

SACB

Executive Order 11605 *פסד 7/17/71*

The latest executive order (No. 11605) issued by President Nixon recreates the defunct Subversive Activities Control Board, giving it not only a new name but wholly new functions and powers. Although he has asked Congress to enact legislation ratifying his ukase—to do, that is, what he has already done—the President's executive order indicates that he considers himself empowered to take this action without Congress—and regardless of the fact that Congress has already acted in that area. This appears to be another assertion of the doctrine of inherent presidential power. In asserting that he possessed authority to conduct electronic searches in internal security situations without obtaining any advance court authorization, the President said, in effect, that he would bypass the judicial branch of the government. And now, in asserting that he possesses power unilaterally to change the role of an agency established by an act of Congress, he is saying, in effect, that in the name of internal security, he will also bypass the legislative branch of the government.

The Subversive Activities Control Board was established by Congress as an element of the discredited Internal Security Act of 1950. It was, by all odds, the worst excrescence of that wretched law; but at least its activities were defined and limited by the law's terms. They have been further limited, of course, by Supreme Court rulings that most of what the law told the SACB to do was unconstitutional. The consequence has been that the SACB has been made meaningless save as a sinecure for political appointees who have been earning \$36,000 annually without anything to do but endorse their paychecks.

Under the terms of the law and successive court decisions, the SACB was narrowly confined to investigating and stigmatizing only Communist-ac-

tion, Communist-front and Communist-infiltrated groups which were substantially under the control of the Soviet Union. The President's order would immensely widen the scope of the agency's powers, inviting it to "determine whether any organization is totalitarian, fascist, communist, subversive, or whether it has adopted a policy of unlawfully advocating the commission of acts of force or violence to deny others their rights under the Constitution or laws of the United States or of any State, or which seeks to overthrow the government of the United States or any state or subdivision thereof by unlawful means."

This is obviously aimed at contemporary organizations—the militant groups of blacks, young people, war resisters, demonstrators of various sorts—that have been activist and sometimes violent in asserting what they believe to be rights and claims as American citizens. Patently, if members of such groups break the law in any way or engage in disorderly conduct, they ought to be prosecuted and punished for their misconduct. But to let an official body brand and destroy voluntary associations of American citizens on the basis of intentions imputed to them as a group is profoundly divisive and mischievous.

What the President has done in this executive order is to combine the worst features of two malevolent hangovers from the era of McCarthyism, the era when Americans looked upon each other with suspicion and mistrust, when they doubted the viability of their own institutions and quaked in fear of freedom. The two McCarthyist heritages brought together by the President in the name of national security are the SACB and the Attorney General's list of proscribed organizations. Neither of these devices ever rendered the slightest service to national security.