

## **ROSEMARY NELSON PUBLIC INQUIRY**

**Day 25: 22nd May 2008**

**Witness: Mr Thomas Reilly**

Mr Reilly joined the Lawyers Alliance for Justice in Ireland (LAJI) in 1989, after twelve years' service as chief of police in a small town in New Jersey. As Edmund Lynch and Mr Reilly were both from New Jersey they met on occasion and Mr Reilly joined the group because he believed the LAJI's ideals and objectives were worthwhile.

The LAJI in Mr Reilly's own words could be described as a conglomerate of attorneys and law enforcement professionals seeking justice in the human rights field.

Mr Reilly first visited Northern Ireland in 1999 in order to hold a series of public meetings and establish whether or not the Good Friday Agreement was effective. Edmund Lynch was particularly keen for him to be part of the delegation because of Mr Reilly's experience in law enforcement. Through his contact with the International Association of Chiefs of Police Mr Reilly was well aware of the alleged human rights abuses by the RUC.

Although Edmund Lynch was in New Jersey, the meetings were organised by him and were held at various different hotels throughout Northern Ireland. All of these meetings were exceptionally well attended.

He recalls that attendance to the meetings was predominantly, if not entirely from members of the Catholic community.

The meetings were informal in nature. The LAJI delegation would sit at a table and people would come forward and speak their mind. Members of the delegation took notes but no formal minutes of the meetings were taken. Issues on policing were pervasive topics in all these meetings.

The statements given to the LAJI were wholly unfavourable to the RUC as approximately 90 - 95% of the complaints were regarding police practices.

Mr Reilly recalled an example of such a complaint which involved a lady whose son had been arrested. The lady and her daughter (who was pregnant at the time) went to the police station to find out what had happened to him. The outcome was that after persisting with their questions the mother and pregnant daughter were thrown down a flight of stairs by a police officer. The pregnant daughter sued following a still-birth but although she was awarded damages in compensation, the police officer was never sanctioned. This failure to discipline offending police officers appeared to be a recurring trend.

After having taking notes of the matters during the meetings Mr Reilly would not usually take them any further, as his intention was to raise them with the Chief Constable of the RUC.

Through his reading of Irish-American newspapers, Mr Reilly was aware of Rosemary Nelson's situation. He knew that she was in contact with Edmund Lynch and that together they planned to make a complaint about her case.

The meeting between the LAJI delegation and the Chief Constable of the RUC took place on the 27th February of 1999. The purpose of the meeting was to communicate to the Chief Constable the themes and the comments that had emerged during the other local meetings. Mr Reilly believed that Edmund Lynch led the LAJI delegation.

Mr Reilly recalled that when Edmund Lynch told Chief Constable Flanagan about the meetings and that the vast majority of the attendees were from the Catholic community, the Chief Constable replied to him along the lines of: "Well, they would say that, wouldn't they?" Although the Chief Constable was making the point that the delegation had only heard one side of the story, Mr Reilly reminded Counsel to the Inquiry that the meetings had been advertised in local newspapers and that they were open for anyone to attend.

Chief Constable Flanagan reassured Mr Reilly that disciplinary measures were taken in response of unlawful police behaviour. Mr Reilly also raised the example of police officers threatening Rosemary Nelson. To this Chief Constable Flanagan said that it was the first time he had ever heard of such threats. Mr Reilly in turn was so dumfounded by such a response that he didn't know how to pursue the conversation. Edmund Lynch intervened and exclaimed: "Chief, you have to be kidding us."

Although Mr Reilly believed that Chief Constable Flanagan was well aware of the issues, the LAJI proceeded with the meeting by summarising Rosemary Nelson's situation. Chief Constable Flanagan responded to the LAJI delegation by saying that the matter would be looked into.

As an ex-police chief himself, Mr Reilly hoped that an internal police investigation would be undertaken. Although the two-hour meeting ended on friendly terms (with Mr Reilly and Chief Constable Flanagan sharing their experiences of the FBI Academy), Mr Reilly believed that changes were unlikely to take place whilst Chief Constable Flanagan was in charge.

