

# PROTECTION OF HUMAN RIGHTS ADVOCATES IN NORTHERN IRELAND

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## HEARING BEFORE THE COMMISSION ON SECURITY AND COOPERATION IN EUROPE ONE HUNDRED SIXTH CONGRESS SECOND SESSION

MARCH 14, 2000

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# PROTECTION OF HUMAN RIGHTS ADVOCATES IN NORTHERN IRELAND

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TUESDAY, MARCH 14, 2000

COMMISSION ON SECURITY AND COOPERATION IN EUROPE,  
WASHINGTON, DC

The Commission met, pursuant to call, at 10:00 a.m., in Room 2255, Rayburn House Office Building, Honorable Christopher H. Smith, Chairman of the Commission, presiding.

*Commissioners present:* Hon. Christopher H. Smith, Chairman; Hon. Joseph R. Pitts; Harold Hongju Koh, Assistant Secretary for Democracy, Human Rights, and Labor, U.S. Department of State.

*Members present:* Hon. Benjamin A. Gilman, Chairman, Committee on International Relations.

*Witnesses present:* Geraldine Finucane; Eunan Magee; Jane Winter, Director, British Irish Rights Watch; Paul Mageean, Legal Officer, Committee on the Administration of Justice; and Michael Posner, Executive Director, Lawyers Committee for Human Rights.

## OPENING STATEMENT OF HON. CHRISTOPHER H. SMITH, CHAIRMAN

Mr. SMITH. The Commission proceeding will come to order.

The purpose of this hearing is for the Commission on Security and Cooperation in Europe, which monitors and encourages compliance with the 1975 Helsinki Final Act, to receive reports on allegations of collusion by members of the security forces in the murders of two prominent defense attorneys, Patrick Finucane and Rosemary Nelson, and to receive reports on the status of the rule of law and the independence of defense attorneys in Northern Ireland.

Since 1976, our Commission has held countless hearings, sponsored fact-finding human rights missions, and published reports concerning implementation of the commitments made by the participating States of the Organization for Security and Cooperation in Europe.

The United Kingdom is a leading participant in the OSCE, and signed the 1990 OSCE Copenhagen Document, which stated in part, "The participating States further affirm that, where violations of human rights and fundamental freedoms are alleged to have occurred, the effective remedies available include the right of the individual to seek and receive adequate legal assistance."

Today marks the Commission's first ever hearing on human rights abuses in Northern Ireland. The Commission has sponsored two fact-finding missions to Northern Ireland. One led by former Chairman, Dennis DeConcini in 1992, and a second which I led in 1997. Since my fact-finding mission in 1997, great strides have been made toward peace in Northern Ireland. The cease fire has been virtually intact for 5½ years now. In 1998, the Good Friday Agreement was signed and approved by the people, and after some delay power was devolved and the Northern Ireland Assembly began its deliberations in December of 1999.

Regrettably, the progress has not been without some setbacks. Just last month, the British Government dissolved the Assembly over the issue of decommissioning of arms in the hands of paramilitary organizations. Thus, with the legislative dimension of the Good Friday Agreement stalled, it is increasingly important to underscore those aspects of the peace process, namely securing the protection of human rights and the fair administration of justice for all the people of Northern Ireland that can still be achieved unilaterally by the British Government.

Ensuring a defendant's rights to a fair trial and to unfettered access to appropriate counsel is crucial if Northern Ireland is to achieve a lasting peace. The central responsibility for assuring this right and maintaining the rule of law belongs to the government, in this case the British Government. However, by supporting continued restrictions on due process rights, the so-called emergency provisions, and by refusing to take decisive actions to protect defense attorneys, the government has failed miserably in this regard, and instead has exacerbated the problem.

As Chairman of the House Subcommittee on International Operations and Human Rights, I have convened four hearings on human rights violations in Northern Ireland. We have highlighted a variety of concerns but have focused most on harassment of and violence against defense attorneys and the possible complicity of members of the RUC in these acts.

In September of 1998, our panel heard from Param Cumaraswamy, the UN special rapporteur on the independence of judges and lawyers, who after his own fact-finding mission to Northern Ireland found that RUC officers engaged, and I quote him, "in activities which constitute intimidation, hindrance, harassment or improper interference" with criminal defense attorneys.

He urged that the authorities, preferably the new Police Ombudsman established by the Good Friday Agreement, conduct an independent investigation of all threats to counsel in Northern Ireland. Mr. Cumaraswamy also called for an independent judicial inquiry into the case of Patrick Finucane stating, "there seems to be at least *prima facie* evidence to show that there could be security forces collusion in the murder."

At the same proceeding, we also heard from defense attorney Rosemary Nelson. Just 6 months after her testimony here in this building, Rosemary was murdered, the victim of a terrorist bomb. Tomorrow marks the one-year anniversary of Rosemary Nelson's murder, and we continue to be moved by her compelling, courageous and all-too-accurate testimony of 18 months ago. Rosemary told us that she had been the subject of harassment, including death threats from members of the RUC.

She told us that she had notified authorities about the threats on her life, but felt little optimism about them being properly investigated, since the complaints themselves are investigated, as she said, by the RUC. She captured the magnitude of the problem and how it had corroded justice in Northern Ireland when she said, "No lawyer in Northern Ireland can forget what happened to Patrick Finucane, nor can they dismiss it from their minds." She called the allegations of official collusion particularly disturbing and asked the Subcommittee to do all in its power to bring about a public inquiry.

The Subcommittee, the full Committee and many members of Congress responded. First, we sent a letter co-signed by a bipartisan delegation of 20 members to Prime Minister Blair urging an independent public inquiry into Pat Finucane's murder and requesting implementation of other recommendations designed to protect defense attorneys.

In April of 1999, after Rosemary's death, Congress adopted my bill, H.Res. 128, which condemned her murder and called on the British Government to launch an independent inquiry into Pat Finucane's murder and in independent investigation, an RUC-free investigation, into Rosemary Nelson's killing. The resolution again urged the British Government to institute protections for defense attorneys at risk in Northern Ireland.

Then late last year, Congress passed and the President signed our legislation that restricts joint-RUC/FBI training seminars unless a vetting process is established to exclude all RUC members who have committed or condoned human rights violations, including any role in the murder of either Patrick Finucane or Rosemary Nelson.

We in the Congress have done a great deal to underscore how important the independence and protection of lawyers is to the rule of law. Yet, the response thus far by the British Government has been frankly very disappointing. For instance, in a reply to our letter for a public judicial inquiry, Prime Minister Blair cited the two previous police investigations, neither of which have been published, and wrote, "I am not persuaded that such an inquiry would bring anything new to light." How does he know? They haven't done it.

We wrote him again, pointing out the numerous new developments in the Finucane case, including the Northern Ireland Law Society's call for a public inquiry and the arrest of Alfred Billy Stobie, an alleged RUC informant, who was charged with the murder. We reiterated our request for an independent judicial inquiry, and this time we didn't get any response at all.

Yet, despite the inaction by the British Government, the call for a public inquiry into both cases is growing not diminishing. Just 2 weeks ago, after meeting with Mrs. Finucane, Irish Prime Minister Bertie Ahern stated publicly, and I quote him, "The Government strongly shares the view that a public inquiry needs to be established into all of the circumstances surrounding this appalling murder."

Last week, I urged the Clinton Administration to join us in boldly stepping up its public statements on the importance of a public inquiry into these cases since they have such a broad significance to the rule of law and the peace process in Northern Ireland.

Before I introduce our very distinguished witnesses, I would like to ask any member of our panel if he would like to make an opening statement. We have a very distinguished panel that is unique in Congress—this panel is made up of 18 members of the House and Senate, but significantly three members of the Executive Branch. We are joined by the Administration's point person for human rights, a man for whom I have a tremendous amount of respect, Harold Hongju Koh, the Assistant Secretary for Democracy, Human Rights, and Labor. I would like to yield to Harold at this point for any opening comments he might have.

**OPENING STATEMENT OF HAROLD HONGJU KOH,  
ASSISTANT SECRETARY FOR DEMOCRACY, HUMAN RIGHTS,  
AND LABOR, U.S. DEPARTMENT OF STATE**

Sec. KOH. Thank you, Mr. Chairman. I want to commend the Commission and its co-chairs, Congressman Smith and Senator Campbell for holding this important hearing on this sad anniversary. The topic of protecting human rights advocates in Northern Ireland is of deep concern to the State Department and to my Bureau, the Bureau of Democracy, Human Rights, and Labor for three different reasons.

First, because of our abiding concern about the protection of human rights defenders around the world. This has been the subject of a UN declaration and now presents further possibilities for action to create a mechanism to implement protection of human rights defenders. I think that to put a human face on it, it is important for us to again review the status of investigations into the murders of two very courageous defenders, Patrick Finucane and also Rosemary Nelson.

Secondly, from the perspective of protecting lawyers and the rule of law, I am delighted to see here Michael Posner, a longtime friend and courageous leader in this field, who will be testifying, as well as Mr. Mageean. I met Martin O'Brien only a week ago in Dublin and spoke to him about current events and developments in this case, and the role that you have been playing with regard to the protection of lawyers I think has been a critical one.

Our third and very timely concern is with regard to the situation of human rights in Northern Ireland. The Clinton Administration strongly believes that the protection of human rights and accountability of all public institutions is central to a lasting peace. As I said, we support the protection of defense lawyers everywhere, and we believe that the tragic murders of Rosemary Nelson and Patrick Finucane only underscore the need to build confidence in the legal system and the police force in Northern Ireland. We believe that the allegations of collusion by the RUC in Mrs. Nelson's murder are disturbing and can only be resolved by an investigation that not only is but is also seen to be fundamentally impartial.

On February 25, I had the honor to present to the House and the Senate our 1999 Country Reports on Human Rights Practices around the world. That report covered in great detail the circumstances of Mrs. Nelson's death by car bomb in March 1999 as well as the controversy surrounding the case, and updates the status of the investigation into the murder of Patrick Finucane, now more than 10 years in the past.

I will say that Rosemary Nelson visited our Bureau only months before she was killed. Her courage and compassion made a tremendous impact on everybody in our Bureau. We are very eager and anxious to continue working on this matter and to try to bring some comfort to the families and also some clarity to the situation in addition we hope to building a longer term solution to the problems of human rights and peace in Northern Ireland. Thank you.

Mr. SMITH. Secretary Koh, thank you very much. I would like to yield to the Chairman of the full Committee on International Relations, Congressman Ben Gilman from New York.

## OPENING STATEMENT OF HON. BENJAMIN A. GILMAN, CHAIRMAN, COMMITTEE ON INTERNATIONAL RELATIONS

Mr. GILMAN. Good morning, ladies and gentlemen, and thank you, Chairman Smith, for conducting this very important hearing. I commend Secretary Koh for joining us this morning. We thank him for his good efforts on human rights throughout the world.

I am pleased that Jane Winter is here from British Irish Rights Watch, with whom I met in London about a year ago I think it was, when she introduced me to John Weir, and we had an opportunity to get some background on all of this problem at that time.

To the Finucane and Nelson families, we extend our heartfelt thanks for your presence and your strength and perseverance in trying to find the answers to the murder of your loved ones. It is certainly extraordinary and we commend you.

Like so many others, your task in obtaining truth and justice in Northern Ireland certainly has not been easy. The resolution of both of these tragedies and the bringing to justice of those responsible, whether they are linked to the security services or not, cannot come soon enough. The British Government, regrettably, has been dragging its feet on these issues, and we in the Congress will continue to stress the need for independent inquiries. The pace with which both inquiries have been conducted is far too slow. The British Government needs to pick up its pace, particularly now.

In last year's State Department Authorization Bill, we called for by statute certification from the President that none of the Royal Ulster constabulary officers we might train have in any way been linked or involved in the killing of either Patrick Finucane or Rosemary Nelson, and that they cannot be trained by any U.S. federal law enforcement agencies, including the FBI, if they were so involved.

That bill also requests from the Administration that a report on past training programs be submitted to the Congress to include a detailed curriculum of what programs were previously taught to the RUC by the FBI or other federal law enforcement agencies. We are still waiting for the certification and the report from the Administration and have been pressing them hard for certification and analysis and are calling for the Administration to pick up its pace here as well.

In relation to the bigger issue in the north, that of criminal justice reform, the first thing we need is a new police service which reflects the new north, shares its diversity and respects human rights. The Patten Commission Policing Report was a good first step, and I was pleased when I met with Chairman Patten earlier this year in Europe and he openly acknowledged the major contribution that our International Relations Committee work played in formulating his final recommendations.

The Ulster Unionist Party has spent weeks trying to undo the Patten Report. I think that tells us a great deal about the need for policing reform and for major changes. I'll have an opportunity to meet with both the Taoiseach and Secretary Mandelson surrounding St. Patrick's Day events here in Washington. We will be meeting with them later this week. We will be pressing for implementation of these policing reforms, so that never again do we see the kind of security service collusion that was involved in the Patrick Finucane case, or as many suspect and fear may have been involved in the Rosemary Nelson case.



I look forward to hearing from our witnesses this morning, Mr. Chairman, on the latest developments in these cases on the murder of Nationalist lawyers merely because they represented their clients. Thank you again for conducting this hearing this morning.

Mr. SMITH. Thank you very much, Chairman Gilman. Commissioner Pitts?

**OPENING STATEMENT OF HON. JOSEPH R. PITTS,  
COMMISSIONER**

Mr. PITTS. Thank you very much, Mr. Chairman, for holding this hearing on this very important issue, protecting human rights advocates in Northern Ireland. I have no prepared opening statement today. Nevertheless, as perhaps the newest member of the Helsinki Commission, I am looking forward to being educated on this issue. The protection of lawyers and the upholding of rule of law I find is a common issue in many countries about which we have hearings, and I am looking forward to listening to the distinguished witnesses today. Thank you very much.

Mr. SMITH. Thank you very much, Commissioner Pitts. Let me just introduce our very distinguished witnesses to the Commission this morning.

First, Geraldine Finucane. Geraldine's husband, as we all know, Patrick Finucane, was murdered in Belfast by a masked gunman on February 12, 1989. All of this was done right in front of the family, in front of his wife and his three children at their home in Belfast. He was shot 14 times, including at close range. Geraldine was, as we know, injured in the attack, most likely by a ricochet bullet. The group that claimed responsibility for this horrific act was the Ulster Defense Association Ulster Freedom Fighters, UDAUFF organization.

Since then, there has been much evidence to suggest collusion by the RUC. This Commission and our Committee has asked repeatedly—and Mr. Gilman and many of us have asked repeatedly—for a free and independent investigation into this, and have yet to get it.

Michael Finucane testified before us back in 1997 and did a masterful job. I was so impressed at the time by his lack of bitterness over what, for a family member, has to have been one of the cruelest things anyone could possibly endure. He was seeking truth and justice and ultimately reconciliation based on that truth. That those who commit these crimes ought to be held accountable. That is the key, according to his testimony when he appeared, to the future of Northern Ireland.

We also have Eunan Magee, who is Rosemary Nelson's brother. Eunan works as a teacher in Derrynoose in County Armagh. We all appreciate very much his willingness to come here to testify after the great loss that he and his family has suffered of losing his sister. When Rosemary sat where you sat, Eunan, she absolutely—you could have heard a pin drop that day at that hearing when she talked about the RUC. All of us were moved by her courage. We owe it to her, all of us who care, both on the other side of the Atlantic as well as here, to pursue this until those who have committed these crimes are held accountable.

I would like to yield to Geraldine if she would proceed.

**TESTIMONY OF GERALDINE FINUCANE,  
WIDOW OF PATRICK FINUCANE**

**Ms. FINUCANE.** Mr. Chairman, distinguished members of Congress, fellow speakers, ladies and gentlemen, I would like to begin this submission by sincerely thanking Chairman Smith for his work in organizing this public hearing. I cannot emphasize the difference it makes both to my family and the people in general to see the crucial importance of this issue. I would also like to thank the members of Congress that have attended today and in the past, the NGO's that have worked so tirelessly to keep this issue alive, and all who have persevered in the quest for justice for my family.

In 1997, the House Subcommittee on International Operations and Human Rights convened its first hearing on the intimidation and murder of defense lawyers in Northern Ireland. My eldest son, Michael, gave testimony at that hearing, and he publicly accused the British Government of ordering and arranging the murder of his father.

In 1998, Pat's law partner, Peter Madden, a true friend to both myself and my family, spoke of the devastating effect that the murder of his friend and partner had on himself and on the legal profession in Northern Ireland as a whole.

At that same hearing, Rosemary Nelson testified about threats that she had received time and again as she carried out her work as a defense lawyer. One year ago, Rosemary was murdered. Those who said it could not happen again were wrong. Those of us who had insisted that it could were devastated.

It is clear that the British Government is responsible for the deaths of my husband and Rosemary Nelson. This is not just because they failed to protect them. Pat and Rosemary were the victims of British Government policy, that of selective targeting and directed assassination. My journey to this conclusion has taken 11 years. Having arrived at this point, I am not only convinced by what I have learned, but I am also horrified by it. Because the truth, as I now know it to be, is overwhelming.

When my husband was killed 11 years ago, I started asking questions about his murder. For the first years, I believed his case to be the work of a self-contained loyalist unit. After the arrest of the British Army Intelligence agent, Brian Nelson, it became clear that this unit was a mere cog in a larger machine and that Pat was not a random target.

At Brian Nelson's trial, the magnitude of the policy he was a part of began to unfold. His superior, a man identified only as Colonel J, said that Nelson's role was to save lives. It is not clear how many lives he did save, but it is clear as to how many people he was involved in killing. The total figure has simply gone up over the years.

The truth is far from the British assertion that they were the defenders of law and order. They are directly responsible for the death of my husband and others. It is for this reason that my family has insisted upon an inquiry. Because for us the key question is not who were the people pulling the triggers, but who were the people pulling the strings.

Last year on February 12, 1999, I submitted a confidential report prepared by British Irish Rights Watch to both the British and Irish Governments. It evoked an immediate and in-depth response by the

Irish Government, who described the case for an independent inquiry as compelling. We have still received no reply from the British Government. Their silence speaks volumes.

Since the handing in of the report to the two governments on the tenth anniversary and since Rosemary's murder a short time later, more facts have come to light. A few weeks after the report was given to the British Government, indeed on St. Patrick's Day last year while the former Secretary of State Mo Mowlam was here in Washington, the Chief Constable of the RUC, Ronnie Flanagan, deliberately took it upon himself to bring back the English policeman, John Stevens, to carry out further investigation. Mr. Stevens has already carried out two investigations in Northern Ireland, and his return for a third time did not inspire any confidence in my family. Indeed, his single-minded pursuit of insignificant trigger men has completely borne out our earliest fears. There are many reasons why this criminal investigation cannot be the definitive search into the circumstances surrounding my husband's death and the British Government who ordered it.

One reason is that the man who recalled Stevens, Ronnie Flanagan, may well be Chief Constable of the RUC now, but what was he doing in 1989? He was a senior officer in RUC's Special Branch, the department that created the informer, William Stobie, the man now charged with the murder of my husband. Ronnie Flanagan had this job at the time my husband was murdered. This is an area of his career that he has taken some care to hide, and it is not difficult to see why.

Ronnie Flanagan's involvement then was central. He has continued to be involved for the last 11 years. Furthermore, he has connived in deliberately hiding William Stobie's confession to my husband's murder for all these years. What is worse is that the DPP and the British Government are now allowing Flanagan to essentially investigate himself. This cannot be allowed to continue. Because not only is the RUC as a whole culpable in Pat's murder, but Flanagan himself is a prime suspect. He and his officers merit serious independent investigation, not another cozy cover-up.

That cover-up does not stop here. My youngest son John had a chance meeting with the British Prime Minister Tony Blair at a school function in Belfast in late 1997. He asked the Prime Minister about the impending UN rapporteur's report into his father's killing and what the government's position might be. Mr. Blair was unable to proffer a response at that time. So John furthered his inquiry with a letter.

In reply on the 29th of January of 1998, the Prime Minister stated, "I have looked into the issues you raised concerning your father's murder. I am sorry that it has not yet proved possible to charge anyone for this dreadful crime despite the intensive police investigation. The circumstances surrounding your father's murder were fully investigated again by Mr. John Stevens following allegations of Brian Nelson's involvement. As I am sure you know, in February of 1995, having considered the independent report before him, the Director of Public Prosecutions for Northern Ireland concluded that there was insufficient evidence to warrant the prosecution of anyone for murder. While I fully understand why you propose an independent inquiry, I am not convinced that this would bring to light anything new."

This statement by the Prime Minister is not only factually wrong, but it is disturbing for a number of reasons. In 1993, John Stevens wrote to British Irish Rights Watch and stated that he had fully inves-

tigated the murder of my husband and had indeed presented his report to the DPP. The DPP followed this line in 1995, as Tony Blair wrote in his letter, and directed that there be no prosecutions. Four years later, in March of 1999, Mr. Stevens returned to Northern Ireland, and the first thing he said at his opening press conference was that he had never before investigated the murder of Patrick Finucane, nor had anyone ever asked him to do so.

It was always impossible for me to have a view on the outcome of these official investigations, as neither of the final reports by John Stevens have ever been made public. Now, in light of his statement last March, how can I now have any confidence in the man or an investigation by him? Why should I think anything will come of his third effort, when I am refused access to the first two? If the same pattern is followed, no one will ever see this third report, and I will certainly not accept being told that there has been an investigation and therefore I don't need a public inquiry.

Last year, John Stevens arrested the former RUC Special Branch informer, William Stobie, and charged him with Pat's murder on the 23rd of June. The basis for the charge was Stobie's confession while in RUC custody in 1990 about his role in the murder. Yet, in 1995, 5 years after that confession, the DPP stated that he had examined the evidence and decided not to prosecute because there was not enough to ground a murder charge.

John Stevens and the Director of Public Prosecutions clearly have questions to answer. But now and perhaps most of all, the Prime Minister also has questions to answer. What he said in his letter to my son is wrong, and I want to know the reason why. Is it because he did not look into the issues surrounding my husband's murder as he said he had done and therefore got it hopelessly wrong? Is it because he sought assistance from his officials in forming a response, people who proceeded to mislead him as to the evidence held in government and RUC files? Or is his actual position more sinister still?

When Mr. Blair came to power in 1997, he offered great hope in the form of a new administration with a fresh approach. His inaction on the murder of my husband was described 3 weeks ago by the Irish Government as intolerable. But is it now the case that what was once the policy of Margaret Thatcher and her Conservative Party government has now been made Tony Blair's own? Can we now add his name to the list of suspects in this case?

If this Committee wishes to take a positive step in advancing the case for an inquiry, then it might ask Tony Blair directly what his position is. Because the one he has given my family simply does not stand up. It does not because the actual evidence in this case strongly suggests that there was government involvement in Pat's murder, that army intelligence did send a loyalist death squad to kill him, and that ever since the DPP and the RUC have done everything in their power to cover it all up.

I have observed firsthand the whole period of the conflict in the north of Ireland from having lived through it and having had its worst horrors visited upon me and my family. Like everyone else, I yearn for a peaceful society in which to live. But peace cannot be disconnected from justice and it cannot be divorced from the truth. The British Government and other narrow-minded politicians would have us believe that we must achieve peace before we can think about truth and justice. But

it is the very absence of these things in Northern Ireland over the last 30 years that has made peace impossible. I know and am certain of one thing. We will never have peace in Northern Ireland until we are at peace with ourselves.

The British Government does not understand that the truth behind my husband's case is so important that it has now assumed a place in its own right as a piece in the jigsaw puzzle of peace. I alone did not do this. The concerns of the people of Northern Ireland, the now public position of the Irish Government, the work of influential human rights NGOs and worldwide disquiet of what my husband's case stands for has placed it firmly on the wider political map. The truth must be exposed publicly so that the healing process can begin and peace can start to grow. No matter how horrifying or painful it proves to be, I, my family and society in Northern Ireland as a whole can learn to live with the truth. We cannot and will not ever learn to live with lies.

Once again, on behalf of myself and my family, thank you very much.

Mr. SMITH. Mrs. Finucane, thank you very much for that moving and eloquent statement and for the courage that you have had all these years in seeking justice and the truth. We do thank you for that.

I would like to ask Mr. Magee if he would proceed.

#### **TESTIMONY OF EUNAN MAGEE, BROTHER OF ROSEMARY NELSON**

Mr. MAGEE. Thank you for your invitation to testify here today. I am Eunan Magee and Rosemary Nelson was my sister. She was murdered one year ago tomorrow, and Cindy and I leave Washington to be returning to be with my family for the anniversary.

My sister was a lawyer. Obviously we, as a family, were very proud of her. Rosemary was a good lawyer. She represented her clients from both sides of the community in Northern Ireland to the best of her ability. That is why she was subjected to harassment and to threats made by police officers and others. That is also why she was killed.

She was a courageous lawyer. She was the first female lawyer to set up her own practice in Lurgan, the town where we grew up. When clients started to come to her with controversial cases linked to the conflict in Northern Ireland, she took their cases and worked tirelessly on behalf of those clients. When she started to get the threats and abuse, she didn't stop representing her clients to the best of her ability. Indeed, if anything, the intimidations seemed to act as a spur which ensured that she would not give up.

Although we were aware that there were problems between Rosemary and the police, we were not aware of the extent of the intimidation and harassment she suffered. We have been taken aback in the aftermath of her death to discover the fact that she had been subjected to a sustained campaign of death threats and abuse at the hands of the police.

Rosemary was always outraged that those who abused positions of power were not held to account. She attempted to ensure that such people were brought to account, whether that be police officers, government officials or others.

My family are concerned that those involved in threatening Rosemary and failing to protect her and in murdering her will not be held to account. Our concerns have been highlighted by what has happened in relation to the investigation of her complaints and also by the lack of success to get an investigation into her murder.

Rosemary, of course, complained about the abuse that she suffered. In addition to reporting the threats to human rights groups, she also testified before the Subcommittee on International Operations and Human Rights. During that testimony, she revealed that an English police officer had been called in to investigate official complaints she had made due to the inability of the RUC to handle her complaints impartially. The report compiled by that English police officer was sent to the Director of Public Prosecutions in Northern Ireland shortly before Christmas. He announced that he was not going to prosecute the officers involved.

Although the RUC are now considering whether to subject those officers to disciplinary action, we are not hopeful that this will happen. There are also other ongoing complaints which were made by Rosemary. These have yet to be completed. But we are again not confident that they will result in effective action being taken against police, either in terms of criminal prosecution or disciplinary sanction.

Rosemary also told the United Nations special rapporteur on the independence of judges and lawyers about the harassment and intimidation she had suffered. He conducted a fact-finding mission to Northern Ireland and met with Rosemary and many other solicitors who had been subjected to similar intimidation and threats. He was so concerned about her personal safety that he drew specific attention to her case when he reported on the intimidation of defense lawyers in Northern Ireland to the United Nations Commission on Human Rights in March of 1998. We are also aware that he communicated his concerns about Rosemary's safety to the attention of the United Kingdom Government. We know that human rights groups also communicated their concern, and yet we are not aware of any action that was taken either by the government or the police in order to safeguard Rosemary's life. We are told that the police carried out a risk assessment on Rosemary and decided there was no significant risk. They were clearly wrong.

It now seems to us that those in government or in the police who did nothing to safeguard Rosemary, and indeed those police officers who were involved in threatening and harassing her will not be held to account. We believe that if they are not held to account, the harassment and intimidation of defense lawyers in Northern Ireland will continue.

We are also concerned that those who murdered Rosemary may also not be held to account. The investigation into her murder is being led by a senior English police officer named Colin Port. Although he remains convinced that he will eventually track down those involved in the murder of Rosemary, he had until last week not made any arrests. According to newspaper reports on Friday, March 10, two individuals were being questioned about Rosemary's murder by the Port team. One of those individuals has now been released. There have been press reports that the individual who is still being detained was a member of the Royal Irish Regiment, a regiment of the British Army at the time of the murder.

In addition, we are concerned that if there was collusion on the part of the police or of the Army in Rosemary's murder, the Port investigation is unlikely to uncover it. While we cannot point as yet to solid evidence of Security Force involvement in the murder, we are not convinced that if such exists, it will be uncovered and revealed. Obviously, the primary purpose of the Port investigation is to catch those who killed Rosemary and bring them to trial. We obviously want those responsible to be brought to account. However, an investigation into who was actually physically responsible for the murder of Pat Finucane would not necessarily result in a full examination of the police and Army role in the murder. In the same way, while Colin Port is devoting resources to discovering whether the heavy security presence in the area before Rosemary's death was suspicious, this is only one possible collusion entity. This is only one aspect of a possible collusion into the death.

Our family believes that regardless of what is found in relation to the security presence in the area before the attack, the police were responsible for contributing to the context in which Rosemary could become a target. A criminal investigation will not examine this type of behavior. Inaction on the part of the police when faced with evidence that Rosemary was at risk will not form part of the criminal investigation. The abuse and intimidation which Rosemary suffered at the hands of the police will not form part of the criminal investigation. Yet, we believe it is self-evident that all of this must be investigated. We cannot accept that these matters will not be investigated in the event that Colin Port manages to catch those who actually planted the bomb that killed Rosemary.

That is why our family are supporting the call for the establishment of an independent inquiry into the murder of Rosemary. We would be most grateful for the support of this Commission in trying to achieve that objective. I would be grateful if this Commission could undertake to pursue through whatever mechanisms are available to it the establishment of such an inquiry and try to persuade the United Kingdom to establish such an inquiry. Obviously, we wish to see those who are responsible for Rosemary's murder brought to justice and sent to jail. However, we also wish to see the agents of the state, whether they be police officers or others, brought to account for the threats and intimidation my sister was subjected to and for failing to take action to protect her despite being warned that she was under threat. It is only in that context that justice will be done and seem to be done.

Mr. SMITH. Mr. Magee, thank you for your very eloquent statement as well. And we join you in your quest to have all of the facts on the table and, wherever the evidence may lead, that prosecutions be forthcoming of people implicated, no matter how high up they are in any aspect of government or policing in Northern Ireland.

I do have a couple of questions. I just want to make the point for the record that we invited both Ireland's Ambassador to the United States and the United Kingdom's Ambassador to the United States to testify at this hearing. Unlike Congressional hearings, this Commission has a very unique role in that we very often and frequently have Ambassadors from countries that make up the OSCE come and present testimony and engage in a dialogue. Just last week we had the Speaker of the Parliament in exile of Belarus. We have had the Ambassadors from Ukraine, and from most of the Central and Eastern European countries. And yet, unfortunately, I am sorry to say, perhaps it was a sched-

uling conflict, we do not have especially the English Ambassador here, which would have been, I think, a very timely place for him to be. If we are all about openness and exchange of ideas, he should be willing to sit here. And I reissue the invitation of the Commission to have him appear before this Commission at any time that he would deem fit, hopefully sooner rather than later.

So that would be part two of this hearing to hear from that individual, and that continues to be our invitation. Because I think, like when we had Christopher Patten testify at a meeting of the Subcommittee—and Mr. Gilman will remember this very well—it was very enlightening. He is a very savvy politician. But when we really got into the meat of the Patten Report and its serious omissions, especially in the area of vetting, all of a sudden he had other commitments and wanted to walk out the door, but he did stay and he did answer questions. That report was very disappointing. As I thought then, and I continue to think now, that then becomes a ceiling and we then work back or they then work back from there, perhaps even weakening what is already a very weak document.

There was no emphasis on vetting. Finding out who committed atrocities in the past. The evidence is overwhelming that it exists, but the who is the big \$64.00 question. And to completely ignore that, and perhaps some of these people—and it is a big perhaps—are sitting in very high places. That to me suggests a cover-up. You used the word cover-up, Mrs. Finucane, just a moment ago, and that is very unseemly.

Let me also note for the record—then I will just ask one question and yield to my colleagues—the Helsinki Commission members will be going to Bucharest for the OSCE Parliamentary Assembly in early July. Last year, we were in St. Petersburg. This year we will be in Bucharest. We are looking at the possibility of raising this issue, let me put it as a high probability, and of coming up with a resolution. We need to garner co-sponsors so that, at that Parliamentary Assembly, the U.K. will then have to deal with this issue as well. All we are asking for is an honest to goodness transparent investigation into both of these horrific murders. It seems to me that we need to ratchet up the pressure, and we certainly will. And at that venue, I plan on hopefully taking the lead there. And I do think we will get the requisite co-sponsors to get that on the floor.

Let me just ask a question, if I could, to Mrs. Finucane with regards to John Stevens. You mentioned him. If you could just elaborate perhaps a little bit further for the record why you believe another report that probably would not be made public would be very unfulfilling and certainly probably wouldn't get to the truth? And has he ever met with you or members of the family to get your side of the story and to debrief you?

Ms. FINUCANE. For the first two reports, John Stevens made no attempt to speak to me or any members of my family or to Peter Madden, Pat's partner. He did ask to meet with us for this third report. But because we are not happy with the fact that it is a criminal investigation and because it is so limited, we have not agreed to meet him up until this point. Now we reserve judgment as to whether we would meet him ever in the future or not. But the reason is that the investigation is simply a criminal investigation. It is very limited in its scope and will not involve the family in any way. And in the end, we don't even actually know what his remit is. We don't know what it is for this report.



We don't know what it was the first times, and therefore we have no confidence in it at all. And as I said in my speech, we don't know the conclusions in the first or second report, and I very much doubt that we will ever know the conclusions in the third one either. So it is very unsatisfactory.

Mr. SMITH. It certainly begs the question—you know, any inquiry of this kind if it produces evidence that leads to prosecutions—certainly it begs the question and continues to bring back a strong sense of suspicion on the government.

Ms. FINUCANE. I think it is a smoke screen really. Because all really he is trying to find out is who pulled the trigger to kill my husband, and that isn't the important issue. The important issue is the policy and the strategies that led up to the trigger man actually entering my house. This is what we are aiming for, and which is what we have always aimed for really. We have always looked behind the trigger man.

Mr. SMITH. Mr. Gilman?

Mr. GILMAN. Thank you again, Mr. Smith, for moving forward on this.

Let me address my inquiry to both Mrs. Finucane and Mr. Magee. Are you satisfied with the fact that the RUC is conducting this investigation or would you prefer to see, as we have suggested, an independent commission inquiry?

Ms. FINUCANE. I do not want the RUC to be involved at all, because I think the RUC have questions to answer about themselves.

Mr. GILMAN. Mr. Magee?

Mr. MAGEE. Well, I think that initially whenever Colin Port did come to Ireland to start his own investigation that RUC intelligence probably was vital for him at that stage. But I think at this stage, the presence of RUC on his team doesn't really inspire confidence.

Mr. GILMAN. Somewhat like the fox guarding the chickens it seems to me. Have you—either one of you—been contacted by any of the investigators at all with regard to these murders?

Ms. FINUCANE. After Pat was murdered, I gave the police a very short report on behalf of myself and the children about what actually happened, the actual murder itself. And that is it. I have never seen a policeman since.

Mr. GILMAN. And when did that take place?

Ms. FINUCANE. That was about a few days—forgive me, the time scale at that time is a bit foggy for me. But a few days after Pat was murdered or perhaps after the funeral and in the presence of Peter Madden. I gave a prepared statement to the police and they asked me no questions and they left and they have never asked any questions since.

Mr. GILMAN. What was the date of Pat's murder?

Ms. FINUCANE. February 12, 1989.

Mr. GILMAN. Were you present at the time of the murder?

Ms. FINUCANE. Yes. I was shot as well.

Mr. GILMAN. And were you able to identify the gunman?

Ms. FINUCANE. No. Well, I wasn't asked to identify anybody.

Mr. GILMAN. The police who interrogated you did not—

Ms. FINUCANE. The police did not interrogate me. The police came to the house and I gave them a prepared statement of what I remembered about the evening. And I also said that I was not prepared at that point to let the children be interviewed because they were very young. My youngest son was only 8, and he was in the room at the time. Both my

sons and my daughter and myself were present when Pat was murdered. But I handed the police a very short prepared statement. They asked me no questions and they left and they have never asked me any questions.

Mr. GILMAN. The statement you gave was a written statement?

Ms. FINUCANE. Yes. Just about the facts of what I saw on that particular evening.

Mr. GILMAN. And they didn't get into any further interrogation with you?

Ms. FINUCANE. No, never.

Mr. GILMAN. And Mr. Magee, were you queried by the police with regard to Rosemary's death?

Mr. MAGEE. No, not at any stage of the game. The RUC have never come near any one of us. Although we do meet with Colin Port's team quite regularly. And Colin Port still does remain convinced that he will gain convictions out of this.

Mr. GILMAN. Convinced of what?

Mr. MAGEE. That he will gain convictions from his investigation. But to find the people who pulled the trigger I don't think goes far enough. I think that we do have to look behind the scenes and see who it was who was responsible for carrying out the operation and for planning and for giving basically winks and nods. I think that maybe only an independent inquiry would come to the bottom of this.

Mr. GILMAN. Were there any witnesses to Rosemary's death?

Mr. MAGEE. Well, so far Colin Port has made repeated calls for witnesses to come forward. But I am sure, as you can understand yourself, a lot of people in our own home area would be very apprehensive about speaking to someone, especially whenever he himself is based in Lurgan RUC station.

Mr. GILMAN. So to your knowledge, there has been no witness that came forward, is that right?

Mr. MAGEE. Well, he has been given statements and he has spoken to different people. Although mind you that doesn't necessarily mean that everyone has come forward. In fact, quite a few people will not talk to him while he has that inextricable link with the RUC.

Mr. GILMAN. While he—I am sorry, I didn't hear that last part. People would not come forward while—

Mr. MAGEE. While he is linked with the RUC. While the RUC are linked to the investigation.

Mr. GILMAN. I see. Has anyone come forward to you to give some information that they did not give to the police?

Mr. MAGEE. No. No one has come forward—any one of those.

Mr. GILMAN. And Mrs. Finucane, has anyone come forward to you who may not have given any information to the police?

Ms. FINUCANE. Well, we—Pat's partner had quite a lot of detail. When Pat was going to interrogation centers and questioning his clients, he was receiving threats. His clients reported to him that the RUC officers had made threats against him, quite serious threats, death threats, saying get yourself a new solicitor. Yours is not going to be around for much longer. And Pat used to note them down at the start. He actually used to note down the comments that were made. And then they became so frequent that he stopped actually writing the actual comment and just put comments made, comments made. Mr. Madden

was never asked by the RUC to produce those or to show them to prove that what we were saying about the threats made by RUC officers was actually true. They never asked him about that.

Mr. GILMAN. Is that diary of those threats available?

Ms. FINUCANE. Yes. They are in Pat's own handwriting.

Mr. GILMAN. They are where?

Ms. FINUCANE. They are on individual forms that he took with him every time he went to a holding center, and they are in his own writing.

Mr. GILMAN. And do you have that diary?

Ms. FINUCANE. No. They are in his office. They are in his—they have remained with—

Mr. GILMAN. And the police never requested those forms?

Ms. FINUCANE. No.

Mr. GILMAN. And they have never been made available to the police?

Ms. FINUCANE. Well, the police have never asked for them.

Mr. GILMAN. They are available if the police were to ask, is that correct?

Ms. FINUCANE. Well, yes.

Mr. GILMAN. There have been some recent revelations on possible collusion with the security services in Pat's murder. Are you aware of any of those revelations?

Ms. FINUCANE. The first revelation was Brian Nelson, who was arrested. He was then discovered to be an agent and he was trained by the British. His information was regularly updated. He was the intelligence officer, but he was infiltrated into the paramilitary group, the loyalist paramilitary group. Perhaps two or three times a week, he would go to his handlers with his information, give it to his handlers, and they would update it for him regularly. Frighteningly, at least two or three times a week, they would be doing this for him. So that when he went back into the loyalist community, he had up-to-date information on all the people that they would have been targeting.

Mr. GILMAN. Did he ever make a statement with regard to the Finucane case?

Ms. FINUCANE. Yes, he did. He said that he was involved in Pat's murder. Not perhaps actually going to the house and killing him, but he was involved in photographing the house, providing a photograph of Pat, so that he would be easily recognized by a gunman. He set the thing up. He helped set the thing up. He provided the information. That was his job.

Mr. GILMAN. As far as you know was he a paid agent of the British Government?

Ms. FINUCANE. Yes, he was a paid agent of the British Government.

Mr. GILMAN. And where did he make these revelations that you have just discussed?

Ms. FINUCANE. Well, he was actually prosecuted. He was charged with—I forget how many charges were made against him—but certainly there were murder charges made against him. Now he was not charged with murder in my husband's case, but he was charged with murder in two other cases.

Mr. GILMAN. And did he make those revelations as part of the court proceeding against him?

Ms. FINUCANE. At the end of the court proceeding, the charges were changed and dropped so that there wouldn't be a full hearing.

Mr. GILMAN. But did he make those revelations publicly someplace on the court record or in the press?

Ms. FINUCANE. No. He didn't go to court to make those revelations because he wasn't allowed to. At the end of the day, the Director of Public Prosecutions changed—did a deal with him really. Dropped the murder charges and he spent a very short time in jail and he is out now. We don't know where he is. But as far as I know, he has got a new life and he has got guaranteed protection.

Mr. GILMAN. Where were these revelations made that you just discussed?

Ms. FINUCANE. John Stevens, the policeman who is back now making a third investigation, arrested John Stevens—sorry, arrested Brian Nelson. These were made to him.

Mr. GILMAN. Brian Nelson made these revelations to John Stevens?

Ms. FINUCANE. Yes.

Mr. GILMAN. And when did Stevens make that public?

Ms. FINUCANE. In 1990. The Panorama Program brought this all out into the public domain. Then at that time, John Stevens was brought back to make a second inquiry.

Mr. GILMAN. And Stevens made these statements publicly as part of an inquiry?

Ms. FINUCANE. No. Stevens didn't make anything public in his two reports. But Panorama brought it out into the public domain.

Mr. GILMAN. Panorama made a public statement about Stevens' revelations?

Ms. FINUCANE. Stevens arrested Brian Nelson.

Mr. GILMAN. Yes.

Ms. FINUCANE. And he was subsequently charged.

Mr. GILMAN. And this Panorama is a television program?

Ms. FINUCANE. Yes. It is a very—it is a documentary program—a very high caliber BBC documentary program.

Mr. GILMAN. And they documented Mr. Stevens revelations to him?

Ms. FINUCANE. They documented Brian Nelson's history and his career and they brought it out into the public domain.

Mr. GILMAN. And when was that program?

Ms. FINUCANE. 1991.

Mr. GILMAN. Following that, did the RUC conduct any further investigation to your knowledge? After the Panorama program was documented?

Ms. FINUCANE. The RUC have made no investigations at all. At the moment, there is a man called Stobie, who was a paid RUC informer.

Mr. GILMAN. What is his name?

Ms. FINUCANE. His name is Stobie—Mr. Stobie.

Mr. GILMAN. How do you spell it?

Ms. FINUCANE. S-T-O-B-I-E. He has been arrested and charged with my husband's murder.

Mr. GILMAN. When was that arrest?

Ms. FINUCANE. About 8 months ago.

Mr. GILMAN. And what is the disposition of that charge?

Ms. FINUCANE. At the minute, he is awaiting trial for the murder of my husband. But he is out on bail.

Mr. GILMAN. Is Stobie an RUC officer?

Ms. FINUCANE. Yes. He is a self-confessed RUC paid informer. On the basis of his confession, he is being charged. But he made this confession in 1990, and the RUC have had this confession since 1990.

Mr. GILMAN. And what was the date of his arrest?

Ms. FINUCANE. June of 1999.

Mr. GILMAN. Mr. Magee, were there any further revelations regarding Rosemary's murder?

Mr. MAGEE. Well, as I have said, two people were arrested last week.

Mr. GILMAN. Last week?

Mr. MAGEE. Last week.

Mr. GILMAN. Who was arrested?

Mr. MAGEE. A gentleman who happens to be—who was a member of the Royal Irish Regiment.

Mr. GILMAN. What was his name?

Mr. MAGEE. I don't know.

Mr. GILMAN. And who else?

Mr. MAGEE. And his girlfriend.

Mr. GILMAN. Both were arrested last week?

Mr. MAGEE. They were arrested last week. They weren't arrested specifically in relation to Rosemary's murder.

Mr. GILMAN. Were they charged with Rosemary's murder?

Mr. MAGEE. No. The girl has been released and the gentleman is still being held.

Mr. GILMAN. And he is being charged with Rosemary's murder?

Mr. MAGEE. No. He hasn't. In fact, what he was arrested—he wasn't specifically arrested in connection with Rosemary's murder. He was arrested because he had bombmaking equipment and guns in the house.

Mr. GILMAN. How was he tied to Rosemary's murder?

Mr. MAGEE. Well, other than the fact that Colin Port has been interested in him, I don't really know.

Mr. GILMAN. Other than general interest?

Mr. MAGEE. The fact that Colin Port is interested in him, I don't really know.

Mr. GILMAN. So we are not sure if he is actually tied to Rosemary's murder?

Mr. MAGEE. Well, I think the fact that maybe Colin Port is interested in him leads us to believe that there is some link.

Mr. GILMAN. I see. With regard to the RUC training the officers receive from the U.S., are you satisfied that there has been some training with officers that may have been involved in these two killings? Have you had any information about that?

Mr. MAGEE. No, none at all.

Mr. GILMAN. Do you feel that the FBI should be training RUC officers who may be involved with these killings?

Mr. MAGEE. Well, to tell you the truth, it is not something that I have given any consideration to.

Mr. GILMAN. Thank you very much. Thank you, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Chairman. Secretary Koh?

Sec. KOH. Thank you very much to both of you for your illuminating and touching testimony. I wanted to ask each of you two questions. One about personal issues and secondly about structural reform.

Mr. Magee, what has happened to your sister's law practice, and in particular who has taken on the representation of some of her clients who were pursuing the same kinds of concerns and claims that she had?

Mr. MAGEE. Well, it is—the law practice itself is to close at the end of the month. All of the employees have been put on notice. As for other work—I mean, Rosemary did have a big work base. Just because she had a few high profile clients, that—I don't know, that I suppose provided opportunity for Rosemary to be demonized among the unionist population. It has to be said that it was a mixed practice. Many clients seem to have gone their own way. The more high profile ones, I think it was Pdraigin Drinan who has taken those.

Sec. KOH. I was also struck by your point about the risk assessment that was done which said that she was not at significant risk. Do you know if there were others who they found were at significant risk?

Mr. MAGEE. I don't if truth be told. But having seen that Rosemary did testify here and the fact that maybe Rosemary wasn't—didn't have any confidence herself in the RUC, the fact that this risk assessment would in fact be carried out by the RUC, they would have gone around the house and decided exactly what to do. I don't think Rosemary would have felt overly comfortable with that anyway. But to answer your question, no.

Sec. KOH. There has been discussion at the UN Human Rights Commission this year about a special rapporteur or a special representative who would focus on human rights defenders. But what is a little unclear in looking at the proposals is exactly what such a mechanism would do that would be meaningful and actually helpful to human rights advocates in particular countries. Can you think of a good role that such an international mechanism could play in a case like your sister's or similar cases?

Mr. MAGEE. That is a very high level question to be asking me. I am stuck.

Sec. KOH. I will direct it to your colleagues. Mrs. Finucane, can I ask you also, can you think of what other kinds of processes could be put into place so that witnesses would feel comfortable coming forward in future cases?

Ms. FINUCANE. I think it is very important to establish something that is entirely independent and international. If people felt they were coming to somebody who could be fair and open-minded, I think perhaps they might come forward. But certainly not in the narrow-minded bigoted situation in which we are still living.

Sec. KOH. I understood that there were some steps taken, for example creating phone lines to call non-RUC officers who are involved in investigations and some other steps. Are these helpful steps?

Ms. FINUCANE. I am sorry, I—

Sec. KOH. I understood that some proposals have been made, for example to create phone lines so that you could call officers who are not from the RUC or not involved in the investigation as people to whom witnesses could speak. Have these been actually helpful or valuable steps?

Ms. FINUCANE. Now, I am not a lawyer and from what I can tell, Cumaraswamy made a number of recommendations, none of which have been implemented. A few of them were coming through and were in the pipeline before he made the recommendations, and they have come

through. But certainly nothing that he has said as far as I know has been implemented in the north of Ireland. There have been some small steps, but perhaps because I am not a lawyer myself and I am not working in that environment any longer, I think perhaps you should direct that to a lawyer.

Sec. KOH. Okay, thank you. Please feel free to answer this question the same way. We know that with regard to the Patten Report, there has been much focus by a number of the groups here in the States on the role of the Oversight Commissioner and the potentially useful role that could play in police reform. Do you have any views about the value of an Oversight Commissioner in police reform?

