill.

Sir Desmond has also been referred to on the “Conservative Home” website—a party political site that describes itself as “the home of Conservatism”—as **“a loyal Conservative who has excelled in his profession.”**

I make no comment on Sir Desmond personally or on his bona fides. However, I think it is stretching credulity to breaking point to suggest that appointing someone with such strong connections to the British establishment would inspire confidence in the Irish public when it comes to case as sensitive and controversial as Pat Finucane.

Sir Desmond delivered his report to the Government on 10th December 2012. At the time, I labelled the report *“a sham”* and *“a whitewash”*. I believed I was right to do so at the time and since then, having had even more of an opportunity to consider the report in detail, I am convinced I was right.

The de Silva report claims to be a comprehensive analysis of the circumstances surrounding Pat’s murder and a definitive examination of what happened to him. I refuse to believe this. The review conducted by Desmond de Silva reveals a great deal of information for the first time but it is nowhere near being a complete answer. The report is based on a reading of documents without any questioning of their authors. Indeed, only eleven witnesses were spoken to by de Silva and twelve written submissions were received. No politicians were interviewed, nor were a number of key intelligence personnel, including the former head of military intelligence in Northern Ireland in charge at the time of Pat’s murder.

In this regard, Mr. Chairman, I would like to ask that an address by Pat’s former law partner and colleague, Peter Madden, be added as an appendix to my testimony. It contains an analysis of the de Silva report and highlights some important discrepancies in the Review and its findings.

Perhaps most significant of all is the “finding” that the authorities had no advance knowledge of Pat’s murder. I do not believe this “finding” has a credible foundation. I am amazed that a lawyer of the experience and knowledge of Sir Desmond could arrive at such a profound conclusion in such a cursory fashion.

Other analysts of Pat’s murder have come to the opposite conclusion. John Stevens, former Commissioner of the London Metropolitan police, came to the conclusion that Pat’s murder, **“could have been prevented”**,³ which suggests, at the very least, that there was advance knowledge of a plot to kill him.

Were the British Army or other State agencies aware of such a plot? Only a public inquiry could answer this question.

Judge Peter Cory, who published his report in 2004, also came to opposing conclusions in key aspects of the case. He believed that there was evidence to suggest that the British Army’s Force Research Unit was aware of the plot to assassinate Pat. Sir Desmond deals with this crucial issue by saying, **“I must respectfully differ**

² *Cory Collusion Inquiry Report: Patrick Finucane*—House of Commons, London, 1st April 2004, at Para. 1.293

³ *Stevens Enquiry: Overview & Recommendations*, 17 April 2003

with inferences he draws in relation to the FRU's prior knowledge of the targeting of Pat Finucane."

De Silva does not explain the basis for his conclusion. He does not say why he disagrees, merely that he does so.

Is this to be the last word on the case of Pat Finucane, insofar as the British State is concerned? Are we supposed to be satisfied with the response that, on the central issue of British State involvement in, and prior knowledge of, the murder of a lawyer, an officer of their own law courts, they simply *prefer* this verdict, rather than the last one?

It seems that the Cameron administration wants to pursue this line. It is not difficult to see why.

By the same token, if my family and the general public lack confidence in the organs of the State, it is not difficult to see why. We have been presented with an obviously self-serving answer to a potentially damning question and it is clear that the British Government is fighting against the prospect of full and public accountability for its actions.

I have said before that I have no wish to be more in the past, nor does anyone else. But misrepresenting important past events and concealing State wrongdoing will never free us from it.

At the commemoration of Pat's murder in Belfast last month, one participant remarked that, "when the Finucanes take a step forward, we all take a step forward." I think this exemplifies the common view of our case in particular and the issue of the past in general.

Proper examination of past issues does represent progress in contemporary society. It allows people to resolve the traumas in their lives and lay to rest the ghosts that haunt them and society as a whole. It is not always necessary to punish or to seek retribution. For many people—perhaps even most people—the truth about what happened is enough.

We have not yet learned the full truth of what happened to Pat But I believe we are getting closer and one day, hopefully soon, I very much hope I will be testifying before this Committee about achieving that goal.

On behalf of my family, I ask for the support of this Commission to persuade the British Government to honour its long standing promise to establish an independent public judicial inquiry into the murder of Pat Finucane.

Thank you very much for this opportunity.

REVIEWING THE REVIEW, BY PETER MADDEN: AN ANALYSIS OF THE DE SILVA REPORT, DATED 12 DECEMBER 2012.

Let me start by stating that, without doubt, the most important conclusion made by de Silva was that the FRU did not know that the UDA was targeting Pat Finucane. It is my view that this conclusion exonerates the FRU for any part in Pat's murder. FRU is the Force Research Unit which was the British Army agent handling unit in existence at the time of the murder.

In paragraph 21.209 page 414 of Vol 1 de Silva states that

"... Having considered and analysed a great deal more evidence than was available to Justice Cory, I must respectfully differ with inferences he draws in relation to the FRU's prior knowledge of the targeting of Patrick Finucane. I am firmly of the view that in this instance Nelson withheld critical information from his handlers."

If FRU is believed by de Silva to have had no targeting information on Pat Finucane then there was no such information to pass up the chain of command to the very top. Ed Maloney gives a very good analysis of this in his online blog, Broken Elbow.

Nelson's Journal gives an account of how Nelson passed all information from the UDA to his handlers in FRU including the targeting of Pat Finucane. Nelson shifts around a bit on different occasions about whether he passed on information or not but this issue alone should be enough to justify the establishment of a Public Inquiry because there is credible suspicion that Nelson did pass on such information to FRU. There are also allegations that FRU people were helping in the targeting of Pat.

The de Silva Review is one man's analysis of a large amount of material. He has been selective. It is impossible to arrive at the truth unless this material is provided and analysed by others who have an interest in the issues. A public inquiry with a number of interested parties would allow these interested parties to pursue their own theories and use the relevant material provided to make their own analysis.

There are concerns about the authenticity of much of the documentation he refers to in his report. There is no indication in the Report as to how he validated the documents he examined.

