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CENTERING WOMEN IN PRISONERS' RIGHTS LITIGATION

*Amber Baylor**

AUGUST 28, 1974:

The women in a housing unit at Bedford Hills Correctional Facility for Women watched as a cadre of prison guards with tear gas canisters made their way towards Carol Crooks' cell. Crooks, a woman in the prison, was a vocal dissenter of the prison's treatment of women. Earlier that day Crooks refused to comply with a prison administrator's order to relocate to a solitary confinement unit.¹ She demanded written notice of any alleged misconduct.² The officials declined to provide notice.³ Instead, they pushed into Crooks' cell, overcoming her efforts to keep the door shut. The other women watched the guards fight Crooks, then throw her down half a flight of stairs and drag her to the prison's solitary confinement row.⁴ They would later learn that Crooks was stripped and laid bare on the solitary cell floor.⁵

The women in the unit who witnessed the takedown feared for Crooks' safety. Crooks had survived solitary many times before,⁶

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1. See Women Against Prison, *Dykes Behind Bars*, DYKE, Winter 1975–76, at 15, 16.

2. *Id.*

3. *Id.*

4. *Id.* Crooks' legs and hands were cuffed behind her on a long rod, a technique called hogtying. See Interview with Carol Crooks, Prisoner Rights Activist, in N.Y.C., N.Y. (Mar. 13, 2015).

5. Women Against Prison, *supra* note 1.

6. See Interview with Carol Crooks, *supra* note 4.

but this time the guards' actions seemed to flout a recent court order directing the prison not to return Crooks to solitary confinement without a hearing or notice of new charges.⁷ Crooks' fate would indicate whether or not the women in the prison could hope to rely upon the prison's compliance with court-ordered disciplinary protections in the future.

On that August night, a collective of women in the upstate New York prison had an urgent choice to make: allow Carol Crooks to be held, yet again, on the solitary row, in violation of a federal district court order—or else rebel.

The next day newspaper reports read: "43 women inmates at Bedford Hills Correctional Institution held seven employees 'against their will' for 2.5 hours last night . . . they surrendered of their own volition."⁸

The uprising at Bedford Hills marked a pivotal moment in women's collective work challenging prison conditions. The women at Bedford Hills advanced the struggle for recognition of their rights in federal courts, forging a path for modern prisoners' rights claims. Their litigation, and similar work of women at other institutions, was a critical contribution to modern constructions of prisoners' rights in the United States.

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7. The preliminary injunction issued in July 1974, directed the prison to release Crooks from solitary confinement if the prison administration did not abide by due process requirements of *Wolff v. McDonnell*, 418 U.S. 539 (1974) (see *infra* text accompanying note 251–54), which required Crooks be given a disciplinary hearing and 24 hours' advance notice of the charges against her before being placed in solitary confinement. Transcript of Record at 354–59, *Crooks*, No. 74 Civ. 2351 (requiring the prison to “grant the plaintiff full procedural due process”). See also *Women Against Prison*, *supra* note 1, at 14, 16.

8. *45 Women Inmates in Disturbance*, N.Y. TIMES, Aug. 30, 1974, at 33.

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INTRODUCTION

The United States has incarcerated women since the nation's first prisons emerged.⁹ Many of these incarcerated women have helped develop modern articulations of prisoners' rights. This Article focuses on a series of lawsuits undertaken by women at Bedford Hills, a New York State prison.¹⁰ The work of the women of Bedford Hills—the organizing and 1974 uprising, as well as the subsequent decades-long prisoner-led litigation—was foundational to modern prisoners' rights litigation and resulted in protections for prisoners across the country.

Through oral history accounts from Carol Crooks, Crooks' attorney, and the Bedford Hills prison warden, this Article i) explores a pioneering piece of prisoners' rights litigation and ii) provides an example of the importance of centering women's accounts in order to disrupt the dominant narrative of prisoners' rights claims.

9. KARLENE FAITH, *UNRULY WOMEN: THE POLITICS OF CONFINEMENT & RESISTANCE* 128–29 (2011).

10. In this piece I use “Bedford Hills” as shorthand to refer to the prison, Bedford Hills Correctional Facility for Women. Bedford Hills is also the name of the town where the prison is located. See *Facility Listing*, N.Y. STATE DEP'T CORR. & CMTY. SUPERVISION, <http://www.doccs.ny.gov/faclist.html> (last visited Sept. 22, 2018).

Litigation by women in prison has been foundational to contemporary prisoners' rights work. Just three years prior to Crooks' lawsuit, in the fall of 1971, Attica Correctional Facility became the site of the most prominent prison rebellion in the country's history.¹¹ The spontaneous rebellion at Attica lasted for four days until the state violently regained control.¹² All told, 32 prisoners and 11 prison employees were fatally wounded at Attica.¹³

The uprising of the men imprisoned at Attica exposed the state's prison conditions to the public and opened up a dialogue about prisoners' rights across the country.¹⁴ Lawsuits brought a few years later by the women at Bedford Hills are an example of the significant developments in prisoners' litigation in the immediate aftermath of Attica.¹⁵ Bedford Hills' proximity to New York City allowed activists and lawyers from the city to access the prison and to collaborate with the women incarcerated there.¹⁶ An examination of the work done by women at Bedford Hills offers an opportunity to see how these political networks supported their struggle at a critical moment for prisoners' rights.

Carol Crooks filed *Crooks v. Warne*, the women's first challenge to disciplinary proceedings in prison, in 1974.¹⁷ It was one among a set of cases that addressed procedural deficits in the state's disciplinary pro-

11. See generally HEATHER ANN THOMPSON, BLOOD IN THE WATER: THE ATTICA PRISON UPRISING OF 1971 AND ITS LEGACY (2016) (discussing the effects of the Attica prison riot on conversations about prisoners' rights).

12. See *id.* at 256–65.

13. See Thomas Kaplan, *Decades Later, State Seeks Release of Report on Attica Uprising*, N.Y. TIMES (Apr. 19, 2013), <https://www.nytimes.com/2013/04/20/nyregion/decades-later-state-seeks-release-of-report-on-attica-uprising.html>.

14. See THOMPSON, *supra* note 11, at 256–65. Prior to the rebellion, politically educated and active prisoners at Attica were organizing and filing complaints about the prison's abysmal conditions. *Id.* at 35–45. Political groups such as the Black Muslims, Black Panthers, and Young Lords organized protests, including a food strike, following the murder of George Jackson. *Id.* Jackson was a black nationalist, a writer, and a critic of the U.S. criminal justice system who was imprisoned at San Quentin state prison in California. *Id.* The writer's death at the hands of the prison guards occurred only a few weeks before the Attica uprising and fueled tensions at prisons across the country, including Attica. *Id.*

15. Telephone Interview with Stephen M. Latimer, Prisoner Rights Litigator (July 13, 2016).

16. The prison is a ninety-minute drive from New York City. See MAPQUEST, <https://www.mapquest.com/us/ny/bedford-hills-282034826> (last visited Nov. 7, 2019) (follow "Directions" hyperlink; then search in "Where are you starting?" dialog box for "New York, NY"; then follow "Get Directions" hyperlink).

17. *Crooks v. Warne*, No. 74 Civ. 2351 (S.D.N.Y. Sept. 30 1974).

ceedings and the use of solitary confinement at Bedford Hills.¹⁸ These lawsuits all turned on the idea that, although incarcerated, people in prison retained some liberty interests.¹⁹ Specifically, the women argued that they were entitled to procedural protections before the prison made punitive housing transfers to solitary confinement.²⁰ It was against this backdrop that the 1974 uprising occurred.

The accounts of the Bedford Hills uprising detail the unfair treatment that was the basis for the women's claims.²¹ They argued that Bedford Hills' lack of procedure in imposing solitary confinement infringed upon their individual dignity.²² At the time, the idea that people could turn to the court to remedy conditions in prison was fairly new and the modern prisoners' rights movement was in its nascent stages.²³

Women at Bedford Hills demonstrated to allies that the state's use of discipline heavily impacted the most vulnerable groups of prisoners, including women of color, lesbians, and Spanish-speaking women.²⁴ Their formal legal successes were even more revolutionary because they framed dignity for prisoners in a language of rights that the courts found compelling—and actionable.²⁵

By 1976 the women's legal victories had resulted in the institution of new procedural protections at Bedford Hills.²⁶ But the women at Bedford Hills were not done; they continued litigating prison

18. JUANITA DÍAZ-COTTO, GENDER, ETHNICITY, AND THE STATE: LATINA AND LATINO PRISON POLITICS, 324–31 (1996).

19. I frequently use “people in prison” and “women in prison” in lieu of “inmate.” Inmate is a label assigned by prisons to intentionally deprive people of individuality and personhood. I sparingly use “incarcerated people/women” because the emphasis on incarcerated status may similarly diminish the individuality of the people being described.

20. See *Crooks v. Warne*, No. 74 Civ. 2351 (S.D.N.Y. Sept. 30 1974); *Powell v. Ward*, 542 F.2d 101, 101 (2d Cir. 1976).

21. See generally Transcript of Record at 7–196, *Crooks*, No. 74 Civ. 2351 (providing the testimony of multiple inmates to their unfair treatment).

22. *Id.*

23. Telephone Interview with Stephen M. Latimer, *supra* note 15.

24. DÍAZ-COTTO, *supra* note 18, at 341, 354. See *Brown v. Spade*, 502 F. Supp. 737, 740 (E.D. Pa. 1980) (due process challenge to inmate's treatment while awaiting hearing); *King v. Wells*, 94 F.R.D. 674, 684–87 (E.D. Mich. 1982) (due process challenge to inmate's disciplinary hearing); *Coles v. Levine*, 561 F. Supp. 146, 154 (D. Md. 1983) (due process challenge to prison's failure to hold a parole hearing); *Gomez v. Myers*, 627 F. Supp. 183, 188 (E.D. Tex. 1985) (due process challenge granting a Spanish-speaking inmate procedural protections in litigation).

25. By the mid-nineties, the passage of federal tort reforms aimed at prisoners closed avenues of relief forged by prisoners in the 1970s. Telephone Interview with Stephen M. Latimer, *supra* note 15.

26. DÍAZ-COTTO, *supra* note 18, at 330–31.

conditions into the late 1970s.²⁷ Their work also helped start a discussion about procedural interests of incarcerated people across the country—work whose impact would reverberate through prisons in the United States.²⁸

This Article consciously employs both a dignity rights-based framing and methodology. Dignity rights are those rights that are based on the Kantian assertion of “inalienable human worth.”²⁹ This framework for defining rights spans across a number of disciplines, including medicine and human rights law.³⁰ Disciplinary sanctions like solitary confinement or forced medication might be described as anathema to human dignity because of their degrading effect on an individual’s emotional and social well-being.³¹

This Article relies on first-person oral histories where possible. Bioethics scholar Claire Hooker argues that including narratives in work on dignity rights “is both a moral and an aesthetic project.”³² Using oral histories in this way—requesting, offering, and receiving narrative—is important for two reasons. First, it is crucial for developing a shared understanding of the context surrounding the event, such as the position,

27. *Forts v. Ward*, 566 F.2d 849 (2d Cir. 1977) (class action suit challenging state’s assignment of male prison guards to an all-female housing unit), *vacated in part*, 621 F.2d 1210 (2d Cir. 1980); *Powell v. Ward*, 542 F.2d 101 (2d Cir. 1976) (class action suit challenging the adequacy of prison disciplinary procedures following *Wolff*); *Armstrong v. Ward*, 529 F.2d 1132 (2d Cir. 1976) (class action suit challenging women inmates being transferred to a different prison without following proper procedures). *See also* DÍAZ-COTTO, *supra* note 18, at 332–33.
28. Telephone Interview with Stephen M. Latimer, *supra* note 15; Tessa Melvin, *Fund for Inmates Celebrated*, N.Y. TIMES (June 26, 1983).
29. *See* Annie Parsons & Claire Hooker, *Dignity and Narrative Medicine*, 7 J. BIOETHICAL INQUIRY 345, 347 (2010).
30. *See id.*; *see also* G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).
31. The United Nations’ Universal Declaration of Human Rights codified the language of dignity rights. G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948). There has historically been a great deal of ambivalence about dignity rights and imprecision defining them in U.S. law. *See* Jonathan Simon, *The Second Coming of Dignity*, in *THE NEW CRIMINAL JUSTICE THINKING* 285–88 (Sharon Dolovich & Alexandra Natapoff eds., 2017).
32. Parsons & Hooker, *supra* note 29, at 348 (“[M]aintaining a unified and meaningful life narrative is both a moral and an aesthetic project. . . . Suffering occurs when any aspect of the person is threatened or is perceived as undergoing disintegration. Such aesthetic upheaval is often referred to as a loss of dignity.”) (quoting Daryl Pullman, *Human Dignity and the Ethics and Aesthetics of Pain and Suffering*, 23 THEORETICAL MED. & BIOETHICS 75, 84 (2002)).

setting, and social order.³³ First-person narratives reveal the human experience behind legal rules.³⁴ Secondly, the methodology is significant to dignity rights scholarship since it respects and augments the idea of a right to dignity by recognizing that the people who are primarily affected by an event are the people best informed about the dynamics of the harm they have endured.³⁵ The precise influences that lead an individual to articulate her rights cannot be conveyed through court records or opinions. That process occurs before, beside, and in the aftermath of litigation. Traditional forms of scholarship—those based on highly bureaucratic processes such as court decisions and filings—may even be considered dignity-violative.³⁶ For women of color or poor women, those indignities are often rendered invisible by supposed “neutral” applications of law and summarization of harms in court decisions.³⁷ In this way, marginalizing individual narratives can be dignity-corrosive.³⁸ To examine the role of women in the development of prisoners’ rights litigation, I conducted oral history interviews with three individuals involved in the lawsuits from Bedford Hills Correctional Facility in the 1970s.

The study of women’s litigation in prison has traditionally been treated as a niche area of scholarship focused on reproductive rights, parenting, and gender-parity in vocational programming.³⁹ This Article argues instead that women should be “centered” in prison litigation scholarship, as articulated in recent iterations of critical race and

33. *Id.* at 346 (“[N]arrative competence might be utilised as a key skill in sustaining and promoting dignity.”).

34. See Robert M. Cover, *Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4, 42–43 (1983); Robin L. West, *The Difference in Women’s Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*, 15 WIS. WOMEN’S L.J. 149, 155–58 (2000).

35. See Parsons & Hooker, *supra* note 29, at 348.

36. *Cf. id.* at 348 (describing the relationship between narrative and dignity in the medical context).

37. For examples of neutral applications of law, see generally Cover, *supra* note 34; West, *supra* note 34. For an example involving women of color, see Mario Barnes, *Black Women’s Stories and the Criminal Law: Restating the Power of Narrative*, 39 U.C. DAVIS L. REV. 941, 945 (2006).

