

RECENT DEVELOPMENT

NEW DEATH BREATHES LIFE INTO OLD FEARS: THE MURDER OF ROSEMARY NELSON AND THE IMPORTANCE OF REFORMING THE POLICE IN NORTHERN IRELAND

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And the battle's just begun. There's many lost but tell me
who has won.¹

"No lawyers in Northern Ireland can forget what happened to Patrick Finucane nor dismiss it from their minds."² Rosemary Nelson's 1998 statement was perhaps more true than she realized. Ten years and one month after Patrick Finucane became the first lawyer to be murdered as part of the conflict in Northern Ireland,³ Nelson, another prominent Irish civil rights lawyer, died as the result of a car bomb.⁴ Nelson's death has brought back to life questions of police practices in Northern Ireland and renewed fears among both lawyers and criminal defendants in the violence-stricken province. Her death has caused a significant ripple in the ongoing peace process, and the bomb that killed Nelson may have been the sound-off to more strife and tragedy in Northern Ireland.⁵

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¹ U2, *Sunday Bloody Sunday, on WAR* (Island Records 1983).

² Rosemary Nelson, *How the RUC Tried to Smear and Intimidate Me*, *SUNDAY TIMES* (London), Mar. 21, 1999, at 16.

³ See Gordon McKibben, *A Lawyer's Slaying Raises New Specter in Ulster*, *BOSTON GLOBE*, Feb. 14, 1989, at 3.

⁴ See Kevin Cullen, *Blast Renews Belfast Fears; Slaying of Lawyer Shakes Legal Community*, *BOSTON GLOBE*, Mar. 17, 1999, at A1.

⁵ See generally Deaglán de Bréadún, *Prospect of Decommissioning a Complete Non-Starter in Wake of Solicitor's Death*, *IRISH TIMES*, Mar. 16, 1999, at 6 (noting the revival of fears and suspicions that came with Nelson's death).

I. THE CURRENT SITUATION IN NORTHERN IRELAND

To say that Northern Ireland has been immersed in social and political turmoil for decades is a gross understatement. With hunger strikes in the 1980s and recurring episodes of violence in the 1990s, the conflict in Northern Ireland has become more confusing and disjointed by the moment.⁶ The seemingly irresolvable conflicts between Catholics and Protestants, between Nationalists and Unionists, came to an apparent end in April 1998 with the signing of a historic peace accord.⁷

In May 1998, a referendum was passed approving a peace plan that would end the perpetual civil war.⁸ The plan provided that Northern Ireland would retain its political allegiance to Britain but allowed for the possibility of the province breaking from Parliament and reuniting with the Republic of Ireland. The peace plan was hailed as a means to end the political violence that had rocked the country for decades.⁹ Part of the success of the referendum was due to the new generation of political minds in Northern Ireland who viewed maintaining peace as more important than harboring the old grudges between Catholics and Protestants. The atmosphere surrounding the vote was one of hope and jubilation.¹⁰ Unfortunately, no sooner had the ink dried on the referendum ballots than the violence returned with a vengeance. In spite of the peace accords, bombings and widespread civil unrest have resurrected many of the horrors that the accords aimed to suppress.¹¹

The world hoped that it could bring some semblance of peace to Northern Ireland. The architects of the peace accords were commended with the Nobel Peace Prize in October 1998, and their award was a symbol of victory for the entire nation.¹² John Hume, who along with David Trimble made up the brain

⁶ See Angela Hegarty, *Observing the Rule of Law: Experiences from Northern Ireland*, 66 *FORDHAM L. REV.* 647, 648-49 (1997) (discussing the general confusion over the conflict in Northern Ireland).

⁷ See T.R. Reid & Dan Balz, *Irish Peace Plan Wins by Big Margin*, *WASH. POST*, May 24, 1998, at A1.

⁸ See *id.*

⁹ See *id.*

¹⁰ See *id.*

¹¹ Violence erupted throughout Northern Ireland in the summer of 1998. One incident involved the bombing of three halls and a church in Hillsborough, County Down. See Louise Flanagan, *Three Orange Halls and Church Damaged in Petrol Bomb Attacks*, *IRISH TIMES*, July 15, 1998, at 6; see also Paul Cullen, *Northern Violence Continues as Shots Are Fired at RUC*, *IRISH TIMES*, July 9, 1998, at 8.

¹² See Kevin Cullen, *Two Architects of Irish Accord Win Peace Prize: Catholic, Protestant Honored for Role in Historic Settlement*, *BOSTON GLOBE*, Oct. 17, 1998, at A1.

trust behind the accords, hailed the award as “ ‘a strong expression of international support for the process and the agreement.’ ”¹³ Unfortunately, the support in Northern Ireland is not as strong. The Irish Republican Army (IRA), perhaps the best known paramilitary group, has held secret meetings and refused to turn in its stockpile of weapons.¹⁴ The years of hatred and violence are fresh in the minds of many, and the IRA considers relinquishing its weapons “a humiliating surrender in its long battle for a united Ireland.”¹⁵

Regrettably, disarmament is not the only standing issue in the wake of the peace process. Violence continues to rock the streets of Northern Ireland, and it appears that the commendations of the global community are not enough to quiet the unrest. Three months after the Nobel Prize was announced, at the dawn of a new year, accounts of continued brutality began rolling in. A Catholic family was targeted with a firebomb in a home near Belfast, just one example of the twenty-eight assaults and shootings that occurred in January 1999 alone.¹⁶ A day after the bombing, a pro-British Protestant guerilla group claimed responsibility and stated on a radio broadcast, “Further attacks will continue. The war is still on. We will start attacking the south soon with guns or bombs.”¹⁷ Although these violent outbreaks have threatened the peace process, Irish leaders are promising to “ ‘not allow those who carry out such violent acts to thwart the implementation of the Good Friday agreement.’ ”¹⁸ The high hopes of the Irish peace proponents notwithstanding, the conflict in Northern Ireland continues to be a viable emergency.

