

THE ROSEMARY NELSON INQUIRY

Day 44: 2nd September 2008

Witness: P228

At the start of the proceedings the Chairman of the Inquiry, Sir Michael Morland, was informed that there were two representatives of the Ministry of Defence seated in the Inquiry chamber. After politely requesting them to leave, the Chairman reiterated that only Inquiry personnel and the participants' legal representatives should be present in the chamber. He also requested that, for future reference, it was important that the identity of the any other individuals present should be checked before the Panel entered the chamber.

The Chairman then proposed the agenda for the day: "to hear witness P228, then after a short adjournment, to consider suggested questions and lines of inquiry submitted by Mr Donaldson (Counsel representing the Police Service of Northern Ireland - PSNI).

Mr Phillips (Counsel to the Inquiry) started the day by questioning P228 about events that happened in February 1997. P228 served as a police officer from 1982 until he joined the Criminal Investigation Department (CID) around Christmas time 1988. He was then based in Lurgan from 7th January 1997 but he had previously served there during the 1980s. After finding himself back in Lurgan, between January-February 1997, P228 described the conurbation of Lurgan, Craigavon and Portadown as very busy in respect to ordinary crime and terrorist activity from both Loyalist and Republican terrorist organisations. At that time, the Provisional IRA was also very active.

As a CID officer, P228 spent sometime – less than a day per week - interviewing suspects at the holding centres. He explained that in early 1997, it was standard procedure that two CID officers at a time carried out these interviews. There were usually 6 interviews per day (2 in the morning, 2 in the afternoon and 2 in the evenings) - each taking 2 hours in duration for a total of 12 hours interviewing time a day. The interviewing officers were able to share the information they obtained. Interview notes were handwritten and each officer took turns to write these down. The officer leading the interview would not be making the notes, but the one making notes (the note-taker) might chip in with questions of his own.

The ultimate decision for allocating interviewing officers was left to the Senior Investigating Officers (SIOs). However, P228 had his own interviewing sub-team with whom he worked on a regular basis. It was rare that a third officer would be present at the interviews, either on supervisory visits or to produce exhibits. Supervisory visits were usually carried out by a SIO. This SIO could raise questions with the detainee or just sit through the interview. However, these visits were infrequent.

Briefings were led by the SIOs, before and after the interviews, with

somebody of the rank of detective inspector immediately signing the post-interview notes. The briefings covered issues on: evidence to date; progression of interviews; additional information arising from interviews; and any other evidence coming to light from the external enquiry team. Any points raised by the external enquiry team were taken up and pursued in subsequent interviews with the suspect. Although there was no interviewing strategy as such, the officers knew what to ask and what points to cover.

It was usual practice that one uniformed custody officer and one of the interviewing officers would return the suspect to his cell. P228 said that, in the course of his career, he had no reason to complain about a fellow interviewer.

Up to this point in his career, P228 had gained substantial experience of interviewing terrorist suspects in his capacity as a CID officer. Nonetheless, he confirmed that he had not received any specific training for this role. He stated that the same interviewing methods were applied to criminals and terrorist suspects alike. During questioning, if the detainee did not reply it was common practice for the question to be repeated again. However, the repeated question would not necessarily be recorded verbatim in the notes. Both the note-taker and the lead interviewing officer would know at what point the relevant questions had been written into the notes for evidence. The content of the notes would be read to the suspect and he would then be asked if he agreed or disagreed. The suspect would often not respond, or they might say that they were satisfied but would refuse to sign it [the notes].

It was standard procedure that the interviewing officers would introduce themselves to suspects before the interview began. If this did not happen, it would be reflected in the notes. Sometimes interviews started with general conversation (i.e. talking about the detainee himself, hobbies, etc.), which was a method used to try and engage the detainee in normal conversation in the hope that it would soften him up to answer the relevant questions. Sometimes it would work; sometimes it wouldn't – even if the suspect was happy to engage in conversation, when interviewers started to ask the relevant questions, they would not respond.

