



**EXECUTIVE SESSION ON  
HUMAN RIGHTS COMMISSIONS AND CRIMINAL JUSTICE**

JODY KOLLAPEN  
Chairperson  
South African Human Rights Commission

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Kennedy School of Government  
Cambridge, Massachusetts

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P R O C E E D I N G S

(7:12 p.m.)

MR. STONE: I'm going to get us going in the formal conversation and interrupt all these nice conversations going on. What we are going to do is, while you all are eating, and you should continue to eat through this conversation, I'm going to introduce Jody and he will speak for twenty minutes or so, give us a picture both of the work of the South African Human Rights Commission and particularly with a focus on the intersection between its work and issues of criminal justice. And then we will be, we'll just open up for, we'll try and hold it together and let's have a broad conversation, questions for him or comments, and we'll just see how the conversation develops.

This is, as you know, the Executive Session on Human Rights Commissions and Criminal Justice. As a meeting, this is our fourth meeting and, each time we get together, we have invited the chair of a one of the human rights commissions outside the United States that is working on the same, on some of the same issues and challenges of human rights issues related to the criminal justice system whether it's hate crimes, police conduct, the rights of prisoners or ex-offenders, to join us, so we can understand more how those commissions outside the United States work and we can really expand the dialogue about techniques, strategies, lessons learned.

We are hugely fortunate to have with us Jody

Kollapen who is the chairperson of the South African Human Rights Commission and has been since, I believe, December of, I'm going to get this wrong, of 1996, is it?

MR. KOLLAPEN: I've been chair for three years now.

MR. STONE: Chair for three years.

MR. KOLLAPEN: I've been a member since--

MR. STONE: A member since '96, chair for three years. Jody is, before that, was with Lawyers for Human Rights in South Africa, which he joined in 1991 and worked, I can't imagine what this work was like, but his initial projects were his first, one of his responsibilities from the beginning was with the Political Prisoners Release Program, a great name for any program, this is, we should all be able to spend some of our professional career on a political prisoners release program. And did well enough or at least hid the embarrassments enough so that he was eventually named National Director of Lawyers for Human Rights, before coming onto the commission.

He also serves on the, he is here not just because he is chairperson but also because of our topic, his connection in the work on criminal justice matters goes beyond his particular role in the commission. He is on the South African Law Commission where he serves with their project on sentencing law and is also on a National Council on Correctional Services. So, on the prison side, on the sentencing side and then specifically on the commission, each

of the commissioners has responsibility for a particular substantive area, as well as a geographic area within the country, Jody's geographic area is Gauteng but his substantive area includes the administration of justice.

So he is about as perfect a guest as we could have for our discussions and it is a huge pleasure for me to welcome him here tonight.

Jody?

MR. KOLLAPEN: Thank you. Thank you, Chris.

And first, thank you for the invitation and thank you for getting me across here. It was a long trip but I think it was well worth it, and thanks for also ensuring that there are two South African colleagues here tonight. But I must say, with all due respect to the two colleagues, before they arrived, I spent some time checking too the other colleagues who are here and you had a sense that there was a connection and, even though I come from a place very far away, there is certainly a connection.

And I think our struggle, in many respects, was a South African struggle but it was a struggle supported and in many ways inspired by what the American people went through as well, and I think the civil rights movement, it provided a great inspiration for us. And I think the solidarity of the American people during our difficult times is something that we always remember. So our liberation was certainly just not an exclusively South African affair, so it's good to be here.

I think the South Africa that I left and the South Africa that we saw being born in 1994 is still grappling, it's grappling to deal with the difficulty of dealing with a historical deficit of some 330 years of neglect and the expectation of the international community that South Africa has decided to embrace a different future and exactly what that means. And from a human rights perspective, it has created considerable challenges for all of us.

You probably have heard of the South African Constitution, and I have a copy here with me, and we are all very proud of the constitution. We are proud of it because the constitution, in many respects, is the story of where we have come from, but it also represents the kind of vision for our future, the kind of society we want to be and the values that will underpin that society. There is a commitment in this constitution that South Africa belongs to all who live in it, united in our diversity. There is a commitment to deal with the problems of the past and there is a commitment to free the potential of each person.

Those are wonderful sounding words but to put them into practice in a society such as ours is proving very difficult indeed. In creating this constitution, the architects of this constitution decided to ensure that institutions were created that would advance and promote constitutional democracy and amongst those institutions is the South African Human Right Commission, I am certainly

privileged to be the chair of such an institution. The nature of these institutions, and they may differ from institutions established here, is that the independence of these institutions are constitutionally guaranteed, so the constitution guarantees the independence of each of the various institutions and there isn't only one institution.

I think when we embraced democracy, we were quite generous as well and we established as many institutions as we could, always thinking, well, there is probably one window of opportunity and someone had said it's like a kid, you know, being let loose in a toy store, I mean we took everything. I think ten years down the line we are correctly reflecting on whether we need as many institutions as we do and whether they serve the purpose that they were established for. And those are difficult discussions but I hope you'll understand and appreciate that.

In 1994 and 1996, that was certainly very far from our mind, having a few institutions or rather more. And I think correctly so, as we wanted more democracy rather than less, we wanted more accountability rather than less, we wanted more human rights rather than less. After all, we were described as the miracle nation, as the country that did extraordinary things, so why not? So the South Africa Human Rights Commission is one of six institutions created in terms of this constitution that are regarded as what are known as Chapter 9 institutions, simply because they all have a home in Chapter 9 of this constitution.

The other institutions are the Commission on Gender Quality and that speaks for itself, Rashida Manjoo was a commissioner on that commission. The Public Protector, which is also known as the Ombud in other jurisdictions, is third of those institutions, the Electoral Commission, the Commission for the Promotion of the Rights of Religious, Cultural and Linguistic Communities, that's quite a tongue twister but that's one of the commissions as well. And the members of these commissions, certainly with respect to the human rights commission, are appointed by the president of the country on the recommendation and advice of parliament.

So there is a pretty open public participation process that leads to the appointment of these members and I think correctly so because the accountability then of these institutions, while formally and legally is to parliament, they report on their work to parliament, but in the wider sense of the work, or the word, they are appointed by the president and there is meant to be a wide public participation process in their appointment. So in the widest sense, they are accountable, in a sense, to the public and I think that's good. Although there are questions currently in a review as to how such appointments take place, whether they are not unduly influenced by, in a sense, horsetrading during the parliamentary process and whether they are compromised in their independence by it. Short of another method and model of appointment, I think this one has worked reasonably well for us, but there are suggestions that it could be improved.

Now, one of the things that may surprise the chief commissioner for New York is that these institutions don't have enforcement powers and I think you make the point quite powerfully earlier. If they don't have enforcement power, then they are just nice to have, and that's been a criticism raised as well.

I wanted to indicate that, within the kind of landscape of democratic institutions, it's important to locate such institutions like the human rights commission and understand the kind of complementary role they play. They were not, certainly in the South African context, intended to replace the courts, and while they don't have enforcement powers, they do have significant powers in terms of the investigative process that they, some powers of subpoena, powers of search and seizure as part of the investigative process.

MR. STONE: Pat would like that.

