

LIVING THE LEGACY OF RHONDA COPELON

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It is an incredible honor to be on this panel, with this group of trailblazers for the human rights of lesbian, gay, bisexual, transgender, and/or queer (“LGBTQ”) people and to be asked to participate in paying tribute to and building on Rhonda’s long legacy of domestic and international advocacy for gender- and sexuality-based rights. My contributions to today’s discussions are not so much around cutting-edge developments in the international law of sexual rights, but rather the application of international law to domestic issues of state violence, and particularly violence at the hands of law enforcement agents, against LGBTQ people.

In 2005, Amnesty International published *Stonewalled: Police Abuse and Misconduct Against Lesbian, Bisexual and Transgender People in the U.S.*,¹ finding widespread violations of the rights of LGBTQ people, and particularly LGBTQ people and youth of color, by law enforcement officers across the United States. This groundbreaking report documented patterns of profiling, arbitrary arrest and detention, cruel, inhuman, and degrading treatment, as well as physical and sexual violence amounting to torture under international law, failure to protect from violence, and denial of the redress and remedies required by international law. I had the privilege of serving as expert consultant, lead researcher, and co-author of the report, which looked to international standards that were and continue to be far more evolved than domestic law with respect to the protection of the rights of LGBTQ people, particularly where state violence based on gender and sexuality is concerned. A critical achievement of that report was to highlight the reality that violations of the rights of LGBTQ people to be free

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¹ AMNESTY INT’L, *STONEWALLED: POLICE ABUSE AND MISCONDUCT AGAINST LESBIAN, GAY, BISEXUAL AND TRANSGENDER PEOPLE IN THE U.S.* 45–47 (2005), *available at* <http://www.amnesty.org/en/library/asset/AMR51/122/2005/en/2200113d-d4bd-11dd-8a23-d58a49c0d652/amr511222005en.pdf>.

from torture and cruel, inhuman, and degrading treatment, arbitrary arrest and detention, state and interpersonal homophobic and transphobic violence, and interference with freedom of movement and expression continue to take place here in the U.S., and that existing remedies for rights violations are failing LGBTQ communities, and particularly LGBTQ youth and people of color, and low-income and homeless LGBTQ people.

Stonewalled, and the research that informed it, formed the basis, in part, of a shadow report developed for the 2006 review of the U.S. government's compliance with the U.N. Convention on Torture² called *In the Shadows of the War on Terror: Persistent Police Brutality and Abuse in the United States*.³ The report not only highlighted continuing rights violations by law enforcement agents across the U.S., but also centered gender- and sexuality-based experiences of police profiling and brutality within the larger context of race- and poverty-based policing practices.

Our advocacy to the Committee Against Torture ("CAT") specifically focused on physical and sexual violence against women and LGBTQ people by law enforcement agents, and therefore relied on one of Rhonda's many legacies—and the one dearest to my heart—the notion that rape and sexual violence by law enforcement and correctional officials constitute torture under international law.⁴ Thanks to Rhonda's tireless advocacy and connections with critical Committee members—all of whom were, of course, also her personal friends—and her willingness to show us the ropes of international human rights advocacy, we were able to secure a finding from the CAT expressing concern about sexual assault against people in detention, including police custody and pre-trial and immigration detention.⁵ The Committee went on to note that people of "differing sexual orientation" are particularly vulnerable

² See Rep. of the U.N. Comm. Against Torture, Considerations of Reports Submitted by States Parties Under Article 19 of the Convention: Conclusions and Recommendations of the Committee Against Torture; United States of America 36th sess., May 1–19, 2006, U.N. Doc. CAT/C/USA/CO/2 (May 18, 2006) [hereinafter CAT Committee Report].

³ ANDREA J. RITCHIE ET AL., *IN THE SHADOWS OF THE WAR ON TERROR: PERSISTENT POLICE BRUTALITY AND ABUSE IN THE UNITED STATES* (2006), available at http://www.theadvocatesforhumanrights.org/uploads/shadow_report_to_cat_on_police_brutality_final.pdf.

