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Improper Interference: The Perils of Defending Suspected Terrorists in Northern Ireland

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IMPROPER INTERFERENCE: THE PERILS OF DEFENDING SUSPECTED TERRORISTS IN NORTHERN IRELAND

Una Lucey

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I. INTRODUCTION

In February 1989, Patrick Finucane, a prominent Irish defense lawyer, was killed in his Belfast, Northern Ireland home.¹ Masked gunmen murdered Finucane as he sat at Sunday dinner with his wife and three young children.² The following day, the Ulster Freedom Fighters (UFF), a loyalist paramilitary group, claimed responsibility for the execution, alleging that Finucane had been a member of the Provisional Irish Republican Army (PIRA).³ At the Coroner's Inquest in September 1990, a police superintendent acknowledged that there was no basis for the claim that Mr. Finucane was a member of the PIRA, finding that he was a "law-abiding citizen going about his professional duties in a professional manner."⁴ However, Mr. Finucane's involvement with the Irish Republican Army (IRA), primarily as a defense lawyer, was cited as the reason for the

¹ See Martin Flaherty, *Human Rights Violations Against Defense Lawyers: The Case of Northern Ireland*, 7 HARV. HUM. RTS. J. 87, 87 (1994).

² *Id.*

³ *Id.*

⁴ *Id.*

killing.⁵ Patrick Finucane was the first lawyer murdered as a result of the conflict in Northern Ireland.⁶

Ten years later, on March 15, 1999, Rosemary Nelson, another prominent Irish civil rights lawyer, died outside her Lurgan home as a result of a car bomb.⁷ Just prior to her death, Mrs. Nelson filed an official complaint alleging that members of the Royal Ulster Constabulary (RUC) had assaulted her.⁸ The alleged assault occurred when she tried to represent her clients' interests in the Garvaghy Road case during the 1997 marching season. Mrs. Nelson had received credible death threats that were known to the RUC, and many human rights organizations had urged the British Government to ensure her safety; however, she was never offered government protection.⁹ These violent deaths and the threats that preceded them illustrate the problems faced by Northern Ireland's criminal defense lawyers who represent clients suspected of terrorist activities.

This paper will examine allegations that the RUC routinely intimidate, harass, and threaten defense lawyers who represent terrorist suspects. Part II will provide a historical background on the formation of the independent Irish Free State, later called the Republic of Ireland, and Britain's retention of six counties in the Ulster province which comprise the modern-day Northern Ireland. Part II will also describe the religious and civil rights problems in Northern Ireland that gave rise to the formation of paramilitary terrorist groups, and the special emergency laws enacted by Parliament in response to terrorist activities in Northern Ireland. Part III will discuss the role of the police in Northern Ireland and complaints about the RUC. These complaints include allegations of RUC partisanship with

⁵ Howard J. Russell, *New Death Breathes Life Into Old Fears: The Murder of Rosemary Nelson and the Importance of Reforming the Police in Northern Ireland*, 28 GA. J. INT'L & COMP. L. 199, 202 (1999).

⁶ *Id.* at 199.

⁷ Elisa Massimino, *Paying the Ultimate Price for Human Rights: The Life and Death of Rosemary Nelson*, 27 FALL HUM. RTS. 3, 4 (2000).

⁸ *See id.*

⁹ *Id.* Amnesty International, British Irish Rights Watch, Committee on Administration of Justice, Human Rights Watch, and the Lawyers Committee for Human Rights urged the British government to ensure Rosemary Nelson's safety. Dato' Param Cumaraswamy, the United Nations Special Rapporteur on the Independence of Judges and Lawyers, personally interviewed Rosemary Nelson in 1997, and wrote to the British government expressing concerns about her safety.

Protestant paramilitary groups and also charges that police routinely commit human rights violations against suspects detained under the emergency laws. Defense lawyers allege that they are regularly harassed, threatened, and intimidated by the police, and that members of the RUC may have participated in the killings of Patrick Finucane and Rosemary Nelson. Part IV will propose implementing the reforms suggested by the United Nations Special Rapporteur on the Independence of Judges and Lawyers, and the recommendations of Human Rights Watch. These reforms, which will improve policing in Northern Ireland and check RUC abuse of defense lawyers, are necessary if Britain is to uphold its responsibility to protect human rights.

II. BACKGROUND

The British presence in Ireland dates from the reign of Henry II, but when England became a Protestant nation under Henry VIII, Ireland remained predominantly Catholic.¹⁰ Under British rule, large numbers of Protestants settled in Northern Ireland, leading to religious tensions between the two regions. Britain's "plantation scheme" transplanted loyal British subjects, mostly Scottish Presbyterians and English Anglicans, to Ulster.¹¹ The Crown assured their loyalty with money, generous land grants, and military power to suppress Catholic resistance.¹² Britain controlled Ireland's economic resources, and Protestants held political and economic power throughout the region.¹³

In this climate of repression, Catholics began a movement for nationalism, and ultimately the IRA was formed by militant Irish-Catholics to wage war against the British presence in Ireland.¹⁴ Formed prior to the partition of Ireland, the IRA is illegal in the United Kingdom as well as in the Republic of Ireland.¹⁵ The IRA is a secret paramilitary organization that

¹⁰ See Alexander C. Linn, *Reconciliation of the Penitent: Sectarian Violence, Prisoner Release, and Justice Under the Good Friday Peace Accord*, 26 J. LEGIS. 163, 164 (2000).

¹¹ Christine Taylor, *Northern Ireland: The Policing of Domestic Violence in Nationalist Communities*, 10 WIS. WOMEN'S L.J. 307, 326 (1995).

¹² *Id.* at 327.

¹³ *Id.*

¹⁴ Linn, *supra* note 10, at 165.

¹⁵ *Ireland v. United Kingdom*, 2 Eur. Ct. H.R. (ser. A) 25, 31 (1979-80).

emerged during the struggle for independence to oppose Britain's presence in Ireland.¹⁶ The IRA does not accept the existence of Northern Ireland as part of the United Kingdom.¹⁷

A. *Home Rule and the Partition of Ireland*

Historically, Northern Ireland has been a society divided between Catholics who consider themselves Irish and Protestants who consider themselves British.¹⁸ Following World War I, the Republicans achieved their goal of independence for part of Ireland.¹⁹ The British Parliament passed legislation creating the Irish Free State, which had self-governing status within the British Commonwealth.²⁰ However, the law provided six counties in the province of Ulster with the option to remain part of the United Kingdom.²¹ In 1922, those six counties opted out and Ireland was partitioned,²² with the twenty-six southern and western counties falling within "Home Rule" jurisdiction.²³ The counties subject to Home Rule were essentially Nationalist and historically sought greater independence from Britain.²⁴ The six counties contained a majority of Protestants loyal to Britain and remained within the direct rule of Parliament.²⁵

The island was divided along religious lines, with the predominantly Catholic section falling within the Free State and the predominantly Protestant north remaining under British rule.²⁶ At the time of the partition, the northern counties were approximately two-thirds Protestant and one-third Catholic.²⁷ Today, Catholics comprise a larger percentage of the pop-

¹⁶ See Linn, *supra* note 10, at 165.

