Carol Los Mansmann: Daughter of Pittsburgh

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Early in March 1985, I received a telephone call from Carol Los Mansmann, who was enjoying a long weekend holiday with her family in North Carolina. "Rugi, maybe you can help me out," she said. "I just received a call from the White House asking me if I would accept an appointment to the Court of Appeals for the Third Circuit. I am flabbergasted. Do you know anything about this?" she asked.

I was then Chief Judge of the U.S. Court of Appeals for the Third Circuit. Carol and I had been friends for almost 20 years—from the time she graduated from Duquesne Law School and started to clerk for Ralph Smith, one of my colleagues on the Common Pleas Court of Allegheny County.

"Carol," I said, "before I respond, the important thing is how did you answer the question?"

"I stammered for a moment, and I finally said yes," she answered.

"Well then, as they would say in exquisite Pittsburghese, 'You done good.' As one of your colleagues-to-be, please accept my congratulations."

"What should I do?" she asked.

"Play it safe, Carol, and say nothing. Wait until a story appears in the newspapers and you are asked for a comment, at which time you can simply say 'I am extremely honored that President Reagan has the confidence in me to nominate me to be a member of this prestigious court.' Then say nothing more. Don't give out any interviews. Just go into hibernation and avoid the media as much as possible. If you're forced to say something, just repeat the mantra: 'I am highly honored that the President, etc.'"

This was the same advice that Warren Christopher, then Deputy U.S. Attorney General, had given me in 1968 as he shepherded my nomination from the moment of the appointment through the Senate confirmation process.

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* Senior U.S. Circuit Judge, Chief Judge Emeritus, U.S. Court of Appeals for the Third Circuit.
Carol was the first to fill an additional seat on our court created by Congress. She was confirmed by the Senate on April 3, 1985 and received her commission the following day. Thereafter, we made plans to have Carol officially sworn in to our Court in an elaborate ceremony held in the historic courtroom of the Pennsylvania Supreme Court located on the ninth floor of the City County Building in Pittsburgh. At the time, the entire roster of Third Circuit judges, both active and senior, assembled in the Supreme Court robing room. We were about to walk out to the bench when I asked, “Who has the oath of office?” You could have heard the proverbial pin drop.

Normally, this was the responsibility of the Clerk of the Court, but we were in Pittsburgh, and the Clerk was in Philadelphia. No one had thought to have a copy available for me to read. Carol remarked stoically, “We'll have to delay this until we get a copy from the library.”

“Don't worry,” I said. “I'll wing it. The courtroom is filled to capacity, and people are waiting.”

A few minutes later, in that majestic setting and in the presence of a standing room only crowd, I administered the oath. It was a combination of the Scout's Oath and the one I swore to in 1942 when commissioned Second Lieutenant in the U.S. Marines.

Never fear. Her appointment to the Court was completely legitimate. She had already been sworn in a week before during a private ceremony in the Chambers of Justice Sandra Day O'Connor, who had performed the official rites with the appropriate language.

This was not the first time Justice O'Connor had administered an oath to Carol. After President Reagan appointed her in 1982 to the District Court for the Western District of Pennsylvania, “[t]he 39-year-old was sworn in by [Justice] O'Connor. She told the well-wishers at that time that she had come a long way for a Polish girl from Dormont.”

Carol’s self-described “long way” journey to the start of her judicial career becomes profoundly multi-dimensional as we pay tribute to her lifetime achievements.

I call her a child of Pittsburgh because, like Pittsburgh, she was modest, but did not ruffle easily. She was feminine in her frills and laces, but when challenged in either her professional or personal life, she could be tough as nails. Carol’s latent competitive

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1. As reported by Mary Lynne Litz, PITTSBURGH POST GAZETTE, March 10, 2002.
spirit was disguised by her ever-present courtesy, kindness, and civility. Although vibrant atop her lofty perch on the federal bench, she was unfailingly considerate to everyone who came her way.