This is one of the main objections to de Silva's process. He has gone into minute detail by analysing the documents, particularly the Contact Forms and other intelligence documents without taking a view that some may not be genuine. He has then reached conclusions that may not be true. More importantly he makes the assertion that he used the intelligence documents as a yardstick to test the validity of other material. He says that he had "the advantage" of having contemporaneous intelligence records. He doesn't say how he knew they were "contemporaneous" and it would be difficult to know unless you ask questions.

At page 390 of volume 1 he states, **"As with all intelligence material, the above information is necessarily limited in its evidential value, though I have not seen any material to suggest there are any doubts as to the accuracy of this information."**

Judge Cory, who published his report on 1 April 2004, examined material and he was assured that he was furnished with all information that might bear on the issues he was examining and on that basis he was satisfied that his review was as comprehensive as possible. However, as de Silva has stated in this report, Judge Cory did not get all the material he was assured he would get. He doesn't say why Cory and Stephens didn't get this material.

In Chapter 11, page 250, de Silva refers to new information that has just come to light but he doesn't say what it is. He refers to Contact Forms (CFs) and the Security Service's "compendium of leaks" published in 1989 but he doesn't make it clear if this is what he means by new information. CFs were examined by Cory.

Interestingly, Judge Cory's document review was similar to de Silva's in that they both had no power to subpoena witnesses nor to require the production of documents and other material. At least Cory didn't claim to find the truth about what happened because he was clear that conflicts of evidence, which he found could only be resolved by examining witnesses in a Public Inquiry.

He set out the areas where he could not make any findings and stated that only a Public Inquiry, where documents and witnesses could be examined, could resolve the conflicts and arrive at conclusions. In other words, a review of documents, although useful, was not the end of the matter. Judge Cory's task was to determine if there was a prima facie case that collusion existed.

Judge Cory's report was a far shorter exercise resulting in 115 pages compared with de Silva of 800 pages. De Silva took a view that the papers that he examined were authentic, which in my view makes it a fundamentally flawed process. In terms of size, the report is certainly formidable but all he has given us is snippet upon snippet of carefully selected material. Unless all the material is examined (or as much as is legally possible to examine) it is impossible to form a view.

He refers to many documents but annexes only a few. He has picked extracts from others. He doesn't say why. He refers to certain documents and we are not permitted to read these documents in full, let alone challenge the contents. Nor were we entitled to examine any of the original documents. He refers to documents that we did not know existed. Basically, he has read the documents and come to his own conclusions about the content. He has referred to many documents that we have not seen as if he is the only person who can make sense of them and come to the truth about them. Some of these, as he says, he has redacted and annexed but most have just been referred to in footnotes. We don't know what other material he has examined. Where is the rest of it?

In view of the fact that there exists over a million pages of documents, he has to be selective. However, we have not been told how he selected the material. There is no explanation for failing to disclose material. We don't know how many pages of material exists. Over a million could mean closer to two million.

Documents can be verified. Authenticity can be verified. There is a forensic way of doing this. Documents have to be examined in the context and with other documents. You have to know what to look for. If we suspect that a document is forged, we can have the original examined by an expert in that field. If we think that the contents of a document are not credible, we can explore by cross examination, where interested members of the public can see and hear witnesses.

There is an allegation by Ian Hurst (*aka Martin Ingram*) that the Contact Forms (CFs) were forged. Ian Hurst was a member of FRU and a whistleblower. This has to be a starting point in any scrutiny of the bona fides of the documentation that was examined by this Review. It is incomprehensible that de Silva can come to a conclusion about this without a thorough examination of the documents and a proper examination of Ian Hurst, who he dismissed as a 'Walter Mitty' character and all those others involved. When you take into consideration that the FRU had a year

to “sort out” the documents, this whole area needs examined. This was highlighted in John Ware’s Panorama programme. It took a threat to arrest the GOC General Waters to get Nelson’s intelligence material and the CFs weren’t produced to the Stevens team for nearly a year. Hurst said that the FRU had the material during this time and were doctoring it. As highlighted in Panorama, Stevens’ team thought that the documents were tampered with.

Hurst is no Walter Mitty character and I met him in Dublin a few years ago, introduced by Greg Harkin. Hurst would be a crucial witness in a Public Inquiry but de Silva dismissed him without even seeing him.

This in itself raises the issue of the “cover-up” of the collusion. It is the accountability escape route. If, for example, there was incriminating material in the Nelson/FRU documents/recordings/transcripts, there was plenty of time to get rid of it or change it. (p.410–415 Vol. I) This goes to the heart of the matter.

The fact that the Stevens Investigation eventually got the FRU documentation and there was no reference to the targeting of Pat Finucane and no reference to Pat at all until the morning after the murder when Nelson phoned Margaret Walshaw, his handler. All this is very suspicious. At a Public Inquiry, Ian Hurst would not be the only witness on this issue as there are other FRU members including the commanding officers and those up the very short chain of command who could deal with this particular issue. Many of them made statements to the Stevens team.

It is inconceivable that this plot was not known to the FRU. They must have known about it and they must have known that Nelson would be in the thick of it, as chief Intelligence Officer and their only loyalist agent, according to de Silva. Questions would be asked about this at a Public Inquiry. It is just not believable that FRU did not know about the plot. It is believable that they knew about it through Nelson and it is believable that they helped Nelson with targeting Pat as they did with targeting other people and it is believable that they directed the murder and that they doctored the documentation to remove all reference to the targeting of Pat Finucane and to paint a benevolent picture of FRU’s links with Nelson.

There is also the important issue of how far up the chain of command did this plot go. The FRU had a chain of command directly to the top of government and there were very few links in the chain: agent – FRU handler – OC Det – OC FRU – CLF & GOC Defence Minister – and then to the Joint Intelligence Committee chaired by Margaret Thatcher in London.

Due to the fact that, according to de Silva, Nelson was the British Army’s only loyalist agent, and that he reported to his handlers on a weekly basis, his weekly FRU reports could easily be dealt with at the weekly Joint Intelligence Committee meetings, in London chaired by Margaret Thatcher. It is inconceivable that Nelson was not a focus at these meetings. Nelson in his diary strongly suggests that Thatcher was a personal recipient of intelligence.

There are numerous inconsistencies in the report that can’t be left on the shelf. For example, de Silva says FRU was founded in 1982 but other authors such as Mark Urban in “Big Boys Rules” quotes CLF Glover who says he established FRU in 1980 to form a “triumvirate” with the 14th Intelligence and SAS.