¹⁷ See *Ireland v. United Kingdom*, 2 Eur. Ct. H.R. at 31.

¹⁸ Brian P. White, *Walking the King's Highway: Peace, Politics and Parades in Northern Ireland*, 1 SAN DIEGO INT'L L.J. 175, 204-05 (2000).

¹⁹ See Linn, *supra* note 10, at 166.

²⁰ See *Ireland v. United Kingdom*, 2 Eur. Ct. H.R. at 31.

²¹ *Id.*

²² Elizabeth Kondonijakos, *The Reasonable Suspicion Test of Northern Ireland's Emergency Legislation: A Violation of the European Convention of Human Rights*, 3 BUFF. J. INT'L L. 99, 102 (1996).

²³ *Ireland v. United Kingdom*, 2 Eur. Ct. H.R. at 31.

²⁴ Linn, *supra* note 10, at 165.

²⁵ See Carol Daugherty Rasnic, *Northern Ireland's Criminal Trials Without Jury: The Diplock Experiment*, 5 ANN. SURV. INT'L & COMP. L. 239, 241 (1999).

²⁶ *Id.* at 240.

²⁷ White, *supra* note 18, at 217.

ulation in the North, but they retain their minority status.²⁸ The twenty-six counties of the Free State left the British Commonwealth and became the Republic of Ireland in 1949.²⁹ The six northern counties remained part of the United Kingdom, with a separate government and parliament in addition to twelve seats in the British Parliament.³⁰ With the exception of a few matters, the Northern Ireland Parliament retained authority over the six counties until 1972, when the British authorities resumed direct rule of the province.³¹

Two factions seek to define Northern Ireland's political and cultural identity, Unionist and Nationalist.³² Unionists are Protestant descendants of the British immigrants who came to Ireland during British rule.³³ This majority, traditionally aligned with England, has no desire to become part of the Free State.³⁴ Staunch Unionists, called Loyalists, make up the hard line fringe that uses violence and terrorism to gain its political ends.³⁵

Nationalists are the Catholic minority who desire reunification with the rest of Ireland.³⁶ "Historically, Ulster's Catholics suffered discrimination and repression by Protestants who controlled the political and economic resources."³⁷ The memory of their suffering makes Nationalists unwilling to accept British rule.³⁸ Political extremists in the Nationalist camp are called

Colonial history has left Northern Ireland with a legacy shared by many of the world's trouble spots: the problem of the double minority. Within their own enclave of Northern Ireland, Protestants outnumber Catholics by a ratio of five to four. However, in the wider context of Ireland, Protestants are easily outnumbered by a ratio of three to one. . . . [T]he inevitable and disastrous result was the advent of a ruling establishment with the reins of power in its hands but acting under the stresses of a besieged minority. Thus, two competing, and often mutually exclusive traditions formed at the extremes, Catholic Nationalism and Protestant Loyalism.

Id. at 205 (internal quotation marks omitted).

²⁸ See White, *supra* note 18, at 205.

²⁹ *Ireland v. United Kingdom*, 2 Eur. Ct. H.R. at 31.

³⁰ *Id.*

³¹ *Id.* at 40.

³² See Linn, *supra* note 10, at 166-67.

³³ *Id.* at 167.

³⁴ See *id.*

³⁵ *Id.* at 166.

³⁶ Linn, *supra* note 10, at 167.

³⁷ *Id.*

³⁸ See *id.*

Republicans.³⁹ Republicans have a history of resorting to violence to achieve their goals.⁴⁰ The social and political instability arose from the culture conflict.⁴¹ It has plagued Northern Ireland with repeated periods of violent turmoil.⁴²

B. *The Troubles*

The Northern Ireland Parliament, called the Stormont, began operations in 1922 and, from its inception, has been controlled by a Protestant majority.⁴³ Protestant leaders consistently used their powers to pursue discriminatory policies against Catholics in employment, housing, and voting rights.⁴⁴ In the late 1960s, Catholics in Northern Ireland, responding to this discrimination, began a civil rights movement.⁴⁵ Dormant since 1922, the IRA re-emerged, as did Loyalist paramilitary groups.⁴⁶ The movement and the resulting civil unrest eventually erupted into violence, which the Protestant-dominated RUC seemed powerless to prevent.⁴⁷ By the summer of 1969, the already politically explosive "parade season" was more violent and chaotic than ever.⁴⁸ Parliamentary civil authority and

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ See White, *supra* note 18, at 205.

⁴² *Id.*

For all of its political life, Northern Ireland was ruled by a single party, invariably consumed with the single issue of maintaining the relationship with Britain and preserving the border with the Irish republic to the south. Any real attempt at political or social change has been swamped by this obsession. As a result, Northern Ireland suffers from a deep psychosis in which rational thought and action are inevitably overtaken by emotional spasms the moment it comes under stress.

Id. (internal quotation marks omitted).

⁴³ See Kondonijakos, *supra* note 22, at 103.

⁴⁴ *Id.*

⁴⁵ See White, *supra* note 18, at 233. In the late 1960s, the Catholic civil rights movement in Northern Ireland departed from the habitual Catholic rejection of any connection to Great Britain, instead asserting that they were entitled to the same civil rights as all British subjects. When the Catholics demanded their rights as British citizens, rather than proclaiming their allegiance to the Irish republic, they stripped the Protestants of their traditional justification for excluding Catholics from political power. *Id.* at 232-33.

⁴⁶ Kondonijakos, *supra* note 22, at 103.

⁴⁷ Linn, *supra* note 10, at 167.

⁴⁸ See White, *supra* note 18, at 236. In July and August 1969, "Catholic civil rights marches were met with violent Protestant resistance, the Orange parades

control vanished.⁴⁹ In August 1969, the British Army deployed troops to Northern Ireland to respond to the increasing violence, and the soldiers have remained ever since.⁵⁰

Catholics initially welcomed the British Army.⁵¹ However, within a year, the Catholic support for the occupation disappeared after several bloody confrontations between British troops and Catholic protestors.⁵² Paramilitary groups on both sides of the conflict began using terrorism to further their political goals.⁵³ The government declared war on the IRA and pursued a policy of confrontation with the Catholic community.⁵⁴ After the government instituted the policy of internment suspected terrorists without trial, the IRA "appeared to assume an offensive and indiscriminately bloody posture."⁵⁵

The IRA responded to internment with a full-scale bombing campaign.⁵⁶ In August 1971, more than 100 explosions rocked Belfast, killing thirty-five people.⁵⁷ In an incident remembered as "Bloody Sunday," the British Army opened fire on 20,000 un-

were more triumphal and taunting than usual, Catholics obliged Protestant provocation by overreacting, and the resulting riots were more ferocious than usual." *Id.*

⁴⁹ *See id.* at 237.

⁵⁰ Kondonijakos, *supra* note 22, at 103.

⁵¹ White, *supra* note 18, at 236-37.

