

## **ROSEMARY NELSON INQUIRY**

**Day 36: 17th June 2008**

**Witness: C138**

The Inquiry Counsel Mr Savill opened the hearing by showing the witness the first and last page of the witness statement given to the Inquiry and a document referring to his custody record. C138 was arrested at Lurgan RUC Station on 6th February 1997 at 18:40. The witness declared that he had gone to Lurgan station himself and was subsequently taken to Gough Barracks. He requested a visit by Rosemary Nelson at 19:21 of the same evening. He was released on 9th February 1997 at 14:15.

The witness stated that he had only used Rosemary Nelson on one prior occasion, after a beating on the street; as a consequence of this incident he made a statement and a claim. He liked Rosemary Nelson because she was a straightforward person, she talked clearly and also because she was "well respected around this end of town and even at the top of town". The witness explained in his statement that Lurgan was split in half, with the top of town being Protestant and the bottom Catholic. The witness's appreciation of Rosemary Nelson's professionalism stemmed from the fact that she would take up a new client regardless of religious faith and a new client would simply be a client to assist.

On Mr Savill's request the witness recalled the general kind of remarks which had been made about Rosemary Nelson while he was in custody; she had been accused of being a money grabber, had it not been for her he would have been out earlier, she was a Provo and she only worked for Provos. At this stage it was only about abusive and unpleasant remarks about her, no threats were being made to her physical integrity.

On his second day of detention the witness saw Rosemary Nelson again and they spoke about the insults he had received during the interviews. She replied he should try not to be intimidated by them, she wrote a statement and told him that if in the future the officers were not able to get the solicitor, he should ask for the inspector. Overall, the witness said, she made him aware of his legal rights. Rosemary Nelson hand wrote the statement given by C138 regarding his whereabouts and actions concerning the allegations that brought him into custody. The statement was written and signed on 7th February. After the consultation with Rosemary Nelson the witness was interviewed by P162 and P135. The statement was given to the officers who said it had been fabricated and that it was just full of lies. According to the statement, the officers were agitated and were frequently shouting. Prior to the statement being handed over, no abusive remarks were made about Rosemary Nelson but after giving it to the officers "they said she was a Fenian bastard and a Provo bastard, and said the reason I was using her was because she was a Provo solicitor". The interviewing officers mentioned Colin Duffy and said Rosemary Nelson was like the "rest of them". The officers mocked Rosemary Nelson's birthmark on her face, they accused the witness

of being a Provo and said once more that had it not been for who his solicitor was he would have been let out sooner. According to the witness statement to the Inquiry, the officers seemed to be very vindictive towards her; in particular, he referred to two "very spiteful" officers, one with a white or grey beard, another with blond hair, P135 and P162.

The insults and remarks continued thereafter, coming from all officers involved but in particular the two described by the witness: it all began once the statement was handed over and, according to the witness, more time was spent talking about Rosemary Nelson than about the allegations concerning him. According to C138, the comments were always very nasty and the officers seemed to "hate her with passion". The witness stated he said nothing as his main concern was to be let out as soon as possible. He never signed the interview records or questioned the fact that in none of them the remarks about Rosemary Nelson were mentioned. The witness added, confirming the information contained in the Inquiry statement, that he had never reported any of the remarks he heard about Rosemary Nelson to anyone while he was held at Gough Barracks: he informed Rosemary Nelson only after his release as he thought that telling her about the remarks would not have done any good to her, perhaps affecting her personally and therefore the quality of her legal work for him. On the release page of his custody records it is evident that complaints were not made against the police officers. On Mr Savill's suggestion that denouncing the remarks made about Rosemary Nelson and the insults he directly received would have given weight to the truth of what he had been alleging, C138 replied that with hindsight that would have probably been the case but at the time the urgency was to get out.

He did, however, tell Rosemary Nelson about what had been said after he was released, without charge, on Sunday. He went to the office either the following Monday or Tuesday. Rosemary Nelson did take what was reported to her by C138 "seriously" and was "very annoyed" by it. She asked the witness if he was prepared to make a complaint on her behalf and he made a one-page statement, signed and sealed on 27th October, in her office. From the correspondence Mr Savill presented, it appeared that Rosemary Nelson had sent a letter of complaint and the statement dated 27th October to the Complaints and Discipline Department. The witness declared he was not aware of the fact that the Complaints and Discipline officer, P146 had been trying to get in touch with him to investigate the complaint or the content of his statement. Ms McNally was in charge of supervising the investigation on this case and from another piece of supporting documentation it appeared that she had sent a fax to Rosemary Nelson on 28th November regarding an interview with the witness. P146 had, in turn, sent a letter to Rosemary Nelson calling for an interview on 4th December 1997. However, on 2nd December, a secretary from Rosemary Nelson's office called the officer to inform him that, due to the office being understaffed, it would have been more appropriate to postpone the interview with the client until after the Christmas holidays. C138 declared that he did not know anything about these exchanges of correspondence and contacts or the scheduled interview.

