The Criminal Cases Review Commission’s Effectiveness in Handling Cases from Northern Ireland

Siobhan M. Keegan*
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Abstract

This Comment considers the Northern Ireland Criminal Cases Review Commission (CCRC), its establishment, and its likely effects on miscarriages of justice. Part I of this Comment considers British and Northern Irish law. Part I also highlights British law leading up to the creation of the CCRC and Northern Irish law in light of its unique elements. Part II explains the establishment of the CCRC, its powers, and structure. Additionally, Part II discusses various commentary on the creation of the CCRC. Part III analyzes the future effectiveness of the CCRC in correcting miscarriages of justice, paying particular attention to the case of Northern Ireland. This Comment concludes that although the Commission is an improvement on the Home Office, miscarriages of justice cases still face a system riddled with many challenges.
COMMENTS

THE CRIMINAL CASES REVIEW COMMISSION'S EFFECTIVENESS IN HANDLING CASES FROM NORTHERN IRELAND

Siobhan M. Keegan*

INTRODUCTION

In 1920, the Republic of Ireland gained independence from the United Kingdom.1 Northern Ireland remained a part of Great Britain and governed itself via the Northern Ireland Parliament.2 The people of Northern Ireland differed among themselves on the future relationship between Northern Ireland and Britain.3 The Protestant majority wanted the area to remain a part of the United Kingdom, but many in the Catholic minority hoped to unite Northern Ireland with the Republic of Ireland.4 The self-governance system of the Northern Ireland Parliament (known as “Stormont”5), allowed the Protestant majority to pursue discriminatory policies of employment, housing, and voting rights against Catholics.6 These policies prevented and discouraged many Catholics from participating in the government of

* J.D. Candidate, 2000, Fordham University School of Law. This Note is dedicated to my family and friends for their love and support. I would also like to thank Jane Winter of British Irish Rights Watch for her inspiration.


3. Id. at 14.

4. See id. (stating that population of Northern Ireland was approximately two-thirds Protestant and one-third Catholic). More recent, though unofficial, figures show to be 57% Protestant and 43% Catholic. Id.

5. See id. (explaining that Northern Ireland Parliament was called Stormont, named after large building in which it was housed).

6. See id. at 14-15 (noting some members of Catholic minority joined IRA’s infrequent activities, in pursuit of reunification).
Northern Ireland.\textsuperscript{7}

In the late 1960s, vast changes occurred in the political climate of Northern Ireland.\textsuperscript{8} Many Catholics, upset with the discriminatory parliamentary practices, organized peaceful demonstrations modeled after the civil rights movement in the United States.\textsuperscript{9} The Stormont Government ignored or rejected the demonstrators’ demands,\textsuperscript{10} and some members of the Protestant majority responded to the marches with violence.\textsuperscript{11} The violent response of the Protestants led some Catholic marchers to leave the peaceful protests and join the previously inactive Irish Republican Army ("IRA").\textsuperscript{12} Loyalist\textsuperscript{13} paramilitary groups also re-surfaced,\textsuperscript{14} and in August 1969, the British government sent troops into Northern Ireland to restore order.\textsuperscript{15}

The violence in Northern Ireland continued,\textsuperscript{16} and the British government reacted to this violence.\textsuperscript{17} In 1972, the British government suspended the role of Stormont and governed Northern Ireland directly from the British Parliament ("Parlia-

\begin{itemize}
\item \textsuperscript{7} Id. at 15.
\item \textsuperscript{8} Id.
\item \textsuperscript{9} Id.
\item \textsuperscript{10} Oren Gross, Once More unto the Breach, 23 Yale J. Int’l L. 437, 474 (1998).
\item \textsuperscript{11} Lawyers Committee for Human Rights, supra note 2, at 15.
\item \textsuperscript{12} See id. (stating that "majority violence encouraged some in the minority to turn away from peaceful protest to participate in the IRA"); see also Human Rights Watch/Helsinki, To Serve Without Favor: Policing, Human Rights, and Accountability in Northern Ireland at vii (1997) (defining Irish Republican Army as IRA); Cain Project Website Organizations (visited Feb. 13, 1999) <http://cain.ulst.ac.uk/othelem/organ/organ.htm> (on file with the Fordham International Law Journal) (describing IRA as main Republican paramilitary group in Northern Ireland having central goal of ending British control of Northern Ireland and unifying Northern Ireland with Republic of Ireland).
\item \textsuperscript{13} See Cain Project Website Glossary, supra note 1 (defining loyalist as person who is loyal to British Crown and noting that in context of Northern Ireland term may imply that person is giving some support to paramilitary groups to use force to remain loyal to Crown).
\item \textsuperscript{14} See Lawyers Committee for Human Rights, supra note 2, at 15 (explaining how Ulster Defense Association and Ulster Volunteer Force reappeared).
\item \textsuperscript{15} See Gross, supra note 10, at 475 (stating that British Army assumed role of police to maintain law and order). Introducing the army into the conflict, along with continued rioting and the rise of paramilitary groups, began the militarized stage of the conflict. Id. As of 1992, British troops in Northern Ireland numbered approximately 18,500. Lawyers Committee for Human Rights, supra note 2, at 15-16.
\item \textsuperscript{16} See Lawyers Committee for Human Rights, supra note 2, at 15 (explaining how violence peaked in 1972 with 467 political deaths, but had reached 3000 fatalities by August 1993).
\item \textsuperscript{17} Id.
\end{itemize}
18. See JOHN JACKSON & SEAN DORAN, JUDGE WITHOUT JURY: DIPLOCK TRIALS IN THE ADVERSARY SYSTEM 8 (1995) (explaining how when British government assumed direct control of Northern Ireland, it re-evaluated effectiveness of criminal justice process in context of increasing political violence). Since 1971, Stormont exercised the power of internment, which constitutes detaining suspects without trial, but this practice intensified the situation. Id.


20. See generally PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) ACT, 1989, ch. 4 (Eng.) (setting forth powers afforded to government in case of "terrorist investigations"); LAWYERS COMMITTEE FOR HUMAN RIGHTS, supra note 2, at 17; WOFFINDEN, supra note 19, at 216 (stating that Prevention of Terrorism Acts ("PTAs") were introduced by Home Secretary one week after Birmingham bombing).

21. LAWYERS COMMITTEE FOR HUMAN RIGHTS, supra note 2, at 17.

22. See LAWYERS COMMITTEE FOR HUMAN RIGHTS, AT THE CROSSROADS: HUMAN RIGHTS AND THE NORTHERN IRELAND PEACE PROCESS 6 (1996) (explaining that under emergency legislation, due process rights are rights most frequently and extensively limited).

23. Id. at 60; see GROSS, supra note 10, at 476 (explaining that over time emergency legislation became more entrenched and broad-based and substantially impacted "ordinary" non-emergency legislation).


26. See LAWYERS COMMITTEE FOR HUMAN RIGHTS, supra note 22, at 57 (describing how duties of judges in states suffering from violence are particularly difficult and Northern Ireland is no exception).

27. See generally id. at 131-35 (making recommendations regarding series of long-term human rights violations in Northern Ireland, including use of emergency powers and abnormal functioning of criminal justice system); HUMAN RIGHTS WATCH/HELSIN-
government, and international bodies.

Over the last few decades, scholars, human rights organizations, and civil liberties groups criticized the British criminal justice system regarding miscarriages of justice. Many high-profile miscarriage of justice cases involved the situation in Northern Ireland and the activity of the IRA. Previously, miscarriage of justice cases were brought before the British Home Office or the Northern Ireland Office, once other appellate procedures had been exhausted. The British government recently established the Criminal Cases Review Commission ("Commission", supra note 12, at 7-13 (considering allegations of abuse by police in Northern Ireland in light of existence of emergency legislation that broadens police power).


29. Id. The European Parliament criticized the government for allowing the RUC to use plastic bullets in controlling riot situations. Id.; see U.N. Press Release HR/4231 (visited Feb. 14, 1999) <http://www.un.org> (on file with the Fordham International Law Journal) (citing committee member of U.N. Committee Against Torture expressing disappointment that emergency powers of police and army were not lifted during ceasefire).


32. See generally Woffinden, supra note 19, at 3-193 (chronicling existence of cases of miscarriages of justice, specifically from 1946 to 1986). In 1950, the government tried, convicted, and hung Timothy Evans, who was mentally retarded, for murdering his infant daughter. Id. at 5-6. At the trial, Evan's defense counsel argued that the murderer was a neighbor, John Christie. Id. at 6. In 1953, three years after Evans was hung, Christie confessed to the infant's murder and six other killings. Id. at 6.

Six Irish men living in Birmingham, England served sixteen years for the 1974 IRA bombing of pubs in Birmingham. Paddy Joe Hill, Forever Lost, Forever Gone (1995). A court quashed their convictions when it was discovered that police had fabricated confession statements and that the scientific evidence against them was faulty. Id. at 246-47.

33. See generally Woffinden, supra note 19, at 213-301 (devoting several chapters of book to cases involving suspected IRA activity, which were later discovered to be miscarriages of justice).


35. Id. The Criminal Cases Review Commission ("Commission" or "CCRC") was established under the 1995 Criminal Appeal Act and began operations in January 1998. Criminal Appeal Act, 1995, ch. 35, § 8(1) (Eng.). The Commission is an independent body established by the British government to investigate suspected miscarriages of jus-
tion" or "CCRC") as an independent body\textsuperscript{36} to review cases for possible miscarriages of justice.\textsuperscript{37} The Commission assumed this responsibility from the Home Office\textsuperscript{38} and from the Northern Ireland Office\textsuperscript{39} (or "NIO"), which previously accepted requests for reconsideration of cases.\textsuperscript{40} The Commission may investigate cases from England, Wales,\textsuperscript{41} and Northern Ireland.\textsuperscript{42} In contrast, the former system only allowed cases from Northern Ireland to be considered by a body in Northern Ireland, specifically the Northern Ireland Office, as opposed to a wider United Kingdom-based body.\textsuperscript{43} The CCRC's structure does not allow for a separate mechanism solely for dealing with cases from Northern Ireland.\textsuperscript{44} This Comment considers the Commission, its establish-


37. Id. Miscarriage of justice is defined as "a failure to attain the deserved end result of justice." Clive Walker, \textit{Introduction, in Justice in Error}, supra note 24, at 2.


40. See Duncan Campbell, \textit{Guilty Until Proven Innocent}, \textit{Guardian}, Aug. 19, 1998, at 17 (explaining that number of cases that CCRC received since taking over responsibility from Home Office); CCRC Ann. Rep., supra note 34, at 6 (stating that cases were transferred from Northern Ireland Office and Home Office to new Commission).

41. See Criminal Appeal Act, 1995, §§ 9, 11 (Eng.) (setting forth Commission's power to investigate cases dealt summarily and on indictment in England and Wales); id. §§ 10, 12 (outlining Commission's role in Northern Ireland).

42. See id. §§ 9-12 (affording Commission mandate to consider cases from England and Wales and Northern Ireland); see also Carmel Robinson, \textit{41 Miscarriages of Justice Dealt with In First Week}, Irish Times on the Web, Apr. 9, 1997 (visited Sept. 15, 1998) <http://www.irish-times.com/irish-times/paper/1997/0409/hom24.html> (on file with the \textit{Fordham International Law Journal}).

43. See CCRC Ann. Rep., supra note 34, at 6 (explaining how cases were transferred to CCRC from Northern Ireland Office).

ment, and its likely effects on miscarriages of justice. Part I of this Comment considers British and Northern Irish law. Part I also highlights British law leading up to the creation of the CCRC and Northern Irish law in light of its unique elements. Part II explains the establishment of the CCRC, its powers, and structure. Additionally, Part II discusses various commentary on the creation of the CCRC. Part III analyzes the future effectiveness of the CCRC in correcting miscarriages of justice, paying particular attention to the case of Northern Ireland. This Comment concludes that although the Commission is an improvement on the Home Office, miscarriages of justice cases still face a system riddled with many challenges.

