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PERSONAL APPEARANCE ISSUES APPEARING IN COURTS OF LAW AND JUDICIAL DECISIONS

By

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ABSTRACT

PERSONAL APPEARANCE ISSUES APPEARING IN
COURTS OF LAW AND JUDICIAL DECISIONS

By

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The purpose of this study was to identify and categorize personal appearance issues through examining selected cases which have been brought into United States courts of law between 1879 and 1980 with emphasis on the last twenty years.

Data collection involved the use of official and unofficial case law reports appearing in West's National Reporter System.

One hundred sixty-five cases were located and categorized; 100 involved clothing and sixty-five involved hair. Categories based on roles and situational settings include Students, Teachers, Employees, Entertainment and Recreation, Courtroom Demeanor, Prisoners and Symbols.

The following conclusions were reached on the basis of the analysis of data: 1. The severity of sanctions indicated how strongly people felt about personal appearance which deviated from the norm. 2. The majority of personal appearance cases were brought by men. 3. Judicial references to behavior, traditional beliefs or emerging values were not numerous.

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CHAPTER I

INTRODUCTION

Although sparse, some writing has been done which investigates dress, adornment or personal appearance from a legal case standpoint. It is authored by lawyers and law students and directed toward professionals in an attempt to explain the legal nature of a specific case or cases. This writing has not been directed toward the non-lawyer and without some understanding of the legal mechanism, would not be understood by the layman. This writing deals, chiefly, with the law and neither examines types of personal appearance related issues brought into courts of law, nor the effect personal appearance plays in legal decisions.

This chapter identifies the objectives and research questions being investigated in this study. It also reviews the historic background of the English legal system as the basis for the American legal system. A historic survey of Sumptuary laws, statutes, judicial decisions, and executive orders which governed personal appearance, and more contemporary restrictions are included. A synopsis of the Federal and State Court systems is presented as background for the cases cited in this thesis. The nature of judicial opinions is presented for explanatory purposes.

Objectives and Research Questions

The following objectives and research questions were developed to guide this thesis:

Objective 1: To identify and categorize personal appearance related issues through examining selected cases which have been brought into courts of law in the United States between 1879 and 1980, with emphasis on the last two decades.

Research Questions:

1a What social roles and situational settings are identified in issues which enter the courts?

1b Will personal appearance issues which are brought to court indicate that change in dress and adornment is more readily accepted for women than for men?

Objective 2: To determine the circumstances under which individuals perceive that their freedom in personal appearance selection was infringed by other members of society.

Research Question:

2a What formal sanctions, if any, are applied before personal appearance issues go to court?

Objective 3: To identify remedies available in courts when personal appearance is an issue.

Research Questions:

3a What kinds of legal proceedings are brought to protect one's rights regarding personal appearance?

3b What legal principles are relevant in resolving personal appearance issues?

Objective 4: To describe the judicial system to the layman interested in personal appearance cases.

Research Questions:

4a Do matters regarding personal appearance appear in state or federal courts?

4b At what level of the court hierarchy are personal appearance issues resolved?

Objective 5: To identify parameters which the courts associate with aspects of personal appearance.

Research Questions:

5a What personal appearance choices do courts recognize as permissible?

5b Will courts consider behavior as well as personal appearance issues in deciding cases?

5c Do courts consider traditional beliefs or emerging values in deciding personal appearance choices or limitations?

5d What personal appearance forms and motives will the courts identify as constituting symbolic meaning?

Sources of Formal Law

In both primitive and industrial societies, rules or laws exist which control behavior within that culture. While the sources of formal law are numerous, a distinction between a constitution, statute law, and case law is appropriate at this point. A constitution is a written or unwritten body of concepts formulated and agreed upon by citizens of a nation and/or state by which citizens will be governed

until it is formally changed. Changes have occurred in the United States Constitution, for example, thru the adoption of amendments which have altered specific portions of the document. Constitutional amendments applicable to personal appearance issues appear in Table 15.

A statute or law is a written order prohibiting or prescribing something and is enacted by a legislative body. Courts of law administer national and/or state laws and ordinances. Reported judicial decisions constitute case law. Case law reports are collections of decisions rendered by the courts. A published decision is a precedent to be followed in subsequent cases involving the same point of law -- Stare Decisis. The decisions of the highest court of a state are binding upon the lower courts in that state. Outside that state, they may be used only as persuasive material, that is, they are not binding.

A legislative act or statute is directed toward the future, as far as society or its institutions permit, while case law is directed toward the past. (Llewellyn, 1930, p. 249) Statutes, which emerged in England around 1235, assume that case law exists and would bear little impact without reference to court decisions. However, where case law and statutes are not in harmony, it is generally the statute that predominates. (Harno, 1950, pp. 8-9)

Historic Background of Case Law

Common Law

The American legal system had its origins in the English Common Law. Judges were required to

> . . . render decisions, based in part upon customary usages and in part upon their own common sense or personal prejudices, or as need to serve the interest of the king, the nobility, the church . . . (Carr and Bernstein, 1965, p. 386)

Therefore, common law was derived from the customs which were common for that time. The term common law was borrowed from the canon law and describes that part of the law that is unenacted, non-statutory, and common to the whole land. (Chaffey and Re, 1958, p. 2) It became mandatory to prove that complaints had a strong legal procedural basis and not that the complaint was justified. To make up for a wrong or injustice comprising a civil suit, the main common law remedy was an award of money. Common law seldom, if ever, was able to prevent the wrong from occurring or re-occurring at a future time. (Carr and Bernstein, 1965, p. 387)

Doctrine of Stare Decisis.--As common law grew, a need for certainty arose. This need was fulfilled by the doctrine of Stare Decisis. As cases grew in number, the decisions of previous cases of like principles of law became controlling, or precedential.

> The doctrine embraces a basic concept of fairness, the feeling that people similarly situated should be similarly dealt with and that judgment should be consistent, rather than arbitrary, so that one may predict the consequences of contemplated conduct by reference to the treatment afforded similar conduct in the past. (Cohen, 1976, p. 5)

Equity

This system, where procedural basis under common law became the prime concern, became rigid and left no recourse for many people with complaints. To remedy this, courts of equity were established. Equity is defined as:

> . . . justice administered according to fairness as contrasted with the strictly formulated rules of common law. It (equity) is based on a system of rules and principles . . . which were based on what was fair in a particular situation . . . (Jacobstein and Mersky, 1977, p. xxviii)

Courts of law and equity merger.--There were separate courts for law and equity. "Too often mistakes of form led to loss of a suit (in common law) by the party entitled to win on the merits." (Fleming, 1965, p. 16) In New York State, the two courts merged around 1850, and both types of matters could be heard in one court. Other states followed this lead at later dates, and the federal courts adopted uniform procedures for law and equity in 1938.

Although procedural distinctions have been abolished, substantive distinctions remain. At the present time, the remedy sought by the plaintiff marks the line of distinction. The case is at law if the plaintiff seeks a monetary judgment and a jury may be requested by either party. The case is in equity if, for example, the plaintiff seeks an injunction, in which case, no jury is present. (Frankel, 1975, p. 74) For example, a student who has been suspended or expelled from school because his/her hair or clothing violated the school dress policy will most probably not seek a cash reimbursement but ask that the court rule against enforcement of the dress policy, or seek to be reinstated as a student. Thus the case is in equity.

Historic Background of Law and Personal Appearance

Sumptuary Laws

Sumptuary regulations, decrees, statutes, and judicial decisions governing personal appearance date back to earlier civilizations. Examples can be found in the laws of Greece, Babylonia, and Rome, to mention a few. Documentation is not complete, however. There are also few records during the Dark Ages in Europe, which, according to Laver, may in part be due to the ragged condition of apparel of the

time. (Laver, 1953, p. 30)

The Middle Ages not only saw the birth and rise of the middle class, but also the mushrooming of sumptuary laws. For the first time in history, a middle class existed and it could afford to purchase and display goods which, before, only the nobility had possessed. After 1336, sumptuary laws became numerous in England and other European countries, and applied to the serfs as well as the nobility. English subjects who disregarded these laws were not only required to forfeit the article of clothing, but were also fined, imprisoned, excommunicated from the church or suffered punition at the will of the King. (Phillips and Staley, 1961, p. 675) The Parliamentary statute of 1483 gave authority to town and city officials ". . . to inquire, hear and determine all said defaults . . ." (Miller, 1928, p. 92)

Regulations also existed in the early days of this country and individuals who violated them were often tried in courts of law for witchcraft or other misdemeanor offenses. (Hurlock, 1921, p. 67 and Langner, 1959, p. 180)

Statutes, Ordinances and Court Decisions

A few examples of more contemporary statutes, ordinances, and judicial decisions involving personal appearance are reported in clothing and textile literature and are briefly mentioned in the following paragraphs.

Street wear.--In 1895, an ordinance passed by the City of Chicago stipulated that ". . . all cycle riders must wear baggy continuations. No knicker knee breeches or revealed stockings are permissible,

but full and loose nether garments down to the heels." (Horn, 1968, p. 65)

At the beginning of the twentieth century thousands of arrests were made at the seashore every season because the bathing costume worn by women included bloomers. The fact that these costumes more fully covered the body than those worn by the men of the same period had no legal significance. (Hurlock, 1929, p. 210)

Around the same time, two women were arrested in Buffalo, New York, because they raised their long skirts higher than considered appropriate or necessary while crossing the unimproved streets. Between 1900 and 1920, a woman wearing a split skirt was arrested and imprisoned for thirty days. During the 1920's, several city ordinances required skirt length be no shorter than four inches below the knee. (Hurlock, 1929, pp. 208-9) In the 1950's, women wearing shorts in public were arrested for indecent exposure in New York. (Langner, 1959, p. 177)

Entertainment.--In the field of entertainment, partial or full nudity in public settings has also been under scrutiny of indecent exposure laws and ordinances in various cities and states. In the late 1950's, for example, Les Ballets Africain performed in major cities throughout this country. Bare breasted black dancers were permitted to perform in Boston and Philadelphia, without objection. In New York, however, dancers were ordered to cover their breasts under penalty of closing the show. (Langner, 1959, p. 177)

In a number of California establishments, topless waitresses wearing saran wrap coverings came under investigation during the

mid-1960's. Law makers and enforcers were required to determine whether saran wrap constituted sufficient body covering to avoid prosecution under indecent exposure laws. (Horn, 1968, p. 192f)

Summary

Dress regulations are related to the socio-cultural conditions existing during a particular time frame. Sumptuary laws attempted, in part, to limit diversity of the middle class. More contemporary regulations which referred to propriety as part of the moral code, resulted in sex/role stereotyping. As new forms of behavior, including choices in personal appearance, emerge, change is likely to occur. Changes are reflected in the types of cases brought to court. With respect to changes in the entertainment field, Birenbaum and Sagarin note changes in judicial decisions.

> More recently, with the changing public attitude and new concept of morality, novel interpretations of law are given by courts that are sensitive to political and social upheavals, a process made possible by the loose manner in which the laws were originally written. Most of the laws against public indecent exposure and pornography were not repealed; what changed were the standards and criteria by which certain objects, people, or behavior fell within these forbidden purviews. Progressively liberal or permissive decisions were for a time handed down by the United States Supreme Court and other federal and state courts. (Birenbaum and Sagarin, 1976, p. 157)

Court Hierarchy

Federal Court System

A dual court system exists in the United States: the federal courts and the state courts. Although jurisdiction and the name of the court may vary to some degree from state to state, the following

description summarizes the basic court structure.

The federal court jurisdiction is: cases in law and equity arising under constitutional laws; cases in law and equity arising under the laws and treaties of the United States; cases of admiralty and maritime. Also included are controversies to which citizens from different states are involved; to which the United States is a party; between two or more states; between a state and a citizen of another state; between citizens of one state with land interest in another state; between a state or citizen and foreign states or subjects; and involving ambassadors, public ministers and consuls.

The district court, which is the lowest court in the federal system, is the trial court. (Figure 1) One judge presides; plaintiff and defendant and their counsels appear, evidence is heard, and a jury and witnesses may be present. Both civil and criminal cases are brought before this court. When the controversy includes money in a civil suit, the sum must exceed a certain amount. The majority of cases terminate after the district judge reaches his decision.

The court of appeals, the second step in the federal court hierarchy, is primarily an appellate court. That is, they hear appeals from lower court decisions, and in practice, they are the courts of last resort for the majority of cases in the federal system. (Pritchett, 1959, p. 107)

Appeals from the district courts or from federal administration boards and commissions, ". . . are normally made only on the basis of (1) alleged improper courtroom procedure or (2) incorrect application of law." (Sanford and Green, 1977, p. 264)

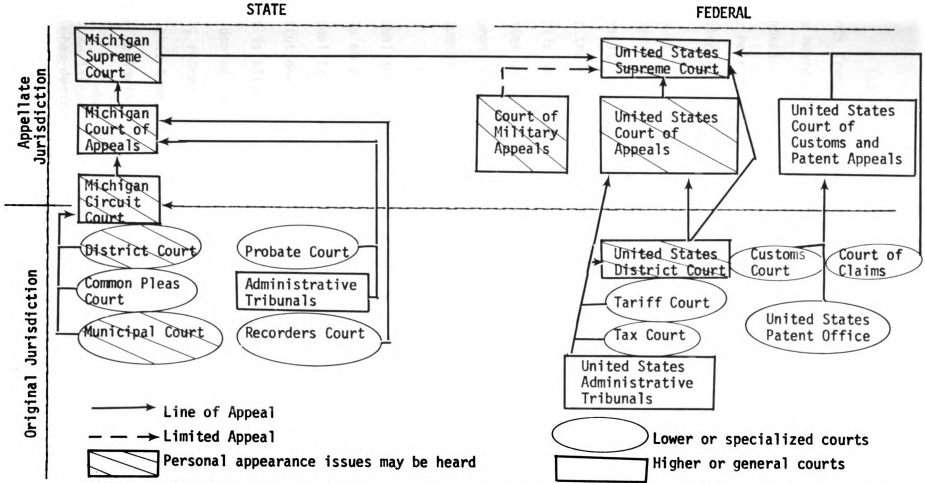

Figure 1.--Court Hierarchy

SOURCE: Adapted from Basic Principles of American Government by Sanford and Green. 1977, p. 265

Customarily, three judges sit on a panel and hear oral arguments from attorneys representing the parties. After oral arguments are heard, the judges retire to discuss the case, or cases, before rendering a decision. In more important cases, more than three judges may hear oral arguments. If all of the judges from a court sit, it is called sitting en banc. (Jacobstein and Mersky, 1977, p. xxviii)

The United States Supreme Court, the final step in both the federal and state court systems, is the only court specified in the constitution. It hears appeals from both the federal courts of appeals and the state supreme courts. Only in matters concerning ambassadors, public officials and consuls and controversies between two or more states do cases originate at this level. Presently there are nine Supreme Court justices who divide their time between hearing oral arguments, reviewing cases and opinion writing.

Cases reach the Supreme Court in three ways: certification, appeal and certiorari. Certification occurs when the court is asked to rule on a question of federal law by the circuit court of appeals. An appeal is heard when a state or federal law has been declared unconstitutional. Certiorari, "to be made more certain," is the most common and is allowed at the discretion of the Supreme Court. When certiorari is denied, it is not the facts and decisions which are being denied, but, rather, that the Supreme Court does not choose to review the case at that time. (Frankel, 1975, p. 85) Certiorari may be granted under the following conditions:

> . . . when two courts of appeals have rendered conflicting decisions; where a state court or a federal court of appeals has decided an important question of federal law on which the Supreme Court has never passed, or in such a way as to

> conflict with applicable decisions of the Court; or where a federal court has so far departed from the accepted canons of judicial proceeding as to call for exercise of the Supreme Court's power of supervision. (Pritchett, 1959, p. 111)

Only cases involving significant points of law are considered for review by the Supreme Court justices.

There are specialized courts which cover certain areas of law under the federal system. They include the court of claims, customs court, court of customs and patent appeals, tax court, traffic court, territorial court, military appeal court, and administrative tribunals.

While the federal court system holds certain jurisdictions exclusively, there are instances where a federal matter may be tried in a state court or where a trial which is already in progress in a state court can be moved to a federal court.

State Court System

The state courts, which exist in every state in the union, constitute a separate court system, the basis for which has been set by state constitutions or statutes. (Figure 1) State courts hear cases of law, equity and state constitutional matters. Jurisdiction and the name of the court may vary to some degree from state to state. For example, state trial courts may be called "Superior," "District," "Circuit," or in the case of New York, "Supreme." (Fleming, 1965, p. 32)

In Michigan, for example, the circuit court is a trial court of general jurisdiction, hearing criminal and civil cases. Depending upon the seriousness of an offense or the amount involved in a civil matter, the case may begin in a court of limited jurisdiction--the district court.

There are specialized courts which cover certain areas of law. Within Michigan, for example, there is probate court, recorder's court, common pleas court, court of claims, and administrative tribunals. Several municipal courts still exist in Michigan. They consider cases within certain cities where the amount in controversy is less than $1,500.

As with the federal district courts, the state trial courts also have one presiding judge, plaintiffs and defendants and their attorneys; evidence is heard and witnesses may be present. In recent years, the right to a jury is often waived.

The state court of appeals, the second step in the state court hierarchy, has appellate jurisdiction in civil and criminal cases from circuit courts (appeals from district court are taken to circuit courts). The court of appeals does not hear evidence but reviews decisions of the lower courts on the record made in the lower court. A panel of three judges hear oral arguments from attorneys or consider written arguments only. Decisions are released some time after the case has been discussed by the judges.

The state supreme court is ". . . (1) final interpreter of the state's law and constitution and (2) a final court of appeals for lower court decisions" (Sanford and Green, 1977, p. 269) in that state. It also has administrative supervision of all state courts and establishes procedural and practical guidelines. Similar to the United States Supreme Court, judges divide their time between hearing oral arguments, reviewing cases, opinion writing and administrative duties.

Opinions

Judicial opinions, in both federal and state courts of appeals and supreme courts, may consist of the majority opinion, concurring opinion and/or dissenting opinions. The written opinion which receives the majority approval becomes the court decision. A concurring opinion occurs when a judge, while agreeing with the decision of the majority, feels differently about the reason or issues of the majority opinion. A dissenting opinion is written when a judge disagrees with either the majority and/or concurring opinion. A single opinion may be present in a case or it may contain any combination of the above opinions.

Conclusion

This background information raises questions regarding aspects of personal appearance in courts of law. The following research questions were formulated.

1. What kinds of legal proceedings are brought to protect one's rights regarding personal appearance?
2. What legal principles are relevant in resolving personal appearance issues?
3. Do matters regarding personal appearance appear in state courts or federal courts?
4. At what level of the court hierarchy are personal appearance issues resolved?
5. What personal appearance choices do various courts determine as permissible?

CHAPTER II

THEORETICAL CONSTRUCTS

The Social Order

Status and Role

Linton states that ". . . the functioning of societies depends upon the presence of patterns for reciprocal behavior between individuals or groups of individuals." (Linton, 1936, p. 113) This reciprocal behavior consists of polar statuses. A status is a specific position in society which includes ". . . a collection of rights and duties." (Linton, 1936, p. 113) Statuses can be divided into ascribed and achieved. Ascription is usually based on sex and age. Thus, these statuses can be predicted and prepared for when an individual is born. Achieved statuses require special qualities and are filled through competition; thus, they acquire prestige. (Linton, 1936, pp. 113-5)

Regularly occurring action, conduct, or behavior while in a particular status is referred to as one's role. (Coutu, 1951, p. 180, Linton, 1936, p. 114) Each individual holds many status positions within a society and performs a variety of associated roles during the course of daily living. (Linton, 1936, p. 114, Gerth and Mills, 1964, p. 12, Ryan, 1966, p. 70) When carrying out an established role, the individual is rarely confronted with a situation in which set patterns for that role have not already been created. (Goffman, 1959, p. 27, Gerth and Mills, 1964, p. 13, Birenbaum and Sagarin, 1975, p. 20)

These patterns of expected behavior or rules help to organize

society. These rules are not concise and clearly defined, but rather have some amount of leeway within which individuals function. Normative expectations vary in intensity depending upon a culture's values, and this variation in turn reflects how these expectations are enforced.

Informal Social Control

Folkways and mores are informal means of social control. Folkways, defined as the continued performance of repetitive acts, are beliefs that are less strongly held and less severely sanctioned than mores. (Sumner, 1906, p. 22) A custom is differentiated from a folkway in that custom implies that some degree of emotional content is present in the continued performance of an action. Customs that connote fairly strong feelings of rightness or wrongness are referred to by Sapir as mores. (Sapir, 1931, p. 658) Many mores of a society are written into laws to ensure that infringement is punished. Sumner believed that laws were the result of the mores of a society. (Sumner, 1906, p. 53) He concluded that the state should not be the regulating power over the mores since that was not in its province. Rather, it should fall to the statesmen and publicists who would be in a better position to observe and evaluate the mores. (Sumner, 1906, p. 117) Mores and values have, traditionally, guided the everyday activities including business interests and leisure activities. As mores and values change, activities in the form of diversion to fill leisure time are also likely to change.