⁵² *See id.* at 237. By 1970,

[t]he British army's reactionary tactics led to repeated confrontations with mobs in Catholic areas of Derry and Belfast and to the deaths of Catholic protestors. These tactics drove the most moderate Catholics to press for communal self-protection. The IRA was reborn as defenders of Catholic neighborhoods, and it soon gained broad support in the Catholic community.

Id.

⁵³ Linn, *supra* note 10, at 167.

⁵⁴ White, *supra* note 18, at 237.

The Army and the RUC engaged in broad "security sweeps" of Catholic ghettos, rounding up men and boys on the thinnest suspicion of IRA involvement. Matters only became worse when on August 9, 1971, British Prime Minister Heath and the new Northern Irish Prime Minister Brian Faulkner initiated internment, without charges or trial, of any suspected terrorists or terrorist sympathizers.

Id.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *See* White, *supra* note 18, at 238.

Catholics of all political persuasions came together in opposition to the Stormont. Moderate Catholics joined huge Republican protests, held despite an official ban, and the Catholic opposition to the Protestant government and its British overseers crystallized in a massive civil disobedience

armed Catholic protest marchers who were gathered in Derry for an anti-internment demonstration.⁵⁸ Seven of the thirteen protestors killed were teenagers.⁵⁹ Catholics rioted throughout Ireland and the IRA stepped up its violence, killing fifty-six British soldiers by March 20.⁶⁰ Reacting to the rising death toll, the British government first suspended, then abolished the Stormont and imposed direct rule.⁶¹

As they were in 1969, tensions in Northern Ireland are typically at their highest during the summer parade season.⁶² Loyalist fraternal orders hold processions, portrayed as traditional marches expressing their religious and cultural heritage.⁶³ The emotional power of these parades is incomprehensible to outsiders who view the parades simply as expressions of political arguments.⁶⁴ To the marchers, the ritual re-deifies past heroes and martyrs.⁶⁵ Nationalist groups perceive the marches as a forum for the Unionists to re-enact historic triumphs of Protestants over Catholics.⁶⁶ Problems arise when Loyalist groups in-

campaign, including tax and rent strikes that lasted more than three years.

Id. at 237-38 (internal quotations omitted).

⁵⁸ White, *supra* note 18, at 238.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Molly R. Murphy, *Northern Ireland Policing Reform and the Intimidation of Defense Lawyers*, 68 FORDHAM L. REV. 1877, 1882 (2000).

⁶² Rasnic, *supra* note 25, at 242.

⁶³ Julia A. Hall, *To Serve Without Favor: Policing, Human Rights and Accountability in Northern Ireland*, HUMAN RIGHTS WATCH (1997).

⁶⁴ See generally White, *supra* note 18, at 206.

⁶⁵ *Id.* at 206 n.152.

Selective memory and an affinity to historic social and political divisions results in a powerful phenomenon in which living individuals conceptualize themselves as the most recent extension of a long and painful history. Mythical as well as legendary heroes have assumed a sort of immortality, so that the passage of nearly nine hundred years of history is felt by the current participants to have occurred within their own lifetimes. While each community has its immortal heroes, each community similarly feels that the ancient atrocities, suffered at the hands of the other, occurred within the current generation. This collective memory phenomenon results in an odd cartoonish sense that time has stood still; contemporary Orangemen feel themselves to march alongside their orange forefathers, while contemporary Nationalist neighborhood groups feel themselves to stand with the nationalist rebels and protestors of the last four hundred years to oppose such marches.

Id. at 206.

⁶⁶ Hall, *supra* note 63.

sist on routing their marches through Nationalist neighborhoods.⁶⁷ During the week of July 12, when Protestants “celebrate the 1690 defeat of Irish forces by William of Orange, the violence is so extreme that most stores barricade their storefronts to avoid windows being smashed and property being torched.”⁶⁸ “In 1997, more than 1500 bombing incidents and 837 attacks on security forces in Belfast resulted from a Protestant Loyalist parade in the week preceding the celebration day.”⁶⁹

The continuing widespread terrorism has caused the RUC to view its role as that of a security force in a war zone, and the political situation has given rise to extraordinary legislation designed to restore order.⁷⁰

C. *The Emergency Laws*

The British Parliament has enacted legislation to combat the rise in terrorism in Northern Ireland. In 1972, the Northern Ireland (Emergency Provisions) Act (EPA) was passed, and the Prevention of Terrorism Act (PTA) was enacted in 1974.⁷¹ The PTA contains provisions comparable to the EPA, but applies throughout the entire United Kingdom.⁷²

Passed in response to the terrorism, these laws and subsequent amendments have radically altered Northern Ireland’s criminal justice system.⁷³ Police powers are extended beyond ordinary bounds while the rights of terrorist suspects are limited.⁷⁴ The police have broad power to stop, search, and arrest, without a warrant, “any person whom they reasonably suspect to be guilty of certain specified offenses or of being concerned in the commission, preparation or instigation of acts of terrorism.”⁷⁵ Police are empowered to stop and question individuals about their identity and recent movements, to search people

⁶⁷ See, e.g., *id.*

⁶⁸ Rasnic, *supra* note 25, at 243.

⁶⁹ *Id.*

⁷⁰ See generally Taylor, *supra* note 11, at 329.

⁷¹ Murphy, *supra* note 61, at 1883.

⁷² *Id.* at 1884.

⁷³ See generally Murphy, *supra* note 61, at 1884.

⁷⁴ Murphy, *supra* note 61, at 1885.

⁷⁵ *Id.* (quoting Brice Dickson, *THE LEGAL SYSTEM OF NORTHERN IRELAND* 163 (3d ed. 1993)).

and residences, and to examine and seize documents, all without prior judicial approval.⁷⁶ Police have discretion to hold a suspect without charge for up to seven days.⁷⁷ A person detained under the emergency laws can be denied access to legal counsel for up to forty-eight hours.⁷⁸ Detainees do not have the right to have an attorney present during interrogations, and interrogations are not tape-recorded.⁷⁹ Finally, a terrorist suspects' right to silence is restricted by the Criminal Evidence (Northern Ireland) Order, which allows prosecutors, judges, and juries to infer guilt from a detainee's silence.⁸⁰ These laws establish a system designed to facilitate convictions based on confessions obtained during extended periods of detention and interrogation.⁸¹

A Parliamentary Commission convened to study the problems emanating from the violence recommended the establishment of special courts to try certain offenses associated with political violence.⁸² These "Diplock" courts, named for the commission chairman, consist of a single judge and no jury, and operate under special rules of evidence, trial procedure, and appeal.⁸³ For a suspect detained under these circumstances, the right to defense counsel is one of the few remaining privileges between arrest and conviction.⁸⁴

III. POLICING NORTHERN IRELAND

The Royal Ulster Constabulary (RUC) was created in 1922 to serve as the civilian police force in Northern Ireland.⁸⁵ Although originally intended to be an integrated force, the RUC has been a Protestant institution since its inception.⁸⁶ Shortly after its formation, the RUC became an official extension of

⁷⁶ Northern Ireland (Emergency Provisions) Act, 1991, ch. 24, §§ 16, 17, 22, 23 (Eng.) [hereinafter EPA ch. 24].

