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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* Richard W. Garnett is an associate with Miller, Cassidy, Larroca & Lewin in Washington D.C. He served as one of Judge Arnold's law clerks during the 1995-1996 term.

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

I don't think it is news to anyone who knows anything about the law that Judge Richard Arnold is a great federal judge. He is very, very smart—one of the stories about him in Washington is that, when he left Covington & Burling, the associates had to start going back to the library[5]—and he is gracious, devout, and wise. He is precisely the sort of judge, and his decisions display just the kind of reasoned and thoughtful craftsmanship, that law reviews should be praising, law students studying, and lawyers emulating. I was honored to work for him and I am proud to know him.

This is—no surprise—not the first time that Judge Arnold has been honored in the law reviews. A few years ago, the *Minnesota Law Review* published several tribute articles about the Judge, in part—or so it seems to me—to make the case that Judge Arnold belonged on the Supreme Court.[6] (He does.) One of those articles contained a few nuggets about the life and work of a Judge Richard law clerk.[7] The piece was, for the most part, accurate. It is true that he decides cases for himself, he reads all the briefs, he dictates a lot of his own opinions, and he doesn't *really* need us. But, with all due respect to the article's distinguished authors, their account could use a little "filling out."

For instance, it has been said that the Judge divides his cases into "three broad categories: If they are simple, he writes the opinions himself because they can be completed in a few minutes. If the case presents a difficult issue, he also writes the opinion himself because he is unsure what exactly to instruct the law clerk to do. The medium cases, he divides for first draft purposes among his four clerks."[8] I suppose this is how the Judge looks at it. But remember, he is an uncommonly smart person. And just so the taxpaying public knows that his law

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orthodox channels. *See* Richard S. Arnold, *In Memoriam: William J. Brennan, Jr.*, 111 HARV. L. REV. 5, 5 (1997) ("In those kinder and gentler days, one did not apply for the job; it was simply offered.").

5. For example, Judge Arnold knew, off the top of his head, who was the only Pope in history to abdicate (Celestine V).

6. William J. Brennan, Jr. et al., *A Tribute to Chief Judge Richard S. Arnold*, 78 MINN. L. REV. 1 (1993).

7. John P. Frank & A. Leon Higginbotham, Jr., *A Brief Biography of Judge Richard S. Arnold*, 78 MINN. L. REV. 5, 11-12 (1993).

8. Frank & Higginbotham, *supra* note 7, at 11.

clerks try to earn their salaries, and on behalf of every Judge Richard clerk who has ever sweated over what certainly *seemed* to be a "difficult issue," I respectfully dissent from the "Judge Arnold keeps all the hard cases" theory. That said, it is true and as it should be that, as the Judge told us early in our clerkship year, "The clerks may draft a lot of the opinions, but I write all of them."[9]

For the law clerks, the high drama in the opinion-drafting process was when the Judge strolled across the hall to the clerks' offices with our re-worked first drafts. His meticulously printed edits would be scattered throughout the draft, along with re-written sentences, requests for further research, questions, grammatical changes, stylistic flourishes, and, often, mysterious Latinisms. Most important for us, though, in the upper-right corner, there would usually be a few cryptic, printed syllables—"O.K.," "Good," "First-rate job," or, in my case, "too long." (That the Judge keeps long-winded clerks in line is another reason, or illustration of, why he is such a good judge.)[10] I don't think I have been prouder in my short legal career than when the Judge returned my draft in what seemed to me to be a tricky tax case with "excellent" written at the top-right.

The other Eighth Circuit clerks' introduction to the Judge usually comes in St. Louis, at an orientation held during the court's first fall sitting. I remember that we were to be drilled on the Sentencing Guidelines and other mysteries of federal practice. Judge Arnold began the session with a short talk on drafting opinions, and the talk was as Strunkian as his opinions.[11] He asked us please not to use the phrase, "totality of the circumstances." That phrase, he thought, is turgid, ponderous, and over-wrought. "The circumstances" does the job just fine. Also, he urged, avoid referring to the principles announced in cases, or to the steps in a process of legal reasoning, as "tests" with "prongs." So, I spent a fair bit of time translating the Supreme Court's ever-increasing body of prong-law to "factors that guide our analysis" or "steps in our reasoning."

