

2012

Chief Justice Christine M. Durham: Trailblazer, Pioneer, Exemplar

andré douglas pond cummings

University of Arkansas at Little Rock William H. Bowen School of Law, acummings@ualr.edu

Follow this and additional works at: https://lawrepository.ualr.edu/faculty_scholarship

Part of the [Judges Commons](#), [Law and Gender Commons](#), and the [Legal Profession Commons](#)

Recommended Citation

andré douglas pond cummings, Chief Justice Christine M. Durham: Trailblazer, Pioneer, Exemplar, 75 Alb. L. Rev. 1657, 1657 (2012).

This Article is brought to you for free and open access by Bowen Law Repository: Scholarship & Archives. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of Bowen Law Repository: Scholarship & Archives. For more information, please contact mmserfass@ualr.edu.

CHIEF JUSTICE CHRISTINE M. DURHAM:
TRAILBLAZER, PIONEER, EXEMPLAR

*andré douglas pond cummings**

In 1978, Christine M. Durham was appointed, in a historic moment, to serve as trial judge to the third judicial district court in the state of Utah by then Governor Scott Matheson.¹ Lost in the appropriate fanfare connected to her groundbreaking appointment as the first woman to serve as a general jurisdiction judge in the state of Utah, was the fact that she would also become the youngest person ever appointed to a judicial post in that great state.² Just four years later, this young thirty-something female judge would be elevated by Matheson to sit on the Supreme Court of the State of Utah, marking the first time that a woman had ever been selected to sit on Utah's highest court.³ In truth, at that time, Justice

* Associate Dean for Academic Affairs and Professor of Law, Indiana Tech Law School. J.D., Howard University School of Law. Law Clerk to Associate Chief Justice Christine M. Durham, 1997–1998. I am grateful to Michael Nissim-Sabat, West Virginia University College of Law class of 2013, for terrific research assistance.

¹ Sara Israelsen-Hartley, *Female Judges Reflect Change in Attitudes*, DESERET MORNING NEWS, Jan. 2, 2009, at 2 (remarking how Christine Durham started the trend of women in the judiciary, with her 1978 appointment to the 3rd District Court bench); David Jordan, *Minorities Win with Utah's Judicial Selection Process*, DESERET MORNING NEWS, Feb. 9, 2003, at 2 (noting that Christine Durham was “originally appointed, not elected, to the trial bench by Gov. Matheson in 1978”); Doug Robinson, *Durham Endures: Chief Justice Rules That Law and Family Are Top Priorities*, DESERET MORNING NEWS, Oct. 4, 2003, available at http://www.deseretnews.com/article/515036327/Durham-endures.html?pg=2&s_cid=s10 (“In 1978—just seven years after she began her professional career and five years after arriving in Utah—she was named a state district judge. In 1982, she was named to the Utah Supreme Court. In 2002, she was named chief justice.”)

² Scott Daniels, Letter to the Editor, *Durham Deserving of Award*, DESERET NEWS, Sept. 27, 2007, available at <http://www.deseretnews.com/article/695213742/Durham-deserving-of-award.html> (“Justice Durham was the first woman and the youngest person ever to be appointed to the Utah district bench. She was the first woman and youngest person elected by her fellow judges as presiding judge of the 3rd District. She was the first woman appointed to the Utah Supreme Court, and she is the only woman to be elected chief justice by her fellow justices.”); Israelsen-Hartley *supra* note 1 (“She was the first female judge in the state and four years later was appointed to the Utah Supreme Court, where she now serves as the chief justice.”).

³ Daniels, *supra* note 2; Marc Haddock, *Utah's High Court Has Rich History*, DESERET MORNING NEWS, Dec. 7, 2009, at B02 (“In 1982, the court made history of another type when Gov. Scott M. Matheson appointed Christine M. Durham to the Supreme Court, making her Utah's first female justice.”); Elizabeth Neff, *Supreme Team: Utah's Currently Configured*

Durham joined just a tiny cadre of female jurists that had been elected or appointed to sit on their state's highest courts.⁴ It wasn't until 1981 that Sandra Day O'Connor was appointed to sit on the United States Supreme Court as the first female member of that Court.⁵ Thus, as one of "the firsts," Justice Durham embarked upon a remarkable career that has for more than thirty years represented trails blazed, spaces pioneered, and extraordinary examples imparted.

