

ROSEMARY NELSON INQUIRY

Day 6: 22nd April 2008

Opening submissions by Mr Rory Phillips QC, leading Counsel to the Inquiry (continued)

Mr Phillips QC opened proceedings by introducing a statement of complaint made by Brian Loughran on 26 January 1998. Mr Loughran described the police officers who had spoken to him and the circumstances of his arrest, but only gave one of their names. His statement gives next to no detail as to what the officers said about Rosemary Nelson. Mr Loughran later gave a statement to the Northern Ireland NGO the Pat Finucane Centre on 24 March 1999, shortly after Rosemary Nelson's murder. Mr Phillips noted that this statement gave no greater detail either. The investigation into Mr Loughran's complaint concluded in March 1998 that no further action should be taken. The ICPC agreed with this recommendation and informed Mr Loughran of this by letter on 17 June 1998.

Mr Phillips then turned to a complaint made by Shane McCrory, who was arrested on 15 December 1997. Mr Phillips noted that this complaint was different from the others because it did not concern a suspect held in a detention centre (Gough Barracks or Castlereagh) but rather someone detained for a public order offence. The comments complained of were allegedly made in the back of a police car on the way to Lurgan police station. Mr McCrory specifically alleged that the driver of the car, who he named in his complaint, stated that, "She [Rosemary Nelson] won't be here that long, she will be dead." The RUC classified this complaint as relating to "incivility", which, according to Mr Phillips, may not have been the appropriate classification for a complaint of this seriousness. The ICPC wrote to the RUC on 29 April 1998, taking note of the seriousness of the allegations and arranging for the complaint investigation to be supervised by Miss McNally. The ICPC also wrote to Rosemary Nelson in her capacity as Mr McCrory's solicitor on the same day, stating that arrangements could be made to interview Mr McCrory in a location other than a police station if this would make him feel more comfortable. The investigating officer made what Mr Phillips described as "considerable attempts" to interview Rosemary Nelson, but she did not co-operate. He nevertheless interviewed the officers involved in Mr McCrory's arrest. These officers proved willing to answer questions and refuted Mr McCrory's allegations. Miss McNally agreed on 4 November 1998 that the interviews were properly conducted and that there should be no further action taken.

Mr Phillips then turned to a complaint made by a client who was detained at Castlereagh Barracks between 21 and 27 February 1998. He was detained in relation to a murder which had allegedly been committed by the IRA. After being detained for six days, during which time he was interviewed several times and also had consultations with Rosemary Nelson and her colleague Pat Vernon, he was finally released without charge. The client alleged that police officers interviewing him were making derogatory remarks about

Rosemary Nelson. Rosemary Nelson therefore requested to be present at all future interviews with the client. The client was then released and the RUC noted that her request was therefore no longer applicable. The matter came to the attention of the ICPC, who proposed to investigate, on 2 March. The case also came to the attention of Jane Winter of British Irish Rights Watch, who prepared a dossier to which Mr Phillips referred. According to this dossier, the police officers began making derogatory comments about Rosemary Nelson after the client had provided them with a statement which he had prepared along with Pat Vernon. According to the client, the officers interviewing him told him to “tell half-face [a reference, Mr Phillips stated, to Rosemary Nelson’s facial disfigurement] we have been doing this for 30 years and she won’t be able to stop us. There was a law passed in 1989 against solicitors who concoct statements”. This may, Mr Phillips suggested, be interpreted either as referring to a change in the law on the right of silence or as a reference to the murder of Northern Ireland solicitor Patrick Finucane, both of which took place in 1989. Rosemary Nelson raised this comment in conversation with an Irish government civil servant on 3 March 1998. According to the civil servant, Rosemary Nelson alleged that the RUC officers interviewing her client had made statements to the effect that the purpose of his detention was “to keep Sinn Féin permanently excluded from the talks” (the negotiations which led to the Good Friday Agreement in April 1998 were then ongoing – Sinn Féin had previously been excluded from talks following activity by the IRA). According to Rosemary Nelson, the police officers had also stated that “Rosemary works for the IRA and takes her orders from them”. Rosemary Nelson also noted that she had a number of similar statements from her clients. She stated that she was very worried and asked to meet the minister to discuss threats against her. She agreed instead to meet the civil servant. Mr Phillips also drew attention to Rosemary Nelson’s belief, stated to the civil servant, that the Chief Constable believed her to be working for paramilitaries as part of their political agenda.

