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Carol Los Mansmann: An Introduction

Samuel A. Alito, Jr.*

I am very honored to be able to contribute this introduction to the issue of the Duquesne Law Review dedicated to commemorating the work of my wonderful former colleague, Carol Los Mansmann. Carol was a remarkable woman who has left us a proud legacy of dedication to public service.

Carol's legal career stands out, not just because of her great accomplishments, but because she was a true trailblazer. It is hard now to believe, but Carol was one of only two women in her Duquesne Law School class of 1967. She was an outstanding student, but because she was a woman, she found it difficult after graduation to secure employment in private practice. The private bar's loss was the public sector's gain; Carol served as a law clerk and then as prosecutor in Allegheny County. Carol must have impressed her supervisors greatly, because in 1970, only three years after graduating, she argued the case of Chambers v. Maroney1 before the United States Supreme Court. In that case, the Supreme Court clarified the authority of police to search a vehicle incident to an arrest. It was an important case, both then and now, and it must have been daunting for a twenty-eight-year old to argue it. But Carol handled the case with aplomb and was successful. Indeed, before reaching her thirtieth birthday, Carol had argued three cases before the Court, a rare accomplishment.

Carol's career next led to her private practice and to a position on the Duquesne faculty. To this day, Carol is fondly remembered by students whose lives she touched. She was a fine teacher who exhibited a genuine and deep interest in her students.

Carol was quickly recognized as one of the best legal minds in Pennsylvania, and it was not surprising when President Reagan nominated her to the District Court in 1982, making her the first woman on the federal bench in Pittsburgh. He then quickly elevated her to the Third Circuit when a new seat was created in 1985.

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* Associate Justice, Supreme Court of the United States.
I joined the Third Circuit in 1990, and I was immediately struck, not only by Carol's legal skills, but by her warmth, collegiality, discipline, willingness to help others, dedication to the Third Circuit as an institution, and deep devotion to her family. I marveled at all that Carol was able to accomplish.

I have now been a member of the judiciary for more than seventeen years, and I have had the privilege of observing and, I hope, learning from the examples of some truly fine jurists. And of course Carol ranks prominently among those models. Carol and I must have sat together on hundreds of cases. In all of those cases, there was never a case when she was not thoroughly prepared. At oral argument, Carol took pains to probe both sides and to make sure that the strengths and weaknesses of the competing positions were highlighted. At conference, Carol always stated her positions clearly and persuasively, but she was respectful of opposing views and eager to engage in intellectual give and take. I think Carol was the most efficient judge I have known. Her opinions were always prompt and well crafted.

Carol's opinions are her lasting legacy to the law, and they continue to exert a strong and positive influence in the Third Circuit and beyond. The articles in this volume ably explore her many contributions to federal case law. Less well known than Carol's opinions are her efforts to maintain and build the Third Circuit as an institution.

Multimember appellate courts like the Third Circuit have unique internal dynamics that are not widely appreciated by the bar and the general public. In order to function at its best, a multimember appellate court requires a delicate balance of cooperation and individuality, of compromise and independence, of collegiality and autonomy. On the one hand, we want the members of such a court to work together collectively and productively. There is work that has to be done and that can only be done if the judges pull together. On a three-judge panel, at least two judges must come to an agreement if there is to be a majority opinion. And of course it is highly desirable for there to be a majority opinion in order to provide clear guidance to the district courts, the bar, and interested members of the public. Sometimes the necessary agreement is easy, but sometimes it is not, and on these occasions, two ingredients are especially important.

The first thing is an overriding commitment to the work of the institution, a commitment that takes precedence over any single judge's individual interests and preferences. The second is respect for the views of one's colleagues, even when they differ from one's
own—a respect that must be grounded on a firm belief in the good faith of one’s colleagues and an appreciation of the fact that tough legal issues often look very different when viewed through the eyes of those with different backgrounds and life experiences. This is the collective aspect of the work of a multimember court. But that is only one side of the balance.

There is also the individual side. There are three judges on a court of appeals panel because every case is supposed to receive three separate examinations. A three-judge panel is not supposed to consist of one judge who takes the lead and dominates and others who defer and go along. Our tradition is one of individual judicial analysis and individual responsibility.

My current Court recently received a visit from a delegation of judges from a European appellate court, and we compared notes on how our respective courts operate. The European judges pointed out that on their court, cases are decided with a single unsigned opinion, that there are never concurring or dissenting opinions, and that the vote on the case is never revealed.

I was very impressed with the European judges, but I think that the American method of appellate opinion writing is superior. In the European system, no one ever knows whether any particular judge voted for or against any particular decision, and therefore there seems to be less individual accountability. In our system, each judge must, as the saying goes, stand up and be counted. We want our appellate courts to function effectively as institutions, but we do not want to snuff out independent decision making or individual responsibility. What we want is a very precise and delicate balance, and that sort of balance is not easy to maintain. It takes skill and hard work. And when I think of Carol Mansmann and the example of her judicial career, one of the first things that come to my mind is all that she did—big things and small—to maintain that balance for the Third Circuit.

I had never met Carol before I was confirmed for the Third Circuit, and I still vividly recall our first communications. Carol called to congratulate me, and she immediately offered to provide helpful advice about organizing and running chambers. The next thing I knew, a package arrived in my office from Carol’s chambers. In it were forms, charts, and internal chambers operating procedures. I do not know of any judge who has organized and run a chambers as efficiently and smoothly as Carol, and her advice was some of the best I have ever received. I am still following some of the practices that she told me about seventeen years ago.
Carol also sent me a videotape that she had put together showing what she described as "the personal side" of the judges of the court. It included such things as childhood and family pictures—photos that showed the judges as human beings, not stern and distant figures in black robes. I recall some high school graduation photos, and you know what they often look like. Carol had put this tape together, and she distributed it to new judges. It helped me to feel comfortable with my new colleagues, some of whom were decades older, even before I got to know them. This video is just one small example of the many things that Carol did during her time on the Third Circuit to foster and maintain good relations among all the members of the court. Carol also threw herself into projects of court administration, whether it was organizing a judicial conference, laboring on one of the countless committees to which she so generously devoted her time, or working on the agenda for a court retreat.

Carol was a strong judge with strong views. She did not hesitate to write a concurrence or dissent if she was not satisfied with the majority opinion. During our years on the Third Circuit, Carol and I did not always agree. But with Carol, the disagreement was never personal or unpleasant. During sittings in Philadelphia, after a day of arguments and a conference at which there may have been some sharp disagreements and disappointments, Carol would often gather up the judges and their law clerks to have dinner together. One of Carol's favorite spots was an Italian restaurant where all the waiters were accomplished singers, and at intervals, they would put down their trays and break into beautiful arias. The combination of good food and good music was always sufficient to soothe even the grumpiest judge. I still have happy memories of those dinners—and many other Third Circuit events that Carol brightened. By contrast, one of my saddest Third Circuit memories is of a court retreat during which Carol was bothered by persistent back pain. That marked the return and spread of the cancer that finally took her life.

It is both painful and inspiring to recall Carol's last years on the Court. Through all the chemotherapy and hospitalizations and pain, she continued to work—to the very end. I never heard her complain, and she maintained her positive and optimistic outlook, supported, I believe, by her deep faith. She made me—and I am sure all her colleagues—immensely proud to be members of the same court. Her career and her life are an inspiration for judges, lawyers, and many others.