⁷⁷ *Id.* § 43.

⁷⁸ *Id.* § 45. See also *Brennan v. United Kingdom*, No. 39846/98, Strasbourg, October 16, 2001.

⁷⁹ See generally Murphy, *supra* note 61, at 1888-89.

⁸⁰ *Id.* at 1888.

⁸¹ See Flaherty, *supra* note 1, at 109.

⁸² Rasnic, *supra* note 25, at 243.

⁸³ See generally Rasnic, *supra* note 25, at 244.

⁸⁴ See Flaherty, *supra* note 1, at 111.

⁸⁵ Taylor, *supra* note 11, at 327.

⁸⁶ *Id.*

Unionism, and Nationalist communities were the primary victims of the brutal police practices sanctioned under the emergency laws.⁸⁷ The Nationalists are viewed as a threat to security, and they have borne the brunt of the RUC's extensive power.⁸⁸

Many communities have no traditional police service because the RUC concentrates its efforts on suppressing political violence.⁸⁹ Catholics began supporting self-protection and looked to the IRA to defend Catholic neighborhoods.⁹⁰ The IRA and Protestant paramilitary groups, such as the Ulster Defense Association (UDA) and the Ulster Volunteer Force (UVF), have assumed the abandoned police functions related to ordinary crime.⁹¹ These groups operate their own criminal justice systems, wherein the paramilitary investigates, prosecutes, and sits as judge and jury.⁹² They carry out their own sentences, including executions, maimings, brutal beatings and expulsion orders.⁹³ The unlawful and inhumane abuse of police powers has caused the Catholic community to reject the legitimacy of the RUC, perceiving it instead as an instrument of state oppression.⁹⁴

A. *RUC Powers Under the Emergency Regime*

The existing emergency laws give the RUC broad power to stop, question, and search any person or vehicle.⁹⁵ Police may stop and question any person "for so long as is necessary to ascertain that person's identity and movements."⁹⁶ Anyone may be stopped and interrogated to determine what they may know "concerning any recent explosion or any other recent incident endangering life or concerning any person killed or injured in any such explosion or incident."⁹⁷ An officer is not required to show reasonable suspicion when detaining a suspect and, upon

⁸⁷ *Id.*

⁸⁸ *See id.*

⁸⁹ *See Hall, supra* note 63.

⁹⁰ *See White, supra* note 18, at 257.

⁹¹ *See Hall, supra* note 63.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *See generally* Taylor, *supra* note 11, at 309.

⁹⁵ EPA ch. 24, *supra* note 76, § 25.

⁹⁶ *Id.*

⁹⁷ *Id.* § 14.

stopping a person for such questioning, the officer may search that person to determine if he or she is carrying a weapon or transmitter.⁹⁸ The police may also enter and search any residence if they have reasonable grounds to believe that the residence contains weapons, explosives, or other contraband.⁹⁹ Police may order occupants to stay in a designated room while the house is being searched.¹⁰⁰ This practice amounts to a form of house arrest.¹⁰¹ Police have the right to seize anything they find during a warrantless search if they believe the object may be connected to a crime.¹⁰²

In 1973, the year the EPA was passed, the police raided 75,000 homes, comprising approximately one-fifth of all houses in Northern Ireland.¹⁰³ Such abuse of authority has led to allegations that the police use their search and seizure powers to harass citizens on the most limited suspicion or information.¹⁰⁴ The police have the power to arrest suspects under the EPA, but those powers are rarely used because under the PTA, the police enjoy broader authority to arrest and wider investigatory powers in cases of suspected terrorism.¹⁰⁵ This authority permits police to stop, question, and search people without any suspicion of criminal activity.¹⁰⁶ The laws contain a vague definition of terrorism.¹⁰⁷ The amorphous definition and expanded power under the emergency laws give the police authority to arrest virtually anyone for any reason.¹⁰⁸ A person detained under the

⁹⁸ *Id.* § 20(6)(a).

⁹⁹ *Id.* § 20.

¹⁰⁰ *Id.*

¹⁰¹ Hall, *supra* note 63.

¹⁰² Kondonijakos, *supra* note 22, at 105.

¹⁰³ Taylor, *supra* note 11, at 329.

¹⁰⁴ Hall, *supra* note 63.

¹⁰⁵ *See id.*

PTA section 14 permits a police officer to arrest, without a warrant, any person he or she has reasonable grounds to suspect of being guilty of an offense under provisions of the PTA that prohibit membership in or support of proscribed organizations or who is or has been concerned in the commission, preparation or instigation of acts of terrorism.

Id.

¹⁰⁶ *Id.*

¹⁰⁷ The PTA define terrorism in § 20 as "the use of violence for political ends, including any use of violence for the purpose of putting the public of any section of the public in fear." The Prevention of Terrorism (Temporary Provisions) Act 1989, c.4, § 20 (Eng.) [hereinafter PTA].

¹⁰⁸ PTA, *supra* note 107, § 14.

emergency laws can be held for up to seven days without charge.¹⁰⁹ In the 1988 case of *Brogan v. United Kingdom*, the European Court of Human Rights held that detention of four days and six hours violated the fair trial provision of article 5(3) of the Convention for the Protection of Human Rights and Fundamental Freedoms.¹¹⁰ That section states,

Everyone arrested or detained in accordance with the provisions of paragraph 1.c¹¹¹ of this article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.¹¹²

In the *Brogan* case, four suspects had been detained for periods from four days and six hours to six days and sixteen and one half hours.¹¹³ The court ruled that detention of such duration failed to protect the detainees' right to be brought before a judge in a reasonable time, as required under the fair trial provision.¹¹⁴

The British government responded to this ruling by entering its derogation under article 4 of the International Convention on Civil and Political Rights (ICCPR)¹¹⁵ and under article 15 of the ECHR,¹¹⁶ in order to retain the seven-day detention

¹⁰⁹ Murphy, *supra* note 61, at 1884.

¹¹⁰ See *Brogan et al v. United Kingdom*, 11 Eur. Ct. H.R. (ser. A) at 117 (1989); Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4 1950, art. 5 § 3, 231 U.N.T.S. 221 (entered into force Sept. 3, 1953) [hereinafter ECHR].

¹¹¹ Paragraph 1 of the ECHR states:

Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: . . . (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offense or when it is reasonably considered necessary to prevent his committing an offense after fleeing or after having done so.

Id. art. 5 § 1(c).

¹¹² *Id.* art. 5 § 3.

¹¹³ See *Brogan*, 11 Eur. Ct. H.R. at 117.

¹¹⁴ See *id.*

¹¹⁵ International Covenant on Civil and Political Rights, Dec. 16, 1966, art. 4, 999 U.N.T.S. 171, 174 (entered into force Mar. 23, 1976) [hereinafter ICCPR].

