

*Return to an Address of the Honourable the House of Commons
dated 1st April 2004
for the*

**Cory
Collusion Inquiry
Report**

Rosemary Nelson

Ordered by the House of Commons to be printed 1st April 2004

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Foreword

I was asked by the Government of the United Kingdom to investigate allegations of collusion by members of the security forces in the context of the deaths of Patrick Finucane, Robert Hamill, Rosemary Nelson and Billy Wright and to report with recommendations for any further action. These four reports are the product of my investigation.

It is important that I should make clear what I have taken my task to involve. My task was not to make final determinations of fact or attributions of responsibility. I had the preliminary role of assessing whether there is a case to be answered as to possible collusion, in a wide sense, by members of the security forces in these deaths such as to warrant further and more detailed inquiry. It necessarily follows from this role that my findings are provisional only, and cannot be taken to be final determinations of any matter. It is right that this point should be emphasised at the outset, in fairness to the individuals referred to in the reports.

The nature of the task which I undertook was reflected in the nature of my investigation in each case. My investigations took the straightforward form of scrutiny of the documentary evidence which exists in relation to each of these cases. Given the preliminary and provisional nature of the task assigned to me, and the desirability of arriving at recommendations expeditiously, it was not necessary or appropriate for me to hear any oral evidence from the individuals referred to in my reports. Obviously, before any final findings of fact or determinations of responsibility could be made, it would be necessary for individuals to have an opportunity of answering any potential criticisms which might be made of them.

For the reasons which I have given in my reports, I have found that in each of the four cases the documentary evidence indicates that there are matters of concern which would warrant further and more detailed inquiry.

Rosemary Nelson

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Introduction

- 4.1 The terms of reference pertaining to this inquiry are precise and clear. I have no power to subpoena witnesses or compel the production of documents. It follows that I cannot make findings of fact based on the examination and cross examination of witnesses.
- 4.2 My task is to review all the relevant papers pertaining to each case including the records of earlier investigations. In addition I may interview anyone I think can assist in the examination of the relevant documents. The aim of the process is to determine whether there is sufficient evidence of collusion between state security forces and those responsible for the murder of Rosemary Nelson to warrant a public inquiry
- 4.3 At the outset I would like to express my gratitude for the support of those who helped me in the preparation of this report.
- 4.4 First, to my counsel, Renee Pomerance, who has worked so arduously, selflessly and conscientiously in the painstaking work that had to be done. She was always cheerful and always ready to go the extra mile no matter how heavy the burden she bore.
- 4.5 Secondly to the police team; Detective Inspector [name redacted], Detective Sergeant [name redacted], Detective Sergeant [name redacted] and Detective Constables [name redacted], [name redacted], [name redacted] and [name redacted]. They have worked long hours in surroundings that were often difficult and unpleasant to say the least. Yet throughout they have displayed great skill, conscientious dedication and cheerfulness that has been exemplary. They have my gratitude and admiration.
- 4.6 As well I would like to thank Chief Superintendent Arthur Provoost for his exemplary cooperation and assistance.
- 4.7 To Paul Stockton who has taken good care of the administration of the office permitting me to devote all my time to reading and writing. Last but certainly not least

to Claire Gray who has worked with great skill and without complaint on the demanding secretarial work.

4.8 Finally I am grateful to all those who submitted documents and material for my consideration in this case.

Rosemary Nelson

- 4.9 On 15 March 1999 Rosemary Nelson died as a result of the dreadful injuries she received when a bomb attached to her car exploded. Who was Rosemary Nelson? At the time of her death she was 40 years old, a practising solicitor, the wife of Paul Nelson and the mother of three children. To her children she was quite simply their mother who loved and nurtured them. To Paul Nelson she was his wife whom he loved. To her mother she was a good daughter, to her siblings a fine sister. To her clients she was an able solicitor who provided sound advice and able and courageous representation. She was a contributor to her community of Lurgan and to her profession. By their cowardly act, Rosemary Nelson's killers deprived her children of their mother's love and care, her husband of her love and comfort and the community of Lurgan of a very brave and able solicitor. How sinister and evil are the forces on both sides of the conflict in Northern Ireland who kill by bombs and by attaching explosives beneath the car of their victim.
- 4.10 There can be little doubt that it was the work of Rosemary Nelson as a solicitor which led to her murder.
- 4.11 Rosemary Nelson graduated in law from Queen's University in Belfast. After serving her apprenticeship she opened her own practice in Lurgan in 1989. She was apparently the first female sole practitioner in that town. It is obvious that her practice was highly successful. She dealt with a broad range of legal issues and was extremely proud of the fact that she had clients from both the Catholic and Protestant sides of the community.
- 4.12 She helped to found, and served in, the Shankill Help Centre where the people of Lurgan could bring their problems, ask questions and receive advice and assistance. Prior to her murder, Rosemary Nelson had been involved in a number of high profile cases. She had acted for the Garvaghy Road tenants in their efforts to prevent an Orange Lodge parade passing through their community. She had also acted for Client A on his acquittal for the murder of two Royal Ulster Constabulary (RUC) officers.

She had been retained by the Hamill family to represent them in proceedings pertaining to the death of Robert Hamill in Portadown. There can be no doubt that Rosemary Nelson worked diligently to protect the rights of her clients and the rights of all defence lawyers working in Northern Ireland.

- 4.13 During the last years of her life she was told by various clients that RUC officers had made her the target of abusive, insulting and demeaning remarks. What was cause for much greater concern was that some officers had threatened her life both directly and by implication.
- 4.14 As well, she received anonymous telephone calls at her office and home threatening her with death.
- 4.15 Some threats were conveyed in writing. A pamphlet distributed at Drumcree in 1998 referred to Rosemary Nelson in terms that by implication were clearly threatening. On 3 June 1998 an anonymous handwritten letter came in the mail to her office. It was a direct, chilling threat of death.
- 4.16 These threats were frightening and of great concern to her. Yet she courageously carried on her work as a solicitor acting for clients who were unpopular with segments of the community. She was a symbol of steadfast courage and of dedication to her role as a solicitor.

The murder

A. Events preceding the murder

- 4.17 For some four years prior to her murder Rosemary, her husband Paul and their three children lived in a house on Ashford Grange just west of the Kilwilke Estate in Lurgan.
- 4.18 On 5 March 1999, just 10 days before she was murdered, Rosemary Nelson had her car, a silver BMW, serviced. This included an inspection of the underside of the vehicle, valet cleaning and the fitting of new batteries to the alarm system.
- 4.19 On the weekend before the murder Rosemary Nelson with her family and a friend, Friend A, packed the car and left to spend the weekend in the country at her caravan. She returned to her home about 6.30pm on Sunday evening 14 March 1999. Following her usual practice, she left her car outside the garage. Her car was seen in this position by a neighbour later on the Sunday evening and by another neighbour at 8am on Monday morning.

B. The scene of the explosion

- 4.20 Sometime after noon on 15 March 1999 Rosemary Nelson started to drive from her home to her office. A short distance from her home on Castor Bay Road, the car bomb exploded, her car veered sharply across the road and struck the garden wall of the [name redacted] family home on Lake Street.
- 4.21 Rosemary Nelson's next door neighbour [name redacted] was a nurse. Her home was about one hundred yards from the scene of the explosion and she was at the scene rendering assistance before the police arrived. So too were other neighbours. Despite her frightful injuries, Rosemary Nelson was miraculously still fully conscious and speaking to friends, neighbours and later family members before the ambulance

arrived. She died in the hospital at approximately 3.30pm as a result of the multiple injuries and damage to her heart caused by the explosion.

4.22 One neighbour was stopped at a checkpoint after leaving the scene. He reported that soldiers stopped him and looked under his car while it was at the checkpoint. One said “Jesus the one we put underneath that car has fell off”. The other soldiers apparently started laughing. Their words and actions were callous, cruel and insensitive. On the other hand, other neighbours at the scene reported that the police officers in attendance at the scene were helpful, polite and concerned. The same comments were made with regard to the fire service that arrived at the scene. When the ambulance arrived Rosemary Nelson was taken to the hospital where she died a short time later. One neighbour noticed that Rosemary’s handbag had been blown out of the car. He picked it up and carried it over towards the car when a policeman stopped him. There can be little doubt that as a result of the sensitivity, kindness and desire to render comfort and assistance on the part of neighbours and family, there was some contamination of the scene. As a result, it was very difficult for the police to ensure that they had gathered all the significant material which was related to the explosion. There can be no doubt that when the police arrived at the scene they did all that they could to both assist Rosemary Nelson and her care givers and to monitor and investigate the scene of the explosion.

4.23 At approximately 8.45pm, on the day of the murder, an unidentified individual telephoned the BBC and, using a recognised code word, claimed responsibility for the murder on behalf of the “Red Hand Defenders” a dissident group thought to be comprised of members of the Loyalist Volunteer Force (LVF) and the Orange Volunteers.

4.24 Shortly after the murder Deputy Chief Constable Colin Port of the Norfolk Constabulary accepted the request of Sir Ronnie Flanagan, the Chief Constable of the RUC, to lead the investigation.

4.25 This report is divided into two principal sections. The first deals with threats, alleged threats and the knowledge of governmental agencies of these threats.

4.26 The second deals with the investigation of the heightened security force activity the weekend before the murder and the investigation of those suspected of the murder.

Definition of collusion

- 4.27 How should collusion be defined? Synonyms that are frequently given for the verb to collude include: to conspire; to connive; to collaborate; to plot; and to scheme.
- 4.28 The verb connive is defined as to deliberately ignore; to overlook; to disregard; to pass over; to take no notice of; to turn a blind eye; to wink; to excuse; to condone; to look the other way; to let something ride; see for example the Oxford Compact Thesaurus Second Edition, 2001.
- 4.29 Similarly the Webster dictionary defines the verb collude in this way: to connive with another: conspire, plot.
- 4.30 It defines the verb connive
1. to pretend ignorance or unawareness of something one ought morally, or officially or legally to oppose;
to fail to take action against a known wrongdoing or misbehaviour – usually used with connive at the violation of a law.
 2.
 - (a) to be indulgent, tolerant or secretly in favour or sympathy;
 - (b) wink at youthful follies;
 - (c) to cooperate secretly: to have a secret understanding.
- 4.31 How should collusion be defined for the purposes of this inquiry? Again it is essential that I observe that members of the public must have confidence in the actions of government agencies whether they be the Northern Ireland Office (NIO), the Secretary of State or the police force. There cannot be public confidence in any government agency that is guilty of collusion or connivance with regard to serious crimes. Because of the necessity for public confidence in government agencies the definition of collusion must be reasonably broad when it is applied to such agencies. That is to say that they must not act collusively by ignoring or turning a blind eye to

the wrongful acts of their servants or agents or by supplying information to assist those servants or agents in their wrongful acts or by encouraging others to commit a wrongful act.

- 4.32 Any lesser definition would have the effect of condoning or even encouraging state involvement in crimes, thus shattering all public confidence in governmental agencies.
- 4.33 In determining whether there are indications of state collusion in the murder of Rosemary Nelson it is important to look at the issue from two perspectives. First, it must be seen whether the documents indicate that the action or inaction of the government agencies might have directly contributed to the killing of Rosemary Nelson. Secondly, it is necessary to examine collusive acts which may have indirectly contributed to the killing by generally facilitating or encouraging terrorist activities. That is, the evidence may reveal a pattern of behaviour by a government agency that comes within the definition of collusion. This evidence may add to and form part of the cumulative effect which emerges from a reading of the documents. In this case it will be important to consider whether the documents reveal that government agents or agencies turned a blind eye to threats which were being made against the life of Rosemary Nelson. It must be determined whether the failure of governmental agencies to protect Rosemary Nelson, in light of the threats that they were aware of, constituted collusion. If the Government knew that Rosemary Nelson's life was in danger, yet took no steps to ensure her safety, this could constitute collusion. State sponsored protection was available to individuals on a discretionary basis. Obviously if this protection could have saved Rosemary Nelson's life, the failure of government officials to provide it was an act or omission that could have facilitated her murder by terrorist paramilitaries.
- 4.34 Further, if it is found that acts of Government encouraged terrorist acts, this too could be found to be collusive action.

The failure to protect Rosemary Nelson

A. Introduction

- 4.35 It is apparent that Rosemary Nelson received a great many threats. They took many forms and were received in various ways. For example, some of her clients told her that when they were interrogated by the RUC the officers would often make derogatory and alarming comments about her, for example, suggesting that they should obtain another lawyer because she would soon be dead. It is true that some of these alleged remarks were insulting and demeaning as distinct from being specifically threatening. Yet they too may be significant in demonstrating an attitude which the police and, on occasion, other government agencies, displayed towards Rosemary Nelson.
- 4.36 There were also alleged threats made directly to Rosemary Nelson by the police, for instance, the verbal and physical assaults alleged to have taken place during a disturbance at the Garvaghy Road.
- 4.37 Threats were also made directly to Rosemary Nelson at her office and home by anonymous callers. Some of the threatening calls were taken by office staff and associates and related to Mrs Nelson. Sometimes they came directly to Rosemary Nelson who in turn recounted them to friends and colleagues.
- 4.38 Threats were also conveyed in writing. One was contained in a pamphlet which clearly described Rosemary Nelson in ominous and disturbing terms. Another more explicit death threat, dated 3 June 1998, was set out in an unsigned letter which she received at her office through the post.
- 4.39 Various legal and other organisations learned of these threats and became very concerned about Rosemary Nelson's safety. These organisations, in turn, wrote on her behalf to governmental agencies decrying the threats and urging that steps be taken to

protect her. These letters were primarily written to the Minister of State, Northern Ireland Office (NIO), the Secretary of State for Northern Ireland and the RUC.

- 4.40 It is necessary at this stage to review in some detail the threats, the extent to which they were brought to the Government's attention, and the reactions of governmental agencies. Consideration will then be given to whether or not the action or lack of action of governmental agencies is capable of constituting collusion as I have defined it. As with all issues, these matters must be considered in their proper context. This includes events in Northern Ireland that preceded the murder, as well as a consideration of the role of the defence lawyer in the judicial process.

B. Background to this murder

- 4.41 The killing of Rosemary Nelson occurred 10 years and one month after the murder of Patrick Finucane. After his murder in February 1989 it would be reasonable to expect that governmental agencies would take a very serious view of threats to lawyers, particularly those that were defending people charged with terrorist offences. The murder of Patrick Finucane brought home the stark and chilling reality that lawyers in this field were indeed targets of terrorists. With his murder a target type was clearly identified. It brought home, or should have brought home, to those in police forces and governmental agencies the real and imminent danger that existed for lawyers acting for alleged terrorists or terrorist groups. At the time Patrick Finucane was murdered, it was known by the Government that two other defence solicitors had also been explicitly targeted by paramilitaries. The 1998 Report of the UN Special Rapporteur on the Independence of Judges and Lawyers found that the repercussions of the Finucane murder continued to have an impact close to a decade later. According to the Report, solicitors informed the Special Rapporteur that the murder led them either to give up criminal practice entirely or to alter the manner in which they handled terrorist related cases.
- 4.42 Significantly, in February 1998 the Special Rapporteur also found that solicitors in Northern Ireland were subject to systemic intimidation and harassment by the RUC, and that there was a compelling need for the Government to provide the necessary protection whenever the physical integrity of a barrister or solicitor was threatened.

All of these factors should have demonstrated that the position of a solicitor representing clients charged with sectarian violence was precarious, to say the least, and that solicitors who courageously accepted these cases were potential targets of sectarian violence themselves.

C. Why should society be concerned with the protection of judges and lawyers?

- 4.43 The span of years that passed between the commencement of Rosemary Nelson's practice until her death in March 1999 was a very difficult time for those who represented alleged terrorists in Northern Ireland. Yet it is in these troubled times that the courts are so often of fundamental importance to the society they serve. In the absence of a jury the role of the judge becomes ever more important. The community must rely on the absolute integrity and impartiality of the judge. It is essential that the judge be as unbiased as humanly possible and that he or she has the courage to make decisions that are bound to be unpopular in one or other segment of the community. Difficult terrorist cases also require Crown Counsel to present all the relevant evidence fairly and courageously. This is truly a difficult role that calls for courage, integrity, dedication and diligence.
- 4.44 Yet the role of defence counsel is the most difficult. Defence Lawyers represent clients that might be extremely unpopular in their district, whether charged with murder or terrorist activities. This requires considerable dedication, diligence and a great deal of hard work. Cases often have to be prepared in very difficult circumstances with limited access either to their client or to investigative assistance. Above all, defence lawyers need courage to represent unpopular clients. At all times, but particularly in troubled times, there is a tendency by the public to confuse the role of the lawyer with that of their clients and their causes. In those dark times, even the police, who should know better, very often associate the lawyer with the client and the client's cause.
- 4.45 Particularly in times of troubles, the community must be able to turn to an institution which it knows will act fairly and impartially in the resolution of disputes. This is particularly true of disputes between the State and the individual which includes all

prosecutions for criminal offences. The community must be satisfied that there has been a fair trial of the issues coming before the court. In criminal cases, there cannot be a reliance on the fairness of the process in the absence of able, dedicated, skilful and courageous defence counsel. The right to counsel is of fundamental importance in the criminal process. A community is fortunate, indeed, if it has a body of able defence counsel who are dedicated to ensuring that every individual has a fair trial. This is not only an essential feature of the judicial process, it is fundamentally important to a democratic form of government.