MS. GATLING: I sure would.

(Laughter)

MR. KOLLAPEN: Okay, you would like that.

And ultimately, they make recommendations but, as I indicated, these institutions also have the power to go to court, to litigate in their own name or litigate on behalf of other parties.

Now, in a very interesting article written by a woman called Linda Reeve, she unpacks this notion of accountability and she speaks of accountability having two

components, the one is enforceability and that's where the courts come in, power to make a binding order, but she also speaks of answerability and that's the power to obtain answers, to call an official to account for conduct, or lack of conduct, or misconduct or an omission.

And I think that's where one distinguishes between the role of a human rights commission, again in the South African context, and I don't want to suggest this model works everywhere else, and the role of courts, and she distinguishes between what she calls coercive control, which is the kind of a control that a court would exercise, and cooperative control, which is the kind of control that a commission, the commission would confer, dialogue, be in an exchange with the other party with a view to finding a solution. So I thought that distinction was quite interesting.

One of the difficulties with regard to having an independent institution is the kind of relationship it has with government. In the context of a society such as ours, such an institution can play two, I think, critical roles and one is the role of transformation, informing citizens of what their rights are, creating a public awareness around it, encouraging citizens to assert their rights, mobilizing, in a sense, consciousness around what rights are. And I think, in the South African context, that's so very, very important, given where we come from.

And the other is this notion of checking and

accountability, and I think those are two important roles that such an institution can play. What that means is that, from time to time, an institution like ours would have to take a cooperative approach with government, and at other times, an adversarial approach, and sometimes we go through an identity crisis ourselves. It's quite difficult having a meeting with the justice, I don't want to use the justice minister because that's not a good example we currently, but having a meeting with a minister in the morning and getting back to your office at lunchtime and finding out that, I mean something terribly has gone wrong in that ministry. And as part of your mandate, having to issue a public statement, and the minister calling and saying couldn't you have just called me?

And yet your role is both to lobby and to advocate and to create a public awareness around it. So this notion of having a cooperative relationship on the one hand and an adversarial relationship is quite easy on paper but in practice, because you form human relationships and you want to work to advance human rights, at the same time you have a public duty and a public accountability.

So that's more or less the human rights commission in South Africa, its roles, its functions and I've tried to be as brief as possible. But let me get to the issue of crime, human rights and the role of these institutions in the criminal justice system.

I think South Africans are deeply debating the

issue of crime and violence in our society, it has reached levels that are quite scary. And it has an impact on the work we do for a variety of reasons, one is that the levels of crime and violence have substantially impacted just on the ability of ordinary people to enjoy the rights guaranteed in this constitution, the right to move around freely, the right to women, for example, to their own self-determination, and sexual violence, gender-based violence has been described by South Africa's highest court as the single most substantive obstacle to the self-determination of women.

Our former President, Nelson Mandela, has questioned whether South Africa needs a reconstruction and development program for the soul, given the manifestation of gender-based violence. The right to property, the right of children just to be children is all undermined by high levels of crime and violence. At another level, there is certainly a strong public debate around whether human rights standards and human rights norms serve as a barrier to effective law enforcement. And there is a perception in some quarters that, well, if we are able to suspend the constitution and the bill of rights for, and this suggestion was made seriously to me as well by law enforcement officers.

If we can suspend the rights framework for two years, we sort out the country, get it back on a solid footing and then we bring back, as if these things can work in that fashion. So, from a rights perspective, there is a relevance that the issue of crime has certainly in our work.

And I think it's important for human rights commissions, certainly the one I head, to take an active interest in these issues. Given the wide mandate we have, I think, firstly, it would be impossible to relate to people's fears, their insecurities and their aspirations, insofar as crime is the issue, without having as part of one's mandate a focus on crime and the criminal justice system.

I think the second and important role commissions can play is that, given a society such as ours where levels of crime are quite high, there is a tendency to respond to public shock and public outrage in a way that says tougher and harsher measures are the way to go, without understanding necessarily the genesis of crime, the social conditions that contribute to crime and seeing crime as purely a responsibility of the criminal justice system, rather than seeing it as the responsibility of the broader society and other agencies. So there is a risk, if a commission that should have a sense broadly of the pulse and the heartbeat of the nation is not involved in that debate, the debate and the discussion go in one direction only.

I think the third issue is that very often the victims of crime don't feel a place in the criminal justice system, their place is taken by a prosecutor and a prosecution is brought in their name, and very often the voice and participation of victims is lacking in the system. So that's a third, and I think good reason, why commissions should be involved in issues around the criminal justice

system.

And the fourth is that issues of human rights are contested all the time. Even though we have made great progress in South Africa, there hardly has been a human rights issue that's not been contested because different groups and different constituencies within the society position themselves differently in respect of those issues.

And I think a human rights commission that has credibility and legitimacy can mediate those conflicts but also can act as a conduit, a conduit between citizens and the state. So, for those reasons, I think it was almost natural the human rights commission in South Africa would become substantially involved in issues around the criminal justice system, mindful of its limitations, mindful of its place within that landscape that I described and mindful of the need for it to work in a fashion that worked to its strengths, understood its limitations but also respected the other organs of state.

So what have we done in this area and what are the opportunities? I think there is a risk that you can try to do everything and end up virtually doing nothing. And yet in the South African context, there is such a demand to do as much as possible and almost a moral imperative to respond to the demand in the best way possible, because we are trying to consolidate our young democracy and consolidating it means that you put as much energy into as possible in the hope that, with the consolidation, future generations will benefit

from it. And I must say it's a fragile democracy, it's a democracy that faces some substantial threats and some risks.

So, in this area, and I have made a couple of notes because I thought if I should travel this far, I should write down a few things.

MR. STONE: Please.

MR. KOLLAPEN: Okay.

We have participated certainly in the policy making role, and for example, the society grapples with issues like the power to shoot and kill. Under what circumstances should law officers have the power to shoot and kill? In South Africa, that power was granted in a fashion that was overly wide, law enforcement officers could shoot and kill someone who stole a loaf of bread, because the basis was not the seriousness of the offense in that context, it was simply whether an offense was listed on a particular schedule in the Criminal Procedure Act. And if the offense was listed on the schedule, you take it up and you could shoot and kill, so you could shoot a little child who stole a loaf of bread.

And in fact, there was a case in point where these provisions were tested under circumstances where a police officer shot someone who had stolen, who had broken into a warehouse and stolen something very minimal. And so there was a serious debate in the society whether this meant that law enforcement officers were more vulnerable now and there was a view that it would impact on their right of self-

defense. And the South African Human Rights Commission became involved in this discussion, urged parliament to pass the necessary legislation to bring the powers to shoot and kill in line with the constitution, to ensure there was proportionality, that the force used was proportional, was relevant to the circumstances.

We did workshops with police and indeed the Center for the Study of Violence that Graeme headed were part of those processes allay police fears that this would take away their rights of ordinary self-defense, that would render them less effective in those processes. And I think if the debate was only between parliament and the police, we wouldn't have had, in a sense, the perspective that a commission is able to bring from a human rights perspective to these issues. Recognizing that you want a law enforcement agency that's effective but also you don't want to grant that agency undue and unlimited powers.

