

Post 8/10/71

SACB

The Sense of the Senate on Subversion

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Sen. Sam Ervin has apparently just begun to fight against the President's order exalting and aggrandizing the Subversive Activities Control Board. The senator served notice on Friday, just before the Senate went off for its vacation, that he means to raise the issue again as soon as it returns. He introduced a bill which would forbid federal employees to engage in the new activities propounded for the SACB by the President. And, in addition, he has proposed a resolution expressing the sense of the Senate that Mr. Nixon's executive order is "an attempt to usurp the legislative powers conferred on Congress by the Constitution" and "an infringement of the First Amendment rights of all Americans."

This is strong language. In our judgment, it is precisely right on both counts. Congress created the SACB to do one thing. President Nixon, without any enabling or authorizing legislation from Congress, has now directed it to do something entirely different. It is as though the Civil Aeronautics Board, established by law to discharge certain specified functions in regard to aviation were suddenly told by an executive order to go far beyond those functions and regulate the railroads. The President has supervisory authority over all executive agencies, of course, and a responsibility to see to it that the laws enacted by Congress are faithfully executed. But the President has no lawmaking powers whatever. Lawmaking is exclusively the province of the legislative branch of the government.

Senator Ervin seems to us to be quite right not only in his view that the President has breached the constitutional separation of powers but also in his view that the President has done so in a way that seriously jeopardizes the freedom of expression and the freedom of association guaranteed by the First Amendment. Under Mr. Nixon's execu-

tive order, the SACB would be empowered to tell the American people which groups and organizations were officially approved for membership and which were deemed unsuitable by the federal authorities. The SACB would be empowered, in short, to tell you that it is all right for you to join some committees, but not others.

Committees and associations to espouse this and oppose that, to pressure the government in one direction or another, are the dynamos of democracy. They are the chosen instruments for self-government in America. It is dismaying that President Nixon should be so indifferent to the restraints which his order would impose on political action and expression in this country. The idea of an American Republic was conceived in committees of correspondence which flourished among the English colonists in this new world—and which would have been condemned as subversive by any Subversive Activities Control Board appointed by King George III.

The President got funds for his new-fangled SACB by a clever legislative maneuver. His executive order was issued after the House had passed a major appropriation bill in which the controversial agency played no more than a trivial role. The Senate approved an amendment forbidding use of any part of the appropriated funds to carry out the executive order. That amendment was eliminated in conference; and the appropriation passed in its deleted form because Congress wanted to get out of town and knew the departments and agencies had to have money to carry on their work.

Sam Ervin is now offering Congress a clear chance to express its convictions and to deal with the SACB on its demerits. Congress' own honor and authority are at stake. And so is an essential freedom of the American people.