

H. RES. 128, CONDEMNING THE MURDER OF HUMAN RIGHTS LAWYER ROSEMARY NELSON AND CALLING FOR THE PROTECTION OF DEFENSE ATTORNEYS IN NORTHERN IRELAND

MARKUP

BEFORE THE
SUBCOMMITTEE ON
INTERNATIONAL OPERATIONS AND HUMAN RIGHTS
OF THE

COMMITTEE ON
INTERNATIONAL RELATIONS
HOUSE OF REPRESENTATIVES

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**MARKUP OF H. RES. 128 CONDEMNING THE
MURDER OF HUMAN RIGHTS LAWYER
ROSEMARY NELSON AND CALLING FOR THE
PROTECTION OF DEFENSE ATTORNEYS IN
NORTHERN IRELAND**

THURSDAY, MARCH 25, 1999

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS AND
HUMAN RIGHTS,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 1:30 p.m., in room 2172, Rayburn House Office Building, Washington, DC, Hon. Christopher H. Smith (chairman of the Subcommittee) presiding.

Mr. SMITH. [presiding] The Subcommittee will come to order.

The Subcommittee on International Operations and Human Rights meets in open session today, pursuant to notice, to consider H. Res. 128, condemning the murder of human rights lawyer Rosemary Nelson and calling for the protection of defense attorneys in Northern Ireland.

The Chair lays the resolution before the Committee, and the Chief of Staff will report the title of the resolution.

Mr. REES. H. Res. 128, condemning the murder of human rights lawyer Rosemary Nelson and calling for the protection of defense attorneys in Northern Ireland.

Mr. SMITH. Without objection, the Chief of Staff will read the preamble and operative language of the resolution for amendment.

Mr. REES. Resolution condemning the murder of human rights lawyer Rosemary Nelson and calling for the protection of defense attorneys in Northern Ireland.

Whereas on September 29, 1998, Rosemary Nelson—

Mr. SMITH. Without objection, the resolution is considered as having been read and is open to amendment at any point.

[H. Res. 128 appears in the appendix.]

And at this point, I would like to make an opening statement. I will yield to my distinguished colleagues—and Mr. Gilman will join us momentarily—for any opening statements they might have as well.

Today's markup will consider H. Res. 128, a resolution, as has been pointed out, which condemns the brutal murder of Northern Ireland defense attorney Rosemary Nelson and calls on the British Government to launch an independent inquiry into Rosemary's killing.

The resolution also calls for a judicial inquiry into allegations of official collusion in the 1989 murder of defense attorney Patrick Finucane and an independent investigation into broader allegations of harassment of defense attorneys by Northern Ireland's police force, the Royal Ulster Constabulary.

Rosemary Nelson was a champion of due process rights and a conscientious and courageous attorney in Northern Ireland. She was the wife of Paul Nelson and the mother of three young children: Sarah, 8; Gavin, 11; and Christopher, 13. Her murder on March 15, 1999 was a cowardly act by those who are the enemies of peace and justice in Northern Ireland. Her death is a loss felt not just by her family and friends but by all of us who advocate fundamental human rights.

Consideration of this resolution today is particularly timely as officials in Northern Ireland—both nationalists and unionists—question the ability of their own police force, the Royal Ulster Constabulary, to properly conduct this murder investigation. Anyone who knows anything about human rights in Northern Ireland would have little confidence that the RUC could produce a credible, transparent, thorough investigation of the murder of a Catholic defense attorney.

The history of intimidation of defense attorneys by the RUC has been documented by this Subcommittee, as well as by the U.N. Commission on Human Rights. Thus, there is little reason to believe that Rosemary Nelson, who was mistreated by members of the RUC throughout her professional life as an attorney, would now be treated respectfully and justly in death.

I first met Rosemary Nelson in Belfast in August 1997 when she shared with me her genuine concern for the administration of justice in Northern Ireland. She explained how, as an attorney, she had been physically and verbally assaulted by RUC members, and how they sent death threats to her through her clients. Many of her clients were harassed as well.

Notwithstanding these threats, Rosemary Nelson still carried an exhaustive docket which included several high profile cases, political cases, such as representing the family of Robert Hamill, who was beaten to death by a sectarian mob, and representing the residents of Garvaghy Road in their bid to stop controversial marches in their neighborhood.

Through her work, she became an international advocate for the rule of law and the right of the accused to a comprehensive defense and an impartial hearing. For this, however, Rosemary Nelson was often the subject of harassment and intimidation. For her service to her clients, Rosemary Nelson paid the ultimate price with her life—as the victim of a car bomb.

In September 1998, just 6 months ago, Rosemary testified before this Subcommittee. She told us she feared the RUC. She reported that she had been "physically assaulted by a number of RUC officers" and that harassment included, "at the most serious, making threats against my personal safety, including death threats."

She said that she had no confidence in receiving help from her government because in the end her complaints about the RUC were going to be investigated by the RUC. She also told us that no lawyer in Northern Ireland will forget what happened to Pat Finucane,

nor can they dismiss it from their minds. She said that one way to advance the protection of defense attorneys would be the establishment of an independent investigation into the allegations of collusion into Pat Finucane's murder.

Testifying along with Rosemary Nelson was Param Cumaraswamy, who, as the U.N. Special Rapporteur on the independence of judges and lawyers, completed an extensive human rights investigative mission to the United Kingdom and published a report in 1998.

Mr. Cumaraswamy stated that he found evidence of RUC harassment and intimidation of defense attorneys in Northern Ireland, and he called it—and I quote—“consistent and systematic.”

His report was quite critical of the excessive authority granted to the RUC through the so-called emergency laws, and he expressed dismay that the government had not moved decisively to protect lawyers under threat.

Mr. Cumaraswamy recommended a judicial inquiry into the threats and intimidation of Rosemary Nelson and other defense attorneys into those threats that they had received. He endorsed the establishment of a police ombudsman, and he called on the British Government to provide protection for defense attorneys who had been harassed.

Today, it is not hard to wonder—if only the British Government had taken the Special Rapporteur's recommendations more seriously, would Rosemary Nelson have been better protected and still be with us today? And yet, they still do not get it.

Despite her testimony and her concerns, the British Government now wants to entrust the investigation of Rosemary Nelson's murder to the very agency she feared and mistrusted the most—the RUC. A report leaked this week by the Northern Ireland's police watchdog, the government's Independent Commission for Police Complaints, outlined “serious concerns”—their words—about the RUC's handling of the inquiry into the death threats Rosemary Nelson received last year.

The ICPC report said that RUC officers investigating the death threats were “hostile, evasive, and disinterested.” It cited an ill-disguised hostility to Mrs. Nelson on the part of some police officers as the reason for moving the inquiry to the London-based Metropolitan Police. And the report revealed that several officers were prompted by the RUC chief inspector to rely on ready-prepared statements, thereby greatly reducing the likelihood of full and candid responses to important questions.

In light of this damning report, Rosemary Nelson's husband, Paul, said just yesterday, and I quote, “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—indeed, their willingness—to effectively investigate her murder?”

