APPENDIX D

MATERIAL RECEIVED FROM FORMER CHIEF CONSTABLE SIR RONNIE FLANAGAN

Sir Ronnie Flanagan, GBE, MA

HM INSPECTORATE OF CONSTABULARY
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The Honourable Peter Cory, CC, CD
Collusion Investigation
84 Brook Street
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30 September 2003

Your Honour,

As requested, I outline hereunder my recollection in respect of a number of meetings in which you have expressed an interest:

1. On 1 July 1998 I met with Mr U then Chairman of the Independent Commission for Police Complaints (ICPC), and Ms B a member of the Commission who had supervised an investigation by an RUC Officer of complaints by and on behalf of Mrs Rosemary Nelson. This meeting was requested by me as a result of a letter to me from Mr U dated 19 June 1998, in which a number of serious concerns were raised regarding the investigation. This was the first occasion on which such concerns were brought to my attention. Whilst I wanted an urgent meeting to discuss the matter, Mr U was out of the country and 1 July 1998 was the first date on which he and Ms B would be available to meet. A copy of Mr U's letter of 19 June 1998 is attached as is a copy of a letter of response dated 24 June 1998 from me to Mr GG, the Deputy Chairman of the Independent Commission for Police Complaints, in Mr U's absence.

At the meeting we discussed fully the concerns raised by Ms B and Mr U. I expressed surprise and dispapointment that these concerns had not been brought to my attention at a much earlier stage rather than at this point, when they considered the investigation to be at an end. I informed them that as a result of their concerns I did not now consider the investigation to be concluded and that I intended to have the matter completely independently re-investigated by someone from outside the RUC. I also informed them that I considered the letter of 19 June 1998 to be a complaint in relation to the original investigation and that I intended to have that independently investigated as well. I expressed the view that as I considered them to be "complainants" I did not now consider it appropriate for them to supervise this aspect of the matter. I indicated that I would speak to the Secretary of State about the appointment of a supervisory member from the Police Complaints Authority in England. Mr U and Ms B made it in fact clear that they were not making a 'complaint' about the original investigation but rather the matter should be 'reviewed' to determine whether further action in that specific regard was

appropriate or necessary. Mr U wrote to me on 2 July 1998 confirming this understanding. A copy of this letter is attached. We agreed that I would seek appointment of an independent external investigator whose appointment would be approved by Ms B who would also agree terms of reference for this invetigation and who would then supervise its conduct. In due course Commander Niall Mulvihill of the Metropolitan Police Service was approved by Ms B and terms of reference were agreed after they had met to consider them. A copy of the terms of reference is attached. These included complete investigation of two complaints originally investigated by the RUC as well as investigation of the 'new' complaints with a review of the original investigation. When these investigations were completed in March 1999, Ms B issued the statutory 'statement of satisfaction' that a proper investigation had been conducted. Ms B did of course allude to her concerns about the original investigation. A copy of a letter from the Chief Executive of the ICPC dated 22 March 1999 is attached.

2. On 27 February 1999 I met Mr X and a number of his colleagues from the American 'Lawyers Alliance for Justice in Ireland'. They had made the request for a meeting and I made the morning of Saturday 27 February 1999 available to comply with their request. I was accompanied by a member of my staff, Chief Superintendent Officer G (now retired). Mr X had a wide ranging agenda he wished to cover including the ongoing work of the Patten Commission on police reform; the marching issue; security and political developments generally; and of course their concerns regarding Rosemary Nelson as articulated by them in their original complaint. They had of course by this time met Commander Mulvihill and our discussion in respect of Mrs Nelson centred on the progress of his investigation. I was able to inform them that the investigation was almost complete and I expected the report to be presented imminently to the ICPC and to the Director of Public Prosecutions. We also discussed some of his recommendations of which I was already aware – a major one of which I had already implemented, i.e, the installation of audio recording as well as video recording in all detention facilities.

This meeting was conducted in an extremely productive and indeed cordial fashion and as we parted, Mr X had friendly photographs taken of me with him and with his group.

3. On Sunday 28 March 1999 I had a meeting with Mr U and with Commander Mulvihill. The meeting lasted all day and followed submission by Commander Mulvihill on 5 March 1999 of his completed report on his investigation into the complaints by and on behalf of Mrs Nelson, and of his report on his review of the original investigation. The dreadful murder of Mrs Nelson had been perpetrated on 15 March 1999 and at this time there were understandable public demands for publication of Mr Mulvihill's report. While legal difficulties prevented full publication, Mr U and I had agreed that we would ask Commander Mulvihill to prepare for public scrutiny what he considered to be an accurate account of his report in the light of the concerns raised by the ICPC. The purpose of the meeting was to agree what would be appropriate to be placed in the public domain. As a result of the meeting, I and Mr U issued a joint public statement on 30 March 1999 and on the same date Commander Mulvihill issued what he described as a 'full and accurate account' of his

report submitted to the Chief Constable of the RUC in respect of the review he conducted of the original RUC investigations into various allegations made against RUC officers by Rosemary Nelson; one of her clients; and the 'Lawyers Alliance for Justice in Ireland.'