In alleged terrorist cases, the interviewers would not have any contact with the detainee's solicitor [in a non-terrorist case the solicitor would be present if the interview was being tape-recorded]. However, the terrorist suspect would have access to legal representation as soon as they were arrested, and more often than not they would have made an immediate request to see a legal representative. At this point, in February 1997, legal representatives would not be present during any of the interviews in a terrorist case.

Often if a suspect was seeing his solicitor, interviews would be delayed. P228 believed that, in his experience, this was a trick employed by suspects to purposefully delay the interview. P228 could not tell if this was an approach devised by the client or the solicitor.

P228 knew that Rosemary Nelson was a solicitor practicing in Lurgan and although he had frequent contact with a lot of other solicitors, he had fewer

dealings with Mrs Nelson. P228 was asked whether he or his colleagues held any particular views about Mrs Nelson. He said that having had extensive experience in his field, and having interviewed a lot of people who had legal representation, he considered her (Mrs Nelson) no different from any other lawyers. P228 said that Mrs Nelson's name might have been mentioned at briefings, in the context that she was the legal representative of a suspect. He said he had no recollection of other instances where her name was mentioned.

P228's main concern, throughout all interviews with any suspects, was that an application requested by a detainee for access to legal advice would mean the interviews, at that stage, would have to be stopped. If that delay were going to be unreasonable, a detective superintendent's approval would then have to be sought to continue interviewing.

P228 said that the fact that Rosemary Nelson represented high profile cases had no bearing on his or his colleagues' views of her - they had all interviewed people in high profile cases and had all been involved in high profile trials, both on the Loyalist and the Republican side. P228 never heard any comments at briefings where it was implied that she was sympathetic or supportive of Republican paramilitaries. He said that any potential links between her (Mrs Nelson) and her Republican clients was a matter for the intelligence side of their organisation. He was never a member of Special Branch and was never briefed on these [intelligence] matters during the course of his career. He also stated that he was only ever briefed on suspects, which Mrs Nelson was not.

In late 1997, P228 was involved in the investigation into the murders of two police officers in Lurgan and these murders had a great impact on P228 and his colleagues. The murders also provoked a strong and sympathetic reaction from the general public, which resulted in widespread condemnation. Mrs Nelson represented Mr Colin Duffy, one of the people accused in this murder investigation. P228 said that this fact [that she was representing Colin Duffy] did not alter the way she was regarded by him or his colleagues. He did not hear any derogatory comments made against her, but if such comments were made he would have reported them as a disciplinary matter.

Mr Phillips was concerned with two specific cases, which related to interviews that P228 had with two suspects: Mr Barry Toman and C138.

In the case of Mr Toman, P228's interviewing partner was always P162. However, P228 said that the interviewing tasks of lead interviewer and note-taker were interchangeable.

Mr Toman was arrested on suspicion of direct involvement with a „prig“ attack on a police Land Rover that took place on the 11th February 1997. It was alleged that the police were deliberately lured into an estate and then attacked. He [Toman] was believed to be keeping a lookout (“dicker”) for the people that actually fired the rocket. P228 made the arrangements for Mr Toman's arrest but was only involved in 9 of the 19 interviews that took place.

Mr Toman did not answer any questions during his interviews nor did he sign any records when P228 was present. Mr Toman was released on the 14th February 1997 without charge. According to P228 this was one of a number of these sorts of attacks and consequently there was no pressure to get an outcome.

Mr Phillips asked if P228 remembered any instances during his 9 interviews with Mr Toman whether he [Toman] had raised any questions or made any comments about the content of the notes. P228 said no. Mr Phillips then asked that if such comments or questions were raised at the end of the interview, what would have happened? P228 said that if any matter could not be resolved in the interview room it would be brought up with the custody officer, who would then inform the SIO and the matter would have been raised at that stage. If allegations were made about inappropriate comments during the interview, these would be reflected in the notes and also in a complaint form.