The bill before us today captures Mr. Nelson's sense of despair and urges the British Government to remove any doubt whatsoever about the investigation of Rosemary Nelson's murder. RUC Chief Ronnie Flanagan has rejected the call for an RUC-free investigation and instead has asked the London police and our own FBI to work with the RUC in—and I strongly emphasize this—an advisory

capacity. Yet this diversionary attempt fools no one, for we know that a chain is only as strong as its weakest link. RUC involvement in this inquiry would taint it forever.

I believe that in order for this investigation to go beyond reproach, and to have the confidence and the cooperation of the Catholic community that Rosemary Nelson adeptly represented, it must be organized, managed, directed, and run by someone other than the RUC.

In order to remove any questions of impropriety, an outside organization must lead an impartial investigative team, not just offer advice or help. To have the FBI or the London police merely in an advisory capacity has surface appeal—no doubt about it—but it still leaves too much of the grueling investigation under the charge of an organization of which the murder victim herself was extremely suspect.

The major international human rights groups, including Amnesty International, the Lawyers Committee for Human Rights, British/Irish Rights Watch, the Committee for the Administration of Justice, and Human Rights Watch, have all called for an independent inquiry. Mr. Cumaraswamy, the U.N. Special Rapporteur, and various elected officials in Northern Ireland and the Republic of Ireland have also called for an RUC-free investigation.

In a letter I received today from the London-based British/Irish Rights Watch, the organization endorsed the urgings of the resolution and said, "These are matters of burning public concern. Unless decisive and urgent action is taken to demonstrate the government's willingness to tackle these serious problems impartially, they could have a serious adverse impact on the peace process itself."

The success of the peace process is predicated on the government's ability to deliver on the protection of fundamental human rights and to demonstrate to the people of Northern Ireland that injustices such as harassment of defense attorneys and the murders of Patrick Finucane and Rosemary Nelson will be investigated by top-notch, dedicated, and impartial personnel.

For this reason, I urge all Members of this Subcommittee to vote this resolution out favorably.

[The statement of Mr. Smith appears in the appendix.]

Mr. SMITH. I would like to yield to Mr. Gilman, the Chairman of the Full Committee, for any comments he might have.

Mr. GILMAN. Thank you, Mr. Chairman. We had a distinguished visitor in the back, the Deputy Foreign Minister of Greece, but he has gone back into the entry room, so allow me to comment.

Mr. Chairman, I am pleased that our Subcommittee on International Operations and Human Rights today is marking up a resolution calling for a fully independent inquiry into the tragic murder of Northern Ireland solicitor Rosemary Nelson of Longan.

I am pleased to be an original co-sponsor and have worked with Chairman Smith in drafting this timely resolution calling for a truly independent inquiry now, not later, into Mrs. Nelson's murder. And I compliment you, Mr. Smith, and look forward to working with you in bringing this resolution through our Full Committee and on to the House floor at an early date.

The wanton murder of solicitors who are exercising their duties and responsibilities to represent Catholics in the North of Ireland cannot, and must not, go unnoticed. And while there are some voices who might say, "Wait, give the situation some time," I say no. According to some in the foreign policy establishments in this town, it is never the right time to do the right thing about Northern Ireland.

The Smith-Gilman resolution is the right thing and it is at the right time. So let us go forward because timing is of the essence, and the gathering of evidence is critical at the very outset of such a major criminal inquiry.

The RUC's involvement in the investigation is problematic and deeply distressing. The Chief Constabulary and our FBI office in London have already announced that, and I quote, "the best chance of detecting those responsible lies in the RUC conducting the investigation." That decision is certainly not the way to build a new Ireland or the trust and mutual respect we all want to see grow and flourish there.

I wonder where such thinking comes from, especially when even the Northern Ireland Independent Commission for Police Complaints, hardly a very independent body, as many of us know, doubted that the RUC could handle Mrs. Nelson's allegations of police harassment. They referred the matter to the Metropolitan Police in London for an investigation, not by the RUC.

Many of us have asked that Northern Ireland's Secretary of State, Mo Mowlan, while she was here during the St. Patrick's week, to do her best. And I had an opportunity to present this issue to her directly. We asked her to establish total independence from the RUC in any inquiry, but she has failed so far miserably.

The Prime Ministers of both Great Britain and Ireland will be meeting in the next few days on the nature of the inquiry into Rosemary Nelson's murder. It is, therefore, important that this Committee let them know of the strong views here in the Congress on the need for an RUC free inquiry, one that is independent and one that can win public support when it is concluded.

Anything else will merely inflame the nationalist Catholic community more, erode support further in the institutions of government, and set the progress in Northern Ireland back, not forward. We have already witnesses rioting in Mrs. Nelson's community. At least 38 RUC officers were injured and over 150 petrol bombs were thrown at the RUC in the days following her murder back on March 15th.

Rosemary Nelson appeared before this Committee last fall, and at that time she expressed her fears about the RUC. She did it vividly and clearly to both Chairman Smith and to myself. We owe her our best efforts to find out just who is responsible for this cowardly, tragic act. And the way to do that is through an independent inquiry, not through the RUC.

I have strongly urged that the Subcommittee move to timely report the resolution before we adjourn for the spring recess, I will move it expeditiously in the Full Committee when we return.

Thank you again, Mr. Smith, for your good work.

Mr. SMITH. Thank you, Chairman Gilman, for your excellent statement and for your good work on this resolution as well.

And I would like to recognize one of the other co-sponsors, Mr. Payne.

Mr. PAYNE. Thank you very much, Mr. Chairman. It is good to be back at your Committee hearings. As you know, leadership of the democratic minority requested that chairpeople only take one committee. So as a result, I agreed, and, unfortunately, have been excluded from officially being a Member of your Committee. But when you look down this way, do not be surprised to see me sitting here, as I was in the past, as an unofficial—

Mr. SMITH. You are always welcome, Mr. Payne.

Mr. PAYNE. Thank you very much. And let me commend you for introducing this, along with Mr. Gilman and myself, Mr. King, and others.

I, too, had the opportunity to hear Rosemary Nelson when she testified here. But prior to that, in 1996, during the marching season when I visited Porterdam and was at Drumcree and went through Derry, I met personally with Rosemary Nelson and other advocates, and we talked about the threats and talked about the injustices. And I recall that evening very well where we went through, even talked about the murder of Pat Finucane; it is also known that the authorities were aware that this was going to occur 10 years and a month ago from the killing of Ms. Nelson.

And so we have to have an independent investigation. You cannot have the RUC investigating itself. It will not work. Never did. Never will.

I also feel that we should reopen the hearings and reinvestigate the February 12, 1989, killing of Pat Finucane. We also should ask for a reinvestigation as there was a tentative agreement to reopen the murders of Blood Sunday back in 1972, where, once again, it was abusive police force that was used improperly.

And so I am here to give our overriding support, and we feel that issues like this are attempts to slow down the Good Friday Accords. There are people who do not want to see the people of the North of Ireland to be able to move forward as one.

And so I certainly commend the group that put this together, including myself and Mr. Gilman and yourself. We will look forward to its swift passage as soon as that can be accomplished.

