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Remarks at a Memorial Service for the Honorable Carol Los Mansmann

April 29, 2002

*Dolores K. Sloviter**

The words that were used repeatedly to describe Judge Carol Los Mansmann in the past several years were courageous, indomitable, dauntless, heroic, valiant. She was all these things, but it would be a mistake to define her in terms of her struggle of the past several years. Now that that struggle is over, we should return to remember and to honor the multifaceted person that she was, a ray of sunlight that warmed us all.

The matters that were central to Carol's life were her family, the court, and her religion. I cannot speak to the third, and not very extensively about the first, but no one who knew her could have been unaware of her delight and joy in her family. She was very proud of Jerry and his many accomplishments, and spoke enthusiastically of their vacation trips abroad, the elaborate and fun-filled dinners they had with friends in Ireland and elsewhere, their trips to Italy, and in more recent years her trips to London where she helped furnish Jerry's place there.

The children were always the topic of conversation and we followed their progress with interest. I think the first time I ever heard of the Navy Seals was when she told me of Michael's interest in joining; she shared her pleasure in Casey's developing business and real estate skills; we heard and saw pictures of Megan's wedding to Michael and then the birth of their baby, and we probably know more than he'd like of Patrick's selection of a college, a major, and his summer jobs.

We learned about her background, her Polish roots, and how the woman she was had been molded from the warm large family from which she came. I even was one of the lucky recipients of that famous Christmas bread.

* Judge, United States Court of Appeals for the Third Circuit. Judge Sloviter's remarks originally appeared at 329 F.3d xxxi (2002). The *Duquesne Law Review* makes no claim to original U.S. Government works.

We know how supportive her sisters have been, spending months in Sewickley when needed, and of course we are aware of and admire the devotion of her office family, her secretaries, Ginny Ryan and Carole Lombard, and her many wonderful law clerks over the years. She spoke warmly of the entire court staff in Pittsburgh.

But most of all, we will remember Carol as a colleague, for it was as a member of the Third Circuit that she interacted with the other members of the court.

Judge Weis spoke at Carol's funeral of the lawyers' comments about Judge Mansmann as they were reported in the Almanac of the Federal Judiciary. They were glowing, and deservedly so. She was always prepared, interested, alert, and engaged. She asked relevant questions, always directly on the point at issue. She didn't spend time cracking jokes because she recognized the importance of the case to the parties and to the lawyers, but she was unflinching courteous, even in the face of arguments that might try the patience of some of her less patient colleagues.

It was only natural that Carol Los Mansmann would be a good judge. She had the perfect background and training. A graduate of Duquesne Law School, she joined the Allegheny County District Attorney's Office a year later, where she worked in the appeals division, but once she actually tried and won a first-degree murder case and learned firsthand how difficult it was. While on that staff she argued a case before the United States Supreme Court on the power of the police to search automobiles, and was, it was reported, the youngest woman to argue before that august body. She was in private practice with Jerry for a short period, was a Special Assistant to the State Attorney General, and then taught on the faculty at Duquesne Law School.

She was appointed to the District Court in 1982, and her friends and fellow district judges on that court still speak highly of her service there. The book that was being prepared for her to celebrate her 20th year as a federal judge, which would have been March 19, 2002, shortly after she died, is filled with loving remembrances from other district judges who preceded or followed her on that bench.

But it was as a colleague on the Third Circuit, when she joined our court in April of 1985, that we got to know her real measure. She possessed all the admirable attributes—she was extremely organized in her mind as well as in her work. She approached problems and issues from Step 1 and progressed logically until a solution was found. She would enter a court meeting with a smile

and kind word for everyone, and her attire was as bright as her aspect. I realized 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 the meeting for the rest of us. I also realized that I never heard anyone on the court say anything critical about Carol.

For all her wonderful qualities, there was nothing staid nor boring about her. She enthusiastically joined her colleagues to explore different restaurants in her Philadelphia sittings, and I learned from another judge's entry in the 20-year memory book that Carol's photo was snapped sitting by a slot machine, undoubtedly somewhere where it was legal.

She was a participant in all aspects of court life. She was continually creative. She devised and carried out the idea of taking the photograph of all members of the court staff so the judges could put the names and faces together. She would willingly take on any task that needed doing, and was of marvelous help to me during my seven years as chief judge. She was in charge of the Space and Facilities Committee at that time, and somehow she was able to discover that there was unused space between the chambers in the Philadelphia Courthouse behind the elevators that made it possible for the five resident Court of Appeals judges to expand so that our law clerks no longer needed to sit on each other's laps. She chaired the circuit Judicial Conferences with the same grace and good humor that she showed in all of her other activities.

Over the years, her accomplishments were recognized in many different venues. She was given an Honorary Doctorate by Widener University School of Law, an Honorary Doctorate of Public Service by LaRoche College, and the Duquesne University Law Alumni Award. I think she particularly appreciated the Susan B. Anthony award bestowed by the Women's Bar Association of Western Pennsylvania.

She was a staunch supporter of equal rights for women, and kept part-time positions for law clerks so they could fulfill family responsibilities at the same time.

In my contribution to the 20-year book, I included a photograph I knew she loved—one of the two of us sitting on the bench with New Jersey District Judge Anne Thompson, the first all-female panel of the Third Circuit.