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9. He also told us, "The opinions are 50% yours and 100% mine."

10. Frank & Higginbotham, *supra* note 7, at 20 ("The typical Arnold opinion is short and never windy.").

11. WILLIAM STRUNK, JR. & E.B. WHITE, THE ELEMENTS OF STYLE 23 (3d ed. 1979) ("Omit needless words.").

The Judge also taught me and all the other clerks the value of judicial courtesy. He is unfailingly polite to the lawyers who argue before him, even, frankly, when they step out of line. He is respectful and attentive even in the most drop-dead-boring cases. And, in every case argued by appointed counsel, he goes out of his way to thank the attorneys for their assistance—"We appreciate your taking this case. It is a big help to us." In fact, ever since I left my clerkship, I've been angling for an appointed case in the Eighth Circuit, just so I can hear the Judge say that to me.

I sometimes joke that a job with Judge Arnold has the best intellectual-satisfaction-to-stress ratio of any legal job in the country. I suppose this is why I have so many wonderful memories from my clerkship (without the horror stories that seem to go with the territory in other chambers): Waiting in line at a greasy, noisy, sweaty, and outstanding Little Rock barbecue joint, the Judge in seersucker, reading slip opinions; the Judge and his brother chiding each other in Latin over dinner in St. Louis; our chambers betting pools (not for money, of course) during the early 1996 primaries, and the Judge's hilariously poor predictions;[12] the daily trip to the jury room to scavenge a few doughnuts—chocolate for the clerks, plain glazed for the Judge; my co-clerk's efforts to convince the Judge that good coffee really is better than bad coffee; the Judge at his Christmas party proudly introducing his guests to the results of my (perfectly legal) home-brewing efforts as "Eighth Circuit brew"; and the sight of all his former clerks, his staff, his wife, and even the President (on video), sporting bow ties at the party celebrating his 15th anniversary on the bench.

Now, the Judge is a bit of an aristocrat, and a Southern Gentlemen, in the true and best sense of both those words,[13] so we law clerks were under no illusions that we were his

12. The Judge actually predicted that Senator Gramm would win the New Hampshire primary.

13. Frank & Higginbotham, Jr., *supra* note 7, at 5 ("Before Richard Arnold was born . . . , the good fairies gathered and agreed to bestow upon him three gifts: a silver spoon for his mouth, an uncommon brilliance for his mind, and a profound sense of spirituality for his heart."). Professor Thomas Shaffer has written a variety of wonderful articles on the "Southern Gentleman Lawyer," which remind me of Judge Arnold. *See, e.g.*, Thomas L. Shaffer, *The Moral Theology of Atticus Finch*, 42 U. PITT. L. REV. 181 (1981).

"buddies." But it was precisely because he usually maintained just the right amount of dignified and professional distance from us that it was so much fun when, for whatever reason, the distance shrank. Because he didn't tell us everything he was thinking, we were able to enjoy sitting in our cramped offices across the hall from his, in Little Rock's relatively decrepit federal courthouse, wondering "what the Judge would think" about various things.

* * *

When Judge Arnold offered me a job, I have to admit that I knew little about him other than that he was viewed by many as a longtime acquaintance of President Clinton's and likely nominee to the United States Supreme Court. But soon after I learned that Judge Arnold was the judicial equivalent of *papabile*, my real introduction to him came when I read his short opinion dissenting from the *en banc* Eighth Circuit's denial of a motion for a stay of execution in *Schlup v. Delo*,[14] a death-penalty case.[15]

Briefly, Lloyd Schlup insisted that he was "actually innocent" of murdering a fellow inmate in Missouri, and that his factual innocence constituted sufficient cause to permit the *habeas* court to review his otherwise-barred claim that his trial counsel had been ineffective. Judge Arnold's short opinion—it is only a few paragraphs long—is an excellent example of his judging. There is in the opinion no fiery rhetoric, no self-righteousness, no indignant accusations, and no hand-wringing. Instead, the judge set out clearly and succinctly two legal questions that, in his view, were sufficiently "deserving of this Court's *en banc* time."[16]

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14. 11 F.3d 738, 754 (8th Cir. 1993) (Arnold, C. J., dissenting from denial of suggestion for rehearing *en banc* and of motion for stay of execution), *vacated*, 513 U.S. 298 (1995).