⁴ Raquel Martín de Mejía v. Perú, Case 10.970, Inter-Am. Comm'n. H.R., Report No. 5/96, OEA/Ser.L/V/II.91, doc. 7, ¶ 157 (1996), available at <http://www1.umn.edu/humanrts/cases/1996/peru5-96.htm>; see also Special Rapporteur on Violence Against Women, Its Causes and Consequences, U.N. Doc. E/CN.4/2005/72 (Jan. 17, 2005) (by Yakin Ertürk).

⁵ CAT Committee Report, *supra* note 2, ¶ 32.

to such abuse, and called on the U.S. to implement preventative measures and ensure prompt and thorough investigation and accountability for such acts.⁶ The CAT also issued a finding expressing ongoing concern regarding police brutality and excessive force by law enforcement agents, noting numerous allegations of ill treatment of persons of differing sexual orientation, which had not been adequately investigated.⁷

When we returned to Geneva for the review of the U.S. government's compliance with the International Covenant on Civil and Political Rights ("ICCPR") a few months later,⁸ we once again raised issues of physical and sexual violence against women and LGBTQ people by law enforcement officers, as well as issues of race- and gender-based profiling of Black and Indigenous women in the context of the war on drugs; Arab, Middle Eastern, South Asian and Muslim women in the context of the war on terror; and gay men, transgender women, and women of color in the context of the policing of sex work. We highlighted the ways in which gender nonconformity gives rise to heightened police surveillance, scrutiny, and presumptions of violence, criminality, and involvement in sexual offenses. In one of my favorite moments in international human rights advocacy, Human Rights Committee Member Michael O'Flaherty held up the Amnesty Report during questioning of the U.S. on its track record of enforcement of the ICCPR domestically, and demanded to know what the U.S. government was doing about the patterns of human rights violations against LGBTQ people documented in the report. When issuing findings expressing concerns regarding ongoing police brutality in the U.S., the Human Rights Committee specifically highlighted the experiences of women.⁹

Finally, in 2008, during a concerted effort coordinated by the U.S. Human Rights Network, over 200 representatives from a broad range of local, state, and national organizations collectively participated in the U.N. Committee on the Elimination of Racial Discrimination's ("CERD") review of the U.S. government's com-

⁶ *Id.*

⁷ *Id.* ¶ 37.

⁸ Rep. of the U.N. Human Rights Comm., Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee; United States of America 87th sess., July 10–28, 2006, U.N. Doc. CCPR/C/USA/CO/3/Rev.1 (Dec. 18, 2006), *available at* <http://www2.ohchr.org/english/bodies/hrc/hrcs87.htm>.

⁹ *Id.* ¶ 30 (calling for an end to the use of TASERS on pregnant women).

pliance with CERD,¹⁰ submitting over twenty shadow reports on issues ranging from housing to labor to prison and policing.¹¹

As part of this process, Rhonda helped ensure that the experiences of LGBTQ people were addressed in each and every one of these reports, offering up the considerable research and advocacy skills of one of her students at the time—who is largely responsible for all of us being here today—one Lisa Davis. Additionally, two transgender women of color, one of whom was Miss Major, a leader of the Stonewall uprising, survivor of the New York state prison system and currently the Executive Director of the Transgender, Gender Variant, & Intersex Justice Project¹² (“TGI Justice”), joined us in Geneva. Together, we broke new ground with the Committee in illuminating the intersections of race-, gender-, and sexuality-based rights violations.

Fierce and skilled advocacy yielded yet another one of my favorite international human rights advocacy moments, when, during opening remarks of the formal hearing on U.S. compliance with the International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”), the Rapporteur demanded to know what the U.S. government was doing to address the ongoing scourge of racial profiling, and its devastating impacts on communities of color, women of color, and on transgender women of color. Tears were rolling down the face of women, including Miss Major and her colleague, whose voices and experiences are so rarely heard by people in power, and for whom international human rights advocacy offered an opportunity to see their government directly confronted for violations of their rights in front of the entire world. These are the types of moments Rhonda’s years of international human rights advocacy made possible.

The findings of the CAT and ICCPR are not, six years later,

¹⁰ See Rep. of the U.N. Comm. on the Elimination of Racial Discrimination, 72nd sess., Feb. 18–Mar. 7, 2008, *available at* <http://www2.ohchr.org/english/bodies/cerd/cerds72.htm>; *see also* International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195.