I. THE DEVELOPMENT OF BRITISH AND NORTHERN IRISH LAW IN RELATION TO THE CCRC

The systems of justice in Great Britain and Northern Ireland share some similarities and some differences in structure and application. Many of these distinctions revolve around the role of emergency legislation. The notion of the CCRC developed from criticism of these systems, and the CCRC performs its role within these environments.

A. British Law

Great Britain and Northern Ireland operate under a Parliamentary system. The criminal justice system consists of a prosecution service, as well as trial and appellate courts. This system also includes emergency legislation and limits on fundamental rights.

46. Lawyers Committee for Human Rights, supra note 2, at 17.
47. Woffinden, supra note 19, at 322.
51. The Stateman's Year-Book, supra note 45, at 1305.
52. Dickson, supra note 24, at 178.
1. British Justice System's Bodies and Powers

The United Kingdom of Great Britain and Northern Ireland functions under a parliamentary system.\(^54\) Criminal cases begin with a police investigation, but are ultimately handled by a special prosecution office of the government.\(^55\) After a trial, defendants may apply for an appeal.\(^56\) During the investigation and prosecution processes, suspects retain certain rights.\(^57\) Emergency legislation altered some of these rights in an attempt to deal with terrorism.\(^58\)

The United Kingdom of Great Britain and Northern Ireland functions under a Parliamentary system that consists of the Crown, the House of Lords,\(^59\) and the House of Commons.\(^60\) Some members of Parliament hold offices of Secretary of State or minister and are responsible for supervising a government department.\(^61\) Secretaries of State and ministers also meet formally as part of the cabinet where they discuss government policy issues.\(^62\) The House of Lords remains the final appellate court in England, Wales, and Northern Ireland, although its use as such is limited.\(^63\) The Crown maintains the Royal Prerogative of Mercy.\(^64\)

\(^{54}\) Id.
\(^{56}\) See The Stateman's Year-Book, supra note 45, at 1338-39.
\(^{57}\) Sanders & Bridges, supra note 53, at 38.
\(^{58}\) Dickson, supra note 24, at 187-91.
\(^{59}\) See The Stateman's Year-Book, supra note 45, at 1305 (describing members of House of Lords and non-election hereditary appointment system); Terence Ingman, The English Legal Process 4-11 (1996) (explaining how House of Lords retains power as appellate court).
\(^{60}\) See The Stateman's Year-Book, supra note 45, at 1305-06 (describing eligibility requirements for House of Commons and election procedures).
\(^{61}\) See Donald Gifford & John Salter, Understanding the English Legal System 13 (1997) (explaining how Members of Parliament are responsible to Parliament for their own actions or in-actions and also for actions or in-actions of department(s) or statutory authority that he or she supervises).
\(^{62}\) Id. at 13-14.
\(^{63}\) See Ingman, supra note 59, at 4-5 (stating that criminal cases must involve points of law of general public importance and be given permission by Court of Appeal or House of Lords to be considered by House of Lords). Only a few cases manage to reach the House of Lords as many fail to meet these two criteria. Id. at 8.
\(^{64}\) See Pattenden, supra note 30, at 359, 378-79 (stating that Royal Prerogative of Mercy can be exercised by way of free pardon or remission of sentence). The Crown
Criminal cases begin with police investigations,65 are transferred to the Crown Prosecution Service66 ("CPS"), and then may end up in the court system.67 The CPS68 initiates criminal prosecutions in the United Kingdom.69 The case is then brought to the Magistrate Courts.70 If the case involves a summary offense, then it will be heard before a Magistrate Court, by a judge or justice of the peace, without a jury.71 If a charge is indictable, then it is transferred to the Crown Court where a jury hears the case.72

Appeals are initially heard by different courts depending on which court held the trial.73 The Crown Court hears appeals on cases from the Magistrate Courts.74 Appeals from the Crown Court has maintained the power to pardon a defendant for centuries. Id. The prerogative to do so derives from the sovereign's power to determine punishments for crimes. Id. at 378.

65. See Review of the Crown Prosecution Service, supra note 55, § 13 (stating that police obtain evidence as part of investigation prior to handing cases to the Crown Prosecution Service ("CPS")).

66. See Crown Prosecution Service Website, supra note 50 (describing CPS as "a national service, working closely with the police, the courts and others in the criminal justice system to improve its effectiveness"); see also Review of the Crown Prosecution Service, supra note 55, § 1 (stating CPS is headed by Director of Public Prosecutions and under superintendent of Attorney General). The Attorney General is a minister of Parliament and is responsible for the conduct of most criminal prosecutions. What Is the Crown Prosecution Service? (visited Feb. 18, 1999) <http://www.cps.gov.uk/cpsa/whatis.htm> (on file with the Fordham International Law Journal).


68. Id. at 369. Until the legislation was enacted in 1986, the responsibility of initiating criminal prosecutions rested with the police. Id. The CPS followed from a 1970 report by Justice arguing that the police did not consider the public policy issues in prosecuting and that the involvement of the police in the actual investigation might encourage police to prosecute even in light of weak evidence. Id.

69. Prosecution Offenses Act, 1985, § 10 (Eng.). The police decide on the charge and prepare the case file for the CPS. Review of the Crown Prosecution Service, supra note 55. This report was presented to Parliament by the Attorney General in June 1998. Id. The Attorney General criticized the CPS, particularly stating that the CPS should have an earlier role in producing prosecution files, currently a role of the police. Id. § 13.

70. GIFFORD & SALTER, supra note 61, at 54.

71. See id. at 66 (explaining that case is summary not necessarily because it is not serious, but because Parliament has designated it to be summary offense). Magistrate Courts can impose fine up to UK£5000 and jail sentence up to six months for each offense. THE STATEMAN'S YEAR-BOOK, supra note 45, at 1338.

72. See GIFFORD & SALTER, supra note 61, at 66 (defining indictable as requiring judge or jury).

73. THE STATEMAN'S YEAR-BOOK, supra note 45, at 1338-39.

74. See id. (describing how appeals from magistrates are heard by Crown Court
Court go to the Court of Appeal, Criminal Division ("CACD"). Only appeals that involve a question of law go right to the Court of Appeal. The Attorney General in Northern Ireland, and in England and Wales, can also refer a case to the Court of Appeal in order to have the sentence imposed by the Crown Court increased.

The Government in Great Britain require the police to inform arrested suspects of certain rights. Following recent changes in legislation, defendants possess an absolute right to legal advice and to be made aware of that right, yet there is no mechanism to enforce this right. Police do maintain the discretion, however, to delay legal advice, and in the case of suspects under the PTAs, some rights are not guaranteed.

The right to silence has been encroached upon across the United Kingdom through Parliament’s legislation, even though this move was criticized by the Royal Commission on Criminal Justice ("RCCJ"). Since 1968, several pieces of legisla-

when it regards conviction or sentence, but cases go to Divisional High Court when only point of law is involved).

75. See id. at 1139.
76. Id.
77. See Brice Dickson, Legal System of Northern Ireland 160 (1993) (explaining how this provision became law when highly publicized sex offenders received light sentences from trial judges).
78. See Sanders & Bridges, supra note 53, at 38 (explaining how suspects arrested are supposed to be informed about right to legal advice, to have someone know about their arrest, and to make phone call).
79. See Police and Criminal Evidence Act, 1984, ch. 60, § 58(1) (Eng.) (stating that person arrested and held in custody is entitled to consult solicitor privately at any time, if he so requests); Sanders & Bridges, supra note 53, at 38 (noting that Code of Practice for Detention, Treatment, and Questioning of Persons by Police requires that legal advice is absolute right and that police must inform persons detained of such right).
80. See Sanders & Bridges, supra note 53, at 38-39 (analyzing research studies of particular police stations that show that 25% of all suspects requested legal advice and that 21% received it, but contending that it does not make sense why three out of four suspects who are supposed to be informed as to their right to legal advice would in effect refuse free gift of advice).
81. Id. at 38. Six to eight percent of those requesting legal advice fail to receive it or receive it when it is already too late. Id. at 39.
83. See Adrian Clarke, A Painfully Slow Process, 146 New L.J. 946, 946 (1996) (explaining how Royal Commission on Criminal Justice ("RCCJ") specifically disapproved of abolition of right to silence in police stations). The RCCJ was established in 1991 to examine the effectiveness of the criminal justice system in England and Wales in convicting the guilty and acquitting the innocent. Walker, supra note 37, at 1. The RCCJ
tion have included restrictions on the right to silence.\textsuperscript{84} Many have limited the defendant's right not to speak in particular circumstances when charged with certain offenses.\textsuperscript{85} The Criminal Justice and Public Order Act 1994 allows juries to draw adverse inferences from the defendant's silence prior to trial.\textsuperscript{86}

Proponents of the argument favoring the abolition of the right to pre-trial silence believe that the right to silence only protects the guilty.\textsuperscript{87} The right to silence prior to trial gives the defendant the opportunity to fabricate a defense for the trial.\textsuperscript{88} An innocent defendant, however, may be inadequately informed of his charge and believe that remaining silent may be more beneficial than trying to respond to an unclear accusation.\textsuperscript{89}

In order to control terrorism, and specifically paramilitary activity associated with Northern Ireland, the British government enacted PTAs.\textsuperscript{90} Much of the PTAs occurred as an immediate

\begin{itemize}
\item \textsuperscript{84} See McElree & Starmer, \textit{supra} note 31, at 62-64 (listing several pieces of legislation, including Theft Act, 1968, § 31, Supreme Court Act, § 72, Criminal Justice Act 1987, § 2, and Criminal Evidence (Northern Ireland) Order 1988, that limited defendant's right to silence).
\item \textsuperscript{85} See id. at 59 (stating that right to silence does not have universal application and has in many instances been restricted).
\item \textsuperscript{86} Criminal Justice and Public Order Act, 1994, §§ 34, 36, 37 (Eng.); see \textsc{Peter Mirfield, Silence, Confessions and Improperly Obtained Evidence} 240 (1997) (noting that common law did allow some inferences to be drawn from silence of accused, but this legislation extends applyability).
\item \textsuperscript{87} See id. at 242 (quoting Bentham on right to silence, who stated that innocence never takes advantage of right to silence, as innocence claims right of speaking, and as guilt invokes privilege of silence). Bentham was considering the right to silence at trial, where there already are certain safeguards in place, including the presumption of innocence and the fact that is open and recorded. \textit{Id.} A committee took his statements, however, and used them to alter the right to pre-trial silence. \textit{Id.}
\item \textsuperscript{88} See id. at 243 (explaining that if suspect had to speak when arrested, he would state any defenses at that time, whereas right to silence allows him not say anything until he has come up with defense).
\item \textsuperscript{89} Id. at 245; see McElree & Starmer, \textit{supra} note 31, at 59 (explaining that right to silence preserves human dignity by defining nature of relationship with individual and state and provides safeguards for vulnerable against wrongful convictions).
\item \textsuperscript{90} See Dickson, \textit{supra} note 24, at 178 (explaining that since mid-1970s emergency legislation under PTAs forms central part of British government's regulatory strategy against terrorism).
\end{itemize}
reaction to a series of bombings, and the British government designed the PTAs to prevent terrorism rather than to eliminate it. Similarly, at least some of the PTAs exist for political reasons, mainly to demonstrate that the British government is doing something to prevent terrorism.

PTAs do not demonstrate an equilibrium between measures necessary to combat terrorism and the protection of civil rights of society. Under current legislation, police may arrest persons with very little cause and hold them for up to seven days without formally charging them with a crime. The European Court of Human Rights struck down the seven day detention provision as a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms (“European Convention”), yet the British government has chosen to ignore that ruling.

