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TAKEN BEFORE  
JOINT COMMITTEE ON THE DRAFT CONSTITUTIONAL RENEWAL BILL

**DRAFT CONSTITUTIONAL RENEWAL BILL**

TUESDAY 3 JUNE 2008

MR GARETH CROSSMAN, MR MIKE SCHWARZ,  
BARONESS MALLALIEU QC and MR MILAN RAI

Evidence heard in Public

Questions 217 - 278

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Oral Evidence

Taken before the Joint Committee on the Draft Constitutional Renewal Bill

on Tuesday 3 June 2008

Members present:

Michael Jabez Foster, in the Chair

Campbell of Alloway, L.  
Fraser of Carmyllie, L.  
Gibson of Market Rasen, B.  
Hart of Chilton, L.  
Morgan, L.  
Norton of Louth, L.  
Plant of Highfield, L.  
Tyler, L.

Mark Lazarowicz  
Martin Linton  
Emily Thornberry  
Sir George Young

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Witnesses: **Mr Gareth Crossman**, Director of Policy, Liberty, **Mr Mike Schwarz**, Partner, Bindmans, **Baroness Mallalieu**, QC, a Member of the House of Lords, President, Countryside Alliance, and **Mr Milan Rai**, examined.

**Q217 Chairman:** Good afternoon. Can we welcome you to our Draft Constitutional Renewal Bill Committee. We are covering a whole range of issues, as you probably know, but this afternoon we are grateful to you for coming along to answer questions and offer advice on a very niche part of the consideration, namely that relating to demonstrations and particularly those outside Parliament to which the Serious Organised Crime and Police Act 2005 currently applies, as indeed does other legislation as well. Milan Rai, I know that you are famous because of issues that have arisen in consequence of the Act in question. Can you tell us what you think the main problems with sections 132-138 of that Act are? Do you think they should be repealed and, if so, what sort of replacement do you think would be appropriate? Perhaps you can tell us of your personal experience in dealing with that.

**Mr Rai:** I am very happy to talk about my personal experience. I have been organising protests in and around Parliament for about 20 years and I have organised many vigils and

demonstrations opposite Downing Street over that time. In September 2005 I was preparing to organise a small part of an international ceremony to mark the people who had died in Iraq as the result of the invasion and occupation of Iraq and as part of that two of us, Maya Evans and myself, were going to be ringing a bell and reading the names of Iraqi civilians and British service people who had died in Iraq. I contacted, as usual, the Metropolitan Police and I encountered for the first time the new system. Previously I had contacted the Metropolitan Police and that was useful for me as an organiser also to make sure that I did not clash with someone else's demonstration, so there was a useful function in my notification for us. On this occasion I was told that new regulations had come in which I knew of but did not know the details of, and I was sent an application form to fill out. At that point I was very much committed to carrying out this remembrance ceremony for people in Iraq and when I first received it I was minded to fill out the form and send it back. However, as I studied it I became more troubled by the issue of principle involved in shifting from a process of prior notification to being required to seek prior authorisation. Having at first been minded to fill it in because completing that ceremony and remembering all the people involved was very important to me and to Maya Evans also, I became unwilling and in conscience unable to complete the form and seek authorisation. I contacted the Metropolitan Police again. I told them that in conscience I was not able to do that. They told me that as the organiser, and I had given my name and address as usual, I could face up to 51 weeks' imprisonment for that. When we went ahead with the demonstration the two of us were arrested. The police were quite reasonable in their treatment of us. We were non-violent and co-operative, while being unco-operative in the filling out of the form, and subsequently we were prosecuted, fined and in my case I was imprisoned for non-payment of that fine because I could not in conscience pay a fine for something which I did not believe was wrong, so I served a short prison sentence for that. The prison sentence and the prosecution and the arrest all turned on the fact

that I felt that a very serious change had happened from a voluntary process of notification to a process where the police had powers to control our demonstrations and that we had to seek the permission of the police simply to remember the dead. In passing I should note that while this did not bear on my decision whatsoever the application form also imposes a much greater burden on the organiser in terms of having to attach advance publicity, having to tell the police when meetings are being held before or after the event and where they are, having to tell the police when the organiser is available for meetings with police, having to deliver this form once completed either by hand or by recorded delivery. All of those are significant changes to the system and the kinds of restrictions that are required now on organisers I believe also serve to give the police the right to effectively neuter political protest, and in the case of the ban on loudspeakers to have a significant impact on public safety and the control of demonstrations as stewards who have loudspeakers are much more likely to be heeded by demonstrators than by police because, in the nature of things, demonstrators tend to not be entirely obedient and sometimes to rebel against instructions given by authority figures such as the police.

**Q218 Chairman:** Was it the nature of the form, the amount of detail, or was it simply the principle of applying for permission that you objected to?

**Mr Rai:** It was the principle that it all turned on for me and these other matters were minor in the making of my decision.

**Q219 Chairman:** Do you have any evidence that the police have ever refused an application?

**Mr Rai:** I do not believe that they have. However, as the Committee will know, the police have the power to relocate demonstrations, to limit the duration of demonstrations and to reallocate the beginning and end of demonstrations within a very large area so that an evening

rally of 500 in Parliament Square could turn out to be a breakfast event of half a dozen people under the London Eye under the powers that the police have, which obviously has a significant impact on the political message that you convey.

**Q220 Chairman:** Would you accept that that is somewhat speculation? Again, do you have any evidence that the police have so changed the nature of a demonstration as to make it inoperable or ineffective?

**Mr Rai:** Not at all. I have not come across any evidence that the police have exercised the powers which they now enjoy.

**Q221 Lord Campbell of Alloway:** You were a co-founder of Voices of the Wilderness.

**Mr Rai:** That is correct.

**Q222 Lord Campbell of Alloway:** What is the object of that? Is that to organise demonstrations? What is the purpose of Voices of the Wilderness?

**Mr Rai:** I regret to take up the Committee's time on disentangling my political allegiances.

**Q223 Lord Campbell of Alloway:** No, it is a straight question. Is it yes or no?

**Mr Rai:** I did co-found Voices in the Wilderness ten years ago. Five years ago, and therefore pre-dating this particular involvement with the Serious organised Crime and Police Act -----

**Q224 Lord Campbell of Alloway:** Forgive me, sir. I am not concerned with this involvement at the moment. It is a simple, straightforward question. The answer is yes or no, was it founded so as to organise demonstrations?

**Mr Rai:** What I was trying to say was that I was not actually involved in Voices in the Wilderness at the time of this demonstration. However, Voices in the Wilderness does carry

out demonstrations and that is one of its purposes, yes, but that is not relevant to my involvement in that particular incident.

