

ROSEMARY NELSON INQUIRY

Day 12: 30th April 2008

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

Mr Phillips opened by looking at Operation George. This operation did not result in any evidence linking any of the target individuals to Rosemary Nelson's murder. However, the senior investigating officers neither questioned their assumption that those individuals were connected with the murder nor the effectiveness of their strategy of putting suspects together in the hope that they would talk about the murder. According to the Ayling report, while Operation George could be considered a success as an operation against the mid-Ulster Loyalist Volunteer Force (LVF), it did not advance the Rosemary Nelson murder investigation.

Mr Ayling's report also looked at the question of whether the work of the collusion cell, under the command of Mr Provoost, was conducted with due diligence. An analyst was used to establish in each instance of alleged collusion what the identities of all the officers involved would have been. This work was commended. However, this was limited to security force personnel in uniform and did not include those who were not on duty that weekend. The team looked at all the threats made to Rosemary Nelson prior to her death, which were also considered by the inquiry on previous days. Mr Ayling concluded that this work was done with due diligence despite the fact that no useful leads emerged from it. Mr Ayling criticised the team for not taking full advantage of independent reviews of their work to advance the investigation, but noted that the team attempted to act with due diligence on the whole.

Mr Phillips then turned to Mr Ayling's conclusions on the overall management of the investigation, which he considered to have fallen short of the required standard. However, the relevant section of the report was not yet substantially available to Full Participants.

Mr Ayling believed that the senior officers were strongly committed to finding and prosecuting those who had murdered Rosemary Nelson. Mr Phillips explained that it is hard to move from a consideration of individual elements of the investigation to any overall conclusion as to whether or not it was conducted with due diligence as a whole. Mr Ayling did this by setting out what he believed to be the basics of any well-conducted murder investigation: guarding against and questioning assumptions; developing different hypotheses; a victimology line of inquiry; validating intelligence; a robust suspect management policy to implicate or eliminate suspects; constant re-evaluation of progress. This would require a well-maintained policy file, which Mr Ayling had not been able to find.

He criticised a lack of supervisory rigour in the investigation. He stated that while the initial focus on certain individuals was justified, what went wrong was that this hypothesis was never reconsidered. Mr Ayling concluded that

there remained important questions to which he did not know the answers and which would be essential to determining whether or not the investigation was conducted with due diligence as a whole. He did not know what intelligence had been offered by Special Branch to Mr Port to support the hypothesis that the LVF were responsible for the murder. He criticised the dearth of intelligence into threats to Rosemary Nelson and did not know what explanation was offered by Special Branch to the Chief Constable as to this lack of information. Mr Ayling also raised concern that some intelligence was not made available by Special Branch to the murder investigation team at the appropriate time. Mr Phillips drew the inquiry's attention to this point and stated that the inquiry had a statement from Mr Provoost on this matter. He stated that the inquiry would need to consider what further requests for information and disclosure should be made as a result of this statement.

Mr Ayling stated that due to a lack of information on intelligence sharing and on some other issues, such as the similarity of the device used to other explosive devices used by Loyalists, he could not reach a conclusion on the question of overall due diligence.

Mr Phillips concluded his opening submissions by noting that the RUC officers maintained that the standard of due diligence had indeed been met and that statements from the senior officers in the investigation would show this. They noted that the investigation had been conducted in extraordinarily difficult circumstances and that the evidence that emerged did in fact support the hypothesis that the LVF were involved. Several individuals linked to the LVF remained core suspects in the ongoing investigation.

Opening submissions by Mr Arthur Harvey QC, Counsel to Mr Paul Nelson
Mr Harvey opened by saying that the family of Paul Nelson appreciated the work of the inquiry. He began by addressing the question of whether the nature of Rosemary Nelson's work created conflict with the security forces and, if it did, to what extent this was the case. Mr Harvey dealt firstly with the conflict between police and solicitors over the interviewing of terrorist suspects detained under the Prevention of Terrorism Act. According to him, there was a general conflict between police and solicitors in this domain and this was not specific to Rosemary Nelson.

Issues relating to police treatment of suspects in detention were raised in the Bennett Report of 1979. This report dealt with unexplained injuries to suspects released from detention. This report found that suspects were denied access to a solicitor whilst in detention and judged this to be unacceptable. At the time, the Emergency Provisions Act made admissible any confession made by a suspect in detention unless it could be proven that the confession was obtained by torture or by inhuman or degrading treatment.

