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# An 'Alien Creature'

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WASHINGTON—Once again the Administration has come before the Congress with a request—this year for almost three-fourths of a million dollars—and the plea that the moribund Subversive Activities Control Board be allowed to survive yet another year. Again there is a flurry of activity before June 30 to distract the Congress from the board's 22-year history of inactivity, at a price thus far of almost \$7 million.

We believe the time has finally come to end this perennial exercise in futility and waste. The board is an anomaly and an unnecessary appendage to our Government. It is a distasteful relic of the McCarthy era, incapable of performing any significant constitutional function.

The Constitution expressly provides two ways to protect our country against domestic danger by civil means. First, Congress may punish dangerous acts and, subject to strict First Amendment limitations, dangerous words. Second, those of us who esteem our system, the best yet devised by man, may use our First Amendment freedoms to instruct the ignorant, convert the doubting and combat the efforts of those who undertake to destroy or injure it.

Before the Internal Security Act of 1950 was adopted, our country steadfastly adhered to the principle that government ought not to punish anybody for anything except for a crime of which he has been convicted in a constitutionally conducted trial in a court of justice.

The Internal Security Act injected a novel concept into our system: that to protect society, our country should maintain a governmental agency to stigmatize publicly organizations the Government considers intellectually or politically dangerous, and visit upon such organizations and their members severe penalties. The Internal Security Act of 1950 created the Subversive Activities Control Board. By an amendment in 1954, the board was given jurisdiction to act on petitions of the Attorney General to identify and require the public registration of "Communist-action," "Communist front,"

and "Communist-infiltrated" organizations, and members of "Communist-action" organizations.

The act automatically imposed severe penalties upon the members of the organizations stigmatized by the board. The S.A.C.B. has been moribund since its existence in part because the courts have struck down its major approach—disclosure of individual members through compulsory registration. These rulings left the Subversive Activities Control Board with virtually nothing it could constitutionally do.

Apart from the constitutional questions, the board has proven to be a gross waste of taxpayers' funds. Congress has appropriated nearly \$7 million to fund the board over the last 21 years. The Attorney General has brought only 26 petitions alleging organizations to be "Communist-action," "Communist front," or "Communist-infiltrated." Of these 26 petitions the board has issued only eight final orders determining that the organizations fell within the definitions of the act—one organization, the Communist party of the United States, was designated a "Communist-action organization seven groups "Communist front" organizations. In spite of these eight final orders, the board has never registered a single organization or individual. The majority of the remaining cases have been dropped either because the board has found that the organization did not fall within the provisions of the act, or because the board's orders were vacated pursuant to a Federal court decision.

On July 2, 1971, President Nixon issued Executive Order No. 11605, which attempts to confer on the Subversive Activities Control Board vast power to harass and stigmatize Americans.

In the last year—a year of "great activity" under the new Executive Order—the board did no more than hold four days of hearings. Aside from the absurdity of expending almost one-half million dollars in such a futile exercise, we submit that the Nixon order, which purports to confer new powers on the board, has no legal force. Its promulgation was beyond the constitutional power of the President; it is a direct violation of the

doctrine of separation of powers for the President to rewrite statutes enacted by Congress. It is void for overbreadth and vagueness under the Fifth Amendment right to due process. It violates the First Amendment and due process rights of all the members of the organizations or groups designated except those who share the illegal aims of the organizations or groups.

The board will have even less to do next year than it had last year. Inasmuch as the courts have rendered it incapable of performing its basic functions under the Internal Security Act, Congress will again be asked to appropriate almost one-half million dollars for practically no purpose whatsoever. It is for this reason that the Senate struck the entire appropriation for the board. The issue is now before a conference committee.

The S.A.C.B. has no rightful place in our land. It is not the function of government in a free society to protect its citizens against the thoughts or associations it thinks hazardous. The time has come to remove this alien creature from our Government.

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