¹¹⁶ ECHR, *supra* note 110, art. 15.

power.¹¹⁷ These articles permit parties to the respective agreements to deviate from certain of their obligations during times of public emergency that are deemed to threaten the life of the nation.¹¹⁸ Each agreement reserves obligations from which no derogation is permitted,¹¹⁹ and each limits a party to taking only those measures strictly required by the exigencies of the situation.¹²⁰

Under Northern Ireland's emergency laws, police can delay a suspect's access to legal counsel for the first forty-eight hours of detention if authorized to do so by a senior police officer.¹²¹ This provision is intended to prevent a detainee from communicating via defense counsel with co-conspirators and providing them with information and warnings that could impede the ongoing investigation. When granted, access to counsel consists of a half-hour conference, after which another forty-eight-hour period of denied access can be authorized.¹²² The conference may be required to take place within sight and hearing of an RUC officer.¹²³ Critics find the delay in access to counsel disturbing because police typically continue the interrogation during the delay, often using improper methods.¹²⁴ Rosemary Nelson vehemently criticized this RUC tactic,¹²⁵ and other defense lawyers believe that the true reason for delaying access to counsel is to "obtain incriminating information during interrogation."¹²⁶

¹¹⁷ See Fionnuala Ni Aolain, *Legal Developments: The Fortification of an Emergency Regime*, 59 ALB. L. REV. 1353, 1365 (1996). These treaties permit a state signatory to suspend certain treaty obligations during an emergency that poses a "threat to the life of the nation." *Id.* at 1367 (quoting *Lawless v. Ireland*, 1 Eur. H.R. Rep. (ser. A) 15, 31-32 (1961)).

¹¹⁸ See ICCPR, *supra* note 115, at art. 4, sec. 1. See also ECHR, *supra* note 110, art. 15.

¹¹⁹ A party is not permitted to derogate its obligations regarding respect for the right to life, the prohibition of torture, or the prohibition of slavery or forced labor. See ECHR, *supra* note 110, art. 15(2); ICCPR, *supra* note 115, art. 4(2).

¹²⁰ See ICCPR, *supra* note 115, art. 4(1); ECHR, *supra* note 110, art. 15.

¹²¹ EPA ch. 24, *supra* note 76, § 47.

¹²² Flaherty, *supra* note 1, at 112.

¹²³ *Id.*

¹²⁴ Russell, *supra* note 5, at 213.

¹²⁵ *Id.* (citing Rosemary Nelson, *How the RUC Tried to Smear and Intimidate Me*, SUNDAY TIMES (London), Mar. 21, 1999, at 16).

¹²⁶ Flaherty, *supra* note 1, at 114.

The EPA provides that a detained person has the right to have a friend or relative informed of his or her arrest.¹²⁷ This notification, however, can be delayed for as much as forty-eight hours on authorization of an RUC superintendent. The UN Committee Against Torture has twice expressed the fear that deferral of notification of arrest coupled with deferral of access to counsel in the first forty-eight hours amounts to "detention incommunicado, thereby creating conditions which might lead to abuses of authority by agents of the State."¹²⁸

Until 1996, RUC regulations did not permit defense counsel to be present during interrogations. The RUC changed its policy in 1996, stating that each detainee's request for counsel during interrogation would be considered on the merits of the particular case. However, defense lawyers report that the RUC routinely denies applications for attorney access to interrogations.¹²⁹ When the application is denied, the suspect is not able to consult with counsel, and neither the suspect nor his attorney will know why the suspect is being interviewed.¹³⁰ Interviews may be devoid of any safeguards for the suspect's rights. The RUC does not permit interrogation sessions to be video or audio taped.¹³¹ Instead, interviews are observed via a system of closed-circuit television cameras.¹³² Officers who are not part of the interrogation team are responsible for monitoring many screens at a time, and for reporting any mistreatment.¹³³

Most convictions for terrorist acts result from confessions, and a suspect who seeks to suppress his confession alleging that it was coerced bears the burden of proving that the police acted improperly.¹³⁴ This burden, coupled with the fact that "the closed-circuit surveillance system has not yielded a single disci-

¹²⁷ EPA ch. 24, *supra* note 76, § 44.

¹²⁸ Hall, *supra* note 63 (quoting UN Committee Against Torture, *Consideration of the First Periodic Report of the United Kingdom and Northern Ireland*, CAT/C/SR.91, Nov. 15, 1991).

¹²⁹ See Hall, *supra* note 63 (citing Human Rights Watch/Helsinki interview with Peter Madden, Madden & Finucane, Solicitors, Belfast (Nov. 8, 1996)).

¹³⁰ See Kevin Dooley Kent, *Basic Rights and Anti-Terrorism Legislation: Can Britain's Criminal Justice (Terrorism and Conspiracy) Act 1998 Be Reconciled With Its Human Rights Act*, 33 VAND. J. TRANSNAT'L L. 221, 265 (2000).

¹³¹ Flaherty, *supra* note 1, at 108.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ See Murphy, *supra* note 61, at 1888.

plinary proceeding on detainee mistreatment," permits the RUC to mistreat detainees with impunity.¹³⁵ Prosecutors are seldom prevented from admitting involuntary confessions under a system where the defendant must produce prima facie evidence that the police subjected him to "torture, to inhuman or degrading treatment, or to any violence or threat of violence" in order to induce him to make a statement.¹³⁶ A defendant has difficulty proving coercion without audio or video tape of interrogations.¹³⁷ Evidence of coercion is especially rare in a setting where the only others present are those who possess the opportunity and incentive to entice the confession in the first place.¹³⁸

B. *The Detainee's Right to Silence*

Although not specifically part of the emergency powers, the 1987 Criminal Evidence (Northern Ireland) Order effectively expands police power by abrogating a detainee's right to silence.¹³⁹ Under the Order, a judge or jury can draw inferences of guilt from a suspect's silence if, under police questioning, he fails to mention facts material to his defense or fails to account for his presence or for the presence of marks or objects that connect him to a crime.¹⁴⁰ A suspect whose access to counsel has been delayed and who is interrogated during the delay period faces a dilemma. He is cautioned under the Criminal Evidence Order in the following terms:

You do not have to say anything unless you wish to do so but I must warn you that if you fail to mention any fact which you rely on in your defense in court, your failure to take this opportunity to mention it may be treated in court as supporting any relevant evidence against you. If you do wish to say anything, what you say may be given in evidence.¹⁴¹

¹³⁵ Flaherty, *supra* note 1, at 108.

¹³⁶ See Murphy, *supra* note 61, at 1888.

¹³⁷ See *id.*

¹³⁸ *Id.*

¹³⁹ See generally Mark Berger, *Reforming Confession Law British Style, A Decade of Experience with Adverse Inferences from Silence*, 31 COLUM. HUM. RTS. L. REV. 243, 254-57 (2000).

¹⁴⁰ Criminal Evidence Order, 20 N. Ir. Stat., No. 198 (1988).

¹⁴¹ See Brennan, *supra* note 78, ¶ 52.

