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*Winner of the 1998 Council of Europe Human Rights Prize*

*CAJ's commentary on*

**Public Order Policing 1998**

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# Public Order Policing - 1998

## Introduction

Since 1996, the Committee on the Administration of Justice (CAJ) has sent observers to a number of the marches, protests and parades that take place across Northern Ireland during the so-called "marching season", and has provided an independent account of the policing of these events. In sending CAJ observers to a series of contentious parades and demonstrations, we had a number of objectives in mind. Firstly, we wanted observers present so that the organisation would have available to it an objective and first-hand assessment of events. Secondly, we hoped that our very presence would make the police and others - whether marchers or demonstrators - aware of the importance accorded to ensuring that policing is carried out in an impartial and even-handed way vis-à-vis all the parties involved. Thirdly, this monitoring role would provide invaluable data for CAJ in drawing up recommendations about the policing of such events in future.

CAJ observers are recruited from amongst our cross-community membership and are committed to the objectives of the organisation which is the protection and promotion of human rights. In particular all the observers share CAJ's concern to monitor if policing is being carried out in a way which respects equally the rights of all, whether marchers or protestors. On the basis of the reports provided to the organisation by its observers, CAJ has published two major documents covering events in 1996 (report entitled **The Misrule of Law**) and in 1997 (**Policing the Police**). In 1997, with the help of the Witness programme (a non-profit organisation working with the Lawyers Committee for Human Rights in New York), a video was also produced on the policing of contentious marches.<sup>1</sup>

CAJ's interest in the issue of marching and the surrounding protests is two-fold. On the one hand, the organisation believes that there is a genuine conflict of rights involved, with some people asserting their right to freedom of assembly and expression, and others asserting their right to freedom from discrimination and/or harassment and their freedom of movement. Both of these claims have roots in international and domestic law, and are properly asserted as a matter of right. However, neither of them is an absolute right, and both claims are subject to the requirement that they be exercised with due respect to the right of others.

CAJ welcomed the (albeit belated<sup>2</sup>) government recognition that there was a genuine conflict of rights involved, requiring careful mediation and effective regulation. The

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<sup>1</sup> Copies of both reports and of the video are available on request from the CAJ office; see also full publications catalogue.

<sup>2</sup> Despite evidence of serious problems in 1995 (and earlier), and the widespread public expectation of difficulties arising around the proposed Orange Order march down the Garvaghy Road in 1996, the then Secretary of State (Conservative Minister Sir Patrick Mayhew) refused to intervene in what was described as a local problem requiring local solutions. A major review of the parading issue, and the conflict of rights involved, was only initiated by the government on 24 July 1996, in the wake of major public disorder right across Northern Ireland lasting some seven days, which witnessed two deaths, many injuries, and £20m compensation damage.

government chose to exercise its responsibility by creating a Parades Commission and giving it the legislative authority to make rulings on marches, parades and parading protests, within some clearly defined, and internationally-recognised, criteria of fairness and impartiality. 1998 is the first year that the Parades Commission has been fully operational; while it was established in early 1997, its powers were minimal until the passage of the Parades and Processions (Northern Ireland) Act 1998. The following report will therefore be able to comment more than the previous two CAJ reports on the decision making process itself, and the extent to which the rights of all are being addressed fairly by the authorities.

A second and very important interest for CAJ in the marching issue has been the whole question of policing. Regardless of the decisions taken as to how the conflict of rights is to be balanced and determined, it is vital that the policing of the eventual decision should be (and be seen to be) impartial and even-handed. In the 1996 report, and again in 1997 (though to a lesser degree), CAJ was obliged to report on very serious problems around public order policing. We reported on the massive use of plastic bullets, the use of plastic bullets in violation of the guidelines, the use of improper force, the lack of accountability, and the sometimes heavy-handed and misguided tactics in controlling potentially hostile situations. This report on events in 1998 is a very different one, highlighting that the police appear to have learnt some important lessons from the mistakes of the past. While there are many outstanding problems discussed in some detail in this report, many other aspects of this year's policing of disturbances can also be held up as examples of effective policing. This report explores both the lessons learnt, and those remaining to be learnt, with a view to ensuring that by next summer further improvements will be seen. If this is to be the case, urgent action needs to be taken now.

## **A conflict of rights: the decision-making process**

**The Misrule of Law** (1996) noted that CAJ's interest lay both in monitoring policing but also in monitoring *"how the legal and civil authorities seek in advance to avoid problems of public order by creating an effective framework within which competing claims of right can be adjudicated"*. Our conclusion was that *"political leadership was required this summer, and it was sadly lacking. The government by insisting initially that the question of parading was not one requiring its intervention, (and) by insisting upon the primacy of the police in resolving potential disputes...- has signally failed in its duty"*. (p.2)

By 1997, there had been a change of government - this led to a change in both style and substance on the issues around marching. An outstanding problem remained, however: the decision making process was still putting inordinate weight on the need to avoid public disorder. Instead of weighing this important consideration alongside other issues such as a balancing of rights, proportionality, disruption to the community etc., priority was clearly to be given to whichever group could threaten the most disorder. The stated reason for allowing a march down the Garvaghy Road (despite nationalist wishes), and for a march not going down the Ormeau Road on the 12<sup>th</sup> July (despite unionist wishes), was the same - fear of violent disorder. This stance, as we noted in **Policing the Police** *"undermines the concept of the rule of law, encourages resort to violence in order to achieve one's aims, and leaves the rights of a minority (whoever they might be) unprotected"* (p.13).

