[471 US 159]

CENTRAL INTELLIGENCE AGENCY, et al., Petitioners

v

JOHN CARY SIMS and SIDNEY M. WOLFE (No. 83-1075)

JOHN CARY SIMS and SIDNEY M. WOLFE, Petitioners

v

CENTRAL INTELLIGENCE AGENCY and WILLIAM J. CASEY, Director, Central Intelligence Agency (No. 83-1249)

471 US 159, 85 L Ed 2d 173, 105 S Ct 1881

[Nos. 83-1075 and 83-1249]

Argued December 4, 1984. Decided April 16, 1985.

Decision: Identities of researchers who participated in CIA-financed project held exempt from disclosure under Freedom of Information Act.

SUMMARY

Two individuals filed a request with a Central Intelligence Agency (CIA) under the Freedom of Information Act (FOIA) (5 USCS § 552), seeking, inter alia, the names of the institutions and individual researchers who had participated in a CIA-financed project, code-named MKULTRA, that was established to counter perceived Soviet and Chinese advances in brainwashing and interrogation techniques. Citing exemption 3 of the FOIA (5 USCS § 552(b)(3)(B)), which in pertinent part, provides that an agency need not disclose matters that are specifically exempted from disclosure by statute provided that such statute refers to particular types of matters to be withheld, the CIA declined to disclose the requested information. The CIA relied on § 102(d)(3) of the National Security Act of 1947 (50 USCS § 403(d)(3)), which states that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure. The two individuals then filed suit under the FOIA in the United States District Court for the District of Columbia. After an appeal to, and remand by, the Court of Appeals, the District Court, applying the Court of Appeals' definition of "intelligence sources" as meaning only those

Briefs of Counsel, p 894, infra.

sources to which the CIA had to guarantee confidentiality in order to obtain the information, held that the CIA need not disclose the identities of researchers who had sought and received express guarantees of confidentiality, and also exempted from disclosure other researchers on the ground that their work for the agency, apart from MKULTRA, required that their identities remain secret. The court further held there was no need to disclose the institutional affiliations of the individual researchers whose identities were exempt from disclosure. The Court of Appeals affirmed that part of the District Court's judgment exempting from disclosure the institutional affiliations of individual researchers found to be intelligence sources, but it reversed the District Court's ruling with respect to which individual researchers satisfied "the need-for-confidentiality" aspect of its formulation of exempt "intelligence sources" (709 F2d 95).

On certiorari, the United States Supreme Court reversed in part and affirmed in part. In an opinion by BURGER, Ch. J., joined by WHITE, BLACKMUN, POWELL, REHNQUIST, STEVENS, and O'CONNOR, JJ., it was held that (1) § 102(d)(3) clearly refers to "particular types of matters" within the meaning of Exemption 3 of the FOIA, and thus qualifies as a withholding statute under Exemption 3, (2) the plain meaning of § 102(d)(3)'s language, as well as the legislative history of the National Security Act, indicates that Congress vested in the Director of Central Intelligence very broad authority to protect from disclosure all sources of intelligence information, and thus the Director was well within his authority to withhold the researchers' identities from disclosure under the FOIA because the researchers provided, or were engaged to provide, information the CIA needed to fulfill its statutory obligations with respect to foreign intelligence, and (3) the Director was not required to disclose the institutional affiliations of the exempt researchers since the record supports his determination that such disclosure would lead to an unacceptable risk of disclosing the sources' identities.

MARSHALL, J., joined by BRENNAN, J., concurred in the result, but expressed the view that the CIA's sweeping definition of "intelligence source" is mandated neither by the language or legislative history of any congressional act, nor by legitimate policy considerations, and it in fact thwarts congressional efforts to balance the public's interest in information and the government's need for secrecy.