Judges come to their robes bearing the stigmata of past experience. Carol proved this old adage in spades. Whatever difficulty judges from other backgrounds may have had with cases involving discrimination based on race, religion, ancestral origin or gender, deciding these cases fairly and justly seemed like a walk in the park for Carol. She was the product of an ethnic group that had been subjected to both sneer and smear. Even today, we are not far removed in time from the degrading Polish jokes that peppered so many conversations. But Carol rose above it. Her pride in being an American of Polish descent was exemplified every Easter, when she delivered her fragrant loaves of traditional Polish bread, fresh from her oven, to her colleagues and staff on the court. She never boasted of it, but Carol was certainly the first American of Polish descent ever to serve on either the U.S. Court of Appeals for the Third Circuit or the U.S. District Court for the Western District of Pennsylvania.

It was Carol's nature to help people. An oft-told story on Grant Street describes how Carol, then a Duquesne University student, encouraged a first-year undergraduate named Donetta Wpyiski from Westmoreland County to study law. Under Carol's mentoring, Wpyiski snagged a scholarship, earned her law degree, served as a Westmoreland County prosecutor, and was subsequently elected to the County's Common Pleas Court. In 1994, Donetta Wpyiski Ambrose rose to the federal trial bench in Pittsburgh where she now serves as Chief Judge of the District Court for the Western District of Pennsylvania. Looking back on the early days of their friendship, Judge Ambrose recalls how she looked up to Carol: "She was smart. She was nice. She was Polish. I was Polish. It was a connection . . . ."2

Barbara M. Carlin, Carol's first law clerk at the Court of Appeals, reports that her judge once began a speech to a Christian Mothers group at a Polish church with a greeting in Polish. The audience, Ms. Carlin recalled, went wild.

Carol's life was inexorably bound to the traditions and customs of Pittsburgh. From our past glory as the nation's leader in steel-making and coal mining, we have evolved into the world's preemi-
nent center for medical research and health care delivery.\(^3\) We possess a rich legacy of medical breakthroughs, including organ transplantation, the polio vaccine, and synthetic insulin. Our early reputation as the "smoky city" with its landmarks of blast furnaces and Bessemer converters has been superceded by impressive institutions of higher learning and the cutting-edge research facilities of the University of Pittsburgh Medical Center "exploring initiatives such as cancer therapies, tissue engineering, medical imaging and molecular biology."\(^4\)

But all of this plays second fiddle to the men and women who lived and worked there, making the past and present of Pittsburgh possible. We can see it as we walk through the Nationality Rooms ringing the great Common Room of the Cathedral of Learning, rooms that extol the accomplishments of many ancestral groups of Greater Pittsburgh. These rooms honor those immigrants who labored and sometimes perished deep in the bowels of the earth as they dug for coal in the famous bituminous Pittsburgh seam, or shoveled iron ore, coke, and slag in the mills or loaded and unloaded the river barges, or defied gravity working on dangerously high girders to build our bridges and high rises.

One of the great joys of being a Pittsburgher (I was one for 68 years before succumbing to Horace Greeley's entreaty to "Go west [old] man, go west")\(^5\) is the paradox of living in a metropolitan area while enjoying the warm, personal values of a small town.

But wait a minute! What does all this have to do with Carol? In a word—everything. Carol Los Mansmann was the very personification of the heart of Greater Pittsburgh, a place of warm, personal feelings held dear, turning neighbors into close friends and interlocking neighborhoods of diverse backgrounds; a place where public officials, business heads, and union officials are not ciphers known to the public only as talking heads on television or radio talk shows (like that other Pennsylvania big city, for example, at the other end of the state); a place where you can't be seri-

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3. I use the pronoun "we" although I no longer live in Pittsburgh. You can take the boy out of the 'burgh, but you can never take the 'burgh out of the boy.