In 1998, the decision making process had changed beyond recognition in several key respects:

- the rulings as to whether a parade, march or protest could proceed were to be given by a specially created Parades Commission vested with legal authority for this specific purpose. This meant that no longer would the police have responsibility for both taking a decision to permit/refuse a march and for policing that same decision. The decision making process, and the enforcement of the decisions taken, were helpfully disentangled.
- the criteria upon which such rulings were to be made were more widely known and the weight given to the different criteria were made a matter for public scrutiny in the published rulings of the Commission;
- there was a renewed emphasis on the fact that several different criteria had to be examined (eg public disorder, disruption to the life of the community, impact on relationships within the community). While several different criteria had existed before, in practice the threat of disorder had always been given an over-riding priority. This was no longer necessarily to be the case.
- the decisions of the Parades Commission were normally rendered public a full five working days in advance of the event in question.<sup>3</sup>

The impact of some of the changes brought about as a result of the establishment of a Parades Commission may not be immediately obvious and/or may take a long time to bear fruit. It will be extremely interesting over time to assess, for example, the impact of the work of the Parades Commission's Authorised Officers in trying to secure effective local accommodation. However, at this early stage in the process, it is premature to comment on such issues. There are, all the same, some changes introduced as a result of the Parades Commission's existence that, already in 1998, could be seen as having had an immediate impact on the public order situation. It is these issues which are discussed below:

- the authority & independence of the Parades Commission;
- the criteria for decision-making & the balancing of rights
- transparency and accountability of the decision making process

### ■ The authority and independence of the Parades Commission

CAJ is in no position to comment categorically on the extent to which the Parades Commission has or has not been able to assert its authority and independence in the course of its first year of operation. It is probably, by definition, too early to come to any hard-and-fast conclusion. Given the importance of its work for the future, however, it is worth making some preliminary observations.

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<sup>3</sup> See Public Processions and Parades, Procedural Rules, para 5.2: "It will be the aim of the Commission, where possible, to make its decision five working days in advance of the notified date of a parade and to provide written notification of that decision, and the basis for it, to (i) the organisers; (ii) the Secretary of State for Northern Ireland; (iii) the Chief Constable and (iv) other concerned parties".

The most sustained challenge to the authority of the Parades Commission has come from the Loyal Orders themselves. The Orange Order, the Apprentice Boys and the Royal Black Institution, have all to different degrees challenged the validity and the good faith of the Commission. Despite the legal authority vested in the Commission by parliament, the Orange Order in particular has refused the formal overtures of the Commission.<sup>4</sup> In its public statements, the Order's refusal to work with the Parades Commission is normally argued on the grounds that opposition to Loyal Order parades is artificially engineered for political purposes, and that such opposition is only given credence if one creates or co-operates with special dispute-resolution mechanisms.<sup>5</sup> Clearly the authority of the Commission is seriously damaged if a key party to the dispute is unwilling to accept its bona fides. The unwillingness of the leadership of the Orders to accept the legitimacy of the Commission is both dictated by, and dictates, attitudes at the local level. Thus, when the Loyal Orders locally were by and large unwilling to engage in direct or even indirect mediation efforts, the Parades Commission would frequently rule against them, because of the emphasis placed on the willingness of the parties in dispute to have made some effort at local conciliation and accommodation. The fact that the Parades Commission were seen to take a series of decisions which ran counter to the Loyal Orders' hopes then in turn risked confirming all the initial reservations of the Loyal Orders.

To judge by public debate, residents' groups, and the nationalist community more generally, were less critical of the principle that an independent commission should be vested with authority in this area. While the creation of an independent parades body was the most popular choice overall and the preferred option of 49% of the public in general in the opinion survey carried out by the North Review, it was more popular with Catholics than Protestants (65% and 40% respectively). Concerns expressed by nationalists since have tended, therefore, to focus on specific aspects of the Commission's work, or specific decisions, rather than its existence per se.<sup>6</sup>

The issues from a civil liberties perspective are different again. While CAJ took no position per se on the specific model which should be created to resolve parades disputes, the organisation did welcome the introduction of an independent element in the decision making process. The separation of decisions about whether or not to allow a parade to proceed, and the conditions (if any) which should be applied, from the decisions about enforcing those decisions, was a particularly welcome development. We had previously been critical of the fact that the police had had sole legal authority to take decisions around the marching issue, and then to police those decisions. Apart from the discussion in principle of a Parades Commission, however,

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<sup>4</sup> Robert Saulters, Grand Master of the Orange Order, writing in the January 1998 edition of *Fortnight* magazine, said of the Parades Commission: "(it) is a draconian body with no respect for the right to march and certainly no respect for Orangeism". Alistair Graham, Parades Commission chairperson, said at a press conference on 29 June 1998: "As a commission we've had to go about our business in a particularly hostile framework. Unionists made no secret of their distaste for the legislation which created us and which we administer. Not entirely unrelated, the Orange Order at its most senior level, and, formally at nearly every lodge, have steadfastly refused to meet with us".

