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# REPORT FROM THE IMPRISONMENT LAW PROJECT

*"dedicated to George"*

Saturday, August 28, 1993

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## Second Annual International Conference on Transgender Law and Employment Policy

**PROJECT MODERATOR:** *Raymond Wayne Hill, 107 S.Ct. 2502*

By Phyllis Frye:

Imprisonment law. This is new for us — not being put in prison but new for us — as a law conference. It's one of the fears that we all have. What happens if we're arrested? Number One! If we should be arrested, and we are transgendered, then just from a humanitarian standpoint, what happens to one of us who does spend some time behind bars? It's a scary thing.

I'm very fortunate because, not only do I have a good friend who's going to do this but, he's very familiar with the subject. He's a former felon himself. His name is Raymond Wayne Hill and last year at the first conference, he was one of our mealtime speakers. His remarks, in total, were reprinted in a recent issue of "Tapestry" and it is a fantastic presentation.

He is the victor in the case of the City of Houston vs. Raymond Wayne Hill. His arrest was declared unconstitutional. He was declared, and it says on his name tag, a "citizen provocateur" by the United States Supreme Court in the case, cite 107 U.S. Supreme Court Reporter 2502.

Raymond is a true friend. Besides my spouse of over 20 years, he is the only other person that I trust implicitly. He's an activist for the lesbian-gay-transgenderal community.



Raymond Wayne Hill, 107 S.Ct. 2502,  
Imprisonment Law Project Moderator

By Raymond Hill:

Thank you Phyllis. A little known fact is that I met Phyllis, perhaps not on her first day out but, on one of her first days out. She was giving a presentation at a junior college. How many in the room have done that sort of thing? And we had laws in Houston against cross dressing — something that Phyllis, herself, would later take care of by volunteering and rubbing it in City Council's face until she got enough votes to win that. But Phyllis, I have to confess, you were not the first transperson in my life.

That first transperson in my life was not a young raving beauty but an elder woman trapped, caged, in a prison called the Windfarm in Texas. We met in the early sixties. She was there alone, with no one to understand, not even me, because this is my first day out. No one understood. In the preparation of these remarks, and Phyllis has given me a good six months lead time to prepare these remarks and prepare for this, I've relived in anx that George — for want of ever asking him, asking her, what she really wanted to be called — went through an imprisonment environment. George was in her fifties, handicapped, one-handed, a transperson struggling to live in a prison environment. This opportunity and this presentation is dedicated to my memories of George who has, no doubt, long since passed, because George was a unhealthy person in her fifties in 1962. So, I want to dedicate today's presentation to George.

It's important that in today's presentation, we may well be the only people on the planet who are afforded the luxury of looking at prison policy and imprisonment issues with any degree of objectivity. I can assure you that when prison wardens and their ilk, and jailers and their ilk, and sheriffs and their ilk, and legislators and their ilk gathered together, this is not one of the topics up for discussion. This conference exists because someone's wisdom, probably Phyllis' with input from wherever, decided, "Hey let's look at this." This is the very beginning of what we hope will be a movement to shed some light down a tunnel long too dark.

I'm Ray Hill. I've been sentenced to 160 years in this state. That's twenty consecutive eight-year sentences for burglary. I used to think I was Robin Hood — steal from the rich and give to myself, the worthy poor, of course. I actually wound up serving four years and four months on that sentence. I would have done time prior to that, but I was able buy a calf from then Governor John Connally. I was able to show up at the prison unit as a school teacher where I met George, never having to put on prisoner white, because I could get by with wearing free-world clothes and just kind of hang around until they said, "You've done enough, go home." So, my experience with prison is extensive.

Since I got out, I had trouble finding work. How many of you have done that, had trouble finding work? So, we have a lot of similarities in our careers, don't we? Finally, I got a paying job as a general manager of a radio station. I woke up one morning, and I discovered much to my own shock that I could do anything I wanted to as long as it was in radio.

