

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.

Richard majored in the classics at Yale and retains to this day his talent for Latin and Greek. A deeply spiritual man, his Biblical learning, like his legal learning and his historical understanding, is a product of a remarkable capacity to combine careful, precise analysis with the ability to synthesize diverse knowledge. It was no accident that in scholarship he ranked first in our class at Yale and at Harvard Law School.

His great love for language (he learned Italian in later life by reading the *Divine Comedy*) has given Richard a poetic writing style—plain, spare, elegant. He recently rebutted the view that Justice Brennan, for whom he clerked in 1960, molded the Warren Court through sheer force of personality and “Irish guile.” In five expressive sentences he catches the essence of Justice Brennan’s role on the Court:

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 mastery 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.<sup>2</sup>

This simple, clear, concise passage expresses a complex idea with a cadence of iambic pentameter typical of Richard’s writing.

I knew that there was something very special about Richard 45 years ago, not long after we sat down next to each other at 8:00 A.M. on September 22, 1953, for our first class as freshmen at Yale College. It was a class in beginning French taught five days a week in a little classroom above Yale’s main Gothic gate, looking out over the New Haven green. When we struck up a short conversation before class began that morning, I was relieved. I thought, “This boy from Arkansas is probably just as unsophisticated and unprepared for Yale as am I, a farm boy from Tennessee.” That idea did not last long. Within two weeks, he and Monsieur Tofoya, our teacher, were conversing back and forth in French. Within a month, Monsieur Tofoya had

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2. Richard S. Arnold, *In Memoriam: William J. Brennan, Jr.*, 111 HARV. L. REV. 5 (1997).

put him up in French 20, which required as preparation two good years of high school French. Before the first semester was out, the French Department put Richard into French 30, an advanced class, where they read Beaudelaire, Stendhal and other great French writers.

But I do not want to dwell on how smart Richard Arnold is. Articles like this one tend to overemphasize a judge's intelligence and learning to the exclusion of qualities of the heart like a sense of justice, diplomacy, thoughtfulness, humor, loyalty, tolerance and affection for others. There are many smart people, but only one with the complex mind and spirit of Richard Arnold. It is his heart and character that make all who know him love and admire him.

For his many friends and acquaintances, Richard is a hero and a model—on the one hand, highly competitive, with a great capacity for work and achievement, while at the same time, blessed with an enlarged capacity for sympathy and the ability to put himself into the shoes of another. Even though pressed for time, he cannot pass a beggar by or allow a genuine request for aid to go unanswered. One such time I said, “Richard, the guy is probably an alcoholic or a dope addict.”

He responded in good humor, “You never know, he may be an angel.” In his mind, the guy is just one of God's children in need.

Richard summons what little anger and hostility his nature owns in the face of the bully who takes advantage of the weakness of others. He is instinctively for the underdog and for the liberty and dignity of the little guy. That sentiment runs subtly throughout his opinions, writings and speeches.<sup>3</sup> His legal and moral philosophy emphasizes the importance of the claims of the less-

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3. For example, his Howard Kaplan Memorial Lecture at Hofstra Law School on the sanctity of trial by jury is a sermon about his faith in the deliberations of “twelve ordinary people,” for whom the expert is no “match.” Richard S. Arnold, *Trial by Jury: The Constitutional Right to a Jury of Twelve in Civil Trials*, 22 HOFSTRA L. REV. 1, 3 (1993). In this same lecture Richard gives us his thoughts on the relation of reason and emotion in the deliberative process:

And here is the thing I want to tell you—the point: emotion is not a bad thing. In law or anywhere else, we do not often think of it that way, perhaps. We say that the life of the law is reason, but there is more to it than cold rationalism. As Pascal said, “The heart has its reasons, which reason does not know.”

*Id.* at 35. But he ends with the qualification, “so long as your feelings and your emotions can be tested by reason.” *Id.*

avored class. Achilles' pitiless enforcers, the myrmidons of the law, are not Richard's friends. He takes basic Christian ethics seriously, reflecting the ancient admonition found in Matthew 25:40: "Inasmuch as ye have done it unto the least of these my brethren, ye have done it unto me." Or as his charming and insightful wife, Kay, said to me once in more modern English: "I was lucky enough to marry the man who is always the last to judge and the first to forgive."

#### MORRIS S. ARNOLD\*

My brother Arnold's distinguished career is too well known to most readers of this journal to make a rehearsal of it here worthwhile. Those who require or desire a primer on it, and a survey of some of my brother's more notable opinions, may consult the contributions noted in the margin.<sup>1</sup> What I want to write briefly about for present purposes has to do with some early influences on his life and thinking that have, I believe, left discernible traces in his jurisprudence, if only one looks at it with a trained and educated eye.

My brother, as everyone knows, possesses a legendary intelligence; indeed, his colleagues sometimes admiringly remark to me on how easy the analysis and solution of legal puzzles is for him. More importantly, my brother is an intellectual. There are lots of differences between being intelligent and being intellectual (there are many brilliant

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\* Judge Morris Shepard Arnold has served with his brother, Richard S. Arnold, on the United States Court of Appeals for the Eighth Circuit since 1992. Prior to his appointment to the Eighth Circuit, Judge Arnold served on the U.S. District Court for the Western District of Arkansas for six years.

1. Especially useful for this enterprise are the following: William J. Brennan, Jr., *A Tribute to Chief Judge Richard S. Arnold*, 78 MINN. L. REV. 1 (1993); John P. Frank and A. Leon Higginbotham, Jr., *A Brief Biography of Judge Richard S. Arnold*, 78 MINN. L. REV. 5 (1993); Donald P. Lay, *My Colleague—Richard S. Arnold*, 78 MINN. L. REV. 25 (1993); and Patricia M. Wald, *Judge Arnold and Individual Rights*, 78 MINN. L. REV. 35 (1993).