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**“The Intensely Practical Nature of the Political Process”:**

**Judge Richard S. Arnold’s Legislative Role in the Third Branch**

Judge Richard S. Arnold served on the U.S. Court of Appeals for the Eighth Circuit for twenty-four years until his death in 2004. This paper, part of a larger biography, examines one instance of a very public “political” role for Arnold: Arnold’s oversight of the federal judiciary’s budget requests to Congress. Arnold was the political face of the judicial branch before Congress throughout the 1990s, a critical period for the federal judiciary. In budget negotiations with the executive and legislative branches, Arnold would emphasize the practical results for the third branch of expansions of federal criminal jurisdiction. This biographical study elucidates an unglamorous yet critical component of a court system – finance and administration – and Arnold’s efforts to gain the political upper hand for the lower federal courts.

[Note to readers: a draft of the paper described above is attached. If there is no easy fit for this subject matter or for judicial biography in general, an alternative proposal is a paper about the 1960 U.S. Supreme Court term, when Richard Arnold served as William Brennan’s law clerk. Arnold’s diary includes discussions of landmark cases from that term with an emphasis on Brennan’s role. This could fit with any Warren-era theme.]

**“The Intensely Practical Nature of the Political Process”:  
Judge Richard S. Arnold’s Legislative Role in the Third Branch**

**Polly J. Price**

Richard Arnold’s political experiences before he became a judge served him especially well in two endeavors. The first was his leading role in election law cases, especially in application of the Voting Rights Act of 1965 in Arkansas. In one of those cases, Arnold’s decision became an important national precedent, at least for a time, and changed the face of Arkansas politics. The case required Arnold to examine “the intensely practical nature of the political process,” as he termed it—a political process that he had experience with firsthand as an unsuccessful candidate for Congress.<sup>1</sup> It was part of the background of knowledge he brought to the task of judging.

The second area in which Arnold’s political knowledge was called into play was his work as chairman of the budget committee for the Judicial Conference. He was appointed to this position by Chief Justice William Rehnquist in recognition of his diplomatic skills and his familiarity with the Senate, stemming from his years as a legislative aide for Senator Dale Bumpers. For nearly a decade Arnold presented the federal judiciary’s annual budget requests to Congress. Rehnquist’s appointment of Arnold was especially meaningful because the chief justice for years was a firm advocate of more resources for the judiciary, and Rehnquist lauded Arnold for his “exemplary

service for the judiciary.”<sup>2</sup> It was in this work, as a representative of the federal judiciary before Congress, that Arnold believed he made his most important contributions as a judge.<sup>3</sup>

Arnold, then, was both a judge of the political process in election cases, and a participant in the political process as a leading spokesman for the judicial branch in Congress. Arnold’s pragmatic understanding of political realities informed his work in both instances.

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#### Budgeting Justice: Financing the Federal Courts

As a young man, Richard Arnold had wanted to be a United States senator. As he gained renown within the federal judiciary, an unexpected opportunity arose for Arnold to have regular contact with members of both the Senate and the House of Representatives in a political capacity. Chief Justice William Rehnquist appointed Arnold in 1987 to present the annual budget request of the federal reports before Congress, a job Arnold carried out for nine years. Arnold was the political face of the judicial branch before Congress for most of the 1990s, a critical period for the federal judiciary.

Rehnquist picked Arnold because of his familiarity with Congress, his experience as a senator’s aide and, equally important, because Senator Dale Bumpers, Arnold’s former boss and the man most responsible for his appointment to the federal bench, was a member of the Senate appropriations subcommittee responsible for the federal courts.<sup>64</sup>

The institutional ties between the federal courts and Congress are substantial. As summarized by Robert A. Katzmann, later appointed by President Clinton to the Second

Circuit, Congress “creates judgeships; determines the structure, jurisdiction, procedures (both civil and criminal), and substantive law of the federal courts; passes laws affecting such disparate areas as judicial discipline and sentencing policy; and sets appropriations and compensation. The legislative branch adds to the judiciary’s responsibilities whenever it enacts laws that result in court cases arising under the statutes.”<sup>65</sup>