**Mr Crossman:** Just turning back to the original question, which I think was relating to what is problematic about SOCPA as well as all the generally well known concerns that have been raised about the onerous nature of it and the ability to place extremely restrictive conditions on demonstrations, there are a couple of other points that I think are relevant. The first is the gestation of SOCPA itself. I think part of the problem with the broad nature of the restrictions comes from the fact that when the Serious Organised Crime and Police Bill was originally published in the House of Commons it was a very different set of proposals. It was far more specific and, to put it bluntly, it seemed to be just targeted towards Brian Haw and there was a considerable amount of criticism at the time saying that it was ridiculous to have an Act of Parliament which seemed to be targeted on a particular individual, so this was redrafted and the consequence of that was that you had a Bill coming back which was far more broad in terms. It was clearly not just about Brian Haw but now was about everyone else as well, so the fact that this was not the original draft and it was done in response to criticism in the hurly-burly of politics I think is part of the problem. Another brief point I would make is that, of course, the problem with this part of the Act is that it does not exist in a vacuum and generally it has to exist alongside the restrictions that can be imposed either by the Greater London Authority which in themselves can be extremely onerous or, in the case of demonstrations in College Green and elsewhere, within the rules that are set down by the Houses of Parliament themselves, so they can increase and multiply the concerns and difficulties faced by anyone trying to organise demonstrations.

**Q225 Chairman:** I take it that you think that the present provisions are unreasonable. What would be reasonable provisions to replace what currently exists?

**Mr Crossman:** I would have to say that I do not think there is any justification for this to continue at all. I think that this part of SOCPA should be done away with. On top of that I would say that the restrictions imposed by the GLA, and I am not sure whether this would be considered a matter for the Committee, in themselves are in our view excessive and disproportionate and can make it extremely difficult for anyone to organise a demonstration. We are actually doing this ourselves at the moment. We are trying, in relation to the Anti-Terrorism Bill which is going through, to organise an event to coincide with the report stage and finding it an absolute headache and we are a bunch of lawyers. Of course there is a need to have a framework to ensure that reasonable and proportionate restrictions can be made but most of those are found within the existing law. We have a considerable amount of public order law that exists but that tends to be targeted towards demonstrations where problems arise. We have a lot of law that can deal with that sort of situation, so I would say that the framework for allowing them to take place needs to be far more relaxed.

**Baroness Mallalieu:** Can I say on behalf of the Countryside Alliance, of which I am the President, that we have no experience of trying to organise either a demonstration or a march which passes through Parliament Square since this legislation came into force, but we very warmly welcome the Government's current intention to repeal the relevant sections for what I suppose would be a lay reason, that prosecutions to conviction of people in circumstances such as Milan Rai in our view bring the law into disrepute and make it look as if Parliament, far from encouraging people to engage in the parliamentary process and express their views openly, is trying to place the Houses of Parliament out of bounds to members of the public and to prevent them expressing their views to Members of Parliament who they have elected. That part I strongly support. In our view the existing powers to properly control either a march or a demonstration are already contained in the existing law in the Public Order Act of 1986, in the byelaws relating to Parliament Square and also in the Sessional Orders. Our view

is that there is no need for any further supplement to those pieces of legislation which would enable the authorities to deal with all the problems that have arisen and currently arise. We are further concerned if there is any suggestion that there should be what I see is referred to in the consultation document as “harmonisation” in relation to assemblies and marches because that would inevitably result in further restrictions being placed on what is already a difficult business of organising an assembly. Essentially we welcome what the Government is proposing to do but are concerned that it should not become a cover for in effect making life more difficult for people who want lawfully to demonstrate.

**Mr Schwarz:** Can I just echo what has been said about the existing law being perfectly adequate? I think there are serious problems about applying it in Parliament but I think it is all there already – the Public Order Act, the Highways Act, the byelaws, aggravated trespass, the Trade Union and Labour Relations Act. It is all there already. I think the key issue here is policing because the trouble with creating a special law which potentially trivialises protest is that it puts the seed in the police’s mind that those people around Parliament who are protesting have fewer rights than tourists, than drivers, than parliamentarians, than other people carrying out non-governmental business here. That I think is the problem. It is the impact on the police. They think, “Parliament has said this about protests. We must enforce the law”, and they assume as a default position that there may be something criminal about protest. My view is that not only is the existing non-SOCPA law sufficient, but so far as policing is concerned the police ought to attach greater weight than they do now and did pre-SOCPA to the right to protest, and you know this better than I do, respectfully. There are different ways of influencing Parliament. There are people who have the “in” on Parliament, who have the ear of MPs. Protest is the key form for people without special access to Parliament to express their views and potentially criminalising ordinary protesters outside Parliament Parliament is reducing the civil standing of ordinary citizens.



**Q226 Emily Thornberry:** Can I ask a question to follow that because I was interested to hear you say that you did not think that we should harmonise the law, that essentially you are saying, “Get rid of SOCPA and then we will be happy”, and that seemed to be what the lawyers on this panel were saying. Are you telling us that you do not think we should go further and try and harmonise because you are suspicious that we will simply restrict people’s rights? Is that really your evidence?

**Baroness Mallalieu:** No. I am saying that there are particular difficulties which relate to a march, for example, as opposed to an assembly and there are particular features which obviously the authorities have to take into account, in particular traffic and danger and so on, and therefore there are particular requirements involved in relation to a march, in relation to notice and in relation to the powers which the authorities can exercise, but it would, I think, be unfortunate if, in taking away what I see as a draconian measure that somehow slipped by into the legislative process when perhaps eyes were elsewhere, we were to replace it with a measure which would further restrict what I think is an essential right of people to come and assemble in Parliament Square lawfully to express their views. My reasons are that I think there is a distinction to be made in relation to the powers that are required for the two sorts of demonstration and in my view they are adequately balanced at the present time with the differing restrictions.

**Q227 Emily Thornberry:** Is that the view of the rest of you?

**Mr Crossman:** Could I just clarify something on the comment that you made about, “Get rid of SOCPA and everything will be fine”. That is not our position at all. We think that SOCPA adds to the problem that already exists from an excessive and disproportionate restriction placed by the GLA. There is a small L-shaped strip where Brian Haw’s demonstration is which is covered by Westminster Council. The rest of Parliament Square is subject to control by the GLA. For example, when we inquired we were informed – this is the GLA, nothing to

do with SOCPA at all – that applications must be five working days in advance, no more than one public meeting allowed on the same day, it cannot last for over three hours, it must be in daylight hours, the real killer – public liability insurance of £5 million required, which for many people would make it impossible to do anything anyway because they are simply not in a position to take out that sort of insurance, and not to attach banners to any part of the square. If you are trying to organise a demonstration and you come up against that as a set of requirements it is going to be very persuasive in making you think that you want to look elsewhere for your demonstration, so SOCPA on its own is not the end of the problem from our perspective.