Thank you very much, Mr. Chairman.

Mr. SMITH. Thank you very much, Mr. Payne.

And I would like to ask Mr. King if he has any comments.

Mr. KING. Thank you, Mr. Chairman. I want to, at the very outset, commend you for the outstanding leadership you have shown on this issue. No one in the Congress has done more on the issue of the abuse of human rights in the North of Ireland than you during your tenure as chairman of the Subcommittee. I really want to commend you for that, especially commend you for the resolution you have introduced and for scheduling this hearing on such a prompt basis.

Also, I have to congratulate Ben Gilman for his work over the years; Don Payne, who I am glad you said it, Mr. Chairman, should always be welcome before this Subcommittee because of the dedication he has shown on this and so many other issues involving human rights violations around the world.

I see Congressman Joe Crowley is here today, who, in his short time in the Congress, has made his mark on this issue and worked for many years in the New York State Assembly on it.

I guess the point I am trying to make is this is not a Republican or a Democratic issue. It is not even a Catholic or Protestant issue. It is not even an Irish issue. It is a human rights issue, and it is an issue that goes right to the heart of the system of jurisprudence in the North of Ireland.

Rosemary Nelson did testify before your Subcommittee. She made it clear that her life was being threatened by the RUC, and the very thought that the group which she thought was about to kill her—and then when she was killed, to have that group investigate the murder, defies all common sense. It defies all sense of logic, and it defies all sense of justice, especially at a time when the Good Friday agreement is in peril, when there is such distrust within the Nationalist community for the law enforcement authorities.

To have the RUC go ahead with this investigation makes absolutely no sense whatsoever, especially when we put this in the context of the murder in 1989 of Patrick Finucane. Pat Finucane was a good friend of mine. His murder, to me and to so many others, clearly, there had to be official collusion in that murder. It could not have been done otherwise.

And to have the killing of a human rights lawyer such as Patrick Finucane, to have the killing of a human rights lawyer such as Rosemary Nelson, to have such compelling evidence that there was RUC involvement or collusion or threats from the RUC, just cries out for an independent investigation.

And again, as you mentioned, the Independent Commission on Police Complaints, the ICPC, to be talking about how the RUC shows general hostility, evasiveness, and disinterest when Rosemary Nelson alleged that her life was in danger, we have to move on this swiftly. We cannot be held off by agencies within our government or any other government who attempt to stop us from bringing this to public light, to adopting this resolution.

I believe it is essential, not just to the memory of Rosemary Nelson and Pat Finucane, but also for the hope that peace will come to all of Ireland, and the Good Friday agreement will be fully implemented, and that the Nationalist community will feel secure that they are subject to the same justice as all other people in Ireland.

So I heartily endorse your resolution. I urge its adoption, and I commend you for the leadership you have shown.

I yield back the balance of my time.

Mr. SMITH. Thank you very much, Mr. King. And you really have done so much on behalf of those suffering injustice in Northern Ireland. I want to thank you for your outstanding leadership for many, many years, and thank you for your kind comments.

Mr. Crowley, one of the other co-sponsors of the resolution.

Mr. CROWLEY. Thank you, Mr. Smith. First, let me say how happy I am to join not only yourself but the other co-sponsors of this resolution. I want to thank you, Mr. Smith, for your work on this Committee.

I, too, am not a Member of this Subcommittee. Had I had the opportunity, I would have liked to have been a Member, but there were not any slots when they got down to the low man on the totem pole, as they say. But maybe in the next go-round I will have an opportunity. I would like to work with you on these issues.

I am here today in strong support of Mr. Smith's resolution condemning the death of Rosemary Nelson, a lawyer who dedicated her life to improving human rights in the North of Ireland. The Independent Commission for Police Complaints has reported that the RUC had disregarded previous death threats against Ms. Nelson, and that she was repeatedly threatened by RUC officers during her course of work.

My colleagues on the International Relations Committee heard Rosemary's fears of the RUC and their intimidation when she testified before Mr. Smith's Subcommittee last year. Quite frankly, I believe the RUC is itself partly responsible for the death of Rosemary Nelson because of their lack of protection of her and its prior history of collusion with Loyalist militias.

I stand in strong support of this resolution to call upon the United Kingdom to carry out an RUC-free investigation into the death of Rosemary Nelson, to issue a detailed report on police harassment of defense attorneys by RUC forces, and to implement the U.N. Special Rapporteur's recommendations for an independent inquiry into the death of defense attorney Patrick Finucane.

In the past, quasi-independent investigations—for example, the Storker inquiry—have not bore any fruit, and typically have been disregarded, unpublished, and swept under the carpet. Reputations have been destroyed and justice has never been served.

I urge my colleagues on the Committee to pass this resolution to honor not only the memory of Rosemary Nelson but many others who have suffered at the hands of the RUC.

And I would just like to also state for the record it is my understanding that there are members of the State Department who wish we were not making or engaged in this work that we are right now. And let me just say that this is not the first time I have ran up against the State Department. This was also the case with my work in the state legislature. And it certainly will not be the last time that I support a resolution that I think is timely and needs to be addressed, especially at this crucial moment of peace negotiations in the North of Ireland.

So I am happy, again, to be here to support this resolution, and will do whatever I can to see that it passes.

Mr. SMITH. Thank you, Mr. Crowley.

And I, too, want to thank you, as Mr. King did, for your fine leadership. Even as a new Member of this body, you certainly are making your mark, and this is one of those areas where I think we all need, in a bipartisan way, to speak out very forcefully. And this is the most opportune time right now.

If there are no further Members seeking recognition, we do have a video.

And, Mr. Crowley, especially for you and others who were not elected at that point, this is the testimony of Rosemary Nelson when she appeared before our Subcommittee last fall. And I know

when I heard about the bomb blast I went back and reread her testimony, and was, again, moved by it.

But when I heard her voice over an Irish radio station that was doing an interview, and in her own words heard her express her fear of the RUC, and the harassment, it is inconceivable that the RUC would be investigating this.

So I would hope that everyone would listen to Rosemary's own words.

STATEMENT OF ROSEMARY NELSON, SOLICITOR FROM NORTHERN IRELAND

Mrs. NELSON. I have been a solicitor in private practice in the North of Ireland for the past 12 years. My practice includes a mixture of several areas of law, including crime, matrimonial, and personal injury cases. My clients are, and always have been, drawn from both sides of the community. For the past 10 years I have been representing suspects detained for questioning about politically motivated offenses.

All of these clients have been arrested under emergency laws and held in specially designed holding centers. There are three such centers in Northern Ireland. Since I began to represent such clients, and especially since I became involved in a very high profile murder case, I have begun to experience some difficulties with the RUC.

These difficulties have involved RUC officers questioning my professional integrity, making allegations that I am a member of a paramilitary group, and, at their most serious, making threats against my personal safety, including death threats. All of these threats have been made to my clients in my absence because lawyers in Northern Ireland are routinely and always excluded from interviews with clients in the holding centers.

