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Pat Stevens

cc PSS  
A/Sec O'Uiginn  
C O'Uiginn, A/Sec

SECURE FAX 788

(C)

18 June 1992

TO: HQ FROM: BELFAST Pages: 5  
FOR: Pat Hennessy FROM: Tim Dalton

Nelson Case

Pat,

I thought I'd fax this to you in case Sean has left for a meeting. I'd be glad if you could pass a copy today to C O'Uiginn, A/Sec., D/Justice.

Tim  
18/6

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AN RÚNAÍOCHT ANGLA-ÉIREANNACH

ANGLO-IRISH SECRETARIAT

BÉAL FEIRSTE

BELFAST

17 June 1992

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

Dear Sean

Nelson Case

This afternoon Robert Alston, accompanied by Clive Barbour, met Declan O'Donovan, David Barry and myself to give us their reactions to the various points we made at a meeting on 10 June concerning the Nelson Case. The following is an account of what took place.

Ministers have been informed of the concerns we expressed and are anxious to assure us that police primacy applies, that the rule of law is observed, that lessons have been learned, that agent handling arrangements have been totally reviewed and that the new arrangements will be implemented (Mr Alston was unable to specify the nature of the lessons learned or to give any details of the new arrangements)\*

They did not feel that comment on the Maskey case was called for as Nelson had pleaded guilty. Mr O'Donovan pointed out, however, that the particular issue which he had raised in relation to Maskey was the allegation that Nelson was provided with Army assistance. Mr Alston had misunderstood the point made at the earlier meeting and will come back to us on this and other matters.

The Army handling of the case had been rigorously investigated, officers had been cross-examined and no evidence had been found for prosecution or disciplinary action.

The DPP, however, is reviewing the case following the Panorama programme. (Mr Alston was unable to say whether it is simply the programme content, or the papers on the case generally which are being reviewed - he will come back to us on this.)

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- The Ministry of Defence and the Secretary of State have made it clear that members of the security forces are not above the law(1).
- With regard to the arms importations in 1988, the Army intelligence had been passed on to the RUC well before the shipment arrived. The UDA "share" of this importation had been intercepted and significant UDA personalities had been convicted. Army connivance was denied.
- The suggestions concerning Whitegate came from the UDA not from the Army. The information was passed on to the Gardai which tended to suggest that the Army neither planned nor encouraged an attack on Whitegate.
- Mr Alston was unable to comment on the suggestion that Nelson had been recruited in the face of MI5 opposition. It is not the practice in any event to comment on intelligence matters of this kind.
- No steps are being taken to recover Nelson's "Journal". We expressed surprise that the police weren't sufficiently interested in a document of this kind even to request the programme makers to supply them with a copy. It was distinctly possible that it contains other material concerning criminal acts/plans. The fact that the authorities do not have evidence that it contained material of this kind is apparently regarded as an impediment to any Court proceedings for recovery of the Journal from the BBC - if the BBC refused to supply it on request, the RUC could do nothing about it. Nothing had been raised by the Programme, in any event, which suggested that other criminal acts were involved. If the DPP concluded otherwise, he could of course ask the RUC to pursue the question of securing the Journal.

Mr O'Donovan said that it was quite likely that there would be further queries and asked whether any light could be shed on the suggestion that the then Secretary of State had written a letter to the Director of Public Prosecutions describing Mr Nelson as "a valuable agent". Mr Alston was unable to add anything to what had been said previously. Mr O'Donovan indicated that we would draw our own conclusions from the fact that Mr King left the House when a question on the subject was raised last week although the Labour spokesman, Mr McNamara, had given him written notice of his intention. Mr O'Donovan requested clarification on recent speculation that the Nelson case might lead to the future control of such agents being passed to police or MI5 rather than the Army. Mr Alston couldn't comment. Mr O'Donovan also raised the question of

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recovering the records now known to be in UDA possession (Nelson handed them back to the UDA) - they could still be used for targeting purposes. Mr Alston noted the point. Finally, Mr O'Donovan again emphasised the importance of providing our Ministers with absolute assurances that there can be no repeat of the Nelson case. Mr Alston suggested that this matter might be dealt with further at political level - perhaps at a future restricted session of the Conference.

I had the benefit of reading through the transcript of the evidence provided by Colonel "J" (you will recall that this was the transcript which was sent to us but which was "lost in the post" for several months) and, on that basis, made a few comments:-

- It was beyond doubt that the Army knew that Nelson's behaviour was a cause for serious concern (he had actually been reprimanded by the Army) and yet he was allowed to continue his deadly operations.
- The admitted failure on the part of the Army to act on warnings was quite extraordinary - in the case of Gillen there had been twelve warnings before an arrest took place.
- It was evident that a large number of people, some very highly placed, knew of Nelson's operations. Colonel "J" mentioned a number who would have access to Nelson's "product" apart from himself i.e. his handlers, the Special Branch at regional and headquarters level, people described as "security desk officers" and "military civilian and police assessment staff". There is even a statement that ..... "obviously the Secretary of State might have an interest in some of the reports".
- Colonel "J" had stated he had understood that something was to be "done" about Home Office guidelines on agent handling so as to render them suitable for agents infiltrating terrorist organisations (essentially to permit a level of criminality). Had this happened? Mr Alston was unable to say but it was obviously one of the matters that would be looked at in the context of reviewing agent-handling arrangements.
- There is an admission that the Army supplied only some of the UDA records to the police i.e. material on which they thought it necessary to have RUC comments. Whatever about the theory that police primacy applies, it can hardly be said to operate in practice where the Army effectively sifts the evidence to be supplied to the police.

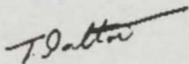
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One gets an overall impression that Nelson may not (as suggested in evidence) have been in grave peril when he handed over UDA records to the Army (it is not clear from the trial how long the Army held the material). Was it possible that the UDA actually knew that the Army were "refining" the information for them? Mr Alston (not surprisingly) couldn't comment on this.

Although Mr Alston will be coming back to us on a number of points, I think it is clear that there are aspects of the Nelson case on which we are unlikely ever to get completely satisfactory answers for the simple reason that "mea culpa" is the only credible answer. They have been made aware that the whole incident marks a very significant setback for the development of closer security cooperation which, at the very least, needs to be underpinned by the conviction on both sides that the observance of the rule of law and the maintenance of police primacy are not just cliches. We have made it clear that we will go back to them again when we have comments from Dublin on their response to date but that, in the meantime, we expect to receive answers on the matters mentioned above.

Yours sincerely



Tim Dalton  
Joint Secretary