**Mr Schwarz:** Can I also respond to your question, which was about whether the existing law itself is a satisfactory status quo. I do not think it is. There are obviously issues about how it is applied generally across the country but so far as Parliament is concerned I think the issue the Committee ought to be considering is the number of people protesting. If, for example, one looks at the rules on assemblies, assemblies are defined as groups of two or more people. I think the concern ought to be about numbers, so if you are looking at existing legislation what sort of numbers would cause a problem – 20, 30, 40? It is not going to be one person as under SOCPA, it is not going to be two under assemblies, or 20 which is in the Public Order Act; it has to be significantly higher than that, particularly bearing in mind, as I said, the numbers of coach loads of tourists who come along without needing a licence or passing traffic, all of which could be carrying suicide bombers, as well as everything else that is going on. Why apply potentially criminal conditions to protesters who appear in that number?

**Q228 Emily Thornberry:** The question I ought to ask at this stage though is do any of you know about other jurisdictions and what it is that other parliaments do? There must be other parliaments that have demonstrations and laws applying to them, so do any of you have any experience of that or know any lessons that we can learn from elsewhere?

**Mr Schwarz:** If you look at, say, the European human rights law, and Gareth can also deal with this, and at the way the European Court has examined different jurisdictions' protests, they say yes, that conditions and prior authority as a condition to protest can be sought but it must be reasonable and proportionate, as you know, proportionate with the aim of allowing protest as well, and that those rights of protest should not be interfered with without a pressing social need. Interestingly, when Westminster Council took Brian Haw to court before SOCPA, the High Court said, "No, we are not going to stop him protesting because there is no pressing social need to interfere with his rights of protest". I think that is the key question for the UK, for other jurisdictions and obviously for the European Court when this Committee, for example, is looking at the human rights implications of SOCPA or its replacement – is there a pressing social need? I say no.

**Q229 Martin Linton:** I am going to ask about additional powers but can I first clarify the answer to the first question because it leads on to this? If you are saying that the present Act is impossibly bureaucratic, and I agree with you, would you prefer a return to the old system of Sessional Orders which have not been read for the last two years? If it was a straight choice between SOCPA and Sessional Orders which would you prefer?

**Mr Rai:** Having been arrested under the Sessional Orders as well in the past, I am not sure I am in a good position to make a choice between the two. Unfortunately, my experience of Sessional Orders is that I have encountered police officers who, in the way that Mike Schwarz has been indicating, have been under the impression that Parliament has asked them basically to stop protests occurring and they have used Sessional Orders as a way of intimidating protesters and occasionally arresting them. I was involved in a case that was won on appeal at Southwark Crown Court which helped to put Sessional Orders into something of disrepute, so if you ask me to choose between the two systems I think that there is a very grave step forward with the demand for compulsory authorisation and that marks the distinction between

the two systems. However, if you said would I actively choose one, I would respectfully decline to make a choice.

**Q230 Martin Linton:** Baroness Mallalieu?

*Baroness Mallalieu:* I would go back to the Sessional Orders and the status quo as before.

**Q231 Martin Linton:** Mr Crossman and Mr Schwarz?

*Mr Schwarz:* I do not know if the Sessional Orders are appropriate. I think existing criminal law applied impartially and independently by the police where appropriate is adequate. I am concerned about Sessional Orders because it is another message from Parliament to the police saying, “We do not like protests around us”.

**Q232 Martin Linton:** We are not looking at protests or demonstrations in general. We are just looking at the law as it applies or should apply to protests outside Parliament. It is a very specific small point.

*Mr Schwarz:* But the Sessional Orders are a message to Charing Cross police station, “This is our view of protests around Parliament”. Legislation is the worst. Sessional Orders I think are pretty bad. Why not let the police, applying the primary legislation, form their own views and policies on when it is appropriate to intervene? Obviously, if they get a call at 10.30 at night from Parliament saying, “We have got a bit of a problem outside. There are too many protesters”, they may come along.

*Mr Crossman:* All I would add is that while the straight answer to that, if there had to be one, would be Sessional Orders rather than SOCPA, the flip side of that is that, for all that I believe that those provisions should be done away with, at least they provide a legislative framework which is easily accessible and where people can see what the parameters of the

law are. I do not think the same applies when we are talking about Sessional Orders where they seem to be far more broadly open to interpretation.

**Baroness Mallalieu:** I wonder if I might just add, if I may be allowed, Chairman, that the thrust of Sessional Orders seems to me to recognise the importance of Members of Parliament being able to get into the building, and indeed the other way, Members of Parliament being able to get out of the building to see their constituents outside. I think that is not necessarily recognised by the other aspects of the law and I think it is a particular feature of Parliament which needs to be in some way preserved.

**Q233 Martin Linton:** I understood your answer, Mr Crossman. Can I lead you on now to, if we do not have SOCPA and we do not have Sessional Orders, as some of you advocate, would the police still need additional powers to ensure that, as Baroness Mallalieu says, parliamentarians can access Parliament and leave Parliament during protests?

**Mr Crossman:** I have to say that my belief is that the Sessional Orders were probably more relevant to a time when there was not the system we have now under which those of us who are not possessors of parliamentary passes wish we could find our way in and out of Parliament in the way that those who do hold them can.

**Q234 Martin Linton:** You do know that several parts of the building are open to the public?

**Mr Crossman:** Well, yes, sorry. What I meant was that if there was a significant sized demonstration out in Parliament Square and I was holding a parliamentary pass I would be able to get in underground without any problem whatsoever because I could get access via the subway. If the purpose of Sessional Orders was to ensure that Members of Parliament were able to enter and exit Parliament, I imagine that was at a time when that method of access was

not a possibility. You will know better than I. It just appears to me that if you hold a parliamentary pass getting in and out of Parliament is not a significant issue.

**Q235 Martin Linton:** So you do not think there would be any need for the police to have powers to keep Carriage Gates open to access?

**Mr Crossman:** Under the common law the police, if they need to open access onto the carriageway for a particular need, they are able to do so. I do not think there is any need for any particular extension of the common law on that.

**Q236 Martin Linton:** If you can just cast your mind back to before 2005, do you think there were occasions when the police had difficulty maintaining access to Parliament?

**Mr Crossman:** I do not know the answer to that. There may have been occasions. What I can say is that I do not believe that that was the policy driver behind the introduction of SOCPA because if it had been the original draft of SOCPA would have reflected that and it did not.

**Mr Schwarz:** There is a very straightforward answer to this, which is the Highways Act. It is an offence to obstruct the highway and if you are stopping people from using the pavement, getting in and out of places, that is an offence. The police can enforce it. It applies at Parliament, it applies everywhere. That is part of my view, which is that there is no need for special powers or special legislation, SOCPA, Sessional Orders or otherwise.

