What Hoover and the FBI Had on Arthur Goldberg

COURTSIDE

by TONY MAURO

Former White House counsel Abner Mikva recalls that his onetime law partner Arthur Goldberg was always worried about what the Federal Bureau of Investigation might have in its files about him.

"These files always concerned Arthur, not because there was anything to it, but because [FBI Director J. Edgar] Hoover had so much clout to use it against people," says Mikva, who worked with Goldberg in the 1950s, before Goldberg became President John F. Kennedy's labor secretary and then a Supreme Court justice.

As it turns out, the FBI had a great deal in its files on the late Justice Arthur Goldberg — 800 pages worth — some of which describe Goldberg as a Communist sympathizer and potential danger to national security. It is also clear from several memos contained therein that Goldberg, as he gained prominence over the years, did all that he could to neutralize the negative information in the files about him.

Goldberg's FBI file was released last month in response to a Freedom of Information Act request filed soon after his death six years ago. FBI files, considered private during the subject's lifetime, become eligible for release under the act after death.

As often happens with such information, the documents say as much about the practices and paranoia of Hoover's FBI as they do about the subject of the files.

Given Goldberg's background as a Jewish labor lawyer in Chicago, it was not surprising that he was the target of FBI attention from his earlier days, according to Marquette University history Professor Athan Theoharis, author of six books on the FBI.

In 1941, just before the United States joined World War II, a letter from Hoover to the Chicago field office described Goldberg as "closely associated with Communist leaders in Illinois." More significantly, Goldberg was targeted for "custodial detention" in case of a threat.

Theoharis says that thousands of Americans were designated for possible detention during the "red scare" — although the threat was never carried out. The internment of Japanese-Americans and others was carried out under a separate program.

The evidence of Goldberg's threat to security was slim. The FBI report on Goldberg indicated he was a sponsor of a planned "National Conference on Constitutional Liberties of America"; was an adviser to the Chicago Committee on Conscientious Objectors; and served as president of the Chicago Lawyers Guild. This last affiliation, the report said, came from the "industrial squad" of the Chicago Police Department, which had obtained the information from an issue of *The Daily Worker*, the Communist newspaper. Equally damning, apparently, was the fact that Goldberg was a lawyer for the Newspaper Guild.

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In spite of the negative reading on Goldberg, he was soon in the Army and served with distinction in the Office of Strategic Services, supervising espionage on labor unions in Europe. Theoharis says it is not unusual that Goldberg was involved in such sensitive work in one government agency while being the subject of a damning file in another.

After World War II, as Goldberg rose through the ranks and became counsel to the powerful Congress of Industrial Organizations (CIO), it appeared that he began courting the FBI, at least in part to purge its files of negative information on him.

A 1954 memo by then-Assistant Director Louis Nichols says Goldberg "has been very friendly disposed to the bureau in recent years." Nichols also indicates that Goldberg had contacted him to refute allegations that Goldberg had been involved with the "International Labor Defense," a group with suspected Communist ties.

Nichols says in the memo that he planned to meet with Goldberg to go over new information about the charges and amend his files if warranted. "I think this would pay dividends in the future," Nichols wrote.

Meanwhile, Mikva recalls, Goldberg was actively working against Communist influences in the labor movement. "He had a clear picture of what was wrong with the Communist movement, and he led the fight to get Communists and corruption out of the labor movement."

In April 1955, while Goldberg was deeply occupied with the merger between the CIO and the American Federation of Labor, he met with Nichols. Goldberg offered evidence and testimonials from friends about his anti-Communist feelings, and Nichols offered to amend the files and inform other agencies about the new information.

"Goldberg stated that he realized full well that the session with him today was very unusual," Nichols reported. "He deeply appreciated our attitude."

Nichols said he concluded that "an injustice has been done in disseminating the information which we had, although I cannot see where the bureau can be blamed for this, but certainly the information comes from sources that cannot be considered as being reliable."

This 1955 meeting sealed the relationship, and from that point forward, all the background reports on Goldberg by the FBI made in connection with his government appointments emphasized the positive. The courtship dance continued through the 1960s.

As secretary of labor, Goldberg was invited by Hoover to speak at graduation exercises at the FBI academy in 1961. As Supreme Court justice, Goldberg nominated Hoover for a "Sword of Loyola Award." Correspondence continued after Goldberg left the high court in 1965 and became United Nations ambassador.

Missing from the files, however, is any indication that the relationship between Goldberg and Hoover resembled that between Hoover and Goldberg's predecessor, Abe Fortas — who sometimes kept Hoover informed of pending Supreme Court decisions.

"He would have been uncomfortable having any contact with Hoover once he became a justice," says Mikva.

The Goldberg file is a classic example of the symbiotic relationship that developed between Hoover and so many high officials, including Supreme Court justices, says Alex Charns. Charns, a lawyer in Durham, N.C., wrote a 1992 book — titled *Cloak and Gavel* — about the links between the FBI and the Supreme Court.