38. Parsons & Hooker, *supra* note 29, at 349.

39. ANDREA RITCHIE, *INVISIBLE NO MORE: POLICE VIOLENCE AGAINST BLACK WOMEN AND WOMEN OF COLOR* 11 (2017) (“[E]xisting research, discourse, and debate about women’s experiences of the criminal legal system have primarily focused on the impacts of mandatory minimum sentences . . . drug use among pregnant women, and women’s gendered experiences of prison, from sexual assault to shackled childbirth.”).

feminist legal theory.⁴⁰ Centering is a gender-inclusive approach to legal critiques, requiring the close examination of the experiences—and resistance—of women affected by criminal justice systems.⁴¹ These experiences are then offered as critical insights on the criminal justice system generally, instead of being marginalized as issues important only to women. Centering is important because when women’s experiences represent only a niche sector of criminal law analysis, their marginalization results in a reformist, rather than transformative, response to injustice.⁴²

Historically, the movement for rights at women’s prisons has been either unacknowledged or relegated to the heavily gender norm-enforcing space of “women’s prison reforms.”⁴³ The exclusion of women’s foundational work in prisoners’ rights litigation has two main consequences. First, it diminishes the organizing strategies that were unique to women’s prisons post-Attica. These struggles can continue to serve as a model for challenging discipline practices in prisons. Second, exclusion of women from the narrative prevents an examination of larger institutional sources of repression. Centering women’s experiences creates a more complex picture of the rights implicated in prisoners’ rights claims.⁴⁴

40. See, e.g., Kimberlé W. Crenshaw & Andrea Ritchie, *Say Her Name: Resisting Police Brutality Against Black Women*, AFR. AM. POL’Y F. 30 (July 2015), http://static1.squarespace.com/static/53f20d90e4b0b80451158d8c/t/560c068ee4b0af26f72741df/1443628686535/AAPF_SMN_Brief_Full_singles-min.pdf; see also RITCHIE, *supra* note 39, at 17.

41. See Crenshaw & Ritchie, *supra* note 40, at 6; see also Andrea Ritchie, *#SayHerName: Racial Profiling and Police Violence Against Black Women*, 41 N.Y.U. REV. L. & SOC. CHANGE 187, 198–99 (2016), <https://socialchangenyu.com/sayhername-racial-profiling-and-police-violence-against-black-women/>.

42. See RITCHIE, *supra* note 39, at 239–41 (describing transformative work as developing a vision of justice that fully reflects the needs and experiences of all community members); BELL HOOKS, FEMINIST THEORY: FROM MARGIN TO CENTER 70 (1984) (“Encouraging political bonding between women and men to radically resist sexist oppression would have called attention to the transformative potential of feminism.”).

43. RITCHIE, *supra* note 39, at 11.

44. Crenshaw & Ritchie, *supra* note 40, at 4–6; RITCHIE, *supra* note 39, at 11. An underdeveloped public understanding of prisoners’ rights can lead to catastrophic results, such as the passage of the Prison Law Reform Act. See Amy Petre Hill, *Death Through Administrative Indifference: The Prison Litigation Reform Act Allows Women to Die in California’s Substandard Prison Health Care System*, 13 HASTINGS WOMEN’S L.J. 223, 237 n.116 (2002). The PLRA, which severely limited civil claims by prisoners in federal court, was justified in part by stories of prisoners filing frivolous lawsuits. *Id.* One such story involved a prisoner filing suit because he received chunky, rather than creamy, peanut butter. *Id.* In reality, the prisoner’s claim was

This Article advocates for centering women's histories in prisoners' rights litigation. The women at Bedford Hills were able to push courts to consider discipline reform in the late 1970s in part by capitalizing on connections between growing anti-carceral, feminist, LGBT rights, and Black and Brown power networks.⁴⁵ They built a broad coalition through these networks that allowed the women to organize with feminist networks in ways that were not possible in many men's prisons.⁴⁶ However, women prisoners also faced retribution for challenging traditional disciplinary techniques like the use of isolation.⁴⁷ These accounts further demonstrate the necessity of centering women's histories of prisoners' rights work.

The narratives in this Article contribute to a deeper and more comprehensive analysis of incarceration, discipline, and human rights as experienced by women in U.S. prisons.

Part One of this Article contextualizes discipline, repression, and the emergence of litigation-based challenges at Bedford Hills in the mid-1970s.⁴⁸ At Bedford Hills, influential figures like Afeni Shakur, Dollree Mapp, Florynce Kennedy, and Carol Crooks joined other women in the prison to start a movement against repressive disciplinary practices. Through litigation, they compelled the New York State Department of Corrections to provide due process protections to prisoners placed in solitary confinement.⁴⁹ Part Two identifies and draws a connection between the work in prisoners' rights generally and the common background experiences of people in women's prisons in the mid-1970s. This section expands on organizing strategies and dignity rights frameworks that activists have fostered in women's detention centers. Part Three explores the sources and ramifications of marginalization. The Article ends with an analysis of the potential impact of centering women in examinations of prisoners' rights work.

about his prison bank account being debited for a product he did not order—an obviously non-frivolous issue. *Id.*

45. See DÍAZ-COTTO, *supra* note 18, at 341.

46. See DÍAZ-COTTO, *supra* note 18, at 327, 341.

47. Interview with Carol Crooks, *supra* note 4; see also Women Against Prison, *supra* note 1, at 15–16.

48. See Interview with Carol Crooks, *supra* note 4.

49. Powell v. Ward, 542 F.2d 101, 103–04 (2d Cir. 1976).

I. RESISTANCE AT BEDFORD HILLS

Well, you have three people that sit in a lock up, over a table, and you sit in a chair across the table from them. They tell you what rules and regulations you violated within the prison, according to them and their rules and regulations. And they are going to give you x amount of days in confinement, in a single . . . 8x10 room.⁵⁰

Many of the women litigants at Bedford Hills in the 1970s suffered degradation at every turn: economic oppression in New York City, white supremacy in the United States, homophobic and sexist behavior codes, and finally, the treatment they received as “convicts” in prison.⁵¹ In the face of intentionally dehumanizing forces, these women pursued their dignity-based rights while incarcerated. Their vision and articulation of not-yet-recognized rights emerged from complex experiences that are impossible to convey solely through the courts’ records.

A. *Bedford Hills in 1972*

Bedford Hills Correctional Facility is a sprawling prison campus seated in a bucolic, hilly region of Westchester County, New York.⁵² During the 1970s Bedford Hills was the only women’s prison in New York.⁵³ It was, and is, a medium security facility.⁵⁴ Yet, like nearly all prisons in the United States, it maintains among its housing units a cellblock set apart from the general living quarters.⁵⁵ These cells are designated for people in the prison to live in isolation—what’s commonly called “solitary confinement” or just “solitary.”⁵⁶ The solitary cells vary

50. Interview with Carol Crooks, *supra* note 4.

51. *Id.*

52. *Bedford Hills Correctional Facility*, Correctional Association of New York (2006), https://www.correctionalassociation.org/wp-content/uploads/2012/05/bedford_2005.pdf (last visited Nov. 7, 2018).

53. Findings and Conclusions at 4, *Crooks v. Warne*, No. 74 Civ. 2351 (S.D.N.Y. Sept. 30, 1974).

54. *Id.*

55. *Id.* at 5–6 (describing “one facility euphemistically denominated ‘Special Housing’”).

56. *Id.*

in their degree of isolation, but in some of them the woman is almost entirely deprived of human contact.⁵⁷

In 1974, the prison had four justifications for isolated housing: medical isolation, protective housing, disciplinary sanctions, and administrative segregation.⁵⁸ A woman placed in isolation for medical reasons during the early 1970s might have been awaiting transfer to a place like New York State's Matteawan State Hospital for the Criminally Insane.⁵⁹ A designation for protective housing generally occurred when prison officials claimed that isolation was necessary for the protection of the prisoner or the general prison community.⁶⁰

The third and fourth—and most severe—forms of isolation were disciplinary segregation and administrative segregation.

Disciplinary segregation existed for violations of prison rules.⁶¹ A New York state prisoner could face a disciplinary hearing before the Superintendent (the facility's warden) for violations of prison rules, including for minor infractions.⁶² When a person was accused of a violation, she would be brought before a "neutral decision-maker" who would decide whether the infraction had occurred and, if so, what sanction was appropriate.⁶³ Pursuant to state rules for these hearings, the prisoners were entitled to notice of the charges and the assistance of a prison employee as an advocate through the course of the proceeding.⁶⁴

57. See Letter from Carol Crooks, Prisoner Rights Activist, to J. Charles L. Briant, Jr. (July 8, 1974) (on file with the author). See also Transcript of Record at 120, *Crooks*, No. 74 Civ. 2351.

58. Findings and Conclusions at 4, *Crooks*, No. 74 Civ. 2351-CLB.

59. See Charles H. Jones & Stephen M. Latimer, *Liles v. Ward: A Case Study in the Abuse of Psychotropic Drugs in Prison*, 8 NEW ENG. J. ON PRISON L. 1 (1982).

60. One example of protective isolation at Bedford Hills was the transfer of a transgender woman from a nearby men's prison. Following her transfer, the woman was kept primarily in isolation—ostensibly for her protection or for the protection of other women. Notably, it was her fellow prisoners who appealed to the administration for her release into general population. See Telephone Interview with Janice Warne Cummings, Former Comm'r of Bedford Hills Corr. Facility (Sept. 16, 2016).

61. Findings and Conclusions at 9, *Crooks*, No. 74 Civ. 2351-CLB.

62. See Findings and Conclusions at 4, *Crooks*, No. 74 Civ. 2351-CLB. Formal charges were delivered to the prisoner in writing, and a neutral, detached observer presided over the hearing. See N.Y. COMP. CODES R. & REGS. tit. 7, § 253.1 (1987). An employee assisted the inmate. § 253.4. A set review occurs every 30 days. See Finding and Conclusion at 4, *Crooks*, No. 74 Civ. 2351-CLB. "Superintendent" is the state's title for the warden of the facility. See *Crooks v. Warne*, 516 F.2d 837, 838 (2d Cir. 1975).

63. Findings and Conclusions at 10, *Crooks*, No. 74 Civ. 2351-CLB.

64. N.Y. COMP. CODES R. & REGS. tit. 7, § 253.1 (1987).

Prior to the Bedford Hills lawsuits, these minimal protections were often circumvented through the use of “administrative” segregation.⁶⁵ Although administrative segregation also typically occurred after allegations of misconduct, it was seen as corrective, rather than punitive.⁶⁶ In reality, both disciplinary and administrative segregation resulted in the same terms of solitary confinement.⁶⁷

“Administrative segregation” was imposed through hearings before “Adjustment Committees.”⁶⁸ Adjustment Committees were composed of three prison employees, including at least one lieutenant and one civilian employee.⁶⁹ Because of their composition, people in prison did not expect much protection from the Administrative Committee hearings, perceiving (correctly) that the hearings were meant mostly as a show of process.⁷⁰

Procedural deficits abounded: individuals were not given notice of the charges they faced before the Adjustment Committee and thus could not prepare a meaningful defense.⁷¹ Prisoners had no ability to call witnesses.⁷² The Adjustment Committee did not provide the women with a record of what occurred during the hearing, so challenging a Committee’s sanction was difficult.⁷³ Once in isolation, an individual’s time in solitary could be extended merely on an administrator’s perception of a noncompliant attitude.⁷⁴

At the end of the first series of Bedford Hills lawsuits in 1976, the court mandated that the state provide accused women with notice of the disciplinary charges they faced, a hearing within seven days of segregation, the ability to call witnesses on their behalf (where witnesses were not deemed a danger to security), and a record of what ultimately happened in the hearing and the grounds for the committee’s decision.⁷⁵

65. See Findings and Conclusions at 5, *Crooks*, No. 74 Civ. 2351-CLB.

66. Findings and Conclusions at 5–6, *Crooks*, No. 74 Civ. 2351-CLB.

67. Findings and Conclusions at 5, 7–8, *Crooks*, No. 74 Civ. 2351-CLB.

68. See Findings and Conclusions at 5–8, *Crooks*, No. 74 Civ. 2351-CLB; DÍAZ-COTTO, *supra* note 18, at 329; see, e.g., Donald Tibbs, *Peeking Behind the Iron Curtain: How Law “Works” Behind Prison Walls*, 16 S. CAL. INTERDISC. L.J. 137.

69. Findings and Conclusions at 7, *Crooks*, No. 74 Civ. 2351-CLB. The civilian employee could, for instance, be any non-officer staff, such as head of laundry. See Transcript of Record at 20, *Crooks*, No. 74 Civ. 2351.

70. See Interview with Carol Crooks, *supra* note 4.

71. Findings and Conclusions at 8, *Crooks*, No. 74 Civ. 2351-CLB.

72. Findings and Conclusions at 8, *Crooks*, No. 74 Civ. 2351-CLB.

73. Findings and Conclusions at 18, *Crooks*, No. 74 Civ. 2351-CLB.

74. Findings and Conclusions at 9, *Crooks*, No. 74 Civ. 2351-CLB.

75. *Powell v. Ward*, 392 F. Supp. 628, 632 (S.D.N.Y. 1976); see also *Crooks v. Warne*, 74 Civ. 2351 (S.D.N.Y. Sept. 30. 1974).

All New York prisons were required to apply these protections.⁷⁶ By challenging their living conditions, the women at Bedford Hills helped drive the nascent prisoners' rights movement in post-Attica America.⁷⁷

B. Crooks v. Warne (1974): *An Individual Challenge to Solitary Confinement*

In 1974 Carol Crooks became the first person at Bedford Hills (post-Attica) to file a lawsuit based on the Adjustment Committee process.⁷⁸ Carol Crooks was born in Brooklyn, New York, in the 1940s to an African-American family that had migrated from the South.⁷⁹ As a young person raised in a home with many people and no money, Crooks learned to be resourceful.⁸⁰ As a teenager on the streets in Brooklyn, Crooks began “hustling,” or working in the city’s underground economies.⁸¹ She states:

I was brought up in a society where everybody stepped on the poor people’s backs. Didn’t give a damn. Living and growing up in my environment, felt like everybody wasn’t equal. Because everybody wasn’t entitled to everything. Because we didn’t get everything. We only got what we scraped and worked for—or begged for.

I wasn’t a beggar, even as a kid. I used to run around with a shoeshine kit I made myself and shine men’s shoes And I used to carry people’s groceries from the supermarket and get a couple of dollars here or there, or change. And worked in a thrift shop and get change. So I was brought up in a society, where

76. *Powell*, 392 F. Supp. at 632. Concurrently, in a separate case, *Wolff v. McDonnell*, the Supreme Court mandated that minimal protections be implemented in prisons around the country. See *Wolff v. McDonnell*, 418 U.S. 539 (1974).