### **Witness: Mr Thomas Burke**

At the time of the interview with the Counsel of the Inquiry, Mr Burke was still a practising civil litigation lawyer in Denver, USA.

He became a member of the LAJI in mid-1997. His family had a historical interest in Irish affairs. His interest in the Northern Ireland troubles was one that he pursued in his spare time.

As part of the LAJI's functions of monitoring key cases, Mr Burke's role in 1997 centred around the receiving of various communications primarily from Mr Lynch, both in the mail and over the Internet.

The LAJI's aim was also to network with policing and legal-related professions with interests in Northern Ireland.

Mr Burke had a very general knowledge of Rosemary Nelson's work. He knew she was engaged in representing various defendants who were either accused of being IRA members or who had been charged with an IRA-related offence involving violence.

Along with an LAJI delegation, he met Rosemary Nelson on the 17th February 1998 at the Beresford Arms Hotel in Lurgan. The general purpose of the meeting was to get acquainted with a fellow legal professional who the LAJI knew had taken a role in representing unpopular defendants, and to ascertain the challenges of defending such clients. Mr Mac Cionnaith from the Garvaghy Road Residents Committee was present at the dinner, but the main speaker was Rosemary Nelson. During her speech, Rosemary Nelson told the delegation that she had been receiving death threats.

After the dinner when Mr Burke had the occasion to speak to Rosemary Nelson, she told him that she had been receiving death threats through clients which had been held at Gough Barracks. At the time Rosemary Nelson seemed genuinely concerned about her family's safety.

Upon learning that the LAJI delegation had a second meeting with the RUC Chief Constable, Rosemary Nelson mentioned to Mr Burke that she wished she could engage with Chief Constable Flanagan. Rosemary Nelson asked Mr Burke to bring it to the attention of the Chief Constable that she no longer felt safe and that she had received numerous death threats. She mentioned the possibility of applying for the "personal protection programme".

To a limited extent, Mr Burke disagreed with the statement by fellow LAJI delegate Jean Forest that Rosemary Nelson spoke of the threats in a very casual manner. In fact his recollection was that, although he was not sitting next to Rosemary Nelson when the comments were made, she spoke of them in a serious manner.

One of the threats she mentioned to the delegation was fairly recent at the time and took place near a supermarket. This threat was especially frightening to her because she knew by sight many loyalists in the area but this man was unknown to her. As far as Mr Burke could remember Rosemary Nelson did not report the incident.

A few days after the dinner with Rosemary Nelson, part of the LAJI delegation (including John Farrell, Walter Pollard and Mr Burke himself) met with Chief Constable Flanagan. Edward Lynch and Peter Connell were the only two who met with the Lord Chief Justice.

The meeting with Chief Constable Flanagan lasted approximately two hours. It consisted of a discussion initiated by the Chief Constable on the challenges that he and the force as a whole faced. He firstly highlighted that the police

force was sizeable and as a result difficult to manage. Secondly Chief

Constable Flanagan pointed out that disciplinary action against RUC officers required a burden of proof to be satisfied "beyond any reasonable doubt". Mr Burke recalled the atmosphere during the meeting as being somewhat tense and that Chief Constable Flanagan was inhospitable.

The topic of threats directed to Rosemary Nelson was led by Mr Pollard. Mr Pollard began with the premise that it was the duty of any police force to protect its citizens, particularly those whom it had learned or it had reason to believe were subject to death threats.

In response the Chief Constable said the police force depended upon human right groups such as the LAJI and that he was happy the delegation was bringing these matters to light. He promised to look into these allegations of threats. In contrast, when Mr Burke talked of the threat Rosemary Nelson received at a supermarket, Chief Constable Flanagan appeared tense and did not say he would investigate the matter.

At the end of the meeting, Mr Burke however recalled having felt mildly encouraged by Chief Constable Flanagan's receptiveness to the issues discussed.

Mr Burke returned to Northern Ireland in 1999 as part of a smaller LAJI delegation, and although he didn't personally maintain contact with Rosemary Nelson, he was aware through his relationship with Edmund Lynch that her life was still in danger. The purpose of the LAJI's visit was to follow up with Chief Constable Flanagan the matters which had been discussed a year earlier and more generally to monitor the Good Friday Agreement.

