

ROSEMARY NELSON INQUIRY

Day 7: 23rd April 2008

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

Mr Phillips opened proceedings by continuing his examination of the handling of the Garvaghy Road complaint. The investigation of this complaint, as he had outlined at the end of Day 6, had been re-opened under revised supervision from the Independent Commission for Police Complaints (ICPC) following discussions between the Royal Ulster Constabulary (RUC), the British and Irish governments, and the NGO community. It was agreed on 21 April 1998 that investigation of the complaint should continue and that Miss McNally should be the supervising member for the ICPC. Miss McNally confirmed the arrangements for the investigation on 15 May 1998. RUC Chief Inspector Oliver was appointed investigating officer. Chief Inspector Oliver sought to arrange an interview with Rosemary Nelson, but was unsuccessful and therefore applied for dispensation [closure of the complaint] in June 1998. The ICPC refused this request on 21 August 1998, on the grounds that Rosemary Nelson had in fact arranged a time to attend for interview. Rosemary Nelson did indeed give a statement on 21 September 1998. Mr Phillips noted that Mr Mageean of the CAJ had also given a statement to police about the verbal and physical abuse of Rosemary Nelson on the Garvaghy Road. Mr Phillips observed that if these complaints had in fact been part of a propaganda campaign involving Rosemary Nelson aimed at discrediting the RUC, this would imply that Mr Mageean must have been part of such a campaign. Mr Phillips suggested that the inquiry might wish to pursue this suggestion with Mr Mageean when he appeared as a witness.

On 26 October, Chief Inspector Oliver decided to contact Tom Cusack, who Rosemary Nelson had cited in her statement of 21 September as a witness who would be able to corroborate her version of events on the Garvaghy Road. Miss McNally wrote a note on 9 December 1998 about the interview with Mr Cusack. She stated that, "This witness was extremely open and credible. The investigating officer... will proceed to identify military police personnel on the basis of the new evidence."

In January 1999, Rosemary Nelson issued a writ against the Chief Constable in the Northern Ireland High Court in relation to the events on the Garvaghy Road. She claimed "aggravated and exemplary damages" for "assault, battery and trespass to her person... by his agents". Rosemary Nelson's counsel alleged that there were two separate incidents of assault by police officers and the alleged timings for these incidents were in agreement with the accounts given by Mr Cusack and Mr Lally.

The police complaint investigation continued. Mr Phillips presented a useful summary made by the ICPC on 7 July 1999 which outlined responses from witnesses and police officers present at the scene and attempted to reconcile contradictions between them. Chief Inspector Oliver and Miss McNally then

visited New York in October 1999 to interview Mr Lally. There was also a note in the ICPC file from June 2000 in which the Irish police presented statements taken from the three Irish politicians who had been at the scene. Chief Inspector Oliver concluded that while there were multiple allegations of incivility towards Rosemary Nelson, nobody could identify individual police officers, no civilian apart from Tom Cusack actually claimed to have witnessed any assault by police on Rosemary Nelson, there was no medical evidence and the limited video evidence provided was unsatisfactory. On this basis, he concluded that there was insufficient evidence to prosecute any individual police officer. The ICPC issued a statement of satisfaction on 30 October 2000 and the Director of Public Prosecutions (DPP) determined on 19 January 2001 that there should be no prosecution, because of "insufficient evidence to identify a police assailant or afford reasonable prospect of conviction".

Mr Phillips turned to setting this complaint in context. He reminded the inquiry that the alleged events would have taken place during a very serious and tense public order incident and that it was therefore unsurprising that there should be inconsistencies in accounts given by witnesses. He stated that the key difference between this complaint and those previously considered was that this complaint had been made directly by Rosemary Nelson concerning herself, as opposed to allegations made by one of her clients.

Mr Phillips reminded the inquiry that it needed to be concerned not only with complaints against the police, but rather with all threats made against Rosemary Nelson and which organisations might have been aware of the nature of these threats. He noted that the Inquiry should therefore consider the totality and context of what individuals knew and not simply be concerned with procedure or protocol. Mr Phillips therefore suggested that the Inquiry should look at threat assessments that were undertaken for other members of the Garvaghy Road Residents Coalition as well as the threat assessment that was undertaken for Rosemary Nelson herself in August 1997.

Mr Phillips then turned to look at some of the material which led up to May 1997. This included correspondence between Rosemary Nelson and Jane Winter of British Irish Rights Watch (BIRW) which led to Jane Winter drawing the attention of the UN Special Rapporteur, Mr Cumaraswamy, to Rosemary Nelson's case on 5 March 1997. Mr Cumaraswamy asked for details of this case to be forwarded to him in preparation for a visit to Northern Ireland on 4 April 1997. He expressed his concerns about abuse of lawyers by police officers to the UK Foreign Office (FCO).

