

THE HONORABLE SHEILA ABDUS-SALAAM: TRAILBLAZER¹

*Erin E. Kilmer**

I. INTRODUCTION

A. *Sheila Abdus-Salaam*

Judge Sheila Abdus-Salaam saw her job on the court as a way to “uphold the laws of our state and treat all those who appear before [her] fairly and with respect and dignity,”² and this sentiment was echoed by those around her.³ After more than twenty years working her way through the ranks of New York Courts,⁴ this respect and dignity paid off when on April 5, 2013, Sheila Abdus-Salaam was nominated by Governor Andrew M. Cuomo to serve on the New York State Court of Appeals,⁵ filling a vacancy left by the death of Judge Theodore Jones, Jr.⁶ After she was confirmed by the State Senate in

¹ Andrew Cuomo (@NYGovCuomo), TWITTER (Apr. 12, 2017, 4:43 PM), https://twitter.com/NYGovCuomo/status/852306160476672004?ref_src=twsrc%5Etfw&ref_url= (“Justice Sheila Abdus-Salaam was a trailblazing jurist and a force for good.”).

* JD, Albany Law School, 2018; MS, Bioethics, Alden March Bioethics Institute at Albany Medical College, 2018; BA, Philosophy, Marist College. I would like to thank Christopher Guyon for his support.

² Marc Santora, *Cuomo Picks Judge in City to Fill Spot at Top Court*, N.Y. TIMES (Apr. 5, 2013), <http://www.nytimes.com/2013/04/06/nyregion/cuomo-nominates-justice-abdus-salaam-for-court-of-appeals.html> (citing a statement Judge Abdus-Salaam made in response to her nomination).

³ See, e.g., Rolando T. Acosta, *In Memoriam: Sheila Abdus-Salaam: The Value of Contribution*, 118 COLUM. L. REV. 1, 1 (2018) (“[Judge Abdus-Salaam] had an unending passion for public service and social justice, and she dedicated her life to serving others”); Rowan D. Wilson, *In Memoriam: To Know Who We Are and What We Can Do*, 118 COLUM. L. REV. 5, 7 (2018) (“In every case—from the most wrenching criminal or family court cases to the driest commercial cases—[Judge Abdus-Salaam] imagined herself in the positions of the parties, wrestled with their troubles as if they were her own, and when she spoke, softly, we all listened, carefully. Her empathy, sensitivity, and compassion pervaded all she did.”).

⁴ See generally *Justices of the Court (Historical): Sheila Abdus-Salaam*, N.Y. STATE UNIFIED CT. SYS., <http://www.courts.state.ny.us/courts/AD1/centennial/Bios/sabdussaalam2.shtml> (last updated May 7, 2014) (discussing Judge Sheila Abdus-Salaam’s time on New York Courts).

⁵ See Press Release, Andrew M. Cuomo, Governor, Governor Cuomo Announces Nomination for Court of Appeals (April 5, 2013), <https://www.governor.ny.gov/news/governor-cuomo-announces-nomination-court-appeals-0>.

⁶ *Justices of the Court (Historical): Sheila Abdus-Salaam*, *supra* note 4.

a unanimous vote⁷ on May 6, 2013,⁸ she expressed at her swearing in that she had been graced with “improbable good fortune” that only God and her mother could have foreseen.⁹

Judge Abdus-Salaam (*née* Turner) was born on March 14, 1952, in Washington D.C.¹⁰ She grew up in a working class family with six siblings and parents struggling to make ends meet.¹¹ She graduated from Barnard College with a Bachelor’s degree in economics in 1974, and attended Columbia University School of Law as a Charles Evans Hughes Fellow where she graduated with a law degree in 1977.¹² Following her graduation from law school, she worked as a public defender in Brooklyn, New York, and as an assistant attorney general in the New York State Civil Rights Bureau.¹³

The importance of her African heritage¹⁴ was not lost on Judge Abdus-Salaam.¹⁵ Her interest in her family’s history began as a young girl in school, and her research revealed that her great-grandfather had been a slave in Virginia.¹⁶ In a 2014 interview, she talked about the importance of her heritage and that someone like her, the “great-granddaughter of slaves” being “the first African-American woman on the highest court of the state of New York . . . tells you and me what it is to know who we are and what we can do.”¹⁷

Prior to her time on the Court of Appeals, Judge Abdus-Salaam had served on New York courts for more than twenty years.¹⁸ In 1991 she was elected to the New York City Civil Court bench where she served “until 1993, when she was elected to the Supreme Court of the State

⁷ See John J. Bonacic, *Senator Bonacic Announces Senate Confirmation of Judge Sheila Abdus-Salaam for the New York State Court of Appeals*, N.Y. ST. SENATE (May 7, 2013), <https://www.nysenate.gov/newsroom/articles/john-j-bonacic/senator-bonacic-announces-senate-confirmation-judge-sheila-abdus>.