PTAs allow police to search with additional powers, including both relaxed requirements for the types of materials for which the police can search and greater ease in obtaining search warrants. Additionally, high level police officers may override the need for a search warrant if they reasonably believe that an emergency exists that demands immediate action. These powers lack safeguards that would otherwise protect their overzealous application. The British government needs the power to counteract terrorism, but it is argued by some authors that these

91. See id. (stating that bombings in pubs in Birmingham created panic that led in part to PTAs).
92. Id. at 179.
93. Id. at 194.
94. See id. at 178 (stating that inordinately broad power of arrest that emergency legislation allows and its powers to detain are not in line with liberal democracy founded on rule of law).
95. See id. at 189 (explaining that official justification for these powers is to allow police enough time to gather evidence to justify charging detainee with crime, however, only one-quarter of those detained are ever charged with any crime).
97. See Dickson, supra note 24, at 192-93 (delineating eight respects where PTA allows greater search powers).
98. Id. at 193.
99. See id. at 194 (noting that much of emergency legislation overlaps with ordinary rules of law, but does so while stripping away protective safeguards).
provisions seem to do so at the cost of unnecessarily limiting fundamental rights.100

2. The CCRC’s Legal Background

Criminal justice scholars debated the issue of justice in the nineteenth century when there was no mechanism available to correct false verdicts.101 Since then, the Court of Appeal102 (or “Court”) and the Home Office acquired the responsibility of correcting miscarriages of justice.103 In recent decades, the United Kingdom faced public criticism regarding the existence of miscarriages of justice.104 Many cases that received high publicity involved suspected IRA terrorist activities.105 Several other recognized miscarriages, however, occurred outside of the terrorist context.106

Prior to the establishment of the formal appellate court, the public clamor for reform reached Parliament.107 The perception of criminal appeals as non-political in nature weakened the import of establishing a criminal appeal process.108 Parliament finally approved the Court of Appeal in the United Kingdom following the exposure of two miscarriages of justice.109 Parliament supposedly designed the Court to correct miscarriages of justice, and the Court initiated formal appeal procedures in 1907.110

100. See id. (questioning whether PTAs are necessary since other laws exist that have same purpose, but also have sufficient safeguards that PTAs lack).

101. See WOFFINDEN, supra note 19, at 321 (describing how no machinery existed for correcting errors in criminal trials and how judges resisted such machinery).

102. See id. (stating Court of Appeal (or “Court”) was established in 1907, after 31 bills in Parliament failed to do so, and was created to remedy miscarriages of justice); PATTENDEN, supra note 30, at 30-31 (stating that controversy surrounding series of convictions persuaded politicians of need for criminal appeal system).

103. See WOFFINDEN, supra note 19, at 324 (describing how in 1968, Home Office gained powers to refer cases of miscarriage of justice back to Court and to recommend to Crown exercise of pardon).

104. See PATTENDEN, supra note 30, at v (stating in General Editor’s Introduction that public discussion regarding miscarriages of justice in 1980s and 1990s centered on British criminal appeal structure).

105. Walker, supra note 37, at 8.

106. Id.

107. PATTENDEN, supra note 30, at 28.

108. See id. at 27 (citing lack of political will to push legislation on what was regarded as non-political issue).

109. See id. at 28-29 (explaining case of Adolf Beck’s mistaken identification and conviction). The second case involved George Edalji, who the government wrongly convicted of animal maiming. Id. at 30.

110. WOFFINDEN, supra note 19, at 321.
The Court, however, never seemed to consider the defendant's guilt or innocence as its founders originally intended, but restricted its work to points of law.\textsuperscript{111} The appellate process in the United Kingdom continues to interpret its role narrowly.\textsuperscript{112} The Court is reluctant to expand its role and become more critical of the original trial\textsuperscript{113} because the Court and the public appreciate the need for closure in the appellate process, so that a case has a true point of termination.\textsuperscript{114} The Court considers only points of law because it also fears a flood of cases.\textsuperscript{115} Furthermore, the Court restricts appellate issues because it wishes to preserve jury findings and to emphasize the importance of the original trial.\textsuperscript{116}

In the early 1960s, Justice,\textsuperscript{117} a non-governmental organization ("NGO"), initiated an inquiry into the existence of judicial miscarriages or errors.\textsuperscript{118} In 1964, the British government began its own investigation of the Court of Appeal with the Donovan Commission.\textsuperscript{119} This investigation caused the British government to reconsider the criminal justice system and led to the introduction of the Criminal Appeal Act 1968 ("1968 Act").\textsuperscript{120} Under the 1968 Act, the Home Office acquired the power to consider cases after an applicant had exhausted his rights at the appellate level.\textsuperscript{121} The Home Secretary could act on his own initiative and recommend that the Queen exercise her Royal Prerogative of Mercy.\textsuperscript{122} Alternatively, under the 1968 Act, the

\begin{itemize}
  \item \textsuperscript{111} See \textit{id.} at 321 (quoting Lord Paget, Member of Parliament, stating that Court's original function was forgotten and Court confined itself to considering points of law).
  \item \textsuperscript{112} \textit{id.} at 322.
  \item \textsuperscript{113} \textit{id.} at 323.
  \item \textsuperscript{114} \textit{id.} at 322.
  \item \textsuperscript{115} \textit{id.}
  \item \textsuperscript{116} See \textit{id.} at 323 (stating that if jury decisions were regularly overturned, jury decisions would lose value and juries themselves would not take their roles as seriously).
  \item \textsuperscript{117} See Clare Dyer, \textit{In Pursuit of Justice}, \textit{GuARDIAN}, June 17, 1997, at T17 (stating that Justice began in 1957 and has become British branch of International Commission on Jurists).
  \item \textsuperscript{118} WOFFINDEN, \textit{supra} note 19, at 322.
  \item \textsuperscript{119} \textit{See id.} (noting that British government recognized authority and respectfulness that Justice's report would receive, and therefore government initiated their own investigation to counteract Justice's investigation).
  \item \textsuperscript{120} Criminal Appeal Act, 1968, ch. 19, § 2 (Eng.).
  \item \textsuperscript{121} \textit{id.} § 17.
  \item \textsuperscript{122} WOFFINDEN, \textit{supra} note 19, at 323. The Home Office could recommend that the Crown exercise the royal prerogative of mercy prior to the establishment of the Court of Appeal. PATTENDEN, \textit{supra} note 30, at 28.
\end{itemize}
Home Office maintained the right to send a case back to the Court if the decision was unsafe and unsatisfactory.\(^\text{123}\)

The Home Office and its Northern Irish counterpart, the Northern Irish Office, assumed the role of considering miscarriages of justice, but the offices have been criticized.\(^\text{124}\) The Home Office and the Northern Ireland Office faced huge backlogs of cases waiting to be considered, and this backlog resulted in extensive delays.\(^\text{125}\) In its role of investigating cases for miscarriages of justice, the Home Office operated within a culture of secrecy.\(^\text{126}\) Under Home Office investigations, the first and sometimes the only correspondence that the Home Office might send a defendant was a concise rejection of the petition.\(^\text{127}\) A report by the RCCJ\(^\text{128}\) recommended that the Home Office should disclose any new evidence that comes to light during an investigation that is relevant to a representation or casts doubt on a conviction.\(^\text{129}\) Additionally, in 1994, Lord Justice Simon Brown, in *R. v. Secretary of State for the Home Department, ex parte Hickey and others* ("Hickey case"), ruled that the Home Office had not been forthcoming with evidence and that the Home Office should not withhold any information that would help the applicant best present his case.\(^\text{130}\)

In the past, the Court did not embrace the involvement of the Home Office in the appeals process and therefore looked unfavorably at some cases referred to it by the Home Office.\(^\text{131}\) Justice's 1971 Annual Report criticized the Court of Criminal

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123. See Criminal Appeals Act, 1968, ch. 19, § 1(a), 17 (stating Court of Appeal will allow appeal against conviction if judges on Court think that conviction is unsafe).

124. See Michael Mansfield & Nicholas Taylor, *Post Conviction Procedures, in Justice in Error*, supra note 24, at 165 (stating that "such have been the quantity and scale of recent mistakes that the post-appeal system [Home Office] itself could be regarded as the ultimate miscarriage of justice").


126. Clarke, supra note 83, at 946.


128. Walker, supra note 37, at 1.

129. Clarke, supra note 83, at 946.

130. See R. v. Secretary of State for the Home Department, ex parte Hickey and others, 1 All E.R. 490 (1995) (holding that in accordance with Section 17 of Criminal Appeal Act 1968, convicted prisoners are entitled to disclosure of new evidence that police uncover in conducting investigations for Home Office and have opportunity to use that material in their petition to Home Office).

Appeal," ("CACD") for not handling two cases that seemed worthy for appeal. Justice suggested that the CACD refused to handle these cases because, among other reasons, the Home Office had repeatedly referred another case to the CACD and the CACD had rejected it each time. Justice's report also criticized the CACD for its unwillingness to reconsider cases that the CACD had previously dismissed and to reopen cases that the CACD believed that it had finalized.

According to one author, years later, the contempt of the CACD towards repeat appeals grew because of pressures from the public, the press, and politicians. The media's investigation of miscarriages of justice and its televised portrayal of miscarriages particularly upset some judges and further damaged the relationship between the Home Office and the CACD. One of these judges made a comment at the first and unsuccessful appeal of the Birmingham Six, stating that the longer a case continues, the more convinced the Court becomes that the original decision was correct.

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132. See PATTENDEN, supra note 30, at 2 (explaining that Court of Appeal, Criminal Division ("CACD") can hear appeals from Crown Court on sentence, or against conviction of error of law, error of fact, or both).

133. Id. at 368.

134. See id. (describing reluctance of CACD to intervene in two cases because Cooper and McMahon affair was sent to CACD by Home Office four times).

135. Id.

136. See id. (discussing speech given at London School of Economics by Stephen Sedley QC, who worked on high profile miscarriage of justice case and is now High Court judge).

137. See id. (noting Lord Denning's statement that television's involvement with these cases undermined public confidence in criminal justice system). Lord Lane attacked the BBC TV program, Rough Justice, for its reporting of a particular case, which Lord Lane said contained fallacies and unsupported assumptions. Id.

138. See HILL, supra note 32, at 246-47 (explaining that Birmingham Six were six men charged, wrongly convicted, and sentenced for IRA bombing in Birmingham, England in November 1974). They were finally released from prison in March 1991. Id.

139. See id. at 369 (quoting now infamous comment Lord Lane CJ regarding Birmingham Six case, who stated: "as has happened before in references by the Home Secretary to this court . . . under the Criminal Appeal Act of 1968, the longer this case has gone on, the more convinced this court has become that the verdict of the jury was correct."). As stated earlier, the Birmingham Six were released from detention in 1991 as it became evident that the evidence that convicted them was insufficient. See id. at 250 (quoting Lord Justice Lloyd speaking to Birmingham Six, "In light of fresh evidence which has become available since the last hearing in this court, your appeal will be allowed and you will be free to go.").
B. Northern Irish Law

The criminal justice system in Northern Ireland is not isolated from miscarriages of justice. Although the number of allegations of such incidents grew in recent years, allegations of miscarriages of justice occur with less frequency than in England and Wales. The British government retains control over Northern Ireland though a Secretary of State. The legal system and specific emergency legislation create a system in Northern Ireland that differs from the rest of the United Kingdom.

Currently, the British government maintains power over Northern Ireland. The recent Agreement Reached in Multi-Party Negotiations ("Agreement") is expected to bring significant changes to the system. For the most part, however, these changes have yet to be implemented because the Assembly, the new legislative body created under the Agreement, does not yet have legislative powers.

The Northern Ireland Office is the major government body under the old system in Northern Ireland and is headed by the Secretary of State for Northern Ireland. The Secretary of State attends meetings as a member of the British Cabinet.