On this occasion Thomas Reilly, Edmund Lynch, Norman Higgins, Ned Devine, Patrick Whalen, Judge Henry and Mr Burke constituted the LAJI delegation. The meeting which lasted approximately one hour, was considerably shorter than the previous years'. Rosemary Nelson's case was high on the agenda of the delegation and was the main focus very early on in the discussion.

Mr Flanagan claimed to be unaware of any issue relating to her security. However when he was reminded of her case, Chief Constable Flanagan asserted that Rosemary Nelson was not entitled to any protection under the law. Mr Burke described the delegation upon hearing these words as being thunderstruck, and despaired of any further discussion with the Chief Constable.

After the murder of Rosemary Nelson, Mr Burke returned in July to Northern Ireland along with Mr Pollard to act as observers during the Orange Order parade in Portadown. During his visit they met, at Mr Lynch's suggestion, Mr Donnelly and Geralyn McNally of the ICPC.

During this brief social meeting Geralyn McNally mentioned that in the

Rosemary Nelson murder investigation 40 to 50 per cent of the police officers had turned up drunk, and the majority of them were unco-operative. GERALYNN McNALLY also expressed concerns about the fact that RUC officers (she presumed) had followed her home on several occasions.

**Witness: Mr John Foley**

Mr Foley, a practicing attorney in Boston (USA) and ex-editor of The Lawyer magazine, joined the LAJI in 1995. As an Irish citizen he was involved in Northern Ireland affairs since the early 1990s and would make regular trips to the region to see family and follow issues.

He first met Rosemary Nelson in March 1996 but prior to this date had had several telephone calls with her. Colin Duffy's wife had initiated correspondence with Mr Foley in 1996, while he was editor of The Lawyer in the hope that he could help with her husband's case. The idea was that he would assist in the case as both a lawyer and a journalist.

He let it be known early on that if he found that they were not correct and that Mr Duffy had in fact been responsible for Mr Lyness' death, he would write about it. To this both Colin Duffy's wife and Rosemary Nelson agreed.

During this period, Mr Foley wrote opinion articles and factual pieces for both The Lawyer and the Boston Herald. Rosemary Nelson was very conscious of the need for foreign journalists and lawyers in order to generate publicity, and she encouraged him to write objective pieces on Colin Duffy. After the Duffy case Mr Foley and Rosemary Nelson had less contact with each other, but he pointed out that he never once felt used by her.

In the period between late 1996 and March 1999 he travelled many times to Northern Ireland and if on an occasion he was not planning to meet Rosemary Nelson, he would call her and let her know that he was in the region.

While working on the Duffy case, Mr Foley learned about her high street practice. In the statement given to the inquiry he described her as someone who ". . . provided necessary services in a very professional manner to people who needed zealous legal advocacy " as well as being someone who was (in a sense) the last legal resort for some individuals. He met several of her clients who said, "I don't know where I would be without Rosie".

Mr Foley also came to be aware of the treatment she would receive at police stations and the threats that she received from people who work in the legal system.

He described how on one occasion he accompanied Rosemary Nelson back to her car on Lake Street, and while walking towards the car she said: "Nothing today... ", to which Mr Foley asked what she meant by that. She then explained how she once found an envelope under the windscreen. Inside the envelope was a picture of her with a target drawn on it. Mr Foley drew his own conclusion that reporting the threat to the RUC was an option that was closed

off. He recommended that in future she keep such letters and preserve them as evidence, but was unsure as to whether she followed this advice.

In relation to her attitude, Mr Foley believed that Rosemary Nelson's real concerns (especially in late 1998) were masked by humour and bravado. He also stayed at her house on different occasions and in his eyes she was not especially concerned about security. Indeed he recalled that people could more or less come and go as they pleased.

Paul and Rosemary Nelson kept a tape recording of the threatening messages that were left on their answering machine. Rosemary Nelson strongly believed that she was being monitored and that her phone was tapped. People knew for example when Mr Foley was staying over because he used to go jogging around the block.

