RHONDA COPELON INTERVIEW TRANSCRIPT

Carrott: It is Friday, March 2nd, 2001. My name is Elizabeth Carrott, and I am a third year law student at the University of Pennsylvania Law School, participating in the Oral Legal History Project. I am in the Biddle Law Library at the University of Pennsylvania to interview Rhonda Copelon, a professor of law at the CUNY law school and a leading attorney in the arena of international women’s issues. Good afternoon. Where were you born?

Copelon: New Haven, Connecticut

Carrott: Did you grow up there as well?

Copelon: Yeah.

Carrott: What did your parents do?

Copelon: My father was a tax lawyer, and my mother was a certified public accountant. And at that point she was I think the first woman in Connecticut to have that position.

Carrott: Do you have any siblings?

Copelon: No.

Carrott: What was your childhood like?

Copelon: That is a large question. It was pretty uneventful.

Carrott: At the 1955 Smith College Graduation Adlai Stevenson told graduates that they should pursue domestic roles because they would “inspire ... vision[s] of the meaning of life and freedom...[,] help [their] husband[s] find values [and] purpose to his [ ] chores... [and] give children the uniqueness [ ] individual [focus],” did such attitudes about women in inform the options you saw available to you as a young girl?

Copelon: Yeah. Well, yes and no. I think I saw my mother struggling to maintain a career and be a mother, and that was not very easy, but it certainly was a model. It was never in my book to simply do what Adlai Stevenson was suggesting. And I think in some peculiar way fact that I was an only child meant that I didn’t get boxed by my father into a completely female role, but I became in some ways you know his companion for certain kinds of things. Though I think in all fairness he would have taught me more you know when I stood by and watched him fix things at his worktable. You know I think he would have out more tools into my own hands if I were a boy. But I don’t think I could ever imagine living that way.

Carrott: As a young girl did you ever think about the possibility of pursuing a career in the law?
Copelon: I don’t, I am not sure I did, no. I think that really started for me with a combination of things, I think the civil rights movement, although I didn’t go south, I was a little young for that, but I think that had a big impact. I had a professor of constitutional law at Bryn Mawr College who had a tremendous impact and the law seemed suddenly to be a tool to contest the establishment. And somehow I moved in that direction. So that had a very big impact. Then I believe that in great ways the time that I grew up in, between the civil rights movement, the anti-war movement, and the burgeoning of the women’s movement as I entered law school were determinative of some directions I took that I am not sure that I am not sure I would have imagined. I regret your generation doesn’t have those sort of powerful historic processes to move you forward in the way I think it moved us forward.

Carrott: You mentioned that you attended Bryn Mawr College, what made you decide to attend an all women’s college?

Copelon: There was something about the seriousness with which I thought Bryn Mawr took women that I liked. I went to public high school, I went to co-ed school. I looked a bunch of different schools. For some reason I was interest in a women’s school, I am nor sure why. But when I made a choice between a number of them what struck me about Bryn Mawr was that we were taken seriously, or at least seemed to be.

Carrott: What was your major there?

Copelon: History and political science.

Carrott: What types of activities were you involved with?

Copelon: You know I am not sure that, in a lot of ways I think I am someone whose activism started, became much more pronounced after college than before. And I moved much more towards the left and toward activist work as I moved through law school. I think one of the most significant things that I actually did at Bryn Mawr, I mean in addition to the influence of certain colleague, you know students, and one or two professors. One, I think there were two influential professor actually, one was a history professor who taught the history of revolutions. And that to me was completely fascinating, right, that people made revolutions. That it wasn’t just that American Revolution, it was socialist revolutions, and Marxist revolutions, that was totally fascinating. And I think the constitutional law really opened up the idea that you could be a dissident with a means of expressing your dissidence and a desire for something different. And that I don’t know what that emerged out of, it may have emerged out of the fact that I argued with my parents all the time, but I think that was significant.
One of the things that I think was actually quite important in my college days is that I spent a week at a black women’s school in North Carolina. You know they had exchange programs, they came to us, we went to them. And I think that was actually very important to me, in sort of breaking the limitations of my own childhood, and being real. It’s only a week, but feeling that you could see the world from a different perspective. And then I think that it was more as I moved through law school that my radicalism, that my activism grew.

I spent a year during college in France, and that was 64 to 65. It was a significant period in the development of the anti war movement. Of course, there was a tremendous critique of the U.S. in France, and I think that had an impact in the sense that suddenly I was looking at the United States from position of not being in the United States. And I often say to younger people I think that is a very important thing, because you get, you can develop some kind of critical perspective. There was wonderful professor, he taught Marxism. It was scheduled, not surprisingly, on Saturday morning, so only the most devoted would take that course, because there you are in Paris and you are supposed to go off and do things on your weekends. So some of us stayed for Saturday mornings for Monsieur Poula. But I think that those were feverant intellectual and political times. So the opportunities to see things differently really emerged out of those kind of processes.

Carrott: What made you decide to attend law school at Yale?