140. See JACKSON & DORAN, supra note 18, at 51 (stating that since 1987 number of allegations of miscarriages of justice in Northern Ireland grew, citing examples of cases held to be miscarriages).
141. Id.
142. Northern Ireland Office Website, supra note 39.
143. See THE STATEMAN'S YEAR-BOOK, supra note 45, at 1337-43, 1369-70 (describing justice systems in Northern Ireland and England and Wales separately); see also LAWYERS COMMITTEE FOR HUMAN RIGHTS, supra note 2, at 17 (describing existence and use of additional emergency legislation in Northern Ireland).
144. DICKSON, supra note 77, at 11.
146. See id. (creating specific democratic institutions in Northern Ireland, North/South Ministerial Council, and Councils between Ireland and rest of the United Kingdom).
147. Id., Validation, Implementation and Review ¶ 3; see John Mullin, Policy and Politics: Blair Steps Up the Pressure on Arms, GUARDIAN, Mar. 4, 1999, at 11 (stating that deadline for transfer of legislative power to Belfast Assembly is March 10, 1999, although fears exist that deadline will not be reached because decommissioning debate continues).
149. Id. The Secretary of State is answerable to the British Parliament. Id.
150. Id.
The NIO mirrors the British Home Office\textsuperscript{151} in its role of directing and controlling political, constitutional, security, and criminal justice matters.\textsuperscript{152} The NIO office also oversees the work of six social and economic departments.\textsuperscript{153}

England and Wales operate a separate judiciary from the judiciary in Northern Ireland.\textsuperscript{154} The legal system in Northern Ireland today reflects the system in England and Wales, but Northern Ireland operates its own system\textsuperscript{155} and is greatly affected by emergency legislation.\textsuperscript{156} When Ireland was partitioned in 1920, Northern Ireland established its own legal system.\textsuperscript{157} Like England and Wales, the House of Lords acts as the final court of appeal in cases of major importance involving points of law.\textsuperscript{158} The Court, the Crown Court,\textsuperscript{159} and the Magistrate Courts\textsuperscript{160} play the same role in England and Wales and Northern Ireland.\textsuperscript{161} Some types of cases, however, specified under emergency legislation, are tried without a jury, in Diplock Courts.\textsuperscript{162}

\begin{footnotesize}
\begin{enumerate}
\item See supra note 38 and accompanying text (explaining role of Home Office as handling internal affairs).
\item Northern Ireland Office Website, supra note 39.
\item See id. (stating that NIO is responsible for Department of Agriculture, Department of Economic Development, Department of Education, Department of the Environment, Department of Finance and Personnel, and Department of Health and Social Services).
\item See generally The Statesman's Year-Book, supra note 45, at 1337-43, 1369-70 (devoting two separate sections to discussion of judiciary in Northern Ireland and in England and Wales).
\item Id.
\item See Gross, supra note 10, at 477 ("Northern Irish legislation combines permanent, complex, and de facto aspects of emergency regimes. Conceptualizing the situation in terms of 'deviations' and 'aberrations' from an otherwise general rule of 'normality' patently misses the point. Emergency is the norm in Northern Ireland.").
\item Dickson, supra note 77, at 3.
\item Id. The Crown Court has exclusive jurisdiction to hear all serious criminal cases. Id.
\item Id. The Magistrate Courts hear less serious criminal cases and also determine whether a case should be brought before the Crown Court. Id.
\item See The Statesman's Year-Book, supra note 45, at 1338-39 (discussing Court of Appeal, Crown Court, and Magistrates Court in England and Wales); see also Northern Ireland Government WWW Server, supra note 158 (describing roles of courts in Northern Ireland Court Service).
\item Northern Ireland Government WWW Server, supra note 158. Non-jury trials are called Diplock Courts and are part of the emergency legislation. See Martin Flaherty, Human Rights Violations Against Defense Lawyers: The Case of Northern Ireland, 7 HARY.\
\end{enumerate}
\end{footnotesize}
1. Emergency Legislation

PTAs apply in Northern Ireland, but additional emergency legislation, unique to Northern Ireland, also exists.\textsuperscript{163} Parliament enacted stronger legislation in 1973,\textsuperscript{164} and again in 1991,\textsuperscript{165} that applies only in Northern Ireland.\textsuperscript{166} This legislation, which does not preserve traditional procedural rights, removed some of the protective gates between arrest and conviction.\textsuperscript{167}

The Lawyers Committee for Human Rights\textsuperscript{168} claims that this legislation creates the core of a system formulated to convict defendants in cases involving suspected paramilitary activity.\textsuperscript{169} The alleged scheme under this system works by convicting suspects based on confessions that result from prolonged detentions and intense interrogation.\textsuperscript{170} The law allows for internment without trial and permits police to stop, question, and search persons without prior approval from a judge.\textsuperscript{171} The authorities also have the power to search residences and to seize

\textsuperscript{163} See Lawyers Committee for Human Rights, supra note 2, at 17 (stating that emergency legislation has been feature of Northern Ireland since Northern Ireland was established originally as temporary provision, but since 1933 it is permanent feature of Northern Ireland legal system).

\textsuperscript{164} Gross, supra note 10, at 476.

\textsuperscript{165} See id. at 476 (explaining how 1991 legislation created new offenses and gave authorities additional emergency powers).

\textsuperscript{166} Lawyers Committee for Human Rights, supra note 2, at 1.

\textsuperscript{167} Flaherty, supra note 162, at 95.


\textsuperscript{169} Lawyers Committee for Human Rights, supra note 2, at 1; see id. at 4 (describing how under PTA arrested individual may be held for as long as seven days without being charged with crime).

\textsuperscript{170} Id.

\textsuperscript{171} See Flaherty, supra note 162, at 96 (stating that EPA empowers police to stop
documents without prior judicial approval. One author asserts that the British government uses terrorism as a justification for the imposition of draconian powers in Northern Ireland.

2. Mechanisms Prior to Trial

In addition to the Diplock Courts, the pre-trial procedures differ in Northern Ireland and affect the trial process. The trial is not isolated from the earlier phases of the criminal process. Some of these pre-trial procedures and their impact on the trial have raised questions regarding the use of Diplock Courts.

In Northern Ireland, emergency legislation is used more broadly than elsewhere in the United Kingdom, and it has greater scope and strength. The broadness of the effect of the legislation in Northern Ireland is regardless of whether the legislation is confined to Northern Ireland or applies across the United Kingdom. Accordingly, scholars contend that this legislation has intruded more upon the use of ordinary law in Northern Ireland than in England or Wales. The Agreement initiated reviews of the current legislation, but the Agreement does not specifically mandate the elimination of PTAs or EPAs. No immediate prospect exists for Parliament to overturn, repeal, or amend this legislation, and it has actually recently extended it for two years. The Lawyers Committee for

and question persons regarding their identity and movements, to search persons and their homes, and to seize documents without prior judicial approval).

172. Id.
173. Kondonijakos, supra note 1, at 115.
174. See Jackson & Doran, supra note 18, at 32 (explaining how special evidentiary rules are part of emergency legislation, therefore effecting link between pre-trial procedures and trial).
175. Id.
176. See id. (stating that combined effect of search powers, lenient arrest powers, seven-day detentions, questionable interrogations, weak restrictions on admissibility of confessions, and non-jury trials produced system weighted against defendant).
177. See Lawyers Committee for Human Rights, supra note 22, at 60 (stating that emergency legislation is implemented more widely in Northern Ireland and has affected ordinary law more in Northern Ireland than in England and Wales).
179. Lawyers Committee for Human Rights, supra note 22, at 60.
180. Id. at 60; Gross, supra note 10, at 476.
181. Agreement, supra note 145.
Human Rights believes that because of the divided nature of the society, confidence in, and adherence to, the law is essential to any lasting agreement. 183

Several authors contend that as the climate improves in Northern Ireland, the need for emergency legislation will subside. 184 There is still, however, no immediate prospect that the emergency legislation will be repealed. 185 Authors believe that ideally this legislation will be amended and fundamental rights will be afforded greater protection. 186 In the meantime, this legislation does exist and has an impact on cases from Northern Ireland. 187 Emergency legislation allows police to take confessions under questionable circumstances and ensures that the prosecution can use these confessions and other implicating statements at trial. 188

Under the Criminal Evidence (Northern Ireland) Order of 1988, a negative inference may be drawn from the defendant's exercise of the right to silence at arrest, pretrial, and even at trial under certain circumstances. 189 Authors are particularly concerned with the effect of this legislation in the Diplock Courts. 190 This infringement is of particular concern in a highly-politicized environment like Northern Ireland, where a substantial part of the population feels alienated from the police force. 191

183. LAWYERS COMMITTEE FOR HUMAN RIGHTS, supra note 22, at 61.
184. Kondonijakos, supra note 1, at 115; see JACkSON & DORAN, supra note 18, at 9 (stating that due to events indicating future peace in Northern Ireland, it is time for revision of emergency legislation approaches).
185. See JACkSON & DORAN, supra note 18, at 9 (contending that restoration of jury trial, that is, elimination of Diplock Courts, which are part of emergency legislation, for all indictable offenses is unlikely in near future, and even if so, it would be gradual phase out).
186. Kondonijakos, supra note 1, at 99, 115.
187. LAWYERS COMMITTEE FOR HUMAN RIGHTS, supra note 22, at 60.
188. See Flaherty, supra note 162, at 109 (stating that under emergency legislation police have conditions, time, and freedom to procure confessions and can produce those confessions with ease at trial).
189. Id. at 111.
190. See JACkSON & DORAN, supra note 18, at 32 (stating that changing confession rules and right to silence most likely would concern itself, but when applied to non-jury trials, where common law traditions have already been infringed concern has been intensified).
191. See LAWYERS COMMITTEE FOR HUMAN RIGHTS, supra note 22, at 72 ("Silence in the face of . . . authorities is as logically consistent with fear and civil non-cooperation as with consciousness of guilt.").
3. Diplock Courts

The British government established the Diplock Courts over twenty years ago. Critics maintain that courts lacking juries are problematic, based on their history and possible rigidness. Individual rights receive greater limitations under the Diplock Courts.

Diplock Courts try defendants accused of certain offenses without juries. Judges, who determine fact and law in these cases, operate under relaxed rules of evidence. The Emergency Powers Act ("1991 EPA") of 1991 added new offenses to the list of prosecutable crimes and gave the police more emergency powers. Michael Mansfield, a well-known attorney specializing in miscarriage of justice cases, contends that there is a hidden agenda to limit jury trials in the United Kingdom and cites Northern Ireland's Diplock Courts as an example. Mansfield believes that juries are the most democratic element in the British judicial system, but that authorities view juries as a threat to their system. Mansfield further states that miscarriages of justice cases have not arisen due to the fault of juries.

Diplock Courts face criticism of becoming case hardened. Case hardening occurs where judges acclimate and readily accept evidence of the police and security forces over the evidence of the defense. The prosecution often relies upon confessions.

192. See Jackson & Doran, supra note 18, at 8-9 (stating that government established Diplock Commission to consider whether changes should be made to better deal with terrorism).
193. Michael Mansfield, Justice Undone, reprinted in Slapper & Kelly, supra note 67, at 539-34; see Jackson & Doran, supra note 18, at 39 (noting that Diplock Court judges may too easily accept evidence).
194. Flaherty, supra note 162, at 110.
196. Id.
197. Id.
199. Mansfield, supra note 193.
200. See id. (stating that authorities are threatened based on their arrogance that they know who is guilty, better than jury).
201. Id.
202. See Jackson & Doran, supra note 18, at 30 (explaining that several factors have led to possibility of easy acceptance of evidence by Diplock Court judges).
203. Id.
that form the basis of many of the prosecution’s cases, as witnesses generally do not exist or are reluctant to become involved.\textsuperscript{204} Michael Mansfield contends that confessions are the most unreliable source of evidence because they often result from police pressures, and courts fail to instruct juries adequately to consider their credibility.\textsuperscript{205}

Because many of the prosecution’s paramilitary cases are based on confessions, the deterioration of the right to silence has the potential to be even more problematic.\textsuperscript{206} According to one author, the continued use of doubtful confessions makes the effective use of the right to silence even more important.\textsuperscript{207} The European Court of Human Rights held that the lack of the right to silence in the context of Northern Ireland, where access to attorneys is delayed, violated the fair trial provisions agreed to in the European Convention.\textsuperscript{208}

As the evidence standards apply, confessions continue to play a role in many Diplock Court cases.\textsuperscript{209} In 1981, an independent study reported that the Director of Prosecutions in Northern Ireland used confessions in eighty-nine percent of scheduled offense cases,\textsuperscript{210} and the frequency of use of confessions is expected not to have changed since.\textsuperscript{211} In a 1994 interview, Sir Patrick Mayhew, the Secretary of Northern Ireland, said that uncorroborated confessions are admissible.\textsuperscript{212} He stated that while there is a good argument for the belief that confessions must be corroborated before they can be admissible, he does not think corroboration is necessary.\textsuperscript{213}

\textsuperscript{204} See id. at 30-31 (stating that prosecution would have limited success if relying on civilian witnesses, as often they do not exist and when they do they are afraid to become involved with cases involving members of terrorist organizations). The lack of other witnesses has accentuated the importance of confessions. Id.