5. For the purists, I admit that the phrase "Go west young man" traces its origin to John Babson Lane Soule who used it in an article of the Terre Haute, Indiana, Express in 1851. Greeley, editor of The New York Tribune, picked it up and used it in an editorial. "As the saying 'Go west young man, and grow up with the country,' gained popularity, Greeley printed Soule's article, to show the source of his inspiration." JOHN BARTLETT, FAMiliAR QUOTATIONS 585 n.1 (13th ed. 1955).
ous about running for public office or labor union without attending Polish Day at Kennywood Park (and don’t forget the Italian, Slovak, Ukrainian, Irish and Scottish Days). You don’t get anywhere in the elections unless you have eaten Polish pierogi or Ukrainian halupchi at a street festival or had kielbasa or pizza at a picnic sponsored by a volunteer fire department or ethnic fraternal lodge out in the county.

These are the people that gave rise to Carol and her family—a family no longer rooted in Dormont, but scattered throughout the country. Her mother set off to California for a warmer clime and to be near her daughter, Gloria Los Baytosh of Orange County; her son, Larry Los of Santa Maria; and her daughter, Rosemary Los Lieberman in Lake Havasu, Arizona. Patricia Los Burke and Kathleen Los resided a continent away in Gulfport, Florida.

A few years after settling into southern California in 1987, I was delighted by a visit from Carol, who brought along her mother and Gloria to Santa Barbara. Uncannily, all three exhibited such identical voices and gestures that at times I thought I was talking to three Carols. It was a joyful interlude, but they did not tarry long; they still had over an hour’s drive to get to Larry’s home in upper Santa Barbara County.

Carol alone chose to remain in Pittsburgh, never forgetting her roots. She was not old enough to have witnessed the ordeals, struggles, and humiliations endured by Pittsburgh’s Polish immigrants who lived there in the decades immediately before and after WWI. While the men labored in twelve-hour shifts, the women managed the house, the children, and the hard-earned cash their husbands delivered to them on pay days. But Carol was aware of the Polish immigrant experience because those “old days” were frequently the subject of family conversation at the dinner table, especially when friends and relatives came to call on Sunday afternoons.

Carol grew up in an environment dominated by steel-making. An enormous amount of unskilled labor was needed to dig the coal and feed the ovens to make coke. Untold thousands of laborers shoveled slag and ore and coke into the mammoth furnaces that converted iron to steel. Carol knew these men who had worked twelve hours a day, seven days a week. They were the fathers and grandfathers and sons and brothers of her relatives and friends, all strong, full-bodied, lusty, rosy-cheeked, loud-voiced, and generous. She knew that they believed their primary role in life was to support their families, to buy their houses as soon as possible (Pittsburgh had hundreds of neighborhood building and loan asso-
citations to offer mortgages at low rates,) to have lots of kids, and to see that they got the best education they could afford—all so that their children would not have to slave in the mills, mines, and railroads. Did Carol’s early respect for workers with grimy hands, heavy accents, and lack of formal education influence her approach to the law as a judge? You betcha!

But there was more that shaped Carol as a person. Ingrained in her character since childhood was a highly refined sense of inter-cultural understanding and respect that was and is uniquely Pittsburgh. Carol was a product of this living inter-culturalism that distinguishes Pittsburgh from many other cities. Men of all backgrounds worked side-by-side in the mills, mines, and railroads. They were natives of Poland, the Ukraine, Russia, Slovenia, Croatia, Serbia, Hungary, Germany, Italy, and Slovakia. These men worked in harmony with one another to accomplish their shared, grueling tasks in order to support their respective families.

Ancestry, race, and religion were immaterial to these men because they were all fair game for injury or even death. Their shared, back-breaking labor instilled in them a brotherhood within the workplace. After the close of the shift, that brotherhood trailed them beyond the mill gates, to the nearby bars and saloons. They enjoyed weary camaraderie as they toasted one another with the favored drink—the Boilerman and his Helper (a shot of whiskey followed by a beer chaser). That spirit of brotherhood migrated into their neighborhoods and homes.