4.46 Yet, the more emotional the issue, and the more unpopular the accused and his cause, the greater is the potential danger for defence counsel. The State that wishes to ensure a fair trial for all and maintain confidence in the courts must take reasonable steps to protect the lives of defence counsel when they are threatened. To take such steps may be unpopular with certain segments of the community, yet it is essential to the operation of the courts.

4.47 The importance of the courts at all times, but particularly in times of turmoil, cannot be overstated. The importance of both prosecution and defence counsel to the operation of those courts must also be recognised. It is just possible that the role of, not only the judiciary, but counsel is as important to society as that of politicians. The State should err on the side of caution to protect the lives of counsel who are believed to be in danger. If those steps are not taken there is a very real risk that counsel might be intimidated by the prospect of acting in cases which could imperil their lives and those of their families. Persons charged with repugnant crimes might have difficulty securing legal representation. Were that to happen, the concept of a fair hearing for all would eventually become meaningless and the trial process would all too quickly become arbitrary and the outcome all too predictable. It is then that the confidence in the courts would rapidly diminish and ultimately disappear. That is one of the reasons why the death of Rosemary Nelson must be so carefully considered.

D. Threats to Rosemary Nelson

i. Alleged threats and derogatory remarks made by the RUC

(a) Threats conveyed through clients

4.48 Various clients of Rosemary Nelson reported to her and others that RUC officers had made derogatory and threatening remarks to them about her during police interrogation. Complaints were made about many of these remarks and were investigated by the RUC and other institutions. The investigations will be discussed later. For the present I will simply outline the comments alleged to have been made by RUC officers while questioning Rosemary Nelson's clients.

February 1997 – Client B

4.49 On 2 February 1997 the police were questioning Client B. He refused to speak to them and asked for his solicitor. Rosemary Nelson attended and after she left he stated that the police “started to fire abuse at me in relation to my solicitor. They said she was a money grabbing bitch ... as bad as Client A ... she was a Provo solicitor ... They also made fun of the marks on Rosemary's face... They called her a bastard fucker... They kept going on to me about Rosemary Nelson getting Client A off ...” The purported remarks of the officers were set out in a statement made by Client B on 27 October 1997.

February 1997 – Client H and Client I

4.50 On 11 February 1997, Client H and Client I were arrested by the RUC. They were interviewed on several occasions. Client H saw his solicitor, Rosemary Nelson, twice a day. To Client H, the police said that Rosemary Nelson “was a friend of the Provos and of Client A.” They continued and said that she was “not that good, she won't get you off”. Client I was told by the RUC, referring to Client H, “He is hiding something, we need to get it out of him, the PIRA bastard, you're dead. Tell Rosemary she's going to die too ...”

March 1997 – Client F

4.51 On 6 November 1997 Client F made a statement. In it he said that he was arrested in March 1997 and taken to Gough Barracks. He alleged that Rosemary Nelson's name was frequently brought up by the CID during the second day of questioning. He stated

that they said “She is a terrorist with a deformed face.” They asked why was I “seeing Rosemary.” They said “I was a game bastard as she had a face on her like a man’s ball bag.” He went on to say that other similar comments had been made. The alleged comments made to Client F form part of a complaint made by Rosemary Nelson in November 1997 regarding comments made by RUC officers.

June 1997 –Client A

4.52 In June 1997 Client A was questioned with regard to murder charges. During the questioning one RUC officer said to Client A “You murdered those people, I’m sure your mother and wife were proud of you and I’m sure Rosemary’s very proud of you”. Client A made a statement with regard to these references to Rosemary Nelson. Rosemary Nelson wrote a letter of complaint to the Custody Sergeant at Gough Barracks with regard to the statements made by RUC officers to Client A on 25 June 1997. A copy of the letter was sent to Ms D of British Irish Rights Watch (BIRW). Client A and Rosemary Nelson took this comment to be a suggestion that Rosemary Nelson was associated with and condoned violent paramilitary activity.

4.53 Both Rosemary Nelson and Client A provided official police statements setting out their complaints regarding the conduct of the police. Rosemary Nelson’s statement, dated 16 September 1997, referred to the comment of the RUC officer who was alleged to have said “I am sure Rosemary is proud of you”, and then continued:

“This appears to be part of an ongoing pattern. During the course of this year I have had quite a number of clients who have been taken to the police office at Gough. Almost invariably there have been reports of derogatory comments made and sometimes threats that I was going to die. At one point it got so bad that I got the CAJ to come down and take statements from my clients independently. I don’t have dates and times or identity of the detectives but CAJ should have that and I give you my permission to approach them to obtain copies of these statements.”

4.54 Client A’s statement was dated 15 October 1997. He confirmed that during the course of his interrogation, Officer A implied that “my solicitor in some way was partial and

that she would have in some way condoned the specific allegations which were being put to me which were that my solicitor was proud of what I had done”.

October 1997 – Client D

- 4.55 On 14 October 1997 Rosemary Nelson wrote a letter to the Chief Superintendent of the RUC Station, Lurgan. In the letter she said that she had been contacted by a client, Client D, who told her that during the course of a search carried out by three members of the Royal Irish Regiment (RIR) Rosemary Nelson’s name was mentioned on a number of occasions in derogatory terms. The letter confirmed that Rosemary Nelson had logged a complaint with the Duty Inspector in Lurgan that night and had asked for information about the progress of the investigation. A copy of this letter was sent to BIRW.

October 1997 – Client G

- 4.56 Client G, who had been a client of Rosemary Nelson, made a statement on 28 March 2000. In that statement he recounted his visit to Rosemary Nelson’s office on 29 October 1997. While he was there he was told that his son’s friend [name redacted] had been put through a window by an RIR soldier or soldiers. Client G started walking over to a soldier. The soldier shouted “I’ll do the same to you”. Rosemary Nelson ran over to the soldier and said to him “I heard you threaten Client G”. The soldier then started to abuse Rosemary Nelson. He made remarks about her face stating that she was ugly, that she was a Provie bastard for getting them out of prison. He went on to tell Rosemary Nelson that he was going to “nut her or do her” or words to that effect. A complaint was lodged with the RUC regarding the treatment of Client G but it is not clear whether this complaint also referred to the way in which Rosemary Nelson had been treated.

October 1997 – Client C

- 4.57 In a statement given on 6 November 1997 Client C confirmed that he had been arrested two weeks earlier and taken to Gough Barracks. He stated that two Special Branch officers interviewed him and one said that “Rosemary must have been hit with an ugly stick about 10 times”. The officer then continued saying “It was as well that I had not been lifted during Halloween as Rosemary would have been out on her broomstick and I wouldn’t have got her down”. He went on to say that about three

years earlier he had been asked by police officers why he was using Rosemary Nelson as “She did all the Provo’s”.

December 1997 – Client E

- 4.58 Client E was a client of Rosemary Nelson. He was arrested on 15 December 1997. Following his arrest he was taken in a police vehicle accompanied by four RUC officers. While he was in the police vehicle one of the officers stated “Rosemary won’t help you this time”. Another officer said, “She won’t be here that long, she’ll be dead”. A copy of a statement taken from Client E by CAJ was sent to Ms D by Rosemary Nelson on 6 April 1998.

February 1998 – Client G

- 4.59 In February 1998 Client G, a client of Rosemary Nelson’s was arrested and taken to Castlereagh. When he asked to see his solicitor Rosemary Nelson he was told “Tell prune face that we have been doing this for thirty years and she won’t be able to stop us. There was a law passed in 1989 against solicitors who concocted statements”. Rosemary Nelson wrote a letter of complaint to the RUC. She appeared to interpret the comment pertaining to 1989 as a reference to the year that Patrick Finucane was murdered and therefore found the words to be particularly threatening. She also told Ms D of this threat. Ms D very fairly pointed out in a memo to her file that 1989 was also the year in which legislation was passed which reduced the right to silence. Nonetheless, however interpreted, the comment, if it was made, was clearly demeaning, if not threatening, to Rosemary Nelson.

June 1998 – Client J

- 4.60 On 30 June 1998 Rosemary Nelson wrote to the Investigating Officer, Castlereagh Holding Centre, Belfast, to complain about derogatory remarks made to her client Client J, stating that “this is part of an ongoing situation which quite frankly is unacceptable”. According to a statement made by Client J to investigators, RUC officers

- talked about the murder of [name redacted] who had been shot in the head and said that that could be arranged to happen to him;
- suggested that he get a steel cage in his house for protection;

- said that his details would be passed to the LVF and that he was being watched by the Ulster Defence Regiment (UDR) who might also pass his details onto Loyalists;
- referred to the murder of Robert Hamill in a way that suggested that he might meet a similar fate;
- made derogatory comments about his solicitor Rosemary Nelson stating that she was a provo solicitor and that she had “got him well trained in anti-interrogation tactics”.

(b) The Garvaghy Road incident

4.61 On 5 July 1997 Rosemary Nelson told BIRW that she had been assaulted by RUC officers during an incident on the Garvaghy Road. Rosemary Nelson gave a statement to Mr E of the Committee for the Administration of Justice (CAJ) regarding this incident. She described the assault in these words:

“One officer grabbed my right arm and pulled me into the middle of the police. I was surrounded by police officers. One said ‘Rosemary, you Fenian fucker’. I said ‘Could I have your number’ and he told me to ‘Fuck Off’ and he spat at me on my face. I am not sure if the police were touching me during this but other people who witnessed the incident said that I was being pushed by the officers. I have bruises to my right shoulder and to my legs and am also extremely stiff and sore. I saw some reaction from the crowd and I shouted to them not to react. The police then let me walk away.”

4.62 There was a note on the statement, presumably made by Mr E, indicating that Rosemary Nelson’s right arm was visibly bruised.

4.63 Mr F, a Member of the Bar in the State of New York, was present at the time. He described what he saw in a statement dated 8 July 1997. It appeared to confirm Rosemary Nelson’s account. This of course occurred while Rosemary Nelson was attempting to represent her clients’ interest pertaining to Garvaghy Road and the Orange parades in the vicinity.

4.64 I would note that on the night of the assault the police were attempting to maintain order during a tense, volatile and potentially violent situation. The officers were wearing riot gear and as a result it would be extremely difficult to identify them. The investigation into the complaint regarding this incident is dealt with later.

ii. Anonymous threats

(a) Early calls to the office

4.65 In the latter part of October 1993 a man called Rosemary Nelson's office and stated: "This is the UVF here, Mr L is on his way to get to your office, there'll be a black wreath there and when he gets there he'll be dead". The office records indicate that on that particular day, Mr L's girlfriend, [name redacted], had an appointment to see Rosemary Nelson. The office staff reported the call to the police. A crime prevention officer was detailed to meet with Rosemary Nelson with regard to this incident. The officer, Constable B, left a letter at her office on 1 November 1993. The letter revealed that he had been asked by the duty inspector at the RUC station in Lurgan to get in touch with her with regard to security matters and ask her to call him. On 2 November 1993 Constable B again attended her office on two occasions, he was not able to see her. Her receptionist made arrangements for her to get in touch with Officer B but no call was made. The next day, 3 November, Officer B again came round to the office and this time left an envelope which contained booklets with titles such as "Stopping Crime Starts with You" and "Personal Protective Security Measures" and details of alarm installation and other victim of crime leaflets. He reported what he had done and agreed with his detachment that nothing further should be done and that the police would simply await a response from Rosemary Nelson.

4.66 This is the first recorded threat to Rosemary Nelson's office. It is unfortunate that she did not call or make an appointment to see Officer B. It is understandable that a recent young graduate in law whose practice appears to have been oriented to court work would have difficulty seeing an officer without an appointment. Yet at some time arrangements should have been made by Rosemary Nelson to see the RUC Officer.

4.67 I must note this early refusal by Rosemary Nelson to cooperate. It is difficult to both demand complete protection from the police force and yet deny it any cooperation. An

ambivalent attitude towards the RUC appears to have prevailed in the Catholic community. Some of it may have stemmed from a perception that the RUC was untrustworthy. This perception may have been justified in the view of Rosemary Nelson, particularly as time went on, since some of the later threats against her were alleged to have emanated from the RUC itself. Yet it is still difficult if a segment of the population rightfully expects protection by the police force but that same segment fails to cooperate with the police.

4.68 Another anonymous call was made to the office in September 1996. Client A had been arrested for the murder of [name redacted], a former UDR soldier. On the day he was released from prison for that murder a young woman working in Rosemary Nelson's office received a call from someone that spoke with a Lurgan accent and sounded angry. He stated "Have yous no conscience up there. Yous have got a murderer out of jail after killing innocent people. All Rosemary Nelson does is support IRA members. Rosemary's in the IRA herself. You are all scummy bastards". The caller went on to say "We'll get Rosemary and we'll kill her". The woman reported the call to Rosemary Nelson who told her that any threatening calls should be put directly through to her. It is not clear whether anyone outside the office was aware of this call before the murder occurred.

(b) The escalation of threats: the Client A case

4.69 Client A was charged with the murder of two RUC officers on 23 June 1997. When it became known that Rosemary Nelson was his solicitor, the threats against her appeared to escalate. In a statement provided by Rosemary Nelson in October 1997, she described four death threats received at her home and office:

- a. A male called the office and told the young woman that answered the phone that they were nothing but IRA bastards and fuckers and that they would get Rosemary Nelson.
- b. One caller when he was put through to Rosemary Nelson, stated "Your a dead IRA fucker" and hung up.

- c. One of the secretaries in the office took a call from a man who said “Your IRA bastards and you are going to get shot”.
 - d. Rosemary Nelson’s 10 year old son Christopher took a call at home and when he gave the phone to his mother the caller said “Your dead, you’ll be shot”.
- 4.70 These threats were set out in a statement given to Mr E, a lawyer with the CAJ. They were also referred to and included as an exhibit in the BIRW report submitted to the United Nations Special Rapporteur in November 1998, entitled “Mistaken Identity: Attempted Intimidation of Defence Lawyers in Northern Ireland, the Murder of Patrick Finucane and other Issues”.
- 4.71 The officers originally assigned to the investigation and, later, the Colin Port Inquiry team gathered evidence which tended to support the statement of Rosemary Nelson outlining the four threats. For example, on 16 March 1999 Detective Sergeant C met with Mr Paul Nelson. Mr Nelson stated his wife had spoken to him about the threats and letters she had received. He did not see any of the letters which he understood had been destroyed. He said his wife did not like bringing them home. However he did suggest to Detective Sergeant C that he should speak to the secretary at the office.
- 4.72 Later that day, an officer met with Rosemary Nelson’s secretary who confirmed that she had received a number of threats. She spoke of a letter Mrs Nelson received in November 1998. She believed this letter had been destroyed. She stated that Rosemary Nelson usually received threats around the Drumcree marching period, but that Rosemary Nelson did not appear to take the threats seriously at least in the presence of office staff. The secretary stated that one coded message was received at the office by another solicitor when Rosemary Nelson was at court.
- 4.73 A further discussion with regard to threats was held on 24 March, when all the staff at Rosemary Nelson’s office had been interviewed by the investigation team. Ms P saw a threatening letter that Rosemary Nelson had received at her home. She had spoken to Mr Nelson about this letter and he believed that his wife had torn it up.