\textsuperscript{205} See MANSFIELD, supra note 193, at 533-34 (citing plea bargains and lesser sentences as pressures to confess, and lack of instructions to jury to consider reliability of such evidence).

\textsuperscript{206} Flaherty, supra note 162, at 111.

\textsuperscript{207} Id.

\textsuperscript{208} Murray v. United Kingdom, Case 41/1994/488/570 (1996).

\textsuperscript{209} Flaherty, supra note 162, at 110.

\textsuperscript{210} Id.

\textsuperscript{211} See id. (stating that the Committee for Administration of Justice ("CAJ") believes that there has been no change in these figures of significance).

\textsuperscript{212} Mary Ann Dadisman, Irish Question: Into the Lion’s Den, 21 HUM. RTS. 14, 16 (1994).

\textsuperscript{213} Id.
4. Judges and the Judicial Framework in Northern Ireland

The Lawyers Committee for Human Rights acknowledges that Northern Ireland judges are committed professionals, operating in an often hostile environment. Concern exists, however, that the judiciary in Northern Ireland is not sufficiently aware of its responsibilities to protect the rights of defendants, particularly when many basic rights are already limited. The role of judge is even more crucial when there are no juries at trials and pre-trial processes and rules of procedure are significantly altered. The changes to the trial proceedings undoubtedly affected the judiciary and modified its perception within the community. The Lawyers Committee for Human Rights notes that history scarred the perception of judges and their reputation for independence with nationalists and loyalists alike.

After courts squashed a series of convictions following extensive criticism that the evidence used to convict was not trustworthy, judges hesitated to convict without corroboration. Because of potential and actual damage to the reputation of the courts, an adjustment of priorities emerged, initially by individual judges, but then spreading to the Court. Although the Court corrected these cases, no mechanism exists to prevent judges from making this type of error again. The Lawyers Committee for Human Rights argues that returning to a system of trial by jury would be the best mechanism to prevent convictions based on untrustworthy evidence.

The recent case of Baker, Groves, and Valente illustrates

214. LAWYERS COMMITTEE FOR HUMAN RIGHTS, supra note 22, at 60.
215. Id. at 61. Individual judges in the system seem to believe that the decisions of local authorities have greater insight into problems of terrorism than European Commission on Human Rights. Gross, supra note 10, at 437, 479.
216. See LAWYERS COMMITTEE FOR HUMAN RIGHTS, supra note 22, at 68-69 (stating that in divided society judges must ensure that law is applied equally and it is perceived that way and also noting context of no-jury trial in which courts function).
217. Id.
218. See id. at 70 (discussing series of criticized cases, known as "supergrass," where uncorroborated informer evidence was used to convict dozens of defendants).
219. See id. at 71 (stating that judge involved refused to admit that procedural rules of evidence in quashed cases failed to guarantee right to fair trial).
220. Id.
221. Id.
222. Id.
how the actions of judges do not protect defendants rights.\textsuperscript{223} Police arrested and charged Sam Baker, William Groves, and Sean Valente with a highly-political and publicized killing in February 1998.\textsuperscript{224} From the time of their arrest, advocates voiced concerns regarding the existence of evidence and its quality and nature.\textsuperscript{225} At the indictment hearing of Baker, Groves, and Valente, a judge relied on a police officer’s statement that the officer could connect the three defendants with the evidence in the case.\textsuperscript{226} The judge failed to inquire into the nature of the evidence and how this evidence specifically connected Baker, Groves, and Valente with the crime.\textsuperscript{227} Lawyers have argued that the judge violated the European Convention by failing to inquire thoroughly into the basis of Baker, Groves, and Valente’s continued retention.\textsuperscript{228} In August, the prosecutor dropped the charges and released all three men, from what the Committee on the Administration of Justice\textsuperscript{229} ("CAJ") notes is effectively internment on demand based on questionable evidence.\textsuperscript{230} This case illustrates the difficulties related to miscarriages of justice resulting from the trial courts, the Court, and the Home Office.\textsuperscript{231} The CCRC is the British Government’s response to such difficulties.\textsuperscript{232}

II. \textit{CCRC AND RELEVANT COMMENTARY}

The British government established the Commission follow-
ing government and independent inquiries and investigations into miscarriages of justice in the United Kingdom. The Criminal Appeal Act 1995 ("1995 Act") gave the Commission the mandate to consider applications of miscarriages of justice, previously a role of the Home Office. The new Commission's mandate affords the Commission powers that are broader than the previous powers of the Home Office, but commentators expressed concern over the Commission's effectiveness since its initial proposal.

A. Background to the Establishment of the Commission

The British government established the Commission as the result of the May Inquiry and other pressures. The May Inquiry investigated the Maguire case and the Guildford and Woolwich bombings. The May report criticized the Home Office's handling of the cases.

233. Malleson, supra note 131, at 929; Pattenden, supra note 30, at 347.
234. Criminal Appeal Act, 1995, ch. 35, § 8(1) (Eng.).
235. Id.
238. Malleson, supra note 131, at 929; Rachel Donnelly, Supporters Angry as McNamme Appeal Delayed, Irish Times on the Web (Nov. 12, 1998) (visited Nov. 13, 1998) <http://www.irish-times.com/irish-times/paper/1998/1112/hom28.html> (on file with the Fordham International Law Journal); see Pattenden, supra note 30, at 353 (explaining that May Inquiry was set up by Sir John May in order to investigate case against Maguire family). When Sir John's interim report was published, the Home Secretary referred the case to the Criminal Court of Appeal where the convictions were quashed. Id.
239. Pattenden, supra note 30, at 347. In 1981-82, the Home Affairs Committee conducted a limited inquiry on how the Home Office conducted investigations into alleged miscarriages of justice and reported concerns regarding the lack of independent scrutiny in handling these cases. Id. Nearly ten years later, the Home Affairs Committee recommended that the government carefully study whether the CPS, the prosecuting authorities in England and Wales, needed an external monitor to look at how the CPS conducted individual cases. Crown Prosecution Service, Fourth Report of the Home Affairs Committee House of Commons (1989-90). Justice, a branch of the International Commission of Jurists, produced a report in July 1989 entitled Miscarriages of Justice. Pattenden, supra note 30, at 346-47.
240. Pattenden, supra note 30, at 352-53. The Maguire case involved seven members of the Maguire family, the youngest 14 years of age, who were all convicted based on positive results obtained from hand-swab tests to determine the presence of the bomb substance, nitroglycerine. Id. The investigation never uncovered even traces of the substance in their home, which the prosecution claimed was a bomb-making factory. Id.
241. Id. at 347. The Guildford Four were four men who in 1975 were sentenced to life imprisonment for bombing public houses in Guildford and Woolwich in England.
for not being proactive enough in the cases that the Home Office received for review. The RCCJ conducted an additional inquiry following the release of the Birmingham Six. The RCCJ and the law reform and human rights organization, Justice, recommended the establishment of a new independent review body to replace the Home Office in its role reviewing cases for miscarriages of justice. This recommendation received significant support and led to the proposed Criminal Cases Review Authority. This proposal resulted in the Commission, which was established under the 1995 Act.

The RCCJ claimed that the approach that successive Home Secretaries had taken regarding the reference of cases led to the change. The RCCJ realized that the Home Office only considered and investigated cases that contained some form of new evidence. Additionally, all of the sixteen members of C3, the division of the Home Office responsible for considering miscarriages of justice, lacked professional legal qualification. C3 considered, yet failed to correct, several of the worst miscarriage of justice cases. For example, in the Maguire case, the Home Office made a conscious decision not to investigate the

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Id. Although their first appeal had been initiated when another group confessed to the crime, it was not successful. Id. Their second appeal, 12 years later, was successful, and they were released. Id. It was determined that evidence that finally led to their release had been in the files of the Guildford police station, idle for fifteen years. Id. at 345-48. The Home Office gained the responsibility of detecting wrongful convictions when the appeal courts have failed in England and Wales. Id.

242. Id. supra note 131, at 929.
243. Malleson, supra note 238, at T17.
244. Donnelly, supra note 117.
245. Dyer, supra note 117.
246. Malleson, supra note 131, at 929.
247. Id.
248. Id.
249. Id. supra note 131, at 925. (noting that Sir John May believed that home secretaries had taken reactive, rather than proactive approach in handling cases).
250. See id. (stating that RCCJ received commentary that stated that Home Office only considered cases with new evidence as Home Office did not have commitment or resources to act otherwise).
251. See SLAPPER & KELLY, supra note 67, at 95 (stating that none of members of C3 were trained as lawyers).
252. Id.
253. Patrick O’Connor, Prosecution Disclosure: Principle, Practice, and Justice, in JUSTICE IN ERROR, supra note 2, at 105. The prosecution failed to disclose the scientific reports after the defense had requested them over a nine month period preceding the trial. Id. The defense also did not know that another test, of which the prosecution was aware, had found negative results for nitroglycerine on each of the swabs. Id.
case because the Home Office believed that it was not the government's responsibility.\textsuperscript{254} Scholars believe that the Home Office made this decision either because of a lack of commitment to this role, to act otherwise, or because of a lack of resources.\textsuperscript{255} The Home Office saw its position as an executive power in conflict with the role of reviewing and referring cases.\textsuperscript{256} Others countered that the proposal of the Commission was the direct reaction to a series of high-profile miscarriage of justice cases.\textsuperscript{257} In either case, authors believe that the RCCJ proposed a body with greater resources and independence, which the 1995 Act reflects.\textsuperscript{258}

B. Establishment of the Commission

The 1995 Act established the Commission\textsuperscript{259} and abolished the power of the Home Secretary to refer cases to the Court.\textsuperscript{260} The Home Secretary previously could only refer cases resulting in convictions.\textsuperscript{261} The Commission, however, can refer cases involving convictions and sentences.\textsuperscript{262} The Commission also possesses greater power to investigating possible miscarriages of justice.\textsuperscript{263} In addition, the Commission has greater access to information and documents from the police, the government, and

\textsuperscript{254} See PATTENDEN, supra note 30, at 353 (stating that it is not government's role to uncover new evidence and that is the reason for not having scientist's committee attempt as that would be what they attempted to do).

\textsuperscript{255} Malleson, supra note 131, at 929.

\textsuperscript{256} Id.; see Clarke, supra note 83, at 946 (citing RCCJ report that role assigned to Home Office, of reviewing cases, was not compatible with constitutional separation of powers that exists between courts and executive). The Home Office has the difficulty of “being saddled with incompatible duties, invigilating a system whose integrity it must protect.” WOFFINDEN, supra note 19, at 334.

\textsuperscript{257} Taylor, supra note 232, at 24-25.

\textsuperscript{258} Malleson, supra note 131, at 929-30.

