

ROSEMARY NELSON INQUIRY

Day 9: 25th April 2008

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

Mr Phillips began by showing the inquiry a letter dated 10 November 1998 from the UN Special Rapporteur, Mr Cumaraswamy, to the Chief Superintendent of the Command Secretariat of the Royal Ulster Constabulary (RUC). This letter followed up on a visit paid by Mr Cumaraswamy to Northern Ireland and a report in which he had been highly critical of the RUC and in particular of its attitude towards Rosemary Nelson. The Inquiry had dealt with the report the previous day. Mr Phillips said that this letter showed that Mr Cumaraswamy remained involved following his report and continued to express his concerns. Mr Cumaraswamy was concerned that the Chief Constable of the RUC did not take account of lawyers' anxieties about threats made against them by RUC officers unless the lawyers complained officially, while the lawyers felt that the complaints system was ineffectual. The Chief Superintendent responded on 18 December 1998, saying that the Chief Constable would be pleased to meet a delegation of defence lawyers and that he had written to the Law Society.

Mr Cumaraswamy produced a draft general report for 1999 on 13 January 1999. This report dealt with a number of countries. In its section on the UK, Mr Cumaraswamy stated that the RUC had still not done enough to stop the harassment of defence lawyers in Northern Ireland and to deal with threats made against them. The Northern Ireland Office (NIO) received an advance copy of this report on 11 March 1999 prior to its publication. This was four days before Rosemary Nelson's murder. After the murder, Mr Cumaraswamy issued a press release on 16 March in which he recalled that he had frequently expressed concerns about Rosemary Nelson's safety and called for the UK government to establish an "independent and impartial commission of inquiry".

Mr Phillips then turned to a visit by a delegation from the Lawyers Alliance for Justice in Ireland (LAJI) to the Chief Constable. LAJI were a US-based NGO which had previously visited the Chief Constable and which had previously made complaints to the RUC about threats allegedly made by its officers against Rosemary Nelson. This visit took place in February 1999. In preparation for this visit, the RUC prepared an internal briefing paper which showed that Rosemary Nelson had been the source of the largest number of complaints made by solicitors against police officers since April the previous year (the police had been monitoring this).

Mr Phillips then turned to the response to Rosemary Nelson's murder. The Secretary of State was in the US when the murder occurred. The NIO's internal memorandum on the murder stated that "Rosemary Nelson's notoriety as a solicitor was down to the fact that she defended a number of high profile republicans... Comparisons will be drawn between her murder and that of

Belfast solicitor, Pat Finucane, ten years ago”.

A further internal memorandum dealt with the allegation that Jonathan Powell (Chief of Staff to the Prime Minister, Tony Blair) “refused protection for Rosemary Nelson when asked to provide this by GRRC members”. (GRRC were the Garvaghy Road Residents Coalition, a group involved in a high-profile negotiations concerning the Orange Order over the Drumcree parade. Rosemary Nelson was solicitor for the GRRC.) The memorandum stated repeatedly that Rosemary Nelson had never approached the NIO or the RUC for protection, despite its being made clear that such protection schemes existed. The memorandum also stated that the police were not aware of any “specific threat” to Rosemary Nelson.

The Chief Constable was interviewed in the media numerous times following Rosemary Nelson’s murder. He gave no direct answer to the question of whether the police were aware of any death threat to Rosemary Nelson, but denied that police officers had made derogatory or threatening comments about her. At a meeting of the Police Authority in April 1999, the Chief Constable “advised that Mrs Nelson had not sought security advice from the RUC and indicated that prior to her murder the RUC did not have information to suggest that she was the subject of a specific terrorist threat”.

Mr Phillips then turned to the question of whether any threats against Rosemary Nelson were isolated incidents. He suggested that they were not, and listed statements made by members of her staff, clients who made complaints against the police and a statement by Jane Winter of British Irish Rights Watch (BIRW) about Rosemary Nelson having spoken to her about receiving threats. He turned to a statement apparently made by Rosemary Nelson to Mr Mageean of the Committee on the Administration of Justice (CAJ), though it was undated and unsigned. She described four death threats to her office and home received over the telephone by members of her staff and her family. Mr Mageean told the inquiry that he believed this statement to be a note written by him following a telephone call from Rosemary Nelson in 1997 after the arrest of Colin Duffy.

Mr Phillips referred to a statement made by Moya St Leger, a witness to the inquiry. She stated that she had met Rosemary Nelson on 6 August 1998. Rosemary Nelson had shown her three letters of a threatening nature, one of which had a red hand stamp (a loyalist symbol) in the corner. An American lawyer, John Foley, stated that Rosemary Nelson had told him of an incident when she had gone out to her car and found a photograph of herself, evidently taken that same day, on the windscreen, with a target symbol drawn over her face.

Mr Phillips then showed the Inquiry a leaflet entitled “Monster Mashed” which was circulated immediately after Rosemary Nelson’s murder. This leaflet suggested that scenes of joy were repeated in loyalist areas at the death of “Rosemary Nelson, civil rights abuser”. The leaflet made a number of lurid allegations about her having a sexual relationship with Colin Duffy and about her being an IRA bomber. It concluded that “justice has been done”. Mr

Phillips suggested that this document surely reflected views held about Rosemary Nelson before her murder.

