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Rosalie E. Wahl and the Jurisprudence of Inclusivity

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Rosalie Wahl’s history as the first woman justice on the Minnesota Supreme Court visibly established her as a major force for change in one notably and needlessly underinclusive area. But viewing her in that context alone consigns her professional career to too narrow a scope and overlooks other major achievements.

Rosalie’s early work in the State Public Defenders’s Office demonstrated her ever present commitment to provide access to the legal system despite the problems of economic exclusion. Her work on the Racial Bias Task Force, following her work on the Task Force for Gender Fairness in the Courts, was a testimonial to her lifelong effort for racial inclusivity. That same spirit was revealed in her efforts to include the Minnesota Constitution as a full partner with the U.S. Constitution in Minnesota decision making. These efforts surfaced with her 1986 dissent in *State v. Murphy,* and came to fruition in her work on the majority in *State v. Hershberger,* and as the author of *State v. Russell.*

Two other facets of her spirit of inclusivity are more subtle. I would identify them as life and landscape. Rosalie’s law school education (and mine) was obtained during the years of the highly vaunted “reasonable man standard.” As far as we could tell, the words meant what they said and extended some distance beyond tort liability. We noted right off the absence of reasonable women from the equation, but lately I’ve been wondering whether we might not have overlooked something in the initially acceptable category of “reasonable.” As it evolves in legal opinions, this “reason” can be confined to very narrow categories bereft of human qualities, or it can be used to disguise a

† Judge, Minnesota Court of Appeals.
1. 380 N.W.2d 766 (Minn. 1986).
2. 462 N.W.2d 393 (Minn. 1990).
3. 477 N.W.2d 886 (Minn. 1991).
received (and maybe only arguably reasonable) set of social assumptions. Rosalie’s opinions, in both her use of language and her analyses, often demonstrate a wider definition of reason that does not artificially omit or ostracize the effect of human emotions on perception and thought. She brings in the emotions to better focus the picture and, when relevant, incorporates them into the decision. In her dissent in *State ex rel. Beaulieu v. Mounds View,* 4 she recognized the influence of the unconscious on individual and collective behavior. In *Pikula v. Pikula,* 5 addressing custody decisions, she emphasized the value of emotional connections forged by primary caretakers. When Rosalie talks about the moral and social values sprouted at the hearth, you quickly conclude that she did not develop that list by reason alone.

Rosalie’s inclusivity of landscape is one of the enduring delights of her opinions. Her descriptions and metaphors of the heartland are great sources of strength. Whether it is layering sod along a culvert in *Kliniski v. Southdale Manor, Inc.,* 6 or observing a dew-laden bulldozer in *Anderson v. American Casualty Co.,* 7 or listening to the rattle of old rain gutters beside a chicken coop in *State v. Anderson,* 8 you can see the meadow stretching beyond. But my personal favorite is her evocation in *In re Wang* 9 of a substantial evidence standard as “evidence with heft.” I can see the threshers in the field and taste the lemon meringue pie for lunch. Rosalie’s work in the judiciary has left indelible “evidence of heft,” and as a judge and as a citizen, I am grateful.

I think that Rosalie was not so much called to the law as the law was called to Rosalie. Called to account. And if that loving and painstaking calling to account does not continue to produce a fairer, truer, wiser, and wholer justice system, it will not be because Rosalie Wahl did not do everything in her power to bring it about.

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4. 518 N.W.2d 567 (Minn. 1994).
5. 374 N.W.2d 705 (Minn. 1985).
6. 518 N.W.2d 7 (Minn. 1994).
7. 504 N.W.2d 467 (Minn. 1993).
8. 379 N.W.2d 70 (Minn. 1985).
9. 441 N.W.2d 488 (Minn. 1989).