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*Pme Ministers*

7th December 1987

*To note*

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*Dea Dige*

*Asap.*  
LIEUTENANT SETHIA

In my letter of 8th October, I reported that an agreement had been reached with Sethia and the Defendants in his various actions which we believed should enable those actions to proceed without further involvement of the Government. What followed, however, proved to be a little more complicated; and I should let you have an account of the proceedings.

The first of the actions, involving the Mail on Sunday as Defendants, was heard between 26th October and 13th November, and resulted in an award of £260,000 damages to Sethia against which the Defendants propose to appeal.

Contrary to our expectations the Ministry of Defence became involved in the legal processes to a significant extent. This arose principally from the wish of the Defendants to use the Defence Secretary's views on the content of Sethia's Diary, as set out in the various Public Interest Immunity Certificates he had provided, as evidence of Sethia's irresponsibility.

An initial ruling by the trial judge that the Certificates could be received as evidence was overturned by the Court of Appeal which ruled that they were not admissible as evidence without a supporting affidavit. The Defendants invited the Defence Secretary to swear an affidavit exhibiting his Certificates and indicated that if this were not done they would seek to subpoena him to give oral evidence. Mr Younger duly swore an affidavit on 1st November.

Having obtained the affidavit the Defendants sought a Court Order for it to be received as evidence. When the application was made, Treasury Counsel argued on our behalf against a personal appearance by the Defence Secretary on the basis that he could add nothing relevant to the affidavit and Certificates, without discussing material that was covered by the public interest claim. The judge, however, rejected both the application by the Defendants and the plea by Treasury Counsel, on the grounds that the jury might have difficulty in weighing written evidence against the oral evidence they had heard from other witnesses in the course of the

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trial. This left the Defendants with no option but to call the Defence Secretary as a witness and they therefore issued a subpoena requiring his attendance in court. Mr Younger was advised that it would be undesirable for him to appear in person, and he was therefore represented by an Under Secretary, Mr Nicolas Bevan.

Mr Bevan's appearance on 10th November was used by Counsel for the Defendants simply as a means of putting on the record relevant passages from the PII certificates. In cross-examination however, Counsel for the Plaintiff sought to insinuate by a variety of means that the Defence Secretary had exaggerated the damage to national security that would result from disclosure of the withheld passages of the Diary. Mr Bevan made no concessions to this view, though he was not of course in a position to deploy the evidence that would have proved the case. But the essential purpose of the Certificates was met in that, with one minor exception, material withheld from disclosure in the public interest was not referred to in Court, although this required vigilance by our own legal representatives.

Demands for serving officers to appear as witnesses were another source of unlooked-for involvement. Through personal contacts the Defendants approached two such officers - a Naval Captain who had served as Chief Naval Judge Advocate and a Commander of the Staff of the Director of Public Relations (Navy). In neither case did we have the time to suggest a more suitable alternative or, apparently, the ultimate right to object to their appearing. In the light of their and Mr Bevan's evidence some subsequent newspaper reports predictably accused MOD and the Defendants of working hand-in-hand to discredit Sethia.

Sethia has two further actions pending against newspapers (the Sun and the Observer). These are unlikely to be heard before the appeal from the Mail on Sunday case, and there must now be a distinct possibility that at least the Sun action will be settled out of court. The Observer case, which involves copyright as well as defamation, is more likely still to come to trial, although I understand that an early date for a hearing is not to be expected. We shall of course be trying to learn the lessons of this first action with a view to possible involvement in one of both of these others.

I am sending copies of this letter to Tony Galsworthy (Foreign and Commonwealth Office), Philip Mawer (Home Office) and Michael Saunders (Attorney General's Office), and to Sir Robert Armstrong and Sir John Bailey.

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Yours sincerely,  
John Howe

(J F HOWE)  
Private Secretary

ARGENTINA Relaciones PUL.



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