⁸ *Honorable Sheila Abdus-Salaam*, N.Y. STATE UNIFIED CT. SYS., <https://www.nycourts.gov/ctapps/jasalaam.htm> (last visited March 31, 2018).

⁹ Zolan Kanno-Youngs et al., *NYPD Investigating Judge’s Death as a Suicide*, WALL ST. J. (Apr. 13, 2017), <https://www.wsj.com/articles/cause-of-death-unknown-for-new-york-judge-found-dead-in-hudson-river-1492096496>.

¹⁰ *Justices of the Court (Historical): Sheila Abdus-Salaam*, *supra* note 4.

¹¹ *Sheila Abdus-Salaam ‘77: Strong Foundations*, COLUM. L. SCH. MAG., Spring 2012, at 63, http://www.law.columbia.edu/sites/default/files/microsites/magazine/files/i_spring_2012.pdf.

¹² *Justices of the Court (Historical): Sheila Abdus-Salaam*, *supra* note 4.

¹³ Alan Feuer & William K. Rashbaum, *Mystery and Melancholy Surround Death of Judge Found in Hudson*, N.Y. TIMES (Apr. 13, 2017), <https://www.nytimes.com/2017/04/13/nyregion/sheila-abdus-salaam-new-york-judge-hudson-river-committed-suicide.html>.

¹⁴ Although it had been reported that she was the first Muslim on the Court of Appeals, this is not the case. Although her married name led to the assumption she was Muslim, she was not. *See id.*

¹⁵ *See* Kanno-Youngs et al., *supra* note 9.

¹⁶ Feuer & Rashbaum, *supra* note 13.

¹⁷ *See* Kanno-Youngs et al., *supra* note 9.

¹⁸ *See Justices of the Court (Historical): Sheila Abdus-Salaam*, *supra* note 4.

2017/18]

Sheila Abdus-Salaam: Trailblazer

1253

of New York for New York County.”¹⁹ She spent 1994 and 1995 on the Criminal Term, and then sat on the Civil Term until 2009.²⁰ In March 2009, she was appointed by Governor David A. Patterson to the Appellate Division, First Department.²¹

When she was nominated to the Court of Appeals, politicians from both major parties praised her. Governor Cuomo discussed her “working-class roots” and her “deep understanding of the everyday issues facing New Yorkers,” and the president of the New York State Bar Association, Seymour W. James, Jr., called her the “ideal choice” and talked about her service to the public.²² While Democratic senators had praised her for “hav[ing] the back of” certain segments of society, Senator John DeFrancisco, the Republican from the 50th State Senate District, said he knew she would “have the back of that lady with the scales.”²³

Unfortunately, Judge Abdus-Salaam’s time on the Court was cut short when she died as a result of suicide on April 12, 2017.²⁴ Her body was found in the Hudson River near West 132nd Street in Manhattan after she had been reported missing when she failed to show up to work that morning.²⁵ Although many of those around her expressed surprise at her apparent suicide, one of her friends noted that she had been under stress due to her caseload and demand as a speaker.²⁶ She had also visited a physician earlier in the week and expressed feelings of being “stressed with the demands of work” and “not spending enough time with her husband.”²⁷ Though her legal career was relatively short, she was celebrated throughout the community.²⁸

B. *This Paper*

This paper looks at Judge Abdus-Salaam’s written opinions

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² See Santora, *supra* note 2.

²³ Casey Seiler, *Senate Confirms New Judge*, TIMES UNION (May 6, 2013), <https://www.timesunion.com/local/article/Senate-confirms-new-judge-4493251.php>.