¹¹ See ICERD SHADOW REPORT 2008, U.S. HUMAN RIGHTS NETWORK, *available at* <http://www.ushrnetwork.org/content/resourcegroup/icerd-shadow-report-2008> (last visited Apr. 15, 2012); *see also* ANDREA J. RITCHIE & TONYA McCLARY, IN THE SHADOWS OF THE WAR ON TERROR: PERSISTENT POLICE BRUTALITY AND ABUSE OF PEOPLE OF COLOR IN THE U.S. (2d Periodic Rep., Apr. 2006), *available at* http://www.ushrnetwork.org/sites/default/files/9_PoliceBrutality.pdf; ANDREA J. RITCHIE & JOEY MOGUL, IN THE SHADOWS OF THE WAR ON TERROR: PERSISTENT POLICE BRUTALITY AND ABUSE OF PEOPLE OF COLOR IN THE U.S. (2d and 3d Periodic Rep., Dec. 2007), *available at* <http://www2.ohchr.org/english/bodies/cerd/docs/ngos/usa/USHRN15.pdf>.

¹² See TRANSGENDER, GENDER VARIANT, & INTERSEX JUSTICE PROJECT, www.tgijp.org (last visited Sept. 10, 2012).

cutting-edge developments, but nevertheless represent promises unfulfilled, and opportunities for ongoing advocacy as well as continued engagement with the U.S. government in the context of upcoming reviews of its compliance with the ICCPR and the U.N. Convention Against Torture.¹³ I have cited the CAT and ICCPR findings before the Prison Rape Elimination Commission with respect to sexual violence by law enforcement agents in police lock-ups,¹⁴ in the context of advocacy to secure comprehensive changes to the New York City Police Department's ("NYPD") policies and practices with respect to the treatment of transgender New Yorkers,¹⁵ and as part of an emerging city-wide campaign to challenge the NYPD's discriminatory, unlawful, and abusive policing practices such as stop and frisk, profiling, and targeting of particular communities, including LGBTQ youth of color.¹⁶ I hope these hard-won statements from the highest international human rights bodies will continue to inform our domestic advocacy to protect and promote the rights of LGBTQ people, and particularly criminalized LGBTQ people and communities.

I want to close by sharing a very recent victory that, although not based on international human rights law, certainly puts an end to a gross violation of human rights of women of color and LGBTQ people of color in the U.S. I am doing so not only because victory is both sweet and rare, and therefore to be celebrated, and frankly because I am having a hard time thinking of anything else right now, but also because there is a connection to Rhonda's legacy.

In Louisiana, racialized policing of sexualities deemed "deviant" was, until yesterday at five p.m., facilitated by the existence of a centuries-old "crime against nature" law, which singled out solicitation of oral or anal sex for compensation for harsher punishment, including mandatory registration as a sex offender for periods of fifteen years to life.¹⁷ Police and prosecutors had unfet-

¹³ See Press Release, U.S. Human Rights Network, U.N. Mechanisms Update from the USHRN, (Nov. 4, 2011), <http://www.ushrnetwork.org/content/pressrelease/un-mechanisms-update-ushrn> (last visited Sept. 10, 2012).

¹⁴ *Hearing Before the Nat'l Prison Rape Elimination Comm'n* 30 (Mar. 26–27, 2007) (concerning lockups, Native American detention facilities, and conditions in Texas penal and youth institutions), *available at* <http://www.wcl.american.edu/endsilence/documents/MARCH2007FULLHEARING.pdf>.

¹⁵ See STREETWISE & SAFE, <http://www.streetwiseandsafe.org/> (last visited Sept. 10, 2012).

¹⁶ See COMMUNITIES UNITED FOR POLICE REFORM, www.changethenypd.org/more-info (last visited Sept. 10, 2012).