<sup>5</sup> Alistair Graham, at the same press conference (see footnote 4) said, when speaking of Orange Order attitudes, "In their view, protest has been orchestrated by republicans, led by Sinn Fein, as part of a strategy by which, if the Order concedes the march and the associated territory of the Garvaghy Road, the battleground will only move subsequently to any new route until marches and the territory that goes with them will be suppressed altogether".

<sup>6</sup> Alistair Graham, at the same time (see footnote 4) said: "On the other side, we have been castigated by leaders of some of the highest profile residents' groups who viewed as conspiracies much of what we believed to be the transparent way in which we have been carrying out our duties".

there were two other issues which arose during the year relating to the authority and independence of the Commission.

Firstly, there was a dispute surrounding the appointment of several members to the Commission who were claimed by some commentators to be partisan.<sup>7</sup> While a judicial review was taken to challenge some of the appointments, it was dropped once the people concerned resigned (apparently for extraneous reasons). This has meant that there is no judicial ruling given as to the meaning of "independence" in the terms of reference of the Parades Commission, and whether it should apply to the composition and operation of the Commission overall, or also to individual members. It is CAJ's contention that it would be appropriate for the Commission either to reflect its independence by consisting of members who represent all the different perspectives involved, or none of such candidates. A composition which appeared not to achieve either of these goals proved an unfortunate error of judgement which, though it was not the responsibility of the Commission (since appointments are made by the Secretary of State), reflected badly on the Commission at the outset of its work.

Secondly, the Commission had the power to, and was accordingly widely expected to, issue a preliminary determination early on in the year. This early insight into the likely overall trend of decisions by the Commission,<sup>8</sup> was intended to encourage more local mediation efforts, defuse the tension that attends the waiting for particular decisions, and highlight the Commission's determination to act in an impartial and even-handed way across the wide variety of parade applications. There was therefore some uproar - expressed by both nationalists and unionists - when this preliminary determination was not issued, apparently at the request of the Prime Minister, who considered the timing (just prior to the referendum) to be particularly sensitive. While, as noted earlier, the legislation establishing the Parades Commission does not clearly define what is meant by "independence", there is a clear understanding that this concept must at least mean that the Commission is independent of government, and the immediate political exigencies governments have to contend with. When one of the Commission's first important decisions appeared so publicly to be taken at the behest of the Prime Minister, its political independence was publicly questioned. In its defence, the Commission note that they convened a meeting of all Commissioners and considered carefully the Prime Minister's request, and independently came to the conclusion that he had urged upon them. CAJ cannot comment otherwise than to emphasise the importance of the Parades Commission being, and being seen, to be independent of partisan political pressure at all times.

## ■ The criteria for decision-making & the balancing of rights

In the Guidelines for Commission members, the following factors are meant to be taken into account in the decision making process of the Parades Commission:

1. **Public disorder or damage to property** which may result from the procession: the Commission will take into account the risk that the decision to

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<sup>7</sup> Irish News and Newsletter, 25 February 1998

<sup>8</sup> See the Public Processions and Parades, Procedural Rules, para 1.4 "...*The Commission will express an informal broad view of what it sees as an overall pattern of parades...*"

allow or not allow the march may provoke disorder, and will seek advice from the RUC on the public order consequences.

2. **Disruption to the life of the community:** The Commission will take into account the duration of the procession, the restriction of freedom of movement by residents, the restriction of access to shops or to public amenities such as hospitals or places of worship.
3. **Impact of the procession on relationships within the community:** The Commission will look at (a) the location and route of the parade and in particular the extent to which it is a residential area, the demographic balance of residents, the presence of sites such as monuments or churches or sites with particular sensitivity within the community, the purpose of the parade and whether the route is relevant or proportional to that purpose, the availability of alternative non-controversial routes. They will also look at (b) the type and frequency of parades, taking into account the purpose, the numbers taking part, past experiences of the manner in which the parade was conducted, the regalia associated with the parade, the nature and number of bands participating and the music they will play and the frequency of such parades along the routes. The Commission "*expects to see evidence of a real attempt to address any fears and concerns about the procession and, where possible, a balance struck in agreements between the organisers of processions and those who oppose them, reflecting tolerance, respect and understanding on both parts*".<sup>9</sup> Finally the Commission says that (c) there are some areas where circumstances other than purely local ones are relevant and where the Commission's decisions will take into account the impact of the decision or of the parade on the wider Northern Ireland community.
4. **Compliance with the Code of Conduct:** This will clearly have more significance in future years, but the extent to which parade organisers sought to comply with the code of conduct, and the behaviour of parade organisers and those involved in protest meetings will be considered in coming to determinations in the future.
5. **The desirability of allowing a parade which has been customarily held on that route to continue to be allowed to do so:** The guidelines note the premium attached by many to the concept of tradition in regard to particular parades, and will in particular weigh this factor alongside others when reaching its conclusions.