On one hand, a defendant runs the risk that silence may be used against him.¹⁴² On the other hand, any statement he makes before he consults his lawyer may be used as evidence against him.¹⁴³ In a system that relies heavily on confessions to obtain convictions, a suspect's access to legal counsel is of paramount importance because most detainees will not know the consequences of speaking or remaining silent.¹⁴⁴ If the suspect is charged and ultimately tried, the Criminal Evidence Order permits the judge and jury to draw inferences of guilt if the defendant refuses to testify.¹⁴⁵

Complicating the suspension of the right to silence is the fact that neither the detainee nor his lawyer will necessarily know why the client is being questioned, and the lawyer may not be permitted to be present while his client is being interviewed.¹⁴⁶ In that case, the client will have to remember and apply his lawyer's advice during the interview. A prominent British civil liberties lawyer observed, "This means not only will it be impossible for solicitors to advise their clients adequately, but that once they have been consulted the clients themselves will be expected to understand and apply complex legal principles. Their failure to do so will have dire consequences."¹⁴⁷

C. *The RUC and Defense Lawyers*

The RUC's extraordinary powers under the emergency laws, combined with the suspension of the right to silence and easy admissibility of confessions, create "a system that gives the security forces every incentive to rely on confessions obtained in custody, and, in turn, to impede solicitors who are often the only significant hurdle in the race to obtain convictions."¹⁴⁸ Lawyers complain of systematic official harassment aimed at them simply for fulfilling the requirements of their profession, and of procedures that impair access to clients and generally obstruct due

¹⁴² See Berger, *supra* note 139, at 254-55.

¹⁴³ See Kent, *supra* note 130, at 265-66.

¹⁴⁴ See Murphy, *supra* note 61, at 1888 (internal quotation marks omitted).

¹⁴⁵ See Aolain, *supra* note 117, at 1381-82.

¹⁴⁶ See Kent, *supra* note 130, at 265-66.

¹⁴⁷ See *id.* at 266 (citing Geoffrey Bidman et al, *Recognising Rights-A Look at the Progress of the Human Rights Bill and Analysis of the Impact of the Government's Rushed Anti-Terror Legislation*, 95 L. SOC'Y GAZ. 22 (1998)).

¹⁴⁸ See Murphy, *supra* note 61, at 1890.

process.¹⁴⁹ Defense lawyers are subjected to body searches before they are permitted to enter courts, prisons or detention centers, while prosecutors are not.¹⁵⁰ While the RUC insists that this is a security measure, no solicitor has ever been found smuggling contraband to a client.¹⁵¹ Detectives at the detention centers typically make threats about the solicitor a detainee has requested, but most defense lawyers are accustomed to such harassment.¹⁵² Defense lawyers often feel that they are viewed by the RUC as the only obstacle to extracting confessions, which, under the emergency laws, invariably lead to convictions.¹⁵³

Widespread allegations of RUC intimidation of defense lawyers have given rise to formal inquiries by several human rights organizations.¹⁵⁴ A 1992 Lawyers Committee for Human Rights mission to Northern Ireland interviewed lawyers who represented detainees under the emergency laws.¹⁵⁵ Several lawyers interviewed received death threats from the RUC and almost all reported some form of official intimidation.¹⁵⁶ The International Commission of Jurists conducted a study that showed defense lawyers in Northern Ireland received more death threats than in any other part of the European Union.¹⁵⁷

¹⁴⁹ See Flaherty, *supra* note 1, at 98-100.

¹⁵⁰ *Id.* at 100.

¹⁵¹ *Id.*

¹⁵² *Id.* at 99.

¹⁵³ *Id.* at 106-07.

¹⁵⁴ See Hall, *supra* note 63; Russell, *supra* note 5, at 207.

¹⁵⁵ See *id.*

The Lawyers Committee mission. . . interviewed solicitors, barristers, former detainees, journalists, government officials, police officials, and human rights activists. The mission conducted in-depth, personal interviews with nine of the approximately 30 solicitors who regularly defend clients in the Diplock courts. The mission corroborated the solicitor's accounts, to the extent possible, by reviewing records the solicitors provided, by checking court, newspaper, and other human rights report accounts, and by raising the solicitors' allegations in other interviews.

Id. at 98 n.46.

¹⁵⁶ Murphy, *supra* note 61, at 1890-91. One detainee describing the RUC interrogator's response when she asked to be represented by the firm of Madden & Finucane, the law firm established by Peter Madden and Patrick Finucane stated, "[o]ne of the interrogators said that Patrick Finucane had ended up in a body bag and that another solicitor at Madden & Finucane would end up the same way." *Id.* (internal quotation marks omitted).

¹⁵⁷ See Murphy, *supra* note 61, at 1888.

In 1997, the United Nations Special Rapporteur on the Independence of Judges and Lawyers conducted a mission to Northern Ireland.¹⁵⁸ That mission investigated allegations that RUC officers at detention centers routinely abused and threatened solicitors.¹⁵⁹ The reported abuse ranged in severity from harassment and minor inconvenience to physical assault and death threats.¹⁶⁰

Defense lawyers view this intimidation as an occupational hazard and have come to expect it.¹⁶¹ They accept the harassment, "noting that in the absence of audio-recording there is only hearsay evidence to prove the allegations, that is, the word of the client against that of the RUC officer."¹⁶² Few lawyers bother to file complaints, feeling it futile since the RUC would conduct any investigation into such complaints.¹⁶³

Death threats are the most severe form of official intimidation reported by solicitors and their clients.¹⁶⁴ Nearly every solicitor interviewed received death threats. Typically, such threats are conveyed by RUC officers to the solicitor's clients during the course of interrogation.¹⁶⁵

¹⁵⁸ See *Report on the Mission of the Special Rapporteur to the United Kingdom of Great Britain and Northern Ireland*, U.N. Commission on Human Rights, 54th Sess., Agenda Item 8, U.N. Doc E/CN.4/1998/39/Add.4 (1998) [hereinafter *Report of the Special Rapporteur*].

¹⁵⁹ *Id.* ¶ 15.

The abuse against lawyers takes various forms ranging from mild forms of harassment (e.g., solicitor kept waiting to see his client) to interference in the solicitor/client relationship (e.g., telling the detainee that the solicitor is not interested in him or her, that the solicitor's advice should be ignored, that the solicitor is representing the paramilitaries and not the client, etc.) to physical abuse and/or death threats. . . .

Id.

¹⁶⁰ *Id.* ¶ 15. The report cites the case of a solicitor who had received numerous death threats because she represented a client accused of murdering two RUC officers. This solicitor also represented a residents group who oppose an Orange Order parade through their Catholic housing estate. While representing the residents during a confrontation with police the solicitor reported being spat at, struck, and accused of being an IRA sympathizer, all by RUC officers. The report does not name the interviewees, for their own protection. However it is clear from the details provided that the subject solicitor is Rosemary Nelson, whose murder, less than two years later, is described later in this section.

¹⁶¹ *Id.* ¶ 20.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ Flaherty, *supra* note 1, at 99.

¹⁶⁵ See Flaherty, *supra* note 1, at 99.