Formal Social Control

Law represents a formal type of social control. In industrial societies, laws are formally established rules. Law, both in statute form and case law, is the sanctioning of conduct considered to be right by the majority of society or the ruling members of that society. The traditional agents of social control include courts of law, law enforcement agencies, military agencies, penal institutions and other authority effecting control. (Goffman, 1969, p. 105, Birenbaum and Sagarin, 1976, pp. 49-50) The goal of these agents is to maintain order within society. To achieve this goal, special roles for agents have been established to insure that laws are upheld and to punish those who do not conform. (Durkheim, 1949, p. 69, Gerth and Mills, 1964, p. 260, Birenbaum and Sagarin, 1976, p. 12, Goffman, 1965, p. 50)

Sanctions

Society encourages the following of folkways, mores, and laws by sanctioning behavior. Sanctioning of informal norms or folkways occurs daily as interacting people react to situations with set expectations, thus reinforcing another's actions and providing social support. (Shibutani, 1975, p. 164, Birenbaum and Sagarin, 1976, p. 6) Thus, sanctioning is continual and not restricted to specific activities. Formal sanctions are exhibited through ceremonial dinners, law, penal institutions and the like. Because of the public nature of formal sanctions, society is more aware of formal sanctions than informal ones. (Blake and Davis, 1964, p. 465) However, ". . . legal sanctions may be differently applied to persons of different social standings." (Gerth and Mills, 1964, p. 262)

Conformity

Conformity is the adherence to behavioral norms which are held for a given society. (Roach and Eicher, 1965, p. 189, Birenbaum and Sagarin, 1976, p. 40) Conforming behavior is a dynamic and necessary process for the transmission of the culture and for the smooth functioning of that society. The majority of human beings do conform to social rules. (Becker, 1963, p. 1, Roach and Eicher, 1965, p. 189)

Group affiliation affects the behavior of its members through the internalization of group norms. "Most deviant groups have a self-justifying rationale (or 'ideology') . . ." (Becker, 1963, p. 38)

Non-conformity

Non-conformity, the opposing polar position, is the deviation from norms of behavior which have been sanctioned by society or subsets within that society. (Becker, 1963, p. 9, Roach and Eicher, 1965, p. 188) Because of the structuralized framework of industrialized societies, individuals and groups within a society can be compartmentalized, resulting in ambiguous social rules and diversity. (Becker, 1963, p. 8)

Becker points out that norms for various roles may conflict. He states:

> People have a number of roles, obey a number of rules and belong to a number of groups--A person may break the rules of one group by the very act of abiding by the rules of another group. (Becker, 1963, p. 8)

Informal norms may be misunderstood, considered irrational, or the individual may lack resources for fulfillment. There may be impending enforcement, or the norms may be contrary to deeply held beliefs or may

be issued through perceived illegitimate channels. (Birenbaum and Sagarin, 1976, pp. 27-9) Blake and Davis list three causes for unintentional deviance. First, human beings may have no control over existing circumstances. The physical environment, and not the desire for deviance, may produce the circumstances. Second, norms may be accepted but interpreted differently. Third, conditions of the interim period between status changes may produce deviant behavior. (Blake and Davis, 1964, pp. 469-70)

Reaction to deviance is varied; it can range from passive to violent. Interpretation of norms and their sanctions are dependent upon the time frame, geographic location, political and religious views, and persons involved in the capacities of actor and recipient. As an ongoing process ". . . people are constantly making new rules to prevent, control, or eliminate deviant behavior." (Birenbaum and Sagarin, 1976, p. 14) At the same time, deviance:

> . . . (P)roduces occasions for reaffirmation of the norms in the entire rule-abiding group and for changing the norms when they no longer usefully serve the function for which they were created. (Birenbaum and Sagarin, 1976, pp. 7-8)

Personal Appearance in Relation to the Social Order

Individuals hold multiple status/roles in society. Personal appearance is an aspect of role behavior. Norms set expectations for personal appearance in various status/roles. These norms vary somewhat based on age and sex and may not be clearly and concisely defined. Personal appearance may affect interaction of persons in reciprocal statuses. Normative expectations are enforced by formal and informal sanctions. Severe conflicts may result and the issue may ultimately

be taken to courts of law for resolution. Conflicts are apt to be severe when people define personal appearance symbols differently. Advancements in technology, including a more rapid means of communication, have created life style changes. These changes are reflected in the norms held by individuals and may affect behavior in all aspects of role performance. Law, as a formal source for societal stability, provides sanctions for violations which are frequently based on the mores of a society. Changing personal appearance norms may not immediately be apparent in judicial opinions, but may take some amount of time before changes become visible in court decisions.

Conclusion

The foregoing theoretical framework suggests certain questions concerning case law and personal appearance issues found therein.

1. What social roles are identified in issues which enter the courts?
2. Will personal appearance issues which are brought to court indicate that change in dress and adornment is more readily accepted for women than for men?
3. What formal sanctions, if any, are applied before personal appearance issues go to court?
4. Will courts consider behavior as well as personal appearance issues in deciding cases?
5. Do courts consider traditional beliefs, and/or emerging values in deciding personal appearance choices or limitations?
6. What personal appearance forms and motives will the courts identify as constituting symbolic meaning?

CHAPTER III

METHODS AND PROCEDURES

The initial objective of this study was to research the area to identify and categorize personal appearance issues found in selected cases of the federal and state courts of the United States from 1879 to 1980, with emphasis on the last twenty years. The second objective was to determine the circumstances under which individuals perceived that their freedom in personal appearance selection was infringed. To identify legal remedies available to individuals who perceived that society or a segment thereof had not permitted them the right to individual personal appearance selection was the third objective. A fourth aim was to describe the judicial system to the layman interested in personal appearance cases and to place personal appearance issues within the court hierarchy. The fifth objective identifies parameters which the courts associate with aspects of personal appearance.

This chapter reviews sources and methods used in data collection and data recording. Assumptions are noted, and a plan for analysis is described. Limitations of the study are presented.

Data Source and Collection

This thesis examines personal appearance issues located in case law. The sources of data for this thesis were the reported decisions of the federal and state courts, annotations and articles

or papers in Law Reviews. Data collection involved the use of official and unofficial case law reports. Official reports are ". . . issued by the courts themselves as their authoritative texts." (Cohen, 1978, p. 35) Unofficial reports originate from the same sources as official reports but are privately printed. The official reports from the Michigan Court of Appeals, for example, are printed by Lawyers Co-operative Publishing Company. These opinions are also sent to other publishing firms such as West Publishing Company for publication as an unofficial source.

Special training in methods of legal research was essential to data collection for this thesis. Methods of legal research are numerous, ranging from the use of an automated case retrieval system to finding a single case, perhaps by luck, and reading cases cited therein, then reading all cases cited in the second group, ad infinitum. An automated case retrieval system was not used in this thesis. It was the judgment of the legal advisor that this type of system is not reliable for this topic for the following reasons. This system searches a data base containing millions of words, for words specified by the researcher. It locates every case in which these words have ever appeared, whether or not personal appearance was an issue. In addition, many words and concepts applicable to this study have technical legal meanings distinct from common meanings. Researching such terms would produce irrelevant results. The system is prohibitively expensive for use by one not fully trained in legal research, especially if researching a broad area of law rather than a specific legal question.

There are a number of systems which collect and publish court decisions, but West's National Reporter System was primarily utilized. This system reports, chronologically, published state appellate and trial court opinions according to seven regional and two state geographic areas, and federal decisions by court level. Legal publishers also provide periodic advance sheets which contain more recent cases which have not yet been published in bound volumes. Cases in West's National Reporter System were located by researching relevant subjects in the American Digest System, considered to be a most comprehensive research tool, where digests or abstracts of each case are presented.

The American Digest editors locate points of law in court opinions, incorporate them as headnotes at the beginning of each opinion and assign a Topic and "Key Number." The Topic System generally classifies points of law located in each opinion published in West's National Reporter System. This subject classification is then further subdivided and assigned a specific "Key Number" which can be utilized for a speedy location of similar points of law through use of the digest. The same procedure is implemented in the advance sheets to achieve uniformity in classification. (Jacobstein and Mersky, 1977, pp. 66-7)

The "Key Number System" employs four methods of search: The Descriptive-Word Index, The Analysis or Topic Approach, Table of Cases, and Popular Name of Cases. All methods were employed in this study.

To locate like points of law regarding promulgated personal appearance codes regulating hair length of students, for example, the following Topic and "Key Numbers" were identified: Constitutional Law:

82, 83(1), 90, 90(1), 209, 211, 274, 274(2), 318; Schools and School Districts: 169, 171, 172, 172½; Civil Rights: 9, 1313(1); and Courts: 406.3(13). Case citations and abstracts are presented under each subdivision. The researcher can then determine whether the subject matter warrants reading the entire opinion published in West's National Reporter System.

The American Digest System was utilized by researching the General Digest. The General Digest (5th Series) includes all headnotes, from 1976 to present, incorporated at the beginning of each case published in West's National Reporter System by Topic and "Key Number." The Digest System provides chronological coverage of published opinions in ten year segments, except for cases reported from 1658 to 1897 which were compiled together. This enables the researcher to examine particular points of law and locate case citations for all cases published in West's National Reporter System during specific time periods. (Ibid., pp. 68-9)

The following sources were also used to locate case citations: The American Law Reports Quick Index, legal encyclopedias, legal digests, and annotations. Significant words, such as schools, teachers, students, contempt, courts, trials, employees, and flag were researched. The "Index to Legal Periodicals" was consulted and related topics investigated, including First and Fourteenth Amendment rights, and Civil Rights. These indices led to what is called "Secondary Authority," material often persuasive but not precedential. The secondary authority led to reported decisions which were primary authority. These procedures led to a broad view of personal appearance related

cases in order that a system of classification could be devised.

Assumptions

All areas of personal appearance that have been involved in court cases were identified by the data collection methods employed.

Analysis

Data for this study include all citations to appearance issues located in legal sources. Data are recorded in table format. An individual table represents an established issue or category. The concept of status/role (Linton, 1936, p. 113) and situational context (Goffman, 1959, pp. 22-4) were used as a basis for developing categories. Since this was an exploratory study with emphasis placed on surveying the breadth of personal appearance issues, statistical analyses were not employed. Descriptive statistics including frequency counts and percentages are presented as a basis for answering research questions.

Limitations Of Study

The breadth of the Clothing and Textile field required a limiting of topics. Court cases dealing with safety and health of textile manufacturing, production, distribution or consumer satisfaction/protection were not included, although cases pertaining to these areas were located. Also, style piracy and related issues did not come under the scope of this thesis.

There were a number of cases in which witnesses and defendants were compelled to try on articles of clothing and/or alter their physical appearance in some manner for identification purposes during

a criminal proceeding. When personal appearance alteration is required, witnesses and defendants may plead self-incrimination, which is a constitutionally protected right. Because personal appearance was not the issue being considered in these cases, cases concerning self-incrimination in a court proceeding were not included in this thesis.

Although a transcript of a trial court proceeding is made, most states do not publish trial court proceedings for the following reasons: (1) the trial court case load volume is too heavy; (2) the trial court judges generally do not write opinions; and (3) the trial court decisions do not have precedential value and can be overturned by the findings of a higher court. Therefore, this thesis does not include trial court decisions, except where opinions were located.

Although a number of cases were located in each category of analysis, the total number of cases existing in the population is not known. Therefore, conclusions regarding time trends, frequencies by sex, etc. must be limited to the 165 cases appearing in this study.

CHAPTER IV

DATA PRESENTATION

In this chapter, the decisions located, 165 in number, are presented in table format. An individual table represents an established category or issue. The concept of status/role (Linton, 1936, p. 113) and situational context (Goffman, 1959, pp. 22-4) were used as a basis for developing categories by which to classify cases. The following categories were based on social roles and situational settings: Students, Teachers, Employees, Entertainment and Recreation, Courtroom Demeanor, and Prisoners. Another category, Symbols, was based on the intent of the individual, regardless of the role or setting. This category appears first because it deals with symbolic conduct as it is legally defined, the explanation of which is helpful in understanding other categories and accompanying summaries.

Table headings are name of case, sex, state, year; appearance issue; court level; relief sought and basis of decision; facts; and decision. The column headed "Relief Sought/Basis of Decision" states the legal proceeding which initiated the case and the legal basis for the decision, or the part relevant to this thesis. The column labelled "Facts" provides a concise statement of roles, sanctions, and circumstances viewed by the parties involved in the case. The column labelled "Decision" provides the decision and the personal appearance

choice or limitation as given by the court in the opinion. Also included is pertinent Obiter Dictum, defined as:

> . . . an official, incidential comment, not necessary to the formation of the decision, made by the judge in his opinion which is not binding as precedent. (Jacobstein and Mersky, 1977, p. xxxi)

A brief summary accompanies each table.

Symbols

Government Symbols

Symbolic conduct, that which publicly conveys a message, is protected by the First Amendment. Symbolic conduct is a more graphic and emotional means of communication than the written or spoken word and includes that which is intentionally conveyed through personal appearance. Judicial problems arise in determining whether a symbolic act is within the parameters of protected rights or whether it is civil disobedience and interferes with the rights of others. Note, "Symbolic Conduct," 68 Colum. L. Rev. 1091, (1968).

Three criteria for symbolic conduct have been suggested to distinguish those acts which are symbolic in nature and those acts which are premised merely on personal preference. The conduct should depart from normal, everyday activity patterns and must be intended to publically communicate a message; it must be anticipated that this communication will be understood as communicative by others; the symbol, a non-verbal expression, is itself sufficient as communication and does not have to be verbalized. (Ibid., p. 1117)

Because our constitution recognizes and protects symbolic speech, certain offenders are punished while others, falling under the

cloak of symbolic communication, are not. Older laws restricting certain conduct have been re-examined as contemporary forms of conduct popularize previously restricted conduct. (Ibid., p. 1125) Flag desecration laws are an example.

Each state has some form of flag desecration law. There is also a federal law regarding flag use. All are similar to the Uniform Flag Law of 1917, which states:

> No person shall publicly mutilate, deface, defile, defy, trample upon, or by word or act cast contempt upon any such flag, standard, color, ensign or shield. Smith v. Goguen 94 S. Ct. 1242, 1244 (1974)

These laws were originally intended to maintain order and prevent breaches of the peace resulting from disruptive and incorrect use of the flag. Since 1968, their constitutionality has been questioned in courts of law all over the country. By 1975, it was reported that litigation approached epidemic proportions. Royal v. Superior Court of N. H., Rockingham City 397 F. Supp. 260, 261 (1975)

Fourteen cases were located in which the American flag was used in some fashion, particularly by males, to cover the human body (see Table 1). The issues in every case was whether the flag, a national symbol of patriotism, was mutilated, defaced or treated contemptuously when it or its representation was used for or on clothing. Articles of clothing included a helmet, cape and poncho, seat and knee of trousers, with the seat of trousers being the most common place on which the flag appeared. In some instances, the actual flag was used as apparel. In other cases, a flag patch was used to mend torn clothing. In all cases, defendants perceived that they had a right to wear the American flag or its representation and that this right should receive symbolic

conduct protection. Yet, in seven cases, it was clearly established in the opinion that flag patches were applied for other than symbolic conduct purposes. Reasons for wearing the flag as apparel or in the form of clothing patches were varied. They ranged from publicly conveying political discontent with the American system, and the Vietnam War in particular, to a desire to appear "cool," following the current fad, an attempt to prolong garment life, or because the flag color scheme was aesthetically pleasing. The fact that wearing the flag did not cause a disruption in any of the cases was not influential in deciding the issue. Courts perceived that at another time, it could have caused a breach of the peace.

The emotional tenure of the subject matter was apparent in reading the cases. Courts discussed the symbolic significance of the flag in society. Earlier courts perceived that flag desecration via clothing was an insult and a threat to societal values and standards, and did not constitute symbolic conduct. While no political or symbolic intent was claimed by offenders as recently as 1970, in 1973 the courts began to verbalize the possible ambiguity of traditional and contemporary flag etiquette.

Included in this category is an example of sanctioned conduct that involved the use of another governmental symbol in a disapproved way. A Congressional Act permitted actors to wear Army uniforms in theatrical productions, provided the performance did not discredit the uniform. An actor was arrested and convicted for the unauthorized wearing of distinctive parts of an Army uniform while performing in a Vietnam War protest play outside a Houston induction center in 1967.

The United States Supreme Court held that the law was unconstitutional, saying that free speech permitted dissent as well as praise.

Group Membership

While the American flag has been a patriotic and emotional symbol, other symbols were located which prompted different and, at times, equally emotional responses. Forms of group identification signified through symbolically distinctive personal appearance were viewed as exclusive, controversial, or feared symbols by segments of American society.

Four cases were located in which clothing and/or badges, worn to demonstrate conformity to group standards, were perceived to infringe the rights of others. A 1909 case dealt with a secret society badge and clearly established that, while personal appearance selection was entitled some degree of latitude, group affiliation was necessary before an individual was permitted to represent himself as a member. The society was not identified in the opinion.

The remaining three cases consider the emotional reaction that dress, worn by members of the Ku Klux Klan and the National Socialist Party of America, provoked in non-members. The Ku Klux Klan's hood and gown and the Nazi uniform and swastika armband were a visible means through which society could readily identify group goals and ideologies. These cases address the issue of societal reaction to these forms of group identification. It appears that in these particular cases, laws and ordinances had been enacted to restrict zealot group activities which would be disruptive to the welfare of the general public. These

laws were not always held to be constitutional, however. Although they were directed toward group organizational matters, public reaction to the mode of dress did enter into court decisions.

A law requiring that certain forms be completed by organizations was upheld in the 1924 Ku Klux Klan case, even though group activities did not result in actual violence. An opposite decision was made in a later case. The 1969 Ku Klux Klan cases involved a Klan meeting which was filmed and aired on television and did not result in actual violence. The United States Supreme Court held that the law restricting meetings was unconstitutional, even in a state which reported a large Klan membership. The 1978 National Socialist Party of America case, heard in six state and three federal courts including the United States Supreme Court, held that the wearing of a Nazi uniform and swastika armband while parading in a Jewish community was protected by the First Amendment. The Court decided that the items could be worn even if the community anticipated violence and that the parade could not be prohibited.

Table 1.--Symbols--Government

Name, Sex State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
State v. Saionz (M) Ohio 1969	Flag Cape	Toledo Municipal, Ohio Court of Appeals	Criminal prosecution dismissal - - - - Interpretation of state statute	Defendant was convicted of flag desecration because he wore a flag cape which another person had cut, burned holes in and attached a peace button in 1968. He wore it to protest the Vietnam War, Civil Rights, and other problems in the U.S.	While court considered actions disgusting, conviction was reversed because he did not cut and mutilate flag and the state did not charge him with right offense.
People v. Cowgill (M) Calif. 1969	Flag Vest	South Bay Municipal, L.A. Superior (Appellate Division)	Criminal prosecution dismissal - - - - 1st Amendment-Freedom of speech	Defendant was convicted of flag desecration because he constructed and wore a vest made from Am. flag.	Law did not deny free speech and was constitutional. State had authority to protect the flag.
Schacht v. United States (M) Tex. 1970	Army Uniform	U.S. District, U.S. Ct. of Appeals, U.S. Supreme (certiorari)	Criminal prosecution dismissal - - - - 1st Amendment-Freedom of speech	Defendant, while performing in street skit protesting the Vietnam War in 1967, was convicted under law which restricted unauthorized use of Army uniforms.	Law was unconstitutional. Free speech permits dissent as well as praise.
Hoffman v. United States (M) D.C. 1971	Flag Shirt	D.C. Ct. of General Sessions, D.C. Ct. of Appeals, U.S. Ct. of Appeals	Criminal prosecution dismissal - - - - 1st Amendment-Freedom of speech	Defendant was arrested for flag desecration because he wore a shirt which resembled an Am. flag as political message in 1969.	Defendant was not convicted of flag desecration because shirt was not actually made from Am. flag.
State v. Waterman (M) Iowa 1971	Flag Poncho	Iowa Municipal, Iowa Supreme	Criminal prosecution dismissal - - - - 1st Amendment-Freedom of speech	Defendant was convicted of flag desecration because he slit a flag and wore it as a poncho in 1970. No political message intended.	Law was constitutional and did not infringe on right to protest.

Table 1.--Continued.

Name, Sex, State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
Franz v. Commonwealth (M) Va. 1972	Flag Vest	Richmond Hustings, Va. Supreme	Criminal prosecution dismissal - - - - Sufficiency of evidence	University design student was convicted of flag desecration because he wore flag vest which he had found in trash container. He wore it to be "cool."	It was not established that he constructed vest and charges were dismissed. Even though he considered flag color scheme appealing, he was not justified in wearing flag vest.
State v. Mitchell (M) Ohio 1972	Flag Patch (Seat of Pants)	Ohio Municipal, Ohio Ct. of Appeals	Criminal prosecution dismissal - - - - 1st Amendment-- Freedom of speech	Defendant was convicted of flag desecration because he wore an embroidered iron-on flag patch on seat and crotch of his jeans. He considered it stylish.	Law did apply to flag representations. Intent was different if one wore flag on sleeve or seat of one's pants.
City of Miami v. Wolfenberger (M) Fla. 1972	Flag with Peace Symbol on Helmet	Miami Municipal, Fla. Circuit, Fla. District Ct. of Appeals	Criminal prosecution dismissal - - - - 1st Amendment-- Freedom of speech	Defendant was arrested in 1970 for flag desecration because he wore a flag with peace symbol attached to his helmet as a visible sign of Vietnam protest.	State court bound by federal court decisions which have held like laws unconstitutional.
State v. Claxton (M) Wash. 1972	Flag Patch (Knee of Pants)	Wash. Superior, Wash. Ct. of Appeals	Criminal prosecution dismissal - - - - Sufficiency of evidence	Defendant was convicted of flag desecration because his dungaree knee had been mended from the inside with a small flag and it was visible from the outside for decorative purposes.	No evidence was given to support conviction. Defendant did not publicly mutilate, deface, defile, burn or trample the Am. flag.
Delorme v. State (M) Tex. 1973	Flag Patch (Seat of Pants)	Tex. District, Tex. Ct. of Appeals	Criminal prosecution dismissal - - - - 1st Amendment-- Freedom of speech	Defendant was convicted of flag desecration because he wore a flag on the seat of his Levis which was visible underneath his long, white gown.	Law was constitutional. Wearing flag on seat of pants was as contemptuous as flag burning.

Table 1.--Continued.

