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The Life and Legacy of Judge Richard S. Arnold

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SENIOR THESIS APPROVAL

This Honors thesis entitled

“The Life and Legacy of Judge Richard S. Arnold”

written by

John Jacob Lively

and submitted in partial fulfillment of
the requirements for completion of
the Carl Goodson Honors Program
meets the criteria for acceptance
and has been approved by the undersigned readers.

Dr. Hal Bass, thesis director

Dr. Randall Wight, second reader

Dr. Lori Hensley, third reader

Dr. Barbara Pemberton, Honors Program director

May 7, 2012

Preface

The topic of this paper was chosen based on a discussion between my thesis director, Dr. Hal Bass, and myself. I told Dr. Bass that I was at a loss of ideas on what to do my senior thesis on. I told him that I was interested in doing something that had to do with law. After some discussion he presented Richard Arnold to me. I did not know who Arnold was at first but quickly learned about him. Being from Texarkana, it was very interesting to see how Arnold grew from his roots there to eventually be a highly distinguished federal judge.

As I started my research for the paper, I found the published resources on Richard Arnold to be limited. However, Polly J. Price, a professor at Emory University's School of Law, released a comprehensive biography entitled Judge Richard S. Arnold: A Legacy of Justice on the Federal Bench in 2009. This book was used as the basis for my research. In this paper, material from Price is used and all credit is due to her. Excerpts from interviews and publications were also found from Price's book. The bibliography for the book can be found on the works cited page alongside a few other sources that were used.

The Life and Legacy of Judge Richard S. Arnold

The world of politics entails a large variety of men and women from diverse backgrounds. Politicians range from mayors of local cities and state representatives to Congressmen and presidents. One other group that I consider to be included under the realm of politicians are those that serve in the judicial branch of the United State government. While judges may not be labeled Republican or Democratic, the political backgrounds of appointees are some of the driving forces to decide who serves on the bench. Studying the judiciary leads to coming across some historical figures that shaped history through the opinions that they wrote during their time of service. It is interesting to see the development of judges and how their past can shape the type of person they become and the decisions they make. The late Richard S. Arnold is no exception to that description. Arnold was a man who was shaped and molded by his upbringing to have certain opinions, gained freedom through the knowledge he gained in education, and ultimately developed his own opinions that led to influence his decisions while serving on the federal court of appeals for the Eighth Circuit from 1980 to 2004.

A Family Legacy

Born in Texarkana, Texas on March 26, 1936, Richard Sheppard Arnold was part of a family rich in the political world. His grandfather was Senator Morris Sheppard of Texas. Senator Sheppard was a leading figure in the preparation of the United States entry into World War II. Senator Sheppard died in April of 1941, prior to the US's entrance into the war. Interestingly enough, following her husband's death, Lucille Sanderson married the

other senator from Texas, Tom Connally. For a continuous forty years, Richard's grandfather and step-grandfather served in the Senate chamber.

Arnold grew up in a family culture where his future was predetermined for him. All men on both sides of his immediate family were lawyers. Not only were the men in the Arnold family involved in politics, but the women were as well. Arnold's grandmother, Kate Lewis Arnold, was a strong supporter for John L. McClellan for the United States Senate. Kate campaigned for McClellan against the incumbent Hattie Caraway, the first woman elected to the United States Senate (Caraway 1989). Kate Arnold was "not opposed to a woman for United States Senator if she is capable of giving that type of service we need. And I say frankly, that if Arkansas has a woman with capabilities for the type of service which Arkansas now needs, I do not know who she is."

The most influential person in Richard Arnold's life according to Price was his mother Janet Sheppard Arnold. Janet was "interested in everything to do with learning, and everything to do with politics. My interest in religion, study, intellectual pursuits, and reading is something that she transmitted to me." According to an interview conducted by Frances Ross, Richard's mother once told him "If I were a man, I would at least be a congressman" (Price, 2009). While Richard did make an attempt to fulfill his mother's desire, Richard's legacy would not be found in the chamber of the capital but would rather develop in the courtroom.

Molding a Man

One of the aspects that I want to focus on is how a person is shaped by the environment in which they grow up. Richard Arnold was shaped greatly by how his mother

was. It has been mentioned that she was involved with politics. According to Price, Richard's mother worked for voting rights for black citizens in Texarkana. Texarkana, which is located on the border of Southwest Arkansas and Northeast Texas, was a traditional segregated town during this time. Richard's mother would meet with the local chapter of the NAACP at her home to discuss issues going on. One story that Richard wrote in 2003 displayed the sympathy his mother had with blacks. Arnold recalled, "Mrs. John J. Jones, the wife of the President of the local chapter, would come to our house to visit my mother. But before she came, Mrs. Jones wished to be assured that she could come in the front door and sit in the living room. 'Of course,' my mother said" (Price, 2009).

Though that may seem like such a simple story, it was those type situations that ultimately led to the development of some of the opinions written by Richard Arnold. Arnold was growing up in a segregated world and throughout his high school and college career we see he favors segregation. However, he ultimately supports the enforcement of *Brown v. Board of Education*. I believe that subtle situations like the one described above played a part in shaping the judge that Richard Arnold became.

Education Background

Growing up, Richard Arnold attended schools that were racially segregated. He started out attending small private schools before moving over to Arkansas public schools for grades three through nine. Even at a young age, Richard was a very talented and intelligent young boy. When he was 13, he had to spend the summer inside due to having malaria. He used his time wisely and wrote a paper on the incorporation of the Bill of Rights in the federal constitution.

Growing up Arnold attended a mix of Baptist and Methodist churches. Arnold was always one who questioned what people said and wanted to seek truth. He left the Baptist church because of a teaching he had heard that said that "God made the world in six days in 4004 B.C.," but Arnold argued with his Sunday School teacher that rocks had been found that were older than that. Even at such a young age, the curiosity to seek truth was prevalent in Richard Arnold.

Arnold spent the beginning of his educational career in a segregated society in the south. Everywhere he went he was exposed to segregation. Texarkana was like any other town in the South during the days of segregation. This type of culture is what Arnold was exposed to and he did not display any dissatisfaction with the way things were. It is very interesting to observe the different cultures that Arnold was exposed to and how each culture shaped him into the judge that he became.