Another troubling aspect of the problem is the encouragement RUC abusers receive from high-profile government officials who publicly identify defense lawyers with their clients' causes.¹⁶⁶ For example, three weeks before Patrick Finucane was murdered, Douglass Hogg MP, during a committee debate in the House of Commons, charged that defense lawyers in Northern Ireland colluded with the IRA.¹⁶⁷ Hogg, then the Parliamentary Under-Secretary of State for the Home Office, said, "I have to state as a fact, but with great regret that there are in Northern Ireland a number of solicitors who are unduly sympathetic to the cause of the IRA."¹⁶⁸ Other officials have publicly made unsubstantiated statements identifying defense lawyers with terrorist causes.¹⁶⁹ These statements by highly-placed public officials give voice to an undeclared policy that encourages the police to engage in harassment and intimidation.¹⁷⁰

On February 12, 1989, Patrick Finucane was killed when two masked gunmen entered his home and shot him fourteen

For example, a young Belfast solicitor maintains that in recent instances, clients who reported threats to harm them and their solicitor were later shot dead. In one incident a client, Martin O'Prey, related to McGrory police statements that both he and "that wee shit McGrory" would be killed. O'Prey was soon murdered.

Id. at 99 n.50.

¹⁶⁶ Flaherty, *supra* note 1, at 100.

¹⁶⁷ *Id.*

¹⁶⁸ *See id.*

Seamus Mallon . . . challenged Hogg, stating: "That is a remarkable statement for a Minister to make about members of a profession who have borne so much of the heat in a traumatic and abnormal situation. Such words should not be said without the courage to support them. I find it appalling that the Minister should make such an accusation with such emphasis and without, it seems, the intention of substantiating it. I have no doubt that there are lawyers walking the streets or driving on the roads of the North of Ireland who have become targets for assassins' bullets as a result of the statement that has been made tonight. Following the Minister's statement, people's lives are in grave danger. People who have brought cases to the European Court against this legislation will be suspected. We have thrown a blanket over many lawyers in the North of Ireland, and it will be on the head of this Minister and Government if the assassin's bullet decides to do, by lead, what this Minister has done, by word."

Id. (citing Hansard, House of Commons, Standing Committee B., Jan. 17, 1989, col. 508, 519.).

¹⁶⁹ *See Id.* at 101 n.56, 57.

¹⁷⁰ *See Id.*

times.¹⁷¹ The UFF, a Protestant paramilitary organization, immediately claimed responsibility for the death.¹⁷² Finucane, one of Northern Ireland's best-known criminal defense lawyers, and his partner, Peter Madden, regularly represented clients detained under the emergency laws.¹⁷³ In addition to his work challenging human rights abuses related to the emergency laws, authorities were hostile to Finucane because three of his brothers allegedly belonged to the IRA.¹⁷⁴ Prior to his death Finucane received numerous death threats from RUC officers, mainly through his clients.¹⁷⁵

There is credible evidence that suggests the security forces were frustrated by Finucane's success and played a part in his murder.¹⁷⁶ Brian Nelson, an operative from the UDA who also worked as a confidential informant for the authorities, later revealed that he told his RUC and Army handlers as early as December 1988 that Patrick Finucane was marked for assassination by Loyalist paramilitaries.¹⁷⁷ Nelson claimed that the security forces leaked documents, photo montages, and security reports about IRA suspects to the UDA.¹⁷⁸ The RUC conducted an inquiry into Brian Nelson's charges, but the re-

¹⁷¹ *Report of the Special Rapporteur*, *supra* note 158, ¶ 60.

¹⁷² *Id.*

¹⁷³ See Hall, *supra* note 63. Finucane represented high-profile clients such as Bobby Sands, who was elected to Parliament while imprisoned in the Maze, a notorious British holding facility for Irish internees. Sands was the first prisoner to die in the hunger strikes called by prisoners in the Maze, who were striking for recognition as political prisoners. See *id.*

¹⁷⁴ See Flaherty, *supra* note 1, at 98 n.47. No evidence that Patrick Finucane was involved in any paramilitary activity has ever been adduced.

¹⁷⁵ *Report of the Special Rapporteur*, *supra* note 158, ¶ 62.

One client testified that an RUC officer told him "it would be better if he (Finucane) were dead than defending the likes of you." The officer threatened to give information about Finucane to the loyalist paramilitaries. Another client alleged that, just five weeks before Finucane's death, an RUC officer "informed me that my solicitor was working for the IRA, and would meet his end also. He asked me to give Mr. Finucane a message from him. He told me to tell him that he is a thug in a suit, a person trying to let on that he is doing his job, and that he, like every other republican bastard, would meet his end."

Id.

¹⁷⁶ Flaherty, *supra* note 1, at 99.

¹⁷⁷ *Report of the Special Rapporteur*, *supra* note 158, ¶ 63.

¹⁷⁸ See Hall, *supra* note 63.

sulting report has never been made public and no one has ever been prosecuted for the killing.¹⁷⁹

Ten years later, on March 15, 1999, Rosemary Nelson was killed by a car bomb outside her home.¹⁸⁰ Nelson's calls for re-opening the investigation into Patrick Finucane's death made her "the most recognizable IRA lawyer in Northern Ireland."¹⁸¹ Nelson began receiving death threats from the RUC after she won an acquittal for her client, Colin Duffy.¹⁸² She told Human Rights Watch that over a three-week period in 1997, twelve of her clients who had been arrested and held at Gough Barracks in Armagh reported that RUC officers threatened that she would be killed.¹⁸³ Nelson's clients charged that RUC officers "put my family under threat, they said 'We'll shoot all of you. . . You're dead, tell Rosemary she's going to die too.' They threatened to pass my photo and details to loyalists."¹⁸⁴

Nelson represented clients such as the family of Robert Hamill, who was beaten to death by a loyalist mob while armed RUC officers parked nearby watched, but failed to intervene.¹⁸⁵ At the time of her death, she was planning to bring a private action against four RUC officers for failing to save Hamill.¹⁸⁶ Nelson also represented the Garvaghy Road Residents Coalition, formed to respond to Protestant marches through their neighborhood.¹⁸⁷ During the 1997 marching season, she was assaulted by members of the RUC while representing her clients' interests.¹⁸⁸ Six weeks before she was murdered, Nelson

¹⁷⁹ *Report of the Special Rapporteur, supra* note 158, ¶ 64.

¹⁸⁰ Russell, *supra* note 5, at 202-04.

¹⁸¹ See *id.* at n.41 (quoting Deaglan de Breadun, *Prospect of Decommissioning a Complete Non-Starter in Wake of Solicitor's Death*, IRISH TIMES, Mar. 16, 1999, at 6).

¹⁸² See Hall, *supra* note 63.

¹⁸³ *Id.* In a Human Rights Watch/Helsinki telephone interview Nelson stated: When [clients] requested me, immediately things were said about me, "she's a terrorist, that makes you a terrorist." RUC detectives were making these statements. Any time I arrived down, any time the clients were told I was there, they would say, "she's an IRA woman, she's going to be shot," or "she's going to be taken out soon."

¹⁸⁴ See Hall, *supra* note 63.

¹⁸⁵ Massimino, *supra* note 7, at 3.

¹⁸⁶ Russell, *supra* note 5, at 204.