Name, Sex, State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
State v. Royal (M) State v. Morrissette (F) (Two Cases) N.H. 1973	Flag Patch (Seat of Pants)	Exeter District, N.H. Supreme	Criminal prosecution dismissal - - - - 1st Amendment-Freedom of speech	Defendant was convicted of flag desecration because she wore a flag on the seat of her trousers for decorative purposes.	Law was constitutional. Flag as a symbol is basic to our society. It is incorporated into law and defended in the courts.
State v. Kasnett (M) Ohio 1973	Flag Patch (Hip Pocket)	Athens Municipal, Ohio Court of Appeals, Ohio Supreme	Criminal prosecution dismissal - - - - Interpretation of state statute	University student was convicted of flag desecration because he wore a flag patch on hip pocket of Levis. It was the current fad.	Flag on clothing was not considered contemptuous flag desecration, and did not come under sanction of law.
Smith v. Goguen (M) Mass. 1974	Flag Patch (Seat of Pants)	Mass. Superior, Mass. Supreme Judicial, U.S. District, U.S. Court of Appeals, U.S. Supreme (appeal)	Criminal prosecution dismissal - - - - 14th Amendment-Due process, vague statute	Defendant was convicted of flag desecration because he wore a flag patch on the seat of his jeans in 1970. No political message intended. Flag expert testified as to current popularity of flag and flag designs.	Law was not definitive as to what constituted criminal treatment of flag. Contemporary and traditional view and use of flag were different. Contemporary use of flag may be for adornment and to attract attention.
Commonwealth v. Morgan (M) Pa. 1975	Flag Patch (Seat of Pants)	Penn. Ct. of Common Pleas, Penn. Superior, Penn. Supreme	Criminal prosecution dismissal - - - - 14th Amendment-Due process, vague statute	Defendant was convicted of flag desecration because he wore a flag on the seat of his pants in 1972.	Sewing flag on clothing did not constitute flag desecration.

Table 1.--Continued.

Name, Sex, State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
Royal v. Superior Court of N.H., Rockingham County (M) N.H. 1976	Flag Patch (Upside down on Jacket Sleeve)	Portsmounth District, Rockingham Co. Superior, N.H. Supreme, U.S. District, U.S. Court of Appeals	Criminal prosecution dismissal - - - - 1st, 14th Amendments-Freedom of speech, vague statute	Defendant was convicted of flag desecration because he wore an upside down flag on jacket sleeve which was partially covered by another patch. He did it to be "cool." Law was later repealed.	Law was so vague that conviction was unjustified.
Symbols--Group Membership.					
Hammer v. State (M) Ind. 1909	Secret Society Badge	Ind. Criminal, Ind. Supreme	Criminal prosecution dismissal - - - - 1st, 14th Amendments-Establishment of religion	Male was convicted and fined for wearing a secret society badge of which he was not a member.	Impersonation was unlawful. One could not pretend to be something one was not.
People v. Sheriff of Erie County (M) N.Y. 1924	K.K.K. Garb	N.Y. Supreme	Habeas Corpus - - - - Police power of the state	Ku Klux Klan member was arrested for violating law compelling societies to file certain organizational papers.	Law was constitutional and detention lawful. K.K.K. night activities and distinctive clothing terrorized citizens' minds.
Brandenburg v. Ohio (M) Ohio 1969	K.K.K. Garb	Ohio Trial, Ohio Supreme, U.S. Supreme	Criminal prosecution dismissal - - - - 1st, 14th Amendments-Freedom of assembly	Ku Klux Klan member was convicted of violating law restricting meetings. TV man filmed and aired K.K.K. rally showing twelve hooded members with guns and one red hooded member. K.K.K. had largest membership of any Ohio group.	Law was unconstitutional. It did not distinguish between supporting and actual violence.

Table 1.--Continued.

Name, Sex, State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
Nat. Socialist Party of America v. Village of Skokie (M) Ill. 1978	Nazi Uniform and Swastika Armband	Ill. Circuit, Ill. Appellate, Ill. Supreme, U.S. Supreme (certiorari), Ill. Circuit, Ill. Appellate, Ill. Supreme, U.S. District, U.S. Court of Appeals	Injunction against demonstration - - - - 1st Amendment-Freedom of speech	Nat. Socialist Party was refused a parade permit in Skokie, a predominantly Jewish area. Their German Nazi Party storm trooper's uniform, swastika armband, and ideology were considered an assault on the residents. Residents anticipated violence.	Uniforms and swastika armbands were protected by the First Amendment. Parade permitted.

Students

This category consists of a compilation of thirty-nine cases in which students, generally high school level, perceived that their freedom in personal appearance was infringed upon by school administrators (see Table 2). Violation of restrictions usually resulted in suspension/expulsion of the offending student. It was the responsibility of the court to determine the circumstances under which personal appearance restrictions were to be legally permitted.

Ten cases involved issues restricting personal appearance in some form for male and/or female students. The restricted items included a cap and gown, public school uniforms, face powder, blue jeans, slacks, pantsuits and culottes. These were the only cases dealing with clothing or cosmetics located by the research in this category. In earlier cases involving khaki uniforms, 1921, and face powder, 1923, the courts perceived that school boards had the authority to govern student conduct, including their personal appearance. But, when a school board refused to issue a diploma in 1919 because the graduating senior refused to wear an odiferous cap and gown, the court held this to be an arbitrary infringement of student's rights. In later cases, 1969 through 1973, the courts generally held that the restriction on articles of clothing was an unreasonable and arbitrary infringement on students' rights. This group of cases is not directly correlated with disruptive behavior resulting from personal appearance selection.

Another group of cases provided concrete examples of student symbolic conduct which was restricted by promulgated dress codes.

When school children wore black arm bands to protest the Vietnam War in 1965, the United States Supreme Court decided that the school board was not permitted to forbid silent protest under the First Amendment. When students of two schools within the same school district wore freedom buttons in 1964 and 1965, the courts held that the students of one school where no disturbance occurred were permitted to wear buttons, but the students were not permitted to wear them where disturbances had occurred. When Mexican American students wore black berets as a symbol of their cultural heritage in 1969, the court held that schools could regulate dress where disturbances and fear resulted. In these cases, it was not the article of clothing or attachment thereto but the behavior which resulted in either restricting or permitting certain personal appearance choices. However, when American Indian students wore braids to symbolize their religious and cultural heritage, federal courts, in 1973 and 1974, held either in favor of the promulgated dress codes restricting long hair or held that the issue was not a matter for the federal courts to decide even though no disruptive behavior occurred.

Twenty-eight cases considered hair and hair-related issues such as sideburns, beards, and mustaches. Only two cases involved hair restriction for female students, and one was an American Indian discussed above. The other case involved a female student who was sanctioned in 1968 because the typing teacher perceived that the student's bangs impeded her ability to see the typewriter and would result in poor progress in class. The court held in favor of the student's right to determine her own hair length, especially when it did not

cause a disruption.

The remaining cases considered promulgated dress and grooming codes applicable to male students. While school administrators appear to have been able to cope with long hair on female students, the same capability was not true for long hair on male students. Comment, "Public Schools . . .", 55 Iowa L. Rev. 707, 711 (1970) Between 1965 and 1978, more than ninety-nine male student hair cases had been heard in courts throughout the United States (Tribe, 1978, p. 959f) The preponderance of cases of this nature reveals the impact of longer hair lengths and diverse styles on society at a time when shorter hair was not only accepted by the majority but considered to connote political, social and moral establishment values. These values were formed by adult members of society and passed to younger members, some of whom chose to reject them.

When male adolescents began to exhibit their preference for unorthodox hair lengths and styles, school systems promulgated dress and grooming codes to sanction deviance. School administrators perceived that long hair was associated with deviant behavior, distracted other students and teachers, resulted in poor grades which negatively impacted the learning process, was a safety hazard in vocational courses, and was a visible but non-verbal sign of political and social unrest. In many cases, dress and grooming codes were explicitly drawn. Although the earliest written dress and grooming code in this study appeared in 1923, most school boards did not perceive the need for them until the mid to late 1960's. As evidenced from the number of hair cases which entered the courts during the 1960's and 1970's, the change

process was not smooth in many school districts throughout the country.

Speaking of stability and change, the seventh Circuit U.S. Court of Appeals said:

> It does not take the wisdom of Solomon to recognize that dress codes which have been judicially condemned were doomed to fall in due course in any event. Judicial participation in the process of changing mores can affect the rate of change, but we certainly do not decide whether or not the change will occur. Arnold v. Carpenter 459 F.2d 939, 945 (1972)

There are two reasons why students selected longer hair lengths and diverse styles. In several cases, it symbolically conveyed an attitude of societal discontent and norm rejection. However, symbolic conduct, viewed by the courts, becomes less convincing ". . . as the non-verbal message becomes less distinct, the justification for the substantial protections of the First Amendment becomes more remote." Richards v. Thurstron 424 F.2d 1281, 1283 (1970) Generally, however, it appeared to have been a matter of personal preference expressing one's personality, aesthetic desires, and/or conformity to current youth trends. One court succinctly states: ". . . they 'wanted' to have longer hair, they 'liked' it and they thought it was their 'right'." Freeman v. Flake 320 F. Supp. 531, 537 (1970) These students were exceptions, at least within their respective schools. While some students who chose to be different were not sanctioned by fellow students or teachers, others bore jeering, insults, reprimands from teachers, physical isolation and like-group segregation.

Courts were divided on student hair issues as evidenced in the decisions. Decisions were divided depending upon the judicial circuit in which the case was heard. Certain districts consistently ruled one way while other districts consistently ruled another way. Arnold v.

Carpenter 459 F. 2d 939, 941 (1972)

From 1965 to 1969, courts perceived that unusual hair lengths and styles may be a negative influence in the school and held in favor of the school boards. After 1969, and as longer hair became more common in America, decisions were dependent upon whether school disturbances had, in fact, occurred, and, at times, whether school boards anticipated or perceived that disturbances were likely to occur. Some judicial circuits required school boards to establish the reasonableness of the regulations, prove that dress and grooming codes were necessary for the maintenance of the educational process, or establish that they were not a result of personal biases.

Court dictum was frequently very expressive, with feelings ranging from complete authority of the school board to control student conduct and personal appearance, to student right to control his/her personal appearance. The following dicta exemplifies the wide range of judicial opinions regarding the permissibility of students to fashion their own personal appearance. Regarding the use of cosmetics, the Arkansas Supreme Court said in 1923:

> Courts have other and more important functions to perform than that of hearing the complaints of disaffected pupils of the public schools against rules and regulations promulgated by the school boards for the government of the schools. Pugsley v. Sellmeyer 250 S.W. 538, 541 (1923)

As seen in the tables, this same feeling was expressed in several of the hair cases fifty-three years later.

In 1968, the dissenting opinion of Mr. Justice Douglas reads:

> I suppose that a nation bent on turning out robots insist that every male have a crew cut and every female wear pigtails. But the idea of "life, liberty, and the pursuit of happiness," expressed in the Declaration of Independence, later found specific definition in the Constitution itself, including of course freedom of expression and a wide zone of privacy. I had supposed those guarantees permitted idiosyncrasies to flourish, especially when they concern the image of one's personality and his philosophy toward government and his fellow men. Ferrell v. Dallas Indep. School Dist., 392 F. 2d 697, 699 (1968)

Four years later, Circuit Judge Wisdom states in his dissenting opinion:

> Hair . . . for centuries has been one aspect of the manner in which we hold ourselves out to the rest of the world. Like other elements of costume, hair is a symbol: of elegance, of efficiency, of affinity and association, of non-conformity and rejection of traditional values. A person shorn of the freedom to vary the length and style of his hair is forced against his will to hold himself out symbolically as a person holding ideas contrary, perhaps, to ideas he holds most dear. Forced dress, including forced hair style, humiliates the unwilling complier, forces him to submerge his individuality in the "undistracting" mass, and in general, smacks of the exaltation of organization over member, unit over component, and state over individual. Karr v. Schmidt 460 F. 2d 609, 621 (1972)

Table 2.--Students.

Name, Sex State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
Valentine v. Independent School District (F) Iowa 1921	Cap/Gown	Iowa District, Iowa Supreme	Mandamus to compel issuing of diploma - - - - State law	Class valedictorian was refused diploma in 1918 because she refused to wear cap/gown which smelled of disinfectants. A doctor said that disinfectants would not prevent the transfer of communicable diseases. Unwritten dress code.	Because a four year program had been satisfactorily completed, withholding the diploma was arbitrary and unreasonable.
Jones v. Day (M) Miss. 1921	Khaki Uniform	Miss. Chancery, Miss. Supreme	Injunction against enforcement of dress code - - - - State law	Student alleged that agriculture high school written dress code required wearing khaki uniform at home as well as school.	Dress regulations, prompted by disciplinary concerns, were not unreasonable if uniforms were worn on school premise and within a five mile radius but not at home.
Pugsley v. Sellmeyer (F) Ark. 1923	Face Powder	Ark. Circuit, Ark. Supreme	Mandamus to compel reinstatement of pupil - - - - State law	Student was expelled in 1921 because she wore talcum powder which violated written dress code. Immodest clothes, transparent stockings, and cosmetics were forbidden.	School had authority to make and enforce dress code. Court had more important business to conduct than hearing student complaints. School was the place to learn respect for authority.
Leonard v. School Committee (M) Mass. 1965	Hair	Mass. Superior, Mass. Supreme	Injunction to prevent exclusion of pupil - - - - State law	Student, a professional musician, was suspended in 1964 because his hair length violated unwritten dress code. Code interfered with his life outside of school.	School had authority to issue and enforce dress code. Court perceived that immodest clothes and unusual hair styles may disrupt school.

Table 2.--Continued.

Name, Sex, State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
Burnside v. Byars (M & F) Miss. 1966	Freedom Buttons	U.S. District, U.S. Court of Appeals	Injunction against enforcement of regulation - - - - 1st, 14th Amendments-Freedom of expression	Students were suspended in 1964 because they wore such buttons. School had permitted other types of buttons in the past. Buttons did not cause a disturbance.	Schools could not ignore matters merely because they did not want to deal with them. Regulation was arbitrary and unreasonable since there was no disturbance.
Blackwell v. Issaquena County Board of Education (M & F) Miss. 1966	Freedom Buttons	U.S. District, U.S. Court of Appeals	Injunction against enforcement of regulation - - - - 1st, 14th Amendments-Freedom of expression	Black students were suspended in 1965 because they wore freedom buttons. Buttons had caused a disturbance and discipline problems.	School had authority to restrict buttons because the disturbance had prevented school functioning.
Davis v. Firment (M) La. 1967	Hair	U.S. District	Action for damages and for injunction - - - - 1st, 14th Amendments-Freedom of expression	Student was suspended in 1966 because his hair violated written dress code. He was readmitted when he cut his hair.	Student had no constitutional rights regarding hair which violated dress code.
Ferrell v. Dallas Independent School District (M) Tex. 1968	Hair	U.S. District, U.S. Court of Appeals	Injunction against enforcement of dress code - - - - 1st, 14th Amendments-Freedom of expression	Students, professional musicians, were denied enrollment in 1966 because their hair violated dress code. The media was called and a protest song was written and aired.	School had authority to issue and enforce dress code which aided school functioning. Dress code was not arbitrary, unreasonable or capricious.
Breen v. Kahl (M) Wis. 1969	Hair	U.S. District	Injunction against enforcement of regulation - - - - 1st, 14th Amendments-Freedom of expression	Student was expelled in 1968 because his hair violated written dress code. His hair did not cause a disturbance. Dress code was in accord with community standards.	School did not prove the necessity for the hair regulations. No data or expert testimony was offered which correlated behavior and long hair.

Table 2.--Continued.

Name, Sex, State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
Brick v. Board of Education, Sch. Dist. No 1, Denver, Colo. (M) Colo. 1969	Hair	U.S. District	Injunction against enforcement of regulation - - - - 1st, 14th Amendments-Freedom of expression	Student was suspended in 1969 because his hair violated written dress code. His hair was not a political symbol. Hair had caused disturbances in school in the past.	Rules were decided by teachers, parents, and students to limit extreme styles. Rules were not unreasonable.
Crews v. Cloncs (M) Ind. 1969	Hair	U.S. District	Injunction to prevent exclusion of pupil - - - - 1st, 14th Amendments-Freedom of expression	Student was suspended in 1969 because his hair violated written dress code. His hair was not a political symbol. Hair had caused disturbances in school.	A high school student did not have a constitutionally protected right to choose his personal appearance at school. Schools had authority to issue and enforce rules for school functioning.
Tinker v. Des Moines School District (M & F) Iowa 1969	Black Arm Bands	U.S. District, U.S. Court of Appeals, U.S. Supreme (certiorari)	Injunction against enforcement of regulation - - - - 1st, 14th Amendments-Symbolic speech	Junior High and High School students were suspended in 1965 because they wore black arm bands to peacefully protest the Vietnam War. No written regulations.	Students had the right to peacefully express their views via black arm bands. School regulation was unconstitutional.
Scott v. Board of Ed., U.F. Sch. Dist. #17, Hicksville (F) N.Y. 1969	Slacks	N.Y. Supreme	Injunction against enforcement of regulation - - - - 1st, 14th Amendments-Freedom of expression	Student was expelled because she wore slacks at a time when they were restricted by written dress code. They could only be worn during the severe winter months. Student was not financially able to comply with dress code.	Dress code was unenforceable and had no effect on safety or discipline.

Table 2.--Continued.

Name, Sex, State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
Noonan v. Green (F) Calif. 1969	Uniform	Calif. Superior, U.S. Court of Appeals	Mandamus to compel setting aside order - - - - 14th Amendment-Procedural due process	Student was suspended in 1967 from a public high school because she did not wear prescribed uniform. Uniforms were requested by the class of 1926 and were worn thereafter so that all girls looked similar and were not distracted by clothing.	Case dismissed. Student did not follow administrative procedure of school. Uniform issue not resolved.
Dunham v. Pulsifer (M) Vt. 1970	Hair	U.S. District	Injunction against enforcing code - - - - 14th Amendment-Personal liberty	Three students were dismissed from the tennis team because their hair violated athletic team dress code. The school had no dress code.	Longer hair did not cause a disturbance and did not hinder tennis playing. Hair regulations were unreasonable. Conformity for its own sake can not be tolerated.
Sims v. Colfax Community School District (F) Iowa 1970	Hair	U.S. District	Action challenging constitutionality of regulation - - - - 14th Amendment-Free choice of appearance	Student was suspended in 1968 for violating written dress code which required a one inch separation between eyebrows and hair. School issued dress code to foster citizenship and respect for authority. No disruption occurred.	School did not justify dress code. There were no disruptions. Individuals had right to choose their own personal appearance.
Crossen v. Fatsi (M) Conn. 1970	Hair, Sideburns, Beard	U.S. District	Action seeking reinstatement of pupil - - - - 9th, 14th Amendments-Right of privacy	Student was suspended in 1970 because his hair/sideburns/beard violated written dress code.	Dress code was vague and overly broad, and therefore unenforceable.

Table 2.--Continued.

Name, Sex, State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
Freeman v. Flake (M) (3 cases) Utah 1970	Hair	U.S. District	Injunction against enforcement of regulation - - - - 1st, 9th, 14th Amendments - Freedom of expression	Three students were suspended in 1970 because their hair violated dress code. One was readmitted after he cut his hair. Another chose the hair style to cover a head scar.	School had authority to issue and enforce dress code. But, it cannot be assumed that long hair, in itself, is meant to express political or societal unrest.
Jackson v. Dorrier (M) Tenn. 1970	Hair	U.S. District, U.S. Court of Appeals	Injunction against enforcement of regulation - - - - 1st, 14th Amendments- Freedom of expression	Students, professional musicians, were suspended in 1968 because their hair violated unwritten dress code. Their hair had been a disruptive influence in school.	School had authority to issue and enforce dress code as one aspect of maintaining order and discipline.
Griffin v. Tatum (M) Ala. 1970	Hair	U.S. District, U.S. Court of Appeals	Action seeking readmission of student - - - - 14th Amendment - Arbitrary and unreasonable classification	Student was suspended in 1969 because his hair violated written dress code. It restricted a "blocked" cut in the back. Long hair was perceived to be a disruptive influence.	School had authority to issue and enforce reasonable dress codes. But, that portion requiring trimmed and well cut hair was arbitrary and unreasonable.
Stevenson v. Board of Ed. of Wheeler County, Georgia (M) Ga. 1970	Shave	U.S. District, U.S. Court of Appeals	Injunction against enforcement of code - - - - 14th Amendment - Racial discrimination; equal protection	Three black students were suspended in 1969 for refusing to shave which violated dress code. Students and parents believed that the students did not need to begin shaving yet.	School had authority to issue and enforce reasonable dress code. Said code was not discriminatory, arbitrary or unreasonable. Court felt that the matter was a school problem and should not have taken up court time.

Table 2.--Continued.