I started doing a program called the "Prison Program," where I spend an hour talking about cops, courts, jails, prisons, probation, and parole. We'll be on a program soon and talk about transfers. For that hour my audience is literally captive. I reach about a third of the male population of Texas prisons every Sunday afternoon between 3:00 and 5:00, including tomorrow, where my guests will be gentle Quakers to talk about their program of alternatives to violence.

The second hour of the program — it's a two-hour show — I answer the telephone. I hear from mothers, and daughters, and lots of children, and wives, and husbands, and fathers, and lovers and companions who have a few words of encouragement to give to some one individual out there in my listening audience. It's a tear jerker. It humanizes the system and keeps my feet on the ground. Because no matter how high and mighty I may, as a politician think of myself, my roots and my heart will always be with those mothers who, like mine, are nurturing and supporting people though.

And there we have transpeople. We've always had transpeople. As a matter of fact, the first workshop we

did, we discussed stories of transpeople in prison. It's an anguishing business discussing those stories. We have an obligation not only to tell them if we know them — because the pain of those stories motivate us to do something about the problem — we have an obligation to hear them as told by others to keep their focus and find a direction on how to help them.

Now, it's easy to say that those people are in prison and they're not my concern. Hopefully, some day, they will get out and become your neighbors. If you deal with the anx of being a transperson out here, free of rights and protection and all kinds of things, then imagine and try not to find heart, which I think you will find it impossible. Care for the anx of those who are in the prison environment.

Every workshop director that I've heard speak from this podium has talked about how active and animated their workshop input was. I can assure you that my workshop participants were wonderful. Absolutely wonderful. And it was their help that guided the structure of this report.

We're going to deal first with the fear of arrest and some helpful hints of what to do if arrested. And then we're going to deal with sexual assault as a vertical and independent issue since the fears for that is important. And finally we're going to offer a proposed policy for the treatment of transgendered people in custody.

I have to explain to you a little bit about prisons and jails. A city jail is where you go. That's the first stop on the train, and you're not there long. It's just kind of a hold-over facility. In Houston, it's a 24-hour facility, although some people manage to spend 72 hours there. A few spend more time than the 24 hours, and the 72 hours is truly the exception. County jail is where you wait. You wait for trial, you wait for sentencing, you wait for transportation, but it too is kind of a short-term facility. The backlog means that people in this county are staying there longer than they should, but in most counties, county jail is just where you wait for your processing and then you go ahead somewhere else. Prisons are where you live. Prisons are where you stay for the duration of a punishment meted out by the court. They're long-term facilities.

There are state prisons, and there are federal prisons in this country. There are county jails and city jails. There are fewer opportunities for safety in city and county jails than there are in state prisons. And from the reports we received in our workshops, federal prison is where one is in a lot of disproportionate danger to be sexually assaulted, either with the assistance of the staff to facilitate opportunities for sexual assault or with the absence of staff facilitating privacy which allows for sexual assault.

But let's go back to that first stop. What happens? You're driving down the road, you've got a new Sunday dress on and the flashing lights go off in back. Well, the first thing is be prepared. Understand that this may happen. Somewhere right now there are literally tens of thousands of people in this country pulled to the roadside being inspected and interrogated by officers of the law. It happens so frequently in every jurisdiction. For you to assume that it would never happen to you is just blindly ignoring the reality. That's what happens in a society with police with lights on top of their car.

So, be prepared. Carry in your pocket or purse a motor club membership. Uh-huh, in addition to your driver's license get a motor club membership. Don't drive without a driver's license. If you don't like the gender on your driver's license, you can do a lot of things while leaving your driver's license at home. But don't drive without your driver's license! Because you literally have to have a permit in every state jurisdiction to drive a car. You have to have a license in your car whether you like it or not. And have that motor club membership because the motor club membership says that if it's a traffic stop situation you're afforded an automatic \$2,000 bond. So, that may be the difference between, "Here's your ticket, thank you, I'm going to keep this part of your automobile club card," or "Let's go down to jail, and you can make bond on this offense."

