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A TRIBUTE TO ROSALIE E. WAHL

Amy K. Adams[†]

In the 1988–89 term of the Minnesota Supreme Court, I had the enormous privilege to work with Justice Rosalie Wahl as a law clerk. It was there that I had the opportunity to observe a truly dedicated woman, who is perhaps the most thoroughly decent human being I have ever met.

Justice Wahl's path to the bench has been well documented. What is less well known is the fiercely consistent approach that she brought to the bench. Justice Wahl believed, and judged, on the principle that the individual, the person engaged in the conflict, was the most important element of the system. She fought strenuously to ensure the rights of the unrepresented, the underdog. She had a sympathy for the plight of the powerless in any fight. Her particular talent was her ability to discern the real source of conflict beneath the strategic positioning, and she never lost sight of the fact that all litigation is essentially a conflict between real human beings. Her decisions were guided by the rules of law and informed by the understanding of how those rules of law affected the individuals in the lawsuit.

This was, for me, a radical departure from my experience in law school, where law was seen as a tool for social engineering. By altering the rules of law, one could effect social and cultural change on a broad scale. The effect on "public policy" was often the basis for determining whether a particular decision was "right" or "wrong." The particular lawsuit was viewed as an opportunity to prescribe future behavior. My experience with Justice Wahl challenged my educational bias toward the "greater good." The most important lesson I learned from her was how to approach law as a human activity with human consequences, and not as an academic exercise.

I have never met anyone as fiercely committed to the preservation of individual dignity as Justice Wahl. In every

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decision, every hearing, every encounter, she remained committed to the ideal that each person is entitled to decency and respect, and she granted that respect to everyone: justices, trial court judges, litigants, and attorneys. I never saw Justice Wahl listen to an oral argument while sitting back in her chair. She always leaned forward, giving each oralist her full attention, assuring each party that he or she was receiving a full and fair hearing of his or her argument.

When the rest of the members of the court disagreed with her perspective on a case, even a case she felt was deeply important, she never expressed frustration or demeaned her colleagues' viewpoints. In one particular case, when she could not convince the court to adopt her position, she only sighed that "my dear friends, the Court might be making a wrong decision."

Perhaps the hardest decision I saw Justice Wahl struggle with was one in which the fundamental human dignity of each of the parties was at stake in the outcome. In my year with the court, a sexual misconduct case arose in which several women had accused an oral surgeon of touching them inappropriately while they were under anesthesia.¹ The doctor denied the allegations. Further, he had taken the precaution of always having a staff person present while his patients were under anesthesia, to assure that there was a witness in the event of complaints. These assistants also denied that the alleged conduct occurred. Complicating the issue was testimony that the type of anesthesia used was known to trigger hallucinations in some patients. The issue for the court was whether the evidence was sufficient to sustain the revocation of the doctor's medical license. The conflict was a classic case of one person's word against another's. There was no way for the complaining women to prove their allegations and no way for the doctor to disprove their claims.

Justice Wahl recognized that the seriousness of depriving anyone of his livelihood required close analysis of the sufficiency of the evidence presented. Justice Wahl was also acutely aware of the need for the court to take the complainants and their allegations seriously. Women who complain of sexual harassment do so at considerable cost to themselves, and such a

1. *In re Wang*, 441 N.W.2d 488 (Minn. 1989).

sacrifice should not be silenced by telling the women that they imagined the incident. What made Justice Wahl so special was her recognition that this case could not be resolved by the application of a “neutral” rule, such as “limited appellate review of an administrative board decision.” Such a review would avoid the essential conflict, but it would fail the essential purpose of the courts: to take complainants seriously and to evaluate the true conflict at issue. Ultimately, the court held that the evidence was not sufficient to support a license revocation, a decision that was reached only after carefully weighing all the interests at stake. Although the decision in any given case might go either way, Justice Wahl always strove to ensure that the parties’ positions were considered seriously, even if they did not ultimately prevail.

Which is not to say that Justice Wahl allowed litigants to get away with anything in their dealings with the court, and she expressed her disapproval of litigation tactics when appropriate. In the case of *Runia v. Marguth Agency*,² the justice expressed her disapproval of what she perceived to be a collusive lawsuit. *Runia* was a suit for insurance coverage, arising from a snowmobile accident. The passenger sued the driver, her fiance, for her injuries. After the jury verdict, the driver, now the passenger’s husband, did not oppose his wife’s motion for additur, which quadrupled the jury award. Recognizing that the driver had no insurance and would never have to pay the damages to his own wife, Justice Wahl characterized the set-up of the insurance company as “both figuratively and literally a ‘sweetheart deal’ . . .”³ However, Justice Wahl recognized that the passenger’s injuries were probably real, and apparently were greater than the amount awarded by the jury, and allowed the parties to relitigate the damages. The genius of the decision was in her recognition that, although technically adverse, the husband and wife did not have separate interests, and that all parties had been wronged by the verdict. Justice Wahl would not condone the collusive use of additur, but she also would not allow litigation strategy to be used to deprive a victim of her compensable damages.

2. 437 N.W.2d 45 (Minn. 1989).

3. *Id.* at 50.

I believe it is this dedication to the dignity of each individual that has made Justice Wahl such an exemplary teacher. Even when writing her opinions, Justice Wahl included her clerks, which provided a rich education in opinion crafting that not all judges offer their clerks. The internal telephone would ring, and Justice Wahl's distinctively deep voice would issue an invitation to "come down" to her chambers. Once there, we would sit, side by side, at a table overlooking the Capitol lawn, as the sun set and the evening crept across the grass. As we sat, Justice Wahl would carefully select each word in her opinion and discuss the decision with the clerk. Litigants who received a Justice Wahl opinion received the genuine article. An opinion written by Justice Wahl was completely her product. She never took a clerk-written memorandum and re-issued it as an opinion. Every word was carefully chosen by the Justice herself, to properly convey the decision of the court. Her care with language and the importance of precision is a standard to which I still aspire.

Justice Wahl also took great joy in the goodness the world had to offer. She was a lover of music and enjoyed singing old standards, folk tunes, and even union organizing songs such as "Union Maid" and "The Ballad of Joe Hill." Her farm, a few miles outside the city, was the site of a case conference at least once during my tenure. My co-clerk and I sat with the Justice underneath an ancient tree, discussing the resolution of a case as the summer winds blew through the tall grasses. Her farm also serves as the site of the annual clerk reunion. Each year, all her clerks, past and present, gather to eat, sing, and celebrate the amazing opportunity we all experienced: the chance to know and learn from this amazing woman.