So in the area of policy making, the commission has played a role and one such recent intervention has been around what we call closed cities. There is a phenomena in South Africa where cities are being gated in the name of crime and violence. But for many of us, we see it simply as a new form of apartheid, as rich folks saying, well, in the name of crime and violence, we will make this safe. And the evidence that we gathered indicated that, very often, black people were refused access to these areas.

We convened a public inquiry, had a public

hearing that brought together people who had very different opposing views on the issue and wrote a report, and the report concluded that there was no real basis for having closed cities, a city was meant to be open and public spaces were meant to be open, and there were different ways of dealing with crime and violence. That report has been used by local authorities across the country to develop its policy around, in a sense, applications for closure, closing public spaces. And I think, again, the role of a commission is quite important in contributing to the richness of the public debate, in contributing to developing public policy that's in line with one's constitution.

So contributing towards the policy making process I think is quite important. Again, in a society such as ours, that's grappling to come to find a balance between having a law enforcement system that's efficient but also one that's loyal to its human rights obligations is not easy. Another area is articulating norms and standards and the role the commission plays there.

The commission played quite a central role in developing what is now being called the Victims Charter. The victims of crime, as I indicated earlier, felt excluded from the criminal justice process. In fact, many of them accused the human rights commission of being accused-friendly and criminal-friendly and hostile to victims' interests. I suppose in part because, in the first ten years of our democracy, we had to rid ourselves of the legacy of a

horrible criminal justice system, and understandably, much of the interventions then were to ensure that due process, fair trial, meant something. And lots of the policy interventions and legislative interventions were around reforming the criminal justice system from that perspective, and understandably, not enough focus was devoted to victims' issues.

The commission became quite involved in the area of victims rights, hosted a couple of workshops, looked at international standards around victims rights and together with the South African Law Commission and the government, developed what is now called the Victims Charter. Unfortunately, the charter hasn't sort of been given life, it needs to be implemented. But again, I think articulating those norms and standards, bringing an international perspective to bear on an important national debate was an important contribution again.

And you may ask me but surely civil society could play that role, and I agree, but I think the stature and the credibility of a national institution enables it to become an important partner in such processes and I think that's important.

I think a third area is in the area of lawmaking and the relationship to parliament, and again, the human rights commission has seen that as a vital part of its mandate as well. We participate in legislation making, in the sense of appearing before parliament, we have a system of

public participation in our legislature. So we would appear before committees of parliament that are debating important pieces of legislation, raise issues of concern to us, make suggestions with regard to law reform.

One such example was what is known as South Africa's antiterror legislation. Initially, the draft bill provided for detention without trial and excluded the oversight of the courts. Given where we've come from, given that with respect, we were not facing any serious threat of an event, we thought that was inappropriate and we thought that, firstly, it wasn't necessary for us to have detention without trial provisions, but secondly, that the exclusion of the oversight role of the courts was totally unacceptable.

And we appeared before parliament's committee on organizations, appeared before the same committee and took the same stance. And to the credit of government the law was withdrawn and the new bill that was reintroduced did not have any of these offensive provisions. There were still some problems but I think that kind of role, again, is quite critical, raising issues of concern, raising public awareness around that, mobilizing like-minded groups and individuals around that. At another level, we provide parliament with information that enables them to exercise oversight over the executive.

As I indicated, we report to parliament. Although we are appointed by the president, we are not accountable to the president. It sounds strange but we are

accountable only to parliament and we submit reports to parliament. Sometimes we are asked by parliament to brief them on particular matters, so we do a briefing on women in prison, what is the position of women in prison? Children in prison?

And the benefit of these briefings is that when government officials appear before those parliamentary committees, the committee has credible information from a source outside of government to put to that official and to use it as a basis of holding them accountable.

And we found the work with parliament actually very, very useful in terms of pushing human rights norms and standards and getting parliament to also understand its role in the lawmaking process and why it had to ensure that, in the process of making and passing laws, it also had an obligation to comply with the human rights standards.

A fourth and important area is around training, I mean very often, and certainly in the South African context, there isn't a lack of political will but very often a lack of capacity. Law officers will tell you I would like to be an efficient police officer, or an immigration officer or correctional officer, but I'm not sure I can be as efficient if I still have to comply with human rights norms and standards, is it possible? And I think one's role is simply not to articulate those standards and say, well, you have to, but to demonstrate how it is possible, how you don't have to make a choice between being a good cop and complying

with human rights norms and standards. And so the training that one does with correctional officials, with police, I think is vital in showing them that there is a way in which you can do your job but do the job within the parameters of the law.

A fifth area is around monitoring, I mean having these standards, training, it's all great but what happens in practice? And the commission does monitoring of detention facilities, for example, we would visit detention facilities for immigrants, look at the conditions that exist there, produce reports around it. We produced reports on the conditions under which immigrants are held in South Africa and we have also produced a national report on prison conditions in South Africa. Those reports only have recommendations, but again, one can use those recommendations to lobby for law reform, to lobby for institutional change, whatever those recommendations speak to, those reports provide an important basis.

Another area is ensuring that South Africa complies with international human rights obligations and we've been quite involved in lobbying for the ratification of the optional protocol to the Convention Against Torture. I'm not sure you are aware of it, but what it basically does is to ensure that each country has a national visiting mechanism that can visit places of detention at any time, to ensure that conditions of detention are consistent with the laws of the country. South Africa has still to ratify this, but

again, the role of the commission in pulling together civil society is quite critical there.

Another area in the criminal justice system is working with the courts and we have taken cases to court but also had referrals from court, and I'll give you two such examples. We took a case to court where, and it sort of has a timeline to it and I need to explain that. In terms of a law that then existed called the Aliens Control Act, a strange sounding name but it was meant to deal with non-nationals. A non-national who was arrested could not be held in custody for longer than 30 days without the sanction of a judge, without a judge making the order.

We visited a detention facility and we found that people were held in excess of 30 days without a court order. We recommended that the practice be brought in line so that you don't hold people for longer than 30 days without it. But despite making that recommendation, on a subsequent visit found that they were in breach, just not on the recommendation but of the legal provision. We then brought an urgent application in the High Court of South Africa to secure the release of 40 people who were held under those circumstances and the court granted the order. So that was important to show them and it's a way in which you can ensure that your recommendations have some effect finally.

The problem is that you can't litigate on every recommendation and you need to find the space to ensure that your recommendations are taken seriously, and part of that is

how you position yourself, the kind of profile of the institution. But there have been other cases where courts have referred matters to the commission. And one such case which is a case that is proving how difficult issues of crime and human rights are in South Africa was a case involving a crime committee. Now a crime committee would be a local committee, living in a community, tired of crime, saying we want to work with police.

What these guys did is, it was quite a vicious rape and a robbery in that community, and someone was identified as the possible suspect. The community arrested this guy and managed to extract some information from him, but the method of the extraction was quite problematic, they put in the boot of a car and drove around. The matter finally came to court and the evidence that indicated that what had happened is he made certain disclosures and the people he had identified were positively linked to the crime, through being in possession of some of the property of the victim. But because of the circumstances under which the evidence was obtained, the guys were all acquitted.

