

## ROADMAP TO A BOLDER FUTURE: RHONDA COPELON'S LEGACY

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The Center for Constitutional Rights (“CCR”) is very proud to be the co-sponsor of this wonderful symposium, honoring and building on the legacy of Rhonda Copelon. We are also proud to co-sponsor with MADRE, another fierce, brilliant organization that Rhonda was deeply invested in.

Rhonda Copelon was one of my heroes before I ever met her. I'm fortunate to have had Rhonda as a colleague when we were both on the CCR board together, and as a mentor and friend when I became the Executive Director. In thinking about the “looking-forward” part of this Symposium, the Symposium conveners expressed the hope that people who didn't know Rhonda might get a sense of what her work was like and what the roadmap and inspiration could be for our current work as we move forward. Since the panels are very heavy on strategy and look deeply at international and domestic applications and implications for Rhonda's work, I thought I would talk about a different aspect of Rhonda's roadmap for the way forward.

Rhonda's roadmap does not merely push us to come to better policy and advocacy solutions for the world's problems, but it also pushes us to become better people. And, particularly as people that work together toward social change, when we form ourselves into organizations, Rhonda's roadmap causes the organizations to become better organizations.

I wanted to talk today about Rhonda's work and how it has created a roadmap and inspiration for CCR as we move our social justice work forward. When I began leading CCR, Rhonda gave me a series of what she called suggestions. The urgency and frequency of her expressions really compelled me to think of them more as demands. And here are the demands that Rhonda laid out for me as the new executive director for CCR five years ago:

Vince, you need to surface gender. Gender needs to surface throughout CCR's work. You need to challenge patriarchy. You need to consult, and, after you are done consulting, you need to consult more. And then you need to consult again. Act boldly, but be careful. Align with those that are most affected by the

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policies and practices that you are challenging. Align with the activists who are supporting those that are most affected by the policies and practices you are challenging. And most importantly, don't ever give up, because justice is possible.

So how does that play out in the context of a human rights organization? Rhonda was very clear on the piece about surfacing gender and challenging patriarchy. I have to say, as the Executive Director of CCR, who is a man and a feminist, this is a tremendous challenge. However, if there is a patriarchal aspect to CCR, then I am the one who is responsible for recognizing it and addressing it. I think that what Rhonda has done by supporting my vision for CCR and believing in where we could take the work, is that she has actually challenged me to *be challenged* around gender and patriarchal constructions. That's a good thing.

So we have taken steps to surface gender within CCR. Both in terms of how we work together and also in terms of the work we generate. As Dean Anderson aptly put it, we at CCR have "put the lenses on," so that we can actually see the gender and lesbian, gay, bisexual, and transgender ("LGBT") implications and applications within the work that we are doing, surface them, and work to figure out what we are going to do about them.

With respect to patriarchy in our workspace, we are organizing ourselves in a way that women, LGBT folks, and folks of color within the organization are being and feeling heard. We organize ourselves intentionally in order to bring our boldest and most creative ideas, perspectives, and legal theories to the table internally. We then turn them outward to the world through our litigation and other advocacy. In this way, our internal values necessarily affect our work and take us closer toward the change we want to make in the world.

With respect to how that work actually happens, the important thing that Rhonda told me, was that she really did not want to see a "gender docket" at CCR. When I asked her why not, she replied, "If you have a gender docket within the Center for Constitutional Rights—people whose only job it is to work on gender and LGBT issues—then you have every other docket feeling that it is not their job to work on gender and LGBT issues. She was very clear about not having the dockets within CCR reflect the siloed discussions that are happening out there in the world. At some level, it is CCR's job to challenge the structures that marginalize the meaningful gender and LGBT discussions in the world. Therefore, we

must take care that those structures are not built into the fabric of our own organization.

Moving from that, Rhonda very generously created the Copeland Fund for Gender Justice within CCR. The two main aspects of that fund are to support work relating to the intersections between race, gender, LGBT status, and class; and also to challenge the evangelical and religious fundamentalist power structures that silence, repress, criminalize, injure, and kill women and LGBT folks. And so utilizing that framework, we have begun to think through what work we can generate, including the work generated in partnership with the people in this auditorium, to move those pieces forward and take affirmative steps toward dismantling some of these structures that we are seeing.

I am happy to report that while it has not been that long since Rhonda left us, we have had some tremendous movement within the organization that has externalized itself in very surprising and powerful ways. You will find (for the law students among you) that being able to articulate a legal framework and file a case or create an advocacy campaign in partnership with community is a deeply powerful thing. It is also a very hard thing to do. But you will also find, as Andrea Richie was talking about, in the Solicitation of a Crime Against Nature (“SCAN”) case in Louisiana, that there are moments when you win. That is an indescribable moment and frankly it does not happen very often. But nonetheless, it is a moment in which you are then left with the following, dawning revelation: “now that we have won the case, what the heck do we do now?” I hope that you all find yourselves in that situation saying, “We’ve won, what the heck do we do now?”