Name, Sex, State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
Hernandez v. School District Number One, Denver, Colo. (M) Colo. 1970	Black Berets	U.S. District	Action for declaration of violation of constitutional rights - - - - 1st, 14th Amendments-Freedom of expression	Mexican-American students were suspended in 1969 because they refused to stop wearing black berets. Hats, worn as a political symbol, had resulted in disruptive conduct and fear.	Disruptive conduct did not receive 1st Amendment protection. Colorado law gave authority to the principal to issue suspensions when necessary.
Bannister v. Paradis (M) N.H. 1970	Blue Jeans	U.S. District	Injunction against enforcement of regulation - - - - 14th Amendment-Personal liberty	Sixth grade student was sent home in 1970 because his clean blue jeans violated written dress code. Not a disruptive influence.	School had authority to issue and enforce reasonable dress code. Blue jeans were not proven to deter learning and that part of the dress code was unenforceable.
Richards v. Thurston (M) Mass. 1970	Hair	U.S. District, U.S. Court of Appeals	Action to reinstate pupil - - - - 14th Amendment-Personal liberty	Student was suspended because his hair violated unwritten dress code. Not a disruptive influence.	School did not justify dress code. The court said that conformity to set standards should not be a part of the educational atmosphere.
King v. Saddleback Junior College District (M) (2 cases) Calif. 1971	Hair	U.S. District, U.S. Court of Appeals	Injunction against enforcement of code - - - - 14th Amendment-Due process and equal protection	High school student was refused enrollment in 1969 because his hair may have violated written dress code. No disruptions due to hair presented.	California law gave schools authority to issue and enforce regulations governing dress. Schools acted in best interest of students and school.
Alberda v. Noell (M) (3 cases) Mich. 1971	Hair	U.S. District	Not stated in opinion - - - - No substantial federal question	Not stated but called "Hair cases."	School issues governing personal appearance should be handled administratively or within Michigan state courts. Case dismissed.

Table 2.--Continued.

Name, Sex, State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
Bishop v. Colaw (M) Mo. 1971	Hair	U.S. District, U.S. Court of Appeals	Action for readmission of student - - - - 9th, 14th Amendments-Personal liberty	Student was suspended in 1970 because hair violated written dress code. His hair had not caused a disturbance.	School did not justify necessity for dress code. Regulations were invalid and unenforceable.
Karr v. Schmidt (M) Tex. 1972	Hair	U.S. District, U.S. Court of Appeals (en banc)	Action to enjoin enforcement of code - - - - 14th Amendment-Personal liberty	Student was refused enrollment in 1970 because his hair violated written dress code. His hair had not caused a disturbance.	School had authority to impose dress code. It was not proven to be irrational.
Lansdale v. Tyler Junior College (M) Tex. 1972	Hair	U.S. District, U.S. Court of Appeals	Action to enjoin enforcement of dress code - - - - 14th Amendment-Personal liberty	Junior college student was denied admission in 1970 because his hair violated written dress code.	College did not have authority to regulate college students' hair. Rules were arbitrary and irrelevant.
Massie v. Henry (M) N.C. 1972	Hair, Sideburns	U.S. District, U.S. Court of Appeals	Action for readmission of student - - - - 14th Amendment-Personal liberty	Student was suspended because his hair and sideburns violated dress code. Welding instructor considered long hair a safety hazard. Hair was considered a disruptive influence.	School did not justify necessity for dress code. Disturbances could have been counteracted with tolerance. Safety measures could have been utilized. Dress code was invalid.
Stull v. School Board of Western Beaver Jr.-Sr. H.S. (M) Pa. 1972	Hair	U.S. District, U.S. Court of Appeals	Action for readmission of student - - - - 14th Amendment-Personal liberty	Student was suspended in 1970 and 1971 because his hair violated written dress code. Not a disruptive influence.	School did not justify necessity for dress code. Hair portion was unconstitutional.

Table 2.--Continued.

Name, Sex, State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
Arnold v. Carpenter (M) Ind. 1972	Hair	U.S. District, U.S. Court of Appeals	Action to enjoin enforcement of code - - - - 14th Amendment-Personal liberty	Student was denied class participation in 1970 because his hair violated written dress code. It was written by students, teachers, and administrators.	School did not justify necessity for dress code. Hair portion was unconstitutional.
Wallace v. Ford (M) Ark. 1972	Hair	U.S. District	Action to enjoin enforcement of code - - - - 14th Amendment-Personal liberty	Student was suspended in 1971 because his hair violated written dress code. Other students had been sanctioned for wearing tight pants, jumpsuits, knickers, maxi and midi skirts, and front opening pants on girls.	Hair portion was unenforceable. Knicker and jumpsuit sanctions were invalid. Skirt six inches above knee was arbitrary but permitted, to deter immodest appearance. Portion covering tight skirts/pants may remain.
Hick v. Sullivan (M) W. Va. 1973	Hair	U.S. District, U.S. Court of Appeals	Action to enjoin enforcement of code - - - - 14th Amendment-Personal liberty	Student asks that the enforcement of hair regulation be discontinued.	Hair regulation violated personal rights under the 14th Amendment.
Johnson v. Joint School Dist. No. 60, Brigham County (F) Idaho 1973	Pantsuit, Culottes	Idaho District, Idaho Supreme	Action to enjoin enforcement of code - - - - 14th Amendment-Personal liberty	Students were sent home in 1971 because their slacks violated dress code.	Regulations were arbitrary, capricious, and beyond authority of school.
New Rider v. Board of Ed. of Ind. Sch. Dist. No. 1, Okl. (M & F) Okla. 1973	Hair (Indian Braids)	U.S. District, U.S. Court of Appeals	Injunction against enforcement of regulation - - - - No substantial federal question	Three Pawnee Indian Junior High students were suspended in 1972 because their braids violated written dress code. Braids symbolized pride in their heritage.	Regulations were not discriminatory but this was not an issue for the federal courts.

Table 2.--Continued.

Name, Sex, State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
School District No. 11-J v. Howell (M) Colo. 1973	Hair (Indian)	Colo. District, Colo. Court of Appeals	Complaint charging religious discrimination - - - - 1st, 14th Amendments-Freedom of religion	Pawnee Indian students were suspended in 1972 because their hair violated written dress code. Long hair was a part of their religious and cultural beliefs.	Regulations were not discriminatory. School's attempt to provide an exception for said students was discriminatory.
Holsapple v. Woods (M) Ill. 1974	Hair	U.S. District, U.S. Court of Appeals	Action for readmission of student - - - - 14th Amendment-Personal liberty	Student was suspended in 1973 because his hair violated written dress code.	School did not justify the necessity for dress code. Hair was not proven to negatively impact learning process.
Hatch v. Goerke (M) Okla. 1974	Hair (Indian Braids)	U.S. District, U.S. Court of Appeals	Action for readmission of student and to enjoin enforcement of code - - - - 1st, 14th Amendments-Freedom of religion	Arapaho Indian fifth grade student was expelled in 1972 because his braids violated dress code. His hair was a symbol of religious, cultural and moral heritage.	Hair issue was not an issue for the federal courts. A school hearing may have been necessary. Re-hearing in district court on this issue.

Teachers

Twenty cases in which individuals teaching in the public school system perceived that they were denied the right to determine their own personal appearance are discussed in this section. (See Table 3.) Regulations were imposed by principals, school boards, education commissions or state legislative bodies. It was the responsibility of the court to determine whether the regulations were within permissible limits allowed for proper management of public schools.

Religious Teachers

Eight cases consider the impact and permissibility of wearing designated religious habits by Roman Catholic sisters and brothers while teaching in a public school environment. Even though the cases are not numerous in relation to the sixty-two year time span, the issue remains constant: At what point will a distinctive religious personal appearance be permitted in the public school system before it is considered intolerable and an infringement upon the student's right to religious freedom protected by the First Amendment? Where it was established that actual religious instruction existed, it was held that sisters and brothers were not permitted to wear their habit in the classroom. In the majority opinions written by Justice McGhee in 1951, references to personal appearance supported the court decision which forbade the wearing of religious garb while teaching in public schools.

> There can be little doubt that the effect of the costume worn by these Sisters of St. Joseph at all times in the presence of their pupils would be to inspire respect, if not sympathy, for the religious denomination to which they so manifestly belong. Zellers v. Huff 236 P. 2d 949, 963 (1951)

Conversely, where it was established that religious instruction did not occur, religious were permitted to wear their habit. A distinctively religious personal appearance did not in itself preclude qualified teachers from employment, but rather, the associated conduct determined whether such appearance would be permitted in a public school setting. The dicta exemplified in these opinions are also belief/value oriented. For example, the majority opinion written by Judge Dean in 1894 states:

> It may be conceded that the dress and crucifix impart at once the knowledge to the pupil of the religious belief and society membership of the wearer . . . The religious belief of many teachers, all over the commonwealth, is indicated by their apparel. Quakers or Friends, Omnish, Dunkards, and other sects, wear garments which at once disclose their membership in a religious sect. Ministers or preachers of many Protestant denominations wear a distinctively clerical garb. No one has yet thought of excluding them as teachers from the school room on the ground that the peculiarity of their dress would teach to pupils the distinctive doctrines of the sect to which they belonged. Hysong v. School Dist. 30 A. 482, 484 (1894)

A similar tone is again repeated in a 1956 case in which the majority opinion reads:

> . . . (T)he religious views of these Sisters and their mode of dress are entirely personal to them. If they were prevented from teaching in the public schools because of their religious beliefs, then they would be denied equal protection of the law in violation of the Fourteenth Amendment of the Federal Constitution. Rawlings v. Butler 290 S.W. 2d 801, 810 (1956)

The dissenting opinion in the case takes another view:

> . . . (T)he distinctive garb . . . create a religious atmosphere in the school room, that they have a subtle influence upon the tender minds being taught and trained by the nuns, that in and of themselves they proclaim the Catholic Church as the representative character of the teachers in the school room, that they silently promulgate sectarianism, and that indeed, these good women are the Catholic Church in action in a most fertile field--the impressionable minds of the children. Rawlings v. Butler 290 S.W. 2d 801, 820 (1956)

Two cases did not address the religious instruction issue but forbade the wearing of religious garb in the public school classroom.

Lay Teachers.

Twelve cases examined restrictions, written and unwritten, placed upon lay teachers in the public school system. The majority of cases involved high school teachers and the issues were found to be less emotional than those in student or religious categories. While a substantial number of the teachers were terminated for violating dress codes, in no case was it established that behavior or reactions to sanctioned personal appearance caused a classroom disruption. As evidenced in a number of other categories, the majority of complaints involved males, with the most common issue being facial hair preferences.

Nine of the twelve cases involved infringements of promulgated school dress codes. School boards enacted these restrictions for a number of reasons: irregular or faddish appearance may be a source of potential classroom disruption; a formal personal appearance helped to establish authority in the classroom situation, thus commanding student respect; in permitting teachers to freely choose their personal appearance, restrictions placed upon student personal appearance would be more difficult to enforce; or perceived deviance in personal appearance negatively impacted the professional image of those in the teaching profession.

Sanctioned teachers reacted by claiming ignorance of standards or that they were bound by existing student dress codes, by perceiving that dress codes were irrational, arbitrary and invaded personal

rights, or by perceiving that dress standards were racially discriminatory.

Teachers in two cases, one involving the general appearance including facial hair of a male teacher and the other involving a short skirt worn by a female teacher, were formally dismissed for alleged teaching inability and contractural infractions. In both cases, teachers perceived that their employment was terminated because they refused to comply with school personal appearance standards. In the case of the male teacher, the court said:

> If a school board should correctly conclude that a teacher's style of dress or plummage has an adverse impact on the educational process, and if that conclusion conflicts with the teacher's interest in selecting his own life style, we have no doubt that the interest of the teacher is subordinate to the public interest. We must assume, however, that sometimes such a school board determination will be incorrect. Even on that assumption, we are persuaded that the importance of allowing school boards sufficient lattitude to discharge their responsibilities effectively--and inevitably, therefore, to make mistakes from time to time--outweights the individuals interest at stake. Miller v. School Dist. No. 167, 495 F.2d 658, 667 (1974)

The trial court dictum regarding the skirt of the female teacher states:

> The court, having taken a view, found that plaintiff's dresses, which came "Half-way down (her) thigh," were "comparable in style to dresses worn by young respectable professional women during the years when the plaintiff was teaching." Tardiff v. Quinn 545 F. 2d 761 (1976)

In both cases, courts upheld the dismissal of the teachers because they had not fulfilled their contracts.

One case considered the symbolic speech, conduct and expression of a teacher, a practicing Quaker, who in 1970 wore a black arm band in the classroom to silently protest and mourn the dead in Vietnam.

Although the symbol caused neither a disruption nor classroom discussion, the New York Commissioner of Education dismissed the teacher for bringing his political views into the classroom. The court ruled that a teacher did have symbolic expression rights in the classroom. This decision placed the responsibility on school boards to establish the reasonableness of their regulations and sanctions in the future. Case Comments . . . , 7 Suffolk U. L. Rev. 197, 210 (1972)

Table 3.--Teachers--Religious.

Name, Sex, State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
Hysong v. School Dist. of Gallitzin Borough (F) Pa. 1894	Religious Garb	Pa. Court of Common Pleas, Pa. Supreme	Injunction against sectarian teaching - - - - 1st Amendment-Freedom of religion	Six Roman Catholic sisters who wore their habit, crucifix, and rosary while teaching in a public school, and did not teach religion during school hours, violated non-Catholic residents' principles. All school board members were Catholic as well as majority of residents.	School board had authority to hire qualified teachers. Even though religious garb was an announcement of their religious tenets, it did not disqualify sisters from teaching in public schools. In the sixty year history of the court, a matter of this nature had never appeared.
O'Connor v. Hendrick (F) N.Y. 1906	Religious Garb	N.Y. County, N.Y. Supreme (Appellate Div.), N.Y. Court of Appeals	Claim for wages - - - - State constitution-Establishment of religion	In 1903, two Roman Catholic sisters were denied their salary because the superintendent issued instructions forbidding teachers to wear distinctive religious garb in public schools. Teachers, however, completed the term in their religious garb.	Superintendent had authority to issue and enforce reasonable rules including the prohibition of distinctive garb in the classroom.
Commonwealth v. Herr (F) Pa. 1910	Religious Garb	Pa. Superior, Pa. Supreme	Indictment of school officials - - - - State constitution-Freedom of religion	School directors were fined and indicted for violating 1895 law forbidding the hiring of teachers who wore religious "dress, insignia, marks or emblems" in the classroom.	Law was constitutional. Legislature had authority to issue and enforce reasonable rules which governed schools. Law did not limit religious freedom.
Knowlton v. Baumhover (F) Iowa 1918	Religious Garb	Iowa District, Iowa Supreme	Injunction against spending funds - - - - State constitution	From 1905 until 1914, two Roman Catholic sisters, who wore the "characteristic garb and regalia," taught religion and other subjects in a two room public school, the only school in town.	Public school was, in fact, a Catholic school. Sisters' appearance was daily reminder to students of Cath. church tenets. Sectarian teaching was forbidden in public school, even when public school was held on Catholic owned site.

Table 3.--Continued.

Name, Sex, State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
Gerhardt v. Heid (F) N. Dak. 1936	Religious Garb	N. Dak. District, N. Dak. Supreme	Injunction against wearing religious garb - - - - State constitution-Freedom of religion	In 1935, four Roman Catholic sisters taught in the public school but did not teach religion. Although they wore their habits, they generally did not wear other religious insignia.	State law did not regulate teachers' dress. School board had authority to hire qualified teachers.
State v. Boyd (M & F) Ind. 1940	Religious Garb	Ind. Circuit, Ind. Supreme	Action to recover funds paid to teachers - - - - State constitution-Establishment of religion	To accommodate eight hundred students from 1933-1939 when the Catholic school closed, public school system took over said buildings, and hired sisters and brothers as teachers. They did not teach religion during school hours.	School board had authority to hire qualified teachers. Religious garb did not automatically constitute a religious school.
Zellers v. Huff (M & F) N. Mex. 1951	Religious Garb	N. Mex. District, N. Mex. Supreme	Injunction to ban members of religious orders from teaching - - - - 1st Amendment-Establishment of religion	Santa Fe public schools were prohibited from staffing schools with Roman Catholic brothers and sisters who wore religious garb, taught religion, supplied religious textbooks, provided busing, and held classes on church property with tax money.	Many Santa Fe public schools were, in fact, run by the Catholic Archdiocese. Religious garb and insignia were forbidden during school hours as were religious instruction and supplying religious materials.
Rawlings v. Butler (F) Ky. 1956	Religious Garb	Ky. Circuit, Ky. Court of Appeals	Injunction against paying salaries to sisters - - - - 1st Amendment-Freedom of religion	Seventy-one Roman Catholic sisters taught in public schools but did not teach religion. Their habit consisted of white wool tunic and scapular, rosary attached to leather belt, veil, guimpe, and headband of white linen. Black wool cloak was worn for outerwear.	Religious garb alone did not constitute a religious school. State law did not regulate dress of teachers. The costume did not teach students, it was the individual who taught.

Table 3.--Continued.

Name, Sex, State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
Teachers--Lay.					
Finot v. Pasadena City Board of Education (M) Calif. 1967	Beard	Calif. Superior, Calif. Court of Appeals	Mandamus to compel teacher's reassignment - - - - 14th Amendment-Deprivation of liberty	Tenured teacher was transferred in 1963-4 because his beard violated written dress code. Mustaches were permitted, as being more common in the community. School perceived that teacher dress impacted student dress and that student dress correlated with student behavior. No disturbance was established.	Beard may have been a symbol of masculinity or nonconformity and thus, was constitutionally protected. Teacher had a right to wear a beard.
Blanchet v. Vermilion Parish School Board (M) La. 1969	Tie	La. District, La. Court of Appeals	Injunction against enforcement of regulation - - - - 14th Amendment-Deprivation of liberty	Tenured teacher was suspended in 1967 because he refused to wear a tie, which violated written dress code. No disturbance was established.	School board had authority to issue and enforce rules which govern public schools. Tie regulation did not restrict personal liberty.
Braxton v. Board of Public Instruction of Duval County, Florida (M) Fla. 1969	Goatee	U.S. District	Action to compel rehiring of teacher - - - - 14th Amendment-Deprivation of liberty	Black teacher was suspended because his facial hair, worn as a cultural symbol, violated principal's dress standard. No disruption was established.	Principal's request, which was discriminatory, was arbitrary and violated teacher's rights.
Lucia v. Duggan (M) Mass. 1969	Beard	U.S. District	Injunctive relief and damages under Civil Rights Act of 1871 - - - - 14th Amendment-Deprivation of liberty	Teacher was dismissed because his beard violated student dress code which was not known to apply to teachers. No disruption was established. He was unable to secure another teaching position.	School board had surpassed their authority. Teacher did not know that beard would result in dismissal and decision making process was not fair.

Table 3.--Continued.

Name, Sex, State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
Ramsey v. Hopkins (M) Ala. 1970	Mustache	U.S. District	Action to regain employment - - - - 14th Amendment- Due process and Equal protection	Black teacher was dismissed because he refused to shave his mustache at the principal's request. He did not object to request at the interview. No disturbance was established. His replacement had a mustache but was not asked to remove it.	Principal's request was arbitrary and unenforceable.
James v. Board of Education of Central Dist. No. 1, Etc. (M) N.Y. 1972	Black Arm Band	U.S. District, U.S. Court of Appeals	Action to regain employment - - - - 1st Amendment- Freedom of expression	Teacher was dismissed in 1970 because he wore a black arm band to silently protest the Vietnam War which violated Board of Education policy. It did not cause a disturbance.	Dismissal was arbitrary. Students should not be protected from national issues until they enter the voting booth. Even though School Board had broad discretionary powers, it may not violate individual's freedom of expression.
Conard v. Goolsby (M) Miss. 1972	Hair, Mustache, Goatee, Beard	U.S. District	Action to regain employment - - - - 14th Amendment- Due process and Equal protection	Three black teachers, who wore long hair and facial hair as a cultural symbol, violated written student dress code. Hair was in accordance with community standards. No disruption occurred.	Regulation was arbitrary and unenforceable. State had no authority to regulate grooming preferences of employees when it did not interfere with job performance.
Morrison v. Hamilton County Board of Ed. (M) Tenn. 1973	Beard	Tenn.Chancery, Tenn. Supreme	Appeal to court from discharge order of Bd. of Ed. - - - - 14th Amendment- Due process and Equal protection	Tenured teacher was dismissed in 1970 because his beard violated written dress code. No disruption was established.	School board had authority to issue and enforce rules which govern public schools. While personal appearance was personal, society sets limits.

Table 3.--Continued.

Name, Sex, State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
Miller v. School District Number 167, Cook County, Ill. (M) Ill. 1974	Beards, Sideburns, Appearance	U.S. District, U.S. Court of Appeals	Action to regain employment and damages. - - - - 14th Amendment-Deprivation of liberty	Junior high teacher, who was eligible for tenure status, was dismissed in 1971 for teaching inability. He perceived the reason to be his appearance and Vandyke beard.	School board had authority to issue and enforce rules which govern public schools.
East Hartford Education Ass'n v. Board of Education (M) Conn. 1975	Jacket, Shirt, Tie	U.S. District	Action to have dress code declared unconstitutional - - - - 14th Amendment-Due process; Freedom of expression	Teacher questioned legality of dress code requiring the wearing of jacket or sweater, shirt, and tie. He preferred not to dress like the establishment which would aid in student rapport. No disturbance was established.	School board had authority to issue and enforce rules which govern public schools. Teachers establish role models for students. Teacher was free to seek job elsewhere.
Hander v. San Jacinto College (M) Tex. 1975	Beard	U.S. District, U.S. Court of Appeals, U.S. District, U.S. Court of Appeals	Action to regain employment - - - - 14th Amendment-Deprivation of property rights	Junior college teacher was dismissed in 1971 because his beard violated written faculty dress code. No disruption had occurred.	College dress code was unconstitutional. Teachers did not have same public impact as policemen.
Tardif v. Quinn (F) Mass. 1976	Skirt Length	U.S. District, U.S. Court of Appeals	Action to regain employment - - - - 14th Amendment-Deprivation of liberty	Teacher was dismissed in 1971 because she did not fulfill her contractual obligations. She perceived the reason to be her short skirt.	Although court stated that teacher's skirt length was not contrary to community standards, she had not fulfilled her contractual obligation and termination was in order.

Employees

Thirty-one cases were located in which individuals, other than teachers, perceived that they were denied the right to individual personal appearance selection in a work environment (see Table 4). Six cases within this category involved reservist members of the United States Armed Services, who, when violating hair grooming regulations of the military dress code, were assigned active duty status by the particular branch of the Armed Service involved. The courts have generally held that review of discretionary military decisions was not within court jurisdiction.

