

E.R.

- I agree with Mr Heaton's comment on this useful paper and would welcome discussion of the issues raised in it.
1. Mr Andrew
 2. Sir Brian Cubbon

cc Mr Phillips

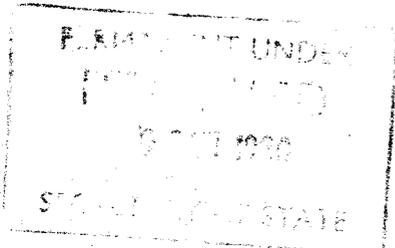
SPECIAL BRANCHES

At your meeting yesterday we mentioned that F4 had prepared, for the purpose of internal discussion only, a paper on Special Branches which seeks to map out the problems we face and will face in this area.

2. I attach a copy of the paper. It is an admirable and comprehensive analysis. The question is where do we go from here. There are obvious constraints - not least the sensitivities of the Security Service, the operational independence of chief officers and the limited resources which, given F4's other heavy commitments, we can afford to devote to this area. But the issues are too important to allow us to do nothing.

3. Of the five tentative proposals put forward at the end of the paper, the last three offer most prospect of early advance. In particular, a discussion with HMIs on their reports of inspections of Special Branches might be a useful way into some of the general issues discussed in the paper. And a review of the role and powers of ports officers might have direct operational value in counter-terrorism. I propose to take these three proposals forward with HMCIC.

4. The first two proposals, particularly the questions of the terms of reference and of the definition of subversion, are important but also more abstract and difficult. You may like to have the issues in mind when you visit the Security Service with S of S on 22 October, and thereafter to have a meeting with Mr Andrew, Mr Phillips and myself to consider how best to proceed.



David Heaton

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8 October 1980

Police Department

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SPECIAL BRANCHES

1. The object of this paper is to discuss recent developments relating to the role and work of Special Branches, to identify current issues and to explore, in a preliminary way, how they might be tackled.

Recent Developments

2. There was a considerable increase in the size and responsibilities of Special Branches in the 1970s. To some extent this trend was already underway in the late 1960s, but it was given its greatest impetus by terrorist incidents of the early 70's. The passage in 1974 of the Prevention of Terrorism (Temporary Provisions) Act reinforced this development.

3. The bulk of the increase in Special Branch numbers was directed to strengthening controls at ports. But some portion also went to other Special Branch functions. Similarly, the decade saw a growth in the proportion of Security Service effort devoted to monitoring terrorism and subversion as opposed to counter-espionage work. The Security Service and therefore Special Branches have in recent years become more heavily involved in those aspects of their duties which are most sensitive politically.

4. Like other aspects of policing, Special Branches have also benefited from and had to face the challenge posed by the application of advances in technology to their work: better methods of conducting covert surveillance and storage of information on computers. There is constant questioning about the type of information to be stored on computer.

5. In the last few years, there has been an increasing tendency for the work of Special Branches to be criticised and questioned. At the same time there has been growing pressure for more information to be divulged on what Special Branches are doing and for them to be made more accountable. This criticism and questioning has manifested itself both inside Parliament (eg. the annual Robin Cook adjournment debate) and outside it, through the activities of investigative journalists (eg. Mr Campbell) and others (eg. State Research).

Criticisms of Special Branches

6. The criticisms of Special Branches made in recent years are too familiar to require detailed repetition. Generally, they are that Branches are over-secretive

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and under-accountable, and that they interest themselves in, and record the activities of, people who are merely undertaking proper political or industrial activity. Specifically, criticism has centred on Special Branch work in monitoring subversion, an activity Branches undertake largely on behalf of the Security Service. There has been concern about the records kept by Special Branches on individuals, particularly on those judged to be subversive.

7. It may be possible to discount much of this criticism as either misguided or mischievous. But it is doubtful whether it can wholly be dismissed on either of these bases. Over the past few years, there have been incidents which have fuelled criticism and raised question marks about whether all is well. In the past two years these incidents have included :

- (i) The Privacy case - in which a student originally arrested under the PoT Act was subsequently asked to act as an informant on campus;
- (ii) The photographing of Anti-Nazi League activists in Humberside;
- (iii) The carrying out of checks on passengers on Aeroflot flights from Prestwick and Glasgow airports;
- (iv) the Privacy case;
- (v) Surveillance by the West Yorkshire Police of a meeting of the Bradford Asian Youth Movement;
- (vi) a current case involving the Special Branch in Kent and in the West Midlands interesting themselves in a young man who was recorded as of potential subversive interest because of some badges he was wearing when he passed through Dover which indicated that he was opposed to racism. There have of course been other incidents in earlier years; examples include the enquiries made by Staffordshire Special Branch at Keele University to identify possible trouble makers prior to a visit to the Student Union by Princess Margaret (1978); enquiries made by Gwent Special Branch at a college to discover who was attending a course on "Great Marxist Writers" (1977); the raid by the Derbyshire Police on the Workers' Revolutionary Party Training Centre on the advice of the Security Service, but much against the advice of the Metropolitan Police Special Branch (1975); MPSB officer who visited the home of some IRA suspects, using the subterfuge that he was a Home Office official seeking to interview a person who had been named as a referee by an applicant for naturalisation (1972).