But interestingly, what the judge did, the judge referred the matter to the human rights commission and said, please, would you look into this? One of my colleagues then went into that community and met with the crime committee, and they were a sincere bunch of people, saying, look, we are simply trying to find a way of assisting the police. But if the methods we used are problematic, then we are not going

to stop doing what we are doing, but we want to do it in a way that doesn't undermine our efforts as well, because it didn't help them to doing what they did, for these guys to walk away. And so the idea is to say to them, well, fine, you can still be part of assisting police, you can undertake your own intelligence, for example, you can identify people, but you need to look at your methods.

And I was also asked by another community who said, look, we, they said to me, look, Mr. Kollapen, we know we are breaking the law, we don't want to break the law. Now what do you do to committees like that? You have two options, you can say to them, well, you are breaking the law and that's it, I want nothing to do with you, but I think that's shortsighted. What you need to do is build on that desire to want to do something and say, well, let's find a way of ensuring that you can work within the law. So that I think was interesting.

The last issue is working with police and law enforcement agencies around work place issues, around discrimination. Currently, we are dealing with a complaint around racism within the police force. And again, that's a vital role that an outside institution, with its independence and with its credibility, can play.

So there are different roles, there are different possibilities. I'm not suggesting that all of these are suitable for your structure but I think it simply offers you some way of --. And I think, for me, what has

been most important is that, as the debates around the criminal justice system happen, the commission is able to bring a different perspective to that. It has been able to bring a perspective certainly in the South African context that unless we understand our own history, unless we understand the legacy of apartheid, unless we understand how institutionalized violence was in our society, we are not going to find solutions to crime and violence by looking at pure responses from a criminal justice perspective. So I think that perspective, for me, is probably the most important, not suggesting any of the others are insignificant.

Finally, and I think you are going to talk about measuring effectiveness. And one of the things I read the things that I read the other day, Chris, and it's not to suggest that measuring is not important, I think it's vital, but someone wrote this and it said not everything can be measured and sometimes you end up valuing things that you can measure and attaching a significance to it and sort of not valuing those things that you can't measure. But I think, notwithstanding that, I think it's important to measure and I think, certainly in our work, you can find ways in some areas.

I just had an interesting discussion with two of our staff members not so long ago. What had happened is, in two regions of the country, I looked at the complaints that were coming into our office, and in one office the complaints

received had gone down and in another office it had gone up. So I asked the two guys in charge of the offices and they said, well, you know, we are both entitled to an increase and I said, well, tell me what happened. The first guy said, well, look, you know, the public education work around rights that we've done has been so effective that it's resulted in changed behavior, people are not violating rights any longer, so the complaints come down.

And the other guy says, well, you know, the work around education and awareness has been so effective that people are aware of their rights now and are aware when their rights are being violated and they come in to complain. So it's difficult to quantify that. But I think one can quantify much of it, certainly the recommendations one makes, you have a way of tracking whether those recommendations are being effective, the advice you provide to parliament, you can monitor and assess whether that advice has been taken in terms of law reform.

Monitoring visits, for example, following a visit, you make recommendations and you can track whether those recommendations have been given effective. So I think if we want to make it a case that human rights commissions are important, we have to answer the question as well, what difference do you make? What value do you add? And I don't think you can duck that issue by simply saying, well, it's hard to measure these things, it's hard to measure whether you have increased the consciousness of a community with

regard to its awareness of rights. It may not be an incorrect answer but I think you have to go beyond that and I think we have found ways of certainly going beyond that.

So I certainly think, in the context of the South Africa Human Rights Commission, our engagement with the criminal justice system I think has certainly benefitted, how we've interpreted our mandate but also how we relate to other issues, how we related to issues of children, issues of disability, issues of inequality. Many of you do work around discrimination and inequality. And clearly there is an intersection between discrimination, inequality and crime, as there is in South Africa. I'm not suggesting that you can blame apartheid for crime in South Africa but certainly the effects of poverty, the effects of marginalization on young people, the effects of growing up in a dysfunctional society, the effects of institutionalizing structured violence must be relevant if you are going to understand the genesis of crime and find durable solutions to it.

And if human rights commissions like ours are not involved in that debate, there is a real risk that the response then is a purely security, get tough, three strikes and you're dead approach, that's it, or three strikes and you're out, I'm sorry.

MR. STONE: No, you've got it.

(Laughter)

MR. KOLLAPEN: They may mean the same thing sometimes. Okay, so I think I've spoken for long enough,

I'll stop here.

Thank you.

MR. STONE: Thank you.

(Applause)

MR. KOLLAPEN: And I forgot to mention that the South African Constitution also has a section called Section 27, which is the right to food.

MR. STONE: Yes, right.

(Laughter)

MR. KOLLAPEN: I was being deprived of that right while I was talking, so I'm--

MR. STONE: As Jody pointed out, he did this at lunch at the law school too, so he has nothing to eat all day as a result of this. So why don't you do this.

But let's open it up. Questions? Thoughts? Comments? Yeah, Robin?

MR. TOMA: Well I'm going to--

MR. STONE: Draw it out.

MR. TOMA: --draw it out and allow you to enjoy your right to eat.

And as I mentioned, I was very pleased and I know how long you traveled because I think one of the longest flights I've ever taken was to get to South Africa from Los Angeles, it was 27 hours, or a series of flights, so I really appreciate the effort you made to get here. I'm also thrilled that we have the privilege to speak with you, and I've been to South Africa twice and it is a country that, you

know, I think embodies so many ways, the hopes and the dreams of a lot of activists, to see a nation that struggled from oppression to really, you know, chart its course and to create a vision that really is, in many ways, a vision for the whole world. I think all of us are far from meeting what the Constitution of South Africa sets forth, but I think that's what we should all strive for.

So let me turn to my question which is actually, from one of my visits to South Africa, I remember when I was in Johannesburg, the first time, in the mid `90s, that I actually saw on police cars a 1-800 or some kind of toll free number that said if you have complaints about the police, you know, if you have complaints about our service, call us.

Okay, this is my recollection and I thought, here in the United States we have many of these little bumper stickers that tell you, you know, if you see someone not driving well, you can call this number and complain about the driver, the truck driver or whatever. But I have never seen that with regard to the police department, and I've worked with LAPD, I'm from LA, for many years about how they can put out their complaint number in different languages and disseminate it, you know, make it more available to people so that people can report when things happen to hold a police officer accountable.

So I wanted to ask you that, you know, I don't know if what I saw in Johannesburg is still going on, I don't know if that's typical of other large cities in South Africa,

but what do you know about the impact that has had in helping to, number one, bring out a greater number of complaints, and number two, in changing police behavior and holding police officers accountable?

MR. KOLLAPEN: I think the idea was a good one. I'm not quite sure how well it worked in practice because I'm not sure, with the idea of lodging a complaint with the very same institution that you have the problem with engenders public confidence. And it's for that reason that you have a separate, well it's meant to be a separate structure called the Independent Complaints Directorate, it's established terms of the police act that's meant to deal with complaints against the police. But all the complaints, there are four categories of complaints, and they are really complaints of the most serious nature, deaths in police custody and other serious matters.