Ms. FINUCANE. Well, I don't have a very strong personal opinion on it, but I certainly think that any police force should be monitored and should be watched very carefully. But I would like to take issue with your words of the reform of the RUC. I don't—that sort of suggests to me that perhaps they are not too bad at the minute and they just need a slight bit of manipulation. I think they need radical change. Because if they are not radically changed, the people in the north of Ireland will never, ever have confidence in them. No matter what society you live in, you need a police force. We live in a democracy, and I would be the first to say that you need a police force to monitor. But it needs more than reform. I mean, I am only one small person in Northern Ireland, and Pat's case started off in a very small way. But Pat's case is a beacon. And we need to get to the bottom of this collusion iceberg. Certainly the RUC are something that need very full investigation and a very deep investigation, and they need more than reform.

Sec. KOH. Thank you.

Mr. SMITH. Thank you, Secretary Koh. Commissioner Pitts?

Mr. PITTS. Thank you, Mr. Chairman.

Mrs. Finucane, could you tell the Commission what it was like for your family as your husband stepped forward to represent clients convicted of political offenses? Other witnesses in the past have said that your husband received death threats from RUC officials through clients and others over the phone. Were you aware of these threats? Did he receive any at home? Did you feel you were under surveillance or that your privacy was being invaded? Could you talk to the Commission about that?

Ms. FINUCANE. Could I just put this slightly into context? When Pat started off his business with Peter Madden, he and I were quite a lot younger than we are now, and we had a very young family. He was starting a business. We had moved into our first home. We were doing renovations. We had three small children running around. I was working. And his practice was exceptionally busy. He was doing very different work. It was exciting and it was challenging. But it was just the work that he was doing, and it was in the context of all these other things that were going on. I knew it was ground-breaking and he knew it was ground-breaking, but life was exciting and it was going along very fast and it wasn't the only thing in our lives at that particular time. Pat loved the law and he felt the law was there for everyone. That is what he tried to do. He tried to represent everyone who came. He came from a working class Catholic background. When he became a lawyer and had the opportunity to put something back into his own community and represent people who had not been represented in the

past at all, he took that challenge up with great delight because he loved the law. He was very intelligent and he liked the challenge of the law.

When he was receiving the threats at the holding centers, they became so common. I mean, he did mention them. Perhaps as in Rosemary's case, she didn't sort of mention everything that she was going through to her family. While I was aware of things with Pat, perhaps I wasn't just 100 percent on it. But certainly I knew the threats were there.

I think the very first time that we actually started to worry that these threats were more than just mere interrogation techniques that RUC or, as has been suggested in the past, rogue policemen might have been issuing was when Douglas Hogg, who was a Junior Minister in the Northern Ireland Office, stood up in Parliament really out of the blue, not in the context of a long speech, but he stood up out of the blue and said that he felt that there were some solicitors in Northern Ireland who were unduly sympathetic to the IRA, and that he was issuing this on the basis of information given to him. Now Seamus Mallon, who is now the Deputy First Minister in Northern Ireland, jumped up in Parliament and instantly said, "Do you realize you have put people's lives at risk by saying this?" and wanted to draw him further on it. He refused. He just repeated the comment and repeated the comment but refused to elaborate. It was at that point that perhaps Pat and I realized that there was something more to this. That this wasn't just the law or anything else. That there was some strategy here. I mean, I can actually remember when that happened.

I know a lot of things have happened to me since that perhaps I can't clearly put in context and in time and I just get things wrong from time to time, but I can remember that statement. That chilled me to the bone. It certainly rocked us on our heels and Pat was dead within 3 or 4 weeks of that comment.

Mr. PITTS. Since your husband's murder and as you take a more public role in requesting judicial inquiry into his death, have you or any of the members of your family been threatened or harassed by agents of the state? Do you feel safe now?

Ms. FINUCANE. No, I don't feel safe. There have been comments made about me and members of my family in paramilitary magazines. Sort of other odd things have happened as well. I am not sure, but I certainly am careful. Perhaps I don't think about it either. I mean, I don't drive the same way twice. I don't make a pattern in my life. But I don't do it consciously. That is just the way I am. My children are the same. When they go out somewhere—I mean, Finucane is quite an unusual name in the north of Ireland and people can actually spell it now. You know, they never used to. What is your name? Where do you come from? But people can spell it. My children go out—or even when I go out, if I am meeting somebody different and you are being introduced, I just introduce myself as Geraldine. My children did the same when they were going out when they were much younger and socializing. We don't make ourselves public. We are public property, but we try to maintain some degree of privacy. Because you just don't know who you are going to meet at home. I mean, you do really have to be very careful. It is not obvious, perhaps, that I am under threat. In fact, the RUC recently told me that I was under no threat whatsoever, but I don't really take their word for anything.



Mr. PITTS. You have been in this fight for justice for a long time. Do you feel any closer or further away today than you did 10 years ago toward finding the truth about who may have been involved or condoned the murder of your husband?

Ms. FINUCANE. It is slightly strange at the minute because we have such a great support at the minute for this inquiry. We have actually come this far to ask you in America to back the call for this inquiry in a public way. Yet because we are so close, I feel we are further away from it than ever. Because I think there is so much to hide that it will be very difficult for the last push to be successful. At the beginning, we knew nothing, and gradually—it is like a can of worms. It has actually been bursting open itself. We haven't had to do anything. It has been so evil and horrible that it has been bursting open by itself.

Mr. PITTS. Thank you. Mr. Magee, with regard to the Port investigation into Rosemary's murder, do you believe he or his team have done enough to gain the confidence of witnesses in the community? Are people still reluctant to come forward to provide testimony for fear of the RUC—they will have access to information or reason for retribution?

Mr. MAGEE. Well, having met Port on several occasions, he does seem genuinely interested and he does seem to want to get to the bottom of who was responsible for the death of Rosemary. However, since as I have already stated he is based in Lurgan RUC station, his offices are in the RUC station, and members of his team are RUC men, the people—certainly the people in the nationalist end of Lurgan would find it very difficult to have any confidence in any investigation that Colin Port—

Mr. PITTS. They are reluctant to come forward?

Mr. MAGEE. Yes. Someone mentioned earlier on about—in fact, I think it was Mr. Koh here—the fact that there was a number that was—it was Colin Port's own office number over in England. But yet, due to still the fact that Colin Port is employed effectively by Ronnie Flanagan, I think that people in and around our own area in Lurgan do have great reservations and might find it difficult to approach him.

Mr. SMITH. Would the gentleman from Pennsylvania yield?

Mr. PITTS. Yes.

Mr. SMITH. Isn't it true that the Finucane Center has gathered evidence or at least information from approximately 50 people who are unwilling to meet with the official probe out of fear that the information either will be compromised or perhaps may come back to haunt their own personal safety?

Mr. MAGEE. That is true, yes.

Mr. SMITH. So you have people out there who have relevant information that apparently are unwilling, and I think, Mrs. Finucane, you made the very good point that the lack of trust in the RUC, it seems to me to be an absolute no-brainer that if you have that kind of information and that kind of distrust and the two aren't meeting that there needs to be some radical surgery done by the British Government. It is beyond me, and I think it should be beyond most people who look at all the facts, why an inquiry that is independent and that is RUC-free cannot be done—if the evidence proves that all of this concern was unwarranted, then they can prove that. But just go wherever the evidence takes them. That is why I think so many of us are perplexed by the British Government's reluctance to just launch this. As you pointed out, Ms. Finucane, 10 years ago they had this information about Mr.

Stobie and it just sat there. Now suddenly he gets an indictment 10 years too late, although maybe something still will come of it. I thank you, gentleman, for yielding. I yield it back to you.

Mr. PITTS. That concludes my line of questioning, Mr. Chairman.

Thank you for your courage in coming forward and for sharing your excellent testimony.

Mr. MAGEE. Thank you.

Mr. SMITH. Let me just ask Mrs. Finucane whether or not in looking at the letter that you got or your family received from Tony Blair, that is almost identical to the one that we got, which was very unavailing and did not provide much insight. Has any attempt been made by Peter Mandelson or by the Prime Minister himself to reach out to you to find out or to talk to you? I mean, here you are in the United States presenting testimony to the Executive and the Legislative Branch. You have access to most people here who want to hear what you have to say and the same way with you, Mr. Magee, and yet have those contacts been made? Did they reach out to you to find out? Has the Police Ombudsman contacted you? Mr. Cumaraswamy had said—we had him at our committee and he laid out all kinds of recommendations, as you point out. Except those that were already initiated, the others have not come to fruition. One of those was that lawyers need to be protected. And has he reached out to you, the new Police Ombudsman?

Ms. FINUCANE. Well, first, with relation to Tony Blair and Peter Mandelson, when we handed in the first British Irish Rights Watch Report on Pat's tenth anniversary, we gave it to Secretary of State Mo Mowlam, and she promised to come back to us very quickly. In fact, she said we could quote her as within a matter of weeks. We are still waiting on any reply whatsoever. I know she is no longer there, so she personally can't come back to us. But I would presume Peter Mandelson has taken up where she left off. So he has made no attempt to come back to us either. Once I was with Bertie Ahern, the Taoiseach and I asked him could he organize a meeting for me with Tony Blair, because I felt that would give added strength to our cause, and that is actually in the process at the minute. I am expecting after St. Patrick's Day to sort of hear when we are going to see Tony Blair. So that is coming. But certainly it has been from our initiation and not from theirs.

Mr. SMITH. It would seem to me that when you have a sore that continues to fester, a decisionmaker says let's get to the bottom of it. Hopefully Tony Blair, after he meets with you if not before, will finally say enough of what to the world looks like a grotesque cover-up. Whether it is or not we will never know until all of the investigations are done and they are done by people who care only about the truth.

You know, the Lawyers Committee points out in its—after its trip to Northern Ireland that, and I quote them, "The Lawyers Committee learned that defense attorneys are continuing to receive threats linked to their representing clients in security related cases." Our great concern, in addition to justice and accountability, is that past very quickly can become prologue. As the Lawyers Committee points out, it is an ever-present problem, not just something that is in the past. Do you have any thoughts on that?

Ms. FINUCANE. Well, I just—I mean, people didn't think that another lawyer would ever been murdered. I mean, it was a very shocking and chilling thing to happen. But it did happen again. I am afraid to say in front of this committee that I think it could happen again. If it did, I certainly would not be surprised.

Mr. SMITH. Let me just ask one final question. I have read that residents of Lurgan reported a high level of security forces present in their community about the time of Rosemary's murder. Do you have any evidence to support this claim, Mr. Magee—I guess this would be to you? What would be the significance if it were true?

Mr. MAGEE. Well, any evidence that did come up obviously came from local residents. In the same area in which Rosemary lived, I have two other sisters presently living. One in particular complained about the fact that her youngest daughter couldn't sleep that night. Another husband of one of my other sisters, he was coming back from the pub late that night, and he commented on the fact that there was a heavy security presence. Numerous neighbors in and around the area, we have spoken to them ourselves, have talked about whenever the RUC conducted their door-to-door investigations that they didn't seem interested in this and they didn't look upon this as any way unusual. They just pushed it to the side. Colin Port stated in the press last week that one helicopter that had hovered overhead was found to be there legitimately. How legitimate was this whenever it had flown off course.

Mr. SMITH. I appreciate that. Would any other members of the Commission—Mr. Gilman?

Mr. GILMAN. Thank you very much, Mr. Chairman. Just one or two questions.

Did either Colin Port or John Stevens, the London detectives, speak to either one of you in the course of the investigations?

Ms. FINUCANE. John Stevens never asked to speak to me for his first or second report. He did ask to speak to me before the start of this third one. But I have declined because I am not happy that it is a criminal investigation. So I declined to speak to him. But certainly on the first two occasions that he was over, I was not contacted at all.

Mr. GILMAN. When was your last declination of speaking to Stevens?

Ms. FINUCANE. Well, I don't actually speak to him. He conducts a written conversation with my lawyer. But before the start of this third inquiry, he wrote to my lawyer and asked could he meet with the family and we just replied and said no.

Mr. GILMAN. The lawyer recommended you not speak to him?

Ms. FINUCANE. Well, it was—I didn't want to speak to him. Neither I nor my family are prepared to speak to him on this occasion, because I am not happy that there is a third investigation by him. So I am not prepared to speak to him. I don't know what he did the first two times. It is very unclear what his remit was the first two times. I mean, there has been very strong contradictory evidence. He says he investigated. He says he didn't investigate. I don't know what he did.

Mr. GILMAN. What is your reason for not wanting to speak to him at this point?

Ms. FINUCANE. Well, a number of reasons. I don't know what he did the first. I don't know what he did the second time. I am certainly not happy that he is in charge of a criminal investigation. I think it is too limiting and it will not get to the bottom of this collusion. We need something much wider.

Mr. GILMAN. Mr. Magee, any opportunity to speak with Port throughout this investigation?

Mr. MAGEE. Well to be fair to Colin Port, Colin Port has kept us briefed right along the way.

Mr. GILMAN. You have talked to Port a number of times?

Mr. MAGEE. On numerous occasions, yes.

Mr. GILMAN. How about Stevens?

Mr. MAGEE. Well, we have no dealings with Stevens whatsoever.

Mr. GILMAN. Let me say that there was a recent news report in January of this year that indicated Stevens identified some six loyalist members of the paramilitary Ulster Defense Association who were suspected in the murder of Mr. Finucane and sent the files to the Director of the Public Prosecutions. Are you aware of that report?

Ms. FINUCANE. Yes. He has sent six files to the Director of Public Prosecutions, but that means very little.

Mr. GILMAN. Has anything been done with regard to those six?

Ms. FINUCANE. No. Absolutely nothing has been done. They have not—it hasn't been taken any further whatsoever. They certainly have not been charged. And if the past is anything to go on, the DPP will probably just say that there is not enough evidence to charge them and it will all be dropped.

Mr. GILMAN. Mr. Magee, are you familiar with the six suspects who have been reported by the press?

Mr. MAGEE. If truth be told, no, I am not.

Mr. GILMAN. Pardon?

Mr. MAGEE. No. Because I mean up until last year, March 15 of last year, politics was something which was quite alien to all of us. Until—well, I mean I suppose until quite recently, we have been very cautious in even what we have commented and said and what we have commented and done. As for Pat's case, no, I wouldn't be up to speed on it.

Mr. GILMAN. Ms. Finucane, the RUC Chief Constable, Ronnie Flanagan, reportedly was in the RUC Special Branch, the intelligence branch, back in 1989 when your husband was killed. Do you know whether he was able to or in control or did he handle Stobie, who admitted a role in the killing of your husband? Was there ever any connection?

Ms. FINUCANE. As far as I know, he was in charge of—he was a senior member in Special Branch. He was in charge of informers, and therefore he would have been in charge of William Stobie. But that area of his career is very difficult to—nobody has been able to pin down exactly what he was doing around the period of when my husband was murdered. No matter how many questions have been asked, and I think there have been some Parliamentary questions asked—I am not altogether certain on that point—but he avoids answering that question.

Mr. GILMAN. Do you know whether Colin Port asked him that question at all?

Ms. FINUCANE. I don't know.

Mr. GILMAN. Thank you, Mr. Chairman.

Mr. SMITH. Thank you. I want to thank our very distinguished witnesses, for whom I have an enormous amount of personal and professional respect for your courage.

You mention Ronnie Flanagan. We too will—I have met with him as have many other people and found his answers to very specific questions very unenlightening. But I would say we would be more than

happy if he is ever here, or we would issue an invitation for him to come and give an accounting, like we have already done so with the British Ambassador. Because he, I think, has much—could reveal much to the Commission. Thank you so much.

I would like to ask our second panel if they would please come to the witness table.

Secretary Koh regrettably has to move on back to the State Department, but he takes with him the testimonies of each of our next witnesses. Thank you, Secretary, for being here.

I would like to welcome our first panelist, Jane Winter, who is the Director of British Irish Rights Watch, an NGO based in London. Jane has worked for the past 6 years on the human rights dimensions of the conflict in Northern Ireland and has been a source of a considerable amount of very accurate commentary on the troubles of Northern Ireland.

Paul Mageean serves as the legal officer for the Committee on the Administration of Justice, a non-sectarian human rights organization active in Northern Ireland. Paul's responsibilities at CAJ include providing legal advice on a number of cases currently being considered by the European Court of Human Rights. Before joining CAJ, Paul spent 4 years as a private practice lawyer with one of the foremost human rights practices in Belfast.

And finally, Michael Posner is the Executive Director of the Lawyers Committee for Human Rights. Mike has directed all of the Lawyers Committee's activities since the organization's inception, way back in 1978. He has participated in more than 25 human rights missions worldwide, including visits to Northern Ireland. Mike was previously a labor lawyer in Chicago and worked for the International Commission of jurists in Geneva, Switzerland, and is a very responsible and has been very helpful to the Congress in the past in providing insights on issues of human rights in general and lawyering and policing issues in particular.

I would like to yield to Ms. Winter to begin.

#### **TESTIMONY OF JANE WINTER, DIRECTOR, BRITISH IRISH RIGHTS WATCH**

Ms. WINTER. Thank you, Mr. Chairman. I am the Director of British Irish Rights Watch, an independent, nongovernmental organization that has been monitoring the human rights dimension of the conflict and latterly the peace process in Northern Ireland since 1990. Our services are available free of charge to anyone whose human rights have been violated because of the conflict, regardless of religious, political or community affiliations. We take no position on the eventual constitutional outcome of the conflict.

We welcome this opportunity to address the Commission on Security and Cooperation in Europe concerning the murders of Patrick Finucane and Rosemary Nelson. Chairman Smith has shown consistent and well-informed concern about these matters over a number of years, for which we are extremely grateful. We also thank the members of this honorable Commission for their interest.

We have monitored both cases in depth and have produced reports about them which are available on our website and which I request be read into the record of these proceedings.

Mr. SMITH. Without objection, it will be.

Ms. WINTER. Thank you. Since my colleague Paul Mageean will speak about the murder of Rosemary Nelson, I will confine my submission to Patrick Finucane.

In February last year, 10 years after his murder, we presented a confidential report to the British and Irish Governments concerning the murder of Patrick Finucane and others. We also sent the report to the United Nations. It was based on documents seen by us which appeared to be genuine British Army intelligence reports. These documents suggested that a secret unit within Army intelligence, the Force Research Unit or FRU, had been conspiring with loyalist paramilitaries to target Catholics for murder. Although those targeted were supposed to be known republicans themselves involved in violence, many of those who died as a result of this alleged policy were like Patrick Finucane, completely uninvolved.

As a human rights group, we would say that in a democracy, no state agency should ever participate in illegal acts, especially not the murder of its own citizens, whatever their alleged crimes. But it is especially worrying when wholly innocent people die in such circumstances.

Our research suggested that many people may have been targeted for murder over a period of years. One outstanding question concerning the activities of FRU is that of who sanctioned its activities and at how high a level in the security forces or the government that decision was made.

When we presented our report to the British Government, we were promised a swift response. Thirteen months later, we are still waiting. We have said to the government that we believe that their own files would reveal whether there was any truth in the shocking allegations that we were making. We asked them to review their files in the belief that if there was any truth in our allegations that they would have no option but to hold a full public judicial inquiry. To the best of our knowledge, they have not conducted any such review. Significantly, neither have they issued any rebuttal of our allegations.

We understand that the Secretary of State for Northern Ireland, to whom we delivered the report, passed a copy to the Director of Public Prosecutions. He in turn gave a copy to the Chief Constable of the RUC, Sir Ronnie Flanagan, who without reference to the Secretary of State called in Sir John Stevens to conduct a third police investigation. Like the Finucane family, we were puzzled by this, as we had been told by Sir John that he had already investigated the murder. However, he has since raised doubt about whether he was authorized to investigate fully on previous occasions.

Of greater concern, though, was our conclusion that the Chief Constable had set up a further police investigation to thwart the public inquiry. The government now says that it must wait for the outcome of Stevens' investigation before deciding whether to hold an inquiry. However, Amnesty International has commissioned a legal opinion from leading experts who maintain that all the criteria for a public inquiry are met in the case of Patrick Finucane, and that the police investigation is no impediment. I request that Amnesty's legal opinion also be read into the record.

Mr. SMITH. Without objection, Amnesty's submission will be made a part of the record.

Ms. WINTER. Thank you. Since then, there have been a number of developments. Books have been published confirming the existence of the FRU. One of these called "1033" by Nicholas Davies has alleged that former Prime Minister Margaret Thatcher took a personal interest in the work of FRU. He also details a number of victims who he says were targeted by FRU. Newspaper interviews with a former FRU operative who calls himself Martin Ingram have alleged that Army intelligence personnel sought to destroy Stevens' first police investigation by burning down his office. Most startling has been the arrest by Stevens of loyalist Billy Stobie, who has been charged with the murder of Patrick Finucane. He freely admits that he supplied the weapons used in the murder. However, he also says that he was an informer for RUC Special Branch at the time of the murder. He claims that he told his police handlers that named loyalists had asked him to supply weapons for a high profile murder. Although he says that he did not know who the intended victim was, he gave the RUC sufficient information to put the perpetrators under surveillance and prevent the murder. It has transpired that he was arrested in 1990 and questioned by the RUC about the murder and that he told them all of this information then. The Director of Public Prosecutions decided not to prosecute him. There has been no material change in circumstances since then, yet now Stevens has arrested him. It seems very likely that he will have a strong defense on grounds of abuse of process, and I personally doubt that he will be convicted for the murder of Patrick Finucane.

It has also emerged that Stobie told his story to the respected journalist Ed Moloney back in 1990 as an insurance policy should he ever be arrested again. Sir John Stevens went to great lengths to try to force Moloney through the courts to give up his original notes of his interviews with Stobie. Moloney refused to do so citing the journalists code of ethics about protection of their sources. Eventually, the courts found in favor of Moloney, but his career could have been ruined and he could have ended up in jail. He has since won awards for his courage and integrity.

A few weeks ago, we published a second report setting out all the developments since we delivered our first report to the two governments, a copy of which I would also request be read into the record.

Mr. SMITH. Without objection.

Ms. WINTER. Thank you. It covered the events I have just described and also raised serious questions about the role of the Director of Public Prosecutions, who appears to have dropped charges against some defendants and done deals with others, the effect of which has been to prevent the truth about the murder of Patrick Finucane ever emerging in court.

On February 24, 2000, we presented this report to the Irish Taoiseach, Bertie Ahern. He responded immediately by calling publicly for a full inquiry into the murder of Patrick Finucane. We are most grateful for his support. There may be those who fear that such statements at this time may be detrimental to the peace process in Northern Ireland, which is very fragile at the moment. However, we believe that peace will never fully take hold in Northern Ireland while landmark cases such as the murder of Patrick Finucane remained unresolved.

The brutal and callous murder of Rosemary Nelson, to whose courage and memory I pay the warmest personal tribute, shows that unless measures are taken to deal with our allegations, lawyers in Northern

Ireland will continue to be at risk. Lawyers cannot choose their clients. Yet, they risk being murdered notwithstanding the cease fires because certain clients choose them. The poisoned atmosphere that gave rise to her murder and to that of Patrick Finucane must be dispelled and dispelled for good so that lawyers in Northern Ireland can go about their daily business without fearing for their lives.

British Irish Rights Watch has made serious allegations of security force collusion in a large number of deaths and other illegal acts, of which the murder of Patrick Finucane is but the tip of an iceberg. We have said that he died because of systematic policies adopted by the security services involving British military intelligence and the RUC. There is also considerable evidence of an official cover-up.

The overriding question that emerges from this murkiest of pictures is that of who sanctioned those policies. If what we allege is true, then the lives of many people in Northern Ireland have been damaged and in some cases destroyed by the actions of agents of the state. This is not an issue that can be swept under the carpet. Its aftermath will go on polluting the atmosphere in Northern Ireland and making a successful resolution of the peace process more difficult. If people cannot trust the police, the army, the courts, the Director of Public Prosecutions, or ultimately the government, how can they be expected to have faith in society itself? What is to become of the rule of law?

There is only one honorable response to the allegations we have made and substantiated to the best of our ability. The government, which already has under its control all the answers to the questions we have raised, must establish an independent judicial inquiry without further prevarication. The British Government cannot hold itself up as an example to other countries around the world if it does not practice respect for human rights at home. We hope that this Commission will help us to persuade the British Government of the necessity of taking resolute action to resolve the murders of these two lawyers and to protect other lawyers in Northern Ireland.

There are three things that we want our government to do. First, we want them to instigate an immediate, public, independent judicial inquiry into the murder of Patrick Finucane. Secondly, we would like them to do the same in relation to the murder of Rosemary Nelson. Thirdly, we would like them to implement in full the recommendations of the United Nations special rapporteur on the independence of judges and lawyers.

We respectfully request the Commission to consider making the following interventions. First, to send a letter to Prime Minister Tony Blair urging him to hold inquiries into the murders of Patrick Finucane and Rosemary Nelson and to implement the UN's recommendations. Secondly, to use every opportunity within the OSCE process to raise these issues with the British Government and to make other governments aware of these issues. Thirdly, to raise these matters privately with the British Government at political and official levels. Lastly, to send a delegation to Northern Ireland to assess progress on political, economic and human rights issues, including particularly these issues. I thank this honorable Commission for its time and attention.

Mr. SMITH. Ms. Winter, thank you very much for your testimony and your recommendations, which are very timely and well thought out, and we do appreciate that.

Mr. Mageean.



**TESTIMONY OF PAUL MAGEEAN,  
COMMITTEE ON THE ADMINISTRATION OF JUSTICE**

Mr. MAGEEAN. Thank you for the invitation to testify today. The Committee on the Administration of Justice or CAJ is an independent human rights organization which draws its membership from across the different communities in Northern Ireland. CAJ works on behalf of people from all sections of the community and takes no position on the constitutional status of Northern Ireland.

In 1998, CAJ was awarded the prestigious Council of Europe Human Rights Prize by the 41 member states of the Council of Europe in recognition of its efforts to place human rights at the heart of the peace process. One of the reasons for the success of our work on the peace process has been the continued involvement of the United States. In this context, we would like to thank the honorable members of this Commission for this opportunity to raise these important issues and in particular to Chairman Chris Smith for his work on this area.

On the 29th of September of 1998, I testified before the International Operations and Human Rights Subcommittee of the House International Relations Committee hearing on human rights in Northern Ireland. I was accompanied then by Rosemary Nelson, who also testified before the Subcommittee. She spoke of the harassment and abuse she had suffered at the hands of members of the Royal Ulster Constabulary. She also told the Subcommittee about the threats that she had received and the problems with the investigation of those threats. The members of this Commission will of course be aware that within 6 months of testifying before the Subcommittee, Rosemary was murdered. The anniversary of her death is tomorrow.

My testimony will attempt to inform the Commission of what has happened in relation to the investigation into the death of Rosemary Nelson and into the threats issued against her. I will also try to indicate ways in which the United States Government can assist in ensuring that the investigation into Rosemary's murder is carried out in an independent and effective fashion.

On the 10th of August of 1998, we wrote to the Minister of Security at the Northern Ireland Office, Adam Ingram, M.P. We drew two documents to his attention which we enclosed with the letter. The first was a note which had been posted to Rosemary Nelson which read, "We have you in our sights, you republican bastard. We will teach you a lesson. RIP." The second was a one-page pamphlet entitled "The Man Without a Future", which related to Brendan McKenna, leader of the Garvaghy Road Residents Coalition. However, it also referred in very derogatory terms to him having received advice from Rosemary Nelson and also give her address and telephone details.

We said in our letter that we considered these documents to be very definite threats against Rosemary Nelson and told Mr. Ingram that we considered it incumbent upon the government to investigate these matters and to provide the necessary protection for Rosemary.

On the 24th of November of 1998, Mr. Ingram's office replied to our letter. His response stated that "obviously the documents enclosed must be of concern to Ms. Nelson and the others mentioned. The Minister has asked me to say that he hopes that those who produced them can be brought to justice for their threatening behavior."

The letter continued that the threats had been passed immediately to the Chief Constable for investigation and that the police would assess the security risk against Ms. Nelson. The letter also mentioned that Rosemary could apply for the Key Persons Protection Scheme for security to be fitted at her home at public expense. Rosemary did not do this as it would have entailed RUC officers carrying out security checks on her home. It was, of course, officers from this same force who she believed were issuing threats against her.

Shortly after Rosemary's murder, we were contacted by RUC officers from the murder investigation team who were seeking originals of the documents we had sent to Mr. Ingram 7 months earlier. They said the originals could be important because the police might be able to obtain forensic or fingerprint evidence from them. We told the police that we did not have access to the originals of these documents. We were, however, very concerned that the police were only seeking access to the originals of these documents after Rosemary was murdered, when they had been alerted to the threats in August of 1998, some 7 months before her death. Surely it would have been a basic investigative step to seek the originals of the documents when they received them rather than wait until after the target of the threats was murdered.

On June 3, 1999, we wrote to the Chief Constable of the RUC, Ronnie Flanagan, asking him a series of questions in relation to these matters. CAJ requests that a copy of this letter be read into the record.

Mr. SMITH. Without objection it will be made a part of the record.

Mr. MAGEEAN. Thank you. The Chief Constable acknowledged our letter on the 11th of June, and we wrote a reminder on the 30th of July. He did not respond. We met with the Chief Constable on the 4th of October, when this issue was raised among others. He undertook at that meeting to respond to our concerns in writing. After having written several reminders, CAJ wrote again on the 9th of March, telling him that we were to testify to this Commission and urging him to respond before today. In his response of today's date, the Chief Constable said in relation to our inquiries about Rosemary Nelson, "In connection with your letter of June 3, 1999, specifically relating to the murder of Mrs. Nelson, I explained to you at our meeting that the RUC itself had no intelligence prior to Mrs. Nelson's death to indicate a threat of the dreadful atrocity which was to be carried out. In relation to the documents to which you refer, as these remain a matter of ongoing investigation, neither I nor Mr. Port believe that it is appropriate to discuss the details you raise while the investigation is current. You should be aware, however, that in relation to the threatening note received by Mrs. Nelson, nothing of potential forensic value was lost in the period between the sending of the document and its subsequent forensic examination. At this stage, nothing has been disclosed in the examination which has assisted Mr. Port's inquiry."

In our view, this response does not address our key concern, namely the apparent inaction of the police between August of 1998, when they were informed of the death threats, and Mrs. Nelson's subsequent murder in March of 1999. It was only after Rosemary Nelson's death that the police showed evident signs of the threats being taken seriously.

Answers to the concerns of police inaction in the face of the threats against Rosemary have also been sought by way of Parliamentary questions in Westminster, and I would request that copies of the question and answer be placed on the record.

Mr. SMITH. Without objection, that too will be part of our record.

Mr. MAGEEAN. Thank you.

We would be grateful if this Commission could write to the United Kingdom Government asking why the RUC did not act in relation to seeking originals of these threats until after Rosemary Nelson was killed. We believe that the police and the government have not answered our questions in this regard because they are unable to provide an adequate answer. We believe the police failed to carry out an adequate assessment of the risk against Rosemary. We believe their failures in relation to that assessment are emblematic of their failure to investigate the ongoing threats against Rosemary by their own members.

In an interview in today's *Irish News* newspaper, the United Nations special rapporteur on the independence of judges and lawyers states that he asked the government to provide protection for Mrs. Nelson. He challenges the government to provide information on what it did. And he says, "You tell us. You knew about it. What did you do?" I would request that the full text of this article also be read into the record.

Mr. SMITH. It will be made part of the record.

Mr. MAGEEAN. Thank you.

The Commission will, of course, be aware that the government-appointed Independent Commission for Police Complaints, ICPC, stated that they were not satisfied with the RUC investigation of complaints that Rosemary herself made in relation to threats and abuse. Among the issues of concern the ICPC identified were "observable general hostility, evasiveness and disinterest on the part of the police officers involved in this investigation." Assertions made by the investigating officer which constituted judgments on the moral character of Mrs. Nelson, and the view that the volume of correspondence received from international groups on behalf of Mrs. Nelson as having more to do with propaganda against the RUC than establishing the truth. Again, I would be grateful if this statement could be placed on the record.

Mr. SMITH. Without objection, that too will be made part of the record.

Mr. MAGEEAN. Thank you.

Subsequent to indications that the ICPC was unhappy with the RUC investigation, a senior English police officer, Commander Mulvihill was tasked with reviewing the initial investigation. He expressed satisfaction with the conduct of the investigation. However, in a linked commentary in the Mulvihill review, the Chairperson of the ICPC, Paul Donnelly, described the Mulvihill report as containing "assertions, conclusions and recommendations that rely heavily on impression and belief as opposed to systematically testable evidence." I would be grateful if a copy of this commentary prepared by Mr. Donnelly also be placed on the record.

Mr. SMITH. Without objection, it is so ordered.

Mr. MAGEEAN. After the publication of the ICPC statement, the supervising member of the ICPC, herself a female lawyer, was threatened, necessitating her to move house. In addition, she became the subject of a whispering campaign by police officers and members of the policing establishment which questioned her impartiality and ability. This campaign was described in an article which appeared in the *Irish Times* written by Gerry Moriarty, a copy of which I would also ask to be placed on the record.

Mr. SMITH. Without objection, it will be part.

**Mr. MAGEEAN.** The honorable members of the Commission will be aware that the criminal investigation into Rosemary Nelson's murder is now being headed by Colin Port, the Deputy Chief Constable of Norfolk Constabulary. Until the 9th of March, no arrests had been made in the investigation and no one had been charged. On the 9th of March, it was reported that two people were arrested in connection with the murder. One of those individuals has now been released, but it has been reported that the other individual, who is still being detained, was a serving soldier at the time of Rosemary's murder.

Mr. Port remains confident that he can catch those responsible. He has indicated that he is looking carefully at possible collusion in the murder. He has also indicated that to date the collusion inquiries have not yielded any results. We, however, remain concerned that Mr. Port continues to conduct his investigation from Lurgan RUC station, where some of those officers involved in threatening Rosemary were based. In addition, there have been a serious of leaks reportedly from the Port investigation team which appear to have damaged the investigation. We are concerned that the continuing involvement of RUC officers in the investigation team is undermining confidence in the independence of the investigation. This is particularly relevant when according to press reports crucial witnesses are refusing to cooperate with the Port investigation.

In addition, however, it is apparent that the criminal investigation, even if successfully concluded, will not result in a full examination of the circumstances surrounding Rosemary's murder. For instance, it will not examine the alleged inaction of the RUC following receipt of the threats issued against Rosemary. Unless hard evidence is obtained to link members of the police or army to the murder, we will not have an opportunity to hear the reasons given for the heavy Security Force presence in the area prior to the murder.

For these reasons, we are committed to a full public inquiry into the murder along with a number of other domestic and international NGOs, including Amnesty International, Human Rights Watch, and the Lawyers Committee for Human Rights. If in another democratic state a lawyer had been subject to regular threats from police officers, if the United Nations had drawn its concerns about the safety of the lawyer to the attention of the government, and if subsequently the lawyer in question had been killed, we are convinced that a full inquiry would be established. We can see no reason for the U.K. Government not taking this step now. We believe the failure to establish such an inquiry is a violation of the United Kingdom's international obligation to make available effective remedies for the violation of human rights. This right is guaranteed by the European Convention on Human Rights in addition to the 1990 Copenhagen Document. We would respectfully request that this Commission requests the United States Administration to raise these issues through the human dimension mechanisms of the OSCE, and to express its view that the United Kingdom should establish a public inquiry. In addition, we believe it would be helpful if the OSCE were to send a fact-finding mission to Northern Ireland to examine the general situation of defense lawyers and in particular to examine the circumstances surrounding the murder of Pat Finucane and Rosemary Nelson.

Rosemary Nelson was a member of the Executive Committee of CAJ. She dedicated her professional life to obtaining justice for others, and we will do all that we can to obtain justice for her. Thank you.

Mr. SMITH. Mr. Mageean, thank you very much for your testimony. You made a number of very valuable recommendations, including the human dimension and raising the issue at the OSCE. I mentioned earlier that I plan on raising it at the OSCE Parliamentary Assembly in July, but I think this is a whole new area or whole new venue that has not been used in the past that as of today and as a result of this hearing, we plan on embarking in this area in addition to everything else. So I do thank you for your very timely recommendations.

Mr. Posner?

**TESTIMONY OF MICHAEL POSNER,  
EXECUTIVE DIRECTOR, LAWYERS COMMITTEE  
FOR HUMAN RIGHTS**

Mr. POSNER. Thank you, Chairman Smith. I have a written statement which I ask also be included in the record of this hearing.

Mr. SMITH. Without objection, it will be made part of the record.

Mr. POSNER. Thank you.

We have heard eloquent testimony this morning from both the family members of Patrick Finucane and Rosemary Nelson and my colleagues on this panel. In my written statement I have some detail about those two investigations, but I am going to leave that for now.

I would simply say that what you are doing here by convening this hearing and what you have done in the past in the Committee on International Relations is enormously important to pushing a process forward for accountability and to break a cycle of impunity. We would reiterate your call and the call made by others this morning that there be independent inquiries in both the Finucane and Rosemary Nelson cases.

I was in Belfast in Northern Ireland in November with a delegation from the Lawyers Committee. We met with Mr. Stevens and Mr. Port and the Deputy Minister of State, Mr. Ingram, and the Chief Constable and many others to look at where these cases are. It is simply impossible to believe that at this stage that there will be a full truth-telling in these cases unless there is an independent inquiry in both cases at this juncture. I want to thank you for your ongoing attention to this and to urge you and others in the Congress to keep pressing on this because we need to make it happen.

I want to make two other general comments about the two cases. One is, as you mentioned earlier, Congressman Smith, these are not the only cases where lawyers are threatened. One thing we were disturbed to find in November when we talked to others in the legal community is that the threats are still being made. They still go on in the same way. A lawyer represents a client who is arrested or detained and interrogated and in the course of interrogation somebody in authority says your lawyer is associated with the IRA or makes some other disparaging comment. That comes back to the lawyer and it has a consequence. It basically says to lawyers, don't represent anybody in a politically sensitive case. The fact that this is still going on at this moment is to me the most important reason that we have to continue to push to break the cycle of impunity. It is still not clear to those in authority or in the police or in government that this sort of conduct is unacceptable

and there is a consequence for saying these sorts of things and acting on them. So we are at a critical juncture in a larger peace process where these issues relating to police practice and relating to the rule of law and related to breaking the cycle of impunity still need to be addressed.

Finally, this is also an area where I think the international attention, not only from the Congress but what you are about to do at the OSCE as well as what Mr. Cumaraswamy has done at the UN has helped end what I found to be a tremendous isolation in Northern Ireland. When I first started going there about 10 years ago, I was amazed at how isolated this conflict had become. I think it is part of a healing process that there is now a more open, honest discussion of things that are wrong, and that it is going on not only within the U.K. or within Ireland, but within the bigger international sphere. So to the extent that this Congress or the OSCE or the UN make it part of their and your agendas, I think it serves a very healthy part of the process.

I want to speak finally about two other larger issues, which are related which I also mention in my testimony. One is the continuation of emergency law provisions. Under emergency law, police have expansive powers to stop, question, search, detain and interrogate persons suspected of security offenses. In our view, the process of police reform and dealing with issues of human rights are inextricably linked to the bigger structural questions of dismantling this emergency regime. Any measures taken to begin to end the emergency would be a significant and much needed step toward changing the culture of policing in Northern Ireland and a big step on the path to peace. So I ask that this aspect not be lost in the discussion that goes forward.

Finally, with regard to the police, you said in your opening remarks, and I want to comment on it. That there are a number of deficiencies in the Patten report, including an absence of clear thinking or clear recommendation with regard to the subject of vetting. We share that concern. We also share the concern that the Patten Commission was a forward looking document and it failed to address these issues of accountability for some of the worst past crimes, including the two cases we are focusing on this morning.

At the same time, the Patten Commission made a number of recommendations which are, I think, important to advance a process of human rights and respect for the rule of law. It is incumbent on all of us now to make sure that the Patten Commission recommendations are taken seriously and implemented. In that regard, one thing we stress in our testimony, and I want to mention here, is that there is now a decision being made to appoint an Oversight Commissioner.

I agree very much with Geraldine Finucane that this is not just a matter of refining or instituting modest reforms. There is a need for a very serious change in the way the police are structured and the way they operate. This will not be an easy task, and there needs to be somebody guiding and directing and motivating that process. The notion of an Oversight Commissioner from outside of the U.K. or the British Isles to be that person is part of the Patten recommendations. It is important that you and others are attentive to how this process goes forward and that the person that takes the assignment is somebody who is both intimate with and knowledgeable about police practices, but also has integrity, right sensitivity, independence and a demon-

strated commitment to building a system of official accountability. This is an important part of what the Patten Commission recommended and an important part of what is needed to be going forward.

Finally, I want to end with a personal word. I had the privilege of meeting and working with Rosemary Nelson. I have met and known the Finucane family for more than 10 years. I have tremendous admiration for their courage, for their perseverance and for their commitment to justice. They have helped keep the flame alive, and it is for me an honor to be working with them. Thank you.

Mr. SMITH. Thank you very much, Mr. Posner. You made an excellent point about the Patten Commission. If it is a floor rather than a potential ceiling that then the page is turned and nothing else is ever done, but if it is a base upon which to build, at least then—we made that point when we had Mr. Patten testify before our Commission or our Committee, I should say—there were good aspects to it. But there was that disclaimer which certainly bore out as one read the document that the Commission would not make judgments about the extent to which the RUC—this is their words—may or may not have been culpable in the past. They were just like turning the page and saying what has already gone on, let's just perhaps forget about or it is not part of their mandate. That would be precisely the wrong thing to do and I think your point was well taken in terms of those good aspects.

In terms of the—let me just ask a couple of general questions with regards to the Police Ombudsman's office, which was established in 1998 or at least that is when the law passed. Has it been established? Is it doing its job? Does it have sufficient resources? Could you just enlighten the Commission as to its validity?

Mr. MAGEEAN. The Police Ombudsperson has been appointed. She is a woman called Nuala O'Loan. She has yet to begin her work. She is recruiting staff at the moment and getting the office into shape. We believe that she will begin to receive complaints in September. There has been some concern in relation to the budget for the Police Ombudsman's office. We certainly were aware that the budget for handling complaints up to now has been in the region of 7 million pounds and there was some concern that I think initially it was suggested that she would have a budget of only 3 million pounds, which would be a significant reduction. In fact, recent press reports, although this is yet to be confirmed, would indicate that in fact she will receive a budget of somewhere in the region of 4 million or 5 million pounds. So we have yet to see how this new procedure will operate. I think one thing that we would raise in relation to this one issue that we are concerned about is that in the Patten report, it revisited previous recommendations that had been made in relation to strengthening the complaint system in Northern Ireland. We don't think that the legislation which forms the basis for the Ombudsman's office equates to the recommendations that Patten made, and certainly our view would be that at the very least, the new Ombudsperson's office should have Patten as the basis for her role.

Mr. SMITH. Has the monitor for the Patten report been selected? The international monitor?

Mr. MAGEEAN. No.

Mr. SMITH. What is the delay on that?

Mr. MAGEEAN. Well, I think that is a very good question. I think certainly there would be some concern that the delay is deliberate in order to allow for what you described earlier, Congressman Smith, which is a reduction or a clawing back in relation to Patten recommendations. Up until Patten reported, we had the Patten Commission, which was protecting the recommendations. Once we have the Oversight Commissioner, we will hopefully have a person of some stature who will do the same. But now I think the recommendations are at a very vulnerable stage. It appears that while the government has committed itself to a number of the recommendations, many others are being left to internal managerial change within the RUC, and certainly I think we feel that is very worrying.

Mr. SMITH. Do you think it has been an oversight—oh, Mr. Posner, did you want to say something?

Mr. POSNER. I want to associate myself with those remarks, and to add to them. When you look at the formal response of the RUC to the Patten Commission, which is a quite lengthy document, and much is on their website, it is clear that all of the significant recommendations that will really go to changing the institution are things that they are going to challenge or try to reshape. They are already acting on a number of things in a way that may not be helpful. So it is both critical that there be an Oversight Commissioner in place as quickly as possible, and that it be somebody with the requisite independence, knowledge and backbone to make sure that the recommendations that are worth pursuing are in fact taken seriously and implemented.

Mr. SMITH. Your sense—Mr. Mageean, you gave us some very solid recommendations for the OSCE to pursue. I indicated earlier that I plan on bringing it up at the Parliamentary Assembly in July. In a way just thinking about this, and this is why we are having this hearing in the OSCE Commission rather than the Subcommittee, is that we have been asleep at the switch. The OSCE very often focuses, as do I, on Chechnya and on the problems in Belarus and the horrific nightmare as a result of Chernobyl. We have had hearings on that and we have had work on that—the nuclear meltdown there. It seems that the U.K. gets off scott-free in an international fora that absolutely lends itself—I always believe you lead by example. If we have problems, they should be out there completely transparent and we ought to fix them. So I hope we are not too late in trying to raise it in this venue. But I can assure you we will be making every effort to do so. It is kind of like catch-up. And we will do everything we can to hold them accountable.

With regard to the emergency powers, have they been employed? I personally and many of us have called for their eradication yesterday and even before that because they are absolutely injurious to any due process rights that any individual who has allegedly done something should have. What is the status—we know that they are still in place. I have heard suggestions that they are actually being strengthened under the cover of the Good Friday Agreement and the euphoria which has obviously faded in recent weeks with regards to that. But where are the emergency powers?

Ms. WINTER. Well, I regret to say they are still all in place, Mr. Chairman. The government is currently legislating to bring in permanent anti-terrorism laws, which have retained many of the features of the so-called temporary laws that we have been dealing with for the last 30 years. The emergency laws—



Mr. SMITH. How do you define temporary?

Ms. WINTER. Good question. The emergency laws that are specific to Northern Ireland were strengthened considerably after the Omagh bombing and have been used both north and south of the border in Ireland, and that is a matter of concern as well because they have taken away yet more due process rights. But the truth is that fewer people have been arrested under emergency laws because of the more peaceful situation in Northern Ireland. It is becoming increasingly apparent that they are of no material benefit and of every disbenefit in terms of due process rights.

Mr. POSNER. I would just again add one quick point, again associating myself exactly with Jane's comments. There is also a question of how you create a culture of respect for rights and law. There is in Northern Ireland, a need to send signals that things are going to be different. One way you do that is to begin to take a look at the laws that were the foundation or the underpinning of an emergency situation. If you are moving to a situation where you are trying to build confidence within the community that there is a new beginning, then you need to have a new approach to law and law enforcement. It would send a tremendously positive signal if the British Government would say that Northern Ireland moving out of a period of emergency and is going to operate in a more normal way. It would send a signal to the police as well that they are going to be susceptible to a rule of law and to greater accountability.

Mr. SMITH. The Northern Ireland Law Society, when they were apprized of the threats against both Patrick Finucane and Rosemary Nelson did very little if nothing. Has that climate changed at all? Have they finally reached out to their defense attorney brethren to manifest concern and to make representations to every level of government that defense attorneys are a very vital and important aspect to a properly function civil society?

Ms. WINTER. There certainly has been a radical change of attitude in recent months, and I think that is partly due to the visit of the UN special rapporteur, Param Cumaraswamy, but also to the international attention that has been brought to bear on the plight of defense lawyers in Northern Ireland from people such as yourself. The Law Society passed a resolution calling for an independent inquiry into the murder of Patrick Finucane and also a similar inquiry into the murder of Rosemary Nelson after an extraordinary general meeting of its whole membership overturned the attitude of its Executive Committee, who were frankly out of step with their own members over this. I think something like 700 solicitors turned up at that meeting, which was the largest gathering of solicitors ever seen in Northern Ireland apparently, and overwhelmingly supported the motion in relation to Patrick. I think that shows that the legal profession there really have taken note of the UN's recommendations, are concerned about the safety of defense lawyers, are prepared to support members of their own profession. I have to say that the 700 lawyers who turned up were from all sides of the community in Northern Ireland. Many of them will have acted for the prosecution or acted for the Crown or acted for the Director of Public Prosecutions. I believe it is because they knew what Patrick Finucane was up against that they were prepared to support his family in their cause so overwhelmingly.

I should also say that the Bar Council, who represent other citizens of Northern Ireland have also become much more supportive of their colleagues within the solicitors' profession and have moved away from a stance of indifference to one of realizing that all lawyers should be protected in their work. So I am pleased to say that is one area where there has been a massive improvement.

Mr. SMITH. Has the Law Society or any of its lawyers joined in the call for the public inquiry?

Ms. WINTER. Yes, they have. It is now their policy and their president—

Mr. SMITH. They are the ones who put their names to that large request?

Ms. WINTER. Yes, they have now.

Mr. SMITH. Let me just ask you with regards to defense attorneys, because obviously they have a very special courage given the fact that two have been assassinated. How many are there?

Ms. WINTER. Altogether about 1,500 we think, lawyers. But the number who deal with highly contentious cases would be far smaller than that, perhaps maybe 100 at the very most.