Located in Exeter, New Hampshire Phillips Exeter Academy became the home of Arnold at the young age of 14. Ranked today as the sixth best boarding school in the nation, Exeter was a highly respected boarding school of its day. Many of its graduates went on to attend Ivy League schools. Exeter was an all male school when Arnold attended. One would assume that a young boy from Arkansas would struggle in the new environment that Exeter brought, however Arnold flourished during his time at the Academy.

At Exeter, Arnold took a diverse curriculum. He concentrated on taking all of the Latin and Greek courses offered. Arnold was a normal contributor to the school's newspaper, a leader on the debate team, and participated in the Phillips Exeter Academy Student Senate. The Senate was modeled after the United States Senate. During their sessions the Senate would deliberate over current issues. During Arnold's time, some of the

issues discussed included communism in the United State and foreign policy. Arnold was elected president his senior year.

Arnold created a weekly column in the school's newspaper known as "A Jeffersonian View." In this column Richard would comment on some of his political opinions on issues. Price comments that looking through these columns, it is apparent that Arnold's stance on the policy of segregation in schools matched those of a traditional Southerner. During the time period that he was writing the column, the Supreme Court heard five different cases that would affect the policy of segregation in the public schools.

Even as a teenager in high school, Arnold displayed his opinion on the separate but equal doctrine. The following is an excerpt from his column "A Jeffersonian View" written on December 13, 1952.

"The separate but equal" doctrine has been accepted constitutional law since 1896. Why should there be a radical departure from established policy now, especially since such a departure would be extremely difficult to enforce? The management of the schools has always been a matter strictly for the states. The federal government has absolutely no legal justification for intervening; the Fourteenth Amendment nowhere bans segregation, it merely ensures the "equal protection of the laws" The "separate but equal" doctrine conforms both with the letter and the spirit of the amendment. The Supreme Court most certainly has no call to overrule it." (Price 2009)

While still a student at Exeter, Arnold had the chance to hear an address from Thurgood Marshall. Marshall was to speak on "race relations in the United States." In his address, Marshall mentioned many instances where through litigation by the NAACP, black students had been added to southern universities and law schools. Furthermore, he went into detail on the litigation strategy to achieve similar results in the public school systems. Marshall wanted to include psychological tests given to children to show the "terrible

effects that segregation leaves in their minds" (Price 2009). This would be the strategy used in *Brown v. Board of Education*.

Arnold was exposed to a wide array of speakers while at Exeter. Through each of these, one can see how he gained valuable insight into the workings of government at a young age. Typically, his column would reflect back on one of the recent speakers that appeared at the school. As far as his columns on segregation, Arnold only addressed the issue once. The other events of the times, communism and the cold war, were the more prominent topics during this time. Communism seemed to always be at the forefront of his columns and the debates that took place in the Senate at his school.

One of the most interesting conflicts with another student that arose during his time at Exeter was during a debate over the McCarran Security Act of 1950. The Act was a piece of legislation that required the "registration of communist organization and established a board to investigate persons suspected of being engaged in subversive activities" (McCarran Act 2007). In the school Senate, students voted 27 to 18 to repeal the Act. Arnold was sided with those who voted to maintain the act. He believed that if the McCarran Act were repealed, it would allow for groups to plot the overthrow of the government. In his column in the *Exonian* on October 24, 1951, Arnold claimed, "If we allow the Reds freedom of speech they would use this privilege to indoctrinate others, and it will mean the destruction of the democratic system."

From the debate in the Senate, a fiery exchange of letters began to be published in the *Exonian* between Arnold and those on the opposing side. In one of the articles, Arnold was labeled a "Junior McCarthy." The students were relating Arnold to Senator Joseph McCarthy. Senator McCarthy is widely known for his accusation made against members of

the state department that they were communists and that the United States was sheltering communists (Joseph McCarthy 2003). The problem that Arnold sought to point out was the conflict that arose in the minds of liberals when dealing with limiting freedom of speech. Liberals tended to favor complete freedom of speech and expression. The McCarthy Act sought to limit the spread of Communism in the United States. The question that Arnold was asking his classmates is one that he was asking all liberals, how can you tolerate those that want to destroy you?

Arnold felt that the faculty at Exeter tended to be politically biased. Many students used this for ammunition in their claims of Arnold's "McCarthyism." Arnold responded back in one of his columns by saying that the faculty should be comprised of a mix of political opinions.

"When the Department is composed of six or seven shades of Fair Deal and a moderate or two, the situation is deplorable. It should be easy for every thinking liberal or conservative to see that it is only by conflict in views, secured by a balance in the department, that students will be provoked to serious thinking instead of blind acceptance. The lack of conflict on political opinion in many parts of the school should be a source of anxiety to any genuine Democrat." (Price 2009)

Arnold's argument is one that stands true today. Many people believe that the absence of conflict leads to the mediocre acceptance of an opinion. People accept what they are told but are not passionate about or know why they accept what they believe. Only through a combination of conflict and openness can one really learn to know who they truly are and why they stand for what they believe. Professors have a large impact on their students and have the ability to help them develop and explore different opinions. Arnold noticed this and believed that a teacher was the "most eminently fitted to influence the opinions of others. Especially at the college

age is there a great opportunity for unscrupulous professors to take advantage of their position and indoctrinate their students with communism. Teachers, since they are better fitted than most men to influence unduly the thought of others, should be more carefully regulated."

During his time as a judge, Richard Arnold was known for being a strident advocate for freedom of speech. The author finds it interesting to "consider his early views with respect to communist issue and, specifically, loyalty oaths for professors." Price was trying to point out that Arnold ultimately comes to terms with the interpretation of freedom of speech when he sits as a judge. However, in this excerpt from the *Exoniam* on December 6, 1952, Arnold takes a stand on the limitations of freedom of speech.