This behavior on the part of RUC officers has worsened over the past 2 years, and most particularly since I began to represent the residents of the Garvaghy Road area in Portlerrigan. These people objected to an Orange Order march passing through their area from the Drumcree Church. Last year, I was present on the Garvaghy Road when the parade was forced through. I had been present on the road for a number of days because I had instructions from my clients to apply for an emergency judicial review of any decision allowing the parade to pass through this area.

When the police began to move into the area in force in the early hours of the 5th of July 1997, I approached the police lines and identified myself as the lawyer representing the residents. I asked to speak to the officer in charge.

At that point, I was physically assaulted by a number of RUC officers and subjected to sectarian verbal abuse. I sustained bruising on my arm and shoulder. The officers responsible were not wearing any identification numbers, and when I asked for their names I was told to fuck off. I complained about the assault and abuse, but to date there has been no satisfactory response from the RUC.

Since then my clients have reported a number of incidents when I have been abused by police officers, including several death threats against myself or my family. I have three young children at home, and, obviously, this causes some great concern. I have

also received threatening letters and telephone calls. And although I have tried to ignore these threats, inevitably I have had to take account of the possible consequences for my family and also for the staff that I have in the office.

No lawyer in Northern Ireland can forget what happened to Patrick Finucane, nor can they dismiss it from their minds. The allegations of official collusion into his murder are particularly disturbing and can only be resolved by an independent inquiry into his murder, as has been recommended by the 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, be a boost to the peace process, as it has been in the Bloody Sunday case.

I have also complained about these threats, again without any satisfactory response from the RUC itself. Although complaints against the RUC are supervised by the Independent Commission for Police Complaints, the complaints themselves are investigated by RUC officers.

Recently, a senior police officer from England has been called in to investigate my complaints in view of the RUC's apparent inability to handle any complaints, or mine, impartially. This English officer is interviewing witnesses himself and has decided not to rely on any assistance from the RUC.

I believe that one of the reasons that the RUC officers have been able to indulge in such systematic abuse against me and other defense lawyers is that the conditions under which they operate allow them to interview clients detained under emergency laws without any scrutiny. My access to my clients can be and has been deferred for up to 48 hours. I am never allowed to be present while my clients are being interviewed.

Interviews are now subject to silent video recording but are not yet being audiorecorded, although this is due to be introduced. We are not sure when. The U.N. Special Rapporteur has made a number of recommendations which would remedy this situation, but which to date have not been implemented. And, again, I would be grateful if the Subcommittee would lend their support to what he proposes.

Another reason why RUC officers abuse me in this way is that they are unable to identify me as a professional lawyer and distinguish me 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, and I deeply and bitterly resent this.

The Special Rapporteur has recommended that RUC officers be sensitized to the important role played by defense lawyers in the criminal justice system. To date, this recommendation has not been implemented. And, again, I would be grateful if this Subcommittee would ask the U.K. Government what steps they intend to take to act on this recommendation.

Like many others, I was pleased to see the human rights provisions included in the recently signed agreement. And, in particular, I was pleased that the agreement looked to the early removal of emergency provisions legislation which has been in place in some

shape or form since the inception of the state. The existence of this legislation has seriously undermined public confidence in the rule of law and has led to numerous miscarriages of justice, some of which have involved my clients.

I was, therefore, very disappointed when, in the wake of the horrific Omagh bombing, new and Draconian legislation was introduced which further erodes suspects' due process rights. For example, this legislation provides for the opinion of a senior RUC officer that someone is a member of a proscribed organization to be accepted as evidence by the courts.

I, and many of my colleagues, fear that if these laws are used they can only lead to further miscarriages of justice. Although this legislation has already been passed, I hope that the Subcommittee will express its concern to the British Government that it will not be used.

I believe that my role as a lawyer in defending the rights of my clients is vital. The test of a new society in the North of Ireland will be the extent to which it can recognize and respect that role, and enable me to discharge it without improper interference. And I look forward to that day.

In conclusion, I would like to thank Chairman Smith and this honorable Subcommittee for its continuing interest in these important matters for the future of my country.

[The prior testimony of Ms. Nelson appears in the appendix.]

Mr. SMITH. I would like to ask the Members and those in the room if we could just have one moment of prayerful silence for Rosemary.

[Moment of silence observed.]

Thank you very much.

Are there any other Members who would like to be recognized?

The Chair recognizes the gentleman from New York, Mr. King.

Mr. KING. Mr. Chairman, I move that the Subcommittee report the resolution favorably to the Full Committee.

Mr. SMITH. Without objection, the motion is agreed to, and the question occurs on the motion from the gentleman from New York.

All those in favor of the motion say aye.

[Ayes.]

Opposed say no.

[No response.]

The ayes have it, and the motion is agreed to.

I would ask unanimous consent that I be permitted to submit for the record the ICPC report, Mr. Paul Nelson's statement, which I quoted from briefly, and the letter from the British/Irish Human Rights Watch.

[The information referred to appears in the appendix.]

Mr. SMITH. The Subcommittee hearing is adjourned, and I want to thank the Members for their co-sponsorship and leadership on this issue.

[Whereupon, at 2:11 p.m., the Subcommittee was adjourned.]



APPENDIX

IV

106TH CONGRESS
1ST SESSION

H. RES. 128

Condemning the murder of human rights lawyer Rosemary Nelson and calling for the protection of defense attorneys in Northern Ireland.

IN THE HOUSE OF REPRESENTATIVES

MARCH 23, 1999

Mr. SMITH of New Jersey (for himself, Mr. GILMAN, Mr. KING, Mr. CROWLEY, Mr. PAYNE, Mr. MENENDEZ and Mr. WALSH) submitted the following resolution; which was referred to the Committee on International Relations

RESOLUTION

Condemning the murder of human rights lawyer Rosemary Nelson and calling for the protection of defense attorneys in Northern Ireland.

Whereas on September 29, 1998, Rosemary Nelson, a prominent Catholic defense attorney in Northern Ireland, who testified before the Subcommittee on International Operations and Human Rights of the Committee on International Relations of the House of Representatives, stated that she had been harassed and intimidated by the Northern Ireland police force, the Royal Ulster Constabulary (RUC) in her capacity as a defense attorney, and that she had been "physically assaulted by a number of RUC officers" and that the difficulties with the RUC in-

(13)

cluded “at their most serious, making threats against my personal safety including death threats”;

Whereas Param Cumarswamy, the United Nations Special Rapporteur on the independence of judges and lawyers, also testified before the Subcommittee on International Operations and Human Rights citing the grave dangers faced by defense attorneys in Northern Ireland and stated that “there have been harassment and intimidation of defense lawyers by RUC officers” and that “these harassments and intimidation were consistent and systematic”;

Whereas the United Nations Special Rapporteur recommended that authorities other than the RUC conduct “an independent and impartial investigation of all threats to legal counsel in Northern Ireland” and “where there is a threat to physical integrity of a solicitor” the “Government should provide necessary protection”;

Whereas despite the threats and the intimidation, Rosemary Nelson courageously continued to represent the rights of Catholic clients in high profile cases, including the residents of Garvaghy road in their bid to stop controversial marches in their neighborhood and the family of Robert Hamill who was beaten to death by a sectarian mob in 1997;