²⁴ Ray Sanchez et al., *New York Judge’s Death A Possible Suicide*, *Law Enforcement Sources Say*, CNN (April 13, 2017, 11:53 PM), <https://www.cnn.com/2017/04/13/us/sheila-abdus-salaam-judge-hudson-river/index.html>.

²⁵ Feuer & Rashbaum, *supra* note 13.

²⁶ *See id.*

²⁷ *Id.*

²⁸ See Vincent Martin Bonventre, *Some Notes on Abdus-Salaam*, N.Y. CT. WATCHER (April 29, 2013), <http://www.newyorkcourtwatcher.com/2013/04/some-notes-on-abdus-salaam-part-3-of.html>.

throughout her tenure on the Court. It focuses primarily on her dissenting²⁹ and concurring opinions,³⁰ although it does also highlight a few of her notable majority opinions.³¹ This paper does not focus on majority opinions because the Judges on the Court of Appeals are randomly assigned the majority decisions they are responsible for writing.³² Because of this, unlike the United States Supreme Court, in which opinions are assigned by the most senior justice on the majority, Court of Appeals majority opinions are not written by a Judge selected by his or her peers for reasons such as ideology or specialization.³³ Instead, the Judge writing the majority for the Court may be someone who voted with the majority, but did not necessarily have a strong opinion about the case.³⁴ This contrasts with those judges who write dissents and concurring opinions. In those decisions, each judge who writes one specifically chose to write the opinion.

Judge Abdus-Salaam was not on the Court for a very long time, and there were quite a few cases during her tenure that she took no part in deciding.³⁵ Because of this, her record is fairly short. However, in her dissents she made it very clear that she did not agree with the majority and that they were going in the incorrect direction,³⁶ and in all of her opinions she was careful to lay out her

²⁹ See *infra* Section II.A.

³⁰ See *infra* Section II.B.

³¹ See *infra* Section II.C.

³² See JOHN P. ASIELLO, COURT OF APPEALS OF THE STATE OF NEW YORK: 2015 ANNUAL REPORT OF THE CLERK OF THE COURT 5 (2016).

³³ See *id.*; *Supreme Court Justices*, UNITED STATES CTS. (last visited May 14, 2018), <http://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/supreme-1>; Forrest Maltzman & Paul J. Wahlbeck, *Opinion Assignment on the Rehnquist Court*, 89 JUDICATURE 121, 122, 181 (2005).

³⁴ See ASIELLO, *supra* note 32, at 5.

³⁵ See, e.g., *Cangro v. Rosado*, 68 N.E.3d 76, 76 (N.Y. 2016); *People v. Perez*, 12 N.E.3d 416, 429 (N.Y. 2014); *K2 Inv. Grp., LLC v. Am. Guar. & Liab. Ins. Co.*, 6 N.E.3d 1117, 1124 (N.Y. 2014); *People v. Tyrell*, 4 N.E.3d 346, 352 (N.Y. 2013); *People v. Shabazz*, 999 N.E.3d 504, 507 (N.Y. 2013).

³⁶ See, e.g., *Ministers & Missionaries Benefit Bd. v. Snow*, 45 N.E.3d 917, 924 (N.Y. 2015) (Abdus-Salaam, J., dissenting) (“When is a duly enacted law of the State of New York not part of ‘the laws of the State of New York’? One would think that the answer is never. But the majority disagrees.”); *Motorola v. Standard Bank*, 21 N.E.3d 223, 230 (N.Y. 2014) (Abdus-Salaam, J., dissenting) (“Today, in the year 2014, the majority for the first time expressly adopts the separate entity rule The rule has no statutory basis and was initially formulated . . . nearly a century ago based on a rationale that has no application to these modern times.”); *People v. Finch*, 15 N.E.3d 307, 315 (N.Y. 2014) (Abdus-Salaam, J., dissenting) (“[T]he majority seems to believe that defendant specifically argued that his future arrest would be unlawful, and that he would be blameless for resisting it, weeks before it happened. Is the majority seriously suggesting that trespass arrestees are blessed with such precognition?”). *But cf.* *People v. Williams*, 31 N.E.3d 103, 109 (Abdus-Salaam, J., dissenting) (N.Y. 2015) (“As the majority’s excellent and learned discussion of our case law in this area reveals . . .”).