**Q237 Martin Linton:** I do not know if any of you were present at the Countryside Alliance demonstration in Parliament Square. I forget when it was but I am sure Baroness Mallalieu would know.

**Baroness Mallalieu:** September 2004.

**Q238 Martin Linton:** I was there, not as a demonstrator but I observed what was happening, and there was a very ugly situation that developed with the crowds surging forward and the police having to hold the line, and indeed several people got injured, not I think through any intent by the police but simply because they had to prevent the demonstration from storming Carriage Gates, effectively. I do not think one could prove either way whether the demonstrators intended to rush through Carriage Gates but the point is that if the police line had broken they could have done and there were several of them behaving in a way that looked as though they were trying to break through, and presumably they were not just trying to cross the road peacefully; they were hoping to go further. Was that not a situation where you had a demonstration on Parliament Square pushing at police lines and where you could get a mass invasion of Parliament?

**Mr Crossman:** Is that not the point of section 14 of the Public Order Act, that in that situation the police can take action, can impose restrictions as they see appropriate?

**Mr Schwarz:** I agree. There is a raft of legislation that applies across the country that can apply there. What you are describing is a policing issue – do the police have resources to deal with this?

**Q239 Martin Linton:** I am asking a specific question, not about the law in general. Outside a legislature is there a case for the police to have additional powers to prevent people from rushing into the legislature?

**Mr Crossman:** They do have powers to do it. That is precisely the point of the additional powers under the Public Order Act that exist as a consequence of section 14. The police can make a judgment to say, “We are imposing restrictions. We are requiring people to act or not act in a certain way and if they fail to do that they have committed a criminal offence”. It allows the police to react appropriately to the sort of situation that you are talking about when things look like they might get out of hand.

**Q240 Martin Linton:** So there is a case for the police saying, “No large demonstrations immediately outside Parliament”?

**Mr Schwarz:** There are different levels. The first is, is there criminal legislation here to criminalise the activity in principle. Answer: without SOCPA, yes. Are there the police powers to enforce that, powers of arrest across the country? Yes. Do the police have the resources to deal with it? Ask Charing Cross, but they can deal with protests anywhere. As far as I am aware Parliament does not pose particular problems, in fact quite the reverse. There are police all over the place, CCTV all over the place, a police station up the road. If anything Parliament is, frankly, one of the most protected areas in the country.

**Q241 Martin Linton:** Baroness Mallalieu is in a particularly good position here, being both the President of the Countryside Alliance and a parliamentarian herself. Do you accept that there are particular circumstances that apply to Parliament that make large scale demonstrations more of a threat?

**Baroness Mallalieu:** No, I do not. I think that, properly policed, a demonstration should not present a problem purely based on size. I will, if I may, deal with the particular instance you referred to in a moment, but going to the general question of access to Parliament, which is clearly crucial, my recollection of that particular day when there was a large demonstration taking place outside is that, certainly so far as the House of Lords was concerned, there was no difficulty at all with access or moving outside and the annunciator was giving indications of which gates were open for people to go in and out during that time. That may be an inconvenience but it seems to me that with a demonstration which after all is not going to arise in those sorts of numbers spontaneously; there is going to be some indication that there is to be a demonstration on that particular day, it does enable Parliament to deal with the inconvenience in exactly the way they did then. Certain gates were closed at certain times but Members were made aware by the annunciator of how they could come and go.



**Q242 Martin Linton:** There were a number of injuries though.

**Baroness Mallalieu:** There were injuries, unfortunately, on both sides. If I can deal with the specifics of that, it was the first demonstration where there had not been what I would call satisfactory liaison. The liaison officers dealing with those in charge of the demonstration were placed in my view in the wrong place, on the wrong side of the barricade, so they could not be communicated with easily, and about 20 minutes before the incident which you are referring to the stewards of the Alliance became aware that there was about to be an attempt to push through the barriers so that people could sit down outside Parliament. They contacted the liaison officer but no apparent steps were taken and the sensible course at that stage would have been to put the stewards of the Countryside Alliance in front at that spot where they would have told their people to go back. In fact what happened was that the police, in close formation, wearing riot gear and many of them, as the Police Complaints Commission found later, concealing their identities, took up a confrontational stance. That had never happened before save in one instance when access to Parliament was denied. Of course, police in that instance had a duty to ensure that no-one broke into the House. That was key and crucial.

**Q243 Chairman:** Thank you for that explanation. I think we have probably gone as far as we are going to go on that.

**Mr Rai:** Could I please add a practical point as an organiser? Can I just say that while frameworks of legislation may or may not be well tuned to those kinds of circumstances, the existence or non-existence of SOCPA or any other legislation is irrelevant in that circumstance where a section of a demonstration has formed the state of mind to create an incident of the kind that you are talking about, so whether or not there is a SOCPA or a super-SOCPA will have no bearing. It will be on the relationship between the organisers, the police and the demonstrators as to how incidents of that kind resolve themselves. Whatever

replacement to SOCPA there is, that will not enter into those relationships which will determine a successful or unsuccessful outcome.

**Q244 Martin Linton:** In my day demonstrations were always in Trafalgar Square and the difference with demonstrations in Parliament Square is that they are only about 20 yards from the gates to Parliament so that if there were a breach it could lead to a security incident whereas a demonstration in Trafalgar Square could not. That is the point I am trying to get to.

**Mr Crossman:** I would just like to make a very quick point. In the sort of situation you have described, where you have a large demonstration and as a consequence a rushing at gates, the problem with SOCPA is that the temptation is going to be that the next time you are doing it you say, "Okay, we are going to limit it to 500 people because that way it is less likely to happen", or however many people. If you are the organiser of a demonstration, and I imagine Milan would be more aware of this, how do you go about ensuring a certain number of people turn up? You are just not going to organise it. If I were organising a demonstration I would want as many people as possible to turn up because that is the whole point of organising a demonstration. That is why these limits on numbers and other restrictions are so destructive to the ability to organise a demonstration.

**Q245 Lord Tyler:** I have a very small supplementary for Lady Mallalieu. The logic of what you said earlier is that there should be a different regime while a House of Parliament is sitting. As I recall as a participant, the first Countryside Alliance march took place on a non sitting day. Is it your view therefore that there should be different controls when there is a problem about Members of either House coming into the building?