A copy of the joint statement and of Mr Mulvihill's account are attached.

I hope this is of assistance.

Yours sincerely,

Ronnie Flanagan

R FLANAGAN

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Chairman: Mr U .. BA, MSc Chief Executive: Mr W , BA

Mr R Flanagan O.B.E. M.A.
Chief Constable
Royal Ulster Constabulary
Brooklyn
Knock Road
Belfast BT5 6LE

19th June 1998

IN CONFIDENCE

Dear Ronnie

Re: Complaints against officers of the RUC in respect of alleged threats to Rosemary Nelson, Solicitor

I am writing to bring to your attention concerns that I have been made aware of by the member of the Commission who supervised the above investigation.

The matters in question are grave: alleged death threats and sinister innuendoes have been made towards Rosemary Nelson, a solicitor. It is claimed that these were communicated to Client A , while under arrest as a suspect in the murder of two police officers in Lurgan in June 1997 and to other persons while they were in police custody.

The circumstances of this investigation are exceptional. Firstly, there is a high degree of interest expressed from external bodies, in particular, the United Nations Commission on Human Rights, Lawyers Alliance for Justice in Ireland and Human Rights Watch/Helsinki. Secondly, for the first time in the history of the Commission, we are unable to confirm that the police investigation has been conducted to our satisfaction. The demeanour, behaviour and investigative approach of the interviewing police officer, together with the responses of those officers under question, combined to fundamentally undermine the investigative process. In spite of numerous efforts on the part of the Commission representatives to challenge and redress the situation, the investigation has been

obstructed and obscured to an extent that leads us to conclude that the final outcome is irretrievably flawed.

I share the Commission member's belief that this case is of such significance, both in terms of its gravity and the exceptional circumstances surrounding it that I have a duty to, in confidence, bring the matter to your attention.

The Commission on 20/3/97 received a complaint form the Lawyers Alliance for Justice, concerning alleged death threats to Rosemary Nelson. Since we do not have the statutory power to formally define the status of such allegations as constituting a formal complaint, the correspondence was referred to the R.U.C.. On your behalf, the Assistant Chief Constable declared that this matter was not a complaint within the meaning of the term as defined in Article 2 of the Order. The Commission protested at this decision and the complaint was consequently reviewed and the decision reversed.

Emerging from [Client A]'s complaint and eight other persons were statements to the effect that, while in police detention, officers had made to them threats and offensive remarks with regard to Ms Nelson. One of the subsequent complaints was actually logged by the RUC under the category of "incivility".

Throughout this investigation the Commission representatives had extreme difficulty in exercising their statutory duty to direct and supervise the enquiry. The officer allocated to the investigation appeared to have a problem in accepting the authority of the Commission in these matters and in following the explicit directions given to him.

Three examples, taken cumulatively, serve to illustrate the pattern of these difficulties.

In the Commission supervised interview of a complainant the interviewing officer attempted to persuade her that she should consider allowing the complaint to be informally resolved, an option which would not, in any case, have been permissible given that the formal process had already begun. The hostility which the interviewing officer had displayed to the witness, her husband, her solicitor's representative and the Commission representatives was commented to the officer's superior who undertook to issue a general reminder of the expected civil conduct in these circumstances.

There were difficulties experienced in securing the attendance of police officers for interview, with short notice cancellations being a particular irritant. One officer arrived for interview forty-five minutes late, without explanation and smelling of alcohol. There was a general air of hostility to the investigation on the part of those police officers whose interviews were supervised by the Commission and the demeanour of the interviewing officer did little to challenge this attitude.

It was made absolutely clear to the interviewing officer that the Commission required that no statements be requested from police officers prior to their being interviewed. In defiance of this direction, statements were requested in advance on three occasions. The possible consequences of this are illustrated by one officer who came to interview and presented the interviewing officer with a hand written statement, saying "Here (name), this is the statement you asked for". During the subsequent interview the officer being questioned consistently replied to questions by saying "I refer you to my statement". When challenged by the Commission's representative as to why direct instructions were defied, the interviewing officer stated that he had taken this course of action "to hurry things along".