With respect to some of the work we’ve done, there is *Doe v. Jindal*,<sup>1</sup> (the “Solicitation of Crimes Against Nature” case), which Andrea mentioned at the end of her talk. In this case, CCR successfully challenged the unconstitutional manner in which sex workers and others who performed certain consensual sexual acts were designated and punished as sex offenders by the State of Louisiana. Among many interesting things about that case, and why it fits in

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<sup>1</sup> See *Doe v. Jindal*, 851 F. Supp. 2d 995 (E.D. La. 2012) (ruling the SCAN sex offender registration requirement violated the Equal Protection Clause). CCR has subsequently filed a federal class action lawsuit seeking to remove from the sex offender registry the hundreds of people who are still forced to register solely as a result of a SCAN conviction, despite the March 29, 2012 ruling in *Doe v. Jindal* that deemed that practice unconstitutional. See Complaint, *Doe v. Caldwell*, No. 2:12-CV-01670 (E.D. La. June 23, 2011), available at <http://ccrjustice.org/files/Doe-v-Caldwell-Complaint-6.27.2012.pdf>.

with Rhonda's legacy, is that the case was brought to CCR by Andrea and was brought to Andrea by a grassroots group called Women With a Vision.<sup>2</sup> This was a movement case at its core, brought by the people most deeply affected by the law—sex workers, most of whom were women of color, many of them, gay men or transgender women. For people that read about the case, and maybe people will teach it in course books, people might make the mistake to say that it was, at essence, a pure civil liberties or sex offender case. It was so much more than that.

This was a case in which lawyers partnered deeply with community groups and women who were oppressed under this terrible law that criminalized sexual behavior by requiring harsher punishments for sexual behavior perceived to be linked to lesbian and gay activity. We partnered with Women with a Vision, which demanded they not be put aside as lawyers decided what to do. They looked to lawyers to help them figure out how to remove some of the obstacles they were facing in their ongoing advocacy and activism. That is what that case was about. It was about transgender women. It was about African-American women. It was about gay men who were doing sex work in Louisiana. The case had the additional effect of serving a broader civil liberties goal of limiting the government's ability to, as we talked about in the earlier panels today, criminalizing and demonizing whole groups of people.

With respect to the fundamentalism and evangelical work, we have also had some successes. Some of you may have heard about a case that CCR filed in September of this year where we petitioned the International Criminal Court ("ICC") to investigate high-level officials in the Vatican for rape and sexual violence against children and vulnerable adults under the Rome Statute.<sup>3</sup> I hope that Pam Spees will talk a little bit about that case later if she can. It is a very bold case. But also it is a very careful case and people should not make the mistake of thinking that this is simply a case about the Vatican and child sexual abuse. This is also about patriarchy. This case is about building on the work that Rhonda and others in this auditorium did with respect to the Rome Statute and the founding statutes of the ICC. Following their efforts to surface gender in the ICC, this case is an opportunity to link to and actualize

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<sup>2</sup> WOMEN WITH A VISION, <http://wwav-no.org> (last visited Aug. 11, 2012).

<sup>3</sup> See File No. OTP-CR-159/11, Victims Communication Pursuant to Article 15 of the Rome Statute Requesting Investigation and Prosecution of High-Level Vatican Officials for Rape and Other Forms of Sexual Violence as Crimes Against Humanity, (Int'l Crim. Ct. Sept. 13, 2011), *available at* <http://www.ccrjustice.org/ICCvaticanProsecution>.

that foundational work. It is an opportunity to push the jurisdictional envelope and take the case beyond the wartime paradigm with respect to Rwanda and Yugoslavia (states that are perpetrating violence against women as a part of their war making) and to think about jurisdiction to investigate organizations who aid and abet rape globally—whose entire makeup is about secrecy, silence, and hierarchy. The Vatican is completely incapable of policing itself when it comes to global rape by church officials, and it is our view that the ICC is the perfect place for these investigations to happen.

You also may have heard about a case that we filed last week. *Sexual Minorities Uganda v. Lively* is an Alien Tort Statute (“ATS”) case that was filed to hold a particularly outlandish U.S. evangelical responsible for persecution of LGBT people in Uganda.<sup>4</sup> Again, I hope Pam Spees talks more about the case, but the point I wish to make here is that when you go back to what Rhonda counseled about looking at the fundamental structures of oppression—how evangelicalism and how fundamentalism repress and silence women and LGBT people, it is a massive problem that each one of us has a very difficult time wrapping our heads around, much less figuring out what to do about it. I am quite proud of the work we have been doing through the Rhonda Copelon Fund. This case and the ATS really take the issue to the courts as a vehicle to investigate, mine, explore, and hold people legally accountable for persecution abroad. It has the potential for a powerful impact, not only in the jurisprudential sense, but also in the justice sense, because this is a community case. This is a case that was brought to CCR by Frank Mugisha and other folks at Sexual Minorities Uganda (“SMUG”) who came to us and told us that they were involved in a battle for their lives with respect to the Ugandan government. The things that they told us they needed our partnership on legally, were the long and powerful reach of anti-gay U.S. evangelicals that are making all of this possible. Our role in the broader movement is to deal with this U.S. evangelical piece.

