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INTERVIEW WITH BRENDA V. SMITH, CO-LEAD COUNSEL FOR THE PLAINTIFFS IN *WOMEN PRISONERS OF D.C.*

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Brenda V. Smith is the Senior Associate Dean for Faculty and Academic Affairs and professor at the American University Washington College of Law where she is the Co-Director of the Community Economic Development Law Clinic. Professor Smith is also the Director of the Project on Addressing Prison Rape. She was co-lead counsel in the Women Prisoner of D.C. litigation. In this interview she reflects on how she came to file that case and the lessons she learned litigating on behalf of women in custody.

How did you come to file *Women Prisoners of D.C.*?

I was working at the National Women's Law Center—I ran a program on Women's Education and Empowerment for women in custody in D.C. I would meet with the women and work with them to provide education on issues they identified as important—issues like domestic violence, how to get a job, women's health care. And while I was working to provide these educational services, the women started to tell me more about their lives behind bars. Like the fact that they weren't able to get into any formal educational programs in the women's facilities, but the prison was offering college programs for the men. And the fact that women weren't receiving much in the way of mental or medical care. There was also this widely known practice of officers exploiting women for sex. The sexual misconduct and abuse was rampant throughout the facility. Eventually women started conceiving while they were in custody. Some women wanted to carry to term—others wanted to terminate their pregnancies. I began helping women get access to abortion services. And I realized I was complicit in their abuse. I didn't set out to file this lawsuit—I didn't want to sue over these issues. But ultimately I felt I had no choice.

How did your clients react to the final outcome of the case?

This case was fundamentally about ensuring that the voices of the women were heard and it was about ending the abuse and inequities in care and services. So the women were thrilled with the outcome here because they were heard, and the court addressed most all of the issues most important to women. The women were able to tell their stories of abuse to an open court room—the case received widespread media attention. The women were powerful. Their stories were powerful. We revealed the truth about incarceration for women in D.C. They also saw their stories affirmed by some corrections staff. One of the witnesses was a Physician's Assistant who, before working at the jail, was a medic during the Vietnam War. He described how the conditions in the jail were like a war zone when it came the provision of medical services and described how one of the pregnant patients went into labor while she was shackled and awaiting her turn in court. She told the officers she was in labor—she had given birth before—and they ignored her. They returned her to her cell where her baby was delivered with assistance from another prisoner. The women's experiences were validated throughout this process and they viewed the final outcome through that lens.

How did the *Women Prisoners of D.C.* litigation affect the field of prisoner's rights?

This lawsuit reverberated around the United States and internationally, in part because the specificity and the breadth of the claims were at the time unprecedented. The case challenged education inequity, inadequate health care, sexual abuse in prison, abusive searches and pat downs. It caught the attention of human rights practitioners who looked at the case as an example of how the United States needed to “bring human rights home.” It provided a framework for taking a gender-specific and intersectional approach to prisoners’ rights and it also made clear that women in custody have specific needs and endure specific rights violations. Since this case, we’ve seen an increase in advocacy strategies that recognize the need to center women in prisoner’s rights advocacy.

This was one of the cases that set up the framework for the Prison Rape Elimination Act. [See Chapter 5, p. 286 for discussion of PREA.] There is an increased understanding of the need to be intentional about preventing sexual abuse in custody and about providing services for survivors of sexual abuse. But the systemic issues that women face in custody—lack of parity with men in programming and medical services, issues with reproductive care—will continue to challenge women prisoners and correctional professionals so long as women remain in prisons and jails.

This work teaches us that the gendered nature of oppression in prison is real. Any kind of vulnerability or difference—whether it’s related to gender, LGBTQI, age, ability—is really compounded in the institutional carceral environment. And I see that people are taking up that charge and pushing successfully for prisons to redress these vulnerabilities.

As you reflect on this work, is there anything you wish you would have done differently?

I worked on this case for 10 years from 1993–2002. I wish we had required the creation of ongoing, external oversight—oversight of corrections in D.C. that was community based, so that the women would have the option to continue to use their voice to document issues in the jail, and fix problems, without litigation. [For discussion of prison/jail oversight, see Chapter 19.]

This case teaches so much about the durability of maltreatment. In 1826 a woman named Rachel Welch became pregnant while she was held in solitary confinement in a New York prison. Officers beat her and she died shortly after giving birth as a result of those beatings. The women I represented lived through the exact same abuse, and we know that the same abuse happens to women in facilities throughout the country. Because of this durability and because litigation ultimately ends, these kinds of cases should build in long-term, sustainable, independent, community-based oversight of prison systems—so that harms can be prevented and redressed without litigation.