Tribute to Chief Justice Durham: The "Special Responsibility" of Lawyers and Judges

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THE “SPECIAL RESPONSIBILITY” OF LAWYERS AND JUDGES

Brigham Fordham*

Just a few weeks after the September 11, 2001 terrorist attacks, I started my job as a law clerk for Justice Christine M. Durham of the Utah Supreme Court. It was a time of great sadness and anxiety. Everywhere I went people were talking about the threat to the American way of life. There was talk that the 2002 Winter Olympics in Salt Lake City might be cancelled due to security concerns. People were angry and scared.

I do not remember the substance of my conversations with Justice Durham about the terrorist attacks. What I do remember, and what impresses me to this day, is the approach to justice that prevailed in her chambers. At that time of insecurity and defensiveness, I was struck by Justice Durham’s openness to other perspectives, her commitment to doing what is right, and her faith that humanity can prevail over lawlessness.

As a young lawyer, I learned much of value from working with Justice Durham. More than ten years later, I view Chief Justice Durham as one of the great teachers and leaders of our time. In a profession long mired by elitism and exclusion, Justice Durham has been a fearless promoter of education and inclusion.

When I began my clerkship, I was surprised by the way Justice Durham interacted with her law clerks. Despite her extensive legal expertise and our comparative naiveté, Justice Durham showed a sincere interest in hearing our thoughts about matters pending before the court. Rather than characterizing herself as the expert and us as the unlearned pupils, Justice Durham found value in the diversity of perspectives. The discipline Justice Durham showed—being able to fully hear others’ viewpoints while simultaneously challenging them to reach deeper—is, in my view, the quintessential trait of a good teacher.

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1 Justice Durham was appointed Chief Justice the following year.
Perhaps Justice Durham’s most influential work as an educator comes not from any formal program or work with an organization but from her example as a leader and role model. As others have often noted, Justice Durham is a trailblazer for women in the law. She went to law school at a time when woman lawyers were few and succeeded as a litigator and law professor in a profession dominated by men. She went on to be the first female judge in Utah, the first woman appointed to the state supreme court, and the first woman to be chief justice of that court. The story of her journey through law school, law practice, and appointment to the bench shows the triumph of courage and persistence over ignorance and prejudice. Justice Durham has not only broken down social barriers for women, she has served as an inspiration for anyone who aspires to transcend expectations.

I remember one day having lunch with Justice Durham and my co-clerk Carol Salem. We were talking about women in the law. We asked Justice Durham what she thought about being the author of so many “firsts.” As we talked, I was impressed by how Justice Durham viewed her own experience confronting and surmounting social barriers. To her, these accomplishments were not so much victories as they were evidence—testaments that the practice of law, and by extension, the application of it, often fails to hear essential voices. She spoke of her experiences as reminders that lawyers and judges must vigilantly seek out perspectives that have been left out of the legal conversation.

Justice Durham’s ability to connect with the underrepresented has led her to be an unfailing promoter of legal education at all levels. The cornerstone of a viable democracy, Justice Durham has said, is a “literate, informed and politically functioning citizenry.” Disturbed by growing ignorance and apathy toward government, Justice Durham spearheaded an organization that put mandatory civics courses back into Utah high schools. She has worked to make

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3 A simple, though moving, example of Justice Durham’s ability to relate to others comes from a 2009 news report. Speaking to former addicts who were graduating from Utah’s drug court program, Justice Durham said that she believed the graduates had overcome more difficult challenges than she has ever faced in her life. Rebecca Palmer, Drug court offers “new realm of opportunities,” DESERET NEWS (Nov. 2, 2009).

4 Angie Welling, Civic Apathy Targeted, DESERET NEWS, B04 (May 2, 2002) (quoting comments of Chief Justice Durham at the Law Day luncheon May 1, 2002 in Salt Lake City).
legal advice available to those who cannot afford a lawyer, participated in programs that teach students about government, and written regular columns in the newspaper encouraging civic participation and awareness.