2017/18]

Sheila Abdus-Salaam: Trailblazer

1255

argument clearly so that it could easily be understood by even non-lawyers.³⁷

II. WRITTEN OPINIONS

A. *Dissenting Opinions*

A common theme among Judge Abdus-Salaam's dissenting opinions is respect for the rules of the appellate process. In two separate opinions she dissented from the majority saying that a criminal defendant's conviction could not be overturned because the issue on appeal had not been preserved in the trial court.³⁸ In *People v. Finch*³⁹ the defendant had been convicted of resisting arrest.⁴⁰ On appeal, the defendant argued that there was not sufficient evidence that the officer had the probable cause necessary to make an "authorized" arrest.⁴¹ The majority found that the officer did not have probable cause to make an authorized arrest and overturned the conviction.⁴² In her dissenting opinion, Judge Abdus-Salaam found that because the defendant did not bring up the issue of whether the arrest was authorized between the arrest and the conviction, that issue was not preserved for appeal.⁴³ Although the majority discussed the issue of preservation, they found that the defendant had protested that the arrest was not authorized when he was arrested on a related charge a month before.⁴⁴ The majority pointed out that "a defendant is not required to repeat an argument whenever there is a new proceeding or a new judge."⁴⁵ Opposing this idea, Judge Abdus-Salaam took a more conservative stance on the issue of preservation, holding that the defendant could not have preserved an issue prior to the occasion he was arrested on.⁴⁶

³⁷ See, e.g., *Brooke S.B. v. Elizabeth A.C.C.*, 61 N.E.3d 488, 498–500 (N.Y. 2016); *Carver v. States*, 44 N.E.3d 154, 165 (N.Y. 2015) (Abdus-Salaam, J., dissenting); *Cunningham v. N.Y. Dep't of Labor*, 997 N.E.2d 468, 474–77 (N.Y. 2013) (Abdus-Salaam, J., concurring); *Applewhite v. Accuhealth, Inc.*, 995 N.E.2d 131, 143–44 (N.Y. 2013) (Abdus-Salaam, J., concurring).

³⁸ See *People v. Turner*, 22 N.E.3d 179, 183 (N.Y. 2014) (Abdus-Salaam, J., dissenting); *Finch*, 15 N.E.3d at 314. (Abdus-Salaam, J., dissenting).

³⁹ *People v. Finch*, 15 N.E.3d 307 (N.Y. 2014).

⁴⁰ See *id.* at 309.

⁴¹ See *id.* at 313 (quoting *People v. Jensen*, 654 N.E.2d 1237, 1240 (N.Y. 1995)) (citing *People v. Peacock*, 496 N.E.2d 683, 683–84 (N.Y. 1986)).

⁴² See *Finch*, 15 N.E.3d at 313–14.

⁴³ See *id.* at 322 (Abdus-Salaam, J., dissenting).

⁴⁴ See *id.* (Abdus-Salaam, J., dissenting).

⁴⁵ *Id.* at 310.

⁴⁶ See *id.* at 319 (Abdus-Salaam, J., dissenting).

In *People v. Turner*,⁴⁷ Judge Abdus-Salaam held that because the defendant did not protest when she was informed at her sentencing that a five year term of post release supervision (PRS) was to be imposed, she could not appeal based on the fact that her plea was made while she was not informed of that fact.⁴⁸ In vacating the plea, the majority instead found that the defendant did not need to preserve the issue because the court proceeded improperly by not giving the defendant more opportunity to object to the fact she was not informed of the possibility of the imposition of a term of PRS during her plea.⁴⁹

Judge Abdus-Salaam also showed her respect for the appellate process in *People v. Jimenez*⁵⁰ where she dissented, saying that the review available to the Court was more limited than that which the majority used.⁵¹ The majority held that whether or not the People met their burden in showing the presence of exigent circumstances to allow for a warrantless search of a closed container was a matter of law, and therefore fully reviewable.⁵² However, Judge Abdus-Salaam argued that this issue was not merely a matter of law and instead was a “mixed question[] of law and fact,”⁵³ and because of that, the review was “limited to whether there [was] record for support for the determinations of the courts below.”⁵⁴ In doing this, she found that the court could not overturn the conviction because there was nothing in the record that indicated the trial court had abused its discretion in convicting the defendant.⁵⁵

Another theme in Judge Abdus-Salaam’s opinions is the idea of carefully considering whether, when an error was made, the error was more than de minimis or it was so minor and harmless that it should not be considered a reversible error.⁵⁶ In both *People v. Rivera* and *People v. Williams*, the majority held that there was an error and therefore ordered a new trial.⁵⁷ The majority said that with both of

⁴⁷ *People v. Turner*, 22 N.E.3d 179 (N.Y. 2014).