8. There have in the relatively recent past been indications that some chief constables are not entirely at ease about the work of Special Branches. Specifically, their anxieties seemed to be about :

- a) whether there was Ministerial approval and authority for the work done by Special Branches on behalf of the Security Service;
- b) the nature of the work done on behalf of the Security Service and its potential for creating difficulties in ordinary police work and damaging relations between the police and the public;
- c) the weight to put on Security Service requests for Special Branches to undertake particular tasks.

9. There have also been indications that operational officers in Special Branches themselves seem uncertain about the proper extent of their role. Although too much should not, perhaps, be read into them, the Minutes of the 1979 and 1980 Conferences of Senior Port Officers held at New Scotland Yard, for example, reveal uncertainty about the extent to which port officers should be submitting reports on individuals of security interest other than those who fall within the categories listed in the relevant circular of guidance from the Security Service. The 1979 minutes record a representative of the National Ports Office as drawing attention to the number of people being reported as of security interest and continue; "While it was not his intention to dampen the enthusiasm of port officers, he asked that delegates as Senior Port Officers study the reports emanating from their staffs and to decide what security intelligence, if any, was contained. Many were, in fact, not of security interest; an example was the practice which had grown up of reporting trade union office holders who left the UK on holiday or to attend a union meeting abroad."

Future Trends and Pressures

10. It seems unlikely that the pressures on Special Branches will lessen. Terrorism shows no signs of diminishing, neither does the militant factionalism of the extreme right and left. Rising unemployment, a sharpening of the conflict between Government and organised labour, and tensions involving ethnic minorities in the inner cities seem likely to provide increased opportunities for subversive exploitation of difficult problems. A continued growth in the work of Special Branch in its most sensitive areas therefore seem likely.

11. Criticism and questioning of the role of Special Branches also seem unlikely to slacken. Pressures for greater openness will probably increase.

12. In these circumstances, it seems important, if the essential work of Special Branches is to be best defended and preserved, to try to clarify those issues on which there is at present uncertainty and to prepare answers to those on which there is criticism.

Special Branch Terms of Reference

13. Any examination of Special Branches must logically start with an attempt to define their proper role. The functions of Special Branches are currently set out in the Terms of Reference issued under the imprimatur of the ACPD CID Committee following discussion with the Home Office and the Security Service in 1970. In addition, further guidance on particularly sensitive issues has been promulgated by the Security Service from time to time following discussion with the Home Office, eg. in 1974 and 1975 letters relating respectively to subversive activities in industrial disputes and to subversive activities in schools were issued. A copy of the 1970 terms of reference and of the 2 letters is attached at Annex A.

14. In the course of last year and in response to the public and police concern mentioned earlier, F4 Division attempted a consolidation and updating of the 1970 terms of reference and subsequent letters of guidance: a copy of the resulting document is at Annex B. While production of the document was welcomed by HMCIC and ^{the} head of MFSB, the Security Service saw no case for revising the terms of reference and indeed likely disadvantages in so doing. They suggested that all that might be needed was for some arrangement whereby the attention of newly appointed chief officers would be drawn to the 1970 terms of reference and other relevant documents.

15. The difficulty with this -- and indeed with the draft revision of the terms of reference produced last year -- is that the 1970 document begs a number of very important questions. Some of the more difficult aspects of the document are indicated by underlining on the copy at Annex A. It therefore seems that :-

- a) the 1970 document plus additions may not be a satisfactory starting point as a statement of Special Branch functions;

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- b) before a revision of the documents can be attempted, however, certain central questions need to be answered;
 - c) any attempt to continue with a revision of the terms of reference is going to require careful explanation to and discussion with the Security Service and the police.