The Parades Commission itself notes that from the beginning of March 1998 to the end of August 1998 there were 3033 parades and processions, of which determinations were issued on 59. Route conditions were imposed on 53 of these parades, that is 1.75% of the total.

CAJ has studied the Parades Commission determinations and made a preliminary assessment of the extent to which the Commission has followed the above criteria in coming to its decisions. Our conclusions are as follows:

- a. The published determinations for the most part indicate careful reflection of the various criteria and of the strong views held by the different protagonists.

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<sup>9</sup> Para 4.3 of the Guidelines, Parades Commission



Efforts have been made to understand the localised nature of each application and of the various arguments both for and against particular routes and marches. The views of the Loyal Orders are presumably not represented to their fullest degree given their decision not to engage directly or fully with the Parades Commission. However, nowhere were their views completely disregarded to judge by the text of the decisions.

- b. CAJ has been very critical of the excessive weight given to the threat of public disorder in past years. It welcomes the fact that other criteria, which were previously available but little used, have now been put on a par with that of public order. It also welcomes the fact that these other criteria have by and large predominated over the fear of disorder in the Parade Commission determinations. CAJ welcomes in particular the fact that the demotion of this criteria from centre-place has further emphasised the fact that the RUC now advise on such controversial decisions, rather than having the primary responsibility they used to have for taking such decisions. This change is important since it strengthens the whole concept of the rule of law, ensuring - as it does - that the police can concentrate on upholding the decisions of the legally constituted bodies, rather than taking and then enforcing decisions they alone have taken.
- c. CAJ welcomes particularly the emphasis placed on concerns around disruption to the life of the community and the impact on community relations, to the extent that both of these criteria require a balancing of respective rights and a sense of proportionality in the treatment of conflicting claims of right. Our analysis of the various determinations is that this criterion was accorded particular significance by the Parades Commission. It is difficult to be certain why the written determinations give such space to this criterion. It could be that the Commission felt that the criterion should get particular attention, or it may merely have been that they felt that this issue was one which required more detailed discussion given the particularities of each location. Our own judgement would be that, if the criterion, which involves the respecting of rights on all sides, was vested with particular importance, this would be in conformity with international good practice in this area, and is to be welcomed.
- d. By contrast, the criterion about the desirability of allowing a parade which has customarily been held on the route, has little or no basis in international law. It may be for this reason that the Parades Commission appears in practice not to have given it great weight in its deliberations. Alternatively, any weakness in this area may be explained by the fact that the people most likely to want to supply arguments and data on this criterion (the Loyal Orders) chose not to co-operate actively with the work of the Commission.
- e. If there is one factor which seemed to predominate over all others being considered by the Commission it was the extent to which there had, or had not, been any serious attempt to broker some mutually satisfactory arrangement at the local level. CAJ is firmly of the view that real progress is only possible when all parties to the dispute recognise the need to respect the rights of all the others involved. This can most easily happen if there is a strong emphasis placed on local dialogue and negotiation leading to accommodations that respect the competing rights involved. We therefore welcome the priority given by the Commission to this factor.

## ■ Transparency and accountability of the decision making process

Already some references have been made which are relevant to the extent to which the Parades Commission could have been considered to act in a transparent and/or accountable manner. In its favour, it published relatively full and thoughtful determinations. This played at least two important functions. Firstly, the determinations provided an important informational and educational tool that sought to explain objectively to all interested parties and to the general public the conflict of rights at issue. Secondly, fairly detailed determinations gave more scope to those people who wanted to challenge Commission decisions, and the five-day advance publication of these determinations allowed dissatisfied individuals or groups to re-open the decision judicially.

We are unaware of the extent to which informal challenges or complaints were made directly to the Parades Commission, if at all, but there were a few judicial reviews mounted against specific Parades Commission decisions. There has been little suggestion in the media at least of groups or individuals who felt that they made representations to the Commission but were ignored or improperly dealt with. With the exception of the Loyal Orders (which is obviously a very important exception) therefore, the Commission appears to have been effective in reaching out to a variety of local groups, various local activists and presumably the police, in their attempts to understand conflicting positions. As to the exception, it is difficult to assess whether the Commission could have made any greater efforts to reach out to the Loyal Orders.

However, this willingness to be open cannot hide the fact that, in reality, there are few effective mechanisms for real accountability. The judicial reviews taken against the Parades Commission were unsuccessful. The composition of the Parades Commission was not changed because of a successful judicial challenge, nor were any specific decisions overturned. Also, one wonders if the lack of challenges entered by the Loyal Orders derived from a determination not to engage in any formal recognition of the Parade's Commission, or because there are limited options for challenging the existence of the Parades Commission per se.

Looking at two of the most controversial decisions (the decisions to prevent the march from going down the Garvaghy Road, and to allow the 12<sup>th</sup> march down the Ormeau Road), the difficulties, and the importance, of transparency and accountability in the decision making process become all too obvious. Thus, in the Garvaghy decision, the Parades Commission gave a long, clear and reasoned argument for not allowing the march through. The two decisive points for the Commission seemed to be (a) the lack of consultation or even dialogue by the local Orange lodge and (b) the need to break the cycle of tension and hostility that had built up over years about this particular march. The first issue was a decisive one in a number of different decisions made by the Commission (see comments earlier), but the second was very particular to the local situation. Whether one agreed or not with the conclusion, few would challenge that a cycle of tension and hostility had been building up locally, and that this therefore was a proper issue to take into account in making a decision about marching in the locality. The decision on the Ormeau Road, however, appeared to fly in the face of the logic deployed in previous Commission decisions.