"The opponents of the oath contend that it abridges the Bill of Rights because it limits the professors' freedom of speech. But it has long been an accepted judicial principle that freedom of speech can be limited when it offers a "clear and present danger" to the security of the community. What could be a clearer and more immediately present danger to the United States' security than communism? Certainly men should not be allowed to teach communism in the schools. This indoctrination is not an exercise of the right of free speech; it is a dangerously revolutionary tendency, since communism teaches the forcible overthrow of enemy governments." (Price 2009)

As his time at Exeter came to an end, Arnold found himself preparing to apply to college. While most of his classmates were applying to Harvard, Arnold applied to and was accepted into Yale. Arnold's father was a Yale graduate and so it was expected for his son to follow in the footsteps of his father. Indeed, Arnold's father "wouldn't hear of" his son going anywhere else. Richard Arnold ended up finishing second in his class at Exeter. This marked the only time that Arnold did not finish first in his class.

Arnold's time in prep school allowed for him to have the opportunity to explore the world outside of the segregated society of the South. He had the chance to understand his beliefs and to be challenged in what he stood for. Exeter allowed for Arnold to have a chance to create that foundation of being able to debate and communicate his beliefs. High school turned out to be a nice dress rehearsal for what was going to happen next, attending college at Yale.

Following in the footsteps of his father, Arnold fit in well as a man of Yale. During his time in New Haven, he majored in Latin and Greek. Additionally, he became involved in winning prizes for public speaking. Arnold went on to add an additional field of study after his freshman year, French. Many students took note at Arnold's intellectual ability. One of them, Gilbert S. Merrit, said "I knew that there was something about Richard 45 years ago, not long after we sat down next to each other for our first class as freshmen at Yale College."

Richard Arnold carried himself as an intelligent young man. His time at Exeter had prepared him greatly for the classes at Yale. He claimed that he found Yale less challenging academically than Exeter had been. During his time at Yale, Arnold experienced the loss of his mother. This moment led to him becoming more involved with the Episcopal Church at Yale. In his senior year at Yale, he was elected student president of its congregational council.

Arnold's religious interests were present through his college work. For his senior essay in classics, Arnold wrote a paper titled "The Emperor Constantine and the Christian Church." In the prologue, Arnold wrote in a way that revealed some of his religious beliefs.

"It is only fair to warn the reader that the author of this paper is himself a Christian, and therefore inevitably biased. The real reason why Constantine did what he did, in my opinion, is that the Holy Ghost told him to. Since this conclusion, however, would be unacceptable to many scholars, and since in any case the Holy Ghost generally works not directly but through the medium of historical circumstance, the opinions her advance will concern only what Gibbon called the "secondary causes" of historical development." (Price 2009)

Through this prologue, we see Arnold openly declare his faith. Furthermore, we see the character of a man of the law. Arnold understands that not everyone is a Christian and realizes that not everyone would understand the Holy Ghost. He goes on in his paper to offer "secondary causes" for Constantine's actions.

While at Yale, Arnold continued to be involved with political activities. He became a debater for Yale's varsity team. Price mentions one particular debate where Arnold clearly outshined the competition. "The Yale team was debating Oxford University in New Haven. One of the Oxford debaters quoted a Latin author. In Arnold's response, he said that his opponent had quoted only part of the piece. He proceeded to quote the rest of it in Latin from memory—then he translated it." At the end of his time at Yale, Richard Arnold found himself at the top of his class and delivering the traditional commencement address. As he prepared for graduation, he already knew what his next step was. His father had once again planned out the next chapter. Arnold was going to attend Harvard Law School.

While Arnold was preparing to enter Harvard Law School, his home state of Arkansas was making headlines. At Little Rock Central High School, nine black students were denied entrance into the school. The conflict caused a standoff between Governor Orval Faubus and President Dwight D. Eisenhower over the

enforcement of *Brown v. Board of Education*. Eisenhower eventually sent in Army troops to help calm the situation.

The images of the events in Little Rock were all over the media. For the small town boy from Arkansas, Arnold found himself ashamed of what was happening back in Arkansas. Arnold later wrote:

“When I first arrived at the Harvard Law School in September of 1957, the events at Central High School, including the Governor’s obstruction by military force of the order of the United States District Court were in full swing. Most conversations between students who meet each other for the first time include the questions, “Where are you from?” I was humiliated to have to answer the questions.” (Price 2009)

At this point, Price points out the line that Arnold had drawn in the sand. She notes that Arnold felt that it was one thing to oppose *Brown v. Board of Education* as a constitutional matter. However, the chaos that was happening in Little Rock was unnecessary. Arnold stood by the fact that the Supreme Court had spoken, and a federally mandated desegregation of public schools was now the law of the land. Here we can see Arnold’s regard for the judicial branch even when he disagreed with a decision.

Arnold’s time at Harvard featured a number of high profile speakers. Shifting from the issues like communism that were discussed during his prep school years, desegregation and civil rights were now at the forefront of the Supreme Court’s agenda. Some of the speakers that Arnold heard included US Senator Strom Thurmond and Judge Learned Hand of the Second Circuit. Arnold also was very successful academically his first year at the Harvard Law School.

Following the completion of his first year of law school, Arnold married Gale Palmer Hussman of Camden, AR. Hussman was a member the Hussman family, a

prominent family in South Arkansas who owned many media outlets. Arnold was soon after named to the *Harvard Law Review*. The position was reserved for students who were at the top of their class. In his third year, Arnold was elected as case editor. He had many interactions with what would become a plethora of successful judges and law professors. One of those, Supreme Court Justice Antonin Scalia, wrote in a memorial tribute "A close bond of friendship between New York City and Texarkana seems unlikely, but it came to be, particularly during the two years Richard and I worked together on the Harvard Law Review. We had in common two qualities not shared by many of our colleagues: an orthodox Christianity and a classical education."

During the years of Arnold's education, he had the opportunity to gain insight about the world outside of the southwest corner of Arkansas. He was challenged to value the opinions of others and use them to strengthen his own. Arnold recognized that "understanding the past—including his own—was crucial to understanding contemporary problems of race in America." Growing up in the segregated society of South Arkansas in the 1940s and 1950s helped him to recognize true discrimination. In an interview in 1988, Arnold said, "Cases of race or gender discrimination were as plain as the nose on your face." Arnold also understood how valuable it had been to grow up in the society in which he did.