Copelon: Well, out of all of this, I had decided I wanted to be a lawyer, and I had decided I wanted to be, I guess at that point I thought I wanted to be a civil rights and civil liberties lawyer, I think that was the limit of my imagination at that point. It was before the feminist movement had really surfaced. But I knew I did not want to be a corporate lawyer. I knew I didn’t want to be involved with business. I knew I wanted to do something political. And I also think, although I look upon John F. Kennedy with a much more skeptical eye today then I did then, and I recently heard his great inaugural speech about passing the torch to a new generation and heard it as basically an anti-Communist track. But I heard the words when I was what 15, 16 years old, the torch is passed to a new generation and I thought that that was me, and I thought now I have a reason to live and to do something with my life. That we are going to make changes. And I think that was kind of an amazing feeling. And you had Bob Dylan, and Joan Baez, and you had the Weavers, you had all of these people contributing to a culture that said, we want to change, the Beatles, we want to change the culture of the world, we want to change the politics of the world.

Carrott: What effect did the assassinations of President Kennedy, and the later assassinations of Martin Luther King Jr. and Robert Kennedy have on your political consciousness and your legal years at Yale?

Copelon: You know I think probably everybody whose old enough has told you that everybody remembers where they were when they heard about these events. And I think that the assassination of Kennedy was an enormous shock because at that point he was, he had handed us something. I was actually not a supporter of Robert Kennedy in that primary, I was working for McCarthy, but obviously that was shocking. I think that the assassination of Martin Luther King was the most shocking. And most mobilizing, because here was the
leader of the unrepresented, of the oppressed in this society. The images of that, the impact of that, I think was really enormous.

Carrott: *You spoke a little bit about the civil rights movement’s impact on your political consciousness, but during your years in law school the nation really erupted over the Vietnam War conflict, how did this debate inform your political consciousness?*

Copelon: Well, I think there were a number of different things that happened while I was a law school. One is that the critique of legal education began. There were a number of people in my class; Duncan Kennedy was one of them. Well, let me say to start with, I think it was very significant that I was one of six women in a class of 183 people. And it was very significant that our procedure professor would have women’s day, when only the women were called upon. And it was very significant that I felt a tremendous alienation from the process that was going on. It was also very significant that the next year the law school took 20 percent women, not out of a great gift of equality, but out of a financial concern that too many guys might be drafted due to the lottery. And that made an enormous change because then you suddenly had 20, 25 women who began organizing, began challenging the way rape was taught, began challenging the invisibility of women in the curriculum, wouldn’t stand up on women’s day, and that was very revolutionary.

The other things I think were revolutionary is the critique of legal education. The sort of new social movements began a critique of legal education, of legal hierarchy, and I think that was significant. That we became, we mobilized in that way. And then the most, actually several other things, I had a broken up law school experience because I spent one year in Washington D.C., then I came back and I commuted, so I can’t say I ever felt like was part of the law school in any intense way. The Panther Trial was going on. I wasn’t very much there because I was in New York, but it matter that people from the law school were involved in that trial. And the other thing that finally convulsed upon all of us was the invasion of Cambodia, and the killings at Jackson State and Kent State, which occurred just as we were about to graduate. And it was, we just stopped the school, we stopped business as usual. And I will never forget Tom Emerson standing up to the rest of the faculty and dean and saying there are times when you cannot do business as usual. So he became, in a sense, the faculty person who supported us when we said we are not going to take exams, we are not going to do this, we are going to mobilize. I went out and worked on a political campaign in Brooklyn against the head of the congressional committee that ran the Army. People did a lot of different things. And the next dean of the law school called our years the dark years of the Yale Law School, I of course think they were the most glorious. I think they had some impact, a lasting impact on some of us.

Carrott: *During the debate over the Vietnam War were war crimes against women, such as rape, discussed at all?*

Copelon: No, I don’t think so. Very, very, very little.
**Carrott:** In the late 1960s a number of women became disillusioned with their treatment at the hands of men in the civil rights, New Left, and anti-war movements, do you recall your first encounter with the burgeoning women’s movement?

**Copelon:** Yeah, I think the first encounter, well there were probably little encounters, but I think the first really significant encounter was the women of NYU law school, this was in my third year of law school. There had been a conference Yale about teaching law and feminism the spring before, which I think I was not in New Haven for, I wasn’t at, but the women at NYU, as a result organized a feminist law conference, the first one. And that was in the spring of my third year at law school. And that was amazing. There were two or three practicing feminist lawyers who were there and all the rest of us were law students. I still have the images in my mind of that conference.

I think it had an enormous effect on my life, because one of the people there was Nancy Sterns, who was working at that time at the Center for Constitutional Rights. As far as I was concerned, she opened for me a whole new way of thinking about both practicing law and really engaged with movement, not so much, it is a different approach than civil liberties approach, she put feminism on the table as something one could really, really do as a lawyer. She also at that time was litigating the first abortion case that had a women’s right perspective, as opposed to a doctor’s right perspective, and that was happening in the federal court, it actually had just terminated, but it had happened in the federal court in New York.

I took a job with a judge as a law clerk very significantly because he had a picket sign in his office that said why can the state force women to bear unwanted children. And he was one of the, at that point whenever you challenged a state law on constitutional grounds there was a three judge court, so he was one of the three judge court judges on the case which got mooted by the fact that the New York State Legislature passed a new abortion law. But that picket sign sat in his office for, until he left the bench. And that picket sign came form the extraordinary work that Nancy and the women movement in New York did, and other lawyers did, to build a political case for women’s right to abortion.