\textsuperscript{259} See Criminal Appeal Act, 1995, § 8(1) (Eng.) (“There shall be a body corporate to be known as the Criminal Cases Review Commission.”)

\textsuperscript{260} Taylor, supra 232, at 24; see Criminal Appeal Act, 1995, ch. 35, § 3 (abolishing power of Secretary of State to refer cases). The Home Secretary can still pardon convicted persons by exercising the Royal Prerogative of Mercy. PATTENDEN, supra note 30, at 420.

\textsuperscript{261} Taylor, supra note 232, at 24.

\textsuperscript{262} See Criminal Appeal Act, 1995, § 9(1)(a) (stating that Commission “may . . . refer the conviction to the Court of Appeal”); see also id. § 9(1)(b) (stating that Commission “may . . . refer to the Court of Appeal any sentence”); Taylor, supra note 232, at 24-25 (stating that Commission has wider powers than Home Secretary).

\textsuperscript{263} Taylor, supra note 232, at 24-25.
the prosecution. The Commission may order the police to produce all material in a case, including undisclosed material. Authors believe that these powers may prove helpful in determining whether the police are abusing their discretion. The Commission, however, cannot obtain documents that government departments have created in the process of the Home Secretary’s consideration of the case.

1. Powers and Responsibilities

The Commission is a non-departmental public body. The 1995 Act gives the Commission the responsibility of reviewing cases for miscarriages of justice and referring back to the appropriate Court of Appeal any case that has a real possibility of not being upheld. The Commission also investigates and reports back to the Court any matter that the Court asks the Commission to consider. Additionally, the 1995 Act afforded the CCRC the power both to consider whether or not the Queen

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264. Donovan, supra note 236, at 1.
265. Id.
266. Id.
267. See PATTENDEN, supra note 30, at 418 (stating that documents produced in Home Office’s investigation do not have to be produced and that those documents that do have to be produced may not be disclosed by CCRC without consent).
268. CCRC Ann. Rep., supra note 34, at 8; see PATTENDEN, supra note 30, at 418 (stating that Home Secretary will not play any role in day-to-day operation, but CCRC will create annual report, which Home Secretary will present to Parliament).
269. See John Jackson, Trial Procedures, in JUSTICE IN ERROR, supra note 24, at 132 (explaining how British justice system uses magistrate judges, without juries, to handle summary cases and how what is defined as summary case has expanded significantly over recent years so that availability of defendants to elect for jury trial is limited). Jackson believes that as more serious crimes are classified as summary, it becomes of greater importance that the defendants receive a fair trial. Id. He also notes that there are concerns about the secrecy shrouding the selection of magistrates, their independence and impartiality, and their tendency to accept easily police evidence. Id. Many of those pleading not guilty, prefer to have their case with a jury, which is in the Crown Court, as they feel they are more likely to be acquitted. Id. Additionally, almost all Crown Court cases receive legal aid. Id. The selection of jurors, however, is not as random as it could be, and recent decisions by the government have given the prosecution more power in the jury selection process and the defense less. Id.
270. See Criminal Appeal Act, 1995, ch. 35, § 13(1)(a) (Eng.) (stating that conviction, verdict, or sentence should not be sent back to Court of Appeal unless "there is a real possibility that the conviction, verdict, or sentence would not be upheld were the reference to be made").
271. See Criminal Appeal Act, 1995, § 15(1) (stating that where direction is given by Court, Commission shall investigate specific matter).
should exercise her power of mercy and to report such decisions
to the Secretary of State.\textsuperscript{272}

2. Structure

According to the 1995 Act, the Commission consists of thir- 
teen commissioners, a chairman, a chief executive officer, a few
dozen caseworkers, and a secretarial and administrative staff.\textsuperscript{273}
The Queen, according to the recommendations of the Prime
Minister, appoints the commissioners\textsuperscript{274} following specific staff-
ing criteria.\textsuperscript{275} In accordance with the 1995 Act, one-third of the
commissioners must be lawyers\textsuperscript{276} and two-thirds must have
knowledge or experience of some aspect of the criminal justice
system according to the Prime Minister.\textsuperscript{277} The 1995 Act also
requires that at least one member appears to the Prime Minister
to have some knowledge of some aspect of the criminal justice
system in Northern Ireland.\textsuperscript{278} The 1995 Act formally estab-
lished the CCRC on January 1, 1997, and the CCRC began its
review of cases on March 31, 1997.\textsuperscript{279} On March 31, it received
284 cases transferred from the Home Office and the Northern
Ireland Office.\textsuperscript{280} Within a year, nearly 1350\textsuperscript{281} individuals
applied, and by August 1998, the number of applicants exceeded
1800.\textsuperscript{282}

\textsuperscript{272} See id. § 16 (mandating Commission to consider cases on whether Her Maj-
esty should exercise her prerogative of mercy and to refer conclusions on issue to Secre-
tary of State).

\textsuperscript{273} See id. § 8(3) (stating that Commission must have at least eleven members).

\textsuperscript{274} Id. § 8(4).

\textsuperscript{275} Malleson, supra note 131, at 930.

\textsuperscript{276} See Criminal Appeal Act, 1995, § 8(5)(a-c) (Eng.). At least one-third of the
members of the Commission must be persons who are legally qualified, and for this
purpose a person is legally qualified if he has a ten year general qualification, within the
meaning of section 71 of the Courts and Legal Services Act 1990, or he is a member of
the Bar of Northern Ireland, or solicitor of the Supreme Court of Northern Ireland, of
at least ten years' standing. Id.

\textsuperscript{277} See id. § 8(6) (stating that criteria for having knowledge or experience of any
aspect of criminal justice system, particularly investigation of offenses and treatment of
offenders, is based on how candidates appear to Prime Minister).

\textsuperscript{278} Criminal Appeal Act, 1995, § 8(6).

\textsuperscript{279} CCRC Ann. Rep., supra note 34, at 5.

\textsuperscript{280} Taylor, supra note 232, at 25.

\textsuperscript{281} Id.

\textsuperscript{282} See Campbell, supra note 40, at 17 (noting further that as of August, 1998, 20
cases have been referred back to Court, 61 cases were turned down by Commission, and
over 1000 wait for review).
3. Procedural Aspects

When a trial court convicts a defendant of a criminal offense, the defendant may appeal a conviction or sentence to the Court. The Court can grant only one appeal, even if there is an application for another appeal showing new evidence that points to a defendant's innocence. Once all of the appeals processes are exhausted, the Commission may consider a case, and new evidence not presented at the original trial or at the appeal must exist. This new evidence may include evidence that was unavailable or undisclosed to the defense earlier. Under exceptional circumstances, a case can be referred back without new evidence. Once a case qualifies for consideration, a caseworker will examine and investigate it. The caseworker may conduct original research or interview the applicant and any possible witnesses. If the caseworker believes that there is a strong possibility of a miscarriage, then the case notes are forwarded to three of the thirteen commissioners who decide whether to refer the case back to the Court.

C. Effectiveness of CCRC

As noted by the Commission, the effectiveness of the

283. PATTENDEN, supra note 30, at 348.
284. See id. (explaining how British system is contrary to practice of most countries in continental Europe where an appellate court can re-open case at any time).
285. See Criminal Appeal Act, 1995, § 15(1)(a)(b)(i) (Eng.) (stating that reference to Court of Appeal shall not be made unless there is "an argument or evidence, not raised in the proceedings which led to it or on any appeal or application for leave of appeal against it").
286. See Campbell, supra note 40, at 17 (noting that defendants who lack new evidence but are in fact innocent may not be eligible to be considered by CCRC).
288. See Donovan, supra note 236, at C1 (assuming that "exceptional circumstances" language would allow possibility of less rigid standard).
289. See CCRC Ann. Rep., supra note 34, at 22 (explaining case review process, which separates procedure into three stages).
290. See Criminal Appeals Act, 1995, § 19 (allowing Commission to appoint investigating officers); see also Campbell, supra note 40, at 17 (stating that applicants may be interviewed and almost half of applicants are in prison).
291. Campbell, supra note 40.
292. See CCRC Ann. Rep., supra note 34, at 22 (stating that caseworker provides overview of case to committee of at least three Commission Members, who then make "case decision" whether to refer case back to Court of Appeal); Paul Donovan, Cold Comfort for Victims of Injustice, INDEPENDENT, Aug. 7, 1996, at 20.
293. See CCRC Ann. Rep., supra note 34, at 5 (discussing how before establishment
CCRC has been in question since the concept of the CCRC was first introduced. The concern involves current challenges and is rooted in a history of criticism of independent bodies and the criminal justice system. The wariness of the Commission ranges from the body's limited power and the appointment of its commissioners, to the language of the mandate, legal aid, and expected delays.

1. The CCRC's Role in England and Wales and in Northern Ireland

The United Kingdom has appointed independent bodies to investigate a variety of circumstances. Human rights groups complain that a related body, the Independent Commission for Police Complaints ("ICPC"), has been particularly unsuccessful in its independent role. The government established the

of CCRC concerns were expressed regarding its independence and ability to investigate thoroughly; see also id. at 7 (acknowledging concerns expressed by commentators when CCRC was being established).

294. See Taylor, supra note 232, at 24 (noting that commentators expressed concern over proposed set-up and on whether Commission will be able to function any more effectively than Home Secretaries).

295. See LAWYERS COMMITTEE FOR HUMAN RIGHTS, supra note 2, at 85-91 (describing ineffectiveness of complaints procedures in Northern Ireland for abuses against defense attorneys).

296. See WOFFINDEN, supra note 19, at xi (stating that United Kingdom is complacent in recognizing faults with its judicial system, even though mechanisms exist to detect and correct errors).

297. Robinson, supra note 42.

298. Id.


300. Campbell, supra note 40, at 17.


302. See LAWYERS COMMITTEE FOR HUMAN RIGHTS, supra note 2, at 87-88 (describing independent investigative role of Independent Commission for Police Complaints ("ICPC") and of coroners in inquests); see also LAWYERS COMMITTEE FOR HUMAN RIGHTS, supra note 22, at 21-29 (chronicling series of independent reviews of emergency legislation, which authors criticize, particularly for ignoring international obligations that emergency legislation violates).

303. Id. The ICPC was established by the Police (Northern Ireland) Order 1987 in 1988 to be an independent observer of investigations of complaints against the RUC, the police force in Northern Ireland. U.S. Embassy, supra note 28.

304. LAWYERS COMMITTEE FOR HUMAN RIGHTS, supra note 2, at 87-88. The ICPC, like the CCRC, has its commission members appointed by the Secretary of State for Northern Ireland, the equivalent to the British Home Secretary that appoints the CCRC commissioners. Id. There is a requirement for the ICPC that half of its eight members
ICPC to review complaints lodged against the police in Northern Ireland. Similar to the CCRC, the police conduct ICPC investigations. The police have not been effective in investigating their own misconduct, and there have been very few prosecutions stemming from these investigations. The U.S. State Department commented on this inadequacy when it stated that the ICPC did not corroborate any of 840 claims of police misconduct that it had received in the first two years of existence.

The CCRC has resources and power to conduct its own investigations, but still relies heavily on the police. The CCRC generally uses police officers from forces other than the one that conducted the initial inquiry, but the CCRC has used police from the same force in at least one case. In many of the major miscarriages of justice cases, according to one author, the conduct of the police in dealing with the suspects has been called into question. The CCRC's annual report emphasizes that the ICPC closely monitors these police investigations, however, the ICPC has exemplified that the role of supervising investigations may be a hollow one.

Under the existing system, critics are concerned as to how independent a body can be. An initial attack on the Commission warns that police, who erred in the first place during the
initial investigation, would investigate the body's cases. The CCRC's limited power to send cases back to the Court, which also already made a mistake, compounds this concern.

2. Appointment, Makeup, and Use of Commissioners

The Queen appoints members of the Commission on the recommendation of the Prime Minister. Authors argue that this system may not be the most effective way to staff such a body; as the current staffing procedure results in a connection with the government that does not further the independence of the commission. Critics point out that the appointments are essentially political in nature. Additionally, critics question the qualifications of originally appointed commissioners.