Supreme Court Law Clerk

Following his graduation from Harvard Law School, Arnold returned to Arkansas to study for the bar exam. To prepare for the exam, he read the Arkansas

statutes in their entirety. This method led to him receiving the highest score since the institution of a written exam for admission to the Arkansas bar. The dream job for any recent law school graduate is to have the ability to clerk on the Supreme Court, and Richard Arnold was no exception.

Arnold had graduated top of his class but was denied the top clerk spot for a Harvard Law graduate. The position, to serve as a Felix Frankfurter law clerk, was the pinnacle for a Harvard student. Frankfurter was a graduate and former professor of the Harvard Law School. He had created a law clerk position strictly for the most distinguished graduate from HLS. Arnold was not awarded the position. The professor in charge of selecting the recipient labeled Arnold as "too conservative" for the position. Arnold later made the claim that Albert Sacks, the professor in charge of selecting the Frankfurter law clerk, "did not like Southerners."

As mentioned, Arnold's family roots with politics ran deep. His grandmother had married two senators from Texas. When she found out that her grandson was seeking a clerkship on the Supreme Court she wrote her friend Felix Frankfurter. Arnold described the situation, "She wrote Justice Frankfurter a letter saying, 'Here's my grandson, why don't you hire him?' Apparently he read the letter on the bench and passed it down the row of justices, and when it came to Tom Clark, being from Texas, he knew my grandmother well. He called her up and said, 'I'll give him a job.' This was very embarrassing to me. I didn't want to get a job that way, and Tom Clark was not well-regarded."

Justice William Brennan was Dwight Eisenhower's recent nominee for the Court. Brennan selected Arnold as one of his two law clerks for the year. The next

year led to a close relationship forming between the justice and his two law clerks. Arnold recalled that on most days they would drive him to and from his house in Georgetown discussing the Court's pending cases. Brennan invited the two clerks over to his home for holidays and family events. Arnold took a deep interest in seeking Brennan's approval. When Arnold was assigned to draft an opinion for Brennan, in his journal he would note how pleased he was when the Justice would compliment his work.

Arnold developed a profound respect for Brennan and his ability to help mold the high court. In an interview later in his life, Arnold made note of how Brennan had the ability to affect the court by his personality.

"Personality, no doubt, is important. Judges are human beings. They live in bodies and react on a personal level. But judges do not cast votes simply because their backs are slapped in a particularly engaging way. What Justice Brennan did, he did as a lawyer and as a judge, and his master of the English language, of the history of the Constitution, and of the technical aspects of the law played at least as big a part in his success at constructing majorities as the warmth of his personality and manner." (Price 2009)

Arnold's time as a law clerk helped him to see how the Supreme Court functioned. This exposure would lead to his ability to function as a Judge for the Court of Appeals. One of the most important lessons he learned from his experience was that the Supreme Court has the final word. Those that were not on the Supreme Court had to follow the precedent that the high court had set.

Brennan was known for his thought of a "living constitution" and took an aggressive approach in interpreting it. He felt that the constitution should be interpreted not literally but should be interpreted by the circumstances of the present not the past. At the beginning of his clerkship, Arnold expressed skepticism

about Brennan's judicial approach, however by the end of the year, that skepticism had become less evident. During his clerkship, Arnold was shaped by Brennan's approach to decisions. Arnold gained a better appreciation for the nature of the judicial task. Brennan and Arnold developed a long-lasting friendship. In a letter to Brennan after completing his clerkship, Arnold wrote: "My only wish for the next five years is that you will be more often on the winning side."

Another Justice that Arnold developed a lot of respect for during his tenure with the Court was Hugo Black. Black had been a member of the United States Senate from Alabama. He was at heart a politician before he was a judge, just like Arnold hoped to be. Arnold admired Black's "ability to anchor his decision in the text of the Bill of Rights. Justice Black is a great one for insisting that the Constitution itself compels his positions" (Hugo Black 2012). Arnold had developed tremendous respect for Justice Black. Black was someone that Arnold "admired immensely, then and now." When Arnold became a judge himself, he kept an autographed picture of Black on a wall in his court chambers in Little Rock, next to photos of William Brennan and Felix Frankfurter. Arnold's fellow clerk Dan Reznick, also noted that Justice Black became a model for Arnold:

"When we were law clerks, in addition to having vast affection for Justice Brennan, we both became great admirers of Justice Hugo L. Black. For us he was the example of a judge dedicated to rigorous legal analysis, mindful of practice concerns and considerations, and yet ever faithful to first principles. I think that model of a judge has remained with Richard ever since. He also shares Justice Black's commitment to civil liberties and the Bill of Rights, while at the same time he has the ability to look at all side of an argument with discernment and sophistication." (Price 2009)

Arnold learned so much during his year serving Justice Brennan. He saw how important it is to have agreement between members of the Court on important issues, such as in the case of *Cooper v. Aaron*. In the case, which came out of Little Rock, the Supreme Court ruled that states are bound by the Court's decisions and have to enforce them even if the states disagreed with them (*Cooper v. Aaron* 1958). This was a very important case in establishing the supremacy of the court's decisions. Through his time with the Court, Arnold saw how tiring and stressful the profession could be. He remarked later in life, how he learned to appreciate the work that Justice Brennan and the others did during conferences. "Justice Brennan would come back from a conference with his notebook and sit down with us and go over the cases they had discussed, and tell us what the court was going to do. Except on days when he was too tired, and on those days, he'd just give us the notebook. I never did understand why it would make somebody so tired to sit in a room and talk about the law for a couple of hours, until I did it myself with a bunch of other judges. And now I understand it."

New Beginnings

Following his Supreme Court clerkship, Harvard School of Law offered Arnold a position on the law faculty. Arnold turned down the position and instead entered into the world of practicing law. For the first three years after his clerkship, Arnold was employed with Covington & Burling in Washington D.C. Arnold had previously clerked with the firm following his second year of law school. His plan was to work for the firm following graduation from Harvard Law School if he did not

land one of the clerkship positions with the Supreme Court. While working with Covington & Burling in 1959, Arnold developed an interest in antitrust law.

