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W. HOWARD MANN: AN APPRECIATION

PHILIP B. KURLAND*

W. Howard Mann is a curmudgeon, an iconoclast: "God's Last Angry Man." And we are all the richer for it. Some years ago, when Howard and I were clerking at the Supreme Court, Justice Frankfurter asked me whether there was anyone who could meet Howard's standards for intellectual rigor and intellectual honesty. I had to reply: "Not even Howard." But his presence assured everyone that the work product would be carefully scrutinized by Howard and if we couldn't meet his standards, we had, at least, to try to do so.

Howard's long teaching career has not been matched by an equally long bibliography, exactly for the reason that even he could not meet his standards of perfection. It is not that Howard has not written a good deal, but that little of this writing has seen the light of day because of the rigorous demands he makes even on himself. It has been for others, not for Howard, to pour forth articles that are rehashings of what has been said before, articles that are artlessly concealed briefs for a cause rather than keen disinterested analysis, books that are merely what Thomas Reed Powell called "recitativo." It was because his own writings did not satisfy his requirements of integrity, novelty, and cogency that we have been denied so much of his own thought in print.

I first met Howard when he presented the strange sight of a Navy lieutenant in uniform beginning his service as law clerk to Justice Burton. He had previously served as a law clerk to Justice Rutledge on the United States Court of Appeals for the District of Columbia Circuit. And so, he had two advisers on the Court. His role at the Court, even then, was that of a teacher, with Burton as his principal pupil; but there were many of us, although each Justice had but a single law clerk, except for the Chief, who had two. The Court was a far more collegial body than it has since become. And the law clerks were by no means strictly confined to their own chambers. They constantly exchanged views with the other clerks

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and, to a lesser but not insignificant degree, with Justices other than those who employed them. (Mr. Justice Douglas and his clerks were exceptions.) Howard's role was an important one to the work of the Court.

After his Court period, I was in Howard's company for a semester when we both served as members of the Indiana University Law School faculty. As was the case wherever he went, Howard was concerned to raise the standards of the institution for which he was working. It was not good enough for Howard to set the level of instruction for "county seat" lawyers. The "good enough" was never good enough for Howard. He was not content to have the good drive out the best. He argued for the appointment of first-rate young academics, even if after a few years they would be picked off by more prestigious schools. He argued for a high quality of student body, even if it meant that some of those admitted would not be graduated. He regarded the law school as an integral part of a university, not merely a trade school annex. He gave his time unstintingly to the university, to students whose careers he fostered, to fellow faculty in the teaching of their courses and in the preparation of their writings. And, while I have had no first-hand knowledge of his years at Buffalo, I am sure that he didn't change his stripes when he went to New York from Indiana.

We served together once more. This time as consultants to one of the price and wage control agencies during the Korean "police action." We both learned the problems of bureaucracy, where the office exists for its own sake rather than to achieve the goals set for it by Congress and the President. I know that this was one of the most frustrating experiences of my career, and I suspect that Howard was no more satisfied than I. And he spent a year at the law school of the University of Chicago as a research fellow. If Howard was equally frustrated here, he did not tell me. But again the faculty benefited from his visit more than he did.

There are ways in which Howard is reminiscent of Judge Learned Hand, and not merely in the gruff pose that both maintained. Like Howard, Hand not only refused to suffer fools gladly, he refused to suffer them at all. And both epitomized the Cartesian dictum: *Cogito, ergo sum*.

This retirement year of Howard's is a "farewell performance" much as all but one of Sarah Bernhardt's. We can be sure that for Howard there will be many more. In what guise Howard will con-

tinue as our mentor, I do not know. That he will so continue, however, I am certain.

Vale atque ave.