Whereas, because of her human rights work, Northern Ireland solicitor Rosemary Nelson, the mother of three young children, suffered the ultimate harassment and intimidation and was brutally murdered on March 15th, 1999, by a bomb placed on her car;

Whereas all those involved in the targeting and killing of defense attorney Rosemary Nelson, including the Red Hand Defenders, an anti-Catholic group that is opposed to the

peace process and that has claimed responsibility for the murder, must be brought to justice;

Whereas the success of the peace process is predicated on the ability of the people of Northern Ireland to believe that injustices such as the murder of Rosemary Nelson will be investigated thoroughly, fairly, and transparently;

Whereas the murder of Rosemary Nelson is reminiscent of the 1989 murder of human rights attorney Patrick Finucane, who, according to the United Nations report, had also received numerous death threats from RUC officers;

Whereas the United Nations Special Rapporteur reported that since the Patrick Finucane murder, further information that seriously calls into question whether there was official collusion has come to light; and

Whereas Rosemary Nelson's fear of the RUC, the United Nations report, and other unresolved investigations necessitate the establishment of inquiry into Rosemary Nelson's murder that will be completely independent of the RUC so that the police force she herself feared will not be the prime source used to gather evidence, conduct interviews, follow leads, or produce final reports: Now, therefore, be it

- 1 *Resolved*, That the House of Representatives—
- 2 (1) recognizes the historic significance of the
- 3 1998 Good Friday Peace Accords and commends the
- 4 people of Northern Ireland for their commitment to
- 5 work together in peace;

1 (2) condemns all violence committed in violation
2 of the Northern Ireland cease-fire agreement, an
3 agreement that has been largely successful; and

4 (3) calls on the Government of the United
5 Kingdom—

6 (A) to launch an inquiry totally inde-
7 pendent of the Royal Ulster Constabulary
8 (RUC) to gather evidence, conduct the ground
9 investigation, and issue a detailed, public, re-
10 port on the murder of defense attorney Rose-
11 mary Nelson;

12 (B) to institute an independent judicial in-
13 quiry into allegations that defense attorneys are
14 systematically harassed and intimidated by se-
15 curity forces; and

16 (C) to implement the United Nations Spe-
17 cial Rapporteur's recommendation for an inde-
18 pendent inquiry into the possibility of collusion
19 in the killing of defense attorney Patrick
20 Finucane.

○

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COOPERATION IN EUROPE**
CO-CHAIRMAN

**Markup of H.Res. 128, Condemning the murder of human rights lawyer Rosemary Nelson
and calling for the protection of defense attorneys in Northern Ireland
March 25, 1999**

Today's markup will consider H.Res. 128, a resolution which condemns the brutal murder of Northern Ireland defense attorney Rosemary Nelson and calls on the British government to launch an independent inquiry into Rosemary's killing.

The resolution also calls for a judicial inquiry into allegations of official collusion in the 1989 murder of defense attorney Patrick Finucane and an independent investigation into broader allegations of harassment of defense attorneys by Northern Ireland's police force, the Royal Ulster Constabulary (RUC).

Rosemary Nelson was a champion of due process rights and a conscientious and courageous attorney in Northern Ireland. She was the wife of Paul Nelson and the mother of three young children: Sarah (8), Gavin (11), and Christopher (13). Her murder on March 15, 1999, was a cowardly act by those who are the enemies of peace and justice in Northern Ireland. Her death is a loss felt not just by her family and friends, but by all of us who advocate fundamental human rights.

Consideration of this resolution today is particularly timely as officials in Northern Ireland -- both Nationalists and Unionists -- question the ability of their own police force, the Royal Ulster Constabulary, to properly conduct this murder investigation. Anyone who knows anything about human rights in Northern Ireland would have little confidence that the RUC could produce a credible, transparent, thorough investigation of the murder of a Catholic defense attorney. The history of intimidation of defense attorneys by RUC members has been documented by this Subcommittee, as well as by the United Nations Commission on Human Rights. Thus, there is little reason to believe that Rosemary Nelson, who was mistreated by members of the RUC throughout her professional life as an attorney, would now be treated respectfully and justly in death.

I first met Rosemary Nelson in Belfast in August, 1997, when she shared with me her genuine concern for the administration of justice in Northern Ireland. She explained how, as an attorney, she had been physically and verbally assaulted by RUC members and how they sent death threats to her through her clients. Many of her clients were harassed as well.

Notwithstanding these threats, Rosemary Nelson still carried an exhaustive docket which included several high profile political cases, such as representing the family of Robert Hamill who was beaten to death by a sectarian mob and representing the residents of Garvaghy Road in their bid to stop controversial marches in their neighborhood. Through her work, she became an international advocate for the rule of law and the right of the accused to a comprehensive defense and an impartial hearing.

For this, however, Rosemary Nelson was often the subject of harassment and intimidation. For her service to her clients, Rosemary Nelson paid the ultimate price with her life -- the victim of a car bomb.

In September 1998 --- just six months ago --- Rosemary testified before this subcommittee. She told us she feared the RUC. She reported that she had been "physically assaulted by a number of RUC officers" and that the harassment included, "at the most serious, making threats against my personal safety including death threats." She said she had no confidence in receiving help from her government because, she said, in the end her complaints about the RUC were investigated by the RUC. She also told us that no lawyer in Northern Ireland will forget what happened to Pat Finucane, nor can they dismiss it from their minds. She said one way to advance the protection of defense attorneys would be the establishment of an independent investigation into the allegations of collusion into Pat Finucane's murder.

Testifying along with Rosemary Nelson was Mr. Param Kumaraswamy, the U.N. Special Rapporteur on the independence of judges and lawyers, who completed an extensive human rights investigative mission to the United Kingdom and published a report in 1998. Mr. Kumaraswamy stated that he found evidence of RUC harassment and intimidation of defense lawyers in Northern Ireland and he called it "consistent and systematic." His report was quite critical of the excessive authority granted to the RUC through the so-called "emergency laws" and he expressed dismay that the government had not moved decisively to protect lawyers under threat.

Mr. Kumaraswamy recommended a judicial inquiry into the threats and intimidation Rosemary Nelson and other defense attorneys had received. He endorsed the establishment of a police ombudsman and he called on the British government to provide protection for defense attorneys who had been harassed. Today, it is hard not to wonder: if only the British government had taken the Special Rapporteur's recommendations more seriously, Rosemary Nelson might have been better protected and still with us today.

And yet, they still don't get it.

Despite her testimony and her concerns, the British government now wants to entrust the investigation of Rosemary Nelson's murder to the very agency she feared and mistrusted most, the RUC. A report leaked this week by the Northern Ireland's police watchdog, the government's Independent Commission for Police Complaints, outlined "serious concerns" about the RUC's handling of the inquiry into the death threats Rosemary Nelson received last year. The ICPC's report said RUC officers investigating the death threats were "hostile, evasive and

disinterested." It cited an "ill-disguised hostility to Mrs. Nelson on the part of some police officers" as the reason for moving the inquiry to the London-based Metropolitan Police. And the report revealed that several officers were prompted by the RUC's chief inspector to rely on ready prepared statements, thereby greatly reducing the likelihood of full and candid responses to important questions.

