10 DOWNING STREET

PRIME MINISTER

Lt. Sethia has written to you to complain about the MOD's legal moves to prevent the disclosure of his diary. The MOD letter immediately below describes the latest position, and in particular that they should agree to the partial disclosure of his diary so that personal, but not operational, extracts may be made available. If you agree, I will reply to Lt. ~~Sethia~~ in the terms of the draft attached to the MOD letter.

Yes please
MT

N.L.W.

N. L. WICKS

19 June 1987

MINISTRY OF DEFENCE
MAIN BUILDING WHITEHALL LONDON SW1
Telephone 01-~~930 7022~~ 218 2111/3

MO 23/1L

18th June 1987

Dear Nigel,

LIEUTENANT SETHIA: PRODUCTION OF DIARY

You will recall that Lieutenant Sethia served aboard HMS CONQUEROR during the Falklands conflict. He kept a personal diary, principally covering the period of CONQUEROR's operational patrol but also extending into the period after he had left naval service, which - as well as personal reflections - contains highly classified operational and intelligence information. Extracts from the diary (including classified information) were subsequently published in the Press without Sethia's permission; and allegations were made that he had stolen CONQUEROR's missing log.

In my letter of 30th April 1986 I informed you that, subject to the Prime Minister's agreement, the Defence Secretary had decided that we should seek, at least in the first instance, to prevent the disclosure of the whole of Sethia's diary in the context of his litigation against the Observer for breach of copyright (and defamation). You notified me of the Prime Minister's agreement in your letter of 1st May 1986 and Mr Younger therefore signed a Public Interest Immunity (PII) Certificate in respect of the whole diary. Further Certificates were signed in the context of Sethia's litigation against Mail Newspapers and News Group Newspapers.

The validity of the PII Certificates is due to be considered in Court on 13th July when the newspapers' applications for production of the diary are to be heard. The Observer's solicitors have now approached the Treasury Solicitor pointing out that the diary is crucial to a proper determination of the issues in Sethia's proceedings against them and asserting that there can be no justification for withholding unclassified diary extracts. Sethia for his part has challenged the PII Certificates in an affidavit which refers to them as an unjustified interference with

Nigel Wicks Esq
10 Downing Street

his right to pursue legal proceedings; and has recently written to the Prime Minister seeking agreement that he may, as evidence in his litigation, produce unclassified extracts from his diary.

In the light of advice from Counsel about the prospects of success in persuading the Court to uphold the PII Certificates, officials in OD(DIS)(O) have reached the clear conclusion that we should agree to partial disclosure on a basis which minimises the risk to national security: not to do so risks a more damaging outcome in Court. They recommend that the Treasury Solicitor should be authorised as soon as possible to hold a 'without prejudice' conference with the litigants' legal advisers to elicit their aspirations for disclosure more clearly and to seek to establish an agreed basis for partial disclosure which would make the planned Court hearing unnecessary. The Defence Secretary has accepted this recommendation and has authorised the Treasury Solicitor to offer partial disclosure on the basis of releasing all personal as opposed to operational extracts from the diary. He has been assured by his naval advisers that this would not disclose information that is classified or could in any way be prejudicial to submarine operations. This approach is thought to have a reasonable chance of acceptance by the litigants: if not, however, HMG will have an entirely reasonable position to defend.

I understand that Lieutenant Sethia's letter to the Prime Minister requires a further response. I am advised that it would be inappropriate to refer in any reply to the substance of the issues he raises and this is reflected in the enclosed draft response.

I am copying this letter to the Private Secretaries to the Foreign and Commonwealth Secretary, the Home Secretary and the Attorney General and to Sir Robert Armstrong and Sir John Bailey.

Yours sincerely,

John Howe.

(J F HOWE)
Private Secretary

DRAFT LETTER TO MR. SETHIA FROM PS/PRIME MINISTER

The Prime Minister has asked me to thank you for your letter of 20th May.

Mrs. Thatcher understands that the question of disclosure of extracts from your diary is under discussion between the legal representatives of those involved in your litigation.

ARGENTINA: Relations.