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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.

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different skills these positions require may be as significant to his judicial development as his basic smarts. In the same way Judge Arnold cherishes the complicated way in which the American law is developed and practiced, those of us lucky enough to serve as his clerks learned that healthy (but not blind) deference to the other components of that system is critical to maintenance of the rule of law as well as to success in legal playing fields.

He does not, for example, consider himself the third senator from the state of Arkansas (as much as he might have coveted the job). A story about Justice Brennan, for whom Judge Arnold clerked and who is perhaps the only non-family member in the RSA Pantheon, told us about the difference between legislation and common law. Remarking on a draft opinion from another set of chambers, Justice Brennan noted that the proposed decision should begin not "We hold" but "Be it enacted."

Similarly, Richard has enormous regard for the other actors in the judiciary, and approaches each new matter with the expectation that the trial court, counsel, parties, and jury have taken their responsibilities seriously. Nevertheless, we also learned that judges, lawyers, legislators, and litigants, as human beings, are by definition bound to err, and that error, while to be avoided, is best confronted by patience and explanation. As readers of Arnold opinions may note, only when decisions are affirmed is the trial judge identified by name; those reversed are just the eastern or western district of some state. (Similarly, there is no such thing as a "lower court" in an RSA opinion.) I learned the hard way that even Judge Arnold—or at least his clerks—could goof. Eighteen months after my clerkship ended, Judge Waters of the Western District of Arkansas ruled against my client based on an Arnold decision that had been written during my tenure. Graciously, but with perhaps more amusement than necessary, Judge Waters explained that both he *and* then district judge Buzz Arnold considered the decision to be erroneous but that he was, of course, bound by the Eighth Circuit. (When I sheepishly recounted this episode to RSA, his response to the compelling argument against the decision was—paraphrased—"Whoops.")

Judge Arnold is testament to the principle (hard to grasp in certain Eastern area codes) that there are eleven federal circuit

courts of appeal and not just three (Second, District of Columbia, and Other), not to mention state appellate courts. A clerkship with Richard Arnold implicitly teaches that courts west of the Hudson and south of the Potomac have skill and authority equal to those anywhere. (Indeed, even D.C. residence may not be enough. I cannot adequately describe the look on RSA's face when he heard that one of my law school classmates withdrew his three remaining Supreme Court clerkship applications because, the fellow said, after Justice So-and-so picked, all of the "good justices" were taken.)

So there is something delicious about this great judge and this exciting new journal being based in Little Rock. And there can be no better valediction for this enterprise that, in helping us think about "appellate law and process," it does so in a way that does not lose sight—as Richard Arnold never has—of the sometimes frustrating and often wonderful contraption that is our legal system.