All marches down the Ormeau Road prior to the 13<sup>th</sup> July<sup>10</sup> had been refused by the Parades Commission, largely on the grounds of the potential impact on relationships within the community. At the same time, the Commission in its April preliminary determination about the parade route and what might happen over coming months argued that *"Our view is that the best way forward in terms of relieving inter-community tensions arising from disputes at this location is that the ground should be prepared for one or more parades to take place in a peaceful atmosphere along the Lower Ormeau Road in 1998"*. Just as the Commission argued in its Drumcree decision that there was a need to break the cycle of tension and hostility developing around a particular route, they had early on laid the ground to argue that the Ormeau Road was another "special case". However, at the actual time of the determination, a quite different argument seemed to be brought to bear, which was in essence the threat of public disorder - *"the cumulative effect on the loyalist community...particularly when taken in conjunction with the Drumcree decision... is in danger of spilling over into a serious law and order situation..."*. It is difficult, even with hindsight, to know if the Commission could have argued its decision in a manner that would have convinced independent commentators that the Commission was maintaining the consistently principled approach of its earlier decisions, rather than engaging in a "trade off". However, there is little doubt that it is a major setback for the whole process if decisions are made - or perceived to be made - on the basis of who can gather the biggest number or create the most violence or threat of violence.

In conclusion, no-one suggested that the establishment of an independent decision-making body to adjudicate about marches and protests would solve NI's marching conflict or that it would render all the protagonists happy all the time. The concerns around these two decisions, however, highlight the necessity of the Commission trying at all times to apply fair and clear criteria, and rendering their decision making process open to public scrutiny at every stage. While the Commission's individual decisions may be subject to intensive criticism, a public debate around the issues involved will ensure that all the various parties are clearer as to the principles being followed. This in turn will help them make their own case more effectively and/or accept the wisdom of greater accommodation on their part.

To assist in this educational process, it is vital that the annual report which the Parades Commission is obliged to prepare analyses the work done to date, the lessons learnt and the difficulties still to be overcome. People on all sides of this dispute have much to gain from studying in detail the work of the Parades Commission.

## **Policing Public Order/Disorder**

Regardless of the decision making process, and the decisions made, the policing of public order events is of crucial importance. Good policing can be crucial to maintaining law and order and defusing tension on the streets; bad policing can exacerbate an already difficult situation. 1998 overall saw some changes in the police's response to the reality or threat of public disorder, and lessons have clearly been learnt from the mistakes of the past. At the same time, there were some serious problems that need to be addressed urgently.

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<sup>10</sup> The 12<sup>th</sup> July 1998 fell on a Sunday, so the majority of parades commemorating the 12<sup>th</sup> were in fact held on Monday 13<sup>th</sup> July.

The following account will focus on the same issues which figured largely in CAJ's reports of policing events in 1996 and 1997. This will allow us to highlight where improvements have been made, and where changes are still needed. The most important issues studied are as follows:

- the use of plastic bullets;
- the police response to illegal demonstrations;
- the control of public space;
- freedom of access;
- the identification of individual officers;
- and effective communication

### ■ The use of plastic bullets

CAJ is opposed to the use of plastic bullets. We believe that this is a lethal weapon, posing an unacceptable threat to life, and it risks exacerbating rather than defusing tension. Furthermore, our experience in 1996 and in 1997 was that the guidelines for the use of plastic bullets were regularly flouted and this was clearly the case again this year.

In 1998, 837 plastic bullets were fired in little more than one week (between 6am on 4 July and 6am on 14 July). CAJ believes that this is unacceptable. Thankfully, no deaths occurred but several serious injuries were caused, including a young woman who lost an eye. Extensive upper body injuries were recorded, despite the fact that the guidelines require that, except in exceptional circumstances, the lower body should be targeted. Given the seriousness of the risk posed by the weapon, the stated justification for their use lies largely in situations of grave public disorder. While such situations did occur this summer - most particularly in the field around Drumcree churchyard - there were also serious allegations that plastic bullets were fired at drunks and disruptive elements within the crowd, who were in no sense posing any serious threat to the security forces.

CAJ had observers in Drumcree churchyard at various points throughout the week in question and we took eyewitness statements from Orangemen and their supporters suggesting that bystanders and onlookers were amongst the injured. Indeed, there was some suggestion that those not directly involved in trying to breach the security force installations were at even greater risk, as several people who were standing further back and on a higher slope received upper body injuries. This would suggest that the front ranks of people were not the main target, even though these people would presumably have been posing the biggest threat to a breach of the security lines. The eyewitness statements also indicated that many of them were unsure as to whether the plastic bullets were being fired by the police or the army. This fact, combined with the uncertainty as to the relevance or otherwise of the existence of different sets of guidelines for the police and army when firing plastic bullets, raises a number of problems in terms of holding the responsible authorities to account.

