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Tribute to Justice Rosalie Wahl

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Honorable Harriet Lansing[†]

Rosalie Wahl's appointment in 1977 as the first woman justice on the Minnesota Supreme Court was a monumental event for women. At the time of her appointment, there was no woman who had served on the U.S. Supreme Court, only one woman who sat on a federal appellate court, and only five women who were serving on other state supreme courts.

The appointment process and the 1978 contested election—one of the roughest high-court elections in Minnesota history—gave Minnesotans an opportunity to see the exceptional quality of Rosalie's mind and the strength of her spirit. The stark adversities of her early life had caused her to turn, personally and professionally, to issues that intersect with the eternal—issues of fairness, justice, and morality.

I have been asked to focus on the justice that Rosalie stood for in her work on gender fairness. Rosalie's own words establish her deep commitment to these issues. In an article entitled *Some Reflections on Women and the Judiciary*, she wrote: "The truth is, despite proclamations of equality, the lives of many women today are impoverished, sometimes violent, and most often marginal in terms of participation, power, and self-determination."¹⁸ Rosalie urged that change must occur in the basic inequity of power and spoke about the work that was being done in the judiciary on the Gender Fairness Task Force.

Even before Rosalie began this work on the court, she had long understood, as she said, that "[w]omen in this and preceding generations have struggled, in their private lives and in their professional and public lives, to have the talents of women and the contributions of women to the body politic accepted and valued."¹⁹

As a beginning lawyer, she was involved in the formation of the Minnesota Women Lawyers, which held its first meeting forty-one years ago today. Its annual lecture series, named in Rosalie's honor, was launched by the funds from Rosalie's exuberant retirement

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18. Rosalie E. Wahl, *Some Reflections on Women and the Judiciary*, 4 LAW & INEQ. 153, 153 (1986).

19. *Id.*

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event. While on the court, she put her shoulder to the wheel as a pivotal member of the National Association of Women Judges (NAWJ) and received NAWJ's Lifetime Achievement Award in 2004. She was a stalwart supporter of the Minnesota Women's Consortium, an organization she believed in with her heart and soul. She was a loyal, beloved, and steadfast member of the Minnesota Women's Forum. She supported the American Association of University Women and worked valiantly in their Leaders of Tomorrow program for young women students. And there were many, many more organizations with similar purposes that she supported and helped to establish.

One of her most significant roles in gender equity she undertook in her capacity as a supreme court justice—the work of the Minnesota Gender Fairness Task Force. Gender fairness task forces were established by supreme courts across the country to investigate the nature and gender bias in each state's judicial system and to formulate specific recommendations for reforms. The Minnesota task force was created in the summer of 1987 and delivered its report in June 1989.

The thirty-member commission produced an extensive report with ninety recommendations for reform on issues of family law, domestic violence, criminal and civil justice, and courtroom environment.²⁰ The report led to wide-ranging changes in statutes, judicial education, and court procedures.

The national leader and inspiration for the gender and race bias task forces, Dr. Norma Wikler said:

Within this national judicial reform movement, no one is more respected or loved than Justice Wahl. . . . Rosalie can articulate better than anyone else what the struggle for gender fairness is about, the horrendous costs for the victims of gender bias and the obligation of the justice system to rectify it.²¹

Jane Larson, a distinguished law professor and former clerk for Rosalie, has put together an excellent account of Rosalie's solid

20. See MINN. SUPREME COURT TASK FORCE FOR GENDER FAIRNESS IN THE COURTS, FINAL REPORT (Sept. 1989), *reprinted in* 15 WM. MITCHELL L. REV. 825 (1989).

21. Norma Juliet Wikler, *Reflections on Justice Rosalie E. Wahl*, in *THE SOCIAL JUSTICE, LEGAL AND JUDICIAL CAREER OF ROSALIE ERWIN WAHL*, pt. 3 (Marvin R. Anderson & Susan K. Larson eds., 2000).

legacy of judicial opinions,²² but I want to speak to what I would characterize as an element of Rosalie's judicial philosophy—the jurisprudence of inclusivity. In addition to her life-long perseverance in eliminating barriers erected through sexism and racism, Rosalie also stood for another form of inclusivity that was evident in her analytical and decision-making processes.

