

COLUMBIA LAW REVIEW

VOL. 118

JANUARY 2018

NO. 1

IN MEMORIAM

SHEILA ABDUS-SALAAM: THE VALUE OF CONTRIBUTION

*Rolando T. Acosta**

Our lives are measured by the impact we have on the lives of others. We are valued when we labor not for ourselves alone, but with an eye toward building a world better than the one we have known. By that measure, Sheila was a giant. She inspired us with her vision and brightened our world with her kindness. She had an unending passion for public service and social justice, and she dedicated her life to serving others, particularly the young lawyers who shared the same lofty goals and passions that motivated her. Sheila was one of those extraordinary people who led by example, and with an understanding of things larger than themselves. I consider myself incredibly fortunate to have known and been influenced by her.

Sheila was my friend for over thirty years. We first met in the early '80s as fellow Columbia Law School alumni, when we were introduced by mutual friends. I immediately felt a kinship with her. She spoke of a desire to use her law degree to make a difference in the world, which was exactly what I sought to accomplish. Not surprisingly, we followed very similar paths out of law school; both of us began our careers by following our hearts and working for organizations that provide free legal services to the poor. Some years later, we became colleagues in New York City government. After that, I had the honor of serving alongside Sheila on the New York State Supreme Court, New York County, and then later on the Appellate Division, First Department.

Aside from being an exceptional colleague, Sheila was also a close friend to me and my family. She was exceedingly generous, particularly with her most precious commodity: her time. Any time I needed a sounding board to discuss everything from a career change to a decision on a case, Sheila was there for me; we would go for walks around the neighborhood and, in her quiet way, she would create the space not only to give advice, but to allow me to think more clearly, with more compassion, and to see the nuances in every situation. She made us all better, and her influence in my life is a testament to that.

As I prepared this Piece, I allowed myself to think back to so many memories Sheila and I shared. A few years ago, we received the Columbia

* Presiding Justice, New York State Supreme Court, Appellate Division, First Judicial Department.

Law School Wien Prize for Social Responsibility in the same ceremony. It was such a privilege to be able to receive that honor with Sheila, especially because we shared a deep love for public service and appreciation for how attending school at Columbia changed our lives. But my most striking memory about that event is getting home to read Sheila's email to me: "Bro, I just wanted again to tell you how proud I am of you and your accomplishments." And, referring to my daughter, whom she mentored at Columbia, Sheila added that "Zila's introduction [of you] brought tears to my eyes." That was my "sister," Sheila, giving generously, even when she deserved all the credit and praise.

Not only was Sheila a compassionate friend and colleague, but she was also a brilliant thinker and strategist, especially as a judge. A perfect example of her brilliance and pragmatism is her lasting contribution to our court's decision in *Bennett v. Health Management Systems, Inc.*,¹ which modified the *McDonnell Douglas* burden-shifting framework for summary judgment motions as applied to claims under the New York City Human Rights Law (City HRL).² Beginning with *Williams v. New York City Housing Authority*,³ our court had been developing a new approach to antidiscrimination cases under the city statute. We viewed some federal doctrines as an obstacle for women in the workplace and inconsistent with the zero-tolerance-for-discrimination policy of the City HRL. For example, we replaced the "severe or pervasive" doctrine—which had evolved through federal case law analyzing Title VII claims—with a simple differential treatment requirement, namely, that a plaintiff had been treated "less well" than other employees because of gender.⁴

In *Bennett*, Sheila and I were part of an appellate panel that was presented with the option of entirely discarding the *McDonnell Douglas* framework with regard to City HRL claims. We were considering that option because, like the "severe or pervasive" doctrine, the framework also seemed inconsistent with the "uniquely broad and remedial purposes"⁵ underlying the city law. Sheila disagreed with that all-or-nothing approach. Instead, since I was charged with drafting the court's decision, she reached out to me and said something like the following: "Bro, if you chuck *McDonnell Douglas*, all anyone will focus on is how arrogant we are to throw away effective U.S. Supreme Court precedent that has withstood the test of time. Why don't we just tweak the framework, particularly how we deal with the fourth element of the test [i.e., circumstances giving rise to an inference of discrimination] so that it is still viable but tailored to City HRL claims?"

1. 936 N.Y.S.2d 112 (App. Div. 2011).

2. N.Y.C. Admin. Code § 8-101 (2016).

3. 872 N.Y.S.2d 27 (App. Div. 2009).

4. *Id.* at 38.

5. *Id.* at 31 (internal quotation marks omitted).

As I had for years, I did what Sheila suggested, and the rest is history. I kept hearing people talk about the brilliant, “revamped *McDonnell Douglas* framework under the City HRL.” Although my name appears as the judge who penned the opinion, it was largely thanks to Sheila’s strategy. Her cautious (but not conservative) nature made her extremely adept at seeing the broader impact of a given decision.

It was also her gentle yet confident demeanor that encouraged others to listen to her. Sheila was always respectful and calm, but she was definitely not afraid to ask tough questions or engage in lively debate. As a judge, when she started her questioning of a lawyer with “Counselor,” you knew that lawyer was going for a ride. I was recently reminded of this during an argument at the Court of Appeals, where I was vouched in on a case⁶ and had the privilege of serving alongside Sheila on the bench one last time. We also found the time to go on one of our walks and chatted not only about the case itself but also about our lives, including her rekindled love with her Columbia Law School classmate, now her husband, and balancing a rigorous Court of Appeals schedule in Albany with a strong desire to be near him. It was our last walk together.

I believe that if Sheila were here, she would want me to write that the best way to honor the nobility of the legal profession is to never forget the importance of contribution, of positively impacting the lives of others, particularly those who have few resources and difficulty accessing justice. She would say to new lawyers that while prestige or financial concerns are legitimate, the desire to make a difference and serve others is paramount. This desire will help you to achieve authentic success, which is measured not by the toys we accumulate, but by the joy we derive from service to justice and the idealistic goals that brought us to the profession in the first place.

Finally, I cannot discuss Sheila without mentioning what a great dancer she was. I’m sure many readers do not know this, but Sheila loved to dance, and she did it with as much grace as she lived her life and dispensed justice. She was the life of the party at my daughter’s wedding, dancing the night away with her husband, Greg. For those of us who are lucky enough to have known her, Sheila will go on dancing in our hearts. Her generosity and warmth will live on through the lives she touched, and her brilliance will continue to be reflected in her judicial writings (and even in some of mine).

6. *Kimmel v. State*, 29 N.Y.3d 386 (2017).