The Work of Special Branches on behalf of the Security Service

16. The most sensitive aspect of the work of Special Branches is that which ^{they} carryes out on behalf of the Security Service. This is the work which can most easily jeopardise police - public relations and is also the area in which the police themselves, or some of them, seem least certain of the authority for their role. It follows that it is not easy to discuss the most difficult aspects of Special Branch work without touching on the role and activities of the Security Service. This has considerable implications for the manner and method of approach to the issues. Nevertheless it may be appropriate to ask how valuable is the work which Special Branches do on behalf of the Security Service and what would be the implications of dropping or curtailing it.

The Definition of Subversion

17. The functions which Special Branches undertake on behalf of the Security Service are listed in 3-9 of the draft revised terms of reference at Annex B. Essentially they relate to matters of national security, terrorism and subversion. The most difficult of these three areas is that of subversion.

18. The current definition of subversion accepted both by Ministers and the security authorities ^{since 1975} is :

"activities which threaten the safety or well being of the state, and which are intended to undermine or overthrow Parliamentary democracy by political, industrial or violent means".

This definition has been repeatedly criticised by Mr Robin Cook MP and others, and contrasted with the definition of Lord Denning in his 1963 report that subversives are those who would "contemplate the overthrow of the Government by unlawful means".

19. It is the absence in the present definition of a clear reference to unlawful activities which prompts most of the criticism. In the Adjournment debate initiated by Mr Cook on 7 November last year, Mr Brittan answered criticism that the present definition enabled Special Branches to spy on

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perfectly proper political or trade union activity by saying that the "definition is such that both limbs must apply before an activity can properly be regarded as subversive". In other words, there has to be an actual or potential threat to the safety or wellbeing of the State and an intention to undermine Parliamentary democracy which, taken together, in police terms will mean the detection of an illegal act or the prevention of a possible illegal act. In correspondence with Mr Kevin McNamara MP we used the phrase that Special Branch officers are properly concerned with information relating to terrorism, subversion, or other breaches of the law. But it may be doubted whether these attempts to impart the concept of unlawfulness into the present definition of subversion are wholly successful.

20. There is certainly evidence that Special Branch officers find difficulty in practice in defining the proper boundaries of subversion. The senior officer who investigated the complaints of Privacy stated in his report: "it is nowadays often difficult to establish where legitimate political activities end and subversion begins". He went on to say that "the political views of 'potential' subversives must obviously be of interest." He then stated the operational dilemma facing Special Branch officers precisely: "Therefore, although the former Home Secretary's strictures on what police should investigate and record about political activities are accepted unequivocally, I am sure that no Special Branch officer doing his job efficiently can avoid becoming involved, at least on the fringe of legitimate politics (of either wing), especially when dealing with informants."

21. Neither the present definition of subversion nor the 1970 terms of reference assist officers in resolving this dilemma. Nor do they provide Ministers or chief officers with a water-tight basis on which to justify the work of police officers in investigating and recording the activities of subversives.

Immigration Enquiries

22. One of the functions of Special Branches laid down by the 1970 terms of reference is the carrying out of enquiries relating to control of Commonwealth immigration. F4 Division is in no position to judge what this amounts to in practice. It seems to fit well with Branches' other responsibilities in relation to aliens and naturalisation. But this is another potentially sensitive area, to which it seems right to draw attention.

Records

23. The advent of the C Department computer at New Scotland Yard has focussed attention on the records kept by Special Branches. The operational advantage of computers to Special Branch work is obvious. The danger of which the critics warn is that computers will encourage the keeping of records where at present they are not kept. (Some critics are also, of course, worried by the fact that a computer will make it much easier to consult and cross refer existing records).

24. For obvious and proper reasons, it is not easy for the Home Office to judge the nature of the information which is kept by Special Branches. But some of the incidents listed in paragraph 7 suggest that this may not always be easily justified. Indeed it seems reasonable to assume that, in the area of subversion, the difficulty which arises in defining the proper extent of Special Branch interest also arises in deciding what information should be recorded. In an area of police work in which the collection of intelligence is fundamental and in which productivity and efficiency may be particularly difficult to define, it is possible that there will be a premium on recording information rather than not doing so. It is interesting to note that the minutes of the 1980 Conference of Senior Port Officers record one delegate as expressing concern about the reduction in statistics and in reports submitted which revised Box 500 requirements would entail. Reference was also made to the absence of a statistical 'norm' for ports.

25. This is an area on which attention is likely increasingly to be focussed, and incidents like the Privacy case will encourage that. The nature of information stored by Special Branches is in many respects secondary to the question what Special Branches are there to do. The more clearly the proper extent of their interest in subversion is defined, for example, the more easy it should be for officers to judge what they should record and what not. But there may also be a case for taking more positive steps, perhaps through HM Inspectorate, to ensure that forces' procedures for judging what to record and for weeding out or disposing of irrelevant information are satisfactory.