I met Nancy, I said I wanted to come work for you, I wanted to come work for CCR, and low and behold they hired me. I wanted to go there for a lot of reason that I realize are very interesting. CCR is the Center for Constitutional Rights. It was, it is, a more left oriented, peoples movement oriented, law, I don’t want to say public interest, but it is considered public interest, because public interest has such a flat meaning today, but we were a movement office. We were an office that said we will defend movement activists and we will take, use the law in multiple ways to advance the goals of movement activists. And among those movements were the anti-war movement, the Native American movement, the civil rights movement, the women’s movement. And we were a kind of place where the goals of many movements coalesced in what we did. We didn’t specialize and do only one kind of work, which is not so much true anymore of public interest. We did a lot of different types of work, and yet we all came out of or were routed in some movement. It was actually through being a lawyer that I became routed in the movement, it all kind of happened at the same time, as opposed to it happen beforehand and then you moved into the law in which you could be an activist, there wasn’t time for that in some ways it happened all at the same time.
Carrott: Did you identify with a specific brand of feminism, such as radical, socialist, or liberal?

Copelon: I think I would call myself more of a Marxist feminist or socialist feminist, in the sense that I rejected the essentialist view of feminism. I took more of a social constructionist view and I wanted to see, to insist upon the fact that feminism is about all women, its intersectional, one has to deal with poverty, one has to recognize privilege, one has to recognize those contradictions. I also found that some of the anti-sexuality aspects of the women’s movement harked to me too much of 19th century Puritanism and missed the significance of sexual agency as a part of the empowerment and liberation of women. So I guess I would put myself in more of the Marxist or socialist camp. But recognizing sexuality as a very, very critical part of that movement.

Carrott: In 1973, the Supreme Court came down with its decision in Roe v. Wade, which upset many feminists who felt that abortion rights could be more adequately protected through implementation of state legislation, what was your feeling about the decision?

Copelon: I don’t think there were many feminists that thought that. Because what had happened at that period was there had been efforts in the state legislature, and very few of them were succeeding, New York, Alaska, and Hawaii succeed. And what happened after that was there was a blockage in the state legislatures, the Catholic Church was preventing legislation. I don’t know who the many feminists are to tell you the truth. I know for example Ruth Ginsberg, we had lots of interesting conversations with her, the current Justice of the Supreme Court, wrote that, she said that she thought that Roe v. Wade may have interrupted a state process. I think that is not right. And I actually believe that she has recently written a letter reanalyzing that.

Because the state legislatures were stuck. There were lawsuits by feminist lawyers, and feminist movements, and women’s health movements that were just beginning all over the country. Almost of them won, with the exemption of one in Texas, I think it was Texas, or Louisiana, recognizing the right to abortion. I think that the other critical things in this period was that instead of allowing doctors to speak for us, or instead of allowing male lawyers to speak for us, we as fledgling lawyers began to insist that we speak for ourselves. We argue our cases, our clients determine the approach, we bring the women into the courtroom, we have the testimonies about what it means not to have abortion, and we take control of the legal process in our movement. That was struggle. That was a major struggle in those days, it doesn’t seem like much now, but it was a major struggle in those days. I don’t think that you would have, I recognize there is always a problem of when the court does something the question is does that undermine the radical movement, the organizing to keep the process going, and I think that if the Court hadn’t done what it did the legitimacy of the right to abortion might not have been achieved as quickly. I think that maybe the anti-abortion movement wouldn’t have organized as a national force as quickly, but I don’t think we would be as far as we are if the Court had not intervened. And I think that the fact that the anti-abortion movement mobilized was something that also kept women, unfortunately, tied to
fighting this issue for almost, what, more than two decades. So I do think the Court made a very significant contribution, and I don’t agree that it would have happened the other way.

My greater concern is that I don’t think that the movement fought for poor women, as hard as it fought for the right to abortion, and that obviously comes out of the fact that I did the Harris v. McRae case, and that it was a major, major political, as well as legal enterprise. My disappointment is that I think that although there was a lot of activity fighting to stop the congressional cut-offs of Medicaid and the lawsuits were very entwined with that, I don’t think that middle class women who could get abortions anyway, so long as it was legal, went out in the same way, as when in the nineties when we were afraid they were going to reverse the right to abortion itself. And I think that had an impact.

Carrott: What do you think was the long-term impact of Harris on the ability of disadvantaged women to take advantage of their abortion rights?

Copelon: Terrible. I mean before Harris v. McRae there was federal Medicaid program that covered abortion. And that covered elective abortion as well as medically necessary abortion, and women all over the country, there are always problems getting medical service as a Medicaid patient, and there are clinics that would not accept Medicaid patients because they did not want poor women around, the ugly, low visibility stuff that happens, but there was also a pretty big commitment on the part of the clinic movement to make abortion available to everybody. When there was a federal program, abortion was a funded item, and the original attack was on elective abortion, and was that included in the federal Medicaid program. And again every lawsuit, almost every lawsuit, before Harris v. McRae and the Maher v. Roe, which came up before, Maher was about state funding of elective abortions and said they don’t have to, and that was of course a tremendous blow, but you still had medically necessary abortion and when you look at abortion it is very hard to say that any abortion isn’t medically necessary. So you still had this federal funding, and that had an enormous impact. Now I think we and the many groups working around this had some impact on limiting its impact because we did a tremendous medical documentation of the problem and there was a lot activities. So right away there were 15 states that continued to fund medically necessary abortions, or elective abortions, with a very sweeping definition, and those are the big, more likely than not, the big provider states. In some cases there are hospitals in urban areas that continued to provide abortions even though it wasn’t a funded item. But the impact on women outside of the larger states that had continued funding is tremendous, in some instances there is no abortion provider around, if you have travel to get an abortion then the difficulty of how you do that and maintain confidentiality around it. How do you do that if you are poor and have no money. How do you find a provider that will do that if you no money. I think the impact is enormous. So that case had a huge impact on poor women’s ability to get abortion and a huge impact on the law.