Arnold appreciated the relationship of the federal judiciary with the executive and legislative branches of government. As he pointed out in a speech at the St. Louis University Law School, “The Federal Courts have neither the power of the purse nor that of the sword. This is why the courts are thought to be, by ourselves at least, the least dangerous branch of government.” The courts, he said, have no substantial money of their own, except for filing fees and admission fees from lawyers. The money must come from Congress “if the judges are to be compensated, if the lights are going to turn on in the courtroom, if the doors are going to open, and if the rent is going to be paid. That is the major source of Congress’ power and a major function of any legislative body in the democratic form of government.”<sup>66</sup>

Arnold was clearly in his element on Capitol Hill. He had enjoyed his years as a legislative aide to Senator Dale Bumpers, and Bumpers, in turn, recognized Arnold’s political skills at the time: “To me, he was much more than an aide. Even his political advice was almost always flawless. He was a master craftsman of legislation, and I never sent our legislation to the Legislative Council to be drafted. Richard did it all.”<sup>67</sup> Tom Eisele, his colleague on the federal bench in Little Rock, noted these political skills as well, but thought they were best employed as Arnold primarily used them as a judge: “I

think he would have loved to have served in the legislative branch, but truth of the matter is he belonged in the judicial branch.”<sup>68</sup>

The job as chair of the budget committee for the federal courts entailed frequent trips to Washington, DC, to testify before various committees in hearings on matters concerning the federal courts. In Arnold’s years overseeing the federal courts’ budget requests, the amount needed to fund the courts grew significantly. In 1987, the budget was about \$1.3 billion. By 1996, the budget request was \$3.1 billion.<sup>69</sup> The request had to be renewed every year.

Arnold was especially adept at pointing out the critical role the federal courts played in law enforcement—law and order being a perennial interest for politicians of all stripes. In 1996, for example, Arnold told the House Appropriations Committee, “The judiciary is an integral part of the criminal justice system, and as such, has a direct impact on public safety. As Congress continues to expand the role of the Justice Department, it increases the caseload and workload in the courts and the need for additional resources.”<sup>70</sup> In the closing decades of the twentieth century, Congress created an extraordinary number of new federal crimes, resulting in more work for federal prosecutors and federal courts, and larger populations in federal prisons.

In the same hearing, Arnold pointed out that the Justice Department increased funding for US attorneys by 7 percent, the Drug Enforcement Agency by 18 percent, and the Immigration and Naturalization Service by 25 percent. The federal courts had no choice whether to accept the accompanying rise in their workload. “Every case that is filed, whether criminal or civil, must be handled, and ultimately disposed of by the courts. Every indigent defendant charged in a criminal case must be provided court

appointed counsel. Every felon released from prison must be supervised.” Arnold told the committee, “We are making every possible effort to make the courts as efficient and cost-effective as possible. The Congress and the Executive Branch have more control over the judiciary’s workload than we do. As long as we comply with our constitutional and statutory mandates, and as long as the Congress and President continue to make fighting crime a high priority, our workload will increase. Increased workload means increased costs.”<sup>71</sup>

Arnold would also put into perspective the comparative amount of the judiciary’s request. In 1996, for example, Arnold noted that the requested budget for the operation of the federal court system for the coming year was \$3.47 billion, which represented just two-tenths of 1 percent of the entire federal budget. “We have been successful in holding down our request by deferring or delaying expenses where possible, and by implementing a large number of management innovations, improvements, and economy measures,” Arnold said in Senate budget hearings.<sup>72</sup>

The year 1993 had been a particularly difficult one for the judiciary’s budget. In a C-SPAN interview in March 1993, Arnold said, “We are going to run out of money to pay lawyers to represent criminal defendants” if the judiciary did not receive a supplemental budget from Congress. Arnold noted also that in a couple of months the federal courts would no longer be able to pay juries for their service.<sup>73</sup> The crisis had come about from a dramatic and unexpected increase in the federal courts’ criminal docket and a budget cut from the prior year. Congress did make a supplemental appropriation, but it took substantial lobbying on Arnold’s part.