Twenty-five cases considered the rights of private business and public service employees to be controlled by what they perceived to be unfair and discriminatory employer promulgated dress codes. The Civil Rights Act of 1964 states that employment opportunities may not be denied on the basis of race, ethnic origin, and sex. Sex as a classification was included to provide equal employment opportunities for women. Act guidelines emphasize applicant/employee evaluation on the basis of competence, skill and self-worth rather than on societal sex role stereotyping. Ziegler, "Employer Dress and Appearance Codes . . .", 46 Calif. L. Rev. 965, 971 (1973) Civil Rights Act litigation emerged in the courts around 1970 (Ibid, p. 973) and continues to the present day.

Sex role stereotyping, resulting in unequal employment practices, was perceived by persons in applicant/employee roles to be the major issue in a number of these cases. While the original purpose of the Civil Rights Act was to provide equal employment for minorities,

including women, the issue of sex discrimination has inadvertently permitted men in our society to also utilize this principle. They alleged that promulgated dress codes restricting long hair on men but not women were discriminatory ". . . because of physical characteristics bearing a cultural stigma which attaches to males but not to females." Oldham, "Questions of Exclusion and Exception . . .", 23 Hastings L. J. 55, 68 (1971)

The long hair issue was not limited to sex stereotyping, but was also applicable to political, social or ideological views of nonconformity. Individuals involved in these cases alleged discrimination because they were men in a society which places acceptance on short haired men. They also perceived that it was not their job performance capabilities which were judged, but rather their personal appearance.

Employers promulgated dress codes, and hair grooming regulations in particular, for a number of reasons. Long hair was perceived to be a sign of societal norm rejection and nonconformity. In some instances, it was considered a safety hazard, for example, in the operation of fire department equipment. It was also thought to have a negative impact on customer and/or co-worker relations. Dress codes, including hair restrictions, may have been considered necessary in establishing the desired corporate image. In cases involving police departments, uniformity was considered important for internal unity and external visibility. In a case involving this particular role, however, the dissenting opinion of Justice Marshall, with whom Justice Brennan joined, addressed a broader issue.

> If little can be found in past cases of this Court or indeed in the Nation's history on the specific issue of a citizen's right to choose his own personal appearance, it is only because the right has been so clear as to be beyond question. When the right has been mentioned, its existence has simply been taken for granted. Kelley v. Johnson 96 S. Ct. 1440, 1449 (1976)

In approximately one third of the cases, employers were unable to provide justification of promulgated dress codes to the court. This included height, weight and eye glass restrictions applied to female airline cabin attendants. The courts generally decided in the other cases that dress codes, including hair grooming regulations which were different for men and women, did provide equal employment opportunities for both sexes. Dress codes existed for each sex and were applied equally. They found that the male gender did not deprive defendants from obtaining or keeping a position. A particular life style or personal appearance choice may have limited employment opportunities but that was a matter of individual choice and could have been altered.

Table 4.--Employees.

Name, Sex, State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
Forstner v. City and County of San Francisco (M) Calif. 1966	Beard	Calif. Superior, U.S. District	Action to regain employment and for back pay - - - - Sufficiency of cause for discharge	Probation officer was suspended for refusal to shave his well trimmed beard. He was expected to appear professional and middle class. No written regulations.	Evidence was not presented to justify discharge. Back salary and position were granted.
Smith v. Resor (M) N.Y. 1969	Hair	U.S. District, U.S. Court of Appeals	Habeas Corpus seeking discharge from active duty - - - - Discretion of military officials	Army reservist, a professional musician, was recalled to active duty because his hair violated written army dress code. Exceptions were permitted.	Reservist had the right to have an army review before active duty order went into effect.
Raderman v. Kaine (M) N.Y. 1969	Hair	U.S. District, U.S. Court of Appeals	Action to enjoin call to active duty - - - - Discretion of military officials	Army reservist, agent for rock group, was reported absent from drills because his hair violated written army dress code. Exceptions were not permitted.	Reservist was subject to army rules even though he was not in active service.
Byrne v. Resor (M) Pa. 1969	Prescribed Belt	U.S. District, U.S. Court of Appeals	Action to rescind orders to active duty - - - - Discretion of military officials	Army reservist, who did not wear prescribed belt, was marked with an unexcused absence which would qualify him for active duty status.	It was not within the jurisdiction of the court to review army decisions. Case dismissed.
Burlingame v. Milone (M) N.Y. 1970	Beard	N.Y. Supreme	Action challenging regulations - - - - Sufficiency of basis for regulations	Probation officer faced suspension for wearing a beard.	Evidence was not presented to justify regulation.

Table 4.--Continued.

Name, Sex, State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
Gianatasio v. Whyte (M) Conn. 1970	Hair	U.S. District, U.S. Court of Appeals	Action to enjoin call to active duty - - - - Discretion of military officials	National Guardsman was cited for unsatisfactory drill participation because his hair violated written dress code. He was assigned active duty status.	Military had authority to regulate hair. Gianatasio could have worn a short haired wig.
Burns v. Pomerleau (M) Md. 1970	Nudist	U.S. District	Action challenging refusal to accept job application - - - - 1st Amendment-Freedom of association	Participating nudist's application for Baltimore patrolman was rejected because of his nudism.	Refusal to accept application solely because applicant was a nudist was arbitrary and unconstitutional.
Eastern Greyhound L.D. v. New York St. Div. of H.R. (M) N.Y. 1970	Beard	N.Y. Supreme, N.Y. Court of Appeals	Complaint charging religious discrimination - - - - 1st Amendment-Freedom of religion	Black Orthodox Muslim, who wore a beard for religious purposes, was refused employment as baggage clerk because written dress code restricted beards.	Clean shaven rule was not intended to discriminate against religious beliefs. It was not against one's human rights.
Anderson v. Laird (M) Ill. 1971	Hair	U.S. District, U.S. Court of Appeals	Action enjoining call to active duty - - - - Discretion of military officials	National Guardsman was reported absent at meetings because his hair violated written dress code. He was called to active duty.	It was not within the jurisdiction of the court to review army decisions. Case dismissed.
Roberts v. General Mills, Inc. (M) Ohio 1971	Hairnet	U.S. District	Action charging sex discrimination - - - - Civil Rights Act-classification	Discharged food processor alleged sex discrimination because men were required to wear hats while women were permitted to wear hairnets for sanitation reasons. Hat did not fully cover his hair. Written dress code.	Dress code stereotyped men and women and violated Civil Rights Act.

Table 4.--Continued.

Name, Sex, State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
Donohue v. Shoe Corporation of America (M) Calif. 1972	Hair	U.S. District	Action challenging dismissal - - - - Civil Rights Act-classification	Discharged shoe salesman alleged sex discrimination because women were permitted to wear longer hair than men.	Dress code violated Civil Rights Act. Outward appearance should not determine self-worth.
Harris v. Kaine (M) N.Y. 1972	Wig	U.S. District	Action challenging regulation - - - - 5th Amendment-Personal freedom	Army reservist was reported absent because his wig violated written dress code. The wig covered long hair which he chose to wear as a symbol of opposition to certain societal standards.	Army was unable to justify rule against presentable appearing wigs. Rule was invalid.
Aros v. McDonnell Douglas Corporation (M) Calif. 1972	Hair	U.S. District	Action seeking reemployment - - - - Civil Rights Act-Sex classification	Discharged flight test employee alleged sex discrimination because men were not permitted the same freedom in hair selection as women. Written dress code.	Dress code, which permits different standards for women than men, constituted sex discrimination. But Aros was not solely discharged because of his hair. McDonnell was phasing out that area of work.
Greenwald v. Frank (M) N.Y. 1972	Hair, Beard, Mustache, Sideburns, Goatee	N.Y. Supreme, N.Y. Supreme (Appellate Division)	Action challenging regulation - - - - Reasonableness of regulation	Policeman alleged that written dress code pertaining to hair infringed personal rights.	Dress code regulating hair was valid. Policemen should be neat and disciplined to gain respect from public.
Stradley v. Andersen (M) Nebr. 1973	Hair, Beard, Mustache, Sideburns, Goatee	U.S. District, U.S. Court of Appeals	Action challenging regulation - - - - 14th Amendment-Due process	Policeman alleged that written dress code pertaining to hair infringed personal rights. His hair did not interfere with job performance.	Police force had authority to issue dress code. It was not arbitrary. Community standards should not be a concern of the federal courts.

Table 4.--Continued.

Name, Sex, State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
Fagan v. National Cash Register Company (M) D.C. 1973	Hair	U.S. District, U.S. Court of Appeals	Action challenging requirement - - - - Civil Rights Act-Personal liberty	Discharged technical serviceman alleged sex discrimination because written dress code restricted men more than women.	Not a matter for the federal courts. Case dismissed.
Owen v. Barry (M) N.Y. 1973	Hair, Beard, Mustache, Sideburns, Goatee	U.S. District, U.S. Court of Appeals	Action challenging regulation - - - - 1st, 5th Amendments-Personal liberty	Policeman alleged that written dress code pertaining to hair infringed personal rights.	Police force did not justify that hair rule was necessary for job performance. Personal liberty includes hair preference.
Dodge v. Giant Food, Inc. (M) D.C. 1973	Hair, Beard, Mustache, Dyed Hair	U.S. District, U.S. Court of Appeals	Action challenging regulation - - - - Civil Rights Act-Sex classification	Discharged and re-assigned clerks alleged sex discrimination because written dress code restricted long hair on men but permitted women to secure their hair.	While there were different rules for men and women, they did not violate Civil Rights Act.
Laffey v. Northwest Airlines, Inc. (F) D.C. 1974	Height, Weight, Glasses, Uniform Cleaning Allowance	U.S. District	Action charging sex discrimination - - - - Civil Rights Act-Sex classification	Stewardess alleged sex discrimination because only female employees were required semi-annual weight checks, were forbidden to wear eye glasses during a flight, could not exceed 5'9" tall, and were not issued a cleaning allowance.	Rules were discriminatory and violated Civil Rights Act.
Michini v. Rizzo (M) Pa. 1974	Hair, Beard, Mustache, Sideburns, Goatee	U.S. District	Action seeking reemployment - - - - 14th Amendment-Governmental interest	Discharged fireman alleged that written dress code pertaining to hair infringed personal rights. Fire Dept. perceived that rules were necessary for safe operation of equipment.	Dress code pertaining to hair was not vague. Facial hair did interfere with equipment functioning. Long hair was a fire hazard.

Table 4.--Continued.

Name, Sex, State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
Bujel v. Borman Food Stores, Inc. (M) Mich. 1974	Hair	U.S. District	Action seeking reemployment and back pay - - - - Civil Rights Act-Sex classification	Discharged clerk-cashier alleged sex discrimination because written dress code regarding hair restricted men more than women.	Dress code restricting hair was not discriminatory.
Knott v. Missouri Pac. Ry. Co. (M) Mo. 1975	Hair, Mustache	U.S. District, U.S. Court of Appeals	Action challenging suspension and discharge - - - - Civil Rights Act-Sex classification	Discharged switchman and an associate procedures analyst alleged sex discrimination because written dress code included hair limitations for men but not women.	Hair stipulations were a part of a total appearance program and were not a form of sex discrimination.
Willingham v. Macon Telegraph Publishing Co. (M) Ga. 1975	Hair	U.S. District, U.S. Court of Appeals (en banc)	Action challenging employment conditions - - - - Civil Rights Act-Sex discrimination	Applicant alleged sex discrimination because he was refused employment due to his hair. Written dress code restricted hair for men but not for women.	Hair length could be changed. It was not a fundamental right. Applicant was free to cut his hair or work elsewhere.
Kamerling v. O'Hagan (M) N.Y. 1975	Hair, Beard, Mustache, Sideburns	U.S. District, U.S. Court of Appeals	Action challenging regulations - - - - 14th Amendment-Governmental interests	Fireman alleged that written dress code restricting hair infringed personal rights.	Dress code restricting hair was reasonable and necessary for safety standards and public interest.
Earwood v. Continental Southern Lines, Inc. (M) N.C. 1976	Hair	U.S. District, U.S. Court of Appeals	Action challenging regulations and for back pay - - - - Civil Rights Act-Sex discrimination	Sanctioned bus driver alleged sex discrimination because written dress code allowed men and women longer hair in other jobs.	Hair length could be changed. Rule restricting hair for men was not discrimination.

Table 4.--Continued.

Name, Sex, State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
Longo v. Carlisle De Coppet & Co. (M) N.Y. 1976	Hair	U.S. District, U.S. Court of Appeals	Action seeking reemployment - - - - Civil Rights Act- Sex discrimination	Discharged employee alleged sex discrimination because dress code restricted hair for men and not women.	Dress code restricting hair for men and not women was not sex discrimination.
Kelley v. Johnson (M) N.Y. 1976	Hair, Beard, Mustache, Sideburns, Goatee, Wigs	U.S. District, U.S. Court of Appeals, U.S. Supreme (certiorari)	Action challenging regulations - - - - 14th Amendment- Personal liberty	Policeman alleged that written dress code restricting hair infringed personal rights and was contrary to community standards.	Dress code was not unconstitutional. A uniform appearance for policemen was advantageous for internal unity and external recognition.
Fountain v. Safeway Stores, Inc. (M) Calif. 1977	Tie	U.S. District, U.S. Court of Appeals	Action challenging discharge - - - - Civil Rights Act- Sex discrimination	Discharged clerk alleged sex discrimination because he was required to wear a tie in accordance with written dress code. Dress code was changed when women demonstrated a preference for slacks.	Dress code requiring tie was not sex discrimination. Employer did permit longer hair on men. An employer should be able to change its dress code as need arises.
Barker v. Taft Broadcasting Co. (M) Ohio 1977	Hair	U.S. District, U.S. Court of Appeals	Action challenging discharge - - - - Civil Rights Act- Sex discrimination	Discharged amusement park craftsman alleged sex discrimination because written dress code permitted long hair for women and not men. Dress code did restrict hair style for women.	Dress code requiring short hair for men was not sex discrimination.
Carroll v. Talman Fed. Sav. & Loan Ass'n of Chicago (F) Ill. 1978	Career Uniforms	U.S. District	Action challenging dress policy - - - - Civil Rights Act- Sex discrimination	Suspended part-time bank employee alleged sex discrimination because written dress code required all women to wear career uniforms while men were required to wear suit, shirt and tie.	Dress code did not violate Civil Rights Act. Dress code did not restrict employment opportunities.

Table 4.--Continued.

Name, Sex, State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
La Von Lanigan v. Bartlett and Co., Grain (F) Mo. 1979	Pantsuit	U.S. District	Action challenging discharge - - - - Civil Rights Act-Sex discrimination	Discharged executive secretary alleged sex discrimination because dress code prohibited women from wearing pantsuit in executive offices but not other sections of the company.	Employer had right to project certain image by restricting pantsuit in executive offices. Dress code did not restrict employment opportunities.

Entertainment and Recreation

Twenty-five cases were located in which personal appearance was limited by law in either the entertainment field or in recreational pursuits (see Table 5). State statutes and city ordinances, enacted to protect the public welfare and morals and preserve the social order, govern the parts of the human body which may not be intentionally exposed before others in a public setting. These laws and ordinances consider nuisance, lewdness, indecency, and obscenity. They are punishable offenses.

Only one case was located in which removal of clothing or parts thereof, was not an issue. A Carmel, California ordinance attempted to restrict and deter the presence of Hippies from the use of public property in 1971. Their appearance and ideology were perceived to be undesireable by the residents. The California Supreme Court declared the ordinance unconstitutional because it labeled a group of people solely because their life style and personal appearance differed from town residents.

The remaining cases considered aspects of permissible undress within a particular situation. In earlier cases, two areas were represented: bathing and playsuit attire and nudism. To shield the real issue from the court, the 1925 case appears to have employed inappropriate appearance for litigation purposes. The real issues apparently were social and ethnic disapproval of Hebrews by a neighbor, with personal appearance being a means in which one aspect of the disapproval was manifested.

The 1937 case, involving an ordinance requiring that customary

street attire be worn on public streets, was the only ordinance or law of that nature. People v. O'Gorman 110 A.L.R. 1231, 1233 (1937) The court held that while covering the human body to comply with decency standards was reasonable, requiring that a specific type of costume be worn was not reasonable. Although a male and female were arrested, whose costume is described in Table 5, it is interesting to note that their female companion who wore slacks was not arrested. It was also pointed out that none of the parties wore hats.

In older cases concerning nudist camps on private property, court decisions appeared to be divided. Certain states held that nudity on private grounds did offend the public standards of decency while other states did not. More recently, it was held that nude bathers in Massachusetts and New York did not have the right to bathe on public beaches or where it violated the common good of the people.

In particular public settings, such as the theatre or stage, partial or full nudity was not only permitted but, at times, constitutionally protected as a means of communication equivalent to that of speech, conduct, and expression. Speech, in its broadest sense, is a form of communication by which messages are transferred from one person to another. Kaufman, "The Medium, The Message and The First Amendment," 45 N.Y.U.L. Rev. 761, 763 (1970) While the First Amendment guarantees the freedom of speech and symbolic communication, it does not protect obscenity. More recently, the Roth test has been applied when the obscenity question arises. Three elements must be present to judge a matter obscene: (1) the dominant theme of the material taken as a whole appeals to prurient interest of sex, (2) the material is

patently offensive because it affronts contemporary community standards relating to description or representation of special matters, and (3) the material is utterly without redeeming social value. Roth v. United States 77 S. Ct. 1304, 1315 (1957) In attempting to determine whether the issue in question violates contemporary community standards or whether it has artistic merit, defendants may call expert witnesses to help determine the facts. 50 Am Jur 2d 489

The stage productions of Hair and Che are cases in point. In Hair, courts ruled against prior censorship and imposed public standards, within constitutional limits. The audience was left to decide the merits of the play. The off-Broadway production of Che is an example of over-stepping constitutionally protected limits. The revolutionary theme of the play centers around the Cuban leader Che Guevera and a "President" who is costumed throughout the play in a top hat, waist sash with side streamer and toenail polish. Twenty-three different sexual acts were performed by clothed and unclothed actors. The act of human defecation was simulated, using toilet paper or cloth which looked similar to an American flag. The writer and producer were arrested on criminal charges. The court ruled that Che went beyond the accepted limits even for off-Broadway and found no redeeming social merit in the play.

Other forms of expression presented before patrons or in front of audiences constitute a method of communication that is constitutionally protected unless proven to be obscene. Partial or full nudity of waitresses and dance performers, the personal appearance issue in the remaining cases, were not automatically held obscene by various courts.

Town ordinances, about half of which were declared unconstitutional by courts throughout the country, were explicitly written. For example, a proprietor in North Hampstead, New York was forbidden:

> a. To suffer or permit any waitress, barmaid, female entertainer or other female person in the employ thereof who appears before or deals with the public in attendance therein to appear in such a manner that the portion of her breast below the top of the areola is not covered with a fully opaque cover or that one or both breasts were wholly exposed to view . . . to appear in such manner as to actually display or simulate the display of the pubic hair, anus, vulva or genitals . . . Salem Inn, Inc. v. Frank 522 F. 2d 1045, 1047f (1975)

An intervening factor in several of these cases was the sale of liquor in establishments which had topless waitresses and/or offered topless or nude dancing. A direct relationship between this type of entertainment, the sale of liquor, and the crime rate was perceived. Each state, under the authority of the Twenty-first Amendment, is able to regulate liquor sales for the greater good of the people. This direct relationship did not go unquestioned, however. In 1972, Mr. Justice Marshall's dissenting opinion states:

> In fact, the empirical link between sex-related entertainment and the criminal activity popularly associated with it has never been proved and, indeed, has now been largely discredited. California v. LaRue 93 S. Ct. 390, 411 (1972)

Table 5.--Entertainment and Recreation.

Name, Sex, State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
Miller v. Jersey Coast Resorts Corporation (M & F) N.J. 1925	Bathing Attire	N.J. Court of Chancery	Action to enforce restrictions on land use - - - - Common law nuisance	Monmouth Beach resident alleged that neighbor's house was over-populated; that occupants sat upon front porch in bathing attire. Neighbor perceived that the problem was their Hebrew heritage.	Court dismissed the case. Current bathing attire worn on city streets was not so objectionable as to warrant court intervention.
People v. Burke (M & F) N.Y. 1935	Nudism	N.Y. Court of Special Sessions, N.Y. Supreme (Appellate Div.), N.Y. Court of Appeals	Criminal prosecution dismissal - - - - State statute nuisance	Nudists were convicted of violating indecent exposure law while participating in New York City gym/pool activities to which non-members were permitted entrance.	Law, enacted many years before, was too narrow to cover a conviction upon the evidence given.
People v. O'Gorman (M & F) N.Y. 1937	Customary Street Attire	N.Y. Court of Special Sessions, N.Y. County, N.Y. Court of Appeals	Criminal prosecution dismissal - - - - Vagueness of statute	Sunday strollers were arrested for violating Yonkers ordinance requiring the wearing of customary street attire on public streets. Female wore sandals, shorts, halter top and jacket. Male wore sneakers, socks, shorts, T-shirt and belt.	Ordinance was too narrow and was unenforceable. Individuals were free to choose their personal appearance as long as it did not offend public standards.
Adams Theatre Co. v. Keenan (F) N.J. 1953	Burlesque Dancing	N.J. Superior (Law Division), N.J. Superior (Appellate Div.), N.J. Supreme	Action challenging denial of license - - - - 1st Amendment-Free speech	Newark burlesque theatre proprietor was denied an operating license because the Director of Public Safety was informed of applicant's dubious background and perceived that the program would be indecent.	Theatre, as a form of free speech, was protected by the First Amendment. Hearsay evidence did not justify license refusal. Decency standards change with time and place.