Antitrust law deals with "regulating trade and commerce by preventing unlawful restraints, price-fixing, and monopolies, to promote competition, and to encourage the production of quality goods and services at the lowest prices, with the primary goal of safeguarding public welfare by ensuring that consumer demands will be met by the manufacture and sale of goods at reasonable prices" (Antitrust Law 1997).

One of Covington & Burling's staple divisions was in antitrust law.

Upon his return to the firm after his clerkship, Arnold worked alongside Gerhard Gesell, a noted antitrust lawyer. Gesell served as a federal court judge in the District of Columbia and went on to preside over landmark cases, including both the Pentagon Papers and Watergate prosecutions. Arnold was influenced by Gesell and claimed that he "taught me how to practice law and gave me an example of a lawyer, a citizen, and a gentlemen." David Falk, a former classmate of Arnold, noted that Gesell had a "reliance on Arnold for the analysis and strategy for many of his cases." Also worth noting is the fact that Gesell was one of the "major liberals" at Covington. Arnold's exposure to the ideas and the actions of Gesell undoubtedly shaped who Arnold would become. Instead of choosing to stay at the large prominent firm he was at, Arnold decided to head back to Arkansas and join the family firm in Texarkana. All of his prior experiences were preparing him for a life in politics, which was his dream. The next step that was necessary for him was to travel back to Arkansas and start getting involved in the local politics.

Arnold returned back to his father's law firm in Texarkana in October 1964. The firm, Arnold & Arnold, had been around for over 40 years and was highly respected. While with the firm, Arnold had the chance to work on a variety of legal issues. On one occasion, Arnold worked with his wife's brother, Walter Hussman Jr., on a couple of legal issues. Hussman, who was involved with the family media business, recalled that a surprising fact about Arnold was that "even though he was an intellectual, he was easy to work with and had a surprising understanding of basic business problems. He seemed to be able to talk to all types of people." Even though Arnold was a man who had been educated at highly regarded institutions, his ability to still connect and communicate with people made him an effective lawyer. Arnold mentioned later in life that one of the aspects of working in a small-town law practice was that it was necessary to take "whatever comes in the door." A wide array of cases came through that door giving Arnold the chance to work on death penalty cases, environmental cases, and much more.

Arnold had the chance to experience two extremes. His exposure in both a high-powered law firm and a small-town practice allowed for him to relate with a wider range of people. Arnold also was an accomplished legal scholar. He published a number of articles in law journals while working at Covington & Burling and at the firm in Texarkana. One of his publications while in Arkansas included a survey of antitrust cases decided by the United States Supreme Court. Arnold's continued interest in antitrust law also led to him serving as an adjunct professor at the University of Virginia Law School.

Up to this point, Richard Arnold had not only been shaped by his educational background, but his background and experience in dealing with the law and exposure to the judicial process molded his judicial philosophy that he would one day hold. Arnold's plans were not to seek a position on the bench; instead his desire was to seek election to a public office. Up to this point, all of his life was a preparation for such a position. However, the plans that he had dreamed were not necessarily what he accomplished.

Entrance into Politics

Through his time in high school and college, Arnold identified himself as a member of the Republican Party. During the 1960s, Arkansas was not a welcoming environment for a Republican. Arnold became a Democrat upon his return to Arkansas. His experiences led him to become more ideologically aligned with the Democrats. Additionally, the political climate of Arkansas was geared toward Democrats. Arnold was now set to throw his hat into politics. As word spread of Arnold's new entrance into the political arena through Washington, some of them had high predication of success for Arnold. Shortly after Arnold returned to Arkansas, Justice Brennan wrote to Arnold and said that he thought he would be returning back to Washington under a new name. "Mr. Senator. We are all particularly intrigued that you are getting your feet wet in politics. We've got bets on how soon they'll be sending you here to Washington, but I won't tell you how we stand until we see who has won."

As Arnold switched parties, he also began to separate himself from the influence that Brennan and Gesell had on him. Arnold was becoming a politician. He had to make moves that would ultimately get him elected. Being a full-blown left-winger was not the way to office in Arkansas. Instead, Arnold identified himself as a Southern Democrat who was conservative on social issues. In addition to preparing to run for office, Arnold delivered a number of lectures throughout Arkansas regarding a wide variety of topics. His experiences were rare for someone from Arkansas and the stories and perspectives that he provided them intrigued his audiences. Once he was addressing the Lion's Club in Texarkana. During the lecture, he chose to analyze the United States Supreme Court. The audience wanted to have a better understanding of how the members of the court fell on a political scale of liberal or conservative. Arnold responded to them by saying, "The issues that appear before the Supreme Court cannot fall into specific category of liberalism or conservatism."

During a question and answer time with the audience, Arnold was asked about a recent case the Court had just heard, *Engel v. Vitale*. In the case, the question the Supreme Court addressed was "Does the reading of a nondenominational prayer at the start of school violate the 'establishment of religion' clause of the First Amendment?" The court decided that it did indeed violate the First Amendment. Justice Black wrote the majority opinion in which he expressed that "New York public school officials could no promulgate an official prayer, even if nonsectarian, because it was a practice wholly inconsistent with the establishment clause" (*Engel v. Vitale* 1962). Arnold sought to clarify that the Court's were not antireligious but

rather they sought to interpret the Constitution at the best of their abilities. "It is my opinion that the Supreme Court had no anti-religious motive in handing down this decision, and was only acting in the interest of the purest interpretation of the Constitution of the United States."

Through this experience, we see how the extreme the views can be between the normal day person to someone who had an inside view of how the Court worked. Many people tried to label the Court as liberal or conservative but Arnold argued that those tags are not appropriate for the Court. They did not make decisions solely based on their opinions but instead sought to interpret the Constitution to protect the rights of all. Arnold went on to write a number of editorial columns for the *Texarkana Gazette*. In one piece, he discussed the retirement of Felix Frankfurter and President Kennedy's replacement for the position, Arthur Goldberg. Many felt that a stable member of the Court was fixing to be replaced by a "dangerous liberal." Arnold wrote in his editorial that when Frankfurter had been appointed to the Court in 1939, he too was seen as a radical.