Rosalie understood the centrality of emotions in people's lives and their interplay with the rule of law. She understood the crucial part that emotions play in shaping laws, applying laws, interpreting laws, and determining the priority of doctrines in analyzing legal questions.

In our law school education, we had become all too familiar with the “reasonable man standard.” We noted right off the absence of reasonable women from the equation. But Rosalie's opinions also called into question whether something was essentially missing in the narrowly drawn definition of reasonable. I explored that question briefly in a reflection at the time of Rosalie's retirement, published in the *William Mitchell Law Review*.²³

Ann Juergens, building on the concept of a jurisprudence of inclusivity, explained that Rosalie understood that the wholeness of a legal solution must incorporate the emotional, social, and economic context of a legal problem.²⁴ “She listened to emotional information and valued it when solving problems. She was very good at reasoning, but never presumed that reason excludes perceptions gained from emotion.”²⁵ Similarly building on that concept, in an upcoming law review article, Dr. Sally Kenney of Tulane University analyzes emotional intelligence as a component of wisdom and good judgment.²⁶ Dr. Kenney, in a series of articles and an excellent chapter in her book on gender and justice, traces the meaning of Rosalie's work in describing why women in the judiciary really matter.²⁷

22. See Jane Larson, *The Jurisprudence of Rosalie E. Wahl*, in *THE SOCIAL JUSTICE, LEGAL AND JUDICIAL CAREER OF ROSALIE ERWIN WAHL*, *supra* note 21, pt. 2.

23. See Harriet Lansing, *Rosalie E. Wahl and the Jurisprudence of Inclusivity*, 21 *WM. MITCHELL L. REV.* 11, 11–12 (1995).

24. Juergens, *supra* note 11, at 34.

25. *Id.* at 33.

26. See Sally J. Kenney, *Wise Latinas, Strategic Minnesotans, and the Feminist Standpoint: The Backlash Against Women Judges*, 36 *T. JEFFERSON L. REV.* (forthcoming 2014).

27. See SALLY J. KENNEY, *GENDER AND JUSTICE: WHY WOMEN IN THE JUDICIARY*

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Rosalie never lost sight of those emotional values that women's experiences could bring to our legal frameworks—those values that she identified as sprouted by the hearth—that included above all a sense of justice and fair play.

In Chicago in 1991, she gave a speech that closed with these lines:

When we come to lay down—or to lift up—our work and our lives, may it be said of each of us as it was said on this marble slab in the Old Meeting House Burying Ground in Jaffrey, New Hampshire:

Sarah Averill
Died
Oct. 16, 1881
89 Yrs, 5 Mos, 5 Days
“SHE DONE ALL SHE COULD”²⁸

It may, without a shadow of a doubt, be said of Rosalie. Rosalie not only “done all she could,” but she did it over and over and over again.

No matter how difficult the circumstances or how bleak the outlook, she could motivate herself to reach down and start a ladder in her heart to mend the broken parts—of life, of law, of judicial structures, and of our social fabric.

As our connections to Rosalie move, as Emily Dickinson would say, from syllable to sound,²⁹ her clear, unwavering voice will remain with us:

In the dreams and aspirations of young women all across Minnesota, we will continue to hear the sound of her voice.

In the lives of young women and men who reach out to make this a fairer and more just world, we will continue to hear the sound of her voice.

In the vibrant yellow of a Kansas sunflower on a beautiful blue Minnesota morning we will glimpse the sound of her spirit.

In the concept of what it means to be a fully human judge with a jurisprudence of inclusivity, we will hear the sound of her voice.

REALLY MATTER 52–64 (2013).

28. Rosalie E. Wahl, Assoc. Justice, Minn. Supreme Court, Address at the Women Judges' Fund for Justice Luncheon: More Prelude Than Token (Oct. 11, 1991), in Rosalie Wahl Papers, *supra* note 2.

29. See EMILY DICKINSON, *The Brain*, reprinted in COLLECTED POEMS 156, 156 (Mabel Loomis Todd & T.W. Higginson eds., 1982).

And, in the hearts and souls of all of us, wherever the spirit prevails over difficult circumstances and decision making, we will hear the strong notes of Rosalie's voice, rising in exuberant song.