Mr. SMITH. One of the most notable aspects of the Helsinki work over the last 25 years since 1976 has been Helsinki monitors are those that we always thought to put the sandbags around and protect. In a country where you purportedly have the rule of law, defense attorneys certainly play that role. Another reason why I think the Commission on Security and Cooperation in Europe needs to be much bolder and to assert itself much stronger, as we did—I remember when we met with people who were part of Charter 77 in the former Czechoslovakia, a few of whom were arrested on their way to our meeting. They were Helsinki monitors. Well, the Helsinki monitors in civilized U.K. are the defense attorneys, and I think it is very important that we make that connection, especially to the British Government. Because they walk and stride boldly at these international fora, as do the United States, thinking that we have nothing to hide. Well here we have the apparent serious cover-up and it is time that in this forum it is raised very aggressively, and I plan on doing it.

The recent detention of the Royal Irish Regiment official, is that a real positive development? Is it too soon to assess that, Mr. Mageean?

Mr. MAGEEAN. I think it probably is slightly too soon to know for definite whether this is a very positive development. Certainly I think it perhaps at this stage raises more questions than it answers and that it seems to indicate at the very least that the Port investigation team is very interested in a suspect who at the time of the murder was a serving soldier. We have yet to find out whether this individual will be charged. From our understanding of when he was arrested, Colin Port will have until tomorrow evening to decide whether or not to charge or release the individual. It appears very likely that he will be charged because it appears that weapons were found in his house. So I think at the very least he will be charged with those matters. It is not at all clear at this stage whether or not he will be charged with Rosemary Nelson's murder.

But I think again we need to come back to a slightly bigger picture on this. Because even if we do see this individual being charged and perhaps other individuals being charged, we still have to focus on a wider issue beyond simply who exactly were the small group of people who

killed Rosemary. There are those who set the context in which she could become a target and who failed to act when concerns about her safety were brought to their attention.

Mr. SMITH. How much of a factor do you believe is the perception by the government that there might be a backlash should the government seriously go wherever the evidence might take them, which might mean into the bowels of the RUC, which might mean right to some of its very highest current leaders. Is there a fear by the government of a backlash politically among the Protestant community?

Ms. WINTER. Well, we can only speculate about that because the government has failed to respond to us on our report. But any sensible person would think that might be at the back of their mind. In our view, whether there is a backlash or not ought not to be the determining factor into whether they actually deal with these issues. I think in any democracy, a government needs to be in a position where it is in control of its intelligence services and its security forces, and they are not in control of the government. That way lies disaster. It would appear that in Patrick Finucane's case and in Rosemary Nelson's case possibly, members of the security forces have been way out of control and have indeed been involved in murdering their own citizens. That is not a situation that any civilized democracy can tolerate. And unpleasant and difficult though it may be for a government to have to deal with these issues, unless they deal with them, then the consequences are absolutely unimaginable.

Mr. SMITH. Let me ask all three of you, when Tony Blair said in his letter that he didn't think anything new would come out of such an inquiry, other than the possibility of some redundancy of resources and some slight expenditure, in the big scheme of things it doesn't cost all that much to bring in some people who would have an absolutely fresh perspective and could pursue this without any appearance of taint. Given the fact that they have suffered, they being the British Government, an enormous amount of loss of face—you know, I have lost a lot of respect for how they have handled this for many years, and I can't help but say it, but it does smack of a cover-up. Why wouldn't you go forward and why would you make such statements as well nothing new. You don't know until you put somebody on the job and a team on the job that can go wherever the evidence may take you. It invites more backlash to the British Government unless they are hiding something. Mr. Posner?

Mr. POSNER. I would like to add to that. The fact is that you have John Stevens now in his third try in relation to the Finucane case, and his two previous reports were never made public. The fact is that there is a history of these sorts of special police investigations which are never made public, there is no public confidence that what is really going on is a serious investigation. All of this erodes public confidence and it is not helpful to a larger effort to build a community of confidence for a peace process. I am pretty clear from our examination of both cases, and in particular the Finucane case, that there are many avenues that are not being explored by those police investigations that need to be explored by an independent inquiry.

Secondly, there needs to be a more open public process that gives the public confidence that there really is a determination to get to the truth. We are not there right now. So it seems to me that it is absolutely in the interest of the British Government to take another look at this and to say that even if they have a fifth, a sixth, an eighteenth Stevens private

inquiry or private investigation. Nobody is ever going to accept the results until it is a public process. There needs to be a sense of independence and a sense that the scope of the inquiry looks wherever the evidence takes you. Until this is done you are not going to have any confidence or a feeling that justice has been done or that the truth has been told.

Mr. SMITH. Yes, Jane?

Ms. WINTER. If I could add, Mr. Chairman. In the case of Rosemary Nelson, her death occurred during the lifetime of the present Administration in Britain. Her death occurred after Patrick Finucane had been killed. His death was a terrible shock and so was Rosemary Nelson's. But when she died, it was a nightmare happening again. The fact is that this present government was warned on many occasions that Rosemary Nelson's life was in danger and they failed to act. That in itself would warrant a public inquiry in my view. So they are already indicted and need to answer for their actions.

In relation to Patrick Finucane, this government did not preside over his murder, but they are rapidly reaching the point where if they fail to call an inquiry into his death, they will become as much implicated in what happened to him as the previous Administration. They really are reaching a point where time is running out for their credibility and their willingness to deal with these deaths. We would say that unless they act soon, they will cease to be part of the solution and they will become part of the problem.

Mr. MAGEEAN. Could I just add one brief matter to that, Congressman Smith, which is that whenever the public inquiry into the Bloody Sunday case was established, Prime Minister Tony Blair issued a statement in which he said where the states' own authorities are concerned, we must be as sure as we can be of the truth. Now in particular in relation to the Finucane case, it is now beyond doubt that the states' own authorities were concerned in the murder. I think similarly where there is grave suspicion of that involvement in relation to the murder of Rosemary Nelson that Prime Minister Blair should establish public inquiries into both of those matters as soon as possible.

Mr. SMITH. I agree fully. And I do thank you for that. Because it seems if it applies there, it certainly applies with equal if not more fervor on the other two murders.

I have no further questions. If you have any further comments you would like to make to the Commission. Again, your recommendations are really excellent. They are timely and they are ongoing. Because you have all three of you been very persistent over the years in trying to stop human rights abuses before they occur. You know, it doesn't pass the straight face test for the RUC to suggest that there wasn't a threat against her and how she herself had some misgivings about them casing her own house because these might be the very people who could be a part of the killing. Because she made that point right here. I mean, if the British Government, who often comes to our hearings when it is on Northern Ireland, was unaware of Rosemary Nelson's fear of the RUC, they certainly left the building, the Rayburn Building, this building, fully apprized of that when she made her very strong statement that they threatened her right to her face and said they were going to take her life. Certainly that is the case.

We do have one additional question from staff. And it is a good question. Where is the legislation before Westminster on the implementation of the Patten reforms?

Mr. MAGEEAN. The legislation has yet to be published. We understand that there is what is called I think a Patten action team within the Northern Ireland Office which has been charged with drafting the legislation. So we are at the very early stages of that process. But I think again it is important to emphasize in relation to that the legislation itself will only cover aspects of the Patten Report. That there are many other aspects of the Patten Report, very important aspects, which I think look as if they may be left to internal management decisions within the police, and I think that is very dangerous in terms of ensuring that we get full implementation of Patten.

Mr. SMITH. I thank you and we appreciate your insights and your courage. The hearing is adjourned.

(Whereupon, the hearing was adjourned at 12:30 p.m.)

## WRITTEN SUBMISSION OF GERALDINE FINUCANE

Mr. Chairman, Distinguished Members of Congress, Fellow Speakers, Ladies and Gentleman:

I would like to begin this submission by sincerely thanking Chairman Smith for his work in organising this public hearing. I cannot emphasise the difference it makes, both to my family, and the people in general who see the crucial importance of this issue. I would also like to thank the members of Congress that have attended today and in the past, the NGOs that have worked so tirelessly to keep this issue alive, and all who have persevered in the quest for justice for my family.

In 1997, the House Sub-Committee on International Operations and Human Rights convened its first hearing on the intimidation and murder of defence lawyers in Northern Ireland. My eldest son Michael gave testimony at that hearing, and he publicly accused the British Government of ordering and arranging the murder of his father.

In 1998, Pat's law partner Peter Madden—a true friend to both myself and my family—spoke of the devastating effect that the murder of his friend and partner had on himself, and on the legal profession in Northern Ireland as a whole.

At that same hearing, Rosemary Nelson testified about threats that she had received time and again as she carried out her work as a defence lawyer. One year ago, Rosemary was murdered. Those who said it could not happen again were wrong. Those of us who had insisted that it could, were devastated.

It is clear that the British Government are responsible for the deaths of my husband and Rosemary Nelson. This is not just because they failed to protect them. Pat and Rosemary were the victims of British Government policy—that of selective targeting and directed assassination. My journey to this conclusion has taken eleven years, and having arrived at this point I am not only convinced by what I have learned, but I am also horrified by it because the truth as I now know it to be is overwhelming.

When my husband was killed 11 years ago, I started asking questions about his murder. For the first years, I believed his case to be the work of a self-contained Loyalist unit. After the arrest of the British Army Intelligence Agent, Brian Nelson, it became clear that this unit was a mere cog in a larger machine, and that Pat was not a random target.

At Brian Nelson's trial, the magnitude of the policy he was a part of began to unfold. "His superior, a man identified only as "Colonel J," said that Nelson's role was to save lives. It is not clear how many lives he did save, but it is very clear as to how many people he was involved in killing, and the total figure has simply gone up over the years.

The truth is far from the British assertion that they were the defenders of law and order. They are directly responsible for the death of my husband and others. It is for this reason that my family has insisted upon an inquiry because, for us, the key question is not who were the people pulling the triggers, but who were the people pulling the strings.

Last year, on February 12, 1999, I submitted a confidential report prepared by British Irish Rights Watch to both the British and Irish Governments. It evoked an immediate and in-depth response by the Irish Government, who described the case for an independent inquiry as "compelling." We have still received no reply from the British Government. Their silence speaks volumes.

Since the handing in of the Report to the two Governments on the 10th anniversary of Pat's murder, and since Rosemary's murder a short time later, more facts have come to light.

A few weeks after the report was given to the British Government—indeed on St. Patrick's Day last year while the former Secretary of State, Mo Mowlam was here in Washington—the Chief Constable of the RUC, Ronnie Flanagan, deliberately took it upon himself to bring back the English policeman, John Stevens, to carry out further investigation. Mr. Stevens has already carried out two investigations in Northern Ireland, and his return for a third time did not inspire any confidence in my family. Indeed, his single-minded pursuit of insignificant trigger men has completely borne out our earliest fears.

There are many reasons why this criminal investigation cannot be the definitive search into the circumstances surrounding my husband's death, and the British Government who ordered it.

One reason is that the man who recalled Stevens, Ronnie Flanagan, may well be Chief Constable of the RUC now, but what was he doing in 1989? He was a senior officer in RUC Special Branch—the department that created the informer, William Stobie, the man now charged with the murder of my husband. Ronnie Flanagan had this job at the time my husband was murdered. This is an area of his career that he has taken some care to hide, and it is not difficult to see why.

Ronnie Flanagan's involvement at that time was central. He has continued to be involved for the last eleven years and furthermore, he has connived in deliberately hiding William Stobie's confession to my husband's murder for all these years.

What is worse is that the DPP and the British Government are now allowing Flanagan to essentially investigate himself. This cannot be allowed to continue, because not only is the RUC as a whole culpable in Pat's murder, but Flanagan himself is a prime suspect. He and his officers merit serious independent investigation, not another cozy cover up.

That cover-up does not stop here.

My youngest son, John, had a chance meeting with the British Prime Minister Tony Blair at a school function in Belfast in late 1997. He asked the Prime Minister about the impending UN Special Rapporteur's report into his father's killing, and what the Government's position might be. Mr. Blair was unable to proffer a response at that time, so John furthered his inquiry with a letter. In reply, on 29th January 1998, the Prime Minister stated:

"I have looked into the issues you raised concerning your father's murder." "I am sorry that it has not yet proved possible to charge anyone for this dreadful crime, despite the intensive police investigation. The circumstances surrounding your father's murder were fully investigated again by Mr. John Stevens following allegations of Brian Nelson's involvement. As I am sure you know, "in February 1995, having considered the independent report before him, the Director of Public Prosecutions for Northern Ireland concluded that there was insufficient evidence to warrant the prosecution of anyone for murder.... While I fully understand why you propose an independent inquiry, I am not convinced that this would bring to light anything new."

This statement by the Prime Minister is not only factually wrong, but it is disturbing for a number of reasons.

In 1993, John Stevens wrote to British Irish Rights Watch and stated that he had fully investigated the murder of my husband, and had indeed presented his report to the DPP. The DPP followed this line in 1995—as Tony Blair wrote in his letter—and directed that there be no prosecutions.

Four years later, in March 1999, Mr. Stevens returned to Northern Ireland and the first thing he said at his opening press conference was that he had never before investigated the murder of Patrick Finucane, nor had anyone ever asked him to do so.

It was always impossible for me to have a view on the outcome of these “official” investigations, as neither of the final reports by John Stevens have ever been made public. Now, in light of his statement last March, how can I now have any confidence in the man or an investigation by him? Why should I think anything will come of his third effort when I am refused access to the first two?

“If the same pattern is followed, no-one will ever see this third report and I will certainly not accept being told that there has been an investigation and therefore I don't need a public inquiry.

Last year, John Stevens arrested the former RUC Special Branch informer, William Stobie and charged him with Pat's murder on 23rd June. The basis for the charge was Stobie's confession, while in RUC custody in 1990, about his role in the murder. Yet in 1995, five years after that confession, the DPP stated that he had examined the evidence and decided not to prosecute because there was not enough to ground a murder charge.

John Stevens and the Director of Public Prosecutions clearly have questions to answer. But now, and perhaps most of all, the Prime Minister also has questions to answer.”

What he said in his letter to my son is wrong, and I want to know the reason why. “Is it because he did not look into the issues surrounding my husband's murder, as he said he had done, and therefore has got it hopelessly wrong? Is it because he sought assistance from his officials in forming a response, people who proceeded to mislead him as to the evidence held on Government and RUC files? Or is his actual position more sinister still?

When Mr. Blair came to power in 1997, he offered great hope in the form of a new administration with a fresh approach. His inaction on the murder of my husband was described three weeks ago by the Irish Government as “intolerable.” But is it now the case that what was once the “policy” of Margaret Thatcher and her Conservative Party Government, has now been made Tony Blair's own? Can we now add his name to the list of suspects in this case?

If this Committee wishes to take a positive step in advancing the case for an inquiry, then it might ask Tony Blair directly what his position is, because the one he has given my family simply does not stand up. It does not, because the actual evidence in this case strongly suggests that there was Government involvement in Pat's murder, that Army Intelligence did send a Loyalist death squad to kill him, and that ever since, the DPP and the RUC have done everything in their power to cover it all up.



I have observed first hand the whole period of the conflict in the North of Ireland, from having lived through it and having had its worst horrors visited upon me and my family. Like everyone else, I yearn for a peaceful society in which to live. But peace cannot be disconnected from justice, and it cannot be divorced from the truth.

The British Government and other narrow minded politicians would have us believe that we must achieve peace before we can think about truth and justice. But it is the very absence of these things in Northern Ireland over the last thirty years that has made peace impossible. I know and am certain of one thing—we will never have peace in Northern Ireland until we are at peace with ourselves.

The British Government does not understand that the truth behind my husband's case is so important that it has now assumed a place in its own right as a piece in the jigsaw puzzle of peace. I alone did not do this. The concerns of the people of Northern Ireland, the now public position of the Irish Government, the work of influential human rights NGOs and world-wide disquiet at what my husband's case stands for has placed it firmly on the wider political map.

The truth must be exposed publicly, so that the healing process can begin, and peace can start to grow. No matter how horrifying or painful it proves to be, I, my family, and society in Northern Ireland as a whole can learn to live with the truth. We cannot, and will not, ever learn to live with lies.

Once again, on behalf of myself and my family, thank you very much.

**WRITTEN SUBMISSION OF EUNAN MAGEE**

Thank you for your invitation to testify here today. I am Eunan Magee and Rosemary Nelson was my sister. She was murdered one year ago tomorrow. I am leaving Washington tonight and returning to be with my family for the anniversary.

My sister was a lawyer. Obviously we, as a family were very proud of her.

Rosemary was a good lawyer. She represented her clients, from both sides of the community in Northern Ireland, to the best of her ability. That is why she was subject to harassment and to threats made by police officers and others. That is also why she was killed.

She was a courageous lawyer. She was the first female lawyer to set up her own practice in Lurgan, the town where we grew up. When clients started to come to her with controversial cases linked to the conflict in Northern Ireland, she took their cases and worked tirelessly on behalf of those clients. When she started to get threats and abuse, she did not stop representing her clients to the best of her ability. Indeed, if anything, the intimidation seemed to act as a spur which ensured that she would not give up.

Although we were aware that there were problems between Rosemary and the police, we were not aware of the extent of the intimidation and harassment she suffered. We have been taken aback in the aftermath of her death to discover the fact that she had been subject to a sustained campaign of death threats and abuse at the hands of the police.

Rosemary was always outraged that those who abused positions of power were not held to account. She attempted to ensure that such people were brought to account, whether that be police officers, government officials or others. My family are concerned that those involved in threatening Rosemary, in failing to protect her and in murdering her will not be held to account. Our concerns have been highlighted by what has happened in relation to the investigation of her complaints and also by the lack of success to date in the investigation into her murder.

Rosemary of course complained about the abuse that she suffered. In addition to reporting the threats to human rights groups, she also testified before the Subcommittee on International Operations and Human Rights. During that testimony she revealed that an English police officer had been called in to investigate official complaints she had made due to the inability of the RUC to handle her complaints impartially. The report compiled by that English police officer was sent to the Director of Public Prosecutions in Northern Ireland and shortly before Christmas, he announced that he was not going to prosecute the officers involved. Although the RUC are now considering whether to subject those officers to disciplinary action, we are not hopeful that this will happen. There are also other ongoing complaints which were made by Rosemary. These have yet to be completed but we are again not confident that they will result in effective action being taken against police either in terms of criminal prosecution or disciplinary sanction.

Rosemary also told the United Nations Special Rapporteur on the Independence of Judges and Lawyers about the harassment and intimidation she had suffered. He conducted a fact finding mission to Northern Ireland and met with Rosemary and many other solicitors who had been subject to similar intimidation and threats. He was so concerned

about her personal safety that he drew specific attention to her case when he reported on the intimidation of defence lawyers in Northern Ireland to the United Nations Commission on Human Rights in March 1998. We are also aware that he communicated his concerns about Rosemary's safety to the attention of the United Kingdom government. We know that human rights groups also communicated their concern and yet we are not aware of any action that was taken by either the government or the police in order to safeguard Rosemary's life. We are told that the police carried out a risk assessment on Rosemary and decided that there was no significant risk. They were clearly wrong.

It now seems to us that those in government or in the police who did nothing to safeguard Rosemary and indeed those police officers who were involved in threatening and harassing her will not be held to account. We believe that if they are not held to account, the harassment and intimidation of defence lawyers in Northern Ireland will continue.

We are also concerned that those who murdered Rosemary may also not be held to account. The investigation into her murder is being led by a senior English police officer named Colin Port. Although he remains convinced that he will eventually track down those involved in the murder of Rosemary, he had until last week not made any arrests. According to newspaper reports on Friday 10th March, two individuals were being questioned about Rosemary's murder by the Port team. One of those individuals has now been released. There have been press reports that the individual who is still being detained was a member of the Royal Irish Regiment, a regiment of the British Army, at the time of the murder.

In addition we are concerned that if there was collusion on the part of the police or the army in Rosemary's murder, the Port investigation is unlikely to uncover it. While we cannot point as yet to solid evidence of security force involvement in the murder, we are not convinced that if such exists, it will be uncovered and revealed. Obviously the primary purpose of the Port investigation is to catch those who killed Rosemary and bring them to trial. We obviously want those responsible to be brought to account. However, an investigation into who was actually physically responsible for the murder of Pat Finucane would not necessarily result in a full examination of the police and army role in the murder. In the same way, while Colin Port is devoting resources to discovering whether the heavy security presence in the area before Rosemary's death was suspicious, this is only one aspect of possible collusion into the death.

Our family believes that regardless of what is found in relation to the security presence in the area before the attack, the police were responsible for contributing to the context in which Rosemary could become a target. A criminal investigation will not examine this type of behaviour. Inaction on the part of the police when faced with evidence that Rosemary was at risk will not form part of the criminal investigation. The abuse and intimidation which Rosemary suffered at the hands of the police will not form part of the criminal investigation. Yet we believe it is self-evident that all of this must be investigated. We cannot accept that these matters will not be investigated in the event that Colin Port manages to catch those who actually planted the bomb that killed Rosemary.

That is why our family are supporting the call for the establishment of an independent inquiry into the murder of Rosemary. We would be most grateful for the support of this Commission in trying to achieve that objective. I would be grateful if this Commission could undertake to pursue through whatever mechanisms are available to it the establishment of such an inquiry and to try and persuade the United Kingdom to establish such an inquiry. Obviously we wish to see those who were responsible for Rosemary's murder brought to justice and sent to jail. However, we also wish to see agents of the state, whether they be police officers or others, brought to account for the threats and intimidation my sister was subject to and for failing to take action to protect her despite being warned she was under threat. It is only in that context that justice will be done and seen to be done.

**WRITTEN SUBMISSION OF JANE WINTER,  
DIRECTOR, BRITISH IRISH RIGHTS WATCH**

**CONCERNING THE MURDER OF PATRICK FINUCANE**

I am the Director of British Irish RIGHTS WATCH, an independent non-governmental organisation that has been monitoring the human rights dimension of the conflict, and latterly the peace process, in Northern Ireland since 1990. Our services are available free of charge to anyone whose human rights have been violated because of the conflict, regardless of religious, political or community affiliations. We take no position on the eventual constitutional outcome of the conflict.

We welcome this opportunity to address the Commission on Security and Cooperation in Europe concerning the murders of Patrick Finucane and Rosemary Nelson. Chairman Smith has shown consistent and well-informed concern about these matters over a number of years, for which we are extremely grateful, and we also thank the members of this honourable Commission for their interest. We have monitored both these cases in depth and have produced reports about them that are available on our website, which I request be read into the record of these proceedings. Since my colleague Paul Mageean will speak about the murder of Rosemary Nelson, I will confine my submission to Patrick Finucane.

In February last year, ten years after his murder, we presented a confidential report to the British and Irish governments concerning the murder of Patrick Finucane and others. We also sent the report to the United Nations. It was based on documents seen by us which appeared to be genuine British army intelligence reports. These documents suggested that a secret unit within army intelligence, the Force Research Unit or FRU, had been conspiring with loyalist paramilitaries to target Catholics for murder. Although those targeted were supposed to be known republicans, themselves involved in violence, many of those who died as a result of this alleged policy were, like Patrick Finucane, completely uninvolved. As a human rights group, we would say that in a democracy no state agency should ever participate in illegal acts, especially not the murder of its own citizens, whatever their alleged crimes, but it is especially worrying when wholly innocent people die in such circumstances. Our research suggested that many people may have been targeted for murder over a period of years. One of the outstanding questions concerning the activities of FRU is that of who sanctioned its activities and at how high a level in the security forces or the government that decision was made.

When we presented our report to the British government, we were promised a swift response. Thirteen months later we are still waiting. We had said to the government that we believed that their own files would reveal whether there was any truth in the shocking allegations we were making. We asked them to review their files in the belief that, if there was any truth in our allegations, they would have no option but to hold a full judicial public inquiry. To the best of our knowledge, they have not conducted any such review. Significantly, neither have they issued any rebuttal of our allegations.

We understand that the Secretary of State for Northern Ireland, to whom we delivered the report, passed a copy to the Director of Public Prosecutions. He in turn gave a copy to the Chief Constable of the RUC, Sir Ronnie Flanagan, who, without reference to the Secretary of State, called in Sir John Stevens to conduct a third police investigation. We

were puzzled by this, as we had been told by Sir John that he had already investigated the murder. However, he has since raised doubt about whether he was authorised to investigate fully on previous occasions. Of greater concern, though, was our conclusion that the Chief Constable had set up a further police investigation in order to thwart a public inquiry. The government now says that it must wait for the outcome of Stevens' investigation before deciding whether to hold an inquiry. However, Amnesty International has commissioned a legal opinion from leading experts, who maintain that all the criteria for a public inquiry are met in the case of Patrick Finucane and that the police investigation is no impediment. I request that Amnesty's legal opinion be read into the record.

Since then there have been a number of developments. Books have been published confirming the existence of the FRU. One of these, "1033" by Nicholas Davies, has alleged that former Prime Minister Margaret Thatcher took a personal interest in the work of the FRU. He also details a number of victims whom he says were targeted by FRU. Newspaper interviews with a former FRU operative, who calls himself Martin Ingram, have alleged that army intelligence personnel sought to destroy Stevens' first police investigation by burning down his office.

Most startling has been the arrest by Stevens of loyalist Billy Stobie, who has been charged with the murder of Patrick Finucane. He freely admits that he supplied the weapons used in the murder. However, he also says that he was an informer for RUC Special Branch at the time of the murder. He claims that he told his police handlers that named loyalists had asked him to supply weapons for a high-profile murder. Although he says that he did not know the intended victim, he gave the RUC sufficient information to put the perpetrators under surveillance and prevent the murder. It has transpired that he was arrested in 1990 and questioned by the RUC about the murder, and that he told them all of this information then. The Director of Public Prosecutions decided not to prosecute him. There has been no material change in circumstances since then, yet now Stevens has arrested him. It seems very likely that he will have a strong defence on grounds of abuse of process.

It has also emerged that Stobie told his story to a respected journalist, Ed Maloney, back in 1990, as an insurance policy should he ever be arrested again. Sir John Stevens went to great lengths to try to force Moloney through the courts to give up his original notes of his interviews with Stobie. Moloney refused to do so, citing the journalists' code of ethics about protection of their sources. Eventually, the courts found in favour of Moloney, but his career could have been ruined and he could have ended up in jail. He has since won awards for his courage and integrity.

A few weeks ago we published a second report setting out all the developments since we delivered our first report to the two governments, a copy of which I request be read into the record. It covered the events I have just described and also raised serious questions about the role of the Director of Public Prosecutions, who appears to have dropped charges against some defendants, and done deals with others, the effect of which has been to prevent the truth about the murder of Patrick Finucane emerging in court.

On 24th February we presented this report to the Irish Taoiseach, Bertie Ahern. He responded immediately by calling publicly for a full inquiry into the murder of Patrick Finucane. We are most grateful for

his support. There may be those who fear that such statements at this time may be detrimental to the peace process in Northern Ireland, which is very fragile at the moment. However, we believe that peace will never fully take hold in Northern Ireland while landmark cases such as the murder of Patrick Finucane remain unresolved.

The brutal and callous murder of Rosemary Nelson—to whose courage and memory I pay the warmest personal tribute—shows that, unless measures are taken to deal with our allegations, lawyers in Northern Ireland will continue to be at risk. Lawyers cannot choose their clients, yet they risk being murdered, notwithstanding the cease-fires, because certain clients choose them. The poisoned atmosphere that gave rise to her murder, and to that of Patrick Finucane must be dispelled, and dispelled for good, so that lawyers in Northern Ireland can go about their daily business without fearing for their lives. British Irish rights watch has made serious allegations of security force collusion in a large number of deaths and other illegal acts, of which the murder of Patrick Finucane is but the tip of an iceberg. We have said that he died because of systematic policies adopted by the security services involving British military intelligence and the RUC. There is also considerable evidence of an official cover-up.

The overriding question that emerges from this murkiest of pictures is that of who sanctioned those policies. If what we allege is true, then the lives of many people in Northern Ireland have been damaged, and in some cases destroyed, by the actions of agents of the state. This is not an issue that can be swept under the carpet. Its aftermath will go on polluting the atmosphere in Northern Ireland and making a successful resolution of the peace process more difficult. If people cannot trust the police, the army, the courts, DPP, or ultimately the government, how can they be expected to have faith in society itself? What is to become of the rule of law?

There is only one honourable response to the allegations we have made, and substantiated to the best of our ability. The government, which already has under its control all the answers to the questions we have raised, must establish an independent judicial inquiry without any further prevarication. The British government cannot hold itself up as an example to other countries around the world if it does not practice respect for human rights at home.

We hope that the Commission will help us to persuade the British government of the necessity of taking resolute action to resolve the murders of these two lawyers and to protect other lawyers in Northern Ireland. There are three things we want our government to do:

1. to instigate an immediate public, independent, judicial inquiry into the murder of Patrick Finucane;
2. to do the same in relation to the murder of Rosemary Nelson; and
3. to implement in full the recommendations of the United Nations Special Rapporteur on the Independence of Judges and Lawyers.

We respectfully request the Commission to consider making the following interventions:

- a. send a letter to Prime Minister Tony Blair urging him to hold inquiries into the murders of Patrick Finucane and Rosemary Nelson and to implement the United Nations' recommendations;

- b. use every opportunity within the OSCE process to raise these issues with the British government and to make other governments aware of these issues;
- c. raise these matters privately with the British government at political and official levels; and
- d. send a delegation to Northern Ireland to assess progress on political, economic and human rights issues, including particularly these issues.

I thank this honourable Commission for its time and attention.

Jane Winter,  
Director, British Irish Rights Watch  
14th March 2000



**WRITTEN SUBMISSION OF PAUL MAGEEAN,  
LEGAL OFFICER, COMMITTEE ON THE ADMINISTRATION OF  
JUSTICE**

Thank you for the invitation to testify today. The Committee on the Administration of Justice (CAJ) is an independent human rights organisation which draws its membership from across the different communities in Northern Ireland. CAJ works on behalf of people from all sections of the community and takes no position on the constitutional status in Northern Ireland. In 1998, CAJ was awarded the prestigious Council of Europe human rights prize by the 41 member states of the Council of Europe in recognition of its efforts to place human rights at the heart of the peace process. One of the reasons for the success of our work on the peace process has been the continued involvement of the United States. In this context we would like to thank the honourable members of this Commission for this opportunity to raise these important issues and in particular the Co-Chairman Chris Smith for his work in this area.

On 29th September 1998 I testified before the International Operations and Human Rights Subcommittee of the House International Relations Committee Hearing on Human Rights in Northern Ireland. I was accompanied by Rosemary Nelson who also testified before the Subcommittee. She spoke of the harassment and abuse she had suffered at the hands of members of the Royal Ulster Constabulary (RUC). She also told the Subcommittee about the threats that she had received and the problems with the investigation of those threats. The members of this Commission will of course be aware that within six months of testifying before the Subcommittee Rosemary was murdered. The anniversary of her death is tomorrow.

My testimony will attempt to inform the Commission of what has happened in relation to the investigation into the death of Rosemary Nelson and into the threats issued against her. I will also try to indicate ways in which the United States government can assist in ensuring that the investigation into Rosemary's murder is carried out in an independent and effective fashion.

On 10th August 1998 we wrote to the Minister of Security at the Northern Ireland Office, Adam Ingram MP. We drew two documents to his attention which we enclosed with the letter. The first was a note which had been posted to Rosemary Nelson which read "[W]e have you in our 'sights' you republican bastard we will teach you a lesson R.I.P." The second was a one page pamphlet entitled "The Man Without a Future" which related to Brendan McKenna, leader of the Garvaghy Road Residents Coalition. However, it also referred, in very derogatory terms, to him having received advice from Rosemary Nelson and also gave her address and telephone details.

We said in our letter that we considered these documents to be very definite threats against Rosemary Nelson and told Mr. Ingram that we considered it incumbent on the government to investigate these matters and also to provide the necessary protection for Rosemary.

On 24th September 1998, Mr. Ingram's office replied to our letter. His response stated that "[O]bviously the documents enclosed must be of concern to Ms. Nelson and the others mentioned. The Minister has asked me to say that he hopes that those who produced them can be brought to justice for their threatening behaviour." The letter continued that the threats had been passed immediately to the Chief Con-

stable for investigation and that the police would assess the security risk against Ms. Nelson. The letter also mentioned that Rosemary could apply for the Key Persons Protection Scheme for security to be fitted at her home at public expense. Rosemary did not do this as it would have entailed RUC officers carrying out security checks on her home. It was of course officers from this force who she believed were issuing threats against her.

Shortly after Rosemary's murder, we were contacted by RUC officers from the murder investigation team who were seeking originals of the documents we had sent to Mr. Ingram seven months earlier. They said the originals could be important because the police might be able to obtain forensic or fingerprint evidence from them. We told the police that we did not have access to the originals of these documents. We were however very concerned that the police were only seeking access to the originals of these documents after Rosemary was murdered when they had been alerted to the threats in August 1998, some seven months before her death. Surely it would have been a basic investigative step to seek the originals of the documents when they received them rather than wait until after the target of the threats was murdered.

On 3rd June 1999 we wrote to the Chief Constable of the RUC, Ronnie Flanagan, asking him a series of questions in relation to these matters. CAJ requests that a copy of this letter be read into the record. The Chief Constable acknowledged our letter on 11th June and we wrote a reminder on 30th July. He did not respond. We met with the Chief Constable on 4th October when this issue was raised amongst others. He undertook at that meeting to respond to our concerns in writing. After having written several reminders, CAJ wrote again on 9th March 2000 telling him that we were to testify to this Commission and urging him to respond before today. In his response, of today's date, the Chief Constable said in relation to our inquiries about Rosemary Nelson:

"In connection with your letter of 3 June 1999 specifically relating to the murder of Mrs. Nelson, I explained to you at our meeting that the RUC itself had no intelligence prior to Mrs. Nelson's death to indicate a threat of the dreadful atrocity which was to be carried out. In relation to the documents to which you refer, as these remain a matter of ongoing investigation, neither I nor Mr. Port believe that it is appropriate to discuss the details you raise while the investigation is current. You should be aware, however, that in relation to the threatening note received by Mrs. Nelson, nothing of potential forensic value was lost in the period between the sending of the document and its subsequent forensic examination. At this stage, nothing has been disclosed in the examination which has assisted Mr. Port's enquiry."

In CAJ's view this response does not address our key concern, namely the apparent inaction of the police between August 1998 (when they were informed of the death threats) and Ms. Nelson's subsequent murder in March 1999. It was only after Ms. Nelson's death that the police showed evident signs of the threats being taken seriously.

Answers to the concerns about police inaction in the face of the threats against Rosemary have also been sought by way of parliamentary questions in Westminster. I would request that copies of the question and answer be placed on the record.

We would be grateful if this Commission could write to the United Kingdom government asking why the RUC did not act in relation to seeking originals of these threats until after Rosemary Nelson was killed.

We believe that the police and the government have not answered our questions in this regard because they are unable to provide an adequate answer. We believe the police failed to carry out an adequate assessment of the risk against Rosemary Nelson. We believe their failures in relation to that assessment are emblematic of their failure to investigate the ongoing threats against Rosemary by their own members.

In an interview in today's Irish News newspaper the UN Special Rapporteur on the Independence of Judges and Lawyers states that he asked the government to provide protection for Mrs. Nelson. He challenges the government to provide information on what it did. He says "You tell us. You knew about it. What did you do?" I would request that the full text of this article be read into the record.

The Commission will of course be aware that the government appointed Independent Commission for Police Complaints in Northern Ireland (ICPC) stated that they were not satisfied with the RUC investigation of complaints that Rosemary herself made in relation to threats and abuse. Amongst the issues of concern the ICPC identified were "observable general hostility, evasiveness and disinterest on the part of the police officers involved in this investigation," assertions made by the investigating officer which constituted "judgements on the moral character of Mrs. Nelson" and a view that the volume of correspondence received from international groups on behalf of Mrs. Nelson as having more to do with propaganda against the RUC than establishing the truth. I would be grateful if the Statement issued by the ICPC be placed on the record.

Subsequent to indications that the ICPC were unhappy with the RUC investigation a senior English police officer, Commander Niall Mulvihill was tasked with reviewing the initial investigation. He expressed satisfaction with the conduct of the investigation. However, in a leaked commentary on the Mulvihill review, the Chairperson of the ICPC, Paul Donnelly, described the Mulvihill report as containing "assertions, conclusions and recommendations that rely heavily on impression and belief, as opposed to systematically testable evidence." I would be grateful if a copy of the commentary prepared by Mr. Donnelly be placed on the record.

After the publication of the ICPC statement the supervising member of the ICPC, herself a female lawyer, was threatened necessitating her to move house. In addition she became the subject of a whispering campaign by police officers and members of the policing establishment which questioned her impartiality and ability. This campaign was described in an article which appeared in the Irish Times written by Gerry Moriarty, a copy of which I would ask be placed on the record.

The honourable members of the Commission will be aware that the criminal investigation into Rosemary Nelson's murder is now being headed by Mr. Colin Port, the Deputy Chief Constable of Norfolk Constabulary. Up until 9th March no arrests have been made in the investigation and no-one has been charged. On 9th March it was reported that two people were arrested in connection with the murder. One of those individuals has now been released. It has been reported that the other individual who is still being detained was a serving soldier at the time of Rosemary's murder. Mr. Port however remains confident that he can catch those responsible. He has indicated that he is looking carefully at possible collusion in the murder. He has also indicated that to date the collusion inquiries have not yielded any results. We remain

concerned that Mr. Port continues to conduct his investigation from Lurgan RUC station where some of those officers involved in threatening Rosemary were based. In addition there have been a series of leaks, reportedly from the Port investigation team, which appear to have damaged the investigation. We are concerned that the continuing involvement of RUC officers in the investigation team is undermining confidence in the independence of the investigation. This is particularly relevant when, according to press reports, crucial witnesses are refusing to cooperate with the Port investigation.

In addition however it is apparent that the criminal investigation, even if successfully concluded, will not result in a full examination of the circumstances surrounding the murder of Rosemary Nelson. For instance, it will not examine the alleged inaction of the RUC following receipt of the threats issued against Rosemary. Unless hard evidence is obtained to link members of the army or police to the murder, we will not have an opportunity to hear the reasons given for the heavy security force presence in the area prior to the murder. For these reasons, we are committed to a full public inquiry into the murder along with a number of other domestic and international NGOs including Amnesty International, Human Rights Watch and the Lawyers Committee for Human Rights. If in another democratic state, a lawyer had been subject to regular threats from police officers, if the United Nations had drawn its concerns about the safety of the lawyer to the attention of the government, and if subsequently the lawyer in question had been killed, we are convinced that a full inquiry would be established. We can see no reason for the United Kingdom government not taking this step now.

We believe the failure to establish such an inquiry is a violation of the United Kingdom's international obligation to make available effective remedies for the violation of human rights. This right is guaranteed by the European Convention on Human Rights in addition to the 1990 Copenhagen Document. We would respectfully request that this Commission, requests the United States administration to raise these issues through the human dimension mechanisms of the OSCE, and to express its view that the United Kingdom should establish a full public inquiry. In addition we believe it would be helpful if the OSCE were to send a fact-finding mission to Northern Ireland to examine the general situation of defence lawyers and in particular to examine the circumstances surrounding the murder of Pat Finucane and Rosemary Nelson.

Rosemary Nelson was a member of the Executive Committee of CAJ. She dedicated her professional life to obtaining justice for others. We will do all we can to obtain justice for her.

**WRITTEN SUBMISSION OF MICHAEL POSNER, EXECUTIVE  
DIRECTOR, LAWYERS COMMITTEE FOR HUMAN RIGHTS**

**I. INTRODUCTION**

Chairman Smith and members of the Commission, thank you for inviting me to testify. We appreciate your long-standing and very active interest in human rights, and your leadership on these issues within the Congress. We appreciate also your giving us the opportunity to present our views this morning on human rights issues in Northern Ireland.

The Lawyers Committee for Human Rights has been actively involved in issues relating to Northern Ireland since 1990. In 1993 the Lawyers Committee issued a detailed report entitled "Human Rights and Legal Defense in Northern Ireland: The Intimidation of Defense Lawyers, the Murder of Patrick Finucane". We published a follow up report in 1995 entitled "At the Crossroads: Human Rights and the Northern Ireland Peace Process". It examined the intimidation of defense lawyers but also examined some broader issues relating to criminal justice and human rights. In that report we recommended an end to emergency laws in Northern Ireland, a recommendation we believe has even greater importance today.

In July of 1999 we published a detailed submission to the Commission on Policing for Northern Ireland, based on two Lawyers Committee missions to Northern Ireland. We continue to follow these issues, some of which I wish to comment on this morning, and which are directly relevant to the protection of human rights advocates.

We have closely followed the investigations into the murders of two prominent human rights lawyers in Northern Ireland: Patrick Finucane and Rosemary Nelson. We have appreciated the opportunity to report periodically to you and others in Congress about these two cases and to express concerns about the lack of progress in those investigations. We appear here again this morning to reiterate our continued concerns about the official handling of both the Finucane and Nelson cases.

As we meet here this morning we mark two anniversaries. Two years ago, Senator Mitchell helped bring parties to the table to sign the Good Friday Agreement, an important milestone that continues to provide the basis for ongoing and still difficult effort to bring a lasting peace to Northern Ireland. One year ago Rosemary Nelson was murdered in front of her home by a powerful car bomb. This courageous woman literally gave her life to the cause of human rights and justice.

This hearing is being held at a time of a continuing political dialogue about various issues relating to the implementation of the Good Friday agreement, including decommissioning of weapons. As these negotiations continue, it is essential that we continue to remind the negotiating parties that these two anniversaries are inextricably linked. For many people in Northern Ireland, the denial of basic human rights has been and continues to be at the heart of the conflict. It is only by reasserting the centrality of human rights, including justice and accountability in the cases of Patrick Finucane and Rosemary Nelson, that peace can be achieved.

## II. THE MURDERS OF ROSEMARY NELSON AND PATRICK FINUCANE

### A. ROSEMARY NELSON

On September 29, 1998, Rosemary Nelson testified before the House Committee on International Relations with a hope of calling international attention to the plight of Northern Ireland defense lawyers who take politically sensitive cases. In her poignant testimony, Ms. Nelson detailed the inherent difficulties of working as a human rights lawyer under a system of emergency law. She also spoke about the threats she was receiving from the Royal Ulster Constabulary, sharing her fears and deep concerns for her family and staff. She ended by saying: "I believe that my role as a lawyer and defending the rights of my clients is vital. The test of a new society in Northern Ireland will be the extent to which it can recognize and respect our role and enable me to discharge my role without improper (sic) interference. And I look forward to that day."

Rosemary Nelson did not live to see that day. On March 15, 1999, one year ago, she was killed by a car bomb in front of her house. Last fall I visited the scene of that horrible crime and met with her husband and family. I was part of a Lawyers Committee delegation to Northern Ireland examining the continued threats against human rights lawyers. I was joined by three others including Jim Brosnahan, a prominent San Francisco lawyer who is actively involved with our work.

On March 30, 1999, RUC Chief Constable Ronnie Flanagan announced the appointment of Mr. Colin Port, the Deputy Chief Constable of the Norfolk Constabulary in England, as Officer in Overall Command of the Nelson murder investigation. While Mr. Port has devoted himself to building a team of investigators to work on this case, and has himself become closely involved in the investigation, there are continuing questions about whether his investigation is sufficiently independent from the RUC. Specifically, critics have noted that Mr. Port is working out of an RUC office and is employing RUC officers. Mr. Port has created three separate databases to exclude RUC access to sensitive witness information, but he acknowledges that he still needs considerable RUC assistance and is still answerable to RUC Chief Constable Flanagan.

In part because of these continuing concerns about the structure of the current investigation, on December 10, 1999, the Lawyers Committee joined five other human rights organizations in a joint statement calling for an independent inquiry into these larger questions surrounding the murder of Rosemary Nelson. The statement recognized that "the current criminal investigation is limited to the specific circumstances of the murder and will not be able to deal with the many questions that . . . Rosemary Nelson's murder raise." Yesterday the Lawyers Committee joined ten other international organizations to repeat the call for "the UK government to act immediately to set up an independent inquiry" into the questions surrounding Rosemary Nelson's murder. In particular, the Lawyers Committee is concerned that the Port investigation will not adequately resolve issues of collusion relating to the Nelson murder. It is also apparent that the investigation will not result in a full inquiry into the official threats made against Rosemary Nelson prior to her murder.

On January 8, 2000, the Director of Public Prosecutions (DPP) decided against prosecuting any police officers with respect to allegations that they threatened Ms. Nelson before her death. Following the DPP's decision, Rosemary Nelson's husband Paul Nelson said that "Tony Blair must recognise his responsibility in relation to truth and justice for Rosemary and establish an independent international judicial inquiry into all the circumstances surrounding her murder." We echo his call, and urge members of Congress to do the same.

## **B. PATRICK FINUCANE**

The Lawyers Committee also continues to press for an independent inquiry into the murder of Patrick Finucane, the Belfast lawyer who was killed on February 12, 1989. Many others have also called for an independent inquiry in this case. Last month the Irish Taoiseach, Bertie Ahern, made a public call for such an independent inquiry. Prior to his death, Mr. Finucane received death threats from members of the police, threats that were communicated through his clients. His unresolved murder continues to have a chilling effect on other defense lawyers.

London Detective John Stevens heads the renewed murder investigation. Since this latest investigation began, the RUC has arrested 11 individuals in connection with the Finucane murder, including William Stobie in June 1999. Other than Stobie, three others were charged (with offenses unrelated to the Finucane murder). All remaining suspects, five of whom were unnamed, were released by late 1999.

When charged, William Stobie revealed that he had been an RUC police informer at the time of the Finucane murder. On October 5, 1999, Mr. Stobie was released on bail. During his bail hearing, Mr. Stobie's lawyer revealed that in 1990, Stobie was interviewed for more than 40 hours by members of the RUC Special Branch. These interviews, which included Stobie's confession to supplying the weapons used in the murder, were transcribed and have been available to the authorities since 1990. Among other things, these notes identify the names of the members of the RUC Special Branch who had warned about the murder. At that time, the authorities never charged Stobie with murder and the DPP dropped firearms charges against him in 1991. Current charges against Mr. Stobie are still pending.

Mr. Stobie's lawyer, Joe Rice, appeared in court on March 8 to complain about the failure to prosecute his client and to object to further remand. On January 12, Mr. Rice had consented to a two-month remand on the basis that substantial progress would be made in the case. However, the Crown counsel claimed he only received the case papers two to three weeks prior to this latest court appearance and was preparing an opinion for the DPP. Mr. Rice challenged the counsel's request for a four week remand by pointing out that the bulk of evidence had been in existence eight or nine years. The judge expressed concern about the delay but granted an adjournment until April 5.

Recent news reports published on January 23, 2000 indicate that Mr. Stevens recently identified six loyalist members of the paramilitary Ulster Defence Association suspected of the murder of Mr. Finucane, and sent the files to the Director of Public Prosecutions (DPP). According to the *Independent*, "DNA samples have been obtained from at least one of the murder weapons and a balaclava helmet worn by one killer. Detectives have also collected tape recordings, witness accounts and

forensic material, believed to support claims that Royal Ulster Constabulary (RUC) officers failed to prevent the hit, despite being warned about the imminent killing."

These and other recent events underscore the need for a full independent inquiry into all aspects of the murder of Patrick Finucane, including allegations of official collusion. Some UK authorities have recently suggested that the current criminal investigation, led by Mr. Stevens, precludes such an independent inquiry. We disagree. At a minimum, there is nothing that prevents UK authorities from announcing the establishment of an independent inquiry, or from appointing members to such an inquiry. The time is long overdue for such an independent inquiry to be put into place.

As we wrote to the Commission on Policing last July:

"In order for the process of creating a new beginning for policing in Northern Ireland to go forward, certain aspects of past policing practice must be brought into the open. If official responsibility is found [in the Finucane case] a degree of accountability must ensue. This would signal a break in the cycle of impunity, thereby playing an important role in encouraging support for the police force from the communities."

Many of our concerns have been expressed also by Dato' Param Cumaraswamy, the UN Special Rapporteur on the Independence of Judges and Lawyers. He first commented on the seriousness of this situation in his April 1998 report to the United Nations. According to Cumaraswamy, "the RUC has engaged in activities which constitute intimidation, hindrance, harassment or improper interference" often because they identify "solicitors with their clients or their clients' causes as a result of discharging their functions." On April 12, 1999, Mr. Cumaraswamy also expressed his "lack of confidence in the RUC investigation mechanism" in connection with the Independent Commission for Police Complaints (ICPC). The RUC officers implicated in Ms. Nelson's complaints continue to serve as officers and are likely to avoid internal discipline since, in deciding whether to take internal disciplinary measures, the RUC uses a "beyond a reasonable doubt" standard.