I think in the context of what's happening in South Africa, that institution, the Independent Complaints Directorate, receives a fair amount of complaints, but I don't think it enjoys the kind of independence to function as a watchdog complaints handling body in a manner that engenders public confidence in it. My own sense is that it's too close to the police both in terms of its structure, its location. And there was, certainly at the time it was established, there was a strong move and a strong call to give it the kind of independence that other institution like the human rights commission had, but that didn't work.

So I think, and Graeme may have some thoughts on this, I'm not sure whether in the current context, the public feel that complaints that they lodge will be dealt with effectively, will be dealt with credibly. I think there is a serious problem around that. And I also think that the series of public support for almost any measures that the police may take, because we are dealing with the threat of crime and violence and you can evoke those kind of emotions in public, means that at some level the public are willing to let the police off the hook, so to speak, almost the sense is, well, they are doing a difficult job under difficult circumstances. If they slap a couple of guys around, so what? If they torture somebody, so what?

And we've had instances of torture as well where, interestingly, the sense of public shock and outrage was hardly evident. So, yes, I think we need to do a lot in respect of, because there is a real danger that the police feel that they have the massive public support behind them and can do as they please. I mean the fact is the police work under very difficult circumstances and I don't really want us to discount that, especially in South Africa, where levels of crime and violence and killing of police is at quite a high level as well.

MR. STONE: We'll talk a lot more about that, we'll come back to that.

Ken?

MS. GATLING: Well, you know, I don't --.

Ken, I'm sorry.

MR. SANDERS: Go ahead.

MS. GATLING: Because I was thinking--

MR. SANDERS: Okay, you go ahead.

MR. STONE: You can sort it out among yourselves.

MS. GATLING: I was just going to say in all my years in working with cops and training cops, I have never known a cop who didn't have, who had all the power he or she needed to get a job done and didn't need more, you know, or didn't less and so I mean that's always an issue.

What I thought was interesting though is when I trained cops in Botswana and we trained a lot of officers, police agents from South Africa, but even the Scorpions, but interestingly enough, never police officers and that had something to do with politics, I'm told, and that South Africa wanted the International Law Enforcement Academy and Botswana got it and South Africa didn't.

And I'm just wondering if politics has changed there now and if they are finally, because I've been out, I haven't trained in like a year, if they are now training in Botswana because we taught human rights and human dignity in the law and all of this kind of stuff. So are they working with these law enforcement academies and sending people there? The police officers and not sort of the specialized units, and corrections and immigration.

MR. KOLLAPEN: I'm not sure if they are linked

to this academy. Interestingly, I mean there is a fair amount of work that was done in the police force around policing and human rights, but the police I think are very protective of their turf.

MS. GATLING: Always.

MR. KOLLAPEN: And so they're quite reluctant to admit it to outsiders, they would rather say, well, work with us in terms of developing manuals and developing training material, but we'll do the training.

MS. GATLING: But that's why I thought the law enforcement academy was always such a better venue for them and that everyone who teachers there is law enforcement, but you know, because of the politics, it was sort of being dropped. We don't teach it here now, just so you know, we don't teach it here, we only teach it in foreign countries.  
(Laughter)

MS. GATLING: We definitely don't teach it here.

MR. STONE: Ken?

MR. SANDERS: I thought I heard you mention something that, because of the level of crime, that some people were looking at if we could maybe roll back human rights for a while until we have this together. What I would like to ask you is how does the population look at that, along racial lines? I mean because the fear, and I think that we have probably seen some of that here in our country, you know, once you start rolling things back, you never get back to where you wanted to be.

I mean I don't know how bad the crime is in South Africa--

MS. GATLING: It's bad.

MR. SAUNDERS: But I would also like to know does it break down along racial lines or is it just so bad that everybody is willing to do that? And is that a fear, that we will never get back to where we were if we roll back?

MR. KOLLAPEN: I think the levels of crime and violence are really high, there is currently a dispute whether it's a crisis. The government denies there is a crisis because it says that a crisis means it's out of control, that's the understanding of a crisis, and they said, well, it's serious but it's not in a state of crisis. I think many outside of government would want to challenge whether indeed it's under control, and if it's under control, one would want to know exactly what that means, and there is a problem with getting the statistics out.

There has been a moratorium on crime stats for a long time because there were serious concerns whether the stats were accurate, and so government brings out stats in a very irregular fashion and it's very difficult then to assess with any integrity and objectively whether one is winning the war against crime or not. There are suggestions that crime levels at certain, and certain crimes have stabilized, others have gone up and others have come down, but I think the lack of regular information doesn't assist in this process.

I think there is a fairly strong view across the

board and it's a perception that we need tougher measures, and that view has changed over time. If I could just give an example, when the death penalty was abolished in 1995, something like 65 percent of South Africans who were polled at the time believed that the death penalty we needed and was necessary, that figure has gone up to something like 90 percent. Now that would suggest that somewhere along the line a substantial number of people took the view that the death penalty would assist in bringing down the levels of crime because those people never held the view before that.

And what we try and argue is that what people are saying is that we want safer society. People are not necessarily saying that we need to kill others in order to get a safer society, but in the absence of seeing a credible and a cogent plan to deal with crime, I think people will continue to argue for tougher measures. Now, yes, it does play ourself out along racial lines, at times, some people have said, well, look, crime levels haven't worsened all that bad, it's just that what's happened now, it's spread throughout the country is all, and white folk are now also victims of crime.

And they have access to the media and the media often would, and I think that happens, it would report crimes where whites are victims in a much different way than where blacks are victims, and those would, in a sense, dominate the headlines. This happened two weeks ago, a young girl was killed under very brutal circumstances and there was a

national campaign around it. And I have a daughter who is 13 years old, she went to school and they were all told to wear pink and blue on that particular day, and many learners at the school say, well, look, we understand this is an important issue, but there are kids who are dying every day, why is it, why is this?

And one has not been callous about the fact that this death was brutal, it was callous, it was unnecessary, but it's also, and it happens with the farming community, for example, there is a major issue around the killing of farmers and there is a suggestion that it's race has an effect, it's to drive white farmers off the farms. But statistically it doesn't represent a higher level of murder than in other parts of the country. Two independent reports have discounted the fact that the motive is political but, yet, in the media, the arguments will persist that race is possibly a factor so, yes.

And I think with the current debate is wrong there is a real risk that crime also has the effect of dividing a nation along racial lines. The example I gave of people wanting to close their communities, most of those applications come from affluent and largely white communities.

MS. JOHNSON: You mean like having gated communities?

MR. KOLLAPEN: Exactly. And black people have often said that, well, you know, it's not possible that

you're going to have gated communities in the townships, because they were not laid out or designed that way. So yes, it has a racial dimension at some level to it but I think, in honesty, South Africans of all colors have reached a point where crime has had a devastating impact on them and at some level they speak in one voice as well.

MS. ARBODELA: I'll talk a few minutes while you chew your next piece of food.