Paul Nelson and Mr Foley would often go for a drink together and talk. Mr Foley recalled Paul Nelson being very concerned, as he knew that she was taking cases that were controversial and that threats were involved. At the same time Paul Nelson also recognised her work was very important and that she was very good at it.

At about the same period as the threat posted on Rosemary Nelson's car windscreen (August 1996), Mr Foley had a conversation with Aine Murray regarding death threats made by telephone to Rosemary Nelson's office.

In August 1996, Mr Foley accompanied Rosemary Nelson on a late night visit to the police station in Lurgan. Upon their arrival at the station they drove into a small car park and it was well lit, but just as they were about to enter the area the lights went off and it made the place very dark. Mr Foley became nervous and suggested they drive out of the car park. Rosemary Nelson ignored him and said, "Fuck them," and told Mr Foley that he could stay in the car if he wanted.

As they walked from the car park to the police station entrance, Mr Foley shielded his head with his arms because it was so dark, and he sensed that they would both get "jumped".

Inside the police station, the police officer at reception called over to his superior saying that "scar face" had arrived.

Mr Foley recalled another incident which happened to him personally in March 1996 when Colin Duffy was awaiting an appeal and serving a sentence in prison. He visited Colin Duffy in prison and presented himself as Colin Duffy's lawyer (American counsel).

During his visit in which he was unable to take notes, Colin Duffy whispered to him that everything they were saying was being listed to. Colin Duffy that Mr Foley was now involved in something that was bigger than both of them and that many people were in danger. Colin Duffy also "welcomed" Mr Foley to the club, and by this Mr Foley believed he meant he was welcoming him to the

Republican side. Mr Foley pointed out to the Inquiry that he didn't belong to any side.

The extent of Mr Foley's involvement in the Colin Duffy appeal was exemplified when he was stopped two hours after he left court on the 19th September 1996. On his way to Dublin, RUC officers in the Newry area stopped his car. They addressed him by his surname and told him, "We are watching you."

Through his conversations with Colin Duffy and Rosemary Nelson, Mr Foley was also aware of the RUC tendency to make derogatory comments to lawyers through the medium of their clients. He speculated that Rosemary Nelson took such threats more seriously than for example ones which were left on her car windscreen, because they came directly from the RUC.

The nature of the divided society was illustrated to Mr Foley when Rosemary Nelson gave him a guided tour along with her brother. Mr Foley recalled that on these occasions when driving with her, Rosemary Nelson put a coat over her head because she was conscious that if in certain areas people recognised her, the car would be stopped and their safety would be put at risk.

As part of the LAJI delegation that visited Lurgan in February 1998, Mr Foley also attended the dinner at which Rosemary Nelson talked of the experience of the Catholic community in dealing with the police. In the context of her experiences, Mr Foley agreed with the Inquiry's suggestion that her relationship with the RUC in general was mutually distrustful and confrontational.

Following a recommendation by Edmund Lynch, Mr Foley also attended the delegation's meeting with Chief Constable Flanagan of which the main purpose was to determine what role American lawyers could play to help bring about an improved judicial system for both sides of the community. The LAJI delegation on this occasion was led by Walter Pollard, who attempted to introduce a discussion on the topic of threats made to Rosemary Nelson by the RUC. Chief Constable Flanagan responded by acting as if he was not familiar with the allegations that had been made, this in turn provoked verbal sparring between the two sides and caused the mood of the meeting to change.

Mr Pollard eventually managed to restore calm, and over tea and biscuits in a smaller group he confronted Chief Constable Flanagan over Rosemary Nelson's security issues. The LAJI suggested security measures such as special windows, shatterproof glass, motion detectors, as well as the Key Persons Protection Scheme. However Chief Constable Flanagan's attitude was one that suggested that even if these were proposed to Rosemary Nelson, she would not accept them because she did not trust the RUC.

Mr Foley left the meeting along with the other LAJI delegates with a pessimistic feeling that although issues regarding Rosemary Nelson's security

had been registered with the Chief Constable, there was little chance that they would see an end result.