

IN MEMORIAM OF HON. DEBORAH A. BATTS*

*By James L. Kainen** and Adam Shlahet****

I. PROFESSOR KAINEN

In starting to write this remembrance, I was sure that I met my friend and colleague, Debbie Batts, when I started at the U.S. Attorney's Office for the Southern District of New York in the fall of 1983. But when I checked Debbie's biography to see how long we had overlapped at the U.S. Attorney's Office, I learned that we didn't overlap at all. Debbie began teaching at Fordham Law in the fall semester of 1983 and I wasn't sworn in until the end of September of that year. Decades later, I realized why I was confused. Although she had already left, Debbie's presence continued to suffuse the U.S. Attorney's Office. It seemed that Debbie came up in conversation with almost anyone I talked to, whether I was hearing about her cases that I should learn from, her model of public service, or the friendships she had made. She was part of the cohort of extraordinary female prosecutors who had diversified and transformed the U.S. Attorney's Office during the decade before I arrived.

I really did meet Debbie when I applied to teach at Fordham Law and was invited to a give a presentation to the faculty. When I arrived, I learned that other candidates either had been or would be hired without a faculty vote or having to present. So, I had to think that those asked to present had little chance of getting a job.

To my delight, Debbie was an engaged member of the audience who, after the presentation, assured me that being asked to present was not a polite way of turning me down. Before checking, I would have said that we greeted each other as old friends. I now realize it is more likely that Debbie greeted me as a kindred spirit and, in that inimitable way that was hers, made me feel as if we were old friends even though we were meeting for the first time.

* The Honorable Deborah ("Debbie") A. Batts joined the faculty of Fordham University School of Law in 1984 as its first African American faculty member. She was nominated to the federal bench in 1994 and sworn in as a U.S. district judge for the Southern District of New York that same year, becoming the first openly LGBTQIA+ member of the federal judiciary. Throughout her judicial tenure, she continued to serve as an adjunct professor for Fordham Law's Brendan Moore Trial Advocacy Program.

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*** Director, Brendan Moore Trial Advocacy Center and Adjunct Professor, Fordham University School of Law. The text of this tribute has been lightly edited and footnoted. For an overview of the corresponding Tribute, see *Foreword: Celebrating a Lasting Legacy*, 89 *FORDHAM L. REV. ONLINE* 1 (2020).

Either way, her appearance felt like that of a guardian angel. When I joined the faculty, I was thrilled she would be my colleague; even better, they assigned me the office next to hers.

Debbie and I both taught property law. We had our own stories about how we came to the subject, but we were kindred spirits again, teaching complicated doctrine far removed from our previous practice. As questions arose, we would pop into each other's offices and learn from each other. I cherish those conversations. Somehow, it always seemed that we complemented each other. What she knew well was what I needed to learn and vice versa. Moreover, when talking with Debbie even about issues I thought I knew well, I realized how much more there was to learn by rethinking things from her perspective.

In those conversations, I saw the passion for family law that motivated Debbie's study of property. She had a powerful sense of the importance to human flourishing of being and feeling part of a family. She suggested that American law develop what she called a system of "protected inheritance" that limited the right of parents to disinherit their children.¹

As someone inclined to think legal scholarship requires detached analysis of the potential behavior of rational actors, I marveled at Debbie's ability to bring scholarly precision to matters that depended upon deep human emotions that she so skillfully evoked in her readers. Debbie taught that the law's validation of those feelings, within reason, was an essential part of human flourishing. "Protected inheritance" would build on children's expectations of support from parents to whom, after all, they did not ask to be born, and parents' sense of obligation evidenced by "[t]he passionate surge of emotions and primitive protective instincts kindled in the hearts and minds of rational, socialized adults when there is a perception of danger or threat to their children of any age."² Her proposal resonated with emotions that Debbie captured in words that any parent or child could appreciate. In the text of the article, she wrote: "Procreation, at once one of the most selfish and selfless phenomena, creates bonds that often transcend the grave."³ Her footnote further explained, "Selfish in that reproduction is the ultimate satisfaction of the ego's search for immortality; selfless in that, for decades to come after the birth of a child, most parents sacrifice personal benefits for the benefit of the child."⁴

The straightforward way that Debbie could accommodate powerful human emotions in the law was also evident in the way she interacted with others in her everyday life. She is famous for greeting friends with a kiss on the lips. She is known as a trailblazer for being the first openly gay federal judge; but to one who watched as she went through the fraught, seemingly endless

1. See generally Deborah A. Batts, *I Didn't Ask to Be Born: The American Law of Disinheritance and a Proposal for Change to a System of Protected Inheritance*, 41 HASTINGS L.J. 1197 (1990).

2. *Id.* at 1264.

3. *Id.*

4. *Id.* at 1264 n.355.

confirmation process, she would say that she was just being herself. I don't pretend to know about the turmoil that might have accompanied Debbie's evolving sexuality, its impact on her family, and the subsequent effect that its widespread publicity might have had on her and them. Those were different days; the law viewed the perceived immorality of same-sex relationships as a reason to deny adoptions or even prosecute a loving couple. So, Debbie's courage to be herself was remarkable, however much she downplayed it. I vividly remember her response when learning that some of her colleagues on the bench were unhappy with how open she was about her sexuality and the casual clothes she was wont to wear (including her famous Donald Duck t-shirt). "That's too bad," she said matter-of-factly. I will always admire Debbie's willingness and ability to be true to herself as much as I do her extraordinary achievements.

It was also my good fortune to work with Debbie teaching trial advocacy in a program she directed for new hires in New York City's Law Department. More than thirty years later, Fordham Law continues to run the program. After taking the bench, Debbie taught trial advocacy to generations of Fordham Law students. Adam Shlahet, Director of the Brendan Moore Trial Advocacy Center and adjunct professor of law can speak best of her contribution to Fordham Law's trial advocacy program after she ascended to the bench.

II. PROFESSOR SHLAHET

Of course I had heard of her, but the first time I met Judge Debbie Batts in person she greeted me with a kiss. I had just taken over the trial advocacy program at Fordham Law, and Debbie had invited me to her chambers to get to know one another. She had been a pillar of our program for over twenty years. After being released from her surprisingly warm embrace, I was immediately taken aback by the unorthodox decor that surrounded us. Was I in the right place? It appeared that a kindergarten classroom had recently exploded in there.⁵ She cleared a cushion from the couch, we sat down, and I encountered a brilliant, unpretentious, funny, opinionated, generous, and welcoming teacher and collaborator. Could a judge of her stature be this fun to be around?

Debbie's contribution to Fordham Law is breathtaking. Every Wednesday night, from 6:30 p.m. to 9:20 p.m., she welcomed a class of law students into her courtroom to teach them how to try a case. For twenty-five years (fifty semesters!), she shared her wisdom with patience, modesty, and kindness. Those lucky enough to take her class loved her for it.

Debbie not only made space for different perspectives in her class, she embraced them. She utilized professionally trained actors as witnesses to an uncommon degree. She always asked for their observations and comments. For someone whose career gave her every reason to believe she "knew it all,"

5. Debbie was famous for the collection of stuffed Disney characters that adorned her chambers.

she knew she didn't, and she listened. Anyone who's shared a meal with a successful trial lawyer or judge knows how rare that kind of humility is.

I feel immense gratitude for the time she gave us. She will be remembered for many outstanding achievements, but I will remember her as a compassionate colleague, a champion of our program, and a superlative teacher. She was a giant.