77. See DÍAZ-COTTO, *supra* note 18; see also Telephone Interview with Stephen M. Latimer, *supra* note 15.

78. DÍAZ-COTTO, *supra* note 18, at 328–29.

79. JB Nicholas, *August Rebellion: New York’s Forgotten Female Prison Riot*, VILLAGE VOICE (Aug. 30, 2016), <https://www.villagevoice.com/2016/08/30/august-rebellion-new-yorks-forgotten-female-prison-riot/>.

80. *Id.*

81. *Id.*

*everybody wasn't rated equal, and I didn't know that I could fight it.*⁸²

Crooks spent time in and out of juvenile institutions and correctional facilities as a young adult, including stints at the New York Training School for Girls, a particularly Dickensian reformatory in upstate New York.⁸³ Her cycles of admission and release from jails halted abruptly, however, when she was sentenced to a term of 15 years at Bedford Hills.⁸⁴

When Crooks arrived to serve her time at Bedford Hills, she was vocal about mistreatment by prison staff and increasingly compelled to protect her dignity as a black, gay woman.⁸⁵ She often faced discipline by the Adjustment Committee.⁸⁶ Throughout Crooks' time in New York City jails in the 1960s and 1970s, she was exposed to a radical political education through her interactions with women incarcerated for their political activism.⁸⁷ These activists formed a kind of community of dissenters, which included, among others, Dollree Mapp, the feisty appellant in the seminal criminal procedure case *Mapp v. Ohio*.⁸⁸ Crooks

82. Interview with Carol Crooks, *supra* note 4.

83. Interview with Carol Crooks, *supra* note 4. The New York State Training School for Girls was founded in 1904 as a reformatory for "incorrigible" girls. See *New York State Training School for Girls*, PRISON PUBLIC MEMORY PROJECT (Sept. 22, 2014), <https://www.prisonpublicmemory.org/blog/2014/new-york-state-training-school-for-girls>.

84. Interview with Carol Crooks, *supra* note 4; *Crooks v. Warne*, 516 F.2d 837, 838 (2d Cir. 1975).

85. See Interview with Carol Crooks, *supra* note 4 (describing punishment for having intimate relationships with other women); see also Telephone Interview with Stephen M. Latimer, *supra* note 15.

86. See Interview with Carol Crooks, *supra* note 4; Telephone Interview with Stephen M. Latimer, *supra* note 15.

87. Interview with Carol Crooks, *supra* note 4; see also SARA HARRIS, *HELLHOLE: THE SHOCKING STORY OF THE INMATES AND LIFE IN THE NEW YORK CITY HOUSE OF DETENTION FOR WOMEN* 22–23 (1967).

88. See 367 U.S. 643 (1961). Dollree Mapp was an African-American woman who lived in Cleveland, was friends with boxers and promoters, and ran a rooming house. See Ken Armstrong, *Dollree Mapp, 1923-2014: "The Rosa Parks of the Fourth Amendment"*, THE MARSHALL PROJECT (Dec. 8, 2014), <https://www.themarshallproject.org/2014/12/08/dollree-mapp-1923-2014-the-rosa-parks-of-the-fourth-amendment>. She came to national prominence as the Petitioner/Defendant in the foundational criminal procedural case *Mapp v. Ohio*, which was heard before the Supreme Court in 1961. See *id.* In *Mapp*, she argued that the Fourth Amendment should lead to the suppression of evidence collected during the police's warrantless entry into her home. *Id.* A version of her assertive refusal to allow police entry can be heard in her attorney's opening arguments before the Court. See Oral Argument at 1:48, *Mapp v. Ohio*, 367 U.S. 643 (1961), <https://www.oyez.org/cases/1960/236>. At

began to see the oppressive conditions she experienced in prisons as linked to larger, structural forms of oppression.⁸⁹ She eventually became a leader of the prisoners' rights community at Bedford Hills:⁹⁰

*For seven years I never talked to [the prison guards]. I would talk through the inmates to the officer. I wouldn't look at them and I wouldn't talk to them.*⁹¹

Her approach to Adjustment Committee hearings was similar. Crooks characterized the proceedings as a farce and participated in them as little as possible.⁹² When she was called to a hearing, she did not sit down in her designated seat in front of the Committee.⁹³ Instead, she stood and refused to speak—and walked out silently at the end of the proceeding.⁹⁴ The Committee was made up solely of prison staff, and in most cases, the person charging her with the infraction was a prison staff member.⁹⁵ Crooks was left to defend herself without an attorney and without forewarning of the exact allegations.⁹⁶

*I had to sit there and listen to them and when I finished listening to them I would walk out. Or I wouldn't say nothing.*⁹⁷

On many occasions the hearings resulted in Crooks being sanctioned with a term in solitary confinement.

In February 1974 Crooks attempted to convince a guard to send her to the medical wing because she had a migraine.⁹⁸ The guard refused

the time of the Bedford Hills rebellion, Mapp was incarcerated due to a conviction for drug possession. See Armstrong, *supra*. She dedicated time to exposing abuses that occurred in the prison, including by writing poetry that drew attention to sexual abuses against women. See Dollree Mapp, *the Right to Privacy & Sexual Violence in Prison*, PRISON CULTURE (Oct. 21, 2013), <http://www.usprisonculture.com/blog/2013/10/21/dollree-mapp-the-right-to-privacy-sexual-violence-in-prison/>.

89. See interview with Carol Crooks, *supra* note 4; see DÍAZ-COTTO, *supra* note 18, at 324–26.

90. See Interview with Carol Crooks, *supra* note 4; see DÍAZ-COTTO, *supra* note 18, at 326–27.

91. Interview with Carol Crooks, *supra* note 4.

92. See *id.*

93. *Id.*

94. *Id.*; Transcript of Record at 122, Crooks, No. 74 Civ. 2351.

95. See Findings and Conclusions at 13–14, Crooks, No. 74 Civ. 2351-CLB.

96. See Transcript of Record at 13–14, Crooks, No. 74 Civ. 2351.

97. Interview with Carol Crooks, *supra* note 4.

98. See Women Against Prison, *supra* note 1, at 15.

to let her leave the cell.⁹⁹ When Crooks' attempted to push by the guard, a group of four nearby guards joined and surrounded Crooks.¹⁰⁰ The guards pulled Crooks down to the concrete floor, hogtied her, and carried her to the prison's solitary confinement row.¹⁰¹ After 22 days in solitary, Crooks was called before the Adjustment Committee, where she was accused of assaulting four officers.¹⁰² The Committee sentenced Crooks to an additional 60 days in solitary confinement.¹⁰³

Without structured methods of self-preservation, solitary would have eroded Crooks' mind.¹⁰⁴ So she began to learn how to survive solitary confinement.¹⁰⁵ As Crooks describes,

*You just have to just make your mind be as small as your room. And don't think like it's as small as the room—think like you're outside in society. Set up a time that you're going to read, a time that you're going to do exercise in your room, a time that you're going to sleep and a time that you're going to mentally go over your life. If it's only going over every day and everything that you do—or everybody that come into contact with you—that's how you break up the monotony of being in a stale room. You make a mental schedule of everything—of how you're going to survive in that room—whether it's weeks, months, or years.*¹⁰⁶

Crooks maintained her resoluteness—a coping mechanism that, perversely, led to more time in solitary. At one point the Adjustment Committee extended Crooks' time in solitary by a week, without a hearing or new allegation, after observing that Crooks' attitude “continued to be somewhat hostile, contemptuous and uncooperative.”¹⁰⁷ Her time in solitary was again extended for another month after that, then again,

99. *Id.*

100. *Id.*

101. *See id.* at 15.

102. *See* Transcript of Record at 106, *Crooks*, No. 74 Civ. 2351. Reports describe a quarrel between Crooks, who wanted to see a doctor for a migraine, and a guard that refused to let her go. *Women Against Prison*, *supra* note 1, at 15. According to one report, Crooks attempted to push past the guard, who then called for backup. *Id.* At least four additional guards arrived to bring Crooks down to the floor. *Id.*

103. Transcript of Record at 103, *Crooks*, No. 74 Civ. 2351.

104. *See* interview with Carol Crooks, *supra* note 4.

105. *See id.*

106. *Id.*

107. Findings and Conclusions at 11–14, *Crooks*, No. 74 Civ. 2351-CLB.

and then again—always without a hearing—until Crooks' time in confinement stretched out from 60 days to nearly four months.¹⁰⁸

Crooks, seeing no end to her time in solitary, managed to get word out of the prison to her close friend and ex-partner, Afeni Shakur.¹⁰⁹ It was this fateful communication that eventually set Crooks' litigation into motion.

Crooks and Shakur initially met during Shakur's incarceration at the Women's House of Detention.¹¹⁰ They became close and developed a romantic relationship, staying in contact after their separation and Shakur's release.¹¹¹ By 1974, Shakur was working as a paralegal at South Bronx Legal Services.¹¹² Upon receiving word that her friend had been locked away in solitary for an extensive period of time, Shakur went to a young prisoners' rights attorney at South Bronx Legal Services named Steven Latimer.¹¹³ Latimer had recently successfully represented detainees in their negotiations for condition reforms at Metropolitan Detention Center.¹¹⁴ Shakur wanted Latimer to investigate Crooks' case and address the abuses occurring at Bedford Hills.¹¹⁵

Latimer traveled to Bedford Hills and found Crooks in solitary confinement.¹¹⁶ After hearing her account, Latimer and Crooks filed a complaint in the Southern District of New York—what became *Crooks v. Warne*.¹¹⁷ In the complaint, Crooks argued that she was given inadequate process before the administrators extended her time in solitary

108. Findings and Conclusions at 11–14, *Crooks*, No. 74 Civ. 2351-CLB. During this time, Crooks was temporarily taken to Westchester Jail, where she also was in solitary confinement from March through early May. Transcript of Record at 106–10, *Crooks*, No. 74 Civ. 2351.

109. Crooks was unable to remember exactly how she got word out. She did note that she relied on other prisoners' access outside of prison. Interview with Carol Crooks, *supra* note 4. See also Telephone Interview with Stephen M. Latimer, *supra* note 15. For more on Afeni Shakur, see *infra* Section II.B.

110. See déqui kioni-sadiki, *The Past Catches Up to the Present*, in LOOK FOR ME IN THE WHIRLWIND 21, 23 (Matt Meyer & déqui kioni-sadiki eds., 2017); Interview with Carol Crooks, *supra* note 4.

111. See Interview with Carol Crooks, *supra* note 4.

112. *Id.*; *Repression at Bedford Hills Prison*, 4 OFF OUR BACKS 4, 4 (1974) (encouraging readers to send support to the women via Afeni at South Bronx Legal Services).

113. Telephone Interview with Stephen M. Latimer, *supra* note 15.

114. *Id.*; see *Wallace v. Kern*, 371 F. Supp. 1384 (E.D.N.Y. 1974).

115. Telephone Interview with Stephen M. Latimer, *supra* note 15.

116. See *id.*

117. Telephone Interview with Stephen Latimer, *supra* note 15; see *Crooks v. Warne*, 516 F. Supp. 837 (2d Cir. 1975).

confinement.¹¹⁸ Both Crooks and Latimer perceived that Crooks was being kept in solitary precisely because of the debilitating effects it had on people.¹¹⁹ Latimer describes exposing this intentional use of solitary in his eventual cross-examination of a prison staff member:

*[The staff person] got up on the stand, and I forget it must have been me on cross examination, because she wouldn't have been on direct examination, and I was asking her what their objectives were in keeping Carol and the way she was and stuff. And [the staff person] said, "Well we were going to keep her there until . . ." and then she stopped and gave another answer. But what you could hear in this courtroom was, "Because we wanted to break her." She never said that but you could just hear the words coming out of her mouth.*¹²⁰

The district court was sympathetic to Crooks' complaint.¹²¹ The judges, like the rest of the country, had recently undergone a fiery tutorial on prisoner abuse as a result of the uprising at Attica.¹²² They were primed to be sympathetic to Crooks' story. The Southern District of New York issued a preliminary injunction ordering Crooks' release from solitary confinement while it considered her case.¹²³ In the end, she had spent nearly five months in solitary confinement.

In 1974, when *Crooks v. Warne* was just beginning, the New York State Special Commission on Attica was publicizing the details of their investigation into the Attica uprising.¹²⁴ Following the rebellion a state commission had been created to investigate the cause of the rebellion and the state's response.¹²⁵ Its report unveiled the falsehoods that had been communicated by the New York Department of Corrections about the rebellion.¹²⁶ The sense that something had to be done about prison

118. See interview with Carol Crooks, *supra* note 4; see Telephone Interview with Stephen Latimer, *supra* note 15; see *Powell v. Ward*, 542 F.2d 101 (2d Cir. 1976); see *Powell v. Ward*, 392 F. Supp. 628 (S.D.N.Y. 1975).

119. See Interview with Carol Crooks, *supra* note 4.

120. Telephone Interview with Stephen M. Latimer, *supra* note 15; see *Wallace v. Kern*, 371 F. Supp. 1384 (E.D.N.Y. 1974).

121. See *Powell*, 392 F. Supp. 628; see Telephone Interview with Stephen M. Latimer, *supra* note 15.

122. See Telephone Interview with Stephen M. Latimer, *supra* note 15; see THOMPSON, *supra* note 11, at 301–03.

123. *Powell*, 542 F.2d at 101.

124. See THOMPSON, *supra* note 11, at 403–17, 445.

125. The investigations lasted for over 30 years. See *id.*

126. *Id.* at 278–84.

conditions was growing.¹²⁷ Federal courts were increasingly sensitive to claims of mistreatment from those in prison and were also more receptive to prisoners' rights claims.¹²⁸ When asked how the litigation that started at Bedford Hills contrasted with prisoners' rights litigation up until that point, Latimer recalled:

[When] we walked into court on one of these cases, we made the rules because it had never been done before. This whole idea of Section 1983, which is the basic statute you go in under, was an old statute, but until the 1960s it hadn't been used very much.

*The whole world—when Carol hooked up with me, the whole world of prison litigation was just starting to move.*¹²⁹

Crooks returned to the general prison population as the court considered her case.¹³⁰ The Southern District of New York decided *Crooks v. Warne* in August of 1974.¹³¹ The court found that due process requirements applied to disciplinary sanctions—including those imposed by the Adjustment Committee—at the prison.¹³² The prison was ordered to provide written notice of the allegation to Crooks within 24 hours of segregation and to provide a hearing for any subsequent decisions to extend her time in solitary.¹³³ The district court also prohibited *ex parte* communication between the disciplinary board and the prison representative seeking punishment: “No member of any Adjustment Committee meeting to which Plaintiff is a party shall discuss the pending matter with other administrative or superior officers in advance of the hearing.”¹³⁴ The procedural protections mandated by the district court were significant, but the Second Circuit would eventually dial back many of them.¹³⁵

For the women at Bedford Hills, the idea that a prisoner in a women's facility could appeal to a court, and that the court would hear the complaints of a convicted criminal, was somewhat novel.¹³⁶ It was

127. See *id.*; see also Telephone Interview with Stephen M. Latimer, *supra* note 15.

128. See Telephone Interview with Stephen M. Latimer, *supra* note 15.

129. *Id.* (“Also I’ll tell you, that was in 1974. By 1985, you couldn’t file a complaint that simple. The courts just wouldn’t let you do it anymore.”).

