

**HUMAN RIGHTS IN ACTION:  
A BRIEF HISTORY OF THE NEW YORK CITY BAR’S WORK TO PROMOTE PEACE AND  
RESPECT FOR HUMAN RIGHTS IN NORTHERN IRELAND  
International Human Rights Committee<sup>1</sup>**

**Introduction**

In March 2009, Sir Hugh Orde, Chief Constable of the Police Service of Northern Ireland visited with members of the Committee on International Human Rights (“the Committee”) and City Bar President Patricia Hynes. Sir Hugh briefed the group on human rights developments in policing in Northern Ireland. The meeting marked nearly 22 years of continuous engagement between the Committee and government officials, judges, lawyers, and non-governmental organizations (“NGOs”) concerning human rights in a region marked by centuries of political strife, and efforts in recent decades to end paramilitary violence, increase public confidence in the police and restore representative local rule. The Committee’s efforts include three fact-finding missions to Northern Ireland since 1987, and continuing dialogue with human rights advocates, members of the Northern Ireland Judiciary, and officials of the Northern Ireland, British and Irish governments. This brief report surveys the Committee’s long-standing work in this area, finding it valuable and important for promoting peace and respect for human rights in this culturally rich and vital region of the world.

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<sup>1</sup> The Committee is grateful to the scores of people in Great Britain and Northern Ireland who gave generously of their time over the course of the past 22 years. The Committee chair, Mark R. Shulman, also acknowledges with gratitude Gerald Conroy’s efforts as a long-time participant in this work, chair of the Sub-Committee on Northern Ireland, and the principal author of this report.

## **The 1987 Mission**

In May 1987, the Committee dispatched to Northern Ireland an overseas mission to investigate human rights issues (the “1987 Mission”).<sup>2</sup> The group was comprised of William E. Hellerstein, Robert B. McKay and Peter R. Schlam.<sup>3</sup> They were assisted in advance of their visit by Martin Flaherty, then a student at Columbia University School of Law, who had spent the previous summer with the Committee on the Administration of Justice (“CAJ”), a leading NGO in Belfast, which continues to advocate for compliance with international human rights in the administration of justice.<sup>4</sup> The members of the 1987 Mission met with more than 50 individuals collecting official and unofficial viewpoints in Belfast, London and Dublin. They included the Chief Justice of Northern Ireland, the Director of Public Prosecutions, members of the Queen’s University Faculty of Law, criminal defense solicitors and barristers, and senior officials of the Royal Ulster Constabulary (the “RUC”). From the start of the modern era of paramilitary intimidation and violence in 1969 – the “Troubles” – through the time of the 1987 Mission, 2,500 individuals had been killed through political violence in Northern Ireland. In 1987, some 6,000 to 7,000 British Army personnel were stationed in Northern Ireland. The local Parliament had been suspended since 1972, with direct rule imposed by the British Parliament at Westminster and executive authority by the Secretary of State for Northern Ireland (an elected member of the British Parliament). Urban police patrols were accompanied by soldiers in armored personnel carriers. Walls were erected

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<sup>2</sup> This was the Committee’s second overseas mission. The first such mission was to Chile in 1986.

<sup>3</sup> Hellerstein is currently a professor at Brooklyn Law School. McKay was a professor at New York University School of Law, and a past president of the City Bar. Schlam was a New York attorney.

<sup>4</sup> Flaherty is currently Leitner Family Professor of International Human Rights and Co-Director of the Leitner Center for International Law and Justice at Fordham Law School. He chaired the Committee when it dispatched its third mission to Northern Ireland in 2003.

to separate (predominantly Roman Catholic) nationalists who favored unification with the Republic of Ireland, from (predominantly Protestant) unionists who sought continued affiliation with Great Britain. Security checkpoints were installed in city shopping districts. Two weeks before the 1987 Mission arrived in Belfast, a Justice of the Court of Appeals and his wife were killed by a bomb while riding in their car. Against this backdrop, from the 1960s through the 1980s, the UK Government instituted statutes and orders for Northern Ireland which generally deviated from those for the remainder of Great Britain concerning powers of arrest, detention, custodial interrogation, and jury trials. Criminal statutes particular to Northern Ireland allowed the police to make an arrest without a warrant based on suspicion that the person was “concerned in the commission” of “scheduled” offenses related to terror. Persons arrested faced up to seven days of detention during which they were subjected to intensive police interrogation. The fact of a suspect’s refusal to answer police inquiries was admissible against him at trial.