⁴⁸ *See id.* at 183 (Abdus-Salaam, J., dissenting).

⁴⁹ *See id.* at 180.

⁵⁰ *People v. Jimenez*, 8 N.E.3d 831 (N.Y. 2014).

⁵¹ *See id.* at 836 (Abdus-Salaam, J., dissenting) (citing *People v. Wheeler*, 811 N.E.2d 531, 533 (N.Y. 2004)); *People v. Greenidge*, 695 N.E.2d 715, 715 (N.Y. 1998)).

⁵² *See Jimenez*, 8 N.E.3d at 833.

⁵³ *Id.* at 836 (Abdus-Salaam, J., dissenting) (quoting *Greenidge*, 695 N.E.2d. at 715).

⁵⁴ *Jimenez*, 8 N.E.3d at 836 (Abdus-Salaam, J., dissenting) (quoting *Wheeler*, 811 N.E.2d at 533).

⁵⁵ *See id.* at 836 (Abdus-Salaam, J., dissenting).

⁵⁶ *See People v. Williams*, 31 N.E.3d 103, 109 (N.Y. 2015) (Abdus-Salaam, J., dissenting); *People v. Rivera*, 18 N.E.3d 367, 372 (N.Y. 2014) (Abdus-Salaam, J., dissenting); *see also infra* Part II(C).

⁵⁷ *See Rivera*, 18 N.E.3d at 372 (ordering a new trial on the basis that the defendant was not

2017/18]

Sheila Abdus-Salaam: Trailblazer

1257

these errors, it did not matter how harmless the error was, and because there was an error, a new trial was required.⁵⁸ However, in both of the cases, Judge Abdus-Salaam looked to the actual harm the defendant faced due to the errors and found that the errors in both of the cases were harmless, so there was no reason to require new trials.⁵⁹

It should be noted that in all of the above cases, Judge Abdus-Salaam sided against the criminal defendant. This is not an uncommon pattern in her voting. Although she had been appointed to the Court and celebrated as a liberal who would protect the rights of the less fortunate, this often did not pan out in her decisions. This might have most notably been seen in her dissent in *Matter of Carver v. State of New York*.⁶⁰ In *Carver*, a 69-year-old veteran was receiving public assistance from New York City.⁶¹ While he was receiving assistance, he worked 35 hours per week, as required, in a “Work Experience Program” (WEP).⁶² The amount of money that he received in assistance weekly was equivalent to the number of hours he worked in a week times the minimum wage.⁶³ After being in the program for seven years, Carver’s benefits were terminated and he stopped working in the WEP.⁶⁴ Seven years later Carver won \$10,000 in the New York Lottery.⁶⁵ Because New York Law allows the state to take up to half of any lottery prize over \$600 won by someone who received public assistance, Carver only received \$5,000.⁶⁶ Carver argued, and the majority held, that taking the lottery winnings away from him constituted an unlawful deduction under the Fair Labor Standards Act (FLSA)⁶⁷ and New York Labor Law⁶⁸ and was therefore impermissible.⁶⁹ However, in a dissenting opinion, Abdus-Salaam found that Carver and New York were not engaged in an employee-employer relationship, and therefore FLSA and New

present during a conversation between the judge and a jury member during deliberations); *Williams*, 31 N.E.3d at 109 (ordering a new trial after a defendant’s pretrial silence was used to impeach his testimony).

⁵⁸ See *Rivera*, 18 N.E.3d at 371; *Williams*, 31 N.E.3d at 109.

⁵⁹ See *Rivera*, 18 N.E.3d at 372 (Abdus-Salaam, J., dissenting); *Williams*, 31 N.E.3d at 109 (Abdus-Salaam, J., dissenting).

⁶⁰ *In re Carver v. State*, 44 N.E.3d 154 (N.Y. 2015).

⁶¹ *Id.* at 156.