15. On my first day at work, I inherited from my predecessor law clerk a list of "Arnold-isms," which included a warning regarding Judge Arnold's careful attention to the demands of the unit-modifier rule, citing one of his recent opinions, *Reed v. Woodruff County*, 7 F.3d 808, 809 (8th Cir. 1993) ("The report also stated that [the deceased] killed himself, apparently unintentionally, while engaged in auto-erotic asphyxiation."). Old habits die hard.

16. *Schlup*, 11 F.3d at 755.

On the first point—whether the *Sawyer v. Whitney*[17] "no reasonable juror" standard or the *Kuhlmann v. Wilson*[18] "fair probability" standard applies when a *habeas* petitioner seeks to avoid a procedural default on grounds of factual innocence—Judge Arnold candidly acknowledged that "[the] panel did what it had to do" in rejecting Schlup's claim, because it was bound by an earlier Eighth Circuit case interpreting *Sawyer*.[19] However, Judge Arnold believed that the earlier panel might have misread *Sawyer*, and that the full court should correct the earlier panel's mistake. Notwithstanding the seriousness of the question, and his doubts about the merits of the earlier panel's decision, it didn't appear to occur to Judge Arnold that the *Schlup* panel could or should have disregarded it. To some, this might seem an insignificant point; to me, though, it shows Judge Arnold's respect and commitment, even in hard cases, to the rule of law.

Next, Judge Arnold noted that, in *Herrera v. Collins*,[20] a majority of the Supreme Court Justices appeared to have recognized that compelling evidence of actual innocence might serve as a free-standing ground for *habeas* relief, and not simply as a "gateway" for review of otherwise barred claims.[21] While maintaining a proper deference to the panel judges' view of the evidence in Schlup's case, Judge Arnold suggested that the case appeared to him a plausible occasion for invoking *Herrera*. The Judge recognized that *en banc* review by an appellate court is not generally the appropriate forum for deciding such "fact-intensive question[s] . . . . But where human life is at stake, I believe that rehearing *en banc* is appropriate whenever a petitioner makes a substantial claim."[22]

As it turned out, the Supreme Court agreed with Judge Arnold.[23]

I realize that Judge Arnold's little opinion in *Schlup* is not the usual grist for law-review tributes. And I recognize that the

17. 505 U.S. 333 (1992).

18. 477 U.S. 436 (1986).

19. *Schlup*, 11 F.3d at 755.

20. 506 U.S. 390 (1993).

21. *Schlup*, 11 F.3d at 755.

22. *Id.*

23. Schlup v. Delo, 513 U.S. 298 (1995). Judge Arnold appears to have better luck in the Supreme Court when he is dissenting than when he writes the majority opinion. See *infra*.

Schlup case was far more complicated than the above few paragraphs might suggest. In my view, though, the Judge's short dissent showed clearly what good judging should look like. In fact, I thought of that opinion when I read Judge Arnold's recent tribute to Justice Brennan, in which he praised the opinion in *Cooper v. Aaron*[24] (written by Justice Brennan) by pointing out that, in addition to being just and right, it was "not verbose" and "gentle in manner, strong in substance."[25] I know that *Schlup* is no *Cooper v. Aaron* (except to Mr. Schlup), but, in both cases, as Judge Arnold would put it, "[t]he maxim, *suaviter in modo, fortiter in re*, comes to mind."[26]

The opinion in *Schlup* is short, clear, respectful, reasonable, modest, and rigorous—all qualities sometimes missing in death-penalty decisions.[27] Judge Arnold did not accuse the *en banc* majority or the panel of bloodthirsty insensitivity nor did he suggest that the court had or should have free rein to toss aside the Supreme Court's demanding and sometimes deadly standards governing post-conviction procedure, even in a case that, like Schlup's, presented the real danger of the ultimate miscarriage of substantive justice. "[H]uman life [was] at stake,"[28] and, while not a license for intemperance or lawlessness, that fact was enough to warrant the most exacting judicial scrutiny the law permits.

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24. 358 U.S. 1 (1958).