Trails Blazed

As most individuals called upon to be "the first" will describe, the scrutiny that accompanies the endeavor of trailblazing can be suffocating.⁶ Certainly, in the early Supreme Court years, Justice Durham felt the eyes of the state upon her as she offered her first opinions, asked her initial questions at oral argument, and delivered talks around the state and country to groups that often

High Court Reflects More Unanimity Than Recent Predecessors, SALT LAKE TRIBUNE, Dec. 23, 2001, at A1.

⁴ Larry Berkson, *Women on the Bench: A Brief History*, 65 JUDICATURE 286, 293 (Dec.–Jan. 1982) (explaining that "by early 1980, eleven women lawyers were on the states' highest benches"); Barbara Palmer, "To Do Justly": *The Integration of Women into the American Judiciary*, 34 POL. SCI. & POL. 235, 236 (June 2001) (showing that the percent of State Supreme Court Justices who were women was nearly zero percent in 1971, and roughly just six percent in 1982); Nicholas C. McBride, *American Bar Tackles Sex Bias*, CHRISTIAN SCIENCE MONITOR, Mar. 24, 1987, at 3.

⁵ SANDRA DAY O'CONNOR, *THE MAJESTY OF THE LAW: REFLECTIONS OF A SUPREME COURT JUSTICE* (2003); Steven R. Weisman, *Reagan Nominating Woman, an Arizona Appeals Judge, to Serve on Supreme Court*, N.Y. TIMES, July 7, 1981, at A1; Lou Cannon, *Reagan Names Woman to Supreme Court*, WASH. POST, July 8, 1981, at A1; Linda Greenhouse, *Senate Confirms Judge O'Connor; She Will Join High Court Friday*, N.Y. TIMES, Sept. 22, 1981, at A1.

⁶ See generally SHIRLEY CHISHOLM, *UNBOUGHT AND UNBOSSSED* (1970); O'CONNOR, *supra* note 5 (on becoming the first woman justice on the United States Supreme Court); JILL NORGREN, *BELVA LOCKWOOD: THE WOMAN WHO WOULD BE PRESIDENT* (2007) (chronicling Belva Lockwood's role in breaking down women's social barriers in the 19th century, including her efforts to become the first woman to argue in front of the Supreme Court after it initially denied her); JUAN WILLIAMS, *THURGOOD MARSHALL: AMERICAN REVOLUTIONARY* (1998) (on becoming the Court's first African-American justice); Aleta Wallach, *Arabella Babb Mansfield (1846–1911)*, 2 WOMEN'S RTS. L. REP. 3 (1974) (showcasing that Mansfield, in 1869, became the first woman to be admitted to the Bar in the United States); Michael Carlson, *Althea Gibson: The First Black Wimbledon Champion, She Broke the US Tennis Segregation Barrier*, THE GUARDIAN, Sept. 30, 2003, at 27 (highlighting Althea Gibson's tennis efforts in overcoming sporting segregation in the United States, and becoming the first black singles champion at Wimbledon and the U.S. Open); Yvonne Shinhoster Lamb, *Pioneering Politician, Advocate Shirley Chisholm Dies*, WASH. POST., Jan. 4, 2005, at B6 (illuminating how Chisholm became a "catalyst for change," in becoming the first black woman elected to Congress in 1968); *Obituary: Gertrude Ederle*, THE ECONOMIST, Dec. 20, 2003, at 137 (describing Ms. Ederle's challenge of becoming the first woman to swim across the English Channel in 1926).

invited her to provide wisdom and encouragement.⁷

The “first” woman or the “first” person of color is often examined by those that make up the status quo with suspicion or even contempt.⁸ Critics will search immediately for signs that a trailblazer is not up to the task or is in over her head.⁹ For a judge, this searching inquiry often includes scrutinization of every word written and delivered in judicial opinions, examination of every question posed to litigants before a court, careful assessment of rulings read or advice provided from the bench to parties before it, and even probing inquiry into the private life maneuverings of a particular trailblazer.¹⁰ Robert Weiner, former law clerk to Justice

