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16.

10 DOWNING STREET

From the Principal Private Secretary

1 May 1986

Dear John.

LT. SETHIA: PRODUCTION OF DIARY

I have shown the Prime Minister your letter of 30 April in which you seek her agreement that your Secretary of State would be justified in seeking, at least in the first instance, to prevent disclosure of the whole of Lt. Sethia's diary.

Provided the other Ministers concerned are content with this course, the Prime Minister agrees that your Secretary of State should try to prevent the disclosure of the whole of the diary.

I am sending a copy of this letter to A C Galsworthy (Foreign and Commonwealth Office), Michael Saunders (Law Officers' Department), Michael Stark (Cabinet Office) and John Bailey (Treasury Solicitor).

Yours ever,

Nigel Wicks

N L WICKS

John Howe, Esq.,
Ministry of Defence

SECRET

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MINISTRY OF DEFENCE
MAIN BUILDING WHITEHALL LONDON SW1A 2HB
Telephone 01-~~XXXXX~~ 218 2111/3

MO 23/1V

30th April 1986

Prime Minister

Agree that Mr Younger should try to prevent the disclosure of the whole of Lt. Sethia's diary?

Yes

Dear Nigel.

LT SETHIA: PRODUCTION OF DIARY

You will recall that my predecessor wrote to you on 11th December 1985 warning that a Summons had been served on Sethia's solicitors seeking the production of his diary in the case against the Observer and a number of journalists for breach of copyright.

N.L.W. 30.4

Your letter of 12th December recorded the Prime Minister's agreement that the Defence Secretary should take steps to prevent disclosure of passages in Sethia's diary on the grounds of public interest immunity. Peter Ricketts advised on the same day that the Foreign and Commonwealth Office would wish to prevent publication of a number of passages, including some which had already been published.

In the event, the hearing was postponed and we are now advised that it will take place on 6th May. After further consideration and on advice from the Treasury Solicitor, my Secretary of State believes that we would be justified in seeking, at least in the first instance, to prevent disclosure of the whole document. (I attach a copy of the draft Certificate for his signature which is under consideration.) Subject to the Prime Minister's agreement, we will proceed in this way.

I am sending copies of this letter to Tony Galsworthy (FCO), Henry Steel (Law Officers' Department), Michael Stark (Cabinet Office) and John Bailey (Treasury Solicitor).

Yours sincerely,

Julian Howe.

(J F HOWE)

Nigel Wicks Esq
No 10 Downing Street

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

1984 S No 6566

BETWEEN:- NARENDRA SETHIA Plaintiff

AND

1. ANDREW WILSON
2. DAVID LEIGH
3. DONALD TRELFORD
4. THE OBSERVER LIMITED Defendants

CERTIFICATE OF THE RIGHT HONOURABLE GEORGE YOUNGER MP

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1. I am the Secretary of State for Defence and I make this Certificate on behalf of the Crown.

2. I have been referred to a copy of a Summons issued in these proceedings on the 5th December 1985 pursuant to which the above-named Defendants apply for an Order of the Court that the Plaintiff should provide them with a copy of a document numbered 16 in a List of Documents prepared on behalf of the Plaintiff and served on the Defendants. I am informed and verily believe that the document numbered 16 in that List is the original of a diary prepared by the Plaintiff who, at all material times, was a Lieutenant in the Royal Navy serving on board the nuclear submarine HMS Conqueror during the Falklands conflict between the United Kingdom and Argentina.

3. I have personally read and carefully considered a copy of the Plaintiff's diary which, to the best of my belief, is a copy of the document numbered 16 in the Plaintiff's List of Documents above referred to. I have no reason to believe that the copy I have considered is not a true copy.

4. The diary contains, inter alia, a record of the operations undertaken by HMS Conqueror during the course of the Falklands conflict and observations and comments upon the submarine's equipment and the state of knowledge ~~about~~ as to the intentions of Argentina and the movements of the Argentinian forces within the vessel at various times during the conflict.

5. I have formed the opinion that it is necessary in the public interest that the said diary be withheld from production in these proceedings for the reasons hereinafter set out.

6. In his post as a Lieutenant in the Royal Navy serving on HMS Conqueror in the capacity of Supply Officer, the Plaintiff had access to highly classified information a great deal of which was, and still is, of the highest sensitivity. His work involved him in duties carried out in the submarine's Operations Room and it was necessary for him to be aware of the operational capabilities of HMS Conqueror which included details of its deployment, speed and depth. He also had access to information concerning the operational effectiveness of certain equipment on board HMS Conqueror and, indeed, to particulars of tactical information on the use of such equipment. He was closely concerned with particular operations carried out by HMS Conqueror during the course of the Falklands conflict and he was aware of some of the detailed intelligence available to HM Forces during the course of the

conflict as well as the sources of such intelligence.

7. As a member of HM Forces the Plaintiff is under a duty at all times both during and after the termination of his service not to communicate, other than to a person to whom he is authorised to communicate it, any information of the type above referred to. No authority has been given to the Plaintiff to communicate, disseminate, or otherwise to disclose to any person not authorised to receive it, information which was obtained by him in consequence of his service in HMS Conqueror.

8. The production of Lieutenant Sethia's diary to persons not authorised to receive it would be likely to cause unquantifiable damage by reason of the disclosures involved. Additionally, such disclosure would clearly damage the operational capability of nuclear submarines at present in commission and thereby the national security of the United Kingdom.

9. The diary gives an insight into how a Royal Navy nuclear submarine operates and its capabilities, including aspects of communications, performance of the nuclear reactor, equipment and weapon performance and tactical procedures. Analysis of this information (in whole or in part) by a hostile power would be of great tactical and intelligence value and could be used to counter British forces in future operations.
The diary also contains many references to the intelligence available to British forces in the Falklands conflict and its sources. These references disclose information which could seriously prejudice British intelligence gathering capabilities in the future.

10. In relation to the unquantifiable damage referred to above, I am not in a position to particularise the precise damage that would be caused by specific disclosures of fact. But it is likely that any such disclosure would endanger the effective discharge by the Royal Navy of its current and future operations and, as a consequence, be of value to a foreign power and highly detrimental to the national interests of the United Kingdom.

11. I acknowledge that there has been publication of passages which purport to be extracts from this diary. It would nevertheless be contrary to the national interest on grounds of national security that there should be confirmation as to the authenticity or otherwise of any of these passages. I therefore consider that the national interest requires protection to be accorded to the whole diary. The damage referred to in Paragraph 10 above can arise notwithstanding that some of the information thus disclosed might be unclassified and, on its face and in isolation, apparently innocuous, because such information may take on a wider significance if put together with other information in the possession of other persons so as to enable them to check the veracity of their sources of information.

12. If oral evidence was sought to be given of the contents of any part of the diary I would wish to object to such evidence on the same grounds as those hereinbefore set out.

SIGNED

GEORGE YOUNGER

Dated this day of 1986

ARGENTINA : Relations : Pt 40