

The Burger Court Opinion Writing Database

CIA v. Sims

471 U.S. 159 (1985)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **The Chief Justice**

Circulated: **JAN 14 1985**

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 83-1075 AND 83-1249

CENTRAL INTELLIGENCE AGENCY, ET AL.,
PETITIONERS

83-1075

v.

JOHN CARY SIMS AND SIDNEY M. WOLFE

JOHN CARY SIMS AND SIDNEY M. WOLFE,
PETITIONERS

83-1249

v.

CENTRAL INTELLIGENCE AGENCY AND WILLIAM
J. CASEY, DIRECTOR, CENTRAL
INTELLIGENCE AGENCY

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[January —, 1985]

CHIEF JUSTICE BURGER delivered the opinion of the
Court.

In No. 83-1075, we granted certiorari to decide whether Section 102(d)(3) of the National Security Act of 1947, as incorporated in Exemption 3 of the Freedom of Information Act, exempts from disclosure only those sources of intelligence information to which the Central Intelligence Agency had to guarantee confidentiality in order to obtain the information. In No. 83-1249, the cross-petition, we granted certiorari to decide whether the Freedom of Information Act requires the Agency to disclose the institutional affiliations of persons whose identities are exempt from disclosure as "intelligence sources."

I

Between 1953 and 1966, the Central Intelligence Agency financed a wide-ranging project, code-named MKULTRA,

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

4
March 3) 1985

PERSONAL

RE: No. 83-1075) - CIA v. Sims
No. 83-1249) - Sims v. CIA

Dear Harry:

Today I am trying "catch up" and I have your note on the two matters of style in my first draft.

I am quite willing to adopt the suggestions as to note #20 but the word "crabbed" was the mildest term I could find in the books for what I consider appropriate to say. I regularly join opinions of others when I do not like the particular terms but style is for the writer.

If the note #20 change will take care of your concerns, I welcome your join.

Regards,



Justice Blackmun

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

March 5, 1985

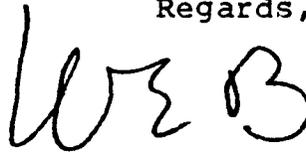
RE: No. 83-1075) - CIA v. Sims
No. 83-1249) - Sims v. CIA

Dear Harry:

I responded to your memo of January 22, that I would be willing to modify Footnote 20 to meet your point but not omit "crabbed" as you requested.

Both points you raised, in my view, are matters of style. I regularly join opinions whose style and adjectives I don't particularly fancy but I "go along" because the style is for the author of an opinion; I consider "crabbed" the mildest term I could use in the circumstances shown in this case.

Regards,



Justice Blackmun

Copies to the Conference

To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

STYLISTIC CHANGES THROUGHOUT

p-15

From: The Chief Justice

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 83-1075 AND 83-1249

CENTRAL INTELLIGENCE AGENCY, ET AL.,
PETITIONERS

83-1075

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I

Between 1953 and 1966, the Central Intelligence Agency financed a wide-ranging project, code-named MKULTRA,

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p. 16

To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **The Chief Justice**

Circulated: _____

Recirculated: **APR 10 1985**

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 83-1075 AND 83-1249

CENTRAL INTELLIGENCE AGENCY, ET AL.,
PETITIONERS

83-1075

v.

JOHN CARY SIMS AND SIDNEY M. WOLFE

JOHN CARY SIMS AND SIDNEY M. WOLFE,
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v.

CENTRAL INTELLIGENCE AGENCY AND WILLIAM
J. CASEY, DIRECTOR, CENTRAL
INTELLIGENCE AGENCY

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[April —, 1985]

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Court.

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MA
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

December 7, 1984

No. 83-1075) CIA v. Sims
)
No. 83-1249) Sims v. CIA

Dear Thurgood,

While the vote is 9-0 to reverse the judgment, you and I went on a different ground from the other seven; namely, that the wrong standard was used by the Court of Appeals and we would remand for application of a correct standard. Would you be willing to take on a dissent to that extent?

Sincerely,



Justice Marshall

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 15, 1985

No. 83-1075) CIA v. Sims
)
No. 83-1249) Sims v. CIA

Dear Chief,

I'll await the dissent in the
above.

Sincerely,



The Chief Justice

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

April 5, 1985

No. 83-1075) CIA v. Sims
)
No. 83-1249) Sims v. CIA

Dear Thurgood,

Please join me.

Sincerely,



Justice Marshall

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 17, 1985

Re: 83-1075 - CIA v. Sims and Wolfe
83-1249 - Sims and Wolfe v. Casey

Dear Chief,

Please join me.

Sincerely yours,

Byron

The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 16, 1985

Re: Nos. 83-1075 and 1249-CIA v. Sims and Sims v. CIA

Dear Chief:

In due course I hope to circulate a dissent.

Sincerely,



T.M.