⁷ See Interview by Carolyn B. McHugh with Chief Justice Christine M. Durham, Utah Supreme Court, in Salt Lake City, Utah (June 25, 2009) (transcript on file with the Albany Law Review); see also Robinson *supra* note 1 (quoting Justice Durham saying “When I became a trial judge in 1978, I was handed a borrowed robe and a case file and was told, here, go be a judge,” she recalls. “There was no orientation, no training, no bench book that contained standardized practices—how to seat a jury, for instance. There was no one even to ask. It was horrifying. The whole field of judiciary education was in its infancy. And Utah was not unusual in that area.”). In her early years as a judge, Justice Durham was forced to overcome many obstacles, including a “chilly” reception from her colleagues following appointment, periods of isolation, and a judicial colleague telling her that Utah was not ready for a female judge. *Id.* Durham was also forced to deal with judicial colleagues who were demeaning publicly and privately, causing her to have to confront these judges and protect her integrity by shaming them for their obsolescence and lack of professionalism. See McHugh, Interview with Chief Justice Christine M. Durham, *supra*.

⁸ Dwayne Mack, *Hazel Scott: A Career Curtailed*, 91 J. AFRICAN AM. HIST. 153 (2006) (showing how Hazel Scott, a world-renowned African-American pianist, and her efforts to destroy segregation frustrated those who wanted the status quo); Joseph H. Brown, *A Would-Be Pioneer on the Social Frontier*, TAMPA TRIB., Sept. 3, 1995, at 6; Philip Martin, *When Baseball Cracked Our Cultural Dam*, ARKANSAS DEMOCRAT-GAZETTE, Apr. 13, 1997, at 1E (explaining that Jackie Robinson’s arrival risked clubhouse turmoil, ostracism, and animosity because of the culture’s entrenched values); Jerre Wroble, *Utah Supreme Court Chief Justice Christine M. Durham*, CITY WEEKLY, May 6, 2009, available at <http://www.cityweekly.net/utah/article-7963-utah-supreme-court-chief-justice-christine-m-durham.html> (in responding to the lack of women in the judiciary, Durham says, “I believe there is still a cognitive ‘disconnect’ for most people in expecting women to occupy positions of power and control, and that this has slowed the movement of women into the federal and state courts.”); *Career of Thurgood Marshall as He Worked to End School Segregation*, National Public Radio (Dec. 8, 2003) (indicating that when Thurgood Marshall argued integration in front of the Supreme Court, opposing counsel was reduced to tears because counsel thought ending segregation was foolish).

⁹ *Id.*; see also *Bradwell v. State of Illinois*, 83 U.S. 130, 141 (1873) (Bradley, J., concurring) (in denying Myra Bradley’s challenge for the right to practice law, Justice Bradley stated, “The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life”).

¹⁰ See, e.g., Mortimer D. Schwartz et al., *Clara Shortridge Foltz: Pioneer in the Law*, 27 HASTINGS L.J. 545 (1976) (as California’s first female attorney, Clara Foltz had to endure ostentatious disrespect; one time, opposing counsel, in his closing arguments, argued, “She is a WOMAN, she cannot be expected to reason; God Almighty decreed her limitations . . . this young woman will lead you by her sympathetic presentation of this case to violate your oaths and let a guilty man go free”); Barbara Allen Babcock, *Western Women Lawyers*, 45 STAN. L. REV. 2179, 2184 (1993) (in reviewing women’s pioneering efforts in the legal profession,

Thurgood Marshall who was the first African American to ever be appointed to the United States Supreme Court, stated when asked about Justice Marshall as a trailblazer: "The first is that it is not easy to be a pioneer in the fight for equality. To be the first woman or the first African-American, to set sail all alone in a sea of hostility, requires a level of courage that few can sustain."¹¹

