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A Tribute to Chief Judge Richard S. Arnold

Preface

William J. Brennan, Jr.

I am pleased and proud to introduce this collection of articles honoring my former law clerk, esteemed colleague, and good friend. The decision of the *Minnesota Law Review* to pay tribute to Judge Arnold speaks volumes to his exceptional accomplishments both on and off the bench—all the more so coming as it does at the tender age of fifty-seven.

I first became familiar with Judge Arnold's extraordinary ability during his clerkship with me in the Court's 1960 Term. He had clearly profited, and prospered, from his years "in training" at Harvard Law School. Having graduated at the top of the class, he came to the Court with the highest possible recommendation from my dear friend Professor Freund. Even at that early stage in his career, Richard Arnold proved to be a brilliant and devoted student of the law. It has been an absolute delight to watch him mature and flourish over the years in private practice, on the federal district court, and as a Circuit Judge and now Chief Judge of the Eighth Circuit Court of Appeals.

The articles that follow chronicle many of Judge Arnold's important contributions to the law and the legal community, and illuminate his fine record as a courageous and stalwart supporter of individual rights. His inclination toward brevity has not detracted from his eloquent and passionate defense of the fundamental rights which we all treasure. Although the Supreme Court would later disagree,¹ Judge Arnold took the view that a statute forbidding the use of public facilities, employees, or funds to encourage or counsel abortion discriminated on the basis of viewpoint and was "flatly inconsistent with the First Amendment."² Judge Arnold has consistently vindicated the First Amendment guarantees of freedom of the press and

1. See *Rust v. Sullivan*, 111 S. Ct. 1759 (1991).

2. *Reproductive Health Service v. Webster*, 851 F.2d 1071, 1085 (8th Cir.

freedom of speech, even in cases in which the protected expression was controversial, distasteful, or hateful.³ He has written splendidly in other areas as well. Judge Wald is quite correct that his comprehensive voting rights opinion in *Jeffers v. Clinton*⁴ must be described as "truly extraordinary." Judge Arnold has also seen fit to salute appointed counsel for their representation of indigent clients—not just on the record from the bench, but also in his opinions.⁵

Naturally, the decisions of Judge Arnold with which I am most familiar are those that I reviewed as a member of the Court. On more than one occasion, I found myself in agreement with the result reached by Judge Arnold, but in the dissenting minority among my colleagues on the Court.⁶ I vividly recall his insightful and stirring defense of the constitutional limitations placed on law enforcement authorities:

A system of law that not only makes certain conduct criminal, but also lays down rules for the conduct of the authorities, often becomes complex in its application to individual cases, and will from time to time produce imperfect results, especially if one's attention is confined to the particular case at bar. Some criminals do go free because of the necessity of keeping government and its servants in their place. That is one of the costs of having and enforcing a Bill of Rights. This country is built on the assumption that the cost is worth paying, and that in the long run we are all both freer and safer if the Constitution is strictly enforced.⁷

Judge Arnold rarely erred in my view, but I was ready to provide a gentle guiding hand when the occasion arose in *Roberts v. United States Jaycees*.⁸ I leave further commentary in this re-

1988) (Arnold, J., concurring in part and dissenting in part), *rev'd*, 492 U.S. 490 (1989).

3. See, e.g., *United States v. Lee*, 935 F.2d 952, 958 (8th Cir. 1991) (Arnold, J., dissenting); *Janklow v. Newsweek, Inc.*, 759 F.2d 644, 656-58 (8th Cir. 1985) (Arnold, J., concurring in part and dissenting in part), *modified and aff'd en banc*, 788 F.2d 1300 (8th Cir.), *cert. denied*, 479 U.S. 883 (1986); *Stanley v. Magrath*, 719 F.2d 279 (8th Cir. 1983).

4. 730 F. Supp. 196 (E.D. Ark. 1989), *aff'd*, 498 U.S. 1019 (1991).

5. See *Sims v. Wyrick*, 743 F.2d 607, 611-12 (8th Cir. 1984); see also *Horsey v. Asher*, 741 F.2d 209, 213 (8th Cir. 1984); *Thompson v. Housewright*, 741 F.2d 213, 216 (8th Cir. 1984).

6. See, e.g., *Solem v. Stumes*, 465 U.S. 638, 655 (1984) (Stevens, J., dissenting); *United States v. Nat'l Bank of Commerce*, 472 U.S. 713, 733 (1985) (Powell, J., dissenting).

7. *Williams v. Nix*, 700 F.2d 1164, 1173 (8th Cir. 1983), *rev'd*, 467 U.S. 431 (1984). I dissented from the Court's decision on grounds different from the basis of Judge Arnold's opinion. See *Nix v. Williams*, 467 U.S. 431, 458 (Brennan, J., dissenting).

8. 468 U.S. 609 (1984), *rev'g United States Jaycees v. McClure*, 709 F.2d 1560 (8th Cir. 1983).

gard to my fellow contributors.

A tribute to Judge Arnold cannot confine itself to his jurisprudential achievements. Judge Donald Lay pays fitting homage to his successor's contributions to the administration of the federal judiciary, most especially Judge Arnold's heroic efforts as the chairman of the Budget Committee of the Judicial Conference. The unfortunate fact is that the wheels of justice too often turn slowly and always at great expense. Judge Arnold has played a prominent role in ensuring that the Third Branch is provided with the resources necessary to enable us to fulfill our vital mission of efficiently resolving legal disputes, fairly enforcing the laws, and vigorously safeguarding our most cherished rights and freedoms.

As those unfamiliar with his full record will discover as they read on, Judge Arnold is undoubtedly among the most gifted members of the federal judiciary. Equally important, his warmth and generosity of spirit have quite naturally made him enormously popular and beloved among colleagues and friends in the bar, on the bench, and throughout his world. I have every expectation that he will keep up the good work and the good deeds.