"That this fear turned out to be without any justification is a measure of the two most important facts that must be kept in mind when judging a new appointment to the Supreme Court: first, that a man who puts on judicial robes and thus removes himself, to a large degree, from the changes and chances of this mortal political life, often turns out to be quite another man than he had seemed; and second, as Felix Frankfurter himself never tired of pointed out, the terms 'liberal' and 'conservative' really have very little meaning to the business of judging." (Price 2009)

In 1966, Arnold finally took a step into a political race. He ran for the open seat in Arkansas' Fourth District for the United State House of Representatives. The contest included a field of five candidates but the race was truly between Richard Arnold and David Pryor. Pryor was serving in the Arkansas legislature at the time.

Arnold had all the “right tools for him to be successful in the campaign—financing, political connections, and media.”

One of the obstacles that Arnold knew he would have to face when returning back to Arkansas was his dealings with Governor Faubus. In school, Arnold was embarrassed by the actions of the Governor for how he handled the Central High School situation. Knowing that Faubus was a key political figure in the state, Arnold had discussed with Brennan during his clerkship on how he should handle Faubus. Arnold recalled the moment later in life, “I remember Justice Brennan telling me—he gave me some political advice. He said, ‘What are you going to do when you get home, politically?’ I said, ‘I’m going to do everything I can to defeat Faubus.’ He said, ‘Don’t do that. He’s the leader of the party. You can’t beat him. Just be calm about it.’ So I tried to follow that advice.” Arnold sought the endorsement of Faubus for the Fourth District but Faubus said he “would take no part in the Fourth District race.” Arnold knew that Faubus would prefer for any candidate but Pryor to win the seat. During his tenure in the Arkansas legislature, Pryor had been very critical of Faubus.” In David Pryor’s autobiography, *A Pryor Commitment*, he relives a moment from the early days of his 1966 campaign in which he had a telephone conversation with Arnold.

“My first call was to Richard Arnold of Texarkana. A lawyer in private practice, he was married to Gale Hussman, whose father ran the Palmer chain of newspapers and radio stations...Richard Arnold’s wide connections throughout the district could prove invaluable, and I wanted him on my side before anyone else go to him. “Richard,” I said when he came to the phone, “Oren Harris is resigning his seat, and I plan to announce today. I’m calling to ask if you’ll manage my campaign in Miller County.” Long pause. Then he said, “I’ve just heard that myself, David, and I was about to call and ask if you would like to head my campaign in Ouachita County. I’m also announcing today.” (Pryor 2008)

As Arnold sought to sell himself as the candidate who would best represent the Fourth District, he identified himself as a “conservative, to be against labor unions and closed shops, as an anticommunist and a supporter of the war in Vietnam.” Additionally he identified himself as a Christian. Arnold felt that his Christianity was a vital part of politics. He considered “politics a Christian vocation. Public officer are ministers of God just as much as our ordained clergy, but in a different sense.” Additionally, Arnold’s campaign flyer highlighted some of his “qualifications.” They included:

- “Lawyer, admitted to practice in Arkansas and Washington, DC.
- Author of articles on State-Federal Relations
- Three years of Washington law practices before federal agencies.
- First in grades on the Arkansas Bar Examination, and in his college and law school classes.
- Active in 1964 campaign for all Democrats.” (Price 2009)

During the campaign, Arnold began to take a more balanced approach to dealing with the Supreme Court. Where at first it seemed that he always would take up for the Court’s decisions, he encouraged citizens to take an approach that would encourage debate but would not damage the institution. “It is the citizen’s right and duty to criticize decisions with which he disagrees. But the criticism should be temperate and informed, instead of emotional. The careless habit of labeling the court ‘Communist’ or ‘atheist’ whenever one happens to disagree with them is a poor substitute for thought.”

During the Democratic primary, none of the five candidates received the majority of the votes. Arnold was second behind Pryor by a significant margin. This left the field with only two candidates remaining—Pryor and Arnold. The race was

now in a dead sprint to the election. From then on, the two engaged in a cross-country speaking circuit through the rural areas of South Arkansas. They spoke to a wide variety of organizations and would speak to anyone that would listen to what they had to say. One of the issues that rose to be the most prominent issue in the race was over labor. Arnold was in favor of Arkansas's "right to work" law. This law maintained, "Employees could not be required to join a union as a condition of getting or retaining a job." Arnold said that he was not anti-union or anti-labor but that, "An organization of members with free choice will ultimately become stronger. The issue is a matter of personal liberty, a personal association that cannot be compelled."

Arnold sought to cast an image of Pryor as being a puppet for the union bosses. The election was turning into a mudslinging event between the two candidates. Arnold claimed, "There is a clear-cut choice between my opponent and me. I stand for a conservative constitutional government and my opponent for liberalism and pro-union policy." Arnold was setting himself up to either be successful in the campaign or fall into being on the losing side of a nasty campaign. One week prior to the election, Arnold took a desperate step and aired a 30-minute speech. Price notes that this moment was Arnold's "most confrontational point of Arnold's political career." In the speech, Arnold claimed that David Pryor "was controlled by powerful out-of-state union bosses." He went on to add that Pryor:

"Voted 100 percent for union labor demands, 100 percent for the wishes of union bosses outside the Fourth District and even outside the State of Arkansas. This record is evidence of domination and control by union bosses, instead of freedom and independence. If you want the Teamsters Union to have a Congressman from the Fourth District, if you want another rubber

stamp for Walter Reuther and Jimmy Hoffa in Washington, D.C., then vote for David Pryor on August 9.”

People must have only listened to the last few words of Arnold’s speech. The Fourth District elected David Pryor as their Representative for the United States House of Representatives. Pryor received 65 percent of the vote in the run-off election. Additionally, Pryor went on to win the seat in the general election by a margin just under 2:1. At the end of the campaign, Arnold found himself asking questions on what had went wrong. He had prepared himself extensively for a career in politics. It is worth noting the two candidates relationship with Governor Faubus. Pryor had went against Faubus extensively where Arnold had never publicly opposed the Governor. Faubus was on the verge of exiting Arkansas politics so his influence was diminishing

Could this move by Arnold to not oppose Faubus led to his defeat in 1966? I believe that it played a part in it. Pryor had campaigned himself as a “reform” candidate. In modern day terms, Pryor on a much smaller scale had advertised himself as the candidate of change, parallel to Obama’s strategy in 2008. He sought to separate himself from what was going on with Faubus and to draw the votes of Democrats who were opposed to Faubus. Arnold’s inability to communicate his distance from Faubus made him seem like the candidate who would be just like the others.