Throughout the investigation the supervising Commission member and senior staff of the commission consistently reminded the interviewing officer of their expectations and their displeasure at these not being fulfilled. In spite of seven separate meetings, numerous telephone contacts and informal conversations with the interviewing officer and his superior, who was formally the designated Investigation Officer, there was no improvement. At each stage much of the harm which was done to the investigation was of such a nature that it could not be undone.

Along with the supervising Commission member, I am concerned that this investigation has been irreparably undermined and that the facts of this case, whatever they might be, cannot now be established.

Yours sincerely

Mr Li

Chairman.

Telephone
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R FLANAGAN, OBE, MA
CHIEF CONSTABLE

BROOKLYN
KNOCK ROAD
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NORTHERN IRELAND BT5 6LE

Our Ref: COM SEC 97/195/21

24 June 1998

Dear Mr GG, [firstname redacted]

COMPLAINTS AGAINST OFFICERS OF THE RUC IN RESPECT OF ALLEGED THREATS TO ROSEMARY NELSON, SOLICITOR

On 22 June 1998 I received a letter from your Chairman boldly titled and referred to in the body of the letter as being "IN CONFIDENCE".

Despite taking a most serious view of the content of the letter I felt constrained by the indicated confidentiality from taking any action other than arranging an appointment with the Chairman to discuss the letter's contents. The Chairman being currently abroad, this appointment has been arranged for, what I am told by your office is the earliest opportunity, on Wednesday 1 July.

On the early evening of 24 June 1998 I was visited by [name redacted] of the NIO who had what appeared to be an exactly similar letter addressed, I believe, to the Secretary of State. Beyond the contents of the letter, [name redacted] intimated to me that the ICPC intended, on Friday 26 June 1998, to issue letters to Rosemary Nelson, Solicitor and to [client A] indicating that the ICPC would not be issuing a statement indicating their satisfaction with the conduct of the investigation under the terms of Article 8 of the Police (NI) Order 1987. I would be astounded if this should happen before my meeting with the Chairman. There has certainly been no such indication given to me either in the letter or by any other means.

The idea that such an outcome should arise, of course, gives me the greatest cause for concern. So too must the question of how we arrived at this point without the matter being brought to my earlier attention, or to my Head of Complaints and Discipline Department.

I would like, in my meeting with the Chairman, to address a number of issues including:

1. Was any objection to the Investigating Officer expressed by the Commission either on his appointment or subsequently?

2. If not, is this a departure from the course taken by the Commission in thankfully a very small number of earlier cases where objection was taken to an investigating officer?

3. Were any directions given in writing to the investigating officer as has been the case in other investigations?

4. I will also want to discuss the appointment of an appropriate officer to investigate what I interpret as a complaint by the Commission. I will have to consider further what supervisory mechanisms are put in place in relation to such an investigation, the ICPC being the actual complainant.

5. In relation to the ongoing investigation which is the specific subject of this correspondence I will want to discuss further investigative steps, including the possible appointment of an "external" officer to conclude this investigation.

The matters raised in the letter received by me certainly mean we are not "at the end of an investigation" within the terms of Article 7 of the Police (NI) Order 1987. I therefore request that the file be returned to me for completion and that no statement be issued until I have been given the opportunity of a meeting with the Chairman. In the public interest I feel we must discuss this matter in detail including how best the investigation can be completed so that the DPP can give due consideration to the criminal dimension of the matter and subsequently how proper consideration can be given to the disciplinary dimension.

Yours ever,

R FLANAGAN
Chief Constable

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Mr R Flanagan, M.B.E., M.A.,
Chief Constable,
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2nd July 1998

Dear Ronnie

RE : INVESTIGATION OF COMPLAINTS BY MRS NELSON AND [CLIENT A]

Thank you for coming to meet with us yesterday.

As you already know, [Ms B] , as supervising member, has agreed to the continued investigation of these complaints by an officer from another force.

In respect of the conduct of the earlier investigation, as opposed to the content of the complaints themselves, I can confirm that we are not of a mind to make a formal complaint. My understanding is that you will request the officer appointed to review these matters alongside his/her investigation of the complaints by Mrs Nelson and [Client A].

We will of course afford this investigation every co-operation. Since it is not the subject of a complaint, I see it as lying outside of our supervisory remit. However, should you consider that there is merit in the matter being referred back to us under Article 8, I would approach the Secretary of State requesting that she make a temporary appointment to the Commission of one of our colleagues from the PCA in England so that he/she could supervise the investigation.

If you do not decide on this course of action I would be grateful if we could in due course be provided with a report on the investigating officer's findings.

Yours sincerely,

Mr U [name and signature redacted]

Chairman