As the first days of 1999 came to an end, former IRA informer Eamon Collins was murdered. Collins, who had cracked under the pressure of a police interrogation in 1985 and betrayed many of his former IRA associates, was stabbed to death in the town of Newry.¹⁹ Collins authored a tell-all book on the IRA and its internal operations in 1997 and had been an outcast from the IRA for over a decade.²⁰ Although Collins’s murder was tragic, the two months that followed his death may prove to be both the most damaging to the

¹³ *Id.* (quoting Hume).

¹⁴ See Ray Moseley, *IRA Keeping Arms, BBC Says*, CHI. TRIB., Dec. 12, 1998, §1, at 4.

¹⁵ *Id.*

¹⁶ See *Family Escapes Firebomb Bid Amid Fears Over N. Ireland Peace*, AGENCE FRANCE-PRESSE, Jan. 28, 1999, available in 1999 WL 2537246.

¹⁷ *N. Irish Group to Wage Violent Attacks*, XINHUA ENGLISH NEWSWIRE, Jan. 29, 1999, available in 1999 WL 7914805.

¹⁸ *Family Escapes Firebomb*, *supra* note 16.

¹⁹ See Jim Dee, *One-time IRA Member Who Penned Tell-all Is Found Murdered*, BOSTON HERALD, Jan. 28, 1999, available in 1999 WL 3388739.

²⁰ See *id.*

peace process, as well as the most important to initiating reform and healing in Northern Ireland. The resurgence of a ten-year old controversy and the exposition of new evidence regarding police tactics have brought some old fears in Northern Ireland back to life.

II. TEN YEARS, TWO DEATHS, ONE POLICE FORCE

On February 12, 1989, Patrick Finucane, a well-known civil rights lawyer, was gunned down in his Belfast home.²¹ The murder, the first of a lawyer in the history of Northern Ireland's conflict, was claimed by the Ulster Freedom Fighters, a Protestant paramilitary group.²² Finucane's involvement with the Irish Republican Army, primarily as a defense lawyer, was cited as the reason for the killing.²³

Finucane's murder began to spur questions of police practices in Northern Ireland, especially those of the Royal Ulster Constabulary (RUC). Finucane was known for his distrust of the police forces, and his death came soon after he convinced an Irish trial court to require police officers involved in a 1983 killing of IRA members to testify in court.²⁴ Through the testimony, Finucane was hoping to probe into an alleged "shoot to kill" campaign the police had initiated against Irish Nationalists.²⁵ Consequently, many believe that security forces including the RUC and the British Army were involved in his murder.²⁶ The *Irish Times* went so far as to allege that the security forces "orchestrated" the murder and that Finucane's success in defending IRA members had made him a strategic target for the RUC.²⁷ As one writer notes, "He was one of the very few lawyers prepared to mount creative and effective legal challenges to the abuses of British repression in Northern Ireland. He was such a danger to their system of injustice that he was singled out for the assassin's gun."²⁸

For nearly a decade, Finucane's murder has been the center of controversy over the RUC's tactics. Reports have surfaced of harassment and threats

²¹ See *Gunmen Kill Prominent Lawyer*, ASSOCIATED PRESS, Feb. 12, 1989, available in 1989 WL 4024869.

²² See McKibben, *supra* note 3, at 3.

²³ See *id.*

²⁴ See *Gunmen Kill Prominent Lawyer*, *supra* note 21.

²⁵ *Id.*

²⁶ See Martin Flaherty, *Human Rights Violations Against Defense Lawyers: The Case of Northern Ireland*, 7 HARV. HUM. RTS. J. 87, 99 (1994).

²⁷ Richard Harvey, *A Climate of Complicity for a Murder in Ulster*, L.A. TIMES, Mar. 21, 1989, at 7.

²⁸ *Id.*

against defense lawyers by police authorities.²⁹ Catholic and Nationalist lawyers and supporters have been reluctant to complain, as the RUC is predominantly Protestant.³⁰ Solicitors that have lodged complaints have found their pleas falling on deaf ears in the government.³¹ In light of the RUC's less-than-zealous investigation of Finucane's murder, defense lawyers in Northern Ireland have continued to voice concern over the collusion and animosity within the RUC.³² In 1998, the United Nations (UN) accused the RUC of intimidating and harassing defense lawyers and undertook its own investigation of Finucane's murder.³³ The UN found that Patrick Finucane had been the recipient of death threats by the RUC and that his murder had sent a chilling effect throughout the criminal defense community in Northern Ireland.³⁴

On the tenth anniversary of his death, a report was issued that uncovered new evidence "suggesting security forces colluded in the murder of Irish solicitor Patrick Finucane."³⁵ A report by the human rights organization British Irish Rights Watch (BIRW) claimed that not only did the RUC have a hand in Finucane's murder but also that they were involved in covering up several other murders.³⁶ BIRW, along with the International Bar Association, voiced its hope that the report would lead to an independent judicial inquiry into the matter.³⁷ When the human rights community caught its breath over the new developments in the Finucane murder case, however, history repeated itself and another civil rights lawyer was killed.