The 1966 campaign cost Arnold over \$80,000. As much as they were political opponents in the race, Pryor and Arnold went on to develop a strong friendship. As Price mentions, Pryor’s “support as a senator was critical for Arnold’s later judicial appointments and Pryor was an early proponent of the view that Richard Arnold

deserved to be on the United States Supreme Court. Arnold still maintained his strong friendship with Justice Brennan and his family. One story that Price tells reveals this:

“Over a decade later, a newly elected Senator David Pryor was invited to a small dinner party in Washington, DC. His seating card for the event placed him next to Marjorie Brennan, the wife of Justice William Brennan. When Pryor introduced himself, Mrs. Brennan responded with a laugh (Price, 2009), “Yes, I know who you are, and I don’t like you because you defeated our friend Richard.” (Price 2009)

Following his defeat in the election, Arnold moved on to securing himself a place in state politics in Arkansas. The *Arkansas Gazette* reported that after his loss to Pryor, Columbia School of Law had offered Arnold a teaching position. He turned down the position. Arnold said that he was more concerned with staying in Arkansas and helping his state. “I told him [William C. Warren, dean of Columbia School of Law] that I wasn’t interested because I felt that far too many people leave Arkansas seeking opportunities and jobs in large cities. I believe that more people should stay in Arkansas and help build our state.”

Beginning in 1968, Arnold became a member of the Arkansas Democratic State Committee. He served as the chairman of its rules committee. While Arnold was continuing his involvement in Arkansas politics, his father continued to work at the law firm. He knew that his son had political aspirations since politics ran deep in the family. However, Arnold’s father never took an interest in being involved in politics. Richard Lewis Arnold went on to say that his son’s campaigns for Congress were “all right with him if he wanted to waste the best damn legal mind he ever saw.”

Senator William Fulbright chose Arnold as a delegate to the Democratic National Convention of 1968 in Chicago. In a letter to Arnold, Fulbright wrote: "I have put your name on the list as a delegate. I do not anticipate any problem with this". Arnold felt that a change needed to be made in the selection process for delegates. As he saw with Fulbright, the delegates were selected based on who would follow the orders of the person who picked them. Fulbright expected Arnold to support whoever Fulbright wanted. To address this issue, Arnold proposed that all future delegates to the Democratic National Convention be elected by members of the party at large in a primary with an equal number of delegates coming from each congressional district. The unit rule was another topic that was called into question. Under this rule, all delegates cast their vote as a block as directed by the party leadership. Arnold's resolution requested the "state general assembly to enact legislation to provide for popular election of delegates and to recognize that the unit rule had been abolished by the Democratic National Committee." Eventually the state legislature took the position Arnold proposed and passed a bill to support it.

In 1966, the Democrats lost the governorship of Arkansas to the Republicans for the first time since the Reconstruction. With only 11 percent of Arkansas voters identifying themselves as Republicans prior to the election, Arnold felt that the Democrats needed to become more organized. Arnold felt that the Democrats had "never really had a political party in Arkansas. But we must develop one now, to meet the organized opposition." Arnold felt that the Democratic Party needed to find "A new, progressive, relatively young face" for a party leader. It seems that Arnold was trying to set himself up to be that person. Arnold sought to rally young

Democrats around the state to step up and replace members of country party organizations who were “old and uninterested.”

Though Arnold tried to find a way to defeat the Republicans, Governor Rockefeller enlisted the services of Arnold in drafting some of his initiatives. Arnold helped to draft some of Rockefeller’s tax codes. Additionally, the Governor appointed Arnold to serve on a commission that would consider drafting a new state constitution. To Arnold’s credit, he won an elected position as a representative to the constitutional convention. This was the only time Arnold held an elected office. Unfortunately, he won the seat because he was unopposed.

Arnold made tremendous steps in helping to draft a new state constitution. His connection with the Hussman family allowed him use the media to try and encourage voters to accept the new constitution. In the new constitution that was absent from the existing one included: “specific prohibition against discrimination on the basis of sex; a guarantee of the right of association; protection against unreasonable invasions of privacy; guarantee of a preliminary hearing in felony cases; expansion of protections of criminal defendants in the areas of right to counsel, change of venue, and double jeopardy; and a broadening of the ability of individuals to file suit against the government when it was alleged that the government had acted illegally.” Additionally, the proposal sought to replace the system for election judges with an appointment process.

Arnold was one of the main drafters of this proposed constitution. There seemed to be a recurring theme in all of the additions to the constitution. Most of them dealt with protecting individual rights. As a judge, Arnold was known for his

protection of individual liberties. His work on this project provided a glimpse into his stances on protecting individuals. Arkansas voters ultimately voted down the constitution that the convention had drafted. One of the convention delegates, G. Thomas Eisele, believed that "the constitutional provisions should have been presented to voters not as a package deal but piecemeal over time." One of the aspects of government that is important to notice is that people do not like sudden change. The structure of the United States government was created in such a way to prevent sudden changes. Instead, changes must take place over time. This structure of the government has led to people being more comfortable with smaller changes over time instead of making drastic changes in a short period of time.

Arnold meets Bumpers

Dale Bumpers was elected as governor of Arkansas in 1971. After Arnold ran another unsuccessful campaign for the Fourth District in 1972, Bumpers enlisted Arnold to be an aide in Little Rock. Arnold became legislative counsel for the governor. His responsibilities included supervising the drafting of Bumper's administration bills, supervising lobbying on behalf of the administration with the Arkansas Senate and House, read each bill that passed the General Assembly, advise the governor whether or not to sign the bills, and drafting a veto message if Bumpers decided to disapprove a bill. Bumpers decided to run for a seat in the United States Senate against J. William Fulbright. Arnold helped with the campaign and continued to work for Bumpers in Washington.