Mr Phillips suggested that in Toman's case he [Toman] had made allegations of inappropriate comments during his interviews and these allegations had been reflected in a complaint form. The first allegation was that the two interviewing detectives did not introduce themselves. P228 said that they did and that it was included in the interview notes. P228 would have expected the same procedure from other interviewing officers as a matter of general practice. The only circumstances where an interviewing officer might not introduce himself were when the interviews were part of a multiple series. This is because the suspect would already know the interviewing officers from previous interviews, rendering introduction unnecessary.

Mr Phillips then referred to further allegations about comments made about Mrs Nelson herself during Mr Toman's interviews. These comments were:
"what is Rosemary telling you? Rosemary knows a lot about rockets, you and Rosemary... (blacked out name) shot the rocket".

Other comments were:

"I had got the wrong advice. Look at how many people she put away. They said she was the one who touted, and I'm going to be shot. They put my family under threat, they said we will shoot all of you".

According to Mr Phillips, so far as the Inquiry is concerned, the most important allegation, is the following:

"He is hiding something, we need to get it out of him, the fine bastard, you're dead. Tell Rosemary she's going to die too".

All these allegations were put forward to P228 who denied that any of these comments were made. His only recollection was asking the suspect whether he had seen his solicitor. What they (the interviewing officers) were actually endeavouring to do is to say to the person:

"Look, we know that you have seen your solicitor, but you are still entitled to further representation if you so desire".

P228 stated that if such a conversation had taken place, it would be recorded in the notes. Mr Phillips however suggested that if such derogatory remarks

were made in an interview the last thing that officers would do was to write them down, to which P228 replied that he understood but that the comments did not happen.

Mr Phillips then referred to other allegations made in the course of the Inquiry and also in a Panorama programme, where it had been suggested that Special Branch officers had said that they were going to get Rosemary Nelson or have her killed. P228 was asked if he had heard those comments or those words being used in any of the interviews with Barry Toman. P228 replied that he did not conduct any interviews with Special Branch nor had he heard any such references to Mrs Nelson in the interviews he conducted.

P228 confirmed that there were other officers conducting interviews with Mr Toman: P162, Steven Walker, P121, B145 and B169. Mr Phillips requested confirmation of their physical descriptions as they were at the beginning of 1997. P228 described himself as being in his mid-30s, 5"8" tall and, at the time, two stones lighter, with the same facial appearance and hair colour.

Mr Phillips put forward several physical descriptions of other police officers for P228 to identify. The descriptions were as follows: "Fat, bushy, dirty, fair hair, about 5"10"- 6" tall; "Black hair with a middle parting, well built, 5"10"- 6" tall"; "Black hair to the side and a squeaky voice" None of these descriptions were recognised by P228. Other physical descriptions were made, which P228 identified as potentially being Mr Walker and his interviewing partner P162.

Mr Phillips then went back to the allegations made by Mr Toman, but P228 said that Mr Toman never made any complaints whilst he [P228] was conducting the interviews and he [Mr Toman] never mentioned to P228 about making any complaints during the interviewing process. He said that Mr Toman had had the opportunity to make one every time he interacted with the custody staff. The first time P228 learnt about Mr Toman's complaint against him was around October 1997.

Between 6th and 9th February 1997 P228 was acting as a CID supervisor. He was one of a number of interviewing officers when C138 was in custody in connection with a mortar bomb found in his garage. As a CID supervisor he was the first point of contact if a serious incident happened, so he was the one called out to attend that incident. After C138 was brought into custody, P228 only interviewed him once and was not involved in any of the briefings. C138 produced an alibi statement and was released without charge. In this second case, involving C138, Mr Phillips's questions were directed to the only interview where P228 was the lead officer. This interview was one of a number of interviews that took place over a period of three days. The process of these interviews were described as follows: recorded introductions; the nature of the enquiries; questions about the MK16 mortar rocket and launcher found in his garage; the caution; and a reference to the entitlement to legal advice.