### III. THE PATTEN COMMISSION REPORT AND THE NEED FOR LEGAL REFORM

In its work on Northern Ireland, the Lawyers Committee has repeatedly recommended that all emergency powers should be repealed as a pivotal step in the process of building confidence in the legal order in Northern Ireland. The police force in Northern Ireland has never operated in any framework other than that of emergency legislation. Emergency powers in Northern Ireland have been linked to serious human rights violations, and the Lawyers Committee believes that the maintenance of emergency legislation inevitably will continue to create conditions leading to such violations. Under international human rights law, states may only derogate from international standards in emergency situations that threaten the life of the nation. Particularly since the adoption of the Good Friday Agreement, and its express recognition of the need to remove emergency legislation, it is extremely difficult for the UK government to justify the continued imposition of emergency law.



Emergency law provisions are especially undermining of due process rights of criminal suspects, in particular regarding arrest, detention and trial. In broad terms, the extraordinary powers dictate the climate within which the police force operates. A corollary is the alienation of that considerable section of the community that is implicitly considered a threat to the life of the nation. Under the emergency regime, the police have expansive powers to stop, question, search, detain and interrogate persons suspected of security offenses. It is clear that the legislative purpose of these expansive powers is to deal with any "terrorist" threat still existing in Northern Ireland. Nevertheless, on a day to day basis, there are credible reports that such powers have been and are used as an instrument of harassment against a portion of the Northern Ireland population. Dismantling of the emergency regime would be a significant and much needed step towards changing the culture of policing in Northern Ireland.

Chairman Smith, last September you convened a consultation under the auspices of the House Committee on International Relations which focused on the Patten Commission's report on policing in Northern Ireland. At that consultation, in which Mr. Patten appeared, we welcomed the publication of his Commission's report, entitled "A New Beginning: Policing in Northern Ireland." In particular, we commended the report's emphasis on the twin themes of human rights and accountability. Focusing specifically on the Finucane and Nelson cases, we emphasized that "building a culture of human rights and accountability in the future will also require some process for addressing past violations." We are convinced that any future progress in developing a rights sensitive police force in Northern Ireland depends on breaking the still existing cycle of impunity. Resolution of the Finucane and Nelson cases would help advance that objective.

I want to conclude with a brief update on reactions to the Patten Commission and efforts to implement its principal recommendations. On January 19, 2000, the Secretary of State for Northern Ireland, Peter Mandelson, announced the government's decision to implement virtually every major recommendation in the Patten report. Mr. Mandelson supported the Patten Report's emphasis on human rights, stating that "[a]ll officers will... receive human rights training, and will be required to behave in accordance with a code of ethics. This Code will be provided for in legislation, and will, like the new Oath, emphasize the priority to be given to human rights." He also stressed that implementation of the Patten Commission's recommendations will depend on the promulgation of new legislation, the appropriation of adequate funding, and the cooperation of the Royal Ulster Constabulary (RUC). The Lawyers Committee welcomes Mr. Mandelson's announcement and supports the Government's initiatives to implement the Patten Commission's recommendations.

The UK government's endorsement of the Patten Commission's findings and recommendations has not been echoed either by the police or by a majority of those in the now suspended Northern Ireland Assembly. To the contrary, in December, the RUC issued a detailed and very critical evaluation of the Patten report. While accepting a number of the Patten Commission's findings and recommendations, the RUC vigorously rejected key recommendations, including that it change its name to the Northern Ireland Police Service and that members of the current force take a new oath that includes a pledge to human rights. The RUC

also has resisted appointment of an outside advisor on human rights, implying that the RUC already had enough staff expertise to align its practices with human rights standards. The RUC statement reflects the overall reluctance of the RUC to acknowledge past problems in the recruitment of minority officers, means of internal discipline, or means of accountability to external monitoring bodies.

On January 24, 2000, the Northern Ireland Assembly voted against the Patten recommendations. The Assembly charged that the Patten reforms rewarded terrorists. The vote was largely symbolic since the Secretary of State still controls security after the devolution. However, the opposition reflects the reluctance of Unionist political parties, who make up the majority of the 108-seat assembly, to support the reform effort.

At this critical juncture, we urge congressional focus on the appointment of the Oversight commissioner, a new position recommended by the Patten Commission to supervise the implementation of the Commission's recommendations. In making this recommendation, the Patten Commission commented, "The oversight Commissioner would provide more than a stocktaking function. The review process would provide an important impetus to the process of transformation. We recommend that the government, the police service, and the Policing Commission should provide the oversight commissioner with objectives (with timetables) covering their own responsibilities, and that they should report on the progress achieved at the periodic review meetings, and account for any failures to achieve objectives. All will need to demonstrate to the commissioner their commitment to the objectives of transforming policing, and the commitment of their members and staff."

The UK government has announced its intention to create this position and to follow the Patten Commission recommendation that it appoint someone from outside the United Kingdom or Ireland. It is imperative that the person who is appointed for this very important position has the requisite skills, experience and independence to carry out this difficult assignment effectively. Among the criteria that the UK authorities should consider in making this appointment are: intimate knowledge of and practical experience with police practices and operations, integrity, rights sensitivity, a demonstrated commitment to building a system of official accountability, independence and perseverance. The new Oversight Commissioner must be willing to make a major personal commitment to devote extensive time and energy to carry out this critical work. The UK Government must provide sufficient resources to support the Commissioner's work and political support to enable the Commissioner to implement effectively the Patten Commission's recommendations.

We urge members of this commission and others in Congress to pay active attention to the appointment process with respect to this critically important new position. Proper implementation of this and the other recommendations contained in the Patten Commission report is the responsibility and duty of the UK government. Lasting peace cannot take hold in Northern Ireland until the UK government demonstrates the willingness and ability to secure justice for the families of Rosemary Nelson and Patrick Finucane and a commitment to creating a representative and accountable police force for Northern Ireland's future.

Thank you.

LETTER OF OCTOBER 23, 1998 TO HON. TONY BLAIR FROM  
MEMBERS OF CONGRESS

**Congress of the United States**

Washington, DC 20515

October 23, 1998

The Honorable Tony Blair  
Office of the Prime Minister  
c/o The British Embassy  
3100 Massachusetts Avenue, NW  
Washington, D.C. 20008

Dear Mr. Prime Minister

The House of Representatives' Subcommittee on International Operations and Human Rights met on Tuesday, September 29 to discuss with United Nations Special Rapporteur on the Independence of Judges and Lawyers, Data' Param Cumaraswamy, his report on the United Kingdom.

The subcommittee also had the opportunity to hear testimony from Northern Ireland lawyers Peter Madden and Rosemary Nelson, and from Paul Mageean, legal counsel to the Committee on the Administration of Justice.

The issues of intimidation of defense lawyers and the murder of Patrick Finucane have been before Congress now for several years and were raised at Subcommittee hearings on June 24, and October 9, of last year. In fact, Michael Finucane, the son of the slain defense attorney, gave compelling testimony and raised serious questions about the possibility of Royal Ulster Constabulary (RUC) collusion in his father's murder. The Special Rapporteur's report gives independent confirmation to the reports we have received from members of the Finucane family, from lawyers, and from human rights groups.

It seems to us that the time is now right to grapple with these issues and put them where they belong, in the past. Mr. Cumaraswamy told the United Nations Human Rights Commission when he presented his report on April 1, 1998:

"I am quite conscious of the fact that the ongoing peace talks in Northern Ireland are at a crucial stage. It is within this context that I concluded and made these recommendations in my report with the conviction that respect for the rule of law and human rights with greater confidence in public institutions showing transparency and accountability will enhance the prospects for a lasting peaceful settlement of the conflict."

We agree with the Special Rapporteur. The British Government took a courageous step when it established a new public inquiry into the events of Bloody Sunday. The murder of Patrick Finucane is another such case which requires similar action and courage. As the Special Rapporteur noted in his report:

“So long as this murder is unresolved, many of the community will continue to lack confidence in the ability of the Government to dispense justice in a fair and equitable manner.”

We respectfully urge the government to recognize the truth of those words and to establish an independent, transparent, judicial inquiry into the murder of Patrick Finucane, and to implement the Special Rapporteur's other recommendations in order to rid the criminal justice system in Northern Ireland of the problems of abuse and harassment of defense lawyers. We believe that in doing so the government would be taking a major step forward in promoting a just and lasting settlement.

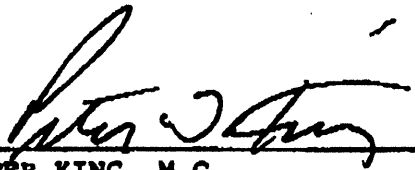
We thank you for your continued diligence in the peace process and look forward to hearing your thoughts on the need for an independent review of the Finucane case.

Sincerely,



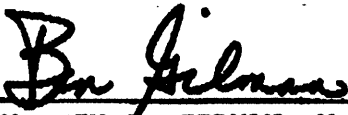
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**CHRIS SMITH, M.C.**  
**CHAIRMAN, SUBCOMMITTEE ON**  
**INTERNATIONAL OPERATIONS**  
**AND HUMAN RIGHTS**



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**PETER KING, M.C.**



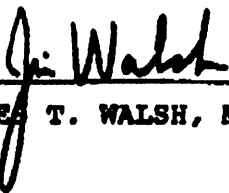
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**BENJAMIN A. GILMAN, M.C.**  
**CHAIRMAN, INTERNATIONAL**  
**RELATIONS COMMITTEE**



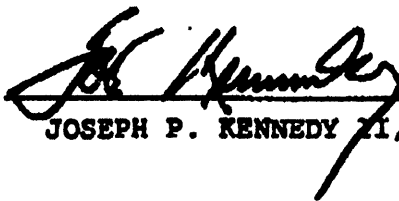
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**MICHAEL P. FORBES, M.C.**



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**JAMES T. WALSH, M.C.**



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**JOSEPH P. KENNEDY II, M.C.**

Donald M. Payne  
DONALD M. PAYNE, M.C.

Randy "Duke" Cunningham  
RANDY "DUKE" CUNNINGHAM, M.C.

Robert A. Borski  
ROBERT A. BORSKI, M.C.

Steven R. Rothman  
STEVEN R. ROTHMAN, M.C.

Eliot Engel  
ELIOT ENGEL, M.C.

Maurice D. Hinchey  
MAURICE D. HINCHEY, M.C.

William O. Lipinski  
WILLIAM O. LIPINSKI, M.C.

John M. McHugh  
JOHN M. MCHUGH, M.C.

Gerald B. H. Solomon  
GERALD B. H. SOLOMON, M.C.

Michael Pappas  
MICHAEL PAPPAS, M.C.

James P. McGovern  
JAMES P. MCGOVERN, M.C.

Rick Lazio  
RICK LAZIO, M.C.

Richard E. Neal  
RICHARD E. NEAL, M.C.

Thomas J. Manton  
THOMAS J. MANTON, M.C.

**LETTER OF DECEMBER 1, 1998 TO HON. CHRISTOPHER H.  
SMITH FROM HON. TONY BLAIR**



**10 DOWNING STREET  
LONDON SW1A 2AA**

**THE PRIME MINISTER 1 December 1998**

Dear Congressman Smith,

Thank you for your letter of 23 October signed by the House of Representative's Subcommittee on International Operations and Human Rights.

As you will know, the Government issued a reply to Mr. Cumaraswamy's report. This welcomed the report and made clear the Government's full support for the UN's human rights machinery of which the system of Special Rapporteurs is a key element. The Government was pleased to see that Mr. Cumaraswamy noted the positive steps that have been taken in the United Kingdom to ensure the independence of our judiciary.

You raise the murder of Patrick Finucane and call for an inquiry similar to that currently looking at Bloody Sunday. These two cases are very different. In the case of Bloody Sunday the state's own authorities are concerned. This is certainly not the case in the tragic murder of Mr. Finucane.

There has been an extensive police investigation into the murder of Mr. Finucane. Although no-one has been charged with this dreadful murder, three people were charged with possession of the weapon used. Unfortunately, there was insufficient evidence to charge anyone with murder.

There were subsequently further investigations following allegations made during the trial of Brian Nelson. These were fully investigated by Mr. John Stevens. In February, 1995, having considered the independent report before him, the Director of Public Prosecutions for Northern Ireland concluded that there was insufficient evidence to warrant the prosecution of any person for murder.

I fully understand your reasons for proposing a further inquiry, but I am not persuaded that such an inquiry would bring to light anything new.

*Yours sincerely,  
Tony Blair*

Mr. Chris Smith, M.C.

**LETTER OF JULY 2, 1999 TO HON. TONY BLAIR FROM  
MEMBERS OF CONGRESS**

**Congress of the United States**

Washington, DC 20515

July 2, 1999

The Rt. Hon. Tony Blair  
Office of the Prime Minister  
10 Downing Street  
London SW1A 2AA  
United Kingdom

Dear Prime Minister:

Given the stunning, recent developments linking the Royal Ulster Constabulary (RUC) to the circumstances surrounding the murder of Belfast solicitor Patrick Finucane, we write again calling on you to establish an independent judicial inquiry that will transparently examine and definitively answer the many disturbing questions that remain in this high profile investigation.

You may recall that on October 23, 1998, many of us wrote to you urging you to establish an independent judicial inquiry in light of the report we received from Dato' Param Cumaraswamy, the United Nations Special Rapporteur on the Independence of Judges and Lawyers, who appeared at the House of Representatives International Operations and Human Rights Subcommittee. In your December 1, 1998 letter of response, you said you were "not persuaded that such an inquiry would bring to light anything new." We hope you would now agree that since our last correspondence, enormous, consequential events have taken place warranting an independent inquiry.

One of these events of course is that the Royal Ulster Constabulary Chief Constable, Sir Ronnie Flanagan has drafted (again) John Stevens, Deputy Chief of the London Metropolitan Police, to conduct another police investigation into the Finucane matter. This is a development that concerns us rather than encourages us. The police secrecy and classified reports which resulted from Mr. Stevens' first two investigations (in 1990 and 1995) undermined the general confidence in the objectivity of the investigations and fueled public skepticism about government-sponsored collusion in Mr. Finucane's murder. The very fact that Mr. Stevens' latest review has exposed the role of an RUC paid agent, Billy Stobie, makes an independent inquiry all the more essential. The charges and counter-charges between the Stevens team and Mr. Stobie raise new questions about the RUC's involvement. Only an independent inquiry will convince Northern Ireland residents and the international human rights community of your government's intention to resolve this case in a full and transparent manner.

There are other compelling developments, as well.

On February 12, 1999, the British and Irish governments and the United Nations received a confidential report from British Irish Rights Watch that revealed information constituting shocking new evidence of collusion in the Finucane case. In May 1999, the Irish government for-

warded its assessment of the report to the British government stating that the allegations in the report “serve to undermine confidence in the rule of law and the concept of equality before the law...[and] can only be answered with confidence—one way or the other—through the mechanism of a public inquiry.”

In March 1999, the UN Special Rapporteur, Mr. Cumaraswamy, commented on the Finucane case in his oral report to the U.N. Human Rights Commission stating that he is “even more convinced that there is now a stronger case made out for a Royal Commission of Inquiry into that murder to ascertain whether there was security forces, including the RUC, collusion into that murder.” The special rapporteur, who had contacted both Mr. Flanagan and Mr. Stevens about the previous police investigations, said that an independent Finucane inquiry is needed to build greater confidence in public institutions committed to transparency and foster an accountability that will enhance the prospects for a lasting peaceful settlement to the conflict.

In an extraordinary show of bipartisan support, the U.S. House of Representatives passed H. Res. 128 condemning the killing of Lurgan solicitor Rosemary Nelson on March 15, 1999, by Loyalist paramilitaries and calling on the British government to adequately protect defense lawyers. The resolution unequivocally linked Ms. Nelson’s murder with that of Patrick Finucane, recognizing the hostile environment within which Northern Ireland’s defense lawyers function, particularly aggravated by threats coming directly or indirectly from the police. The resolution renews our previous calls for an independent inquiry into Patrick Finucane’s murder as but one step toward accountability for human rights violations against defense lawyers. Significantly, the resolution passed by a vote of 421 “yes” votes to 2 “no” votes.

In a May 1999 general meeting attended by approximately 700 solicitors, the Law Society of Northern Ireland ended years of opposition to the establishment of an independent inquiry into the Finucane murder. An overwhelming number of Law Society members endorsed the call for a public inquiry. The Law Society of Northern Ireland joins the Law Society of England and Wales, the Law Society of Ireland, the Bar Councils in all three jurisdictions, and the American Bar Association, among many other legal professional organizations, in demanding that action be taken on allegations of collusion into Pat Finucane’s murder.

A June 21, 1999, BBC Panorama program dealing with allegations of lawyer intimidation by the RUC and RUC Chief Constable Ronnie Flanagan’s responses to inquiries by the U.N. Special Rapporteur on the Independence of Judges and Lawyers featured highly contradictory comments by the Chief Constable with respect to both the Finucane and Rosemary Nelson cases. The Chief Constable was simply incapable of defending his force against these allegations or justifying his own inappropriate comments regarding defense lawyers being associated with paramilitary interests. The program further underscored the fact that numerous questions remain unanswered with respect to these cases. We believe that many of those outstanding questions—which do so much to undermine public confidence in the RUC and the rule of law in Northern Ireland can only be answered adequately through, among other things, the mechanism of a full judicial inquiry into Pat Finucane’s murder.

And, in addition to these developments that make the case for a public inquiry ever more solid, we also believe that there is an urgency to the decision. We are sure you are aware of recent shameful public at-



tacks on the reputations of Patrick Finucane and Rosemary Nelson by Ken Maginnis, MP, and by former RUC Chief Constable John Hermon. Mr. Maginnis' characterization of Patrick Finucane as "a member of a dedicated republican family" and as "inextricably linked to the IRA and committed to its objectives" are unconscionable. John Hermon's contention that Patrick Finucane served as a conduit for information to republican clients is a disgrace. The Maginnis and Hermon comments are profoundly irresponsible and potentially put other lives at risk. Moreover, we were shocked to learn that John Taylor, MP, invoked parliamentary privilege on May 5 in the House of Commons and proceeded to defame the Finucane family. We are convinced that only swift, authoritative action to establish an independent inquiry in the Finucane murder can stem the tide of such shameful allegations and send a strong message that the government will not tolerate such attacks on defense lawyers.

We commend you for your commitment to ensuring a just and lasting peace in Northern Ireland and urge you to take yet another step toward that goal by establishing an independent judicial inquiry into Patrick Finucane's murder.

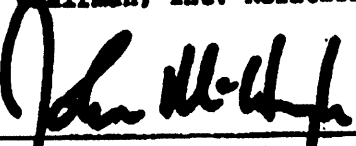
Sincerely,



Benjamin A. Gilman, M.C.  
Chairman, Int. Relations



Christopher H. Smith, M.C.  
Chairman, Int. Operations/Human Rts.



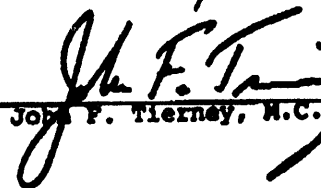
John M. McHugh, M.C.



Peter T. King, M.C.



James P. McGovern, M.C.



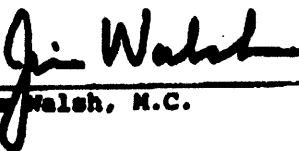
John F. Tierney, M.C.



William Lipinski, M.C.



Donald Payne, M.C.



Jim Walsh, M.C.



Mark Foley, M.C.

*Richard E. Neal*

Richard E. Neal, M.C.

*Gary L. Ackerman*

Gary L. Ackerman, M.C.

*Bob Borski*

Robert Borski, M.C.

*Eliot L. Engle*

Eliot Engle, M.C.

*Naurso D. Hinchey*

Naurso D. Hinchey, M.C.

*Joe Crowley*

Joe Crowley, M.C.

*Tim Holden*

Tim Holden, M.C.

*Rick Lazio*

Rick Lazio, M.C.

*Mike Forbes*

Mike Forbes, M.C.

*Mike Doyle*

Mike Doyle, M.C.

*Anthony D. Weiner*

Anthony D. Weiner, M.C.

*Michael E. Capuano*

Michael E. Capuano, M.C.

*Louise M. Slaughter*

Louise Slaughter, M.C.

*Robert Menendez*

Robert Menendez, M.C.

*Ciro D. Rodriguez*

Ciro D. Rodriguez, M.C.

*Patrick D. Kennedy*

Patrick Kennedy, M.C.

**JUSTICE DELAYED...  
ALLEGED STATE COLLUSION IN THE MURDER OF  
PATRICK FINUCANE AND OTHERS**

*A Report by British Irish Rights Watch*

**1. INTRODUCTION**

1.1 On 12<sup>th</sup> February 1989 the Belfast solicitor Patrick Finucane was murdered by the Ulster Freedom Fighters (UFF). In the eleven years since his death evidence has emerged which strongly suggests that there was official collusion in his murder on the part of British army intelligence and the RUC. This evidence also calls into question the role of the Director of Public Prosecutions (DPP) and of a government minister. His family's call for an independent judicial inquiry into his death and the circumstances surrounding it have been echoed by many prestigious organisations and individuals, including the United Nations.

1.2 On the tenth anniversary of his murder, British Irish RIGHTS WATCH delivered a confidential report, *Deadly Intelligence*, to the British and Irish governments and to the United Nations. Some 64 pages long, it detailed all that was known about his murder and about the operations of the Force Research Unit, a unit within British army intelligence that assisted loyalists to target people for murder. It was extremely detailed and named many names, and for that reason we decided not to publish the report for fear of putting lives at risk. We did, however, publish a summary of the report, which is reproduced in full here:

"On 12<sup>th</sup> February 1999, the tenth anniversary of the murder of Belfast solicitor Patrick Finucane, British Irish RIGHTS WATCH will deliver a confidential report to the British and Irish governments and to the United Nations' Special Rapporteur on the Independence of Judges and Lawyers.

The report concerns the activities of British military intelligence and its agent Brian Nelson. It is based on years of research by British Irish RIGHTS WATCH and others. Much of the information it contains is in the public domain, but some of it is not, and for that reason the report itself cannot be published.

In summary, the report alleges that, through its secret Force Research Unit (FRU), a branch of army intelligence, the state sought out loyalist Brian Nelson and infiltrated him into the Ulster Defence Association, which carried out its campaign of murder under the flag of convenience of the Ulster Freedom Fighters (UFF). FRU used Nelson to enhance the loyalists' intelligence on people it was targeting for murder, and that intelligence rapidly spread throughout other loyalist paramilitary groups.

The report examines in depth the murders of three innocent victims of this deadly enterprise: Patrick Finucane, Terence McDaid, and Gerard Slane.

The United Nations' Special Rapporteur has called for an independent public inquiry into the murder of Patrick Finucane. The British government has refused to hold such an inquiry unless new evidence comes to light. The report reveals information that, if the data we have seen is authentic, constitutes shocking evidence that:

- members of the RUC suggested that the UDA kill Patrick Finucane

- the RUC sent a report to Douglas Hogg which prompted his remark in Parliament that some solicitors were “unduly sympathetic to the cause of the IRA”
- Nelson was actively involved in the murder
- FRU misled the Stevens Inquiry and the Crown Court about its knowledge of and involvement in the murder
- a “P” [personality] card used by Nelson to summarise information about potential UDA victims was withheld from the Stevens Inquiry into collusion and has been withheld from lawyers acting for Patrick Finucane’s widow
- RUC Special Branch had detailed information about the plot to murder Patrick Finucane but did nothing to prevent it or to protect him.

This is all information which, if true, would constitute new evidence.

Terence McDaid was killed when he was mistaken for one of his brothers. The report suggests that it may have been wrong information from FRU’s handlers that led to his death. The Ministry of Defence have paid compensation to his family.

Nelson kept his handlers informed about the UFF conspiracy to murder Gerard Slane, but the report indicates that FRU did nothing to protect him. The Ministry of Defence have also compensated his family.

The alleged role played by FRU, and possibly by elements within the RUC, in these three murders and many others meant that UFF assassins were not brought to book. They literally got away with murder.

The report also examines the significant role played by Nelson in procuring weapons from South Africa for three loyalist groups, the UFF, the Ulster Volunteer Force and Ulster Resistance. Both FRU and MI5 were fully aware of Nelson’s involvement. After the shipment of weapons was received, loyalists’ capacity for murder more than doubled.

The report also discusses evidence that indicates that FRU misled the Stevens Inquiry. British Irish RIGHTS WATCH has examined documents which, if authentic, show that

- FRU impounded Nelson’s intelligence material within a week of the Stevens team’s arrival in Belfast
- FRU did not hand over these materials to Stevens until ten days after Nelson’s arrest three months later
- FRU did not hand over its own materials to Stevens for another six months or more
- the Stevens team found evidence that the materials had been tampered with
- not all the relevant documents were passed to Stevens.

FRU’s activities appear to have gone beyond isolated acts of collusion. Before the late 1980s, loyalist murders were often wholly sectarian and apparently random. After 1988 their capacity for murder increased dramatically and their targeting of victims became very much more precise. There seems very little doubt that FRU played a systematic role in this. If so, they broke every rule in the book and committed some very serious crimes.

British Irish RIGHTS WATCH considers that all the deaths and other crimes in which FRU was allegedly involved merit proper scrutiny by a public inquiry. The organisation believes that the British government will be able to tell from the report whether the documents on which these allegations are based are genuine, because if so they have the originals in their possession. If they are authentic, then only a public inquiry can allay the matters of burning public interest that they raise.

The materials on which the report is based strongly suggest that agents of the state have been involved, directly and indirectly, in the murder of its citizens, in contravention of domestic law and all international human rights standards. British Irish RIGHTS WATCH calls on the British government without further delay or prevarication to set up an independent public inquiry with full judicial powers to investigate the matters raised in the report. In particular, such an inquiry must:

- determine whether the activities of the Force Research Unit, especially their infiltration of Brian Nelson into the UDA, had as their aim the assassination of any individual
- make an informed assessment based on all the available evidence, whether currently in the public domain or not, of the damage caused by those activities, both in terms of lives lost and otherwise
- determine how much knowledge and oversight of those activities was had by the army, the intelligence service, the police, the Northern Ireland Office and the government.”

1.3 When we delivered our report to the then Secretary of State for Northern Ireland, Mo Mowlam, she promised the families of Patrick Finucane, Terence McDaid, and Gerard Slane a swift response. A year later they are still waiting, despite the Irish government’s conviction that such an inquiry is necessary. We note that the British government has not denied any of our allegations. This report, which will be published in full, details the developments of the past year. What they show is that

- significant further evidence of collusion has emerged
- another lawyer, Rosemary Nelson, has been brutally murdered in circumstances that bear some striking similarities to those of Patrick Finucane’s death
- further evidence pointing to RUC involvement in collusion in the murder of Patrick Finucane has emerged
- attempts to cover up the truth about his murder continue
- serious doubts surround the role of Sir John Stevens in his investigation into the murder, ordered by the Chief Constable of the RUC in response to our first report
- there may also have been RUC involvement in the murders of Terence McDaid and Gerard Slane
- the role of the DPP in protecting loyalists from prosecution and sanctioning sentencing deals for those convicted must now be investigated, as well as that of the army, the intelligence service, and the RUC
- support for a full inquiry has grown considerably, particularly within the legal profession.

1.4 Everything that has come to light points ever more sharply to the need for an independent judicial inquiry. In our view, it is not a matter of whether such an inquiry should take place, but when. The longer the British government delays, the more it makes itself a party to the shameful murders, lies, and cover-ups that our reports reveal. We are dealing here with the ugliest face of the conflict in Northern Ireland. It undermines public confidence in the security forces, the system of criminal justice, and of government itself. It strikes down the principle that lies at the very heart of good governance, the rule of law. The only way to undo the appalling damage we describe is to hold an inquiry sooner rather than later, so that the relatives of the many people who have lost their lives as a result can find some kind of justice, so that the public may know the truth, and so that such events can never happen again.

## 2. FURTHER EVIDENCE OF COLLUSION

2.1 On 7<sup>th</sup> March 1999, three weeks after we delivered our report, the BBC2 television series *Loyalists*, by respected journalist Peter Taylor, broadcast an interview with Bobby Philpott, a UFF member released from prison last October under the early release scheme. Philpott was a close associate of Brian Nelson. The broadcast included the following exchange:

TAYLOR: How were you able to target republicans in the way that you did?

PHILPOTT: Security forces' information.

TAYLOR: Which branches of the security forces?

PHILPOTT: All branches: RUC, army, UDR.

TAYLOR: The police assisted you in the targeting and killing of republicans?

PHILPOTT: In targeting."

Taylor then asked Philpott how he received this information.

PHILPOTT: I was getting documents daily. I was getting so many documents I didn't know where to put them.

TAYLOR: What sort of documents?

PHILPOTT: Intelligence reports, photos, what colour socks republicans was wearing... what sort of cars they drive, where they lived... their safe houses.

TAYLOR: Could the UFF have done what it did without that degree of help from the security forces?

PHILPOTT: No."

2.2 In 1999 Hodder & Stoughton published a book, *Fishers of Men*, by a former member of the Force Research Unit, Bob Lewis. In the foreword, he describes FRU's role as follows:

"The objective of the unit was to target, recruit and run human sources from all divisions of the community, with priority given to the running of agents within the terrorist organisations themselves. The FRU's role is probably the most sensitive of all the covert operations undertaken within Northern Ireland. It is the only military unit that exploits preemptive intelligence gathered directly from its informants to combat terrorist activity."

In a note at the beginning of the book, the author says that his book was vetted by the Ministry of Defence prior to publication.

2.3 In a series of articles published in the *Sunday Times*, a former member of FRU calling himself Martin Ingram has made a number of revelations about what he calls "the dirty war". He claims that FRU started the fire that nearly wrecked Sir John Stevens' first investigation into collusion and the activities of Brian Nelson. The fire took place on 10<sup>th</sup> January 1990, the same day that Brian Nelson temporarily fled to Britain in order to escape arrest by Stevens. It did extensive damage to Stevens' office and would have ruined his investigation had he not taken the precaution of keeping copies of key documents elsewhere. When members of Stevens' team discovered the blaze, they found that the fire alarms were not working and the telephone lines were dead. It seems

unlikely that FRU could have started the fire and sabotaged the fire alarms and telephones without some internal assistance from the RUC, whose reservists guarded the building, which was the headquarters of the Northern Ireland Police Authority at Seapark, Carrickfergus. Martin Ingram claims that FRU “wanted a little bit of time to construct an alternative cover story” to explain its relationship with Nelson. It is believed that Nelson had fled as the result of a tip-off from FRU, who in turn had been tipped off about his impending arrest by an RUC officer. Commenting on these revelations in its editorial on 21<sup>st</sup> November 1999, the *Sunday Times* said:

“The public interest requires that the full truth is known before it is lost in a welter of cover-ups.”

2.4 On 25<sup>th</sup> November 1999, Defence Secretary Geoff Hoon obtained an injunction in the High Court in London banning the *Sunday Times* from publishing any more allegations by Martin Ingram. The Secretary of State argued that Ingram owed “a duty of confidence/secretcy to the crown”. Initially the court order barred the newspaper from even reporting that it had been silenced, and from repeating the allegations it had already published, but the following day Mr. Justice Sullivan relaxed these conditions. The hearings were held in camera. On 28<sup>th</sup> November the *Sunday Times* called for a public inquiry. The newspaper said that it intended to contest the attempt to censor them, saying that they are exposing illegality.

2.5 The Metropolitan Police’s Special Branch has now opened an investigation into the *Sunday Times*’ allegations concerning the fire in Stevens’ office. However, they are not looking into the question of whether FRU started the fire. Instead, they are investigating whether Martin Ingram has breached the Official Secrets Act by telling his story to the newspaper.<sup>2</sup> On 17<sup>th</sup> December 1999 Martin Ingram was arrested by Metropolitan Police officers in Wales at the request of the Ministry of Defence. He was taken to Charing Cross police station in London and questioned about possible offences under the Official Secrets Act. He was released without charge on police bail on 18<sup>th</sup> December until February 2000.<sup>3</sup> We understand that he was not interviewed by the Stevens team, nor was he questioned about the fire in Stevens’ office. The authorities seem very anxious indeed to cover up this story, which we have reason to believe is true.

2.6 Another person who has been on the receiving end of official attempts to silence him is journalist Nicholas Davies. His book, *Ten-Thirty-Three: The Inside Story of Britain’s Secret Killing Machine* was published<sup>4</sup> in November 1999. He too was made the subject of a High Court injunction in February 1998, and his notes and computer were confiscated. He claims he was put under intense pressure to identify his three informants, whom he describes as being from “the higher echelons of the British intelligence establishment”, but he refused to do so. He was finally allowed to publish his book after removing some 10% of its contents, although he says that none of the excisions concerned FRU.<sup>5</sup> It is to be presumed that, after such careful vetting, what remains in the book is accepted by the government as being true. In our view, his book is not always accurate when it comes to details. For example, our information is that Brian Nelson’s FRU agent number was 6137, not 1033 as Davies claims. However, generally speaking the picture that he paints of FRU, its methods, and the role played by Brian

Nelson largely confirms what we said in *Deadly Intelligence*. This is significant because his account, so far as we can ascertain, came from completely different sources from our account.

2.7 The picture that Nicholas Davies gives concerning FRU differs from our account in two important respects. First, he describes, more strongly than we were able to, a systematic policy and method of operation on the part of FRU which led them to instigate many murders. This description does not conflict with our allegations, but, if accurate, it substantiates them considerably. Davies gives details of at least nine murders in which he alleges that FRU played a proactive role, including the murders of Terence McDaid<sup>6</sup> (although it was his brother Declan they targeted) and Gerard Slane<sup>7</sup>. Secondly, he alleges that the then Prime Minister, Margaret Thatcher took a very close interest in FRU's activities<sup>8</sup>. He claims that this interest stemmed from her near escape at the time of the Brighton bombing in October 1984. He says that she demanded weekly reports from the Joint Irish Section, an MI5 committee that coordinated intelligence and security in Northern Ireland, and points out that MI5 had a liaison officer who worked from the same office as FRU's ops (operations) officer. He also says that some FRU CFs (Contact Forms, Davies calls them Contact Reports) were passed to the Joint Intelligence Committee, chaired by Margaret Thatcher, "usually on request"<sup>9</sup>.

2.8 Davies also describes the use of "restriction orders" that ensured that other branches of the security forces kept out of an area where another branch was operating<sup>10</sup>. He alleges that FRU often used these to assist loyalists to get to and from a murder scene without encountering security force patrols<sup>11</sup>.

2.9 When it comes to the murder of Patrick Finucane, however, our account differs from his in many respects. It is obvious to us that his sources were not speaking from firsthand knowledge of this murder.

2.10 On 4<sup>th</sup> November 1999, the RUC raided Stoneyford Orange Hall in County Antrim. They found up to 300 files containing photographs, addresses, telephone numbers and other personal details of alleged republicans from South Armagh and Belfast<sup>12</sup>. By 7<sup>th</sup> November alarming details were emerging about this find. According to one Sunday newspaper<sup>13</sup>:

"The information contained in the handwritten documents discovered at Stoneyford Orange Hall in Co Antrim last weekend is more recent than was first thought. Some of the details were copied from army files compiled as recently as 1997, three years after the IRA declared its first cessation. There were also copies of 70 photographs of republican suspects taken between 1988 and 1993<sup>14</sup>."

The paper quoted a security source as saying,

"All the indications are that it was the work of elements within the regular British Army, probably intelligence. It represents a very serious breach of security."

Another paper<sup>15</sup> also claimed that the original documents came from army intelligence and reported:

"A senior RUC officer said the material they are looking for includes information on the murder of Lurgan solicitor Rosemary Nelson, the personal details of republican suspects, and statements carrying threats against the lives of journalists working in Northern Ireland."

By December the same newspaper<sup>16</sup> claimed:



“Secret military intelligence files on almost 400 republican suspects that fell into the hands of dissidents came from the British Army’s central headquarters in Northern Ireland. The files - which included names, addresses, car registrations, photographs and maps of the homes belonging to republicans - were downloaded from a computer inside Thiepval barracks, the army’s HQ in Ulster. The Observer has learnt that the investigation into the leak to the Orange Volunteers centres on civilian workers at the base who are related to known dissidents. Last night the Army refused to discuss the origin of the files...”

If it is true that elements within British army intelligence have continued to leak security files to dissident loyalists since the cease-fires, the case for a public inquiry into the matters raised by our earlier report and by these recent discoveries is irrefutable.

### 3. THE MURDER OF ROSEMARY NELSON

3.1 On 15<sup>th</sup> March 1999, ten years and one month after the murder of Patrick Finucane, Lurgan solicitor Rosemary Nelson was blown up by a loyalist car bomb outside her home. She suffered horrific injuries and died two hours later.

3.2 Like Patrick Finucane, her clients had reported a systematic pattern of abuse against her by certain RUC officers in the two and a half years prior to her death. With Patrick Finucane’s fate very much on her mind, she complained about this abuse, privately and publicly. In March 1997 she allowed the American Lawyers Alliance for Justice in Northern Ireland to make an official complaint on her behalf, which was investigated by the Independent Commission for Police Complaints. In July that year she was assaulted by unidentifiable RUC officers while trying to represent her clients’ interests on the Garvaghy Road. She told the Lawyers Committee for Human Rights, “I can’t recall ever being so frightened in my life.” When the UN’s Special Rapporteur on Judges and Lawyers, Dato’ Param Cumaraswamy, visited Northern Ireland in October that year, she told him about her fears for her safety. The Special Rapporteur highlighted her case in his 1998 report to the UN Commission on Human Rights<sup>17</sup>. He also wrote to the government privately expressing concern about her safety<sup>18</sup>. The abuse against her did not abate. In September 1998 she testified before the House Subcommittee on International Operations and Human Rights in Washington, concerning harassment and intimidation of defence lawyers and death threats against her by the RUC. She told Congress:

“Another reason why RUC officers abuse me in this way is because they are unable to distinguish me as a professional lawyer from the alleged crimes and causes of my clients. This tendency to identify me with my clients has led to accusations by RUC officers that I have been involved in paramilitary activity, which I deeply and bitterly resent... I believe that my role as a lawyer in defending the rights of my clients is vital. The test of a new society in Northern Ireland will be the extent to which it can recognise and respect that role, and enable me to discharge it without improper interference. I look forward to that day.”<sup>19</sup>

Human rights groups in Northern Ireland, in Britain and around the world repeatedly raised her case with the RUC and the government, to no avail. In November 1998, British Irish RIGHTS WATCH said in a report about intimidation of defence lawyers to the UN:

“One solicitor who has been subjected to a campaign of death threats and vile abuse, some of it sexual in character, by RUC officers is Rosemary Nelson from Lurgan... We have transmitted a number of complaints on her behalf to the Special Rapporteur during the past year, and also conducted extensive correspondence with the Secretary of State. The situation in the area where Rosemary Nelson practices remains volatile and we call on the UK government to accept responsibility for her safety and for bringing this despicable campaign to an end.”<sup>20</sup>

The Chief Constable of the RUC, Sir Ronnie Flanagan, to whom we sent a copy of our report, responded with utter contempt, saying:

“I have received the documents forwarded with your letter of 5 November 1998. I suppose by now I really should have learned to expect, and not be surprised by, the total absence of balance in reports produced by your organisation. This latest report continues your now well established practice in that regard.”<sup>21</sup>

Less than three weeks before her death, the Lawyers Alliance met the Chief Constable, to express their concern for her safety. Only three days before her death she gave an interview to the *Irish News* in which she talked of the death threats she had received, describing them as “so sinister”. The interview was published posthumously<sup>22</sup>.

3.3 Despite her fears for her own safety, Rosemary Nelson campaigned consistently for an inquiry into Patrick Finucane’s murder. In January 1998 a statement signed by 33 lawyers in Northern Ireland, entitled *Equal Protection under the Law*, was published. Rosemary Nelson was the chief author of that statement, which read in part:

“We remain particularly concerned about the murder of our esteemed professional colleague, Pat Finucane. It is simply unacceptable, that faced with compelling evidence of state involvement in the killing of a defence lawyer, no action has been taken. Serious allegations of collusion between members of illegal loyalist paramilitary organisations and members of the security forces have yet to be properly investigated. Similarly no action has been taken about the continuing intimidation and abuse of solicitors by police officers via their clients in detention centres. We are all too well aware of this continuing problem, which is one we face in our daily lives.”<sup>23</sup>

She said in her address to Congress in September 1998;

“No lawyer in Northern Ireland can forget what happened to Patrick Finucane or dismiss it from their minds. The allegations of official collusion in his murder are particularly disturbing and can only be resolved by an independent inquiry into his murder, as has been recommended by the UN

**Special Rapporteur.** I would be grateful if the Subcommittee could do all in its power to bring about such an inquiry, by communicating to the United Kingdom government its belief that an inquiry in this case would in fact boost the peace process, as it has been in the Bloody Sunday case."<sup>24</sup>

On 12<sup>th</sup> February 1999 she addressed a meeting in Derry on behalf of the Pat Finucane Centre, marking the tenth anniversary of his murder. A month later she too was murdered.

3.4 On the day after her murder, realising that parallels would be drawn with the death of Patrick Finucane and that her case would be equally controversial, the RUC Chief Constable announced that he had called in the FBI to assist with the forensic aspects of the murder investigation. He also said that the Chief Constable of Kent, David Phillips, had been appointed "to oversee the investigation"<sup>25</sup>. Both these moves turned out to be cosmetic. Within two weeks, the Chief Constable announced that Colin Port, Deputy Chief Constable of Norfolk Constabulary, would assume responsibility for the day-to-day control, direction and command of the murder investigation<sup>26</sup>. David Phillips' role seems quietly to have been phased out. In a radio interview at the end of March, the Chief Constable said that David Phillips' "responsibilities in other fields don't allow him to be here on a daily basis"<sup>27</sup>. On 12<sup>th</sup> April 1999, only a month after the murder, John Guido, legal attaché to the FBI, indicated that its 4-week involvement with the murder investigation was at an end. He said the FBI found little that they would have suggested the RUC change or do differently.<sup>28</sup>

3.5 When Colin Port arrived on the scene, he found that the murder investigation was already well under way. The Chief Constable had set up a team, within the investigation team as a whole, to look into the question of whether there had been any collusion in the murder, which included RUC officers<sup>29</sup>. The whole team was based at Lurgan RUC station, the very office from which some of the worst abuse against Rosemary Nelson emanated, and the team was sharing the RUC's computers. It was late July before it was reported that the investigation team had its own computer system and that all RUC personnel had been removed from the collusion team<sup>30</sup>.

3.6 The involvement of RUC officers in the police investigation meant that some witnesses were reluctant to speak to the police. Some have still not come forward to this day. In May 1999 the Pat Finucane Centre published a report on Rosemary Nelson's murder<sup>31</sup>. In it they included extracts from interviews they had conducted with 52 local eye-witnesses after the Centre had been asked to take statements because of local reluctance to talk to the RUC. These 52 people all came forward voluntarily, without any approach being made to them by the Centre. Many of them gave consistent accounts of intense and highly unusual security force activity in the area around Rosemary Nelson's house in the 48 hours before the murder. Saturation of an area by the security forces has been cited in other murders where collusion has been alleged as a suspicious circumstance. Such activity has the side effect of discouraging local people from being out and about and noticing anything or anyone unusual, and could provide cover for loyalists intent on murder.

3.7 Another very disturbing aspect of Rosemary Nelson's murder is the way in which her complaints about threats and abuse against her by RUC officers were handled. The ICPC began to investigate her complaints in March 1997. On 23<sup>rd</sup> March 1997 the ICPC passed the complaints they had received from the Lawyers Alliance to the RUC. The RUC initially refused to accept them as *bona fide* complaints.<sup>32</sup> Geralyn McNally, the member of the ICPC responsible for their investigation, became increasingly critical of the way in which RUC officers acting under her supervision were dealing with the investigation. She identified nine separate points of dissatisfaction, including the hostility, evasion and disinterest of RUC officers, the provision of pre-prepared written statements by RUC officers due to be questioned, and a general unwillingness on some of their part to cooperate with the investigation or take it seriously. She cited "ill-disguised hostility to Mrs. Nelson" by some RUC officers as "bordering on the obstructive".<sup>33</sup> The Chairman of the ICPC, Paul Donnelly, drew her concerns to the attention of the Chief Constable and the Secretary of State for Northern Ireland. On 10<sup>th</sup> July 1998, the Chief Constable called in the Metropolitan Police to take over the investigation. They appointed Commander Niall Mulvihill to be in command. On 22<sup>nd</sup> March 1999, days after the murder, Geralyn McNally certified that she was satisfied "now" (her emphasis) with the conduct of the investigation. However, on 14<sup>th</sup> July 1999, a private report by Paul Donnelly, the ICPC Chairman, was leaked to the press. Written on 24<sup>th</sup> April 1999, it was heavily critical of Mulvihill's part in the investigation. In particular, it criticised the fact that Mulvihill only conducted a review of the RUC's handling of the investigation, rather than investigating the complaints from scratch. It also disapproved of the practice of allowing RUC officers who were under investigation to read other witness statements, presumably including Rosemary Nelson's own statement, before being interviewed. The Chairman said that Mulvihill was too ready to accept the RUC's classification of the abuse against Rosemary Nelson, some of which was sexually explicit, as "incivility", and displayed insufficient concern over an RUC officer identifying the solicitor with a client "of bad character". Mulvihill had failed to vindicate Geralyn McNally's complaints about the RUC handling of the investigation. Paul Donnelly also disputed Mulvihill's finding that "thorough" interviews were conducted with RUC officers alleged to have threatened Rosemary Nelson, most of whom declined to answer questions.<sup>34</sup> If her complaints were well-founded, and all the evidence suggests that they were, then no RUC officer has been disciplined, let alone dismissed, for uttering death threats and other disgusting abuse against her. There is no doubt in our minds that such abuse helped to create the climate which brought about her death.

3.8 Much more could be said about this barbaric murder<sup>35</sup>, but for the purposes of this report suffice it to say that there are some obvious parallels between the murder of Rosemary Nelson and that of Patrick Finucane. In particular, the attitude of certain RUC officers towards both lawyers is chillingly similar, with both of them suffering threats and abuse before they died.

3.9 The timing of Rosemary Nelson's murder was significant. It is obvious that from their own warped perspective her death served a number of purposes for her murderers. At one level it was clearly an attempt to destabilise the peace process in Northern Ireland. At another, it put an end to the career of an able advocate who, like Patrick Finucane,

was becoming a thorn in the side of the RUC and others. Thirdly, and here again there are echoes of Patrick Finucane's murder, her murder sent a clear message to defence lawyers generally to keep their heads down and to the Finucane family to desist from campaigning. It is an intensely uncomfortable thought that the publicity surrounding the tenth anniversary of his murder and Rosemary Nelson's own outspoken support for an inquiry into his case may have contributed towards the decision to target her for murder.

3.10 While there is at present no evidence of any direct link between the two murders, that of Rosemary Nelson has intensified the need for an independent judicial inquiry into that of Patrick Finucane. Her untimely death has shown that Patrick Finucane's murder was not a once-only event. That another lawyer should die so violently during a period of cease-fire shows that the murder of Patrick Finucane ten years ago, and in particular the government's failure to act to counter the official cover-up or to protect lawyers simply going about their work, has repercussions that are still highly relevant today.

#### 4. OFFICIAL REACTIONS TO DEADLY INTELLIGENCE

4.1 Since our first report was confidential, the scope for official reaction to it has been limited. However, three public reactions are worthy of note. They are the reactions of the Irish government, that of the United Nations and that of the Chief Constable of the RUC.

4.2 When we presented a copy of *Deadly Intelligence* to Department of Foreign Affairs Minister of State Liz O'Donnell on 12<sup>th</sup> February 1999, she said that she would read the report personally, have her officials evaluate it, and then deliver that evaluation to the British government. Acting with commendable speed, on 13<sup>th</sup> April 1999 she forwarded an 11-page evaluation to the Secretary of State for Northern Ireland. She told Mo Mowlam,

"In the light of the report and this assessment, I believe that the case for a public inquiry into all the circumstances surrounding Mr. Finucane's murder is compelling.

As the assessment argues, the Finucane case and the associated allegations of collusion, fulfil the fundamental requirement of a public inquiry i.e. that the matter under consideration is of urgent public interest. The accumulated evidence is sufficient to give reasonable cause to the public to believe that collusion may have taken place. Moreover, the allegations in question serve to undermine confidence in the rule of law. In my view, they can only be answered with confidence—one way or the other—through the mechanism of a public inquiry."<sup>36</sup>

As we have already pointed out, we are still waiting for a response from the Northern Ireland Office.