Under the 1995 Act, one-third of the commissioners must be trained lawyers, and two-thirds must have some experience in the criminal justice system. In practical terms, if the 1995 Act is interpreted loosely, which the Commission seems to have done, then one-third of the Commission members do not have to be lawyers or have any experience with any aspect of the criminal justice system. Some scholars, in their early analysis of the CCRC, viewed this mandate to mean that all of the commissioners would fall into one of the two groups, either a lawyer or one

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316. See Taylor, supra note 232 (quoting another author describing CCRC as "a toothless commission whose inquiries will be conducted by the police [who made mistakes that led to injustices] and whose only power is to refer a case to the Court of Appeal [which made the mistake in the first place]").

317. Id.

318. See Criminal Appeal Act, 1995, § 8(4), (6) (Eng.) (stating that Her Majesty appoints members of Commission following recommendation from Prime Minister and that Prime Minister has discretion on choosing members who appear to be qualified).

319. See Leonard Jason-Lloyd, The Criminal Cases Review Commission—One Year On—Part 2, 148 Nsw L.J. 1244, 1244 (1998) (describing how number of commentators expressed concern over appointment process); see also Malleson, supra note 131, at 930 (stating that connection to government is not completely severed with this appointment process).

320. Slapper & Kelly, supra note 67, at 93.

321. Robinson, supra note 42.

322. Malleson, supra note 131, at 930; see Criminal Appeal Act, 1995, § 8 (5), (6) (providing that "at least one-third of the members of the Commission shall be persons who are legally qualified" and "two thirds of the members of the Commission shall be persons who appear to the Prime Minister to have knowledge or experience of any aspect of the criminal justice system").

with some exposure to the criminal justice system. Of the current thirteen commissioners and one chairman, three appear not to fall into either category. Moreover, only one of the members, John Leckey, is from Northern Ireland. Although trained to be a lawyer, Leckey has little miscarriage of justice experience and is a coroner by profession. The fact that Leckey is part of the establishment in a flawed system may also limit his work with miscarriages of justice. Additionally, defense attorneys argue that the Commission's membership is weighted towards the prosecuting authorities.

Notable concern exists among critics with respect to the appointment of Sir Frederick Crawford as chairman and regarding the advertisement of the position. Sir Crawford's credentials as a plasma scientist, who formerly worked with the National Aeronautics and Space Administration ("NASA"), do not readily fill the mandate for the CCRC personnel. Authors contend that Crawford's role, particularly because of its supervisory na-

324. See Malleson, supra note 131, at 930 (stating belief that all members will have some experience).
325. See CRIMINAL CASES REVIEW COMMISSION, APPLICATION MATERIALS (1997) (showing that Sir Frederick Crawford is engineer and past Master of Worshipful Company of Engineers). Crawford's criminal justice experience involved his role as High Sheriff and Deputy Lieutenant in the West Midlands, which has a record involving miscarriage of justice cases recently. Id.; see Donovan, supra note 292 (stating Crawford's main role has been as academic and his experience with miscarriages of justice is not evident from this information); see supra (describing Tony Foster as chemist who has been involved with manufacturing and business community). Mr. Weiss is Chartered Accountant who has been involved with corporate finance, but there is no mention of any relevant experience with the criminal justice system. Id.
326. Robinson, supra note 42; see Langdon-Down, supra note 125 (detailing speech by Jane Winter of British Irish Rights Watch regarding concern that Commission is not familiar enough with justice system in Northern Ireland); E-mail interview from Jane Winter, Dec. 19, 1998 (on file with Fordham International Law Journal) (describing March 11, 1998 CCRC training session on criminal justice system in Northern Ireland held for one afternoon).
327. Robinson, supra note 42.
328. Interview with Martin Flaherty, Associate Professor of Law, Fordham University School of Law, in New York, New York (Dec. 2, 1998).
ture, would seem to require that he had experience investigating miscarriages of justice, but he does not. Jim Nichol, an experienced solicitor who has handled high-profile cases, stated that Crawford has no record in the area of miscarriages of justice, and Nichol found no record of Crawford speaking out against injustices anywhere. Additionally, Crawford is a member of an elite branch of the Freemasons, a fraternal secret organization. Critics question whether a Mason should have a role in the CCRC because the Masons have had a role in several miscarriages of justice according to the Director of Liberty. Critics also claim that the British government did not widely publicize the part time, £88,000-a-year chairman position, as it had promised. Also, some of the applicants who were rejected seem to be more qualified than those chosen. For example, Chris Price, who has a background in correcting miscarriages of justice, received a rejection. In the 1970s, while a Member of Parliament, he successfully cleared the name of Maxwell Comfait by uncovering police corruption.

The CCRC recognizes that as of its first annual report the number of caseworkers needed to be increased. Indeed, within the first week of operation, Crawford stated that there was a shortage of funding and staff to deal with the number of cases. In spite of the fact that there does not appear to be any

333. Id.
334. See id. (stating that Jim Nichol was solicitor on Bridgewater Four case).
335. See id. (quoting Jim Nichol, who stated that Crawford "has no record in the area of miscarriages of justice" and no record was found "of Crawford speaking out on injustices anywhere").
337. Id. Liberty is non-governmental civil liberties organization. Donovan, *supra* note 292, at 20.
339. See *Paradigm*, *supra* note 30, at 418 (noting that government committed to advertise all positions, including position of chairman).
340. See Donovan, *supra* note 292, at 20 (noting that Chris Price MP has had experience with miscarriage of justice cases and with exposing police corruption).
341. Id.
342. Id.
343. See CCRC Ann. Rep., *supra* note 34, at 5 (stating plans to increase number of case managers from 24 to 50).
particular staffing criteria for the caseworkers,\textsuperscript{345} they seem to have a substantial amount of discretion in review and investigation.\textsuperscript{346} A member of the House of Lords raised the issue in Parliament of whether case review managers should be trained, but the topic did not receive significant discussion, citing the Commission's discretion in appointing its own staff.\textsuperscript{347}

3. Limitations of the CCRC's Mandate

The CCRC only considers cases where there is new evidence.\textsuperscript{348} This means that the CCRC might not consider a case where a defendant has been wrongly convicted but does not have new evidence to show.\textsuperscript{349} In some cases where applicants presented new evidence to the Commission, the Commission made a quick referral to the Court.\textsuperscript{350} But in a case where only a possibility of new evidence exists following a future investigation, it is unclear how dedicated the CCRC will be to the investigation, and it is questionable as to whether it will investigate.\textsuperscript{351} As discussed earlier, the reluctance of the Home Office to investigate triggered the creation of the CCRC.\textsuperscript{352}

Some interest groups, including Justice, hope that the CCRC conducts these investigations because these interest groups and their clients do not have the resources to do so themselves.\textsuperscript{353} Additionally, the CCRC has broader power in ob-
taining documents from the police than these groups. Critics fear, however, that because of the Commission’s limited resources, the Commission will interpret its mandate narrowly and only consider cases where there is already new evidence and no need for any new investigation. In this regard, critics argue, the Commission would be no different from its predecessor, the Home Office.

4. The Effectiveness of the Commission in Light of the Court

The overall effectiveness of the CCRC depends on the subsequent actions of the appellate courts. One of the strongest early criticisms of the CCRC concept was that it lacks the power to decide cases for itself. The CCRC only maintains the power to refer cases back to the Court, thus the appellate courts have the final word on whether or not miscarriages of justice will be corrected. The Commission does not have the ability to act itself, by overturning or quashing a conviction, or altering a sentence. Under the CCRC mandate, one of the elements in considering whether to refer back a case is the likelihood that the appellate court will quash it. Even if the CCRC is structurally independent, it will depend on the approach of the Court because the Court is the sole body that can alter a verdict.

One author believes that the CCRC has the potential to alter that relationship in light of positive feedback from some members of the bench. This author realizes, however, that even if the relationship is amiable between the Court and the Commission, the 1995 Act mandates the Court to treat a referral from the Commission as an ordinary appeal. Two authors ar-

354. Id.
355. Id.
356. Id.; see Malleson, supra note 131, at 933 (stating that applicants to Home Secretary sometimes found themselves in predicament where Home Secretary would not investigate unless there was new evidence, but new evidence would not be found until investigation was initiated).
357. Malleson, supra note 131, at 929.
358. Id. at 926.
359. Clarke, supra note 83.
360. Id.
361. Malleson, supra note 131, at 929, 934.
362. Id.
363. Id.
364. See id. (noting that Court has not “acted as a rubber stamp” in past and is unlikely to do so in future).
gue that there is no evidence to assert that the new Commission will alter the practices of the Court, particularly in light of the fact that the animosity that existed between the Home Office and the Court may develop between the CCRC and the Court because the reasons for this animosity may still be present.365

5. Unlikelihood of Changing the System

Some believe that the CCRC will positively effect the overall functioning of the criminal justice system.366 Under the 1995 Act, however, there is nothing to ensure that the work of the CCRC will have any effect on the courts or the criminal justice system.367 In particular, the Court is supposed to deal with references from the CCRC with the same scrutiny and deference as any other appeal, using general appellate principles.368 To the contrary, the CCRC expects to gain knowledge on its own performance by considering the reaction to the cases that it has referred back to the Court.369

Logically, if the criminal justice system operated effectively, then there would be no need for the CCRC.370 The effectiveness of the criminal justice system at lower levels would save money371

366. See Donnelly, supra note 238 (quoting Kevin McNamara MP, speaking of recent delay of Danny McNamee case that was sent back to Court by CCRC). “There is also an historical significance about this trial because we hope it brings to an end an era of judgments in the British Courts leading to gross miscarriages of justice.” Id.
367. Criminal Appeal Act, 1995, ch. 35 (Eng.).
368. Malleson, supra note 131, at 934.
and better preserve justice.\textsuperscript{372} Currently, however, there is a need for the CCRC to handle cases with which the system has not adequately dealt.\textsuperscript{373} A former prison governor and current academic recently told the British Broadcasting Company ("BBC") that the existence of the CCRC amounts to an admission by the system that it convicted some prisoners wrongly.\textsuperscript{374} The 1995 Act includes a recommendation made by the RCCJ to amend the Criminal Appeals Act to include what the RCCJ refers to as a broader scope for finding justice.\textsuperscript{375} The 1995 Act proposes to do so by expanding the rules of admissibility of evidence.\textsuperscript{376} The RCCJ recommended that the phrase "likely to be credible" be replaced with "capable of belief."\textsuperscript{377} The RCCJ believes "capable of belief" is a broader definition, under which more evidence will be admissible.\textsuperscript{378} The British government's Discussion Paper\textsuperscript{379} ("Paper"), however, does not reflect the content of this recommendation in the same way.\textsuperscript{380} The Paper refers to the amendment as the current operating method of the Court, not as an attempt to change it.\textsuperscript{381}

History further evidences the unlikelihood of change in the Court.\textsuperscript{382} According to one author, the 1995 Act will probably not have much of an effect on the Court’s practices because such efforts for change in the past through Parliamentary statute have been extremely difficult.\textsuperscript{383} Additionally, this Parliamentary statute did not contain language that expressed a clear intent to

\begin{itemize}
\item \textsuperscript{372} BBC News, \textit{supra} note 370.
\item \textsuperscript{373} \textit{Id.}
\item \textsuperscript{374} \textit{Id.}
\item \textsuperscript{375} \textit{See Malleson, supra note 131, at 929, 935 (stating that Government Discussion Paper said that 1995 Act reflected how Court was already operating).}
\item \textsuperscript{376} \textit{Id.}
\item \textsuperscript{377} \textit{Id.}
\item \textsuperscript{378} \textit{Id.}
\item \textsuperscript{379} \textit{See Smith, supra note 299, at 573 (describing Government Discussion Paper as document of government in power that contains proposals for legislation).}
\item \textsuperscript{380} Malleson, \textit{supra} note 131, at 935.
\item \textsuperscript{381} \textit{Id.}
\item \textsuperscript{382} \textit{See id.} (quoting Lord Devlin, from history, who stated "Parliament can as we know, do anything it likes, but it has not yet found a way of suggesting to the judges in statutory language that they should be less sticky about the use of its powers").
\item \textsuperscript{383} \textit{Id.}
\end{itemize}
change the Court, so it is even less likely to have any effect on the Court’s approach.384

6. Vague Language in the Mandate and Evidentiary Concerns

Critics argue that currently the language of the 1995 Act is ambiguous.385 The 1995 Act does not say anything about what criteria the CCRC should consider when determining whether the finding in a case is unsafe.386 The CCRC itself hopes to gain insight into what is meant by phrases such as “exceptional circumstances,” “capable of belief,” “real possibility,” and “unsafe.”387 The Commission currently does not consider the innocence of the defendant along with the way that the case had been conducted,388 even though some authors believe that it should.389 Those who think the Commission is necessary, believe that the Commission must consider whether the defendant actually committed the crime.390

Under the current rules of evidence, there may be some materials that the CCRC uses to consider cases that are not admissible in the Court.391 Therefore, although this information might be useful, and even necessary, to persuade the Court of a defendant’s innocence and may have already persuaded the CCRC, it is simply not admissible and cannot be used to consider

384. Id.

385. See Taylor, supra note 232, at 24-25 (stating that terms of Criminal Appeal Act are ambiguous and that parliamentary debates did little to clarify meanings).