Cory says, **“In 1985 Brian Nelson walked in off the street to offer his services to the British Army as an agent.”** (page 24 Cory Report) whereas de Silva says, quoting Brian Fitzsimmons, **“[Nelson] appears not to have become involved in paramilitary activity until May 1984, when he contacted the Army to offer his services as a source of intelligence”** (para 6.6 at page 99 de Silva Vol 1). Brigadier Arundell David Leaky, on the other hand, a director of Military Operations in the Ministry of Defence, who filed an affidavit in injunction proceedings, says that **“In 1983 Nelson offered his services to the Army as an agent in the UD”**. This document is not referred in de Silva report nor Cory but was published in the “Sunday Tribune” on 14 April 2002 in an article by Ed Maloney. This is an example of the limited nature of the de Silva process. He was limited by virtue of his terms of reference.

So what is the truth of the recruitment of Brian Nelson? And what is the truth about the formation of FRU?

Cory says, **“At this time he [Nelson] was a member of the UDA and acting as an Intelligence Officer for that organisation in West Belfast”** (para 1.45 page 24 Cory Report) But de Silva says, “Despite his previous conviction for involvement in serious sectarian violence, the FRU tasked Nelson with rejoining the UDA (quoting from Nelson’s journal). (para 6.7, page 99 of de Silva Vol. 1)

So was he already in the UDA when he offered his services or was he **“tasked with rejoining the UDA”** after offering his services?

These are important issues because the suspicion is that he was a soldier and then a UDA sectarian killer and that these credentials made him a very good can-

didate for targeting uninvolved Catholics or republicans. Was this the continuation of the classic Kitsonian death squad? In other words a British military unit using local agents as killers whilst funding and supporting them and directing them.

There is a suspicion by many that Nelson never left the British Army and when he went to Germany in 1985, it was not to get away from the UDA but to train with the British Army in Germany before his re-introduction in a more specialised system and when it is alleged he came back to Belfast from Germany in 1987 is it a coincidence that this coincided with a shipment of modern weaponry from South Africa to arm loyalists in a revived murder campaign against Catholics and republicans. There are many questions to be asked about this.

De Silva says that Nelson was not involved in the South African arms shipment in 1987, even though he accepts that Nelson travelled to South Africa in 1985 and discussed arms shipments to the North. There is an interesting issue about Nelson's trip to South Africa. Judge Cory states that FRU paid Nelson's expenses for the trip but de Silva doesn't mention that at all in his report. I wonder why? The absence of this crucial bit of information from de Silva's report is significant.

This is another example of de Silva exonerating FRU and thus the British Government, in the murders Catholics and republicans post 1987. Nelson remained in his targeting role up until his arrest in 1990.

This whole issue would be closely examined at a public inquiry where one document could lead to another and all interested parties would be entitled to examine all the documentation, as well as cross-examine relevant witnesses. None of that happened during the de Silva process.

There is so much information and misinformation in the public domain about Pat's murder. There has to be public clarification. It can't be allowed to be swept under the carpet by Cameron and de Silva.

This is just a short narrative of what I think are important areas that have not been properly examined in this review process and which cannot be examined properly until all the documentation is furnished, not just snippets and footnotes.

The following examples are some of the important areas that needs thorough examination in a public forum at a Public Inquiry where there is no hiding place:

- The role of the RUC in Pat's murder, from the death threats to solicitors from Castlereagh and the other holding centres of which Pat bore the brunt, to the RUC briefing by Jack Hermon to Douglas Hogg with false information about Pat's family members. De Silva published what he says is intelligence material about this. The detail of the contact between the SB and FRU is crucial and requires a full public examination along with the connection between the RUC and the RUCSB.
- He published what he calls intelligence which alleges that Pat laundered money for the IRA in the firm where we worked closely together for 10 years. I know this to be completely untrue but I don't know who concocted it and questions need to be asked about that. He also published allegations that Pat was a finance officer and an intelligence officer in the IRA p 353 Vol 1. He cleverly makes it clear that there is no evidence that Pat was involved with the IRA but I think what is interesting about this is that de Silva published documents in Vol 2 of his report which allege just that. This is a cynical exercise in deception and there can be no excuse for it. He should not have published this material because there was no mechanism in his process for the family members, or me for that matter, to challenge it.
- The fact that there was an RUC SB file on Pat which seems to have been packed with fact and fiction. Questions need to be asked about how false information got into this file.
- This whole area needs explored as it will show that this intelligence information was faked beforehand to justify the murder and it had to be beforehand as some of it was briefed to Douglas Hogg in November 1988, when Hogg travelled to Belfast to meet the RUC hierarchy, according to de Silva.
- The role of the FRU in its entirety and the calling of FRU witnesses to explain themselves and the role of the people in that chain of command.
- There was a British army file on Pat and the word "PIRA" next to his name. De Silva accepts the British army explanation that this was only an administrative reference (whatever that means—he doesn't say what it means) p 409/410 vol 1.
- In Chapter 15 there is what is called Propaganda Initiatives by MI5 in which Pat was targeted and where de Silva implies that the targeting of Pat in this initiative was inadvertent. This needs examined because it is new. I had never heard of it before the publication of this report.

