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Court Gives CIA Broad Secrecy

In a decision that could facilitate closer ties between academic scientists and the intelligence community, the Supreme Court decided on 16 April that the Central Intelligence Agency (CIA) may keep secret the names and institutional affiliations of virtually all of its intelligence sources. As a result, academic scientists can perform research for the agency without fear that their work will ever become public knowledge.

In a prepared statement, the CIA said that the decision sends "a powerful message to current and prospective intelligence sources that the agency can, indeed, fulfill their expectations of confidentiality." More immediately, it allows the agency to withhold the names of nearly 200 scientists who participated in the 1950's and early 1960's in a project known as MKULTRA, one of the CIA's most bizarre research endeavors.

Known only to a handful of federal officials, the MKULTRA program was supposed to discover "chemical, biological, and radiological materials capable of employment in clandestine operations to control human behavior," as the CIA explained in internal documents. "For example, we intend to investigate the development of a chemical material which causes a reversible non-toxic aberrant mental state, the specific nature of which can be reasonably well-predicted for each individual. This material could potentially aid in discrediting individuals, eliciting information, implanting suggestion and other forms of mental control." The avowed purpose was to gain "a thorough knowledge of the enemy's theoretical potential, thus enabling us to defend ourselves against a foe who might not be as restrained in the use of these techniques as we are."

By most public accounts, the program was less than a sterling success. Grants were made to a variety of universities* and individual scientists through foundations that served to conceal the CIA's involvement. According to a government affidavit, the fruits of the research were used in 109 "intelligence collection operations" from 1953 to 1966 alone. Ultimately, however, several persons died as a result of unwitting exposure to experimental mind-altering drugs, and others were apparently injured. Most files relating to the project were ordered destroyed by CIA officials, and although there has been considerable public speculation about the scientists involved, their names have never been officially released.

Seven years ago, Ralph Nader's Public Citizen Litigation Group requested the names under the Freedom of Information Act, arguing that most of the work was unclassified, that a list of the participants was unclassified, and that many of those on it were unaware that their funds had come from the CIA. Obviously, the agency had made few pledges of confidentiality. Public Citizen wanted the information so that it could publish a detailed report on the research, and contact all of the unwitting participants.

CIA officials argued, however, that disclosure might inhibit future research and disrupt ongoing relationships with researchers and institutions. "In the case of one researcher," said M. Corley Wonus, a former director of the agency's Office of Technical Service, "his operational activity was of such a sensitive nature that the mere disclosure of his name in the context of the MKULTRA projects will have severe consequences for the diplomatic relations of the United States."

In other instances, disclosure might harm the participants' professional standing, an agency official said in an affidavit, noting for example that "in 1977 a Professor Michael Selzer lost his position and tenure with Brooklyn College as a direct result of allegations by associates and relatives that he had been involved with the CIA." The official added that "simply put, not all professions regard affiliation by their members with the CIA as desirable or acceptable." In addition, the agency argued that secrecy was needed in order to obtain intelligence from unwitting sources in the future, such as "a foreign official who regularly discusses official business problems and concerns . . . with an old and trusted confidant who repeats such information to the CIA."

In a sweeping decision, seven members of the Supreme Court accepted these arguments wholeheartedly, ruling that "even a small chance that some court will order disclosure of a source's identity could well impair intelligence gathering and cause sources to 'close up like a clam.'" Even public sources of intelligence—such as newspapers and magazines—can be kept secret, the Court said, on the grounds that knowledge of their use could tip off an adversary to the agency's overall goals. At one point, the Court went so far as to suggest that "the mere explanation of why information must be withheld can convey valuable information to a foreign intelligence agency."

Paul Levy, an attorney with Public Citizen, says that the ruling is likely to all but eliminate the release of information about the agency's activities, including those that are generally considered unethical. Justices Thurgood Marshall and William Brennan, in a partial dissent to the majority opinion, also decried the fact that the ruling gives the agency "boundless" authority to keep information from the public, whether or not the information is classified, whether or not its disclosure will harm national security, and whether or not the source sought a specific promise of confidentiality. The decision seriously mangles "a carefully crafted statutory scheme," the dissenters wrote, and thwarts "congressional efforts to balance the public's interest in information and the Government's need for secrecy."

CIA spokesperson Patti Volz notes that the agency can no longer completely conceal its involvement in academic research, as it did in MKULTRA. Under the terms of a 1981 order signed by President Reagan, the agency is required to inform officials at all academic institutions where it sponsors research. Although it is not specifically required by the order, Volz adds, the agency will in the future also disclose its involvement to the researchers themselves. —R. JEFFREY SMITH

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*According to court documents and a 1979 book on the program by John Marks, entitled *The Search for the Manchurian Candidate*, the research was conducted in part by investigators at Columbia, Cornell, Emory, George Washington, Georgetown, Harvard, Johns Hopkins, MIT, Montana State, Princeton, Queens College, Rutgers, Stanford, and Texas Christian, as well as the universities of Delaware, Denver, Florida, Illinois, Indiana, Maryland, Minnesota, Ohio State, Oklahoma, Pennsylvania, Richmond, Rochester, Texas, and Wisconsin.