The judiciary had asked Congress for an additional \$70.8 million to pay court-appointed lawyers and an additional \$7.5 million to pay jurors in civil cases. The situation was familiar because it was the third year in a row that the federal judiciary found itself running out of money. The year before, the judiciary borrowed money from other budget items to fund the shortfall, but Arnold noted the shortfall was “too great and the excess funds too few” to do that again in 1993. The year’s budget request had been cut by \$370 million—they were “cut to the bone,” Arnold said.<sup>74</sup>

During the Clinton administration, Arnold also capitalized on his friendship with the president to push the budget requests for the federal courts. Arnold wrote to Clinton in May 1994 about a budget amendment transmitted to Congress by White House chief of staff Leon Panetta that had erroneously subtracted \$285 million from the budget request for the federal judiciary. As Arnold informed Clinton, that development was contrary to an earlier agreement that “had occurred solely on account of your personal intervention.” Now, however, Arnold wrote Clinton that “the train has gone off the track,” and he asked once again for Clinton’s assistance with the judiciary’s budget request.<sup>75</sup>

Arnold wrote Clinton again in June 1994. It seems the matter was not yet resolved to Arnold’s satisfaction. He wrote, “It alarms me to hear our Subcommittee Chair say that you have targeted the Judiciary for cuts. I am confident this is not your intention, but it is clear that the situation will not change without personal intervention from you.” Arnold’s request was for Panetta to make it clear “on the Senate side that you are not proposing a decrease in the Judiciary’s budget request, and that you are asking that all parts of the budget as transmitted by you be given equal and fair consideration.”<sup>76</sup>

In response, Clinton wrote Arnold that he hoped to avoid “some of the confusion of the past” and that he intended “to carefully track funding for the Judiciary during the development of the FY 1996 budget.” Clinton also reported to Arnold he was “pleased that in a discretionary budget that’s virtually frozen for FY 1995,” the recently passed Senate version of the appropriations bill “provided the Judiciary with an eight percent increase over FY 1994.”<sup>77</sup>

In the following year, Arnold once again called on Clinton for his assistance with the federal judiciary’s funding. Arnold worried about a recurrence of the problem they had experienced in the past: the Office of Management and Budget wanted to cut the judiciary’s request before transmitting it to Congress. Arnold wrote Clinton,

I am writing to you immediately because I know this is occurring without your knowledge. The governing statute expressly provides that the President is to send to Congress “without change” the budget request of the Judicial branch. You made a decision at the time that OMB would not be allowed, in the future, to reduce our budget request. It surprises me to learn that we are, potentially anyway, facing a recurrence of this problem. Obviously someone in OMB is unaware of the decisions that you have made.<sup>78</sup>

Arnold later described the issue and President Clinton’s response:

In our view, this was a clear violation of the statute, as well as the almost uniform practice among the three branches of Government. Because I was

Chairman of the Budget Committee, it was my job to correct it. I called everybody I knew in the Executive Branch, including a lot of people in the White House. Finally, I called the President, who knew nothing about it. Granted, you would not expect him to be acquainted with the matter to that level of detail, but eventually he corrected it. It was actually one of the most satisfactory meetings I have ever had on budget matters. It took about three minutes, and he told me “yes” before I had even made my speech. I said, “thank you, Sir,” and that was the end.<sup>79</sup>

Arnold worked with alacrity to stay on top of the budget proceedings through both the White House and Congress. But at the same time he fulfilled Rehnquist’s expectation about his political sense—he was extremely “politic” in all his public statements about the relationship between Congress and the courts.

For example, he said in an interview that Congress had always looked very favorably on budget requests coming from the judiciary, and that the judiciary committee staff was very knowledgeable and easy to work with.<sup>80</sup>

Arnold also described his past relations with both the House and Senate: Interestingly, the two houses of Congress are very different. For about the first five or six years of my work, the Chairman of the House Subcommittee was the wonderful Neal Smith of Iowa. He gave us almost exactly what we asked for, to the extent that he could. From the House, one must go to the Senate which, under Senator Hollings, except for the last year, would always cut our requests. This year will be interesting because we have a new majority in both Houses. The House Chairman,

Harold Rogers from Kentucky, has been a ranking member for a number of years and is very knowledgeable. I am sure he will do the best he can for us. The Senate Chairman is Senator Gramm of Texas. I went to see him, and he said he would be the most supportive Chairman we have ever had for civil and criminal justice. He further assured me that he would do his best to get for us whatever we genuinely, reasonably needed. I was very encouraged.<sup>81</sup>