Bumpers would be a very important figure in Arnold being appointed to the US District Court. As Price mentions, "it took an alignment of stars for Richard Arnold to become a federal judge, that alignment was the confluence of Jimmy Carter's election, a Democrat-controlled Senate, Griffin Bell and attorney general, and most important, the influence of a freshman senator from Arkansas, Dale Bumpers." Bumpers was a rising star in the political spotlight. In Washington, Arnold fulfilled the role of what Bumpers considered to be "right arm" on all legislative matters. Bumpers went on to nominate Arnold for the US District Court vacancy in Little Rock. The Senator went around introducing Arnold to various members of the Senate. In Price, we find an excerpt from an interview with Arnold where he reflects on this time.

"One day when Senator Bumpers and I got on the elevator in the Dirksen Senate Office Building, who should come on with us but the powerful James O. Eastland, chairman of the Senate Judiciary Committee. And so we got on the elevator and Dale said, "Jim, Richard here," -and he jerked his thumb at me—"Richard has been nominated to be District Judge, and I want you to confirm him." And Senator Eastland looked at him, and said, "Whatever you say, Dale." Then we got down to the bottom of the building and it was time to get off the elevator. The doors opened up, and Eastland looked at me and said, "After you, Judge." (Price 2009)

After going through interviews with the Department of Justice and other parts of the process, Arnold was confirmed to be a federal judge. He did not have time to get rooted in to the position though. Less than a year after being appointed to the position, he was being considered for a newly created seat on the Eighth United States Circuit Court of Appeals. At first Arnold's name was mentioned based upon his status as a great judge. However, as with most political deals, there was an underground motive of why he was eventually appointed to the Court of Appeals.

President Carter wanted to place more minorities in political positions throughout the South. Those positions included judges. Bumpers believed that Arnold was highly qualified enough to serve on the Court of Appeals but some were contemplating placing a minority in the position instead. Eventually a deal was made between Attorney General Griffin Bell and Senator Bumpers to put forward Arnold's name for the Eighth Circuit Court of Appeals in exchange for the appointment of George Howard to become Arkansas' first black federal judge. Arnold had been promoted to the Court of Appeals in order to make room for Howard to fill Arnold's position.

Life on the Eighth Circuit

Through his time on the Eighth Circuit Court, Arnold heard a wide array of cases. Three of these present a representation of the issues that he dealt with during his tenure. The first cases dealt with the Little Rock School District and desegregation. Cases were still being heard over desegregation in Little Rock and were being brought to the Court of Appeals. Some of the highlights from these cases included a 1985 opinion from Arnold that school consolidation was not the answer to de facto segregation in Pulaski County schools and ruling that the Little Rock School District be released from more than forty years of federal court supervision of its desegregation efforts.

Another of Arnold's prominent rulings was a 1989 decision requiring the Arkansas Board of Apportionment to create super-majority districts to ensure that voters in the Mississippi Delta would elect some African American state legislators.

In 1990, when Bill Clinton won his last term as governor, Arkansas voters set precedent by electing blacks to one position in the Arkansas State Senate and ten of the one hundred seats in the Arkansas House of Representatives.

The final case shows how Arnold's judgments lined up with the opinions of the Supreme Court. The Minnesota Junior Chamber of Commerce (Jaycees), a national organization with over 7,000 chapters and nearly 300,000 members, did not admit women. A case was filed and the Minnesota Department of Human Rights ordered that Jaycees must admit women to full membership in its local chapters in the state. The Jaycees brought suit in federal court claiming that the decision was unconstitutional. The case was argued in front of the Eighth Circuit Court of Appeals and was overturned to rule in favor of the Jaycees. Arnold wrote the opinion for the case, which was eventually overturned by the Supreme Court.

Through these various cases, we see how it was difficult to label Arnold as being Republican or Democrat, liberal or conservative. He seemed to strike a balance in his ruling. In the supermajority case, one would seem to want to label him as being liberal since he was wanting to empower minorities. In the case of the Jaycees, we see clear discrimination against women that Arnold sides with. This action goes against any liberal leanings. Arnold was a judge who knew how to strike a balance in the courtroom. Because of this, he was eventually considered to be a member of the Supreme Court.

Clinton and the Supreme Court

Arnold had befriended a young Bill Clinton back in Arkansas. After Clinton was elected as President, he faced filling a vacancy on the Supreme Court in 1994. Many people believed that Arnold was the right fit for the position and held the upper hand due to the Arkansas connection. Clinton hesitated though. According to Clinton's autobiography *My Life*, Clinton would have named Arnold to the Supreme Court in 1994 had not he had been diagnosed with lymphoma. Whether or not Arnold would do a good job was not the question. Clinton figured that if he appointed Arnold to the position, he would die in the near future when a Republican was President and would be allowed to fill the vacancy with a pick from that party. Clinton was known to be "weeping when he told Arnold that he wasn't going to appoint him because of Arnold's health."

The Legacy of the Judge Richard S. Arnold

Through my research, I have come to grasp a deeper understanding of the judicial system, politics, and the long lasting influence a person from small-town Arkansas can have on a country. Richard Arnold's life reflects one that always sought to bring light and focus it on the truth. His brother Morris Arnold, who served with Arnold on the Eighth Circuit Court of Appeals, praised Arnold's work as being "consistently high-quality work he has done. He was second to none in the country. I mean that literally." Arnold's legacy goes beyond the walls of a courtroom. His perseverance to strive for excellence in academics and in everything he did is noticed. In 2003, Congress renamed the federal courthouse in Little Rock the

"Richard Sheppard Arnold United States Courthouse." The courthouse was underway when Arnold passed away in 2004. In September of 2007, President Clinton delivered a dedication address to the audience.

"Richard Arnold was one of the best on the bench, one of the most brilliant people I met, and one of the finest. It is no surprise that the courthouse is named in his honor. Richard was an inspiration to me personally and professionally. And I am very proud to have the chance to honor him today. His death was a great loss to all of us, but I know that he would be so proud that through this courthouse, his love of the law and public service will be carried on through the next generation of jurist. This courthouse is a fitting and permanent reminder of a brilliant man, a great judge, a patriotic American, and a cherished friend."

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