Old-world tensions melted in the heat of the mines and mills. Many inter-ethnic and religious marriages took place in Pittsburgh. Significantly, in light of the Balkan conflicts that raged in Kosovo and Bosnia during the Yugoslav wars of the 1990s, Pittsburgh bore witness to many mixed marriages of Croats and Serbs. Many small retail merchants were Jewish, and strong bonds grew between them and their customers, almost all of whom were Christians.

Many Pittsburgh traditions flowed in her blood, but the lesson of the Sermon on the Mount was etched on her heart: All God’s Children Are Created Equal. That was Carol’s spoken premise in deciding a discrimination case, and her jurisprudence reflects that belief in every opinion she crafted on that subject.

Carol’s rearing inculcated in her a philosophy that ran counter to the Central European tradition that a woman’s place is in the kitchen. Her family believed that a woman could perform as well as a man. She adhered to this tenet her entire life and did not
need a Supreme Court case to teach it. Although not reflected in legal tomes, the concept of “I can do it just as well” was embedded in her psyche. A popular recitation of the women’s rights movement comes to mind: Fred Astaire and Ginger Rogers were the best dancers on the silver screen, but Ginger did it the hard way—dancing backwards and in high heels. In Carol’s entire life, personal and professional, she was an imaginable Ginger Rogers.

From 1968 to 1972, Carol worked in the appeals division of the Allegheny County District Attorney’s office, defending actions of the trial assistant district attorneys. It was here that Carol would set all records as the youngest woman ever to argue before the U.S. Supreme Court, in *Chambers v. Maroney.*\(^6\) She persuaded the Court that the Third Circuit did not err when it ruled in favor of the Commonwealth. The Court held that there was no violation of a criminal defendant’s Fourth Amendment rights when the district court admitted evidence seized by police during a warrantless search of defendant’s automobile after it was brought to the station house.

From 1974 to 1979, Carol lawyered at Mansmann, Cindrich, McVerry & Baxter, where her husband, Jerry Mansmann, was a partner. She worked there while still a tenured professor at Duquesne University. Pennsylvania had enacted a statute subjecting a physician who performed an abortion to potential criminal liability if he failed to utilize a statutorily prescribed technique when the fetus “is viable” or where there is “sufficient reason to believe that the fetus may be viable.” A three-judge district court held that the statute was unconstitutional. After the state took an appeal to the Supreme Court, the then-Pennsylvania Attorney General, J. Shane Creamer, did not believe he could appropriately argue on behalf of the Commonwealth. Creamer appointed Carol Special Deputy Attorney General in order to represent the State of Pennsylvania before the Supreme Court and defend its statute in *Colautti v. Franklin.*\(^7\) Speaking through Justice Blackmun, the majority held that the statute was void for vagueness, but Justice White wrote a dissent agreeing with Carol’s argument. He was joined by Chief Justice Burger and Justice Rehnquist, all suggesting that the Commonwealth had a legitimate interest in regulating abortion. This, too, must be said. Although a dedicated women’s rights advocate, Carol also was a devout Roman Catholic.

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\(^6\) 399 U.S. 42 (1975).

\(^7\) 439 U.S. 379 (1979).
whose support for the pro-life position never wavered. She did appreciate the difference between ecclesiastical and civil law and remained true to her judicial duties, but she always remained a staunch pro-life advocate, comporting with her religious beliefs. Once she took the bench, she ceased taking a public position on abortion, but before then, she made her stance clear in writings and speeches.

Personal anecdotes about Carol abide. Her husband's law partner and his wife, Bob and Bonnie Cindrich, were good friends of the Mansmanns. The Cindriches joined them one winter for a ski trip in the Rockies. Bob relates an incident that he believes personifies "her absolutely competitive nature"—a wild race between Carol and her sister down a Colorado mountain as they skied on its high back ridges. "It ended up," Bob said, "with Carol developing altitude sickness high on the mountain and being evacuated by the Ski Patrol in an unconscious state while we stood by helplessly. She was a very social and agreeable person, but anyone who competed against her in any sport or parlor game understood that her competitive instincts were fierce."

