

1953

Mr Mawer ✓
Miss Drew

Mr Heaton

THE McROY CASE AND SPECIAL BRANCHES

You will recall the McRoy case and ought to see these files. The action to be taken is for Lord Belstead to write to Kevin McNamara. I have considered whether we ought to prepare a general note on the case, as opposed to simply putting up the file with a draft letter, but, on reflection, prefer the latter course. Mr Mawer's minute on the file is a clear summary of Mr Horan's findings, and the difficulties with which we can deal in correspondence; and there seems no point in airing the general issues for Ministers if we are not proposing any particular means of tackling them.

2. As to those general issues, I suggest you glance at pages 44-47 of Mr Horan's report on the purposes of informants and the role of Special Branches in tackling subversion. One can have different views as to whether Mr Horan's formulation of this difficult issue is tightly argued or sensitive enough, but what he says clearly presents the dilemma faced by SBs in dealing with 'subversion'. For example on page 45 he says that "it is nowadays often difficult to establish where legitimate political activities end and subversion begins"; and on page 46 that "the political views of 'potential' subversives must obviously be of interest". The first paragraph on page 47 states the dilemma 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."

Mr Horan is then quite right to draw attention to the need for SB officers to be highly skilled and well supervised.


3. These points are of relevance to how we carry forward the question of revised terms of reference for SBs, but they also bear on one word in the draft which is of general policy importance. The fourth paragraph states that "the police were not concerned with lawful political activities". Mr Horan's comments, and the words of Ministers in previous cases and on previous occasions have talked about

'legitimate political activity'. The risk in using either of these words is trying to define what is 'unlawful' or 'illgitimate' political activity. To do that we are thrown back on the definition of subversion announced by Ministers namely: "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". You will recall that before the debate on SBs on 7 November, Mr Brittan and I discussed how that definition fitted with the argument that SBs in carrying out their State security functions were acting properly within the police objectives of maintaining the peace and preventing and detecting crime. The answer which Mr Brittan used in the debate was to say 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 well-being of the State which in police terms will mean the detection of an illegal act or the prevention of a possible illegal act. Hence our suggestion that on this basis the use of the word 'lawful' is safer and less contentious than the word 'legitimate'.

4. Of course the use of the word 'lawful' does not get us out entirely of the wood. First, it might be agreed that the only 'unlawful' political activities in Great Britain were those of proscribed organisations. But this is not what we mean. The police are concerned with any political activity (or indeed other activity) which may involve now or in the future the planning or commission of unlawful acts. Perhaps it may be better to cut away from using either the word 'legitimate' or 'lawful' to describe political activity (they are, in any event, simply shorthand substitutes for a complex argument), and say "the police were not concerned about political activities as such only whether they might involve some breach of the law".

5. Second, the words 'lawful' or 'unlawful' echo the definition of subversion given by Lord Denning in 1963, namely those who "contemplate the overthrow of the Government by unlawful means". This definition has been rejected. Certainly the phrase "the overthrow of the Government" is too narrow but presumably it was thought that "unlawful means" failed to cover adequately the general need for intelligence about subversion. However, I would hope this could be done in the way this note suggests: the presumption being that intelligence gathering in this field is not an end in itself. In short, if we begin to use the word 'lawful', we may need to look again at the definition of subversion.

6. As to the draft letter, I have left the word lawful. Although I would prefer the longer form of words I have mentioned above, I think before doing so we would need to reach a conclusion on the points raised in this note. If you would prefer to stick to 'legitimate' on the same grounds, I do not think this would matter for the immediate purpose.


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F4 Division