Carrott: Where you involved, personally or as an attorney, in the move to get the Equal Rights Amendment passed?

Copelon: Not terribly much. I want to say one more thing about McRae, which is we did something there that I think is also really important, that is we challenged the restriction on
abortion as a violation of both the right of conscious under the First Amendment and the obligation to keep church and State separated. That lead to an enormous debate about whether or not, and our position was that the view that the fetus was human life from the moment of conception is an inherently religious perspective. We demonstrated that in a number of ways. Our judge ruled that it was a right of conscious and gave us all the factual findings we needed on the establishment claim, and the Supreme Court rejected it. I would say that was, on the personal side, that was also one of those moments as a lawyer where you are working in front of a lawyer where you are working in front of a judge who gets it. And the interesting things is about Judge Dooling was that he was a devout Catholic. And as a devout Catholic who was very much in the Vatican Two school of Catholicism which believed deeply in the conscious, he considered that oppression of the conscious of a woman to make this decision was totally impermissible. And so he was both very philosophical and deeply, religiously pro-choice. Not only religiously but he was as a matter of constitutional juris deeply pro-choice, and it was a moving process, in fact, to litigate that case, and to litigate issues of the church before him. It was like the good church and the bad church, we had a, we called them fetus lawyers, on the case, and there were moments of conflict between the two of them that were absolutely conflicts over the church really or over how you do religion in a pluralistic society. So that was a major life work really at that particular time.

I wasn’t that much involved with the Equal Rights Amendment and I’ll tell you frankly I felt that the Equal Rights Amendment campaign made a big mistake in leaving reproductive rights out of it. There was a decision that you couldn’t enlist the Catholics in favor of the Equal Rights Amendment if you had abortion as part of, or reproductive rights, as part of the agenda. And that made it kind of hard to get involved in the Equal Rights Amendment. I think we also had a little more optimism then that through the Equal Protection Clause we would get strict scrutiny, and we wouldn’t need the Equal Rights Amendment so much anyway. And I think that there are these ways you can be naïve about the roles of the court, I think that the loss of the Equal Rights Amendment had a tremendous impact on, had a significant impact on the courts ability to knock down sex discrimination to intermediate scrutiny. Because if you can’t win the Equal Rights Amendment then people don’t think that you deserve strict scrutiny, and unfortunately our Constitutional theories have usually too much to do with majoritarian preferences than with real protection of rights. So I think that was a loss. But I think there were things about the campaign that were problematic for those of us involved in a movement which we thought was one of the foundations of women’s equality.

Carrott: What made you make the decision to move from the Center for Constitutional Rights to a career in academia?

Copelon: Well you know on a very personal level it was very hard to lose the McRae case. And I say that from the perspective that I was probably the most cynical lawyer of the whole team, we had about nine lawyers on the team. I was probably the one who least believed that we could win that case, because I saw in the prior decisions the emergence of a very, of the theory that really took full blown shape in DeShaney that we were a negative Constitution and there was no obligation to do anything for anybody. And so I kept arguing with my colleagues you know the only way we are going to win this is really politically, we are going
to win this because we demonstrate how terrible it is to do this. But in the last analysis, the last moments after the argument I thought we had a chance. And I had put three years of my life into it. When we lost it, I felt two things. I felt that the efforts at changing the national policy through litigation had hit a stone ceiling, and the stone ceiling was poverty, and that meant lack of universality. And I have to say I probably was depressed, and I felt like we'd lost our power to make changes. And I think that I was really very personally effected by it for quite awhile. I went around the country for about a year talking about what a horrible decision it was, and what this meant and all the rest. And I began to feel like that spirit that you can make changes was being effected.

The other thing that happened the very same day, I think this is all somewhat significant to how I moved, I knew at the time of McRae that there was an international human rights framework, and actually after we lost McRae we filed a motion for rehearing based on a case that had just come down in a European court of human rights involving the right of a woman to have a lawyer appointed for a divorce proceeding before the House of Lords. What they said there was that where you have a right you have to have a remedy, and if you need the resources of the state to have that remedy then you should have it. So we went back with 330 organizations, I think, and said you know you've got it all wrong, there is an international human rights framework here, and you should recognize it. This is just fundamental to having the right. Of course we lost that.

The other thing that happened was on the very same day, like three hours after the decision in McRae came down, I had worked on the case of Filartiga v. Pena-Irala which is the first Alien Torts Claims Act case that opened the federal courts to cases against human rights violators that constitute torts in violation of international law where the cases are brought by non-citizens, under that statute of aliens. So that was a case involving a Paraguan activist and his son who was tortured to death by a Paraguan police official who then came to this country, overstayed his Visa, was discovered by the Paraguan movement and by the daughter, the sister of the victim. The case came to this saying what can we do, and we said there is this old statute, Alien Tort Claims Act, why don't we try it. And we won that case. So I look at that, when someone came in to tell me, they said I know you are not going to be able to take this in today because you just lost McRae, but, and I said oh please don't bother me. It took me about three months to realize that we had a really significant victory. And so at the point, something was saying to me you have got to go look at the international human rights framework, there are economic and social rights in international law, that has got to be some kind of next step to dealing with what is happening with the constriction of our own Constitution in terms of turning rights into privileges.

