

In fond remembrance of Eve Cary  
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In the summer of 1970, Eve Cary was between her second and third years at NYU Law School, and was assisting the lawyers at NYCLU. Mel Wulf, then Legal Director of the ACLU, enlisted her for a special assignment. The Idaho Supreme Court had just decided a case called *Reed v. Reed*. That court upheld against constitutional challenge an estate administration statute which read: “As between persons equally entitled to administer a decedent’s estate, males must be preferred to females.” A Jurisdictional Statement was needed to appeal to the U.S. Supreme Court, and Mel asked Eve to help him compose it. (At the time, no woman served as staff counsel at the ACLU or the NYCLU.)

The pleading drafted by Eve and Mel engaged the Court’s attention, and in 1971, *Reed* became an historic first: the first ruling ever in which the Supreme Court declared that a law discriminating against women violated the Fourteenth Amendment’s Equal Protection Clause. Eve’s hand, mind, and heart were there at the very beginning, a full year and a half before the ACLU, sparked by the Supreme Court’s decision in *Reed*, launched its Women’s Rights Project.

First woman to serve as staff counsel at NYCLU, Eve litigated pathmaking cases in the 1970s involving the First Amendment, the rights of prisoners, and genuinely equal opportunities for women. To this day, I preserve among my favorite briefs one she filed in the New York Court of Appeals early in 1973 in a case captioned *Sontag*

*v. Bronstein*, 33 N.Y. 2d 197 (decided 11/15/1973). Eve was Attorney for the Appellant, Marilyn Sontag. Paul Chevigny and I were “Of Counsel.” Respondents were officials at the New York City Department of Personnel.

The problem: In 1970, Sontag had been engaged at Hunter College as an Audio-Visual Aid Technician; some two years later, despite her capable performance on the job, she was disqualified for failure to pass a newly devised heavy lifting test. The test required lifting a 20-pound barbell overhead with the left hand and a 25-pound weight with the right hand. Sontag was unable to lift the 25-pound barbell higher than her shoulder. All the men taking the test passed. The only other woman put to the test also failed. Eve’s winning brief left not stone unturned. My favorite line from it: “[W]omen throughout history have proven themselves capable of lifting and carrying 25-pound weights—the weight of an infant between 12 and 18 months [old].” Women did not carry that weight overhead, of course, but in a far more sensible and protective way. Eve’s argument and briefing yielded a resounding victory in New York’s Court of Appeals. A test neutral in form but disparate in impact would no longer escape attentive review.

As the barbell case illustrates, Eve lived to see great changes in women’s chances, and she was an active participant in making them happen. She did so, as she did all else in her lawyering and teaching careers—without fanfare, but with unrelenting persistence, and something more of surpassing importance. She had an irreverent, unflinching sense of humor, the kind that helps one through life’s trials and dark days. She was also an uncommonly caring person. The French word *sympathique* fit her to a T.

**I count it my great good fortune to have known Eve Cary as co-worker, from days when we were rather young. She was taken from our midst far too soon. But her wit and wisdom, her brave and bright spirit will continue to uplift and encourage the legions whose lives she touched.**