On Monday, March 15, 1999, just forty-eight hours before St. Patrick's Day, Rosemary Nelson, a Catholic lawyer well-known for her advocacy of Catholic and Nationalist groups, was the victim of a car bomb.³⁸ Nelson was a renowned civil rights attorney who had defended numerous activist groups.³⁹

²⁹ See Flaherty, *supra* note 26, at 99.

³⁰ See *id.* at 103-04.

³¹ See *id.* at 102.

³² See *id.* at 104.

³³ See Brian Rohan, *U.N. Presses for RUC Murder Inquiry: Lawyers "Intimidated" by Northern Police, Says Report*, IRISH VOICE, Apr. 7, 1998, available in 1998 WL 11398342.

³⁴ See generally Gerry Moriarty, *UN Report Says RUC Intimidated Lawyers*, IRISH TIMES, Apr. 1, 1998, at 7 (commenting on several reactions to the murder in the legal community of Northern Ireland); see also Cullen, *supra* note 4, at A1 ("Lawyers here are edgy. A few have taken to carrying guns. Others have installed security systems at their homes. And some have begun altering the routes they drive to and from work.").

³⁵ *Report Gives New Light on Finucane Murder Case*, LAWYER, Feb. 15, 1999, at 7.

³⁶ See *id.*

³⁷ See *id.*

³⁸ See *Catholic Lawyer Killed by Bomb in Northern Ireland; Damage to Troubled Peace Process Feared*, DALLAS MORNING NEWS, Mar. 16, 1999, at 9A.

³⁹ See *id.*

She is perhaps best known for her involvement in Patrick Finucane's murder case and for her desire to see his true killers brought to justice.⁴⁰ Nelson had pushed for the reopening of the Finucane case, and the similarities between their lives and deaths are compelling.⁴¹ Not only did they represent similar clients, they also shared common goals. At the time of her death, Nelson was planning to bring a private action against four police officers for failing to save a Catholic man from being beaten to death by Protestant partisans.⁴² It is also important to note the alleged role of the RUC in both Finucane's and Nelson's deaths and the possible collusion by the security forces in both cases.

Nelson had been one of the most vocal opponents of the RUC and its tactics. She publicly denounced the police authorities in Northern Ireland and alleged that they had physically and verbally assaulted her.⁴³ She believed that officers in the RUC resented her because her clients were the very Catholic activists the RUC was trying to quiet.⁴⁴ Nelson, like Finucane, was often the target of death threats from the RUC, but she usually found her complaints of these abuses went unheard.⁴⁵ By winning acquittals for Nationalist paramilitaries, she had embarrassed the police in Northern Ireland, and it is not surprising that the RUC saw her as a nuisance.⁴⁶ Nelson's position as Northern Ireland's top IRA advocate made her an enemy of the police and allegations of RUC involvement in her murder have become widespread.⁴⁷ Members of Sinn Fein, the political wing of the IRA, say that the sophisticated bomb that killed Nelson could not have been constructed by the Red Hand, the group that claimed responsibility. Instead, the circumstances of the explosion indicate RUC involvement.⁴⁸

The deaths of Finucane and Nelson provide a window on particular areas of the criminal justice system in Northern Ireland that require reform in order to make peace a reality. As both murders are part of the overall criminal justice problems in terrorism-plagued Northern Ireland, an examination of that

⁴⁰ See generally Malachi O'Doherty, *Lawyer Saw RUC as the Enemy of Catholics*, SCOTSMAN, Mar. 16, 1999, available in 1999 WL 12631382 (describing Nelson's public criticism of the RUC).

⁴¹ See de Bréadún, *supra* note 5, at 6; see also Cullen, *supra* note 4, at A1 (explaining how Nelson's zeal in reopening the Finucane investigation made her the most recognizable IRA lawyer in Northern Ireland).

⁴² See O'Doherty, *supra* note 40.

⁴³ See Nelson, *supra* note 2, at 16.

⁴⁴ See *id.*

⁴⁵ See generally *id.* (giving Nelson's personal statement of the threats to her work and life).

⁴⁶ See Cullen, *supra* note 4, at A1.

⁴⁷ See *id.*

⁴⁸ See *id.*

criminal justice system may offer a better understanding of the lawyers' deaths.

One of the most important areas of the system to be corrected concerns the ongoing problems with police interrogation and detention in Northern Ireland. The oppressive detention, interrogation, and torture that RUC officers have become famous for are major impediments to securing justice and peace in Northern Ireland.⁴⁹ Reports of police misconduct need to be made public,⁵⁰ and the relationship between defense lawyers and police interrogators needs to change.⁵¹ Nelson herself stated that the animosity and harassment towards defense lawyers is a by-product of "the conditions under which they interview clients detained under emergency laws . . . I am never allowed to be present while my clients are interviewed."⁵² Threats made against defendants, isolation of suspects, and hostility toward defense lawyers are common practices by the RUC, and the power and abuses in the police interrogation process in Northern Ireland are some of the reasons that the Finucane and Nelson murders spur suspicion.⁵³ As such, an examination of police interrogation practices in Northern Ireland may shed light on both murder cases and lend support to the fact that Nelson's murder may reignite some of the abuses and tactics that the pending peace agreement hopes to curtail.

III. PROBLEMS IN POLICE INTERROGATION TECHNIQUES

The criminal justice system in Northern Ireland is a result of the conflict that engulfs the country, and police interrogation is one area in which the British have maintained "emergency powers" in Northern Ireland. Police, in response to terrorist outbreaks, have assumed more power in their interrogation tactics. The constables of Northern Ireland have resorted to forms of torture such as food and sleep deprivation while carrying out interrogations.⁵⁴ Police commonly use intimidation to elicit what they hope to be reliable

⁴⁹ See Editorial, *Justice From Injustice: Ulster Policing Must Change*, SYRACUSE HERALD-J., May 7, 1998, at A16.

