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30 January 1992

Mr. Seán O hUiginn  
Assistant Secretary  
Anglo-Irish Division  
Department of Foreign Affairs

Dear Assistant Secretary,

Nelson Case

As this case will run and run, it might be useful to make the following points about the discussion at Tuesday's Conference and later developments:

- We proposed a Communique text on Tuesday morning which said there had been a discussion at the Conference arising from the statement by the Attorney General's representative at the trial on 22 January, that the Irish side had expressed deep concern at the implications of the case, that the British side had said the matter was sub judice and that it had been agreed to resume discussion of the issues arising in the case at a later Conference. After much resistance, a variant of that formula was accepted by the British side five hours later with the addition of the phrase that the resumed discussion would take place when the case had ended.
- From an early stage, the British side were trying a formula on the lines that the Irish side had underlined the importance of the case's wider implications. The purpose seemed to be to establish a cordon sanitaire around the Attorney General and the DPP. This was confirmed later when the British went so far as to try to get our Ministers to accept a demand by the Law Officers that, in any public comments, they should not raise now or in the future the question of the Law Officers' policy in the prosecution. As I have mentioned to Alston, what this prolonged and rather desperate effort to protect the Law Officers could only have done was to heighten any sense our Ministers might have had that in their conduct of the case, the Law Officers had sought to protect the Army.

I gather there was some private criticism among officials of Mr Brooke's handling of the matter at the Conference, in particular of his initiative to consult the Law Officers after the Communique had been agreed. I understand also that the official entrusted with this task, Mr Bell, has not received universal praise for his efforts to enforce the demands of the Law Officers but there is no doubt that he was acting on Mr Brooke's instructions. With reference to a quibble raised by Mr Brooke about whether our concern should be described as deep or serious, one very senior NIO officer told me half-jokingly that any thinking person would have to regard the Nelson affair as a matter for "deeply serious concern" and that the Law Officers could not expect to escape scrutiny.

#### Court Proceedings yesterday

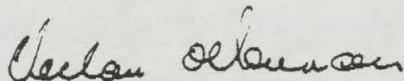
I raised with Robert Alston today the reports of the character evidence given on behalf of Nelson yesterday by the head of Military Intelligence at the time, a man described to the Court only as "Colonel". His evidence received detailed coverage here and in Britain (see especially today's London Times and Independent). I drew attention to the following points:

- The "Colonel" had said that Nelson's reports or the information gleaned from them had been discussed regularly with the GOC, senior police officers, sometimes including the Chief Constable, and the Secretary of State. It follows that Nelson's activities and the leak of security information to the UDA must have been known at the highest levels in the North from 1987 when Nelson was infiltrated into the UDA and, therefore, two years before the Stevens Inquiry.
- The "Colonel" said "Whatever he (Nelson) might have done, he would not have done it if I had not been responsible for his recruitment." This was a remarkable statement of complicity in the actions of a man whom the Law Officers had prosecuted on a variety of very serious charges including murder and who had pleaded guilty to all but the murder charges. When it was pointed out to him that there were several instances of Nelson's alleged willingness to participate in planning murders, the "Colonel" said he had not enough detailed knowledge to comment. But he did say elsewhere that an agent was bound to be involved in criminality and Mr Boal QC had pointed out to the Court that the advice to Nelson by his handlers was that he must not be a member of one of the killing teams which conveyed that other activities did not need to be avoided. These developments raised the most serious questions about the Army's knowledge and tolerance of and failure to prevent serious crimes.

Alston thought that these issues would be for the Defence Secretary in the first instance although obviously there would be a need for a wider review. He was unable to confirm the

report by Mark Urban in the Daily Telegraph of 28 January that a top civil servant is to embark on a review on how the security forces are using or misusing intelligence supplied by informers.

Yours sincerely,



Declan O'Donovan  
Joint Secretary