At the same time Howard Lesnick called me up, and you know Howard as he is here at the law school, and he said we are putting together a new law school, it is going to be a different law school, public interest oriented, and people told me I should talk to you about a faculty position. And I said well okay let's talk. And I think I was thinking at that point that it was time to think about full time teaching. I had taught Gender and the Law at Brooklyn Law School for eight years. I had taught a women in prison course at Rutgers for a year. I think that for me, I didn't want to go teach until I felt that I had something to teach out of my own experience. And I am still quite astounded at people who come out of law school and go into
law teaching, where I don’t get it on some level, because to me it was a process of coming out of a activist period of work and wanting to take that into a law school setting where that experience is part of what informs my teaching, and what provides opportunities for students. So CUNY seemed perfect, and I joined. I was asked to, I am thrilled that I was, that I was asked to join the founding faculty. And that was a roller coaster of phenomenal, creative, intense, passionate energy involved in trying to create a new kind of legal education, making it available to the kind of people that had always been alienated by and had no opportunity for access to legal education. That was extraordinary experience. And I think that plus the later, almost a decade later, involvement in the international women’s human right movement broke that sense of powerlessness, that despite all the things I could say to myself that we did everything we could, it broke that sense of powerlessness that came as the result of lose of decision in McRae.

Carrott: As you stated, CUNY law school was founded with a special commitment to public interest law, have you observed any change in that vision over your 18 years there?

Copelon: Yeah. I think that, I remember you know that I was a visitor here a Penn for a semester after I was an honorary fellow, and I remember having a conversation with a German professor who had came over, I don’t know if he still does, I don’t remember his name, he would come over once a semester and teach here for a semester a year. He had been involved with trying to start a progressive law school in Germany. And he said to me it is not going to work. He said the bar and whatever the traditional forces are around legal education are going to come in, they’re going to stand on your head, they’re going to make you, they’re going to try to transform you. And I kept saying oh no we are really lucky that the Chair of the University is socialist, he is totally in favor of what we are doing, all of that. Well, he wasn’t entirely right, because I think the wonderful thing about CUNY is that we have retained a significantly different curriculum, environment, and above all student body. And you just heard the presentation by my colleagues by Steve Loffredo about one of our clinical program, which is just extraordinary. And I think that the most telling way evaluating are we different, is the transfer students are out of their mind with delight at being at CUNY.

But I think there have been a lot of changes. And the changes did come as predicted through convergence of conservative forces. We didn’t have a curriculum that taught to the bar, so we had terrible bar results. As a result of that, the great Chancellor of the University, who we thought was our great ally, came down on us and cause the denial of tenure to two of our most wonderful founding faculty members, which lead us into a huge battle with the University. The low bar results forced us into a constant reevaluation of the curriculum and how could we strengthen it. So we did some things I think we had to do, we instituted exams in the large courses, we used to do everything through simulation and experiential education the first year. Then we realized people are triaging everything else so we had to have exams. Now we even, and I have been in opposition to this, we even have grades, which I think is not having a good impact. But I think that we had to make some adjustments in order to give students more familiarity with and grounding in bar-oriented material. Personally I think we have probably gone further than I would personally want to go.
And at the same time I think that we have fabulous clinical programs that draw a lot of students. We have a terrific admissions policy, which means that if people who are coming, really most of the people who come have some commitment to public interest or to serving disadvantaged communities that do not have lawyers. And we don’t have the debates at CUNY about law firms and public interest in law firms. Our debates are very different. So I do think that we have succeeded in maintaining a significant aspect of the mission. But I think the processes of how we work are very much more traditional than they used to be, and there is much more tension in the school between traditionalism and progressivism then there was in the beginning.

Carrott: You mentioned that you spent a year at University of Pennsylvania, how would you describe your time here considering the great difference between our school and CUNY?

Copelon: It was a rest in a way. It made me sad actually. I taught family law and I taught a seminar on reproduction and sexuality. And it made me sad to have students say to me you know what I really want to do is practice family law but people here are telling me that is not really hard law, that is not what I should aspire to do. And I would say to them no, family law is very hard, it is very hard to do, it has an enormous impact on people’s lives. And obviously I think the advisors here were a little behind the feminist movement in the sense, because I think that feminists realized that doing family law was very critical. And we were fighting always the public-private distinction – the public is important and the private is not. But what I felt was that people were not getting, there was no encouragement for seeking other directions. I think maybe that has changed some since 1985. At the same time you had Tony Amsterdam here years and years ago developing the clinical program, and he was one of the most creative clinical program developers you could have. You got a lot of different conditions here. But I did feel that there was an overwhelming corporatism and privatization orientation. That the message is well you can do all these nice public interest things while you are in law school, but the really serious thing to do is X. That is a message that I am always in conflict with.

Carrott: As a woman in academia do you think that you have been treated differently in any ways by other members of faculty or by students?

Copelon: I think if I had been at another school I probably would have been. I think when I started teaching women were still in most schools a complete minority, a sort of tokenistic minority. I think we weren’t looked upon as as serious. Or we were looked upon as too subversive, or whatever. I think the fact that I went to CUNY protected me from that. And I think that the fact that I went to CUNY after having worked so long, and been a litigator for so long, and been a public speaker, done a lot of things already that the classroom didn’t intimidate me. I know that people, that there are people who loved my course and people who didn’t love them. And I know that I could easily get criticized for, for example when I teach law and family relations, there is a contingent that criticizes me for spending too much time on lesbian or gay issues or feminist issues. But that is a real minority, and I have had lot of those same, usually guys, say to me when it is all over, you know I sat in the back of your class first year and I didn’t like it, I didn’t want to be sitting there, but you and this school, not me alone this school, the students, the things that are in debate here, have really changed my
way of looking at the world. And I think that well if we have accomplished that at the same
time as we are giving people a legal education then that is quite an accomplishment.