130. *Women Against Prison*, *supra* note 1, at 15–17.

131. *Crooks v. Warne*, 516 F.2d 837, 838–39 (2d Cir. 1975).

132. *Crooks*, 516 F.2d at 838–39.

133. *Crooks*, 516 F.2d at 839.

134. *Crooks*, 516 F.2d at 839.

135. *Crooks*, 516 F.2d at 839.

136. See Interview with Carol Crooks, *supra* note 4.

stranger still that a court would immediately intervene against a prison on a person's behalf.¹³⁷ Crooks' injunction did not resolve the procedural deficits in disciplinary hearings, but it was an important victory because it demonstrated for the women at Bedford Hills the potential power of litigation.¹³⁸

C. Competing Feminisms: Women at Work, Women Incarcerated

The women prisoners' claims of mistreatment were challenged by the administrators' benign characterization of discipline.¹³⁹ Importantly, in 1978, 97.7% of the Bedford Hills' staff were women.¹⁴⁰ This created a source of friction unique to women's facilities and allowed staff actions to potentially be seen as lightly corrective, rather than aggressive. The tension between preserving the dignity of the women who were incarcerated and the professional aims of the women at work in the facility created two competing feminist narratives.

Many of the Bedford Hills administrators experienced their work as defying gender norms. Janice Warne, the Superintendent at Bedford Hills in the early 1970s, was a pioneer in her role. During the 1950s and 1960s she developed a notable career in corrections, which was a major industry in western New York.¹⁴¹ Warne entered corrections in 1956—18 years before the uprising at Bedford Hills.¹⁴² Her aunt worked as a matron in an institution for wayward women.¹⁴³ Eventually Warne, a mother of five, found work there.¹⁴⁴ Like many white women of her generation that went to work, Warne's decision to re-enter the workforce was highly stigmatized.¹⁴⁵

Warne was displaced early in her career by men returning from war.¹⁴⁶ She continued to pursue a meaningful career:

137. Crooks, *supra* note 4.

138. DÍAZ-COTTO, *supra* note 18, at 330; Interview with Carol Crooks, *supra* note 4.

139. See *supra* Section I.B. for a discussion of prison staff's treatment of Crooks when she asked to be taken to medical for a migraine.

140. DÍAZ-COTTO, *supra* note 18, at 275.

141. Telephone Interview with Janice Warne Cummings, *supra* note 60.

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.* ("I worked at my father-in-law's and most of the workers were women. After the men came home, the jobs went to the men. The women stayed home.").

*There were an awful lot of evenings I remember not seeing my children that were in school, so I thought about working nights. I ended up working nights so I could see my children a lot. I ended being the supervisor at night for years. . . . I was promoted right on up to Superintendent.*¹⁴⁷

After 14 years in corrections, Warne got her first position as Superintendent at the Albion State Training School—an institution for young women with developmental disabilities who were convicted of crimes.¹⁴⁸ Albion only accepted young women with an IQ of 70 or below.¹⁴⁹ Part of Warne's role was to develop training programs to assist the young women in getting jobs.¹⁵⁰ This is reflected in Warne's later prison administrator projects. The Training School had an explicitly paternalist orientation towards the people confined there.¹⁵¹ Echoes of this mission emerge in Warne's later programs, and even articulation of discipline, at Bedford Hills.¹⁵²

The rebellion at Attica took place while Warne was working at Albion.¹⁵³ Warne was close to the community of people working in corrections, including people who were injured during the uprising at Attica. Warne remembers people's fears that the guards—her neighbors, friends, and coworkers' husbands—might not make it out of the uprising alive.¹⁵⁴ She and her colleagues made sandwiches for the National Guard members posted outside of the gates as they awaited the order to retake the prison.¹⁵⁵

Support for the correctional officers at Attica—and the retaking of Attica by state police—was common among middle- and working-class white residents in the region.¹⁵⁶ In particular, there was a large community of state corrections employees and their families who identified

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

151. New York Correction History Society, *Facility Profile: Albion Correctional Facility*, DOCS TODAY (Sept. 1998), <http://www.correctionhistory.org/html/chronic/docs2day/albion.html> (stating that “greater stress was placed on ‘social attitudes,’ emotional maturity and self-control, manners, safety and personal hygiene. As in the reformatory days, the inmates were still being prepared for domestic service.”).

152. See *infra* note 164 (discussing the programs Warne implemented) and note 165 (describing administrator views of corrective discipline).

153. Telephone Interview with Janice Warne Cummings, *supra* note 60.

154. *Id.*

155. *Id.*

156. See generally THOMPSON, *supra* note 11.

closely with the guards inside the prison.¹⁵⁷ Camaraderie between correctional officials in western New York continued to solidify in the years following Attica.¹⁵⁸ It was unsurprising, then, that when the women took over the units at Bedford Hills in 1974, staff called for assistance from guards from a nearby prison, Green Haven, and they immediately came to assist.¹⁵⁹

Janice Warne began her job as Superintendent of Bedford Hills in 1972.¹⁶⁰ When she got to Bedford Hills, Warne found that the institution had a few practices that appeared insensitive to women.¹⁶¹ For example, one of Warne's early accomplishments was getting new uniforms for the women that were less dreary than the standard male-issue.¹⁶² The goal of her project was to help contribute to the positive self-esteem of the women in the prison. Some of the prisoners disagreed and joined together to file a lawsuit to argue that the new uniforms violated their religious covering requirements.¹⁶³

Warne was, in part, a reformer. In particular, Warne made positive contributions by securing some of the federal funding streams that developed, post-Attica, for programs at women's prisons:

*You know what? Nobody pays attention to the women. I wanted them to help the women.*¹⁶⁴

When asked about the prison's disciplinary proceedings in the *Crooks v. Warne* hearings, the administrators cast their use of discipline as gently corrective, rather than punitive terms.¹⁶⁵ Indeed, in the hearing during *Crooks v. Warne*, prison officials described the Adjustment Committee's role more like behavior modification counseling than discipline.¹⁶⁶ According to the prison administrators who testified, the

157. *Id.*

158. *Id.* at 260, 413–14.

159. *See* Women Against Prison, *supra* note 1, at 15.

160. Telephone Interview with Janice Warne Cummings, *supra* note 60.

161. *See id.*

162. *Id.*

163. Telephone Interview with Stephen M. Latimer, *supra* note 15.

164. Telephone Interview with Janice Warne Cummings, *supra* note 60.

165. Transcript of Record at 224, 268, *Crooks*, No. 74 Civ. 2351 (describing the sanctions issued by the Administrative Committee, including segregation, as focused on “[changing] attitudes”).

166. *See generally* Transcript of Record at 162–82, *Crooks*, No. 74 Civ. 2351.

Committee nudged women towards better behavior through sanctions.¹⁶⁷

Years later—after the Bedford Hills uprising—Warne was transferred to a position as a Superintendent at a men's prison, where she became New York's first woman to run a men's institution.¹⁶⁸ She would later say that she found it much easier than working as a warden of a women's facility like Bedford Hills.¹⁶⁹

D. Uprising at Bedford Hills

The state appealed the district court's decision in *Crooks v. Warne*.¹⁷⁰ As the Second Circuit was contemplating her case, Crooks continued to navigate the resentment of the prison staff, who resisted implementing the court's decision by using heightened forms of aggression against individuals who challenged their authority.¹⁷¹ Their response, as remembered by Crooks, supported her claim that the prison meant to instill not just rule-abiding behavior, but outright submission in those who advocated for themselves. As Crooks recalled:

*[Prison staff] played all kinds of tricks. They would do all kinds of things—they couldn't find you in time for your visit—your visit was cut short—or when it came time for your phone calls.*¹⁷²

On the morning of the women's uprising in August 1974, Crooks was directed by a prison official to transfer to a cell in solitary confinement.¹⁷³ Crooks demanded notice of the prison's allegation against her, which she believed the court had ordered the prison to provide before any transfer into disciplinary segregation.¹⁷⁴ She refused to go to solitary

167. *Id.* at 224, 268. Warne was obligated to testify in federal court on behalf of the prison, but later noted that she believed the administrator conducting the Adjustment Committee hearings failed in her duties when she did not hold a committee hearing for Crooks. See Telephone Interview with Janice Warne Cummings, *supra* note 60.

168. Telephone Interview with Janice Warne Cummings, *supra* note 60.

169. *Id.*

170. *Crooks v. Warne*, 516 F.2d 837 (2d Cir. 1975).

171. Interview with Carol Crooks, *supra* note 4 (speaking about retribution generally); DÍAZ-COTTO, *supra* note 18, at 330.

172. Interview with Carol Crooks, *supra* note 4.

173. See *Women Against Prison*, *supra* note 1, at 16.

174. The prison later alleged that Crooks had struck another prisoner. See *Women Against Prison*, *supra* note 1, at 14, 16. *But see* Interview with Carol Crooks, *supra* note 4 (“The officer busted me having sex with another inmate and it was a big deal. Then the officer pushed the panic button and said that I attacked her and it wasn't true.

voluntarily without notice.¹⁷⁵ When Crooks attempted to block guards working in the unit from entering her cell to take her forcibly, the guards decided to “take down” Crooks:

*So they take me, hogtie me, and take me down the back way, put me in a station wagon. All the time I was in the station wagon, my head was hanging out the back. My head was out. You know how they flip the [rear door of the wagon] up? It was down. I was tied down with my head and legs backward. My head was out so I could see the road. They kept hitting me in my back, hitting me in my ribs, [the guard] that was back there with me.*¹⁷⁶

Many of the women who watched the guards drag Crooks away described the act as a blatant violation of the district court’s injunction.¹⁷⁷ The women decided to approach prison administrators to question the legitimacy of the guards’ actions and demand an update on Crooks’ status.¹⁷⁸ They were particularly concerned because they believed that the court order should have prevented Crooks from being arbitrarily swept into solitary confinement again.¹⁷⁹ According to *Off Our Backs*, a feminist newsletter, Warne assured the women that she would respond to their concerns by that evening.¹⁸⁰ In the meantime, Crooks sat in solitary, injured from her violent transport to the cell.¹⁸¹

The prison instituted an early lockdown that night, requiring all prisoners to return to their cells.¹⁸² With questions left unanswered, the women refused to comply.¹⁸³ They responded to the lockdown order by taking over a section of the prison and locking the doors. The women locked some of the guards inside with them, and fought to keep the others out.¹⁸⁴ The women held down the prison’s housing units for

When the Captain or the Sergeant came up, they tried to tell her that it was not true, what they were saying.”).

175. See *Women Against Prison*, *supra* note 1, at 14, 16.

176. Interview with Carol Crooks, *supra* note 4.

177. *Women Against Prison*, *supra* note 1, at 14, 16.

178. See *Women Against Prison*, *supra* note 1, at 14, 16; see also Carol “Crooksie” Crooks, *Prison Women’s Defense*, 5 *OFF OUR BACKS* 23, 23 (1975).

179. *Women Against Prison*, *supra* note 1, at 14, 16.

180. See *Bedford 28*, 5 *OFF OUR BACKS* 18, 18 (1975).

181. Interview with Carol Crooks, *supra* note 4.

182. See *Women Against Prison*, *supra* note 1, at 14, 16; *Bedford 28*, *supra* note 180.

183. See *Women Against Prison*, *supra* note 1, at 14, 16.

184. See *Women Against Prison*, *supra* note 1; see also *Repression at Bedford Hills Prison*, *supra* note 112, at 4.

hours, until the middle of the night.¹⁸⁵ Reports indicate the women held off the guards by gathering tear gas canisters—meant to be used against the prisoners in the event of exactly such an uprising—and used them to fight back against the guards attempting to enter.¹⁸⁶

Warne got updates on what happening from a guard who had hid inside a closet in the locked-down unit with a phone.¹⁸⁷

*There was one lieutenant . . . who had the sense enough . . . She got herself locked in a storage room-type thing, and she was watching and hearing things. She had her phone, and she just called back and kept us informed of what was going on.*¹⁸⁸

Warne remembers the event as a minor, quickly-resolved disturbance.¹⁸⁹ But reports state that the prison called in New York state troopers and officers from nearby Sing Sing and Greenhaven state prisons.¹⁹⁰ The backup arrived four hours later and ended the uprising.¹⁹¹ Some of the women jailed in the unit where the uprising occurred were taken to solitary confinement units at the prison,¹⁹² while others were locked down in their own cells.¹⁹³ Many did not receive a hearing to procedurally justify their solitary confinement until weeks later.¹⁹⁴ Crooks, locked away in the solitary barracks the whole time, learned of the uprising second-hand from custodial staff cleaning her unit.¹⁹⁵

The procedural injustices at the prison multiplied in the aftermath of the uprising. In September 1974 Crooks and 22 women who had been involved in the uprising were transferred—without hearings or medical diagnoses—to Matteawan State Hospital for the Criminally Insane.¹⁹⁶ The women were incarcerated at the prison hospital and forcibly

185. See *Women Against Prison*, *supra* note 1; see also Crooks, *supra* note 178.

186. *Repression at Bedford Hills Prison*, *supra* note 112, at 4.

187. Telephone Interview with Janice Warne Cummings, *supra* note 60.

188. *Id.*

189. *Id.*

190. Crooks, *supra* note 178.

191. See *id.*

192. See *Women Against Prison*, *supra* note 1, at 16; see also Crooks, *supra* note 178.

193. See *Women Against Prison*, *supra* note 1, at 16; see also Crooks, *supra* note 178.

194. *Powell v. Ward*, 392 F. Supp. 628, 630 (S.D.N.Y. 1975).

195. See Interview with Carol Crooks, *supra* note 4. Women in solitary confinement were able to communicate with others infrequently, such as when they were able to leave the cell to shower or to exercise.

