

SPEEDING UP TO SMELL THE ROSES

Stuart Banner*

They say SO'C is retiring. I don't believe a word of it. Not deciding cases any more—I'll accept that. But not retiring.

This is a woman who packs more activity into her life than anyone I have ever known. My strongest memories from clerking all involve trying to keep up with her. I think it was my second day on the job when she took us whitewater rafting. Then it was the National Gallery, Harpers Ferry, the National Arboretum, a picnic by the cherry blossoms, sailing on the Eastern Shore—somewhere else every few weeks. My favorite was a behind-the-scenes tour of a U.S. Postal Service building where they were testing what were then futuristic mail-sorting machines. If you could get there from the Court within a couple of hours, SO'C got there, and she brought us along.

This wasn't quite stopping to smell the roses. It was more like speeding up to smell the roses. And learning why they smelled the way they did. And how one could become a better rose-smeller. And what steps one should take to improve the quality of roses and the breadth of their distribution. And then moving on to the next set of flowers down the road. SO'C was interested in learning about everything and everyone.

Then there were all the people who came through the office. It seemed like every day there were visiting judges from some place or another, or one of my relatives who just happened to be popping in. (It's funny how they never came to see me at any of my other jobs. Maybe they weren't really coming to see *me*.) SO'C had a way of making visitors believe that meeting them was the highlight of *her* life, that she had long admired the trial judges of Denmark or Thailand or Saginaw and was thrilled finally to *meet* one, that she had heard so much about how *wonderful* my little sister Debbie was and how *pleased* she was to see her in person. Such things sounded believable because I really think she believed them. She genuinely *is* interested in meeting people. I'm convinced that if you met her once, for five minutes, and then didn't see her again for a decade, you could run into her at the airport and she'd remember your name, your spouse's name, your kids' names, their favorite flavors of ice cream, and everything else you had told her a decade before—not because she

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has anything to gain from keeping track of you, but because she cares enough about all those things to remember them. I've seen something close to this happen at the law clerk reunions. After twenty-five years on the Court it must be hard enough to remember all the clerks, but somehow she remembers all our children (or, as she calls them, her "grandclerks") as well.

I have certainly never worked for anyone else as concerned about the well-being of her staff. The Court cafeteria was closed on weekends, so when we worked on the Saturdays before oral argument weeks, she cooked lunch for us at home and brought it in. She kept track of our birthdays and planned the celebrations. She gave us play-by-play accounts of the Justices' conferences so we would know what to expect from the opinion assignments and the opinions themselves. I know the other Justices didn't do that with their clerks, because their clerks would come to us to find out what had happened.

And the sports. By the time I got to work in the morning, she had already finished her aerobics class and was plowing through briefs at her desk, often so she'd have time for golf or tennis in the early evening. I played in some of those doubles games, although maybe *games* isn't the best word for them. This was serious business. In the office we worked on our putting—the office was just long enough, and she had a putter, some balls, and a plastic gadget that would spit the ball back to you if you could hit it in. Just a few years earlier she had been one of the country's most famous cancer patients, but you sure couldn't tell.

All this activity would have been more than enough to fill up the lives of most people, but of course for her these were just the extra bits squeezed into the gaps. Law professors and journalists love to criticize the Court, but they sometimes forget what a high-volume operation it is. There are law professors who, in effect, decide one case per year—sometimes one case per career. At that pace you can write a pretty good opinion. At 100 per year, the task gets a lot harder. Add on all the cert petitions and the midnight stay applications from condemned prisoners, and it becomes harder still. How good a job you think she did depends—let's be honest—on your political preferences, but whether or not she wrote the best opinions, she certainly wrote the fastest. That's a measure of her courtesy to her colleagues and a rough indication, I think, of her attitude toward life. No use sitting around and *brooding* about it, I can still hear her say. Just *do* the best you can and move on to the next one. Lots of doing, not much sitting around—that about sums it up.

So I'm skeptical about this so-called retirement. To us law clerks it looks more like a massive expansion of the range of possible places to go, people to meet, and things to do. The signs have been building up already. I count three books published in the past five years, and we've only just left the Lazy B, so there's plenty of ground still to cover. When I saw her waving and smiling in the rain in Pasadena as Grand Marshal of this year's Rose Parade, I had a glimpse of the future. Within a week of her ostensible retirement, she was teaching at the University of Arizona and speaking out against legislative

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attacks on judicial independence. I suspect there will be more of this to come.

We have a lot for which to honor SO'C, and this is as good an occasion as any, but I'll be very surprised if her future is any less busy than her past. When all is said and done, her biographers may well look back on 2006 not as the end of a career but as a transition from one phase of her career to another. Now that she's supposedly retired, well, watch out.

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