Carrott: In 1992, you co-founded the International Women’s Human Rights Law Clinic, the
first U.S. law school based program in this field, what led to your decision to found this
organization?

Copelon: Well, some of it comes out of that moment of losing McRae and winning Filartiga.
That those two things left for me a sense that there was somewhere else to go. In 1991, there
began to be a number of articles in the paper. I wasn’t involved in the international women’s
movement for example in Nairobi, and some of the earlier movement moments. And partly I
was very much, I very much had the view then that even although I was involved in certain
international things, I wanted to keep my focus on domestic work. And this seemed to me
international, something else, it was a divergent from merely focusing on domestic work. But
when articles began to come up about things happening, particularly in Latin America, a
colleague of mine and I, Celina Romany, basically we created this together, we decided to get
a little grant from CUNY and go down to some of the places, we had some contacts in Latin
America, and talk to them about how the law and how our experience in using law to make
change could be helpful in the burgeoning movements. And we went actually with the idea of
reproductive rights, and everybody said violence against women is the first issue on our
agenda. In Latin American they said we can’t touch reproductive rights until we get through
with violence against women and that is what we think is significant. And out of that, and out
of the interest of a number of people, some conferences, we basically decided that we wanted
to create a project at the law school that would engage the students in this international work.
I took at year off and went and lived in Costa Rica, both to learn Spanish, which I didn’t do
quite as well as I would have liked to, and also to live in piece of the women’s human rights
movement abroad. And again much like that experience back in Paris, in my junior year of
college, really live this process, not from the prospective of the United States, but from the
prospective of the movements in the global south that were in fact the leadership force in the
women’s human rights movement. And so I did that for a year, I came back, and it was clear
from that years experience and Celina’s experience that we ought to put this together, that it
would be an exciting thing for the students, for us, and there was a burgeoning movement and
a need for legal support to that movement. So that is how is start out. And part of it was that
I couldn’t survive in academia without feeling my work was also both emboldening and
teaching students about how to do activist work and engaged in the process of activist work.

Carrott: They spoke at little bit today at the Sparer Conference about the role of a clinical
education in legal education, what role do you see clinics playing in legal education?

Copelon: I think they are totally essential. I mean much of what Steve Loffredo said today
about the clinical experience he is involved with is true of the international women’s human
rights law clinic for example. And I feel like it is a place where you get away from abstract
theory and you really talk about putting theory into practice – both theory about the process of
lawyering and theory about the law. And I think, for example, our clinic is a little bit different
because most of what we have done is about getting the law to recognize the unrecognized.
So we have been involved in treaty negotiations. We have been involved in filing amicus
briefs in the international criminal tribunals. We are currently representing the Kensington
Welfare Rights Union, which is here in Philadelphia, before the Inter-American Commission on Human Rights in effort to have the welfare quote reform or illumination laws looked at from a perspective of economic and social rights. So what is a little bit different is that we have one big piece of litigation, but most of our work is more directly law reform work. But what is similar is that it is also done in concert with movements, and as part of a process of building the capacity, the strength, the knowledge, and the legitimacy of movements seeking to make change.

Carrott: You have worked with the United Nations on a variety of international women’s issues, what role do you believe the U.N. should play in crimes against women?

Copelon: Oh, I think that it should play a tremendous role. And I think the interesting thing about the international conferences of the last decade and now the tribunals, is I think we are actually, or they are, making a very significant change. One of the things that is really true is when you get, and this has to do with the fact that global women’s movements have developed over the last 15 years that are focused on changing the concept of rights and the concept of policy to put women and women’s rights and needs in a central place, so none of this is happening because officials got good will. It is sort of like this morning’s conversation, what is left out of the conversation is how the activism changes, changes the constructs that people work in. And I think the international women’s human rights movement is an example of how activism has changed the constructs.

What also I think is very, very important about the United Nations and various mechanisms and structures and opportunities for interventions that it provides is that when you get national officials on a global level they are constrained by their colleague, the are constrained by more progressive forces. And so, for example, if you look at the Beijing platform for action, I would say that there is no country in the world that has as good a policy as the Beijing platform for action, except for maybe the constitution and the hope that exists in South Africa. So that is fascinating, isn’t it? That it is so much broader than our own constitutional policy. It is even broader than most European constitutions and policies. So what that says is that there is something about the dynamic of the international system, where NGOs, non-governmental organizations, and here I am taking in this field about the women’s movement, can have an absolutely direct, immediate, constant impact on the foreign diplomats and what they do. And the foreign diplomats have to deal with one another.