We are able to record that CAJ observers on some occasions heard warnings being given prior to the discharge of plastic bullets. Though such warnings had been required by the guidelines, this is the first time to our knowledge that such warnings have been heard. We are not however in a position to say that this was a consistent practice since there were also instances in which firing occurred and, while a prior warning might have been given, it was not heard.

## ■ Police response to illegal demonstrations

In the course of the Drumcree stand-off, there were two forms of illegal protest around the churchyard - peaceful and violent.<sup>11</sup> With the exception of the injuries caused to bystanders with plastic bullets, the police did not engage directly with any peaceful protesters in the Drumcree stand-off. Any policing problems therefore arise largely in connection with the police response to the use of violence by some of the protesters. By and large, again with the exception of the resort to the use of plastic bullets, the policing operation was effective and relatively restrained. Indeed, given the level of physical and sustained attack on the police (with pipe bombs and even eventually live shots being fired at them) the restraint of the police was noteworthy. Sceptics, for example, have suggested that a similar level of attack from nationalist protesters would not have met with such stoicism. Whether this scepticism is valid or not, it is indisputable that the main reason for the success of the operation was the extent to which the police were able to keep safe distances between themselves and rioters. This meant that they were at limited personal risk from attack or of being over-run, and this is commented on elsewhere.

However, where there was some inter-action, most particularly at the major barricade near the churchyard, the police were captured on TV sometimes engaged in strong-arm tactics to repel demonstrators (apparently batoning them over the head, throwing people down off a height etc). Statements were taken by CAJ from a number of loyalists who suggested that people were beaten at the time of their arrest, and in one particularly serious incident a young man was alleged to have barely survived a police beating which took place when he was being arrested.

Across Northern Ireland, other forms of protest sprung up in support of the Portadown Orangemen. Several caused severe inconvenience and raised the spectre of intimidation and mob-rule. Many, however, were peaceful and, though certainly a matter of some inconvenience to other members of the public, they provided a safety-valve by which people could express their strongly held beliefs in a manner safe to all concerned. All such events were, however, illegal and the police will have been expected to have taken details of the organisers of such protests in order to determine what legal action should follow.<sup>12</sup> In such cases, it is difficult to second-guess decisions on the ground, but in principle there is a lot to be said for sensitive policing which allows for some peaceful if illegal protests of this nature. Decisions to limit them in time and/or in location helps ensure that the rights of the protesters and those wanting to go about their business can both be met; and decisions to pursue legal proceedings at a later date ensures that the rule of law is upheld.

However, many protests were violent in intent and often in practice. According to police statistics, there were 615 attacks on the security forces which included 24 shooting incidents and 45 bombing incidents; 144 incidents of criminal damage to homes and 165 to other buildings; and 467 incidents of criminal damage to vehicles. Yet even these statistics hide the reality of fear and intimidation which affected many across Northern Ireland in this period, with sectarianism rampant. In the most serious tragedy of all, the lives of three young children were lost when a petrol bomb was thrown into their house in what the police have described as a clearly sectarian attack.

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<sup>11</sup> From the moment the marchers chose neither to disperse after the church service in Drumcree, nor to return by the same route they had taken, they were behaving illegally, in that they were refusing to comply with a legally binding decision of the Parades Commission.

<sup>12</sup> It is too early to assess this aspect of policing but it should be monitored in due course.

The continuing tensions around Portadown have been particularly prolonged and tense with many nationalists afraid to use the town centre even in the daytime and also feeling under siege in their own communities. This situation has created some new problems for policing. It is clearly important that the police are ready in sufficient numbers to protect life and property in times of heightened tension and conflict, and the numbers and seriousness of the deployment around Drumcree/Garvaghy was a response to just such a situation. However, a different situation is posed if the police have to be present every Saturday afternoon in town centres, or at the entries to housing estates on an almost daily basis, in the event of a mob running amok. If the police are not present, they are understandably criticised for their absence and any resultant damage or injury caused; but if they are there, they can, by their very presence, add to the tension and to the sense of intimidation that exacerbates rather than defuses communal tensions?

There are of course no easy answers to this dilemma: police response must be determined carefully in response to the needs of local communities and in close co-operation with them. Yet this is particularly difficult, not to say impossible, to do when the local communities have little or no confidence in the police. This is a clear example of how public order policing both influences, and in its turn is influenced by, wider debates around the future of policing in Northern Ireland.

### ■ The control of public space

In 1996 the police were heavily criticised for allowing large numbers of protestors to gather and create an unmanageable policing situation in the area around the Drumcree churchyard, which led to a complete collapse in the rule of law. In 1998, the initial deployment of police and army was seen as very effective in comparison: it protected individual members of the security forces from intimidation and defused the mood since there was no direct face-to-face contact between the protestors and the police. The concept of distance was essentially maintained throughout the early stages of the "siege" and it was this deployment which, with a few exceptions, allowed the police to uphold with the minimum of force necessary the Parades Commission ruling that the parade should not proceed.

