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Winner of the Council of Europe Human Rights Prize

Testimony from Martin O'Brien

to the Commission on Security and Cooperation in Europe
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What is the CAJ?

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights. CAJ takes no position on the constitutional status of Northern Ireland and is firmly opposed to the use of violence for political ends. Its membership is drawn from across the community.

The Committee seeks to ensure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its responsibilities in international human rights law. The CAJ works closely with other domestic and international human rights groups such as Amnesty International, the Lawyers Committee for Human Rights and Human Rights Watch and makes regular submissions to a number of United Nations and European bodies established to protect human rights.

CAJ's activities include - publishing reports, conducting research, holding conferences, monitoring, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include prisons, policing, emergency laws, the criminal justice system, the use of lethal force, children's rights, gender equality, racism, religious discrimination and advocacy for a Bill of Rights.

The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

**TESTIMONY OF MARTIN O'BRIEN, DIRECTOR,
COMMITTEE ON THE ADMINISTRATION OF JUSTICE, BELFAST**

Thank you for the invitation to testify today. The Committee on the Administration of Justice, CAJ, draws its membership from across the different communities in Northern Ireland and works for a just and peaceful society where the human rights of all are fully protected. In recognition of its efforts to place human rights at the heart of the peace process, CAJ was awarded the Council of Europe's Human Rights Prize. We have a broad remit and are active on a wide variety of subjects.

Since our foundation in 1981, we have worked consistently on issues of policing and as early as 1995 we argued for an Independent International Commission to look into future policing in Northern Ireland. Accordingly, we worked hard to ensure that the establishment of such a body would be provided for in the Good Friday Agreement. We were fortunate in that we had earlier secured funding from the Ford Foundation and others to undertake a major comparative research project into good policing around the world. The findings arising from that study underpinned all our work with the Commission and were, we believe, from a reading of its recommendations, very useful to its work.

In testimony in September 1999 to Congress on the findings of the Patten Commission, we said, "CAJ believes that in general terms the Commission has made a very genuine and constructive effort to meet the difficult task imposed on it by the agreement. They have put forward many thoughtful and positive recommendations about the way forward. Most importantly of all, they have recognized, as did the agreement itself, that just as human rights must be at the heart of a just and peaceful society in Northern Ireland, they must also be at the heart of future policing arrangements."

We went on, however, to outline to the Committee some of the serious reservations we and other human rights groups had regarding the omissions from the Patten Report. Amongst other things, we expressed concern as to the feasibility of bringing about real changes to policing if emergency powers are still retained, if plastic bullets are still deployed, and if officers known to have committed human rights abuses in the past remain as serving officers.

Despite these important shortcomings, however, the main thrust of our submission was to urge Congress to push for speedy implementation of the Commission's recommendations. Though Patten's recommendations did not address everything that was needed, they gave a clear framework within which change could occur and they pointed all those interested in fundamental change in the right direction.

Unfortunately, as we said in our earlier testimony, implementation is everything and in that context CAJ must report our profound disappointment at developments since the publication of the Patten Report. Our concerns are twofold. First, many of the changes Patten called for are long overdue, and

speed is of the essence. Second and as important, a hesitant or unwilling approach to major change, which is what we are experiencing, feeds fears that change will be short-lived and under-mined over the longer term.

One of the key findings of our earlier international research was that political will is always a determining factor in preventing or facilitating successful change. Initially, it seemed that the necessary political will did in fact exist within government for change. Yet since the publication of the Patten Report, the signs have been ominous.

Patten called for the speedy appointment of an Oversight Commissioner to oversee the peace and nature of change. The Commission said, "We believe that a mechanism is needed to oversee the changes required of all those involved in the development of the new policing arrangements and to assure the community that all aspects of our report are being implemented and being seen to be implemented." This recommendation was accepted by government, but Tom Constantine was only appointed on 31 May 2000, almost nine months after the Patten Report was published. This tardy appointment meant that the Commissioner was excluded from scrutinizing the draft legislation, played no part in the detailed implementation plan prepared by the existing policing establishment and has still to take on a public profile and produce his first report.

Given this delay, any change that has taken place to date has been dictated by those who have been responsible for policing over the last 30 years and to have resisted change in the past. Only a third or less of Patten's recommendations resulted in proposals for legislative change. The vast majority of the program of change has been left to the discretion of senior civil servants and the Chief Constable. Indeed, much of the change, whether in terms of police training, police reorganization or in terms of crucial decisions relating to special branch detention centers, the use of plastic bullets or the extent of stop and search activities lies largely at the discretion of the Chief Constable alone.

The slowness in appointing an external Oversight Commissioner has left government open to the charge that the nature and pace of change has been deliberately left in the hands of those who have so mismanaged policing in the past. This charge is not easily refuted. A study of the draft legislation, for example, seems to confirm the view that government is unwilling to put Patten's agenda into practical effect. The draft legislation first presented to the House of Commons in May was a very far cry from the Patten Report and, despite much lobbying and extensive changes in the course of the Parliamentary process to date, there is still a long way to go.

I would like, with the Chair's permission, to have read into the record a short CAJ briefing on the major outstanding concerns and the policing legislation and a detailed series of amendments which CAJ believes must be introduced if the legislation is to faithfully reflect Patten.