⁶² *See id.*

⁶³ *See id.*

⁶⁴ *See id.*

⁶⁵ *See id.*

⁶⁶ *See id.*

⁶⁷ *See id.*; 29 U.S.C. § 206 (2012).

⁶⁸ *See Carver*, 44 N.E.3d at 156; N.Y. SOC. SERV. § 336 (McKinney 2018).

⁶⁹ *See Carver*, 44 N.E.3d at 162.

York Labor Law did not apply.⁷⁰

B. *Concurring Opinions*

Although Judge Abdus-Salaam did not author many concurring opinions that differed substantively from the majority, in those that she did, she tended to argue that government power should be kept in check, including in two search and seizure cases.⁷¹ In *In re Cunningham v. New York State Dep't of Labor*,⁷² Judge Abdus-Salaam argued for greater search and seizure protections under the New York Constitution⁷³ and the Fourth Amendment to the U.S. Constitution⁷⁴ than the majority.⁷⁵ In her opinion, she acknowledged the majority's desire to allow states to investigate workplace misconduct; however, she said that without a warrant, a state absolutely may not place a GPS on a personal, private car to investigate whether or not the state employee was where he was supposed to be.⁷⁶ In *People v. Argyris*,⁷⁷ Judge Abdus-Salaam again wanted to go further than the majority in protecting against unlawful search and seizure, writing that courts should apply the *Aguilar-Spinelli*⁷⁸ test to determine whether an investigatory stop based on an anonymous hearsay tip was legal, and that whether a tip provides probable cause or reasonable suspicion should depend on the quality of the tip's description of the crime or non-criminal conduct.⁷⁹

Even in civil cases,, Judge Abdus-Salaam sometimes differed from the court to ensure that the government was being held to a high enough standard.⁸⁰ In *Applewhite v. Accuhealth, Inc.*, the majority found that an ambulance service provided by a municipality performs a governmental function and therefore, "cannot be held liable unless

⁷⁰ See *id.* at 163 (Abdus-Salaam, J., dissenting).

⁷¹ See *People v. Argyris*, 27 N.E.3d 425 (N.Y. 2014) (Abdus-Salaam, J., concurring); *In re Cunningham v. New York State Dep't of Labor*, 997 N.E.2d 468 (N.Y. 2013) (Abdus-Salaam, J., concurring); see also *Applewhite v. Accuhealth, Inc.*, 995 N.E.2d 131 (N.Y. 2013) (Abdus-Salaam, J., concurring).

⁷² *In re Cunningham v. New York State Dep't of Labor*, 997 N.E.2d 468 (N.Y. 2013).

⁷³ N.Y. CONST. art. I, § 12.

⁷⁴ U.S. CONST. amend. IV. As applicable to New York through the Fourteenth Amendment. U.S. CONST. amend. XIV.

⁷⁵ See *Cunningham*, 997 N.E.2d 468, 474 (Abdus-Salaam, J., concurring).

⁷⁶ See *id.*

⁷⁷ *People v Argyris*, 27 N.E.3d 425 (N.Y. 2014).

⁷⁸ *Aguilar v. Texas*, 378 U.S. 108 (1964); *Spinelli v. United States*, 393 U.S. 410 (1969).

⁷⁹ See *Argyris*, 27 N.E.3d at 428–29 (Abdus-Salaam, J., concurring).

⁸⁰ See *Applewhite v. Accuhealth, Inc.*, 995 N.E.2d 131, 141 (N.Y. 2013) (Abdus-Salaam, J., concurring).

it owed a ‘special duty’ to the injured party.”⁸¹ However, in her concurring opinion, Judge Abdus-Salaam disagreed by saying that an ambulance service provided by a municipality is not performing a governmental function, but rather a proprietary one, and therefore owes the same duty of care that a private ambulance service would owe.⁸² This idea is premised on the fact that providing medical treatment is not a governmental function, and therefore, when a government performs that function, it must abide by the same standards as private groups would.⁸³