It was, however, surprising that at Drumcree this year (a) crowds were allowed to come and go with apparently little or no control on numbers; and that (b) this ingress and egress took place with apparently little security control, so that it proved possible to bring to the site implements such as wire cutters, tree fellers, catapults, ladders, ball bearings, and other material which could have had no role in the vicinity other than breaching the security installations. Even more seriously, bomb making equipment and guns with live ammunition were brought into the immediate area, posing a serious threat to the lives of both police and civilian bystanders. It is not clear why greater security control was not exercised. While we were made aware of some complaints from Orangemen of being stopped at checkpoints and even of verbal abuse exchanged between protestors and security forces at these checkpoints, our observers saw no systematic car-boot checks or basic security precautions being taken on any of their numerous trips to and from the churchyard area.

On the other hand, there are media and eyewitness accounts of careful searches taking place on people and cars going into the nationalist Garvaghy Road area. Our

own observers saw local stewards being body-searched within the Garvaghy estate without any obvious justification. Our monitoring (on both sides) of the security checks was not systematic but, at the very least, the higher profile given to searches of nationalist areas, when physical violence (specifically directed at the security forces) was coming from unionist protesters, fed suspicions about the partiality of policing operations.

## ■ Freedom of access

With a few minor exceptions, CAJ was given access freely and without delay. Even with the exceptions, it proved relatively easy to resolve the problem and get the required access. The increasing number of international observers attending with a variety of interests has in some senses created a dilemma that may need to be addressed for future years. The police cannot be expected to give unfettered access to large numbers of people and groups, since in addition to being practically difficult it may create operational and safety problems for all concerned. On the other hand, it is equally inappropriate for the police to determine which individuals or organisations can have access, or for groups like Amnesty International (which has a long history of working on Northern Ireland) to be excluded simply because a sufficient number of other observers had already gained access (which is what happened in at least one incident on the Ormeau Road). It is sobering to contrast the access given to groups like CAJ with the complete exclusion from the same area of those most directly affected (whether they be residents or marchers), and to realise the important responsibility that we therefore take on.

A quite distinct problem of access arose at the Garvaghy Road. Some elected representatives (Independent Councillor Brendan Mac Cionnaith and Sinn Fein Assembly Member Francie Molloy) were denied access to locations that were accessible to other elected officials (in the instance, SDLP Assembly Member Brid Rogers). Three distinct issues arise as a result of this incident. Firstly, there appears to have been differential treatment accorded to different elected officials without any clear justification. This is certainly not the first time that CAJ observers have seen elected Sinn Fein officials accorded different treatment than their counterparts in other political parties.

Secondly, in denying access to Brendan Mac Cionnaith specifically, the justification given was supposedly to avoid inflaming the situation by allowing him (as a representative of the residents' coalition) to be seen by the protesters. Several options for avoiding such a scenario were suggested including having a police officer with Mr Mac Cionnaith at all times, but none proved acceptable to the police. This gave an unfortunate signal to the community Mr Mac Cionnaith represents, since it suggested that the onus was on their community not to do anything (however seemingly innocuous) that would inflame the situation, whereas inflammatory behaviour, language and individuals seemed to be getting free rein among the protesters.

Thirdly, in denying access to Mr Mac Cionnaith there was apparently no readiness to respond to the understandably natural fears of the community. In a "siege" type setting, it would have been helpful to allow someone trusted from the community to assess the situation directly and help assuage their worries. This role is quite a distinct one from that of independent observers.

## ■ Identification of individual officers

CAJ has repeatedly raised the need for clear display of I.D.s so that, in case of the need to lodge a complaint, the appropriate officer can be identified. We were pleased to see that number plates and numbers were well displayed on most of the vehicles in use and that ID numbers were also fairly consistently displayed by police officers. However, still this year again there were a few, fortunately isolated, examples of this not happening. In one very serious incident in relation to the loyalist Manor Park estate in Lisburn on the night of 7 July, CAJ took a whole series of eyewitness statements alleging serious misconduct by police officers. In several of these statements, the witnesses claim that the officers involved were not wearing ID numbers. Several of the complainants are pursuing formal complaints and it will be interesting to see how far such steps can proceed when individual officers are not able to be identified. The Independent Commission for Police Complaints (ICPC) commented critically on precisely this problem in a recent bulletin.<sup>13</sup>

This year, CAJ's attention was drawn to the fact that senior officers wear no such I.D.s but are expected to be identified by their insignia and possibly also the group number assigned to their Land Rover. We believe that this system may pose some difficulties for the average member of the public who would have no particular understanding of the significance of the various insignia or of the person's relationship to a particular vehicle. Alternatively, senior officers are expected to identify themselves by name when requested to do so. However, in the specific incident recounted above with a refusal of access to Brendan Mac Cionnaith, independent observers clearly heard the officer present decline to give his name when asked to do so. When the issue of proper ID for all police officers is being pursued, specific provision should be made to ensure that civilians can easily identify all serving officers and not just the lower ranks. Some such system is necessary if we are to secure basic measures of accountability from all police officers.

## ■ Effective Communication

In previous years CAJ has been able to point to good and bad experiences of communication between police and the policed, and that is true this year again. At Newtownbutler, and other venues across Northern Ireland, we witnessed examples at different times of sensitive policing being developed in liaison with local people, and with the help of local mediators, which helped dramatically to defuse a potentially difficult situation.