**Baroness Mallalieu:** I do not think so. I would like to know from those at the other end of the building whether there was in fact any practical difficulty that day in getting in. I know there were complaints, from Mr Alan Duncan among others, to the police about police not

letting MPs out who wanted to go out and join the demonstration or see their constituents and refusing to accept the Commons pass, and that was the subject of a formal complaint. I was not aware, certainly at my end of the building, of anyone being prevented from coming in or leaving. There was a mention of Trafalgar Square and demonstrations there. Really I think that leads to my having to make the point that this House is the people's House, this square is Parliament Square, and it may be very convenient for the authorities to say the demonstration should take place down on the South Bank or elsewhere but noise and things that are unsightly or things that are inconvenient or irritating to MPs are things which have to be tolerated in a parliamentary democracy. People are entitled to come to their House and express their views to their MPs and that will on occasions lead to difficulties and to people getting fed up and to inconvenience, but it is a small price to pay in my view for parliamentary democracy and freedom of speech.

**Q246 Sir George Young:** Can we move on to noise? Baroness Mallalieu, I was very interested to read the memorandum which you sent out but I was slightly surprised by one sentence, "There is no doubt that excessive noise impinges on the work of those working within the parliamentary estate. This however is a small price to pay for free speech ...". I wonder whether on reflection you might like to qualify that. You have got the policemen at the gates of New Palace Yard within feet of these loudspeakers, you have got tourists who are trying to enjoy what is a world heritage site and you have got colleagues who are trying to work in the outbuildings of the parliamentary estate. Given that there are restrictions on noise for health and safety reasons in other areas, do you not think there should be some restraints on the sheer volume of noise that can be generated, much of which makes it impossible to hear what the message is? The message gets lost in the general noise. Do we not need some control?

**Baroness Mallalieu:** We do have some control but it simply is not exercised at the moment. Under the Public Order Act, under the provisions for the control of Westminster Green, there are provisions in both cases. First of all, unless you have, as I understand it, the permission of the Mayor of London you cannot use your loudspeaker on the gardens themselves but there is no problem about the police, it seems to me, imposing a restriction on the length of time that noise may go on and it would be perfectly proper to say to a demonstrator, “An hour and then that is it”, and the power does currently exist within the present legislation. I understand from those who work in, for example, 1 Parliament Street, that at times it is unbearable. I can only say that so far as the House of Lords is concerned we are slightly further down the line. When there have been major demonstrations the obtrusive noise has been that of an overhead helicopter. Otherwise within the chamber I have certainly not been aware of noise which interferes with the process of Parliament. That may not be the case in the Commons but I would be surprised if the Commons chamber was affected. It is absolutely right that people in working in offices must have some respite from what we have all heard, but it could be done now. The power is there.

**Q247 Sir George Young:** If the length of time was exceeded or if the noise went over what was acceptable would it be appropriate for the loudspeaker to be confiscated?

**Baroness Mallalieu:** Under the provisions the police would have power to make the restriction and then no doubt to take such steps as are necessary to ensure that that happens. The powers are there. I was looking just now as I came in at Brian Haw’s present set-up and his fellow demonstrators and they are within the law in every respect in that they seem not to be blocking the pavement, they are not on the gardens, for which they would require the Mayor’s written consent, and they are not making any noise. They are entitled to take out their megaphone and shout until or unless they are subject to a restriction by the authorities on the timing or the duration, and that could be done, but, perhaps because there is a recognition

in the authorities that although they have the powers this is something that must be policed sensitively, it has not been done. Going back to the old powers would give the authorities power to do that. There is nothing to stop them.

**Q248 Chairman:** The power you mentioned about confiscating loudspeaker equipment -----

**Baroness Mallalieu:** I did not mention it. It was a suggestion that was put.

**Q249 Chairman:** Does anyone know what power that is because we are not quite clear about that? Certainly the Mayor of London is suggesting that such a power should exist so we have made the presumption that it does not exist.

**Baroness Mallalieu:** I have no knowledge that there is a specific power of confiscation but presumably, as there is a power to limit the duration of noise, steps can then be taken, whether by injunction or whatever means I am not totally clear, I am afraid, to enforce that order.

**Q250 Chairman:** Would you accept that it would be a reasonable power to give to a local authority or to the police if indeed a nuisance did continue?

**Baroness Mallalieu:** Persistent noise I think in those circumstances, yes. There is just one thing I would add to the question of microphones if I may and it has already been raised by Milan Rai. When there is a demonstration in Parliament Square microphones, loudspeakers, amplification are crucial in our submission for two reasons. First, without them there can be no proper speech made to a crowd who can hear it, and, secondly, and this comes back to the matter that Mr Linton mentioned earlier, on the occasion when there was trouble in Parliament Square permission had been refused for there to be loudspeakers at each corner in order that the crowd could be contacted. When trouble brewed up the single loudspeaker, which was some distance away from what was happening, was used to give an order to the crowd simply to sit down, and those who could hear it did so, to try to defuse the situation,

but there was no means of communicating with those who were in the area where there was conflict and there was a crush. The loudspeakers are important in the case of a demonstration both in order to allow the demonstration to be effective for those who attend but also to maintain some control over a really large crowd.

**Mr Schwarz:** I do not think any special powers around Parliament to do with loudspeakers is necessary because if someone is doing something with the intention of harassing, alarming or distressing parliamentarians or with the intention of interfering with their lawful activity or their work, the powers are there in the Public Order Act under aggravated trespass and under the Trade Union and Labour Relations Consolidation Act. Those offences exist and if those offences are proved then the courts have the power after conviction to order confiscation.

**Q251 Chairman:** That is not quite what we were looking at. We are talking about the here and now rather than after a trial. Would it be not reasonable to give the police the power to remove the offending item at the time and then, of course, it would be subject to review subsequently?

**Mr Schwarz:** When you say “review subsequently”, what you are saying is that the police have a unilateral power, using their own discretion, to take someone else’s property without due process. If the Committee is considering that, that is quite a serious inroad into human rights and protest and the right peacefully to enjoy one’s possessions and to protest. I think that would be a very serious step without some due process to order the confiscation of someone’s property.

**Mr Crossman:** I refer back to section 14 of the Public Order Act, but it does cover a lot of ground. It allows conditions to be imposed for a number of grounds, including serious disruption to the community. That is one of the specific grounds set out in the Act. If I were a police officer and I decided that use of a loudspeaker was doing so I could place a condition upon you to stop using the loudspeaker. I could not take it off you but I could tell you to stop

doing it. If you then continue to do it you have committed an offence under the Public Order Act because you are breaching that, to which I presume not only would you be arrested but that loudspeaker would be taken off you because it is a material piece of evidence that is relevant to the prosecution that you will no doubt be facing. Prior to arrest I do not think you could justify it. Post arrest the power exists.

