

Alexander Charns

# My Hero Still

not  
Michael

The day after Thanksgiving, the postman brought a 10-pound box to my law office. It was from the Federal Bureau of Investigation. I knew that inside the bulging cardboard were reams of paper created, studied, indexed and stored for as long as a half century. All of it was about the late Thurgood Marshall.

I practice law in the areas of civil rights and criminal defense. Justice Marshall is one of my legal heroes. But I also write about the FBI and the Supreme Court. So I had bad feelings as I cut open the box to find some 1,300 pages of records. Three years after the great civil rights champion's death, the FBI was finally releasing its main file records under the Freedom of Information Act.

The bulk of the paperwork was produced by lowly special agents. They had interviewed friends, enemies, neighbors and politicians during FBI background investigations of Marshall after he was nominated for high government posts—appellate judge, solicitor general and justice of the Supreme Court.

The background-check file also contained FBI reports from the '40s and '50s and report after report about the prior reports. In the report summaries, and in the internal security file and the miscellaneous file kept at FBI headquarters, were memos that will be mentioned in future Marshall biographies. These memos from FBI Director J. Edgar Hoover's top men describe how Marshall provided confidential information to the FBI from 1956 to 1959 while serving as director-counsel for the NAACP Legal Defense and Education Fund.

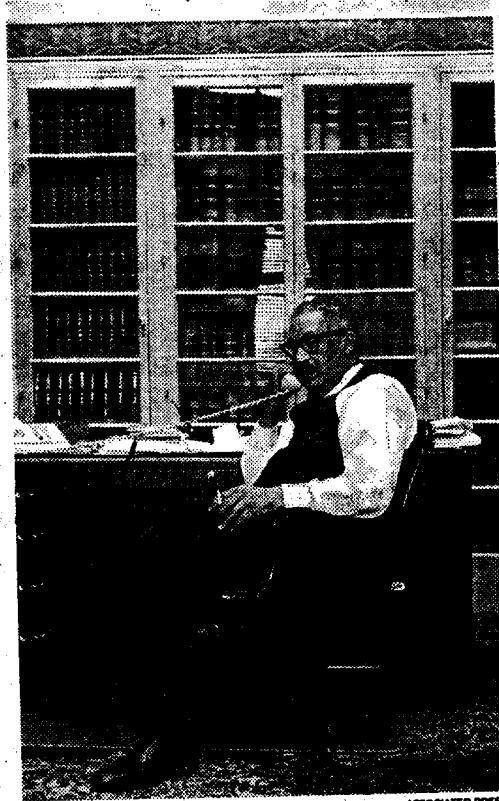
I've reflected on the revelations and the consternation in the African American and liberal white community about all of this and concluded that Thurgood Marshall is still my hero. He's more of a real-life person now. The FBI papers are a reminder that my legal heroes had to compromise and adapt to the political winds of their time. Thurgood Marshall should be viewed in the context of his time not ours. His legacy is not diminished.

Marshall was no informer out for personal profit or advantage. During those Cold War days, Hoover loomed large over the political and cultural scene as a crime- and communist-busting superman. He was not vilified as he is today. Much less was known about how he conducted the operations of the FBI.

In the late 1950s, the NAACP was under attack. The FBI had paid informers within it and just about any organization working for progressive change in this country. The reports sent to headquarters were captioned "Communist infiltration of the NAACP" or "Communist Party—Negro Question."

Marshall had been an outspoken critic of the FBI's lax enforcement of civil rights laws. But he was an anti-communist. When he provided information and sought the assistance of the FBI, he was probably doing so to stave off attacks from the bureau and others who perceived the organization as subversive.

So far, the bureau has ignored my request for hundreds of cross-referenced documents and electronic-surveillance records (I have filed an appeal), but I have been relieved to see that the files the FBI has consented to release about Thurgood Marshall contain no suggestion



that he provided privileged information to the bureau while on the Supreme Court. Other justices not only served as FBI informers while on the court but accepted gratuities and favors.

Justice Abe Fortas told the FBI about the secret conference discussions of his brethren on the sensitive issue of illegal wiretapping in cases then pending before the Supreme Court in 1966. In one case, Fortas warned his bureau contact in advance of the decision and revealed the substance of the ruling. (Thurgood Marshall was then solicitor general and had forced the issue of FBI illegality by telling the high court of the warrantless bugging of a man whose criminal conviction had been upheld by the justices.) In the late 1950s, Justice Tom Clark called Hoover for quotations to use in his communist-bashing dissents.

Some other great liberal jurists had cozied up to Hoover. Earl Warren, as a California district attorney, attorney general and governor, had a long-standing political alliance with the FBI. The chief justice continued on Hoover's "special correspondents list" until the Warren Commission Report was issued; he was provided such favors as private detective services. None of these perks helped Hoover when it came to Warren's rulings. (Like Marshall, Warren is still a hero of mine.)

Thurgood Marshall's interaction with the FBI was different. He engaged in ill-advised information swapping with Hoover's high command and agents in the New York field office for about three years before he became a justice. I cannot judge the great man from the safety of 1996 and my white skin. So I will continue to remember him for a lifetime of bravery, on and off the court.

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