Of course, to judge by official government statements, one would have thought that government was fulfilling Patten in its first draft legislative text in May. The same claim to be fulfilling Patten was still being asserted in July when, by its own admission, it had already made 52 substantive changes to bring the initial draft in line with Patten. Further amendments have also been promised, but CAJ understands that these will still not deliver the Patten agenda.

This is not a concern which is shared alone by us but as recently as yesterday the Police Authority for Northern Ireland, the existing board which manages policing affairs, has issued a strong statement which lays out their continuing concerns about the failings in the legislation.

The chair of that body says, "The impact of sufficient emphasis on reports and inquiries combined with the possible removal of the Board's power to audit police finances significantly reduces the Board's ability to hold the police service accountable." He goes on to say, "By restricting the powers of the Board to call for reports on exceptional matters and reducing its ability to routinely see policing costs, government has created a situation where there will be the appearance of oversight without the real power to back it up. The overall result of the legislation as it stands is a less powerful Policing Board and a more powerful Secretary of State. This is exactly what Patten argued against. He wanted the people of Northern Ireland to have more say in the way they are policed through the new Policing Board. Instead, this bill makes the Board a poor relation to the Secretary of State in this regard. Government must ensure that the strong, independent and powerful Policing Board which Patten envisioned is created by addressing the deficiencies in this bill immediately." That's the end of that quote.

If government does want to implement Patten as it says it does, why is it still resistant to a whole range of important safeguards which Patten called for? Why is it impossible to get government agreement to include explicit reference in the legislation to a broad range of international human rights norms and standards? What reason can there be for the government denying any role to the Northern Ireland Human Rights Commission in advising on the police use of plastic bullets? Why are effective inquiry powers for the Policing Board consistently opposed? Why is the Secretary of State so adamant that the Police Ombudsman can not have the power to investigate police policies and practices, a power that Patten called for? Why was the appointment of the Oversight Commissioner so long delayed and why is his term of office so curtailed in the legislation?

There will be some who claim that government can not move fast on certain issues because policing is a very divisive issue in Northern Ireland. While there are, of course, many contentious issues, the name and symbols, for example. None of the important issues listed above divide nationals and unionists. They do, however, clearly divide those who want to defend the status quo from those who want a police service that is impartial, representative, and accountable, able and willing to ensure that the rule of law is upheld.

Some of the obstacles to real change can be detected by a study of the parliamentary record. A government minister in the course of the debate resisted any amendments that sought to make policing subject to international human rights standards and norms. He said, "Some appalling human rights abuses take place around the world. Those low standards should not be compared with the past activities of the RUC. The RUC carried out a difficult job, often in impossible circumstances. Such comparisons as might be made in the light of the amendment could cause unnecessary offense. We might reasonably say that against the norms in question the RUC has a good record on human rights." I think in this position one sees that the government appears to reject out of hand the many past reports of the United Nations and respected international nongovernmental organizations which criticize the RUC. This stance presumably explains the legislation's failure to address the legacy of the past, yet if government is unwilling to admit past problems, can the necessary change occur?

CAJ's fears about the place and nature of policing change are further heightened by the government's approach to the separate but complimentary criminal justice review also established as part of the Good Friday Agreement. The inter-relationship between policing and the criminal justice system is self-evident. Accordingly, it is extremely disturbing to have to report to Congress that CAJ has serious concerns about the nature and pace of change proposed in the criminal justice sphere also. For example, a new appointment system for judges, changes to the prosecution service, and a revamping of the criminal justice system generally are long over-due change. The government time table clearly does not recognize any urgency. CAJ, however, feels that Northern Ireland can not afford any further delay.

Of course, change is inevitably difficult and change of the scale and nature required in Northern Ireland is particularly difficult. We urge the U.S. Congress to use its best endeavors to lend its support to the U.K. and Irish Governments as they work with local politicians to develop a more just and peaceful society in Northern Ireland. In particular, we hope that Congress would work, both directly and, as appropriate, in conjunction with the US Administration, to urge the Prime Minister, Tony Blair, to amend the draft legislation to ensure that it reflects both the letter and spirit of Patten and that the legislation conform in particular to Patten's exhortation that the fundamental purpose of policing should be, in the words of the agreement, "the protection and vindication of the human rights of all."

Congress should urge the U.K. and Irish Governments to recognize the importance of greater external oversight of the transition process and ask that the Oversight Commissioner be accorded the resources and remit necessary to this vital work.

Congress should commit itself to monitoring developments closely in the coming months and urge the U.S. Administration to do the same. Congress may, for example, want to consider holding further hearings in due course to receive a progress report on developments. This particular Commission has

an important role in continuing to raise concerns about policing in Northern Ireland in the OSCE forum and any further initiatives which the Commission can take in that regard would be very welcome.

To conclude, I don't need to remind Chairperson Smith that defense lawyer and CAJ executive member, Rosemary Nelson, testified before him and other members of Congress on issues of policing almost two years ago on the 29th of September, 1998. The concerns she raised in her testimony and her terrible murder a short while later remind us, if we need reminding, that policing change in Northern Ireland is not an abstract or intellectual debate. It is about the lives of real people. We must bring about policing change in Northern Ireland and we must ensure that that change is right.

Whatever US Congress can do to help those of us on the ground secure such change will be greatly appreciated, and we thank you for your efforts to date. Thank you very much.

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