In the nine years Arnold presented the judiciary's budget request to Congress, he carefully emphasized a key factor that distinguishes the federal courts' request from the budget of other parts of the government that rely on Congress for funding. "We do not determine our own workload," he said. "In this respect, we are really a passive instrument of government. We do the work that Congress gives us to do. As new federal statutes are enacted, the workload of adjudication goes up." Arnold worried about suggestions by some members of Congress that the federal judiciary raise its filing fees to cover funding shortfalls. "Justice should not be for sale," Arnold said. While the courts should be open to the use of certain fees, those fees should not "raise unreasonable barriers to a citizen's access to justice."<sup>82</sup>

When Arnold stepped down as chief judge of the Eighth Circuit, Chief Justice Rehnquist and other members of the Supreme Court honored him in March 1998 with a dinner at the Supreme Court celebrating his work for the judicial branch. The nearly one hundred guests included Supreme Court Justices Antonin Scalia, Ruth Bader Ginsburg, David Souter and Clarence Thomas. The Judicial Conference's resolution honoring Arnold lauded him for "his gifted intellect, integrity, and statesman-like demeanor" and

for his leadership on the budget in which he “demonstrated unwavering good judgment and has earned our utmost respect and gratitude.”<sup>83</sup>

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Richard Arnold had wanted to be a political actor before he became a federal judge. Arnold’s appointment to the Eighth Circuit gave him two chances to continue his interest—one he must have anticipated and one he probably did not.

Arnold knew he was likely to encounter a number of election law cases and especially lawsuits brought under the Voting Rights Act of 1964. In these instances he became a judge of the political process, although he recognized the close constraints of his judgment based upon governing law.

In his work representing the federal judiciary in budget matters, it is not likely Arnold had anticipated an opportunity to engage so directly in setting national policy. Unlike Voting Rights Act cases, this work entailed a merger of “politics” with practical governance. In this way, perhaps Arnold’s hopes about being a political mover were realized, although not in the way that he had first imagined.

#### Notes

1. *Jeffers v. Clinton*, 730 F. Supp. 196, 198 (E.D. Ark. 1989), *affd.*, 489 U.S. 1019 (1991).
2. Quoted at <http://www.firstamendmentcenter.org/news.aspx?id=14098> (accessed August 15, 2008).
3. Interview with Richard S. Arnold, June 30, 2004.

64. Richard S. Arnold, "Money, Or the Relations of the Judicial Branch with the Other Two Branches, Executive and Legislative," *St. Louis University Law Journal* 40 (1996): 22.
65. Robert A. Katzmann, *Courts and Congress* (Washington, DC: Brookings Institution Press 1997), pp. 2–3.
66. Arnold, "Money," pp. 19–20.
67. Dale Bumpers, "A Tribute to Richard S. Arnold," *Arkansas Law Review* 58 (2005): 498.
68. Interview with G. Thomas Eisele, October 1, 2007.
69. Arnold, "Money," p. 22.
70. Quoted in "Judiciary's Budget Request for FY 1997 Relates to Law Enforcement Role," Federal Court Management Report, April/ May 1996, p. 1.
71. *Ibid.*, pp. 2–3.
72. "Judiciary Presents FY 97 Funding Request," *Third Branch* 28 (May 1996): 1.
73. C-SPAN interview with Richard S. Arnold and Gustave Diamond, March 17, 1993.
74. Henry J. Reske, "Federal Courts' Budget Blues," *American Bar Association Journal* (June 1993): 20–21.
75. Richard S. Arnold, letter to President Clinton, May 2, 1994. Clinton Presidential Library.
76. Richard S. Arnold, letter to President Clinton, June 23, 1994. Clinton Presidential Library.
77. Bill Clinton, letter to Richard S. Arnold, August 10, 1994. Clinton Presidential Library.

78. Richard S. Arnold, letter to President Clinton, November 2, 1995. Clinton Presidential Library. The statute Arnold referred to is 31 U.S.C. §1105(b).
79. Arnold, "Money," p. 24.
80. C-SPAN interview with Richard S. Arnold and Gustave Diamond, March 17, 1993.
81. Arnold, "Money," p. 26.
82. "Judge Richard Arnold: Presenting the Courts' Budget to Congress," *Third Branch* (June 1990): 9.
83. Quoted in *Third Branch* (March 1998): p. 3.