¹⁷ See generally Andrea J. Ritchie, *Prostitution Conviction Not Sex Offense*, THE BILERICO PROJECT (Feb. 18, 2011), http://www.bilerico.com/2011/02/prostitutes_are_not_sex_offenders.php; Alexis Agathocleous, *Eight Years After Lawrence, Sodomy Laws Are*

tered discretion in deciding whether to charge under the prostitution statute, which reaches the same conduct but does not carry the same penalty, or the “crime against nature by solicitation” (“CANS”) provision. It should come as no surprise that a law rooted in condemnation of sexual acts traditionally associated with homosexuality and applied in a context in which Black women’s sexualities have historically and continue to be framed as deviant, was discriminatorily applied to poor Black women involved in street-based economies, as well as transgender women and gay men of color, many of whom are among the hundreds of thousands of LGBTQ youth around the country that wind up on the streets after they are kicked out of their families and communities, with nowhere to go and no way to safely access what little resources exist for poor and homeless communities. As a result of these discriminatory law enforcement practices, a significant percentage of individuals on Louisiana’s sex offender registry are women and LGBTQ people of color, overwhelmingly as a result of this charge.¹⁸

The consequences of the mandatory sex offender registration requirement imposed upon a conviction of CANS are not insignificant. They implicate a broad range of civil, political, social, economic, and cultural rights. Among other things, Louisiana requires individuals who must register as sex offenders to carry a driver’s license emblazoned with the words “SEX OFFENDER” across it in bright orange letters. Think of all the places you have to show identification: when you apply for a job, when you go to the bank, when you seek shelter, when you are stopped by police, when you order a drink at a bar, when you go register your children for school. Individuals required to register as sex offenders cannot evacuate with their families in cases of natural disaster or emergency, such as Hurricane Katrina, but must go to shelters designated for sex offenders. And they are required to notify all of their neighbors, schools, and community centers within a mile radius of their address and crime of conviction, and pay up to \$800 to do so.¹⁹

Alive and Kicking, THE BILERICO PROJECT (Feb. 16, 2011), http://www.bilerico.com/2011/02/eight_years_after_lawrence_sodomy_laws_are_alive_a.php; JOEY MOGUL, ANDREA J. RITCHIE & KAY WHITLOCK, *QUEER (IN)JUSTICE* 157 (2011).

¹⁸ See WOMEN WITH A VISION, JUST A TALKING CRIME: A POLICY BRIEF IN SUPPORT OF THE REPEAL OF LOUISIANA’S SOLICITATION OF A CRIME AGAINST NATURE STATUTE 3 (2011), http://wwav-no.org/wp-content/uploads/Final_PolicyBrief_TalkingCrime.pdf.

¹⁹ See *id.*

As a general rule, discriminatory decisions made by law enforcement officers in the highly discretionary world of prostitution policing have profound consequences, in terms of loss of housing, employment, outing, the availability of immigration remedies and, under S-Comm,²⁰ deportation. CANS exacerbated these consequences in the extreme by mandating sex offender registration, thus compounding and multiplying the many barriers to accessing services and safety for people with prostitution-related convictions. By increasing penalties and consequences, CANS also gave police even greater leverage to extort sex—an experience described by many people we spoke to in the context of developing this litigation. It also places women, transgender people, and gay men at greater risk of sexual and other forms of violence while incarcerated for extended periods of time due to longer sentences or failure or inability to comply with onerous registration requirements.

Several years ago, under the leadership of Deon Haywood and Women With a Vision,²¹ a local harm reduction organization in New Orleans led by Black lesbians, we, along with the Center for Constitutional Rights²² and Loyola University Civil Justice Clinic,²³ began a concerted campaign to strike down the sex offender registration requirement for people convicted of CANS. We filed a lawsuit in February 2011, claiming, among other things, that the law violated the Equal Protection Clause of the U.S. Constitution.²⁴ We achieved a legislative victory less than six months later, when the mandatory sex offender registration requirement for CANS convic-

²⁰ See Andrea J. Ritchie, *It's Time for LGBTQ Groups to "Come Out" Against the ICE "Secure Communities" Program*, TURNING THE TIDE (Oct. 11, 2011), <http://altopolimigra.com/2011/10/11/its-time-for-lgbtq-groups-to-come-out-against-the-ice-secure-communities-program/>. "S-Comm" is the term used by advocates to refer to the much-criticized "Secure Communities" initiative currently being implemented by the Department of Homeland Security's Immigration and Customs Enforcement Division. The program requires police departments to automatically forward fingerprints taken of individuals under arrest to immigration authorities before there has been any finding that probable cause even existed to justify the arrest. Advocates are concerned that this will facilitate deportation of immigrants subject to racial profiling as well as profiling and false arrests based on sexual orientation and gender identity, and serve as yet another tool of law enforcement violation of the rights of communities of color.