Justice Durham, despite this early scrutiny, proved to be a prescient appointment by Governor Matheson, as she conducted her responsibilities and delivered her opinions with intelligence, grace, and aplomb. Critics were left grasping as Justice Durham easily brushed off criticism, held firm to her judicial philosophy and approach, and worked relentlessly to find collegial spaces and avenues to perform her work on a Court filled exclusively with male colleagues (until the 2003 appointment of Justice Jill N. Parrish to the Utah Supreme Court).¹²

When Byron White retired from the United States Supreme Court in 1993, President Bill Clinton was confident that the time had arrived to appoint the second woman ever to join the Supreme Court.¹³ Justice Christine Durham, as trailblazer, had long evidenced the kind of judicial skill that President Clinton was

Babcock said it was the intense scrutiny that was overwhelming: "I wonder at their courage when I think how hard it is to work under a critical gaze: how it exacerbates the fear of failure and aggravates the human sense of unworthiness that has no gender"); BARBARA J. HARRIS, *BEYOND HER SPHERE: WOMEN AND THE PROFESSIONS IN AMERICAN HISTORY* 110 (1978) (in distinguishing women in the legal profession from doctors, Harris explains that "female doctors could claim that their careers were natural extensions of women's nurturant healing role in the home, and that they protected female modesty by ministering to members of their own sex. By contrast women lawyers were clearly intruding on the public domain explicitly reserved to men"); Nicholas D. Kristof, *When Women Rule*, N.Y. TIMES, Feb. 10, 2008, available at <http://www.nytimes.com/2008/02/10/opinion/10kristof.html> (quoting Rosabeth Moss Kanter, "It's an uphill struggle, to be judged both a good woman and a good leader," when explaining Hillary Clinton's efforts to be "a pioneer in a man's world"). Justice Durham felt this pressure intensely as the first female general jurisdiction judge in Utah and the first female Justice of the Utah Supreme Court stating "I was very aware that if I screwed it up, I wasn't just screwing it up for myself, I would be creating negative impressions and negative expectations for all the other women coming behind"; Interview by Carolyn B. McHugh with Chief Justice Christine M. Durham, Utah Supreme Court, in Salt Lake City, Utah (Oct. 20–25, 2009) (transcript on file with author).

¹¹ See Brown, *supra* note 8.

¹² Josh Loftin, *Leavitt Appoints 2 More Justices*, DESERET NEWS, Jan. 26, 2003, at A1 (announcing the appointment of Parrish as the second female justice after Christine Durham).

¹³ Bill Clinton, President of the U.S., Announcement (June 14, 1993), in *The Supreme Court; Transcript of President's Announcement and Judge Ginsburg's Remarks*, N.Y. TIMES, June 15, 1993, at A24; Editorial, *Mr. Clinton Picks a Justice*, N.Y. TIMES, at A26; Andrew Miga & Joe Battenfeld, *BENCHED!; Women's activist is Supreme choice*, BOSTON HERALD, June 15, 1993, at 1.

searching for in the role of U.S. Supreme Court judge.¹⁴ Though the appointment eventually ended up going to Justice Ruth Bader Ginsburg, Justice Durham was vetted, interviewed and placed on the Supreme Court “short list” for appointment to the highest bench in the nation.¹⁵ Of course, through the “short list” process and attendant media flurry, Justice Durham was confident, humble, self deprecating, and willing to serve if called upon.

As a trailblazer, the first women ever to sit on the Utah Supreme Court and one of the first women ever to sit on any state’s highest court, Justice Durham set sail all alone in a sea of hostility and navigated a career that has been astonishingly successful, winning her admirers across the nation and world. Indeed, Justice Durham exhibited and continues to exhibit a courage that few can sustain.

Spaces Pioneered

As a jurist, Justice Christine Durham is probably most well known for pioneering two important conceptualizations amongst the many critical endeavors and issues she has championed. The first is that Justice Durham has been an advocate for women’s rights and the rights of minority citizens from the start of her legal career.¹⁶ The second is that Justice Durham has underscored and

¹⁴ Paul Richter & David G. Savage, ‘Wow’ Candidate for High Court is Sought, L.A. TIMES, May 29, 1993, at A18 (highlighting that, in President Clinton’s search to replace Justice White Utah Supreme Court Justice Christine Durham was a name “under consideration”).