- 4.74 Mr G, the only other solicitor practising in Rosemary Nelson's office, thought that she may have sent copies of the threatening letters to CAJ. He stated that she did not keep them in the office in case the staff saw them and became frightened.
- 4.75 Ms Q spoke of her knowledge of threats received by Rosemary Nelson. She had little knowledge of threatening phone calls but mentioned the possibility that letters might have been sent to CAJ. In her statement dated 24 March 1999 Ms Q stated that she was aware that Rosemary Nelson received a number of threats by telephone both at her home and at the office.
- 4.76 Ms R stated that Rosemary Nelson's clients who were questioned at Gough or Castlereagh had relayed to her the threats that were alleged to have been made by the RUC. In her statement dated 24 March 1999 she made this comment about the threats: "I think the ones from the police were the ones which scared her most". She remembered taking a statement from a client whose name she could not recall who stated that the police had said to him "You're going to die when you get out and tell Rosemary she's going to die too".
- 4.77 In the same set of interviews, Mr G an associate of Rosemary Nelson stated that during his employment with her he became aware that she received a number of written and verbal threats of an anonymous nature. On one occasion, Mr G took a call a day or two before the Orange parade was scheduled to take place in Portadown. The man calling said "This is the LVF. Tell Rosemary Nelson we will be at the march in Portadown and we will see what is going on". The caller mentioned words that Mr G took to be code, such as, Blue Lagoon or Blue Platoon.
- 4.78 Mr G spoke of a time before Christmas 1998 when Rosemary Nelson told him that when she returned to her parked car four persons had driven up beside her, stopped, glared at her and then driven off. On this same occasion Rosemary Nelson showed Mr G a card or document which bore the words "We know what you are".
- 4.79 Ms S worked as a receptionist/secretary at Rosemary Nelson's office for approximately five years. In her statement of 24 March 1999 she reported that she was aware of a number of threats towards her employer. Some six weeks earlier she

said she had taken a call from the switchboard. The man at the other end of the line had a local accent and said “Just tell Rosemary this, (it was to this effect) the LVF and UVF will be joining with the Blue Platoons and they will be policing the Orange parade in Portadown”. She then put the call through to Mr G.

(c) The bullet

4.80 At some time in 1997 Rosemary Nelson received a bullet in the mail which she showed to Ms D. She also showed the bullet to an official in the Irish Civil Service (Irish Official A), who told her the bullet was a round for an automatic rifle. She also told her friend Friend B about the bullet.

4.81 There can be little question that the bullet mailed to her was a death threat. Although she showed the bullet to at least three people and expressed her concern, there is no evidence that it came to the attention of either the RUC or any British governmental agency.

(d) The handwritten death threat

4.82 On 3 June 1998 Rosemary Nelson received a handwritten note at her office. It read “We have you in our sights you republican bastard, we will teach you a lesson RIP”. Not surprisingly this letter worried Rosemary Nelson. She showed and spoke about the letter to a good many people including her husband, her sister Mary Magee, Ms D, Friend A, her bookkeeper [name redacted], the CAJ and a journalist named [name redacted]. This document became highly significant in connection with subsequent events.

(e) The “Man Without a Future” pamphlet

4.83 In July 1998 a pamphlet entitled “The Man Without a Future” was being freely distributed at Drumcree 1998. It came into the possession of both BIRW and CAJ both of whom forwarded a copy of it to the NIO. This office in turn sent it on two occasions to the Chief Constable of the RUC.

4.84 An internal memorandum from the RUC, dated 7 August 1998, stated that the police had been informed by the NIO that Rosemary Nelson was extremely distressed by the leaflet and was seriously concerned about the threat to her personal security posed by the claims in the leaflet and by the circulation of her office address and telephone number. Certainly, coupled with the anonymous death threat letter, the pamphlet would have been particularly frightening and threatening, because of its extensive distribution amongst Loyalist factions.

4.85 The pamphlet read as follows:-

While in the Maze prison, he (Mr M) became close friends with Mr N, now IRA chief of staff, and his second in command, Mr O, these two men have been pulling Mr M's strings since he left gaol. Under the command of Mr N, [name redacted], a Jesuit Priest, and with advice from Lurgan solicitor and former bomber Rosemary Nelson ([address redacted]), this motley crew have for the past six years been trying to put into place a plan that was first used by the Jesuit Philip Muller. His plan was to destroy the religious rights and freedoms of Hungarian Protestants by bringing them into conflict with the state. Mr M, your plan has been found out, your time running out.

ASK NOT FOR WHOM THE BELL TOLLS, IT TOLLS FOR YOU MR M [emphasis in original]

(f) The death threat in the food market

4.86 In February 1999, a delegation of American attorneys came to Northern Ireland to meet with the Chief Constable, Sir Ronnie Flanagan. Some time before the meeting, the delegation met with Rosemary Nelson. She told them that strange and frightening things were regularly occurring in the course of her activities as a solicitor. According to one attorney that was present, Mr T, Rosemary Nelson told the group about the allegations that RUC officers had conveyed threats to her through her clients during police interrogations. In addition, Mrs Nelson reported another incident which she

found to be particularly unnerving. She told the group that sometime earlier, she had been shopping in the local food market when she noticed that she was being followed around the store by a large man that she had not seen before. At one point, when other shoppers were not in the vicinity, this man came up to her and told her that “if she didn’t stop representing IRA scum, she would be dead.”

iii. Billy Wright’s diary

- 4.87 It has been suggested in certain briefs that an additional threat to Rosemary Nelson was contained in the diary of Billy Wright, the leader of the LVF who was murdered in HMP Maze on 27 December 1997. It is true that, when Billy Wright’s diary was made public, it was found to contain a passage that was clearly threatening to both Client A and his solicitor, Rosemary Nelson. While the entry in question was written before the murder of Rosemary Nelson, the diary did not become public until some time later. Moreover, the documents from the Billy Wright file would seem to clearly indicate that the contents of the diary were not known to either Rosemary Nelson or the police prior to her murder.
- 4.88 This was made clear in a letter dated 11 February 1998, sent to Billy Wright’s father, David Wright, by the Director of Custody for the Northern Ireland Prison Service, Mr A. In this letter, Mr A apologised for not turning Billy Wright’s personal effects over to his father. He explained that the personal items contained in Wright’s cell had been placed in boxes and handed out of the wing by his LVF comrades. These personal effects were then collected by Mr Wright’s common law spouse. The letter indicated that the only property belonging to Wright that had been seized by the RUC were items of clothing worn at the time of his murder. This assertion was confirmed by another document, which outlined all of the evidence seized by the RUC from HMP Maze following the murder of Billy Wright. It is apparent from this document that nothing was seized from Billy Wright’s cell and that, apart from his clothing, the police did not take possession of Wright’s personal effects.
- 4.89 These documents would appear to confirm the RUC position that it did not search Billy Wright’s cell after his murder, and did not know of his diary until after the murder of Rosemary Nelson. One can presume that Rosemary Nelson was similarly

unaware of the diary. The threat contained in the diary was not known to the RUC, the NIO or any other government agency prior to her murder. It could be argued that the RUC should have searched Billy Wright's cell and recovered the diary. However, it may be inferred that they considered it more important to search the cells of his murderers immediately after the killing. This may explain the failure to recover the diary obviously taken by his LVF friends in the prison wing.

iv. Rosemary Nelson's testimony in Washington

4.90 On 29 September 1998 Rosemary Nelson testified in Washington before the House Committee on International Operations and Human Rights in Northern Ireland. In her testimony to the House Sub Committee she testified:

“Since I have begun to represent clients detained for politically motivated offences 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.

This behaviour on the part of the 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.

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 myself. No lawyer in Northern Ireland can forget what happened to Patrick Finucane nor dismiss it from their minds...

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.”

4.91 During her testimony before the House Committee Rosemary Nelson was asked whether she had sought protection. In response she explained that such a process would require RUC involvement and she had no faith in that institution. She testified:-

“I did not make any specific requests for security but the RUC was notified about these threats. They have continued to be notified about them. In fact they have continued as recently as July of this year I had a similar threat. That complaint was made known to the RUC as well but the issue of security just hasn’t been raised”.

4.92 The chairman asked if it wouldn’t be appropriate for her to request security and a licence to carry a weapon since her life had been threatened. She informed him: “possibly but to be perfectly honest I am not sure I would use a firearm, I may not have taken certain precautions around the home.” The chairman said “but I am talking about the UN provision that we discussed that the government has responsibility to provide you with security if your life has been threatened”. Rosemary Nelson replied “Yes indeed the government does have responsibility *but the procedure there is if you request security from the RUC your premises are assessed by the RUC, the security installations and I wouldn’t have any great faith in the RUC coming in to assess that*”. [Emphasis added]

E. Government knowledge of threats to Rosemary Nelson

i. Letters written on behalf of Rosemary Nelson

4.93 A number of organisations and individuals learned of the threats that had been directed at Rosemary Nelson. They became extremely concerned for her safety and wrote to the NIO, as well as other government officials or agencies. Through these letters, the RUC and Government departments received clear and, in some cases, repeated notice of the threats made to Rosemary Nelson. These letters are reviewed below.

(a) The Lawyers Alliance for Justice in Northern Ireland

4.94 In March 1997, Rosemary Nelson gave her permission to the American Lawyers Alliance for Justice in Northern Ireland to make an official complaint on her behalf regarding the threats and abusive comments allegedly made by RUC officers to her clients. On 13 March 1997 the Alliance wrote to the Independent Commissioner for Holding Centres, Mr V. The letter stated in part ... “a very effective solicitor Ms Rosemary Nelson has been subject to death threats emanating from RUC detectives stationed at Gough Interrogation Centre. These threats have been communicated to Ms Nelson through several clients”. The Lawyers Alliance also wrote to Mr U, Chairman of the Independent Commission for Police Complaints (ICPC) on 30 June 1997. The letter stated that: “unfortunately the threats and intimidation directed against Ms Nelson have not abated ...” It went on to note that

“With specific reference to threats against Ms Nelson, the interrogating officers accused Client A of murder and stated that Ms Nelson ‘condoned murder’ and was acting as a front for the IRA or words to that effect. Not surprisingly Ms Nelson has received death threats at her office.

It is doubtful that this serious matter can be dealt with internally by the Royal Ulster Constabulary.

Would you please bring this case to the Attorney General of Great Britain.... I am concerned that if prompt and responsible action is not taken Ms Nelson will meet the same fate as that of Patrick Finucane ...”

4.95 Mr U responded to this letter by reporting that he had forwarded the Lawyers Alliance letter to the Assistant Chief Constable of the RUC who “who is responsible for recording and investigating complaints against police officers”. The letter went on to state that an investigation had commenced on 13 March 1997 but, due to Rosemary Nelson’s refusal to be interviewed it was not possible to obtain sufficient information to form the basis for a meaningful investigation.

4.96 At about the same time Mr V had sent a copy of his letter from the Lawyers Alliance to the Legal Secretariat to the Law Offices, Attorney General’s Chambers. On 20 March 1997 [name redacted] the Legal Secretariat wrote to Mr W, the Secretary of the ICPC, enclosing a copy of the letter from Mr X and stating:

“I enclose a copy of Mr X’s letter in which he alleges that Ms Nelson, a solicitor has been subject to death threats emanating from a detective in the RUC stationed at Gough Holding Centre.

I have written upon the Attorney General’s direction to the Assistant Chief Constable “G” Division, Royal Ulster Constabulary so that the police may take necessary steps as considered appropriate in order to investigate these allegations and to consider such steps as are in relation to Ms Nelson’s security.

The Attorney General has also requested me to bring the matter to the attention of the Commission and I enclose a copy of Mr X’s letter.”

4.97 On 30 June 1997 Mr X, National Coordinator of the Lawyers Alliance wrote directly to Officer F of the Complaints and Discipline Branch of the RUC. Officer F was then investigating certain complaints regarding comments made by officers to Rosemary Nelson’s clients. Mr X’s letter included the following:

“Most recently the situation has become more sinister.

I am sure you are aware Client A was arrested in Lurgan and charged with the murder of two members of the RUC...

In the meantime it is reported that the interrogators of Client A referred to Mrs Nelson as a person “who condones murder” and was a front for the IRA or words to that effect.

Such language encourages individuals to carry out assassination as witnessed by the case of Patrick Finucane which remains unsolved...”

- 4.98 On 17 July 1997 Mr X wrote to Mr Jack Straw, then British Home Secretary. The letter alerted him to the threats which were said to have been made against Rosemary Nelson and enclosed correspondence which Mr X thought documented the situation. Mr X emphasised “my immediate concern is for the safety of Ms Nelson”. On the same day Mr X wrote a letter to Ms Y Deputy Chief Executive of the ICPC, stating: “Unfortunately I must report that the harassment threats and attempted intimidation of Mrs Nelson have continued and in fact have recently become more sinister”. He referred to the incident in which Mrs Nelson was alleged to have been assaulted at Garvaghy Road. The letter finished with the observation “None of us wish to see a repetition of the unsolved murder of solicitor Patrick Finucane”. It is obvious that the significance of the murder of Patrick Finucane was apparent to other organisations. It should have been equally apparent to the RUC and the NIO.
- 4.99 The RUC responded to Mr X’s correspondence, by letter dated 6 August, advising the Lawyers Alliance that “the matter had been investigated as far as practicable and the papers sent to the ICPC”.
- 4.100 A further letter was sent by NIO Official A, NIO Police Division indicating that “the allegations about harassment, threats and intimidation of Mrs Nelson are extremely serious ones... The current situation is that Mrs Nelson’s complaint is likely to be dispensed with (in other words closed down) because of Mrs Nelson’s failure to cooperate”. It is noteworthy that, notwithstanding the status of the complaint, the NIO Police Division appreciated and acknowledged that the allegations of harassment,

threats and intimidation of Rosemary Nelson were extremely serious. Later, the investigation did continue after Rosemary Nelson and Client A attended to make formal statements to the investigators.

4.101 On 1 December 1997, Mr X wrote to Mr W Chief Executive of the ICPC enclosing the statement of Client F in which he had reported that an RUC officer had made highly offensive and shocking comments regarding Mrs Nelson's facial scarring.

4.102 There can be no doubt that, through its correspondence, the Lawyers Alliance for Justice in Ireland notified the RUC, the Home Secretary, the ICPC, the Independent Commissioner of Holding Centres, and the Attorney General of the reported threats and derogatory comments directed at Rosemary Nelson by the RUC. The agency also expressed its serious concern for Rosemary Nelson's continued safety.

(b) The Committee for the Administration of Justice

4.103 The Committee for the Administration of Justice (CAJ) is an independent body which received the Council of Europe prize for its work in Human Rights. I say this simply to note that it has an enviable international reputation. Its recommendations should be carefully considered.

4.104 On 5 March 1998, Mr E of CAJ wrote to Adam Ingram, Minister of State, NIO. The object of the letter was to alert the Minister to the concerns of CAJ for Rosemary Nelson's safety. The letter pointed out that, for at least a year, she had been subject to harassment and abuse at the hands of the police. It also reported that she had received a number of death threats, some of which had been telephoned to her office anonymously and others which had been made by police officers to her clients. The letter noted that Mrs Nelson and a number of her clients had lodged complaints against the police which were then being dealt with by the ICPC. These complaints involved death threats and allegations that Mrs Nelson was involved in paramilitary activity.

4.105 The letter also made specific reference to death threats that had apparently been conveyed by RUC officers through one of Mrs Nelson's clients, Client K. The letter closed with the following statement:

“If the police are unable to deal effectively with this problem, then it becomes the responsibility of the government to ensure that the UK does not continue to breach its international obligations. We look forward to receiving confirmation as to how you intend to deal with this particular problem and the pattern of police harassment of defence lawyers in general.”

4.106 On 10 March 1998, the CAJ again wrote to Mr Ingram. This letter is of particular importance because it enclosed copies of two documents: the “Man Without a Future” pamphlet and the handwritten, anonymous death threat letter received by Rosemary Nelson at her office. It will be recalled that the pamphlet “Man Without a Future” clearly referred to Rosemary Nelson as a former bomber and part of a “motley crew” who was giving advice to Mr M, whose “time[was] running out”. The letter dated 3 June read “We have you in our sights you republican bastard we will teach you a lesson RIP”. The CAJ quite properly characterised these documents as “very definite threats against the personal safety of Rosemary Nelson”, and stated that there was an urgent need for the Government “to provide the necessary protection for Mrs Nelson”.

4.107 NIO Official C, Private Secretary to Mr Ingram replied to Mr E of the CAJ on 24 September 1998. The letter acknowledged that the documents enclosed must be of concern to Mrs Nelson. It went on to say that the documents had been immediately passed to the Chief Constable's office for investigation, and that given the nature of the material, “they would obviously ... assess the security risk against Mrs Nelson”.

4.108 From this point on the situation becomes murky to say the least. A letter was sent by the NIO to the RUC on 26 August 1998, which referred to two attachments: “a pamphlet relating to Mr M which refers to Rosemary Nelson and a threatening note which was posted to Rosemary Nelson (copies attached)”. It would appear that, while both attachments were specifically referred to, neither was actually faxed through to the RUC. It would further appear that there was little or no follow up by either the NIO or the RUC in connection with the missing documents. This issue is explored in

some detail in connection with the RUC threat assessment. For present purposes it suffices to note that these important documents, which contained clear and insidious threats to Rosemary Nelson, were brought to the direct attention of Government officials in the NIO. They either were, or ought to have been, within the knowledge of the RUC. Ultimately, the request of the CAJ that Rosemary Nelson be given protection was denied by the NIO, based largely upon the RUC's position that it was not aware of any "specific threats" against her.