Table 5.--Continued.

Name, Sex, State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
Adams Newark Theatre v. City of Newark (F) N.J. 1956	Burlesque Dancing	N.J. Superior (Law Division), N.J. Supreme	Action challenging legality of ordinance - - - - 1st Amendment-Free speech vs. police power	Newark burlesque theatre proprietor sought review of city ordinance forbidding the unveiling of female breasts, genitals, and buttocks, and male genitals, and buttocks before an audience as well as offensive language.	Ordinance was held constitutional. Police had authority to enforce ordinance and protect the morals of the citizens.
State v. Brown (M & F) Ohio 1956	Nudism	Ohio Supreme	Mandamus to require accepting of articles of incorporation - - - - 1st Amendment-Freedom of religion vs. police power	Nudist club operator was denied a charter because the practice of nudism violated indecent exposure law.	Law was constitutional and charter was denied.
Campbell v. State (M & F) Tex. 1960	Nudism	Tex. County, Tex. Court of Criminal Appeals	Criminal prosecution dismissal - - - - Interpretation of statute	Nudists were arrested for indecent exposure as they participated in health club activities. Police viewed activities from a point off club property.	Because activities were visible off club property, indecent exposure law applied. Punishment was a $100 fine.
In Re Giannini (F) Calif. 1968	Topless Dancing	Calif. Municipal, Calif. Supreme	Habeas Corpus after criminal conviction - - - - 1st Amendment-Freedom of expression	Dancer and manager were convicted in 1965 of violating lewd exposure and conduct section of Calif. law. Dancer's costume consisted of tights and a transparent cape, and at times, her breasts were exposed. Thirty to forty San Francisco establishments had topless dancing.	Sections in question were held unconstitutional and were not in keeping with contemporary community standards. Decency standards change with time and place.

Table 5.--Continued.

Name, Sex, State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
P.B.I.C., Inc. v. Byne (M & F) Mass. 1970	Theatre Hair	Mass. Supreme, U.S. District	Injunction against criminal prosecution - - - - 1st Amendment-Freedom of expression	Actors in Boston production of Hair preferred to close show rather than make necessary revisions to prevent prosecution under state obscenity laws. Script did not specify when clothing should be removed or when sexual conduct occurred, but left it to the discretion of the actors.	Theatre, as a form of free speech, was protected by the First Amendment, unless it was proven to be obscene. New Englanders were not given opportunity to determine the merits of the play for themselves.
People v. Bercowitz (M & F) N.Y. 1970	Theatre Che	N.Y. Criminal	Criminal prosecution dismissal - - - - 1st Amendment-Freedom of expression	Actors and set designer were arrested in 1969 for violating laws prohibiting obscenity, public lewdness, consensual sodomy, and conspiracy. Actor portraying the President was nude except for top hat and sash. Human defecation was simulated, using toilet paper or cloth which looked similar to U.S. flag.	Obscenity was not protected by the First Amendment. Che went beyond the accepted norm even for off-Broadway productions.
Parr v. Municipal Court for Monterey-Carmel J.D. (F) Calif. 1971	Hippy Sitting on Grass	Monterey Superior, Calif. Supreme	Action to restrain criminal prosecution - - - - 14th Amendment-Equal protection	Hippy was arrested for sitting on grass in Carmel public park. City ordinance regulated park use because of influx of "undesirable and unsanitary" people.	Ordinance was unconstitutional. It labeled a group of people whose life style and personal appearance differed from town residents.

Table 5.--Continued.

Name, Sex, State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
California v. LaRue (M & F) Calif. 1972	Topless & Nude Dancing	Calif. Court of Appeals, Calif. Supreme, U.S. District, U.S. Supreme (certiorari)	Action challenging validity of regulation - - - - 21st Amendment-State power to control alcoholic beverages	Proprietor questioned state law prohibiting liquor sales in establishments having topless and nude dancing. Law was enacted to curb sexual misconduct and reduce high crime rate in said areas.	Twenty-first Amendment gave the state authority to regulate liquor sales and protect health, welfare, and morals of public.
Yauch v. State, City of Tucson (M & F) Ariz. 1973	Topless & Nude Dancing	Tucson City, Ariz. Superior, Ariz. Court of Appeals, Ariz. Supreme (en banc)	Action challenging validity of ordinance - - - - 1st Amendment-Freedom of expression	Individuals were convicted of violating city ordinance restricting liquor sales in establishments where breasts, genitals, or buttocks were exposed or covered by transparent fabrics.	City ordinance did not suppress a free exchange of ideas or infringe First Amendment rights. Nudity in said establishments was for profit and not symbolic expression.
City of Kenosha v. Bruno (M & F) Wis. 1973	Nude Dancing	U.S. District, U.S. Supreme	Action challenging denial license renewals - - - - Justification of federal court	Tavern proprietors were denied liquor license renewal because they offered nude dancing.	Issue not settled.
Clark v. City of Fremont, Nebraska (M & F) Nebr. 1974	Topless & Nude Dancing	U.S. District	Action challenging validity of ordinance - - - - 1st Amendment-Freedom of expression	Club proprietor, who served liquor, and had topless and nude dancing, and body painting acts, questioned Fremont ordinance. Ordinance restricted nudity of an area one inch above and four inches below breast nipple. Covering must be opaque.	Topless and nude dancing was protected by the First Amendment.

Table 5.--Continued.

Name, Sex, State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
Southeastern Promotions, Ltd. v. Conrad (M & F) Tenn. 1975	Theatre Hair	U.S. District, U.S. Court of Appeals, U.S. Supreme (certiorari)	Action challenging denial of license - - - - 1st Amendment-Freedom of expression	Hair promoter was denied use of Chattanooga municipal auditorium in 1971 on hearsay evidence without a hearing. Purpose of auditorium was for the clean, cultural enrichment of citizens.	Proper administrative procedures were not followed. Censorship was applied before play opened.
Attwood v. Purcell (M & F) Ariz. 1975	Topless & Nude Dancing	U.S. District	Action to enjoin enforcement of statute - - - - 1st Amendment-Freedom of expression	Dancers were arrested in Phoenix for violating state law prohibiting wilful and lewd exposure of tabooed parts of body in a public place or in the presence of others.	Topless and nude dancing was protected by the First Amendment. As it was written, the statute included unclothed citizens using obscene gestures in their own home.
Doran v. Salem Inn, Inc. (F) N.Y. 1975	Topless Dancing	U.S. District, U.S. Court of Appeals, U.S. Supreme (certiorari)	Action to enjoin enforcement of ordinance - - - - Jurisdiction of federal court	Bar proprietors, one of whom received a summons, violated a 1973 North Hampstead town ordinance prohibiting topless dancing in all public places.	Ordinance was too broad and was held unconstitutional.
Salem Inn, Inc. v. Frank (F) N.Y. 1975	Topless Dancing	U.S. District, U.S. Court of Appeals	Action to enjoin enforcement of ordinance - - - - 1st Amendment-Freedom of expression	Bar proprietors sought relief from 1975 North Hampstead ordinance prohibiting topless dancing in cabarets, bars, lounges, dance halls, discotheques, restaurants, and coffee shops. Dancers wore bikini tops to cover their breasts and business loss was estimated at 90%.	Ordinance was too broad and violated constitutionally protected rights. Topless dancing was a form of communication. Ordinance did not distinguish between those places serving liquor and those that did not.

Table 5.--Continued.

Name, Sex, State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
Lucifer's Gate v. Town of Van Buren, Etc. (F) N.Y. 1975	Topless Dancing	N.Y. Supreme	Action challenging ordinance - - - - 1st Amendment-Freedom of expression	Bar and restaurant proprietor who employed topless dancers sought relief from Van Buren town ordinance which regulated clothing, regardless of artistic merit, in certain public places.	Ordinance was too broad and violated constitutionally protected rights. Non-obscene nude dancing was constitutionally protected. Ordinance did not distinguish between those places serving liquor and those that did not.
Williams v. Hathway (M) Mass. 1976	Nude Bathing	U.S. District, U.S. Court of Appeals	Action challenging regulations - - - - 5th Amendment-Personal liberty	Nudists sought relief from nude bathing ban at Bush Hollow, Cape Cod, an area designated as a conservation site. Nudists had used the area for about fifty years. Recently, the number had greatly increased. There were no lifeguards, sanitation facilities, or parking areas.	While nude bathing did come under some measure of constitutional protection, a greater threat to the environment and surrounding area existed which made ban enforceable.
Richter v. Dept. of Alcoholic Beverage Control (F) Calif. 1977	Nude Dancing	U.S. District, U.S. Court of Appeals	Action to enjoin revocation of license - - - - 1st Amendment-Freedom of expression	San Diego proprietor who employed nude dancers questioned his impending liquor license revocation. Calif. law prohibited liquor sales in topless and nude dancing establishments which portrayed sexual misconduct.	Exploitation was not constitutionally protected. Regulation purpose was not censorship but crime deterrent.

Table 5.--Continued.

Name, Sex, State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
Chapin v. Town of Southhampton (M) N.Y. 1978	Nude Bathing	U.S. District	Action to enjoin enforcement of ordinance - - - - 1st, 5th Amendment-Freedom of expression, right of privacy	Nudist was arrested for violating Southhampton town ordinance prohibiting nude bathing and requiring the wearing of suitable bathing attire on beaches.	Nude bathing was not constitutionally protected. Nude bathers did not have the right to bathe on public beaches. Suitable bathing attire section was too broad. Individuals were free to demonstrate their clothing preferences on beaches as well as other places provided some clothing was worn.
Bundo v. Liquor Control Commission (F) Mich. 1979	Topless & Nude Dancing	Mich. Trial, Mich. Court of Appeals	Action to enjoin enforcement of regulation - - - - 21st Amendment-State's power over liquor	Proprietor and dancers were arrested in Walled Lake in 1977 for violating ordinance prohibiting nude dancing in liquor serving establishments.	Liquor Control Commission had authority to regulate behavior in public places which served liquor.
State v. Baysinger (M & F) Ind. 1979	Nude Dancing	Ind. Superior, Ind. Supreme	Action challenging statute - - - - 1st Amendment-Freedom of expression	Proprietor and dancers questioned state indecent exposure law because it covered nudity in all public places which could be interpreted to include a performance of Les Ballets Africain as well as rest-rooms, locker rooms and the like.	Law was held constitutional. Procedures and standards existed for defining indecent exposure. Individuals were not constitutionally entitled to appear nude in a public setting. Nude dancing for profit was behavior rather than free speech.

Courtroom Demeanor

It is generally accepted that judges have the power and authority to prescribe procedural rules and practices which are considered necessary for the administration of justice. In this situational setting, certain forms of behavior, including the personal appearance of those appearing in the courtroom, are considered not only appropriate, but expected. When the bench perceives that the justice, authority, dignity or decorum of the court is in jeopardy, he may issue warnings and/or contempt of court citations to the offending person. Contemptuous acts may limit judicial administration by embarrassing, obstructing, or disrupting court functioning. 17 Am. Jur. 2d Courts 2 Contempt of court is not a personal issue between the offender and the judge, but rather, is considered an offense against the state. Civil contempt compels immediate obedience to a judicial order and is removed upon compliance with the order. Criminal contempt is a willful and intentional act aimed at the dignity and power of the judge. Common sanctions include fines and jail sentences.

Proper procedures are available to individuals who perceive that court promulgated forms of behavior, including dress codes, are unfair or improper. The requirement is to be adhered to until either the matter is modified in the court which issued it, or until it is modified by an appellate court. The court frowns upon open defiance in court, verbally or by conduct.

Historically, the role of attorney in the courtroom was directed by the court. Judges:

> . . . regulated in minute particularity, even in matters so personal as the growth of their beards or the cut of their dress. People Ex. Rel. Karlin v. Calkin 162 N.E. 487, 492 (1928)

Many courts throughout this country have permitted some measure of freedom in personal appearance expression within the confines of the courtroom setting, but a number have not. In the past decade, legal and non-legal sources have reported conflicting judicial personal appearance norms within the courtroom. In 1970, Judge Woodrow Hill asked a young man appearing before him: "Now let me get this straight. Do I address you as Miss, Mrs., or Mister?" (Chapel Hill (North Carolina) Weekly, 24 May 1970, p. 2.) A New York youth was held in contempt of court and sentenced because the presiding judge considered his hair "to be a cross between an Angora goat and a baboon." An appeal was premised on the grounds that the judiciary in this country have no concrete personal appearance standards on which to base restrictions. Dobbs, "Contempt of Court . . ." 56 Cornell L. Rev. 183, 201-2f (1971)

More recently, Judge Herbert Miller suggested the adoption of ceremonial robes for attorneys because many appear before him as though they "slept in" their clothing and used an "electric eggbeater" to comb their hair. (Middleton, 1980, p. 834)

Due to the increasing number of female attorneys appearing in courts of law, Michigan Judge Gordon Britten retracted personal appearance standards which were applicable to male but not female attorneys, stipulating only that all attorneys appear "neat and clean." By way of explaining this decision, Judge Britten said:

> . . . (Female attorneys) apparel is an ever changing variety in that they are dressed in ankle-high, knee-high, and thigh-high skirts; house dresses and party dresses; sleeveless and sleeve jackets; sweaters; slack suits, trousers, shirts and blouses of various cuts, styles, and decolletage, allowing freedom of movement and seasonal comfort and styles (with some courtroom observers suggesting there is sometimes emphasis on that asset or assets more likely to impress) . . . "Equal Protection Under the Law." (Michigan Bar Journal. vol. 59, No. 6 (June, 1979) p. 356)

Fifteen cases were located in which attorneys, defendants, witnesses or spectators refused to comply with personal appearance standards issued by particular judges (see Table 6). Judges perceived that standards upheld and enforced associated and expected role performance of attorneys and conveyed the solemnity, dignity and decorum of the occasion. Verbal warnings and reprimands usually preceded more serious sanctions. When individuals refused to comply with judicial stipulations, contempt of court citations, civil and criminal, were frequently issued and included jail sentences ranging from three to thirty days, with one exception, and fines ranging from $25--$100. A sentence of 180 days was issued to a defendant who undressed himself and left his clothing laying on the floor as the judge arrived to convene the day's proceedings. He had to be dressed and removed from the courtroom. This resulted in giggles and laughter from some spectators, while others left the courtroom. The severity of the sentence was premised upon the defendant's overt intent to disrupt and obstruct court functioning. While nudity may be appropriate and even expected in certain situational settings, it is a contemptuous act in a court of law.

The majority of judges, both trial and appellate, stated that the authority of the court included the issuance of certain guidelines,

including those dealing with personal appearance standards. Two exceptions were noted by judges but none of the cases located dealt with these exceptions; where it was substantiated that individuals could not afford required clothing and where an emergency situation existed, courts may suspend promulgated dress codes. Five factors by which the various courts reviewed personal appearance standards and sanctions emerged. They are not necessarily clear cut and some measure of overlap exists. First, several courts ruled on whether or not the standard was sufficiently explicit to avoid confusion. Standards such as "suitable, conventional and appropriate" and "customary courtroom attire" were not considered explicit, but "conservative business attire" did not come under judicial review. In prescribing appropriate personal appearance for female attorneys, a trial court judge's dictum addresses role expectations via an inexplicit standard. He said that the attorney:

> . . . (S)hould use sound judgment . . . as to what is nice and right in the Court . . . Matter of DeCarlo 357 A. 2d 273, 274 (1976)

Second, where it was held that personal appearance and behavior were not disruptive to judicial proceedings, appellate courts generally cancelled the penalty. This occurred in a case in which two defendants appeared in court on traffic related charges, and were held in contempt because they did not wear a jacket, tie, and slacks. The detailed description of their wearing apparel, as it appeared in the opinion, follows:

> Larry Kersevich was cleanly and neatly attired. He wore a sport shirt hanging over flared blue jeans . . . He wore

> shoes and, I believe socks. He did not wear a tie and jacket. Mark Stone was cleanly and neatly attired. He wore slacks with a sport shirt which was hanging over the slacks. He wore tennis shoes without socks and did not wear a tie and jacket . . . Kersevich v. Jaffrey District Court 330 A. 2d 446, 448 (1974)

A like issue is also evidenced in a case in which a spectator wore a t-shirt on which "Bitch, Bitch" was written in letters over five inches high. She was held in direct contempt of court. The trial judge who perceived that the shirt had insulted the dignity of the court, told Miss Watts: "You're not very lady-like wearing that on the street." People v. Watts 384 N.E. 2d 453, 454 (1978) The appellate court cancelled the sanction for the following reasons: neither the shirt nor behavior disrupted the court, and the attached meaning to the word "bitch" had changed through time. The court also noted that individuals who were more familiar with courts would not have worn such a shirt in this situational setting. While it did not approve of such attire, the court added that other judges would react differently to the shirt.

Third, where personal appearance and behavior were considered to be a direct assault on the dignity of the court, contempt orders, especially stringent for attorneys, were upheld. Judge Tyson requested, in open court, that an attorney before him don a tie, to which the attorney replied: "No sir. I am saying right now I shall not. I shall dress my mode of dress, not the dictations of the Court." Sandstrom v. State 309 S. 2d 17, 19 (1975) Even though the attorney wore a sport shirt, necklace and white suit, the appellate court upheld the lower court ruling by saying:

> The wearing of a coat and necktie in our court has been a long honored tradition. It has always been considered a condition to the seriousness and solemnity of the occasion and the proceedings. It is a sign of respect. A "jacket and tie" are required dress in many public places. Sandstrom v. State 309 So. 2d 17, 23 (1975)

Another example appears in a case in which a female attorney, who wore a hat while defending her client, defied the judge's request that hats not be worn in the courtroom because of their potential for distracting jurors, thus, impacting the decision of the case. Upon review, Justice Shinn said in the majority opinion:

> Parading a freakish hat before a jury could only be characterized as pure exhibitionism . . . The artistic creation that would add to the beauty of a garden party would be, in most cases, entirely out of place in a courtroom. People v. Rainey 36 Cal Rptr. 291, 294 (1964)

Fourth, a few courts considered personal appearance standards in relation to contemporary community or societal standards. Where change through time conflicted with promulgated standards, courts generally cancelled sanctions. Justice Gabrielli, for example, while referring to the skirt length of a female attorney, said in the majority opinion:

> Whatever may be one's personal judgment as to the propriety of petitioner's dress, we are compelled to conclude that it has become an accepted mode of dress, not only in places of business or recreation, but, to the consternation of some, in places of worship. Peck v. Stone 304 N.Y.S. 2d 881, 884 (1969)

Fifth, in determining whether imposed sanctions were necessary and justified, many appellate courts examined the behavior of the individual and the court standards, as well as possible cultural, social, and ideological biases of judges and jurors. It was held that idiosyncrasies of judges and/or jurors should not govern court rules, practices or decisions. Mr. Justice Douglas, referring to the possible

bias against beards which may tend to influence jurors, said in his concurring in part and dissenting in part opinion:

> The prejudices invoked by the mere sight of non-conventional hair growth are deeply felt. Hair growth is symbolic to many of rebellion against traditional society and disapproval of the way the current power structure handles social problems . . . For those people, non-conventional hair growth represents an undesirable lifestyle characterized by unreliability, dishonesty, lack of moral values, communal ("communist") tendencies, and the assumption of drug use. Ham v. South Carolina 93 S. Ct. 848, 860 (1973)

A similar issue was presented in a case in which a judge requested a Roman Catholic priest, who was also an attorney, to remove his clerical garb when he assumed the role of attorney because of its potentially persuasive effects upon the jury. The priest, who had worn his clerical garb in other court proceedings, without comment, but not in the presence of a jury, stated that his religious superiors and client expected him to appear thusly garbed. His appeal was based on the grounds that the restriction violated his right to religious freedom. The appellate court held that the right to a fair trial outweighed the right to wear his clerical garb before a jury. The majority opinion written by Chief Justice Breitel states:

> A clergyman is accorded high status by most members of our society. Whatever the character of the man or woman who wears the cloth, the cleric is accorded a measure of respect and trust unlike that which is given to those of other vocations. LaRocca v. Lane 338 N.E. 2d 606, 613 (1975)

Due to the formal status held by courts in this country, personal appearance may well impact the attitudes of those present in the courtroom to some degree. It is perceived, however, that the intensity will be minimal unless other procedures and rules totter. Dobbs, "Contempt of Court . . .", 56 Cornell L. Rev. 183, 201 (1971)

Table 6.--Courtroom Demeanor.

Name, Sex, State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
People v. Rainey (F) Calif. 1964	Hat	Calif. Superior, Calif. District Ct. of Appeals	Criminal prosecution dismissal - - - - Power of judge to control courtroom	Attorney, reprimanded for wearing a hat which may distract jurors, perceived that discussion about hat prejudiced the decision of the case she was trying.	Request to remove hat did not warrant a new trial. No utilitarian purpose was served in wearing the hat indoors. Hat worn on second day was more conspicuous than that worn on the first day. Judge had authority to control behavior in the courtroom and attorneys were bound to obey his orders.
Peck v. Stone (F) N.Y. 1969	Skirt Length	N.Y. City, N.Y. Supreme (Special Term), N.Y. Supreme (Appellate Div.)	Action to vacate trial judge's order - - - - Power of judge to control courtroom	Attorney was banned from court until her attire was "suitable, conventional, and appropriate." Her skirt, which was five inches above her knee, did not cause a disruption.	Even though the judge had authority to control behavior in the courtroom and attorneys were bound to obey his orders, dress requirements were not sufficiently explicit and ban was cancelled.
United States Ex. Rel. Robson v. Malone (F) Ill. 1969	Rise For Judge	U.S. District, U.S. Court of Appeals	Contempt of court dismissal - - - - Power of judge to control courtroom	Spectators, one of whom was a Roman Catholic Sister, were cited for contempt of court because they refused to rise for the judge. Malone had served four hours of her ten day sentence and Kennedy had served two hours of her thirty day sentence.	Time already spent in confinement fulfilled courtroom etiquette infraction. While rising for the judge was symbolic, it also signifies when court begins and ends.