⁵⁰ See *id.*

⁵¹ See Kristin Gazlay, *U.N. Fears Lawyer's Death Erodes Law in Northern Ireland*, PLAIN DEALER (Cleveland), Mar. 18, 1999, at 5A (quoting UN investigator Dato Param Kumarasway on how Nelson's death "is going to be a further blow to the independence of defense lawyers in Northern Ireland").

⁵² Nelson, *supra* note 2, at 16.

⁵³ See Flaherty, *supra* note 26, at 99.

⁵⁴ See David B. Kopel & Joseph Olson, *Preventing a Reign of Terror: Civil Liberties Implications of Terrorism Legislation*, 21 OKLA. CITY U. L. REV. 247, 260 (1996).

confessions.⁵⁵ The effect of these practices need not be explained in any detail. It is well accepted that interrogation is a mentally and physically draining experience. Detaining a suspect for interrogation restricts the suspect's freedom and gives the interrogator a significant psychological advantage.⁵⁶ The stress and pressure police can invoke through custodial interrogations lend substantial aid to investigations⁵⁷ and are a means to help the RUC curtail the widespread terrorism in Northern Ireland.

Accounts of police interrogation abuses are widespread. In one account, a convicted terrorist claimed he was beaten during his interrogation by the police and confessed as a result. After over a decade in prison, he stated that he "just told the police what [he] thought they wanted to hear."⁵⁸ The man was convicted based solely on his confession and was denied access to legal counsel throughout the questioning. Many trials in Northern Ireland reveal similar tales, and numerous alleged terrorists have been convicted on confessions they say were forced by violence.⁵⁹ Some defendants have even claimed outright torture, which has led groups such as Amnesty International to accuse the Northern Ireland police forces of human rights violations.⁶⁰

One of the primary justifications for using these practices is the general character of terrorist activity. Terrorism, especially in Northern Ireland, is grounded in the belief that one's political views are the only correct views. It is a political weapon that survives on secrecy and loyalty. Not surprisingly, this results in less than cooperative suspects for police to deal with.⁶¹ To make matters worse, defense lawyers are often accused of discouraging their clients from cooperating with the police.⁶² The strife in Northern Ireland is an "us against them" situation, and distrust of the police by suspects is substantial.

Radical fear, however, is perhaps the only force stronger than radical loyalty. Suspects are usually terrified of police and thus are vulnerable to police abuses.⁶³ Police forces in Northern Ireland undoubtedly play on this

⁵⁵ See *id.* at 259.

⁵⁶ See Mark Berger, *Legislating Confession Law in Great Britain: A Statutory Approach to Police Interrogations*, 24 U. MICH. J.L. REFORM 1, 24 (1990).

⁵⁷ See *id.*

⁵⁸ Craig R. Whitney, *Faith in British Justice Is Shaken by Forced Confessions and False Jailings*, N.Y. TIMES, June 2, 1991, § 1, at 10.

⁵⁹ See *id.*

⁶⁰ See Kopel & Olson, *supra* note 54, at 262.

⁶¹ See COMMITTEE ON THE ADMINISTRATION OF JUSTICE, RIGHT OF SILENCE DEBATE: THE NORTHERN IRELAND EXPERIENCE 3 (1994).

⁶² See Flaherty, *supra* note 26, at 99.

⁶³ See COMMITTEE ON THE ADMINISTRATION OF JUSTICE, *supra* note 61, at 4.

during interrogations, and many of their tactics provide the means to take advantage of terrorist suspects' fears.

To understand why and how the police forces of Northern Ireland use such questionable tactics, it is important to recognize what factors foster such practices. Certain theoretical assumptions, procedural changes, and judicial support appear to justify interrogation abuses by police in Northern Ireland. The theories embraced by police as part of their job are adopted by the courts and Parliament, and the entire criminal justice system of Northern Ireland works as a collective whole to carry out the emergency measures necessary to combat terrorism.

IV. THE CRIME-CONTROL MODEL

Adopting methods which arguably violate human rights, a police agency and its individual officers must be willing to embrace the "crime-control model" of criminal procedure. The crime-control model "is based on the proposition that the repression of criminal conduct is by far the most important function to be performed by the criminal process."⁶⁴ Success for a crime-control model system is defined by a high conviction rate and is advanced by a speedy and final judicial process. Each stage in the process is a means to secure a conviction.⁶⁵ The crime-control model recognizes that confessions by suspects are the best evidence available to the police. As such, proponents of the model oppose strict guidelines for police interrogation methods and simply count on the "good faith" efforts of the police to obtain admissions of guilt.⁶⁶

In Northern Ireland, police have adhered to the crime-control model to justify emergency measures. By doing away with technical rules and procedures meant to protect civil rights, the emergency provisions in Northern Ireland help police function more efficiently.⁶⁷ This position is perhaps best summed up by the following:

We think that it is justifiable to take the risk that occasionally a person who takes no part in terrorist activity and has no special knowledge about terrorist organizations should be

⁶⁴ Herbert L. Packer, *Two Models of the Criminal Process*, 113 U. PA. L. REV. 1, 9 (1964).

⁶⁵ *See id.* at 10-11.

⁶⁶ *See id.* at 32-33.