(c) Amnesty International

4.109 On 21 August 1997 [name redacted], Secretary General of Amnesty International wrote a detailed three page letter to Dr Marjorie Mowlam, Secretary of State for Northern Ireland, expressing Amnesty's concern with the threats directed at Rosemary Nelson. The letter noted that the Organisation was disturbed to learn that Mrs Nelson had received death threats relating to her representation of Client A. It asked the Secretary of State to provide Amnesty with information as to the measures that were taken to protect Rosemary Nelson.

4.110 An identical letter was also sent by Amnesty International to [name redacted], DPP for Northern Ireland, on the same day.

4.111 On 18 September 1997 [name redacted] the Programme Director of Amnesty International wrote a letter with similar content to Chief Constable Sir Ronnie Flanagan at the RUC. The letter referred to the death threats made against Rosemary Nelson and requested information about any measures that were taken to protect her.

(d) The Lawyers Committee for Human Rights

4.112 On 23 October 1997 Mr Z, Executive Director of the Lawyers Committee for Human Rights, also wrote to Dr Marjorie Mowlam setting out his organisation's concerns for the safety of Rosemary Nelson. He asked for investigation of the threats made against Rosemary Nelson and requested that her office "take all appropriate measures to protect her, and other solicitors who represent people in politically sensitive cases". This letter serves as a helpful example because of the level of detail it provided. For

example, in addition to referring to Mrs Nelson being “beaten and verbally abused” by members of the RUC while representing the residents of the Garvaghy Road, the letter cited the following additional incidents:

“For the last six years, Rosemary Nelson has represented a number of individuals who are detained and in some cases have been prosecuted under Northern Ireland’s emergency laws. During this period, she has been subjected to repeated direct and indirect threats. Such threats recently have intensified. In the past six months, Mrs Nelson has received four telephone threats in her office and one at her home. She has also received a number of calls where the caller hangs up when she answers the phone. The callers have used threatening phrases such as “you are dead” and “you will be killed”. Several of the callers have called her derogatory names. In one call, she was warned to clear out of her office because “the UVF was coming”. Last week there was a loud explosion just outside her office window, which she subsequently learned was caused by fireworks. She and her clients report that numerous derogatory comments and threats have been made to her by police officers in the course of interrogating her clients.”

4.113 This letter, which was sent to a high ranking Government official, should have left little doubt that Rosemary Nelson was a solicitor whose safety was very much in issue.

(e) British Irish Rights Watch

4.114 On 27 November 1997, Ms D of the British Irish Rights Watch (BIRW) wrote to Dr Marjorie Mowlam regarding the derogatory comments and threats allegedly made by police officers to clients concerning Rosemary Nelson. The letter enclosed a statement made by Mrs Nelson and included specific reference to the alleged comments pertaining to the facial scarring suffered by Mrs Nelson.

4.115 On 22 January 1998 BIRW wrote to Adam Ingram, Minister of State for Northern Ireland expressing concern over the treatment of solicitors in Northern Ireland in general and Rosemary Nelson in particular. On 5 March 1998 Adam Ingram replied to

the BIRW stating 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 Mrs Nelson’s safety”.

4.116 On 10 March 1998 BIRW wrote again to then Secretary of State, Dr Marjorie Mowlam, referring to the United Nations Special Rapporteur and his draft report on the Independence of Judge and Lawyers in Northern Ireland. By letter of 14 July 1998 Dr Marjorie Mowlam replied to the BIRW stating “...I can understand your concern over Rosemary Nelson’s safety although clearly this is not a matter which 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”.

4.117 The most significant aspect of this letter is the reference to the police being aware of concerns of BIRW and others regarding to the safety of Rosemary Nelson. I should point out that this letter was dated 14 July 1998, some seven or eight months before her murder. Yet even after her murder, the RUC repeatedly denied knowledge of any specific threats pertaining to Rosemary Nelson.

4.118 In November 1998 BIRW submitted its report to the UN Special Rapporteur dealing with the independence of judges and lawyers. On 5 November, Ms D, sent a copy of the report to the Chief Constable of the RUC. He responded in what appears to be an unnecessarily intemperate way. He wrote “I suppose by now I should really 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.” Something more will be said of this reference in the section dealing with the apparent attitude of the RUC towards solicitors in general and Rosemary Nelson in particular.

(f) The Garvaghy Road Residents Coalition (GRRC)

4.119 It appears from various documents that the GRRC specifically raised the issue of protection for members of their coalition, as well as their solicitor Rosemary Nelson, when they met with [name redacted] of the Prime Minister’s office in the summer of

1998. The official minutes of this meeting, which were recorded by NIO officials, do not mention Rosemary Nelson by name. However, other briefing documents prepared after the murder indicate that the GRRC did request protection on Rosemary Nelson's behalf. This request, like that made by the CAJ, was denied. A risk assessment was carried out in 1998. At that time the police stated that they were not aware of any specific threat against Rosemary Nelson. The NIO concluded that she did not qualify under the Key Persons Protection Scheme (KPPS). The result was that no steps were taken to provide her with protection. This will be examined in greater detail later.

(g) Senator [name redacted] – United States Senator

4.120 Senator [name redacted] wrote to [name redacted] in his office as the British Ambassador to the United States on 15 April 1997. He said that he would like to bring Rosemary Nelson's case to the Ambassador's attention and went on to note that:

“Ms Nelson has indicated that she has received several threats against her life from an officer of the RUC stationed at the Gough Interrogation Station. Several clients have stated that during the course of their interrogations Mrs Nelson's life was threatened. Although these threats were not made directly to Mrs Nelson they have been terrifying nonetheless...”

“These threats have recently become more insistent and ominous causing Mrs Nelson to fear for her safety”.

(h) The United Nations Special Rapporteur's Report on the Independence of Judges and Lawyers

4.121 On 5 March 1998, the United Nations Special Rapporteur on the Independence of Judges and Lawyers, Mr Kumaraswamy, released his Report dealing with Northern Ireland, pursuant to the Commission on Human Rights Resolution 1997/23.

4.122 The recommendations made in the report include the following.

- a. that the authorities preferably the proposed Police Ombudsman conduct an independent and impartial investigation of all threats to legal counsel in Northern Ireland;
- b. that where there is a threat to the physical integrity of a solicitor or barrister irrespective from whom the threat emanates the government should provide all necessary protection and should vigorously investigate the threats and bring to justice the guilty party.

4.123 Although she was not named, one section of the report clearly referred to Rosemary Nelson. It read:

“It was alleged that one solicitor had been the victim of numerous death threats owing to the representation of a client who had been charged with the murder of two RUC officers. Further in relation to the representation of a residents’ group who oppose marching of the Orange Order through their nationalist housing estate it was alleged that on 6 July 1997 this solicitor was verbally and physically abused while attempting to communicate with an RUC officer concerning the RUC efforts to seal off the area. The source further alleged that an RUC officer spat on the face of the solicitor who was accused of being a “Fenian” sympathiser. This solicitor was also allegedly struck on the back of the head with a police riot shield while intervening on behalf of a boy who was allegedly being ill treated by an RUC officer.”

4.124 By letter dated 6 October 1997 the NIO advised the Special Rapporteur of its position in these words : “I can confirm that the RUC has received four complaints from this solicitor and a client. The investigation of these is being supervised by the ICPC. However to date the solicitor has not made himself available for interview to discuss the complaints”. While this response referred to a male solicitor, other documents confirm that the solicitor was Rosemary Nelson. The use of the male pronoun may have been in error, or may have been designed to conceal her identity.

4.125 It is apparent that, at one stage, the Special Rapporteur intended to name Rosemary Nelson and make a reference to the RUC. However he was requested in letters from

the Ambassadors for the United Kingdom stationed in Geneva and in Kuala Lumpur to delete, at the request of the RUC, the references to Rosemary Nelson and the RUC. The request was purportedly made on the basis that it might add to the dangers faced by Rosemary Nelson. It could be taken from this that the RUC recognised that Rosemary Nelson was in danger and that the danger she faced might be increased. As well it appears to confirm that the RUC was aware and indeed must have been aware that threats were received by or directed to Rosemary Nelson.

4.126 The documents received from the office of the Rapporteur raise further troubling issues.

4.127 In the course of preparing the Report, the Special Rapporteur, Mr Cumaraswamy and his assistant, Mr Parra, met with Chief Constable Flanagan and the Assistant Chief Constable of the RUC in Sir Ronnie Flanagan's office. Mr Parra took contemporaneous notes of the discussion. It was his recollection that, while the Assistant Chief Constable may have interjected one or two sentences, Chief Constable Flanagan made most of the remarks. The notes made by Mr Parra attributed the following comments to the Chief Constable (with the occasional intervention by the Assistant Chief Constable.)

“Lawyers want to have access because they are working for paramilitaries. Madden and Finucane represent Republicans.

There is a political agenda and the police are thought to be one part of the divide.

Any UK use of legislation (emergency) is part of their agenda.

Legislation is under review. We have to justify each section of the Act and its uses.

We must show that we are proactively using it. Paramilitary organisations have an influence.

Mr V has commented upon the corruption of solicitors and there are those who (are) working for a paramilitary agenda and part of that agenda is to make sure that detainees do not speak – stifling any means of communicating information.

Paramilitaries want to learn (ie information and possession of police) from the holding centre which is deduced from questions to detainees. Use legal people to inhibit provision of information (ie lawyers tell clients to say nothing).

More than a suspicion on lawyers. Have reams of documented evidence from detainees where that has come about.”

4.128 According to Mr Parra’s notes, the Chief Constable apparently made the following comments about the Patrick Finucane murder:

“Only prosecute where there is sufficiency of evidence. Interview 10 people. No admission. No forensic. No identification. Nothing incriminating found on suspects. UFF claimed the murder and 10 loyalists taken in.

Stevens investigated collusion.

Allegations dismissed.

Allegations and the threat.

Seen in company of Provisional IRA members on TV.

Brothers were in leadership of IRA.

He himself was a Republican.

Didn’t need anyone (from security forces) to inform Loyalist of this fact.

Have investigated every avenue.

Stevens brought in to look at whole issue of collusion. Stevens issued summaries of findings. Very little evidence of police planting information.

4.129 When certain of these remarks appeared in a draft report that was circulated by Mr Kumaraswamy, the Chief Constable denied that he had ever said that lawyers are working for paramilitaries. Mr Kumaraswamy has consistently maintained that these remarks were made.

- 4.130 It is not for me to make findings of fact where issues of credibility arise. However, should it be found that these remarks were made, it might be very strong evidence of an attitude that was pervasive in the RUC. Namely, starting with the Chief Constable and permeating throughout the force, it would appear that some members of the RUC associated lawyers with the causes of their clients particularly those acting for Republicans charged with terrorist offences. It would be most unfortunate if this erroneous view, which was evident at the time of the Patrick Finucane murder in 1989, had persisted over the course of the ensuing decade.
- 4.131 The Special Rapporteur's report was sent to various departments of the Government of the United Kingdom and to the Chief Constable of the RUC.
- 4.132 The RUC appears to have taken objection to the report. This is revealed by an RUC press release. It is unclear whether this document was officially released, but its form would indicate that its release was at least contemplated. This document could be taken to indicate the attitude of the RUC. The following is the first paragraph. "The Royal Ulster Constabulary considered the report of Mr Cumaraswamy to fall short of the objectivity, accuracy and fairness which might have been expected from an investigation carried out through the offices of the United Nations Commissioner for Human Rights."
- 4.133 This document went on to totally reject a suggestion by Mr Cumaraswamy that the Chief Constable, Sir Ronnie Flanagan, had expressed the view that some solicitors may be working for paramilitaries. Rather, according to the document, "the RUC holds firmly to the basic United Nations principle that the lawyers shall not be identified with their clients or the clients causes".
- 4.134 Aspects of the UN Report, the positions taken with regard to the deletion of Rosemary Nelson's name and that of the RUC, and the disputed conversation in the Chief Constable's office must be explored. This exploration can only be properly carried out by an independent public inquiry.

4.135 Finally, it should be noted that Mr Cumaraswamy, the UN Special Rapporteur, took steps to alert the Government to his concern for Rosemary Nelson's safety before her murder. The Special Rapporteur did remove Rosemary Nelson's name from his report because he had been told that, if he did not, her safety could be compromised. Having done so, he nonetheless felt it necessary to bring his concern for her safety to the attention of the British Government. On 5 March 1998 he wrote to "M E [name redacted] Ambassador, permanent Representative of the UK to the United Nations office in Geneva", stating:

"I am particularly concerned over the harassment and threats on Mrs Rosemary Nelson. I appeal to you that your Government give its highest priority to my concerns and prompt measures be taken to provide security for these lawyers.

As it appears that the threats seem to emanate from the RUC, the question of concern is who can provide these lawyers with adequate credible security? I remain very disturbed"

4.136 Mr Cumaraswamy had earlier written to the UK Ambassador on 1 August 1997. Other documents confirm that this correspondence was passed on to Government officials within the UK.

ii. Complaints made by and on behalf of Rosemary Nelson

4.137 In addition to the many letters written on behalf of Rosemary Nelson, Government officials also had direct knowledge of alleged threats as a result of the formal complaints made against RUC officers. It will be recalled that several of Rosemary Nelson's clients alleged that RUC officers made derogatory and threatening comments about her during police interrogation. The documents indicate that 11 clients reported conduct of this nature to Mrs Nelson. Complaints were lodged with the RUC in connection with 8 of these individuals. Mrs Nelson lodged complaints with respect to Client A, Client D, Client J and Client K. Mr X, on behalf of the Lawyers Alliance for Justice in Ireland, lodged complaints based on the allegations of

Client F, Client H, Client I and Client B. The specifics of these allegations are set out above under the heading “Threats to Rosemary Nelson”.

4.138 An investigation into these matters commenced on 13 March 1997. The RUC was provided with copies of all of the statements taken from Rosemary Nelson’s clients by Mr E of the CAJ. It should also be noted that four clients – Client A, Client J, Client F and Client B - eventually attended at the offices of the ICPC and provided formal statements to the investigating team as did Rosemary Nelson.¹ Significantly, Client F, who alleged that the RUC had made several shocking and demeaning statements about Rosemary Nelson, was considered by one officer, Commander Niall Mulvihill, as “credible, smartly dressed and unquestionably the best witness to appear in relation to this complaint.”

4.139 While the RUC was obviously aware of the allegations underlying these complaints, the investigation into these matters was itself the subject of considerable controversy and debate.

4.140 The investigation was first carried out by Officer F, of the Complaints and Discipline Department of the RUC, with supervision by the ICPC. On 28 July 1997, Officer F asked for permission to dispense with the investigation “due to the lack of detailed information provided”, but was denied permission by the ICPC. While there was an apparent lack of cooperation by the complainants at the outset, Rosemary Nelson and five of her clients did eventually provide formal statements to the team investigating her complaint. In April 1998, Officer F released his final report, concluding that “there was nothing which would support the allegations of misconduct by interviewing detectives”.

4.141 Initially, the ICPC was highly critical of the investigation. In a statement issued on 22 March 1999, the supervising member, Ms B, set out a number of concerns that, in her view, seriously undermined the credibility of the inquiry and its findings. It is not necessary to itemize all of these concerns. It is sufficient to observe that some of them appeared to disclose the existence of a very negative, if not hostile, attitude of the

¹ It should, in fairness, be observed that these individuals, along with Rosemary Nelson, missed several appointments before finally attending to speak with the investigating team.

RUC toward Rosemary Nelson. For example, Ms B reported “observable, general hostility, evasiveness, and disinterest on the part of the police officers involved in this investigation”. She noted that, in his final report, Officer F cast aspersions on the moral character of Rosemary Nelson and questioned her reliability. She remarked that: “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”.

4.142 Once it was clear that the ICPC was going to declare Officer F’s work to be unsatisfactory, a meeting was held with the Chief Constable of the RUC. He proposed that an independent investigator, Commander Niall Mulvihill of the Metropolitan Police Service, take over the investigation. The ICPC agreed, and on this basis, Ms B refrained from declaring the investigation to be unsatisfactory. The Mulvihill report was submitted in March 1999. Commander Mulvihill harshly criticised the concerns that had earlier been expressed by Ms B. He ultimately found that, while “the various complaint investigations might not have been conducted in a truly outstanding fashion, they were adequate...” Mulvihill’s conclusions were released as part of a “joint statement” on the part of both the ICPC and the RUC. However, the Mulvihill Report continued to generate adverse comment. In April 1999, Mr U the Chairman of the ICPC wrote a 15 page critique of the Mulvihill report in which he registered his strong disagreement with Commander Mulvihill’s findings.