Now, it just recently fell on me. Louisiana: I got pulled over. Guy tells me, "Let me see your driver's license, proof of insurance; handed it over." The guy wanted to see the title to my car, but we don't do that in Texas. They do in Louisiana, I learned. And after looking it over, he kept my driver's license. "Wait a minute,

you don't have to keep my driver's license." He says, "bond for the offense." I say, "No, no, no, no. Triple A."

Then I came back here, and I told Triple A, "Hey, the guy took my driver's license — didn't recognize your bond." And they said, "Oh, it was just one of those things." "No, no, you don't understand. When I joined this club, I availed myself of that bond. I have read your booklet that said that bond must be recognized in Louisiana. Either you will aggressively defend your bond or I will go aggressively defend my breach of contract case against you." As a result I got my driver's license back with apologies from the Attorney General of Louisiana and an apology from Triple A in Texas and Triple A in Louisiana. They were very glad to send me all that information. The nice lawyer over there got my case dismissed, and Triple A reimbursed me for my lawyer's fees. So, just be ready.

Number one, realize that you can get stopped, so this is not a total surprise to you. Have something like an automobile club, it doesn't have to be Triple A. There's all kinds of automobile clubs. Check your Monkey Ward bill next month. You'll have an application form stuck in it. You'll be able to have some kind of back up there.

Understand that the officer may be shocked. The officer may not be shocked. If you think that a man in a dress is going to shock a third generation, Irish, New York City cop, forget it. You can't shock New York cops. But if you think that a man in a Marine uniform with a pinky ring is not going to shock and offend a state trooper in Alabama, then you really don't understand state troopers in Alabama. So, the point is, understand where you are, the potential of some discomfort on the officer there. And that discomfort is something to be cause for alarm.

So, the first thing, first rule is, be cool. Be calm. If you are afraid, bite your lip. Settle down. Don't show any fear or show any sweat. Be real calm. If the officer is animated or shows some kind of stress, suggest that they call their sergeant. Of course if the officer says, "I am the sergeant", then start talking about maybe some supervisory forces that are not the sergeant. But at any rate, two cops are better than one. Three are better than two, unless you're Rodney King in which case, don't try to get up. I don't care what they do, don't try to get up. In that situation they're confident. If you have to ask the officer a question, you want to assure the officer — in every case — that you will cooperate fully and that you have no intention of threatening or, in any way, harming the officer or prohibiting him or her from doing their duty.

Now, the last 18 months, we've got new rules. Things happened. Change even happened in conservative areas as you go into Intake. Now, if you're going into Intake in Seguin, Texas, this may not be true. But if it's Dallas, Forth Worth, Corpus Christi, El Paso, or equivalent size towns in the jurisdiction where you come from, there is a medical person to ask you questions. At that point — if you're going into custody, say we didn't get a ticket, we didn't get to get away from, that we're going into custody for whatever reason — the first person that's most likely to be there that you can safely communicate with is the medical intake person. And they're going to ask you questions like are you on any drugs, medications and yada, yada. Tell them everything! I mean, you're already there in a dress, just load them up.

The reason I say that is that, if this arrest is "chicken stuff" that was created at the point that you were arrested and it's of no important value to the booking people at the jail, then the medical person may go through the list of hormones that you've been taking and other medications and say, "Wait a minute. It would be better to release this person right now than to hold them here in custody." I mean they make tactical decisions at that point. And like I say, the intake medical examinations — something relatively new — is now in place in Houston. The last time I went to a jail, it didn't have it. The next time I go to jail, it will have it. Avail yourself of that. You must assume that, although you're talking to a nurse practitioner, the chances are they know a little bit more about it than the jailers themselves.