**Q252 Baroness Gibson of Market Rasen:** Some of the points I was going to raise, Chairman, have just been answered and thank you very much for that. As someone who has been a protester and organised protests in the past I have a little knowledge of this but, of course, it is back knowledge. I think a lot of what we are discussing in relation to the powers around Parliament does really concentrate on noise. I really do think that noise is something that people get particularly angry about. Can I just say that it is not just the noise from Parliament Square because what seems to be happening at the moment is that if demonstrators come they are sent down to demonstrate around the King George statue and, as someone who has an office overlooking the King George statue, I can assure you it does affect work, so I am very interested in the whole question of how we come to what is a satisfactory answer for allowing people to protest to our Parliament, which I totally agree should be allowed, but how at the same time we can keep control of the rights, if you like, of those who work in Parliament and those who are on the marches or whatever. One of the things that I have been thinking about during with your answers is, is there a difference – and I thought of this when Milan raised issues about marching and then assembling – between the use of loudspeakers on a march where you ask people to keep in, keep up and not to go onto pavements and things like that, and when you get to the assembly point and are using it then constantly? I think that is (and Baroness Mallalieu raised this issue) about whether there should be a length of time. If there is a length of time at the moment are we able to tease this out in a better fashion than we have done because there do seem to be some genuine feelings that a certain amount of

time should be allowed for a very loud loudspeaker if you are addressing a group, or indeed keeping a group in order, and if there was a time limit that people knew about would that not make things easier for both the demonstrators and those who are being demonstrated to?

**Baroness Mallalieu:** Protests take various different forms but I do agree with Baroness Gibson that incessant noise is not fair to anybody. I think it is very difficult to be prescriptive. This is something that presumably is best agreed between the organisers of the march or the demonstration and the police in a proper liaison, and it is one of the factors that should be taken into account. It seems to me these are things that the police have power to agree already. The time and duration of the demonstration are two of the features that the police can specify in relation to an assembly and they can certainly do that and more in relation to a march, so I think the complaints that are quite justified about the noise are ones that could be met under the existing legislation if there was a willingness to do it.

**Q253 Emily Thornberry:** As somebody whose office is on the second floor of 1 Parliament Street I again have some sympathy with the complaints people are making about noise, but I was interested in the answer you gave, Gareth, about the Public Order Act and about police officers' powers to be able to confiscate megaphones. How many people need to be on a demonstration? It is two, is it?

**Mr Crossman:** Two. It used to be 20. When the legislation was passed it was 20. The Anti-Social Behaviour Act of 2003 reduced the number from 20 to two.

**Q254 Emily Thornberry:** So if one person turns up with a megaphone it is not able to be confiscated?

**Mr Crossman:** It may be if you feel that they are acting in a way which is in effect under section 5 of the Public Order Act, for example, behaviour likely to cause harassment, alarm or distress. I would say that if a person with a loudspeaker turns up in Parliament Square and



starts speaking through that loudspeaker it is not activity (depending of course on what they are saying) which in my view of itself would justify taking action and not activity that a single person on their own is such that is going to significantly affect the people working around Parliament Square. I do not work there so it is probably easy for me to say that.

**Q255 Lord Morgan:** I would like to consider a different matter if I may, which is not how many people are on demonstrations or the form they take but their duration. Mr Haw, for example, has been there for many years. One could imagine, for example, people being opposed to Britain having nuclear weapons, and that is an ongoing issue which has lasted almost the whole of my life and no doubt will continue long after I am dead. Do you see any possible justification for saying that there should be some kind of time limit; otherwise we all have consciences which are, of course, eternal?

**Mr Schwarz:** Can I respond with a question, which is what is wrong with a permanent demonstration about war or nuclear weapons if it is quiet, peaceful and otherwise not committing an offence? That is what I do not understand.

**Q256 Lord Morgan:** Could I suggest one possible objection, which is that it prevents other people of equally strong consciences on other issues demonstrating. I would support this hypothetical demonstration that you mentioned; I do not think Britain has ever had nuclear weapons, but it does also raise the issue of small minorities allocating to themselves particular positions of conscience and protest which other people have and indeed other people might be in favour of Britain having nuclear weapons and equally campaign for ever.

**Mr Schwarz:** I think Liberty have made this point in their own representation, which is, and perhaps you are better placed than I am to comment on this, that there appears to be no evidence that there is a conflict in terms of time or space or politics between protesters. I

remember the time when the Countryside Alliance were there with their banners and Brian Haw and anti-war campaigners were there, and as far as I am aware they got on pretty well.

**Q257 Lord Morgan:** The Alliance was not there for weeks on end, was it?

**Baroness Mallalieu:** Yes, at one stage. It ran from, I think, April to September, a small demonstration. I can only endorse that. They got on extremely well, and on one occasion I think there was a pig also in the corner of the square and that seemed to fit in perfectly well with everybody else protesting.

**Q258 Lord Morgan:** That almost makes my point because I was not aware that you were there. I suspect the reason why I was not aware was the loudspeaker of Mr Haw which prevented you impinging on my consciousness.

**Baroness Mallalieu:** Perhaps we did not make our point strongly enough.

**Q259 Lord Morgan:** But there is surely a point about permanent occupation for the rest of time by any group, whatever it might be.

**Mr Crossman:** As I said a little while ago, the rather unusual nature of the authorisation process has this very narrow L-shaped strip which is controlled by Westminster Council which is the part of Parliament Square where you do not need to get authorisation from the GLA. Part of our concern is that there is this great big swathe where you do have to jump through a great number of hoops, which is why Mr Haw's demonstration is where it is and why anyone who wants to compete for space with Mr Haw would find themselves in a very narrow area in which to do so, so I think that says more about the problems arising from the severe restrictions imposed elsewhere than any concern in itself about a demonstration taking place over a long period of time.

**Q260 Lord Morgan:** That would mean with no limits, forever.

**Mr Rai:** Can I add something from an organiser's point of view? I think the same thing could be said about marches, vigils or any other form of protest. It might be that a whole host of people would wish to carry out a protest at the same time or the same place. The fact is, permanent protests occur because there is something which a significant number of people feel is a very great social evil. It is not simply one person; one person cannot sustain a permanent encampment; there has to be a support structure for that and that support structure, inevitably, involves people rotating in and out. The reason why Brian Haw has been able to be there so long is because of a large number of people who have supported him, and the support of a broad movement, in fact, in many ways. It is because it is an issue of major significance to the nation and to a very large proportion of the nation that you have something like a permanent encampment. The question is, if there is such an issue then why should there not be a permanent expression of that concern?

**Q261 Lord Morgan:** Not necessarily in one particular place or at one particular time. Those of us who are against the Iraq invasion could say that a different form of protest which would be quieter and less rooted in one spot might take place.

**Mr Rai:** I do not disagree with you at all that there are alternatives, but the reason why it continues and it has the level of support that it does to enable it to continue is because a sufficient number of people feel that the enduring question, not only of the invasion but of the occupation, means that they sustain it. If there were many such issues then it would mean that there were many such issues on which a large number of people in this country felt that they would give their support to someone who was expressing their view to Parliamentarians on a permanent, day-by-day basis, and that is what Brian Haw does for very many people. If there were other people doing it on other issues it would mean that there were other issues which were as important to a large number of people in this country.