4.143 It is apparent that considerable resources were devoted to the investigation of Rosemary Nelson’s formal complaints against the RUC. Thus, it might be said that there is no need to consider this matter at a public inquiry. However, three points militate against this view.

4.144 First, the investigation was confined to a small sample of threatening incidents. It was limited to determining whether certain RUC officers had uttered certain remarks. As a result it could not conduct a wider assessment of the risks faced by Rosemary Nelson.

4.145 Second, while opinions were written by various officials, these opinions were not so much concerned with whether officers had uttered disparaging and threatening remarks about Rosemary Nelson as they were with the adequacy of the initial

investigation. That is, once Ms B expressed her concerns and Commander Mulvihill was appointed, the focal point shifted away from the question of whether the RUC officers had, in fact, made disparaging remarks and threats when they were interrogating her clients. The characterization of Officer F's investigation as "adequate" did not resolve that important issue.

4.146 Third, there was a clear lack of consensus as to whether the initial investigation was adequate. For all of these reasons, it is my view that these complaints ought to be considered by a public inquiry to determine whether the threats and demeaning remarks were made by RUC officers. If they were, this would form part of the cumulative pattern of threats and hostility that should have raised a serious concern for Rosemary Nelson's safety.

4.147 Finally, it should be noted that a separate investigation was carried out into Rosemary Nelson's allegation that she had been verbally and physically assaulted by the RUC on the Garvaghy Road in July 1997. It is apparent from the documents that, in connection with this investigation, Rosemary Nelson refused to cooperate. This served as an insurmountable obstacle to continuing that investigation. In the absence of a statement from Rosemary Nelson, it was concluded that there was not sufficient evidence to warrant any disciplinary or criminal proceedings. While it is unfortunate that the investigation into the Garvaghy Road incident could not proceed, these allegations should still be considered at a public inquiry.

4.148 This is essential to determine whether the RUC acted in a threatening and demeaning way toward Rosemary Nelson at that time. This can only be done when witnesses can be called, assessed and findings of fact made.

4.149 Some might question the justification of a public inquiry that is based in part on the evidence of persons held for terrorist or other criminal offences. Yet if an interrogation of suspects or witnesses is to take place in the absence of any recording device, the system is prone to abuse. In the absence of a solicitor and without the benefit of audio or video recording, officers may well be subject to allegations of impropriety.

4.150 In some instances these threats were attested to in statements made by Rosemary Nelson's clients. It cannot be forgotten that she was a respected solicitor taking important cases before the courts obviously with some measure of success. She was in a good position to assess the credibility of her clients. Their evidence cannot be dismissed out of hand. Rather it can only be reviewed and properly assessed in a public inquiry.

4.151 Moreover, notwithstanding the outcome of the criticised RUC investigation, it remains highly significant that a number of threats alleged to have been made against Rosemary Nelson were said to have emanated from the RUC. If it is found that they were made, this would constitute the defining feature of the relationship between Rosemary Nelson and the RUC. Some might argue that this justified Rosemary Nelson's reluctance to seek protection from the RUC, the very institution whom she perceived was making threats against her. Rosemary Nelson was not a model of cooperation with the RUC in the investigation of her complaints. There is some indication in the documents that this seems to be characteristic of one segment of the population of Northern Ireland. Whether this lack of cooperation is based upon unfounded myths and suspicion, political motives or is fairly based upon acts of the RUC which lead to mistrust, I cannot say. I am in no position to make any findings or comments in this regard. However Rosemary Nelson along with four of her clients did eventually make official statements for the investigators. In addition there did seem to be grounds for Rosemary Nelson's suspicions. The number of clients that reported rude and obscene remarks about her by the RUC suggested that there was a credible basis for complaint.

4.152 Lawyers often have a very good idea of the credibility of their clients. If Rosemary Nelson could indeed have confidence in their statements to her then she had every reason to mistrust the RUC. Several of her clients reported to her that the RUC had made threats against her; that vicious remarks were being made about her appearance, her sexual immorality, her ties to the Provisional IRA, that she was acting as a terrorist (a bomber) and finally that she would soon be dead. If the reports of her clients were true then in these sad circumstances it is certainly understandable that Rosemary Nelson would have very little confidence in the RUC and might well have been loathe to cooperate with them. In sum, if the threats and insulting remarks were

made by the RUC it would be easy to understand her lack of confidence and her failure to cooperate with them and to thus excuse her behaviour.

4.153 Similarly, if it is found that the RUC did demonstrate the undisguised hostility toward Rosemary Nelson that was observed by Ms B, then it could be inferred that their hostility could well have influenced the manner in which RUC officers conducted their threat assessments on Rosemary Nelson in 1998. In short, the Government was, or should have been, aware that the relationship between Rosemary Nelson and the RUC was strained, to say the least. The question then arises as to whether the NIO knowing of the threats against her, had an obligation to offer Rosemary Nelson protection under an alternative scheme that was available through the NIO without the involvement of the RUC. This is an issue that can only be explored at a public inquiry.

4.154 In passing I would say that a new era has been inaugurated with the organisation of the new police force, The Police Service of Northern Ireland (PSNI) – which in time will truly represent all aspects of Northern Ireland society - and the appointment of a dedicated and able Chief Constable. No democratic society can live without a courageous, skilled and honest police force. A police force cannot function effectively without the full cooperation of the society within which it operates. There must be cooperation with the police. In time it will no longer be acceptable for one faction to criticise the force and yet be uncooperative with it. If the community is to function effectively all segments of society must cooperate with the police force and the police force must serve and protect all segments of society.

iii. The meeting with Chief Constable Flanagan on 27 February 1999

4.155 On 27 February 1999, a delegation of North American Attorneys, including Mr X of the Lawyers Alliance for Justice in Ireland, met with Sir Ronnie Flanagan to discuss a variety of issues. This meeting was referred to in one of the documents that I reviewed, but no details were provided. Because this meeting with the Chief Constable took place just two weeks before the murder it was necessary to obtain further information concerning the nature of the discussions. Accordingly, some members of the delegation were sent e-mails and asked to provide written statements

setting out any recollection they might have of the meeting. The same request was made of Sir Ronnie Flanagan, through letters sent to the current Chief Constable of the PSNI Hugh Orde. At the time that I had completed the report, I had not received any written response from Sir Ronnie Flanagan. I had, however, received written statements from three of the American Attorneys who were in attendance at the meeting: Mr X, Mr T and Mr BB. All three describe the meeting in similar terms.

- 4.156 They state that the delegation consisted of several attorneys from the United States, one lawyer from Canada, and Mr CumaraswamyC, a retired police chief from New Jersey. According to the statement of Mr T, the delegation met with Rosemary Nelson two days prior to the meeting. When Rosemary Nelson learned that the group would be meeting with the Chief Constable, she told them that strange and frightening things were regularly occurring in the course of her work as a solicitor. Mrs Nelson went on to recount the many threats that she had received, including the remarks allegedly made to her clients by the RUC. She added that a death threat had been conveyed to her by a man she did not know in a food market.
- 4.157 The meeting with Chief Constable Flanagan took place on 27 February 1997 at RUC headquarters. Present were the members of the delegation, the Chief Constable, and another member of the RUC believed by Mr X to be either Officer G or Officer H. According to the three Attorneys that have provided statements, several subjects were raised with Chief Constable Flanagan, including the issue of Rosemary Nelson's safety. Mr X recalled that the word "dangerous" was used when describing her situation, and that someone made a statement to the effect "we don't want another case like that of Patrick Finucane".
- 4.158 Mr BB recalls that either he or Mr X specifically asked the Chief Constable, "what steps have the RUC taken to safeguard the life of Rosemary Nelson and to investigate death threats conveyed to her by your own officers?" While he could not recall the Chief Constable's verbatim response, it was to the effect that, "we [the RUC] are taking all appropriate steps to safeguard Mrs Nelson and are looking into her allegations".

4.159 The group then outlined for the Chief Constable what the dangerous circumstances were and why Mrs Nelson was in need of protection. This included a discussion of the threats she had received, including the threat conveyed to her in the food market. Mr T's statement continued as follows:-

“Chief Constable Flanagan replied that he was ‘acquainted with Rosemary Nelson and also with her law practice’. He went on to thank us for bringing this matter to his attention. He specifically commented that it was only with information provided by professionals such as ourselves that the RUC could become aware that someone’s life was in danger and in need of official protection. Mr Flanagan made no commitment to provide such protection, which I thought remarkable in light of the information we had given him. He said only that he would see that her situation would be fully looked into and investigated”.

4.160 According to Mr T, his recollection of the meeting was shared by Mr DD of San Francisco, California, another member of the delegation who was present. At an earlier meeting with the Chief Constable in 1998, members of the same delegation had requested that Rosemary Nelson be provided with official protection by the RUC.

4.161 The meeting of 27 February 1999 appears to be significant. Just two weeks before Rosemary Nelson was murdered, the Chief Constable of the RUC was made aware of the threats she had received. It would appear that no official action was taken. The meeting may also be significant when one considers that, both before and after the murder, Chief Constable Flanagan consistently maintained that the RUC was not aware of any specific threat against Rosemary Nelson, notwithstanding the information that was conveyed to him by the delegation of Attorneys.

F. The RUC threat assessment

4.162 RUC threat assessments appear to have been the most important and decisive factor in the determination by the NIO as to who should be entitled to state sponsored protection in Northern Ireland. Apart from those who were automatically enrolled due to their public positions (such as MPs and Judges), eligibility depended on the

person's occupation and confirmation from the RUC to indicate that the individual under consideration came within one of the categories specified in the applicable legislation, namely:

- i) specific intelligence had been received that the subject will be the target of an attack (Threat level 1); or
- ii) specific intelligence and recent events indicated that there was a serious threat to the individual (Threat level 2), or
- iii) general intelligence, circumstances and/or recent events indicated a significant threat to the individual (Threat Level 3).

4.163 Those assessed at Threat Level 4 (general threat only) fell short of the governing risk criteria for the KPPS.

4.164 The RUC was asked by the NIO to carry out two threat assessments in connection with Rosemary Nelson. The first took place in February/March 1998 and was triggered by a meeting that was held between officials from the NIO and representatives of the Lawyers Alliance for Justice in Ireland. In correspondence sent to the RUC on February 23, 1998, the NIO observed that the Lawyers Alliance had "recorded their deep concerns over the safety of Rosemary Nelson" and that "we have also heard these concerns voiced by other organisations and individuals over recent months". A security assessment was requested.

4.165 It would appear that, on this occasion, the threat assessment was based on the opinions of three officers. All three asserted that there were no reports, records or intelligence which revealed an actual threat against Rosemary Nelson. Two of the officers acknowledged that Rosemary Nelson would be known to Loyalist paramilitaries because she represented high profile Republican activists, and that this alone would create some level of risk. One of the officers appeared to draw a personal link between Rosemary Nelson and the causes she represented. He made a point of noting that she attended functions and rallies in support of the Republican movement. The third officer who was asked to comment found that, in the absence of further details, there was no basis for concluding that Rosemary Nelson was under any threat. This assessment made it clear that Rosemary Nelson did not qualify for

protection under the KPPS. However it was suggested that officers in Lurgan should be briefed to pay attention to her home and office address. This recommendation could be taken as indicating that there was some concern for her safety.

4.166 The second request for an RUC threat assessment was made in August 1998. It was triggered by the receipt of documents sent to the NIO by BIRW and CAJ. BIRW sent a copy of the “Man Without a Future” Pamphlet to the NIO. On 6 August 1998, NIO Official A forwarded this pamphlet to the RUC and asked for a security/threat assessment. Subsequently, on 10 August 1998, the CAJ wrote to Adam Ingram, Minister of State, NIO, urging that Rosemary Nelson be enrolled in the KPPS. In support of this request, the CAJ enclosed two documents which they argued showed “that there is indeed a threat to the physical integrity of Rosemary Nelson”. The first was the “Man Without a Future” pamphlet which had previously been sent by BIRW. The second document was the handwritten death threat which Rosemary Nelson had received on 3 June 1998. It read: “We have you in our sights, you Republican bastard, we will teach you a lesson RIP”. On 24 September 1998, Adam Ingram’s private secretary, NIO Official C wrote to CAJ and stated, with respect to the attachments, that: “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 Mrs Nelson”. The letter then went on to detail the procedure for applications to the KPPS.

4.167 Unfortunately, as a result of a series of errors and omissions, it is not clear when the handwritten death threat was actually sent to the RUC, and what was done with it upon receipt. On 26 August 1998, NIO Official B of the NIO wrote to Superintendent I of the Command Secretariat, RUC, explicitly stating that she was attaching two documents to her letter: “a pamphlet relating to Mr M which refers to Rosemary Nelson and a threatening note which was posted to Rosemary Nelson (copies attached)”. In the final paragraph of the letter, NIO Official B stated that the NIO had already written on 6 August 1998 concerning the pamphlet. She closed by stating: “I would be grateful for advice as to what action has been taken”.

4.168 It is now apparent that, while the letter clearly referred to two attachments, neither was actually faxed through on the date the letter was sent. It is also apparent that the

RUC did not take any steps to follow up on the missing documents, even though one of them was described as a “threatening note”. A statement taken from a staff member in the Command Secretariat disclosed what might be described as a very casual approach to correspondence. When asked specifically about the letter from NIO Official B and the missing attachments, Officer J stated that “we received lots of letters from the NIO, I would have given this a quick read and filed it, as we already had received the pamphlet on Mr M a few weeks earlier”. Officer J went on to say that he thought that NIO Official B’s letter was about the same pamphlet. Yet, even a cursory reading of the letter should have alerted him to the fact that there was another document – a “threatening note” - that had not come through on the transmission. This appears to reveal a worrisome lack of attention. It cannot be forgotten that the letter raised a serious question as to whether the life of a well known solicitor had been threatened. This error was repeated in September 1998 when Superintendent I returned from leave and read NIO Official B’s letter. She too failed to appreciate that there was a missing attachment in addition to the “Man Without a Future” pamphlet.

4.169 The extent of follow-up by the RUC is unclear. In her statement, NIO Official B said that she recalled receiving a telephone call from someone in the RUC a few days after the letter was faxed. That person informed her that the attachments had not been sent. She believed that she then faxed the documents but was told that they were of poor quality. She further recalled that she read out the contents of the threatening letter and told the caller that the pamphlet was the same as the one that had been sent earlier. She was certain that she then sent the documents by courier to the Command Secretariat, but never received any confirmation that they had been received. She did not know the identity of the person who called, and no one has been identified as a result of subsequent inquiries.

4.170 The mystery deepened when the Colin Port Inquiry team conducted a search of the Command Secretariat files. On 30 March 1999, neither the pamphlet nor the threatening letter were found in the files, though the covering letter sent by NIO Official B on 26 August 1998 was there. Approximately two months later, on 27 May 1999, the head of the Command Secretariat retrieved the file in order to deal with press enquiries and discovered, to her apparent surprise, that both the pamphlet and the threatening note were now in the file behind NIO Official B’s letter. There was

neither a “received” stamp, nor a fax cover sheet. To date, there is still no explanation for the sudden appearance of these documents. It appears that they were received by the RUC, but it is not clear when or by whom. What is clear is that the handwritten death threat does not appear to have formed any part of the RUC threat assessment.

In light of the confusion surrounding the document, it is likely that it was never passed on to those who were carrying out the important task of assessing Rosemary Nelson’s security.

4.171 The content of the threat assessment certainly suggests that it was based exclusively on the pamphlet. No mention was made of a threatening note or letter. The assessment was based on the opinions of three officers: 2 from J Division, Portadown and one from Special Branch. All three officers stated that they had no intelligence to suggest that Rosemary Nelson was under threat from paramilitaries. As for the pamphlet, it was characterized as non-threatening because the information listing Rosemary Nelson’s office address could be obtained from the yellow pages. By letter of 3 September 1998, the result of the assessment was communicated to the NIO by the Command Secretariat of the RUC. This letter, which purported to be responsive to the NIO correspondence of both 6 August and 26 August, concluded that: “Police are unaware of any specific threat against Mrs Nelson”.