With regard to the Ormeau Road, we saw examples of both effective and ineffective communication. Initially the police seemed to dramatically over-react, and communication with local people was poor or entirely non-existent. Thus, there was a decision to partially seal off the area some 28 hours before the march was due to pass through. Then, 16 hours before the march, decisions were taken to flood the area with a large number of army and police vehicles and with high numbers of police and army officers in riot gear, and to surround the offices of the local residents office. These decisions, combined with the determination to keep deploying the Royal Irish Regiment (with its particularly controversial history vis-à-vis the nationalist community) throughout the week, despite frequent complaints from local residents, was provocative. Yet, once the police received assurances which satisfied them that

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<sup>13</sup> ICPC Bulletin, Issue 3, August 1998



the intention of the residents was to mount a peaceful protest, the police presence was scaled down almost immediately and effectively. Thereafter, there appeared to be frequent and effective communication between the police and local people, so that the latter were kept informed and reassured about developments. Finally, once the march had passed through, the police dispersed quickly from the area. It is not clear to CAJ why there was such a total failure of communication at the outset, but the ease of the operation (from a policing perspective) once communication was effectively established was very evident.

We noted earlier the fact that there appears to have been effective communication at a local level between the police and the impromptu illegal but peaceful demonstrations that occurred in many locations across Northern Ireland to support the right to march. Agreements appear to have been struck about the positioning and timing of road protests which would allow the protest to go ahead and yet not bring mayhem to the streets.

It is not clear to us, however, what communication, if any, took place between the police and the protestors at Drumcree. The one disadvantage of the lack of interface between the security forces and the protesters (for the safety advantages, see earlier comments) is that there may be some difficulty in establishing effective communication channels. For example, it was clearly objectionable for the Orangemen that there was no-one present on the morning of Sunday 5 July to deal with, or even just formally acknowledge, their protests. Moreover, there is clearly a dissonance between the interpretation of the events of the week offered by the security forces and the official Orange Order stewards. It is not clear if these two groups were in regular contact with each other.

## **General Conclusions**

Overall, our analysis of this summer's events is that progress has been made since the disastrous collapse in the rule of law in July 1996. Many improvements are clearly visible. At the same time, there are still many problems outstanding and these need to be urgently addressed. Most importantly, the resort to plastic bullets will never be a solution to our public order problems: they must be withdrawn with immediate effect.

With regard to more general police strategy, it was noteworthy that the police decided this year to exercise control over the situation largely by a careful policy of non-intervention and laissez-faire. This operational approach was greatly facilitated by the fact that the decision making process as to whether to allow a march to proceed or not was no longer solely a matter for the police. The non-interventionist approach ensured that the number of injuries to police officers, and those of others, were kept relatively small, and it helped to defuse some of the most volatile situations. Yet, the "hands-off" approach was not successful everywhere. Despite the relatively low level of casualties, overall, the police suffered one of their most serious public order losses ever, with the death of one of their officers - Frankie O'Reilly - at the hands of loyalist protestors. Nor indeed was the "hands-off" approach consistent - as witnessed by the anger sparked off in a local neighbourhood because of heavy-handed policing in a raid on the loyalist Manor Park estate in Lisburn, and the mass police deployment on the Ormeau Road on the afternoon of the 12<sup>th</sup> July.

But even if the approach had been consistent, a laissez-faire attitude creates different, but not necessarily fewer, problems than was the case previously. Thus, from the perspective of those living on the Garvaghy Road, they have been obliged since early July 1998 to live in siege-like conditions. The promise to ensure freedom from sectarian harassment in the Good Friday Agreement must seem a very empty one to them. While the lives of nationalists living in the area have been protected by the regular intervention of the police to ensure the area is not overrun, their quality of life is quite unacceptable in a society which wishes to pride itself on upholding the rule of law. Appropriate policing responses must be evolved to deal with these situations so that those groups being protected from physical assault do not - even if unwittingly - become little more than prisoners in their own area.

It would be wrong to conclude this analysis without emphasising the impossibility of assessing public order responses merely by looking at the work of the Parades Commission, and indeed of the police, in isolation from other factors. The political ramifications of the negotiation of an Agreement, the referendum vote, the Assembly elections, and the persistence of sectarian attacks targeted at both communities, all played their part for good and for ill in setting the scene for the "marching season" in 1998. Indeed in the week of the 5-13 July, with no obvious solution to the confrontation in sight, fear was the dominant emotion: the situation appeared almost cataclysmic. The terrible murder of the Quinn brothers that week was in some sense the culmination of that unfolding tension and was enormously significant in shaping subsequent events.

This recognition should not, however, hide the fact that bodies such as the Parades Commission and - even more so - the police have a crucial role to play in creating a positive climate. Both bodies, and particularly the police, have a unique ability to either ensure or undermine the creation of a society wedded to the rule of law. If we are to promote an environment in which the rights of all are equally respected - the only environment in which peace can truly thrive - then we need to build on the advances, and avoid the mistakes, of the past.