The Chief Justice

cc: The Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Marshall**

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Recirculated: _____

1st DRAFT

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CENTRAL INTELLIGENCE AGENCY AND WILLIAM
J. CASEY, DIRECTOR, CENTRAL
INTELLIGENCE AGENCY

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[April —, 1985]

JUSTICE MARSHALL, concurring in the result.

To give meaning to the term "intelligence source" as it is used in § 102(d)(3) of the National Security Act of 1947, the Court today correctly concludes that the very narrow definition offered by the Court of Appeals is incorrect.¹ That the Court of Appeals erred does not, however, compel the conclusion that the Agency's sweeping alternative definition is in

¹The Court of Appeals defined an "intelligence source" as "a person or institution that provides, has provided, or has been engaged to provide the CIA with information of a kind the Agency needs to perform its intelligence function effectively, yet could not reasonably expect to obtain without guaranteeing the confidentiality of those who provide it." — U. S. App. D. C. —, — (1980); 642 F. 2d 562, 571 (CADC 1980) (*Sims I*).

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P. 1

STYLISTIC CHANGES THROUGHOUT

To: The Chief Justice
Justice Brennan
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Marshall

Circulated: _____

Recirculated: APR 11 1985

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 83-1075 AND 83-1249

CENTRAL INTELLIGENCE AGENCY, ET AL.,
PETITIONERS

83-1075

v.

JOHN CARY SIMS AND SIDNEY M. WOLFE

JOHN CARY SIMS AND SIDNEY M. WOLFE,
PETITIONERS

83-1249

v.

CENTRAL INTELLIGENCE AGENCY AND WILLIAM
J. CASEY, DIRECTOR, CENTRAL
INTELLIGENCE AGENCY

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[April —, 1985]

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins,
concurring in the result.

To give meaning to the term "intelligence source" as it is used in § 102(d)(3) of the National Security Act of 1947, the Court today correctly concludes that the very narrow definition offered by the Court of Appeals is incorrect.¹ That the Court of Appeals erred does not, however, compel the conclusion that the Agency's sweeping alternative definition is in

¹The Court of Appeals defined an "intelligence source" as "a person or institution that provides, has provided, or has been engaged to provide the CIA with information of a kind the Agency needs to perform its intelligence function effectively, yet could not reasonably expect to obtain without guaranteeing the confidentiality of those who provide it." 206 U. S. App. D. C. 157, 166, 642 F. 2d 562, 571 (1980).

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 22, 1985

Re: No. 83-1075) CIA v. Sims
No. 83-1249) Sims v. CIA

Dear Chief:

Would you consider making two small changes on page 15 of your opinion:

1. In the sixth line of footnote 20, replace the words "This suggestion is nothing less than extraordinary--" with the word "But"

2. Omit the word "crabbed" at the end of the fourth line of the page.

I dislike to excoriate the Circuit Judge who was the author of the Court of Appeals opinion. I do not mind the use of the word "crabbed" with respect to an argument, but I hesitate to use it with respect to an appellate opinion.

If you see your way clear to make these changes, you have my vote.

Sincerely,



The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

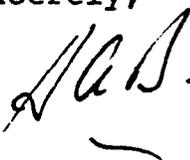
March 4, 1985

Re: No. 83-1075) CIA v. Sims
No. 83-1249) Sims v. CIA

Dear Chief:

I have your note of March 3. I do not regard footnote 20 as a matter of mere style. You have my joinder, however, if you adopt the suggestion set forth in my note of January 22.

Sincerely,



The Chief Justice

✓

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 6, 1985

Re: No. 83-1075) CIA v. Sims
No. 83-1249) Sims v. CIA

Dear Chief:

With the change you have made, pursuant to my request, in footnote 20 on page 15, I join the second draft of your opinion for these cases. You now have twice stated that all this is a matter of style. I disagree, for I cannot accept the proposition that the phrase "the suggestion is nothing less than extraordinary," directed as a criticism of the Court of Appeals, is nothing more than mere style.

Sincerely,

H.A.B.

The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 8, 1985

83-1075 CIA v. Sims

Dear Chief:

Please join me.

Sincerely,

L. F. P.
lfp

The Chief Justice

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 16, 1985

Re: No. 83-1075) CIA v. Sims
83-1249) Sims v. CIA

Dear Chief,

Please join me.

Sincerely,



The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 14, 1985

RE: 83-1075 - Central Intelligence Agency, et al.
v. John Cary Sims, et al.

83-1249 - John Cary Sims, et al. v. Central
Intelligence Agency, et al.

Dear Chief:

Please join me.

Respectfully,



The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

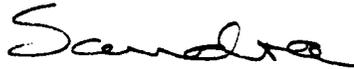
January 15, 1985

No. 83-1075 CIA v. Sims and Wolfe
No. 83-1249 Sims and Wolfe v. CIA

Dear Chief,

Please join me.

Sincerely,



The Chief Justice

Copies to the Conference