According to Mr Harvey, police found themselves going into interrogations where their sole purpose was to obtain an admission from a suspect who would be reluctant to admit his participation in a crime. Some police interviewed at the time of the Bennett Report stated that the police believed that the sole function of a solicitor would be to tell their client to say nothing.

This ran contrary to the objectives of the interrogation. The Bennett Report also identified a lack of confidence in the complaints system. While the complaints system did evolve, attitudes did not.

Mr Harvey stated that Rosemary Nelson had no background in criminal litigation prior to becoming Colin Duffy's solicitor in 1993. The evidence presented against Colin Duffy was the testimony of two anonymous witnesses. One of these witnesses however came to be identified as Lindsay Robb. The RUC claimed that Lindsay Robb was a man of good character and a reliable witness and Colin Duffy was convicted on 5 July 1995. Lindsay Robb himself was then convicted of attempting to acquire arms for the UVF in Scotland in December 1995. This caused the Crown to inform the court that they no longer wished to rely on Mr Robb's evidence in Colin Duffy's conviction. The judge released Colin Duffy in September 1996 on the grounds that the evidence of the one remaining witness was insufficient to establish the case against him. Mr Robb was later released and gave an interview to the Scottish newspaper the Sunday Herald in 2000 in which he stated that he had never seen Colin Duffy and that he had been recruited by Special Branch who had told him they needed someone with a clean background who could give evidence against Colin Duffy.

Colin Duffy was then re-arrested in June 1997 for the murders of Constables Graham and Johnston. Rosemary Nelson again acted as his solicitor and her performance was, according to Mr Harvey, proactive and exemplary. She encouraged witnesses to come forward and engage with the investigation at an early stage. Rosemary Nelson also used NGOs to further her client's cause. According to Mr Harvey, this was a channel that was available to her and she used it properly. On 2 October 1997, the Director of Public Prosecutions issued a direction that the evidence was insufficient to prosecute Colin Duffy.

Mr Harvey then turned to complaints that Rosemary Nelson had handled on behalf of her clients. Mr Harvey pointed out that in the absence of video and audio recordings of interrogations, the only corroborating evidence possible for a complaint would have been an admission by a police officer that he had indeed issued threats and behaved very badly. Mr Harvey noted the response to the UN Special Rapporteur Mr Kumaraswamy's allegation that the Chief Constable had made remarks in a meeting with him on 24 October 1997 that were disparaging of lawyers and of Rosemary Nelson in particular. The first response had been "it didn't happen"; then "there is no corroboration"; then "if it did happen, it must have been a misunderstanding"; then "it must have been your misunderstanding"; then "there must be some way to compromise". Mr Harvey pointed out that the position of those suspected of terrorism was much weaker than that of Mr Kumaraswamy.

He stated that GERALYN McNALLY, a young female barrister who was a member of the Independent Commission for Police Complaints (ICPC) was treated with disrespect by police officers. He stated that they treated her severe misgivings about the conduct of their investigation into complaints that police officers had made threatening remarks about Rosemary Nelson with

contempt. Mr Harvey turned to the Chief Constable's reaction to the ICPC's intention to issue a statement of dissatisfaction with this complaints investigation. He suggested that the RUC had aimed to conflate a number of different complaints in order to create confusion and to produce an ultimate outcome that there was no evidence to support these complaints.

Mr Harvey noted that Commander Mulvihill, who had investigated complaints regarding threats to Rosemary Nelson allegedly made by police officers, had stated in his report that on each occasion where Rosemary Nelson had brought a complaint, she had done so in the terms in which her clients had relayed them to her. He stated that this was in contradiction to the attitude of one police officer who had stated, in writing, that he did not blame the individual on whose behalf the complaint was being made, he blamed the solicitor who was, in his view, seeking to undermine the whole system.

Mr Harvey stated that police officers who held the view that Rosemary Nelson was involved in a Republican propaganda campaign to discredit the RUC would have been aware of the impact that dissemination of this view would have had in a community such as Lurgan at the time of Drumcree. He pointed to the Chief Constable's reaction to Mr Cumaraswamy's allegation that he had made disparaging remarks about Rosemary Nelson and linked her to Republicanism. He immediately asked that such remarks be redacted because the publication of such remarks could put her life in danger. Mr Harvey stated that the sole measures taken by the British Government to protect Rosemary Nelson involved the redaction of disparaging statements allegedly made by the Chief Constable himself from an international report.