4.3 We also sent a copy of *Deadly Intelligence* to Dato' Param Cumaraswamy, the UN's Special Rapporteur on the Independence of Judges and Lawyers. Introducing his most recent report to the Commission on Human Rights in April 1999, he said:

With regard to the Patrick Finucane murder, I have continued receiving further information. I understand the same information has also been submitted to the Government of the United Kingdom. I am even more convinced that there is now a stronger case made for a Royal Commission of Inquiry into that murder to ascertain whether there was security forces, including the RUC, collusion in that murder and therefore once again reiterate my recommendation for such an inquiry."<sup>37</sup>

During the same session of the Commission, a meeting was held in memory of Rosemary Nelson, which was addressed by the High Commissioner for Human Rights, Mary Robinson. During her tribute she said,

“... There are dark elements that have to be addressed in this solemn moment of marking the tragic death of Rosemary Nelson... Her death evoked the sad death ten years earlier of Patrick Finucane, who has been also to the front of concern here at the Commission.”<sup>38</sup>

4.4 On 18<sup>th</sup> March 1999, an RUC press release was issued that said: “The Chief Constable also announced that the British/Irish Rights [sic] document recently [sic] presented to the Secretary of State has been referred by him to Mr. Sir John Stevens, Deputy Commissioner of the London Metropolitan Police Service, for investigation.”

4.5 We were surprised by and concerned about this development. At a meeting with the Secretary of State for Northern Ireland on 23<sup>rd</sup> March 1999 we raised various concerns with her. We told her that we understood when we gave her our report that it would be necessary for her to consult with a number of persons before reaching a conclusion. She told us that she had passed the report to the Chief Constable of the RUC, the Director of Public Prosecutions, and the Attorney General. No doubt she also passed it to others whom she did not mention, but this group of recipients surprised us, since they are primarily concerned with the detection and prosecution of crime. Our report was not primarily concerned with those matters; it was designed to enable her to decide whether or not an independent inquiry was required. It became apparent that the Chief Constable had not consulted the Secretary of State about his decision to refer the report to Sir John Stevens and she was unable to explain his reasons for having done so. At the meeting her chief of security, David Watkins, said that the Chief Constable had taken this action because he believed the report disclosed fresh crimes that needed police investigation and the Chief Constable deemed Sir John Stevens to be the most appropriate person to investigate them. We pointed out that the report had not been designed to ground a police investigation, that any such investigation in advance of an independent inquiry would be premature and doomed to failure, and that were such an inquiry to be held Sir John Stevens would be a key witness and it was therefore inappropriate to call him in. We also drew her attention to the fact that his two previous investigations had failed to bring Patrick Finucane’s murderers to book, and that we believed this was because vital evidence had been withheld from him. Neither of his two previous reports were published, and another secret investigation was no substitute for a proper inquiry. He does not have the power to compel witnesses to be interviewed, nor does he have the power to compel the disclosure of documents. There is a real danger that the Stevens investigation will bury the truth rather than reveal it. Suspects will be advised, quite properly, by their lawyers not to answer questions, and will be alerted to lines of enquiry and to the possibility of destroying documentary evidence. In any case, our allegations were based on information which we have reason to believe is already in the hands of the authorities; there is no need for a police investigation to discover what is already known.

4.6 We also expressed concern that the Chief Constable, who in our view had no right to take it upon himself to use our report in that manner, might use the existence of an on-going police investigation to frustrate any decision she might take to call an independent inquiry. In

July the Northern Ireland Office replied to a letter from a member of the Lawyers Committee for Human Rights, calling for an inquiry, in the following terms:

"The Government has not ruled out any course of action in this case. As you are aware, a further police inquiry began in April this year into the murder and related issues, and someone has now been charged with Mr. Finucane's murder. This very much limits the Government's position at present."<sup>39</sup>

4.7 Subsequently, extreme confusion has arisen about Sir John Stevens' previous investigations into the murder of Patrick Finucane, and his investigation to date has raised more questions than it has answered.

## 5. DID STEVENS INVESTIGATE PATRICK FINUCANE'S MURDER?

5.1 Sir John Stevens twice conducted investigations in Northern Ireland before his present investigation. The first investigation commenced in September 1989 and the second in the summer of 1992, after (though not necessarily because) a *Panorama* programme exposed Brian Nelson's role in the murder of Patrick Finucane.

5.2 On 6<sup>th</sup> September 1990, Detective Superintendent Alan Simpson, who was in command of the RUC murder investigation, told the inquest on Patrick Finucane's death that Stevens had investigated some of the allegations of collusion in the murder, but these enquiries had been quite separate from the RUC's investigation into the murder, although there had been close liaison between the two teams.

5.3 On 4<sup>th</sup> September 1992 Stevens met a delegation from the Lawyers Committee for Human Rights, during a fact-finding mission. They reported:

"The Stevens Inquiry has not, however, resulted in prosecution for the Finucane murder. Nor were efforts made to contact Mrs. Finucane, Finucane's colleagues at his firm, or his former clients. Mr. Stevens, who met with members of our delegation, told us that limited time, resources, and terms of reference prevented his inquiry from tracking down every lead in the Finucane case. He added that anything that was uncovered would properly have been turned over to the RUC."<sup>40</sup>

5.4 On 17<sup>th</sup> January 1995, Sir John Stevens wrote to British Irish RIGHTS WATCH in the following terms:

"With regard to the murder of Patrick FINUCANE, I can confirm that this matter was fully investigated during the initial and subsequent inquiry and the results included in both reports [to the DPP]."<sup>41</sup>

This would appear to be a quite unequivocal declaration that he did investigate the murder during both his earlier investigations and reported on his findings to the DPP.

5.5 In June 1995 the Law Society of England and Wales' International Human Rights Working Party sent a delegation to Northern Ireland. They also met Sir John Stevens. Commenting on the DPP's decision not to prosecute anyone following Stevens' second investigation, they said:

"This does not mean that there are no suspects. On the contrary we believe the police have, at the very least, strong suspicions as to the identity of the killers. Sir John Stevens told us he knew 'beyond a shadow of a doubt' who was responsible for the murder."<sup>42</sup>

5.6 On 20<sup>th</sup> August 1995, the Lawyers Committee for Human Rights again met Sir John Stevens. This time, they reported:

"The second Stevens Inquiry has produced few, if any, results. Unlike the first report, the follow-up has not led to any reforms or prosecutions to date. As before, Mr. Stevens spoke with the Lawyers Committee and stressed that he had conducted a thorough investigation into Nelson's activities, including with respect to the Finucane murder, though he added that he could not discuss specific findings... He also reiterated that he 'absolutely' knew who Finucane's killers were, but was not at liberty to disclose their identity publicly."<sup>43</sup>

5.7 On 14<sup>th</sup> April 1999, Audrey Glover, the Head of the UK's Delegation to the UN, told the Commission on Human Rights:

"The first point the Government would like to make in response to Mr. Cumaraswamy is that the Patrick Finucane case was considered not only by the criminal investigation into the murder but also in great detail by Sir John Stevens as part of his wider inquiry into allegations of collusion between the security forces and terrorists."<sup>44</sup>

This also seems a clear statement that Stevens did investigate the case, "in great detail".

5.8 On 16<sup>th</sup> April 1999 a junior Minister at the Ministry of Defence, Doug Henderson MP, said in a reply to a Parliamentary Question:

"The murder of Patrick Finucane was investigated both by the RUC and subsequently by the investigation team led by Sir John Stevens, then Deputy Chief Constable of Cambridgeshire."<sup>45</sup>

Until this date, then a consistent picture emerges.

5.9 However, on 28<sup>th</sup> April 1999 Sir John Stevens held a press briefing in Belfast. Here is how he described his first two investigations:

"Referring to his earlier involvement in Northern Ireland, Mr. Stevens said that in September 1989 he had been appointed by the then RUC Chief Constable, Sir Hugh Annesley to inquire into breaches of security by the Security Forces in the Province.

The inquiry began after the theft of photo-montages from a Belfast police station. It resulted in 43 convictions and over 800 years of imprisonment for those convicted.

Mr. Stevens said that his report contained more than 100 recommendations for the handling of security documents and information. All had been accepted and implemented.

In 1993, he was again asked by Sir Hugh Annesley to investigate further matters which solely related to the initial inquiry.

He added that at no time did he investigate the murder of Mr. Finucane. However, the earlier inquiries, through the so-called double agent Brian Nelson, were linked to the murder."<sup>46</sup>

In a newspaper account of the press conference<sup>47</sup>, it was reported:

"Those investigations [into security force leaks], as he revealed at a press conference in Belfast yesterday, also pointed to a link to the murder of Mr. Finucane. He reported his concerns at the time to the Northern Ireland Director of Public Prosecutions and to the then RUC chief constable, Sir Hugh Annesley. No prosecutions followed from those concerns."

It is known that Brian Nelson was interviewed by the Stevens team and made a long statement; it was doubtless this statement that prompted Stevens to alert the DPP and the Chief Constable.

5.10 A few days before the press conference, on 23<sup>rd</sup> April 1999, Sir John Stevens wrote to Peter Madden, Patrick Finucane's former legal partner, seeking the cooperation of the Finucane family in his latest investigation. He wrote:



"I am sure you are aware that I have been appointed to reinvestigate the murder of Patrick Finucane... The original enquiry was followed by a request from the Director of Public Prosecutions to investigate further allegations, which related to a Panorama programme and the enquiry is sometimes referred to as Stevens Two. Those enquiries primarily related to the activities of the so-called 'double agent' Brian Nelson. At no time was I given the authority by either the Chief Constable of the RUC or the Director of Public Prosecutions to investigate the murder of Patrick Finucane."<sup>48</sup>

This letter raises even deeper questions about Stevens' role. Stevens knew, because of his own team's interview of Nelson, about Brian Nelson's role, and also the role of others, in the murder of Patrick Finucane during his first investigation. He was so disturbed by what he learned that he reported on it to both the DPP and the Chief Constable. By the time of Stevens Two, Nelson had stood trial and the *Panorama* programme had been broadcast. Neither the DPP nor the Chief Constable could claim to be unaware of the allegations of collusion in the murder of Patrick Finucane, especially since they knew about Stobie's role (please see paragraph 6.5 below), yet Stevens was not authorised by either of them to investigate. Nevertheless, Stevens and government ministers and representatives have been telling the world that he did investigate the murder on both occasions. If it is true that he was not in fact allowed to investigate the murder, what were the reasons behind that decision, and why have the Finucane family, the United Nations, and the public been misled?

## 6. STEVENS' PRESENT INVESTIGATION

6.1 So far, Sir John Stevens has made eleven arrests, one of which has led to a loyalist being charged with the murder of Patrick Finucane.

6.2 A man called Fletcher was arrested on 27th July 1999. He is a former member of the Ulster Defence Regiment. He was convicted, we believe in 1989, for stealing weapons, including the Browning used to murder Patrick Finucane, from Palace Barracks. He sold the guns to the UFF. On this occasion, he was released without charge.

6.3 Mark Barr was arrested on 28th July 1999 and charged on 29th July with:

1. possession of photocopies of index cards concerning named persons (not named in the charge) between 1985 and 1989
2. possession of photocopies of index cards and photomontages between 1984 and 1989
3. possession of a computer printout of named persons (not named in the charge) on a date unknown before 16<sup>th</sup> January 1990.

He was arrested with William and Stephen Barr in July 1989. The three men were in possession of the Browning used in the murder. William Barr, Francis Arbuthnot and David Anderson were later convicted of possession of weapons and UFF membership.

6.4 Another man whose name we do not know was also arrested on 27th July. He is 36 years old and comes from Glencairn area of Belfast. He was arrested in a dawn swoop on a caravan in Co. Down where he was on holiday. He was released without charge. It is not known whether a report was sent to the DPP concerning this man.

6.5 The arrest that has hogged the limelight has been that of Billy Stobie. He was arrested and on 23<sup>rd</sup> June he was charged with the murder of Patrick Finucane. Stobie has now confessed publicly that he was

at the time of the murder a quartermaster for the Ulster Defence Association, whose armed wing was the UFF, and that he supplied the weapons used in the murder. He has also said publicly that he was acting as an informer for the RUC's Special Branch, and that he told his handlers everything he knew at the time concerning the murder.

6.6 In June 1990 Stobie described his role in the murder to a journalist, Neil Mullholland, who at that time worked for the *Sunday Life* newspaper and is now a press officer at the Northern Ireland Office. Although Stobie spoke to Mullholland in confidence, Mullholland has been reported<sup>49</sup> as having discussed what Stobie had told him about the murder with Bill McGookin, the head of the RUC press office. On 7<sup>th</sup> September 1990, Mullholland was formally interviewed by the RUC. He told them all he knew, but refused to sign a statement or hand over his interview notes. On 13<sup>th</sup> September 1990 Stobie was arrested and questioned about the Finucane murder during a period of seven days' detention under emergency laws. He denied direct involvement in the murder, but admitted to being the UDA's quartermaster, supplying the weapons used in the murder, and recovering them afterwards. He said he did not know who was the intended target, but only that it was a "top provo". Stobie was released without charge, but a file was sent to the DPP.

6.7 Knowing that Mullholland had breached his confidentiality, Stobie then spoke to Ed Moloney, the Northern Ireland editor of the *Sunday Tribune*. He is a very experienced and highly respected journalist, noted for his political commentary and investigative reporting, and for his independence. Stobie agreed to tell the journalist everything he knew about the Finucane murder and various other matters in return for an absolute undertaking from Ed Moloney that he would not publish what he was told without Stobie's express permission.

6.8 Stevens interviewed Mullholland on 3<sup>rd</sup> June 1999. On this occasion, Mullholland gave Stevens a signed statement and his original notes of his interview with Stobie. On 23<sup>rd</sup> June 1999 Stobie was charged with the murder of Patrick Finucane. On 24<sup>th</sup> June he appeared at Belfast Magistrate's Court, where it was reported that he had made the following statement upon being charged:

"Not guilty of the charge that you have put to me tonight. At the time I was a police informer for Special Branch. On the night of the death of Patrick Finucane I informed Special Branch on two occasions by telephone of a person who was to be shot. I did not know at the time of the [name of the] person who was to be shot."<sup>50</sup>

Stobie's solicitor Joe Rice told the court that his client was a "paid Crown agent" from 1987 until 1990 and that he gave the police information on two occasions before the Finucane murder which was not acted upon. In addition Joe Rice claimed that,

"As a result of this information at another trial involving William Stobie on firearms charges on January 23 1991, the crown offered no evidence and a finding of 'not guilty' was entered on both counts. My instructions are that the bulk of the evidence here today has been known to the authorities

for almost 10 years. He will say that this murky web of deceit and lies spun around this murder did not emanate from him and he looks forward to the truth coming out at the inevitable trial."

6.9 Now that his part in the Finucane murder was in the public domain and he was in trouble with the law, Stobie gave Ed Moloney permission to tell the whole story. On 27<sup>th</sup> June Ed Moloney published a very detailed account of what Stobie had told him in the *Sunday Tribune*. On 29<sup>th</sup> June detectives from Stevens' team visited Ed Moloney and asked him for his interview notes with Stobie. Ed Moloney refused to give them up. On 8<sup>th</sup> July the RUC, acting on behalf of the Stevens team, applied to Belfast County Court for an order under paragraph 3 of Schedule 7 of the Prevention of Terrorism (Temporary Provisions) Act 1989 compelling him to hand over his notes. The order was granted after an ex-parte hearing at which Ed Moloney was not present. The penalty for failing to comply with such an order is an unlimited fine and/or up to five years' imprisonment.

6.10 Ed Moloney applied to have the order set aside. He also sought discovery of Mulholland's witness statement, the summary of Stobie's interviews in 1990, Stobie's witness statement of 23.6.99, and the two-page statement in support of the application for the order, presented to the court on 8.7.99. He eventually obtained Stobie's statement of 23<sup>rd</sup> June and the statement made in support of the application, but he has not been allowed to have copies of Mulholland's statement to the Stevens team or the summary of Stobie's 1990 interviews with the RUC.

6.11 While Ed Moloney was waiting for his case to be heard, Stobie applied for bail. The High Court heard his application on 3<sup>rd</sup> August. The prosecution told the court that Stobie had denied any involvement in the Finucane murder when he was interviewed by the RUC in 1990. Stobie was denied bail. The situation now was that Stobie was claiming that he had admitted his part in the murder back in 1990 and that his Special Branch handlers had failed to prevent the murder or to apprehend the perpetrators. Ed Moloney had published an article confirming that Stobie had told him the same in 1990, but the crown was saying that this was all untrue, while at the same time denying Ed Moloney access to the documents which would establish the truth of the matter.

6.12 On 22<sup>nd</sup> August Ed Moloney published another article in the *Sunday Tribune* explaining why he had refused to hand his notes of his interviews with Stobie to the police. He said that to do so would not only be a breach of the journalists' code of ethics, but it would have the effect of making it impossible for him to continue working as a journalist because no-one would want to give him information if they feared a court could compel him to breach their confidentiality. Furthermore, he pointed out that UDA members might seek to murder him if he handed over information that incriminated them. If any journalist was forced to reveal confidential information in such circumstances, it would have a chilling effect on the whole profession of journalism. Journalists should not be forced to become police informers. The police had known all about Stobie's role in the Finucane murder since 1990 and did not need his notes to establish those facts. Neil Mullholland had also refused to hand over his interview notes in 1990, but had not found himself being taken to court as was Ed Moloney.

6.13 When Ed Moloney's case was heard on 23<sup>rd</sup> August, the police admitted that Stobie had indeed made admissions concerning his role when he was interviewed by the RUC in 1990. Detective Chief Inspector Richard Turner of the Stevens team said that Stobie had admitted supplying the weapons for the Finucane murder and disposing of the principal murder weapon afterwards.

6.14 On 2<sup>nd</sup> September Judge Hart ruled Ed Moloney must disclose the documents. He found that, in view of Ed Moloney's declaration that he would not appear as a prosecution witness against Stobie, his notes would not be admissible in evidence unless he appeared for the defence. He found that Stevens did not need Ed Moloney's notes in order to evaluate Mulholland's evidence because Ed Moloney's article of 27<sup>th</sup> June contained sufficient information to enable Stevens to decide whether or not Mulholland's evidence was credible. However, the judge held that Ed Moloney's article contained other information not covered by Mulholland's evidence which was potentially of substantial value to the police investigation. He also held that Ed Moloney was not justified in giving Stobie an undertaking in the terms he did. Stobie has abandoned the right to confidentiality by agreeing to have his name and details of his crimes published. The public interest in the freedom of the press was outweighed by the value Ed Moloney's notes would have for the police investigation. Ed Moloney was given seven days to produce the documents. The judge stipulated that the notes must be returned to Ed Moloney as soon as possible and that they must only be used for the purpose of the investigation of the Finucane murder and any criminal proceedings arising from that investigation.

6.15 Ed Moloney took an action for judicial review against the judge's ruling. On 21<sup>st</sup> September he again applied to the court for discovery of Stobie's 1990 police interview notes. He was again denied access to these crucial documents. On 23<sup>rd</sup> September the High Court heard his application for judicial review. The case ended on 28<sup>th</sup> September and judgment was reserved.

6.16 On 5<sup>th</sup> October Stobie was granted bail after the court was told that it had been misled on 3<sup>rd</sup> August concerning the admissions he made in 1990. Extracts from his RUC interview notes were referred to in court and corroborated all that Ed Moloney had said in his article of 27<sup>th</sup> June about Stobie's role in the Finucane murder and about what Stobie had told Special Branch about the murder. On 12<sup>th</sup> January 2000 he was further remanded until 9<sup>th</sup> March.

6.17 The only difference between the case against Stobie in 1990 and that in 1999 is that in 1990 Mulholland refused to sign a statement detailing his knowledge, whereas now he has done so and handed over his interview notes. Such a statement would not have been crucial to a conviction in 1990, nor is it today, because Stobie had confessed. Equally, Ed Moloney's notes are inessential to the case against Stobie and in any case will not be admissible in evidence because Ed Moloney will refuse to appear as a witness against Stobie.

6.18 According to evidence given at the inquest by DS Simpson, fourteen people were interviewed by the police in connection with Patrick Finucane's murder. He testified:

"We are reasonably certain that the main perpetrators of the murder were among these suspects but no evidence is presently available to sustain a charge of murder, but enquiries are ongoing ... None of these 14 persons I interviewed in connection with Mr. Finucane's death had any connection with the security forces."

Stobie was obviously one of these 14 men, and he certainly had a connection with the security forces; he was a Special Branch informer. One of the many questions arising from the recent revelations must be why he, and for that matter the other 13, were not interviewed by Stevens' first two investigations.

6.19 On 27<sup>th</sup> October 1999 the High Court quashed the disclosure order against Ed Moloney. Carswell LCJ ruled that the trial judge had misdirected himself as to the potential value of Ed Moloney's notes to Stevens' investigation. Stevens indicated that he would not appeal against the ruling.

6.20 British Irish RIGHTS WATCH is at a loss to understand why the Stevens team ever pursued Ed Moloney, whose career and liberty they put at risk, rather than seeking to track down those who murdered Patrick Finucane, especially those who planned or colluded in his murder. Stobie's role has been known since 1990, and Ed Moloney was not in a position to add anything to what the police already knew. The role played by other loyalists, mentioned in his article of 27<sup>th</sup> June, was explained explicitly in *Deadly Intelligence*, which has been in the hands of the authorities since February 1999.

6.21 Stevens knew that Ed Moloney's notes would not be admissible in court, unless he appeared as a witness, and that the journalist had already said he would not testify for the prosecution. He knew that Ed Moloney's notes contained nothing new, since he had made everything he knew public. Stevens himself had claimed that he knew "absolutely" and "beyond a shadow of doubt"<sup>51</sup> who had murdered Patrick Finucane. It is difficult to see what purpose would have been served by having access to Ed Moloney's notes, unless it was to compare what Stobie had told Mulholland with what he had told Moloney. It is difficult to see what use this would be to the prosecution, but any inconsistencies thrown up by such an exercise might certainly have been useful to anyone who wanted to undermine Stobie's claim to have been a Special Branch informer.

6.22 In September 1999 the Stevens team arrested two more men, Paul Givens and William Hutchinson. Each has been charged on three counts of possession of information of use to terrorists before June 1989<sup>2</sup>. We do not believe these cases have any connection with the murder of Patrick Finucane.

6.23 On 3<sup>rd</sup> November 1999, a week after the collapse of the case against Ed Moloney, the Stevens team arrested three men, whose names were not released but are known to us. These men were named in *Deadly Intelligence* as being prime suspects for the murders of Patrick Finucane, Gerard Slane and others. On 8<sup>th</sup> November it was reported that the men had been released without charge<sup>53</sup>. On 10<sup>th</sup> November 1999, Stevens arrested two more men. It appears that they have not been charged.

6.24 On 1<sup>st</sup> December 1999 it was announced that Deputy Assistant Commissioner Hugh Orde of the Metropolitan Police had taken over day-today responsibility for Stevens 3 in view of Stevens' appointment as Commissioner of the Metropolitan Police, which commences in February 2000<sup>54</sup>.

6.25 On 24<sup>th</sup> January 2000 the *Independent* newspaper printed a number of revelations concerning the present Stevens investigation which had every appearance of having come directly from the Stevens team<sup>55</sup>. The paper alleged that Stevens had identified a three-man team of loyalists who carried out the murder and another team of three who acted as a backup squad and were parked nearby during the murder. It claimed that all six names had been passed to the DPP, and that Stevens had recommended that they be charged with murder. The newspaper claims that they were "debriefed by the UDA after questioning by detectives from Stevens 3". The article said that DNA samples had been obtained from at least one of the murder weapons and from a balaclava worn by one of the killers. The Stevens team was also said to be in possession witness accounts and forensic material "believed to support" claims that the RUC failed to act on warnings in order to prevent the murder. They also have evidence from former RUC officers and informers, and from a tape-recording, supporting Stobie's claims to have warned his Special Branch handlers. The investigation is using fingerprints and DNA material to research possible collusion on the part of army and RUC personnel. The newspaper also highlights the extraordinary security measures being taken by the Stevens team in order to safeguard their investigation from outside interference. The newspaper says that the final report of the investigation is not expected until 2001.

6.26 These revelations raise more questions than they answer. It seems very likely that the men arrested by Stevens were previously questioned by the RUC, yet do not appear to have been arrested then<sup>56</sup>. The existence of DNA evidence on a weapon and a balaclava ought surely to have been known to the original RUC investigation, but was not mentioned at the inquest. The investigation so far appears to have concentrated on the loyalists who carried out the murder, rather than the collusion aspects. Stevens' ability to identify the perpetrators highlights the RUC's apparent failure to do so. The extreme security required by the investigation suggests that Sir John Stevens is taking no chances, after the previous fire in his office, of any further attempt to wreck the investigation, whether by the security forces or loyalists. A burning question raised by the newspaper coverage is that of why Stevens was not able to reach this stage in either of his two earlier investigations. It is evident that Stevens 3 will not answer any of these questions; only a public inquiry can do so.

6.27 None of the arrests made by Stevens so far has shed new light on the murder of Patrick Finucane. Even the latest revelations, which have not so far as can be ascertained resulted in arrests, contain little fresh evidence. However, Stobie's arrest has shed considerable light on the role of the RUC and has also raised further serious questions about the role of the DPP.

## 7. THE ROLE OF THE RUC

7.1 In *Deadly Intelligence* we alleged that the RUC may have been involved in the murder of Patrick Finucane in the following ways:  
members of the RUC suggested that the UDA kill Patrick Finucane

the RUC sent a report to Douglas Hogg which prompted his remark in Parliament that some solicitors were “unduly sympathetic to the cause of the IRA”

RUC Special Branch had detailed information about the plot to murder Patrick Finucane but did nothing to prevent it or to protect him.

7.2 The first of these allegations was already in the public domain when we wrote our report. We are therefore making public here what we said about alleged RUC incitement of the murder:

“[BBC journalist] John Ware has reported on an interview he conducted with Tommy ‘Tucker’ Lyttle, head of the UDA at the time of the murder, shortly before Lyttle’s death. Lyttle alleged that the impetus for the murder came not from Nelson or the UDA, but from the RUC:

‘Lyttle also confirmed that the original idea to murder Patrick Finucane came from two RUC detectives. While a prominent UDA gunman was being held in Castlereagh, an officer entered the interrogation room and said to his colleague: “Have you put it to him yet?” They then suggested that the UDA shoot Finucane. Lyttle said that he was so astonished at this suggestion that he informed a regular contact in the RUC Special Branch: “I told him: ‘What the hell is going on in Castlereagh? Why is Finucane being pushed?’” The officer said that it would be “a bad blow for the Provos [the IRA] to have Finucane removed.” Did that amount to approval that he should be shot? “Put it this way,” said Lyttle, “He didn’t discourage the idea that he should be shot.”<sup>57</sup>

We named the prominent UDA gunman in our report, and also gave the names of two of the RUC officers we believe to have been involved.

7.3 Our second allegation concerns the sending of a report by the RUC to the Home Office on which Douglas Hogg based his infamous remarks in Parliament that “there are in Northern Ireland a number of solicitors who are unduly sympathetic to the cause of the IRA”. Sir John Hermon, who was the Chief Constable of the RUC at the time of the murder, has now spoken publicly about Hogg’s remarks. In a newspaper interview in May 1999<sup>58</sup>, he claimed that:

“Pat Finucane was associated with the IRA and he used his position as a lawyer to act as a contact between suspects in custody and republicans outside.”

He said that Hogg’s statement to the House of Commons prior to the murder was “based on fact”. This strongly suggests that there was indeed a report sent to Hogg and that Hermon had personal knowledge of its contents.

7.4 Stobie’s claim to have been an informer for RUC Special Branch has not been denied by the RUC, although at his first bail application on 5<sup>th</sup> August 1999 the prosecution informed the court that,

“As a result of inquiries today, there is no Special Branch information, record, or source showing that Stobie contacted the Special Branch at any stage on 12 February 1989.”<sup>59</sup>

However, at his bail hearing on 5<sup>th</sup> October 1999 his interview notes from 1990 were produced in court; they showed that he had named Special Branch handlers and had related all his attempts to keep Special Branch informed about the murder. If Stobie is telling the truth, it would appear that he contacted his Special Branch handlers at three crucial junctures during the planning of the murder, the murder itself, and its aftermath. He says<sup>60</sup> that he told his handlers when he was first approached and asked to supply the weapons. He claims that he did not

know the identity of the intended victim, but that he did tell Special Branch the identity of those who asked for the weapons. He says he also informed his handlers when the guns were collected from him on the day of the murder. Then he says that he told his handlers when the murderers were about to deliver the guns back to him. If this is true, then it implies that the RUC knew that named UFF men had asked for weapons, but made no effort to keep them under surveillance; that they knew these men were about to commit a murder, but did nothing to prevent it; and that they knew when and where these men were due to deliver the guns back to Stobie, but made no attempt to arrest them. Furthermore, Stobie alleges that after the guns had been returned to him, Special Branch took them into their custody, but gave them back to him when their absence was in danger of exposing him as an informer. He also claims that one of the guns had been tampered with by the RUC and that he feared he was being set up by them to be murdered by his loyalist associates.

7.5 New evidence has also come to light that suggests that the RUC played some role in the murders of two other men whose cases we highlighted in *Deadly Intelligence*, Terence McDaid and Gerard Slane. In their submission<sup>61</sup> to the Independent Commission on Policing, the Police Authority for Northern Ireland discuss their difference of opinion with the Chief Constable over the amount of information he was prepared to disclose concerning a claim for damages against the RUC by "the relatives of two people killed by terrorists". We understand that these claims were made by the relatives of Gerard Slane and Terence McDaid. It is clear from PANI's submission that the Chief Constable had settled the claim on a shared basis with the Ministry of Defence. However, the Chief Constable had argued that,

"... the security and intelligence factors which lay behind the need to agree a settlement of the case on behalf of the RUC were too sensitive to be disclosed to the Authority."

The settlement was ultimately shared between the Northern Ireland Office and the Ministry of Defence. On 2nd June 1999, in view of the Northern Ireland Office's part in the settlement, we wrote to the Secretary of State asking for urgent replies to the following questions:

On the basis of what act(s) of commission or omission did the Chief Constable believe that the RUC needed to reach a settlement in these two cases?

What were the security and intelligence factors that were too sensitive to be disclosed to PANI?

She declined to answer our questions and in July passed them to the RUC and the Ministry of Defence<sup>62</sup>. We have yet to receive any reply from either body.

## 8. THE ROLE OF THE DPP

8.1 Alasdair Fraser, CB, QC, the Director of Public Prosecutions for Northern Ireland, has been in post throughout this decade. He or his office have made a series of decisions that, in the light of all the other information available, now require explanation.

8.2 As has been seen<sup>63</sup>, Sir John Stevens had been so concerned about Brian Nelson's role in the murder of Patrick Finucane that he raised those concerns with the Chief Constable and the DPP. Stevens interviewed Nelson under caution on 15<sup>th</sup> January 1990, and Nelson made a



lengthy statement implicating himself in the murder of Patrick Finucane. He also made other statements implicating himself in a whole series of other murders. His statements should have sparked off a full-scale police investigation. The first questions arising for the DPP must be:

1. Why did the DPP not instigate further enquiries when Sir John Stevens alerted him to his concerns about Brian Nelson's role?

2. Why did the DPP not authorise Sir John Stevens to investigate Patrick Finucane's murder<sup>64</sup>?

8.3 Brian Nelson originally stood indicted on 34 counts, including four counts of conspiracy to murder Alex Maskey, James Morgan, Patrick Monaghan and Brian Gillen, and two of aiding and abetting the murders of Gerard Slane and Terence McDaid. However, when he appeared in court on 22<sup>nd</sup> January 1990 Crown Counsel, John Creaney QC, added a 35<sup>th</sup> count, that of conspiracy to murder Terence McDaid, and requested that Nelson be re-arraigned on all counts. During the process of re-arraignment, Nelson pleaded not guilty to two counts, as follows:

1. Aiding and abetting the murder of Terence McDaid
2. Collecting information about Declan McDaid (visual sightings)

Mr. Creaney then instructed the Clerk of the Court not to put 13 of the charges, as follows:

3. Collecting information about Declan McDaid (Electoral Register)
4. Aiding and abetting another to collect information re Declan McDaid
6. Collecting information about Alex Maskey
7. Aiding and abetting the murder of Gerard Slane
12. Collecting information about James Morgan (Electoral Register)
13. Ditto (his address)
14. Aiding and abetting another to collect information re James Morgan
16. Collecting information about Patrick Monaghan (visual sightings)
17. Ditto (his address)
18. Aiding and abetting another to collect information re Patrick Monaghan
20. Collecting information about a public house
21. Aiding and abetting another to collect information re Brian Gillen (photo)
23. Possession of sub-machine gun in suspicious circumstances.<sup>65</sup>

Nelson pleaded guilty to the rest of the counts as each was put to him. Mr. Creaney then requested the court to allow all those charges to which Nelson had not pleaded guilty—i.e. the two to which he pleaded not guilty and the twelve that were not put—to remain on the books of the court but not to be proceeded with without the court's permission. Most of the counts that were left on the books were relatively minor, with the exception of the 7<sup>th</sup> count of aiding and abetting the murder of Gerard Slane and the 23<sup>rd</sup> count of possession of a sub-machine gun. In this manner, a deal was struck which meant that a trial which was expected to have lasted for many days if not weeks was over in two short days. Since the only matters before the court were ones to which Nelson had pleaded guilty, there was no need to prove the facts on each of the remaining 21 counts.

8.4 Brian Nelson's trial raises the following questions concerning the role of the DPP:

3. What were the terms of the deal done with Brian Nelson?
4. Why was a deal done with him?

5. Why was he not prosecuted for his role in the murder of Patrick Finucane?

6. Why was he not charged with conspiracy to murder Pat McGeown<sup>66</sup> or collecting information about him?

8.5 In June 1991, Tucker Lyttle, Tosh Lyttle, Winkie Dodds, Matt Kincaid and Eric McKee stood trial on charges arising out of the first Stevens inquiry. Between them, they faced 51 separate counts of possession of documents likely to be of use to terrorists, recording such information, planning acts of violence, and conspiracy to collect information. Tucker Lyttle alone was charged with issuing death threats against witnesses in a racketeering trial with intent to pervert the course of justice.<sup>67</sup> None of them was charged with murder or conspiracy to murder. On 3<sup>rd</sup> July 1991 Tucker Lyttle was sentenced to 7 years for possession of documents likely to be of use to terrorists<sup>68</sup>. Eric McKee and Winkie Dodds were each sentenced to 6 years, Tosh Lyttle to 5 years, and Matt Kinkaid to 4 years<sup>69</sup>.

8.6 In October 1990 charges against Sam Duddy and four other UDA/UFF members were dropped when it was decided not to use Nelson as a prosecution witness<sup>70</sup>. The other four men were James Spence, Joe English, Sammy McCormick and Billy Elliott<sup>71</sup>.

8.7 A telling exchange between Desmond Boal QC, defending Nelson, and the trial judge, Lord Justice Kelly, sheds light not only on the failure of the authorities to bring the UFF to book, but also on the true nature of FRU's Nelson project:

"KELLY: I have been asking myself that question all morning, what did he [Nelson] achieve at the end of the day? Of course he did, and I take the point immediately, save lives<sup>72</sup> but I think the intention really of the Colonel [Colonel Gordon Kerr, head of FRU, referred to at Nelson's trial as Colonel J] was to, that he would try to bring down the organisation. Were any of these men prosecuted at all?

BOAL: Yes.

KELLY: For acts of conspiracy to murder or attempted murder? I dealt with some of them I recall.

BOAL: Not I think for...

KELLY: But only on charges of collecting information.

BOAL: I think that's right.

KELLY: But were any of them dealt with for more serious charges?

BOAL: Not that I know of, my Lord, which is another irony of course. The basis of your Lordship's question, the inference might be it's because of Nelson that they haven't in fact been brought to book. That I can tell the Court is not so. Nelson, may I say quite clearly, has never been asked to give evidence against these people."

8.8 A deal had been done over Nelson's own trial. As a result, a limited and in many respects misleading picture of FRU's strategy had been disclosed. If Nelson was used as a supergrass, other more damaging details might emerge, especially if Nelson found himself being accused of involvement in other crimes for which he had not been tried.

8.9 Our research shows that at least 39 loyalists apart from Nelson can be identified from the information that would be before a public inquiry. These individuals were involved in at least 12 murders, 11 attempted murders, 18 conspiracies to murder, 51 other cases of targeting, one kidnapping, one wounding and one punishment shooting. We do not suggest that the material available is sufficient to ground a prosecution in each case, but we are concerned that Nelson's role and the

reluctance of the authorities to use him as a prosecution witness for fear of what he might expose about FRU's operations meant that it was inevitable that this appalling catalogue of crime would go unremedied.

8.10 The question arising for the DPP here is:

7. Why was Brian Nelson not used as a witness?

8.11 After Nelson's conviction, journalists John Ware and Geoffrey Seed made a *Panorama* programme about his role, "The Dirty War", transmitted by BBC television on 8<sup>th</sup> June 1992. In the programme extracts from Nelson's journal were broadcast, in which he admitted to involvement in a number of other murders, including that of Patrick Finucane. The programme also named other loyalists as having been involved in his murder. The programme alleged that Nelson had also targeted another lawyer, Paddy McGrory<sup>73</sup>. The transcript of the programme was referred to the Director of Public Prosecutions, who asked Sir John Stevens to investigate these allegations. Stevens completed his enquiries in January 1995, and submitted his final report to the DPP of Northern Ireland on 24<sup>th</sup> January 1995. On 17<sup>th</sup> February 1995 the DPP issued a direction of no prosecution to the Chief Constable of the RUC. It is not known why he reached this decision, which seems extraordinary in the face of Brian Nelson's allegedly self-confessed part in the murders.

8.12 However, it was not in fact the *Panorama* programme that led to Stevens' second inquiry. Geraldine Finucane, Patrick Finucane's widow, had initiated a civil claim for damages against the Ministry of Defence and Brian Nelson personally in respect of her husband's murder. It was Nelson's threat that unless the civil proceedings were conducted and completed without his involvement, he would disclose FRU's knowledge of this murder and other illegal activities by FRU that prompted the further police investigation.

8.13 Not even a summary of Stevens' second report has ever been published. We believe that his inquiries focussed on the extent to which Nelson's handlers and other members of the security forces may have been implicated in murder and other illegal acts. Respected journalist and commentator Tim Pat Coogan, in his book *The Troubles*<sup>74</sup> says that he understands that Stevens' second report,

"... squarely implicate[s] four named members of the RUC as being involved in sectarian killings".

8.14 We also believe that one of the reasons that the DPP was not able to prosecute anyone on the basis of the report was the refusal of members of FRU and others to co-operate with his inquiries. If we are right about this, this is a compelling argument for holding a public inquiry into the issues raised in our report.

8.15 The following questions arise for the DPP:

8. Why was Nelson not prosecuted for his part in the murder of Patrick Finucane on the basis of the new revelations in the *Panorama* programme?

9. Why was no member of FRU or the RUC prosecuted?

10. What charges did the DPP consider, and against whom?

11. Why did those loyalists who were charged as a result of the Stevens investigation not face more serious charges?

8.16 On 7<sup>th</sup> November 1989, Billy Stobie's house was searched and weapons were found in the roof space. Stobie was arrested. On 8<sup>th</sup> November he was charged with unlawful possession of a sub-machine gun and a pistol. On 12<sup>th</sup> April 1990 he was granted bail despite being on a

suspended sentence for a weapons conviction in 1987. On 13th September he was arrested and questioned about the Finucane murder. On 1st October Stobie's trial for the firearms offences commenced but was halted when a prosecution witness, DC Cormack, mentioned Stobie's criminal record, forcing the court to abandon the trial. Stobie alleges that this happened just after he threatened to reveal what he had told Special Branch about the Finucane case. The re-trial was scheduled to begin on 17th November, but was taken out of the list at the last moment. On 12th December the re-trial opened but was immediately adjourned. On 16th January 1991, the DPP decided not to prosecute Stobie for his part in the Finucane murder. At the end of January his re-trial was heard; no evidence was offered against Stobie on the firearms charges by the prosecution and a verdict of not guilty was entered.<sup>75</sup>

8.17 We have had sight of the depositions relating to the arms charges which Stobie faced in 1991. The weapons were found in the roof space of Stobie's flat by the police<sup>76</sup>. Stobie was arrested and asked to explain the presence of the weapons. He failed to provide any credible explanation saying only that the weapons were not his and they must have been placed there by someone else<sup>77</sup>. In Northern Ireland, where weapons are found in a defendant's property, the burden of proof reverses and the defendant must persuade the court of his/her innocence. The vast majority of such defendants are consequently found guilty. In the absence of any explanation from Stobie it is remarkable that the DPP would have ordered that the charges be withdrawn and not guilty verdicts be entered against him, especially since the RUC already knew that Stobie was a UFF quartermaster, and therefore a loyalist of some significance. Stobie himself, of course, has been reported as saying that he threatened to expose Special Branch's inaction over the information he supplied about the murder of Patrick Finucane<sup>78</sup>. The DPP has refused to answer questions about this, claiming that the matter is sub judice<sup>79</sup>, although it is difficult to see how this can be so, given that verdicts of not guilty were entered in January 1991.

8.18 Furthermore, despite the misleading information given to the High Court by the Crown at Stobie's first bail hearing this year, it has now been confirmed that Stobie did make admissions concerning his role in the murder of Patrick Finucane when he was arrested in 1990. A file was passed to the DPP, but Stobie was not prosecuted. At the first bail hearing, Crown Counsel told the court that the

"... Director thought there was insufficient evidence against Stobie, principally because Mulholland refused to put his verbal account into evidential form. It would be open to the Director to proceed and compel Mulholland's attendance and while he could be compelled, unlikely to give an account in open court. Information was available to the police but there was insufficient evidence to be used in court. It was not an officer who decided not to proceed, it was taken at the highest level, where it was decided that there was insufficient evidence."<sup>80</sup>

However, as we now know, there was confession evidence against Stobie. This decision not to prosecute Stobie in relation to the murder of Patrick Finucane was taken on 16<sup>th</sup> January 1991, seven days before the dropping of the arms charges against Stobie<sup>81</sup>. It was, we note, taken "at the highest level".

8.19 Stobie's case gives rise to two more questions for the DPP:

12. Why were the firearms charges against Stobie dropped?

13. Why was he not charged in 1990 for his part in the murder of Patrick Finucane?

## 9. SUPPRESSION OF INFORMATION CONCERNING THE MURDER OF PATRICK FINUCANE

9.1 Patrick Finucane's widow, Geraldine, is suing the Ministry of Defence and Brian Nelson over her husband's murder. According to journalist John Ware:

"The Crown Solicitor's office in Belfast has stated there is no evidence that the army or Nelson were involved. In a sworn affidavit the Crown claims to have disclosed to Finucane's widow's lawyers all relevant and material documents in their 'possession, custody or power'. Such few disclosures as there have been include a heavily blanked out extract from one of the secret contact forms seized by military intelligence... However, her lawyers are 'convinced that full and proper discovery has not been made'. And they are right... the Crown has failed to disclose at least one contact form which suggests that Nelson had a much more active role in the murder and that his army handlers must have known. Dated 2 March 1989, the document reveals that Nelson had compiled a 'P' card on Finucane."<sup>82</sup>

We understand that a further 600 pages have since been disclosed. For legal reasons we are not allowed to comment on their content, or lack of content, or whether they constitute disclosure of "all relevant and material documents". However, we understand that Geraldine Finucane's lawyers are not satisfied that full disclosure has been made and that an application for discovery on oath for specific documentation, which was adjourned pending receipt of the 600 pages, will be renewed and augmented.

9.2 Geraldine Finucane has also sought disclosure of the witness statements taken by Stevens and others in connection with Brian Nelson's trial. On 28th May 1999 the Lord Chief Justice, Sir Robert Carswell, refused her application.

9.3 She has also asked the DPP for the reasons for many of his decisions regarding the murder. To date she has received no reply.

## 10. SUPPORT FOR AN INDEPENDENT JUDICIAL INQUIRY

10.1 At the same time that *Deadly Intelligence* was delivered, the Finucane family delivered a petition signed by over 1,000 lawyers worldwide calling for an inquiry into the murder of Patrick Finucane.

10.2 Support for such an inquiry has continued to grow. The following have so far expressed concern about the murder of Patrick Finucane and the issue of intimidation of lawyers:

- the United Nations Special Rapporteur on the Independence of Judges and Lawyers, Dato' Param Cumaraswamy;
- Dr Claire Palley, UK nominee on the United Nations Commission on Human Rights;
- Peter Burns, Rapporteur on the UK for the Committee Against Torture;

- the Standing Advisory Commission on Human Rights, which until recently advised the UK government on human rights in Northern Ireland;
- Viscount Colville of Culross QC, in his capacity as independent scrutineer of UK emergency laws;
- Sir Louis Blom-Cooper QC, Independent Commissioner for the Holding Centres;
- the Irish government;
- the European Parliament;
- Amnesty International;
- the International Commission of Jurists;
- the International Federation of Human Rights;
- the Committee on the Administration of Justice;
- British Irish RIGHTS WATCH;
- Liberty;
- the Haldane Society;
- Norwegian Helsinki Committee;
- BBC journalist John Ware;
- the American Bar Association;
- the Lawyers Committee on Human Rights;
- Human Rights Watch (formerly Helsinki Watch);
- the Law Society of Northern Ireland;
- the Law Society of England and Wales;
- the Law Society of Ireland;
- the General Council of the Bar of England & Wales;
- the General Council of the Bar of Northern Ireland;
- the General Council of the Bar of Ireland;
- the International Bar Association;
- the Society of Labour Lawyers;
- the National Association of Criminal Defense Lawyers, USA;
- the International Association of Democratic Lawyers;
- the Association of the Bar of the City of New York
- the Patrick Finucane Centre, Northern Ireland;
- Springhill Community House, Northern Ireland;
- Relatives for Justice, Northern Ireland;
- the International Centre for Human Rights and Economic Development, Canada;
- the Brehon Law Society, USA;
- the International League for Human Rights;
- the Lawyers Alliance, USA.

10.3 Possibly the most significant recent addition to that list has been the Law Society of Northern Ireland, of which Patrick Finucane was a member. On 11th May 1999 almost 700 solicitors of all shades of opinion from all over Northern Ireland attended an extraordinary general meeting of the Law Society. Among those present were solicitors who have represented loyalists, have represented the Ministry of Defence, and have represented the RUC, as well as those who have represented defendants who have been agents and informers. This was the most representative group yet to have examined these issues, and the best informed. They reached their decision after long and careful debate, and it was virtually unanimous. The Law Societies and Bar Councils throughout England and Wales, Northern Ireland and the Republic of Ireland all support an inquiry, as does the Irish government and the United Nations and lawyers' and human rights groups throughout the

world. The only significant bodies that have yet to support an independent judicial inquiry into these matters are the RUC, the Ministry of Defence and the Northern Ireland Office, all of whom would be under scrutiny were such an inquiry to take place.

## 11. CONCLUSION

11.1 The callous murder of Rosemary Nelson shows that, unless measures are taken to deal with our allegations, lawyers in Northern Ireland will continue to be at risk. Lawyers cannot choose their clients, yet they risk being murdered because certain clients choose them, notwithstanding the cease-fires. The poisoned atmosphere that gave rise to her murder, and to that of Patrick Finucane must be dispelled, and dispelled for good. When Douglas Hogg made his infamous remarks in the House of Commons not long before Patrick Finucane was murdered, Seamus Mallon MP told the House:

“... Following [this] statement, people’s lives are in grave danger. People who have brought cases against the European Court of Human Rights will be suspected.”

It is a scandal that, nearly eleven years later, those words should still resonate.

11.2 British Irish RIGHTS WATCH has made serious allegations of security force collusion in a large number of deaths and other illegal acts, of which the murders of Patrick Finucane, Terence McDaid and Gerard Slane are but the tip of an iceberg. We have said that those three died because of systematic policies adopted by the security services involving British military intelligence and the RUC. There is also considerable evidence of an official cover-up.

11.3 The overriding question that emerges from this murkiest of pictures is that of who sanctioned those policies. If what we allege is true, then the lives of many people in Northern Ireland have been damaged, and in some cases destroyed, by the actions of agents of the state. This is not an issue that can be swept under the carpet. Its aftermath will go on poisoning the atmosphere in Northern Ireland and making a successful resolution of the peace process more difficult. If people cannot trust the police, the army, the courts, DPP, or ultimately the government how can they be expected to have faith in society itself? There is only one honourable response to the allegations we have made, and substantiated to the best of our ability. The government, which already has under its control all the answers to the questions we have raised, must establish an independent judicial inquiry without any further prevarication.

*February 2000*

## THE MURDER OF ROSEMARY NELSON

*A Report by British Irish Rights Watch*

### 1. INTRODUCTION

1.1 On 15<sup>th</sup> March 1999 at 12:40 pm Lurgan solicitor Rosemary Nelson was blown up by a loyalist car bomb outside her home. She suffered horrific injuries and died two hours later.