The 1987 Mission concluded that the political situation in Northern Ireland remained troublesome. The Committee published its findings in *The Record*.<sup>5</sup> It found a “compelling need” for significant modifications in criminal justice practices, and urged the UK government to pursue them with “greater intensity.” Much of the report focused on the so-called “Diplock” system of non-jury trials of terror suspects, a departure from the norms of UK justice. The 1987 Mission found that the period of “emergency” in Northern Ireland was of especially long duration, and there was a danger that the derogations from British legal traditions would become permanent. It criticized the list of

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<sup>5</sup> 43 REC. ASS’N B. CITY N.Y. 2 (1988). Available at <http://www.nycbar.org/pdf/report/88083%20-%20Criminal%20Justice%20and%20Human%20Rights%20in%20Ireland.pdf>

scheduled offenses requiring Diplock trials and recommended that the number of such offenses be greatly reduced, and that the Attorney General be charged with the affirmative obligation to justify a non-jury trial in each case. The 1987 Mission recommended that three judges (instead of one) preside over Diplock cases where juror intimidation remained a concern. It found that there would be greater public confidence – particularly in the nationalist community – in (unanimous) three-judge verdicts in cases of political violence. With respect to the admissibility of confessions (or refusal to answer inquiries) it recommended that the existence of an emergency should not warrant a departure of standards from regular Northern Ireland / United Kingdom criminal procedure. Finally, the Committee recommended the repeal provisions for extra-judicial detention, which had not been in use for nine years.

Speaking in February 2009, Hellerstein described his work on the 1987 Mission and the Committee’s report (of which he was the primary author) as “one of the outstanding experiences of my professional life.” It received coverage in the *New York Times*, and Hellerstein recalled learning that the report was circulated in Prime Minister Margaret Thatcher’s office where it received some “positive responses.”<sup>6</sup>

### **The 1998 Mission**

Eleven years after the first visit, the Committee dispatched another mission to Northern Ireland in October 1998. In April of that year, voters in Northern Ireland ratified the historic Good Friday Agreement, which provided for a home rule legislature for the first time in decades. The Good Friday Agreement also established the Independent Commission on Policing (the Patten Commission) which began a

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<sup>6</sup> Francis X. Clines, *Ulster Jury Urged by New York Bar*, N.Y. Times, Dec. 11, 1987.

comprehensive review of policing in Northern Ireland. The 1998 Mission – which also attended meetings in London and Dublin – consisted of Judges Barbara S. Jones and Sidney H. Stein, former Association President Barbara Paul Robinson, and attorneys Peter G. Eikenberry, and Gerald P. Conroy.<sup>7</sup> Members of the 1998 Mission met with judges, prosecutors, attorneys, police officials, academics and NGO representatives, renewing and establishing contacts and correspondents which continue to the present.<sup>8</sup> The Committee again published its findings and recommendations in *The Record*.<sup>9</sup> This report highlighted the 1998 Human Rights Bill (effective in 2000) requiring British (and Northern Ireland) courts to interpret U.K. law to be compatible with the European Convention on Human Rights (“ECHR”). The Committee called for greater transparency in the judicial selection process, including a commitment to broaden the diversity of judicial candidates. The report recommended uninterrupted audio recording of police interrogations as a safeguard against abuses, and noted with approval the scheduled establishment of the Office of the Police Ombudsman for Northern Ireland, as an independent investigatory body to check allegations of abuse on the part of the police.<sup>10</sup>

Most significantly, the Committee reported on police harassment of criminal defense attorneys in Northern Ireland. Shortly before the Mission, a United Nations Special Rapporteur found that the RUC had engaged in a pattern of harassment of attorneys with clients accused of terrorist offenses. In February 1989, Belfast attorney

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<sup>7</sup> Jones and Stein are judges of the United States District Court, Southern District of New York. Robinson, a past president of the City Bar, is currently Of Counsel to Debevoise & Plimpton LLP; Eikenberry is a Manhattan attorney; Conroy is currently Deputy Commissioner of the Office of the Special Commissioner of Investigation for the New York City School District.

<sup>8</sup> The NGOs include the Committee on the Administration of Justice (<http://www.caj.org.uk/>) in Belfast and British-Irish Rights Watch (<http://www.birw.org/>) in London.

<sup>9</sup> 54 REC. ASS’N B. CITY N.Y. 426 (1999) Available at <http://www.nycbar.org/Publications/record/julyaug99pp.1.pdf>.

<sup>10</sup> See <http://www.policeombudsman.org/>.