Sooner or later, you're going to get to use the telephone. Who do you call? I don't care where you are, you call the person that you know for sure will facilitate taking care of your needs from wherever they are. If you're

in Tennessee and that person happens to be in Boston, you still call that person. You get in touch with somebody who's going to get on the telephone and find out. I mean I don't know anybody in Memphis, but if Phyllis were in jail in Memphis and she called me, I would find out who I need to know in Memphis to facilitate taking care of whatever Phyllis' needs are.

The most important thing is get out as soon as possible. In many cases that means post a bond or call a bondsman. Whatever matters, will be settled in court of law, and not in a jailhouse. And for all transpersons, pretrial, pre-convictions, the object is to get out. Now!

And if you are the recipient of such a call, get ready to wear callouses on your butt sitting there using your telephone until you figure out how to do that. That's what our little networks are for, is that love and support we have for one another.

Think on those things. Better yet, get the "Proceedings" and see them all nicely written out in one, two, three order. Then you will find the fear of being stopped and the fear of going to jail is somewhat less. And I hope that satisfies the small stuff.

What is not small stuff in all of this is sexual assault. Dealing with sexual assault. It came to me last night. In dealing with our policies for incarceration, the one thing that was left out — the very large and very real fear of sexual assault. So I spent some time thinking about that. Actually sexual assault and aggravated sexual assault in a prison or in an institutional environment is probably one of the least reported, most under reported crimes ever. And certainly it is one of the most under prosecuted crimes that I'm aware of.

I could add to your fears by saying rape happens every night in Harris County jail. That's true. I could add to your fear that somewhere in Texas prison systems there are probably rapes every day. That's true. But rapes in prison, sex in prison, is not so much predicated on sexual attractiveness. The fear that I find in a lot of transpersons' minds is, "Wait a minute, I'm a woman in a man's cage, and they're all going to be after me." Well, actually sex in prison is not predicated on that basis. Now it may be predicated on that basis in county jail where bunch of punk kids are spending the night, and it may be predicated that way in federal prisons.

But in state prisons, sex is part of the pecking order, gang dominance thing. "I'm the boss of this tank." And so who does the boss of the tank practice his sexual assault on? The people who would threaten to be boss of the tank. It's a first-tier over second-tier perhaps over third-tier kind of thing. Most inmates in that tank are



Raymond Wayne Hill, 107 S.Ct. 2502,  
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not even in the running for being boss. And the feminine ones in that tank are completely out of the running. So, the sex is to prove who's boss and that happens among the potential bosses.

And love, it doesn't happen. There's no sex for love in prison. This is not one of the most romantic interludes. I mean this is not like a cruise on the Love Boat to the Caribbean. Going to prison is serious business. And the kind of sexual aggression that occurs there is pecking order and then perhaps other dominance. All right? "I lost \$20 in last night's poker game to you, you S.O.B.; and therefore I'm going to prove that I'm a bigger man than you because I'm going to rape you." All right? That teaches you not to engage in a lot of poker games. Sex in prison is not just the stronger overriding all of the weaker — there's simply too many "weaker" people in prison. It's the stronger competing for top strong. Does everybody understand that concept? That's in prisons where you live.

Also, there's another thing that puts a cap on prisons where you live. In state prisons, at least the state prisons that I've toured in Texas, New Mexico, Oklahoma, Arkansas, Louisiana, Alabama; it's kind of a southern circuit, there's not a whole lot of privacy. You wake up in the middle of the night, look around and there's the guard, always in sight. So, there's not a lot of privacy; sexual assaults generally take place where other people are not watching. I've seen a couple that were real spectacles in my day, but they don't last long. It doesn't take guards long to get there and break that up.

So, sexual assaults happen in shadows where there are not any. And in prisons, there's not going to be any approving eyes. It's just that with two men coupling up over here, whether one's a transperson or not, other inmates don't approve of that. It's against their morals. I mean, those in prison are very fundamentalist, religious people. That's where poor people are, and what's the characteristic of poor people, at least in Texas and in the South? They're fundamentalist religious people. And so they have very strong moral feelings about sex with other people of the same gender and all that. The inmates don't approve, and the guards don't approve.