**Q262 Lord Morgan:** We do not know how many people would support him. Would it not be the case, perhaps, whatever the figures were, that Mr Haw would continue there? He has a strong pull of conscience.

**Mr Rai:** We did see that he did win the Channel 4 award, when he had a number of competitors, for political figure of the year.

**Q263 Martin Linton:** How many votes did he get?

**Mr Schwarz:** He got quite a significant number but in the Westminster area it is probably not as big as in other places.

**Chairman:** I think we had better move on from that. Lord Campbell, did you want to add something to that? I know you had a question on that.

**Q264 Lord Campbell of Alloway:** First of all, may I say, I wholly accept Lady Mallalieu's approach to this: the law is about as effective as it can be, and if you start tinkering with it it could probably make worse conditions. Can you not draw a distinction between a demonstration and permanent camping? It seems to me that if you cannot you have got a rather sort of disproportionate approach to the community as a whole, because every man's right has to be exercised with respect to other people's rights. It seems to me that a permanent camp outside Parliament, where the people come in and out to keep it going, is not really necessary for a demonstration about anything – about the Countryside Alliance, about Iraq or anything. What do you say to that? Is this absolutely essential and reasonable?

**Baroness Mallalieu:** Of course, none of it is essential; it is not essential for people to be allowed into Parliament Square at all and cause inconvenience, but I do not think you can draw such an artificial distinction. If people feel strongly enough to come to Parliament and put their views in a lawful way, how they choose to do it and for how long they choose to do it, we say, should be a matter for them.

**Q265 Lord Campbell of Alloway:** Yes, but I am suggesting that it is not a lawful way to demonstrate to be there as long as they want to be there. There are other interests – the pollution interest and all sorts of other interests.

**Baroness Mallalieu:** Can I say that so far as the pollution interest is concerned, anybody having a demonstration in Parliament Square does require a considerable back-up of people who come and collect rubbish, people who make sure everything is cleared up and people who are providing food and drink and all that. So there has not, so far as I am aware, been any problem with that sort of difficulty. It is unsightly - the present one that is there at the moment is unsightly – but that is, as I have already said, a small price to pay for people being able to come and put their views directly to their House of Parliament in Parliament Square. I do not see that there is a distinction to be made. In one case you could say: “We can look the other way because it will all be gone next week” but I am not aware that Brian Haw’s presence, or any of the other more permanent demonstrations that have taken place in Parliament Square, have ever caused conflict or prevented anybody who wanted to demonstrate doing so. If I can just go back to the pig, which I think was demonstrating about the state of the pig industry at the time, enormous care was taken to send barrow-loads of dung up to Downing Street for the garden, in order to make sure there was no pollution in the Square. Anybody who was infringing any of the local bylaws would, of course, fall foul of them and be liable to prosecution.

**Q266 Lord Campbell of Alloway:** Thank you very much. We shall just have to disagree. It would not be the first time.

**Baroness Mallalieu:** Indeed.

**Q267 Chairman:** Before we leave this subject entirely, Mike Schwarz, perhaps I could ask you: do you think there is already provision, perhaps under the Highways Act or otherwise, to

ban permanent demonstrations? If not, do you think there should be? Is there not in the Highways Act a provision that you cannot stand in one place for any period of time? Is that not already there?

**Mr Schwarz:** The Highways Act does apply to protests on the pavement. Westminster Council brought civil proceedings against Brian Haw before SOCPA to try to move him on, and Mr Justice Gray said that there was no pressing social need to interfere with his right of protest because he was not significantly disrupting passers-by trying to exercise their right of passage along the pavement. That applied then; it applies now. Unless the pavement is obstructed, there is no need to intervene. If it does become excessive then the police have the power to intervene and people can be prosecuted, but if the site of the protest is not disruptive then there is no offence committed and one's right to protest under the Human Rights Act should be protected.

**Mr Grossman:** I will be brief and make two short points. If I was to be asked: "What are the benefits of living in a common law country as opposed to a civil code country?" I would say one of the great things about a common law country is that you are free to do things unless laws are passed which say that you cannot do them. I think that Brian Haw's case, although laws were passed, is a very good example of the benefits of living in a common law country. The other quick comment I would make is that the framework under the Human Rights Act says that you have a right to assembly. That is a qualified right and it can be restricted, in a manner that is proportionate, in order to ensure compliance with other needs, which include preventing crime and disorder, national security and to protect the rights and interests of others. I do not think that the fact that Mr Haw's protest might be unsightly or people might not like it particularly falls into one of those legitimate restrictions.

**Q268 Chairman:** You are aware of the proposals under the World Squares proposals to pedestrianise Parliament Square which would have up to 34 million people using it. If that

goes ahead, would that change any of your views as to whether or not permanent demonstrations could fit in with that sort of proposal?

**Baroness Mallalieu:** I think Parliament Square should be a living place and not a theme park for tourists. The answer is no.

**Q269 Sir George Young:** Would it not be an obstruction, though?

**Baroness Mallalieu:** If it is pedestrianised there is even more room for people to walk round Brian Haw and others.

**Q270 Lord Plant of Highfield:** Under section 134 of SOCPA the police have a power to impose conditions to prevent a security risk or a risk to public safety. If this section were to be repealed those provisions would obviously go, along with the repeal. Do you think the police should continue to have a power to impose conditions to prevent a security risk or a risk to public safety?

**Baroness Mallalieu:** They do already under the existing Public Order Act and under the existing bylaws.

**Mr Crossman:** And, I presume, under section 44 of the Terrorism Act as well, which I presume the whole of Westminster is under a rolling authority (?) for.

**Q271 Lord Plant of Highfield:** Since that was a fairly quick answer I will come back on something. It is really about the status of Parliament Square. I am very much sympathetic to the points that Lady Mallalieu has made but there is another issue and I would be interested to know your view about this. You did say that at least three of you are a bunch of lawyers, so it is a lawyerly kind of question. Recently, in Parliament, the Minister for Justice said: “Having been Home Secretary I discovered that the legal ownership of that piece of land is a nightmare. There’s different bits of it belong to different owners with different rights in

respect of it, and, if I may make my own suggestion to my right honourable friend the Home Secretary, one of the things that we have to ensure is that any new legal framework in respect of demonstrations there takes proper account of those legal ownership issues.” Do you see the issue of the property rights in various bits of Parliament Square as having anything to do with the scope of the right to demonstrate? After all, if I own the lawn at the back of my house, I can control who says what and when and why and for what purpose.