⁶⁷ *See* JOHN FINN, *CONSTITUTIONS IN CRISIS: POLITICAL VIOLENCE AND THE RULE OF LAW* 91 (1991).

detained for such a short time . . . rather than that guilty men should escape justice because of technical rules about arrest.⁶⁸

The adoption of the crime-control model by the Northern Irish police forces is now well established. The model fits well into a system that one author describes as "more geared to securing convictions than to insuring that justice is done."⁶⁹ The adoption of this mentality by the police in Northern Ireland has caused both defense lawyers and the world community to lack "confidence in the ability of the government to dispense justice in a fair and equitable manner."⁷⁰

Of course, the crime-control model cannot be effectively maintained by the police alone. For the model to succeed, the entire criminal justice system must be coherent, which requires the courts to adopt the same philosophy as the police. The courts in Northern Ireland have seemingly done so, and practices that would appear to be basic violations of civil rights are now overlooked by the courts to further the goals of the crime-control model. Additionally, defense lawyers and defendants alike have found little help from the courts in policing abuses by the RUC.⁷¹

In one case, *Regina v. Harper*, the defendant was arrested in connection with the murder of a British soldier. The attack "bore all the hallmarks of an IRA murder."⁷² After his arrest, the defendant offered two written statements, which were the only evidence used to convict him. The defendant claimed that the police denied him access to his attorney and that the confessions were obtained through oppressive techniques.⁷³ On appeal, the court found that even if the defendant's allegations were true, it was nonetheless up to the trial judge to decide whether the confessions should be admitted into evidence. Rather than adopt a bright line rule requiring police to always provide counsel during questioning, the court of appeal found it better to allow the trial court to determine what should be admitted "in order to avoid unfairness to the accused or otherwise in the interests of justice."⁷⁴ As is mandated by the crime-control model, the British court favored just results (i.e. conviction) over strict procedural rules.

⁶⁸ *Id.*

⁶⁹ Whitney, *supra* note 58, at 10.

⁷⁰ Moriarty, *supra* note 34, at 7.

⁷¹ See Flaherty, *supra* note 26, at 103 (discussing the limits of judicial review of police practices in Northern Ireland).

⁷² *Regina v. Harper*, 1990 N. Ir. 28, 30.

⁷³ See generally *id.* (giving the details of appellant's statements).

⁷⁴ *Id.* at 48.

A second Northern Ireland case makes the acceptance of the crime-control model even more apparent. In *Regina v. Dillon*, the court faced another allegation of abusive police interrogation procedures.⁷⁵ The defendant claimed that he had been subjected to lengthy questioning, deceit by the police, and interrogation conduct that weakened his mental state. He asserted that these factors tainted the reliability of his statements made to the police.⁷⁶

In response to the defendant's allegations, the court cited with approval the goals forwarded by the Diplock Commission, a body established to deal with terrorism in Northern Ireland. The commission's report found that "the detailed technical rules and practice as to the 'admissibility' of inculpatory statements by the accused as they are currently applied in Northern Ireland are hampering the course of justice in the case of terrorist crimes."⁷⁷ The court expounded on this view and stated that "confessions made by [terrorist] suspects after periods of questioning . . . should not be excluded from evidence because they were involuntary in the somewhat technical sense of the common law."⁷⁸ The court was prepared to accept the statement as long as it was given voluntarily. The court further supported acceptance of the crime-control model as in sync with the intent of Parliament in adopting the Emergency Provisions Acts to combat terrorism.⁷⁹

The *Dillon* court, however, went further. Not only did the court reject common law doctrines that would make the evidence inadmissible, it also gave the police a legal "green light" to continue abusive interrogation practices. The defendant in *Dillon* claimed that the police showed him postmortem photographs of terrorist victims to weaken his resolve.⁸⁰ The court recognized that although this type of practice was undesirable, it was not a sufficient ground to exclude the defendant's statement from evidence.⁸¹ The use of the postmortem photographs was not the prevailing cause of the defendant's confession, and the court cited a problematic principle in British jurisprudence. The court reiterated the stance that "the doing of an act by the police which should not be done does not itself make a statement later obtained inadmissible."⁸² While this statement leaves review of interrogation practices to a case-

⁷⁵ *Regina v. Dillon and Another*, 1984 N. Ir. 292, 292.

⁷⁶ *See id.*

⁷⁷ *Id.* at 299 (quoting Report of the Diplock Commission, para. 87).

⁷⁸ *Id.*

⁷⁹ *See id.* at 301.

⁸⁰ *See id.* at 310.

⁸¹ *See id.* at 314.

⁸² *Id.* at 314-15.

by-case analysis, it once again proves the judiciary's support for the crime-control model in Northern Ireland.

V. THE DIPLOCK COURTS

One of the most controversial anti-terrorism measures is the adoption of the Diplock Courts in Northern Ireland. The courts are a result of the Diplock Commission, a group appointed to develop measures to combat terrorism.⁸³ The Diplock Courts try defendants in front of a judge alone, without the use of a jury.⁸⁴ The justification for the courts is obvious. Terrorism breeds fear, and both juries and witnesses face intimidation in terrorist trials. Further, the conflict in Northern Ireland is one grounded in prejudice and hatred, factors that can undoubtedly affect the integrity of a jury.⁸⁵ Unfortunately, the inherent evils of the Diplock system have led to widespread criticism of the courts.