Now, if it's the guys fighting over who's going to be tank boss this week, nobody cares. Bosses don't care, that's somebody else's fight. The inmates don't care because that's between them over there. Just go around those people and go to the commissary. Transgendered people are in less hazard of being sexually assaulted in a state prison, but if you go to Harris County jail, you can be on a wing for a week and never see a guard. Same in city jail; they come in and holler at you only about every two hours; ral, ral, ral, wake you up, make you do things and holler, shake up the drunks and herd around the people. You're afforded a lot of seclusion in city jail and in county jail.

Then there's sex as chattel sex or sex as currency. As a matter of fact I knew a young man in one of my prison experiences who had engaged in a lot of sex for commissary activity and had built up, in that market, an illusion of value for his services. Then he decided he wouldn't do that any more. And so this real, actual person in my experience came to me and said, "Well, you know I want to pull up. I got a little store now and I don't need to do that any more. But I got all these guys camping on me, how do I stop that?" And I said, "Well, there's a way to do that. Take a lot of laxative." In the prison environment, if someone wants to get real insistent of doing that and privacy zones are available, if they want to get involved in that, then there's not going to be an easy handy facility to clean up. The word is going to get around real quickly that you really don't want to do that to this person. You can devalue sex as currency just as quickly as you can build its value as currency. There's not a lot of prostitution going on in jails or prisons. There's not. Commissary is not worth that much or, maybe, that's not worth very much commissary.

Actually, gay people don't engage in sexual activity in prison at all. I didn't. Four years and four months, I didn't touch another human body. I got along fine. Couldn't screw in that environment — no privacy, no trust and no approving circle.

So, our fears of sexual assault are as valid in the prison environment as they are in the free world

environment, but they may be a little off focus.

Now, there is such a thing as the guards facilitating sexual assault, and that brings us to this proposed policy which will appear in the manual of these events. Sexual assault charges should always be filed in the appropriate criminal court in the district where the offense occurred. They should be aggressively prosecuted, and any sentence given should be consecutive to, not concurrent with, the time already being served. If the facts indicate that sexual assault was, in any way, facilitated by jail or prison staff, appropriate charges under the law of parties should be filed against the involved staff members and aggressively prosecuted. That should be a standard condition that would benefit all people. As I say, that's not the rules now. Hopefully, the exposure we get from the "Proceedings" of this conference will get someone — present something like that to Judge Joe Kegans, and she'll send an investigator over to find out who's facilitating, because she's the kind of judge that would — that makes eminently good sense.

Unfortunately even whenever they catch the sexual assault, or aggravated sexual assault, perpetrator in county jails, they just kind of write that off. That's not the way we handle that; that's not the way we should handle it. There are probably some circumstances where we have, what Washington State is now calling, sexual predators. Those are repeat sexual assault perpetrators. That gives rise to all kinds of segregation and isolation kinds of policies and those things. With sexual predators, multiple offenders and sexual aggravated sexual assaults, within custody circumstances, those people need to be handled so that they interact with other inmates only under supervised circumstances.

The next thing we want to discuss here is a general policy that the workshop came up with to deal with transgendered people in custody. Imagine, if you will, the whole panel — the whole spectrum of transgendered people from the not yet self-aware to the self-aware, to those beginning some form of transition, to the process of what happens post-operative and fully out kind of thing. And deal with those people who are post-operative and those people who choose not to have SRS and the problems you have sorting that out in the custodial environment.

So, we thought about all of those things and we anguished together. We came up with the following six principles. As far as I know, this is the only time anyone has been able to sit down and objectively go through this. The other times that these issues have been raised were during an individual lawsuit or under circumstances where there are other pressures than what the overall policy should be. I hope that you will all assist us in giving this the broadest possible distribution when it comes out in the proceedings.

