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Tribute to the Honorable Richard S. Arnold

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disadvantage in argument, and his views of the law were far more grounded in precedent and history than most of the rest of us, who considered ourselves policy makers and legal realists. We sometimes thought of him as a brilliant anachronism, but if we tried to hammer that home in debate we were quite likely to have our arguments met and more than matched with surprising ease by Richard.

What was most striking then was that, although he liked to argue, he had no desire to dominate; that he believed more deeply than most of us in the law as an institution with its own rules; and that he was absolutely committed to intellectual as well as personal honesty. Even those who found his views too conservative would trust him to respond to their arguments openly, honestly, and respectfully.

Two other traits were already there although they would grow as the years went on. He had a sense of humor about himself, based in a deep sense of humanity and fallibility that has made him a great human being. And he had a sense of fairness to all that now shines through his opinions.

I was and am very lucky indeed to have Judge Arnold as a friend.

PRICE MARSHALL*

And thou shalt teach them ordinances and laws, and
shalt shew them the way wherein they must walk,
and the work that they must do.

Inscription on the front of Austin Hall at the
Harvard Law School, quoting *Exodus* 18:20.

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It started with bow ties. One day at lunch, when I was attending Arkansas State University, I saw a lawyer friend at a restaurant. For some reason I was dressed up in a suit and a bow tie.

“You look like Richard Arnold,” he said.

“Who,” I asked, “is Richard Arnold?”

Several years later I was in law school, and I kept hearing about him. “Don’t worry about trying to write a perfect exam,” my civil procedure professor told my class. “It’s already been done, but only once.” And then my professor told us about a former student, now a federal judge in Arkansas, named Richard Sheppard Arnold. He wrote his civil procedure exam in a neat, printed handwriting that looked like typing between the lines of the paper. He cited every case by its complete name and correct citation. He addressed every issue thoughtfully and thoroughly. “Perfect,” my professor said. “You won’t be able to match that.” We didn’t.

I therefore knew it was blind luck when I got invited to Little Rock the next year to interview with Judge Arnold for a clerkship. I went to his house on a beautiful Saturday afternoon. Kay, his wife, met me at the door. “I’ll tell the Judge you’re here,” she said and offered me a seat. With the edginess of an interviewee, I latched onto Kay’s words and sat wondering: what kind of man was called “the Judge” by his wife?

“The Judge” and I talked for an hour—about Arkansas, politics, his brother, and London. The law came up a time or two. His words revealed a gentle spirit, a thoughtful nature, and an amazing mind. But I left perplexed because we had more of a conversation than an interview. Later I learned why. It wasn’t an interview. Judge Arnold is from the old school on clerkships, and he trusts and relies on the recommendations of a few close friends. I was only there to take what the Judge calls “the crazy test”: as long as the applicant is not crazy, he gets the job.

I passed. From August 1989 until August 1991 I served as one of Judge Arnold’s law clerks. It was the best job I’ve ever had.

* * *

RSA involved his clerks in each step of his work. My co-clerks and I divided and studied the briefs in the cases the Judge

was scheduled to hear. Then the three of us spent our afternoons circled around the Judge's desk, giving him what one of our predecessors called "book reports" on the cases. All the while RSA taught us the law under the pretense that we were preparing him for oral arguments.

One afternoon, a fellow clerk summarized an immigration case about a question of extradition.

"Do they cite *Ker v. Illinois*?" the Judge asked.

"No sir."

The Judge got up, went to his set of United States Reports, and pulled down a volume. He opened the table of contents and said quietly to himself, "I thought the name was spelled with one 'r,' not two." Flipping to the case as he walked back, he said, again only to himself, "Oh, it was a typographical error." Handing the book to my co-clerk, the Judge explained the holding in *Ker* to us and why this decision from 1886 controlled the case he was about to hear.¹ That is RSA: gifted with an encyclopedic knowledge of the law, and rarer still, blessed with the patience to teach young lawyers.

* * *

The Judge taught us more than the law. Unfailingly courteous, he treated every person with respect. To him, manners revealed morals, and he always stopped his work to talk—with us, with his fellow judges, and with the folks who cleaned the chambers as we worked into the evening together. RSA showed us that work could wait, but people could not.

The Judge also showed us how laughter leavens the day. One of my co-clerks kept a kangaroo doll (a souvenir from a trip to Australia) in her office. "Kanga" was always into mischief, and the Judge joined our antics. Once RSA got a telephone message from Kanga saying that she was in the Pulaski County Jail and needed his help. RSA responded with a note: "Call her back and tell her I am ethically forbidden to intervene."

The Judge loved a good laugh, especially on himself. A frequent visitor to chambers was an elderly woman who long ago had been a client at the law firm of Arnold & Arnold in

1. Compare 119 U.S. viii (table of contents listing *Kerr v. Illinois*), with *Ker v. Illinois*, 119 U.S. 436 (1886).

Texarkana. She had known wealth, but had fallen on hard times and often wandered in her own world. The Judge spent many hours listening to her troubles. But even his patience had limits. Returning from a cruise around the Mediterranean with Kay, he summoned all the law clerks and his two secretaries into his office. The elderly former client had telephoned him—in Istanbul—and talked his ear off. The Judge wanted to know who had given her the phone number of his hotel. The culprit, he said, would be boiled in oil. All of us pleaded innocent, and we were excused.

