

only is the fear of public exposure and ridicule substantial, but the pressure upon an individual to avoid even the remote possibility of incurring substantial criminal penalties is also constant and heavy.

Second, the provisions in question suffer from the "fatal defect of overbreadth" *United States v. Robel*, 389 U.S. 258 (1967). Proposed § (b) (1) (A) makes the failure to disclose one's mere membership in a Communist organization unlawful. Not even the faintest attempt at compliance with the tests set forth in *Yates v. United States*, 354 U.S. 298 (1957), and *Elfbrandt v. Russell*, 384 U.S. 11 (1966), is made. The sections in question do not require *specific intent* on the part of the member to further or accomplish the illegal goals of the organization, nor do they require *action* by the individual to further or accomplish such goals. The sections punish indiscriminately those who may seriously threaten the nation's security, and those which do not.

Third, the suggested provisions suffer from the vice of unconstitutional vagueness. When the wording of a statute is vague or ambiguous and that statute imposes substantial criminal penalties upon certain forms of membership in various types of organizations, the individuals affected cannot forecast whether the statute will apply to them. Individuals who sincerely believe their behavior is innocent may be punished; others may be deterred from lawful activities by the fear that such activity is unlawful. As the Supreme Court has indicated,

"A criminal prosecution under a statute regulating expression usually involves imponderables and contingencies that themselves may inhibit the full exercise of First Amendment freedoms . . . For '(t)he threat of sanctions may deter . . . almost as potently as the actual application of sanctions. . . .' The chilling effect upon the exercise of First Amendment rights may derive from the fact of the prosecution, unaffected by the prospects of its success or failure." *Domkowski v. Pfister*, 380 U.S. 479, 486-87 (1965).

In addition, as the vagueness increases, so does the discretion given to officials who enforce the act. Absent clear and precise standards, it becomes easy for the authorities to proscribe conduct which offends them.

The vagueness in the proposed provisions in question is obvious. These provisions penalize a member of an organization who knows or has reasonable grounds for believing that such an organization is in fact Communist. Proposed subsection (b) (2) (B) defines the term "Communist organization" as follows:

"(B) The term 'Communist organization' means a Communist-action organization, and any organization in the United States (other than a Communist-action organization) which (i) is substantially directed, dominated, or controlled by a Communist-action organization, or (ii) is substantially directed, dominated, or controlled by one or more members of a Communist-action organization, and (iii) is primarily operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement referred to in section 2 of this title."

A single Communist in *any* organization in any kind of leadership position, whether its a flower club, a Boy Scout troop or a literary club, or a P.T.A., taints the whole.

Under that definition every member of this committee and its staff must have belonged to some organization which would run afoul of this provision.

Would an international scientific society, comprised predominantly of members from Communist countries, be "primarily operated for the purpose of giving aid and support" to a Communist foreign government? How would an American scientist know whether his membership in such a society would subject him to punishment under the proposed amendments in question?

Proposed subsection (b) (1) (B) declares it unlawful for any individual to engage in "*any* employment which may affect the national security of the United States in a facility which is designated as (such) . . . under a currently valid designation by the Secretary of Defense. . . ." However, this provision is unconstitutionally vague. An employee in a defense plant who is also a member of a Communist organization must determine, at his peril, whether his particular employment "may affect" the national security. The proposed amendments do not provide standards by which the individual can determine whether his job or position "may affect" the national security. Thus, the individual cannot determine whether his conduct is punishable. He will either be deterred from engaging in activities which are perfectly lawful, or be punished for unlawful activities he