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Pgm, Pgms

Secure Fax no.

22 April 1999 URGENT

To: Belfast From: HQ

For: Joint Secretary From: Dermot Gallagher

23 APR 1999

Pat Finucane/Rosemary Nelson Cases

Following the discussions yesterday and preparatory to raising these cases at political level next week, grateful if you would convey to the other side the following points regarding the Government's concerns:

Pat Finucane

1. We wish to underline the deep concern of the Government about this case and our view that it is extremely important, in terms of confidence in the administration of justice and the terms of the Good Friday Agreement, that this issue is *seen* to be addressed in a manner consistent with the seriousness of the allegations concerned

2. The questions raised in the BIRW report are not capable of resolution by a police investigation. They concern matters of urgent public interest, including the allegation that the security forces were complicit in the murder of Pat Finucane.

3. **By definition** Stevens cannot address the allegations (a) because the nature of the allegations are far more extensive than the murder of Pat Finucane and (b) we cannot see how Stevens can be conferred with the requisite legal powers or authority to discover or force the disclosure of testimony relevant to these allegations.

4. Even if Stevens were to discover sufficient evidence on which the DPP could prefer charges of murder and/or conspiracy to murder, the central allegations in the BIRW report would remain unaddressed.

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5. The Stevens investigation may result in the destruction of evidence which would be material to a public inquiry.

6. It is arguable that John Stevens has twice failed in the past to resolve this issue (and neither of his reports has, of course, been made public).

7. The information on which many of the renewed allegations are based pre-dated the second Stevens investigation yet seem not to have been disclosed to Stevens at that time. It is hard to see how Stevens could be successful this time round, and sound reason to believe he may be unsuccessful, even in regard to the limited aim of his investigation.

8. Moreover, John Stevens himself would be an important witness into a public inquiry and it would, therefore, seem inappropriate to re-involve him at this point.

9. In the light of the provision of the Good Friday Agreement and supporting legislation regarding prisoners, it may be that persons convicted as a result of this investigation would qualify for early release. The expectation of such an outcome might materially affect the approach by any charged person to trial with the clear possibility of such a person entertaining pleas to avoid or forestall further revelations in the course of trial.

10. The fact of an ongoing criminal investigation may inhibit the release of official material deemed germane to the allegations.

11. To postpone a decision on a public inquiry until the completion of a criminal investigation and any subsequent trials would entail a delay of possibly two years or more on an issue of urgent public interest.

Rosemary Nelson

12. Against the background of allegations of threats and intimidation directed at Rosemary Nelson by RUC officers, we are concerned that potential witnesses , or

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those who may be in possession of relevant information, may be reluctant to come forward because of RUC involvement in the investigation. We believe that this and the need to address it in operational terms is generating widespread public concern about the investigation. Moreover, addressing this issue has been identified by the Government as key element in our confidence in the investigation and hence our overall response to the calls for an international inquiry into the murder.

13. The key operational concern is to ensure that the investigation is structured and operated in a such a way that all potential witnesses or those with relevant information can with confidence come forward. We would propose the following:

- that a hotline operated by non-RUC personnel be established accompanied by a published protocol regarding the manner in which information is to be handled.

- this protocol would ensure that information be retained exclusively by non-RUC officers and that provision be made to ensure that that commitment is guaranteed at an operational level. Such factors as secure information technology, phone lines, office accommodation etc., would all be relevant.

- that the hotline, protocol and the other changes in the structure of the investigation relating to its independence are widely advertised to ensure cooperation with the investigation and widespread confidence in it.

- that interviewing be conducted by non-RUC officers as a general rule, operating in plainclothes.

- We understand that up to 85% of all interviews to date have been conducted by RUC officers. Provision should be made for those interviewed to be able to present themselves for reinterview by non-RUC officers.

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- We understand that RUC officers are currently serving on the collusion team assembled by Colin Port. We believe it would very much help to engender confidence if the collusion team and related resources were staffed solely by non-RUC officers with necessary provision for the security of the collusion investigation (office space, information technology and communication systems etc.)

- There is a need to address the current 4 to 1 ratio between police officers from the RUC and from the outside. We understand that there may be now 14 officers from outside police forces involved. We would be grateful for a breakdown of this, including in regard to non-investigative support staff, details of the exact role of the FBI, clarity about Philips's current role and relationship to the investigation, and the nature of the organisation and deployment of the officers involved.

END

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