In light of this damning report, Rosemary Nelson's husband, Paul, said yesterday, "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 --- indeed their willingness to effectively investigate her murder?"

The bill before us today captures Mr. Nelson's sense of exasperation and urges the British government to remove any doubt about the investigation of Rosemary Nelson's murder. RUC Chief Ronnie Flanagan has rejected the call for an RUC-free investigation and instead has asked the London police and our own FBI to work with the RUC in an advisory capacity. Yet this diversionary attempt fools no one, for we know that a chain is only as strong as its weakest link. RUC involvement in this inquiry would taint it forever.

I believe that in order for this investigation to be beyond reproach, and to have the confidence and cooperation of the Catholic community that Rosemary Nelson adeptly represented, it must be organized, managed, directed and run by someone other than the RUC. In order to remove any questions of impropriety, an outside organization must *lead* an impartial investigative team, not just offer advice or help. To have the FBI or the London police merely in an advisory capacity has surface appeal, but it still leaves too much of the grueling investigation under the charge of an organization of which the murder victim herself was extremely suspect.

The major international human rights groups, including Amnesty International, Lawyers Committee for Human Rights, British/Irish Human Rights Watch Committee for the Administration of Justice, and Human Rights Watch have all called for an independent inquiry. Param Kumaraswamy, the UN Special Rapporteur, and various elected officials in Northern Ireland and the Republic of Ireland have also called for an RUC-free investigation.

In a letter I received today from the London-based British/Irish Rights Watch, the organization endorsed the urgings of the resolution and said: "These are matters of burning public concern. Unless decisive and urgent action is taken to demonstrate the government's willingness to tackle these serious problems impartially, they could have a serious adverse impact on the peace process itself."

The success of the peace process is predicated on the government's ability to deliver on human rights protections and convince the people that injustices such as harassment of defense attorneys and the murders of Patrick Finucane and Rosemary Nelson will be investigated by top-notch, dedicated and impartial personnel. For this reason, I urge all Members of the Subcommittee to vote to report this bill favorably.

**REPORT ON THE MISSION OF THE SPECIAL
RAPPORTEUR TO THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN IRELAND**

MEETING
BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS
AND HUMAN RIGHTS
OF THE
COMMITTEE ON
INTERNATIONAL RELATIONS
HOUSE OF REPRESENTATIVES
ONE HUNDRED FIFTH CONGRESS

SECOND SESSION

SEPTEMBER 29, 1998

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Statement of Rosemary Nelson
Committee on the Administration of Justice, Belfast

**Before the International Operations and Human Rights Subcommittee
of the House International Relations Committee
Hearing on Human Rights in Northern Ireland**

29th September 1998

I have been a solicitor in private practice in Northern Ireland for the past twelve years. My practice includes a mixture of several areas of law including crime, matrimonial and personal injury cases. My clients are drawn from both sides of the community. For the last ten years I have been representing suspects detained for questioning about politically motivated offences. All of these clients have been arrested under emergency laws and held in specially designed holding centres. There are three such centres across Northern Ireland. Since I began to represent such clients and especially since I became involved in a high profile murder case, I have begun to experience difficulties with the RUC.

These difficulties have involved RUC officers questioning my professional integrity, making allegations that I am a member of a paramilitary group and, at their most serious, making threats against my personal safety including death threats. All of these remarks have been made to my clients in my absence because lawyers in Northern Ireland are routinely excluded from interviews with clients detained in the holding centres.

This behaviour on the part of RUC officers has worsened during the last two years and particularly since I began to represent the residents of the Garvaghy Road, who have objected to an Orange Order march passing through their area from Drumcece Church. Last year I was present on the Garvaghy Road when the parade was forced through. I had been present on the road for a number of days because I had instructions from my clients to apply for an emergency judicial review of any decision allowing the parade to pass through the area. When the police began to move into the area in force in the early hours of 5th July. I went to the police lines and identified myself as a lawyer representing the residents. I asked to speak to the officer in charge. At that point I was physically assaulted by a number of RUC officers and subjected to sectarian

verbal abuse. I sustained bruising to my arm and shoulder. The officers responsible were not wearing any identification numbers and when I asked for their names I was told to "fuck off".

I complained about the assault and abuse but to date have obtained no satisfactory response from the RUC.

Since then my clients have reported an increasing number of incidents when I have been abused by RUC officers, including several death threats against myself and members of my family. I have also received threatening telephone calls and letters. Although I have tried to ignore these threats inevitably I have had to take account of the possible consequences for my family and for my staff. No lawyer in Northern Ireland can forget what happened to Patrick Finucane nor 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 be a boost to the peace process, as it has been in the Bloody Sunday case.

I have also complained about these threats, again without any satisfactory response. Although complaints against the RUC are supervised by the Independent Commission for Police Complaints, the complaints themselves are investigated by RUC officers. Recently, a senior police officer from England has been called in to investigate my complaints in view of the RUC's apparent inability to handle my complaints impartially. This English police officer is interviewing witnesses himself and has decided not to rely on any assistance from the RUC.

I believe that one of the reasons that RUC officers have been able to indulge in such systematic abuse against me is that the conditions under which they interview clients detained under emergency laws allow them to operate without sufficient scrutiny. My access to my clients can be deferred for periods of up to 48 hours. I am never allowed to be present while my clients are interviewed. Interviews are now subject to silent video recording but are not yet being audio-recorded, although that is due to be introduced. The UN Special Rapporteur has made a number of recommendations that would remedy this situation, which to date have not been implemented. I should be grateful if this Subcommittee would lend their support to what he proposes.

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 personally been involved in paramilitary activity, which I deeply and bitterly resent. The Special Rapporteur has recommended that RUC officers be sensitised to the important role played by defence lawyers in the criminal justice system. To date this recommendation had not been implemented. I should be grateful if this Subcommittee would ask the UK government what steps they intend to take to act on this recommendation.

I, like many others, was pleased to see the human rights provisions included in the recently signed Agreement. In particular I was pleased that the Agreement looked to the early removal of the emergency provisions legislation which has been in place in some shape or form since the inception of the state. The existence of this legislation has seriously undermined public confidence in the rule of law and led to numerous miscarriages of justice, some of which have involved my clients. I was therefore very disappointed when, in the wake of the horrific Omagh bombing, new and draconian legislation was introduced which further erodes suspects' due process rights. For example, the legislation provides for the opinion of a senior RUC officer that someone is a member of a proscribed organisation to be accepted as evidence by the courts. I and many of my colleagues fear that if these laws are used they will lead to further miscarriages of justice. Although this legislation has already been passed I hope that the Subcommittee will express its concern to the British government that it will not be used.

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.

I thank Chairman Smith and this honourable Subcommittee for its continuing interest in these important matters for the future of my country.

REPORT ON THE MISSION OF THE SPECIAL RAPPOREUR TO THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRE- LAND

TUESDAY, SEPTEMBER 29, 1998

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:40 a.m., in room 2172, Rayburn House Office Building, Hon. Christopher H. Smith (chairman of the Subcommittee) presiding.