Table 6.--Continued.

Name, Sex, State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
McMillan v. State (M) Md. 1970	Head Covering (Filaas)	Md. Criminal, Md. Court of Appeals	Contempt of court dismissal - - - - Power of judge to control courtroom	Black defendant, who refused to remove his filaas which he wore for religious purposes, was cited for contempt of court. It did not cause a disruption. Other judges had permitted him to wear filaas without comment.	Even had judge allowed him to explain his religious beliefs, contempt citation would probably have been issued anyway. Therefore, citation was cancelled.
Morrow v. Roberts (M) Ark. 1971	Haircut	Ark. Circuit, Ark. Supreme	Contempt of court dismissal - - - - Power of judge to control courtroom	Witness, a professional musician, was cited for contempt of court and given a fifteen day sentence for refusal to cut his hair. Sentence would be lifted as soon as he cut his hair.	Hair was not found to cause a disruption or affront the court. An issue of this nature had never been heard in an appellate court.
Cohen v. California (M) Calif. 1971	Jacket (Fuck The Draft)	Calif. Municipal, Calif. Court of Appeals, Calif. Supreme, U.S. Supreme (appeal)	Criminal prosecution dismissal - - - - 1st Amendment-Freedom of speech	Defendant, who wore a jacket with "Fuck The Draft" written on the back while standing outside the courtroom, removed it and put it over his arm when he entered the courtroom. He received a thirty day sentence for "disturbing the peace by offensive conduct." He did not cause a disruption.	California "offensive conduct" law did not encompass the wearing of said jacket. State law could not obliterate the use of particular words. If bystanders found it offensive, they could have looked elsewhere.
Ham v. South Carolina (M) S.C. 1973	Beard	S.C. State, S.C. Supreme, U.S. Supreme (certiorari)	Criminal prosecution dismissal - - - - 14th Amendment-Fair trial	Black Civil Rights worker perceived that his drug conviction was unfair because the trial judge did not question jurors about possible racial or beard prejudices that may have affected trial verdict.	If requested, trial judge was required to ask jurors general question about prejudice but not specifically about beard biases.

Table 6.--Continued.

Name, Sex, State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
Kersevich v. Jaffrey District Court (M) N.H. 1974	Jacket, Tie, Slacks	N.H. District, N.H. Supreme	Contempt of court dismissal - - - - Power of judge to control courtroom	Defendants, who were neatly dressed, were cited for contempt of court because they did not comply with court dress code requiring jacket, tie and slacks.	While court rules were necessary, defendants' appearance did not warrant contempt citation.
Sandstrom v. State (M) Fla. 1975	Tie	Fla. Circuit, Fla. District, Fla. Supreme	Contempt of court dismissal - - - - Power of judge to control courtroom	Attorney, who wore a sport shirt, necklace and white suit, was held in direct contempt of court and given a three day sentence for refusing to obey an order requiring him to wear a tie. He had appeared thusly garbed before other judges without comment.	Judge had authority to require attorneys to conform to dress standards. Attorneys were expected to obey judge's orders. Courtroom attire had traditionally been a jacket and tie.
LaRocca v. Lane (M) N.Y. 1975	Clerical Garb	N.Y. Criminal, N.Y. Supreme, N.Y. Supreme (Appellate Div.), N.Y. Court of Appeals	Action to prohibit order regarding dress - - - - Power of judge to control courtroom	Attorney, who was also a Roman Catholic priest, wore his clerical garb representing a client at a jury trial. The court requested that he remove his garb which may tend to influence jurors. He perceived that request abridged his right to free exercise of religion.	Due to the significance attributed to religious, visible through their clothing, such attire may have swayed minds of jurors. Interest in a fair trial outweighed free exercise of religion.
Matter of DeCarlo (F) N.J. 1976	Sweater, Open Neck Blouse	N.J. Superior, N.J. Supreme (Appellate Div.)	Contempt of court dismissal - - - - Power of judge to control courtroom	Attorney, who wore gray slacks and sweater with green blouse, was cited for contempt of court and fined $50 for refusal to wear "customary courtroom attire." Judge would not have permitted male attorneys to appear in like manner. Appearance did not cause a disruption.	Attorney's appearance and behavior did not warrant contempt citation. "Customary courtroom attire" was too broad and unenforceable.

Table 6.--Continued.

Name, Sex, State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
People v. Watts (F) Ill. 1978	T-Shirt (Bitch, Bitch)	Ill. Circuit, Ill. Appellate	Contempt of court dismissal - - - - Power of judge to control courtroom	Spectator, who wore a t-shirt with "Bitch, Bitch" on the front, was cited for direct contempt of court and given a three day sentence. She offended the dignity of the court. Her appearance did not cause a disruption.	Even though shirt was not appropriate courtroom attire, behavior of spectator did not warrant direct contempt citation. Traditional and contemporary usage of word were different.
People v. Collins (M) Ill. 1978	Nudity	Ill. Circuit, Ill. Appellate	Contempt of court dismissal - - - - Power of judge to control courtroom	Defendant, who sat naked in the courtroom, was dressed and removed from the room. He was cited for direct criminal contempt of court and given a one-hundred and eighty day sentence. His appearance did cause a disruption.	It was defendant's intention to disrupt the court. Sentence was upheld.
People v. Cogborn (M) Mich. 1980	Hat (Taboosh)	Mich. Trial, Mich. Court of Appeals, Mich. Supreme	Criminal prosecution dismissal - - - - 14th Amendment-Fair trial	Defendant perceived that his trial was unfair because of comments made to a black witness about witness's attire. Witness wore a red fez, cloak, pantaloons, and turned up shoes.	Michigan Court of Appeals ruled that comments were unseemly but did not result in an unfair trial. Case pending review by the Michigan Supreme Court.
Friedman v. District Court (M) Alaska 1980	Jacket, Tie	Alaska Superior, Alaska Supreme	Contempt of court dismissal - - - - Power of judge to control courtroom	Attorney was cited for contempt of court three times and fined $100, $25, and $50 for refusing to wear jacket and tie. He perceived that jacket and tie may negatively influence jurors. Female attorneys were required to appear in conservative business attire.	Court had authority to impose reasonable dress code on attorneys. Traditionally, courts had controlled their appearance and behavior. Attorneys, appearing in court, had certain restrictions which others did not have.

Prisoners

Prison Garb in the Courtroom

One constitutional guarantee is the fundamental right to a fair trial, and inclusive in that right is that no aspect of that trial, including one's personal appearance either in civilian or prison clothing, be unfair, prejudicial, or a denial of one's presumption of innocence. During the trial, the prisoner is entitled to appear ". . . with the appearance, dignity, and self respect of a free and innocent man. . . He is therefore entitled to wear civilian rather than prison clothing at a trial . . ." 21 Am Jur 2d. Criminal Law 239 A trial in civilian clothing, however, is not an absolute constitutional right; the accused has the responsibility to establish the prejudicial effect of his demeanor. If he is unable to do this, the court holds that no adverse effect resulted and that his fundamental rights were not violated. If the evidence in the case was overwhelming, such as a confession by the accused, the impact resulting from his appearance in prison garb is considered harmless, even in the presence of a jury. In appellate hearings, it is the duty of the state or prosecutor to prove that the prisoner's attire was harmless, beyond a doubt. When a prisoner does not object to his appearance in prison garb at the time of his trial, he may not, afterwards, claim error.

Twelve cases were located in which either marked or unmarked prison clothing worn during the trial was perceived by the accused to have negatively impacted his right to be presumed innocent of a crime until proven guilty (see Table 7).

The courts have generally held that compelling a defendant to wear prison clothing before a jury denies presumption of innocence. Prison garb may influence the minds of jurors in one of two ways: it may create sympathy for the prisoner, or it may infer guilt. It may, however, have no effect. In a non-jury trial, the decision should not be influenced by the defendant's clothing, but this may be dependent upon the norms and values of a particular judge.

While the decisions in these cases did not establish that prison clothing worn during a trial necessarily impacted trial decisions, it was recognized that there may be a causal relationship. Because of this possible causal relationship, procedures were available to safeguard the rights of the accused.

Prison Inmates

Four cases were located in which prison inmates perceived that they were unfairly treated by prison officials. The 1879 case, the oldest case located, is a prime example of an ordinance which was expressly directed toward one segment of the American populace, the Chinese, at a time when they flocked to the American shores and survived at a subsistence level. They brought with them their religious beliefs which included the wearing of a queue by Chinese males. Cutting the queue meant degradation and suffering after death. Ho Ah Kow sought and won $10,000 because his queue was cut while serving a five day sentence for living in over-crowded conditions which violated a San Francisco health ordinance. It was the customary practice to cut the hair of those incarcerated to within one inch of the scalp.

This practice was to promote discipline, and only incidentally, sanitary conditions. Prison officials stated:

> The close cutting of the hair . . . like dressing them in striped clothing, is partly to distinguish them from others, and thus prevent their escape and fascilitate their recapture. Ho Ah Kow v. Nunan 12 Fed. Cas. 252, 254 (1879)

The court held that since this practice was not necessary for an individual serving a brief sentence, the act was "malicious" and "wanton cruelty." The opinion continues:

> Probably the bastinado, or the knout, or the thumbscrew, or the rack, would accomplish the same end; and no doubt the Chinaman would prefer either of these modes of torture to that which entails upon him disgrace among his countrymen . . . Ho Ah Kow v. Nunan 12 Fed. Cas. 252, 255 (1879)

The remaining cases, mostly hair restrictions, revealed that where individuals had been convicted and sentenced, prison personal appearance regulations outweighed personal rights. In one case where defendants awaited trial, personal appearance regulations were not as stringent. Discipline, health, personal image, and the prevention of theft and conspicuous consumption appeared to be the major reasons for promulgating personal appearance regulations in prison.

Table 7.--Prisoners--Prison Garb in the Courtroom.

Name, Sex, State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
Eaddy v. People (M) Colo. 1946	Prison Garb	Colo. District, Colo. Supreme (en banc)	Criminal prosecution dismissal - - - - 14th Amendment-Fair Trial	Black prisoner was compelled to appear in marked, striped coveralls at jury trial even though he objected.	Prison garb may have denied presumption of innocence. Prisoner was entitled to appear as an innocent and free man.
Brooks v. State of Texas (M) Tex. 1967	Prison Garb	Tex. Criminal, Tex. Court of Criminal Appeals, U.S. District, U.S. Court of Appeals	Habeas Corpus after state conviction - - - - 14th Amendment-Fair trial	Prisoner appeared in white prison garb at a jury trial. His counsel did not object to the garb.	Prison garb and handcuffs may have denied presumption of innocence before a jury. Counsel gave ineffective assistance.
United States v. Social Service Dept. (M) Pa. 1967	Prison Garb	U.S. District	Civil Rights Act complaint - - - - 14th Amendment-Fair trial	Prisoner was compelled to appear in marked prison garb at trial before a judge.	Prison garb did not deny presumption of innocence before a judge.
McFalls v. Peyton (M) Va. 1967	Prison Garb	Va. Circuit, U.S. District	Habeas Corpus after state conviction - - - - 14th Amendment-Presumption of innocence	Prisoner was compelled to appear in prison garb at jury trial.	Prisoner did not establish that prison garb denied presumption of innocence before a jury.
Xanthull v. Beto (M) Tex. 1970	Prison Garb	Tex. Trial, U.S. District	Habeas Corpus after state conviction - - - - 14th Amendment-Presumption of innocence	Prisoner was compelled to appear in prison garb at jury trial.	Prisoner did not establish that prison garb denied presumption of innocence. Prisoner had already confessed to crime.

Table 7.--Continued.

Name, Sex, State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
Hall v. Cox (M) Va. 1971	Prison Garb	Va. Trial, U.S. District	Habeas Corpus after state conviction - - - - 14th Amendment-Presumption of innocence	Prisoner was compelled to appear in prison garb at jury trial. State refused to provide civilian clothes to pauper.	Prison garb did not deny presumption of innocence. State was not required to provide civilian clothes.
Hernandez v. Beto (M) Tex. 1971	Prison Garb	U.S. District, U.S. Court of Appeals	Habeas Corpus after state conviction - - - - 14th Amendment-Presumption of innocence	Prisoner appeared in marked prison garb, white t-shirt and dungarees, at jury trial, without objection.	Prison garb denied presumption of innocence before a jury.
Bentley v. Crist (M) Mont. 1972	Prison Garb	U.S. District, U.S. Court of Appeals	Habeas Corpus after state conviction - - - - 14th Amendment-Presumption of innocence	Prisoner appeared in marked, gray prison garb at jury trial and counsel objected.	Prison garb may have denied presumption of innocence even if funds were not available for civilian clothes.
Watt v. Page (M) Okla. 1972	Prison Garb	U.S. District, U.S. Court of Appeals	Habeas Corpus after state conviction - - - - 14th Amendment-Presumption of innocence	Prisoner appeared in marked prison garb at jury trial without objection.	Prison garb may have denied presumption of innocence unless it was used as trial strategy.
Bates v. Estelle (M) Tex. 1973	Prison Garb	Texas Trial, U.S. District	Habeas Corpus after state conviction - - - - 14th Amendment-Presumption of innocence	Prisoner was compelled to appear in prison garb at jury trial.	Prison garb did not deny presumption of innocence before a jury. Prisoner had already confessed to crime.

Table 7.--Continued.

Name, Sex, State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
Gaito v. Brierley (M) Pa. 1973	Prison Garb	U.S. District, U.S. Court of Appeals	Habeas Corpus after state conviction - - - - 14th Amendment-Presumption of innocence	Prisoner was compelled to appear in brown unmarked prison garb at a jury trial.	Prison garb may have denied presumption of innocence before a jury.
St. Jules v. Beto (M) Tex. 1974	Prison Garb	Texas Trial, U.S. District	Habeas Corpus after state conviction - - - - 14th Amendment-Presumption of innocence	Prisoner appeared in white marked prison garb at jury trial without objection.	Prison garb may have denied presumption of innocence before a jury.
Prisoners--Prison Inmates					
Ho Ah Kow v. Nunan (M) Calif. 1879	Pig Tail (Queue)	Calif. Circuit	Civil Rights action against prison regulations, damages - - - - 14th Amendment-Due process and equal protection	Chinese male was arrested for sleeping in an overcrowded room, which violated San Francisco health ordinance. While serving a five day sentence, warden cut off prisoner's pigtail which had religious significance.	Haircut was "wanton cruelty." He probably would have preferred any other means of torture than be disgraced in front of his countrymen.
Brooks v. Wainwright (M) Fla. 1970	Haircut, Shave	U.S. District, U.S. Court of Appeals	Action for damages - - - - 14th Amendment-Equal protection	Black prisoner was compelled to shave several times a week and have haircuts.	Prison regulations did not infringe prisoner's rights. Rules were intended for sanitary and personal image purposes.

Table 7.--Continued

Name, Sex, State, Year	Appearance Issue	Court Level	Relief Sought - - - - Basis of Decision	Facts	Decision
Seale v. Manson (M & F) Conn. 1971	Beard, Goatee, Jewelry	U.S, District	Action against enforcement of prison regulations - - - - 1st, 14th Amendments-Freedom of religion; Due process and equal protection	Male and female prisoners, awaiting trial, were required to follow jail hair regulations and were not permitted to wear jewelry.	Seale, not yet convicted, was permitted to retain his trim goatee because no vermin problems existed in the prison. Jewelry restriction was enacted to deter theft and conspicuous display.
Hill v. Estelle (M) Tex. 1976	Haircut, Shave	U.S. District, U.S. Court of Appeals	Action challenging conditions of pre-trial confinement - - - - 14th Amendment-Personal liberty	Prisoners were compelled to have short hair, restricted sideburns, and no beard or mustaches, among other issues. Female prisoners had no hair length restrictions.	Incarceration implied certain restrictions. Different regulations for males and females were not arbitrary or unreasonable.

CHAPTER V

FINDINGS AND DISCUSSION

In the following chapter, descriptive statistics are presented and discussed in relation to the research questions.

Question One

What social roles and situational settings are identified in appearance issues which enter the courts? In Table 8, social roles and situational settings are identified and the number of cases located in each category is presented.

Since an exhaustive search was not made of all categories, conclusions about the proportion of various types of categories must be limited to this sample. Within this sample, the largest number of cases were located in the Students category, but students also appeared in the Symbols and Employees categories (see Table 8).

In the last twenty years, educational theories along with student and parent reactions have witnessed a dramatic change in America. Prior to this time, the years spent in the classroom were highly structured and were perceived to be a time of character building necessary for future pursuits. Rules were followed as part of expected behavior. Parents more often supported school dictates, and when problems arose, they were generally settled within the school setting.

Table 8.--Frequencies of Roles and Situational Settings.

Social Roles	Situational Settings	N	Col %
Symbols:		19	11.5
Government: N.A.	On public streets, in public buildings, in shopping center parking lot		
Group Membership:			
K.K.K. Members, Nat. Soc. Party Members	On public streets, on private property, in public park		
Students: Grammar, Junior High, High, Junior College, University	In classroom, on school premises, in school bus	39	23.6
Teachers:		20	12.1
Religious: Roman Catholic Sisters and Brothers	In classroom		
Lay: Junior High, High, Junior College	In classroom		
Employees: Executive Secretary, Probation Officer, Nudist, Army Reservists, Bus Driver, National Guardsman, Clerks, Baggage Clerk, Switchman, Flight Test Engineer, Policemen, Firemen, Technical Serviceman, Shoe Salesman, Stewardess, Food Processor, Craftsman, Bank Employee	In work place	31	18.8
Entertainment and Recreation: Bathers, Sunday Strollers, Nudists, Actors, Designer, Promoters, Dancers, Hippy, Managers, Proprietors	On public streets, in public park, on private property, theatres, bars, lounges, beaches	25	15.2
Courtroom Demeanor: Attorneys, Priest/Attorney, Defendants, Witnesses, Spectators	In courtroom, corridor outside the courtroom	15	9.1
Prisoners:		16	9.7
Prisoners: N.A.	In courtroom		
Prison Inmates	In prison		
Total		165	100

It is speculated that the majority of personal appearance cases involving students which were taken to court prior to 1965 were not heard by the courts. The findings of this study indicate that it was not until the last two decades that an increasing number of students and parents began to publicly question rules established by schools. There were a number of reasons which contributed to the rise in the number of personal appearance related cases entering the courts during this time frame. They included: changing attitudes of parents which permitted the questioning of authoritarian influences of the school; a more open structure within the school which affected student perceptions and reactions; growing popularity of youth fashion trends; and, more liberal thinking regarding personal appearance selection which resulted in courts hearing more cases of this nature.

The smallest number of cases located was in the Courtroom Demeanor category. The courtroom setting, like schools, has traditionally had a formal, structuralized framework but the findings of this study indicate that prescribed personal appearance rules were challenged less frequently in the courtroom. A number of contributing factors explain why fewer cases were located in this category. First, courts are not a part of everyday activity patterns for the majority of people. Second, although people are aware of the symbolic nature of courts, they are less familiar with the legal mechanism and are more likely to be on their best behavior, including their personal appearance selection, in a court of law. Third, the purpose in taking a case to court is to win and neither plaintiffs nor defendants want to jeopardize their chances by presenting a personal appearance which may be perceived as

inappropriate by a judge or jury. Fourth, courtroom personal appearance standards, generally established by the presiding judge, do not hold constant in all courts.

In seventy-five or 45.5% of the total number of cases, disputes regarding personal appearance appear to be occupational related, with examples appearing in the Teachers, Employees, Entertainment and Recreation and Courtroom Demeanor categories. Since most people work, it is probably not surprising that this number of cases deals with the work environment. For many years, society has set limits on acceptable personal appearance in a public setting and these limits have frequently been challenged. More recently, restrictions and sanctions applied by employers who imposed personal appearance standards on those in their employ have also met with resistance. Several factors account for the lack of cases located in work related categories prior to 1965. Personal appearance was less varied and, therefore, better understood. Employers set expectations and little deviation occurred.

Question Two

Will personal appearance issues which are brought to court indicate that change in dress and adornment is more readily accepted for women than for men? Table 9 shows the frequency of personal appearance issue regarding hair and clothing, by sex.

The data indicate that overall, cases involving males appeared three times more frequently than cases involving females (see Table 9). An overwhelming 96.9% of the hair issues were raised by males. Clothing issues were likely to be raised by both sexes. Within the role

Table 9.--Summary Frequencies of Hair and Clothing Issues by Sex.

Issue	Males		Females		Both		Totals	
	N	Row %	N	Row %	N	Row %	N	Col %
Hair	63	96.9	1	1.5	1	1.5	65	39.4
Clothing	50	50	30	30	20	20	100	60.6
	113	68.5	31	18.8	21	12.7	165	100

and setting categories, specific appearance issues are enumerated by hair and clothing subdivisions for each sex (see Appendix B-1). Persons involved in the categories of Symbols, Students, Lay Teachers, Employees and Prisoners were predominantly male, numbering 101 of 117 cases or 86.3% of them. A noticeable number of females did appear in the Religious Teachers, Entertainment and Recreation, and Courtroom Demeanor categories.

The frequency of hair and clothing issues varies by category. Clothing issues comprised the total number of cases in the Symbols, Entertainment and Recreation, Religious Teachers, and Prisoners in the Courtroom categories. Clothing issues predominated in the Courtroom Demeanor category. Hair issues dominated in the Students, Lay Teachers, and Employees categories where hair issues were two and three times more numerous than clothing issues.