Mr Harvey then turned to the role of Special Branch in Northern Ireland. He stated that "everyone knows how they operate" and that the Loyalist paramilitary organisations "must be the most infiltrated groups in the history of the world". He stated that the ideal starting point for this inquiry would be to ask the Special Branch who their agents operating in mid-Ulster were; what steps they took to ascertain from their agents whether people were seeking to murder Rosemary Nelson; and what the "hard core" information was following her murder. He stated that all the Loyalists active in mid-Ulster who could have committed this murder would have been known to the security forces. He suggested that the sophistication needed to carry out such an attack could have been supplied in a collusive manner from within the security forces themselves.

Mr Harvey supported the RUC's reservations about victimology and stated that there was an immediate obvious cause for Rosemary Nelson's murder. Regarding the device used, he stated that the investigation team should have asked whether this was the sort of device that could have been built and deployed by those already known to the security forces or, if not, whether there could have been some collusive input.

Opening submissions by Mr John O'Hare, Counsel to the Magee family

Mr O'Hare thanked Mr Phillips for his lengthy opening submissions and

thanked the inquiry for the work it had done in obtaining documentation. However, he observed that a great deal of what Mr Phillips had said was based on information that was already in the public domain. His clients would only have confidence that the inquiry was making satisfactory progress once new information could be obtained.

He turned to the hostility between Rosemary Nelson and the RUC. He stated that the evidence for this hostility was threefold: the complaints made by her clients; statements made by police officers themselves in writing; and statements made by witnesses to the inquiry. He turned to a complaint previously commented on by Mr Phillips, that made by the Lawyers Alliance for Justice in Ireland (LAJI) to the effect that police officers had made threatening and degrading comments about Rosemary Nelson to her clients in the course of interrogations. The officer responsible for investigating this complaint had expressed "incredulity" at Rosemary Nelson's "lack of professionalism" in presenting evidence relating to this complaint and stated that "the volume and timing of... correspondents... on Mrs Nelson's behalf gives rise to the reasonable suspicion that these complaints are more to do with generating propaganda against the RUC than establishing the truth". According to Mr Harvey, this officer associated Rosemary Nelson "with her clients and their alleged crimes and causes".

When an assessment was conducted into threats against Rosemary Nelson in March 1998, a Special Branch officer stated that "Mrs Nelson remains closely associated with the Republicans and attends functions, rallies, et cetera, in support of their aims and objectives".

Mr Harvey stated that his clients were disappointed that the Police Service of Northern Ireland (PSNI) had failed to provide a satisfactory statement as to the integrity of their databases. He stated that the inquiry could not be satisfied that it was in possession of all the relevant information. It could not say with any degree of certainty that relevant information had not been deleted, added to or amended. He stated that if this remained the case, then the inquiry would be fundamentally flawed.

Opening submissions by Mr Andrew Donaldson QC, Counsel to the PSNI

Mr Donaldson began by praising the work of Mr Phillips, but noted that he did not agree with all of his propositions. He stated that the PSNI very much wished for the truth about Rosemary Nelson's death to be established, but that he doubted that the inquiry would be able to establish all the truth even with the best of efforts. He stated that he represented not only the PSNI but also a number of individual police officers and retired officers from the RUC. The PSNI fully supported the work of the inquiry.

He stated that searching questions would have to be asked of the witnesses. He expressed concern at Mr Phillips's statement that the inquiry would have to consider "the possibility that government agencies or others might have been to some extent involved with, complicit in or responsible for the murder of Rosemary Nelson". He stated that there must be some standard of proof

that the inquiry was looking for, rather than “mere possibility”. He anticipated that the inquiry would focus on finding facts around the 29 issues within its remit and that it would seek to establish facts only from credible evidence.