Mr Savill then mentioned a change in the responsibility for the investigation of

the complaints: from the RUC the case was turned over to the Metropolitan Police under the supervision of Mr Mulvihill. The witness said he was aware of that through a letter he had received dated 20th August. The letter invited him, and/or his solicitor, to visit the premises of the ICPC at the end of September 1998. The witness did not show up on 21st nor on 22nd September, he skipped another appointment fixed for 6th October, leading to the date of 6th November when another interview date was agreed in consultation with Rosemary Nelson's office. C138 justified his inability to attend previous interviews by pleading work commitments; he eventually did co-operate with Mr Mulvihill and released a statement to him. On a letter dated 31st January 2000 Mr Mulvihill informed the witness that there would be no prosecution of any police officers but the disciplinary aspects of the case would be considered. The witness said he was not at all surprised by the outcome and when Mr Savill presented him with the possibility that he actually fabricated the whole complaint because he had some axe to grind with the police, C138 replied that he would not have agreed to collaborate with the Inquiry had he told lies. He confirmed that the statements given to the Inquiry corresponded to the truth. Mr Savill then brought to the witness's attention the fact that, while he admitted reporting to Rosemary Nelson what had happened in custody a day or two after his release, the statement was dated 27th October. The witness confirmed that all information given to his solicitor, and contained in the statement, was conveyed to her as he said either on the Monday or the Tuesday following his release on Sunday: however, he did not know why it was dated more than a month after he gave it to Rosemary Nelson. Mr Savill then referred to C138 statement : "The word was that Rosemary had been set up. The cops or someone in the security forces had set her up to get murdered. As they say, even a blind man would have known. The police hated her with a passion because she used the law and she used it to the first degree. They couldn't cope with this, so they set her up." The witness told Mr Savill that he believed these words were not based on specific information he may have had but were simply his personal opinion.

### **Witness: Mr Colm Toman**

The witness statement is dated 2nd June 2008. Mr Toman was arrested on 11th February 1997 and taken to Gough Barracks. He was released on 14th February 1997. He always refused to sign the custody records in case the police used his signature "to fix him" or for any other purpose against him: he confirmed that he had been harassed by police before in relation to criminal matters (related to terrorism) and that he chose Rosemary Nelson to represent him because of the good reputation she had amongst his friends. He told Mr Savill that whenever he was going out for a walk he would get stopped and tormented by the police. He had seen Rosemary Nelson once or twice a day while in detention. While he was interviewed, there were always two detectives questioning him and two officers at the door to intimidate him.

It was not during the first interview that remarks were made about Rosemary Nelson, the witness said, but roughly in and after the second: the officers, according to Mr Toman, said she was a senior Provo and that she had them (the witness and presumably his friends) well trained. He added they went on

saying that she was a fire bomber and that was how her face was injured. The officers said "she was beat by the ugly stick". There were also threats made to her life and this was especially happening when, according to Mr Toman, the officers got a bit frustrated during the interviews, telling him they would get him and his solicitor out and that he would end up like his uncle, in the graveyard. Most of the remarks made during the second and third day of interviews, the witness recalled, were made by a black-haired fellow referred to in paragraph 11 of the statement, but the grey-haired officer referred to in the same paragraph made comments too.

Reading directly from the statement, Mr Savill recited: "They said that she had been part of an active service unit which had been caught when a fire bomb had exploded prematurely causing the scarring on her face. They also said that she had been beaten with the ugly stick and that she was Colin Duffy's right-hand woman. They said they would have her sorted out and that there would be no fucking Rosemary Nelson, Provo solicitor, running about. They said she would not be helping me this time. They said they would lock me up and throw away the key." Continuing with the statement it emerged that the officers kept saying they would take him and his solicitor out, the lives of his dear ones were directly threatened and references to his uncle being dead were made.

