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IN WASHINGTON:

SACB

This column appears in Civil Liberties *regularly. Look to it for information on congressional actions you can influence through communication with your congressmen, the press and other groups.*

By Arlie Schardt

As this legislative year bumps into the humid months of summer, it becomes increasingly clear that one of the primary reasons there have been so many misunderstandings between the administration and the Congress is the result of a minor oversight by the administration.

The administration simply forgot to share with Congress—and the rest of us—its copy of the Constitution, which is obviously different from the one we all studied in history class.

If the administration would only take a moment to make public its copy of the Constitution, hundreds of man-hours would be saved because countless nit-picking disputes would no longer arise. Everyone would be on the same ground.

The present set-up, known to some scholars as the "Dual Constitutional System," is favored by those who feel it is more democratic to offer citizens a choice.

However, it is now clear after three and one-half years' experience that government will run more smoothly by using just one Constitution, not two.

Nominees

For example, by failing to share its copy of the Constitution during the fights over Supreme Court nominees Haynsworth and Carswell, the administration confused those senators who somehow thought the Senate has a voice in these matters. You know the result: Debates that took up weeks of the Senate's valuable time, when the whole wrangle could have been avoided if both branches had been reading the same rules.

Explaining the arrest of 13,000 people

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in Washington's 1971 Mayday demonstrations, the administration revealed the doctrine of "qualified martial law." No other constitutional scholars had ever heard of this doctrine, but its author was soon promoted to the Supreme Court, where he will presumably find it for them.

The current school integration battle is another example. During recent hearings on the President's anti-busing bills, witnesses from the Justice Department had members of the House Judiciary Committee absolutely stroking their chins in confusion.

A few members finally admitted that their law schools were apparently deficient, because they were learning things that morning about the Constitution they had never known before, such as the business about Congress having the right to deprive citizens of constitutional rights. Or the revelation that constitutional rights could be suspended indefinitely because the administration was considering some new laws. All that misunderstanding – and the embarrassment of those congressmen who had to admit things about their law schools – would have been spared had the Committee been given copies of both Constitutions.

And then there's been all this fuss over the war. Even now, after these years of patient explaining, there are still senators – and lately even a few representatives—who insist that at least one of our Constitutions says something about Congress having a voice in setting off wars.

Who Makes Laws

Another problem, less understood by the general public but potentially very important, involves this whole business about who gets to make the laws. Last summer, in fact, Sen. Sam Ervin got so exercised about the whole thing that he made this emotional speech, in which he insisted (all the time waving around a copy of the *old* Constitution, just as if it were the only one), that only Congress has the power to pass legislation.

Well, the administration could have made short shrift of that kind of unedu-

cated talk by sending Sen. Ervin a copy of you-know-what. But they made a tactical error. They just went right ahead with their new law (they called it Executive Order 11605 instead of calling it an actual law, but a law by any other name . . .) so that now the entire argument has been prolonged and a whole bunch of other senators have all jumped in.

Executive Order 11605 was voted in, by a margin of 1-0, by the President last July. Its purpose is to expand the powers of the Subversive Activities Control Board (SACB). The SACB was created by the Internal Security Act of 1950. Its purpose was to help Joe McCarthy and other patriots to expose subversives. The original sponsor of the Act was Rep. Richard Nixon, so you can understand why the administration feels especially warm about the constitutional principles involved here.

The SACB's primary trouble has been that ever since it was created, practically everything it has done, except draw salaries, has been declared unconstitutional (there's that problem again, but that's another matter).

Things got so bad that last year its chairman was finally moved to tell Congress, "We have nothing to do."

Abolish SACB

It's been expensive doing nothing, though. Last year Sen. Proxmire figured out the SACB has cost us taxpayers over $8 million so far. That's why Sen. Proxmire tried to abolish the SACB last year, and he came very close (his motion lost by only 47-41). He is trying again this year.

Sen. Ervin tried a second tack. His main concern was Executive Order 11605, which gave the SACB new powers by Presidential direction. "My copy of the Constitution says that all legislative power is given to Congress," protested Ervin. "The President has none. His responsibility is to 'faithfully execute' the laws, not amend them as the Justice Department sees fit."

So Sen. Ervin has been urging the Congress to strip away all funds which would be spent to implement the new powers given SACB by Executive Order 11605.

Mainly, those new powers enable the SACB to update the so-called "Attorney General's list" of subversive organizations. After last July, when Executive Order 11605 became law, SACB rushed into action with a speed that belies its barren past.

Apparently deciding it would be best to check out the Attorney General's list before, presumably, expanding it, the SACB announced last January, with some fanfare, that it was dropping 29 groups from the list. This was because it turned out those groups no longer exist. Some, indeed, had been defunct for as long as 32 years.

While this revelation did raise questions in some minds about the value of protection provided by a Board which accepted money to keep tabs on groups who were out of business even before the Board's creation, the administration was not deterred.

Budget Proposal

Instead, impressed by the SACB's relative hurricane of new activity, and sensing there could be even more to come, the administration called for a 57 per cent increase in the SACB's budget. This year it is seeking $706,000 for the SACB.

Executive Order 11605 was challenged weeks after its inception in a suit filed by the American Civil Liberties Union. The suit was rejected by Federal District Judge Gerhard Gesell on the ground that it was premature (i.e., SACB hadn't actually implemented the Order yet).

But Judge Gesell left no doubt that a later action would bring a ruling that Executive Order 11605 is indeed an unconstitutional usurpation of congressional powers.

"There is no precedent," wrote Gesell, "for a President delegating to an independent, quasi-judicial body far-reaching responsibilities different . . . from those specifically given that body when created by Congress. Moreover, Congress has never authorized the delegation attempted in this instance."

Beyond Sen. Proxmire's antipathy to wasting money, and Sen. Ervin's dislike of the dual constitutional system, there is another compelling reason for abolishing SACB: Its very existence is a threat and an insult to First Amendment guarantees of free speech and association.

The entire thrust of a "subversive list" is aimed at citizens' speech and political beliefs, not illegal acts. Big government's ideas of which groups are subversive tends to embrace those groups who disagree or dissent from that government's policies.

Bizarre

The high comedy in a list of nonexistent subversive groups becomes less laughable when the vague criteria are applied to real groups. That people can be smeared, and government employees fired, for membership in leftish groups (peace and civil rights groups are considered left) becomes totally bizarre when our own President is toasting communist rulers in their own capitals.

In a virtual admission that Executive Order 11605 is improper, the administration introduced a bill this spring, sponsored by Reps. Ashbrook and Ichord, entitled H.R. 9669. Ex-post-facto, H.R. 9669 aims to overcome the usurpation of powers problem by giving the President unlimited authority to expand the powers of the SACB. (Indeed the SACB would also be sanitized by the usual method: changing its name. It would become the Federal Internal Security Board).

Interested spectators can help bring an end to all this by urging members of the Senate and House to oppose all funds for the SACB. If that should fail (but it may well succeed), citizens can call for defeat of H.R. 9669 and support for Sen. Ervin's S.2466, which would make it a crime (officially, this time) for any federal employee to implement Executive Order 11605.

If all these should fail, we will at least have lived to see the ultimate absurdity: the marvelous moment when Congress approves funds for an Executive Order which usurps Congress's own authority, and which is sure to be ruled unconstitutional anyway.

The outcome is rooted in that same new problem: Whose Constitution do you like this week?

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