25. Arnold, *supra* note 4, at 7.

26. *Id.*

27. *See, e.g.*, Kills on Top v. State, 928 P.2d 182, 213 (Mont. 1996) (Trieweiler, J., specially concurring) ("The dissent touches all the politically correct buttons."); Payne v. Tennessee, 501 U.S. 808, 844 (1991) ("Power, not reason, is the new currency of this Court's decisionmaking.") (Marshall, J., dissenting); Callins v. Collins, 510 U.S. 1141 (1994) (Scalia, J., concurring in denial of petition for writ of certiorari); *Id.* at 1141 (Blackmun, J., dissenting from denial of petition for writ of certiorari). In general, Judge Arnold's opinions in death-penalty cases have reflected at the same time his respect for juries, lower courts, and state judges and his commitment to providing the full and fair review that such serious cases and grave government conduct require. *See, e.g.*, Miller v. Lockhart, 65 F.3d 676 (8th Cir. 1995) (systematic exclusion of blacks from jury in capital case violated the Equal Protection Clause); Chambers v. Bowersox, 157 F.3d 560 (8th Cir. 1998).

28. Schlup v. Delo, 11 F.3d 738, 755 (Arnold, C. J., dissenting from denial of suggestion for rehearing *en banc* and of motion for stay of execution).

The same month Judge Arnold wrote his dissent in *Schlup*, the *Minnesota Law Review* published its above-mentioned tribute.[29] I read the various articles to prepare for my interview, and they certainly made me want the job. But, looking back—and I hope the Judge and the distinguished lawyers and judges who contributed to the tribute will forgive me—I cannot help thinking that the well-meaning tribute failed to do the Judge justice. It seems to me today that, rather than identifying, explaining, and praising the Judge's talents, the articles aimed more at "selling" Judge Arnold to those who presumably were advising President Clinton on nominations to the Supreme Court. It is almost as if the tribute were designed to smuggle Judge Arnold's reasonableness past a gaggle of suspicious ideologues and self-appointed guarantors of progressive purity.[30]

In my view, though, for what it is worth, it is *precisely* because Judge Arnold's devotion to, for example, the demands of the First Amendment is not something that wanes as the importance of political litmus tests waxes that he is such a principled, respected, and valuable judge, and that it may truly be said that he is "Justice Black revived."[31] For instance, to hear

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29. *See* Brennan, *supra* note 6.

30. *See* Patricia M. Wald, *Judge Arnold and Individual Rights*, 78 MINN. L. REV. 35, 50, 52 (1993) ("Some women's groups have skeptically viewed Arnold's position in abortion cases. Except for perhaps one case, I think his record stands up well as a defender of a woman's right to control her own body under the strictures of *Roe v. Wade*. . . . Even in dissent, orthodox feminists must recognize that his position is in most respects far more expansive than the present Supreme Court's. Judge Arnold's critics must play fair among all suspects in assessing alleged heresies.") (footnotes omitted). I suppose it could just as well be said that in that "one case"—*Webster*—Judge Arnold demonstrated, by holding that a State *may* write into law, for purposes unrelated to abortion, its commitment to the principle that human life begins at conception, the independence from political orthodoxies and ideological demands that good judging requires. *See* Reproductive Health Serv. v. Webster, 851 F.2d 1071, 1085 (8th Cir. 1988) (en banc) (Arnold, J., concurring in part and dissenting in part), *rev'd*, 492 U.S. 490 (1989).

Judge Wald also thought it necessary, apparently, to assure her audience that even a judge consigned to the hinterlands of the Eighth Circuit could have the requisite familiarity with individual-rights cases. Wald, *supra*, at 36. Speaking as a big fan of the Eighth Circuit and its judges, I cannot help wondering whether the citizenry should be more concerned about filling the Supreme Court with judges from Judge Wald's own D.C. Circuit, where the docket seems to consist primarily of acronyms suing other acronyms under statutes known by acronyms.