C. Majority Opinions

Perhaps the most noted opinion of Judge Abdus-Salaam’s time on the bench was her majority opinion in *Brooke S.B. v. Elizabeth A.C.C.*⁸⁴ In this custody case, Judge Abdus-Salaam held that “where a partner shows by clear and convincing evidence that the parties agreed to conceive a child and to raise the child together, the non-biological, non-adoptive partner has standing to seek visitation and custody”⁸⁵ This directly overturned a previous New York case, *Matter of Alison D. v. Virginia M.*,⁸⁶ which held that “in an unmarried couple, a partner without a biological or adoptive relation to a child is not that child’s ‘parent’ for purposes of standing to seek custody or visitation”⁸⁷ *Brooke S.B.* was a landmark case because it addressed the challenge of defining “parent” at a time where there are “increasingly varied familial relationships.”⁸⁸ It was recently cited in a dissenting opinion in an Arizona appellate level case where it was used to support the idea that same-sex couples should be protected under the same parentage laws that opposite-sex couples are.⁸⁹

Another commonly mentioned majority opinion by Judge Abdus-Salaam is *People v. Peque*.⁹⁰ In *Peque*, Judge Abdus-Salaam

⁸¹ *Id.* at 133.

⁸² *See id.* at 141 (Abdus-Salaam, J., concurring).

⁸³ *See id.* at 143 (Abdus-Salaam, J., concurring).

⁸⁴ *Brooke S.B. v. Elizabeth A.C.C.*, 61 N.E.3d 488 (N.Y. 2016).

⁸⁵ *Id.* at 490.

⁸⁶ *In re Alison D. v. Virginia M.*, 572 N.E.2d 27 (N.Y. 1991).

⁸⁷ *In re Brooke*, 61 N.E.3d at 490 (citing *Alison D.*, 572 N.E.2d at 28).

⁸⁸ *In re Brooke*, 61 N.E.3d at 490, 501.

⁸⁹ *See Turner v. Korbin*, 398 P.3d 110, 117 (Ariz. Ct. App. 2017) (Winthrop, J., dissenting) (citing *In re Brooke*, 61 N.E.3d at 498 – 501).

⁹⁰ *People v. Peque*, 3 N.E.3d 617 (N.Y. 2013). It should be noted that this is more like a plurality opinion than a strict majority opinion. *See id.* at 642 (Pigott, J., dissenting) (referring to the opinion as “the majority (for want of a better word.)”).

held that prior to accepting a guilty plea to a felony, “a trial court must inform the defendant that, if the defendant is not a citizen of this country, he or she may be deported as a result of the plea.”⁹¹ She held that this was required under the due process clauses in both the Fourteenth Amendment to the U.S. Constitution⁹² and article I, section 6 of the New York Constitution.⁹³ In this holding, she was joined by Chief Judge Lippman, and Judges Graffeo, Read, and Rivera.⁹⁴ However, this idea that the “trial court *must* inform the defendant”⁹⁵ is tempered significantly later in the opinion.⁹⁶ This “tempered” opinion was joined by Judges Graffeo, Read, and Smith and says that if a trial court does fail to notify the defendant, the defendant is not entitled to an automatic vacatur of the plea, but rather that the defendant would first need to “demonstrate that he or she was prejudiced by the court’s omission.”⁹⁷ This echoes some of Judge Abdus-Salaam’s dissenting opinions discussed above where she found that although there was an error, it was *de minimis* and therefore the Court could not overturn the trial court’s decision.⁹⁸

III. CONCLUSION

While Judge Abdus-Salaam was lauded as a trailblazer,⁹⁹ unfortunately her time trailblazing on the Court was cut short.¹⁰⁰ Her well laid-out opinions and careful analysis likely would have become even better over time. Despite her struggles with mental health, she was highly successful and truly “ha[d] the back of that lady with the scales.”¹⁰¹

If you are a lawyer or a judge who may be suffering from depression or other mental health issues, contact the New York State Bar Association Lawyer Assistance Program at 1-800-255-0569 or online at <https://www.nysba.org/LAP/>.

⁹¹ *Id.* at 621.

⁹² U.S. CONST. amend. XIV.

⁹³ N.Y. CONST. art. I, § 6; *see Peque*, 3 N.E.3d at 627.

⁹⁴ *Peque*, 3 N.E.3d at 635.

⁹⁵ *Id.* at 621 (emphasis added).

⁹⁶ *See id.* at 639.

⁹⁷ *Id.*

⁹⁸ *See supra* Part II(A).

⁹⁹ *See Santora*, *supra* note 2.

¹⁰⁰ *See Sanchez et al.*, *supra* note 24.

¹⁰¹ *Seiler*, *supra* note 23.