- The various death threats to Pat starting in 1981, which State agents knew about but they decided not to warn Pat about them. Things might have been different if warnings were given.
- There is the inconsistency in Gordon Kerr's role, see p 488 Vol 1 that refers to Cory's analysis of Kerr's testimony as misleading and also referred to the highly dubious numerical analysis. De Silva challenges Cory at pages 488/489 and goes into a lengthy analysis of the FRU documentation, again accepting their authenticity and says that his analysis takes him in a different direction to that of Cory p 491. In other words Cory got it wrong, according to de Silva. This requires a full examination at a Public Inquiry as there is a clear conflict between Cory and de Silva on this crucial issue of Kerr's evidence at NELSON's trial. Cory said that only a Public Inquiry could resolve this issue.
- The role of government ministers who were cleared by de Silva on the basis that the paperwork showed that ministers were not included in the distribution lists of some intelligence reports. De Silva says at p 500 that Government Ministers were not on the distribution list for a particular report and this is just not believable and it is also convenient. He took the view that because he didn't see any evidence of ministerial involvement that there wasn't any.
- At pages 56–60 of Nicholas Davies' book, "Ten Thirty Three", the author states that Margaret Thatcher was chairman of the Joint Intelligence Committee (JIC) which met weekly at Downing Street and she ordered a complete review of the security and intelligence set-up in NI (after the Brighton bomb in 1984) and **"from that moment on Margaret Thatcher decided to become far more closely involved in the Irish question."**

The author states that in her memoir, *"The Downing Street Years"*, Thatcher said she played a vital role in co-ordinating the services through the powerful and influential Joint Intelligence Committee. The Joint Irish Section (JIS) was strengthened. Interestingly de Silva refers to about a half dozen books in his Report, including *"The Downing Street Years"* but not *"Ten Thirty Three"*, which is remarkable, since it is based on Nelson and FRU. The British Government took injunction proceedings against the author to stop publication and succeeded in preventing parts of his draft from getting into the final publication. Yet none of this is mentioned in the de Silva Report.

Another area to be examined at a Public Inquiry is the reference to a redacted statement of Alan Simpson who was the RUC officer in charge of the murder investigation where Simpson says two army personnel spent an hour in Pat's house after the murder (p 137 Vol 2) and although he says that he doesn't think there was anything sinister in that and that it happens all the time, I think questions have to be asked about it.

Finally, I would like to comment on perception.

According to the Mail Online 25 September 2009, Sir Desmond de Silva is a member of the Carlton Club St James Street London. This club was bombed by the IRA on 25 June 1990. Lord Kaberry, who was injured in the attack, died in March 1991 aged 83. Douglas Hogg is a member of this club as is Margaret Thatcher, John Major and Boris Johnson and other Tory notables. Past members were Winston Churchill and Ted Heath. The club describes itself as **"the oldest, most elite, and most important of all Conservative clubs."** Membership of the club is by nomination and election only. He is also a member of the Naval and Military Club and Brooks club.

So there you have it. Cameron obviously cared little that there might be a perception that de Silva might be biased in some way. It's unlikely that he would ever be selected to head a Public Inquiry into Pat's murder due to this perceived bias.

I don't know how many times throughout this report de Silva refers to his *"full public account."* It is not a full account. It is definitely not a public account and it is so flawed in its failure to authenticate documentation that it is not anywhere near an account of the truth.

David Cameron made a statement in the House of Commons on 12 October 2011 that **"...the really important thing...is to open up and tell the truth."** But the truth will have to wait for another day.

Background

Members of Congress, ladies and gentlemen I am extremely honoured to be addressing you today. My name is Professor Kieran McEvoy and I am Law Professor at Queens University Belfast, currently seconded to the University's Institute of Conflict Transformation and Social Justice. My specialism is transitional justice—in effect how societies deal with violence and human rights abuses of the past. I have researched in over a dozen such societies for the past twenty years.

In Northern Ireland, I am a long term peace and human rights activist. I have previously served on the board of the Committee on the Administration of Justice (CAJ), the primary human rights Non-governmental organisation in Northern Ireland) for much of those last twenty years, serving almost a decade as Chairperson.

I am currently working with the CAJ and others in producing a piece of draft legislation on dealing with the past in Northern Ireland—mirroring the efforts of the UK government—which we hope will help to inform the public conversation on these difficult and challenging matters.

Prior to that, with my colleague Professor Louise Mallinder from the University of Ulster and others, I managed a two year project funded by the UK's Arts and Humanities Research Council wherein we provided practical and legal information to all of the political parties involved in the negotiations on aspects of dealing with the past, as well as a range of victims groups, civil society, human rights NGOs, ex-prisoner groups and others.¹

Thus my interest in dealing with the past is both academic and practical—trying to use international experiences garnered elsewhere to help politicians and others navigate through these complex issues. I have been asked by the Commission to specifically address a number of issues related to the Stormont House Agreement namely:

- *Origins*
- *Substance*
- *Politics*
- *Implementation*
- *Accountability and Justice for past crimes*
- *Reconciliation & the Peace Process.*

I shall address these in the order requested.

Origins

Unlike in other post conflict societies, the Good Friday Agreement (1998) did not contain provisions for an over-arching mechanism such as a truth commission to deal with the past in Northern Ireland. What has emerged in the interim is a 'piece-meal' or 'patchwork quilt' range of past focused mechanisms, most of which are located within the Northern Ireland criminal justice system. That patchwork of mechanism has included a number of public inquiries into controversial killings (although not as Mrs Finucane will testify into the murder of her husband Pat), the work of the Office of the Police Ombudsman, the work of the police-based Historical Enquiries Team, and Inquests into conflict-related deaths. The UK government has previously argued that taken together the cumulative effect of these 'package of measures' to deal with the past are such that they satisfy the governments legal obligations under Article 2 of the European Convention of Human Right to establish effective and independent mechanisms to investigate conflict related deaths. As is detailed below, and as this Commission has heard previously, there is now compelling evidence that in fact those legal obligations are not being satisfied by the existing structures—in particular with regard to deaths involving state forces or agents of the state.

The antecedents of the elements of the Stormont House Agreement which deal with the past can be traced to a number previous pieces of work.

In 2006 the well-respected local NGO Healing Through Remembering produced a lengthy document entitled 'Making Peace with the Past' which outlined a range of options for dealing with the past in Northern Ireland.

In 2009, the Consultant Group on the Past which had been appointed by the Tony Blair led Labour government reported. It picked up on a number of suggestions in-

¹ For a range of policy document on aspects of the dealing with the past debate in Northern Ireland produced by this project including the requirements of Article 2 of the European Convention on Human Rights see <http://amnesties-prosecution-public-interest.co.uk/>

cluded in the Healing Through Remembering report and recommended the establishment of a Legacy Commission with a mandate to oversee a range of processes designed to assist the process of reconciliation, justice and information recovery. Following a negative political reaction to one recommendation in particular (the payment of £12,000 to all families who had lost loved ones during the conflict regardless of the status of the person killed) and a vociferous rejection of the report by Unionists in particular, the new Conservative government in effect shelved that report.