Mr. SMITH. [presiding] The Subcommittee will come to order for this very special meeting, and I want to thank our very, very distinguished guests for traveling so far to be with us this morning.

We will be joined very shortly, by chairman of the full International Relations Committee, Ben Gilman. A Member of the Full Committee, Cass Ballenger, is also here. Throughout the morning I'm sure many of our other colleagues will be coming by.

Let me just give a brief opening and then I'd like to present our witnesses and thank our guests for traveling and being here.

The purpose of this meeting is for the House Subcommittee with primary jurisdiction over international human rights to receive and review the recent U.N. report on harassment and intimidation of defense attorneys by police officers of the Royal Ulster Constabulary—the RUC—and other violations of the right to fair trial and the right to counsel in Northern Ireland.

Prior to today's public roundtable discussion, this Subcommittee has held two hearings on the status of human rights in Northern Ireland and conducted one fact-finding peace mission in Belfast in August 1997. On March 17 of this year, the full House of Representatives passed my bill, H. Con. Res. 152, which, among other provisions, expressed the sense of Congress that any peace agreement in Northern Ireland must recognize the State's obligation to protect human rights in all circumstances.

Since our last meeting, great strides have been made toward a lasting and just peace in Northern Ireland. In April, representatives of the multi-party peace talks signed the Good Friday Agreement. In May, the people of Northern Ireland and the people of the Republic of Ireland voted overwhelmingly in support of the peace referendum. And, in June, the people of both the Catholic and the Protestant communities took part in the election of representatives to the new 108-member Northern Ireland Assembly.

Regrettably, the progress has not been without some setbacks. For instance, the "marching season" in July was again marked by violence, including firebombing, which led to the tragic death of three young brothers, the Quinn boys, in Ballymoney. And, in August, the world was stung again by the horrific Omagh bombing which took the lives of 28 people and injured many more.

Because there are extremists on both sides who may continue to try to undermine the peace process and exploit the emotions and fears of both communities, it is all the more imperative that the Northern Ireland bill, the enabling legislation of the Good Friday Agreement, be predicated on and capable of extending human rights protections to all people in Northern Ireland. Ensuring a defendant's right to a fair trial and an unfettered access to appropriate counsel is crucial if Northern Ireland is to experience a just and a lasting peace.

Param Cumaraswamy, the U.N. Special Rapporteur on the independence of judges and lawyers, conducted his own fact-finding mission just less than 1 year ago and released his findings in April of this year. In reading the report, I was struck by the similarities between his inquiry and those undertaken by the Subcommittee on International Operations and Human Rights—not only in the list of government officials and others who are interviewed, but also in the stated items of concern and the recommendations for reform.

The Special Rapporteur's Report finds that the RUC officers have indeed engaged in "activities which constitute intimidation, hindrance, harassment or improper interference" with criminal defense attorneys. The Rapporteur therefore recommends that the authorities—preferably the new police ombudsman, whose office would be established by the proposed Northern Ireland Act—conduct an independent investigation of all threats to counsel in Northern Ireland.

Among other important recommendations, the report suggests an independent judicial inquiry into the case of Patrick Finucane, the defense attorney who was murdered in front of his wife and children in 1989, under circumstances suggesting possible collusion by officers of the RUC. It also recommends reforms in the training of police officers, protection of the right to have an attorney present during police interrogation, reinstatement of trial by jury and the right of a criminal defendant to remain silent, and strict safeguards against arbitrary wiretapping.

Finally, the Special Rapporteur recognizes the inadequacy of a complaint system in which the RUC essentially investigates itself, subject to a supervisory commission that can only make non-binding recommendations. He notes that "of the 16,375 complaints generally received by the ICPC through 1994, not one has resulted in any disciplinary sanction against any RUC officer," and that during 1996, there were 2,540 cases of which only one resulted in a finding that an RUC officer was guilty of abuse of authority. The Rapporteur therefore recommends that the office of the new police ombudsman be given the necessary human and financial resources to meaningfully carry out its mandate, which will go a long way toward restoring public confidence in the police complaints procedure.

The response thus far to the Rapporteur's Report by the British Government is frankly disappointing. Aside from taking credit for those areas in which the Rapporteur noted merit or progress, such as the integrity of judges and the scheduled introduction of video and audio recording in interrogation rooms, the government's response is largely dismissive, both in tone and in substance. For instance, the report points out that an independent judicial inquiry is justified only "if there is a need to look at a matter of urgent public importance." It inexplicably concludes that "this is not the case with the murder of Mr. Patrick Finucane" unless "new evidence is brought to light."

The government does not explain how new evidence will be brought to light in the absence of an independent inquiry, and seems not to understand the corrosive effects of not knowing the truth about whether law enforcement officials were guilty of collusion in murder.

The attitude on the part of the government officials is not an encouraging sign to those of us who believe that respect for human rights is a sine qua non for peace and reconciliation in Northern Ireland or anywhere else. Nevertheless, there is also reason for hope. The proposed police ombudsman can be a powerful force for police reform and for the restoration of public confidence, if the government follows the Rapporteur's recommendations and give the office sufficient resources.

The recently established Independent Commission for Policing for Northern Ireland, although its only legal power is the power to make recommendations, can also be a force for change in the right direction if it takes to heart the Special Rapporteur's recommendations and the detailed submissions of human rights organizations, such as the Committee for the Administration of Justice and British Irish Rights Watch. Drawing their sustenance from the reservoir of goodwill instilled by the Good Friday Agreement and the subsequent referenda, these government and non-government institutions can work together to restore public trust in the legal system, largely by helping to shape a system that is, in fact, trustworthy.

And, again, I want to thank our distinguished guests.

I'd like to yield to my good friend, Mr. Ballenger, for any opening comments he might—

Mr. BALLENGER. I'm here basically for an education. I have not read the report, have not even been involved one way or the other so, I'm here to listen.

Mr. SMITH. I thank my good friend, and when Mr. Gilman does arrive, we will ask him if he has any opening comments.

I'd like to ask the distinguished Special Rapporteur if he would begin his comments at this point.



Independent Commission for Police Complaints for Northern Ireland
 Chamber of Commerce House - 22 Great Victoria Street - Belfast BT2 7LP
 Phone (01232) 244821 - Fax (01232) 248563

Chairman: Paul A. Donnelly, BA, MSc

Chief Executive: Brian G. McClelland, BA

THIS STATEMENT IS MADE IN ACCORDANCE WITH ARTICLE 9, PARAGRAPH (B) 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 10th April 1997, 16th July 1997 and 10th 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 16th September 1997 and 15th 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, twenty-eight interviews took place with police officers. The Supervising Member attended twelve 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 mind set 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 1st 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 an 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 9th 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 21st September 1998; a further witness attended on 22nd 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 6th November 1998. Commission Representatives supervised all of these interviews. Four other potential witnesses failed to co-operate 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.