1.2 Rosemary Nelson was 40 years of age when she died. She was married with three children aged 8, 11 and 14. She had a thriving high street practice in her home town of Lurgan, providing a variety of legal services to the local population. Her clientele was drawn from both the Catholic/nationalist and Protestant/unionist communities. She was an able advocate with a caring attitude towards her clients and a passion for justice. The majority of her cases were very ordinary, but she had a few high-profile clients whose cases attracted a lot of publicity. These included:

the family of Sam Marshall, who was murdered by loyalists on 7<sup>th</sup> March 1990 just after he had signed for bail at Lurgan RUC (police) station. His bail arrangements were known only to the police and his lawyers. A car spotted at the scene was later acknowledged as belonging to the security forces. No-one has been charged with the murder, nor has there been any inquest.

Colin Duffy, who was with Sam Marshall when he was killed but escaped injury himself. Rosemary Nelson achieved his acquittal on appeal in September 1996 on a charge of having murdered a former soldier, John Lyness. Colin Duffy had spent over three years in jail. The case against him collapsed when it became known that a key prosecution witness, Lindsay Robb, had been arrested for gun running for the loyalist Ulster Volunteer Force (UVF) and had probably been under surveillance by the police at the time of his testimony against Colin Duffy. After his release Colin Duffy was arrested in June 1997 for the murder of two RUC officers, Constable Graham and Reserve Constable Johnston, in Lurgan. In October 1997, after Colin Duffy had spent three months in prison on remand, the Director of Public Prosecutions dropped the case against him after Rosemary Nelson had worked tirelessly to prove they had got the wrong man.

the family of Robert Hamill, a young Catholic father who was set upon by a loyalist mob on 27<sup>th</sup> April 1987. He died 12 days later in hospital from head injuries, having never regained consciousness. Eye witnesses said that armed RUC officers parked nearby in a police landrover failed to intervene to save his life. RUC press releases falsely claimed that Robert Hamill and his friend, who was also attacked, had been involved in a fight between rival factions and that the police themselves had come under attack. The RUC themselves later admitted that this was not the case.

the Garvaghy Road Residents Coalition, formed to respond to Orange marches through their nationalist neighbourhood.

1.3 Until early 1997, Rosemary Nelson had represented relatively few clients arrested under emergency laws. Such clients can be held for up to seven days and access to their lawyers can be deferred for periods of up to 48 hours. They are interviewed without their lawyers being present, and at that time there was no video- or audio recording of the



interrogations. Many lawyers who attended such clients in the special Holding Centres at Castlereagh in Belfast and Gough Barracks in Armagh<sup>2</sup> complained that RUC interrogators uttered abuse and threats against their clients and themselves during these interviews, which take place in the absence of the lawyers themselves. On 3<sup>rd</sup> October 1996, Rosemary Nelson told British Irish RIGHTS WATCH (BIRW) that on the few occasions when she had clients arrested under emergency laws she had come in for abuse. One RUC officer told one of her clients, "We'll tell Billy Wright [a prominent loyalist] your solicitor's address."

1.4 Colin Duffy's acquittal in September 1996 received widespread publicity. In February 1997, following a spate of arrests, Rosemary Nelson found herself with about a dozen clients in Gough Barracks over a very short period of time. She was alarmed when they reported abuse against her, including vile sexual innuendoes, and death threats. On 18<sup>th</sup> February 1997 she telephoned both Amnesty International and BIRW to record her concern. On 26<sup>th</sup> February 1997 Jane Winter, the Director of BIRW, travelled to Lurgan at Rosemary Nelson's request to discuss her fears. During their discussion, Rosemary Nelson expressed her horror at the murder of Belfast solicitor Patrick Finucane in February 1989 amid circumstances strongly suggestive of official collusion. A parent herself, she was appalled that he had been shot repeatedly in front of his wife and children. He too was threatened by RUC officers before his murder, and she was afraid that she was being targeted in the same way. She was amazed at the hatred expressed towards her by RUC officers, and resented their inability to see her as a professional just doing her job. She and Jane Winter discussed at length the options open to her, including giving up contentious work altogether, learning to live with the abuse but trying to keep a low profile, and tackling the abuse head on by making official complaints and campaigning publicly for her clients' rights. After giving the matter serious thought, she concluded that the main purpose of the threats was to dissuade her from representing clients whom the RUC officers concerned perceived as their enemy. Her abiding concern, frequently expressed, was that if she did not represent the handful of clients whose cases were contentious, no other solicitor in the area would take them on. It was unthinkable to her that she should abandon her clients. It came as no surprise to anyone who knew Rosemary Nelson that she opted to confront the problem.

1.5 The threats against Rosemary Nelson did not occur in a vacuum. They were part of an ongoing problem experienced by many defence lawyers in Northern Ireland. Human rights groups had been highlighting a pattern of abuse of defence lawyers by RUC officers since the early 1990s<sup>3</sup>. In 1997 the distinguished Malaysian lawyer Dato' Param Kumaraswamy, who is the United Nation's Special Rapporteur on the Independence of Judges and Lawyers, made an official visit to the United Kingdom to investigate threats against lawyers and the murder of Patrick Finucane. He delivered his report to the United Nations Commission on Human Rights in April 1998. He was extremely critical of RUC practices, concluding that "... the RUC has engaged in activities which constitute intimidation, hindrance, harassment or improper interference" with lawyers<sup>4</sup>. He found that intimidation and harassment of defence lawyers in Northern Ireland was "consistent and systematic". He called for an independent investigation into intimidation of defence lawyers. He also called for an independent judicial inquiry into the murder of Patrick Finucane.

1.6 The timing of Rosemary Nelson's murder was significant. It happened ten years and one month after the murder of Patrick Finucane. It is obvious that from their own warped perspective her death served a number of purposes for her murderers. At one level it was clearly an attempt to destabilise the peace process in Northern Ireland. At another, it put an end to the career of an able advocate who, like Patrick Finucane, was effective in upholding her clients' rights. Thirdly, and here again there are echoes of Patrick Finucane's murder, her murder sent a clear message to defence lawyers generally to keep their heads down.

## 2. TAKING A HIGH PROFILE

2.1 In March 1997 Rosemary Nelson allowed the American Lawyers Alliance for Justice in Northern Ireland to make an official complaint on her behalf about the threats and abuse reported by her clients as having been uttered against her by certain RUC officers. This complaint was investigated by the RUC, under the supervision of the Independent Commission for Police Complaints.

2.2 On 5<sup>th</sup> July that year she was assaulted by unidentifiable RUC officers while trying to represent her clients' interests on the Garvaghy Road. This assault was attested by independent witnesses and a lawyer recorded her own account two days after the event, and made a note of visible bruising upon her person<sup>5</sup>. She told the Lawyers Committee for Human Rights<sup>6</sup>:

"I went up to the police lines and asked, 'Could somebody please tell me what's going on here?' One of them grabbed me by the arm and took me into them, right into the circle [of riot shields] and said, 'Rosemary, you Fenian fucker', and they threw me about a bit. I said, 'Can I have your number please?' Somebody else said, 'F... off.' The difficulty there was, because of the way they were dressed, there were no numbers distinguishable, you just couldn't see any numbers, and they were wearing balaclavas. I can't recall ever being so frightened in my life."

On 29<sup>th</sup> January 1999, six weeks before she was killed, Rosemary Nelson issued a writ against the RUC for this assault.

2.3 When the UN's Special Rapporteur on Judges and Lawyers, Dato' Param Kumaraswamy, visited Northern Ireland that October, she told him about her fears for her safety. The Special Rapporteur highlighted her case in his 1998 report to the UN Commission on Human Rights<sup>7</sup>. Originally, he named her in his report, but after a disputed telephone call from the RUC (please see paragraph 3.10 below), he took her name out of his report. He also wrote to the government privately expressing concern about her safety.<sup>8</sup>

2.4 The abuse against her did not abate. On 3<sup>rd</sup> June 1998 a handwritten death threat was posted to Rosemary Nelson. She also received a number of telephoned death threats.

2.5 In September 1998 she testified before the House Subcommittee on International Operations and Human Rights in Washington, concerning harassment and intimidation of defence lawyers and death threats against her by the RUC. She told Congress:

"Another reason why RUC officers abuse me in this way is because they are unable to distinguish me as a professional lawyer from the alleged crimes and causes of my clients. This tendency to identify me with my clients has led to accusations by RUC officers that I have been involved in paramilitary activity, which I deeply and bitterly resent... I

believe that my role as a lawyer in defending the rights of my clients is vital. The test of a new society in Northern Ireland will be the extent to which it can recognise and respect that role, and enable me to discharge it without improper interference. I look forward to that day."<sup>9</sup>

2.6 Human rights groups in Northern Ireland, in Britain and around the world repeatedly raised her case with the RUC and the government, to no avail. In November 1998, BIRW said in a report about intimidation of defence lawyers to the UN:

"One solicitor who has been subjected to a campaign of death threats and vile abuse, some of it sexual in character, by RUC officers is Rosemary Nelson from Lurgan... We have transmitted a number of complaints on her behalf to the Special Rapporteur during the past year, and also conducted extensive correspondence with the Secretary of State. The situation in the area where Rosemary Nelson practices remains volatile and we call on the UK government to accept responsibility for her safety and for bringing this despicable campaign to an end."<sup>10</sup>

The Chief Constable of the RUC, Sir Ronnie Flanagan, to whom they sent a copy of their report, responded with utter contempt, saying:

"I have received the documents forwarded with your letter of 5 November 1998. I suppose by now I really should have learned to expect, and not be surprised by, the total absence of balance in reports produced by your organisation. This latest report continues your now well established practice in that regard."<sup>11</sup>

2.7 Less than three weeks before her death, the Lawyers Alliance met the Chief Constable, to express their concern for her safety. Only three days before her death she gave an interview to the *Irish News* in which she talked of the death threats she had received, describing them as "so sinister". The interview was published posthumously<sup>12</sup>.

2.8 In the weekend before her death, Rosemary Nelson revealed to a friend that two more telephoned death threats had been received at her office in the previous week.

2.9 Despite her fears for her own safety, Rosemary Nelson campaigned consistently for an inquiry into Patrick Finucane's murder. In January 1998 a statement signed by 33 lawyers in Northern Ireland, entitled *Equal Protection under the Law*, was published. Rosemary Nelson was one of the chief authors of that statement, which read in part:

"We remain particularly concerned about the murder of our esteemed professional colleague, Pat Finucane. It is simply unacceptable, that faced with compelling evidence of state involvement in the killing of a defence lawyer, no action has been taken. Serious allegations of collusion between members of illegal loyalist paramilitary organisations and members of the security forces have yet to be properly investigated. Similarly no action has been taken about the continuing intimidation and abuse of solicitors by police officers via their clients in detention centres. We are all too well aware of this continuing problem, which is one we face in our daily lives."<sup>13</sup>

She said in her address to Congress in September 1998;

"No lawyer in Northern Ireland can forget what happened to Patrick Finucane or dismiss it from their minds. The allegations of official collusion in his murder are particularly disturbing and can only be resolved by an independent inquiry into his murder, as has been recommended by the UN Special Rapporteur. I would be grateful if the Subcommittee could do all in its power to bring about such an inquiry,

by communicating to the United Kingdom government its belief that an inquiry in this case would in fact boost the peace process, as it has been in the Bloody Sunday case."<sup>14</sup>

On 12<sup>th</sup> February 1999 she addressed a meeting in Derry on behalf of the Pat Finucane Centre, marking the tenth anniversary of his murder. A month later she too was murdered.

### **3. THE FAILURE TO OFFER ROSEMARY NELSON PROTECTION**

3.1 On 10<sup>th</sup> August 1998, the Committee on the Administration of Justice (CAJ) wrote to government minister Adam Ingram MP including a copy of the handwritten death threat sent to Rosemary Nelson on 3<sup>rd</sup> June that year. They also enclosed a copy of a one-page pamphlet entitled "The Man Without a Future", which referred to Garvagh Road Residents Coalition's (GRRC) spokesperson and local councillor Breandán Mac Cionnath. The pamphlet referred to his having received "advice from Lurgan solicitor and former bomber Rosemary Nelson" and quoted her business address and telephone number. The description of Rosemary Nelson as a "former bomber" was completely untrue.

3.2 The government were already well aware of the existence of this pamphlet as it was given to them by the GRRC in proximity talks<sup>15</sup> held in Armagh on 21<sup>st</sup> July 1998, when the issue of security for the whole of the Coalition, and in particular their legal representative Rosemary Nelson, was raised with Jonathan Powell, Prime Minister Tony Blair's Chief of Staff. Jonathan Powell had previously indicated on 18<sup>th</sup> July that the security of the Coalition was a matter of concern that should be dealt with urgently. The next day Inspector Foster and Superintendent Cully of Portadown RUC telephoned Breandán Mac Cionnath to ask what it was that he wanted. It is believed they had been instructed to make contact by the Chief Constables' office, who in turn had been contacted by Jonathan Powell. The two RUC officers offered nothing other than crime prevention advice. This was relayed to Jonathan Powell, who said this was not what he had thought would happen when he raised the issue of security with the police. At the meeting on 21<sup>st</sup> July he said that he would instruct the Northern Ireland Office to attend to the security of the GRRC within the next 48 hours.

3.3 On 24<sup>th</sup> September 1998, some six weeks after they wrote, Adam Ingram's private secretary replied to CAJ, saying, "We passed the documents immediately to the Chief Constable's office for investigation. They would obviously, given the nature of the material assess the security risk against Ms. Nelson." She also invited Rosemary Nelson to apply for the Key Persons Protection Scheme, without giving any assurance that an application would succeed. The letter also advised on how to apply for a personal protection weapon and suggested that Rosemary Nelson contact the local RUC crime prevention officer.

3.4 Rosemary Nelson did allow the GRRC to make an application on her behalf to join the Key Persons Protection Scheme, although she had reservations about the RUC assessing her safety. They would have asked for all sorts of details about herself, her family, and her associates, and her daily routine. Her house and office would have been visited by the RUC to assess whether security measures were necessary. Since the threats against her were predominately emanating from RUC officers, she felt that to enable them to obtain all this information about her would merely make it easier for them to carry out their threats, and there was a real danger that such details would be leaked to loyalists,

as such leaks were frequent<sup>16</sup>. Questioned about this, Rosemary Nelson told the House Subcommittee on International Operations and Human Rights in Washington:

“The government does have responsibility, but the procedure there is, if you request security from the RUC, your house or your premises are assessed by the RUC for these security installations. And I wouldn’t have any great faith in the RUC coming in to assess that.”<sup>17</sup>

She had no wish to carry a gun, nor to have one around the house with three young children at home. The idea that the local crime prevention officer would be interested in her protection seemed to her a contradiction in terms. She felt that the NIO’s response to CAJ was derisory.

3.5 The GRRC repeatedly attempted to obtain protection for Rosemary Nelson and for the Coalition. They raised the issue at several meetings over the months following their meeting with Jonathan Powell on 21<sup>st</sup> July 1998 between the GRRC and Northern Ireland Office officials including the Director and Deputy Director of the Security Policy and Operations Division. On 20<sup>th</sup> November 1998 a meeting took place in the Drumcree Community Centre, which was organised by Tony McCusker of the Northern Ireland Office. Also present at the meeting was an independent third party<sup>18</sup>. The issue of security for members of the Coalition and specifically for Rosemary Nelson was raised yet again. Breandán Mac Cionnath reiterated that Rosemary Nelson had been subjected to constant harassment from the RUC, that loyalists had circulated a pamphlet identifying her as a bomber, that she had a high profile in the North of Ireland, that the United Nations had investigated the harassment against her and that the Metropolitan Police were investigating threats from within the RUC. A specific request was made to Tony McCusker, as the NIO’s representative, to place her on the Key Persons Protection Scheme, although the GRRC explained that there was some reluctance on her part to have the RUC visit her home. At that stage Tony McCusker indicated that Councillors Breandán Mac Cionnath and Joe Duffy could be placed on the Key Persons Protection Scheme but no-one else. There was also discussion of an alternative method of providing some measure of protection for other members of the GRRC, not funded by the NIO, which would not have provided as high a level of protection as the Key Persons Protection Scheme.

3.6 The GRRC left the meeting dissatisfied with the failure to resolve the security issue. Six days later, Breandán Mac Cionnath wrote to Jonathan Powell at 10 Downing Street as follows:

“The issue of security for members of the Coalition has still not been satisfactorily resolved. While the NIO are prepared to concede security cover for Councillor Joe Duffy and myself, they are not prepared to extend such cover to include other members of the Coalition whom we deem to be equally at risk. Although an alternative source of funding for such measures has been proposed, we feel the NIO are not treating the issue of personal security protection with the seriousness it deserves. The responsibility for security provision is within the remit of the NIO, not outside agencies.”

Jonathan Powell replied on 27<sup>th</sup> November:

“I thought the issue of security had been successfully concluded. I understand the Northern Ireland Office have offered assistance with security to you and Councillor Duffy on

the basis of your position as Councillors. The NIO apparently have no power to offer assistance to your committee members, but I believe they have pointed to other possible sources of help.”

After Rosemary Nelson was murdered, Adam Ingram wrote<sup>19</sup> to Breandán Mac Cionnath:

“I know you raised the issue of protection with the GGRC at proximity talks last July. Subsequently, you and Councillor Duffy received protection at your homes. Officials also facilitated discussion with a third party with respect of measures for other members of the GGRC. Any arrangements as a result of these discussions would be entirely separate from the KKPS and as such the requirements for an RUC threat assessment would not apply.”

In the same letter, he described the Key Persons Protection Scheme as follows:

“The Scheme is designed to protect those whose death or injury as a result of terrorist attack could damage or seriously undermine the democratic framework of Government; the effective administration of government and/or the criminal justice system; or the maintenance of public order.”

Despite the catalogue of issues relating to Rosemary Nelson’s safety raised by Breandán Mac Cionnath at the meeting on 20<sup>th</sup> November 1998, and even after she had been brutally murdered, the government maintained that the Key Persons Protection Scheme did not apply to her. It is, though, quite apparent from the government’s own definition that it did.

3.7 On the day after Rosemary Nelson’s murder, the then Secretary of State for Northern Ireland, Mo Mowlam MP, gave a press conference in Washington. After paying tribute to Rosemary Nelson, she said that, as a result of concerns about Rosemary Nelson’s safety raised with her by BIRW<sup>20</sup>, a security assessment had been made of the risk to her safety and the risk had been found to be low. BIRW’s Director, Jane Winter, was present at the press conference, and was astonished by what she heard. BIRW had never been told that such an assessment had ever been carried out, and what was more, neither had Rosemary Nelson. BIRW entered into a lengthy correspondence with the NIO to try to establish

- who made the assessment
- when the assessment was made
- how it was possible to make such an assessment without ever speaking to Rosemary Nelson
- what factors had been taken into account, and
- why the outcome had found her to be at a low level of risk.

They also sought a copy of the assessment. They have never received any satisfactory answers to these questions and they have been refused sight of the assessment. BIRW have yet to be convinced that any assessment was in fact carried out. Even if it was, it is now, sadly, clear that it was completely wrong in its conclusions.

3.8 Despite the government's assurance to CAJ that the handwritten threat against Rosemary Nelson's life had been passed immediately to the Chief Constable's office for investigation, on 27<sup>th</sup> May 1999 the Chief Constable said in an RUC press release that "the RUC itself did not have any information to substantiate a threat to Mrs. Nelson's life before her murder". He also said he "was not aware of any request made to the Prime Minister's office for protection for her". The minutes of the Police Authority of Northern Ireland's meeting of April 1999, in which the Chief Constable of the RUC's monthly report is included, recorded<sup>21</sup>:

"Members raised a series of questions about whether security protection had been requested or offered to Rosemary Nelson. 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."

3.9 These claims of ignorance are totally lacking in credibility. Not only had the GRRC persistently raised Rosemary Nelson's safety with senior government officials, but government ministers had claimed repeatedly that they and the RUC were well aware of the danger she faced. On 5<sup>th</sup> March 1998, government minister Adam Ingram MP wrote to BIRW in the following terms in a letter responding to their complaints on behalf of Rosemary Nelson:

"...The first thing I would say is that intimidation of anyone, but perhaps particularly a solicitor, in the way alleged, is an extremely serious matter. The police are aware of this and of the concerns expressed about Ms Nelson's safety."

3.10 Controversy surrounds remarks attributed to the Chief Constable by the Special Rapporteur in the first draft of his report on the United Kingdom, delivered to the United Nations on 1<sup>st</sup> April 1998. In that draft, the Special Rapporteur said that it was remarked during his meeting with the Chief Constable and other senior police officers that some solicitors "may in fact be working for the paramilitaries". BIRW and CAJ were told by the United Kingdom Mission in Geneva that the Chief Constable had insisted that this passage be excluded from the report because if they appeared in the same report as allegations about abuse against herself made by Rosemary Nelson, whom he named specifically, it might lay her open to loyalist attack. Later BIRW understood from the Secretary of State that the Chief Constable denied that these remarks were ever made at the meeting, although that is not what the Mission told the two human rights groups at the time. The Chief Constable has also publicly denied making these remarks, in a BBC *Panorama* programme broadcast on 21<sup>st</sup> June 1999. In the same interview, he also said he had no recollection of calling Geneva and asking for changes in the Special Rapporteur's report. He later denied having made the call altogether<sup>22</sup>. In response to correspondence with Mo Mowlam about this matter, she said to BIRW in a letter dated 14<sup>th</sup> July 1998:

"Finally, I can understand your concern over Rosemary Nelson's safety. Although clearly this is not a matter which it would be appropriate for me to discuss with you or anyone else, I can say that the police are aware of concerns such as yours, and take their responsibility for the safety of individuals very seriously."

3.11 For these reasons BIRW are sceptical about the Chief Constable's claim to have been unaware of any threat to Rosemary Nelson's safety, especially in light of his contemptuous response to their 1998 report (please see paragraph 2.6 above). As the Special Rapporteur himself said in his oral presentation to the UN Commission in April 1998:

"There was, in my view, a complete indifference shown by the RUC to the allegations contained in reports from the NGOs."

3.12 Ten days after Rosemary Nelson was killed, two RUC officers called in at the office of the Committee on the Administration of Justice. They wanted to know if CAJ had the originals of the threatening letter and the abusive pamphlet they had sent to Adam Ingram, so that they could subject them to fingerprinting and DNA testing. Had they taken her situation seriously, they would have taken these measures in August 1988. It might have saved her life.

#### 4. THE FAILURE TO INVESTIGATE ROSEMARY NELSON'S COMPLAINTS ADEQUATELY

4.1 Another very disturbing aspect of Rosemary Nelson's murder is the way in which her complaints about threats and abuse against her by RUC officers were handled. The Independent Commission for Police Complaints commissioned an RUC investigation of her complaints in March 1997. On 23<sup>rd</sup> March 1997 the ICPC passed the complaints they had received from the Lawyers Alliance to the RUC. The RUC initially refused to accept them as *bona fide* complaints.<sup>23</sup>

4.2 Geralyn McNally, the member of the ICPC responsible for their investigation, became increasingly critical of the way in which RUC officers acting under her supervision were dealing with the investigation. She identified nine separate points of dissatisfaction, including the hostility, evasion and disinterest of RUC officers, the provision of ready-prepared written statements by RUC officers due to be questioned, and a general unwillingness by some of them to cooperate with the investigation or take it seriously. One RUC officer had even turned up for an interview 45 minutes late and smelling of alcohol. She cited "ill-disguised hostility to Mrs. Nelson" by some RUC officers as "bordering on the obstructive".<sup>24</sup>

4.3 The Chairman of the ICPC, Paul Donnelly, drew her concerns to the attention of the Chief Constable and the Secretary of State for Northern Ireland. On 10<sup>th</sup> July 1998, over 15 months after the investigation began, the Chief Constable called in the Metropolitan Police to take over the investigation. They appointed Commander Niall Mulvihill to be in command. On 22<sup>nd</sup> March 1999, days after the murder, Geralyn McNally certified that she was satisfied "now" (her emphasis) with the conduct of the investigation. On 30<sup>th</sup> March a résumé of Mulvihill's investigation was published. It concentrated on the RUC's handling of the investigation, rather than on Rosemary Nelson's substantive complaints.

4.4 On 14<sup>th</sup> July 1999, a private report by Paul Donnelly, the ICPC Chairman, was leaked to the press. Written on 24<sup>th</sup> April 1999, it was heavily critical of Mulvihill's part in the investigation. In particular, it criticised the fact that Mulvihill only conducted a review of the RUC's handling of the investigation, rather than investigating the complaints from scratch. It also disapproved of the practice of allowing RUC officers who were under investigation to read other witness statements, presumably including Rosemary Nelson's own statement, before being



interviewed. The Chairman said that Mulvihill was too ready to accept the RUC's classification of the abuse against Rosemary Nelson, some of which was sexually explicit, as "incivility", and displayed insufficient concern over an RUC officer identifying the solicitor with a client "of bad character". Mulvihill had failed to vindicate Geralyn McNally's complaints about the RUC handling of the investigation. Paul Donnelly also disputed Mulvihill's finding that "thorough" interviews were conducted with RUC officers alleged to have threatened Rosemary Nelson, most of whom declined to answer questions.<sup>25</sup>

4.5 Three separate files concerning Rosemary Nelson's complaints are currently under consideration by the Director of Public Prosecutions. These are two complaints made jointly by Rosemary Nelson with two different clients, and the complaint made on her behalf by the Lawyers Alliance. In view of the information contained in Paul Donnelly's report about the Mulvihill investigation, from which it was clear that RUC officers accused of uttering threats and abuse against Rosemary Nelson had declined to answer questions, it is not anticipated that any prosecutions will ensue. Rosemary Nelson's other complaint about the assault by RUC officers on the Garvaghy Road in July 1997 is still being considered by the ICPC, who expect to conclude their investigation by the end of the year. However, since the officers concerned wore no identification markings, it is unlikely that this complaint will lead to prosecutions, either.

4.6 The situation now is that Rosemary Nelson's complaints have never been properly investigated. If her complaints were well-founded, and all the evidence suggests that they were, then no RUC officer has been disciplined, let alone dismissed, for uttering death threats and other disgusting abuse against her. If RUC officers were prepared to make such remarks to Rosemary Nelson's own clients, they must have been even more ready to say such things to loyalists. These constant attempts to associate her with her clients' alleged crimes and causes undoubtedly put her life at risk. There is no doubt in the minds of the human rights groups that took up her complaints while Rosemary Nelson was alive that such abuse helped to create the climate which brought about her death.

## 5. THE MURDER

5.1 Shortly after Rosemary Nelson left her home for her office at around lunchtime on 15<sup>th</sup> March 1999, a bomb went off as the car approached a junction, possibly as she applied the brakes<sup>26</sup>. Security sources were quoted as saying that the device was almost certainly a mercury tilt switch detonator connected to Powergel (commercial) explosives<sup>27</sup>. However, a BBC *Spotlight* programme transmitted on 20<sup>th</sup> April 1999 suggested that the explosives used were not Powergel. It is understood that the detonator used has not been found, and some mystery surrounds the precise details of the device used.

5.2 The Red Hand Defenders (RHD) claimed responsibility for the murder in a telephone call to the BBC in Belfast<sup>28</sup>. They used a recognised code word<sup>29</sup>.

5.3 The RHD are made up of dissident elements of the Ulster Defence Association and the Loyalist Volunteer Force<sup>30</sup> (LVF). According to security sources, the RHD emerged in July 1988 and have only two or three dozen members. Membership overlaps with that of another dissident loyalist group, the Orange Volunteers.<sup>31</sup>

5.4 Senior RUC detectives believed it unlikely that the RHD could have carried out the murder without some help from elements previously connected with mainstream loyalists<sup>32</sup>. Many were puzzled at the advance in sophistication displayed by the RHD. The group had previously killed RUC Constable Frankie O'Reilly during Drumcree demonstrations in Portadown in October 1988. On 31<sup>st</sup> October 1998 they shot a Catholic, Brian Service, in north Belfast. They were also said to be responsible for a series of arson attacks on Catholic churches and businesses.<sup>33</sup> The RHD had previously only used crude devices, whereas the UDA had been known to use the sort employed in Rosemary Nelson's murder<sup>34</sup>. Ulster Democratic Party member John White (who was engaged in attempting to persuade the RHD to call a ceasefire) said that three people expelled from the UDA were now involved with the RHD<sup>35</sup>.

5.5 The only successful loyalist car bomb in recent years was employed against UDA man Glen Greer, allegedly over drugs, in October 1997<sup>36</sup>. No organisation has claimed responsibility for his murder, but the UFF are thought to have obtained Powergel explosive<sup>37</sup>, which was used in the bomb, which was triggered by a mercury tilt mechanism (both of which may or may not have been used in the bomb that killed Rosemary Nelson).

5.6 Two newspapers claimed that Rosemary Nelson was probably murdered by former members of the UDA with help from Ulster Resistance. They alleged that Ulster Resistance supplied the mercury tilt device and the Powergel explosive, while former UDA members planted the bomb.<sup>38</sup> In December 1988 *The Observer* revealed that weapons put on show by the RHD were part of Ulster Resistance's 1987 arms shipment from South Africa, which was said to have been brokered by Army intelligence agent Brian Nelson, who has been implicated in the murder of Patrick Finucane. The newspaper also claimed that the same people murdered both Glen Greer and Rosemary Nelson. Another Sunday paper said that the car bomb device may have been made by a UFF<sup>39</sup> bomb-maker on the Shankill Road. It also claimed that the device may have been supplied by UDA members in Belfast.<sup>40</sup> An unnamed senior RUC detective was reported as saying that the device could have been planted in less than 10 seconds<sup>41</sup>. Colin Port, the police officer in charge of the murder investigation, has said that it is highly likely that the bomb was attached to Rosemary Nelson's car in the hours of darkness on 14/15 March<sup>42</sup>.

5.7 An editorial in the *Sunday People* claimed that, "The people believed to have been behind the outrageous murder of Mrs. Nelson are well-known"<sup>43</sup>. Several papers speculated that loyalist Frankie Curry, who was himself murdered on 17<sup>th</sup> March, only two days after Rosemary Nelson, had been involved in her murder, although others claimed there was no connection. One paper alleged that Curry had been an RUC Special Branch agent<sup>44</sup>. Curry himself apparently claimed to have murdered Glen Greer and is thought to have been sympathetic to the Red Hand Defenders<sup>45</sup>. Colin Port has dismissed any connection between the two murders.<sup>46</sup>

## 6. THE POLICE INVESTIGATION INTO THE MURDER

6.1 On 23<sup>rd</sup> March 1999, Rosemary Nelson's husband Paul made his first public statement since the murder. He did so after reading the ICPC's report on Rosemary Nelson's complaints. He said:

"I was very shocked when I read the catalogue of hostility, obstruction and dishonesty which the ICPC identified in the RUC investigation into the threats against Rosemary... If the ICPC had no confidence in the ability of the RUC to investigate the death threats against Rosemary how can my family be expected to have confidence in their ability or indeed their willingness to effectively investigate her murder?"

6.2 On the day after her murder, obviously realising that parallels would be drawn with the death of Patrick Finucane and that her case would be equally controversial, the RUC Chief Constable announced that he had called in the FBI to assist with the forensic aspects of the murder investigation. He also said that the Chief Constable of Kent, David Phillips, had been appointed "to oversee the investigation"<sup>47</sup>. Both these moves turned out to be cosmetic. Within two weeks, the Chief Constable announced that Colin Port, Deputy Chief Constable of Norfolk Constabulary, would assume responsibility for the day-to-day control, direction and command of the murder investigation.<sup>48</sup> He would, however, report to the Chief Constable. David Phillips' role seems quietly to have been phased out. In a radio interview at the end of March, the Chief Constable said that David Phillips' "responsibilities in other fields don't allow him to be here on a daily basis."<sup>49</sup> The Chief Constable said that he was still involved in an advisory capacity.

6.3 On 12<sup>th</sup> April 1999, only a month after the murder, John Guido, legal attaché to the FBI, indicated that its 4-week involvement with the murder investigation was at an end. He said the FBI found little that they would have suggested the RUC change or do differently.<sup>50</sup> It is understood that the FBI sent four officers to Northern Ireland. Two of them spent less than three weeks there and one of them was there for less than two weeks. A rapid-start computer expert also returned to the USA after a short stay. The FBI were not involved in any operational capacity; they conducted no interviews and they were not involved in gathering evidence. The RUC carried out all the forensic work on the ground. The FBI's role appears to have been limited to participation in a round-table guidance group and to acting as observers and/or supporters. It appears that they have played no role in the investigation since 16<sup>th</sup> April 1999.<sup>51</sup> It would appear that no independent forensic tests have been carried out at all, and the Nelson family are now considering commissioning their own tests.

6.4 When Colin Port arrived on the scene, he found that the murder investigation was already well under way. The Chief Constable had set up a team, within the investigation team as a whole, to look into the question of whether there had been any collusion in the murder<sup>52</sup>. This team included RUC officers. Initially, Colin Port's investigation team of 50 police officers included 40 RUC officers and 10 drawn from six other police forces<sup>53</sup>. The whole team was based at Lurgan RUC station, the very office from which some of the worst abuse against Rosemary Nelson allegedly emanated, and the team was sharing the RUC's computers. Human rights groups who met with Colin Port to discuss his reliance on local RUC officers were dismayed that he did not appear to be sufficiently alive to the possibility that RUC involvement in the investigation could facilitate any cover-up if any RUC officers had been involved in the murder. Given the death threats some RUC officers had allegedly uttered against her this seemed a distinct possibility. He de-

fended the inclusion of RUC officers in the collusion team, who by 1<sup>st</sup> May 1999 outnumbered non-RUC officers by a ratio of two to one, "because they know the systems that operate here"<sup>54</sup>.

6.5 Human rights groups were also concerned that Colin Port was not carrying out a completely independent investigation. He had been called in by the RUC Chief Constable, Sir Ronnie Flanagan, and ultimately he reports to the Chief Constable. Ownership of his report will vest in the Chief Constable, which means that it will be for him to decide whether the report is ever published. If earlier investigations by external police officers are anything to go by, it is unlikely that Colin Port's report will ever be published.

6.6 Furthermore, his investigation is the least independent of the RUC of any external investigation to date. The three other external investigations - by John Stalker and Colin Sampson into the alleged RUC shoot-to-kill policy; by John Stevens into collusion and the murder of Patrick Finucane; and by Strathclyde Police into the ill-treatment of David Adams in Castlereagh - have all used non-RUC officers for the investigative elements of their tasks. Nevertheless, the Stalker/

Sampson and Stevens investigations were both hampered by collusion.

6.7 It was late July before it was reported that Colin Port's investigation team had its own computer system and that all RUC personnel had been removed from the collusion team<sup>55</sup>. By mid September the number of RUC officers in the team as a whole had dropped from 80% to about 50%<sup>56</sup>. It remains to be seen whether the inclusion of RUC officers in both the collusion team and other aspects of the investigation, and the sharing of computing facilities, has made it difficult or impossible to establish whether any RUC officer(s) actively incited or participated in the murder.

6.8 The involvement of RUC officers in the police investigation meant that some witnesses were reluctant to speak to the police. Some have still not come forward to this day. In May 1999 the Pat Finucane Centre published a report on Rosemary Nelson's murder<sup>57</sup>. In it they included extracts from interviews they had conducted with 52 local eyewitnesses after the Centre had been asked to take statements because of local reluctance to talk to the RUC. These 52 people all came forward voluntarily, without any approach being made to them by the Centre. Many of them gave consistent accounts of intense and highly unusual security force activity in the area around Rosemary Nelson's house in the two or three months beforehand and especially during the 48 hours before the murder. In particular, local people reported that troops were being dropped off in a field near Rosemary Nelson's house on the day before she was killed. They also reported helicopters hovering low over the area from around 6:30 pm until after midnight on the night before the murder. Rosemary Nelson herself noticed the heightened level of security activity. She mentioned it to a client and to a friend, to whom she remarked that she suspected troops were dug in in the fields near the house. There also appeared to be many more RUC patrols than usual throughout the weekend. At about 10:00 am on the day of the murder several witnesses noticed an army patrol by the railway station. Although the area was not sealed off from the public, one RIR soldier told a witness that a suspect device had been found. Other wit-

nesses saw soldiers handling various objects, which would be highly unusual if it was suspected that an attack might be made on the railway line.

6.9 Prior saturation of an area by the security forces has been cited as a suspicious circumstance in other murders where collusion has been alleged. A book published recently<sup>58</sup> has suggested that the security forces issue "restriction orders" when one branch wants to make sure other branches do not interfere with their operations. Security force activity has the side effect of discouraging local people from being out and about and noticing anything or anyone unusual, and could provide cover for those intent on murder. Given the very high level of security force activity in the area, it seems strange that the perpetrators went ahead with the murder, rather than calling it off and re-scheduling it for a quieter night. It suggests a surprising degree of self-confidence on the murderers' part, unless they knew they had nothing to fear from discovery.

6.10 According to the Pat Finucane Centre (PFC), some of those who gave them statements also gave statements to Colin Port's investigation team. Some time after doing so, they were asked to return to Lurgan RUC station for a further interview. This interview was conducted by an English police officer and an RUC officer, who led the interview. The witnesses told the PFC that the RUC officer told them that they had mentioned seeing an RUC mobile patrol and a particular time and place, but that no other witnesses had done so and there was no RUC log of such a patrol. The witnesses felt they were being persuaded to change their evidence. However, they were sure they were right and did not change their account. The RUC officer's assertion that their account was uncorroborated was incorrect; other witnesses had also seen the patrol, and given statements to the police team to that effect, and a media report<sup>59</sup> also confirmed its presence.

6.11 PFC also reported that a friend of Rosemary Nelson's who had spent the weekend before the murder with the Nelson family in Donegal had left the friend's own car parked in Rosemary Nelson's drive in Lurgan throughout the weekend. RUC officers had visited the friend's house two and a half weeks after the murder. Having ascertained that the friend lived at that address but was not at home, they asked if the friend owned a car of a certain description. The description did not match the friend's car. The following week, Colin Port told Rosemary's husband Paul that officers had yet to interview the family friend and that officers had gone to the wrong address, which was untrue and suggests that Colin Port may have been misled by the RUC. The friend had still not been interviewed seven weeks after the event<sup>60</sup>. Other key witnesses had still not been interviewed months after the event.

6.12 It is suspected that an RUC member of Colin Port's team has leaked information about the murder investigation to the *News of the World*. In a piece entitled "Nelson bomb suspect is on run from cops", published on 3<sup>rd</sup> October 1999, someone described variously as "senior security sources" and "the senior security source" gives detailed information about the murder investigation. The article says that a middle-aged LVF leader had fled after an internal feud within the organisation. He was under intense scrutiny by the murder team, who had a lot of intelligence linking him to the crime but insufficient forensic evidence to secure a conviction. Police believed that the bombers had carried out a dummy run before the actual attack and that this man and another

LVF member had carried out surveillance on the Nelson home in the days prior to the attack. This suspect had planted the bomb during the night of Sunday 14<sup>th</sup> March. Three people had been identified as being capable of making the sort of device used in the bombing. They included: a senior UDA man from Scotland, who had been smuggled over to Northern Ireland by boat along with seven others; a freelance bomb-maker whose name had been linked to several loyalist bombings; and a UVF man from east Belfast who had fled in May because he feared arrest by Port's team. It was alleged the bomb may have been manufactured in a UFF area of west Belfast. The murder team had taken over a thousand witness statements, made dozens of house-to-house enquiries, and were trawling security camera tapes in order to try to identify the vehicle used to transport the bomb and the murderers to Lurgan. This highly circumstantial account contains some obvious inaccuracies<sup>61</sup>, and cannot be relied upon. However, what is disturbing about it is the fact that it describes potential suspects in enough detail for them to be warned that they are under scrutiny. It also gives some details about the methods employed by the murder team, which might alert the murderers, for example, to destroy the vehicle they used. If this information was leaked by an RUC officer, the implications for the integrity of the murder investigation would be very serious indeed.

6.13 On 4<sup>th</sup> November 1999, the RUC raided Stoneyford Orange Hall in County Antrim. They found up to 300 files containing photographs, addresses, telephone numbers and other personal details of alleged republicans from South Armagh and Belfast<sup>62</sup>. By 7<sup>th</sup> November alarming details were emerging about this find. According to one Sunday newspaper<sup>63</sup>:

“The information contained in the handwritten documents discovered at Stoneyford Orange Hall in Co Antrim last weekend is more recent than was first thought. Some of the details were copied from army files compiled as recently as 1997, three years after the IRA declared its first cessation. There were also copies of 70 photographs of republican suspects taken between 1988 and 1993.”

The paper quoted a security source as saying,

“All the indications are that it was the work of elements within the regular British Army, probably intelligence. It represents a very serious breach of security.”

Another paper<sup>64</sup> also claimed that the original documents came from army intelligence and reported:

“A senior RUC officer said the material they are looking for includes information on the murder of Lurgan solicitor Rosemary Nelson, the personal details of republican suspects, and statements carrying threats against the lives of journalists working in Northern Ireland.”

The link to the investigation into Rosemary Nelson's murder was made more explicit by another Sunday paper<sup>65</sup>:

“Detectives investigating the murder of Rosemary Nelson are waiting to examine computer discs, files and other items seized during the crackdown against loyalist dissidents. The team of 50 English<sup>66</sup> detectives hope the material might reveal a vital link with the Lurgan solicitor’s murder last March. Arrests of loyalist dissidents suspected of involvement in the murder were expected last month. But it’s understood they were delayed until the RUC operations against the Red Hand Defenders and Orange Volunteers were completed. Materials seized in the raids are currently undergoing examination for fingerprints and other forensic traces. It’ll be another week before Norfolk deputy chief constable, Colin Port’s team will be passed relevant material for examination.”

While it is to be hoped that these developments will lead to a breakthrough, if this newspaper report is accurate it appears that the RUC will decide what it is relevant for Colin Port to see. If there has been any collusion between loyalist dissidents and RUC officers, there is clearly a danger that any evidence this seizure may have brought to light will have been filtered out before it can reach the murder team.

6.14 No-one has yet been arrested in connection with the murder.

## 7. CALLS FOR AN INDEPENDENT INQUIRY

7.1 Human rights groups reacted swiftly to Rosemary Nelson’s murder. On the day it happened, 15<sup>th</sup> March 1999, Amnesty International put out a press release calling on the government:

“... to take the following measures without further delay:

- institute a thorough and impartial inquiry into the killing of Rosemary Nelson. Amnesty International considers that, given the circumstances, the RUC would not be considered impartial;
- institute an independent judicial inquiry into allegations that defence lawyers are systematically harassed and intimidated by the security forces;
- urgently implement the Special Rapporteur’s recommendation for an independent inquiry into the killing of Patrick Finucane.”

The following day, Amnesty International, British Irish RIGHTS WATCH, the Committee on the Administration of Justice, Human Rights Watch, the Irish Council for Civil Liberties and the Lawyers Committee for Human Rights all met the Secretary of State for Northern Ireland in Washington to impress on her the need for a truly independent investigation of the murder.

7.2 On 16<sup>th</sup> March 1999, Dato’ Param Cumaraswamy, the UN’s Special Rapporteur on the Independence of Judges and Lawyers, put out a press release in response to the murder. It set out his concerns about her safety and his attempts to raise those concerns with the government. It concluded:

**“The Special Rapporteur calls upon the Government to establish an independent and impartial commission of inquiry to investigate this brutal crime, to apprehend those responsible and bring them to justice.”**

7.3 On 15<sup>th</sup> April 1999 the European Parliament passed a resolution calling for an independent inquiry into the murder<sup>67</sup>.

7.4 On 19<sup>th</sup> April 1999, the Rosemary Nelson Campaign was launched in response to “widespread concern at the circumstances leading up to her murder, particularly following the ICPC Report and the comments of UN Special Rapporteur Param Cumaraswamy.” The Campaign is calling for “an independent, international investigation and an independent, international, judicial inquiry” into the circumstances of Rosemary Nelson’s death.<sup>68</sup>

7.5 On 20<sup>th</sup> April 1999, the US House of Representatives passed a resolution<sup>69</sup> calling on the British government to:

“(A) to launch an independent public inquiry for the investigation of the murder of defense attorney Rosemary Nelson so that evidence gathering, witness interviews, and the issuance of a detailed, public report can be based on the work of law enforcement experts not connected to or reliant upon the efforts of the Royal Ulster Constabulary (RUC);

(B) to institute an independent judicial inquiry into allegations that defense attorneys are systematically harassed and intimidated by security forces; and

(C) to implement the United Nations Special Rapporteur’s recommendations for an independent inquiry into the possibility of collusion in the killing of defense attorney Patrick Finucane.”

7.6 On 11<sup>th</sup> May 1999, a special meeting of the membership of the Northern Ireland Law Society passed a motion calling for “an independent judicial inquiry into the circumstances surrounding the murder of Mrs. Rosemary Nelson and for an independent investigation into her murder”<sup>70</sup>.

7.7 That international concern has not abated with the passage of time. On the contrary, it has deepened. On 10<sup>th</sup> December 1999, international human rights day, a coalition including some of the most authoritative international human rights groups called for an independent inquiry into Rosemary Nelson’s murder. Amnesty International, Human Rights Watch, the International Commission of Jurists’ Centre for the Independence of Judges and Lawyers, the Lawyers Committee for Human Rights, the Committee on the Administration of Justice and British Irish RIGHTS WATCH called for “a thorough, independent and impartial inquiry into all the circumstances surrounding her death”.

## 8. CONCLUSION

8.1 All right-thinking people want the murderers of Rosemary Nelson found and brought to justice. It follows that they want to see a successful police investigation into her death.

8.2 However, as this report shows, there are very serious question marks over the role played by the RUC. The evidence indicates that:



- several of Rosemary Nelson's clients reported that she had been abused by RUC officers, who had also threatened her life, in the two years before her death
- the Chief Constable of the RUC, Sir Ronnie Flanagan, had been contemptuous in his attitude towards complaints made on her behalf by human rights groups
- RUC officers acting under the supervision of the Independent Commission for Police Complaints failed to investigate those complaints properly
- after her death, the Chief Constable tried to maintain that the RUC had been ignorant of any threat to her life
- although he called in external police officers and the FBI to assist in the police investigation into her murder, he included RUC officers in the team charged specifically with investigating whether there had been any collusion in her death
- Colin Port, who has charge of the police investigation, reports directly to the RUC Chief Constable, who will own Colin Port's report.

8.3 Despite these defects, Colin Port was slow to separate his own investigation from the RUC investigation he inherited. Although he has tried to be as accessible as a police officer running a murder investigation can be, the facts remain that his team is still based in Lurgan RUC station, from whence some of the threats against Rosemary Nelson allegedly emanated, and that half his team is still made up of RUC officers. There is also some evidence to suggest that at least one member of his team has leaked informed in such a way as to undermine the investigation.

8.4 The complaints that Rosemary Nelson made about death threats and other abuse allegedly made against her by RUC officers have yet to this day to be properly investigated, despite the participation of Commander Niall Mulvihill of the Metropolitan Police.

8.5 However, it was not only the RUC who failed to protect Rosemary Nelson's life. Human rights groups from around the world constantly drew the Secretary of State's and the Northern Ireland Office's attention to the threat to her safety. The United Nation's Special Rapporteur called publicly for an inquiry into intimidation of defence lawyers, drew specific attention to her case in his report, and wrote privately to the government expressing concern about her situation. The government refused to act on his recommendations. The Garvaghy Road Residents Coalition repeatedly raised her safety with the government, all to no avail.

8.6 The criminal justice system has not served Rosemary Nelson well, either before her death or afterwards. She was abused and threatened by RUC officers and others, she complained, her complaints were neither taken seriously nor properly investigated, she was murdered, and her murderers have yet to be brought to book. If such a train of events had happened to one of her clients, she would have been up in arms. That it should happen to a solicitor, an Officer of the Court, despite her case having been raised with the government by the United Nations, is a scandal.

8.7 Whatever the outcome of the police investigation into the murder of Rosemary Nelson, it is imperative that all the issues that have been raised in this report are properly examined and recommendations made

and implemented to ensure that she is the last lawyer ever to be murdered in Northern Ireland and the last to have to carry out her professional duties in fear of her life. British Irish RIGHTS WATCH has concluded that only an independent, international, judicial inquiry into her murder will suffice to achieve these ends.

**DECEMBER 1999**

**“IN RE THE MURDER OF PATRICK FINUCANE AND THE CASE  
FOR A PUBLIC INQUIRY:” JOINT OPINION FOR AMNESTY  
INTERNATIONAL**

**INTRODUCTION**

1. On 12<sup>th</sup> February 1989 Patrick Finucane, a Belfast Solicitor, was murdered when a number of masked assailants broke into his home and shot him in front of his wife and children. Since that time there have been repeated allegations of collusion in his killing on the part of the security forces and widespread calls for the establishment of a public inquiry into the circumstances surrounding it. In February 1999 the United Kingdom Government, through the then Secretary of State for Northern Ireland, indicated that fresh consideration was being given to the calls for such an inquiry. Although it was said that a decision would be made “*within weeks*” no official decision has yet been announced.

