



Life Story: Dorothy Kenyon

The lawyer and social activist whose lifelong advocacy laid the foundation for litigating women's rights

Background

Dorothy Kenyon was born in New York City on February 17, 1888. She was the first of three children, and the only daughter, of Maria Wellington Stanwood and William Houston Kenyon. William was a prominent patent lawyer, and he argued his first case before the Supreme Court when Dorothy was a year old. His successful career furnished the family a very comfortable life with an apartment on Manhattan's Upper West Side, a summer home in Connecticut, and prestigious private schooling. William was far from the only lawyer in the Kenyon family. His three younger siblings, including his sister Mary, also practiced law. Later, both of Dorothy's brothers and her three male cousins followed suit. She recalled asking her dad as a little girl, "Can girls be lawyers, father?" He replied, "Why not, my dear?"

Dorothy graduated from the Horace Mann School in 1904 and then attended Smith College. She participated in many campus activities, including music, championship tennis, and the hockey team. Her grades earned her election to the prestigious honor society Phi Beta Kappa, and she received her degree in economics and history in 1908. After college, the self-described "social butterfly" returned home and partook in the typical activities of New York society—reading, horseback riding, and visiting with friends. She received calls from many suitors, and her brothers poked fun at how ten different boys from the neighborhood declared that Dorothy would be their wife. She never married.

The course of her life changed in 1913 after a year-long trip to Mexico awakened her sense of social obligation. The level of poverty there disturbed her and inspired her to go to law school. She enrolled in New York University Law School—one of the only law schools that admitted women—and graduated in 1917. She was one of the first women to be admitted to the New York Bar.

Career

After a brief stint as a law clerk with the firm Gwinn & Deming, Dorothy moved to Washington D.C. from 1917 to 1919 to work for the government during World War I. She researched war labor patterns and collected economic data for the 1919 Peace Conference. She moved back to her father's apartment in Manhattan at the end of 1919 and joined a small New York law firm. The experience frustrated Dorothy because her male colleagues gave her constant criticism and assigned her the least desirable work. In 1925, she got her own apartment and opened a private practice. A few years later, she joined with another lawyer, Dorothy Straus, to open the firm Straus & Kenyon. "The two Dorothys," as they were familiarly known, conducted a general practice handling estates, cooperatives, and laws relating to women from 1930 to 1939.

At the same time, Dorothy immersed herself in a number of advocacy groups. In the 1920s, Dorothy joined the New York League of Women Voters as a legal advisor. She led a campaign to repeal a state law barring women from jury service, a cause she would champion for the rest of her life. She was a member of the American Association of University Women and a Legal advisor to the Consumers' League. Throughout the 1930s and 1940s, she made hundreds of speeches, publications, and radio addresses educating the public about women's legal rights. She wrote copious letters to the editors that "peppered" the *New York Times* for years. She fought for labor protections for women, and challenged state and federal policies that discriminated against married working women. In 1930, she joined the board of the American Civil Liberties Union (ACLU), and remained an active member until she died.

Her success in private practice and active participation in advocacy groups earned her several government appointments. From 1936 to 1937, she was the Deputy Commissioner of Licenses for the state of New York. Then, Mayor Fiorello LaGuardia appointed Dorothy a Justice of the Municipal Court. As a midterm appointment, she finished the 1939-1940 term and then needed to be elected by the people to continue serving. Though she lost reelection, she went by "Judge" the rest of her life. For the next seven years, she returned to her private practice and volunteering, in addition to serving on the League of Nations Committee on the Status of Women. This experience with the League of Nations—the international organization that preceded the United Nations (UN)—led President Harry Truman to appoint her to the UN Commission on the Status of Women from 1946 to 1950. At the same time, she began leading the ACLU Committee on Discrimination Against Women. The main agenda was opposition to the Equal Rights Amendment (ERA). The proposed amendment stated that equal rights "shall not be denied or abridged by the United States or by any state on account of sex." Though she later changed her stance, Dorothy initially believed that the ERA might *undermine* women's rights by disallowing maternity leave. She also believed that women needed to be compensated for past discrimination through laws giving them special protections. For instance, she supported widows' pensions paid to women, who likely did not have their own income, after their husbands died. Instead of the ERA, she proposed that equality for women be found under the **Equal Protection Clause** to the **Fourteenth Amendment** of the Constitution.

The nature of her advocacy led her to be accused of **communist** activities by Senator Joseph McCarthy and the House of Un-American Activities Committee (HUAC) during the **Red Scare** in 1950. At the time, the United States was in the thick of the Cold War with the Soviet Union, a communist country. Senator McCarthy created HUAC to identify, try, and detain members of the communist party. At her hearing, Dorothy told HUAC, "I am a lover of democracy, of individual freedom and of human rights for everybody, a battler, perhaps a little bit too much of a battler sometimes, for the rights of the little fellow...but who is a human being just the same and entitled to be treated like one." HUAC formally cleared her of charges, but McCarthyism ended her public career. She never received another government appointment. She continued her private practice and drafted briefs for the National Association for the Advancement of Colored People (NAACP) and the ACLU.

