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## Tribute to the Honorable Richard S. Arnold

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## PASCO M. BOWMAN II\*

Having served for more than fifteen years with Judge Richard Sheppard Arnold, I feel qualified to write a few words about him. He is a truly remarkable and impressive person. I consider it a great privilege to serve with him on the same federal court of appeals.

At the time of my appointment to the court, Judge Arnold was one of the first of my new colleagues to call and say congratulations. He made it clear he had checked me out with his sources and the word he had gotten back was that I was a good guy, or something to that effect. I replied that I was glad to have passed muster, but that even if I had not, he was stuck with me anyway. We laughed, and our relationship was off to a good beginning. In all the ensuing years, it has never deviated from that good beginning. He is a highly valued colleague and has become a cherished friend.

Our court is notable for its collegiality, its lack of rancor, for the true feeling of warmth and friendship among its members. Part of the credit for that must go to Judge Arnold, particularly during the time of his service as our chief judge. His tact, courtesy, good judgment, and respect for others, as well as his unflagging attention to the business of judicial administration, have set the standard for all of his successors as chief judge.

Since his appointment to the court of appeals in 1980, Judge Arnold has become one of the undisputed leaders of the federal judiciary. His service as chairman of the Budget Committee of the United States Judicial Conference was exemplary. It is not too much to say that he amazed observers with his encyclopedic knowledge of the judiciary's budget, or that he deeply impressed them by the capable way in which he presented the annual budget request to Congress. He similarly distinguished himself in his service as a member of the

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\* Chief Judge Bowman has served on the United States Court of Appeals for the Eighth Circuit since 1983, and as chief judge since April 1998. Prior to his appointment to the bench, Chief Judge Bowman was Professor of Law and Dean at the School of Law at the University of Missouri in Kansas City.

Executive Committee of the conference. To paraphrase the boast of a certain brokerage firm, when Judge Arnold speaks, people listen.

Judge Arnold is a brilliant and accomplished person. He was first in his undergraduate class at Yale and first in his law school class at Harvard. He clerked for Justice Brennan at the Supreme Court. He successfully practiced law, first with a large firm in Washington, D.C., and then with his family's firm in Texarkana. Under the tutelage of Senator Dale Bumpers, he learned the political ropes in Washington as a member of the senator's staff. Eventually, he ran for Congress but lost in the Democratic primary. In retrospect, we can view his loss as a fortunate one. Had he won a seat in Congress, a judgeship might never have beckoned. As things turned out, in 1978 President Carter appointed him to the district court and the rest is history. Congress's loss was definitely the judiciary's gain.

Judge Arnold has many traits that I greatly admire. Among them is clarity of thought and of expression. His ideas are always well formed, and he knows how to communicate them in a simple and economical fashion. Though steeped in the classics and in classical languages, in his writings and his speech he eschews Latin phrases in favor of plain, easily understood English (except when bantering in Latin with his younger brother, Judge Morris Sheppard Arnold). His clear, uncluttered style augments the quality of his thought, giving added force and persuasiveness to his ideas.

I also greatly admire Judge Arnold's courage in standing up for his principles. He is not one to trim his views about what the law or the constitution requires in the cases on which he sits. He is not often a lonely dissenter, but when he believes the court is in error, he does not shrink from stating his views separately, or from supporting a petition for rehearing *en banc* if he thinks the issue is important enough. He always goes where the law and the facts take him, whether or not the destination is a popular one.

Judge Arnold has demonstrated another kind of courage—the courage to look into the face of severe adversity and to stare it down. Confronted several years ago by a serious illness, he underwent a series of unpleasant and debilitating treatments, and he prevailed. He dealt with the illness stoically, gracefully, and

even with a measure of good cheer, all the while maintaining his heavy work schedule and being extraordinarily productive. I am sure his strong religious faith, as well as the support of his wife Kay and the other members of his family, helped to sustain him throughout this difficult time. We rejoice that he has been restored to good health.

Another trait I greatly admire is Judge Arnold's unfailing courtesy to everyone with whom he comes in contact. His respect for individuals knows no bounds, extending from presidents, members of Congress, and justices of the Supreme Court to the beggar we used to pass almost every morning as we walked to the courthouse in St. Louis. Judge Arnold knew the man's name, always spoke kindly to him, and always put something into his cup. He can be firm when the situation calls for firmness, but his firmness never takes the form of an attack on another person's dignity. In all the years I have known Judge Arnold, I never have heard him utter an unkind word to anyone.

Where to stop? I do want to point out that Judge Arnold is a convivial dinner companion. He also is an excellent golfer. Like his opinions, his shots are crisp and on target. Like his approach to the law, his swing is a model of consistency. And no matter what the situation, his demeanor on the golf course is just as it is elsewhere: unflappable.

Finally, I would comment that Judge Arnold is committed to the institutional well being of the federal judiciary and to keeping the rule of law alive and well. His tireless work on the budget committee and the executive committee of the judicial conference illustrates that commitment, as does his service as our court's chief judge. That commitment is accompanied by a generous spirit toward his colleagues, as witnessed by his stepping down last April, almost a year early, to give me an opportunity to serve as chief judge before I reached the age at which taking up a chief judgeship is barred. I am grateful to Judge Arnold for his generosity and his confidence in me. He believes it is good for our court that more of its members have a turn as chief judge, and I agree with him, for I am learning that the insights and understanding gained from the experience are quite valuable.

To sum up, Judge Arnold is a great judge, a delightful colleague, and a wonderful human being. We are fortunate to know him and to have him in our midst.

GILBERT S. MERRITT\*

Richard Arnold's playing partners are in for a treat when his golf ball arrives at the green. He pulls out a 100-year-old putter with a worn, but finely polished, antique wood shaft. His grandfather, a lawyer in Texarkana, first putted with it at the turn of the century. Richard's father inherited it and played with it for many years. Now it is Richard's. No telling how many balls it has rolled into the cup. In Richard's steady hands, as another fifteen footer drops in, the old putter seems like a magic wand with a long memory for how a golf ball will run and break.

But I do not intend to dwell on Richard's golf game. The old putter is not only lovingly connected with Richard's family. It is symbolic of a life and mind rooted in history, with an uncanny memory for people, events and literature, legal and otherwise, and with a sense of balance and moderation based on the Golden Mean and a deep understanding of history.<sup>1</sup> When Richard works, or talks or writes, the ball always seems to drop in the cup.

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\* Judge Merritt has been a member of the United States Court of Appeals for the Sixth Circuit since 1977, served as Chief Judge from 1989-96, and served as a member and as a Chairman of the Executive Committee of the United States Judicial Conference. Prior to his appointment to the bench, he practiced law in Nashville, Tennessee, and was a member of the faculty at Vanderbilt University Law School.

1. In a fascinating lecture last year at NYU on the problem of constitutional interpretation, as seen through the eyes of James Madison, magnified through the lens of Richard Arnold, Richard has this to say about his own love for history:

The question of the relevance of Madison's views is one you will have to answer for yourselves. My own view is that history is important because it's intrinsically interesting, or, to put it in plain language, history is fun. It may also be of some use in the work we have to do in our own time.

Richard S. Arnold, *How James Madison Interpreted the Constitution*, 72 N.Y.U. L. REV. 267, 269 (1997), an article that those interested in constitutional history should read as soon as possible.