¹⁵ *Id.*; see also *Clinton Mulls Two Front-Runners To Fill Supreme Court Vacancy*, SEATTLE TIMES, May 27, 1993, available at <http://community.seattletimes.nwsource.com/archive/?date=19930527&slug=1703501>.

¹⁶ Betty Barteau, *Thirty Years of the Journey of Indiana’s Women Judges: 1964–1994*, 30 IND. L. REV. 43, 88 (1997) (quoting Utah Supreme Court Justice Christine M. Durham) (in discussing a woman’s impact on the judiciary, Justice Durham states “We bring an individual and collective perspective to our work that cannot be achieved in a system which reflects the experience of only a part of the people whose lives it [a]ffects”); Sheila R. McCann, *Female Judges are Coming to Salute Utah Justice Christine Durham for . . . Blazing Trails; Durham Will Hear Peers’ Applause*, SALT LAKE TRIB., Sept. 22, 1997, at A1 (detailing Justice Christine Durham’s award as the National Association of Women Judges honoree of the year for her commitment to the profession, including her 1979 vision to work on changing the “invisible” presence of women in the judiciary); Editorial, *The Thumb*, SALT LAKE TRIB., Nov. 17, 2007 (commenting that because Christine Durham was such a trailblazer in “developing programs to teach us about such shadowy subjects as domestic violence,” among others, she was “justly honored” with the prestigious 2007 William H. Rehnquist Award for Judicial Excellence by the National Center for State Courts); *Chief Justice Christine A. Durham received William H. Rehnquist Award*, UTAH MINORITY BAR ASSOCIATION BLOG (Nov. 20, 2007), http://www.utahbar.org/bars/umba/umblog/2007/11/chief_justice_christine_a_durh.html (congratulating Chief Justice Durham on her award for her efforts with advocating for on behalf of women everywhere); *Centennial Panel Features Four Female Chief Justices*, NEW ENGLAND LAW SCHOOL, <http://www.nesl.edu/media/news.cfm?newsDetailID=3523> (last visited June 9, 2012) (recounting the struggles for women in the legal profession); Lana

established the importance of state constitutional rights from the very early days of her career as a Utah Supreme Court Justice.¹⁷

While unfailingly fair and even-handed from the bench, Justice Durham has been outspoken throughout her storied career in her support of women and their need to find equal opportunity in the United States. Justice Durham was forthright early in her career as a jurist, repeatedly citing the lack of female lawyers and judges throughout the state of Utah and the nation. In 1987, just a few years after being elevated to the Utah Supreme Court, Justice Durham remarked in an interview with the *Christian Science Monitor* “Five percent of state and federal judges are women. This is pretty pitiful. My case is an anomaly.”¹⁸

Justice Durham did not just speak out about equality and justice, she actively worked for and continues to advocate for equal opportunity for women and minorities. After nearly thirty years as a Supreme Court judge, Justice Durham has hired upwards of sixty individuals to work for her as law clerks and office staff. Dozens of her former clerks and staff are women and women of color. They hail from across the United States and are, like Justice Durham herself, bright, affable, driven, conscientious, and thoughtful. Justice Durham has spoken to hundreds of women’s groups, sat on dozens of commissions and boards that advocate for equality and the end to discrimination, and has inspired thousands of young women to pursue their dreams to become lawyers and judges.¹⁹

Groves, *Summit Encourages Women to Reach High*, *DESERET NEWS*, May 16, 2009, available at http://www.deseretnews.com/article/705304618/Summit-encourages-women-to-reach-high.html?s_cid=s10 (as the keynote speaker at the Young Women’s Leadership Summit, Justice Durham conveyed to the young women the importance of persevering and taking on leadership positions).