Surveillance

26. An aspect of police (usually but by no means always Special Branch) activity which regularly causes difficulty and complaint is the photographing or filming of demonstrations. The usual police response is that this is undertaken primarily for training purposes, and to help police officers to learn

how to handle public order problems. Sometimes the filming or photography is conducted overtly, on occasion covertly.

27. Existing Home Office guidance on the use of surveillance equipment ^{is not geared to surveillance on public order occasions} / as a general principle, the primary purpose of the use of equipment in police surveillance operations should be to help confirm or dispel a suspicion of serious crime. That criterion can hardly apply in the case of filming of demonstrations. Nor is the argument about filming for training purposes persuasive. It seems clear from a number of recent incidents that there is a case for an examination of the arguments about filming or taking photographs in these sort of circumstances and for some further attempt to bring home to forces the sensitivities of filming demonstrators. This was last brought to the attention of the police by Sir James Waddell at the meeting of the Central Conference of Chief Constables on 7 November 1974.

The Accountability of Special Branches

28. The preceding paragraphs have discussed the functions of Special Branches as well as certain aspects of how Branches discharge their duties. It may be appropriate now to consider how Branches are accountable for the work they undertake.

29 Special Branch officers are police officers. They are therefore immediately answerable to the chief officer of police. In practice, supervisory responsibility is generally delegated to an assistant chief constable or detective chief superintendent. One practical problem in ensuring effective supervision within forces may be that it is possible to acquire responsibility for supervising SB work without previously having had any direct experience of it.

30. The fact that much of Special Branches' work is carried out on behalf of the Security Service means that the Security Service has an important say in what work Special Branches actually do. Indeed it appears that some chief officers may find difficulty in evaluating the work they are being asked to do on behalf of the Service. But the Security Service does not, of course, have responsibility for the way in which that work is discharged, although they seek to influence this by the occasional issue of written guidance together with regular training courses in agent running and symposia, conferences and presentations. In particular, one day seminars are held for Chief Constables and Deputy Chief Constables

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who are invited to attend such an occasion once every three years for updating and discussion of policy and problems arising from the work of Special Branches.

31. Neither police authorities nor the Home Office have responsibility for Special Branch operations, any more than they have for the operational aspects of other police work. Chief Officers are, generally speaking and for understandable reasons, reluctant to disclose to police authorities anything other than the most general information about their Branches. The Home Secretary's national powers and responsibilities (including his special position in relation to the Security Service and the Metropolitan Police) mean, however, that the Home Office has more of an opportunity for influence. In recent years, a close working relationship has developed between the Home Office, the Security Service and MPSB, particularly on terrorist matters, and under pressure of events, this relationship is gradually being extended into other areas. But there are limits to which this working relationship provides opportunities for influence and this is particularly so, of course, in relation to provincial Special Branches. The role of the Home Office in this area is often limited to picking up the pieces after some unfortunate incident.

Inspection of Special Branches

32. One of the most useful means the Home Office may have at its disposal in influencing provincial Special Branches, apart from encouraging the emergence of general guidelines via ACPO, is HM Inspectorate. Even here, however, the operational sensitivities of Chief Constables need to be observed. Nevertheless, as a result of discussion between HMCIC and F4, HM Inspectors have been paying particular attention to Special Branches and port units during their current inspections of forces, using guidance notes drawn up with the help of the head of MPSB. The resultant reports, of which 21 have now been received, are being monitored and when complete will provide an invaluable source of information. It is already apparent, however, that the reports themselves will need to be supplemented by discussion with HM Inspectors if any comprehensive view of the strengths and weaknesses of Special Branches is to be formulated. One problem which must face both chief officers and HM Inspectors in the assessment of Special Branches is how best one can measure their performance given the relative absence of simple yardsticks like

crime arrests which are available in other areas of police work.

Supervision and Training

33. It is one of the paradoxes of Special Branch work that those aspects which are most sensitive and delicate (ie the work done on behalf of the Security Service) are carried out by those (ie Detective Sergeants and Constables) who may be least well qualified to undertake them. For this and other reasons, the importance of effective supervision and training are arguably greater in Special Branch than in other areas of police work. A description of the training provided for Special Branches is given in the letter of 21 December 1979 from Mr J L Jones at Annex C. This broadly suggests that existing training arrangements are adequate. However, there is, so far as we know, no guarantee that every Special Branch officer has received training, nor is there any guarantee that those returning to Special Branch work after a period of absence will go on refresher courses. It is intended that discussion with HMIs of their reports of Special Branch inspections should include consideration of the adequacy both of line supervision of Special Branch officers and of existing training arrangements. Also relevant in this context is the scope for increasing attachments of provincial officers to MPSB and for reducing what in some cases may appear to be the relative isolation of Special Branches within forces.