4.172 One could argue that this assessment was flawed in several respects. First, and most obviously, it was based upon incomplete information. The officers did not apparently have access to the handwritten death threat. Further, it could be said that the assessment of the pamphlet trivialized its contents and failed to appreciate its threatening tone. The pamphlet did more than list Rosemary Nelson’s office address. It described her as a former bomber, and part of a “motley crew” that was trying to “destroy the religious rights and freedoms” of Protestants. The leaflet was being freely distributed at Drumcree 1998. The RUC had been informed by the NIO that Rosemary Nelson found the pamphlet to be very threatening. A memorandum dated 7 August 1998, sent by Superintendent I of the Command Secretariat to ACC South Region, and ACC Special Branch stated that, according to the NIO, “Mrs Nelson is extremely distressed by the leaflet and is seriously concerned about the threat to her personal security posed by the claims in the leaflet and by the circulation of her address and telephone number”. It could be said that to suggest that the leaflet was

simply a recitation of information in the telephone directory was to ignore and distort the context in which this information appeared.

4.173 It is as well significant that the Irish Government considered the tone of the pamphlet to be extremely menacing and so advised British officials.

4.174 In a note to the “British Side” from Irish Official B dated 4 August 1998 the following appears:

“Note to the British Side

Re: Ms Rosemary Nelson (Log No 2363)

1. Ms Rosemary Nelson, the Lurgan-based solicitor, has brought to the Irish Side’s attention an extremely disturbing leaflet (copy attached) which we understand to be in circulation in Portadown at present.
2. The leaflet, the overall tone of which is extremely menacing, makes a number of inflammatory allegations about several individuals, including Ms Nelson. It describes Ms Nelson as a ‘former bomber’ and, alarmingly, contains her address and telephone number.
3. Ms Nelson is, understandably, extremely distressed by this incident, and has expressed serious concerns about the threat to her personal security posed by both the claims advanced in the leaflet, and the circulation of her address and telephone number. The Irish Side fully shares these concerns, which are of an extremely serious nature.
4. The Irish Side would be grateful to receive, as a matter of some urgency, the British Side’s full assurance that those mentioned in the leaflet, including Ms Nelson, will be provided with appropriate additional security given the increased risk to their personal safety. In addition, the Irish Side would wish to be advised of the Police Authorities’ plans to carry out an investigation into both the

publication and the circulation of these dangerous and inflammatory allegations, and to receive a full report on the matter.

5. The Irish Side also believes that this matter should be brought to the attention of Metropolitan Police Commander Mulvihill, who has been appointed to investigate previous threats against Ms Nelson.

[Irish Official B]

4 August 1998”

- 4.175 With respect to the missing death threat letter, the question must be asked: why did the NIO not follow up when it received the threat assessment from the RUC and it was clear that there was no mention of the handwritten death threat? Should it not have been obvious that the assessment was based exclusively on the pamphlet? The NIO failed to question the assessment; and relied upon it in denying Rosemary Nelson admission to the KPPS. This is apparent from the contents of an internal document authored by NIO Official B on 22 September 1998 and sent to PS/Secretary of State (B&L), NIO Official D, NIO Official E and NIO Official F.
- 4.176 This document made specific reference to “a copy of a threatening note which was posted to Mrs Nelson” and “a copy of a pamphlet which relates to Mr M and which refers to him having received “advice from Lurgan solicitor and former bomber Rosemary Nelson”. Yet, it went on to state in a later paragraph that the “RUC have advised that they are unaware of any specific threat against Ms. Nelson and therefore it is unlikely that she would be eligible for protection under the Key Persons Protection Scheme”. This statement certainly gives rise to concerns since the NIO was aware of a specific threat, namely the anonymous letter threatening death, and it was the NIO that had failed to send that document to the RUC.
- 4.177 Finally, it should be noted that the police were made aware of the handwritten death threat through other means. In the statement of Rosemary Nelson to the Mulvihill Inquiry team dated 1 September 1998, the threat letter was produced. She said that it terrified her, and a copy was attached to her statement. Yet the threat was not referred to in the Report nor apparently passed on to other police authorities who could have

assessed its significance. Again, one might have thought that a document as stark and chilling as the handwritten death threat would have attracted prompt and concerted action on the part of the police and Government once it came to their attention. Unfortunately, in the case of Rosemary Nelson, it appears to have been ignored.

G. The position of the NIO

4.178 On the basis of the RUC threat assessment, NIO decided that Rosemary Nelson was not entitled to protection under the Key Persons Protection Scheme. Nor did the NIO offer Mrs Nelson any form of protection outside the confines of the scheme, even though it was within their power to do so. This is illustrated by the position taken in connection with two councillors of the GRRC, Mr M and Mr EE. They had requested protection for themselves, for their solicitor Rosemary Nelson, as well as other members of the coalition. Documents from the NIO indicate that Messrs Mr M and Mr EE did not qualify for enrolment in the KPPS, because the RUC threat assessment placed them below the risk criteria for entry into the scheme. They were assessed at Level 4 (general threat only). There is nothing to indicate that anyone other than Messrs Mr M and Mr EE were assessed at that time.

4.179 However, at the time of the request, Government officials were actively engaged in political negotiations with the GRRC. It was in the context of the “proximity talks” that the request for protection was made. Internal Government documents indicate that Ministers were recommended to “exceptionally, and outside the Key Persons Protection Scheme, agree in principle to a range of physical security measures at the homes of both councillors, similar to that offered to civil servants on the Scheme”. This was done, in order to ensure that protection issues would not block the progress of ongoing political discussions.²

4.180 This was a political decision that could very properly be made. I refer to this example only to point out that the offer of state protection was discretionary, that it could be

² Confidential policy document dated 26 October 1998 from NIO Official E the Associate Director of Policing and Security to PS/Secretary of State (B&I) re “Protection at the Homes of Councillors Mr M and Mr EE”

administered outside of the KPPS, and that it could be offered despite the outcome of an RUC threat assessment.

4.181 There are other worrisome aspects of the position taken by the NIO. Following the murder, various briefing documents were prepared setting out “lines to take” on contentious issues. On the question of whether the GRRC had mentioned Rosemary Nelson’s name when seeking protection for members of the coalition, the Government’s official position was that there was “no record” of her name being mentioned. That is technically true. The NIO official who recorded the minutes did not write down her name. However, other briefing documents indicate that her name was mentioned during discussions about protection of others from the GRRC. While perhaps technically correct, the “line to take” on this issue might well have created an erroneous impression.

4.182 Similarly, the NIO placed considerable reliance on the fact that Rosemary Nelson did not herself make personal application for protection under the KPPS. However, many reputable organisations requested protection on her behalf, and presented strong evidence that she was at risk. The correspondence sent to the Government on this issue could fairly be described as voluminous. While many requested protection in general terms, both the CAJ and the GRRC³ specifically asked that Rosemary Nelson be enrolled in the KPPS. It is true that, save for her complaint to the RUC, Rosemary Nelson did not approach the Government directly. However, it could be argued that the Government is not relieved of its obligation to protect a citizen in danger merely because the issue of security has been pursued by proxy.

H. Evidence of attitude

4.183 Evidence in the documents may reveal both an act of collusion and the prevalent attitude of an organisation. Attitude alone cannot be the basis for a finding of collusion. However a demonstrated attitude may be relevant in the interpretation of a document, an action, or a failure to act by an organisation.

³ See paragraphs 4.105, 4.118 above

4.184 Some of the documents could be found to indicate both an attitude within an organisation and an act of collusion. Let us first review the documents that may be found to indicate both the attitude of the organisation and acts of collusion.

i. The conversation between Chief Constable Flanagan and Mr Cumaraswamy

4.185 The first document to be considered is comprised of the contemporaneous notes of the meeting of Mr Cumaraswamy with his assistant Mr Parra, and Chief Constable Flanagan and Assistant Chief Constable K of the RUC. As I have said, I cannot determine whether or not the statements attributed to Chief Constable Flanagan were made by him. This can only be determined at a public inquiry. If they were made, they constitute what some might consider significant evidence of a most unfortunate attitude in the highest ranks of the RUC, namely, a clear identification of solicitors with their clients. Further the attributed remarks could be taken as evidence that the RUC thought that a solicitor was a party to the same activities as the client. If so, it could be found that there might have been a reluctance to either protect or to thoroughly investigate and assess threats to a troublesome solicitor, who was seen by the RUC to be personally affiliated with and involved in the activities of her clients.

ii. The statement of Ms B

4.186 A reference has been made to an earlier meeting between Ms B and the Chief Constable. In late 1998 or early 1999 a second meeting took place at RUC Headquarters, Knock. Those in attendance were Chief Constable Ronnie Flanagan, Deputy Chief Constable L, Mr U Chairman of the ICPC and Ms B, a Supervising ICPC member.

4.187 During the meeting the Chief Constable spoke of Rosemary Nelson. According to Ms B he did so in derogatory terms referring to her as unreliable and sexually immoral. If it is found that these remarks were made they are certainly significant to this inquiry. They appear to be both unfortunate and irrelevant to the complaints Rosemary Nelson had made with regard to the conduct of RUC officers or to any consideration of her safety and protection.

4.188 If, as Ms B has described in her statement, these words were spoken then the following inferences could be drawn. First it could be inferred that any complaints emanating from Rosemary Nelson need not be considered seriously by the RUC. Secondly it could be inferred that, generally, the RUC or at least its highest ranking officers considered her to be both unreliable and immoral. It would as well be evidence of a most unfortunate attitude of the RUC to Rosemary Nelson. In addition it could be inferred that the conduct of other members of the RUC would reflect the words and attitude of the Chief Constable. Indeed the words alleged to have been spoken by RUC officers interrogating clients of Rosemary Nelson were reported to involve similar suggestions of immorality and unreliability.

iii. The meeting with the American Delegation

4.189 The meeting on 27 February 1999 between Chief Constable Flanagan and a delegation of North American lawyers is also relevant to attitude. These lawyers made a direct and personal plea that Rosemary Nelson be protected. They referred to threats that she had received. They characterized her situation as dangerous and spoke of the need to prevent another tragedy like the Patrick Finucane murder. The Chief Constable told the delegation that he was familiar with Rosemary Nelson and her practice, and that the RUC was taking all steps to safeguard Mrs Nelson and look into her allegations. Yet, there is nothing in the material I have received, including that from the RUC, which indicates that steps were being taken to protect her from harm. It could be inferred that this constitutes further evidence of an attitude in the RUC which would indicate a lack of concern for Rosemary Nelson's welfare. Ms B's statement might shed some light on what the Chief Constable meant when he told the delegation that he was "familiar with Rosemary and her practice". In any event, it appears that an important message about Rosemary Nelson's safety, received just two weeks before she was murdered, was ignored. The Chief Constable's statements after the murder that he was not aware of any specific threat against Rosemary Nelson may have been mistaken, or they may give rise to an inference that the Chief Constable had simply discounted all that he had been told by the American delegation.

4.190 I should note that four letters were sent to former Chief Constable Sir Ronnie Flanagan. They were dated, 11 June 2003, 27 June 2003, 1 July 2003 and 20 August 2003. They advised him that others including several American lawyers, had made statements regarding meetings they had attended with him. He was asked if he wanted to make a statement or comments regarding the meetings. A copy of the letters is attached at Appendix B to this report. There was initially no response apart from a voice mail message stating that he wanted to check his records before responding. About 3.45pm on Tuesday 30 September 2003 I received from Sir Ronnie Flanagan the material which appears as Appendix D to this Report on the murder of Rosemary Nelson. The material, when considered in light of the Report as a whole, appears to confirm the necessity of holding a public inquiry. Nothing less will serve as a forum for hearing all the witnesses and making the requisite findings of fact on all those issues where there appears to be a conflict in the evidence or a difference of opinion.

iv. The response to criticism

4.191 The following documents refer solely to the attitude of the RUC, namely its reaction to criticism. This attitude, while not collusive in and of itself, can become relevant in the interpretation of acts and omissions.

4.192 The first is the press release under the name of the Chief Constable which followed the release of the Report of the United Nations Special Rapporteur, and complained that the Report lacked balance. The other is the somewhat intemperate and highly critical letter sent by the Chief Constable to Ms D regarding the BIRW brief that had been submitted to Mr Cumaraswamy. Some might find that these documents reflected an attitude in the RUC, namely, that it did not consider or accept criticism but rather attacked the author or the author's organisation.

4.193 The RUC demonstrated a similar attitude in connection with the volume of correspondence that had been sent to the Government and RUC by various individuals and organisations. In the view of at least one officer, Officer F, the nature and

number of letters detracted from the validity of their concern for Rosemary Nelson's safety. In his report, dealing with complaints against the RUC, he stated:

“Leading on from the previous point, the volume and timing of the voluminous correspondence from various international groups on Mrs Nelson's behalf gives rise to the reasonable suspicion that these complaints are more to do with generating propaganda against the RUC than establishing the truth...”

4.194 This could be taken to demonstrate a desire to protect the RUC's reputation above any duty to protect individuals.

I. What actions of the RUC and NIO could be found to be collusive?

4.195 It is essential to identify those acts and omissions on the part of the state that are capable of constituting collusion in the murder of Rosemary Nelson. By necessity, this section will be somewhat repetitious, however, it is necessary because of the importance of specifying the basis for my conclusion that there is evidence of collusion that warrants directing a public inquiry.

i. The RUC

a. RUC officers are alleged to have made highly demeaning and threatening remarks about Rosemary Nelson while questioning her clients. Among other things, they are said to have questioned her morality, made insulting sexual innuendos, described her facial scarring in cruel and debasing terms, belittled her ability as a lawyer and, perhaps most disturbingly, to have threatened her life. It is for a public inquiry to determine whether or not these remarks were made. If it is found that they were, this could constitute strong evidence of collusion. The remarks would indicate that the RUC itself made death threats against Rosemary Nelson. In addition, the remarks could be interpreted as an incitement or encouragement to others to kill or harm her and an indication that the RUC would turn a blind eye to that conduct. The alleged remarks would have conveyed to others that the RUC were contemptuous and hostile

to Rosemary Nelson, both as a person and a solicitor. They are so significant and have such consequences that there must be a public inquiry to determine whether any of the alleged threats or demeaning remarks were made by the RUC officers. Similarly, it is essential that a public inquiry determine whether the allegations of verbal and physical assault on Rosemary Nelson at the Garvaghy Road are true.

- b. The RUC investigation into the alleged demeaning and threatening remarks might also be indicative of collusion, if it is found that the force failed to take these complaints seriously. The adequacy of the investigation is a matter of some dispute. Commander Mulvihill found the investigation carried out by Officer F to be adequate. Yet, representatives of the ICPC found that it disclosed additional hostility and disregard for Mrs Nelson's welfare. It is for a public inquiry to resolve the conflicting viewpoints. If it is found that these matters were not properly investigated, this could be taken as an indication that the police force turned a blind eye to or was indulgent or tolerant of conduct that demeaned and threatened Rosemary Nelson. It might also have signalled to others – RUC officers as well as members of paramilitary organizations - that this conduct would be tolerated. This, in turn, could have been taken as tacit encouragement of conduct that threatened Rosemary Nelson.
- c. The comments made by the Chief Constable of the RUC to Mr Cumaraswamy, could be taken to indicate that those of the highest ranks in the RUC tended to identify lawyers with the causes of their clients. This, together with the demeaning remarks alleged to have been made about Rosemary Nelson by other RUC officers, could be taken as an indication that neither her complaints nor her protection would be taken seriously by the RUC and as well may have encouraged others to attack her.
- d. It seems beyond dispute that the RUC did not receive the documents that were said to have been attached to NIO Official B's letter in August, 1998. Yet, there was little or no follow up by the RUC, notwithstanding that the covering letter clearly referred to two attachments, one of which was described as a

“threatening note”. Nor was anything apparently done with the death threat letter when it was produced to the Mulvihill Inquiry team by Mrs Nelson. As a consequence, the RUC did not appear to consider this document when preparing its threat assessment regarding a solicitor involved in high profile cases. While the death threat note eventually turned up in the RUC files, no explanation has ever been forthcoming as to how and when this occurred. What is clear is that it could be found that a vitally important document, containing what many would describe as a “specific threat” was given little, if any, attention. This, too, could be found to be indulgent or tolerant of threatening conduct or to constitute the turning of a blind eye to threatening material which was vitally important.