Geraldyn Mc Nally

Geraldyn McNally

Supervising Member

22nd March 1999

APPENDIX**Aspects of this investigation that illustrate the unsatisfactory nature of the inquiry by the BUC 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 poppery" 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 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 judgements 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 investigation, 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

22nd March 1999

PRESS STATEMENT

23rd March, 1999

ROSEMARY NELSON'S FAMILY CALL FOR NON RUC INVESTIGATION

Paul Nelson, husband of murdered solicitor Rosemary Nelson, today called for the investigation of his wife's murder to be undertaken by officers from outside the RUC. Mr Nelson said that he was making his first public statement on his wife's case after reading a document provided to him by the Independent Commission for Police Complaints (ICPC). This document contained concerns which the ICPC had in relation to an investigation undertaken by the RUC into alleged death threats made against Mrs Nelson.

"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. The inadequacy of the investigation was such that for the first time ever the ICPC brought their attentions to the Secretary of State", Mr Nelson said.

"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" Mr Nelson added.

Mr Nelson will not be responding to requests for interview or any further queries as a result of this statement.

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TOM THORNTON, Colorado

RICHARD J. GARCH
Chief of Staff

The Honorable Christopher Smith, Chairman
Subcommittee on International Operations and Human Rights
B358 Rayburn House Office Building
Washington, DC 20515

Dear Chris:

I am pleased to be an original co-sponsor of, and to have worked with your office in drafting the resolution calling for a fully independent inquiry into the Rosemary Nelson's murder in Northern Ireland.

Because timing is of the essence, and the gathering of evidence is critical at the very outset of such a major criminal inquiry, the RUC's reported involvement in the investigation is very problematic and deeply disturbing. We asked the Northern Ireland Secretary of State, Mo Mowlam to do her best and establish total independence from the RUC and apparently she failed.

According to press accounts, the Prime Ministers of both Great Britain and Ireland will be meeting in the next days on the nature of the inquiry into her murder.

It is therefore important that we let them know of the strong views here in the Congress on the need for an RUC free inquiry that is independent and can win public support when it is concluded.

Rosemary appeared before this committee last fall and expressed her fears about the RUC vividly and clearly to both you and I. We owe her our best efforts to help find out who is responsible for this cowardly act.

I would urge that your subcommittee move to report the resolution before we adjourn for the Spring District work period. I will move it expeditiously in the full committee when we return.

With best wishes,

Sincerely,



BENJAMIN A. GILMAN
Chairman

BAG/jmp

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March 22, 1999

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A New Threat to Irish Peace

Northern Ireland's peace agreement is facing the most serious crisis of its 11 months of life. David Trimble, the Protestant Unionist who is First Minister of Northern Ireland's new assembly, is set to appoint a cabinet of 10 ministers, 2 of them from the I.R.A.'s political wing, Sinn Fein. But he will do so only if the I.R.A. starts to turn over its buried weapons and explosives. Such disarmament, while not required now under the peace agreement, is clearly reasonable. The I.R.A.'s refusal to begin even token disarmament could destroy the peace.

The I.R.A. would be more likely to compromise if weapons alone were the issue. But more important to I.R.A. hard-liners are the I.R.A. fighters who preceded them, whose memory, they feel, would be dishonored by disarmament. Symbolism, not military need, is driving the issue.

The landscape of modern civil war is strewn with agreements wrecked over disarmament. A 1994 peace treaty for Angola required the rebel leader Jonas Savimbi's organization to turn in its guns. It did not, and last year used them to restart the war. After Cambodia's civil war ended in 1991, the U.N. failed to disarm Hun Sen's forces. He then threatened his way back into power after losing an election.

The difference in Northern Ireland is that disarmament, or decommissioning, should matter little. Urban terrorism requires only bombs easily built after a trip to a hardware and gardening store. Unlike Mr. Savimbi and Mr. Hun Sen, who wanted power, not peace, Sinn Fein's leaders have staked their lives on peace. Some in the I.R.A. may desire more violence, but it is credible that the organization has genuinely changed.

So why is the I.R.A. so determined to keep all its weapons now? In part because disarmament is a symbol of trust, which many Catholics do not feel. In El Salvador, the guerrillas turned over most of their weapons to the United Nations after the war ended. They felt safe in part because former guerrillas were joining a new civilian police force.

Many Catholics in Northern Ireland do not yet have this sense of security. The latest illustration was the murder March 15 of the attorney Rosemary Nelson, who had defended a man accused of an I.R.A. killing of two police officers. She said she had received death threats from the Royal Ulster Constabulary, Northern Ireland's overwhelmingly Protestant police. Her accusation is credible to many Catholics because there is evidence of possible official complicity in previous killings. One is the 1989 murder of Patrick Finucane, a lawyer with accused I.R.A. clients. The British Government has asked a constable from England and the American F.B.I. to supervise the R.U.C. investigation into Ms. Nelson's death. But the R.U.C. cannot be impartial. Britain assigned London police the task of investigating threats against Ms. Nelson. It must also take the investigation of her death out of R.U.C. hands.

Sinn Fein leaders argue that Mr. Trimble is making demands not required by the peace agreement, while changes wanted by Catholics, such as police reform, are still far off. This is correct, but misses the point that Protestants also lack trust. Many do not believe the I.R.A. has really changed. In part because of the I.R.A.'s refusal to disarm, the peace agreement is in serious danger of rejection by Protestants in the assembly. Allowing Sinn Fein ministers into the cabinet before the I.R.A. turns over a single gun is seen by Protestant groups as surrender.

London and, notably, Dublin have sided with Mr. Trimble on this issue. They are asking the I.R.A. to make at least a symbolic start toward disarmament. The I.R.A. — and Protestant paramilitaries, which are also declining to disarm — have so far refused. "The dead control the thinking of the living," says Paul Arthur, a professor of politics at the University of Ulster. Each side constantly asks: How much can we give up before we betray our dead? They need to be asking: How much can we hold back before we betray the living?



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Representative Christopher Smith
Chair, Subcommittee on Human Rights and International Relations

24th March 1999

Dear Representative Smith,

H.RES. 128

We write to express our support for resolution H.Res. 128, standing in the names of Messrs Smith, Gilman, King, Crowley, Payne and Menendez.

It raises issues of urgent public importance in relation to the situation in Northern Ireland and the peace process there.

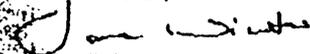
The unresolved murder of lawyer Patrick Finucane ten years ago and the recent horrific murder of solicitor Rosemary Nelson raise fundamental questions about the rule of law, the role of lawyers, the ability of the state to protect lawyers going about their daily work, and public confidence in policing in Northern Ireland.

Only a full judicial inquiry into the murder of Patrick Finucane, as recommended by the United Nations Special Rapporteur on the Independence of Judges and Lawyers, will suffice to allay allegations of official collusion in his death. Equally, only a completely independent police investigation, without the involvement of the RUC, into the death of Rosemary Nelson will meet concerns that her death was linked to death threats she received from RUC officers.

These are matters of burning public concern. Unless decisive and urgent action is taken to demonstrate the government's willingness to tackle these serious problems impartially, they could have a serious adverse impact on the peace process itself.

We commend the resolution to the House.

Yours sincerely,



John Winter,
Director.

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