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Naming the CIA's Names

A PARADOX became evident when, in the mid-1970s, critics of the CIA began naming names of agents and sources, with the result that the morale, effectiveness and sometimes the lives of intelligence operatives were endangered. If the critics had communicated the names clandestinely to a foreign enemy, they might have been open to prosecution for espionage. No statute existed, however, under which to prosecute them for releasing the same information publicly. The problem broke down into two parts. There was the Agee problem, named for Philip Agee, the disaffected former CIA employee whose disclosures five years ago were followed by the murder of the CIA's station chief in Athens. And there was the Wolf problem, named for Louis Wolf, a private citizen with no intelligence background who earlier this month identified 15 Americans as CIA officers in Jamaica, after which gunmen went after two of them.

Now, there has been a rough consensus for some time on how to tackle the Agee problem: make it a crime if someone learns through his work in an intelligence agency the secret of an agent's identity and then releases that information with hostile intent. People in intelligence, however, have wanted to solve the Wolf problem at the same time. That is much harder. The Wolfs of this world cannot be accused of spilling secrets they learned in confidence on the job. They

say they came by their information by subjecting unclassified material to the reasoning process. How can they be punished for publishing such information without punching a hole in the First Amendment's guarantees of freedom of speech and expression?

In response to the Jamaica disclosures, the House and Senate intelligence committees have suddenly revived legislation to punish the "Wolfs" as well as the "Agees." With the Agee part, we have no quarrel. But the Wolf provision is another matter. A conscientious effort is being made to draw the bill as narrowly as possible so as not to affect others, such as journalists, who publish information about intelligence activities, especially information drawn from unclassified sources: there must be a "pattern" and an intent to "impair or impede" U.S. intelligence, and so on. But in the end, the act of publication would be punished. This is precisely what the First Amendment forbids.

To the extent possible, the CIA can remove from the public domain the materials that permit a Louis Wolf to operate. Beyond that, however, the contempt of his fellow citizens may be the strongest sanction available against him. We do not say that this will end his ugly mischief. We do say that his mischief cannot be the cause of an abridgment of the freedoms that the population as a whole enjoys.