



# Department of Justice

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PROCEEDINGS IN THE SUPREME COURT OF THE  
UNITED STATES IN MEMORY OF JUSTICE GOLDBERG

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Monday, October 15, 1990

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REMARKS OF THE ATTORNEY GENERAL OF THE  
UNITED STATES

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MR. CHIEF JUSTICE, and may it please the Court:

The Bar of this Court met today to honor the memory of Arthur Joseph Goldberg, Associate Justice of the Supreme Court from 1962 to 1965.

Arthur Goldberg served the Nation with distinction as a lawyer, soldier, Cabinet officer, Supreme Court Justice, and diplomat. Born in Chicago in 1908, he was educated in the Chicago public schools and at Northwestern University, where he was first in his law school class and Editor-in-Chief of the Law Review.

By special dispensation, Arthur Goldberg sat for the Illinois bar examination before he reached the age of 21. He was admitted to the Illinois bar in 1929 and began a general law practice in Chicago. He opened his own law office in 1933, and soon began handling labor matters for clients such as the United Steelworkers and the Chicago Newspaper Guild.

During World War II, Arthur Goldberg served under William J. Donovan as Chief of the Labor Division in the Office of Strategic Services. He carried out several intelligence missions to Europe, where he organized transportation workers into a valuable Allied intelligence network.

After the war, he resumed his law practice and soon gained recognition as a preeminent labor lawyer. He served as general

counsel to the United Steelworkers from 1948 to 1961. As general counsel to the Congress of Industrial Organizations, Arthur Goldberg played a major role in the merger of that organization and the American Federation of Labor in 1955. He remained as special counsel to the merged AFL-CIO until 1961. During this period, he was active in efforts to rid the unions of corruption. He made six oral arguments before this Court in the 1950s, and was on the brief in many other cases. He argued as amicus curiae in the Steel Seizure Case, Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952).

Arthur Goldberg was appointed Secretary of Labor by President Kennedy in 1961. Secretary Goldberg employed his superb negotiating skills to resolve labor conflicts that he regarded as jeopardizing national interests. Within 24 hours after his swearing in by Chief Justice Warren, he was on his way to New York to mediate a harbor strike. This pattern of personal mediation was repeated several times during his months as Labor Secretary.

Arthur Goldberg was nominated by President Kennedy to succeed Justice Felix Frankfurter and sworn in on October 1, 1962. The seat he occupied is a distinguished one, having been held by Benjamin Cardozo, Oliver Wendell Holmes, and Joseph Story in addition to Justice Frankfurter. It is now held by Justice

Blackmun. Soon after his appointment, the new Justice commented on the transition from life as Secretary of Labor to life as a Supreme Court Justice:

The Secretary's phone never stops ringing; the Justice's phone never rings -- even his best friends won't call him.

The Secretary. . .worries about what the President and . . .Congress will do to his carefully formulated legislative proposals; the President, the Congress, and the Secretary wonder what the Justice will do to theirs.

The Secretary's. . .vacations are. . .interrupted by unanticipated strikes; the Justice's. . .long recess by an apparently endless flow of petitions for certiorari, difficult stay applications, and the certitude that if he vacations too obviously he will be "time charted" by Professor Hart and the editors of the Harvard Law Review.

In his three Terms on the Court, Justice Goldberg delivered 94 opinions, including 37 opinions for the Court. His first opinion for the Court, in United States v. Loew's, Inc., 371 U.S. 38 (1962), a complex antitrust case, revealed his high abilities as a judicial craftsman.

One of Justice Goldberg's most significant opinions came later in his first Term. The Court held unconstitutional, as imposing punishment without a criminal trial, a statute providing that persons who evaded military service by remaining outside the jurisdiction of the United States in time of war would automatically be deprived of citizenship. Kennedy v. Mendoza-Martinez, 372 U.S. 144 (1963). In Gibson v. Florida Legislative Investigation Committee, 372 U.S. 539 (1963), Justice Goldberg's opinion for the Court held that the committee could not require the production of membership records of the NAACP absent some showing of a connection between the NAACP and the Communist activities it was investigating. His opinion for the Court the following year in Aptheker v. Secretary of State, 378 U.S. 500 (1964), held that a statute prohibiting any member of a Communist organization from applying for a passport was an unconstitutional infringement of the right to travel.