There are other cases and issues that we are working on where gender is surfaced, but it does not necessarily get written up in the *New York Times* or the *Washington Post* or, even Truth Out newsletters. There are two examples I would give you.

One is in Honduras and one is in New York. In the Honduras context, we filed a case challenging political repression, killing,

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<sup>4</sup> *Sexual Minorities Uganda v. Lively*, No. 3:12-CV-30051-MAP (D. Mass. July 13, 2012); see also *LGBT Uganda Fights Back: The Case Against Scott Lively*, CTR. FOR CONSTITUTIONAL RIGHTS, <http://ccjjustice.org/LGBTUganda/> (last visited Aug. 11, 2012).

and violence following the *coup* in Honduras in 2009.<sup>5</sup> The gender piece in that project is that the organizing bodies—the groups on the ground that are organizing to get the issues around the *coup* addressed—are led by women and LGBT folks in Honduras. While that is not something that is widely known to most people in the U.S., it is significant in terms of their organizing strategy. As someone was saying on an earlier panel, you have to be careful when you activate because the reaction can be just as strong. The reaction in this context in Honduras has been violent reprisal.

Even though some of these issues do not dictate the manner in which we argue our legal positions, we are trying to hold the gender pieces of this work in a way that reminds us of what we are fighting against and, more importantly, what we are fighting for.

Lastly, with respect to stop-and-frisk, you might ask what the New York City Police Department (“N.Y.P.D.”) stopping more than 600,000 people a year has to do with gender and LGBT issues. If you do not know the answer to that question, I recommend Andrea Ritchie and Joey Mogul’s book, *Queer (In)Justice* to you.<sup>6</sup> It was a revolutionary text for me—virtually everyone at CCR has read it. It even reframed how we think about racial justice issues by looking at the intersection. It is important to note that of the 600,000 stops that happen, over 84% of those are of Black and Latino folks. That is clearly problematic, unconstitutional, and it needs to be stopped. But if you look a little bit deeper, you begin to see the impact on other groups within that cohort. How does it affect LGB youth? How does it affect transgender youth? How does it affect the laws with respect to carrying a condom in your pocket. In New York, a condom can be considered indicia of sex work, and if you are a young, queer person that has a condom in your pocket in one of the many stops the N.Y.P.D. subjects you to, then that gives them an extra charge to put on you.<sup>7</sup> So surfacing gender and LGBT issues even within the racial profiling context, is deeply important.

Rhonda said to us, “Surface gender.” I now say to you, “Surface gender.” For those of you that will be working in organizations—either an organization that only works on gender issues or an or-

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<sup>5</sup> See Complaint, *Murillo v. Micheletti Bain*, No. 4:11-CV-02373 (S.D.T.X. June 23, 2011), available at <http://ccrjustice.org/honduras-coup>.

<sup>6</sup> See JOEY MOGUL, ANDREA RITCHIE & KAY WHITLOCK, *QUEER (IN)JUSTICE: THE CRIMINALIZATION OF LGBT PEOPLE IN THE UNITED STATES* (2011).

<sup>7</sup> See generally CTR. FOR CONSTITUTIONAL RIGHTS, *STOP AND FRISK: THE HUMAN IMPACT* (2012), available at <http://stopandfrisk.org/the-human-impact-report.pdf> (exploring the impact of the New York City Police Department’s stop-and-frisk practices on people’s lives).

ganization that works on a broad range of issues, take up the challenge. Ask yourselves, ask your colleagues. Create structures where the conversations around gender surface. If you do not surface those conversations, they will not happen. If they do not happen, your organization and your work will become as marginalized with respect to these issues as the structures that we are trying to push back against.

Finally, Rhonda told us to act boldly and be careful. Initially, that puzzled me. How does one act boldly and be careful at the same time? Rhonda has helped me learn a sacred truth about social justice work, which I want to share with you. This truth is that living in the tension between what is possible and what is actual, is what we do. If that stresses you out, you need to find another way to deal with that, because that is the place that we will always be. We will fight and we will love and we will dance and we will sing. But we will fight together and we will struggle together through this tension. So please, be bold, do not let the carefulness with which your colleagues outside this room want to tread diminish your boldness. At the same time do not let the boldness that other people want to push through on an issue diminish your desire to be careful to make sure that the work you are doing is actually supporting communities actually advancing movements, because that is the role of a lawyer. No lawyer in the history of the world has ever made social change by herself. Our job is to remove obstacles; our job is to make the path easier and to clear the path. You have to do that by being bold, and you have to be very careful.