Although there are concerns over the process and evidentiary rules of Diplock Courts, of primary importance is the role of these courts in police interrogation practices. The Diplock Courts, for all intents and purposes, live and die by the confession. Admissions by defendants are the principal evidence in roughly eighty percent of Diplock Court cases. Confessions are considered to be "high-grade evidence and difficult to controvert."⁸⁶ Once an admission is entered into evidence, an acquittal is a virtual impossibility.⁸⁷

The importance of confessions was apparent in a 1991 case. In *Re Madden's Application*, the defendant, charged with terrorist offenses, asserted that his statement to the police was involuntary.⁸⁸ He claimed that the police physically and verbally abused him, and, as a result, his statements should be excluded at trial.⁸⁹ The defendant sought to obtain the notes taken by the police during the interrogation to support his allegations. The Director of Public Prosecutions, of course, refused this request.⁹⁰ The court found for the Director, holding that the government was under no obligation to reveal

⁸³ See John D. Jackson & Sean Doran, *Conventional Trials in Unconventional Times: The Diplock Court Experience*, 4 CRIM. L.F. 503, 504 (1993) [hereinafter *Conventional Trials*].

⁸⁴ See *id.* at 503.

⁸⁵ See GERARD HOGAN & CLIVE WALKER, *POLITICAL VIOLENCE AND THE LAW IN IRELAND* 101 (1989).

⁸⁶ *Id.* at 115.

⁸⁷ See *id.* at 112.

⁸⁸ *Re Madden's Application*, 1991 N. Ir. 14, 15.

⁸⁹ See *id.*

⁹⁰ See *id.* at 15.

interrogation notes taken by the police. The only basis for the court's ruling was that "[i]t has never been the practice at this stage of the proceedings on foot of a criminal charge to furnish to the defence copies of interview notes."⁹¹ While this may be a correct application of the law, the consequence is apparent. Without proof to support his claim, the defendant is left with only his word against that of the police. Consequently, relying solely on statements made by defendants may result in the Diplock Courts overlooking viable claims of police misconduct.

The reliance on confessions stems partly from the crime-control model discussed above. The courts, as mentioned in *Regina v. Dillon* above, are built on the notion that "common law rules on admissibility [are] 'highly technical' and 'hamper[ing] the course of justice.'" ⁹² The Diplock Courts have consistently lowered the standards for the admissibility of statements in order to curtail terrorism.⁹³ Lowering these standards has encouraged police forces to continue abusing the interrogation process, and the few restrictions remaining on police conduct do not necessarily ensure that improper confessions will be excluded from evidence.⁹⁴

The prominence of police abuses in the interrogation process is by no means unknown to the Diplock Courts. The courts were established in 1973, and statistics taken between 1976 and 1986 indicate that physical abuse during interrogation was common practice during the height of the Diplock Courts.⁹⁵ The courts were accused of ignoring "dubious police interrogation practices that routinely produced a prosecutor's ticket to conviction in the shape of a confession."⁹⁶ The Diplock Courts have accepted into evidence confessions obtained through police coercion and through breach of administrative guidelines.⁹⁷

There is a concern that the Diplock Courts have become "hardened" by the cases they have faced over the past twenty-five years. As more complaints of police abuse are filed, the Diplock judges are likely to tire "of the same old

⁹¹ *Id.*

⁹² HOGAN & WALKER, *supra* note 85, at 112.

⁹³ See *Conventional Trials*, *supra* note 83, at 505.

⁹⁴ See HOGAN & WALKER, *supra* note 85, at 116; see also *Conventional Trials*, *supra* note 83, at 510 (noting that the effect of the Diplock system cannot be considered in isolation but must look at the effects on the whole criminal justice system).

⁹⁵ See HOGAN & WALKER, *supra* note 85, at 118.

⁹⁶ John Jackson & Sean Doran, *Juries and Judges: A View From Across the Atlantic*, CRIM. JUST., Winter 1997, at 15, 17 (1997) [hereinafter *Juries and Judges*].

⁹⁷ See HOGAN & WALKER, *supra* note 85, at 113.

lines of defense."⁹⁸ Although statistics do not indicate that the Diplock Courts have become "hardened," judges still must deal with substantial societal pressure to obtain convictions. As such, after hearing myriad claims of alleged police abuses, judges will more readily accept prosecutorial evidence.⁹⁹ With the support of the court system, police in Northern Ireland have some faith that their tactics will be supported as long as they get results.

VI. DELAYING ACCESS TO COUNSEL

Provisions adopted in the 1996 Emergency Provisions Act (the Act) cause further concern in regards to police interrogations and the role of defense lawyers. While the Act allows for the traditional right to counsel, it limits that right. The Act provides that a "person who is detained under the terrorism provisions and is being held in police custody shall be entitled, if he so requests, to consult a solicitor privately."¹⁰⁰ The Act further requires that a person be informed of this right and that a request for counsel be answered as soon as practicable.¹⁰¹ The problem stems, however, from the discretion that police are given in this area. The Act allows an officer to delay access to counsel for the accused for various reasons. If the officer reasonably believes that the exercise of the right to counsel "will lead to interference with or harm to evidence connected with a scheduled offence," or "will lead to the alerting of any person suspected of having committed such offence but not yet arrested for it," or "will make it more difficult to prevent an act of terrorism," he may delay providing the accused with requested counsel.¹⁰² While the desire to prevent future terrorist acts is understandable, the amount of leeway left to police officials may be too broad. If an officer can deny a request for counsel on suspicion alone, the potential for abuse is obvious.

Some authors reiterate that international human rights mandate a right to immediate access to counsel of one's choice.¹⁰³ The right is set forth by the

⁹⁸ *Juries and Judges*, *supra* note 96, at 18.

