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A Tribute to Burke Marshall

Nicholas deB. Katzenbach[†]

Everyone who has studied or worked with Burke Marshall has enormous respect and affection for him. I probably have more respect and affection than most of you because I have known Burke for almost sixty years—and those feelings keep increasing.

About ten years ago, IBM—when it was still solvent—and some friends donated a Chair at the Law School in my honor—an honor that seemed to me to have a trifle posthumous flavor. Nevertheless, I was of course very flattered. But I think what honored me more was that Burke was the first professor to hold that Chair, giving it a wholly unexpected prestige.

Honors graduate of Yale College and Yale Law School, officer of the *Law Journal*, partner in Covington & Burling, Assistant Attorney General for Civil Rights, General Counsel and Senior Vice President of IBM, Deputy Dean and Professor here—what a resume! But it tells you very little about the intelligent, sensitive, wise, and humorous man himself. It isn't on paper, and it's darned hard to put in words. He really is unique.

There may be better analytical minds in law, but I haven't yet come across one. What is even more unusual is Burke's capacity not to confuse the world of analysis and reason with the world all of us live in. The two are sometimes related, sometimes not—always a little different. And it is perceiving that difference, understanding its significance and consequence in both the present and the future, that gives Burke such superb judgment about law and politics.

Let me give just two illustrations of Burke's analytical ability, decisiveness, and appreciation of the consequences of events. One night Burke and Violet joined Lydia and me for a sail on the Chesapeake. As we got on board and prepared to cast off and set sail, Burke took off his hard-soled shoes and socks. Unfortunately one sock went overboard. Without hesitation, Burke threw the other sock in the water after it.

My second illustration has to do with civil rights. While it might not have appeared so to the public, the fact is the Department of Justice and the movement shared the same ends but not always the same means. What Burke and Bobby Kennedy wished to accomplish was to use law and courts to make Southern white politicians, judges, sheriffs, and police administer law

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evenhandedly to the races—not to use federal authority to do it for them—to use the Supremacy Clause to support federalism rather than destroy it. At a time when blacks had no trust or confidence in Southern law enforcement, that wasn't either easy or popular. But in the longer run it was essential, and looking back, I think clearly right.

Burke was by far Bobby's closest advisor, the person in whom he quite rightly had the most confidence. All of us wanted Burke's judgment on difficult problems. There is, in my experience, nothing more unsettling or more destructive of one's self-confidence than to disagree with Burke. Which is, perhaps, why we so seldom do so.

No one can, of course, know all that might have happened if John Kennedy had lived to enjoy a second term as President. I have always felt that one strong possibility would have been to see him name Burke to a Supreme Court seat. Had this occurred, Yale would have lost a great teacher, but the country would have benefitted immeasurably. And in either event, we would be gathered together to pay tribute—with love and affection—to this man.