In December 2013, following extensive political negotiations between the five parties of the Northern Ireland Executive under the direction of Richard Haass and Megan O'Sullivan, a document was published by the Office of the First Minister and Deputy First Minister of Northern Ireland. That document, ultimately rejected by the two main Unionist parties, contained provisions for new mechanisms to deal with the past. These included: a Historical Investigations Unit (merging the work of the Historical Enquiries Team and the Office of the Police Ombudsman); an Independent Commission for Information Retrieval (ICIR) which would have the power to offer limit immunity to those who gave evidence and frame a range of themes concerning the past; detailed provisions on how different actors might acknowledge their role in the conflict.

In December 2014 the Stormont House Agreement was completed. This initiative included much more 'hands on' involvement from the British and Irish governments. Although it appeared that all of the parties had 'agreed' to the document immediately after negotiations were completed, there has been some slippage with the Ulster Unionist Party, the SDLP and Sinn Fein all appearing to distance themselves from different financial aspects of the Agreement—but not (to date) the elements associated with dealing with the past. The DUP have yet to formally endorse the document.

Substance (Summary of Key Past-Focused Elements of the Stormont House Agreement)

The first important point to make with regard to the Stormont House Agreement (SHA) is that the document is in reality a series of 'Heads of Agreement' rather than a detailed agreed programme. For example, the elements in the document relating to dealing with the past contain 5 pages compared, for example to the Haass O'Sullivan document where in the equivalent provisions were detailed over 20 pages.

Second, the Agreement requires new legislation to enact a number of its provisions.

The SHA includes provisions for establishing:

A Historical Investigations Unit (HIU) to be overseen by NI Policing Board, slated to complete its work within five years of establishment. The HIU will incorporate the current work being done the Historical Enquiries Team and the Office of Police Ombudsman. Decisions on whether or not to prosecute as a result of the work of the HIU will remain the responsibility of the Director of Public Prosecutions.

An Independent Commission on Information Retrieval (ICIR) to be established by UK and Irish Governments to cover both jurisdictions. Limited to five years of operation. Information provided to it will not be disclosed to law enforcement or intelligence agencies, and such information will be inadmissible in criminal and civil proceedings. This body will be immune from judicial review, Freedom of Information, data protection and national archives legislation in both jurisdictions. It will be led by a person (possibly of international standing) and 4 others, two nominated by OFM-DFM and one each nominated by the British and Irish governments.

An Implementation and Reconciliation Group (IRG) established to oversee themes, archives and information recovery. A themes report to be commissioned after five years. Promoting reconciliation will underlie all of the work of the IRG. This body will be made up of 11 representatives, nominated by the different political parties of the Executive (3 DUP, 2 SF, 1 each by the other parties and two governments).

An Oral History Archive—independent and free from political interference—to be formed by Executive by 2016. Academic-led historical timeline and statistical analysis of the Troubles to report within 12 months of Archive establishment.

In addition,

Legacy inquests (compliant with ECHR Article 2 requirements) to continue as separate process to HIU.

In the context of the work of the IRG the UK and Irish Governments will consider **statements of acknowledgement** and would expect others to do the same.

Politics

The first point to make with regard to the politics of the past related elements of the SHA is that achieving some level of consensus (albeit on heads of agreement) with regard to a series of mechanism for dealing with the past was itself a formidable achievement.

Second, as is detailed below, the evidence would suggest from the operation of the existing patchwork of dealing with the past mechanism, that there remain elements within the state security sector which are determined that some of the less savoury actions of the state during the conflict will not come to light. The bona-fides or otherwise of the non-state actors, with the exception of the IRA's engagement with the Disappeared Commission, has yet to be tested.

Third, it should also be noted that one gap in the political process which led to the Stormont House Agreement is that there has been no systemic attempts to keep politicians and others affiliated to the loyalist paramilitaries on board and supporting the mechanisms agreed. Certainly if for example the information retrieval mechanisms are to function properly or indeed the envisaged 'statement of acknowledgement', this will require the co-operation of those previously affiliated to the loyalist paramilitaries.

Implementation

Officials from the Northern Ireland Department of Justice have recently confirmed that one single bill will be introduced in Westminster to cover all elements of the SHA on dealing with the past including some changes to the Inquest system. The officials aim to produce the draft legislation by June 2015 and it is slated to be introduced in September. The current time-frame is that the HIU and other bodies should be operational by April 2016. In the meantime, practical elements including the appointment of the Director of the Historical Investigations Unit may be progressed.

Accountability and Justice for Past Crimes

The primary mechanism envisaged to provide accountability and justice for past crimes under the SHA Agreement is the Historical Investigations Unit (HIU). As noted above, this body will assume the past related work conducted by the police led Historical Enquiries Team and the Office of the Police Ombudsman.

Before considering some of the detailed challenges associated with the establishment of the HIU it is important to make a number of important preliminary points.

(i) *A Responsibility Not to Oversell Likelihood of Prosecutions*

First, as the former Chief Constable of the Police Service of Northern Ireland made clear when he set up the Historical Enquiries Team, it is important that the potential for conflict related prosecutions is not over-sold, particularly to victims.

"The likelihood of solving cases was clearly going to be slight. Witnesses would be old or dead. Exhibits, if still available, could be contaminated or inadmissible. Informants and agents would be in the mix; the original paperwork incomplete or missing.... The forensic laboratory was blown up twice. Numerous police stations were blown up, stations housing much of the investigative material.... The fact that evidential opportunities lost at the time would be hard to recover did not render the initiative worthless. We had to shift the focus to ensure that, mindful of our primary role as investigators, the driving force behind this initiative would be to deliver a meaningful outcome for the families." (Hugh Orde, 2009)

(ii) *A Two Year Maximum Sentence under the Good Friday Agreement*

Second, any person arrested and successfully convicted of a conflict related offence which was committed before 1998 will only serve a maximum of two years if they fall within the terms of the early release legislation.