But appellate judges are known primarily for their opinions, and Carol was no exception. Her first opinion for the en banc

court, not long after she joined the court, was in *Chipollini v. Spencer Gifts*,¹ a case holding an employee could prevail in an Age Discrimination in Employment Act suit even if he could show only circumstantial or indirect evidence. In another discrimination case, she wrote that universities could not hide discovery behind a claimed academic peer privilege if the information was needed to help an employee prove a claim of discrimination,² and in yet another case she wrote that a lay teacher in a catholic school could bring an action alleging age discrimination.³

It has surprised me that in all of the press comment about Judge Mansmann following her death, there was so little recognition of the core values that characterized her decision making. None of the judges on our court are bleeding hearts—we see too much crime and too much destruction to be motivated by pity or sympathy. But Carol came as close as any of us as to understanding the misery out of which crime may have been born and carefully examining the record to ensure that the defendant's rights were scrupulously observed.

It is in the body of her opinions dealing with the rights of the disabled that Carol Los Mansmann may have left her most lasting mark. The case that started the series concerned the application of regulations implementing the Rehabilitation Act to a subway station on the Temple University campus. The station was undergoing extensive renovation, using federal funds. The regulations required that such stations must be accessible to the disabled. Philadelphia had reconstructed the station without the elevator that would have put it in compliance, construing the regulations to be satisfied if there had been "special efforts" made. Judge Mansmann, writing for the court, reversed the summary judgment the District Court had granted to the defendants. After extensive analysis of the complex regulations, she wrote that it was clear that the defendants had the obligation to make the northbound terminal of the station usable by persons in wheelchairs, and that there was an issue to be tried as to the feasibility of making the southbound terminal usable by wheelchair occupants. She was undeterred by the hue and cry created over the holding that required reconstruction of the already completed station.⁴

1. 814 F.2d 893 (3d Cir. 1987).

2. *E.E.O.C. v. Franklin & Marshall Coll.*, 775 F.2d 110 (3d Cir. 1985).

3. *Gearing v. Visitation of the Blessed Virgin Mary Parish Sch.*, 7 F.3d 324 (3d Cir. 1993).

4. *Disabled in Action of Pa. v. Sykes*, 833 F.2d 1113 (3d Cir. 1987).

Shortly thereafter, she authored an opinion for the court holding that children seeking disability benefits were entitled to be given an opportunity for individualized assessment of the severity of their functional limitations, just like adults.⁵

The third case that should be mentioned here also involved the rights of handicapped individuals to public transportation services, but this was not a Judge Mansmann majority. In fact, in this en banc case she wrote an opinion that was a concurrence and dissent. At issue was whether certain federal statutes mandated that all newly purchased buses be equipped with wheelchair lifts. Unlike the plurality of the court, Judge Mansmann, writing for the four of us, would have held that the statutes required that affirmative steps be taken in the direction toward “the goal of eradicating the ‘invisibility of the handicapped.’”⁶

This is, of course, by no means a chronology of all the opinions that she authored, but this sample illustrates the depth of her concern for the unfortunate of our society, and serves to demonstrate the kind of judge that she was and the kind of person that she was.

I hope you’ll give me leave to make some personal remarks. I first met Carol in Pittsburgh, at a reception that I believe followed celebration of Judge Aldisert’s ascension to the Chief Judge position of our court. Her name had been mentioned for the next seat on our court, but the matter dragged on, as these things do. I introduced myself and asked her how she was coping with the uncertainty. She said that it was easy, because she loved her job on the District Court and she was sure she’d also love the job on the Court of Appeals if it came her way. I was immediately drawn to her because I had felt the same way when I was nominated out of a faculty position at a law school.

When she came on the court she was given Philadelphia chambers next door to mine, and we became fast friends. I had no sisters, I was an only child, and I had been the only woman on the Court of Appeals for six years until Carol was appointed, so we developed a sort of sister/friend relationship. On occasion, she would dine at our house, but we also fell into the habit of taking tea together, either in her chambers or mine, at least once during every one of her Philadelphia sittings.

5. *Zebley by Zebley v. Brown*, 855 F.2d 67 (3d Cir. 1988).

6. *Ams. Disabled for Accessible Pub. Transp. v. Skinner*, 881 F.2d 1184, 1204 (3d Cir. 1989).

She was very generous with her chambers, insisting that the extra staff persons (a part-time secretary and a law clerk) that I had as Chief Judge be housed in her chambers throughout the seven years, and she always offered to let my interns use her chambers.

She was supportive personally and professionally. We generally viewed most legal issues similarly, except for the one rather major difference of opinion in the highly publicized *Taxman* case, where she wrote for the en banc majority and I wrote for the dissent.⁷ As is known, the parties settled before the Supreme Court could decide what became a nationally divisive issue, but our personal friendship survived.

I last saw Carol on February 13, when she came to Philadelphia to participate in the en banc sittings we had scheduled that day. She had called and asked me to pick her up at the hotel, which she thought would facilitate her entrance to the courthouse. Of course I did, and when we got off the elevator together at the eighteenth floor, where our chambers are, because I was going through some difficulties at home, which she was well aware of, I asked her, "Carol, how do you do it? How do you keep on going day after day, with such tremendous suffering?" And she said, "You just put down one foot at a time, and then the next." I thought, that is a life lesson for all of us.

I would imagine that there are as many different views of life after death as there are people in this courtroom. I was impressed a long time ago with a dialogue in one of the Russian novels, which I have not been able to find again, in which an agnostic young Russian intellectual asked a wise elder woman whom he respected whether she thought there was life after death. She answered that people live on in the memories of those they have touched. Carol Mansmann's memory is indelibly etched in the hearts and minds of each of her colleagues.

7. *Taxman v. Bd. of Educ. of Twp. Of Piscataway*, 91 F.3d 1547 (3d Cir. 1996).