⁹⁹ See HOGAN & WALKER, *supra* note 85, at 103.

¹⁰⁰ Northern Ireland (Emergency Provisions) Act, 1996, ch. 22, § 47(1). The Act is one of the most recent in a long line of legislation adopted by Parliament to combat terrorism in Northern Ireland. See, e.g., Emergency Provisions (Northern Ireland) Act, 1991, ch. 24; Prevention of Terrorism (Temporary Provisions) Act, 1989, ch. 4.

¹⁰¹ Northern Ireland (Emergency Provisions) Act, 1996, ch. 22 § 47(2), (4).

¹⁰² *Id.* § 47(8).

¹⁰³ See, e.g., Martin S. Flaherty, *Interrogation, Legal Advice and Human Rights in Northern Ireland*, 27 COLUM. HUM. RTS. L. REV. 1, 12 (1995).

UN and represents a practice that is both wide-spread and cherished.¹⁰⁴ The UN's stance on this is clear-cut: "All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality."¹⁰⁵ International case law further supports this right.¹⁰⁶

The situation in Northern Ireland, however, is indicative of how easily this right can be pared down. Although the delay to legal access is problematic, the real problem is that interrogation continues, often via improper methods, during the delay.¹⁰⁷ This was one of Rosemary Nelson's most vehement criticisms of the RUC and its tactics.¹⁰⁸ In addition, the police authorities in Northern Ireland require a detained suspect to indicate a specific firm or solicitor with which he would like to speak.¹⁰⁹ Since the police can delay access to a lawyer if they suspect said access will alert others involved in terrorist activities, Northern Ireland suspects have their hands tied. If the suspect chooses a friend or relative to act as legal counsel, the police may have the justification they need to delay access. Further, it has already been discussed that police authorities in Northern Ireland often intimidate solicitors involved in defending alleged terrorist.¹¹⁰ With this type of control over both detainees and their attorneys, the police in Northern Ireland are given a distinct advantage in the interrogation process. As Parliament, the courts, and the police continue to work together to fight terrorism, police interrogation tactics should be watched closely.

VII. CONCLUSION

Nelson's death, perhaps due to its proximity to the re-opening of the Finucane investigation, has inspired demands for inquiry and reform in the RUC. Nationalists are looking to disband the RUC and soften the effects its

¹⁰⁴ *See id.*

¹⁰⁵ *Id.* at 17 (quoting U.N., Report of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/Conf. 144/28, at 127 (1990)).

¹⁰⁶ *See generally id.* at 17-18 (tracking the development of the right to counsel in international case law).

¹⁰⁷ *See id.* at 6-7.

¹⁰⁸ *See generally* Nelson, *supra* note 2, at 16 (describing personal experience with improper interrogation methods).

¹⁰⁹ *See* LAWYERS COMMITTEE FOR HUMAN RIGHTS, HUMAN RIGHTS AND LEGAL DEFENSE IN NORTHERN IRELAND 78 (1993).

¹¹⁰ *See* Flaherty, *supra* note 103, at 9.

ninety-three percent Protestant police force has had on the Catholic population.¹¹¹ The RUC itself has called on the FBI to aid in its investigation of the Nelson murder, and efforts are being made to recruit Catholic officers and develop new peace-keeping techniques.¹¹² The UN has recommended that Northern Ireland officials work to eradicate the hatred between police and defense lawyers and that the sections of the 1996 Emergency Provisions Act allowing a delay in access to counsel be amended to allow defense lawyers to be present during police interrogations.¹¹³ In late March 1999, representatives from Amnesty International, BIRW, and the Committee on the Administration of Justice met with officials from the British government and Northern Ireland. The groups requested independent inquiries into both Finucane's and Nelson's murders, as well as an inquiry into police conduct toward lawyers.¹¹⁴

The question that now remains is whether the police abuses in Northern Ireland actually will be investigated and reformed. Many see quelling fear and suspicion of the police as vital to the peace process.¹¹⁵ United States' leaders have joined in the fight, and all involved hope that the political overtones of the peace process will not be an invincible impediment.¹¹⁶ The fact remains that any reform must start at ground zero. Changes in the police atmosphere in Northern Ireland are the only means to ensure that lawyers will be able to work free of intimidation and that police interrogation practices will take a suspect's rights into consideration.¹¹⁷ As the world waits for the British government to make headway in the Finucane and Nelson cases, the people of Northern Ireland will have to hope that the fight against RUC abuses started by the two lawyers will continue. Exploring and reforming police interrogations and collusion within the RUC is merely a starting point in a long journey ahead. The fears and suspicions that have regained life in the wake of Rosemary Nelson's death are reason enough for that journey to start now.

¹¹¹ See *Northern Ireland's Police: The Murder of Rosemary Nelson and its Aftermath Underlines the Necessity for Reform of the Royal Ulster Constabulary*, ECONOMIST, Mar. 20, 1999, at 17.

¹¹² See generally *id.* (discussing the murder of Rosemary Nelson and the need to reform the Ulster Constabulary).

¹¹³ See Moriarty, *supra* note 34, at 7.

¹¹⁴ See *Amnesty International: Northern Ireland*, M2 PRESSWIRE, Mar. 26, 1999, available in 1999 WL 14066729.

¹¹⁵ See de Bréadún, *supra* note 5, at 6.

¹¹⁶ See *id.*

¹¹⁷ See *Amnesty International*, *supra* note 114.