¹⁸⁷ Massimino, *supra* note 7, at 4.

¹⁸⁸ *Id.* at 3.

filed a complaint against the RUC for the assault.¹⁸⁹ She believed the RUC officers resented her because she represented activists whom the RUC wanted to silence.¹⁹⁰

Human rights organizations throughout the world urged the British government to protect Rosemary Nelson, and in 1997, the UN Special Rapporteur on the Independence of Judges and Lawyers interviewed Nelson and expressed to the government his concerns for her safety.¹⁹¹ Amnesty International, British Irish Rights Watch, and Lawyers Committee for Human Rights, among others, echoed those concerns.¹⁹² In spite of these fears, Rosemary Nelson never received government protection.¹⁹³

Rosemary Nelson's position as Northern Ireland's top defense lawyer made her an enemy of the police, and there are widespread allegations that the RUC was involved in her murder.¹⁹⁴ Numerous death threats from the RUC, together with the large security presence outside her house the night before the bomb went off have caused some commentators to wonder how her attackers could have planted the bomb without some RUC assistance.¹⁹⁵ The police investigation into her murder has thus far led to no arrests.¹⁹⁶ In any case, the investigation

¹⁸⁹ *Id.* at 4.

¹⁹⁰ Russell, *supra* note 5, at 204.

¹⁹¹ Massimino, *supra* note 7, at 4.

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ Russell, *supra* note 5, at 204 ("[m]embers 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").

¹⁹⁵ See Murphy, *supra* note 61, at 1894-95.

¹⁹⁶ *Id.* at 1895-96.

Immediately after the murder, the RUC chief constable announced the involvement of the Chief Constable of Kent and the FBI in the Nelson investigation, giving the inquiry "added independence." However, the FBI had no authority to investigate, could not issue search warrants, and its role in the investigation concluded only a few months after the murder. Currently, the Norfolk Deputy Chief Constable heads the investigation with a team of English and RUC officers. The RUC officers reportedly are not investigating the collusion allegations. However, because the Deputy Chief Constable must still report directly to the RUC Chief Constable, and the investigators from outside Northern Ireland work out of the RUC station in Nelson's home town, those with information may be less inclined to come forward.

Id.

is being conducted out of the Lurgan police station, where the RUC officers regularly threatened Rosemary Nelson.¹⁹⁷ Many of the officers who threatened her still work at that station.¹⁹⁸

The murders of Finucane and Nelson demonstrate the perilous position of defense lawyers in Northern Ireland. The murders of such high profile lawyers, who had tremendous success representing their clients, have had a chilling effect on both the legal profession and the public's confidence in the legal system.¹⁹⁹ The abuse that characterizes relations between police and lawyers undermines the administration of justice, and flies in the face of Britain's obligation to protect human rights.

IV. CONCLUSION

The international community has attempted to establish standards for the independence of the bench and bar to address the abuse faced by lawyers around the world. One example of an international standard is the United Nations Principles on the Role of Lawyers (Basic Principles).²⁰⁰ While not a legally binding treaty, the Basic Principles operate as a source of customary international law. According to Principle 16(a), "Governments shall ensure that lawyers are (a) able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference. . . [w]here the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities."²⁰¹ It further states in Principle 18 that, "Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions."²⁰² The situation of lawyers in Northern Ireland demonstrates that Britain has violated these principles.

While the RUC is implicated in multiple human rights abuses, many of them concern abuse of detainees' rights and are beyond the scope of this paper. This paper is concerned with

¹⁹⁷ Massimino, *supra* note 7, at 4.

¹⁹⁸ *Id.*

¹⁹⁹ See Russell, *supra* note 5, at 199.

²⁰⁰ See generally United Nations Basic Principles on the Role of Lawyers, U.N. GAOR, 45th Sess., 8th Cong. on Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/Conf. 144/2B (1990).

²⁰¹ *Id.* at Principles 16 and 17.

²⁰² *Id.* at Principle 18.

violations against defense lawyers in the performance of their professional duties. The best safeguard against violations of detainees' rights is prompt, regular access to lawyers who are free from police harassment and intimidation. Both the UN Special Rapporteur and Human Rights Watch have made recommendations for reforming the RUC with respect to its dealings with defense lawyers.²⁰³

To properly protect defense lawyers, the United Kingdom should immediately conduct an independent and impartial investigation of threats made against legal counsel.²⁰⁴ "Where there is a threat to the physical integrity of a solicitor or barrister, irrespective from whom the threat emanates, the government should provide the necessary protection and should vigorously investigate the threats and bring to justice the guilty party."²⁰⁵ The police must be required to provide protection for those known to be targets for paramilitary assassination, and to promptly and thoroughly investigate Loyalist paramilitary violence. Additionally, the government is urged to establish a public, independent inquiry into the Finucane and Nelson murders, and ensure that the investigation operates without RUC participation or influence.²⁰⁶

The United Kingdom must establish an independent unit to investigate complaints against the RUC²⁰⁷ to provide greater accountability that will restore public confidence in the judicial system. Most of the lawyers interviewed in the human rights inquiries asserted they did not bother to complain about RUC threats and abuse because they had no confidence in a complaints process wherein the RUC investigated allegations of its own misconduct.²⁰⁸

Last, and perhaps most important, the United Kingdom must establish a mechanism for vetting the police force in Northern Ireland. Police officers should be screened through a thorough background check that examines several independent,

²⁰³ See Hall, *supra* note 63.

²⁰⁴ See *Report of the Special Rapporteur*, *supra* note 158, ¶ 91(a).

²⁰⁵ *Id.* ¶ 91(b).

²⁰⁶ See, e.g., Human Rights Watch, *Assessment of the Patten Commission Report*, available at <http://www.hrw.org/reports/1999/nireland/index.htm> (last visited Oct. 22, 2003).

²⁰⁷ Hall, *supra* note 63.

²⁰⁸ Murphy, *supra* note 61, at 1897.

legitimate sources of information to determine if an officer has been involved in human rights abuses.²⁰⁹ Officers should be similarly scrutinized for paramilitary connections. If properly implemented, a vetting mechanism can serve to hold officers accountable for past abusive practices by excluding them from the police service, while instilling greater confidence that future police action will be taken in accordance with democratic principles by a police force that is accountable to the people it serves.²¹⁰

Shortly before her death, Rosemary Nelson testified before the House International Operations and Human Rights Subcommittee in Washington, D.C. and described the ongoing harassment and threats she encountered in her work.²¹¹ When she was asked why she continued in the face of such obstacles, she explained, "I believe that my role as a lawyer in defending the rights of my clients is vital. The test of a new society in Northern Ireland will be the extent to which it can recognize and respect that role, and enable me to discharge it without improper interference. I look forward to that day."²¹²

²⁰⁹ Human Rights Watch, *Briefing Paper for the Independent Commission on Policing for Northern Ireland*, available at <http://www.hrw.org/press/1999/jan/nire0116.htm> (last visited Oct. 22, 2003).

²¹⁰ See generally *id.*

²¹¹ Massimino, *supra* note 7, at 4.

²¹² *Id.*