Notwithstanding her competitive spirit, always present was her genteel femininity. An example: when I came aboard the Court of Appeals in 1968, judges had no say in choice of furniture. It was massive dark mahogany for the classic desk, conference table, end tables, bookcases, and the arms and legs of the dark blue leather chairs encircling the conference table. For the three leather arm chairs provided to my chambers, there was a choice of colors—black or black. Today, my secretary enjoys modern furniture, but my law clerks do their work at the original, junior-size versions of my own desk. Their desks, like mine, are nearly forty years old. The leather on most of the chairs is wrinkled and cracked, much like the judge who sits on them, and chambers furnishings are what some clueless purchasing agent of the General Services Administration (the dreaded GSA) envisioned for judges' chambers—discreet and somber.

But not in Judge Mansmann's chambers. When she came aboard in 1985, U.S. Circuit judges were now free to choose their own furniture. When you entered her chambers, it welcomed you like a bright and warm living room with its pastel walls and fresh flowers. At the Court of Appeals Memorial Ceremony for Carol, Judge Dolores Sloviter said

[s]he would enter a court meeting with a smile and kind word for everyone, and her attire was as bright as her aspect. I re-
alized the other day that I don’t remember ever seeing Carol in dark clothes, other than her robe. Otherwise she wore prints, flowered fabrics, and lots of bright green, and that brightened the day and meeting for the rest of us. 8

The same was true of her chambers. It was, to use the words of Thomas Wolfe, “something growing like a flower . . . something coming to life again like April.” 9 Entering her chambers was walking through a portal to Spring. Not dark with massive furniture, but light and airy in shade and shape. And the centerpiece? A magnificent chandelier that she had carted from her home to add a special sparkle and elegance to her desk and work tables.

One of Carol’s first cases in our court involved a professor of French descent who sued a small college for discrimination based on ancestry by denying him tenure in its French Department. 10 She and I served on the same panel. The issue was whether the EEOC, without asserting a reason, could properly issue subpoenas to all faculty members who had expressed a view in the tenureship evaluation process. Carol and I disagreed at conference, but when we dined together later that evening, Carol said: “Rugi, I’ve got to tell you why I feel so strongly about this. I know we could have gone either way because the courts are divided throughout the country, but I’ve had experience in academia, and I know what has happened to a lot of women who are denied tenure for reasons that should not be kept secret. These evaluations should be brought out into the sunshine.” What Carol Los Mansmann had experienced as a person, she had not forgotten as a judge. This was another example of the “stigmata of past experience.” Although young in years, she was loaded with wisdom, and Carol was a living example of why diversity is so important in an appellate court.

My feelings about Carol are best expressed by the following remarks I made at our Court’s Memorial ceremony:

The loved and loving sister of this court died where womanhood’s morning almost touches noon, and while shadows were still falling towards the West. She had not passed on life’s highway a stone that marks the highest point, but, being

8. In Memoriam: Honorable Carol Los Mansmann, 329 F. 3d xxxi, xxxii (3d Cir. 2002) [hereinafter In Memoriam].
weary for a moment, she laid down by the wayside, and using her burdens for a pillow, she fell into that dreamless sleep that kisses her eyelids still.

While yet in love with life and raptured with the world, she passed. This brave and tender woman in every storm of life was oak and rock, but in the sunshine, she was vine and flower. She loved the beautiful. She sided with the weak, and with a willing hand, gave alms. With loyal heart and purest hands, she faithfully discharged all trusts.

Carol added to the sum of human joy. For her, happiness and comfort for the many was the greatest good, and reason the greatest pathway, and love the greatest inspiration. She climbed the heights and left all superstitions far below.

In storm and sunshine, on her always fell the golden dawning of the grander day.\textsuperscript{11}

\textsuperscript{11} \textit{In Memoriam, supra} note 8, at xlili.