I think that what happened in the area of women’s rights is that an international framework has been built and that international framework is then, women are able to take that international framework back as a legitimizing tool, even if not something that is enforceable in the way you think laws are enforceable, and bring that back domestically. In terms of international criminal law the movement has had the same effect and our clinic has worked very, very intensely and closely in that process. Both in filing amicus briefs before the international tribunals when they are ignoring, either ignoring crimes against women as they did in the beginning, or failing to prosecute them either appropriately in terms of the characterization, that they should be characterized as among the most grave crimes, or failing to do things necessary to prosecuting them properly, like witness protection. So I think those efforts have both cumulated in some of the jurisprudence we have, there was a decision last
week from the Hague on sexual slavery and rape which is an extraordinary decision and I think our work, we can see it significantly contributed to that, and the movement made that happened. And the codification of gender crimes and processes in the statutes of the international criminal court was the work of an organization that a group of us from around the world put together called the Women’s Caucus for Gender Justice and as to which we the clinic served as the legal secretariat, so the students worked on various research projects and drafting projects around what we were demanding be in the statute, and that was all vetted with a group of participants from around the world and put forward and lobbied. We got probably 90% of what we were asking, and made them talk about things that at the beginning they didn’t want to spend time on.

Carrott: What difficulties have you encountered bringing such international cases in the courts of the United States?

Copelon: Well, I guess the best example of that is we filed an amicus brief last year in the Morrison case, the violence against women case, the violence against women act, and our amicus brief took the position that not only should Congress have power under the Commerce Clause and the Civil Rights Act to pass statutes giving victims of gender the right to go to federal court with a civil rights action, but we said that developments in international law recognizing both private and official violence against women as an international violation, and embedding that recognition in the interruption treaties which we have ratified, including the International Covenant on Civil and Political Rights and the Torture Convention, provide Congress additional power to pass a statute like the VAWA statute, both because Congress has the power to implement treaties and because Congress has the power to give the District Courts the power to litigate claims, or the jurisdiction, to litigate claims that arise under customary international law. It was a fabulous piece of work. And we sent an outline around to a group of international law scholars, and even before they got the brief people were signing on, were just falling over themselves in fact to sign on. And we ended up with 51 international law scholars and human rights experts, some of whom were members of actual UN human rights committees, many of whom are the authors of human rights textbooks in this country, along with a very important group of feminist international jurists and scholars.

We had hoped that the brief would at least produce a footnote. We knew the issue had not been raised in the court below by the plaintiffs. They didn’t, at that point the international framework wasn’t on the charts for people. And so we knew the court could decide it, or if used in the dissent, the dissent couldn’t decide it, but we hoped that it would be recognized. And that would be something that would lay a foundation for future recognition and certainly with Ginsberg and Breyer talk enough about the international frameworks and its importance. It didn’t emerge that way. It’s getting a lot of attention in academic circles, you know people are talking about the role of international law in so far as it expands, it is very key, I think this issue is so very key, as we see the court cutting back on the force of the Commerce Clause and the force of the Civil Rights Acts, I think we have to continue to push the idea that international obligations have to lead to Congressional power to implement. And I don’t think it is dead on, I think it is a first foray, but I think it is an example of how difficult it is.

At the same time, under the Alien Tort Claims Act that’s also probably the area of litigation, and that is the area that was opened up by the Filartiga case, where the courts begin resistant
and become fascinated. In the Filartiga case, I was, they wanted us to withdraw the case, what are we doing here, it happened Paraguay between Paraguans, it has nothing to do with our law, it has nothing to do with anything that happened here, what are we doing in federal court. And the one case on the clinic docket right now is a case involving an Algerian terrorist, when we went into court in Washington the judge would say I don’t understand why you are here, what are you doing here, it happened Paraguay between Paraguans, it has nothing to do with our law, it has nothing to do with anything that happened here, what are we doing in federal court. We you finally say to some of these judges that this country can be sanctuary but is not supposed to be a refugee for persecutors, then they sit back, they begin to listen. And one development, one of the things I understand has developed among the judiciary on these cases, almost every judge starts in Alien Tort Claims case saying what are you doing here, that is changing now, but certainly in the first 10 years of litigation it was what are you doing here, but then they recognize that the law authorizes this, of course it is now in the Supreme Court on petition to cert, the law authorizes this and there is some sense in it. And many of the judges who have had these cases have then learned a great deal about international law, because they have had to, and become supportive of the idea that international law is enforceable, international human rights law, I mean they are always doing other kinds of international law, that international human rights law is enforceable in the federal courts. So then Alien Torts Claims Act cases are problematic, because they are so much about wrong doers abroad and have not, you know the new wave is against corporations, which is very significant in terms of wrong doing here. They are beginning; it is a force for the embedding of international human rights law into domestic jurisprudence. And I think these cases are extremely important in that regard. And I think that the attitude of judiciary is changing about it, as they became accustomed to the notion that these are binding norms.

Carrott: *What role do you think lawsuits play in healing process of women who have been the victims of violent crimes?*

Copelon: That is a good question. I think recognition by justice; let me say this, I think that there is an extent to which my comments are limited by the fact that unless I have had a continuing relationship with a survivor I can’t say with certainty. I have had some continuing relationships. And I think that fact of taking the initiatives, the fact of agency to fight back has been for many, for a number of my clients extremely important in the healing process. I also think that the ability to, that the process, it depends very much on how you are treated in the process. I think that testimony is an aspect of healing. When you are giving testimony that recognizes the harm. When you are giving testimony in a context where you are provided the means to feel safe. Where the statement of what you are saying is respected. I think that the lack of recognition of sexual and gender violence in law has had terrible effects.