Mr Phillips then introduced a letter from Mr Mageean of the Committee on the Administration of Justice (CAJ) to the Minister of State, Adam Ingram, on 5 March 1998. Mr Mageean recounted the allegations made by Rosemary Nelson’s client regarding his detention in February 1998 and stated that this complaint must be seen in the context of a pattern of allegations of harassment and intimidation of defence lawyers in Northern Ireland by the RUC. He called on Mr Ingram to take measures to ensure that defence lawyers were properly protected. Mr Mageean enclosed a statement made to him by Rosemary Nelson’s client for the attention of the Secretary of State. In this statement, the client alleged that he was told that he would be “set up by the LVF” (the Loyalist Volunteer Force – a terrorist organisation linked to a number of murders at this time), that the police had said the IRA were “pulling her [Rosemary Nelson’s] strings”, and that “there was a new law passed in 1989 which meant they could do away with solicitors who concocted stories”.

Mr Phillips then turned to a letter from BIRW Director Jane Winter to the Secretary of State, dated 10 March 1998. Jane Winter stated that the Chief Constable’s “insensitivity to the problem is undoubtedly responsible for the fact that RUC officers on the ground continue to abuse Rosemary Nelson”.

An investigation into this complaint was opened and the officers concerned were interviewed. The final interview was conducted on 7 August 1998. The officer gave a detailed statement in which he stated his belief that "this is a concerted effort not by the person making the complaint, but by the solicitors to attempt to show system in complaints made against me and then by blackening my character".

Mr Phillips then commented on the response by Mr Ingram's private secretary to CAJ, dated 7 July 1998. This response said, "I have to say that the Government is not aware of evidence of... a pattern of police harassment of defence lawyers." Mr Phillips noted this was perhaps a surprising statement given the amount of evidence which he had already presented to the inquiry and suggested that the inquiry might like to examine Mr Ingram on this point.

The investigation into the complaint regarding the client held at Castlereagh concluded with the ICPC accepting the conclusion that the allegations were unproven on 4 November 1998.

Mr Phillips paused to note that the inquiry was required to take account of not only complaints, but of the more general question of who was aware of potential threats to the life of Rosemary Nelson. The pattern of complaints could therefore be relevant, as were the communications from NGOs and the Irish Government. Mr Phillips noted that, for the most part, the inquiry was presented with a "black and white situation". Mr Phillips noted that whilst in many cases complaints against the police were made by detainees as a prelude to a civil action in which they could hope to gain financial compensation, this is not the case with these complaints. There was a straightforward choice between the view that the RUC was behaving disgracefully towards Rosemary Nelson and other defence lawyers and the view that Rosemary Nelson was a front for the IRA. "There is," Mr Phillips suggested, "no... limited admission, as it were, on either side... these battles were taking place along old and very familiar lines and peace in that sense and at that level had not broken out."

Mr Phillips then turned to a complaint made by Christine McAuley against British soldiers who had stopped her car on the night of 7 October 1997. Rosemary Nelson had telephoned Lurgan police station at 11pm to complain that members of the Royal Irish Regiment (RIR) patrol had made a derogatory remark about her. According to Rosemary Nelson, this had occurred at 10.30pm that night when soldiers stopped Christine McAuley. There were conflicting accounts of what had occurred. The RUC inspector on duty assured himself that any relevant events had taken place before the arrival at the scene of any RUC officers and therefore determined that this complaint was a matter to be dealt with by the Army.

The Irish civil service raised their concerns at derogatory comments allegedly made by soldiers in the Christine McAuley incident with their Northern Ireland Office counterparts, with the NIO passing these concerns on to the RUC on 13 October 1997. Mr Phillips noted that this was a good example of how these

concerns were seen by other important actors.

Mr Phillips then turned back to the details of a complaint made by Rosemary Nelson herself in writing on 14 October regarding the Christine McAuley incident. In a letter to the Chief Superintendent at Lurgan police station, Rosemary Nelson stated that “intimidation of defence solicitors in this fashion is most certainly not acceptable and indeed the whole incident is most disturbing”. This letter was significant because Rosemary Nelson also sent copies to the Chief Constable, to the Irish government and to British Irish Rights Watch. Mr Phillips attempted to trace what had happened to this complaint and found that while there was no police investigation because the complaint was not made against any members of the police, nor was there an investigation by the Royal Military Police. The paper trail appeared to have been lost and it was not until November 2001 that the Royal Military Police confirmed for the team investigating Rosemary Nelson’s murder that there had been no investigation.