(iii) *No state Actors Prosecuted since 1998*

Third, as the recent CAJ report Apparatus of Impunity has made clear (a document I have submitted to the commission to be part of the official record), only a handful of non-state actors have been successfully prosecuted for such offences since 1998 and no state actors at all.²

(iv) *PSNI Legacy Investigations Branch is Not Article 2 Compliant*

Fourth, as the Commission is aware, following the highly critical research of Professor Patricia Lundy and the report of Her Majesty's Inspectorate of Policing, the credibility of the Historical Enquiries Team was so badly undermined that its Direc-

² CAJ (2015) *The Apparatus of Impunity? Human Rights Violations and the Northern Ireland Conflict*. Belfast: CAJ. Available at <http://www.caj.org.uk>.

tor resigned and its work was suspended. The central tenet of those criticisms was that the relationship of the Historical Enquiries Team to the PSNI was such that the HET was incompatible with the requirements for independent investigations under Article 2 of the European Convention of Human Rights. In December 2014 the PSNI announced that a new body within the PSNI—the Legacy Investigations Branch—would assume the role of the HET, albeit with a reduced budget and reduced personnel. It is not at all clear to me how this new police entity can satisfy the independence criteria which undermined the HET. Indeed on 11th March 2015, a joint House of Lords-House of Commons All party committee on human rights concluded at para 3.17 “As well as having fewer resources at its disposal than its predecessor, the Legacy Investigations Branch cannot itself satisfy the requirements of Article 2 ECHR because of its lack of independence from the police service.” I agree strongly with that conclusion.

Key Issues Regarding the Establishment of the Historical Investigations Unit

Given that the draft legislation which will establish the HIU is yet to be produced, all that one do at this juncture is to set out a non-exhaustive range of matters which will require close political and legal scrutiny concerning the detail of that legislation.

How To Ensure That The HIU Is Article 2 Compliant? What (If Anything) Will Be The Future Role Of The PSNI And Former PSNI-RUC Officers In The Historical Investigations Unit?

The key to the credibility of the Historical Investigations Unit will be to ensure that this institution is compliant with Article 2 of the ECHR with regard to its independence. A central component of that credibility will be to decide the relationship between the HIU and the PSNI and the role (if any) of former PSNI/RUC officers within the HIU structures. The SHA states “Appropriate governance arrangements will be put in place to ensure the operational independence of the two different elements of the work of the HIU.” i.e. the work previously completed by the HET and Office of the Police Ombudsman.

The now discredited HET model was in effect that a policing led structure, answerable to the Chief Constable could be created with sufficient ‘firewall’ protections inbuilt to ensure its independence, particularly involving cases of state malfeasance. Despite doing some good work and bringing a measure of closure to some families, as was detailed by Professor Lundy and the HMIC report, this model was fatally undermined by its inability to deal with state-related cases in an independent and impartial manner.

In order not to replicate the same mistakes in the HIU, the simplest way forward is to make the HIU entirely independent from the PSNI and to insist that former RUC and PSNI personnel are not involved in the work of the HIU. Obviously this will require recruitment of experienced investigators, family liaison personnel, suitable vetted archivists and data management personnel so forth—but it is preferable to do this than to try to adapt a version of a model that was not Article 2 compliant, that would undoubtedly be challenged and that would fail to command the required levels of public confidence.

What Will Be The Criteria To Have Cases Completed By The HET Or OPONI ‘Re-Opened’?

The starting point for the HIU is that it will complete cases where the HET or the OPONI have not completed their work including HET cases already identified as requiring re-examination. It also states “Families may apply to have other cases considered for criminal investigation by the HIU if there is new evidence, which was not previously before the HET, which is relevant to the identification and eventual prosecution of the perpetrator.”

It is important that this criteria is not overly restrictive where families have concern about the effectiveness or impartiality of a previous HET or OPONI investigation but where, for example, the most likely direct perpetrator is dead. One way to ensure that such families have the possibility of achieving justice or accountability is to adopt a broader definition of perpetrator beyond simply those who pulled the trigger or planted the bomb. The jurisprudence developed by the International Criminal Tribunal for the Former Yugoslavia is useful in this regard. Article 7 of the tribunal statute offers the following definition of a perpetrator. “A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime. shall be individually responsible for the crime.” There may also be a case for power for referral from other state agencies to have the HIU review a case in the public interest.

Will The HIU Have The Power To Request Previous Prosecutorial Decisions Taken By The Director Of Public Prosecutions To Be Reviewed?

The SHA stipulates “As with existing criminal investigations, the decision to prosecute is a matter for the DPP [Director of Public Prosecutions].” It does not make clear whether the negotiators intended that prosecutorial decisions which were taken previously with regard to conflict related cases may also be re-opened. For example, it is possible to envisage circumstances where the HIU could (either on its own initiative or at the request of the family) reopen and resubmit files where it believes that the DPP should review an earlier decision not to prosecute. I would suggest that such a possibility should be explicitly catered for in the legislation.

Sanctions for the Withholding, Destruction or Failing to Take Due Care of Evidence

The SHA stipulates that “The UK Government makes clear that it will make full disclosure to the HIU. In order to ensure that no individuals are put at risk, and that the Government’s duty to keep people safe and secure is upheld, Westminster legislation will provide for equivalent measures to those that currently apply to existing bodies so as to prevent any damaging onward disclosure of information by the HIU.” The stipulation about ‘damaging onward disclosures’ is obviously a reasonable requirement given the sensitive nature of the material to which HIU staff may have access. In addition however, given the experiences documented by CAJ in Apparatus of Impunity of repeated examples of materials “being put beyond the reach of investigators, going ‘missing’, being destroyed, or being overly redacted”, it would seem prudent to include in the legislation sanctions with regard to destruction of failure to take due care and attention in the storage of materials to be passed to the HIU.

There a range of other issues which will impact upon the efficacy and legitimacy of the HIU which will all be addressed in the draft legislation which CAJ and myself hope to produce in the coming months.

Reconciliation & the Peace Process

The other key theme which I have been asked to address in this submission is the potential effect of the SHA on reconciliation and the peace process. Obviously the justice focus of the HIU is but one element of this significantly larger process.

The Independent Commission for Information Retrieval (ICIR)—At the moment there is scant detail as to what may be contained in the legislation with regard to this body. A number of obvious points arise from the relative sections of the SHA.

Time-frame—while the SHA stipulates that the ICIR should only run for a total of five years it would seem prudent to include a mechanism in the legislation which would allow for the work of the body to be extended if necessary or at the very least, a process whereby the ICIR archives would be maintained along with the capacity to receive any additional statements and communicate results to families.