- 1. Segregation in the interest of an inmate's safety and dignity shall not deprive any inmate from the rights, privileges and facilities afforded to other general population inmates.**
- 2. Access to counseling shall be afforded all transgendered inmates and shall include peer support group participation by those from inside the institution and those from the outside where possible. Counselling professionals should be qualified with respect to the current standard in gender science.**
- 3. Transgendered inmates shall be allowed to initiate or to continue hormone therapy, electrolysis and other transgendered treatment modalities as prescribed by the involved professionals.**
- 4. The transgendered inmate shall have access to clothing, personal items and cosmetics that are appropriate to the gender presentation of that inmate and appropriate within the institutional setting.**
- 5. Special care shall be taken not to make a spectacle of transgendered inmates to the amusement of others, or to deny or to deprive transgendered inmates of their dignity.**
- 6. A process shall be established to afford the hearing of grievances to the above policy items and appropriate resolution shall be made.**

Real simple, to the point, six point, level, practical ordinary stuff that, I think, any professional jailer, and there are professional jailers, could use. There are wardens that I know that were educated to be wardens, and they're professionals. They take their business seriously and have looked at the data seriously on how you treat gay and lesbian inmates and have done a good job of implementing that in the institutions. They are would read this and say, "Uh-huh, that makes sense to me," and implement it in their institution.

And then, in a few years, there would be a report out of the Institutional Directors Conference of what they're doing about transpersons in that institution and the word would get around. I've made such a beginning before, but neither in interest of gay and lesbian people or interest of transpersons. I had one woman in Bexar County who was a woman with Turret's Syndrome. Anyone know what Turret's Syndrome is? She kept getting arrested because she was an activist. And what they would do is they would carry her up to the mental ward and thorazene her into nirvana which is the wrong thing to do to someone with Turret's Syndrome.

So, she called me and she said, "They're poisoning me with their chemicals. "They don't have any understanding of me. She and I sat down and wrote a simple policy of what you do with people with Turret's Syndrome, and she carried it, first, to the jails in Bexar County and didn't get a response. She carried it to a commissioner and didn't get a response. She carried it to a county judge and didn't get any response. Then one of the assistants in the county judge's office said, "Oh, my sister has Turret's Syndrome." And he read it and reported to the judge, and the judge called the sheriff, and now as far as I know, Bexar County jail is the only jail with a policy on what to do with inmates with Turret's Syndrome. That policy was written by someone who lives with Turret's Syndrome and could live with that even in a custody situation which is likely to happen again. So, the next thing I know I get a letter from the high Sheriff of Bexar County thanking me for doing that and asking me if he could share that with other jailers. I wrote him back and I said, "That's the whole damned idea. I may not know someone with stroke in Comanche County. So share it with whomever you will."

So, I think that the work we put in — and I again want to thank the members of the task force and Sister Mary — was wonderful. We had a wonderful time. And again, the time we spent sharing the stories is some of the most valuable time we will ever spend. The stories of horror. She reported a young woman who had male anatomy and looked like a teenage woman and was thrown into prison and was serially raped in twenty-two moves within the federal system. I mean, just unheard of. That federal authorities would be so insensitive as to allow this to happen. But I visited a couple of federal institutions and one thing about federal institutions is there's greater affordance of privacy or those hidden zones in federal construction than there is in state construction. It's just kind of a principle; you put yourself in a private zone and abuse yourself with the misery that comes from that privacy. Or in case you're in custody, they put you in a place where there are no eyes other than assaulter or an assaultee. It's the quality of the thing. Closets — whether they're in prison or on the street — are dangerous places for all of us.

By Phyllis Frye:

Thank you Ray. And the committee. That was fantastic. We are doing terrific. Actually y'all keep complaining because you don't have time to visit. Well, we've got almost a half hour so we are going to adjourn. It's 3:32. We're going to adjourn until 4:00 o'clock sharp. At 4:00 o'clock we're going to start Family Law and then we are going to cap it with the International Gender Bill of Rights. So, be here at 4:00 o'clock sharp.