Mr Donaldson expressed doubt as to what weight could be given to the written statements of the large number of witnesses who would not be called to give oral evidence where they could be questioned. He stated that where witnesses were called to give oral evidence, they would frequently need to be questioned vigorously. He would suggest lines of questioning for Mr Phillips to follow, but there would be times when he would seek leave to question witnesses directly where their evidence was of great importance. He asked that consideration be given to why certain witnesses were not being called and asked that any serving or former police officers against whom serious allegations were being made should be given the opportunity to respond, in public and under oath, to those allegations.

Mr Donaldson expressed concern that there was already a perception in the minds of many people that the RUC were somehow responsible for Rosemary Nelson’s death and that some people would feel that if the inquiry did not find fault with one state agency or another, it would have failed in its duty.

Mr Donaldson stated that the PSNI had cooperated fully with the inquiry and had committed considerable resources to supplying it with as much information as possible. The Chief Constable was himself fully committed to finding the truth about Rosemary Nelson’s murder. Mr Donaldson was therefore disturbed at Mr Phillips’s statement regarding lack of co-operation in providing IT records. He stated that no ulterior motive should be attributed to the inability of some police officers to explain fully how the IT system functioned as this was simply down to a lack of knowledge.

Mr Donaldson turned to comment on some of the 29 issues within the remit of the inquiry. He began with Issue 1: whether Rosemary Nelson’s work for her clients created conflict with the RUC or with other state agencies and, if so, to what extent. He acknowledged that there was tension between Rosemary Nelson and the RUC which had arisen from her work for the GRRC and for Colin Duffy. He stated that Rosemary Nelson had been conducting an international campaign alleging that Colin Duffy had been falsely charged and that he was completely innocent. He suggested that the police should have the chance to respond to these allegations.

He also suggested that Rosemary Nelson’s social relationship with Colin Duffy should be examined. He noted that Rosemary Nelson’s sister, Caitlin McVeigh, had stated that “Rosemary began to feel that she had blurred the line between client relationships and friendships”. She had also referred to Rosemary Nelson’s renting of a house to Colin Duffy after Colin Duffy’s marriage had broken up. Mr Donaldson agreed that Issue 1 was key to the inquiry and suggested that it be examined in light of the “Duffy factor”.

Mr Donaldson then turned to Issues 2-6, which dealt with threats to Rosemary Nelson’s safety. Central to these issues was the allegation that RUC officers

had made threatening comments about Rosemary Nelson during interviews with her clients. He noted that the Police Ombudsman had conducted a survey of members of the legal profession in Northern Ireland which had shown that 98% of respondents had not experienced problems in their dealings with police officers. He accepted that police officers in detention centres may occasionally have made comments of an abusive nature, but questioned why an officer would make a comment such as “Rosemary Nelson will be dead”. He stated that complaints would regularly be made by terrorist suspects as a means of delaying police investigations.

Mr Donaldson turned to the Mulvihill complaints investigation. He suggested that Mr Harvey had unduly belittled the Mulvihill investigation in his opening remarks and that Mr Phillips was closer to the true position. He reminded the inquiry that the appointment of Commander Mulvihill was approved not only by the ICPC, but by Miss McNally in particular, who had been involved with the previous investigation. He noted that what he called “Mulvihill 1” – the investigations into the LAJI complaint and into complaints made by various of Rosemary Nelson’s clients – had concluded that there was “no evidence to support the contention that Rosemary Nelson’s life was ever put at risk”. He noted that “Mulvihill 2” – allegations made by Rosemary Nelson and Colin Duffy that police officers had conspired to pervert the course of justice in relation to Colin Duffy’s arrest – had concluded that the allegations were disproved. “Mulvihill 3” – an investigation into a complaint made by one of Rosemary Nelson’s clients – had concluded that there was “not a shred of evidence against the officers complained of”. He further noted that the ICPC had issued a statement of satisfaction with Commander Mulvihill’s investigation.

Turning to Issue 7 – to what extent Rosemary Nelson sought assistance from the RUC or other state agencies regarding her personal security – Mr Donaldson stated that it was unclear to what extent she herself felt that she required security. There was nothing to indicate that she took even the most basic precautions.

On Issue 8 – the response of police, army and other state agencies to threats made against Rosemary Nelson – he noted that Commander Mulvihill had concluded that “differing interpretations... led to the creation of something allying to an entirely false conspiracy theory notion” regarding allegations of threats made by RUC officers. Mr Donaldson suggested that Commander Mulvihill was an “independent person” and that great weight should be given to his conclusions.