²¹ See *NO Justice*, WOMEN WITH A VISION, <http://wwav-no.org/programs/louisiana-womens-advocacy-alliance/no-justice> (last visited Apr. 15, 2012).

²² *Crimes Against Nature by Solicitation (CANS) Litigation*, CTR. FOR CONSTITUTIONAL RIGHTS, <http://ccrjustice.org/crime-against-nature> (last visited Apr. 15, 2012).

²³ *Stuart H. Smith Law Clinic + Center for Social Justice*, LOYOLA UNIVERSITY NEW ORLEANS, <http://www.loyno.edu/lawclinic> (last visited June 15, 2012).

²⁴ *Doe v. Jindal*, 2012 U.S. Dist. LEXIS 43818, 2002 W.L. 1068776 (E.D. La. Mar. 29, 2012).

tions was eliminated for individuals convicted after August 15, 2011. Unfortunately, the legislation passed was not retroactive, leaving up to 400 people convicted prior to that date, including the plaintiffs in our case, *Doe v. Jindal*, still on the registry for fifteen years to life for this offense. Yesterday, a federal court judge granted summary judgment in favor of the plaintiffs in our case, finding that continuing to require them to register as sex offenders violated the Equal Protection Clause.²⁵

One of the many strengths of the litigation, advocacy, and organizing campaign around this issue is that it made the links between all populations whose sexuality is framed as deviant, and whose efforts and struggles to survive are criminalized. We took a page from theory advanced by Black feminists like Cathy Cohen²⁶ and Patricia Hill Collins,²⁷ who talk about how the sexuality of women of color is framed as inherently deviant and to be controlled, and as such is queered in deeply racialized ways. We put it into practice in a campaign that, unlike previous efforts to challenge this law, which focused only on LGB people, brought together advocates and organizations working locally and nationally with women of color and LGBTQ people of color, for civil and human rights, LGBTQ rights, and sex worker rights, and struggles against police profiling and brutality, HIV/AIDS, and poverty in unprecedented ways. We did this under the leadership of, accountable to, and centering the experiences and voices of women of color, including transgender women of color, and highlighting the shared experiences of policing and punishment among poor Black women and poor and homeless LGBTQ people of color. It challenged the criminalization of all sexualities deemed to be “deviant” as well as the criminalization of survival, and the use of policing and punishment of sexual and gender nonconformity to reinforce structural oppressions based on race and gender that feed the ongoing gentrification and ethnic cleansing of New Orleans, and was firmly rooted in struggles against poverty, racism, and criminalization.

When I told Rhonda about the case in the last few months she was with us, her immediate response was that this was precisely the kind of cutting-edge case we should be bringing to achieve gender justice and protect the human rights of women and LGBTQ peo-

²⁵ *Id.*

²⁶ CATHY J. COHEN, *Punks, Bulldaggers, And Welfare Queens: The Radical Potential of Queer Politics?*, 3 G.L.Q. J. LESBIAN AND GAY STUD. 437, 440 (1997).

²⁷ PATRICIA HILL COLLINS, *BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, AND THE POLITICS OF EMPOWERMENT* 76–7 (1999).

ple who are profiled, criminalized, and marginalized on a daily basis. And so it is particularly significant that the decision came down literally on the eve of this symposium honoring Rhonda's work and the directions it points us. So this victory, and this work, is not only dedicated to the women of color and LGBTQ people who labored under this injustice for decades, and to the tireless advocacy of Deon Haywood and the courageous people at Women With a Vision who doggedly fought to bring local and national attention to the issue until justice was done, but also to Rhonda's memory. I look forward to continuing to work with all of you to continue to fight as Rhonda did, courageously, tirelessly, and tenaciously, often against all odds, for sexual and gender rights until they are secured for everyone in the U.S. and around the world.