"Goldberg was aware of the power Hoover had," says Charns. "How lucky he was to have the opportunity to clear his name, where thousands of others didn't."

De Maximus

Deputy Solicitor General Michael Dreeben's masterful performance before the court earlier this month arguing the government's position on asset forfeiture was all the more remarkable because it was the longest uninterrupted argument by a single lawyer in recent memory.

Instead of the standard 30 minutes, Dreeben spoke for 40 minutes — or 39 minutes and 50 seconds to be precise. (More on that later.)

His arguments came in two cases that had been consolidated: *United States v. Ursery*, No. 95-345, and *United States v. $405,089.23*, No. 95-346. In both cases, the government was challenging appellate court decisions that viewed asset forfeitures as some form of double jeopardy when tacked on to criminal prosecutions.

The cases were consolidated on the government's motion, which would normally mean that the government would have a half-hour and the lawyers for the defendants would have 15 minutes each, for a total of one hour. But the defense lawyers asked for more time, and the court gave the cases 80 minutes instead of an hour — 40 minutes to Dreeben and 20 each to the defense lawyers.

Dreeben paced himself well and the time flew by. His scholarly demeanor, as usual, did not come across as stuffy or arrogant, but rather as knowledgeable and clear. Dreeben did not receive a single question that he wasn't able to answer effortlessly.

Which is not to say that Dreeben will win. Several justices seemed to be still in sync with the court's recent rulings that cast doubt on the constitutionality of excessive forfeitures.

Justice David Souter kept asking Dreeben about the "principle of coherence" — i.e., how could the court square approving the forfeitures in the current case with its recent rulings that seem to run contrary? Dreeben ably stuck to his points and distinguished the current cases from the earlier ones. He also gave the justices a glimpse of the havoc that would result from a ruling adverse to the government, but without sounding too alarmist. If the government wins, it will be in good measure because Dreeben held his own.

When Dreeben finally answered Souter's last question, he sat down, reserving his remaining time for rebuttal. After the court heard from defense lawyers Jeffry Finer and Lawrence Robbins — who also did well — Dreeben rose to rebut.

But before he spoke, Chief Justice William Rehnquist informed Dreeben that he had only 10 seconds left. Rehnquist then recited the Latin maxim "De minimis non curat lex," which means, "The law does not take notice of trifling matters," and said the case was submitted — meaning no rebuttal for Dreeben.

A 'Fool for Christ'?

The chattering classes (columnists and other pundits) have already pretty well disposed of Justice Antonin Scalia's much-publicized prayer breakfast remarks in Mississippi April 9. He has been criticized, mostly — and garnered a bit of praise — for speaking so openly about his belief in miracles and the resurrection of Christ.

The negative reaction has to a large extent proved his point — that the "worldly wise" will always scorn and snicker at the deeply held beliefs of Christians. "Surely those who adhere to all or most of these traditional Christian beliefs are to be regarded as simple-minded," Scalia said.

Scalia, quoting a New Testament phrase "We are fools for Christ's sake," said, "We must pray for the courage to endure the scorn of the sophisticated world."

His audience, mainly members of the Christian Legal Society at the Mississippi College School of Law, gave him a standing ovation — remarkable in a sense, because it is a Southern Baptist institution.

Not too long ago, Baptists didn't think much of Roman Catholics like Scalia and would themselves have scorned some of the uniquely Catholic miracles Scalia mentioned — such as the recent story of the Virginia priest who displayed stigmata, the bleeding wounds which, according to the Bible, were suffered by Christ when he was crucified.

But was Scalia's speech as unusual as the media portrayed it to be? Justices from the beginning of the republic have professed their allegiance to God.

As noted in the recent book "The Godless Constitution," Justice William Strong was a Presbyterian elder who served as president of the National Reform Association while sitting on the Court from 1870 to 1880. That association led a drive to amend the Constitution to insert God's name into the document and to "constitute a Christian government."

On the current court, Clarence Thomas, Ruth Bader Ginsburg, and Stephen Breyer all make fairly regular mentions of their faith in public. Ginsburg appeared in a newspaper ad titled "What being Jewish means to me," sponsored by the American Jewish Committee. And at the recent Holocaust remembrance at the U.S. Capitol, Breyer spoke as "an American Jew, a judge, a member of the Supreme Court."

Scalia's confession of faith may have caused more squirming because he got into the somewhat mystical area of miracles. But belief in miracles and the Easter story is part and parcel of being a Catholic — so Scalia was saying little more than, "I am a Catholic." As one commentator on the ReligionLaw computer bulletin board observed, the court isn't often called upon to rule on miracles, so Scalia's profession of faith won't necessarily interfere with his work.

Footnote: Scalia's faith runs in the family. His son Paul Scalia will be ordained as a priest May 18 at St. Thomas More Cathedral in Arlington, Va.

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