Supreme Court Advocacy

Thurgood Marshall's litigation in *Brown v. Board of Education* (1954) inspired Dorothy. His unprecedented strategy used social science to prove that racial segregation created feelings of inferiority that caused lasting psychological impacts. The Court agreed with his argument and unanimously decided that segregation violated the Equal Protection Clause of the Fourteenth Amendment. Dorothy theorized that the same line of reasoning could apply to women's equality under the Fourteenth Amendment.

She found an opportunity to test her theory in *Hoyt v. Florida* (1961). After Gwendolyn Holt killed her husband, an all-male jury in Florida state court convicted her of second-degree murder. Under Florida law, women were only considered for jury service if they volunteered. Hoyt's legal team argued before the Court that the trial violated her Fourteenth Amendment right to equal protection because the jury did not include anyone of her own sex. The ACLU expanded on this argument in an eloquent **amicus brief**, authored by Dorothy, who had long led efforts to overturn state laws excluding women from jury service. Instead of focusing on the fact that Hoyt's rights to have a jury with members of her sex were violated, Dorothy argued that the rights of *all* Florida women were infringed upon because they did not have equal opportunity to serve on the jury. She cited the Court's decision in *Hernandez v. Texas* (1954), which addressed a Mexican-American man convicted of murder who was sentenced to life imprisonment by an all-white jury. The Court held in *Hernandez* that "when the existence of a distinct class is demonstrated, and...the laws...single out that class for different treatment not based on some reasonable classification, the guarantees of the Constitution have been violated." Dorothy submitted that this argument, used to extend equal protections to all racial groups, also applied to women as a historically underprivileged group and therefore a distinct class. The Court would not agree. It unanimously decided that Florida's jury selection system was constitutional.

Four years later, Dorothy partnered with Pauli Murray, a Black feminist lawyer, to challenge Alabama's jury system in *White v. Crook* (1965). Together, they wrote the ACLU's amicus brief about sex discrimination. The case was never appealed to the Supreme Court, but the outcome marked a major milestone. It was the first time a federal court declared an all-male jury service system unconstitutional, and the first use of the Fourteenth Amendment to invalidate a sex discrimination law.

Legacy

Dorothy received a diagnosis of stomach cancer in 1969, but continued working until the end of her life. She died at her home in New York City on February 12, 1972, five days before her 84th birthday. Before her death, several law schools honored Dorothy's life's work by awarding her honorary degrees, and the New York University Law School awarded her the Vanderbilt Gold Medal for outstanding service. Her five decades of social advocacy, including 40 years with the ACLU, laid the legal groundwork for women's rights litigators who followed. In 1971, Ruth Bader Ginsburg

wrote the ACLU's brief for its successful case in *Reed v. Reed* that an Idaho law automatically preferring fathers to mothers as the administrator of a deceased child's estate was unconstitutional. The *Reed* decision marked the first time the Supreme Court held a state statute unconstitutional on the basis of sex under the Equal Protection Clause of the Fourteenth Amendment. The influence of the arguments Dorothy had formulated for the *Hoyt* brief was so paramount that the future Justice Ginsburg listed her as a co-author of the brief. Dorothy's legacy is pioneering the idea that the protections of the Fourteenth Amendment should be extended to sex discrimination.

Vocabulary

- **Equal Protection Clause** – The Equal Protection Clause in the Fourteenth Amendment to the U.S. Constitution provides that no state may deny to any person within its jurisdiction the equal protection of the laws.
- **Fourteenth Amendment** – ratified in 1868, granted citizenship to all persons born or naturalized in the United States—including formerly enslaved people—and guaranteed all persons “equal protection of the laws.”
- **Communist** – a person who believes in communism, a political ideology that advocates for a classless system where all property and wealth are owned communally instead of by individuals.
- **Red Scare** – refers to the widespread fear of communism in the United States that occurred in the 1920s (in response to the Bolshevik Revolution of 1917) and in the 1950s (in response to the Cold War)
- **Amicus brief** – legal reports filed by organizations not involved in the case that provide additional perspective and context about a case.

Discussion Questions

1. Why did Dorothy want to become a lawyer?
2. Why did Dorothy oppose the Equal Rights Amendment?
3. Why do you think that Dorothy was accused of communist activities?
4. Why was *Brown v. Board of Education* (1954) important to Dorothy's work?
5. How did Dorothy Kenyon's work advance rights for women?

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