Justice Durham has also worked to provide better training for lawyers and judges. In 2007, Justice Durham received the William H. Rehnquist Award, the highest honor a sitting judge can receive, in recognition of her contributions to judicial education.\(^5\) Indeed, her work applying adult education principles to judicial education programs has had a major impact on judicial education nationwide. In addition to developing programs and institutes to provide support and guidance to judges, Justice Durham has developed programs to encourage mentoring and professionalism among lawyers, and advocated for policies that support judicial independence and public confidence. Justice Durham's emphasis on the role of legal professionals as teachers and learners is strong medicine against lopsided access to justice.

The list of awards Justice Durham has received during her career is challenged only by the list of leadership positions she has held.\(^6\)


\(^6\) In July 2010, Justice Durham listed the following as her current civic and community affiliations: Chair, Utah Judicial Council; Member, Board of Trustees, Duke University; Member, Council of the American Law Institute; Fellow, American Bar Foundation; Member, ABA Council on Legal Education and Admissions to the Bar; Chair, Education and Program Committee, Conference of Chief Justices; Chair, Utah Coalition for Civic, Character and Service Learning; Chair, Initiative on Utah Children in Foster Care. Resume, Christine Meaders Durham, Chief Justice, Utah Supreme Court (July 2010), available at http://www2.americanbar.org/divisions/srlawyers/womentrailblazers/Women%20Trailblazers%20Documents/christine_meaders_durham.pdf. In the same document, Justice Durham identified the following past professional and civic activities: Presiding Judge, Third District (1981–1982); President, Utah District Judges Association (1980–1981); Member of the Board of Trustees, Legal Services for the Developmentally Disabled (1977–1978); National Board of Directors, Odyssey Institute, Inc. (1974–1978); Co-founder, Women Lawyers of Utah (1980); Charter Member and Bencher, American Inn of Court I, (1980–1982) (now Emeritus); Member, Governing Board of Developmental Disabilities, Inc. (1980–1982); Member, Governor's Task Force on Implementation of Revised Judicial Article, Utah Constitution (1985); President, National Association of Women Judges (1986–1987); President, Women Judges' Fund for Justice (1987–1988); Board of Directors, American Judicature Society (1986–1989); Chair, Standing Committee on Judicial Branch Education, Utah Judicial Council (1990–1992); Member, Education Committee, Appellate Judges Conference, ABA Judicial Administration Division (1984–1995); Member Emeritus, Duke Law School Board of Visitors; Chair, Advisory Board/Faculty Member, Leadership Institute for Judicial Education (State Justice Institute-funded program for adult development and judicial education) (1990–1998); Member, Executive Committee, Appellate Judges Conference, ABA (1995–1998); Member, Board of Directors, National Center for State Courts; Member, ABA Commission on Women in the Profession (1996–1999); Member, Advisory Committee on Federal Rules of Civil Procedure, Federal Judicial Conference (1994–2000); Member, Board of Overseers, The
believe she is sought out to be a leader because she knows how to connect with people of different views and bring them together. To be sure, Justice Durham is not afraid to speak her mind; but she is also extremely savvy about when and how she expresses it. Justice Durham does not attempt to battle those who might oppose her; instead, she takes a more challenging approach: She educates them.

Justice Durham’s success as a leader comes, in part, from her ability to take the long view of success. Learning requires change and change takes time. Justice Durham is refreshingly adept at thinking about success as a long-term commitment, persistently drilling at obstacles in the same way a stream slowly cuts through a mountain. She is secure enough that she is not afraid to fully hear opposing perspectives, strong enough to stand up for what she believes to be right, and wise enough to know that progress in a democracy is impossible unless decision-makers are willing to negotiate and compromise.

“Lawyers and judges,” Justice Durham has said, “bear a special responsibility to foster public understanding of the law and legal institutions.” Few have taken this responsibility more seriously and employed it more effectively than Chief Justice Durham.