196. DÍAZ-COTTO, *supra* note 18, at 326–27. The hospital had recently been renamed the Fishkill State Correctional Facility, but this Article will continue to refer to it as “Matteawan.”

medicated until the end of April 1975. This group of women later became known as the “Matteawan Six.”¹⁹⁷

As the Second Circuit contemplated the state’s appeal in *Crooks v. Warne*, the women waited at Matteawan, involuntarily sedated by antipsychotics.¹⁹⁸ When it ruled in May 1975, the appellate court largely affirmed the district court’s requirement of notice and a hearing before administrators could extend an inmate’s time in solitary.¹⁹⁹ But it also reversed some of the critical procedural protections the lower court put in place.²⁰⁰ The Second Circuit held that the lower court went too far in outlawing all *ex parte* prehearing conversations about the case among prison administrators and members of the Adjustment Committee.²⁰¹ Instead, the appellate court allowed prison administrators and staff to engage in some of these discussions:

It is not improper for a member of the adjustment committee to discuss with the warden the procedures that should be followed, although it would be clearly improper for the warden to tell a member of the adjustment committee what the decision of the committee should be or for them to discuss what the decision should be. Nor is it improper for the members of the adjustment committee to discuss among themselves the procedure to be followed, although it would be improper for them to decide the proper disposition of the case before the hearing.²⁰²

In justifying the less-favorable aspects of their decision, the appellate court focused on the fact of Crooks’ conviction for violent crimes and relied on the stereotype of the incorrigible prisoner.²⁰³ Whether intentionally or not, by invoking her previous conviction, the court was signaling that no matter what the prison administrators decided, it was likely rational. As a convicted criminal, Crooks and the other women were anti-social outcasts, and the prison leaders needed to be able to ex-

197. See *Women Against Prison*, *supra* note 1, at 64.

198. See Interview with Carol Crooks, *supra* note 4.

199. See *Crooks v. Warne*, 516 F.2d 837, 839 (2d Cir. 1975).

200. See *Crooks*, 516 F.2d at 839 (departing from the district court’s rule that an inmate subject to discipline should not be held more than twenty-four hours in solitary confinement before being notified in writing of the charges against her).

201. See *Crooks*, 516 F.2d at 839–40 (characterizing the district court’s prohibition on *ex parte* prehearing conversations as “too broad”).

202. *Crooks*, 516 F.2d at 839–40.

203. *Crooks*, 516 F.2d at 839–40.

ert control over them. The Second Circuit's decision did not acknowledge that the complaint came to the court in the context of a deeply entrenched, systemic problem—a total lack of due process in the administration of solitary confinement.

The appellate court also minimized the retribution experienced by the women who filed the lawsuits, as evidenced by its partial reversal of the district court's procedural requirements.²⁰⁴ The appellate court deferred to the institutional need of the prison while mentioning, but ultimately brushing aside, the contemporaneous illegal transfer of women to a *de facto* hospital for the criminally insane.²⁰⁵

The entire decision in *Crooks v. Warne* was soon vacated by *Powell v. Ward*, a class action lawsuit filed by a group of women at Bedford Hills in 1976.²⁰⁶ That decision impacted all prisoners involved in disciplinary proceedings across the state because it set forth general due process standards—many of which still exist today.²⁰⁷

E. *Armstrong v. Ward (1976): Isolation for Women in the Guise of Mental Health Treatment*

For people in women's prisons, dissent is often explained away as mental instability or intellectual deficiency.²⁰⁸ Bedford Hills designated the Matteawan Six and their cohort as intellectually deficient in order to justify their transfer to Matteawan State Hospital.²⁰⁹ Crooks and at least one other woman were transferred to Matteawan because of their supposed "inability to function at the Bedford Hills environment."²¹⁰ The remaining women were labeled as having "reading difficulties."²¹¹ And

204. See *Crooks*, 516 F.2d at 838 (emphasizing Crooks' multiple convictions for violent offenses, the seriousness of the injuries she inflicted upon guards while in prison, and Crooks' continued insubordinate behavior while in solitary confinement); see generally VICTORIA LAW, RESISTANCE BEHIND BARS 10 (2d ed. 2012).

205. See *Crooks*, 516 F.2d at 839–40.

206. *Powell v. Ward*, 542 F.2d 101, 103 (2d Cir. 1976).

207. *Powell*, 542 F.2d at 103–04 (requiring the due process requirements of *Wolff* be applied in adjustment committee hearings); see also *Powell v. Ward*, 392 F.Supp. 628, 629 (S.D.N.Y. 1975).

208. KARLENE FAITH, UNRULY WOMEN: THE POLITICS OF CONFINEMENT & RESISTANCE 71 (2011); see Emily Thuma, *Against the "Prison/Psychiatric State": Anti-violence Feminisms and the Politics of Confinement in the 1970s*, 26 FEMINIST FORMATIONS 26, 32 (2014).

209. *Armstrong v. Ward*, 529 F.2d 1132, 1133 (2d Cir. 1976); Telephone Interview with Stephen M. Latimer, *supra* note 15.

210. *Armstrong*, 529 F.2d at 1133.

211. *Armstrong*, 529 F.2d at 1133.

although it was a violation of state regulations to perform a medical transfer without a referral, Crooks never received one.²¹²

In its coverage of the Matteawan Six, the radical activist magazine DYKE wrote to its subscribers: “It’s up to you—whoever you dykes are reading this—to do something to help these women. Somebody has to because Carol Crooks’ life is in danger the minute the state thinks the women’s movement has lost interest in her.”²¹³

Only months before Crooks’ transfer, the state had begun converting the all-male Matteawan State Hospital for the Criminally Insane into Fishkill Correctional Facility, a co-ed prison.²¹⁴ The Department of Corrections had just authorized the establishment of a women’s institution at the facility in May 1974.²¹⁵ When the Matteawan Six arrived, they were the only women at the prison.²¹⁶ As far as Carol Crooks and the others knew, they had been transferred to an all-male hospital for the criminally insane.²¹⁷ Although the state later argued it had created a new, non-medical unit for women, the distinction between the women’s institution and the hospital was unclear; Crooks and the other women were vulnerable because of the male prisoners’ access to them.²¹⁸ They also found that the staff treated them as though they were criminally insane.²¹⁹

*They didn’t treat us like we were prisoners—criminal prisoners—they treated us like we were criminally insane. If we defied them, they would push the panic button and they would come charging out with these shields, nice billy clubs, and these breast, chest on and everything—handcuffs. Then they would put a straitjacket on you and throw you in an empty room for days at a time. Sometimes months. And all your waste that came out of your body, they would do that—whether you had clothes on your body or you only had on a nightgown. That’s what you lived in.*²²⁰

212. New York’s Department of Corrections later admitted the women were not all transferred for medical reasons. See *Armstrong*, 529 F.2d at 1133.

213. Women Against Prison, *supra* note 1, at 68.

214. *Armstrong*, 529 F.2d at 1132–33.

215. *Armstrong*, 529 F.2d at 1132–33.

216. See Interview with Carol Crooks, *supra* note 4; see also *Armstrong v. Ward*, 529 F.2d 1132–33 (2d Cir. 1976).

217. See Interview with Carol Crooks, *supra* note 4.

218. *Id.*; see also *Armstrong*, 529 F.2d at 1113.

219. Interview with Carol Crooks, *supra* note 4.

220. *Id.*

In many ways, the hospital at Matteawan was worse than solitary confinement at the prison.²²¹ The guards at Matteawan used measures on the women that were crudely tailored for the “criminally insane,” such as binding the women’s arms in restraints, forcing them to remain sedated through medication, and leaving them to live in isolated rooms for long periods of time.²²² The medicine made the women disoriented and caused unhealthy weight gain.²²³ Latimer reports of the conditions at Matteawan:

*They were giving them Thorazine, which was a predecessor to some of the real heavy-duty stuff that they use today. And Thorazine had some real serious side effects, including a condition called Tardive Dyskinesia, which gave you Parkinson’s-like symptoms.*²²⁴

Hidden away at Matteawan, Crooks was far beyond the reach of her network of colleagues and supporters—both in Bedford Hills and on the outside. Yet she developed a way to survive even this level of isolation:

Q: How did you survive that?

*A: Anger. Anger was the only thing that could take me through the whole thing.*²²⁵

After some time at Matteawan, word of Crooks’ transfer reached her friend, Afeni Shakur, and attorney, Steven Latimer.²²⁶ Latimer then traveled to see the women who had been transferred to the facility, accompanied by a medical expert.²²⁷ The doctor who joined him examined the women, but found they had no mental health conditions requiring hospitalization at the facility.²²⁸ Latimer reported that the

221. *Id.*

222. *Id.*

223. *Id.* (“Things that didn’t even look nice or smell nice, you’d eat it up like a dog. So the medication makes you eat like crazy. When I came from there I was almost 90 pounds overweight. Went in 120-something and came out 200-something. Came out a little fat butterball.”).

224. Telephone Interview with Stephen M. Latimer, *supra* note 15.

225. Interview with Carol Crooks, *supra* note 4.

226. Telephone Interview with Stephen M. Latimer, *supra* note 15; Interview with Carol Crooks, *supra* note 4.

227. Telephone Interview with Stephen M. Latimer, *supra* note 15.

228. *Id.*

conditions at Matteawan were significantly worse than those at Bedford Hills.²²⁹ The food was entirely inedible.²³⁰ Male guards and patients often walked through the women's wing.²³¹

With Latimer's help, Crooks and her peers filed a lawsuit—what later became *Armstrong v. Ward*—seeking a permanent injunction from having women sent to Matteawan.²³² Their complaint alleged procedural violations in their transfer to the facility, which had been conducted without notice or a hearing.²³³

As word of the women's transfer to Matteawan spread, a movement coalesced in feminist, Black and Latino power, gay rights, and prison activist circles.²³⁴ Feminist magazines like *Off Our Backs* dedicated their coverage to advocate for the Matteawan Six to be returned to Bedford Hills.²³⁵

Supporters from the feminist community sought help from the state's first female Lieutenant Governor, Mary Anne Krupsak.²³⁶ At the time, Krupsak's office was heavily involved in many cutting-edge women's rights issues.²³⁷ Krupsak's team gathered information about the women and arranged for her to meet with the Commissioner of Corrections, Benjamin Ward.²³⁸ After the meeting, the Commissioner directed the prison administrators to return the women to Bedford Hills.²³⁹ The state complied, then argued that the Matteawan women's unit was permanently shut down.²⁴⁰ After eight months in the mental health hospital, all of the women returned to Bedford Hills.²⁴¹

229. See *Armstrong v. Ward*, 529 F.2d 1132, 1133 (1976).

230. *Armstrong*, 529 F.2d at 1133.

231. See Interview with Carol Crooks, *supra* note 4; see also *Armstrong*, 529 F.2d at 1133.

232. *Armstrong*, 529 F.2d at 1133.

233. *Armstrong*, 529 F.2d at 1133.

234. See *Women Against Prison*, *supra* note 1, at 65–66 (mentioning the involvement of Florynce Kennedy of Black Feminist Lawyers with the Bedford Hills' news press conference).

235. Crooks, *supra* note 178, at 23.

236. *Women Against Prison*, *supra* note 1, at 66.

237. Email from Mary Anne Krupsak, Former Lieutenant Governor of N.Y., to Amber Baylor, Assoc. Professor of Law & Crim. Def. Clinic Dir., Tex. A&M U. (June 13, 2016, 17:56) (on file with author).

238. *Id.*

239. *Women Against Prison*, *supra* note 1, at 66.

240. See generally *Armstrong v. Ward*, 529 F.2d 1132 (2d Cir. 1976). However, in July 1976, the prison sent another group of women to Matteawan for disciplinary infractions. Those women also filed a lawsuit, and the court granted a preliminary injunction ordering their return to the prison. See *Liles v. Ward*, 424 F. Supp. 675 (S.D.N.Y. 1976).

241. See *Armstrong*, 529 F.2d at 1132.

The Second Circuit eventually dismissed *Armstrong v. Ward* as moot.²⁴² But the court's order did condemn the Department of Corrections' procedural violations.²⁴³ The transfer to Matteawan can be read as a way to diminish Crooks' claim, which was on appeal to the Second Circuit.²⁴⁴ Transferring Crooks and her comrades out of Bedford Hills allowed the prison to cast the women as mentally unstable and to cut the women off from their networks, further distinguishing the "dissenters" from the rest of the prison community.²⁴⁵

F. *Powell v. Ward (1975): The Women Collectively Challenge
Disciplinary Procedures*

In the aftermath of the uprising and the transfer, the women at Bedford Hills realized that the procedural protections Crooks secured in her first lawsuit, *Crooks v. Warne*, applied only to Crooks.²⁴⁶ They met en masse with Latimer to ask him to file a suit on behalf of all the women at Bedford Hills.²⁴⁷ Latimer agreed to represent a class of women from the prison in order to force a change to prison-wide policies.²⁴⁸

Latimer filed a class action lawsuit, *Powell v. Ward*, in 1975 and listed selected women from the facility as representatives of the class.²⁴⁹ At the time *Powell v. Ward* was filed in district court, the appeal to the Second Circuit in Crooks' individual lawsuit was still pending.

In *Powell*, the women of Bedford Hills focused on the systemic nature of due process violations in disciplinary decisions at the prison.²⁵⁰ The case was filed before the district court shortly after the Supreme Court decided *Wolff v. McDonnell*, a class action lawsuit by individuals incarcerated at a men's prison in Nebraska.²⁵¹ *Wolff* established that

242. *Armstrong*, 529 F.2d at 1136.

243. *Armstrong*, 529 F.2d at 1132.

244. Interview with Carol Crooks, *supra* note 4.

245. *Id.*

246. *See id.*

247. *Id.*

248. *See id.*; *see also* Telephone Interview with Stephen M. Latimer, *supra* note 15.

249. *Powell v. Ward*, 392 F. Supp. 628, 628 (S.D.N.Y. 1975).

250. *See Powell*, 392 F. Supp. at 626; *Crooks v. Warne*, 516 F.2d 837, 837 (1975); *see also Abuse of Women Convicts Charged*, N.Y. TIMES, Oct. 9, 1974 (describing Latimer's plan to challenge prison after women were "thrown into segregation" following an uprising).