Mr Phillips then turned to a second allegation of a threat made by soldiers to Rosemary Nelson which, he opined, was just as poorly investigated as was the first one. The allegation was that a soldier had put someone through a window near Rosemary Nelson’s offices. Rosemary Nelson had then come downstairs and spoken to the soldier (who had by this time threatened to put a witness through a window as well). The soldier allegedly told Rosemary Nelson that she was ugly, that she was “a Provie bastard for getting them out of prison”, and that he was going to “nut” her. This incident took place on 29 October 1997 and was reported to the RUC in Lurgan, who passed on the complaint to the Royal Military Police to be investigated. The Royal Military Police did indeed investigate in this case, but they did not examine the issue of a threat being made against Rosemary Nelson. The army also appeared to have relied on an RUC investigation and to have come to the conclusion – it was not entirely clear why – that no further action was warranted.

Mr Phillips then moved on to a complaint made by Rosemary Nelson herself, to the effect that she was publicly abused and assaulted by RUC officers on the Garvaghy Road on the night of 6 July 1997. These events took place in the context of a major public order incident arising from a decision to clear the Garvaghy Road of protestors in order to allow passage of an Orange Order parade. The issue of whether or not this parade should be allowed to go ahead in the face of opposition from local residents had been the focus of considerable controversy to the point of destabilising the entire peace process in Northern Ireland. The decision to allow the parade to go ahead was made, according to Mr Phillips, “very late in the day”. There was therefore a situation of extreme tension with hundreds of police officers deployed, wearing full riot gear, as well as a large deployment of British Army troops.

Mr Phillips began by referring to a statement made by Rosemary Nelson to Mr Mageean of the CAJ on 7 July 1997. Mr Phillips began by noting that Rosemary Nelson’s statement that she was “the solicitor representing the Garvaghy Road Residents Coalition” gave rise to controversy later because, in 1998, security protection was requested for members of the Coalition. It was therefore of importance to consider whether she was merely

representing the Coalition or whether she was a member or otherwise identified with it personally.

Rosemary Nelson stated that her instructions were to seek an injunction preventing the parade pending judicial review should the Secretary of State order it to be “forced through”, in Mr Phillips’ term. For this reason, she was attempting to determine what the decision had been. She therefore went up to the police lines, explained the situation and asked if there had been a decision. This appears to have happened around 3:30am, though there was some confusion as to the exact time. According to Rosemary Nelson, a police officer grabbed her arm and pulled her into the middle of the police lines. She asserted that the officers had called her a “Fenian fucker” and that they had spat in her face. Their badge numbers were covered up and they refused to give her their identification numbers. She had bruises the next day when she gave this statement. She noted that Susan McKay, a journalist with the Sunday Tribune, accompanied her after this incident and may be able to corroborate her version of events.

Mr Phillips also introduced a statement by Gerard Lally, who is a member of the bar in the USA and who was staying with a family in the Garvaghy Road area as an international observer. Mr Lally did not describe this alleged assault in his account of events, but he did describe a different altercation between Rosemary Nelson and an RUC officer.

Mr Phillips then turned to a statement made by an RUC officer who was in the police line. According to this statement, Rosemary Nelson had been visibly upset and had been going up to police officers, accompanied by Susan McKay, and asking them for their identification numbers. He stated that whereas other police officers had not responded, he could see that she was upset and gave her his details. According to him, Rosemary Nelson told Susan McKay that she was not sure if he was the police officer who had pushed her and called her a “Fenian fucker”. He took this to be an allegation against him and stated that he refuted this false allegation against him. He then reported this exchange to his bronze commander (a senior police officer).