386. See Smith, supra note 299, at 572 (suggesting that mandate of Commission be further explained, by addition of following provision: “a conviction is unsafe where, in the light of representations made to the court, of any fresh evidence, and of all the circumstances, it is not satisfied (i) that the appellant is guilty of the offence; or (ii) that a reasonable jury would have convicted the appellant if the trial had been properly conducted in all respects.”).

387. See CCRC Ann. Rep., supra note 34, at 7 (discussing development of meanings of terms used to consider cases, Commission states that in coming year, Commission will gain valuable insight into practical interpretation of terms in 1995 Act, including “exceptional circumstances,” “capable of belief,” “real possibility,” and “unsafe,” which affect case review, particularly as its case referrals are heard by courts of appeal).

388. See Taylor, supra note 232, at 24-25 (describing clarifying discussion author had with CCRC, where it was determined that safeness of conviction is in issue, not innocence of applicant).

389. See Smith, supra note 299, at 573 (stating that 1995 Act says nothing about referring cases where there is real doubt whether defendant committed crime, but author assumes that Commission must consider issue of defendant’s innocence).

390. Id.

391. Id.
the "safeness" of the case. Under this system, authors believe that it is pointless even to refer back a case to the Court if the decision of the CCRC to refer the case is based solely on inadmissible evidence.

7. Challenges in the Existing Criminal Justice System

The new Commission has not cured a myriad of problems in the system that have been instrumental in causing some miscarriages in the first place. Rather, these challenges will limit the successfulness of the body. These challenges include concerns of legal aid, delays, and disclosure.

The Commission addressed concerns regarding legal aid directly in their application materials. The CCRC included a page that describes the use of a lawyer and how one may apply for legal aid. Some critics believe that legal aid is crucial to the success of the CCRC. One author believes that in order to have success, applicants need a committed lawyer, supportive family and friends, or good luck. The CCRC itself states that although it is not necessary to have a lawyer, the process may be quicker with a lawyer's assistance. Current CCRC figures show that only one in ten CCRC applicants has legal representation.
Many of these applicants claim that they did not have adequate representation at trial.\textsuperscript{405}

The ordinary legal aid application scheme generally allows two hours of legal aid.\textsuperscript{406} The CCRC form says that more time can be allowed to cover an application to the Commission,\textsuperscript{407} but according to one author it is difficult to receive additional time.\textsuperscript{408} Also, the legal aid scheme will not be in effect while the Commission carries out its investigation.\textsuperscript{409} The lack of legal aid coverage may even increase costs to the Commission, as the Commission's work might be made easier if the commissioners and caseworkers could speak directly with lawyers, rather than the individual applicants.\textsuperscript{410} The only solution to this dilemma is to find a lawyer willing to work for free.\textsuperscript{411}

Despite the Royal Commission report and the Hickey case holding, the 1995 Act still leaves the disclosure rules uncertain.\textsuperscript{412} Nothing in the 1995 Act speaks of disclosure of materials to the applicant.\textsuperscript{413} Disclosure seems to be a detrimental omission from the 1995 Act as one of the most significant functions of the Commission will be to uncover undisclosed material currently under the prosecution's control.\textsuperscript{414} There are strict rules about disclosure at trial and appeal, but once the appeals are exhausted these rules do not apply.\textsuperscript{415} The CCRC will be attempting to find previously-undisclosed information, particularly from the prosecution.\textsuperscript{416}

Lawyers familiar with submitting miscarriage of justice appli-

\textsuperscript{405} Id.
\textsuperscript{406} See Clarke, supra note 83, at 948 (noting that Commission may actually be saved money by greater legal aid, as Commission's job would be easier if they could work directly with lawyers).
\textsuperscript{407} CRIMINAL CASES REVIEW COMMISSION, supra note 400.
\textsuperscript{408} See Clarke, supra note 83, at 948 (stating that it is unclear whether Commission can contract lawyers to represent applicants within Commission's budget).
\textsuperscript{409} Id.
\textsuperscript{410} Id.
\textsuperscript{411} Id.
\textsuperscript{412} Criminal Appeal Act, 1995, ch. 35, §§ 17-18 (Eng.); see Clarke, supra note 83, at 948 (stating that 1995 Act gives Commission power to require production of documents from public bodies, but does not address issue of disclosure of information to applicant).
\textsuperscript{413} Clarke, supra note 83, at 947.
\textsuperscript{414} Id.
\textsuperscript{415} Id.
\textsuperscript{416} See id. (stating that not solving issue of disclosure is "major omission from the Act").
ocations have noted that delays were a trademark of the Home Office and the Northern Ireland Office.417 With the daily addition of four to five cases418 and greater investigative power, the Commission realizes that it needs more Case Review Managers to handle the load to prevent further delays.419 One author particularly notes that the coexistence of the CCRC and the Criminal Procedure and Investigation Act of 1996420 poses a potential problem.421 Certain materials, specifically under the code of practice relating to retention of materials by the police, could be destroyed by police when the CCRC decides not to refer a case back to the courts.422 According to this author, this material would then be unavailable in the event that new forensic tests and techniques were developed that would cause the case to be reconsidered.423

III. THE CCRC AND NORTHERN IRELAND

The situation in Northern Ireland presents unique challenges to the CCRC. It is unclear whether the commissioners and caseworkers are currently equipped to deal effectively with these distinctions.424 Lawyers and NGOs, particularly concerning cases heard before Diplock Courts, have raised concerns.425 The Commission did participate in some training regarding the Northern Ireland cases, but such training lasted only a few hours.426 Additionally, academics taught the course, rather than practitioners.427 The meeting took place after lawyers from

417. See Langdon-Down, supra note 125, at 23 (quoting Razia Karim, legal officer for Justice, who stated that once cases were sent to Home Office, it might take years before hearing decision).
419. Id. at 7.
420. Criminal Procedure and Investigation Act, 1996 (Eng.).
421. See Robinson, supra note 42.
422. Id.
423. Id.
424. See supra note 326 and accompanying text (noting only one Commissioner is from Northern Ireland and detailing Jane Winter of British Irish Rights Watch’s speech regarding concern that Commission is not familiar enough with justice system in Northern Ireland).
425. Id.; see Flaherty, supra note 162, at 96 (defining Diplock Courts as courts in which certain offenses, which are mostly, but not entirely related to political violence, are tried in absence of a jury in front of one judge).
426. See supra note 326 and accompanying text (describing e-mail from Jane Winter regarding March 11, 1998 CCRC training session held for one afternoon).
427. Id.
Northern Ireland and NGOs urged the CCRC to do so. The session did not focus on the elements of the Northern Irish system likely to create miscarriages of justice, but rather presented a straightforward description of the ways that the Northern Ireland justice system is different.

A. Emergency Legislation

The emergency legislation of Northern Ireland stands in striking contrast to the ordinary criminal standards applied in Britain and Northern Ireland. To consider the situation in Northern Ireland as one with only minor differences from a non-emergency situation is incorrect. Police can stop, question, and search persons without approval from a judge. Once arrested, the defendant can be held for prolonged periods of time and be subjected to intense interrogation. The confessions that may result from the interrogations and extended detentions are then used to convict the individual. This emergency legislation is more broadly used than elsewhere in the United Kingdom, and its effects have also infected the ordinary law of Northern Ireland. Some NGOs fear that the CCRC is not sufficiently aware of this distinction and will not thoroughly consider the effects of this legislation on cases from Northern Ireland.

B. Role of Judges Under Emergency Legislation

The role of judges demands even greater attention when the judges operate under a jury-less system as in the Diplock Courts of Northern Ireland. As discussed earlier, human
rights organizations believe that members of the judiciary are not sufficiently aware of their obligation to protect the rights of defendants, especially when legislation has encroached upon many basic rights. This particular criticism is relevant following a series of previous cases that courts eventually quashed, involving the admission of uncorroborated evidence. Additionally, the notion that judges become case hardened is an issue that the CCRC should address carefully. The theory is that because judges rely on confessions so frequently and lay witnesses rarely testify in these cases, the judiciary may too easily accept the testimony of the police and security forces. The recent case of Baker, Groves, and Valente illustrates a recent mistaken judgment by a judge in the Northern Irish system.

C. Other Challenges Relating to the Criminal Justice System in Northern Ireland

The elimination of the right to silence is an infringement on the rights of the accused and is of particular concern in Northern Ireland. Where a substantial number of the population distrusts the police, it is dangerous to assume that the people's silence is based on guilt rather than on fear, mistrust, or the civil decision not to cooperate. This assumption is further discredited by the coexistence of the elimination of the right to silence and coercive interrogations permitted under the emergency legislation. The CCRC needs to be aware that miscarriages of justice in Northern Ireland do in fact exist. Therefore, it is imperative that when the CCRC is reviewing cases from

437. See supra note 215 and accompanying text (describing how individual judges believe that they know better than European Commission on Human Rights).

438. See supra note 218 and accompanying text (discussing practice of convicting based on informer evidence, which is no longer used).

439. See supra notes 202-08 and accompanying text (describing how the routine admission and reliance on confessions may lead to lower standard of admissibility, especially in regard to confession evidence).

440. See supra notes 223-30 and accompanying text (explaining how judge failed to protect defendants' rights by not inquiring into nature of police evidence that connected defendants with crime).

441. See supra notes 174-75 and accompanying text (considering right to silence limitations in non-jury trials as intensifying concern over right to silence).

442. See supra note 179 (stating that fear and civil non-cooperation may be reasons for remaining silent, rather than guilt).

443. See supra note 179, 191 (stating that silence is as likely to be caused by fear or civil non-cooperation as guilt in Northern Ireland situation).
Northern Ireland, it is aware of EPAs and their effects on the whole system of justice in Northern Ireland.

CONCLUSION

Many organizations see the CCRC as a definite improvement over the Home Office and the Northern Ireland Office. They generally, however, do so with a certain level of reservation. The CAJ, an NGO, stated that although it is too early to come to a final judgment on the Commission, its operations over the first year appear encouraging.

The CCRC, however, has several structural challenges and is faced with problems from the existing criminal justice system. These challenges are further exacerbated by the situation in Northern Ireland and its emergency legislation. The Commission does, however, have certain powers that the Home Office and the Northern Ireland Office did not have. How the CCRC decides to use these powers will be the true test. Additionally, because the Court has the final say, the Court's reaction to the CCRC will determine whether miscarriages will be corrected.