- e. Similarly, it could be found that, by finding the “Man Without a Future” pamphlet to be innocuous, the RUC failed to adequately recognize the dark and sinister implications of the threatening message this pamphlet conveyed. This, it could be found, constituted collusion by turning a blind eye to a threat to Rosemary Nelson or by failing to take action against a threatening document.
- f. The RUC was aware of the fact that several reputable agencies and organizations were expressing their serious concern for Rosemary Nelson’s safety. These organisations wrote letters to various officials, including those within the RUC. Just two weeks before the murder, Chief Constable Flanagan met with a delegation of lawyers that once again alerted him to the threats that had been received by Mrs Nelson and the danger she was facing. It could be found that, if nothing else, the sheer volume and cumulative effect of this material should have triggered some action. The apparent disregard of these agencies’ concerns could be seen as further evidence of a general lack of regard for Rosemary Nelson’s safety, and a failure to act in the face of threats.

ii. The NIO

- a. It could be found that, like the RUC, the Northern Ireland Office appears to have largely disregarded the cumulative impact of letters sent by numerous

agencies from 1997 onwards. These letters not only expressed concern about Mrs Nelson's safety; in many instances, they provided the details of threats she had received. Further, it could be found that although the NIO had knowledge of the threats to Rosemary Nelson it apparently did not take any action to protect her. Rather, all requests that Mrs Nelson be enrolled in a state protection scheme were denied.

- b. The NIO's mishandling of documents that were directly pertinent and vitally important to the safety of Rosemary Nelson may also indicate a level of neglect or disregard that could be found to be collusive. The NIO did request that the RUC conduct threat assessments. However, the failure to send to the RUC the death threat letter of 3 June 1998 adversely affected the second assessment. This most vital piece of information was not sent. There is every indication that this was an error, and not a deliberate or sinister act. Nonetheless, the importance of the death threat ought to have been clear to NIO officials – it was literally a matter of life and death - and it could be found that greater care ought to have been taken to ensure its delivery. This is particularly so since the NIO had already received several pleas to protect Rosemary Nelson and knew that her safety was considered by others to be a serious issue. It could be found that the NIO has never provided a satisfactory explanation for its failure to enclose the attachments, its failure to ensure that the documents reached the RUC, or how the documents eventually reached the RUC files. The lack of care that was demonstrated with respect to the enclosures could be found to be collusive in that the NIO failed to properly process what it knew was a vitally important document, or on the basis that it is part of a cumulative pattern of careless conduct capable of constituting collusion.
- c. The NIO failed to question the threat assessment it received from the RUC, although it could be found that it was clear, or ought to have been clear, that the death threat letter had not been considered, and that the threatening aspects of the pamphlet had been ignored. Again, this could be taken to demonstrate a lack of care or the turning of a blind eye to the protection of a prominent solicitor, whose life and safety was believed by others to be at risk. By

simply accepting and relying upon the RUC assessment, it could be found that the NIO demonstrated an approach that constituted the turning of a blind eye to serious matters of concern. This could be found to be particularly troubling because the NIO *was* aware of specific threats against Rosemary Nelson.

- d. It could be found that by failing to provide protection for Rosemary Nelson, the NIO failed to take steps that could well have saved her life. The NIO's conclusion that Rosemary Nelson did not qualify for enrolment in the KPPS may have flowed from its application of the strict criteria of the scheme. However, it could be found that the NIO had knowledge that Rosemary Nelson, a high profile solicitor engaged in high profile cases for unpopular Nationalist clients, had received repeated threats including an explicit handwritten death threat in the post. This could be found to be sufficient to make the issue of her safety a priority. Even if the KPPS was not available, the NIO had a discretion to offer a package of protection without regard to the RUC threat assessment. Its failure to take any action to protect Rosemary Nelson could be found to be troubling when it is considered against the background of the earlier murder of Patrick Finucane. By disregarding a significant body of evidence of threats against Rosemary Nelson, it could be found that the NIO engaged in conduct that was collusive in nature.

4.196 Carelessness or negligence might be found to constitute collusion either by the careless or negligent act or omission itself or taken together with other acts or omissions which would indicate a pattern of conduct. That is to say the act or omission itself might indicate that an entity such as the RUC or NIO was turning a blind eye to dangerous or threatening acts or was condoning those acts or was looking the other way and thus would come within the definition of collusion. Similarly it could be taken as indicating indulgence or tolerance of the dangerous or threatening acts or as a failure to take action against known wrongdoing. As well as the act or failure to act could be taken to form a pattern of conduct that comes within the definition of collusion. Further, individual negligent acts may indicate an uncaring attitude or evidence of collusive acts. For example they may indicate that something has been deliberately or knowingly ignored, overlooked, disregarded or passed over.

It follows that the negligent acts of the RUC and the NIO will have to be carefully considered to determine whether they constitute acts of collusion.

J. Conclusion with respect to the failure to protect Rosemary Nelson

i. Introduction

4.197 I am satisfied that there is evidence of collusion by Governmental Agencies in the murder of Rosemary Nelson that warrants holding a public inquiry.

4.198 For ease of reference, I will reproduce the definition of collusion that was stated earlier in this Report, and that I have applied in the Rosemary Nelson case.

ii. Definition of collusion

4.199 How should collusion be defined? Synonyms that are frequently given for the verb to collude include: to conspire; to connive; to collaborate; to plot; and to scheme.

4.200 The verb connive is defined as to deliberately ignore; to overlook; to disregard; to pass over; to take no notice of; to turn a blind eye; to wink; to excuse; to condone; to look the other way; to let something ride; see for example the Oxford Compact Thesaurus Second Edition 2001.

4.201 Similarly the Webster dictionary defines the verb collude in this way: to connive with another: conspire, plot

4.202 It defines the verb connive

1. to pretend ignorance or unawareness of something one ought morally, or officially or legally to oppose:

to fail to take action against a known wrongdoing or misbehaviour – usually used with connive at the violation of a law.

2. (a) to be indulgent, tolerant or secretly in favour or sympathy:

- (b) wink at youthful follies:
- (c) to cooperate secretly: to have a secret understanding.

4.203 How should collusion be defined for the purposes of this inquiry? Again it is essential that I observe that members of the public must have confidence in the actions of Government agencies whether they be the NIO, the Secretary of State or the police force. There cannot be public confidence in any Government agency that is guilty of collusion or connivance with regard to serious crimes. Because of the necessity for public confidence in the Government agencies, the definition of collusion must be reasonably broad when it is applied to these agencies. That is to say that they must not act collusively by ignoring or turning a blind eye to the wrongful acts of their servants or agents by supplying information to assist those servants or agents in their wrongful acts or by encouraging others to commit a wrongful act.

4.204 Any lesser definition would have the effect of condoning or even encouraging state involvement in crimes, thus shattering all public confidence in governmental agencies.

4.205 In determining whether there are indications of state collusion in the murder of Rosemary Nelson it is important to look at the issue from two perspectives. First it must be seen whether the documents indicate that the action or inaction of the government agencies might have directly contributed to the killing of Rosemary Nelson. Secondly it is necessary to examine collusive acts which may have indirectly contributed to the killing by generally facilitating terrorist activities. That is the evidence may reveal a pattern of behaviour by a Government agency that comes within the definition of collusion. This evidence may add to and form part of the cumulative effect which emerges from a reading of the documents. In this case it will be important to consider whether the documents reveal that Government agents or government agencies turned a blind eye to threats which were being made against the life of Rosemary Nelson. It must be determined whether the failure of Government agencies to protect Rosemary Nelson, in light of the threats that they were aware of, constituted collusion. If the Government knew that Rosemary Nelson's life was in danger, yet took no steps to ensure her safety, this could constitute collusion. State sponsored protection was available to individuals on a discretionary basis. Obviously

if this protection could have saved Rosemary Nelson's life, the failure of Government officials to provide it was an act or omission that could have facilitated her murder by terrorist paramilitaries.

4.206 Further, if it is found that acts of Government encouraged terrorist acts, this too could be found to be collusive action.

iii. State conduct that is capable of constituting collusion

4.207 The following is a summary of those acts and omissions on the part of the RUC and NIO that are capable of giving rise to a finding of collusion. As with all summaries, it suffers from the effects of compression, and must be read together with the document as a whole in order to be properly understood. This may be somewhat repetitious but may provide a helpful outline.

(a) The RUC

- (i) The alleged threats and demeaning remarks made by the RUC officers while interrogating clients of Rosemary Nelson about her, if they are found to have been made, are capable of constituting collusion, both as evidence of turning a blind eye to all threats made to her and as encouraging others to attack her.
- (ii) If the allegations of verbal and physical abuse to Rosemary Nelson at Garvaghy Road are shown to be true, they too could constitute evidence of collusion, both as to the turning a blind eye to threats to her and as encouraging others to abuse and threaten her.
- (iii) If it is found that the RUC failed to properly investigate the complaints regarding the alleged threatening remarks that could constitute evidence of collusion both by turning a blind eye to threats to her and by encouraging threats by others or by indicating that they would be tolerated.

- (iv) If it is found that the Chief Constable told Mr Cumaraswamy that solicitors were working for paramilitary organisations that could constitute evidence of collusion by encouraging others to think of solicitors as being paramilitary members or terrorists who could be treated as such.

RUC threat assessments

- a. The RUC approach to the pamphlet “Man Without a Future” could constitute evidence that it was turning a blind eye to the threat it contained.
- b. The RUC failure to follow up and obtain the 3 June death threat letter which it knew had been referred to but was not enclosed could certainly constitute collusion in that it was turning a blind eye to the dangers besetting Rosemary Nelson.
- c. The RUC failure to become aware of the same letter when it was attached to Rosemary Nelson’s statement to the Mulvihill inquiry could be evidence of turning a blind eye to evidence regarding the death threats to her.
- d. The failure of the RUC to attach any weight to the heightened danger to a solicitor taking high profile cases for Nationalists could constitute turning a blind eye to a danger so clearly demonstrated in the Finucane murder.
- e. The failure of the RUC to give any weight to the letters from reputable organisations concerned about her safety could constitute turning a blind eye to the dangerous situation faced by Rosemary Nelson and thus collusion.

(b) The NIO

- (i) The failure of the NIO to take into account the letters from reputable organisations which expressed concern for the safety of Rosemary Nelson could be found to be a collusive act in that it turned a blind eye to a dangerous situation.

- (ii) The NIO relied upon the RUC threat assessment which it must have or should have known did not take into account the death threat letter of 3 June. This could well be found to constitute the turning of a blind eye to the dangers faced by Rosemary Nelson.
- (iii) The NIO failed to ensure the 3 June death threat was enclosed in its letter to the RUC. This could be found to be carelessness amounting to turning a blind eye to the dangerous situation.
- (iv) It knew the conditions for qualification for protection under the KPPS and thus the importance of the letter and yet took no, or inadequate steps, to rectify the failure to enclose the note. This could be found to constitute turning a blind eye.
- (v) The NIO like the RUC could be found to have ignored the threatening aspect of the “Man Without a Future” pamphlet. Thus, the NIO could be found to have turned a blind eye to the dangerous situation faced by Rosemary Nelson.
- (vi) The NIO failed to offer Rosemary Nelson protection under its own protection scheme although it was aware or should have been aware of the dangers to her. This too could be found to be turning a blind eye.

Following the murder

- a. Both the NIO and the RUC denied that they were aware of any specific threat to Rosemary Nelson although both were aware or should have been aware of alleged threatening incidents, the pamphlet and the death threat letter.
- b. Similarly the NIO were prepared to take the position there was no record that the GRRC had requested protection for Rosemary Nelson when it knew or ought to have known that a request had been made at the meeting.

4.208 Although these actions after the murder cannot standing alone constitute collusive acts, they may be seen as a part of a cumulative pattern of conduct which could be found to be collusive.

The investigation into the murder of Rosemary Nelson

A. The composition of the investigation team

4.209 Deputy Chief Constable Colin Port was asked to carry out and supervise the investigation into the murder of Rosemary Nelson shortly after it occurred. There have been criticisms of his work. Various groups and individual have raised concerns about the presence of RUC officers on the investigating team. On the one hand, these concerns may be understandable, in light of the allegations that the RUC had threatened Rosemary Nelson prior to her death. The presence of RUC officers on the team may have been seen by some as detracting from its independence, because the force was being asked to investigate itself. Certainly, it would appear that some individuals declined to cooperate with the Port Inquiry team, perhaps because of the RUC component.

4.210 On the other hand, it cannot be forgotten that Colin Port was faced with obvious difficulties and considerable challenges. In order to conduct a proper investigation, he needed the assistance of those who were familiar with the situation in Northern Ireland and, more specifically, the district of Lurgan. To this extent, he required the assistance of the RUC. Furthermore, it would appear that he did all that he could to create a separation of powers so that officers from the RUC would have nothing to do with aspects of the investigation pertaining to collusion.

4.211 It has also been suggested that Deputy Chief Constable Port was handicapped by the fact that he could not make arrests in Northern Ireland without a member of the RUC present. Because RUC officers had to make the arrests, it was thought that they might have warned the suspects of their pending arrests. Whether or not this concern is justified, it has not had any practical impact on the investigation of Rosemary Nelson's murder. In an ideal world the Port Inquiry team would have been exclusively composed of officers from outside the RUC. However, for practical reasons, this may not have been feasible. In any event I am satisfied that the presence of the RUC did not in any way impair the integrity or progress of this very thorough and impressive

investigation. The investigation carried out by the Port Inquiry team was, in every way, exemplary. This point may be illustrated by a consideration of the extremely thorough review of the increased security activity in Lurgan during the weekend prior to the murder.

B. Security force activity the weekend before the murder

4.212 During the weekend prior to the murder, several residents of the Kilwilke Estate and surrounding area reported an increase in security force activity, such as more vehicle check points, a greater presence of both the RUC and RIR (Royal Irish Regiment), and increased helicopter flights. For reasons that I will explain later I have found, on the basis of the documents, that this security force activity was a part of their duties. It has been more than adequately accounted for and does not appear to have had any connection to the murder of Rosemary Nelson.

4.213 This matter was exhaustively reviewed and investigated by the Port Inquiry team. Two reports or analyses were prepared by Richard Nerush, an intelligence analyst with the Kent County Constabulary. The analyses were detailed and carefully done. The analysis began with a very broad definition of “security forces”. This term was defined to include the following

- a. Royal Ulster Constabulary – This encompassed all RUC personnel, including those of the regular force, full time reserve, part time reserve, plain clothed and support staff based at:
 - I. Lurgan RUC Station
 - II. Moira RUC Station
 - III. Craigavon RUC Station
 - IV. J2 Mobile Support Unit (J2MSU) - Portadown
 - V. Traffic Department – Portadown
 - VI. Other RUC divisions and departments, where these personnel did or may have entered the Lurgan area during the period covered by the report.

- b. British Military Forces – This represented:

- I. 3rd Battalion Royal Irish Regiment – (3 RIR) including personnel of:
 - a. F Company ('W' prefixed callsigns)
 - b. G Company ('L' prefixed callsigns)
 - c. Operations rooms at Battalion and Brigade levels
- II. Royal Military Police (RMP)
- III. Army Technical Officers (ATO)
- IV. Army Air Corp (AAC)
- V. Royal Air Force (RAF)
- VI. Operations Company Scots Guards ('EE' prefixed callsigns)

4.214 The analysis included a review of the activity of every member of the security force as defined above who was on duty on the weekend of 13 March to 15 March. Their actions were cross-referenced and cross-checked in various ways to ensure the accuracy of the statements and conclusions. The cross checking was done with the log keepers and with the "honesty maps" that were kept by the officer commanding each patrol which reflect the movements of all members and the maps that they made. The confirmation of the statements was done by triangulation and by cross reference to the extensive interviews undertaken of every member of the security force on duty. Infinite care was taken to account for the movements and actions of every member of the security force and of every vehicle and aircraft used by them.

4.215 The reports confirmed that during the weekend in question, there were a number of significant events and incidents:-

4.216 On Saturday 13 March 1999

- a surge operation, Operation Improvise, was carried out by G Company 3 RIR in Lurgan and Craigavon during the morning;
- A suspect device was reported to have been placed outside [house number redacted] Victoria Street, Lurgan in the late afternoon; and
- There were reports of youths throwing stones and paint bombs at J2MSU RUC Land Rovers attending Victoria and Lake Street in order to provide cover for a local officer.

4.217 One Sunday 14 March 1999

- a suspect device was reported to have been placed outside [house number redacted] Lake Street, Lurgan in the late afternoon;
- there was an outbreak of public disorder in the Kilwilke Estate, which included the burning of a motor vehicle.

4.218 On Monday 15 March 1999

- there were reports and subsequent arrests of persons breaking into a vehicle in Waringstown around 2am;
- there was a clearance operation in Lake Street, Lurgan in relation to the suspect device reportedly thrown on to waste ground there the previous night.

4.219 The surge operation, like all surge operations, consisted of putting additional personnel in the area and, indeed, flooding a particular area with security forces. This is done in connection with planned searches, to provide protection for soft targets (homes of security force workers) and shift changes, to perform security force base protection and to prevent PIRA forces from undertaking terrorist operations in the area. Surge operations were routinely undertaken, often two or three times a week. The surge operation conducted on Saturday the 13th was routine, or as routine as anything in Northern Ireland can be.