251. *See generally Wolff v. McDonnell*, 418 U.S. 539 (1974). In fact, Latimer was initially unaware that *Wolff* was being considered by the Court, but he later tailored his complaint to the decision. *See* Telephone Interview with Stephen M. Latimer, *supra* note 15.

minimal due process requirements must be observed in prison disciplinary decisions.²⁵² Specifically, the Supreme Court held that a prison must provide notice of charges in disciplinary proceedings.²⁵³ The prison's disciplinary process must also provide an opportunity for prisoners to call and confront witnesses unless the prison finds that doing so would unduly compromise safety.²⁵⁴

Latimer recalls that the district court judge visited the prison to view the conditions firsthand in response to the lawsuits filed by the women.²⁵⁵ With *Wolff* as a backdrop, the district court decided *Powell* in April of 1975, holding that the state's policies had violated due process protections.²⁵⁶ The decision required the prison to provide notice of disciplinary charges at least 24 hours in advance of a hearing, notify individuals before the committee that they could call witnesses (if doing so would not compromise safety), hold a disciplinary hearing within seven days of special confinement, and provide a record of evidence relied upon during the proceeding.²⁵⁷ The decision also prevented any person who witnessed an incident or was responsible for institutional security from serving on the Adjustment Committee.²⁵⁸

The litigants behind *Powell v. Ward* soon became aware of the importance of the work they had done. When word of their successes before the district court reached the women, they were elated. Crooks recalls:

This was like a 'hip, hip, party hooray,' because women had never, ever spoke out against prison officials. . . . We all came together and met up and met in the lawyers' visiting room. And [the lawyers] were speaking about our cases in the visiting room. And the men [in prison] were so happy there were changes that affected everybody. Because the one male that had did any fighting—[his case] only affected him, it didn't affect the other prisoners. Because other prisoners couldn't come together like we did to affect a class action. So it changes things. The due right process, for lockup, or a—I'm missing my words right now—the

252. See *Wolff*, 418 U.S. at 555.

253. See *Wolff*, 418 U.S. at 555.

254. One weakness of *Wolff* is its deference to institutional administrators in determining whether safety considerations will prevent an individual's ability to confront and call witnesses. See *Wolff*, 418 U.S. at 563–66.

255. See Telephone Interview with Stephen M. Latimer, *supra* note 15.

256. See *Powell*, 392 F. Supp. at 630.

257. *Powell*, 392 F. Supp. at 632.

258. *Powell*, 392 F. Supp. at 633.

*due right process of what our rights was—whether you were being locked up and put in segregation, or locked up and thrown out of your job, or if you were being locked up in parochial school, high school, or college, you had a right to the due right process. And it comes from Powell versus Ward—it just didn't cover the inmates, it covered anybody in society. . . . You can quote this rule of law to assist you.*²⁵⁹

Powell also provided resources for the women to continue their work.²⁶⁰ The lawsuit resulted in an award of \$127,000, which the women reinvested in programming for inmates at the prison.²⁶¹ The women also took steps towards formal, democratic power structures. Informal group leaders moved the women imprisoned at the facility to elect representatives to a steering committee.²⁶² Once elected, the committee disseminated a survey to all the women to ascertain their funding priorities.²⁶³ They then purchased office supplies, legal research materials, and books about Black and Latino history.²⁶⁴ They also bought telephones so that the women could contact family members and supporters more than once a month.²⁶⁵ The committee supported women reentering the community by giving them start-up funds.²⁶⁶ They also paid for lawyers in order to continue challenging the prison's procedural and substantive rights violations.²⁶⁷

Powell v. Ward provided more than a monetary award—the case was also cited by complainants across the country because it delineated inmates' rights in disciplinary hearings and established an incarcerated person's right to an impartial disciplinary hearing.²⁶⁸ It provided guidance as to how the protections in *Wolff* should be applied to disciplinary hearings—particularly in the context of solitary confinement.²⁶⁹

259. Interview with Carol Crooks, *supra* note 4.

260. Interview with Carol Crooks, *supra* note 4; Melvin, *supra* note 28, at 9.

261. Interview with Carol Crooks, *supra* note 4; Melvin, *supra* note 28, at 9. Accounting for inflation, this would be the equivalent of an award for \$595,000 in 2018. US INFLATION CALCULATOR, <https://www.usinflationcalculator.com> (last visited Sept. 21, 2018).

262. See Interview with Carol Crooks, *supra* note 4; Melvin, *supra* note 28, at 9.

263. Melvin, *supra* note 28, at 9.

264. See Interview with Carol Crooks, *supra* note 4; Melvin, *supra* note 28, at 9.

265. Interview with Carol Crooks, *supra* note 4; Melvin, *supra* note 28, at 9.

266. Interview with Carol Crooks, *supra* note 4; Melvin, *supra* note 28, at 9.

267. Interview with Carol Crooks, *supra* note 4; Melvin, *supra* note 28, at 9.

268. Melvin, *supra* note 28, at 9.

269. Telephone Interview with Stephen M. Latimer, *supra* note 15.

In 1976 the Second Circuit changed some of the protections granted by the district court.²⁷⁰ The court permitted prison officials to sit on the disciplinary committees and made an emergency exception to the rule that a Superintendent's Proceeding must be conducted within seven days of special confinement.²⁷¹ The court acknowledged the risk that the exception could be abused.²⁷²

The organizers at Bedford Hills had provided a model for class action lawsuits by prisoners. For decades, cases that involved collective challenges to prison conditions used *Powell* as a model for certifying a class of prisoners.²⁷³ The *Powell* decision established the minimal protections required by due process for all New York prisoners in disciplinary proceedings.²⁷⁴

In 1977 the same group of women involved in the first three lawsuits (*Crooks*, *Armstrong*, and *Powell*) sued the prison for allowing male guards uninhibited access to women as they changed in their cells.²⁷⁵ They raised their claims in federal court, and had some success in obtaining increased privacy protections from guards' surveillance.²⁷⁶ They also brought subsequent challenges regarding the prison's religious dress limitations and lack of vocational courses.²⁷⁷

The litigants at Bedford Hills were the forerunners of prisoners' rights litigation. These women led the prisoners' rights movement in New York and made lasting inroads against the American carceral system.²⁷⁸ Their legal challenges were a significant contribution to the evo-

270. *Powell*, 542 F.2d at 103–04.

271. *Powell*, 542 F.2d at 103–04.

272. *Powell*, 542 F.2d at 104.

273. *See, e.g.*, *Hayes v. Walker*, 555 F.2d 625, 629 (7th Cir. 1977) (citing *Powell v. Ward* to argue for the right to call witnesses in disciplinary proceedings); *United States ex rel. Speller v. Lane*, 509 F. Supp. 796, 801 (S.D. Ill. 1981) (stating that “due process is violated where an inmate’s request to call witnesses is automatically denied”).

274. *See Hayes*, 555 F.2d at 629; *Lane*, 509 F. Supp. at 801.

275. *Forts v. Ward*, 621 F.2d 1210, 1211–12 (2d Cir. 1980); *Forts v. Ward*, 566 F.2d 849, 851 (2d Cir. 1977). Elizabeth Powell, Iola Forts, Cynthia Reed, Doris Armstrong, Margaret Leak, Carol Crooks, Leslie Mason, Gloria Jones, Daisy Garcia, Barbara Lee, Dollree Mapp and Deidre Plain were named plaintiffs in a number of Second Circuit decisions in the 1970s and 1980s involving protections for incarcerated people. *Forts*, 621 F.2d at 1210; *Forts*, 566 F.2d at 849; *Powell v. Ward*, 542 F.2d 101 (1976); *Armstrong v. Ward*, 529 F.2d 1132 (1976).

276. *Forts*, 1210 F.2d at 1216–17; *Forts*, 566 F.2d at 854; *DIAZ-COTTO*, *supra* note 18, at 332–33.

277. Telephone Interview with Stephen M. Latimer, *supra* note 15.

278. *Forts*, 621 F.2d at 1210; *Forts*, 566 F.2d at 849; *Powell*, 542 F.2d at 101; *Armstrong*, 529 F.2d at 1132.

lution of class action lawsuits against prisons and represented a new articulation of the dignity interests of people who are incarcerated.

II. CENTERING WOMEN'S ORGANIZING ROOTS IN MODERN PRISONERS' RIGHTS WORK

*And it amazed me that when I went to jail, I found out that I had a right to have what everybody else had, regardless if I was locked up. And if these people at these facilities, if they don't act properly, I have the right to whip them with they own laws. And their own people would set them straight. And that made me feel good.*²⁷⁹

Centering women within the discussion of the prisoners' rights movement acknowledges the theoretical work and contributions of women in prison as broadly transferable to critiques of the criminal justice system.²⁸⁰ The centering of women focuses on "women's prison experiences" as "prison experiences"—worthy of examination for the participants' roles in the trajectory of prisoners' rights. Articulating the experiences of women-identifying prisoners and dissecting the aspects of organizing that were unique to them adds to a deeper understanding of prisoners' rights litigation. It is a history that should be used to inform future movements.

Society's treatment of women—particularly women who are poor, Black or Latina, or gender non-conforming—informed the experiences and skill set of the women at Bedford Hills in the 1970s. These experiences developed the women's resilience and creativity, which were necessary for propelling forward the broader prisoners' rights movement.²⁸¹ A number of aspects of the accounts from Bedford Hills have gone largely unappreciated, including the impact of women from radical po-

279. Interview with Carol Crooks, *supra* note 4.

280. The project of centralizing women's voices should not solely on "women prisoner issues." Even work in very gendered areas, such as parenting rights or reproductive (medical) rights, affects people in men's prisons.

281. Despite a focus on women, the project of centering women seeks to dissolve gender-essentialized narratives. Women were not uniquely able due to inherent qualities of gender; rather, they often had some shared experiences based on social position. HOOKS, *supra* note 42, at xvi ("This sense of wholeness, impressed upon our consciousness by the structure of our daily lives, provided us an oppositional world view—a mode of seeing unknown to most of our oppressors, that sustained us, aided us in our struggle to transcend poverty and despair, strengthened our sense of self and our solidarity.").

litical parties in the prison, the modes of activism with prison, and the impact of the feminist law projects that provided legal education to the women.

A. *Calling Upon Intersectional Networks for Support*

In order for the plaintiffs and lawyers in the class action lawsuit *Powell v. Ward* to successfully challenge the prison's use of solitary confinement, women had to collaborate across language, race, socioeconomic status, and sexual preference.²⁸² Finding ways to communicate across statuses was critical to the litigation because it allowed the women to better identify the harms and goals of the litigation, select named plaintiffs, gather evidence of procedural impropriety, and protect litigants.²⁸³ The women at Bedford Hills in the 1970s proved to be adept in strategic organizing.²⁸⁴ All of their efforts to collaborate—holding meetings, electing representatives from different communities, mediating past disputes, developing consensus on litigation goals, and sharing information from the lawyers—had to occur under the prison officials' supervision.²⁸⁵ Accordingly, the women had to develop complicated strategies for gathering evidence without the prison discovering what they were doing.²⁸⁶ Sociologist Juanita Díaz-Cotto characterized the organizing at Bedford Hills as underground political activism: the women's expertise in building underground networks, political awareness, and legal research skills contributed to effective collaboration systems in the prison.²⁸⁷

Many within the prison felt that their safety relied on public awareness of their struggles.²⁸⁸ They called upon and built alliances with many outside organizations, and then asked their allies to hold prison officials accountable for the safety of those within the prison.²⁸⁹ Even in solitary and while at Matteawan, Carol Crooks was able to slip out written communication to allies.²⁹⁰ She wrote a letter that was published in

282. DÍAZ-COTTO, *supra* note 18, at 342.

283. *Id.*

284. *Id.*

285. *Id.*

286. Interview with Carol Crooks, *supra* note 4.

287. DÍAZ-COTTO, *supra* note 18, at 343, 354.

288. Crooks, *supra* note 178, at 23.

289. As an example, the women's supporters were able to get assistance from feminist politicians like New York's Lieutenant Governor, Mary Anne Krupsak. See *supra* Section I.E. for more on Krupsak's response to the situation at Bedford Hills.

290. Interview with Carol Crooks, *supra* note 4.

the March 1976 edition of the feminist magazine *Off Our Backs* describing her experience:

It helps us women to know that we are supported, and it makes a big difference in the kind of justice we get. If we are alone in that courtroom, the state does whatever it wants. . . . We implore all women's organizations to help us. . . . If we lose in court, all of you lose your minds and spirits too someday.²⁹¹

The women of Bedford Hills aligned their struggle with other movements. Because of the ways the women framed their struggle, outside activists were able to see supporting the women as furthering their own causes. The Black Panther Party (BPP), Latinx organizations, LGBT coalitions, feminist politicians, and women lawyer networks all offered support to the women because they were motivated by the particular discrimination that prisoners from minority communities faced.²⁹² For example, it was widely known that many prison administrators overused discipline against women who they identified as gender non-conforming, and particularly targeted Black lesbians.²⁹³ The women also reported that staff members unfairly punished Latina prisoners for speaking Spanish.²⁹⁴ It was apparent to women on the inside that there was a relationship between their challenges in prison and their status as members of disadvantaged people, so they relied on feminist lawyers, such as Florynce Kennedy of the National Black Feminists Organization, and lesbian and women's rights activists to publicize and protest their mistreatment.²⁹⁵ This technique was feasible because the women

291. Crooks, *supra* note 178, at 23.

292. See DÍAZ-COTTO, *supra* note 18, at 341.

293. Women were disciplined for having intimate relationships in the prison. Interview with Carol Crooks, *supra* note 4. See also JOEY L. MOGUL ET AL., QUEER (IN)JUSTICE: THE CRIMINALIZATION OF LGBT PEOPLE IN THE UNITED STATES 7–8, 104 (2011) (describing how black lesbian prisoners were seen as sexual assaulters).

294. DÍAZ-COTTO, *supra* note 18, at 278.

295. See, e.g., *Abuse of Women Convicts Charged*, *supra* note 250; *Women Against Prison*, *supra* note 1, at 65–66. Florynce Kennedy was a prominent feminist lawyer and activist. SHERIE M. RANDOLPH, FLORYNCE “FLO” KENNEDY: LIFE OF A BLACK FEMINIST RADICAL 1–9 (2015). She was a founder of the national feminist movement, and often spoke alongside Gloria Steinem, yet she remained critical of the mainstream feminist movement's marginalization of Black women. *Id.* at 5–7, 224–25. Her work with various organizations was very media-focused and Kennedy was skilled in wielding popular media to further her causes. *Id.* at 2, 4–5. One example is the press conference she presided over for the Matteawan Six. *Abuse of Women Convicts Charged*, *supra* note 250.

intentionally approached their struggle within that context of their intersectional experiences.

B. *Enhanced Political Education from the Movement*

Political prisoners incarcerated in the 1960s and 1970s galvanized other inmates in a number of ways. First, as legal historian Donald Tibbs argues, the BPP encouraged prisoners to recognize that all incarcerated people could claim the status of a political prisoner, given the disproportionate number of prisoners from marginalized communities.²⁹⁶ Second, the BPP argued that the prison system upheld white supremacy.²⁹⁷ These political leaders also taught rudimentary literacy skills since many people in the prison were not formally educated.²⁹⁸ Importantly, unlike most prisoners, many political prisoners also had access to legal support after their incarceration.²⁹⁹ BPP activists in prison developed networks that allowed all prisoners to get assistance from outside organizations.³⁰⁰

The political prisoners' own experiences as marginalized people within their own political and social organizations—particularly as victims of gender discrimination—informed the way they organized in prisons.³⁰¹ This experience informed the political education that these women provided and made evident the need to merge feminist, gay, and Black and Brown power networks.³⁰² The result was that when the

296. DONALD F. TIBBS, *FROM BLACK POWER TO PRISON POWER: THE MAKING OF JONES V. NORTH CAROLINA PRISONERS' LABOR UNION* 89 (2012). Tibbs highlights the distinction between the Prisoners' Rights Movement and the Political Prisoner Movement. While the Prisoners' Rights Movement highlighted prison reform, the Political Prisoner Movement centered itself in a global struggle. *Id.* at 87–89. Point 8 of the Black Panther Party's "Ten-Point Program" is "Freedom for all Black people in prisons and jails." *Black Panther Party Platform and Program*, reprinted in *LOOK FOR ME IN THE WHIRLWIND*, *supra* note 110, at 603.