(Laughter)

MS. ARBODELA: I think country, we have a very contentious issue, which is immigration, and we are going to talk about that very issue tomorrow, in tomorrow's session. Aand it is how the immigrant population, not only Latino but of other immigrant origins, how they are perceived and also how they are treated by the criminal justice system, and the consequences of not having full vested citizenship. And it is the case in this country that unless you are a full vested citizen you don't have all the protections that citizens do, even if you are, if you've been here for 30-50 years, even if you are an LPR, which is a green card holder, you do not have the same kinds of rights and protections.

So, if a person who has been here for 15 years and has a green card breaks the law, and for whatever reason lands in a courtroom where the prosecutor is savvy enough to manipulate certain things, this person can actually, and this person is convicted of a felony which is punishable for a year or more, this person can in fact be deportable, even if

this person carries a green card, even if this person has children who are American citizens. So, in the context of criminal justice and in the context of the anti-immigrant sentiment that we are living under right now in the United States, there is a struggle to secure our borders, to ensure that the country is free of, you know, terrorists and the association between immigrants and terrorists is almost, it's almost interchangeable, especially post 9/11 that is true.

So my question to you is, in South Africa, you talked about immigrants in South Africa, how does it work? What is the role of the criminal justice system vis-à-vis immigrants? Do they enjoy the same protections? Are they treated differently? What about the lengths of sentences? Because, right now, even as we are here today, there is a bill in congress that says that if you are convicted of a gang crime, and this is the Feinstein Bill, and you are an undocumented person and you are convicted of a felony that carries 365 days in prison, you are not only in prison for that time but you have to serve 20 years, just because you are undocumented, and then deportable, the same is not true if you are a citizen. So can you give us a little bit of a context for South Africa?

MR. KOLLAPEN: I think South Africa is also grappling with a serious immigration problem and how to manage that. I mean post 1994, with the democratization of the country--

MS. ARBODELA: From where?

MR. KOLLAPEN: Mainly from the African Continent. Given the problems in Zimbabwe, I think I would say 90 percent of what we call undocumented immigrants will come from Zimbabwe and Mozambique, and less so now from Mozambique because Mozambique is in the process of reconstruction, but Zimbabwe, there is an estimation that there are probably something like three million Zimbabweans in South Africa, most of them illegal.

Now the common policy of the government is to arrest, detain and deport, but it's futile because people simply get deported and come through the system again. I took a train once that deported immigrants back to Mozambique, just to watch what happened, and there were 1,200 loaded on at about 6:00 p.m. that night and it was an overnight trip, at 6:00 a.m. the next morning, we would arrive at Rosanna Gasea, which was just inside Mozambique. I think about half of them jumped off the train during the course of the night, law enforcement officers on the train did not have the authority to pursue any of them, so half of them jumped off, got over the border on the other side. The 600 were released as free citizens in their country, I think a fair percentage of them had crossed the border.

Taxis know exactly which day the train comes, wait at designated spots alongside the road and the taxis obviously drive back into South Africa much faster than the train, so I suspect that, by the time we got back from our starting point, most of these guys were back at work. And in

all of that, it cost the South African taxpayer something like 100 rands per, so South Africa has to sort out its policy with regard to migration, at that level.

I think that in the criminal justice system, to my knowledge, there aren't any additional sanctions that would apply purely in account of the fact that you are not a citizen, that would violate the equality provision in the constitution and I think if there was an attempt to do that, there certainly hasn't been.

But more recently, there have been suggestions that because, again, of South Africa's criminal justice system that has been brought into line with international standards, South Africa has become an attractive destination for foreign criminal gangs, so the suggestion is that the triad, the Chinese triad, the Russian mafia, the Jewish mafia, the Nigerian cartels, all operate within South Africa. And the argument goes that while they are able to work within the criminal justice system quite effectively, get lawyers, get out on bail, organize the best defense.

That fuels the argument about standards that should be rolled back because it allows people to, well I think that's different from, and our view is that we should, from an intelligence point of view, we should understand crime and deal effectively with it from that perspective. But simply suggesting that crime equals foreigners is problematic, and that's also some of the argument that's currently playing in South Africa.

MS. ARBODELA: Let me press a little bit here. Are police officers vested with the authority to detain, arrest and deport people? Police officers, regular police officers, I'm not talking about, like, immigration people, immigration officers.

MR. KOLLAPEN: The procedure is that police officers have the power to arrest. What happens then is they are handed over to immigration officers who will then do the process of determination of whether the person has the authority to be in the country, and they are vested then with the power to decide whether to issue the person with a permit to allow the person in the country or to deport the person, so that decision is taken by immigration officers. The police officers do have the power to arrest.

MS. ARBODELA: Do they have the power to ask for documentation?

MR. KOLLAPEN: Yes.

MS. ARBODELA: They do?

MR. KOLLAPEN: They do have the power but, in terms of the law, the person has the reasonable opportunity as well to produce that documentation. So, technically, the person should be accompanied to their home if the person has the document there, but again, race has been a factor here because a large number of people arrested are largely black people, and many South Africans have been arrested in this process. Children of South Africans who are in exile, who came back to South Africa with an American exit and who

weren't given the opportunity to learn any of their home languages are then confronted and say, well, name six of your body parts in Zulu, and people are arrested sometimes on those flimsy grounds.

MR. STONE: Ryan?

MR. GOODMAN: I just had an institution building question. With a group that's assembled like this one here, can you speak to analogs in your experience or in the commission's experience with working with other commissione, like counterpart commissions or counterpart commission members, regionally or internationally, and that kind of a network effect, what you yourself or maybe the commission itself has learned from or gains from those types of experiences, or ways to make them more sustainable?

MR. KOLLAPEN: I think there have been attempts both regionally and internationally to develop networks amongst commissions. So you have the Asia Pacific Forum, for example, that brings together commissions within that region. In the context of Africa, we established what we call a Secretariat for African National Institutions and initially the secretariat was housed in the offices of the South African Human Rights Commission, it's since moved to the offices of the Kenyan Human Rights Commission. And the idea of the secretariat was to provide a basis for exchange of personnel, sharing of best practices.

I must confess it didn't quite take off, I think in part because most of the institutions were grappling to

try and establish their own presence and identity at a national level, and I think the same applies to the Kenyan commission, but I think there is certainly a considerable start for commissions to begin to learn from each other. The Ghanaian Human Rights Commission, for example, has been quite successful in decentralizing its operations and getting it right down to the community and district level, it's been quite effective with it.

That's something that we I think can learn from because my own sense is that we are very much centralized and very much urban-based and haven't been effective there. I think the methodology we use as well, in terms of teaching human rights and creating an awareness around human rights, again is something that commissions can learn from each other, the issues around independence, issues around the appointment processes as well.

We have received numerous requests to host staff of commissions from other countries, just not in Africa, we had someone from the Korean Human Rights Commission as well, and they want to be, they spent time in our finance and administration department, I thought they were much better at stuff like that than we were so, yes, I think there is scoping. My own sense is that unless you have the dedicated funded secretariat to do that, it becomes impossible to do it as part of and within the structure of an existing commission.

MR. STONE: Graeme, did you want to, you were

baited there a moment ago about saying about--

MR. KOLLAPEN: Graeme is the expert on criminal justice issues so--

MR. STONE: About crime, about the issue of crime and human rights, and how it's playing out in South Africa, do you want to say something about that?