Independence—like the HIU, the independence of the ICIR will be key to its effectiveness. That independence needs to be guaranteed in the legislation including a requirement that statutory bodies would respect the ICIR’s independence.

Guarantees of Non-Prosecution—A related central element of the effectiveness of the ICIR will be the confidentiality of the process including the guarantees contained in the SHA that no person will be prosecuted, held liable in civil court or have the information they give to the ICIR passed to law enforcement or intelligence agencies. The SHA also provides that the ICIR will be given “the immunities and privileges of an international body and would not be subject to judicial review, Freedom of Information, Data Protection and National Archives legislation, in either jurisdiction.” The legislative robustness of those guarantees will be crucial, as they have been in securing the continued functioning of the Independent Commission on the Location of Victims’ Remains (the ‘Disappeared Commission’) to which the SHA makes explicit reference.

The Powers of the ICIR

The SHA is vague on the powers of the ICIR (e.g. re access to documents, powers to question witnesses etc.). All that is stated is that the ICIR will be held accountable to “the principles of independence, rigour, fairness and balance, transparency and proportionality”. The legislation will need to make clear what powers the ICIR has in order that these principles may be enacted.

The Implementation and Reconciliation Group

As noted above (IRG) will oversee themes, archives and information recovery and after five years, a report on themes will be commissioned involving independent academic experts. Given that all of the appointees to this body will be political nomi-

nees by the various political parties, it will be particularly important that it too will have a strong legislative framework to ensure that the commitment in the SHA that the process of addressing the themes of the conflict “*should be conducted with sensitivity and rigorous intellectual integrity, devoid of any political interference.*”

Conclusion

As noted at the outset, it was quite a formidable political achievement to achieve consensus on the heads of agreement contained in the Stormont House Agreement. As ever on these matters, ‘the devil will be in the detail’ contained in the enabling legislation. However, if the political will exists from the different political actors, and that will is translated into robust legislation designed to maximise the effectiveness of the different mechanisms, the SHA does provide a roadmap to make significant progress in dealing with the past in Northern Ireland.

PREPARED STATEMENT OF ANNE CADWALLADER

My name is Anne Cadwallader and I am a staff member of the Pat Finucane Centre. The Centre is named after Geraldine Finucane's husband, Pat, because we—like him—believe in the potential of the rule of law, impartially administered, to uphold human rights and thus prevent and even resolve conflict.

As you are hearing, I am English. Since 1981, I have covered the conflict in Ireland on both sides of the border, first with the BBC in Belfast, then for the Irish Press, RTE, Reuters and many other media organisations.

When I began working for the Pat Finucane Centre five years ago, the bulk of the research on which the book we published last year, *Lethal Allies: British Collusion in Ireland* had been completed. I pay tribute to my colleagues in the PFC, particularly Alan Brecknell whose own father was one of those killed, and to Justice for the Forgotten in Dublin for their disciplined, determined and intelligent work over the fifteen years it took to reveal the facts on which the book is based.

I have never been able to understand why the British essayist G. K. Chesterton wrote about the Irish that “for all their wars are merry and all their songs are sad”. How could anyone see anything remotely humorous in the 1798 Rebellion in which 20,000 died or Cromwell's “Sacking of Drogheda”?

Perhaps it's the same mind-set that considered it appropriate to plan an Independence Day barbecue to commemorate the burning of the White House.

Last week I sat beside a woman in County Armagh who had been blinded in one eye in a loyalist bomb explosion. She had been chatting to a friend about her upcoming marriage when the bomb exploded—but at least it spared her life and that of the unborn son she was carrying.

Alas, he also became a random victim of the violence in Ireland—shot dead at the age of 17 during a break in his studies at Armagh city. Nearly twenty years separate the two events. Collusion unites them.

The same bomb explosion also killed a young mother of three boys, Elizabeth McDonald. Her four-year-old son was blown out of his cot and found in the rubble crying over her body.

Across the street, another mother was cradling a dying son, Gerard McGleenan, aged 23. His heart pierced by a long, sharp piece of the shattered bomb car.

What has only recently been revealed is that the bomb was made, transported and detonated with the active involvement of members both of the Royal Ulster Constabulary, the police, and the British Army.

We know this because investigators have found a paper trail that establishes it without a shadow of a doubt. To this day, no-one in authority has ever gone to any of the bereaved families or the injured to acknowledge the state's involvement in these horrific crimes.

The papers establishing the state's guilt lay for over thirty years in locked police archives. Those who knew at the highest levels, and I mean the highest levels, must have hoped they would never be discovered.

When officers, selected for their independence of the RUC, in the Historical Enquiries Team, found the paper trail, and finally informed the families, you can imagine their deep shock.

Since we first published the details in our book, *Lethal Allies*, however, there has been the most deafening silence from London about these and 120 other murders in the same series perpetrated in both jurisdictions in Ireland.

It is—in my view—a most shabby, unworthy, dishonourable silence. The guilty silence of a disgraced establishment that hasn't the courage to face the truth.

If those in authority in London are listening, might I suggest they would be well-advised to reconsider because the families are not going away—and neither are their lawyers.

Last week in Liverpool, England, a senior police officer admitted he lied in the aftermath of the Hillsborough football disaster in which 96 people were killed. It was welcomed by the bereaved families who, nevertheless pointed out that some elderly relatives had passed away before hearing the truth. Truth delayed is truth denied.

We, along with other human rights NGOs in Ireland including Justice for the Forgotten, Amnesty International, the Committee on the Administration of Justice and Relatives for Justice now demand that London learn that facing up to the truth is not only the right thing to do, it can also be healing.

The British prime minister, David Cameron, apologised for the British Army's shooting of fourteen people on Bloody Sunday. The sky did not fall in. The Irish government acknowledged, albeit on the basis of very scanty evidence, Garda collusion in the IRA murders of two RUC officers, Robert Buchanan and Harry Breen, in 1989.

For the families we represent there has been NO acknowledgement, no truth—just a grim and enduring silence.

Collusion is a word that has sometimes been used as a political battering ram. But it was a tactic used by the RUC and British military intelligence to manipulate and control both sides throughout the recent conflict.