C138 handed in a statement on 7th February 1997, which was attached to the

written notes. Mr Phillips then asked P228 about a complaint made in reference to the conduct of the interviews, which was served on a 17/3 Form dated 27th October 1997. The complaint included allegations about several comments that were made about Rosemary Nelson during C138's interviews and were written as follows:

"...a money grabbing bitch. She is only in it for the money. She got him [namely Colin Duffy] off. He is a Provo bastard..." "...that Rosemary Nelson was as bad as Colin Duffy and that she was a Provo solicitor"; "...they told me I would have got out a lot sooner if I had not requested Rosemary Nelson because of her firm and that the only people who requested Rosemary Nelson are the Provo's".

The last comments were about Mrs Nelson's face marks:

"How did that happen? Is that fucking birthmark? They called her a bastard, fucker and said I wouldn't be in there place only for the fucking bastard, meaning Rosemary. Each time I was questioned, they seemed more interested in Rosemary Nelson. They stated that Sharon was not too bad, but Rosemary, she was the bastard of the lot. They kept on going on to me about Rosemary getting Colin Duffy off. They said they knew Duffy shot Lyness and she knew it too."

P228 said that he did not make those remarks and that the physical description of him or his interviewing partner did not fit with them.

P228 pointed out that he only referred to Mrs Nelson as a legal advisor. Mr Phillips asked if references were made about Colin Duffy. P228 replied that he did not know, but if that was the case these remarks should have been reflected in the notes. C138 was interviewed in February 1997 and was charged with the murder of the two police officers in June 1997.

The Form 17/3 was part of the complaint process. P228 did not know about this complaint until the investigating officer informed him on the 30th October 1997, almost eight and half months after the interview with C138. This surprised P228 because it was the first of such complaints he had received.

The process of initiating a complaint started with the service of Form 17/3 and an opportunity was given to the officers involved to make some statement or comment. On the same date (30th October 1997) the investigating officer served the Form 17/3 and P228 responded by saying "Nothing to say", which meant that he did not rebut these allegations immediately. P228 knew that he was going to be interviewed at a later date to answer these allegations and decided to wait until then rather than immediately responding to the complaint.

At this subsequent interview, P146 recorded P228's statement in which he [P228] stated:

"the content of the interview notes are a true and accurate account of the interviews that I was involved with in relation to Barry Toman. I did not make any derogatory comments against any person during any of the interviews that I was present in and neither did any officer who was there interviewing with myself, and neither would I have permitted [the] same. I also deny any irregularities and interviews with C138 on 7 February 1997".

Mr Phillips then questioned P228 about this last line of his statement relating to C138 and how it came about. P228's response was to say that "the interviewer must have raised the issue", but added that he was never interviewed about it.

Mr Phillips then referred to a document generated in regards to the Mulhivill investigation where it is stated:

"it became apparent that he [P228] had also been involved in the interviews of C138, but that no Form 17/3 had ever been served in relation to these matters. However, in a previous interview regarding the Toman complaint he had done nothing improper in the interviews of C138".

The statement released after the Mulhivill investigations seemed not to pursue P228's involvement in the C138 case from that point onwards.

P228 denied the allegations made by Mr Toman because he believed that they were employed as part of an ongoing and orchestrated smear campaign against the RUC at the time.

The complaints made by Mr Toman and C138 were the only two ever made against P228 throughout his career.

It was rare to receive complaints where the alleged comments focused on the suspect's solicitor. P228 confirmed that there have been other instances where complaints were made for tactical reasons, and in his opinion the real purpose of them was to undermine the RUC. It was important therefore in future to ensure that all interviews were tape-recorded. However, the down side of tape recordings was that the intelligence flow stopped.

Sir Anthony Burden said that there were a total of nine complaints about the same issue from suspects arrested at different times and locations. There seemed to be a common thread behind these allegations relating to comments of a personal nature and attacks made against Rosemary Nelson. In particular allegations that she was connected with paramilitaries and comments made about her personal appearance. P228 argued that these allegations were made as part of a strategic campaign by the Provisional IRA to disassemble the RUC.

P228 is now one rank higher than he was in 1997 and has been working in a uniformed branch since 1999.