¹⁷ See Steven Huefner, *A Champion of State Constitutions*, 76 *ALB. L. REV.* 1673 (2012) (carefully detailing the long and important advocacy by Justice Christine Durham of state constitutional rights); Sind McLoughlin, *Choosing A “Primacy” Approach: Chief Justice Christine M. Durham Advocating States Rights in Our Federalist System*, 65 *ALB. L. REV.* 1161 (2002); Christine M. Durham, *The Judicial Branch in State Government: Parables of Law, Politics and Power*, 76 *N.Y.U. L. REV.* 1601 (2001); Christine M. Durham, *What Goes Around Comes Around: The New Relevance of State Constitution Religion Clauses*, 38 *VAL. U. L. REV.* 353 (2004); Christine M. Durham, *Obligation or Power? The New Judicial Federalism and the Policy-Making Role of State Supreme Courts*, 2 *EMERGING ISSUES IN ST. CONST. L.* 219 (1989).

¹⁸ McBride, *supra* note 4.

¹⁹ For extensive list of Chief Justice Christine Durham’s extracurricular activities, see Interview by Carolyn B. McHugh with Chief Justice Christine M. Durham, Utah Supreme Court, in Salt Lake City, Utah (Jan. 6, 2010) (citing that despite being “stretched very thin,” Durham finds it important to serve on many boards and associations, including as President of the Conferences of Chief Justices, Chairperson to the ABA Section on Legal Education and Admissions to the Bar, on the American Law Institute Council, and on the National Association of Women Judges); see, e.g., Groves *supra* note 16; *WLU Women of the Year*,

Additionally, as noted skillfully by Professor Steven Huefner in this tribute volume, Justice Durham has worked her entire career to emphasize the importance of state constitutional rights in state specific Supreme Court decisions.²⁰ Indeed, Justice Durham has carved out an important distinction between the rights afforded a state's citizens by its own constitution and the rights available to citizens through the federal constitution.²¹ Not only has Justice Durham established the importance of state constitutional rights in her judicial opinions, she has taught courses in state constitutional law, delivered lectures, and drafted law review articles that highlight this important, and often overlooked, distinction.²²

As a pioneer, Justice Durham stepped boldly and often into spaces that lacked leadership and required definition and insight. Despite her own obligations as a "first ever" judge, mother, wife, daughter, and friend, and despite the isolation and chill directed her way by colleagues as a "first," Justice Durham appreciated the spaces that needed to be pioneered and unwaveringly stepped into those spaces. Her pioneering efforts in the areas of women's rights and state constitution import are but two examples of the many labors undertaken successfully by Chief Justice Durham.

Examples Imparted

As a former law clerk to Justice Durham, this last portion of my contribution will necessarily entail a quite personal recitation of her incredible examples imparted. Despite all of the accomplishments and accolades noted above, and while recognizing her deep intellectuality, perhaps Justice Durham's greatest gift is that of being a mentor. As a new, young lawyer, I began my late 1990s clerkship with Justice Durham as my first job out of law school. I was impressionable, no doubt, but also filled with vigor, zeal, and very strong opinions.

One of the greatest lessons I learned from Justice Durham as exemplar was the pure collegiality and spirit of community that embodies her career and work. I had never before experienced

WOMEN LAWYERS OF UTAH, <http://utahwomenlawyers.org/wlu-women-of-the-year/> (last modified Dec. 7, 2011) (showing the recipients of the Christine M. Durham Woman Lawyer of the Year Award, which recognizes "outstanding woman in our profession who exemplifies professionalism, excellence, and a dedication to furthering the opportunities for women in the law").

²⁰ See Huefner, *supra* note 17, at 1674–77.

²¹ *Id.* at 1674–75.

²² *Id.* at 1675–77.

anything like it. Justice Durham's chambers were and are filled daily with free-flowing discussions, debates, and collaborations between clerks, interns, and the justice herself. As we prepared to meet for my first time review of the oral argument calendar, Justice Durham instructed us, her two full-time clerks, to read all of the briefs that would be argued before the court that given month, and relayed that we would schedule a day to review each case, discuss each case brief on either side, and work through the problems and issues that confronted each party prior to oral argument. I was literally astonished when the time came for my first oral argument review, that we three did in fact sit around her desk (or a conference table other months) and literally discuss each and every case, parsing through the issues and weaknesses of each case and party, and debate and interrogate the appropriate legal outcomes for each case, working through what critical questions needed to be asked and answered at oral argument. While extraordinarily difficult and time consuming to read and understand each and every brief presented to the court, this exercise became one of my favorite job responsibilities as we would meet monthly seeking to land upon the right judicial outcomes by the law while adhering to notions of fairness and equality.