It has many forms. In 1972, the worst year of the conflict, the General Officer Commanding the British Army in Northern Ireland, while recognising the UDA sectarian threat, nevertheless said soldiers should ignore UDA patrolling and barricading of Protestant areas which “could be almost entirely secured by a combination of UDA, Orange Volunteers and RUC”. The military, he said, could “turn a blind eye to UDA arms when confined to their own areas”.¹

After the Dublin/Monaghan bombings in which 34 people, including an unborn child perished, it took the form of the British government deciding not to share information on the bombers with the Irish government as it “could embarrass the Crown”.²

After the 1971 bombing of McGurk’s Bar in which 15 died, it took the form of a dishonourable attempt to blame the victims, a claim that the bomb was an IRA “own goal”.³

There is hard evidence that the gang who attacked a bar in Loughinisland, shooting dead six men as they watched Ireland play Italy at Giant’s Stadium in New York during the 1994 World Cup, included at least one informer whose identity was protected.⁴

It is now clear that UVF informers in the pay of RUC Special Branch in the Mount Vernon estate in North Belfast were responsible for at least 20 killings.⁵

Each and every bit of the truth is being dragged out piece by piece but the PFC will shortly be publishing more evidence on the secret relationships between loyalist paramilitaries and the British government in the 1970s.

Collusion was not restricted, though, to the manipulation of loyalists. Evidence is emerging that covert British intelligence agencies manipulated republican informers, such as Freddie Scappaticci, allowing them to murder at will.⁶

Admitting collusion will not be easy for London because it will tear aside the polite fiction that successive British governments were merely neutral umpires during 35 violent years.

The excuse is sometimes made, privately, that, in the face of a determined and bloody armed insurrection, such as that mounted by the IRA, impartial administration of the rule of law has to be compromised.

The then British prime minister, Margaret Thatcher, told an interviewer in October 1988 that “to beat off your enemy in a war” some civil liberties have to be suspended.⁷

We contend that, at a time of civil strife, it is even MORE important that the law be upheld without fear or favour and that the principle that no-one is above the law, is implemented in full. Once you tailor the means to meet the ends, no matter how laudable, you are on a slippery slope.

We contend that London went down that slippery slope during the 35 year civil conflict in Northern Ireland and that this rendered the British state culpable for at least part of the loss of life, the grief, the waste, the agony that the people of Northern Ireland suffered.

The nature of the collusion the PFC examined over the last 15 years, that of the 1970s, was of a less structured and targeted nature than the same policy during the 1980s and 1990s when British double-agents imported arms into Northern Ireland, substantially increasing the loyalist kill-rate and murdering Pat Finucane.

The recent report by Sir Desmond de Silva into his murder concluded that 85% of all the intelligence available to loyalists came from within the police or military.⁸

Collusion fuelled the conflict leading to the deaths of many police officers and soldiers as well as civilians both Protestant and Catholic.

The PFC has discovered hundreds of documents in the British National Archives which establish beyond any reasonable doubt that London knew from a very early stage that, in setting up the Ulster Defence Regiment, the UDR, it was establishing a pool of trained killers with access to an unlimited source of modern and deadly weapons.⁹

In the area we examine in *Lethal Allies*, the aim seems to have been to terrorise the Catholic/nationalist community into lowering its political, constitutional and economic aspirations. With one exception, ALL those targeted in the series of murders we examined were civilian non-combatants.

They were shopkeepers, publicans, farmers, small businessmen, workers who had been promoted. Nine were members of the SDLP and many had close links to the Gaelic Athletic Association.

The official record currently states that the percentage who died as a direct result of state violence in the conflict amounts to only ten per cent. That figure will rise, once collusion is taken into account, to a far higher number.

The PFC will today place on the record here at Congress a small selection of the declassified documents we have uncovered from the British and Irish national archives. We invite members of Congress to read them. [Available at <http://www.patfinucanecentre.org>.]

Mrs. Thatcher, for example, even before she was elected prime minister, was quite clearly informed that the UDR, the largest regiment in the British Army, consisting exclusively of locally-recruited soldiers, was heavily infiltrated by loyalists and that in a crisis could not be relied upon to follow orders.¹⁰

We know from the words of a secret British document¹¹ that the UDR was the sole source of the heavy-duty modern weapons used to orphan so many children and London accepted that between 5 and 15% of its entire membership were active loyalists.

Such was the extent of theft from its arsenals that the British kept monthly records. They knew even then that the guns were being used to kill repeatedly.

Most of the families we represent realise that seeing anyone brought to court for the crimes described here, is beyond their reach. With a few exceptions, they are not what I would call "bitter" or recriminatory.

They are, however, full of steely determination that the truth should be told. That the shadowy figures whose names they don't know and probably never will, should be held at least collectively accountable.

They hope that this will ensure that those responsible for taking similar decisions will never again collude in the deaths of the citizens they are meant to protect.

We thank Congress for its continuing interest and hope by this time next year there will be progress towards reconciliation in Ireland. It may even be that these and other revelations will show both sides they have more in common than they thought.

¹ British National Archives, reference CJ4/266, Tuzo paper, 9 July 1972

² British National Archives, reference: FCO87 447

³ See: <http://mcgurksbar.com/collusion/>

⁴ <http://www.amazon.co.uk/THE-LOUGHINISLAND-MASSACRE-Survivors-Diary-ebook/dp/B001ONLOJQ>

⁵ <http://www.thedetail.tv/issues/54/the-state-and-northern-ireland%E2%80%99s-past/the-state-and-northern-ireland%E2%80%99s-past>

⁶ <http://www.belfasttelegraph.co.uk/news/northern-ireland/freddie-scappaticci-was-our-most-valuable-spy-in-ira-during-the-troubles-british-army-chief-28739868.html>

⁷ Interview in The Times (London) 26 October 1988

⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/246867/0802.pdf

⁹ British National Archives, attached in full: "Subversion in the UDR", August 1973 [Available at <http://www.patfinucanecentre.org>.]

¹⁰ British National Archives, attached: PREM 16/520 [Available at <http://www.patfinucanecentre.org>.]

¹¹ British National Archives, attached in full: "Subversion in the UDR", August 1973



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