Publication of Information about Special Branches

34. Partly in response to and partly in anticipation of the demand for more information to be made publicly available about Special Branches, consideration has been given in recent years to 3 related issues :

- (i) publication of Special Branches' strengths;
- (ii) publication of more information about Special Branches by Chief Constables in annual reports; and
- (iii) the publication of a document describing the functions of Special Branches.

35. In the Adjournment Debate on 24 May 1978, the then Home Secretary gave the number of Special Branch officers in the Metropolitan Police and an approximate figure for the total number of officers in forces outside the Metropolitan engaged on Special Branch work. Following/CID Committee to mention their Special Branches in Annual Reports. As a result, in 1978, 22 did so, 11 giving the number of Special Branch officers.

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The respective figures for Annual Reports for 1979 are 33 and 17. The Security Service have expressed some concern about the practice of publishing Special Branch strengths, but have been told that Ministers support it.

36. The references to Special Branches in Chief Constables' Annual Reports for 1978 varied a good deal. In an attempt to bring about greater consistency HMIs were invited in February of this year to advise chief officers that references in reports to the work of Special Branches are best cast in general terms with emphasis on their work in relation to the prevention of terrorism, and aliens and naturalisation enquiries. The analysis at Annex D of references in Chief Constables' 1979 reports indicates that considerable progress has been made but that some unfortunate phrases still occur and that there remains scope for achieving greater consistency of practice.

37. In October 1978, Sir Robert Armstrong suggested that there might be advantage in producing a document about the work of Special Branches which could be published. The draft of such a document was produced and the views of HMIC and of the Head of MPSB on it were sought. Both thought that the disadvantages of publication outweighed any advantages and the draft was put aside for the time being. In fact what can be said publicly about Special Branches has probably already been said by Ministers in the House of Commons and such scope as there is for extending the publication of information about Special Branches would seem to lie at present in what is said or rather not said in Chief Constables' Annual Reports.

Conclusion and Tentative Proposals

38. The foregoing analysis suggests that the coming years will see a continuing increase in the level and complexity of the work of Special Branches. It is unlikely there will be any reduction in demands for openness or the level of criticism. And there are a number of respects - most notably that in relation to the monitoring of subversion-in which it is difficult to ensure that very generalised definitions are easily turned into readily defended operations and procedures.

39. The role of the Home Office in this area in the past, except in relation to terrorism, has on the whole been reactive. In part this flows from an understandable reluctance to hurry into areas of Security Service operation, and into the operational independence of chief officers. But if we are to be well equipped to meet possible future pressures, we may need to adopt a more coherent and coordinated approach on the basis that we, the Security Service and the police have a clear and common view of what Special Branches are for and what they are doing. An example of an

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area in which we need such an approach is in relation to how we decide on and how we justify increases in Special Branches' establishments.

40. The difficulties in the way of developing this sort of approach are obvious. There is the inherent sensitivity of the work Special Branches do. There is the operational independence of Chief officers and, equally important in this case, of the Security Service. There are the operational jealousies of the police and the Service. There is the need for us to define more clearly our own role and to recognise the limitations, eg. because of lack of information, and the need to distance the Home Secretary from the details of operations, which must inevitably be placed upon it.

41. But there are ways in which we might seek to take matters forward :

- (i) we might seek a further discussion with the Security Service on the question of the work done by Special Branches on behalf of the Security Service. Sir Robert Armstrong chaired such a discussion in December 1978 but matters have moved on since then and a meeting now might deal in particular with the questions of the revision of the terms of reference and of the definition of subversion. It is for consideration at what point HMCIC and the head of MPSB should be brought in;
- (ii) we might try to define more clearly the justification for and proper limits of Special Branch and Security Service interest in some of the more sensitive issues. A good current example is race;
- (iii) we should pursue with HMCIC and HMIs the analysis of the special inspectors' reports and seek, in particular, to raise in discussion with them the questions of records, surveillance, the adequacy of supervision, and training and opportunities for cross-posting and secondments;
- (iv) one area which might merit particular study is the role and powers of Special Branch officers at ports. This would both be of immediate relevance in the context of our follow-up to the recent paper on Near East and North African terrorism and ~~might~~ provide a useful specific way into some of the more general questions about Special Branches discussed above;
- (v) we should continue through HM Inspectorate to encourage a relative openness and consistency of approach by chief officers in what they say about Special Branches in their Annual Reports.