Patrick Finucane was shot and killed in his home by masked gunmen. He had been the target of threats by RUC officers who transmitted the threats to his clients during interrogations. Two government inquiries of allegations of collusion among the RUC, the military and paramilitary groups considered evidence in the Finucane murder, but only a portion of their findings were released by the government. The Committee called for a full judicial inquiry into the Finucane murder, in light of the substantial and credible evidence pointing to collusion by the security forces with the paramilitaries responsible for Finucane's murder.

Members of the Mission met in Belfast with Rosemary Nelson, a criminal defense attorney, who described many threats she had received in anonymous mailings and, like Finucane, transmitted by police through her clients after interrogations. Six months after the meeting, Nelson, a mother of three, was murdered by a car bomb as she drove from her home. A loyalist paramilitary group claimed responsibility. The Committee joined with many human rights advocates in calling for an independent investigation of Nelson's murder.<sup>11</sup> On the first anniversary of her death, the City Bar presented a program to honor Nelson's life and work and to examine the investigation into her murder and that of Patrick Finucane. Speakers included Robert McGuire, the former New York City Police Commissioner, and Michael Posner, the Executive Director of the Lawyers Committee for Human Rights (now Human Rights First).

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<sup>11</sup> G. Conroy, P. Eikenberry, B. Jones, S. Stein and B. Robinson, *The Death of Rosemary Nelson*, N.Y. Law J., March 16, 2000.

## **The 2003 Mission**

The Committee undertook its third mission to Northern Ireland in May 2003 to continue its dialogue with attorneys and officials regarding ongoing efforts to reform policing and criminal justice. The 2003 Mission examined issues pertaining to the Justice (Northern Ireland) Act 2002; the transformation of the public prosecution service; new procedures for judicial appointments; human rights training; compliance with the ECHR; the intimidation of defense attorneys; and the status of investigations into the murders of Patrick Finucane and Rosemary Nelson. Three members of the 1998 Mission – Gerald Conroy, Judge Sidney Stein, and Barbara Paul Robinson – were joined by Fiona Doherty, Sam Scott Miller and Marny Requa.<sup>12</sup> The Committee published its report in *The Record*.<sup>13</sup>

The 2003 Mission consisted of interviews with a number of people in Belfast: officials from the Northern Ireland Office, the Office of the Director of Public Prosecutions, the Northern Ireland Court Service, as well as representatives of public offices newly inaugurated as a consequence of the Good Friday Agreement: the Police Service of Northern Ireland (supplanting the RUC), the Northern Ireland Human Rights Commission and the Police Ombudsman's office. Members of the Mission met with representatives from the Republic of Ireland, academics, and attorneys. It renewed its contacts with members of two NGOs, British Irish Rights Watch, and the Committee on the Administration of Justice, and established contact with a third, the Derry-based Pat

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<sup>12</sup> Doherty is currently an attorney with the Federal Defenders of New York; Miller is currently Of Counsel to Orrick, Herington & Sutcliffe LLP. Requa, a student at Fordham Law School at the time of the 2003 Mission, has since joined the Law Faculty at Queen's University Belfast and remains a faithful correspondent who keeps the Committee apprised of human rights developments in Northern Ireland.

<sup>13</sup> 59 REC. ASS'N B. CITY N.Y. 314 (2004). Available at [http://www.abcny.org/record/Vol\\_59\\_%20no\\_2.pdf](http://www.abcny.org/record/Vol_59_%20no_2.pdf).

Finucane Center (“PFC”) for their work in promoting human rights protections in Northern Ireland.<sup>14</sup>

During previous missions, members had not met with representatives of political parties. In light of the activity of the Northern Ireland Assembly (“NIA”) since the 1998 Mission, members in 2003 found it beneficial to meet with elected officials who would share responsibility for justice issues when the planned devolution (from Westminster to the NIA) of those issues occurred. Toward that end, members met with Alban Maginness, the criminal justice spokesperson for the Social Democratic and Labour Party (“SDLP”).<sup>15</sup> Members of the Mission also met with Gerry Kelly, Sinn Fein’s criminal justice spokesperson, along with two of his colleagues.<sup>16</sup> Members were unable to meet with members of the two main unionist parties, the Democratic Unionist Party (“DUP”) and the Ulster Unionist Party (“UUP”).<sup>17</sup> Members also met with political leaders seeking to bridge the unionist – nationalist divide: Dr. Stephen Farry, the Alliance

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<sup>14</sup> In 1998, CAJ received the prestigious Council of Europe Human Rights Prize (from the then 40 member states) for its work in placing human rights principles at the center of peace negotiations leading up to the Good Friday Agreement.