31. Frank & Higginbotham, *supra* note 7, at 23. It is worth noting, I think, that the same is true of Judge Arnold's brother Judge Buzz, also a brilliant and principled judge, on "the other side" (to the extent they are on different "sides") of the political spectrum. *See* Frank & Higginbotham, *supra*, at 22 (noting that Judge Arnold is "the liberals' favorite

some of his tribute-bearers tell it, the sole blot on Judge Arnold's judicial career is his opinion in *United States Jaycees v. McClure*.[32] In that case, Judge Arnold wrote an opinion holding that Minnesota's public-accommodations law, which prohibited sex discrimination, was insufficient warrant to permit the State to infringe the Jaycees' First Amendment rights of association.[33] In the Judge's view, "if, in the phrase of Justice Holmes, the First Amendment protects 'the thought that we hate,' it must also, on occasion, protect the association of which we disapprove."[34]

Some have sought to push this opinion aside (as if the Supreme Court's 9-0 reversal were not enough on that score!) as aberrational or "enigmatic."[35] Judge Wald quipped, "even at his peak, Jack Nicklaus had an off-day,"[36] and concluded that "[f]or recognition of the rights at stake, he gets an A; for balancing, he gets a B-."[37] But I believe Judge Arnold deserves praise for his constitutional courage in that case, not patronizing condescension.[38] Presumably, in accord with the today's established First Amendment method, he should have engaged in a convoluted, multi-factored, utterly contrived "weighing" of various elements and "prongs,"[39] the results of which would be—surprise!—one that accorded with his own beliefs about the importance of eradicating sex discrimination. Instead, the Judge decided the case as he believed the Constitution required. Although Judge Wald gave the opinion a "B-" (and the Supreme Court flunked him), I think Justice Black would be proud.

The same could be true, I think, of Judge Arnold's interesting dissent in *Richenberg v. Perry*.[40] In that case, the

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conservative and the conservatives' favorite liberal").

32. 709 F.2d 1560 (8th Cir. 1983), *rev'd sub nom.* Roberts v. United States Jaycees, 468 U.S. 609 (1984); *see* Wald, *supra* note 30.

33. *McClure*, 709 F.2d at 1569-78.

34. *Id.*at 1561.

35. Wald, *supra* note 30, at 53.

36. *Id.*

37. *Id.* at 56.

38. *Id.* at 35 ("Judge Arnold's progression has been stunning—he surely has many more miles to go.").

39. There's that word again.

40. 97 F.3d 256 (8th Cir. 1996).

majority upheld the military's "Don't Ask, Don't Tell" policy toward homosexuals. The Judge avoided the temptation to dive headlong into the controversial moral and political underpinnings of that policy—the opinion's measured tone reminds me of the *Schlup* dissent—and instead insisted that the failure to permit Captain Richenberg to rebut the presumption that, because he is gay, he would necessarily engage in prohibited conduct, effectively and unconstitutionally punished him for his thoughts, not his actions: "To assume automatically that he would [violate the military's policy] is to disadvantage him simply for who he is and not for what he has done or will do."[41] The Judge reminded us that "[o]ur whole constitutional heritage rebels at the thought of giving government the power to control men's minds."[42]

This healthy suspicion of attempts by government or anyone else to prescribe political orthodoxy,[43] and his commitment to protecting even the "speech that we hate," comes through again and again in his decisions. In *Forbes v. The Arkansas Educational Television Commission*[44]—another case where the Supreme Court parted company with Judge Arnold—the court held that a state-owned television station could not exclude Ralph Forbes, a fringe candidate for Congress who had qualified for placement on the ballot, on the purely subjective ground that he was not a "viable" candidate. Much to the dismay of the latte-and-public-television crowd, the Judge sided with Forbes's First Amendment claim, and agreed that a government-run news outlet has no constitutional business screening out "non-viable" candidates. As the Judge put it, "[p]olitical viability is a tricky concept. We should leave it to the voters at the polls, and to the professional judgment of

41. *Richenberg*, 97 F.3d at 264.

42. *Id.* (quoting Stanley v. Georgia, 394 U.S. 557 (1969)).

43. In another example, Judge Arnold joined Judge Fagg's majority opinion in *Twin Cities Area New Party v. McKenna*, 73 F.3d 196 (8th Cir. 1996), *rev'd sub nom. Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997), striking down Minnesota's ban on "fusion" candidacies, a ban that, he and Judge Fagg believed, served no purpose other than advancing the interests of the two dominant political parties and violated the First Amendment rights of third-party members. Again, though, it appears from the Supreme Court's reversal that the Judge's participation in the case turned out to be the kiss of death.