2. In June 1999, following an investigation by a team of detectives under the command of John Stevens, the Deputy Commissioner of the Metropolitan Police, William Stobie was charged with the murder of Patrick Finucane. Stobie has since pleaded not guilty and has alleged that at the time of Mr. Finucane’s murder he (Stobie) had been a paid Crown agent and that prior to the killing he had provided his “*handlers*” in the Royal Ulster Constabulary Special Branch with information that a murder was to take place and that specific individuals had asked for – and been supplied with - weapons for this purpose.

3. Counsel acting on behalf of Stobie in the criminal proceedings have stated that Stobie’s case is that he had specifically informed Special Branch of a series of key matters relating to the killing both before and after it took place. These were (5 days before Mr. Finucane was killed) that a murder was to take place and that Stobie had been asked to collect two 9 mm guns for the killing, (on the evening of the murder) that Stobie had handed out the weapons and, (after the killing) that the weapons were to be returned by specific individuals at a specific time and location. Stobie further claims that despite their receiving this information on no occasion was any action taken by Special Branch to stop the murder, make arrests or seize the weapons although he believes that a covert operation was mounted which involved observation of the movements of the weapons. Stobie’s Counsel have also asserted that there is nothing to suggest that any of the material now relied upon by the Crown against Stobie was not available in 1990 save that it is now supported by a written rather than an oral statement from the former journalist Neil Mulholland.

4. It has now been confirmed on behalf of the Crown that Stobie was indeed a Special Branch informant but it has been asserted that there are no records to show that he contacted his handlers at any stage on 12<sup>th</sup> February 1989, the day of Mr. Finucane’s murder, and on this basis it is denied that there was any such contact<sup>1</sup>. As indicated above Leading Counsel acting on behalf of Stobie in fact claimed at the most recent bail application that the 1990 interview records now available do show that Stobie was in close contact with Special Branch in the period leading up to the murder and reveal an expectation on the part of the interviewing officers, and indeed of Stobie, that he would face charges in 1990 in relation to the killing<sup>2</sup>.

5. The allegations now made by Stobie also echo the contents of another interview said to have been given by him in 1990, the substance of evidence given in civil proceedings triggered by the publication of that interview and the findings of a report published by the Lawyers Committee for Human Rights in 1993:

(a) Earlier this year an article published in the Sunday Tribune described what was said to have been an interview between a Tribune journalist, Ed Moloney, and Stobie in 1990. The article claimed that in 1990 Stobie had told Moloney that he had given the RUC information relating to the killing of Mr. Finucane before it took place, although he did not name Finucane, but that they chose to take no action<sup>3</sup>. The article also provided detailed information about a firearms charge brought against Stobie in 1990 and 1991 and recorded a claim by Stobie that the DPP had ultimately offered no evidence and requested a not guilty verdict in respect of the charge after Stobie had threatened to expose what he knew about the Finucane murder<sup>4</sup>;

(b) The publication of this article itself led to the instigation of civil proceedings in Northern Ireland. The Stevens team obtained an ex parte order under Schedule 7 of the Prevention of Terrorism Act in order to compel Moloney to hand over his notes of the interview with Stobie and Moloney, in turn, ultimately successfully, sought to set this aside<sup>5</sup>. At the first inter partes hearing of this dispute Detective Chief Inspector Turner, giving evidence in support of the application for the order, stated that Stobie was interviewed by the RUC 32 times in connection with the killing of Mr. Finucane as long ago as September 1990 and that while Stobie had denied shooting Mr. Finucane he had admitted being the Quartermaster for the UDA, supplying certain weapons prior to the killing and recovering them afterwards<sup>6</sup>;

(c) The 1993 Lawyers' Committee' report stated as follows:

"Two independent sources told us that the RUC had a double agent in the UDA. They stated that they had learned from loyalist sources that in late December 1988 or early January 1989 Brian Nelson<sup>7</sup> came to a UFF meeting and passed a file on Finucane to "R". Those present took the transfer of this file to mean that Finucane would be killed. A week later the double agent alerted his handlers in the RUC Special Branch who were stationed at Castlereagh. About two weeks later R came to the agent and asked him for weapons, including a Browning. At the next meeting with his handlers, the agent told them of R's request and that he would be supplying the weapons in the next few days. In both instances the agent gave the information to his handlers on the assumption that they would do something to prevent the murder from taking place."

4. Against this background we have now been asked to advise on the following matters:

(a) The general powers and duties of the United Kingdom Government in relation to the establishment of public inquiries;

(b) Whether on the facts now known in relation to the case of Patrick Finucane there is sufficient material in existence to empower, or indeed require, the Government to establish such an inquiry;

(c) The inter-relationship between any such inquiry and criminal proceedings relating to Mr. Finucane's murder and, specifically, whether the fact of the ongoing prosecution against William Stobie should prevent or delay the establishment of an inquiry.

Government powers and duties in respect of public inquiries

## THE TRIBUNALS AND INQUIRIES (EVIDENCE) ACT 1921

7. Probably the most important piece of legislation governing the holding of public

inquiries is the Tribunals and Inquiries Act 1921<sup>9</sup>. The Act, in fact, principally regulates the *powers* of a Tribunal of Inquiry once the same is established but it also, by its terms, reveals the mechanism by which one is to be set up and the conditions which will have to exist to allow the mechanism to be employed.

8. Section 1(1) of the Act provides as follows:

“Where it has been resolved—by both Houses of Parliament that it is expedient that a tribunal be established for inquiring into a definite matter described in the Resolution as of urgent public importance—the instrument by which the tribunal is appointed—may provide that this Act shall apply”.

9. Accordingly, the Act envisages that in order for the Government to call an inquiry it has to be satisfied (and to persuade both Houses of Parliament) that (a) there is a definite matter of “*urgent public importance*” which (b) it is “*expedient*” for there to be an inquiry to investigate.

10. The Act itself provides no definition as to what constitutes “*expedience*” or a matter of “*urgent public importance*” and it is likely that a Government will enjoy a relatively wide discretion in assessing both issues. Some guidance as to the proper approach is, however, available from a variety of sources. These

include the history of recourse to the Act, the report of the Royal Commission on Tribunals of Inquiry of 1966<sup>10</sup>, the subsequent observations of Lord Salmon (the Chairman of the Commission), and the comments made by previous Tribunals or Committees of Inquiry describing their own terms of reference. Each of these is considered below.

The history of recourse to the Act

11. Since 1921 there have only been around 20 occasions upon which the Act has been invoked. The focus of these inquiries has generally been alleged serious misconduct by Government or public officials. The inquiries have included investigation into allegations of improper gifts to ministers<sup>11</sup>, the leaking of price sensitive financial information<sup>12</sup>, alleged police brutality<sup>13</sup>, the events of “*Bloody Sunday*”<sup>14</sup> and the Aberfan landslide disaster<sup>15</sup>.

12. The most recent invocation of the Act came in 1998 when the Prime Minister tabled a resolution to establish a second inquiry into the events of “*Bloody Sunday*”. Announcing the proposed resolution to the House of Commons the Prime Minister explained why the particular circumstances of “*Bloody Sunday*” merited the establishment of a judicial inquiry and contrasted the events of that day with the numerous other instances of loss of life and injury in Northern Ireland. He stated that “*Bloody Sunday was different because, where the state’s own authorities are concerned we must be as sure as we can of the truth, precisely because we pride ourselves on our democracy and respect for the law and on the professionalism and dedication of our security forces*”<sup>16</sup>.

## THE ROYAL COMMISSION ON TRIBUNALS OF INQUIRY

13. The Commission was established to investigate whether or not the mechanism provided by the Act of 1921 should be retained or replaced by some other procedure. It heard evidence from a wide array of

individuals including three former Lord Chancellors, the then Lord Chief Justice of England and Wales, the Master of the Rolls, numerous other members of the judiciary, the legal profession, the press, members of both Houses of Parliament and representatives of newspaper trades unions.

14. The Commission's report of 1966<sup>17</sup> held that the mechanism provided by the Act fulfilled an important function and recommended that it be retained. It concluded, however, that a Tribunal under the Act should

*"never be used for matters of local or minor public importance but should always be confined to matters of vital public importance concerning which there is a nationwide crisis of confidence" and that "such procedures must be used to preserve the purity and integrity of public life without which a successful democracy is impossible".*

Emphasizing the important role played by inquiries established under the Act the Commission then concluded that

*"[it was] essential that on the very rare occasions when crises of public confidence occur, the evil, if it exists, shall be exposed so that it may be rooted out; or, if it does not exist, the public shall be satisfied that in reality there is no substance in the prevalent rumours and suspicions by which they have been disturbed".*

#### THE OBSERVATIONS OF LORD SALMON

15. Lord Salmon, in a lecture given after the publication of the Commission's report, summarised the critical importance of the inquiry mechanism in the following way:

*"In all countries, certainly in those which enjoy freedom of speech and a free press, moments occur when allegations and rumours circulate causing a nationwide crisis of confidence in the integrity of public life or about other matters of vital public importance. No doubt this rarely happens but when it does it is essential that public confidence should be restored for without it no democracy can long survive. This confidence can be effectively restored only by thoroughly investigating and probing the rumours and allegations so as to search out and establish the truth"<sup>18</sup>.*

#### COMMENTS MADE BY PREVIOUS INQUIRIES

16. Although not in fact set up under the 1921 Act the Committee of Inquiry into complaints about medical treatment at the Ashworth Hospital<sup>19</sup> provided a useful summary of the reasons why inquiries will, typically, be set up. The Committee identified 5 particular justifications for the inquiry system, namely:

- “(1) Horror or disquiet needs to be assuaged;
- (2) The need to allay fears of a state sponsored “whitewash” of allegations involving fault by government or public authorities;
- (3) Events can cause public anxiety that go beyond the interests of individual victims;
- (4) The cathartic<sup>20</sup> effect for victims, relatives and others who are affected. A public inquiry gives an opportunity to all who have a reasonable interest in the events to make a representation;
- (5) An inquiry can not only establish facts and possibly assign responsibility, but also make recommendations to avoid recurrence.”

### SUMMARY

17. Taking all these matters into account it is our view that a Government can, and indeed generally should, establish a public inquiry—whether through the mechanism of the 1921 Act or otherwise—when ever the following criteria are met:

- (a) Allegations of serious misconduct and prima facie merit have been made against those acting, or purporting to act, on behalf of the State;
- (b) Those allegations are sufficiently widespread and are being treated sufficiently seriously by those outside Government to undermine the public’s confidence in the integrity of the State and in the rule of law;
- (c) The allegations relate to a sufficiently defined event or series of events to allow an inquiry to be given proper and clear terms of reference;
- (d) An inquiry would represent the most effective means of establishing the merit of the allegations made and so of restoring public confidence.

### THE PATRICK FINUCANE CASE

18. It is our clear view that each of the criteria set out in paragraph 17 above have been met in the case of Patrick Finucane and that, accordingly, the Government has ample material available to it to justify the establishment of a public inquiry into the circumstances surrounding his killing. We also consider that it is strongly arguable that were the Government to refuse to establish such an inquiry then its decision would be susceptible to judicial review and would place the Government in breach of its obligations under the European Convention on Human Rights. We address each of the criteria referred to above in turn.

### SERIOUS NATURE AND *PRIMA FACIE* MERIT OF ALLEGATIONS

190 The allegations of state collusion in the killing of Mr. Finucane are quite obviously of the utmost seriousness. As indicated in paragraphs 3 to 6 above and further explained in paragraph 20 below, at their highest, they suggest the active participation of military intelligence and / or the RUC in Mr. Finucane’s assassination and that he was targeted for assassination by reason of his work as a criminal defence solicitor specialising in terrorist cases. If true the allegations would amount to the gravest affront to the rule of law and to the operation of a democratic system in Northern Ireland.

20. The truth or otherwise of the allegations is obviously not yet clear—hence the calls for an inquiry—but we consider that the following particular matters show the allegations to be of sufficient *prima facie* merit and gravity to justify the establishment of an inquiry:

- (a) As indicated above William Stobie—the man accused of Mr. Finucane's murder—has expressly asserted that he provided the RUC with information directly relevant to the murder prior to and after it taking place and that no effective action was taken in response. This is consistent with an earlier account given by Stobie to a journalist – Ed Moloney—in 1990 and with the findings of the 1992-1993 investigation by the Lawyers Committee for Human Rights;
- (b) The failure to prosecute Stobie until now, despite the apparent contents of his admissions in RUC interviews made as early as 1990, itself gives rise to further concern as to the nature of his links with the RUC and the circumstances surrounding Mr. Finucane's death. It also raises questions about the role of the prosecuting authorities in not proceeding with the prosecution, particularly in circumstances where it has now been alleged that firearms charges against Stobie were not proceeded with on 23<sup>rd</sup> January 1991 after Stobie had threatened to make public his allegations of Special Branch's prior knowledge relating to Mr. Finucane's killing and just seven days after a decision had been taken not to prosecute Stobie in connection with that killing<sup>21</sup>;
- (c) The BBC's Panorama programme<sup>22</sup> has published extracts from what is said to be the prison diary of Brian Nelson – an acknowledged agent of Military Intelligence's Force Research Unit and a convicted UDA terrorist<sup>23</sup> – which itself stated that Nelson had informed his own military handlers of the plan to kill Mr. Finucane. The diary also stated that Nelson had provided a photograph of Mr. Finucane to a paramilitary assassin a few days before the murder<sup>24</sup>;
- (d) Tommy Lyttle, the head of the UDA shortly before Mr. Finucane's death, is reported by John Ware<sup>25</sup> (a respected BBC journalist) to have claimed that members of the RUC had expressly suggested that Mr. Finucane be shot by the UDA;
- (e) The weapon used to kill Mr. Finucane came from army barracks and a member of the UDR has been convicted of its theft;
- (f) Numerous of Mr. Finucane's former clients have claimed that prior to his death, and during the course of interrogation by the RUC, they were expressly told that Mr. Finucane would be killed<sup>26</sup>;
- (g) Although the police officer who gave evidence at the inquest into Mr. Finucane's killing stated in terms that he was "*just another law abiding citizen going about his professional duties in a professional manner [and] was regarded in police circles as very professional*"<sup>27</sup> this does not appear to have been the unanimous view of those in the RUC. By way of example only John Stalker has described one RUC sergeant as having told him that Mr. Finucane "*is an IRA man [and] any man who represents IRA is worse than an IRA man*"<sup>28</sup>;
- (h) According to British Irish Rights Watch neighbours and relatives of Mr. Finucane have claimed that there was an exceptionally high level of security force activity in the area of his home until shortly before his killing when road blocks which had been in place for a number of hours were removed;



- (i) A British Irish Rights Watch report submitted to both the United Kingdom and Irish Governments in February 1999 is said to refer to official contemporaneous documentation suggesting that the Force Research Unit assisted loyalist terrorists in identifying potential terrorist targets and that the Force Research Unit deliberately frustrated attempts made by John Stevens to investigate allegations of collusion<sup>29</sup>;
- (j) Another loyalist terrorist, Bobby Philpott, has told the BBC's Peter Taylor that enormous quantities of intelligence documentation were being supplied to loyalist paramilitaries in the late 1980s and early 1990s<sup>30</sup>;
- (k) Mr. Finucane's killing came shortly after Douglas Hogg MP, then a Home Office Minister, had told the House of Commons "*I have to state as a fact, but with great regret, that there are in Northern Ireland, a number of solicitors who are unduly sympathetic to the cause of the IRA.*"<sup>31</sup>

#### WIDESPREAD NATURE, AND SERIOUS TREATMENT, OF ALLEGATIONS

21. The degree of support for an inquiry into the killing of Patrick Finucane is, in our view, unprecedented. We are, in particular, unaware of any other call for any inquiry which has obtained such a breadth and depth of support. We consider the following matters to be of particular significance in this regard:

- (a) The domestic and international legal community have spoken with one voice in calling for an inquiry. Support for the establishment of an inquiry has come from, amongst others, the Northern Ireland Law Society, the Northern Ireland Bar, the Law Society of England and Wales, the Chairman of the Bar of England and Wales, the Irish Law Society, the Irish Bar, the American Bar Association and the International Bar Association;
- (b) The domestic and international human rights community have displayed similar unanimity. The United Nations Special Rapporteur on the Independence of Judges and Lawyers has twice called for the establishment of an inquiry. He has been supported by the Independent Scrutineer of Emergency Legislation, the Independent Commissioner for the Holding Centres, the International Commission of Jurists, the Lawyers Committee for Human Rights, Amnesty International, Human Rights Watch, the Federation International des Droits de l'Homme, the Committee for the Administration of Justice and British Irish Rights Watch;
- (c) The Irish Government – having seen the British Irish Rights Watch report referred to above – has described the case for an inquiry as "*compelling*"<sup>32</sup>;
- (d) The United States House of Representatives has voted to block any further policing co-operation with the RUC until an independent inquiry into the killing of Patrick Finucane has been established<sup>33</sup>;
- (e) The calls for a public inquiry have been given fresh – and tragic – momentum by the murder in March of Rosemary Nelson, another lawyer specialising in representation of those accused of terrorist crime and who had allegedly been the victim of intimidation and harassment by the RUC.<sup>34</sup>

## SUFFICIENT DEFINITION OF EVENTS

22. There would in our view be no difficulty in defining the terms of reference of the inquiry. The inquiry could be charged with carrying out an investigation into the murder of Patrick Finucane, the allegations of state collusion in his killing and the nature of the subsequent investigations into it.

## MOST EFFECTIVE MEANS FOR RESTORATION OF PUBLIC CONFIDENCE

23. It is our view that a public inquiry is the most—and indeed the only—effective means by which the allegations relating to the murder of Mr. Finucane can now be properly addressed and by which the public confidence which they have undermined can be restored. In reaching this conclusion we have taken account of the following facts and matters:

- (a) The major significance of the Finucane case in our view lies *not* in the guilt or innocence of any particular individual or individuals—whether William Stobie or others—but in the suggestion of state involvement in the killing. A public inquiry armed with powers of subpoena would be best placed to investigate these matters. In contrast to either civil or criminal proceedings the inquiry process would be inquisitorial rather than adversarial and would be specifically designed to address the public concerns which have been raised and to search for, and establish, the objective truth rather than simply to weigh up the individual merits of two conflicting cases;
- (b) Although there have been 2 previous investigations by John Stevens into allegations of collusion on the part of the security forces, on neither occasion have the reports produced been published and on only one occasion was even a summary published. It is also by no means clear to what extent these investigations focussed on allegations of collusion into Mr. Finucane's death as in April 1999 John Stevens gave a press conference at which he stated that he had "*at no time*"<sup>35</sup> ever previously investigated the murder of Patrick Finucane but that his inquiries into collusion "*were linked to the murder of Patrick Finucane*"<sup>36</sup>;
- (c) Although there are ongoing civil proceedings between Mr. Finucane's widow and the Ministry of Defence it is our view that these are a wholly inadequate means of establishing the full facts in the public interest and are certainly less likely to achieve this end than a public inquiry. The most striking example of this imperfection is likely to lie in the discovery process where the initial sifting of documents for relevance and redaction of material documents is likely to be carried out by a lawyer in the Treasury Solicitor's department without the benefit of an overview of the key issues in the case which the Chair of a properly established inquiry would have. Further as pointed out above the whole purpose of civil proceedings is different to that of an inquiry being designed to resolve individual rights rather than to address public concern;
- (d) Finally, and adopting the logic of the Prime Minister when announcing the second inquiry into the events of "*Bloody Sunday*", "*where the state's own authorities are concerned we must be as sure as we can of the truth*". State involvement is, of course, exactly what the most serious of the allegations raised in the Finucane case are concerned with and the same logic must, in our view, therefore apply.

24. The Government has expressed a concern that “many of the matters that the inquiry would be asked to consider would be likely to relate to intelligence gathering and operational security force activity which could not be brought into the public domain”<sup>37</sup> and has asked for advice as to “How a public inquiry [would] resolve this difficulty?”<sup>38</sup>. Although an understandable concern we do not consider that the difficulty identified by the Government is in any way insurmountable or should be given undue weight. First it cannot be the case that the mere fact that allegations are made against the intelligence services renders the establishment of a public inquiry impossible – on the contrary allegations of the seriousness with which this case is concerned, in our view, demand to be addressed in public. Secondly even if particular matters do, in the national interest, require protection from publicity this is well within the power of the Tribunal. Section 2(a) of the Tribunals and Inquiries Act expressly allows the public to be excluded from the proceedings if it would be “expedient” in the public interest<sup>39</sup>.

### JUDICIAL REVIEW AND BREACH OF ECHR

25. In our view there is a strong argument to the effect that a refusal by the Government to order a public inquiry into the murder of Mr. Finucane would be susceptible to judicial review and in breach of the European Convention on Human Rights:

- (a) The Government’s powers in respect of public inquiries exist, principally, to guard against abuse of power and loss of public confidence in the State;
- (b) As explained in paragraphs 7 to 17 above, implicit within those powers there must be a duty to properly consider whether or not to establish an inquiry;
- (c) There could hardly be more serious allegations raised against the State than those which have been raised in the case of Mr. Finucane;
- (d) As set out above at paragraph 21 there could hardly be more compelling evidence of widespread domestic and international concern at those allegations;
- (e) If an inquiry were not justified on the facts of this case it is difficult to conceive of any case where an inquiry would be justified. In our view a refusal to hold an inquiry would be close to being irrational particularly in the context of a case concerning fundamental human rights<sup>40</sup>;
- (f) Further the Government’s continuing failure to take a decision one way or the other as to whether to hold an inquiry could, in itself, be categorised as irrational and unreasonable and an abdication of its duties and responsibilities in respect of the holding of inquiries;
- (g) Under the case law of the European Court of Human Rights, and the European Commission of Human Rights, Article 2 of the European Convention on Human Rights requires not just the protection of life but, taken together with Articles 6 and 13, also requires careful, independent and effective investigation once there has been loss of life<sup>41</sup>;
- (h) Both the Court and the Commission have also repeatedly stressed the importance of independent impartial investigations into any allegations of serious wrongdoing on the part of Government agents and, specifically, upon the importance of the publication of any resultant reports and findings<sup>42</sup>;

(i) It is strongly arguable that none of the investigations into Mr. Finucane's killing, and the allegations of collusion surrounding it, meet the standards of transparency, independence and effectiveness thus required for compliance with the European Convention:

- i The inquest into Mr. Finucane's death took place at a time when the vast majority of the material underlying the collusion allegations had yet to come into the public domain;
- ii For the bulk of the ten and a half years since the killing the RUC—itself accused of collusion in respect of the killing—has been the force responsible for investigating it;
- iii The two other police investigations into allegations of collusion on the part of the security forces (headed by John Stevens and referred to above) are both unclear in their scope and their findings have in any event remained unpublished;
- iv The investigation into, and prosecution of, William Stobie is, as explained above, necessarily concerned with his individual guilt or innocence rather than with the broader concerns which a public inquiry would address. It is also not clear to what extent, if any, this investigation has looked into the collusion allegations at all.

#### INTERRELATIONSHIP BETWEEN PUBLIC INQUIRY AND CRIMINAL PROCEEDINGS

26. The Government has also expressed concern as to the possibility that an inquiry would compromise criminal prosecutions in relation to Mr. Finucane's death<sup>43</sup>. We consider that on a proper analysis this concern is wholly unfounded.

27. In reaching this view we have considered, in particular, whether the announcement of a judicial inquiry would itself lend credence to the defence apparently to be run by William Stobie—that he was a Crown Agent at the time of the killing and provided his RUC handlers with information relating to it—and would thus interfere with the criminal proceedings, albeit to the benefit of the accused.

28. We do not in fact consider that there would be any such interference, and any suggestion that there would be, in our view, not only discloses a misunderstanding of what the Government would be deciding in establishing an inquiry but also completely fails to take account of the fact that Stobie is to be tried by a judge sitting alone rather than by a judge and jury:

- (a) As Lord Salmon and the Royal Commission indicated the procedure of an inquiry is just as valuable for clearing away unfounded suspicion as for unearthing misconduct and, accordingly, the establishment of an inquiry should not, as a matter of logic, have any material impact on or implications for the conduct of the criminal proceedings;

(b) Secondly, and in our view conclusively, in the context of civil law the presumption that a judge sitting without a jury should be capable of excluding from his considerations irrelevant matters or general publicity relating to a case he is trying is fundamental and very well established<sup>44</sup>. We consider that precisely the same presumption should apply here so rebutting any suggestion of interference with the criminal proceedings by publicity surrounding the establishment of an inquiry. Stobie will be tried by a judge who will be sitting alone and who will be required to provide a reasoned judgement as to Stobie's guilt or innocence which itself can then be the subject of close scrutiny.

30 Further support for this aspect of our conclusions may, in addition, be derived from the Government's own approach to other cases. These make it clear that the Government has in the past itself recognised that there is no necessary inconsistency between a decision that there be a public or judicial inquiry and the continuation of a criminal investigation into the same or related subject matter and we refer to three particular examples in this regard:

- (a) First, and perhaps the most well known, the Lawrence Inquiry. The inquiry was established and proceeded at a time when it was still expressly stated by the Metropolitan Police that it was hoped to bring a criminal prosecution against those responsible for Steven Lawrence's death;
- (b) Secondly the forthcoming Bennett inquiry. In October 1998 a Mr. David Bennett died in the secure unit in a psychiatric clinic in Norfolk and police investigations into his death are ongoing. Despite these investigations, and with the full support of the Minister of State for Health, the Norfolk Healthcare Trust has announced that a public inquiry into the death will be held at the conclusion of the criminal investigation and any criminal proceedings;
- (c) Thirdly the recent Butler Inquiry. This was an inquiry into the Crown Prosecution Service's approach to decisions to prosecute in respect of three specific deaths in custody and it was both established and proceeded at the same time as the Crown Prosecution Service was re-considering decisions of non-prosecution following successful judicial review proceedings<sup>45</sup>.

### CONCLUSION

40 For the reasons set out above it is our clear view that there is ample material already in the public domain to justify the Government in establishing a public inquiry into the murder of Patrick Finucane, the allegations of state collusion in his killing and the subsequent investigations into it. We also consider that it is strongly arguable that as a matter of law the Government is required to establish such an inquiry and that any failure to do so would render the Government both susceptible to an application for judicial review and in breach of the European Convention on Human Rights.

*Robert Owen QC*  
*Ben Emmerson*  
*Tim Otty*  
 29<sup>th</sup> October 1999

## END NOTES

<sup>1</sup> See bail applications before Lord Justice Shiel: 3<sup>rd</sup> August 1999 and 5<sup>th</sup> October 1999. Mulholland (now a civil servant in the Northern Ireland Office) was formerly a journalist to whom Stobie spoke in the summer of 1990. Stobie claims that he gave Mulholland a full account of his activities as a Special Branch agent between 1987 and 1990 and left him instructions to write his story should anything happen to him. When Stobie was questioned in September 1990 (see paragraph 5(b) below) he says that he understood that the information upon which he was questioned must have come from Mulholland. At the 3<sup>rd</sup> August 1999 hearing Counsel instructed on behalf of the Crown stated that the only differences in the information available to the Crown in 1999 as opposed to 1990 were that Mulholland's allegations were in written form and that Mulholland's interview notes were now available. At the same time Counsel for the Crown did confirm that Stobie had been a Special Branch informant. At the 5<sup>th</sup> October 1999 hearing Leading Counsel for the Crown contended that the Mulholland evidence went further than that contained in Stobie's admissions to the police in that the latter contained no admission to hand over of the weapons actually used in the killing or to knowledge that Mr. Finucane was the intended target.

<sup>2</sup> See 5<sup>th</sup> October 1999 hearing and submissions made by Arthur Harvey QC

<sup>3</sup> Sunday Tribune 27<sup>th</sup> June 1999—Pat Finucane and how the RUC could have stopped it

<sup>4</sup> The hearing at which no evidence was offered took place on 23<sup>rd</sup> January 1991. Seven days earlier, on 16<sup>th</sup> January 1991, a decision was taken not to prosecute Stobie in relation to the Finucane case, (see Committee on the Administration of Justice Submission to Criminal Justice Review September 1999 and correspondence with Ms P Atchison of Department of Director of Public Prosecutions 18/8/99)

<sup>5</sup> Judgement upholding the order was given on 2<sup>nd</sup> September 1999 but following a successful judicial review application this order was itself quashed on 27<sup>th</sup> October 1999

<sup>6</sup> Re Moloney, Antrim Crown Court 23<sup>rd</sup> August 1999. This disclosure led to the release of the interview records compiled in 1990 and to Stobie's second, and successful, bail application of 5<sup>th</sup> October 1999

<sup>7</sup> Human Rights and Legal Defense in Northern Ireland, Lawyers Committee for Human Rights (HRLD) New York February 1993

<sup>8</sup> Nelson is now officially acknowledged to have been an agent of the Army's Force Research Unit - see further at paragraph 20(c) below.

<sup>9</sup> It should, of course, be noted that the Government's powers to establish judicial inquiries are very broad and they may be established outside the terms of the 1921 Act. Two of the most recent examples of this are the BCCI inquiry and the Matrix Churchill inquiry;

<sup>10</sup> The Commission was established to investigate the operation of the Tribunals and Inquiries Act and to make any necessary recommendations for its reform;

<sup>11</sup> Cmd. 7616 (1948)

<sup>12</sup> Cmd 5184 (1936) and 350 (1957)

<sup>13</sup> There have in fact been 5 instances of police misconduct leading to the establishment of inquiries under the Act but policing matters are now more normally dealt with under specific legislation. The Lawrence Inquiry was, for example, set up under Section 49 of the Police Act 1996, see Cmd 4262-1

<sup>14</sup> Cmd 566 (NI), Apr. 1972 and see paragraph 12 below

<sup>15</sup> HC 533, July 1967

<sup>16</sup> HC Official Report Parliamentary Debates (Hansard) Columns 501-503

<sup>17</sup> See Cmd. Paper 3121

<sup>18</sup> See Tribunals of Inquiry, lecture delivered at the Hebrew University of Jerusalem, 28<sup>th</sup> December 1966

<sup>19</sup> Cmd 2028-I, 1992

<sup>20</sup> the particular importance of the cathartic effect of, and justification for, inquiries was also emphasised by the Lawrence Inquiry report, Cmd 4262-1.

<sup>21</sup> see para. 5(a) above & see also Sunday Tribune 29<sup>th</sup> August 1999 – What is the RUC trying to hide ?

<sup>22</sup> broadcast on 8<sup>th</sup> June 1992

<sup>23</sup> Evidence was given in support of a plea of mitigation by Nelson by a Colonel J of Army Intelligence on 29<sup>th</sup> January 1992 at Belfast Crown Court. Colonel J stated, inter alia, that Nelson was infiltrated into the UDA by the army in the full knowledge that this would involve him in committing crime and that this involved the provision of information by Nelson, including photographs on those the UDA was targeting for assassination. Colonel J stated that Nelson had provided the UDA with a photograph of a targeted victim leaving court. Nelson has admitted to providing the UDA with a photograph of Finucane and another man, Patrick McGeown, see transcript 29<sup>th</sup> January 1992

<sup>24</sup> This account would appear to be consistent with the separate findings made by the Lawyers Committee for Human Rights and referred to in paragraph 5(c) above

<sup>25</sup> "Time to come clean on the Army's role in the "Dirty War"" – New Statesman 24<sup>th</sup> April 1998

<sup>26</sup> see eg. Lawyers Committee for Human Rights interviews with Brian Austin, Paul Finnegan, Seamus Finucane, Patrick McDade August 1992 cited in 1993 report at pp. 47-49 & deposition of Geraldine Finucane at the inquest into the death of Patrick Finucane made on 6<sup>th</sup> September 1990

<sup>27</sup> Deposition of DS Simpson at Inquest into death of Patrick Finucane 6<sup>th</sup> September 1990

<sup>28</sup> Stalker, Penguin 1998 p. 49

<sup>29</sup> see British Irish Rights Watch report - Deadly Intelligence: State collusion with loyalist violence in Northern Ireland, Published Summary February 1999

<sup>30</sup> "Loyalists", broadcast on 7<sup>th</sup> March 1999

<sup>31</sup> see Committee stage debate on the Prevention of Terrorism (Temporary Provisions) Bill 17<sup>th</sup> January 1989

<sup>32</sup> The Independent 4<sup>th</sup> May 1999

<sup>33</sup> Amendment 1211 to State Department Authorization Bill passed on 14<sup>th</sup> April 1999

<sup>34</sup> On 22<sup>nd</sup> March 1999 the Independent Commission for Police Complaints in Northern Ireland made a public statement categorising the RUC's investigation into the alleged threats by RUC officers against Mrs. Nelson as unacceptable in a series of respects and referred to "ill-disguised hostility to Mrs. Nelson on the part of some police officers".

<sup>35</sup> See Irish News 29<sup>th</sup> April 1999 "Fury over Finucane inquiry revelation"

<sup>36</sup> *ibid.*

<sup>37</sup> Northern Ireland Information Service press release 13<sup>h</sup> May 1999 available at <http://www.nio.gov.uk/990512h-nio.htm>

<sup>38</sup> see press release 13/5/99 and footnote 37 supra.

<sup>39</sup> The flexibility available to a Tribunal and demonstrated by Section 2 was recognised in the recent Court of Appeal ruling on anonymity in the context of the Bloody Sunday Inquiry, see *R v Lord Saville of Newdigate ex parte Ministry of Defence*, Times 29<sup>h</sup> July 1999

<sup>40</sup> In *Smith & Grady v United Kingdom* (27/9/99) the European Court of Human Rights has in fact recently held that the threshold requirement of irrationality may itself be too high as excluding adequate consideration of proportionality

<sup>41</sup> *McCann, Farrell and Savage v United Kingdom*, ECHR Judgement 27/9/95 at para. 161 & *Kaya v Turkey* ECHR Judgement 19/2/98 at para. 86

<sup>42</sup> see eg. *Govell v United Kingdom*, Application No. 27237/95 – there the Commission held that the system of investigation of complaints into police misconduct provided by the Police Complaints Authority did not meet the requisite standards of independence to constitute sufficient protection against abuse of authority; see also *Taylor, Crampton, Gibson & King v United Kingdom* 79-A D.R. 127 – this case concerned the Beverley Allitt inquiry and although the complaint was declared inadmissible considerable emphasis was placed on the independence of the inquiry team and the fact that the inquiry's findings were made public;

<sup>43</sup> <http://www.nio.gov.uk/990512h-nio.htm>, 12<sup>h</sup> May 1999

<sup>44</sup> see eg. *Schering Chemicals v Falkman* [1981] 2 All ER 321; *Re Lonrho Plc & Observer Limited* [1989] 2 All ER 1100 HL

<sup>45</sup> see ISBN 0113412363 at <http://www.official-documents.co.uk>. One of the police officers involved was in fact subsequently prosecuted and unsuccessfully sought to have those proceedings stayed as an abuse of process because of the publicity surrounding the judicial review proceedings and the establishment of an inquiry. Even though he was to be tried before a jury this application was dismissed.



**LETTER OF JUNE 3, 1999 TO RONNIE FLANAGAN,  
CHIEF CONSTABLE OF THE ROYAL ULSTER CONSTABULARY,  
FROM COMMITTEE ON THE ADMINISTRATION OF JUSTICE**

Ronnie Flanagan  
Chief Constable  
Royal Ulster Constabulary Headquarters  
Brooklyn  
Knock Road  
3rd June 99

Dear Chief Constable,

We are writing in connection with the recent publicity surrounding the apparent discrepancy between your comments to the Police Authority and correspondence which passed between ourselves and the Minister for Security Adam Ingram.

You will be aware that the minutes of the Police Authority suggest that you indicated that "the RUC did not have information to suggest that she [Rosemary Nelson] was the subject of a specific terrorist threat."

However, we wrote to the Minister for Security Adam Ingram in August last year enclosing copies of two documents relating to Rosemary Nelson. One of those documents read "[W]e have you in our sights...we will teach you a lesson. RIP."

The second document threatened Breandan MacCionnaith and included a reference to his receiving advice from Rosemary Nelson. Her office address and telephone number were included in the document. We certainly felt that these documents contained sufficiently threatening material to bring them to the attention of the relevant minister. His response indicates that he also felt the documents to be of a threatening nature.

Indeed his private secretary commented that "the Minister has asked me to say that he hopes that those who produced them can be brought to justice for their threatening behaviour." According to the letter from the Minister's office the documents were passed "immediately to the Chief Constable's office for investigation. They would obviously, given the nature of the material, assess the security risk against Ms. Nelson."

In light of your comments to the Police Authority we would be grateful if you could provide information on the following:

1. Did Minister Ingram's office pass on the relevant documents to your office and, if so, when?
2. Was an assessment of the security risk against Rosemary Nelson carried out?
3. Who carried out that assessment?
4. What were the results of that assessment?
5. What did that assessment entail?
6. Was there an investigation of the written threats against Rosemary Nelson?
7. Who carried out that investigation?
8. What did the investigation entail?
9. What were the results of the investigation?
10. Did those carrying out the assessment or the investigation speak to Rosemary Nelson?

We look forward to hearing from you in the near future.

Martin O'Brien  
Director

**EXCERPTED TRANSCRIPT OF PARLIAMENTARY  
QUESTIONS AND ANSWERS IN THE PARLIAMENT OF GREAT  
BRITAIN SUBMITTED FOR THE RECORD BY PAUL MAGEEAN**

**MRS. ROSEMARY NELSON—10 FEB. 2000**

**Mr. McNamara:** To ask the Secretary of State for Northern Ireland for what reason the police did not contact the Committee on the Administration of Justice seeking originals of threats for forensic examination until some days after Mrs. Rosemary Nelson was killed [103821]

**Mr. Ingram** [holding answer 19 January 2000]: The investigation into the murder of Mrs. Nelson is being directed by Mr. Colin Port, the Deputy Chief Constable of Norfolk. While his investigation is in progress it is not appropriate to comment in detail on it. I understand from the Chief Constable that once the original threatening note to Mrs. Nelson was obtained it was immediately forwarded for independent forensic examination. That examination has not produced results which have, at this point, assisted the investigation.

**MRS. ROSEMARY NELSON—24 JAN. 2000**

**Mr. McNamara:** To ask the Secretary of State for Northern Ireland when the written threats issued against Mrs. Rosemary Nelson were passed to the Minister of Security's office by the Committee on the Administration of Justice. [103818]

**Mr. Ingram** [holding answer 17 January 2000]: The Committee on the Administration of Justice wrote to me on 10 August 1998.

**Mr. McNamara:** To ask the Secretary of State for Northern Ireland what steps were taken by the Government to ensure the safety of Mrs. Rosemary Nelson. [103820]

**24 JAN 2000 : COLUMN: 6W**

**Mr. Ingram** [holding answer 17 January 2000]: The Government sought assessments from the RUC on Mrs. Nelson's security on two occasions, February and August 1998. On each occasion the RUC determined that they had no intelligence to substantiate a specific threat to Mrs. Nelson. Following the RUC's reply to our August inquiry we wrote to the Committee on the Administration of Justice on 24 September 1998. My office replied to their queries about how Mrs. Nelson could apply for inclusion in the Key Persons Protection Scheme and for the provision of a personal protection weapon. We also suggested that she may wish to seek the advice of her local Crime Prevention Officer in relation to security advice at her home and at her work place.

**JUDGES AND LAWYERS—19 JAN. 2000**

**Mr. McNamara:** To ask the Secretary of State for Northern Ireland what action he took in response to the report of the United Nations' Special Rapporteur on the Independence of Judges and Lawyers, presented to the United Nations in 1998. [103819]

**Mr. George Howarth** [holding answer 17 January 2000]: My right hon. Friend the Member for Redcar (Marjorie Mowlam) then Secretary of State, met Mr. Param Cumaraswamy, UN Special Rapporteur on the Independence of Judges and Lawyers on 14 April 1999 to discuss the issues which he raised in his report presented to the United Nations in 1998. A copy of the statement that she issued afterwards is available in the Library.

19 JAN 2000 : COLUMN: 446W

The report called for an independent inquiry into the murder of Patrick Finucane. In February 1999 the Government took receipt of alleged new evidence into the murder. We undertook to consider this very carefully before deciding whether any further action was necessary. The DPP(NI) decided to ask the Chief Constable to look into the allegations and a further police inquiry was announced on 28 April into the murder and related issues. A person has been charged with Mr. Finucane's murder. We will be in a better position to decide what, if any, further action is needed when the police investigation and criminal proceedings have been completed.

Mr. Cumaraswamy refers in his report to the introduction of the new Police Ombudsman for Northern Ireland. On 11 October 1999, the Government announced the appointment of Mrs. Nuala O'Loan as Police Ombudsman Designate for Northern Ireland. The Ombudsman will have complete control over the Police Complaints system. She will be required to carry out independent investigations into serious complaints against the police. The Police Ombudsman has been appointed on a designate basis until the new office is established. This interim period will enable the Ombudsman Designate to have a direct say in the structure, staff and ethos of the office. This highlights the independence of the office.

The report also comments on audio/video recording in the holding centres. The police have a statutory Code of Practice which governs video recording and the detention, treatment, questioning and identification of terrorist suspects. A statutory Code of Practice on audio recording became mandatory on 24 May 1999. It is a disciplinary offence for a police officer to breach either of the Codes of Practice. Full audio recording and video recording of all interviews of persons in custody now takes place. The Chief Constable of the RUC has invited the Law Society to be involved in the training of Detective Officers who are involved in such interviews.

**“RUC STILL HAS QUESTIONS TO ANSWER OVER NELSON KILLING,” REPRINTED FROM *THE IRISH NEWS*, MARCH 14, 2000**

**BY STEVEN MCCAFFERY TOMORROW MARKS THE ANNIVERSARY OF THE MURDER OF LURGAN SOLICITOR ROSEMARY NELSON. IRISH NEWS REPORTER STEVEN MCCAFFERY TALKS EXCLUSIVELY TO PARAM CUMARASWAMY, THE UNITED NATIONS SPECIAL RAPPORTEUR CHARGED WITH THE TASK OF MONITORING THE INDEPENDENCE OF LAWYERS AND JUDGES AROUND THE WORLD**

It took only hours for news of the bomb attack on Rosemary Nelson to spread across Ireland, Britain, Europe and the United States. But one of the earliest telephone calls was to Kuala Lumpur.

Malaysian United Nations official Param Cumaraswamy, the ‘special rapporteur’ mandated to monitor the independence of judges and lawyers around the world, knew Mrs. Nelson.

He had heard her concerns for her safety at first hand and had informed UN officials in Geneva of her allegations of police harassment.

The concerns for her safety were also raised by hate mail she had received and threatening leaflets distributed by loyalists.

But concerns are one thing. Murder is another.

The call came as a deep shock.

“The night when I got the news on the telephone—that her car was bombed and she was in a critical condition, and half-an-hour later or so she had passed away—it did come as a real shock to me, because I was extremely concerned about her safety.

“I am only saddened that once again there is another high profile lawyer gone,” Mr. Cumaraswamy told the Irish News.

“If only the Patrick Finucane case had been properly investigated and the perpetrators and all other angles of state collusion been investigated thoroughly, there could have been a saving grace in this particular case.”

In 1998, the UN official had detailed Mrs. Nelson’s allegations in a report to the UN. He met Mrs. Nelson twice, once in Belfast and again in Washington.

He has confirmed he also wrote to the British government in August 1997 calling on it to ensure the Lurgan solicitor’s safety.

“I remember the first meeting I had with her. I will never forget, I was really concerned after that long meeting,” he said.

“She told me all her problems – I had already been given some materials about the threats she said she was subjected to – but after meeting her I asked her whether she was ever concerned for her safety or her family, or children.”

Mrs. Nelson was concerned for her family, he said. But he believes she was also aware that as a high-profile solicitor—and despite her personal fears—she had “a very important role to play in the circumstances prevailing in Northern Ireland”.

“I was very impressed by her. There are very few lawyers who show that kind of courage and tenacity in pursuing, against all odds, and standing up for the rights of her clients. Very impressive, very impressive.”

**“But I was very concerned. I was quite concerned about her.”**

Later this year Mr. Cumaraswamy will present the UN Human Rights Commission in Geneva with his latest report. It will address matters of concern in more than 50 countries, but will include his latest findings in the cases of both Mr. Finucane and Mrs. Nelson.

In the past his observations have caused controversy.

There were tense scenes in a BBC Panorama programme last year when RUC Chief Constable Sir Ronnie Flanagan strongly denied that, during a meeting with Sir Ronnie and senior officers, Mr. Cumaraswamy was told some lawyers may be working to a paramilitary agenda.

The RUC has denied this and the chief constable has pointed to the moves made in the aftermath of Mrs. Nelson’s murder to establish an investigating team made up, not just of RUC officers, but officers brought from Britain.

Mr. Cumaraswamy now expresses hopes the investigating team, headed by Deputy Chief Constable of Norfolk Colin Port, will secure the conviction of those responsible for the killing.

“I would also be very interested in any outcome of these investigations to either rule out any RUC and/or security force collusion,” he said.

“If there is any evidence that should also be made open and public.

“Rosemary Nelson had lodged several reports against RUC officers, therefore it is important that that aspect too is carefully investigated.”

He pointed to a “pattern” between Mrs. Nelson’s murder and that of solicitor Patrick Finucane, who was killed by loyalists in 1989.

Evidence of a security force role in the circumstances surrounding Mr. Finucane’s killing continues to the surface.

“Just before that murder the intimidations were intensified – with telephone calls and various statements made by various personalities.

“And if you look at Rosemary Nelson herself, there is a similar pattern. The harassments and intimidations were intensified. Her concern, was in her case, in regards to the RUC. And she took a lot of trouble at the time to officially lodge her complaints.

“Previously defence lawyers were just frustrated by the entire mechanism,” he said.

A central element of the controversy surrounding Mrs. Nelson’s murder is the claim that colleagues had asked the British government to provide her with protection.

But Mr. Cumaraswamy said he believes she would have been wary of protection involving security forces he says she “never trusted”.

But he added: “She may not have asked, but I recall I had written to the government expressing my concerns and that the government had a duty to protect its lawyers.”

Against the background of widespread calls for a full inquiry into Mrs. Nelson’s murder, some critics have asked why this death should be highlighted and not others.

“I know. This question has been asked before, ‘Why so much attention to Patrick Finucane?’ And now about Rosemary Nelson,” said the UN official.

“As far as I am concerned the independence of defence lawyers is critical in any democratic state for the rule of law to be applied and protected.

“And it is for this reason that we in the United Nations brought out in 1990 a set of principles for the protection of these defence lawyers enforcing upon governments certain obligations.

"When these defence lawyers are threatened in the discharge of their duties, there is a specific provision that such defence lawyers, once a government comes to know that they are threatened, that they should provide them with security.

"The state is expected to protect them."

He added: "If the state doesn't provide protection for [lawyers], what kind of protection will it provide others?"

"My concern here is whether the United Kingdom really complied with those standards in these two cases."

Did the government fulfil its obligations in Mrs. Nelson's case?

"This is why I want an inquiry into it," he said.

"On the face of all these materials there is a very strong concern, a strong suspicion, that the state may not have complied.

"The quicker these things are resolved the better for northern Ireland, because we cannot ultimately have a very effective peace process when people are labouring under all these suspicions about the authorities who are there to protect."

Mr. Cumaraswamy is careful to note that "no doubt the RUC has played an effective role in many other areas", but he added that the security forces have questions to answer in Mr. Finucane's and Mrs. Nelson's cases.

He refers to claims made by both solicitors that they were threatened by security forces and he issues a challenge to government.

"You tell us," he said. "You knew about it. What did you do?"

"That is what I call enforcement of human rights standards."

A year after Mrs. Nelson's death, Mr. Cumaraswamy believes she was targetted because of her professional commitment.

"I think it really falls down to her courage—irrespective of all she was subjected to—she was very courageous and determined to continue regardless.

"Whereas in many other cases the lawyers would have backed out—after particularly Patrick Finucane. In this case she was quite consistent with her professional duties and hence she became a target for this attack."

**REPORT BY THE INDEPENDENT COMMISSION FOR  
POLICE COMPLAINTS FOR NORTHERN IRELAND  
RELATING TO COMPLAINTS AGAINST OFFICERS OF THE  
ROYAL ULSTER CONSTABULARY**

**This statement is made in accordance with Article 9 Paragraph 8 of the Police (Northern Ireland) Order 1987, relating to complaints against officers of the Royal Ulster Constabulary made by Lawyers Alliance for Justice in Ireland on behalf of Rosemary Nelson, solicitor, and Mr. Colin Duffy.**

It is a statutory requirement that, on completion of an investigation into complaints against members of the Royal Ulster Constabulary which has been supervised by a member of the Independent Commission for Police Complaints for Northern Ireland, the Supervising Member provide a statement. This document should indicate that the investigation has been conducted satisfactorily, or, if there are grounds for withholding or qualifying this certification, the legislation requires the supervising member to specify those aspects of the investigation which gave rise to concern.