Mr Phillips then turned to consider the events and controversy surrounding the Drumcree parade. He suggested that these events fitted into the List of Issues to be considered by the Inquiry with reference to Issue 7: to what extent Rosemary Nelson or others acting on her behalf sought assistance from any state agency regarding concerns for her personal safety, and reactions thereto. This is because of suggestions that members of the Garvagh Road Residents Coalition had asked Jonathan Powell for protection for Rosemary Nelson during talks they were holding with him over the Drumcree parade. Mr Phillips also referred to Issues 22 and 23 and to the Key Persons Protection Scheme (KPPS), a process for dealing with personal security administered by the NIO. He also referred to Issue 14 regarding which organisations could have been “directly responsible” and suggested that, given the intense feelings about Rosemary Nelson’s work evidenced in the leaflet seen earlier, this “takes us outside the range of the familiar organisations”.

Mr Phillips explained some background to the talks involving the British Government (including the Prime Minister himself at some points), the Orange Order and the GRRC regarding the Drumcree parade in 1998. He suggested that Rosemary Nelson was a relatively minor player compared to the leaders of those groups.

Mr Phillips noted that Mr Mac Cionnaith, one of the leaders of the GRRC, had not yet made a statement to the inquiry and that his evidence “would be of considerable assistance to the Inquiry”. He explained that Mr Mac Cionnaith and Joe Duffy were both leaders of the GRRC and that both were elected local councillors in May 1997. The Drumcree parade had been “pushed” down the Garvagh Road in July 1997 and violence had ensued. The Parades Commission had been established to determine routes for contentious parades in 1998. The Orange Order had applied to march along the Garvagh Road in July 1998 and the issue was highly contentious.

Mr Phillips then explained the functioning of the KPPS. The scheme was “discretionary, non-statutory and publicly funded” and was run by the NIO. In 1998 it had 1,100 individuals within it and cost £4 million. There were two categories: the “automatic” category of persons protected simply because of their occupation e.g. judges, for which there was no individual threat assessment or financial limit; and the “discretionary” category, which depended on “occupation and level of threat”. There was a six-level threat system. Levels 1 to 3 received protection under KPPS whereas levels 4 to 6 did not. The important question in Rosemary Nelson’s case, according to Mr Phillips, was whether Rosemary Nelson fell into level 3: “General intelligence, circumstances and/or recent events indicated a significant threat to the individual”; or into level 4, which was imprecisely defined but which was described by a High Court judge in 2004 as being “moderate, where a target’s circumstances indicate that there is potential for being singled out for attack and a moderate level of threat”.

Mr Phillips suggested that the Inquiry might consider whether elements now known to it would have brought Rosemary Nelson into the level 3 category. He noted that the discretionary part of KPPS required an application. If an application was received, an assessment would be made by RUC Security Branch, which was separate from Special Branch which the inquiry had looked at previously. The officer in command of Security Branch at the time had told the inquiry that “even if Special Branch thought there was no threat, we at Security Branch could look at the potential threat from a different angle and come to a different view”.

Mr Phillips noted that the KPPS had been extended following judicial reviews and that, despite government efforts to reduce its cost, 1,800 people fell under the scheme in 2006. He also noted that the “automatic” tier now included some defence lawyers. At the home assessment stage, there was no longer involvement with the Police Service of Northern Ireland (PSNI – the successor to the RUC) as the assessment was conducted by an independent security consultant.

Mr Phillips then turned to negotiations between the Prime Minister and various parties involved in the Drumcree parade which began on 4 June 1998. Sinn Féin leader Gerry Adams wrote to the Prime Minister saying that “what would be intolerable is another collapse by London and another day of shame on the Garvaghy Road”. The NIO wrote an internal memorandum stating that “the coincidence of timing with the elections to the Assembly and its first meeting, probably on 1st July, coupled with the special capacity of the parades issue to polarise opinion and raise community passions, have contributed to a volatile and tense political atmosphere”. A note on 25 June from an unknown author to the Prime Minister stated: “I am worried we may be sleepwalking to disaster”. The analysis suggested an extreme reluctance of the parties to compromise and stated that “in any case, their [the Orange Order leaders’?] influence over the LVF [Loyalist Volunteer Force – a terrorist group]-dominated local Orange Order in Portadown is not great”.

On 29 June, the Parades Commission determined that the Drumcree parade could not pass through the Garvaghy Road except by local agreement (with the GRRC). The Prime Minister then held meetings in Belfast on 3 July. He spoke to the Chief Constable, who stated that he was “worried about preparations for violence by extreme loyalists”. He stated that he would “hold the position if necessary, although he feared violence and bloodshed on a large scale”. On 9 July, the Prime Minister spoke to David Trimble, the Ulster Unionist leader, who said he “feared a difficult weekend”. Gerry Adams disagreed, saying that “the situation was under control”.

There were talks involving the GRRC on 11 July 1998. Following these talks, the GRRC asked for and received an escort home from the Army (they refused an RUC escort). Later, on 20 July, an internal memorandum in the NIO stated that “Brendan McKenna, at the indirect talks... [on 11 July], asked if it would be possible for the RUC to meet him to discuss his personal protection”. A meeting later took place between Brendan McKenna and the

NIO on 21 July in which he asked for an NIO official to contact him the next day regarding the personal security of the GRRC. He stated that contact with the RUC had been unsatisfactory.

Mr Phillips referred to a report from British Irish Rights Watch (BIRW) which alleged that the issue of “security for the whole of the Coalition [the GRRC] and in particular, their legal representative, Rosemary Nelson, was raised with Jonathan Powell” at the meeting on 21 July. According to Mr Phillips, there was no specific reference to Rosemary Nelson in that context.