44. 93 F.3d 497 (8th Cir. 1996), *rev'd*, 118 S. Ct. 1633 (1998).

nongovernmental journalists. A journalist employed by the government is still a government employee."[45]

Another example: In *United States v. Dinwiddie*,[46] while upholding the "Freedom of Access to Clinics Act" in the face of a *Lopez*-inspired[47] Commerce Clause challenge, the Judge remained sensitive to the danger that efforts to restrict disorderly speech and conduct around abortion clinics pose to First Amendment rights.[48] Thus, after resolving the Commerce Clause question in a straightforward and succinct manner,[49] the Judge held that, notwithstanding the occasionally threatening nature of Ms. Dinwiddie's pro-life protesting, the district court's "vague and overinclusive" injunction violated her First Amendment rights.[50] For instance, the district court purported to forbid Ms. Dinwiddie from airing her view—even to a newspaper reporter—that "abortion is a violent, violent business and that violence begets violence."[51] Judge Arnold insisted that such remarks, however irresponsible, were "pure speech" and that the injunction was an "unconstitutional viewpoint-based restriction on speech."[52] Other judges have not been so vigilant.[53]

My point here is simply that Judge Arnold's dedication to the text and values of the First Amendment has been unswerving, even in those cases where a slight deviation might have been more pleasing to those who make book on Supreme Court nominations. I think it a more fitting tribute to Judge Arnold to praise this consistency, which Justice Black shared, than to explain it away.

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45. *Forbes*, 93 F.3d at 504.

46. 76 F.3d 913 (8th Cir. 1996).

47. United States v. Lopez, 514 U.S. 549 (1995).

48. *Dinwiddie*, 76 F.3d at 917-919.

49. *Id.* at 919-921. Although Judge Arnold's opinion was one of the first decisions by a federal court of appeals on the constitutionality of the statute, he resisted the temptation to write a Commerce Clause treatise, and instead simply decided the case.

50. *Id.* at 927.

51. *Id.* at 928.

52. *Id.*

53. *See, e.g.*, Pro-Choice Network of Western New York v. Project Rescue Western New York, 799 F. Supp. 1417 (W.D.N.Y. 1992), *aff'd*, 67 F.3d 359 (2d Cir. 1995), *vacated in part on rehearing en banc sub nom.* Pro-Choice Network of Western New York v. Schenck, 67 F.3d 377 (en banc), *aff'd in part, rev'd in part*, 519 U.S. 357 (1997).

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In Judge Arnold's contribution to the *Harvard Law Review*'s symposium in honor of the late Justice William J. Brennan, Jr., the Judge said, "[t]hat clerkship was the best job I ever had."[54] Same here, Judge.

ANNE COHEN*

It is more than fitting that this inaugural issue of *The Journal of Appellate Practice and Process* should include a tribute to Richard Sheppard Arnold, Judge of the United States Court of Appeals for the Eighth Circuit. The reason, however, is not simply his widely acknowledged scholarship and even wisdom as a federal judge. One of his college classmates and fellow circuit judges has said, "Richard is smart like Learned Hand was smart."

Increasingly, those who shape the law—judges, legislators, practitioners of all stripes, trial and appellate judges—are compartmentalized and specialized, with mutual distrust and disdain common and even encouraged. Richard Arnold, on the other hand, continues to live happily in a world of law that is broadly defined. In his "big tent" of jurisprudence, the participants revel in the critical roles that each set of legal actors plays in the development of American law.

Much of this is attributable, of course, to the fact that he has participated in most of the arenas where law is grown—law review editor, law clerk, lawyer, political operative (had he actually been a *politician*, he might have won one of those elections), legislative and executive aide, trial and appellate judge.

There are few jobs in our legal system that Richard has not held; the breadth of his experience and his appreciation of the

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54. Arnold, *supra* note 4, at 5.

* Anne Cohen is a partner at Debevoise & Plimpton in New York, New York. She served as one of Judge Arnold's law clerks during the 1985-1986 term.