4.220 In addition to the surge operation, other problems arose on that Saturday. A suspect device, that is to say, a package suspected of containing explosives, was reported to have been placed outside [house number redacted] Victoria Street Lurgan in the late afternoon. This was in a predominately Nationalist subdivision. An officer was dispatched to investigate the suspect device and a mobile support unit of the RUC provided cover for the local officer carrying out the investigation.

4.221 There were as well reports of youths throwing stones and paint bombs at the Mobile Support Unit. Land Rovers came to Victoria Street to provide cover for the officer investigating the suspect device. It should be noted that it was apparently a common practice to create and plant suspect devices, so that when the RUC were called to investigate, they could be attacked with stones, paint bombs and fire bombs.

4.222 On Sunday 14 March, a suspect device was reported to have been placed outside [house number redacted] Lake Street in the same general area of Lurgan in the late afternoon. There was as well an outbreak described as a public disorder in the Kilwilke Estate which involved a vehicle being burnt in that area. On 15 March there were reports of persons breaking into a vehicle in Waringstown around 2am. Arrests were made of persons suspected of being involved in that incident. There was as well a clearance operation in Lake Street in relation to the suspect device which was reportedly thrown onto waste ground in that area the night before.

4.223 After tracing the duties and movements of every member of the security forces that was on duty that weekend Mr Nerush concluded his report in these words:

“Instructions from the Senior Investigating Officer were that statements would be taken from all security forces personnel known to have performed any duty in the Lurgan area between 18.00 hours on Sunday 14 March 1999 and 13.00 hours on Monday 15 March 1999. In the case of those military personnel who performed duties during the whole of Saturday and on Sunday morning given that they were supervised by their patrol commanders, only patrol commanders, Military Police and those involved in helicopter activity were required to make statements. All accounts have been tested and all but a few are corroborated by documentary evidence or the recollections of other security forces personnel.

Where conflicting accounts existed they were investigated and the majority have been resolved. None of these referred to activities or deployments in or around the vicinity of Ashford Grange during the period between Mrs Nelson’s arrival home on the Sunday evening through to the time of the explosion. Where conflicting accounts remain, investigations are currently in hand. None of these outstanding enquiries are considered to be significant being more to do with minor timing errors and poor standards of documentary recording.

A full and thorough account of all helicopter activity, during the period covered by this report, was considered essential in relation to allegations

regarding the deployment and activity within the area of concern. Having analysed all current statements and documents, including the detailed research carried out by Constables Kynoch and Pillar, there are no indications that anything other than authorised, scheduled and recorded flights were undertaken albeit as mentioned in paragraph 102 the details concerning the flight of GZ6/Hawk 364 are somewhat lacking.

All civilian accounts of security forces activities and sightings including those produced with the Pat Finucane Centre report (D1274) have been analysed and where they differ with those recorded by the military and RUC they have been thoroughly investigated. With regard to the Pat Finucane Centre report, please refer to my report “Analysis of the Pat Finucane Centre Report (D1274) and Comparison with Known Security Force Activity 13 to 15 March 1999 reference RBN 16 (D17172)

Through the detailed analysis of all relevant documents relating to security forces activities in the Lurgan area during the period covered by this report, it is apparent that both the RUC and military personnel on duty were expecting their duties to be routine.

The level of security forces deployed within the Lurgan area during the weekend, though larger than usual (especially during the morning of Saturday 13 March 1999), was commensurate with planned operations and the response to the security situation at the time.”

(See Appendix C)

4.224 There can be no doubt that there were additional forces on duty that weekend particularly on the Saturday. However surge operations were conducted two or three times a week, there was nothing unusual in that aspect. Further there was additional security force activity in the area as a result of the report of suspect devices in the area. I will refer to the helicopter activity separately. However there is nothing to indicate that these were collusive actions or that they constituted collusion in any way. They arose from the ordinary and routine duties of the security forces at that time. These activities have been scrutinised with great care as evidenced by the meticulous

and detailed reports prepared by Mr Nerush. The reports of Mr Nerush are attached as Appendix C to this Report.

- 4.225 With respect to helicopter activity, Mr Nerush's report confirmed that the operations of every military aircraft stationed in the area had been carefully logged. At the outset it has to be pointed out that Lurgan is on the flight path for all aircraft routed through the area. Thus there will always be a good deal of aircraft activity over Lurgan. However all aircraft flights were carefully logged and plotted and all personnel were interviewed with regard to them. These logs were checked against statements taken from persons in the area by the Patrick Finucane Centre. All discrepancies were very carefully reviewed.
- 4.226 One helicopter flight must be specifically mentioned. Upon receiving the report of a suspect package outside [house number redacted] Lake Street, a Gazelle helicopter was directed to attend. The pilot did not know where the residence of Rosemary Nelson was, nor did he know of her at all at the time he performed the flights on Sunday 14 March 1999. However when he was told of the location of her home, he stated that the helicopter did fly in her area on numerous occasions on that night. Thus, witnesses were justified in stating that there appeared to be frequent helicopter activity in the vicinity of Rosemary Nelson's home. Yet there was nothing sinister about this activity. It was simply a routine (for Northern Ireland) response to the investigation of a suspect package.
- 4.227 Similarly, although cameras were mounted in some of the helicopters flying over Lurgan that weekend there were no tapes recovered of photographs taken by helicopter cameras. It has been alleged that the failure to produce tapes from the helicopters is a further indication of inappropriate or collusive conduct. The answer to this is that the helicopter personnel did not consider that there was anything of an exceptional nature occurring on this weekend. Although the report reveals that there were people seen collecting at every corner at the time of the public disturbance when the vehicle was burnt: this was apparently a common place occurrence in this district at this time.

- 4.228 With regard to the use of helicopter cameras and the tape, there were no special directions or orders with regard to this. Obviously if something of concern had taken place, there would have been an attempt to photograph it and to maintain the footage. However in situations such as this one, where the pilot was of the opinion that there was nothing of any special nature observed, the tendency was to put the tapes in a general bin. From there they would be taken, cleaned and reused. That is what happened in this case.
- 4.229 It appears that, apart from Saturday's surge operation, any increased or special activity of security forces in the area flowed from the disturbances in the Kilwilke area and the reports of the suspect packages in and about the area. I am satisfied that there is no evidence of collusion or turning a blind eye. Rather the helicopter personnel were carrying out routine flights.
- 4.230 The statements from the Patrick Finucane Centre pertaining to helicopter activity are satisfactorily answered by the meticulous and exemplary review of the activities of helicopters in the area.
- 4.231 The intense research undertaken by Mr Nerush in compiling his report reveals that there is one observation of a vehicle check point that cannot be explained. Witnesses in one car recalled being stopped at a check point during the weekend. These witnesses appeared to be very credible and they were able to relate the time and date of the stop to a specific and memorable event. Yet no check point appears to have been officially recorded at the location identified by the witnesses. This discrepancy cannot be explained. The location described by the witness was not one that could have affected the murder or events leading up to it. Accordingly, I do not attach any significance to this apparent anomaly for the purpose of my inquiry.

Conclusion

- 4.232 Security Force activities, including the helicopter flights, have been exhaustively researched and reviewed. On the basis of this review, I am satisfied that the increased security force activity is not evidence of collusive activity. It did not

facilitate the murder of Rosemary Nelson, nor can it be said that there was a turning of a blind eye to activities at or near her home during the weekend preceding her murder.

C. Other avenues of investigation

4.233 The Colin Port Inquiry team undertook a long, thorough and extensive investigation of all the persons thought to have been in any way involved in the murder of Rosemary Nelson. It is apparent that neither financial resources nor personnel were spared in the course of this investigation. It was conducted with great tenacity, skill and imagination. It involved a review of literally hundreds of hours of covertly captured intelligence product and the labours of very skilled and dedicated officers working undercover in a very difficult, yet most imaginative manner. The investigation was broad in scope and extended not only to Northern Ireland but to England, Wales and the United States.

4.234 It would be unfair to the police to disclose the operational details of this investigation. It is often in the public interest that the secrecy of certain police techniques should be maintained. However an idea of its scope can be gained from the statistics which reveal that there were hundreds of hours of covertly captured intelligence product that were carefully scrutinised and reviewed. Similarly hundreds of additional hours were spent in meticulous checking of the activities of all suspects; this quite apart from the time devoted to the undercover operation.

4.235 It was only after long days and many months and indeed years of intensive investigation that the Port team concluded that they had exhausted every avenue and there was no use continuing. The investigation was therefore terminated. [Justice Cory has addressed the current state of the Port investigation at paragraph 4.246]

4.236 To repeat, I am satisfied that a very intense, thorough, long lasting, painstaking and imaginative investigation was carried out. Heroic efforts were made to discover any evidence that would facilitate the arrest and prosecution of individuals for the murder of Rosemary Nelson. There is certainly no evidence whatsoever of collusive actions on the part of the Port Inquiry team.

4.237 There are three peripheral matters that I should mention.

4.238 First during the investigation certain suspects reportedly mentioned the name of an RUC officer. However this was not in connection with Rosemary Nelson or her murder. Rather the references were made by the suspects in a completely different context. They were to the effect that he was a tough officer but had assisted them through his knowledge of the LVF. The comments are irrelevant to my inquiry and no useful purpose would be served in mentioning the officer's name. I simply wish it noted that I have considered this issue and am satisfied that it is irrelevant to my inquiry.

4.239 -----

4.240 Lastly a newspaper account in the News of the World article of 25 May 2003 has come to my attention. It reports that a man convicted of a serious offence, Mr FF, has now volunteered that two RUC officers spoke to him about Rosemary Nelson in July 1997, close to two years before her murder, inciting him to kill her.

4.241 The investigation of this new allegation cannot affect the conclusion that I have already stated in this report. If it is found to be a fabrication it cannot change my view that there must be a public inquiry regarding the failure of the RUC and NIO to provide some form of protection for Rosemary Nelson. If the allegations are found to be true they will simply support the conclusions I have reached based on my review of the documents and statements. It may well be that those conducting the public inquiry will wish to explore the statement made by Mr FF. The use to be made of the statement will be for that inquiry to determine.

The basic requirements for a public inquiry

4.242 When I speak of a public inquiry, I take that term to encompass certain essential characteristics. They would include the following:-

An independent commissioner or panel of commissioners.

The tribunal should have full power to subpoena witnesses and documents together with all the powers usually exercised by a commissioner in a public inquiry.

The tribunal should select its own counsel who should have all the powers usually associated with counsel appointed to act for a commission or tribunal of public inquiry.

The tribunal should also be empowered to engage investigators who might be police officers or retired police officers to carry out such investigative or other tasks as may be deemed essential to the work of the tribunal.

The hearings, to the extent possible, should be held in public.

The findings and recommendations of the Commissioners should be in writing and made public.

The importance and necessity of holding a public inquiry in this case

- 4.243 During the Weston Park negotiations, which were an integral part of the implementation of the Good Friday Accord, six cases were selected to be reviewed to determine whether a public inquiry should be held with regard to any of them.
- 4.244 The Nelson case was specifically chosen as one of the six cases to be reviewed to determine if there was sufficient evidence of collusion to warrant the directing of a public inquiry. In light of this provision in the original agreement, the failure to hold a public inquiry as quickly as it is reasonably possible to do so could be seen as a denial of that agreement, which appears to have been an important and integral part of the peace process. The failure to do so could be seen as a cynical breach of faith which could have unfortunate consequences for the Peace Accord.
- 4.245 Further, if as I have found, there is evidence which could be found to constitute collusion then the community at large would, undoubtedly, like to see the issue resolved quickly. This is essential if the public confidence in the police, the Government and the administration of justice is to be restored. In this case only a public inquiry will suffice. Without public scrutiny doubts based solely on myth and suspicion will linger long, fester and spread their malignant infection throughout the Northern Ireland community.
- 4.246 At the time I commenced my review of the Rosemary Nelson case, I was advised that the investigation into the murder was, for all intents and purposes, very nearly completed. Notwithstanding the careful, comprehensive and thorough nature of the investigation carried out by the Port Inquiry team, no person has been charged with any offence relating to Mrs Nelson's murder, and given the advanced state of the investigation, it is unlikely that any major leads will develop. The current state of the investigation into the murder of Rosemary Nelson was explained by the leading investigator in the following manner:

Whilst the police investigation into the murder of Rosemary Nelson is still live, the inquiry can be described as being in its final stages. Before closing the inquiry, the police team intends to review key areas of the investigation in order to determine whether any further opportunities to advance these particular lines of enquiry now exist. However, none of the inquiries currently being undertaken by the police team promises the significant breakthrough that would be needed in order to prosecute those responsible for the murder of Rosemary Nelson.

This report on the status of the investigation clearly indicates that it could not and should not be the basis for delaying the public inquiry into this case.

- 4.247 If criminal prosecutions are to proceed the practical effect might be to delay the public inquiry for some considerable time. The family of Rosemary Nelson will be devastated. A large part of the Northern Ireland community will be frustrated. Myths and misconceptions will proliferate and hopes of peace and understanding will be eroded. This may be one of the rare situations where a public inquiry will be of far greater benefit to a community than prosecutions.
- 4.248 If this public inquiry is to proceed and if it is to achieve the benefits of determining the flaws in the system and suggesting the required remedy, and if it is to restore public confidence in the police and the Government, it should be held as quickly as possible.
- 4.249 During the course of my review of this case, new information came to light in the form of a press article appearing in the News of the World on 25 May 2003. I have now been advised that this investigation has been completed and that there will be no prosecution arising from the allegations made by Mr FF. I have been given a copy of a letter dated 4 November 2003 from the office of the Department of the Director of Public Prosecutions and signed by [name redacted], Assistant Director, Special Section. It indicates that the Director is satisfied that there is no evidence to sustain criminal proceedings against either person referred to in the allegations made by Mr FF. Thus, another aspect of the investigation into the murder of Rosemary Nelson is now closed and completed.

4.250 Moreover, it is important to note that I have recommended that a public inquiry take place on the issue of the failure of the RUC and Northern Ireland Office to furnish protection to Rosemary Nelson prior to her murder. This issue stands alone. It is separate and distinct from the issue as to who murdered Rosemary Nelson. Indeed, as a result of the basis on which I have recommended a public inquiry, this may be one of those rare cases in which a public inquiry *can* run concurrently with a criminal prosecution. Once again I must stress the importance of ensuring that the public inquiry take place at the earliest reasonable opportunity. In light of my finding that there appears to be evidence capable of constituting collusion which warrants the holding of a public inquiry the community might prefer a public inquiry over a prosecution even if it means that some witnesses must receive exemption from prosecution. The difficult decision to be made by the Attorney General will require a careful and sensitive balancing of all the relevant factors.

4.251 Concerns may be raised regarding the costs and time involved in holding public inquiries. My response to that is threefold:

1. If public confidence is to be restored in public institutions then in some circumstances such as those presented in this case a public inquiry is the only means of achieving that goal.
2. The original agreement contemplated that a public inquiry would be held if the requisite conditions had been met. That there is evidence of collusion has been established in this inquiry. In this case, the requisite condition has been met.
3. Time and costs can be reasonably controlled. For example, a maximum allowance could be set for counsel appearing for every party granted standing. That maximum amount should only be varied in extraordinary circumstances duly approved by a court on special application.

Counsel and the Commissioner or Commissioners should undertake to devote their full time to the inquiry until it is completed.

If the Commissioner found that the actions of a counsel were unnecessarily and improperly delaying the proceedings the costs of that delay could be assessed against that counsel or his/her client.

4.252 These are simply suggestions for controlling the unnecessary expenditure of public funds. Obviously there are many variations that could be played upon the important theme of cost reduction of public inquiries. If implemented, they could reduce the burden on the public purse and lead to greater harmony and fewer discordant notes in the inquiry process.

4.253 The Good Friday Accord and the Weston Park Agreement, which set out the selected cases as an integral part of the Accord, must have been taken by both Governments to be a significant step in the peace process. Six cases were chosen and the Agreement was negotiated and entered into on the basis that, if evidence which could constitute collusion was found, a public inquiry would be held. In those cases where such evidence has been found, the holding of a public inquiry as quickly as is reasonably possible is a small price to pay for a lasting peace.

4.254 At the time of the Accord, the parties would have had in mind a public inquiry as that term was known in 2001. Yet all reasonable people would agree that an inquiry should proceed as expeditiously and economically as possible. They are not designed, and should not be considered, as a means of enriching the legal profession. No reasonable person could object to strictures being placed on the inquiry to ensure these goals. These strictures would benefit all.