The following statement will confirm that, by the conclusion of the investigation, it was satisfactory, but that there were aspects of the earlier stages that gave rise to serious concerns as to its proper conduct.

### **THE COMPLAINTS**

On 10<sup>th</sup> April 1997, 18<sup>th</sup> July 1997 and 10<sup>th</sup> September 1997 the matters under investigation were variously referred to the Independent Commission for Police Complaints for Northern Ireland under Article 7 of the Police (Northern Ireland) order 1987.

The nature of the complaints fell within the category of discretionary supervision under the provisions of Article 9(3)(a) of the Order, and in this context the Commission confirmed that it would supervise their investigation.

The member of the Commission supervising the investigation approved the appointment of an Investigating Officer of the rank of Superintendent, who had been nominated by the Royal Ulster Constabulary. In turn, a colleague of the rank of Chief Inspector, who undertook the day to day conduct of the investigation, assisted the Investigating Officer.

The allegations made by the Lawyers Alliance for Justice in Ireland concerned death threats to Mrs. Nelson.

In order to gain a more detailed understanding of the nature of these and the circumstances in which they were allegedly made, the Supervising Member directed that the Chief Inspector interview, in her presence, Mrs. Nelson and Mr. Duffy. These interviews took place on 16<sup>th</sup> September 1997 and 15<sup>th</sup> October 1997 and written statements were provided.

Additional witness statements were forwarded by Mrs. Nelson and the Lawyers Alliance for Justice in Ireland and, at the direction of the Supervising Member, further statements were sought from the Committee on the Administration of Justice, who provided statements from two clients of Mrs. Nelson detailing references allegedly made about her by police officers during interviews at Gough Police Office. Efforts to secure interviews with these witnesses and others did not meet with success.

The Supervising Member and a Commission staff colleague spent half a day at the RUC Complaints and Discipline Department reviewing

various associated crime file documentation. Subsequently the Supervising Member formally directed that extracts from these be copied and handed over to the Commission.

### **SUPERVISION OF THE INVESTIGATION**

The supervision and direction by a member of ICPC of an investigation into alleged police misconduct represents a pro-active engagement with the detailed process of the inquiry. There are meetings for information, review and the issuing of further directions held between the Supervising Member, Investigating Officer and their various assistants.

The Investigating Officer is required to keep the member informed of all developments in a case, provide all relevant documentation upon his receipt of it and follow the directions given by the Supervising Member.

At interviews of witnesses and police officers who are the subject of complaints the Supervising Member has a right to be in attendance and to direct that certain questions be put or specified matters addressed.

It is the responsibility of the Investigating Officer to conduct his enquiries in an effective and ethical manner to the satisfaction of the Supervising Member.

In the course of this investigation, in addition to the measures previously outlined in this statement, 28 interviews took place with police officers. The Supervising Member attended 12 of these.

Throughout the investigation the Supervising Member consistently raised concerns about its conduct and the behaviour and attitudes displayed by police officers in the course of interviews.

Ultimately she concluded that the accumulated effect of these shortcomings was such as to be seriously damaging to the credibility of the investigation itself.

Equally, the confidence that the complainants and others should rightly expect to have in the investigation of serious allegations concerning threats to a solicitor in the conduct of her professional duties was potentially severely undermined.

The appendix attached to this statement sets out a catalogue of concerning incidents that occurred in the course of this investigation. Each of these incidents, taken in isolation, would be unacceptable but not calculated to render the overall investigation severely flawed. However, considered accumulatively, they do add up to behaviour and attitudinal predispositions which are both unacceptable and undermining of the rigorous professionalism and professional detachment which the Supervising Member is, by statute, required to be satisfied has pertained in any particular case.

In summary, the investigation of the alleged threats to Mrs. Nelson by officers of the RUC was unacceptable to the Supervising Member of the ICPC because:

- the officer assisting the Investigating Officer appeared to have difficulty in co-operating productively with the power and authority relationships which are an inherent facet of supervised investigations
- the concerns raised by the Supervising Member were either not addressed or addressed unsatisfactorily
- the apparent prompting of the police officers to have ready prepared statements in advance of interview undermined the possibility of full and candid responses to important questions



- the ill-disguised hostility to Mrs. Nelson on the part of some police officers was indicative of a mindset which could be viewed as bordering on the obstructive.

### **THE METROPOLITAN POLICE TAKE OVER THE INVESTIGATION**

The investigation appeared to be close to an outcome which would result in it being declared by the Supervising Member to be "Unsatisfactory". At the Supervising Member's request the Chairman of the Commission conveyed her concerns to the Chief Constable. Because there were issues of public interest and in the light of the United Kingdom's commitments to the United Nations, who had established an interest in the case, the Secretary of State was also communicated with.

The concerns surrounding the investigation were discussed in a meeting at the Commission's headquarters on 1<sup>st</sup> July 1998 between the Supervising Member, the Chief Constable and his Staff Officer, the Chairman of the Commission and the Commission's Chief Executive.

The Chief Constable proposed that the complaints investigation be taken over by officers from an outside force, subject to the usual vetting of, and approval by the Commission, of the nominated Investigating Officer.

This suggestion was acceptable to the Supervising Member.

The Commission is a statutory body with supervising and disciplinary responsibilities in respect of alleged police misconduct. These responsibilities and the powers that accompany them constitute a position of privilege in respect of any concerns that might be identified by the Commission Members in the discharge of their duties. It is therefore inappropriate for the Supervising Member's concerns on the conduct of this investigation to be considered as constituting a complaint by the Commission.

In response to these concerns, the Chief Constable indicated that he was of a mind to ask the external Investigating Officer to consider the conduct of officers in the investigation undertaken by RUC officers. This was not to be a full and formal investigation into the details of the specified conduct, but rather than over-arching review that would be reported to him.

While clearly the Commission could not submit its stewardship in this case to the scrutiny or critique of an Investigating Officer, the Supervising Member indicated that she would however provide information on the conduct of the police officers concerned.

On 9<sup>th</sup> July 1998 the Supervising Member met with and approved as investigating Officer Commander Niall Mulvihill of the Metropolitan Police Service.

### **THE INVESTIGATION BY THE METROPOLITAN POLICE**

The Commander and his team met regularly with the Supervising Member to discuss and agree the course of the reviewed investigation.

Numerous attempts were made to obtain interviews with Mrs. Nelson, Mr. Duffy and various witnesses. Mrs. Nelson, Mr. Duffy and one other witness attended for interview at the Commission's offices on 21<sup>st</sup> September 1998; a further witness attended on 22<sup>nd</sup> September 1998.

Mr. Lynch from the Lawyers Alliance for Justice in Ireland was present on both dates. One other witness attended the Commission's offices on 6<sup>th</sup> November 1998. Commission Representatives supervised all of these interviews. Four other potential witnesses failed to cooperate with the enquiry.

During the course of the Commander's investigation, thorough interviews were conducted with 21 accused RUC police officers. The Supervising Member oversaw 13 of these interviews.

The copious documentation, assimilated during the course of the investigation, included copies of numerous sets of interview notes, custody records, Occurrences Book Entries, telephone and fax billing records. Contemporaneous notes recorded by Mrs. Nelson were provided. These proved to be significant.

The Supervising Member can now confirm that the investigation of these complaints has been conducted to the satisfaction of the Independent Commission for Police Complaints for Northern Ireland.

Geralyn McNally  
Supervising Member  
22<sup>nd</sup> March 1999.

#### APPENDIX

Aspects of this investigation that illustrate the unsatisfactory nature of the inquiry by the RUC are listed below.

- Observable general hostility, evasiveness and disinterest on the part of the police officers involved in this investigation.
- One officer attended for interview 45 minutes late, without explanation. He smelled of alcohol and continually referred to one of the complainants as being the murderer of two police officers.
- An officer indicated, through the Chief Inspector, that on reflection he considered that he ought not to have answered any of the questions that had been put to him.
- An officer's uncooperative stance during an interview was explained by the Chief Inspector as indicative of his "very peppery" character.
- Having declined access to legal advice, an officer, when questioned about matters crucial to the enquiry, asked if the interview was going to end. He indicated that if this were not to be the case he would avail of legal advice. This officer left refusing to sign the last page of his statement, which made references to key allegations.
- Prior to three supervised interviews, the officers concerned, without the prior knowledge of the Supervising Member, prepared and presented at interview written statements.
- When questioned, after caution, about specific allegations, one of these officers substantially answered by indicating that his written statement constituted his reply. By doing so he did not adequately address the very serious matters that were being put to him.
- The Supervising Member inquired of this officer how it was that he had decided to prepare a statement in advance of the interview. He replied that he had done so at the request of the Chief Inspector who had conducted the interview.
- The Supervising Member directed that the Chief Inspector was not to repeat this request to any other police witness or suspect, as his doing so would prejudice any subsequent interview. At this point the Chief Inspector informed the Supervising Member that he understood that one such statement was currently in preparation by another accused officer.

- The concerns arising from the pre-interview prepared statements were conveyed in writing to the Investigating Officer. His reply contained a denial on behalf of the Chief Inspector that any such requests had been made by him. However, in response to a question from one officer he had indicated that written statements could be provided. The Investigating Officer confirmed that it was inappropriate for either confirmations of this nature to be provided or for statements to be requested.
- The degree to which the Chief Inspector's rebuttal stands at variance to the reply given to the Supervising Member's direct questioning of the police officer who arrived at the interview with a prepared statement has not been satisfactorily explained.
- In the report of the investigation drafted by the Chief Inspector he makes a number of assertions which constitute judgments on the moral character of Mrs. Nelson and others.
- Although early in the report the Chief Inspector stated that he had no reason to doubt Mrs. Nelson's reliability as a witness, he subsequently recorded that he in fact did harbour doubts on her reliability. This change of opinion appears to rest primarily on the difficulties that the Chief Inspector experienced in his efforts to arrange interviews with Mrs. Nelson.
- In another part of his report the Chief Inspector questioned the circumstances in which Mrs. Nelson's clients' evidence had been prepared and forwarded. This concern is not matched by any supporting substantial evidence.
- The Chief Inspector cited the volume and timing of correspondence received from various international groups on behalf of Mrs. Nelson as giving rise to what he claimed was the reasonable suspicion that the complaints were more to do with generating propaganda against the RUC than establishing the truth.
- Another senior officer, reporting on the investigating, coupled the quality of the evidence given by Mrs. Nelson, a solicitor and officer of the court in good professional standing, with that of her clients, whose reliability was deemed by him to be questionable. The evidence given by Mrs. Nelson was seen as being "no better" than that given by her clients.

Geralyn McNally  
Supervising Member  
22<sup>nd</sup> March 1999.

**A COMMENTARY BY THE CHAIRMAN OF ICPC  
ON THE REVIEW OF RUC INVESTIGATIONS  
INTO COMPLAINTS BY OR ON COMMANDER N G MULVIHILL  
METROPOLITAN POLICE**

**INTRODUCTION**

In June 1998 the Chairman of the ICPC, through the medium of an "in confidence" letter, brought to the attention of the Chief Constable the Supervising Member's concerns about the RUC's conduct of investigations in the Nelson complaints case. This letter stated the concerns in broad terms and provided some illustrative examples.

In the ensuing discussions between the Member, the Chief Constable and the Chairman of ICPC the Supervising Member rejected any suggestion that her concerns should be expressed in terms of a formal complaint. This was because her association with the investigation was on the basis of her public appointment under statute. To position herself as a citizen with a grievance, as opposed to an official office holder drawing attention to serious concerns, would have been wholly inappropriate and essentially undermining of her statutory role. The Chief Constable was not of a mind to exercise his discretion to have the matter formally investigated under Article 8 of the Police (Northern Ireland) Order 1987. He did, however, decide to request Commander Mulvihill of the Metropolitan Police, who had been brought in to take over the substantive complaints inquiry, to review also the original RUC investigation.

It should be noted that the terms of reference for this review are specific to the conduct of the RUC. The Commission had not requested any critique of its role in the investigation. However, the report which emerged contains extensive commentary on the part played by the Supervising Member in this case and, uninvited, ventures into what might be interpreted as direct criticism of the Member and the Commission.

Early in his report Commander Mulvihill states that I have taken as the basis of my review that letter from the Chairman. I take that to be the "in confidence" letter of 29/6/98 from the Chairman of ICPC to the Chief Constable.

This letter, as has already been stated, was sent for the sole purpose of personally alerting the Chief Constable to the generality of the concerns that had emerged in this case. It was not the intention of the author that its contents should be construed as constituting the detailed specifications of all that was seen to be amiss in the investigation. Equally, it was not his intention that it should be used for any purpose, other than that for which it was originally intended.

The first intimation that the Chairman of ICPC had of the use of his correspondence in this manner was upon his receipt of a copy of the Commander's report. In his report on this review Commander Mulvihill states that the ultimate review would be a reinvestigation, but since that was not to be the case it was therefore a review of the RUC investigation procedures rather than of any specific material produced by that process.

The result of this is a report that has not had the benefits of the full rigours of the formal investigative process. Thus it is that it contains assertions, conclusions and recommendations that rely heavily on impression and belief, as opposed to systematically testable evidence.

### AT THE BEGINNING

The story of concerns associated with the Rosemary Nelson case begins with the initial refusal of the RUC to accept as a complaint correspondence from the Lawyers Alliance for Justice in Ireland, received by the ICPC and forwarded to the RUC on 20/3/97. In this correspondence allegations were made to the effect that police officers had threatened the life of Mrs. Nelson in the course of interviews with persons under detention.

Following representations from the ICPC the RUC revised its earlier decision and accepted the complaint, categorising it as an allegation of "incivility."

In his report Commander Mulvihill comments on the initial refusal to accept the complaint in the following terms. The fundamental point is that there was no resistance from the RUC, once the matter had been the subject of discussion, to revisit the earlier decision.

I disagree. Had this case not been initially referred through the offices of the ICPC, we would not have known of its existence and not been in a position to challenge the decision to refuse to accept it as a complaint. Consequently, it would not have been investigated. The fundamental point is that the RUC were initially disinclined to accept a serious allegation as constituting a legitimate complaint. Commander Mulvihill states that:

sometimes there is a very fine line between what should, and what should not, be recorded as a complaint.

I agree, but where along this fine distinguishing line should one place alleged threats to Mrs. Nelson's life?

Commander Mulvihill, referring to the decision to categorise the complaint as being one of "incivility" states that: I can find nothing sinister or undermining about this particular action.... The use of the category "incivility" does not seem inappropriate in the circumstances. In another part of his report he gives further confirmation of his belief in the appropriateness of the incivility category. He states that:

The allegations were very broadly based but with the common thread of RUC interviewing officers verbally abusing suspects and, in particular, making unpleasant references to Mrs. Rosemary Nelson, a solicitor, who happens to have a facial deformity.

I disagree with Commander Mulvihill's analysis and conclusions. There is no doubt that a considerable degree of incivility is implied in the allegation that a Solicitor's life was threatened by police officers. However, for a case to come into the complaints system, after initial refusal to acknowledge its status as a complaint and then to be categorised as "incivility" could be construed as representing both resistance to and trivialisation of a serious matter on the part of the RUC. Further, this category is indicative of an allegedly relatively minor disciplinary offence rather than a serious crime, allowing for the inference to be drawn that this case was not treated seriously from the very outset.

## BEHAVIOUR & ATTITUDE OF INVESTIGATING OFFICERS

A fundamental concern is that the RUC officers involved in the investigation of this case, by their behaviour and attitude, lent credibility to an interpretation that their frame of mind was such as to be undermining of the investigation, no matter how subconsciously or unintentionally that might have been. There is a considerable body of social scientific research on the extent to which biases, unchecked by adherence to the principle of proof by disproof, adversely influence perception, decision and action. The challenge could be put that the Investigating Officers in this case fell victim to such circumstances.

Commander Mulvihill records in his report that the ICPC hold concerns regarding the "conclusions" drawn by the Assistant Chief Constable and the Chief Inspector. They are anxious that Investigating Officers base conclusions wholly on the evidence and do not tread into broad areas of personal comment which stray from the allegations made and the evidence uncovered. Their rationale is that the inclusion of such comments can give rise to a suspicion of partiality on the part of the Investigating Officer, in particular, and the RUC in general.

It is important to note just what exactly the comments, written as part of a formal investigation report which was ultimately intended for transmission to the Director of Public Prosecutions, actually were.

The Assistant Chief Constable recorded in his report that he had doubts about Mrs. Nelson's reliability, apparently basing this assessment on a lack of response to some correspondence and an inability to arrange witness interviews. He coupled her evidence with that of one of her clients whom he described as "of bad character."

The Chief Inspector questioned the circumstances in which the evidence of Mrs. Nelson's clients was prepared and forwarded, commenting that he would "have expected a solicitor to be more professional in putting her case." He concluded that the volume and timing of correspondence from various international groups on behalf of Mrs. Nelson gave rise to the reasonable suspicion, as he saw it, that the complaints were "more to do with generating propaganda against the RUC than establishing the truth."

In referring to the Commission's expressions of concern Commander Mulvihill comments,

I make no critical observations in this area but,...their concerns are worthy of note.

I disagree. I do make critical observations in this area and the Commission's concerns are worthy of a good deal more than note.

There has been a barrage of allegations to the effect that RUC officers associated Mrs. Nelson's character with those of the people whom she represented, and as a consequence the RUC did not treat the complaints made by her, or on her behalf, seriously.

Setting aside all the other concerns that have been raised by the Commission in this case, the comments that the Investigation Officers committed to writing are incontrovertible. They could lend themselves to being presented as evidence of a negative attitudinal approach that permeated the investigation, giving foundation for, if not substance to, serious allegations that are far reaching in their implications.

In the course of his review Commander Mulvihill interviewed the Chief Inspector who was centrally involved in the investigation. On the basis of this contact, he concluded that the Chief Inspector was clearly a strong-minded and principled man imbued with a strong sense of duty. Presumably also on the basis of interviewing the Chief Inspector, the Commander was convinced that he did his best, worked industriously and that any perception that he might somehow have failed was wholly unintentional on his part. Again, presumably drawing on the Chief Inspector's self-reported accounts, Commander Mulvihill concluded that, The style of his interviewing technique was generally robust and determined, clearly displaying an intention to get to the truth.

In fact, the Chief Inspector is reported to have been under the impression that the Supervising Member in this case specifically requested his continued involvement in the investigation after he had been transferred to other duties. As in a number of issues that will be referred to later in this commentary, this is not a recollection shared by the Commission Member concerned.

The report explores some aspects of the concerns raised by the Commission and draws a number of conclusions. The certainty in which many of these are expressed is matched only by the subjectivity of the beliefs on which they are founded.

The Commander makes mention of an earlier related case in which complaints arose out of the allegedly inappropriate behaviour towards a potential witness by police officers in a murder investigation in which one of Mrs. Nelson's clients was a suspect.

Ms McNally gives an account of an interview with this complainant, supervised by the Commission Member. The complainant's husband, her solicitor and a member of the Commission staff were also present.

According to Ms McNally, the Chief Inspector sought to encourage the complainant to allow the matter to be "informally resolved," thus withdrawing her complaint from the formal investigation process.

If this account is accurate the situation represents a serious departure from the required procedures, as a supervised formal investigation, once commenced, cannot be transferred to the "informal" status. Had the Commander been conducting an investigation, rather than a review, he would have had the opportunity to interview several witnesses to the encounter. However, he did discuss this interview separately with both Ms McNally and the Chief Inspector and notes that perceptions play an important part in this area of concern.

It would appear that Commander Mulvihill's impression was that the Chief Inspector's version of events was the more convincing of the two. He did not believe that he ever intended to suppress evidence and notes the Chief Inspector's comment that he was attempting to control a difficult set of circumstances. This is an interesting, if not telling, perception of events. The Chief Inspector was not there to "control" anything, but to conduct an interview under the supervision and direction of the ICPC Member.

In concluding his commentary on this case the Commander states that It is only right to point out that in this particular investigation, conducted by the Chief Inspector and supervised by Ms McNally, resulted in the ICPC issuing a certificate of satisfaction at its conclusion. This is perfectly true. It signifies that by the conclusion, the investigation had met the minimum standard necessary for the complaint to be considered acceptably investigated: it is not an endorsement of every aspect of the Investigating Officer's conduct throughout the inquiry.

Commander Mulvihill's report encompasses a review of the practice of police officers preparing written statements in advance of interview.

Ms McNally cites an occasion when an officer arrived for interview with a prepared statement. On handing it to the Chief Inspector he is reported to have stated, "forename, here is the statement you asked for." According to Ms McNally, when she inquired as to how the officer had come to prepare the statement he replied sharply to the effect that the Chief Inspector had requested it. Her account of this incident goes on to record that, after the interview was over, she expressed her grave concern to the Chief Inspector that statements had been requested from accused officers without any consultation with the Supervising Member. She records that he replied with the words "it was done to hurry things along."

During the later investigation by the Metropolitan Police the officer involved in this incident was again asked, in an audio taped interview, about the origins of his written statement and again he replied that he had been requested to do so by the Chief Inspector. He also stated in this interview that this was a departure from standard practice.

The Chief Inspector's reaction to these accusations was firstly, that a junior officer would never call him by his forename and, secondly, that he never made any such request for a statement in advance.

According to Commander Mulvihill, the recollection of conversation between the Chief Inspector and Ms McNally, after those interviews, is also subject of dispute. Certainly it had, as one of its themes, the issue of prepared statements. However, whereas Ms McNally says that the Chief Inspector said "it was done to hurry things along," the Chief Inspector, in denying pro-actively seeking such statements, say that when officers made them "it can hurry things along."

Commander Mulvihill states that he has no doubt that, responding to Ms McNally's question, the officer being interviewed may well have indicated that he made the statement at the request of the Chief Inspector.

In spite of Ms McNally's account, which was twice corroborated by the officer under investigation, the Commander concludes that in the overall context of the proceedings he accepts the Chief Inspector's version of events.

## THE INTERVIEWS WITH POLICE OFFICERS

The Mulvihill report makes some comment on, and recommendations in respect of, the serving of Form 17/3 on police officers who are the subject of complaints.

In England and Wales these state very briefly the offences which an officer is accused of. However, in the RUC these, along with full witness statements, are supplied to accused officers after each statement is made.

Commander Mulvihill comments Whilst it is essential that any suspect officer is treated fairly, and advised by notice within a very short time-frame of any allegations made, the supply of extensive "evidence" from statements taken can make the investigation interview extremely predictable. The Investigation Officer is very restricted in developing an interview strategy to test the honesty or recollection of a suspect



officer who has been provided with much of the written evidence in advance. An ordinary suspect for criminal offences has no such safeguard.

In summary, police officers who are accused of serious offences are supplied with copious material on the case which is being set out against them. It is a matter of dispute, as has already been noted, as to whether or not they are invited to prepare their own written statements; in preparation for an interview scheduled on average three weeks ahead, and to which they might or might not show up.

Commander Mulvihill recommends that this practice should be reconsidered.

Others might view it to be an outrageous, systematic undermining of the investigative process which is worthy of a good deal more than administrative reconsideration.

Matching the above, with the nature of the complaints made, the reluctance of witnesses to attend at police stations and the attitudes they expect to encounter, the remarkable fact is that any witnesses come forward in such circumstances. However, time after time the difficulties experienced in getting witnesses to co-operate with complaints investigations is cited as evidence of their lack of integrity or reliability.

The Mulvihill report states that Generally, the Chief Inspector did conduct thorough interviews.

The following paragraphs illustrate the thoroughness with which some of these were conducted.

*unsupervised interview*

After the usual cautions the Chief Inspector put the question "How do you respond?"

A: 8-line reply

Interview over

*unsupervised interview*

After the usual cautions the Chief Inspector put the question "How do you respond?"

A: 6-line reply

Interview over

*unsupervised interview*

After the usual cautions the Chief Inspector put the question "How do you respond?"

A second question was put to the officer during this interview.

Both replies amounted to 20 lines of text. 4

Interview over

*unsupervised interview*

After the usual cautions the Chief Inspector put the question "How do you respond?"

A: 7 lines

Interview over

*unsupervised interview*

After the usual cautions the Chief Inspector put the question "How do you respond?"

A: 7 lines of text

Interview over

*unsupervised interview*

After the usual cautions the Chief Inspector put the question "How do you respond?"

One further question was put.

Both replies amounted to 13 lines of text, including the comment "I believe these allegations have been concocted by Rosemary Nelson, Solicitor to maintain her campaign of attempting to discredit the RUC."

Interview over

*unsupervised interview*

After the usual cautions the Chief Inspector put the question "How do you respond?"

A: 5 lines of text

Q: Anything else you wish to say?

A: No

Interview over

*unsupervised interview*

After the usual cautions the Chief Inspector put the question "How do you respond?"

A: It's a total fabrication

Q: So you deny the allegation, is that correct?

A: Yes

Interview over

*unsupervised interview*

After the usual cautions the Chief Inspector put the question "How do you respond?"

A: 3 lines of text

Q: Anything else you wish to say?

A: No

Interview over

*unsupervised interview 4*

After the usual cautions the Chief Inspector put the question "How do you respond?"

A: 8 lines of text

Q: Anything else you wish to say

A: No

Interview over

*unsupervised interview*

After the usual cautions the Chief Inspector put the question "How do you respond?"

A: 6 lines of text

Q: Anything else you wish to say?

A: That just about covers it

Interview over

*unsupervised interview*

After the usual cautions the Chief Inspector put the question "How do you respond?"

A: 5 words

Q:.....

A: 6 words

Q: Anything else you wish to say?

A: 3 lines of text

Interview over

*unsupervised interview*

After the usual cautions the Chief Inspector put the question "How do you respond?"

A: 2 lines of text

Q: Anything else?

A: No

Q:.....

A: 2 lines of text

Interview over

*unsupervised interview*

After the usual cautions the Chief Inspector put the question "How do you respond?" A: 15 lines of text

Q: Anything else?

A: 2 lines of text

Interview over

*unsupervised interview 4*

After the usual cautions the Chief Inspector put the question "How do you respond?"

A: 4 words

Eight further questions were asked: one answer was "Yes" and seven replies were "No."

Interview over

*unsupervised interview*

After the usual cautions the Chief Inspector put the question "How do you respond?"

A: 4 words

Three further questions were asked: one answer was "Yes" one "No" and one "I don't know."

Interview over

*unsupervised interview*

After the usual cautions the Chief Inspector put the question "How do you respond?"

A: 2 lines

Four other questions were put: one answer covered two lines of text, two answers of "No" and one of "Absolutely not."

Interview over

*unsupervised interview*

After the usual cautions the Chief Inspector put the question "How do you respond?"

A: That's just a ball of lies

Q: Anything else you wish to say?

A: No

Interview over

*unsupervised interview*

After the usual cautions the Chief Inspector put the question "How do you respond?"

A: 3 lines of text

Q: Anything else?

A: No

Interview over

*unsupervised interview*

After the usual cautions the Chief Inspector put the question "How do you respond?"

A: 2 lines of text

Two other questions were put: one answer was "That's correct" and the other was "No."

Interview over

*unsupervised interview 4*

After the usual cautions the Chief Inspector put the question "How do you respond?"

A; 4 lines of text

Three other questions were put: one answer was "Yes" another "No" and a third covered two lines of text.

Interview over

*supervised interview*

This is an account of the interview where the officer arrived at interview with a written statement that he stated the Chief Inspector had requested him to prepare. Ms McNally was present at his interview.

Q: Are you submitting a pre-prepared statement?

A: That's correct, yes

Q:.....

A: I do, yes

Q:.....

A: I can't recall

Q:.....

A: Yes

Q: .....

A: I can't comment

Q:.....

A: Again, I can't answer that

Q: .....

A: I refer you to the statement I handed in

Q:.....

A: I refer you to the statement I'm handing in

Q:.....

A: I refer you to the statement I handed in

Q: .....

A: I refer you to the statement I handed in

Q: .....

A: No

Q:.....

A: No

Q:....

A: No

Q:.....

A: No

Q:....

A: Yes

Q:...

A: I don't recall

Q;.....

A: 2 lines of text 4

Q:.....

A: I cannot remember

Q:.....

A: 4 lines of text

Q:.....

A: 2 lines of text

Q:.....

A: 2 lines of text

Q: Anything else you wish to say?

A: No

Interview over

*supervised interview*

Ms McNally was present at this interview.

Twenty-three questions were put to the officer.

His answers were as follows:

7 were answered by "Yes"

3 were answered by "No"

1 was answered by the word "Me"

1 answer was "Dunno"

5 answers were "Nothing to say"

1 answer was "I have no way of knowing"

The answers to the other questions put amounted to less than fifty words.

Interview over

*supervised interview*

This is an extract from the notes made by Ms McNally at the time of the interview, which was in relation to the complaint by the lady who was a witness in a related case. The officer being interviewed concluded with the words "I believe the allegations are a concoction of lies made up (by the complainant) with the help of her solicitor Mrs. Nelson. I guess this has been done to discredit the RUC and the murder investigation team generally."

Commander Mulvihill comments that much has to be left to the investigator who will be reliant on experience and even intuition to determine how an individual interview should progress. He cautions that, in the Chief Inspector's conduct of interviews with accused officers, too authoritarian or challenging an approach would have led to him achieving far less than he did. His conclusion is that the style of the Chief Inspector's interviewing was generally robust and determined, clearly displaying an intention to get to the truth.

Commander Mulvihill had access to the same files that I have referred to in this commentary, but fails to comment on the possible negative consequences or implications of conducting interviews in the manner illustrated in the examples given above.

With regard to the demeanour of the officers being questioned, the Commander appears to base his comments on the same data utilised by the Commission Member in her expression of concerns in this matter.

He acknowledges that there were difficulties in arranging interviews with some officers and that appointments were cancelled at short notice. However, his view is that, When police officers are involved the complexity and likelihood of delays and difficulties are increased. Police officers do have court commitments and duty demands often at very little notice and equally, sometimes, there can be a pressing need to take leave at short notice.

I wonder what view would be taken of a non-police person who was accused of a serious offence and behaved in a manner similar to some of the police officers in this case.

Commander Mulvihill's advice is that, Given that appointments will inevitably not always be met, and that they are often broken at the eleventh hour, it would be prudent for a pager system to be established to ensure that ICPC Members are advised at the earliest possible time.

Others might view these circumstances differently. The failure on the part of police officers to attend for interview, or attend on time, could be seen as indicative of attitudes towards investigations such as this; attitudes which are possibly tolerated by the organisation.

It might be good advice to suggest that, except in the gravest of circumstances, attendance at complaints' interviews should be afforded the status similar to a direction to meet with the Chief Constable.

Much has been made of the statement by Ms McNally to the effect that an officer arrived forty five minutes late for an interview, smelling of alcohol and the fact that this was not brought to the attention of the RUC until three months later. Commander Mulvihill holds that this provides no opportunity for the RUC to address the matter or to prove or disprove the observation. This might well be the case. However, nobody has asked the officer in question about this matter, nor looked into why he was 45 minutes late. Regardless of the hype that this incident has been given, it is not the crux of the concerns that have been expressed in this case.

Commander Mulvihill comments on the strong feelings held by some officers and their affront at the indignity of being treated as common criminals, adding that, for them, the whole process is particularly aggravating. In referring to two of the officers who had been interviewed by the Chief Inspector, and subsequently by the Metropolitan Police, Commander Mulvihill observes that, I have to say when both officers were re-interviewed during my investigation they were indeed awkward characters. In fact, one of these officers refused to be further interviewed in respect of the criminal allegations. He acknowledges that the manner of each (of these accused officers) might well have fallen within the broad definition of being hostile.

In offering an explanation as to why police officers might behave in the manner in which they did, the Commander comments that some officers are so disgusted at 'the tables having been turned' that they react adversely.

Essentially, Commander Mulvihill saw the same manifestation of hostile behaviour as was observed by the ICPC Member, but appears to attribute much less significance to it than does she. He also does not accept that the Chief Inspector failed in how he dealt with 'the attitude' of suspect officers. The Commander recommends that officers should be reminded of the standards of manners required even when a suspect officer feels aggrieved at what he believes to be a false or malicious allegation.

Clearly, Commander Mulvihill does not view the behaviour of officers as outlined here to be particularly untoward or unexpected and he considers that the situation was largely outside the control of the Chief Inspector.

Commander Mulvihill states that he had no reason to believe that the 'hostility' displayed by any suspect officer was directed at the ICPC Member. This is perfectly understandable; there was never any implication on the part of the Commission that this was ever the case. The Supervising Member had no concerns on her own account, but she was concerned with the core dynamics of the investigation. The fact that officers apparently felt comfortable to behave as they did in her presence might, however, be seen as indicative of just how ingrained and tolerated some very negative mind-sets have become.

#### IN CONCLUSION

When the content of the ICPC Statement on the Nelson complaints investigation was placed in the public domain by third parties the Chief Constable commented that it represented the subjective view of one individual. He indicated that the production of Commander Mulvihill's report would lend balance to the picture that this Statement presented.

The report that has been produced could be criticised on a number of levels, not least of them being that it lacks balance.

I have worked with Ms McNally for two years now and I am unaware of any defects of intellect, vision, hearing, memory or personal integrity on her part. The outcome of her supervision of this case was not "the subjective view of one individual" but rather a systematic evaluation of the facts in the matter as they were presented to her.

Although the report liberally strays into uninvited comment on the part played by the Commission in this investigation, Mr. Mulvihill offers no personal evaluation of MS McNally, unlike the Chief Inspector whom, as has already been noted, he considers to be a principled man imbued with a strong sense of duty.

Throughout the review, the Commander is frequently faced with either accepting Ms McNally's account of events or that of the Chief Inspector. He consistently opts for the version offered by the Chief Inspector.

As was stated at the beginning of this paper, Commander Mulvihill's review lacked the standing of a fully-fledged inquiry and this is reflected in its process, analysis and outcomes. This is no way a personal criticism of him. He undertook a very difficult assignment with honesty and integrity, but the parameters which were set for the task inevitably meant that many of opinions which were expressed by him have no more standing than that: they are opinions.

Commander Mulvihill concludes his review by stating the essence of the case to be, a breakdown of communication, coupled with a series of unrelated administrative and organisational problems, combined to create an 'air of concern' which was wholly at odds with, and disproportionate to, the actual situation.

On the basis of my analysis of the documentary evidence available to me I am compelled to disagree.

P A Donnelly  
*28th April 1999.*



**"CONCERNS BEING ACTED ON AT LAST"  
REPRINTED FROM *THE IRISH TIMES*, APRIL 16, 1999,**

The murders of solicitors Pat Finucane and Rosemary Nelson and the policing establishment's defensiveness in the face of formal and detailed criticism continue to undermine nationalist confidence in the RUC. But there is sign of late movement. *Gerry Moriarty reports*

The unresolved questions arising from the murder of Pat Finucane 10 years ago and of Rosemary Nelson one month ago are making it increasingly difficult for the Patten Commission on Policing to formulate a package that would be acceptable to nationalists, including moderate nationalists.

The RUC Chief Constable, Sir Ronnie Flanagan, was offered a fair wind from most SDLP supporters when he took office, but the fallout from the murders of the two solicitors has been swinging that breeze into a raw and bitter easterly. Sinn Fein, which makes up most of the rest of nationalism in the North ideologically, could never be generous to the RUC. Sir Ronnie and his supporters in establishment bodies such as the Police Authority complain of unfair criticisms being levelled against the RUC in its handling of the two cases. Mr. Pat Armstrong, of the Police Authority, suggested that some of those seeking the removal of the RUC from the Nelson murder inquiry were more interested in denigrating the force than seeing the killers convicted.

On the other hand, local and international human rights groups complained of a rearguard action from the Chief Constable and his supporters. The tendency of the policing establishment, according to the Belfast-based Committee on the Administration of Justice (CAJ), was to attack the messengers rather than face up to a real problem in the RUC.

A case in point, according to the CAJ, was the response of Sir Ronnie, and elements within the Police Authority, to the hard-hitting report from the Independent Commission for Police Complaints (ICPC) on the conduct of the police inquiry into allegations of police officers issuing death threats against Ms Nelson.

The ICPC barrister who was statutorily charged with directing the RUC inquiry detailed a catalogue of complaints about the RUC officers under investigation showing ill-disguised hostility to Ms Nelson and being unable or unwilling to distinguish between the solicitor and the clients she was representing, as one would expect from any professional officer in any professional force.

The barrister was so unhappy with the conduct of the actual inquiry that Sir Ronnie felt compelled to take the inquiry away from his officers and hand it to Commander Niall Mulvihill, of the London Metropolitan Police.

The ICPC report was an opportunity for the Chief Constable to act swiftly, but no officers were suspended. Sir Ronnie instead, while offering total co-operation and professing total support for the ICPC, spoke of the barrister's "subjective" viewpoint.

"Well I am certain that is what the independent supervisor felt," he said of the barrister's findings, "and these are subjective feelings as expressed, and I have no doubt that they were very sincerely felt by the independent supervisor."

Curiously, at the same time two members of the Police Authority were also anxious to make the point that the barrister's findings were "subjective", and that Commander Mulvihill took a far less critical view of the conduct of the original inquiry - even though he was not involved directly in the original inquiry and his view had no statutory basis, as had the barrister's findings. Interestingly, there was no mention of Commander Mulvihill's comments being subjective.

The Police Authority sources were keen to claim that what was really at issue was a personality clash between the RUC chief inspector effectively charged with leading the inquiry into the allegations of death threats against Ms Nelson under the direction of the barrister, and the barrister herself. "Something seems to have gone wrong in terms of their working relationship, and it ended up in some type of bust-up. It was all extremely unfortunate," said one of the sources.

Coincidental with these developments was a whispering campaign against the barrister, who, it was pointed out in political and journalistic circles, was a Catholic, a woman, young - aged 28 - spoke Irish, had a human rights interest, and was a member of Amnesty International. In certain quarters in Northern Ireland this is sufficient to damn anyone as irredeemable, no matter how high their qualifications or their integrity. It must be stressed here that there is no suggestion of the Chief Constable or anyone in the Police Authority being party to this whispering campaign.

There can be no doubting the barrister's competence. She has supervised over 100 cases, she has dealt with complaints against scores of RUC officers, covering charges made by Catholic and Protestant, nationalist and unionist, agnostic and political centrist.

There have been no complaints about how she supervised these cases. Some of them have involved her dealing with hard-boiled, difficult police officers, and again never have there been complaints of her being professionally unable to handle a clash of personalities. Not until, that is, she was invited to venture into the case of alleged police death threats against Ms Nelson.

What is particularly ironic here is that the barrister entered into the system because she believed she could do good work that would benefit both the policing service and help develop general and cross-community confidence in that system. Rather than being a woman who would be flustered by a hostile police officer, the evidence, according to her colleagues, is that not only is she selfconfident, but that she is pretty hardboiled herself.

The Bar Council of Northern Ireland and the new Human Rights Commission were quick to express public support for the barrister. Mr. Brian Fee, of the Bar Council, described her as a "respected barrister who, with other members of the profession, was encouraged to provide this type of community work".

He added: "While not wishing to stifle legitimate public debate, we would ask commentators to bear in mind that attaching labels to individual lawyers in this jurisdiction may put those lawyers at risk."

The general manner in which the barrister was treated tends to support the CAJ argument that the gut establishment response is to safeguard the institution of the RUC, even if that could mean denigrating the lawyer concerned. "Why couldn't they just deal with the central point and not muddy the waters?" said one close associate of the barrister.

This leads to the special UN investigator, Mr. Dato Param Curamaswamy, who met the Northern Secretary, Dr Mo Mowlam, this week to repeat his allegations of RUC harassment and intimidation of defence lawyers. Like the barrister, Mr. Curamaswamy is hard-hitting in his criticisms. He accused the RUC of showing "complete indifference" to the allegations of intimidation made on behalf of defence solicitors to organisations such as the CAJ, Amnesty and the British-Irish Rights Watch.

He also said there was "at least prima-facie evidence" of "military and/or RUC collusion" in the 1989 murder of Belfast solicitor Mr. Pat Finucane. He did not disclose what this evidence was but repeated his call for an inquiry into Mr. Finucane's murder, similar to the new inquiry into Bloody Sunday.

"Only such an inquiry could finally lay to rest the lingering doubts about this brutal murder which had a chilling effect on the independence of the legal profession in Northern Ireland," Mr. Curamaswamy said.

HE welcomed the RUC Chief Constable's move to invite senior British officers, with FBI assistance, to oversee the RUC investigation into the murder of Ms Nelson. "Yet I hope the involvement of the RUC in the investigations would not affect and taint the impartiality and credibility of the investigations," he added.

"I say this because the late Rosemary Nelson lodged several complaints against RUC officials and expressed no confidence in the RUC investigatory mechanism," said Mr. Curamaswamy.

The Chief Constable and the Police Authority strongly rejected the complaint of RUC "indifference" to the allegations of police intimidation of lawyers. The authority said it welcomed Mr. Curamaswamy's "important contribution" but expressed reservations "about the extent to which evidence has been produced to support the conclusions" in his report. As is so often the case in Northern Ireland, it is back to a conflict of opinion on the way forward. Following from Mr. Curamaswamy's latest report, the calls will continue for independent public inquiries into the murders of Ms Nelson and Mr. Finucane.

Dr Mowlam, after meeting Mr. Curamaswamy in London, "ruled no options out" in relation to addressing the allegations of security force collusion in the killings of Ms Nelson and Mr. Finucane and the claims of police intimidation of defence lawyers.

It seems likely that this issue will remain as a running sore right up to the publication of the Patten report on the future of policing, expected in late summer. The European Parliament yesterday overwhelmingly supported a motion calling for an independent inquiry into Ms Nelson's death. A US House of Representatives sub-committee has also passed a motion calling for independent inquiries into the Nelson and Finucane killings.

Sir Ronnie Flanagan, with the Authority's support, is continuing to argue that the only way of tracking Ms Nelson's murder is with RUC involvement in the investigation. But in the past two days there is some evidence of an attempt to find middle ground on the issue. Of the 50 strong police team involved in the Nelson inquiry, 10 are now English officers, "with that number increasing every day", according to the RUC. So it seems at last there is a growing acknowledgment of a nationalist concern about who should police the police, notwithstanding the establishment's natural inclination to mount counter-offensives in the face of detailed criticism.

**JOINT STATEMENT OF DECEMBER 10, 1999 BY AMNESTY INTERNATIONAL, BRITISH IRISH RIGHTS WATCH, AND OTHER NON-GOVERNMENTAL HUMAN RIGHTS ORGANIZATIONS, FOR AN INDEPENDENT INQUIRY INTO THE KILLING OF HUMAN RIGHTS DEFENDER, ROSEMARY NELSON**

Today, on Human Rights Day, nearly nine months after the murder of Rosemary Nelson, six human rights organizations have joined together to urge the government to institute a thorough, independent and impartial inquiry into all the circumstances surrounding her death. Rosemary Nelson was the second human rights lawyer to have been killed in Northern Ireland; the first was Patrick Finucane in 1989. Loyalist paramilitaries claimed responsibility for both murders.

The failure to carry out an independent inquiry into Patrick Finucane's killing, and to find those responsible for his death, contributed to a deterioration in the rule of law, whereby some police officers regularly made derogatory and intimidatory remarks against defence lawyers without fear of sanction. The death of Rosemary Nelson further undermined the rule of law and underlined the government's failure to meet its obligation, under international standards, to ensure that lawyers could do their jobs without fear for their personal safety and without hindrance.

The murder of Rosemary Nelson was also a serious indictment of the Royal Ulster Constabulary's (RUC) failure to carry out a fundamental aspect of its job, which is "to protect and save lives". It was an indictment of the government's and RUC's failure to seriously consider allegations of intimidation of lawyers and to clamp down on unlawful and unprofessional conduct by police officers. It was an indictment of the RUC's failure to make a correct security assessment of a risk to life and to take the necessary action.

We recognize that the current criminal investigation is limited to the specific circumstances of the murder and will not be able to deal with the many questions that the circumstances of Rosemary Nelson's murder raise. Therefore, we urge the UK authorities to meet their obligations under international standards to carry out an independent, thorough and impartial inquiry into these circumstances. The remit of the inquiry should include an investigation of:

- a) Rosemary Nelson's complaints against RUC harassment and intimidation, which should be in the context of also investigating alleged RUC harassment and intimidation of other lawyers through their clients in special interrogation centres;
- b) death threats received by Rosemary Nelson in the context of death threats made to others by Loyalist paramilitaries at the same time;
- c) the RUC's failure to initiate an impartial investigation into her allegations of consistent threats;
- d) the RUC's failure to investigate other lawyers' allegations of threats and intimidation;
- e) the RUC's failure to take Rosemary Nelson's fears seriously, to take human rights organizations' complaints seriously, and ultimately to protect her life;
- f) the Northern Ireland Office's failure to ensure protection of Rosemary Nelson's life;

- g) the Northern Ireland Office's failure to implement with most of the recommendations made by the UN Special Rapporteur on the independence of judges and lawyers in 1998 concerning the intimidation of lawyers

#### **BACKGROUND ON COMPLAINTS MADE BY ROSEMARY NELSON**

Patrick Finucane was shot dead in February 1989. Following Patrick Finucane's death, lawyers took threats against their lives and physical integrity much more seriously. Rosemary Nelson received death threats at her office and her home. She was also subjected to threats and intimidation by Royal Ulster Constabulary (RUC) officers from 1996 onwards and lodged official complaints. Rosemary Nelson was killed in a car bomb on 15 March 1999. Loyalist paramilitaries claimed responsibility for her murder. She was killed after many appeals had been made to the authorities to protect her life. Having failed to protect her, the authorities must now carry out a full inquiry not only into the murder and any possible collusion in it, but also into how the authorities ultimately failed to protect her life.

Human rights organizations, national and international, believed that Rosemary Nelson had been threatened because of her work on a number of high profile cases. We all urged the government and the police to ensure Rosemary Nelson's security, as did the UN Special Rapporteur on the Independence of Judges and Lawyers, who even issued an urgent action on her behalf in 1997. The Garvaghy Road Residents Association raised concerns about her security. All to no avail.

#### **INVESTIGATION INTO ROSEMARY NELSON'S COMPLAINTS**

Some of Rosemary Nelson's complaints against the RUC, based on comments made to her clients in special interrogation centres, were initially investigated by the RUC under the supervision of the Independent Commission for Police Complaints (ICPC). The ICPC supervisor became very concerned at the conduct of the RUC investigation, citing the hostility, evasiveness and disinterest of police officers; eventually the Chief Constable asked the Metropolitan Commander Niall Mulvihill to take over.

After the death of Rosemary Nelson, Mulvihill issued his review of the initial RUC investigation, which appeared to vindicate the RUC's handling of it. This published review did not deal with Rosemary Nelson's complaints about police abuse. It was coupled with RUC attempts to personalize the ICPC's supervisor's conclusions as "subjective". This review was not carried out thoroughly and impartially and was severely criticized by the ICPC Chairperson Paul Donnelly in a private report.

Commander Mulvihill's review of Rosemary Nelson's complaints remains with the DPP (where it has been since March). But given the nature of the investigation, and the ICPC Chairperson's criticisms, we do not have any confidence in the findings of this investigation.

Other complaints made by Rosemary Nelson, including one of assault by RUC officers in July 1997, are still being dealt with by the ICPC.

Deputy Chief Constable Colin Port's investigation into Rosemary Nelson's murder has also failed to investigate Rosemary Nelson's complaints about police abuse thoroughly. Such an investigation, in order to have compelling credibility, should be part of a wider inquiry into complaints by other lawyers of intimidation and harassment, as recom-

mended by the UN Special Rapporteur on the independence of judges and lawyers. Only by painstakingly investigating many complaints, comparing dates and the identities of detectives allegedly making comments, would one be able to determine a pattern of certain detectives targeting particular lawyers.

#### **INVESTIGATION INTO ROSEMARY NELSON'S MURDER**

Immediately after Rosemary Nelson's death, human rights organizations urged the government to launch an immediate independent and thorough investigation into her killing. The RUC Chief Constable attempted to give credibility to an RUC investigation by declaring that he had appointed an English Chief Constable to head the investigation and had also called in the FBI. NGOs expressed concern that these appointments failed to satisfy the requirements of an independent investigation and continued to urge that the RUC should not be centrally involved in the investigation. Within weeks the Chief Constable further appointed Deputy Chief Constable Colin Port to lead the investigation on a day-to-day basis. However, NGOs continued to be concerned because Colin Port's investigation involved RUC officers centrally in both the murder investigation and, for several months, in the collusion investigation; in addition, his investigation was based in Lurgan RUC station, which undermined the credibility of the investigation.

While Colin Port is actively investigating aspects of the case, to date his investigation has not resulted in any arrests. We note this with great concern.

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