POSTSCRIPT¹¹⁸

When the preceding article was originally authored, peace in Northern Ireland was a distant dream. In the fall of 1999, that dream came closer to realization. In November 1999 a provisional Northern Irish government was created.¹¹⁹ The government was headed by a cabinet composed of both Catholic and Protestant leaders.¹²⁰ By the beginning of December 1999 the people of Northern Ireland regained the self-government they had been denied for so long.¹²¹ Although the governments of Northern Ireland and the Republic of Ireland were to remain separate, representatives from both nations met in December 1999 to discuss a future of good-will and cooperation between the two.¹²²

While these developments brought hope to the people of Northern Ireland, they did not bring an end to the problems the nation would still face. Catholics and Protestants are still somewhat suspicious of each other,¹²³ and the continuing problems with the Irish Republican Army (IRA) are threatening the peace process.¹²⁴ More importantly, as contemplated by the preceding article, problems with the police authority in Northern Ireland remain a viable issue.

All parties to the Northern Ireland situation, as well as international bodies, recognize that the police forces in the province must undergo substantial

¹¹⁸ The author feels this postscript is necessary to mention the recent events in Northern Ireland. Although the continuing peace process does not change the deep-seated problems in the police forces in Northern Ireland, it does put the problem in a new context.

¹¹⁹ See T.R. Reid, *N. Ireland Blocs Form Government; IRA Backers, Unionists Included in Cabinet*, WASH. POST, Nov. 30, 1999, at A1.

¹²⁰ See Kevin Cullen, *Sinn Fein Joins Ulster Cabinet; Milestone Reached*, BOSTON GLOBE, Nov. 30, 1999, at A1 (describing the creation of the new cabinet composed of both Catholics and Protestants).

¹²¹ See Ray Moseley, *New Era for Northern Ireland; After 25 Bloody Years, Province's People Regain Self-Determination*, CHIC. TRIB., Dec. 3, 1999, § 1, at 1 (discussing Britain's relinquishment of power to the people of Northern Ireland, and the Irish Republic's abandonment of its claim to the province).

¹²² See *Two Irelands Take Step Toward Peace*, WASH. POST, Dec. 14, 1999, at A32; see also *Island's 2 Governments Hold 1st Meeting*, CHIC. TRIB., Dec. 14, 1999, § 1, at 8 (citing the "era of cross-border cooperation" established by the governments of Northern Ireland and the Republic of Ireland).

¹²³ See Kevin Cullen, *Sinn Fein Says British Bugged Talk With IRA*, BOSTON GLOBE, Dec. 9, 1999, at A2 (reporting on Sinn Fein president Gerry Adams accusing British intelligence of spying on him).

¹²⁴ See Kevin Cullen, *Power Sharing in Ulster Advances; Condition on IRA Added*, BOSTON GLOBE, Nov. 28, 1999, at A1 (explaining the Ulster Unionists stance that they would abandon any new government if the IRA did not disarm by February 2000).

reform.¹²⁵ Years of bad blood and distrust of the Royal Ulster Constabulary were hardly erased when the new government was born. Consequently, as part of the peace process, British and Irish officials undertook to reform Northern Ireland's police force.¹²⁶ Possible reforms now being adopted include changing the name of the police authority to the "Police Service of Northern Ireland," and creating programs to recruit more Catholics into the police service.¹²⁷ Although these plans had yet to be realized at the time this article was published, they at the very least indicate an understanding of police problems by the new government of Northern Ireland.

These proposed reforms and the new government are symbols of hope and optimism to the people of Northern Ireland, but the ink is not yet dry on the peace accords. The peace process remains in its infant stage, and tensions still run high. By the end of the first thirty days of the year 2000, peace remained a hope, not a reality.¹²⁸ The IRA continues to protest disarming itself, and in late January 2000 Protestant leaders threatened to withdraw from the new government if the IRA dispute could not be resolved.¹²⁹ Consequently, British officials began to contemplate suspending the new government.¹³⁰

Ultimately, peace in Northern Ireland remains an uncertainty, and the world can only watch and hope that the decades of hatred and violence will give way to a bright and peaceful future.

¹²⁵ See generally Michael Kilian, *Britain Unveils Sweeping Reforms of Ulster Police; Changes Would Triple Presence of Catholics*, CHIC. TRIB., Sept. 10, 1999, § 1, at 5 (outlining some of the reforms suggested by British officials); *60 Minutes: Can Northern Ireland Police Enforce Justice for All?* (CBS television broadcast, Nov. 21, 1999), available in 1999 WL 16209155 (discussing the inherent problems in Northern Ireland's police force, as well as the case of Rosemary Nelson).

¹²⁶ See Kilian, *supra* note 125, at 5.

¹²⁷ Kevin Cullen, *British Adopt Most of Recommendations for Ulster Police Force; Changes Intended to Help Recruit More Catholics*, BOSTON GLOBE, Jan. 20, 2000, at A11; see also *Britain: Strip 'Royal' From Ulster Police*, CHIC. TRIB., Jan. 20, 2000, § 1, at 16 (discussing "legislation designed to transform the predominantly Protestant Royal Ulster Constabulary into a new Police Service of Northern Ireland that would enjoy greater support from Catholics").

¹²⁸ See T.R. Reid, *N. Ireland Accord Threatened Again; IRA Refusal to Disarm Angers Unionists*, WASH. POST, Feb. 1, 2000, at A9.

¹²⁹ See *id.*; see also Kevin Cullen, *Panel to Report IRA Still Armed*, BOSTON GLOBE, Jan. 29, 2000, at A1 (discussing a forthcoming report that the IRA was standing by its refusal to disarm).

¹³⁰ See Reid, *supra* note 128, at A9.