The witness was arrested in relation to an attack involving a rocket: at one stage the officers brought in a rocket and put it on the desk. They expected Mr Toman to tell them how he had made it and how it could be used: he replied he had no idea. The interviews were mainly conducted by CID officers who would not give their identity, but there were other officers too. The witness was sure that the interviews were not tape recorded but only video recorded; however, from the statement it emerged that from the second day of interviews onward, the red light, which was supposed to indicate the correct functioning of the video recording, had not been on. In addition to that, Mr Toman recalled that the sergeant who was supposed to monitor the recordings in the video room was actually standing by the door; he recognised him as on his way to and from the interview room, he had to pass by the monitors room where the sergeant was normally sitting. Going back to the statement, Mr Savill read out the description Mr Toman had given of the two officers responsible of the nasty remarks and threats against Rosemary Nelson: "One was a black-haired fellow whose name was [blank]. He was in his 30s, skinny and about five foot seven. Another had grey hair and a grey beard. He was well into his 40s, five foot eight or five foot nine and heavily built."

During an interview which took place, unusually according to the witness at 1:00am, Mr Toman was informed that a soldier called Stephen Restorick was killed in south Armagh; the black-haired officer roared at the witness shouting that they would finish Rosemary Nelson off and that there would be no "Rosie the Provo" any more. The officer said, as reported by the witness in his Inquiry statement, "We will fucking kill her, a Provo like the rest of you." There was, however, no entry in the custody record referring to this interview but the witness confirmed it had happened. On a few occasions Mr Toman tried to get

up from his chair but was brutally pinned back down to it and threatened to be “put down”, together with his lawyer Rosemary Nelson. Mr Toman, however, never expressed the wish to make a complaint about what had been said; after his release, he told Rosemary Nelson about the threats. Rosemary Nelson was very shocked. Mr Toman was also subject to further threats and witnessed comments being made about Rosemary Nelson in July 1997, when he was arrested in connection with a train hijack which took place in Dumcree. Once again Rosemary Nelson was accused of being a fire bomber and the comments about the beating with the ugly stick were repeated. Mr Toman said that Rosemary Nelson, after being told about them or about the threats to the physical integrity of the witness, always tried to reassure him, telling him to try not to pay attention to them.

RNI-206-072 was called on to the screen by Mr Savill: Mr Toman did not recall why, to whom or when it was given; he said he was given a statement to sign but there was a page missing, where all the threats had been allegedly reported to Rosemary Nelson. Mr Savill revealed that it was Paul Mageean from the CAJ that took the statement after being contacted by Rosemary Nelson in late February. Mr Mageean declared that, in agreement with Rosemary Nelson, they would take statements from a number of clients alleging similar threats to Rosemary Nelson, Barry Toman being one of them. Mr Savill asked the witness why, in a statement released presumably a couple of days after his release no word was contained about the serious threats confided to Rosemary Nelson. Mr Toman is sure to have provided such information and insisted there must have been a missing page; however, the Inquiry Counsel said that, because the document flowed, made sense, and was coherent in its drafting, such information had not probably been conveyed to Rosemary Nelson or Paul Mageean.

The witness had his ears repeatedly pulled by the interviewing officer, he was slapped at the back of his head, a chair leg was placed on his foot while an officer sat on it. Essentially, he was bullied. The officers allegedly also tried to throw him down a flight of stairs. Counsel referred to a letter dated 21st October addressed to Rosemary Nelson putting reliance on her to bring the witness and his brother to an interview on 11th November. The witness did not recall Rosemary Nelson or anybody else informing him of these interviews. On 12th November 1997 Annette, the clerk working in Rosemary Nelson's office, called the ICPC apologising for the no show and setting a new date. The witness did not recall ever having discussed these kind of letters or invitations to attend interviews, nor the one dated August 1998 from the Metropolitan Police. Mr Mulvihill had written to him to ask for better co-operation to pursue the investigation but Mr Toman denied having ever seen it. On 18th September Ita, from Rosemary Nelson's office, called to suggest the 22nd as a possible date for Rosemary Nelson to attend. The interviews were further scheduled for the 6th October. All this implies, according to Mr Savill, that the witness must have been in touch with his solicitor to pursue the investigations. Mr Toman never saw Mr Mulvihill.

In July 1997 the witness was arrested with Brian Loughran and Shane MrCroy. In the statement given to the Inquiry, the witness also mentioned an

incident he witnessed involving a Land Rover and a member of the police, at the top of the Kilwilke estate at the top of the junction between Victoria, Levin and Lake Streets: a member of the police force got out, he was wearing a balaclava and had an assault rifle in his hand, pointing it up to the sky. It must have been about midday and Mr Toman was hanging around with some friends: he saw an Army patrol suspiciously remove an object from what looked like a concrete pillow. There were about 16/17 soldiers in the patrol spread out in line. The witness was about 200 feet away. There was a Scottish regiment seemingly patrolling the area around the soldiers. He could recognize them from their tartan berets; one of them said "Do you think she needs a hand down there?" This happened on Sunday, the day before Rosemary Nelson was murdered.