Justice Goldberg wrote noteworthy concurring opinions in a number of other constitutional cases. In Griswold v. Connecticut, 381 U.S. 479 (1965), he expressed the view that the Ninth Amendment expanded the concept of "liberty" in the Due Process Clauses beyond those rights specifically enumerated in the Constitution and the Bill of Rights. In New York Times v. Sullivan, 376 U.S. 254 (1964), Justice Goldberg called for an unconditional privilege to criticize the conduct of public

officials. And in Heart of Atlanta Motel v. United States, 379 U.S. 241 (1964), his opinion concluded that the public accommodations provision of Civil Rights Act of 1964 was a valid exercise not only of Congress's power under the Commerce Clause, as the Court held, but under Section 5 of the Fourteenth Amendment as well.

Many of Justice Goldberg's opinions addressed matters of criminal procedure. Draper v. Washington, 372 U.S. 487 (1963), held that indigents appealing criminal convictions are entitled to a transcript or other account of the trial sufficient to permit review of their contentions on appeal. Justice Goldberg also wrote a trio of decisions concerning the sufficiency, under the Fourth Amendment, of affidavits used to obtain search warrants. Justice Goldberg's dissenting opinion in United States v. Barnett, 376 U.S. 681 (1964), concluded that state officials accused of disobeying orders of a federal court of appeals were entitled to a jury trial. And in a memorandum circulated to the Conference in 1963, Justice Goldberg anticipated and addressed many of the death penalty issues the Court would consider in the ensuing years.

Justice Goldberg's best-known opinion for the Court was in Escobedo v. Illinois, 378 U.S. 478 (1964). The Court held that the admission of an incriminating statement made by Escobedo

during the course of police questioning violated his Sixth Amendment right to counsel. Although the Sixth Amendment analysis of the Escobedo opinion was later abandoned by the Court, Justice Goldberg's reasoning foreshadowed the Court's decision two years later in Miranda v. Arizona, 384 U.S. 436 (1966).

Justice Goldberg also wrote several opinions in labor cases that drew on his great knowledge and expertise in this field. In both NLRB v. Metropolitan Life Insurance Co., 380 U.S. 438 (1965) (concerning bargaining unit determinations), and American Ship Building Co. v. NLRB, 380 U.S. 300 (1965), he expressed a willingness to defer to decisions of the National Labor Relations Board, but only so long as the Board set forth reasons for its decision and the decision was supported by substantial evidence in the record.

In 1965, President Johnson prevailed upon Justice Goldberg to resign from the Supreme Court to succeed Adlai Stevenson as United States representative to the United Nations. In accepting the President's nomination, Justice Goldberg said that he could not "conceal the pain with which I leave the Court. . . . It has been the richest and most satisfying period of my career." And in a letter to his fellow Justices, he said that "only the most compelling call to duty could bring me to leave this Court. . . .

But that call did come, and I could not refuse." 382 U.S. ix (1965). In his new post, Ambassador Goldberg confronted many difficult issues relating to the conflict in Vietnam. He also played a role in the adoption of Security Council Resolution 242 after the 1967 war in the Middle East.

Following his resignation from the U.N. post in 1968, Arthur Goldberg continued to contribute to public life as ambassador-at-large to the United Nations, chairman of the U.S. delegation to a major conference on the Helsinki human rights agreements, professor at several universities, and distinguished practicing lawyer. His final appearance before this Court was in Flood v. Kuhn, 407 U.S. 258 (1972), an antitrust challenge to professional baseball's reserve system. In 1978, he received the Medal of Freedom, the Nation's highest civilian award.

Appearing before the Senate Judiciary Committee prior to his confirmation as a member of this Court, Arthur Goldberg said:

I would regard the first function of a judge, whether he sits in a trial court or an appellate court or in our highest tribunal, to make sure as much as any human being can that he puts aside his own prejudices, predilections, viewpoints, prejudices -- which we all possess and knowing



that he possesses them, try to administer justice equally under the law.

Throughout his public life, Arthur Goldberg remained committed to the rule of law. He recognized that "[t]he law gives form and substance to the spirit of liberty." Justice Goldberg's tribute to Chief Justice Warren is a fitting tribute to Arthur Goldberg himself: "He did his part in the sacred stir towards equal justice."

MR. CHIEF JUSTICE, on behalf of the lawyers of this Nation and, in particular, of the Bar of this Court, I respectfully request that the resolutions presented to you in honor and celebration of the memory of Justice Arthur Goldberg be accepted by the Court, and that they, together with the chronicle of these proceedings, be ordered kept for all time in the records of this Court.