MR. SIMPSON: Well I didn't really but, because I came to listen to Jody. But maybe a couple of things, the one thing for me is I actually think that it's not just in racial terms that the kind of interpretation of crime plays out, I actually think that there are very important class-based issues that also revolve around those who are poverty stricken and most marginalized on the basis of their poverty. And one of the classic examples is the fact that they simply don't present often in the statistics around property crime, despite the fact that they are primarily victimized, because most people who are reporting the property crime are reporting it not because they believe the police are going to solve the crime but for insurance purposes.

And poverty stricken communities are actually uninsured and so they have no motivation to report around property crime, so the representation, statistically, of property crime is that it is affluent and primarily white people who are victims of property crime. And it's simply untrue in terms of the way in which these communities prey on themselves.

And the same is true in relation to the

discourse around violent crime. Actually, you know, all evidence demonstrates that it is primarily in poverty stricken communities that the levels of violent crime and particularly crime against women go through the roof and there are a whole range of reasons for that.

So that's just one issue in relation to the way in which I think the issues of moral panic that promote this sort of approach actually take on both racial and class terms, and this issue of moral panic is I think very important. The second issue is in relation to what Jody said about the independent complaints directorate and the question that was raised about community reporting and those opportunities.

There are two concerns here that I have, but one is that, in relation to the South African Independent Complaints Directorate, actually there is a real problem of capacity. It's not just where it's located, it's also about the devastating consequences in newly emerging democracies, embryonic democracies, of the gap between vision-based policymaking in these areas and the absence of the capacity to implement on that. And the expectation gap that that creates is a critical factor in frustrating popular expectations of the criminal justice system and it drives, at a popular level, this backlash, this anti-human rights discourse in the wider society.

And it's very important for many of us because this is not just about privileged whites, defenders of

property who are pushing for the return of the death penalty, this is actually a popular discourse that is playing out in the victim communities, in the most marginalized groups, in the most vulnerable groups. We always talk about civil society, I mean in terms of human rights terms, South Africa is quite an uncivil society, not just because of the level of violence but because of the, I think the growing, it's a popular push and government is often responding to popular pressure to retreat on these measures. There are a number of others, the issues of minimum sentencing, the reversal of bail entitlement.

I think the greatest casualty of this is, and it is something that Jody said earlier, the greatest casualty of this is what it has done to the discourse of social crime prevention, that in some sense is the national crime prevention strategy, which was passed by the South African Cabinet in May, 1996 and duly ignored from that point on.

I think it was probably the most analytically astute assessment of the root causes of crime and violence in South African society, which rather than ducking the issue, recognized the fact that the lines between political and criminal violence were always blurred, that people were crossing those lines throughout the apartheid era, that a sanitized version of the past would show the conflict only as political and the post apartheid violence as criminal was actually very problematic. And yet I think that it was largely in response to a growing popular cry for harder law

enforcement measures, that government really sacrificed its commitment to the crime prevention strategy.

The second reason for that was the same issue that I raised in relation to the independent complaints directorate, the national crime prevention strategy, if it did fail, failed because it was a grand scheme, which was not incremental in its implementation and which taxed enforcement and implementation ability in the state. And there might actually be an important difference between emerging democracies and the established democracies on what can be expected in terms of enforcement and delivery because the capacity of the state and the reach of the state is not always the same.

And so we need to, again in the context of South Africa, we need to be even more mindful, I think, of the need for incremental policy making which anticipates these popular concerns and which seeks to actually deliver in parallel the social crime prevention approaches dealing with marginalized groups, early childhood development programs, youth programs, all that stuff, but alongside it doesn't sacrifice popular perceptions around the efficacy, the response time of policing, those sorts of things, and that's a very difficult balance to get right. So I mean these are points that I think simply reinforce what Jody was saying, rather than contradict them.

MR. STOWE: Can I just, this issue on the moral crisis piece and I think that is by far one of the banners

for which law enforcement is able to do a number of things. Because I think you are absolutely correct in the big scheme of things when you are faced with either getting protection from someone breaking into your home or not getting it, and then finding out who did that, particularly if there some losses incurred or heaven forbid that there be a death or some sort of fatality incurred. We have oftentimes said to ourselves then absolutely, this, in fact, end does justify the means in this particular set of circumstances.

We have seen here, for example, many, many years where the most violent crimes have been on a decline for many, many years, but we have seen our, in our case, our city, our budget is still consumed with this idea that public safety is a number one issue and we are spending, right now, 70 cents on the dollar. So when you are talking about programs, as an example, youth related program, recreational kinds of programs, child care programs, supplementing those who are impoverished, as an example, and you've got, you know, a little less than 30 percent of our budget to do all those kind of things that directly impact, you know, why we need or we think we need, anyway, law enforcement.

So we have not been able to, and maybe you have some ideas about that as well, but to be able to have people understand and try to have a public discourse that allows us to even talk about this issue in terms of what the reality is in terms of public safety. And by the way, it doesn't always happens down in the urban parts of our community either,

crime is everywhere in that regard. It is not until people get involved and engaged in things like, in our community, like the local block watch, which is a neighborhood incentive where individuals within that neighborhood are engaged in the process of watching our neighborhood, watching out for their neighbors, as an example. They are going to make the phone call and get information and sometimes they don't always give their name, mind you, because again there could be some retaliation issues, but at least having an ownership in your community outside your own residence.

And it's kind of hard for us to get to a place where we can build more on that line, you say crime prevention and end up over here again, when we do a citizen survey and ask the question what's the most important issue for you? Public safety, and the fire you see, you understand fire, that kind of makes sense. But the vast majority of those dollars are going to our police department, and we don't get a single argument, there is nobody coming to petition, counsel, to say that that's a bad thing at all, no argument whatsoever.

So it is that moral crisis that we've got to figure out how do we deal with that and then to try to create some kind of balance because we can't continue to up and up, and up with our tax dollars for one part of what we do, and over here, the very things that could impact that, we never fund.

MR. STONE: I just want to say there is a

conversation right around this. And that I think one of the most telling things you talked about early on was the alignment between the human rights commission and the appreciation that criminal victimization is itself, prevents the realization of a lot of rights and the call for the victims charter as a call from a human rights commission is a terribly important message.

One of the things that went wrong, I mean a lot of people worked very hard for the crime prevention strategy in '96 but one of the, in my view, I think one of the mistakes of that, of the structure, was not its over-ambition but the fact that nobody wanted the crime victims. So you look at the crime prevention strategy, the crime victims were relegated to the department of social welfare, none of the criminal justice agencies wanted, as they don't in this country, nobody wanted crime victims. And there is, and that sends a signal and that, and I think that the embrace of the rights of victims by human rights commissions is a step in the way of reconfiguring the politics in which the victims of crime and those who get caught up in the criminal justice system share a stake in a right-based society and a rights structure, as opposed to being pitted against each other. But that's a, do you want to come back on that?

And we'll get to Pat, but go ahead.

MR. KOLLAPEN: It doesn't mean they want them--

MR. STONE: Not at all.