Mr Lynch also examined a letter from Mr Lynch of the US-based Lawyers' Alliance for Justice in Ireland (LAJI) to the UK Attorney General in which he expressed his concerns at threats made to Rosemary Nelson's life. He also referred to a letter from US Senator Torricelli asking the Attorney General to investigate threats to the life of Rosemary Nelson. Mr Phillips then noted an internal memo from an official in the Northern Ireland Office (NIO) who had to respond to Senator Torricelli. In this memo, the official wanted to know "if the police have discussed with Rosemary Nelson anything to do with her personal

protection". This memo led to a report being produced by the RUC Complaints and Discipline Department for the Command Secretariat on 29 May. This report stated that Senator Torricelli and Mr Lynch were "reading more into the alleged threats than Mrs Nelson or ourselves". The RUC noted that "the Investigating Officer [into the various complaints made against police officers] is available to provide any information to enable Special Branch or others to assess the threat". It did not appear that the RUC in fact conducted a threat assessment at that time.

Mr Phillips noted that RUC officers were obliged to inform the local Special Branch if they learned of any threat against any person, according to the terms of the Force Order issued in July 1991. When the Investigating Officer was seeking dispensation not to investigate further from the ICPC relating to the LAJI complaint (which dealt with threats allegedly made by RUC officers about Rosemary Nelson to her clients during interview), he noted that "a threat assessment has been made and appropriate action taken". However, no such assessment was actually undertaken and the investigating officer said he had only spoken to officers in passing. Mr Phillips suggested that the inquiry might like to question him about this when he appeared as a witness.

Mr Phillips then turned to a letter from the NIO to the Command Secretariat of the RUC in June 1997, entitled "alleged death threats by RUC". This asked for information about the various complaints investigations. He also introduced a letter from the UN Special Rapporteur, Mr Cumaraswamy, to the Foreign Office on 1 August. In this letter, Mr Cumaraswamy set out the concerns and complaints which the investigation had already considered and requested a response from the UK government to the allegations made, detailing the action taken, within one month. The NIO requested information from the RUC on 26 August. There then followed letters from Amnesty International regarding alleged threats to Rosemary Nelson and from Chris Mullin MP to the Secretary of State. The Command Secretariat responded to these letters as a group in September 1997. They did not, however, address directly what was being done about threats to Rosemary Nelson, but rather focused on complaints investigations.

Amnesty International wrote directly to the Chief Constable on 18 September requesting information about what was being done to investigate threats to Rosemary Nelson relating to the Colin Duffy case. Amnesty International received a response from the private secretary to Adam Ingram, the Northern Ireland minister for security, that same day in which he noted that, as Rosemary Nelson had failed to co-operate with complaints investigations, "it is highly likely that the complaint will be dispensed with... clearly, this is not a satisfactory outcome". Mr Phillips noted that this letter did address the issue of death threats directly. The reply from the Chief Constable to Amnesty International on 26 September did not, however, address the issue of death threats at all.

Mr Phillips then turned to look at a letter sent to the Secretary of State on 23 October 1997 by the Lawyers Committee for Human Rights, a New York-based NGO [now re-named as Human Rights First]. This letter detailed

threatening telephone calls allegedly made to Rosemary Nelson's office, saying "you are dead", "you will be killed" and that the UVF (a terrorist organisation) would be coming. Mr Phillips considered this letter significant because it dealt with threats allegedly made to Rosemary Nelson outside police interviews. It also referred explicitly to Mr Cumaraswamy's visit to Northern Ireland, which took place between 23 and 30 October, and therefore set the case in its political context.

Mr Phillips turned to an incident on 17 November in which Colin Duffy's car was stopped by the police. Some form of altercation took place. The Irish government raised the incident with the British government and expressed concern that Mr Duffy had been assaulted by police and that there was a strong pattern of police harassing Mr Duffy. An exchange of correspondence ensued in which the police took the position that any violence that had taken place had been orchestrated by the Provisional IRA, that the IRA had used his arrest to gain publicity coverage, and that several police officers had been injured as a result of Colin Duffy's actions. An internal police memo concluded that "despite Rosemary Nelson's PR machine going into overdrive in relation to the ongoing harassment of Colin Duffy, we must not lose sight of the fact that all officers involved carried out sterling work in the face of overwhelming odds".

There appeared to have been a breakdown in communication between the police division at the NIO and the Command Secretariat of the RUC, which led to a letter from the NIO to the Command Secretariat on 4 December asking for a report on the Colin Duffy case for the Secretary of State. The Secretary of State then wrote to Jane Winter of BIRW on 9 December to say that she was aware of concerns about the case and that the police were also aware of them. Mr Phillips noted that he had drawn attention to this aspect of the case because it was one in which Rosemary Nelson figured centrally, where her work had a clear political impact and where top-level figures, such as the Secretary of State and the Chief Constable, were paying attention to her circumstances.