297. TIBBS, *supra* note 296, at 88–89.

298. *Id.* at 88.

299. Sundiata Acoli, *An Updated History of the New Afrikan Prison Struggle*, in *LOOK FOR ME IN THE WHIRLWIND*, *supra* note 110, at 60.

300. TIBBS, *supra* note 296, at 107–08.

301. KUWASI BALAGOON & HAYWOOD BURNS, *LOOK FOR ME IN THE WHIRLWIND: THE COLLECTIVE AUTOBIOGRAPHY OF THE NEW YORK 21* (1971), reprinted in *LOOK FOR ME IN THE WHIRLWIND*, *supra* note 110, at 529; see generally JASMINE GUY, *AFENI SHAKUR: EVOLUTION OF A REVOLUTIONARY* 92, 107, 109 (2004).

302. Thuma, *supra* note 208, at 28. Shakur wrote of her time in prison: "I do not regret any of it—for it taught me to be something that some people will never learn—for the first time in my life I feel like a woman—beaten, battered and scarred maybe, but

women called for outside support, they spoke with an unusually amplified and unified voice.

Afeni Shakur was one of these dedicated political activists who had been imprisoned because of her BPP affiliation.³⁰³ She first met Crooks during her time at Women's House of Detention, a New York City jail, in the late 1960s.³⁰⁴ Crooks and Shakur connected right away. Shakur and another woman, Joan Bird, were among the "New York 21"—the 21 people affiliated with the Harlem and Bronx chapter of the BPP who were arrested in 1969 for conspiring to kill police officers.³⁰⁵ The highly publicized case was later revealed to have been based on unfounded charges created by COINTELPRO, an anti-leftist, covert FBI operation.³⁰⁶

When bail was set after their arrest, Shakur and Bird made a fundraising appeal to the community of women philanthropists who were sympathetic to their cause.³⁰⁷ This group raised enough money to free Shakur and Bird and organized to attend Shakur and Bird's court appearances.³⁰⁸ In 1971, two of the women's male co-defendants (and BPP leaders) fled the country, jumping bail, without alerting Shakur or

isn't that what wisdom is truly made of?" BALAGOON & BURNS, *supra* note 301, at 529.

303. By the late 1960s, Afeni Shakur was well known as a leader within the New York Black Panther Party. She remained engaged in Black human rights efforts throughout her life, but she is best known as the mother of the artist Tupac Shakur. See GUY, *supra* note 301 (providing a more personal and gender-conscious take on her experience as a woman in the Party). For more of her political writing about her work in the Black Panther party, see BALAGOON & BURNS, *supra* note 301.

304. The dynamics of Shakur's role in educating women in New York jails very much reflects the work of Black Panther Party members in jails during this time. TIBBS, *supra* note 296, at 88. Much of the material for her course was rooted in communist philosophy, was international in scope, and offered critiques of capitalism and institutionalized racism. *Id.* There were some philosophic distinctions in the BPP's prison work—legal historian Donald Tibbs writes that “the Prisoners' Rights Movement focused on legislative reform for changing prison. Political prisoner movement radicals looked beyond administrative reforms, to situate prisoners' rights within a national and global struggle to revolutionize democracy.” *Id.*

305. *déqui kioni-sadiki*, *supra* note 110, at 21, 22–24. (In the aftermath of the revelation of COINTELPRO's acts, the Church Committee hearings followed, which led to the eventual dismantling of COINTELPRO.) Shakur and her only other female codefendant, Joan Bird, were imprisoned in 1969 with bail set at \$100,000. Reflecting on her experience with her male codefendants, Shakur stated, “women have to find strength from other women.” GUY, *supra* note 301, at 111.

306. GUY, *supra* note 301, at 111.

307. *Id.* at 106.

308. *Id.*

Bird.³⁰⁹ As soon as the court learned of the men's flight, it revoked Bird's and Shakur's bail and detained them at Women's House of Detention, even though Shakur was pregnant.³¹⁰ Thirteen of the 21 members went to trial, including Shakur, and all were acquitted.³¹¹

Even before her arrest, Shakur had been pushing for greater opportunities for women within the BPP, including arms training and access to political education.³¹² Upon release, she continued to support women at Bedford Hills from the outside.³¹³ The political education that activists like Shakur shared with women at Bedford Hills laid the foundation for the lawsuits and activism that would come.

C. *Legal Education in Prisons Through Feminist Law Projects*

In addition to the training that incarcerated women received from political activists during the 1970s, they were increasingly able to gain legal research skills from volunteer teachers within prisons. The imprisonment of recognized political leaders like Angela Davis ignited feminist lawyers' interest in assisting women in prison.³¹⁴ Women's rights attorneys and law students began to develop law projects for women in prison.³¹⁵ Until the mid-1970s, grassroots prison activism had centered on men in prison.³¹⁶ Starting in the early 1970s, collectives of feminist legal workers started holding a variety of courses at the prison.³¹⁷ These attorneys were often already active in the feminist movement and believed that they had a responsibility to assist incarcerated women.³¹⁸

309. *Id.* at 109; BALAGOON & BURNS, *supra* note 301, at 529 (Afeni Shakur writes, "February 8th when Joan and I came back to jail I was full of distrust, disappointment and disillusionment.").

310. GUY, *supra* note 301, at 109.

311. déqui kioni-sadiki, *supra* note 110, at 21, 22–24.

312. GUY, *supra* note 301, at 102.

313. Telephone Interview with Stephen M. Latimer, *supra* note 15.

314. Karlene Faith, *Reflections on Inside/Out Organizing*, 27 SOC. JUST. 158, 160 (2000); see FAITH, *supra* note 9, at 315.

315. DÍAZ-COTTO, *supra* note 18, at 25; FAITH, *supra* note 9, at 275–373; Ellen Barry, *Women Prisoners on the Cutting Edge: Development of the Activist Women's Prisoners' Rights Movement*, 27 SOC. JUST. 168, 169–70 (2000).

316. Barry, *supra* note 315, at 319.

317. DÍAZ-COTTO, *supra* note 18, at 25; FAITH, *supra* note 9, at 275–373; Barry, *supra* note 315, at 169.

318. FAITH, *supra* note 9, at 275–373; Barry, *supra* note 315, at 169.

One project these feminist lawyers undertook was to train the women prisoners in legal research.³¹⁹ Sociologist Díaz-Cotto reports that post-Attica reforms facilitated this shift because they increased volunteer access to the prisons.³²⁰ The Santa Cruz Women's Prison Project started teaching community education and cultural courses at California's women's prisons in 1972.³²¹ In New York, the Women Law Project started offering legal courses for women in prison.³²² Law students at New York University School of Law taught courses in prisons to assist their "sisters in the movement."³²³

Some observers and participants critiqued the "sisterhood" justification for working in prisons as overly simplistic and patronizing.³²⁴ They noted that many of the instructors had no experience in prison, were not a part of racially marginalized communities, and had very little in common with the women they were teaching.³²⁵ But others described the "sisterhood" framing as necessary to "align interests" because it assumed common gender oppression.³²⁶

In any case, the attorneys' efforts helped women in the prison develop research expertise that was useful to their later litigation. As Latimer reports, by the end of the 1970s women prisoners were filing their own legal challenges.³²⁷ The arrangement was also beneficial in that it helped the activists to be able to relay information to the outside world about the concerns of women inside the prison.³²⁸

Crooks describes the importance of the feminist law projects to the litigation. At one point, early on, Crooks received advice from another woman who was incarcerated and worked in the prison library.³²⁹ The woman pushed Crooks to begin thinking of her mistreatment as something that could be challenged through litigation.³³⁰ The librarian's skill

319. *8 Women N.Y.U Law Students and 2 Professors Teach Course to Bedford Hills Prisoners*, N.Y. TIMES, (Oct. 14, 1973), <http://www.nytimes.com/1973/10/14/archives/8-women-ny-u-law-students-and-2-professors-teach-course-to-bedford.html>.

320. DÍAZ-COTTO, *supra* note 18, at 275.

321. FAITH, *supra* note 9, at 160.

322. DÍAZ-COTTO, *supra* note 18, at 275.

323. *8 Women N.Y.U Law Students and 2 Professors Teach Course to Bedford Hills Prisoners*, N.Y. TIMES, (Oct. 14, 1973), <http://www.nytimes.com/1973/10/14/archives/8-women-ny-u-law-students-and-2-professors-teach-course-to-bedford.html>.

324. Jodie M. Lawston, "We're All Sisters": *Bridging and Legitimacy in the Women's Antiprison Movement*, 23 GENDER & SOC'Y 639, 642 (2009).

325. *Id.* at 643.

326. *Id.* at 652 (describing the framework being used to build bridges).

327. DÍAZ-COTTO, *supra* note 18, at 340–41.

328. Faith, *supra* note 314, at 160.

329. Interview with Carol Crooks, *supra* note 4.

330. *Id.*

in legal research was likely the result of their legal training programs.³³¹ As Crooks remembers it, she spoke to the woman about the disciplinary treatment she received at the prison:

*It was an inmate; she was an Italian, white inmate. She worked in the law library. She had her paralegal certificate and ran the law library. . . . She found out about civil suits, [and told me] that I could challenge [conditions].*³³²

Legal education programs contributed to the women's articulation of dignity rights and rights violations in prison. During the early 1970s, many incarcerated women, including Crooks, began to argue that they had individual rights worthy of legal protection:

*We didn't understand that for a long time—until Afeni's group of lawyers from South Bronx Legal Services taught us how to fight prison officials, even though we were criminals, even though we had violated the rule of law. But we still had a right as individuals, human beings—to be treated like human beings.*³³³

Their legal education also allowed the women to be active in developing their own cases.³³⁴ Networks of women throughout the facility surreptitiously collected evidence that was used in the *Crooks v. Warne* and *Powell v. Ward* lawsuits:

*I hung around a lot of inmates that were in different departments, with different officials. And also civilians. Civilians can be a resource. They were not considered a correctional officer. Inmates worked all over the facility to assist these personnel. And that's how we stole information from the departments—that we needed—to show we weren't lying. Because they used to always say we were lying, or it wasn't true, or we were making it up. They wasn't used to dealing with us.*³³⁵

331. DÍAZ-COTTO, *supra* note 18, at 340–41.

332. *Id.* at 5. During the hearing in *Crooks v. Warne*, Crooks testified that she had attempted to have a fellow incarcerated woman, who had been trained in legal research, represent her at her Superintendent proceeding when solitary confinement was first imposed, though her request was denied. Transcript of Record at 354–59, *Crooks*, No. 74 Civ. 2351.

333. Interview with Carol Crooks, *supra* note 4.

334. Telephone Interview with Stephen M. Latimer, *supra* note 15.

335. Interview with Carol Crooks, *supra* note 4.

Women were effective because they worked in underground collectives.³³⁶ One organizer at Bedford Hills reported that women circulated petitions for signatures between groups and housing units by using underground networks.³³⁷ Joan Bird, Shakur's co-defendant in the New York 21 trial, also commented on the well-organized women's networks inside of the prison during her stay in the Women's House of Detention.³³⁸ She wrote, "The sisters in there are actually very beautiful. Because they are all from the colony and they know about how rough it is and how hard it is to survive. And they know about how to use different methods to get around and survive."³³⁹

The roots of contemporary resistance to mass incarceration developed largely within the women-prisoner rights networks.³⁴⁰ The presence of political activists in prison—and the activists' acknowledgement of their own experiences of gender-oppression in outside organizations—contributed to much of the women's work at Bedford Hills. The women were also assisted by feminist law projects that were just developing in the 1970s. The litigants at Bedford Hills were pioneers of the emerging prisoners' rights movement because of—not in spite of—their backgrounds of poverty and discrimination. The women were able to harness their experiences as tools to assert their personhood and dignity. Their articulation of rights also inspired other prisoners in the early years of prisoners' rights litigation.³⁴¹

III. SOURCES AND RAMIFICATIONS OF MARGINALIZATION

No I didn't speak about it. There were men up there that used to get arrested and come back to work. It was a big easy thing for a man to get arrested and go back to his job and stuff like that. It wasn't a big thing. Women, you just didn't talk about that stuff. It was hard as it was.

What are the causes and consequences of marginalizing women's contributions to prisoners' litigation? How are women excluded from

336. See DÍAZ-COTTO, *supra* note 18, at 334.

337. *Id.* at 343.

338. BALAGOON & BURNS, *supra* note 301, at 486.

339. *Id.*

340. See Emily Thuma, *Lessons in Self-Defense: Gender Violence, Racial Criminalization, and Anticarceral Feminism*, 43 *Women's Stud. Q.* 52, 54 (2015); Barry, *supra* note 315, at 168–69.

341. Interview with Carol Crooks, *supra* note 4.

discussions on prison conditions and what are the ramifications of that exclusion? This Article is an example of centering women in the effort to advance transformational work on prison conditions. Telling women's stories has the potential today to upset paternalistic perceptions of women in prison, particularly regarding experiences of disciplinary actions and solitary confinement.³⁴² Inclusion of women's historical accounts helps to advance our current understanding of the criminal legal system.³⁴³

The accounts from Bedford Hills indicate that the experience of women within the system was both significant to the beginnings of prisoners' rights litigation, but de-centered—possibly because of the danger the women represented to the status quo. Their accounts document both the horrors of solitary confinement and the women's strategic efforts to challenge it. The women's legal challenges to discipline procedures and punitive medicalization were progressive for their time, and still are.³⁴⁴

There are many reasons, both intentional and unintentional, why the history of women in prison litigation has been marginalized. As described below, at least three themes emerge from these oral history accounts: First, the women's accounts were de-legitimized because the women were labeled as medically unstable. Second, there are a number of structural barriers—including the survival work women have to do after release—that result in the erasure of women's stories from prisons. Finally, those that support prison systems using disciplinary measures like solitary confinement are those that benefit from silence regarding women's experiences.