<sup>15</sup> The SDLP is a moderate nationalist party born out of the civil rights movement. It was founded by John Hume, who won the Nobel Peace Prize in 1998, jointly with David Trimble; the two men won the prize in recognition of their efforts to find a peaceful solution to the conflict in Northern Ireland.

<sup>16</sup> Sinn Fein is a republican party “committed to achieving a 32-county democratic socialist republic in Ireland.” It seeks an end to U.K. control in Northern Ireland. Sinn Fein is frequently described as the political wing of the Irish Republican Army. Like the SDLP, Sinn Fein very much supports the devolution of criminal justice functions to Northern Ireland.

<sup>17</sup> The DUP declined to meet with the Mission, and a UUP meeting was cancelled because of a legislative conflict. The UUP is a moderate unionist party committed to Northern Ireland’s union with the United Kingdom and the maintenance of British citizenship for its people. It supports a democratic system of local government, and its leader, David Trimble, was the First Minister before the NIA was suspended. The DUP is a hard-line unionist party that opposed the Good Friday Agreement, but did have two ministers in the NI Executive before the Assembly was suspended. The party was led by Dr. Ian Paisley.



Party's spokesperson for justice and human rights,<sup>18</sup> and Monica McWilliams of the Northern Ireland Women's Coalition.<sup>19</sup>

Members of the 2003 Mission met with surviving members of Rosemary Nelson's family, and the Committee's report noted the lack of progress in resolving either the case of her murder or that of Patrick Finucane. In January 2005 a judge appointed to review evidence of collusion in the murders announced that he recommended public inquiries in both cases in October 2003. The report expressed frustration with the delay, and called for immediate public inquiries. Subsequent to the Committee's report, in November 2004, the Secretary of State for Northern Ireland established a three-member panel to oversee a public inquiry into Nelson's murder.<sup>20</sup> The Nelson Inquiry remains ongoing.<sup>21</sup> In 2006, British attorneys for the Inquiry traveled to New York and conducted formal interviews of members of the 1998 Mission concerning their meeting in Belfast with Nelson.

The Committee's report of the 2003 Mission noted with approval the significant policing reforms since the 1998 Mission. International and local scrutiny ensured that these reforms – such as the establishment of the Police Ombudsman's office, the appointment of an Oversight Commission, and the drafting of new human rights codes for the police – happened relatively quickly. Although the process was not without

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<sup>18</sup> The Alliance Party is a cross-community party that seeks to heal the communal divisions in Northern Ireland and build a united, non-sectarian society.

<sup>19</sup> The Women's Coalition is a "cross-community political party working for inclusion, human rights and equality." The party works to "widen participation in politics" and to implement the Good Friday Agreement. See <http://www.niwc.org/aboutus.asp>.

<sup>20</sup> In January 2005 the Committee published an analysis of the U.K. Inquiries Bill, and expressed concern that it would have negative consequences for the Finucane inquiry and other inquiries into human rights cases from Northern Ireland. See [http://www.abcny.org/pdf/report/ABCNY\\_Inquiries\\_Bill1.pdf](http://www.abcny.org/pdf/report/ABCNY_Inquiries_Bill1.pdf).

<sup>21</sup> See <http://www.rosemarynelsoninquiry.org/>.

shortcomings, the pace and transparency of policing reforms was striking when compared to other criminal justice agencies.<sup>22</sup>

## **Conclusion**

The Committee's three missions to Northern Ireland have brought about 22 years of continued engagement and dialogue on human rights, including annual visits in New York and dialogue with Northern Ireland officials, political leaders, and NGO advocates. The Committee remains dedicated to promoting human rights and the rule of law in Northern Ireland for as long as it can remain relevant and useful. In particular, the Committee remains steadfast in its support for credible public inquiries into the killings of Pat Finucane and Rosemary Nelson and for fellow human rights lawyers in Northern Ireland generally. At the same time, the Committee is pleased with the transformation in the human rights situation that it has observed and hopes that it will continue with the constructive roles it has played for as long as it can remain relevant and useful.

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<sup>22</sup> In July 2005, the Chair of the Committee wrote to the U.S. Special Envoy for Northern Ireland to commend his support for a restoration of the devolved governmental institutions in Northern Ireland. *See* [http://www.abcny.org/pdf/report/flaherty\\_letter.pdf](http://www.abcny.org/pdf/report/flaherty_letter.pdf).