Mr Phillips then moved to examine the events in February 1998, during the visit to Northern Ireland of a delegation from the US-based Lawyers Alliance for Justice in Ireland, which led to a threat assessment being conducted relating to Rosemary Nelson's safety. There was a dinner on 17 February where LAJI representatives met Rosemary Nelson. They met the Chief Constable on 19 February. They then met officials from the NIO – this meeting, according to Mr Phillips, was the trigger for the February/March threat assessment. The background to the LAJI delegation visit was that LAJI had made several complaints to the RUC about threats allegedly made by police officers about Rosemary Nelson to her clients, which the inquiry had previously examined, and that LAJI had also issued a report on policing in Northern Ireland which the RUC had criticised as "lacking in balance" and displaying "a complete ignorance of realities in Northern Ireland". There was, Mr Phillips observed, "history" between LAJI and the RUC.

Mr Phillips focused on the meeting between LAJI and two civil servants from

the policing division of the NIO which took place on 22 February. This led to the NIO writing to the Command Secretariat the next day, saying, "If this has not already happened as a result of her complaints about RUC threats, et cetera, then in a situation where such concerns continue to be expressed by those who have apparently met her [as LAJI had done the previous week], it might be prudent to consider whether or not she needs to be approached and given advice on her security. I should be grateful if you would let me know if and, if so, when Mrs Nelson has been given such advice." Mr Phillips observed that the civil servant did not explicitly ask for a threat assessment to be conducted or for Rosemary Nelson to be approached – one could rather see the letter as a request for information.

The Command Secretariat then wrote to the Assistant Chief Constable of South Region (which covered Lurgan) on 25 February. In this letter, he stated "I am aware that the matter of death threats against Mrs Nelson was referred to the Deputy Subdivisional Commander, Lurgan, in May of last year". Mr Phillips noted that the inquiry had seen earlier that morning that no assessment had in fact taken place. There then ensued a chain of communication within the RUC which led to an officer in Lurgan producing a note on 10 March 1998, stating that, "I can report that there is no record of a threat against Rosemary Nelson held in this office." The note went on to say that Mrs Nelson was associated with republican causes and individuals in the public eye and that, as a result, "in the absence of any threat, she would be known to loyalist paramilitaries in this area and would be at a degree of risk while working and residing in this area". Mr Phillips noted that this was the result of a Special Branch threat assessment exercise and that the inquiry had the product of this assessment but not the material on which it was based.

The Deputy Sub Divisional Commander for Lurgan added his comments on 11 March 1998, stating that "no complaints have been made to police in Lurgan [regarding threats to Rosemary Nelson]". Mr Phillips noted that this was not entirely accurate, as the inquiry had seen. The officer stated that "the only reliable information is that contained in the attached threat assessment... and I do not consider it sufficient to base personal security advice on". He did, however, instruct local police to give special attention to Rosemary Nelson's office and home address, though importantly the address they were given was an old address. Mr Phillips added that this meant simply that local patrols would keep a particular eye out for any suspicious activity.

Mr Phillips noted a reference to a "threat register" in this note which puzzled the inquiry. He stated that there was a "Threat Log" in the Lurgan RUC station, but that it contained no references to Rosemary Nelson. He surmised that the instructions to be issued to local patrols may instead have gone into the "briefing book2, which was a large, often hand-written, tome. However, the briefing book for 09/05/97 to 23/04/99 had apparently been lost.

The Chief Superintendent in the Command Secretariat wrote an internal memo on 1 April 2008 suggesting that the police offer crime prevention advice to Rosemary Nelson. She explained to the Inquiry that she had only recently been made Superintendent at that stage and that she was really asking, "Is

there anything else we can do?" A decision was however made, involving the Chief Constable directly, that no such advice should be given. The Chief Superintendent suggested that offering crime prevention advice would be inappropriate as such advice would be given by local officers "and Rosemary Nelson had complained about threatening behaviour by local officers".

Mr Phillips proceeded to consider the attitude of the NIO to the police response. The head of the police division in the NIO did not, according to Mr Phillips, "simply accept, as it were, that is the end of it, the police have opined, there will be no further discussion or consideration". Following internal discussions, the NIO did ultimately accept the police position but, Mr Phillips suggested, they had a strong sense of the importance of these issues. Mr Phillips turned to a statement made to the inquiry by Mr Steele, a senior civil servant, who said that, "I was aware of the threat assessments that were carried out at the time and the results of them, namely, that she was not considered at risk. However, we were worried about Mrs Nelson's security. On the other hand... we were not prepared to break the KPPS scheme and risk opening the floodgates." (The scheme referred to was the Key Persons Protection Scheme, which provided enhanced security to prominent individuals considered to be at risk.)

Mr Phillips turned to the response to the UN Special Rapporteur Mr Cumaraswamy's report. He produced an internal NIO memo written on 12 February 1998, referring to a pre-publication version of the report. According to this memo, "little of the report is positive". Notably, Mr Cumaraswamy was critical of "a suggestion by the Chief Constable that solicitors may be working for paramilitaries". According to Mr Phillips, Mr Cumaraswamy was essentially saying that "I keep being told... by the RUC that [solicitors are working for paramilitaries]... but I have been provided with no evidence". Mr Cumaraswamy was also concerned that police may be identifying solicitors with their clients' causes. He was "satisfied that there has been harassment and intimidation of defence lawyers by RUC officers".