And my most, my best most recent example is the clinic currently the legal advisors to the judges of the International Women’s War Crimes Tribunal on Japanese military war crimes, which was an NGO effort, I don’t know if you are aware of it, it is an NGO effort created a tribunal that took place in Tokyo in December of 2000. It was four day, three days of trial, one day of decision making, and it was really a put on by nine country prosecutors from the countries that were victimized by the Japanese military plus Japan, and it was trying the unbelievable systemization of sexual slavery by the Japanese military during the war in the pacific, the second world war period in the pacific. And this was something that was never
tried by the post-war Tokyo tribunal, the parallel to Nuremberg. And these women lived at least 40 to 50 years in complete silence, shame, isolation, pain from the fact that they had be made to endure persistent rape over long periods of time, some of these women were raped, and they were girls most of them at the time, were raped for 40 times a day. And yet there was no recognition in the post-war process. They were described as prostitutes, their real condition was never put forward despite the fact that forced labor was very fully, nothing was fully, but was very well demonstrated, this kind of forced labor was not, and this kind of slavery was not. The women began speaking out in these various countries beginning in 1991, so that now I think probably there are survivors in about 11 countries speaking out. Seventy-four of them were at the tribunal itself. And this was not, we had to keep reminding that we weren’t able to give these women what they wanted from the Japanese government. But what they got was the opportunity to say what happened to them. And the opportunity to have recognized that the Japanese government had enslaved them and violated them in the most atrocious ways. And everybody worked with the survivors, all the women’s activists that worked with the survivors, say that they are different people today, not just because the tribunal, that was a high moment, but they had created solidarity groups, there are houses in many of the country, there were cultural programs, there are all the things that allowed survivors to come together and become empowered, right, in that process. And this was something they were demanding; they wanted their day in court.

And it was an extraordinary experience, and it made me think on more profound levels about the terrible impact of leaving people out of justice, the terrible impact of the Tokyo tribunal, which was essentially dominated by the U.S., in leaving this out of justice. And the way in which justice properly done can be empowering. People who have worked with some of the people who testified at the international tribunals have said the same thing, the power of giving testimony, I have seen that in some of my own clients. I think that there is a power in it, it doesn’t solve all the life problems that are created by that kind of traumatic experience, or the disruption, or the poverty, but it is something I think that helps to restore to people their dignity and their, and put the blame on the perpetuators as opposed to allow the blame to continue to be internalized, which is women have been trained to deal with sexual violence.

Carrott: You spoke a little bit about the roles of NGOs in the international women’s movement, some critics of international women’s movement argue that since many organizations are headquartered in the west, they impose western biases about the proper treatment of women on other cultures, how would you respond to this criticism?

Copelon: I think it is a serious criticism. I think what is really important is that the work that we do be done in deep connection with the women’s movements from around the world, that we not take it upon ourselves to be leaders in the process, that we understand that the leadership in terms of what ought to be done, how it ought to be done, has to come from the women on the ground. And that when we don’t honor that, and that can come out of being in deep connection with people and building a life that is in deep connection, but when we don’t do that I think we make errors of, we don’t see alternatives, there is a danger of imposing western views, there is a great danger of narrowing the frame of possible responses by what we know as opposed to what the women know from the ground, what kinds of responses are really available, utilized.
And one example that I have is in the whole violence against women movement, when we started in the sixties and seventies fighting violence against women, we did it in very popular forms, women demonstrated in front of abusers households, you know homes, and did things that had to do with public shaming. Now some of the alternative methods that are popular in other parts of the world are very much like that, you know they have to do with shaming, they have to do with a different kind of process in the community. And in some ways the international efforts, because they focus on states and what states have to do can, start to move everything toward a reliance on state power as opposed to recognizing that the immediate action of people has an enormous impact. And I think we have to be very careful because we are in a society where I think that notion of immediate action has been diminished by the fact that we have legal remedies, and we have bureaucracv. And it’s a tension, because you need the state to intervene, and here we are talking about in some cases criminal intervention and at the same time, you need to retain the significance of what it means for communities to organize. And I think that if I see a danger in some of the things happening in terms of the international human rights process, I think one of the dangers is a move toward bureaucratization.

Carrott: What differences do you see in the opportunities available to your female students and those available to you when you graduated from Yale in 1970?

Copelon: Oh my god. Well, number one, Yale had no clinical programs. We had this little bit of feminism in the law school which was created by having a women’s group, and the women’s group organizing about what to do in various classes. The way courses were taught when I, and issues that effected women were taught were usually jokes. You know rape was taught as a joke. I think that is significantly different. I wouldn’t say the problems is solved, my students yesterday were talking about wanting to do a gender analysis of the law school and really look again at all the processes that diminished and subordinated women in the law school, and I thought that’s a great idea, needs to be done again. So I am not saying I think everything is taken care of at all, and I think that what has happened culturally is that feminism, a word about which I am very proud and to me takes in a very broad range of concerns, feminism has been given a bad name by the media. And that those who are strongly feminist feel themselves marginalized. And that is the same phenomenon of having felt marginalized when we tried to put the issues on the table. It is a phenomenon that limits the legitimacy of the unfinished revolutions. And I think its needs to be taken very seriously. So I do think that there are big changes. It is an enormous difference to have at least half the class be women; you are not a token minority anymore. It makes an enormous difference to have female professors. It makes an enormous difference to have the male professors know that they can’t get away with what they used to get away with and have some that are in fact committed and feel that those issues are as important as any other issue. All that makes a difference. But there is still a ceiling on it in terms of where it can go.

Carrott: Thank you so much for your participation.