The chairman turned to Mr Donaldson and said that they had considered his questions but felt that the witness [P228] had already answered most of them, either through the questions put forward by Mr Phillips and/or by members of the Panel. The remaining questions were ruled out because they would not assist the Inquiry.

Mr Donaldson commented about the consistency of the complaints made by the various complainants, namely the "Lurgan Nine". He asked the Inquiry to look into this further. Mr Donaldson believed that the "Lurgan Nine" had far

more in common with each other:

“they all knew each other; they were all from the Kiwilke Estate areas; they were all clients of Rosemary Nelson; and that there were derogatory references alleged to have been made about Rosemary Nelson”.

Mr Donaldson expressed that P228 could assist the Inquiry in relation to whether or not these people knew each other and whether they all came from the Kilwilke Estate. A further point made by Mr Donaldson was that P228 was only concerned with interviewing two of the “Lurgan Nine”: Mr Toman and C138, both of whom made complaints about allegations made against Mrs Nelson. Mr Donaldson also pointed out the coincidence that nobody else, aside from Mr Toman and C138, had made allegations against P228 and that they [Mr Toman and C138] were two of the “Lurgan Nine”. P228 had not interviewed the remaining seven, so they were not in a position to make allegations against him. The chairman replied that the Inquiry would look into both oral and written statements to reach their conclusions with regards to these questions posed by Mr Donaldson.

Mr Donaldson said that the Inquiry should regard “the other side of the coin”, especially in light of Mr Phillips' opening statement regarding the consistency of the pattern of derogatory references made against Rosemary Nelson. He (Mr Donaldson) suggested that there seemed to be a situation where the complaints by the “Lurgan Nine” had a lot in common, and that it seemed likely that they had colluded with each other in an attempt to smear the police.

The Inquiry asked whether Mr Donaldson could submit his points when all the evidence was finally given by the various complainants, both in written statements and by the evidence of the various officers. Mr Donaldson responded by saying that he would prefer to make his submissions on the actual evidence because there might be some substance in these points. Mr Donaldson added that he felt at a disadvantage in not being able to cross-examine witnesses and, in his opinion, the Inquiry had “set its face” against allowing him to do so.

Mr Donaldson also put forward some MSN questions, two of which he considered to be very important and were relevant to complaints made by Mr Toman and C138. Mr Donaldson invited Mr Phillips to refer P228 to the custody records of Mr Toman and C138. This was because when both of these suspects were asked whether they had any complaints, they said no. Mr Donaldson said that Mr Phillips had referred P228 to documents of which he [P228] was not necessarily the author. Mr Donaldson went on to say that he was only allowed to ask 5 of the 15 questions, which in his opinion, was not good enough.

Mr Phillips intervened saying that, given the general point made by Mr Donaldson about how PSNI's questions were dealt with, he wanted to make absolutely clear that the PSNI's questions and the questions of all full participants were taken seriously by him and his fellow counsel. Mr Phillips went further to say that Mr Donaldson's questions had been sufficiently covered by the witness and that the question for the Inquiry to consider was

whether Mr Donaldson's questions were likely to elicit any further relevant and useful testimony.

The chairman expressed that, although some of Mr Donaldson's points were valid, they were satisfied that P228, as a witness, was not an appropriate or legitimate vehicle to advance these issues. Mr Donaldson could elaborate on these points in his final submission. The chairman went further to say that Mr Donaldson failed to refer to Mr Phillip's opening where, by way of balance, he [Mr Phillips] had said:

“that these were no more than a set of fabricated allegations put forward in a cynical attempt to obtain advantage in criminal proceedings or, more broadly [...] in an attempt to undermine and discredit the police and the RUC”.

Before the day's adjournment, Mr Phillips flagged up that, after P228's evidence, participants in the Inquiry would have noticed persistent references to P228's interviewing partner [P162] in the Toman case. P162 has already provided a statement to the Inquiry, but due to medical reasons he may not be able to be called to give evidence. The chairman then stated that the Panel have considered the medical evidence and decided that it would not be fair to call P162 as a witness.

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