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To: Embassy Washington
For: Secretary Gallagher
cc C O Floinn HQ

From: Belfast
From: Joint Secretary

Subj: Rosemary Nelson - conversations with the Chief Constable and others

1. Confirming a conversation with Ray Bassett last night, the following were the key points of interest to emerge in (a) a conversation I had with the Chief Constable at our St Patrick's Day reception last night; and (b) an earlier briefing given by Stephen Leach of the NIO.

The Phillips investigation

2. Flanagan was emphatic that Phillips will be in charge of the inquiry and that it will be "his show". He had made clear in his media interview earlier yesterday that Phillips would be given a very wide remit. (Leach was equally emphatic on this point when we drew his attention earlier to concerns from the CAJ and others that Phillips might merely have a loose supervisory role).

3. It was Flanagan's decision to bring in an outsider to lead the inquiry but the choice of Phillips was made by HM Inspector of Constabulary. Flanagan does not know Phillips personally but is aware of his very high reputation in UK policing circles and is happy with the choice. The Kent Constabulary has what Flanagan described to me as an "untouchable" reputation and has been used in a number of controversial cases including the Lawrence investigation.

4. While Flanagan has been praised in some circles for his prompt decision to bring in an outsider, others feel that the unprecedented nature of this case requires a more radical approach. I gather from some members of the newly formed Human Rights Commission who attended our reception last night that the Commission intend to issue as their first statement, later today or tomorrow, a call for the inquiry to be taken out of the hands of the RUC altogether.

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5. Asked about the likely extent of contact between Phillips and the Chief Constable while the inquiry is in progress, Leach said that this remains to be seen and that, as the case is without precedent, it is difficult to make forecasts. He observed, however, that Phillips is Flanagan's equal in rank terms and that it is not to be ruled out that Phillips would handle the inquiry entirely on his own, without discussing it at any point with Flanagan, and send his report directly to the DPP. (In the Hermon/Stalker relationship, you will recall, part of the tension arose from Stalker's lower rank).

6. It is not yet clear how large the inquiry team will be. However, both Flanagan and Leach indicated that Phillips may bring in staff of his own from Kent. The RUC themselves, we are told, will be committing significant resources to the investigation.

7. As regards the FBI dimension, Flanagan told me that what he wanted to achieve, apart from building in an international element for confidence-building purposes, was to provide Phillips with access to the vast panoply of technical expertise available to the FBI (e.g. in the forensics area). He has in mind that a couple of FBI officers might form part of the inquiry team and act as a "bridge" back to the FBI in Washington, who could supply further manpower and expertise as required. He did not demur when I suggested that Phillips might choose to have certain aspects investigated by the FBI people rather than by the RUC. (Leach had earlier suggested that Phillips might see positive value in demonstrating that key parts of the investigation were not carried out by the RUC).

Mulvihill report

8. Flanagan told me that he has sent the Mulvihill report, which was completed at the end of February, to the DPP. He showed some appreciation of the difficulties which he might face were he to appear to be covering up any faults identified by Mulvihill. However, like Leach at the earlier briefing, he pointed to the problem of the report containing material of potential relevance to prosecutions; if it were to be published, the bringing of charges could be compromised and the DPP would resist this strongly.

9. In discussion, however, he suggested that, depending on the view taken by the DPP of what was in the report, he might ask Mulvihill to prepare a summary of it which could be published.

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10. We understand that the ICPC may be issuing on Friday to the complainants (probably the solicitors for Rosemary Nelson and Joe Duffy) the statutory certificate on conduct of the investigation, which is likely to be an expression of dissatisfaction in the light of the Mulvihill report, and that some of this will probably reach the public domain.

Wider Loyalist involvement

11. Flanagan made clear that he strongly suspects UDA involvement in the killing in some form. Recalling the Copeland and Greer attacks, he said that the Nelson murder bore strong echoes and that the device used was far too sophisticated to have been assembled by the Red Hand Defenders on their own. He believes that UDA dissidents who are unhappy with their ceasefire may either have defected to the RHD or supplied material and expertise on an unauthorised basis.

12. Leach observed that commercial explosives of the kind used are known to be in the possession of the UDA and indicated that there was a sophisticated mercury-tilting device.

13. On the RHD as such, Leach said that the RUC's level of penetration is "developing". It is a new group, which makes penetration more difficult, but there is some cross-over from other groups. He repeated the view that there is a clear distinction between the RHD and the LVF, who are maintaining their ceasefire, notwithstanding the identification of both groups with the Portadown area. He referred also to the "evangelical streak" which characterises the RHD and the Orange Volunteers. Following a grenades find in Belfast several months ago, a number of people thought to be RHD members were arrested but the charges could not be made to stick.

Collusion allegations

14. Leach maintained that the heightened security force presence close to Ms Nelson's home a day or two before the killing was pure coincidence. He referred to a pattern of hoax bomb alerts from the Kilwilkie estate over recent years, which the RUC regard as a deliberate "come-on" for the security forces. These calls have to be checked, however, and a RUC and Army operation was mounted for this purpose, including the use of a helicopter overhead. Leach recognises fully that other interpretations can be, and are being, put on this operation.

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15. When I raised these concerns with the Chief Constable, he also spoke of a coincidence of timing. He went on to suggest that, if there were elements in the security forces who were colluding with Loyalist paramilitaries on this, they would hardly have regarded it as sensible to stage a high-profile operation in the area on the preceding day which would have the effect of drawing attention to, rather than masking, a possible security force involvement.

Personal protection

16. Leach said that, although minutes of the various meetings with the residents do not refer to any request made in relation to personal protection for Rosemary Nelson, Jonathan Powell recalls having been asked by Breandan MacCionnaith about protection for the Residents Coalition. When this was processed, a decision was taken by the NIO and RUC to provide home protection for MacCionnaith and Joe Duffy but not for Rosemary Nelson - on the grounds that she was not a member of the Coalition, was not pressing the matter herself and was not an elected Councillor (which gives MacCionnaith and Duffy an extra status).

17. The NIO line continues to be that Ms Nelson did not make any direct approaches on this matter herself, though they accept that concerns were raised through third parties. They suggest that, had she contacted them directly, her case would have received favourable consideration.

18. In a private conversation with me last night, Joe Pilling reflected that, with the benefit of hindsight, the NIO ought perhaps to have actively sought her out on this. However, they suspected that she would not have welcomed e.g. a RUC visit to inspect her home for this purpose. Specifically, Pilling would like to have had equipment attached to the home which would have illuminated the entire front of the house and would also have detected any interference with her vehicle.

Interview by Minister for Foreign Affairs

19. Finally, Leach expressed appreciation for the line taken on the killing in the interview which the Minister for Foreign Affairs gave on Monday and, in particular, the careful terms used in response to the collusion allegations.

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