**Mr Schwarz:** I do not think the ownership of the property is relevant except if the offence that is being considered relies on who owns the property. You can imagine two offences: one is the Highways Act – an offence can clearly be committed on the pavement or public road – and the other is aggravated trespass, which can only be committed on land which is not the highway or road. With Parliament Square, as elsewhere, it is either highway or it is private – so either Highways Act obstruction of the highway or it is aggravated trespass. Otherwise, the other public order criminal offences apply wherever the offences take place. I do not think, with respect, it is an issue.

**Mr Crossman:** Can I add to that? I think Lord Plant has gone to the heart of the problem of what happens when you have privately owned public spaces, which is that the people who own private land can place restrictions upon that land which are greater than on publicly owned property, which is why the GLA is able to impose extremely severe restrictions upon those who wish to use its property. From our perspective, this goes to a much deeper problem which is that you have large public areas (and this is going slightly beyond the scope of this Committee), particularly shopping centres, and so on, and you are finding that because they are privately owned public spaces you are having extremely onerous conditions being legitimately (I use the word “legitimately” in a legal sense) placed upon those who wish to carry out demonstrations which would not be upheld if it was a public space. This goes to the heart of a much deeper problem of increasingly privately owned public space property.



**Baroness Mallalieu:** I do not think there is any question of the restrictions which are available to be used by the GLA ever having been used in relation to any demonstration. When one reads through them they are extremely wide-ranging. The whole point about Parliament Square is, I think, that it has hitherto been policed sensitively, in that the various owners have, with one or two exceptions on one or two occasions, on the whole, been happy to see demonstrators behaving lawfully in that area. There is no reason to suppose that that is going to change. I think it would be a pity to try to look for difficulties where none have actually arisen.

**Q272 Emily Thornberry:** If various provisions of SOCPA are repealed, we may find ourselves in a situation where it is no longer necessary for the police to be given notification of assembly. I think there has been a consultation about that, and I know that the Met Police are certainly in favour of being given prior notification of assemblies, and I think you will find that the Clerk of the House of Commons and the Serjeant at Arms are as well. I wonder if we could have your comments on whether or not you felt that it was important, for the management of assemblies outside of Parliament, to be giving notification in advance to the police. If so, what size of demonstration or anticipated demonstration and how much notice?

**Baroness Mallalieu:** For practical purposes, with any sizeable demonstration of anything more than a few dozen the reality is any organiser would be extremely unwise not to give that notification, and any responsible organiser would. I do not think there should be a further strict liability. Are we trying to discourage people from spontaneous protest?

**Q273 Emily Thornberry:** Or should we suggest it should be voluntary?

**Baroness Mallalieu:** I suggest it should remain as it is for the present time, which is, in practical terms, that people do give that notice if it is anything other than a couple of people

handing out leaflets. Those couple of people should still be entitled to come and do so if they feel strongly enough on that day to go and do it.

**Mr Rai:** If I understand the question, it is about compulsory authorisation prior ----

**Q274 Emily Thornberry:** Not authorisation – notification. The police need to be notified that there will be an assembly of, perhaps, 20-plus outside Parliament in advance. Do you think that they should?

**Mr Rai:** So three cases: compulsory prior authorisation; compulsory prior notification and voluntary prior notification.

**Q275 Emily Thornberry:** Yes.

**Mr Rai:** I am very reluctant to endorse the idea of making notification compulsory and criminalising the holding of spontaneous demonstrations. That makes me reluctant to endorse that idea. There are strong practical grounds for organisers of demonstrations to contact the police in advance to organise a demonstration of any size because if they do not they may clash with someone else or they may run into police hostility on the day, which stops them at square one. There is a very strong incentive for someone who is trying to organise anything of any scale to do that. The kind of people who are trying to organise something on a large scale who are opposed in principle to co-operation with the police are unlikely to co-operate with compulsory notification either. So I am not sure what would be achieved by that move.

**Mr Crossman:** A couple of points. I think it is very easy to draw a distinction between a procession and an assembly. You can see the reasons why a procession needs to have prior notification because it is going to be moving, there is going to be traffic affected, the police will need to know routes, and so on. I do not think there is a particular issue over that. However, the need for some sort of legitimate restriction is apparent. This was actually considered recently by the European Court of Human Rights, who have said that the mere fact

that prior notification has not been given is not in itself grounds to prevent an assembly taking place, and it is in the nature of the right to assembly that a spontaneous reaction to events is a legitimate and proportionate act in a democratic society. However, I would say that the reason why anyone should feel that they should notify and co-operate with the police (as well as just making life easier for everyone) is that if you do not give notification in advance then the police would be in a legitimate position to place small, onerous limitations under section 14 once it has happened than would have otherwise been the case, because the police are having to react to a situation where they have not been able to put prior mechanisms in place to ensure that things go in a lawful manner.

**Q276 Emily Thornberry:** A restriction under section 14 of what?

**Mr Crossman:** Of the Public Order Act. The reason why I am saying it is in your interests, if you are organising something, to notify and co-operate with the police is that when you are actually having your assembly on the day you do not want the police turning around and placing restrictions upon you there and then. That is far more likely to happen if you have not previously notified the police. So it is really in everyone's interests to notify, but there should not be a requirement to notify.

**Q277 Lord Norton of Louth:** I was going to ask about police powers of arrest – whether they are adequate for dealing with breaches of public order – but I think, from what you have already said, the answer is that you clearly think the existing powers are adequate. Could I put a more specific question, following on from what you were saying, Mr Crossman, just to clarify the point about, particularly, loudspeakers, which is clearly part of the problem. Of course this is very hypothetical but let us say I am stood outside with a friend, I have a loudhailer and I am screaming at Parliament, and a police officer decides that I am causing harassment, and there are two of us – we are an assembly. As I understand what you are

saying, under the Public Order Act the police officer could take action. If I told my friend to go away and I am still on my own and, therefore, there is not an assembly, am I right in thinking that the police officer then could not do anything about that?

**Mr Crossman:** Not on your own description because you used the word “harassment”, and the word “harassment” is an element of section 5 of the Public Order Act, which is an offence, and it does not matter if there is one of you, two of you or any more of you. You are right to say that it would need two of you to place conditions upon you as an assembly – if that clarifies.

**Q278 Lord Norton of Louth:** That would only relate to the two of us in an assembly, where you can impose conditions, but if I am on my own making a noise which the police officer deems is sufficient to be harassment then the police could take action.

**Mr Crossman:** Absolutely. And, of course, there is common law breach of the peace as well.

**Lord Norton of Louth:** Yes.

**Chairman:** Can we thank you very much for coming to give evidence today? We are grateful to you; you have informed us enormously of your views and, indeed, we are going to take them very much into account. I do have to say something formal, and that is I should have told you at the beginning that Members have declared their interests relevant to this inquiry (mainly because they are lawyers) and these are available today and on the Committee’s website should you wish to read them. Thank you very much indeed.