Mr Phillips also introduced statements made by three Irish elected representatives who were present at the scene as observers. These three representatives stated that RUC officers were behaving with incivility towards Rosemary Nelson, but that they did not witness any assault and could not identify any individual RUC officers. Mr Phillips also referred to Mrs McKay’s statement in which she spoke of incivility by police officers and of Rosemary Nelson looking for the officer who she said had “thrown me around like a sack of potatoes”. Mrs McKay did not, however, witness an assault herself. Mr Phillips then referred back to Rosemary Nelson’s complaint to police in which she complained of a second assault – in which she alleged she was hit on the shoulder with a plastic riot shield – at around 4:40am. Rosemary Nelson was keen to emphasise to the officer investigating her complaint, and to Jane Winter of BIRW, that the police that night knew that she was there as a solicitor representing the Residents Coalition. Rosemary Nelson also referred

to Tom Cusack, a local resident, as being a witness to the assault on her. Tom Cusack however referred to the incident as having taken place at 6:00am.

Mr Phillips pointed out that many observers had noted that police had their identification numbers covered and were otherwise unidentifiable owing to their balaclavas and full riot gear. He noted that this was a common feature of the policing of public order incidents in Northern Ireland and that the Patten Commission in September 1998 called for identification numbers to be made clearly visible in future so that police officers could be held publicly accountable for their behaviour.

Mr Phillips referred to a phone call made by Rosemary Nelson to her husband, Paul Nelson, at 6:00am in which she seemed upset and said that she had been assaulted. Mr Phillips also referred to a video taken by the Army around 6:00am which showed Rosemary Nelson and an American man walking away from the police lines having been unsuccessful in locating the bronze commander. According to Mr Phillips, this video did not appear to show someone in the aftermath of an unpleasant assault.

Mr Phillips also introduced a statement made by Mr Lally, an American observer, in which he stated that he observed Rosemary Nelson being pushed around and called a "Fenian bitch" by police officers at some time between 7:00 and 8:00am, by which time it was fully light. This statement was, however, made to police on 9 November 1999, more than two years after the event and, indeed, after Rosemary Nelson's murder.

Mr Phillips summed up the events of that evening as presenting a confused picture. He noted that even well-intentioned international observers found it difficult to provide an accurate picture of exactly what was going on over the course of the night. He noted that there was very little direct evidence of an assault by police on Rosemary Nelson, but that there was a great deal of independent testimony to the effect that the police had, at the very least, treated her with incivility.

Rosemary Nelson wrote to the Chief Constable on 15 September 1997 and stated that she had suffered physical injuries during the disturbances on the Garvaghy Road and that she believed the cause of those injuries to lie with the Chief Constable. She then confirmed on 24 September that she meant for this letter to stand as both a complaint and as the starting point for civil proceedings (pursuing both of these simultaneously was common in actions against the RUC under the system then in place). Mr Phillips noted that this timing was interesting because this complaint was made at around the same time as the LAJI complaint but that there was no reference to this incident in the LAJI complaint, despite Rosemary Nelson's having been in contact with Mr Lynch of LAJI.

The investigation into the events on the Garvaghy Road opened on 21 October 1997. The ICPC recommended that there be no supervision of the investigation because there was no medical evidence and Rosemary Nelson

did not merit any special treatment because of her status. Rosemary Nelson did not attend for interview, but did provide a written statement to the investigating officer on 19 November. The investigating officer wrote a report, apparently on 1 January 1998, in which he stated that he had considered evidence from Mr Lally. He stated that “the status and objectivity of these international observers remains open to question”. He complained that Mr Lally’s public statements were much more colourful than his statements to police as well as being at variance with them. He noted that Rosemary Nelson’s statement to CAJ was simply the first half of a statement which was circulating on the internet and which appeared designed to discredit the RUC. He asserted that Rosemary Nelson appeared to be “more interested in generating international publicity than co-operating in a fact-finding investigation”. He noted that it was impossible to identify any police officers involved in any assault on Rosemary Nelson and therefore recommended no prosecution.

Mr Phillips noted that one might expect that “at this point the Commission [ICPC] would draw a line under the matter”. However, what in fact happened was that the ICPC recommended “revised supervision”. This appeared to have been the result of a meeting on 8 April 1998. An internal minute written by Stephen Herron stated that “if the political implications were left aside, in light of the fact that Mrs Nelson has provided no medical evidence... dispensation would be appropriate. However, the present international focus... brings a new dimension to the complaint and creates a case for revised supervision of this complaint in the public interest”. This led to the investigation being re-opened in April 1998 under revised supervision. This investigation, Mr Phillips observed, was to continue for several years.