MR. KOLLAPEN: --same problem--

MR. STONE: Actually, when Bill Elani was running the national prosecuting authority, I wrote a, with Cheslin, I wrote a program for him and one of the things we recommended was that he take up the cause of victims and create a victims council, and this is the national prosecutor, meet with victims on a regular basis and have, which is what the British Home Secretary had just done in the same way where they also had no authority, I think it's supposed to be relegated to someone else.

But it's interesting how criminal justice agencies don't want, the National Prosecutors Association in this country every year opposes the National Victims Rights Amendment. It's probably a stupid amendment but the, but what they are doing is--

(Laughter)

MR. STONE: But there is something about where you align yourself and that's why I thought your comments about the victims charter were so telling.

But, Graeme, go ahead.

MR. SIMPSON: Purely an anecdote, I sat around the table after the national crime prevention strategy adopted by cabinet, and it's a very elaborate program with 17 pillars and each one with a lead department in government, which is why I said the over complexity will compromise it. And we literally had to sit there and identify which department would be the lead on which aspect. And one of the pillars of the national crime prevention strategy was victim

empowerment and that was who would take ownership of the victims.

And actually you are wrong, it was initially what happened when we sat at the table and we said, okay, who is going to take on victim empowerment? Everyone looked at social welfare and said, well, surely the responsibility of victims is the welfare department's responsibility, and they said, hold on a minute, we do all the stuff on rehabilitation of perpetrators, so we deal with perpetrators, we are not taking on the victim empowerment thing.

The South African Police Service, who had their eye on a 200 million rand piece of the RDP budget, they saw those dollars signs and they said we'll take victims, very quickly. So you had this extraordinary irony that the police was doing victims and the welfare department was doing perpetrators, until two weeks later when the department of welfare realized that the budget, that the reason were taking it on was because the budget was available and they said we insist on getting the victims back, not because they had any commitment to victim empowerment but because they saw the budgetary figures.

MR. STONE: Absolutely, I completely agree.

Pat?

MS. GATLING: Prosecutors have taken on domestic violence victims. But now I mean I just think it's a critical time in South Africa, having dealt with these crime issues, you know, in the '80s, here in this country, when I

started doing crack cases, you know, all of a sudden in New York City--

MR. STONE: You should know Pat was a prosecutor--

MS. GATLING: I'm a prosecutor.

MR. STONE: --before she was a human rights commissioner.

MS. GATLING: I'm still a prosecutor and just discriminators, that's all, and the issue was, you know, you would go to Bed-Stuy and all of these crime ridden neighborhoods with crack and they would say we want the death penalty, we want to kill them, we're sick of this, and da-da-da. So hence Nelson Rockefeller Drug Laws and you know, people are doing 20 years and I'm getting 140 year sentences on defendants. Can you believe that? I figured the defendant didn't, but I did but.

Nonetheless, what's happened now, you know, fast forward 15-20 years and what we found out was that now those same people are crying out to the police, well, why are you doing over-enforcement in our community? Why are now all the black and Latino men in jail? Because we did that enforcement 20 years ago and now our communities have lost 20 years of young black and Latino men working who could have, you know, who make the money and they'll never be able to catch up in history.

And so I think what, you know, just looking in hindsight, what we should have done was really sort of taken

a step back and someone should have had the good sense to say, okay, let's look at this in the long run and talk to the communities about what does this really mean and what do you really want? Because enforcement can do one thing, we can remove, that's it, and for anyone to ask us to do anything other than that, I think that there is, you can't do it. And while now you have police social workers, and they are certainly a lot more sensitive and a lot better at handling things, I think ultimately the goal, you know, they understand removal

And so, you know, you need to start working with these communities, I think, and it's critical to understand that, okay, we do have this crime problem, but you've got to understand and really know what you are asking for because you'll end up with the same situation. And you can just point to New York State, where crime and enforcement becomes an industry and where jails, people argue about it in New York State because that's what makes money and you know, this is what ultimately will happen, and so I think that that's just something, that's a role for human rights commissions, to really educate.

MR. STOWE: And we are okay, if that problem gets removed from our neighborhood.

MS. GATLING: Right, but you have to understand to what extent people--  
(multiple people speaking)

MS. GATLING: And they have to understand the

cost.

MR. STOWE: I think the cost--

MS. GATLING: Nobody understands the cost. They want us to fix it and fix it quickly, but not understand the cost.

MR. STONE: Let's give Jody the last word here and then I'm going to--

MR. KOLLAPEN: I think we are already in that crisis because, in a sense, in the last ten years, the South African prison population has grown by about--

MS. GATLING: And that's an expensive proposition.

MR. KOLLAPEN: --60-70 percent. But, apart from the growth in numbers, there has also been a growth in terms of the length of sentence, it's increased--

MS. GATLING: And then you get the rehabilitation that we are dealing with now.

MR. KOLLAPEN: And I think communities are looking at it from the perspective you are saying, almost saying, look, we are worried about now, and yet you need to engage them in that debate.

MS. GATLING: You have to.

MR. KOLLAPEN: I think they are disconnected as well from the debate.

MS. GATLING: And no one knows--

MR. KOLLAPEN: And no one hears their voices and the immediate concern is safety, and I'm not sure if, long

term, that's what they are getting.

MR. STONE: So I'm going to pull this to a, this formal bit, to a close here. We can continue this actually in the day and a half ahead. And in fact one of the benefits of having you here is we'll have your words and then we'll actually continue to work with this, even beyond this weekend.

I just wanted to say that you've given us, I'm not sure you can appreciate how valuable it is for people who are working, struggling with what seem like very local issues and the tensions, the lack of sometimes enforcement power, the question about whether this is even our business, the question of the tension between political, the awkwardness of political accountability and political answerability for the human rights commissions themselves, to hear your account. Because there is, as Robin was saying, there is no country that's been more inspiring on these issues and I think given us more confidence and optimism about the possibility of progress in democratic structures than South Africa over the last fifteen years.

And there is something, although it may be frustrating for you, comforting I think perhaps for us, for us sometimes, to know that those struggles that you are having about how to be effective, how to move this, how to move these issues in the context that you are describing is a struggle for all of us.

I think the menu you have given us of things to

think about, training, working with victims, working with courts, monitoring, a range of other examples, are ones we'll pick up and actually come back to in the conversations over the next couple of days.

But I want to finish by just a phrase you used which I have heard, it's a word that South Africa, for me, has redefined and that's the word transformation. That word has come to mean something in South Africa about the process of transformation that began, I'm not sure when it began but certainly took great, a great leap forward in '94. So many conversations in the last thirteen years with ministers in South Africa talking about, you know, we need to refocus on transformation, we need to continue transformation, transformation is not complete. It's a word that begins to embrace not just the change of who is in government, and not just the change of who is in power and not just the change of sort of what the laws are, but it is a word that captures an ambition for government, and for democracy and for rights that I think we can all learn from and follow.

So I want to both thank you for being here, I look forward to the next day and thank you on, thank you, as the representative of your government and your colleagues, for helping us see something about how one can transform not just a country but the world. Thank you very much.

(Applause)

(Whereupon, at 8:37 p.m., the session was adjourned.)