Further, perhaps my most poignant lesson learned as law clerk to Justice Durham came when I was asked to take the first crack at drafting an opinion that would eventually become a dissent in *McBride v. Motor Vehicle Division*.²³ This case was one of many that crossed Justice Durham's desk in her career that dealt with issues of civil rights, equality and justice. I was delighted to be assigned this case as it dealt with the American Indian Mascot issue, one I knew much about and held strong opinions in connection with. Several Utah residents had applied for and been granted personalized state-issued license plates that contained some form of the moniker "Redskin" after the Washington N.F.L. club, "Washington Redskins."²⁴ Justice Durham believed, and I fervently agreed, that the use of the term "Redskin" on a state-issued license plate ran afoul of the Utah administrative rule that forbade "derogatory," "vulgar," or discriminatory verbiage on

²³ *McBride v. Motor Vehicle Div.*, 977 P.2d 467, 472–73 (Utah 1999); andré douglas pond cummings, "Lions and Tigers and Bears, Oh My" or "Redskins and Braves and Indians, Oh Why": *Ruminations on McBride v. Utah State Tax Commission, Political Correctness, and the Reasonable Person*, 36 CAL. W. L. REV. 11 (2000).

²⁴ *McBride*, 977 P.2d at 468–69.

personalized license plates.²⁵ Several American Indian plaintiffs had filed suit against the Motor Vehicle Division for approving these license plates in contravention of the rule that expressly forbade them from doing so, if the term could be construed as “derogatory,” “vulgar” or discriminatory in some fashion.

Perhaps channeling Justice Antonin Scalia of the U.S. Supreme Court, my first opinion draft in *McBride* hammered the other justices on the Utah Supreme Court that did not readily agree with Justice Durham that the term was obviously “derogatory” or discriminatory. I could not imagine how, when given the historical connotations of the word “redskin” as the record below provided, anybody could make a colorable argument that the term was not derogatory, vulgar or discriminatory in some form, and I said so in this opinion draft. I will never forget the day that Justice Durham sat down with me to review the draft in order to provide feedback and revision guidance. Justice Durham gently and with good humor, but firmly, guided me to an understanding that nothing of import could be accomplished by hammering individuals that we were in the process of trying to persuade to our position. Inflammatory language and the questioning of the motives of her colleagues was not the way that Justice Durham conducted her business. Chastened, I returned to the opinion. Eventually Justice Durham delivered an opinion that was categorized as a dissent, but the circulation of which ultimately persuaded the remaining members of the Court that the license plates should be revoked. All five members agreed, but the method by which the revocation would come, was what divided the Court making Justice Durham’s opinion a dissent.²⁶ What an incredible lesson I learned through that process. Justice Durham worked then, and continues to work today, toward collegiality, respectful disagreement, and principled persuasion—lessons I have internalized and never forgotten.

Because of the impeccable professional example of Justice Durham, I have endeavored throughout my practicing and professorial career to infuse my relationships with colleagues and collaborators with this same spirit of collegiality and community. Looking back now after nearly fifteen years, to the time that I served with Justice Durham as one of her full-time law clerks, I remain amazed by the level of confidence that she would place in the opinions of those that she hired to assist her in preparing for

²⁵ *Id.* at 472–73.

²⁶ *Id.*; *cummings*, *supra* note 23.

oral arguments and for writing opinion drafts. I have endeavored to place this same level of confidence in my junior associates as a practicing attorney and in my research assistants as a professor, and have found that nearly always the young associate or the research assistant will rise to meet the high expectations placed upon them.

Justice Durham has lived a life worthy of emulation. She is a professional's professional. To this day, I have still not met a lawyer, judge, politician or professional that outstrips Justice Durhams' mix of intellect, spirit of community, principled positions, and collaboration. I firmly believe that had Justice Durham allowed "career clerks" in her chambers when I worked for her, that I would still be working with her today (if she would have me).

Chief Justice Christine M. Durham: trailblazer, pioneer, exemplar.