The next day, after the woman had come for a visit, the Judge called us all back in. He was laughing at himself. He was the culprit. Before he left he had told her about his trip and the stop in Istanbul. It had been easy to find him, she said, because there are only two good hotels in Istanbul and she knew he would be at one of them. The Judge apologized for doubting us, and we left him still laughing at himself.

The flow of our work in chambers was steady, but usually not overwhelming. At times, however, the flood came. Judge Arnold's reaction was always the same: when there was more to do than we possibly could, he slowed his pace. I would be caught up the rush, moving too fast and making mistakes. But the Judge would pause for breath, and take the extra care that comes from moving deliberately. His calm reassured us; it was more important to do the job right, than to get it done on some particular schedule.

Taking time for people, for laughter, and to do the job well. Only a great-souled man can keep such a balance when pressed by this world. And so the Judge showed us the way in which we should walk.

* * *

The Judge divided the cases that fell to him to write into three groups. Easy cases he wrote himself because he could do the work very quickly. Hard cases he wrote because they demanded it. And we clerks helped him write the opinions in the cases in the middle. The Judge would outline the court's reasoning, provide the architecture of the opinion, and then put one of us to work. We usually worked on one opinion at a time. His timetable for us never varied: "Work on it until you get it

exactly right.” When we were done, the draft opinion went to his conference table with the briefs and the record. And after he revised it, and made it completely his own, he circulated the draft to the other judges on the panel.

He expected our best in our work. When we let him down, he corrected us gently and reminded us to keep striving to do better. We lived for his comments on our draft opinions. They came in his small printed hand, in black ink, at the top right corner of the first page. An “excellent draft” could lift your spirits for days. A “very good job” always brought contentment. His comments, however, were not always sweetness and light; they were the truth. I recall a draft that I had hurried through. He kept my first sentence and rewrote the rest of the opinion himself. That was his comment. And I learned from it that high expectations are the best teacher.

The Judge had some general rules for opinions. First, the facts had to be correct. No exceptions. So we studied trial records, checked facts, and double-checked each other’s work—all to be sure that every opinion kept faith with the record. Second, every opinion had to be understandable to the losing party—not only to his lawyer, but also to the litigant himself. The Judge insisted that his opinions rest on reasons and explanations, not case citations and conclusions. That seemed right to me then, but I did not really understand until I started practicing law; now I’ve lost cases, and had to explain why to clients, and I do. Third, the Judge’s opinions had to be well written. He insisted that we learn the difference between “that” and “which,” where “only” goes in a sentence, that “breach” is a noun and not a verb, and when to hyphenate phrasal adjectives. As RSA told us, it makes some difference whether you mean a purple people-eater, or a purple-people eater. Following the rules of grammar and usage made our thinking and our writing clearer. It also taught us the importance of being faithful in small things.

The Judge is fond of Holmes’s advice: the craftsman’s task is “to hammer out as compact and solid a piece of work as one can, to try to make it first rate, and to leave it unadvertised.”²

2. OLIVER WENDELL HOLMES, JR., *The Class of '61*, in *THE ESSENTIAL HOLMES* 94 (Richard A. Posner ed., 1992).

Echoing Holmes in his example and his precepts, RSA showed us the work we must do.

* * *

Lawyers often comment on the bow ties I wear, and ask if I picked that up from Judge Arnold. I smile, say no, and leave it there. The truth is deeper. Bow ties are not his mark on me. But the little law I've ever really understood, the balance I seek in my life, and the habit of sticking to my work until the job is done as well I can do it—all these and more I owe to him.

RICHARD W. GARNETT*

Judge Arnold has joked that his appointment to the bench was based on “merit”—“[his] merit was that [he] worked for a Senator.”¹ Well, I’m not a judge; I was just a law clerk.² But, like Judge Arnold, I got my job on “merit”: My “merit,” and the reason I had the privilege of clerking for Judge Richard,³ was that his brother, Judge Morris (“Buzz”) Arnold, had the good sense to hire my wife. One brother did a favor for the other and, as a result, I was blessed with the chance to spend a year in Arkansas pilfering the Whitewater jurors’ snacks, hiking in the Ozarks, and learning from Judge Richard.⁴

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1. Richard S. Arnold, *Trial By Jury: The Constitutional Right to a Jury of Twelve in Civil Trials*, 22 HOFSTRA L. REV. 1, 1 (1993).

2. Just to be clear, law clerks are not judges. Some people these days appear to have lost sight of this fact. See, e.g., EDWARD LAZARUS, *CLOSED CHAMBERS* (1998); Tony Mauro, *Corps of clerks lacking in diversity*, USA TODAY, March 13, 1998, at 12A. Judge Arnold has not, which is just one of the many reasons he is a good judge.

3. I hope Judge Arnold knows that his extended “chambers family” often calls him (though not to his face) “Judge Richard,” and his brother, “Judge Buzz.” If not, I apologize for this “leak.” In fact, this would not be the first time I’ve mistakenly spilled the beans to the Judge. I once inadvertently let slip in Judge Arnold’s company the “secret” that, when he is out of town, his clerks wear jeans.

4. Judge Arnold’s own clerkship, with Justice Brennan, came about through more