342. See, e.g., HOOKS, *supra* note 42, at xvi (asserting that “feminist theory lacks wholeness” because it “emerges from privileged women who live at the center”); Mario Barnes, *Black Women's Stories and the Criminal Law: Restating the Power of Narrative*, 39 U.C. DAVIS L. REV. 941, 945 (2006) (seeking to give “voice to the counter-narratives of disenfranchised women” and “advancing methods to challenge the systems of power that are partially responsible for instantiating and misrepresenting black female lives within the criminal law.”).

343. See Barnes, *supra* note 342, at 945; see also *An Organizer's Resource and Tool Kit*, INCITE! WOMEN OF COLOR AGAINST VIOLENCE, http://incite-national.org/sites/default/files/incite_files/resource_docs/3696_toolkit-final.pdf (last visited Sept. 18, 2018).

344. See Telephone Interview with Stephen M. Latimer, *supra* note 15. Modern practice of using solitary confinement for medical reasons is a developing area of the law. See Sari Horwitz, *Federal Prisons Keeping Mentally Ill in Solitary Confinement for Long Stretches of Time, New Report Says*, WASH. POST (July 12, 2017), https://www.washingtonpost.com/world/national-security/federal-prisons-keeping-mentally-ill-in-solitary-confinement-for-long-stretches-of-time-new-report-says/2017/07/12/0668a3f4-6717-11e7-9928-22d00a47778f_story.html.

A. *Pathologizing Dissent*

Treating non-docile women as crazy is deeply embedded in our society, and is particularly manifest in our women's prisons.³⁴⁵ Paternalism pathologizes women's discontent.³⁴⁶ Scholars of women in prison, such as Karlene Faith, describe how women's challenges to prison norms, including making valid assertions of their rights, are conflated with hysteria.³⁴⁷ Prisons often treat women deemed noncompliant as "crazy."³⁴⁸ At the time of the Bedford Hills lawsuits, it was not uncommon for dissenting women to be shuttled off to places like Matteawan State Hospital for the Criminally Insane after vocalizing concerns.³⁴⁹ It occurred in many women's facilities across the country.³⁵⁰ These transfers coincided with the rise in the use of psychochemicals and forced medication of women in prison during the 1960s and 1970s.³⁵¹

When the women of Bedford Hills rebelled, they were not simply placed in solitary confinement—they were also transferred out of the facility and tranquilized.³⁵² Prison officials beyond those at Bedford Hills used this invasive, physical incapacitation to quell disruption.³⁵³ Allegations of mental illness and medical transfers to hospitals undermined the reasonableness of the women's claims. Importantly, once heavily sedated, the dissenting women may also have appeared to be as ill as the officials claimed.³⁵⁴ Sedation, like segregation, was used to

345. See Telephone Interview with Stephen M. Latimer, *supra* note 15.

346. Thuma, *supra* note 208, at 30–39.

347. FAITH, *supra* note 9, at 230–37; Thuma, *supra* note 208, at 30.

348. Thuma, *supra* note 208, at 30.

349. See HARRIS, *supra* note 87, at 54–56.

350. Thuma, *supra* note 208, at 30. While these transfers may have capitalized on the image of women as mentally unstable, other vulnerable communities in prison face the same risk of medicalization today. In particular, people who have a mental illness or an intellectual disability are often over-medicated and unnecessarily subjected to solitary confinement. Their disability serves as a justification for gratuitous punishment. See OFFICE OF THE INSPECTOR GENERAL, REVIEW OF THE FEDERAL BUREAU OF PRISON'S USE OF RESTRICTIVE HOUSING FOR INMATES WITH MENTAL ILLNESS (2017), <https://oig.justice.gov/reports/2017/e1705.pdf>.

351. Thuma, *supra* note 208, at 32. Thuma refers to the development and use of psychochemicals as technologies of control.

352. DÍAZ-COTTO, *supra* note 18, at 326–27; Thuma, *supra* note 208, at 33; see FAITH, *supra* note 9, at 230–37 (comparing violence in male and female prisons, and noting that a woman is often given behavior-modifying drugs if she disobeys instructions).

353. See Thuma, *supra* note 208, at 38.

354. See Jones & Latimer, *supra* note 59, at 10.

instill compliance, diffuse challenges to the prison, and de-legitimize women's complaints.³⁵⁵

B. *Burdens of Representation*

The women who challenged discipline in the prison forged strategies that made them vanguards in prisoners' rights litigation.³⁵⁶ Upon release, women from Bedford Hills had to survive all of the difficulties of being a woman of color, without financial support, who was re-entering society from prison.³⁵⁷ Many women found it impossible to continue to advocate for prisoners' rights or to devote time to ensure that women's experiences in prison were given the depth of attention they deserved because they were struggling to rebuild their lives.³⁵⁸

As an example, Crooks found that the fatigue from her 15-year-long fight in prison was overwhelming.³⁵⁹ Instead of continuing activism, she joined the construction industry where she encountered new barriers because of her gender and race.³⁶⁰ Federal court consent decrees required the presence of women on all construction sites, but Crooks' male co-workers resented the new laws, which only fed the tension on the job.³⁶¹ Crooks had to mask all her vulnerabilities, including her criminal record, for job security.³⁶²

Women jumped multiple hurdles to succeed in life outside of prison. Survival after incarceration required repressing their experiences in prison, and the work they've done to challenge conditions there.³⁶³

355. Thuma, *supra* note 208, at 32–33.

356. DÍAZ-COTTO, *supra* note 18, at 342.

357. See Interview with Carol Crooks, *supra* note 4.

358. See *id.*

359. *Id.* (“When I came home that I tried to intermingle with some groups. I went down to 13th Street and Seventh Avenue, down to the gay organization down there, and tried to intermingle with some of them. I didn’t let them know who I was when I went down to the different groups that they have. In-house groups that they had at the time. They was all talk shows. And I could’ve led a force when I was released but I chose not to. I chose to relax. Because 13 and a half years, I had to stay awake. My mind had to constantly be working. I couldn’t sleep. I had to be one step forward than those prison officials.”).

360. *Id.*

361. *Id.* (“It was like there was a prisoners’ thing going in the construction field. It was Blacks against Whites. Or Italians against Irish. It was a very bad thing that was going on. And I had to contest with that too. The white men didn’t feel like—especially a Black woman . . . they can’t start the work or get paid the hours unless I’m there.”).

362. See *id.*

363. See *id.*

Although women's contributions to prisoners' rights have been significant, many women did not have the luxury, upon release, of being able to share their experiences.³⁶⁴

*C. Consequences of Maintaining the
Dominant Narrative Centered on Men's Prisons*

The minimization of women's stories begs the question: What ends have been served by de-emphasizing their accounts? The prisoners' rights litigation by women in the 1970s helped deconstruct the courts' longstanding deference to prison facilities' decisions regarding discipline.³⁶⁵ It is important to note the ways in which the system has historically depended upon a non-complex gender analysis of people in the legal system. As Victoria Law, a prison scholar and journalist, writes:

Although female incarceration has increased drastically during the past few decades, prevalent ideas of prisoners remain masculine: the term "prisoner" continues to conjure the image of a young, black man convicted of violent crimes, such as rape or murder. . . . Because women do not fit this stereotype, the public, the politicians and the media often choose to overlook them, rather than grapple with the seeming paradoxes inherent in women prisoners. . . .³⁶⁶

When the stereotypes of people in prison center on one male archetype, they ignore the heterogeneous needs of people in every prison. Expanding our focus to experiences beyond the male archetype is useful in identifying the multiple harms inflicted on people in prison.³⁶⁷ For in-

364. *Id.*

365. However, due to federal tort reforms in the 1990s, challenging conditions has become more difficult. *See* Telephone Interview with Stephen M. Latimer, *supra* note 15; *see also* Prison Litigation Reform Act, 42 U.S.C.A. § 1997e (Westlaw through P.L. 115–223) (amended multiple times since its enactment).

366. *See* LAW, *supra* note 204, at 4.

367. RITCHIE, *supra* note 39, at 10, 239. One example is the emergence of parental rights as a prisoners' rights issue. The right, which emerged from women prisoners' struggles to maintain family ties, has enhanced parenting rights for prisoners in all facilities. *Id.* Andrea Ritchie argues that looking at women's experiences also exposes sexual violence in the criminal legal system. *Id.* at 104–26. Advocates can then better understand how all people, including men in the system, are affected by sexual assault. *Id.*; *see also* INCITE!, *supra* note 343, at 107 (describing the tyranny of the universal which diminishes the importance of women's experiences through marginalization).

stance, members of the public that supported aggressive prison disciplinary policies like solitary confinement in the wake of the Attica Rebellion in 1971 were largely influenced by the media-spread image of homicidal male prisoners overtaking a prison.³⁶⁸ The stereotypical images of Black and Brown male prisoners were used to implicitly justify solitary confinement as a means of controlling “dangerous inmates.”³⁶⁹ First-person accounts from women’s prisons complicate that narrative. The stories of women at Bedford Hills show that prisons often use discipline and segregation when it is not necessary in order to quell prisoner non-compliance or complaints about conditions. Accounts from people in women’s prisons expose the way that incarceration—including its systems of control and efficiency—depend on the social vulnerability of those in prison.³⁷⁰

With the exception of work by historians and sociologists like Juanita Díaz-Cotto, Emily Thuma, and Victoria Law, the efforts of women challenging the prison system are minimized in our histories of prisoner movements.³⁷¹ When their work is discussed, it is often characterized as a novel event, a brief uprising.³⁷² The Bedford Hills rebellion may have been one event, but it was one event in a greater stream of resistance—namely, the body of litigation in the 1970s and 1980s—that helped to change the conditions of confinement. The women leaders at Bedford Hills developed an ideology and repositioned themselves as actors, not subjects—they were agents who, through their organization and political networks won some, if limited, accountability from the Department of Corrections.

CONCLUSION

After she was released, Carol Crooks kept her past life in prison private.³⁷³ She did not advertise the details of her work to develop pris-

368. THOMPSON, *supra* note 11, at 195–97 (describing initial reaction to first reports from Attica’s retaking).

369. *See id.* at 564–66.

370. INCITE!, *supra* note 343, at 107–08; HOOKS, *supra* note 42, at 18 (“Broader perspectives can only emerge as we examine both the personal that is political, the politics of society as a whole, and global revolutionary politics.”).

371. *See generally* DÍAZ-COTTO, *supra* note 18; LAW, *supra* note 204; Thuma, *supra* note 208; Thuma, *supra* note 340.

372. *See e.g., State Denies Injuries at Women’s Prison*, N.Y. TIMES, (Oct. 10, 1974), at 51, <http://www.nytimes.com/1974/10/10/archives/metropolitan-briefs-attica-defendant-wins-acquittal-state-denies.html>.

373. Interview with Carol Crooks, *supra* note 4.

oners' rights or share widely about the lawsuits she helped bring in the wake of the Attica Rebellion.³⁷⁴ For decades, even her children remained unaware of her contributions to the prisoners' rights movement.³⁷⁵ It was not until the early 2000s that Crooks' daughter, who attended university in upstate New York, happened to be discussing the class action challenge in *Powell v. Ward*.³⁷⁶ As Crooks recalls:

[My daughter] never heard anything about me until she was in school in Utica. The second year she was in school she called me about one o'clock in the morning and said 'Mom, how are you doing? Well I was in class, law class, and they was talking about . . . this case called Powell versus Ward.' And I just kept listening to her, and kept listening. She said 'Why didn't you tell me about this case?' I said . . . 'I was twenty-seven years old at the time, I was a very young person, with a lot of different things at the time. I had all kinds of excuses about why I did things at the time. But there was a lot of cases that we took out class action, to help where I was. And it extended out to society—to assist in their problems.'

*Their lawyers can cite our cases. She was giggling on the other end of the phone. I could tell she was very proud, very happy about it.*³⁷⁷

The work of the women at Bedford Hills, while necessarily cited by name in subsequent legal cases, has not been widely explored or celebrated for its important role in history. Likewise, women's experiences in incarceration have not been substantially integrated into the larger narrative of important prisoners' rights movements.³⁷⁸ When accounts of women in prison are told, they are often minimized as niche and gender-specific, rather than exemplary of a human experience.

The networks that the women at Bedford Hills relied upon were at times particular to their gender, ethnicity, and social position. Their work, however, improved protections for all people in prison in New York.³⁷⁹ The women's decision to bring their disciplinary concerns to the courts and the public, shortly after the Attica Rebellion, should be

374. *Id.*

375. *Id.*

376. *Id.*

377. *Id.*

378. See LAW, *supra* note 204, at 42.

379. See *e.g.*, *Powell v. Ward*, 542 F.2d 101 (1976).

acknowledged for the impact it had on the court's view of protections in prisons. The dignity concerns they raised were not limited to Bedford Hills in the 1970s, but rather can be understood as common to all people who are harmed by the conditions of confinement—even today. The narratives from Bedford Hills demonstrate that issues affecting women in prison should be at the center of the discussion about the relationship between incarceration and human dignity.

The organizing histories of people at Bedford Hills are instructive for understanding how grievances can be galvanized into action. The women's gender, ethnic, LGBT, and class-based collaborations were powerful factors in developing awareness of rights and rallying support for legal challenges. At the same time, the societal prejudices affecting these communities resulted in marginalization of the women's experiences; if their stories were believed, their work in bringing about the change was often not acknowledged or remembered. This explains their relative exclusion from the canon of prisoners' rights work in the United States. Without these narratives, the depth, complexity, and cross-status collaboration that characterized the early days of the prisoners' rights movement would be lost to history.

Centering women in the history of prison litigation is an act of resistance against our modern criminal legal system. It challenges the popular narrative of who—and what—drives dissent within prisons. The process of centering women forces us to look for the silences and unattended-to spaces in experiences of incarceration. It ultimately provides a revelatory picture of a moment in our country's history: the birth of the modern prisoners' rights movement with women at the helm. Centering women also demonstrates the harm of many prison disciplinary policies, including those challenged by the women at Bedford Hills: lack of process in disciplinary hearings, solitary confinement, deprivation of contact with people on the outside, punitive transfers, and forced medication.

The women at Bedford Hills successfully illustrated, to the courts and the public, the inevitable clash between incarcerated people's rising awareness of dignity rights and the realities of modern prisons. In centering the role of women in the trajectory of prisoners' rights litigation, advocates can expose the causes and consequences of marginalization and unveil truths that apply across the justice system. Bedford Hills is significant because it is a story of the dignity rights that were fought for by those who are most politically disregarded: women of color, poor women, LGBT individuals, and those imprisoned for crimes. From prison, the Bedford Hills women undertook litigation for their humanity and that of others. Their efforts are foundational and instructive for

all marginalized people within the prison system who struggle for recognition of their dignity.³⁸⁰

380. *Cf.* Crenshaw & Ritchie, *supra* note 40, at 30 (focusing on women allows us to evaluate structural oppression rather than quick fixes to the system).