From the "clean cut" look of the 1950's, the following decade saw an abrupt change in hair lengths and styles, and facial hair treatment of many men in America. Reasons for these changes included

political, racial, religious, aesthetic and moral statements, as well as the desire to be in step with the latest fashion trend. While changes in female hair styles have always been more common, these changes for men generated a great deal of controversy, resulting in many men going to court for relief from restrictions.

Changes which were not automatically accepted for and by females between 1965 and 1980, also appear in cases, for example, shorter skirt lengths, slacks, pantsuits, and career uniforms. While bare legs were common on beaches after 1930, short skirts which exposed more and more of the female leg were not accepted by everyone in more formal settings. Skirts had never been so short and many people reacted to this change. Reactions often included moral overtones. Prior to the late 1960's, slacks had been worn by some females for leisure wear but not in schools or work environments except during World War II. For some after this time, the wearing of slacks meant the lessening of femininity and role reversal. For others, it meant comfort and style. Career uniforms became more common in the 1970's. They were welcomed by some females. Others, however, did not react favorably to them because they meant sameness of appearance, absence of individuality, and mandatory costs. They were perceived unfair especially in situations in which male employees were not bound by the same requirements.

The researcher concludes that personal appearance issues which are brought to court do indicate that change in dress and adornment is more readily accepted for women than for men in certain roles and situational settings, such as in the classroom, places of employment and other settings in which the law has not been broken. This

perception is based on the findings appearing in Table 9, together with statements made by male litigants appearing in a number of the opinions to the effect that changes in aspects of female personal appearance were permitted, while aspects involving males were not.

Racial Classification

References to "Black" individuals are made in Tables 2, 3, 4, 6, and 7. Racial classification was not specified in the majority of the opinions. In one instance, a 1946 Colorado case involving a prisoner who appeared during his trial dressed in prison clothing, a factual statement about his race was made but this did not appear to influence trial proceedings or the decision rendered. (Appendix B-2) Of the ten cases which were based on a racial basis, black individuals sought judicial determination of personal appearance restrictions, sanctioned by school administrators, employers, and prison officials. The premise was that the personal appearance issues, mainly hair lengths and styles, facial hair preferences and head coverings, were more predominant among a particular race and should be permitted as part of the norm and/or religious beliefs held by that race. Cases were predominantly brought by black males, with earlier cases originating in the South.

An interesting facet surfaces in these findings. While the number of cases utilizing a racial classification is small, merely 6% of the total number of cases, the cases occurred in the 1960's and 1970's. It appears that the cultural climate of the era that witnessed the Civil Rights movement was a factor in the appearance of these issues in courts of law.

Question Three

What formal sanctions, if any, are applied before personal appearance issues go to court? Table 10 consolidates information regarding the more commonly applied sanctions. Including the most commonly applied sanctions and other types of sanctions, 132 cases or 80% of the total number of cases reported that sanctions were applied by individuals or law enforcement agents.

Of the more common sanctions appearing in Table 10, individuals in the Symbols and Entertainment categories were more often arrested and convicted; students were more likely to be suspended, expelled or denied school enrollment; teachers and other employees were more often suspended, dismissed, discharged, disqualified or transferred; those appearing in the courtroom setting were issued contempt of court citations, sentenced or fined; and prison inmates were compelled to comply with prison regulations. The subject of sanctions was not stated or was not applicable in twenty-six cases. It was specifically stated in six cases that teachers and other employees were not sanctioned. Further enumeration of sanctions appears in Appendix B-3.

The fact that individuals subjected themselves to serious consequences resulting from noncompliance to personal appearance regulations and laws indicated how strongly they felt about having aspects of personal appearance restricted. For those who broke the law, consequences often were imprisonment, and once in that setting, for whatever reason, inmates were frequently deprived of certain perceived rights, including the right to appear as one wishes. For a number of students, the educational process was interrupted, permanently for at

Table 10.--Frequencies and Types of Common Sanctions.

Category	Most Common Sanctions			Other Sanctions		Sub-Total		Not Stated or N.A.		No Sanction		Totals	
		N	Row %	N	Row %	N	Row %	N	Row %	N	Row %	N	Col %
Symbols													
Government	Arrested & Convicted	15	78.9										
Group Membership	Arrested & Convicted	3	15.8	1	5.3	19	11.5					19	11.5
Students	Suspended; Expelled; Denied Enrollment	32	82.1	4	10.3	36	92.3	3	7.7			39	23.6
Teachers													
Religious	Suspended; Dismissed; Discharged; Disqualified; Transferred	4	20.	4	20.								
Lay	Suspended; Dismissed; Discharged; Disqualified; Transferred	10	50.			18	90.	1	5.	1	5.	20	12.1
Employees	Suspended; Dismissed; Discharged; Disqualified; Transferred	14	45.2	10	32.3	24	77.4	1	3.2	6	19.4	31	18.8
Entertainment/ Recreation	Arrested & Convicted	10	40.	8	32.	18	72.	7	28.			25	15.2
Courtroom Demeanor	Contempt of Court; Sentenced; Fined	11	73.3	2	13.3	13	86.7	2	13.3			15	9.1
Prisoners													
In the Courtroom								12	75.				
In Prison	Compelled to Comply with Regulations	3	18.8	1	6.3	4	25.					16	9.7
Grand Totals		102	77.3	30	22.7	132	80.	26	15.8	7	4.2	165	100.

least one young man who never returned to school to complete his senior year or receive his diploma. For individuals in the occupational groups, noncompliance and resulting sanctions often resulted in loss of salary and job security. In the courtroom setting, noncompliance with judicial rules frequently meant legal action, which for the role of attorney, in particular, may impact further business before the particular judge.

Judging from the kinds of sanctions imposed (Table 10), three types were identified: laws and ordinances, legal procedures, and dress and grooming codes. Dress and grooming codes, issued by both the private and public sector of our society, appeared as early as 1879 and continue to the present time. However, between 1965 and 1980, their number greatly increased. This was an era of greater variability of personal appearance. Advancements in technology, economic availability and changes in political, social, religious, racial and moral attitudes resulted in changes in the American way of life. Aspects of appearance became more personalized and were often controversial. Mass communication effected the transmission of changes regarding personal appearance throughout the entire country. Due to the numerous changes in personal appearance which occurred during this period, those in authority perceived the need to set limits restricting diverse modes of personal appearance. Limits established through personal appearance regulations were perceived by some to whom regulations and sanctions were directed to be not only beyond the scope of school authorities, employers, judges and prison officials but that their right to individual personal appearance selection was a matter to be resolved in

the court. As an increasing number of regulations were imposed, personal appearance issues became more common on court calendars.

Dress and Grooming Codes

In an attempt to learn if the form of the personal appearance regulation was a factor in the cases appearing in this sample, references to dress and grooming codes were examined. Table 11 gives the form of codes by role or setting and issue.

References to dress and grooming codes were located in 101 cases in the roles of students, lay teachers, employees and prisoners and in the courtroom setting. In fifty-two of the cases, the regulations were specified in writing, twenty-two were unwritten, and twenty-seven existed although the form in which they appeared was not stated in the opinions. Court opinions gave no indication that the form of the codes influenced decisions.

Question Four

What kinds of legal proceedings are brought to protect one's rights regarding personal appearance? Table 12 shows frequencies of similar kinds of relief sought by individuals for hair and clothing appearance issues. Under the legal system in this country, citizens may take grievances to court for resolution. Individuals who perceived that the restrictions or sanctions placed on their personal appearance choices infringed protected rights sought certain types of redress from the court. The totals appearing on Table 12 exceed the total number of cases in this study because a number of cases sought multiple relief for a single issue. The percentages appearing on Table 12, presented

Table 11.--Category Frequencies for Dress and Grooming Codes.

Category and Issue	Written		Unwritten		Not Stated But Existed		Totals	
	N	Row %	N	Row %	N	Row %	N	Col %
Students								
Hair	17	43.6	3	7.7	8	20.5		
Clothing	4	10.3	1	2.6	6	15.4		
Total 39							39	38.6
Lay Teachers								
Hair	5	41.7	2	16.7	1	8.3		
Clothing	1	8.3	0	0	3	25.		
Total 12							12	11.9
Employees								
Hair	20	64.5	1	3.2	3	9.7		
Clothing	5	16.1	0	0	2	6.5		
Total 31							31	30.7
Courtroom Demeanor								
Hair	0	0	2	13.3	0	0		
Clothing	0	0	13	86.7	0	0		
Total 15							15	14.9
Prisoners in Prison								
Hair	0	0	0	0	4	100		
Total 4							4	4.
Grand Totals	52	51.5	22	21.8	27	26.7	101	100

by hair and clothing appearance issues, were based on a total of 172 reliefs. Table 13 shows a break down of these frequencies by role and setting categories.

Table 12.--Summary Frequencies for Reliefs Sought.

Relief Sought	Hair		Clothing		Totals	
	N	Row %	N	Row %	N	Col %
Enjoin Enforcement; Mandamus; Injunction	19	45.2	23	54.8	42	24.4
Dismissal of Contempt of Court Order; Criminal Prosecution	2	5.6	34	94.4	36	20.9
Challenge Ordinance Statute; Regulation; License Denial; Judges Order	18	52.9	16	47.1	34	19.8
Re-hire Teacher; Employee; Re-instate Pupil	19	90.5	2	9.5	21	12.2
Habeas Corpus	1	7.7	12	92.3	13	7.6
Back Pay; Wages; Damages	5	71.4	2	28.6	7	4.1
Other	10	52.6	9	47.4	19	11.
Totals	74	43.	98	57.	172	100

An analysis of legal proceedings brought to protect one's rights regarding personal appearance indicate that the relief sought in only eight cases was in the form of monetary compensation, either in salaries which had not been paid, or damages to compensate for the psychological

injury sustained as a result of restriction or sanction. In the remaining 157 cases, individuals sought some type of legal action which would permit: freedom from incarceration, expression of political, moral, religious, or racial attitudes and beliefs through personal appearance selection, free exercise of personal appearance choices, or occupational pursuits to continue.

The relief sought by forty-two individuals in 165 cases included Injunctions, Writs of Mandamus and to Enjoin Enforcement. In granting these reliefs, the court orders the person applying the personal appearance requirement or sanction to stop enforcing the requirement or sanction or to do some act. Litigants in the Symbols, Students, Teachers, and Entertainment and Recreation categories sought these types of relief in order to be permitted freedom of choice.

The relief sought by individuals in thirty-six of the cases appearing in this study in which individuals were sanctioned for their personal appearance choices involved dismissal of contempt of court citations or reversals of criminal convictions. Judges issued contempt of court citations against individuals who refused to obey judicial rules or requests. Cases involving this type of action appeared in the Courtroom Demeanor category. Criminal prosecution is an action brought on the behalf of society to convict and punish individuals who have broken criminal laws which have been established for the protection of society. (Black's Law Dictionary, 1951, p. 449) Cases seeking relief from criminal prosecutions appeared in the Symbols, Entertainment and Recreation, Courtroom Demeanor and Prisoners categories.

Table 13.--Category Frequencies for Reliefs Sought and Basis of Decisions.

Category		Relief Sought/Number		Basis of Decision/Number	
I. Symbols					
Government	15	Criminal Prosecution Dismissal	15	Interpret statute	2
				Insufficient evidence	2
				1st Amendment	9
				14th Amendment	3
Group Membership	4	Criminal Prosecution Dismissal	2	State Police Action	1
		Injunction	1	1st Amendment	3
		Habeas Corpus	1	14th Amendment	1
Total	19				
II. Students					
Hair	28	Injunction	11	State Law	1
		Damages	1	1st Amendment	9
		Challenge restriction	1	9th Amendment	3
		Reinstate pupil	8	14th Amendment	25
		Enjoin Enforcement	6	No Federal Question	2
		Stop Religious Discrimination	1		
		Not Stated	1		
Clothing	11	Injunction	6	State Law	3
		Mandamus	3	1st Amendment	5
		Stop Violating rights	1	14th Amendment	8
		Enjoin Enforcement	1		
Total	39				
III. Teachers					
Religious	8	Injunction	5	State Constitution	5
		Wages	2	1st Amendment	3
		Indict school officials	1		
Lay	12				
Hair	8	Injunction	1	14th Amendment	9
		Mandamus	1		
		Rehire teachers	6		
Clothing	4	Injunction	1	1st Amendment	1
		Rehire teacher	2	14th Amendment	2
		Declare unconstitutional	1		
Total	20				
IV. Employees					
Hair	24	Rehire employee	5	Discretion of Military	4
		Habeas Corpus	1	Insufficient cause	2
		Stop active duty order	4	1st Amendment	3
		Stop discrimination	1	5th Amendment	2
		Challenge regulation	16	14th Amendment	4
		Back pay	3	Civil Rights Act	9
Clothing	7	Stop active duty order	1	Discretion of Military	1
		Challenge regulation	4	Civil Rights Act	5
		Stop sex discrimination	2		
Total	31				
V. Entertainment & Recreation	25	Criminal Prosecution Dismissal	5	Interpret statute	1
		Injunction	1	Vague statute	1
		Enforce land restriction	1	Nuisance	2
		Challenge license denial	4	1st Amendment	15
		Challenge ordinance/statute	8	5th Amendment	2
		Mandamus	1	14th Amendment	1
		Habeas Corpus	1	21st Amendment	2
		Enjoin Enforcement	4	Other	2
Total	25				
VI. Courtroom Demeanor					
Hair	2	Criminal Prosecution Dismissal	1	Power of judge to control courtroom	1
		Contempt of Court dismissal	1	14th Amendment	1
Clothing	13	Criminal Prosecution Dismissal	3	Power of judge to control courtroom	11
		Contempt of Court dismissal	8	1st Amendment	1
		Vacate judges order	2	14th Amendment	2
Total	15				

Table 13.--Continued.

Category		Relief Sought/Number		Basis of Decision/Number	
VII. Prisoners In the Courtroom	12	Criminal Prosecution Dismissal	1	14th Amendment	12
		Habeas Corpus	10		
		Enforce Civil Rights Act	1		
In Prison	4				
Hair	3	Enforce Civil Rights Act, Damages	1	14th Amendment	3
		Damages	1		
		Against prison regulations	1		
Clothing	1	Pre-trial conditions	1	1st Amendment	1
Total	16				

Individuals in thirty-four of 165 cases challenged city ordinances, state and federal statutes, formal regulations, denial of operating licenses and orders issued by judges. Cases in the Students, Employees, Entertainment and Recreation, Courtroom Demeanor, and Prisoners categories involve this type of relief.

Twenty-one cases were located in which individuals sought to regain the same role held prior to imposed sanctions. The majority of cases involved hair issues. Cases seeking the reinstatement of students and the rehiring of employees were located in the Students, Teachers, and Employees categories.

Thirteen of the cases utilized the writ of Habeas Corpus which seeks release from prison. "This is the well-known remedy for deliverence from illegal confinement." (Ibid., p. 837) Other types of relief, too individualized to examine here, are enumerated on Table 13.

The relief or aid sought of the court by persons who brought cases involving aspects of their personal appearance to court was dependent upon the type of sanction applied. Relief was found to vary with category rather than issue. For those who broke laws, the relief sought was release from serving sentences. For those who did not break laws, individuals sought more equitable reliefs which would recognize freedom in personal appearance or to have sanctions removed. In the overwhelming majority of the cases, individuals did not seek monetary reimbursements, rather, they went to court because they broke the law or because of deeply held convictions regarding their personal appearance. Legal action was an alternative to imposed restrictions and/or applied sanctions.

Question Five

What legal principles are relevant in resolving personal appearance issues? Table 14 states frequencies of consolidated legal principles by hair and clothing appearance issues.

Table 14.--Frequencies of Legal Principles as Basis of Decisions.

Legal Principles	Hair			Clothing			Totals	
	N	Row %	Col %	N	Row %	Col %	N	Col %
First Amendment	12	24.	15.4	38	75.	35.5	50	27.
Fifth Amendment	2	50.	2.6	2	50.	1.9	4	2.2
Ninth Amendment	3	100.	3.8	0	0	0	3	1.6
Fourteenth Amendment	42	59.2	53.8	29	40.8	27.1	71	38.4
Twenty-first Amendment	0	0	0	2	100.	1.9	2	1.1
Civil Rights Act	9	64.3	11.5	5	35.7	4.7	14	7.6
Power of Judge to Control the Courtroom	1	8.3	1.3	11	91.7	10.3	12	6.5
Other	9	31.	11.5	20	69.	18.7	29	15.7
Totals	78	42.2	99.9	107	57.8	100.	185	100.

After hearing the facts relevant to the case, the court renders a decision or judgment based on the legal merits of the controversy. These decisions may also include answers to legal questions raised during the case. The legal principles upon which decisions were based are discussed in the following paragraphs.

The totals appearing on Table 14 exceed the total number of cases in this study because decisions in a number of cases were based on more than one principle of law. Percentages are based on a total of 185 references to legal principles. Table 13 shows a break down of these frequencies by role and setting categories.

More than two thirds of the decisions in personal appearance cases were based upon constitutional grounds, in particular, the First and Fourteenth Amendments. Decisions regarding hair issues were more often reached under the Fourteenth Amendment and clothing issues under the First Amendment. Cases in which these amendments were the basis for decisions were identified in all categories (see Table 13). The Fourteenth Amendment was the basis of decision in cases involving departments of education, correction, fire and police, in particular, all of which are under city or state control. In addition, the First Amendment is applicable under the Fourteenth Amendment. The First Amendment was the basis for decisions in cases in which aspects of personal appearance were recognized as intentional expressions of moral, religious, racial or political viewpoints of the wearer. A discussion of personal appearance aspects applicable under the First Amendment is addressed in Question Eleven of this chapter.

The remaining amendments, Fifth, Ninth and Twenty-first, provided the basis for decisions in nine of 165 cases in this sample. Decisions utilizing these amendments were located in the Students, Employees and Entertainment and Recreation categories and were more often clothing related. Constitutional Amendments applicable to personal appearance issues, or that part relevant in this study, appear

on Table 15.

Decisions in the remaining one third of the personal appearance cases were based on non-constitutional issues such as the Civil Rights Act, state statutes or constitutions, the inherent power of the judge to control the courtroom, discretion of the military, insufficient evidence and cause, nuisance, and cases not utilizing the appropriate court system. Decisions regarding clothing were more predominant under these principles of law. Cases appeared in all categories except in the Prisoners category.

Fundamental laws and principles in this society are set forth in written constitutions, federal and state, which guarantee and protect certain rights and liberties of citizens. State constitutions are less rigid than the Federal Constitution and are more apt to change as the needs of society change. Many constitutions, laws, and ordinances were adopted and enacted many years ago, but provisions are available permitting modification.

The upsurge in the number of cases involving personal appearance, especially during the 1960's and 1970's, indicates that a number of American citizens perceived that the liberty guaranteed under the federal and state constitutions, along with laws, acts, and the like, had been taken away by others. The decisions rendered during this time frame, as in the past, followed established legal principles. Many of the cases were decided upon legal principles which were not originally formulated to include personal appearance.

Table 15.--Constitutional Amendments Applicable to Personal Appearance Issues

Amendments	Provisions
First	Congress shall make no laws respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.
Fifth	No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land and naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without compensation.
Ninth	The enumeration in the Constitution of certain rights, shall not be constructed to deny or disparage others retained by the people.
Fourteenth	All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws . . .
Twenty-first	. . . The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of laws thereof, is hereby prohibited . . .

Question Six

Do matters regarding personal appearance appear in state courts or federal courts? Table 16 shows the total number of times personal appearance clothing and hair issues were heard and reported by court level.

Table 16.--Summary Frequencies with which Hair and Clothing Issues Were Heard by State and Federal Courts.

	State				Federal				
	Trial	Appellate	Supreme	Total	District	Appellate	Supreme	Total	Grand Total
Hair	12	3	4	19	56	36	2	94	113
Clothing	82	26	35	143	43	24	10	77	220
Total	94	29	39	162	99	60	12	171	333

One hundred sixty-five cases involving personal appearance were located in this study. Including appeals, these cases were heard in 333 courts throughout the United States. Table 16 and Appendix B-4 do not indicate the order in which cases appeared but the total number of cases appearing at each level. For example, a case may have originally been tried in the state trial and supreme courts, proceeded to the United States Federal District Court, and terminated in the United States Court of Appeals. This case would then be tallied in each court in which it appeared.

Table 16 shows that persons taking personal appearance issues

to court utilized the state court system almost as frequently as the federal court system. However, hair issues appeared more frequently in federal courts, while clothing issues appeared more frequently in the state courts. Different issues seem to have appeared in one particular system more often than the other. The following remarks offer possible explanations for this occurrence.

The Table in Appendix B-4 shows that both Symbols and Entertainment and Recreation categories were primarily tried in state courts because the personal appearance issues involved conduct restricted by state laws or city ordinances, and jurisdiction would initially be within the state court system. Courtroom Demeanor cases also appeared more frequently in state courts. It is speculated that biases regarding personal appearance in the courtroom are more prevalent in state courts than federal courts; thus, the issues would primarily arise in that system.

All earlier cases involving personal appearance located in this study were tried in the state court system. Personal appearance issues were not tried in federal courts until 1966 when Black students were suspended for wearing freedom buttons in the classroom. This suggests that change has taken place in the legal issues or the remedies sought in later personal appearance issues; that is, a change to constitutional issues from local issues.

Cases in the Students and Lay Teachers categories were more often tried in federal courts. School systems, which are under state control, were given broad rule making power by state legislatures and courts have traditionally upheld school board decisions. Therefore,

the issues were necessarily raised in a constitutional framework. "Recent Cases," 84 Harv. L. Rev. 1702, 1702f (1971)

Several cases in the Employees category were litigated in federal courts because they involved individuals who worked for a firm having an office in one state and a corporate office in a different state. Jurisdiction would then be in the federal courts.

Question Seven

At what level of the court hierarchy are personal appearance issues resolved? Table 17 shows the frequencies of the levels of the state and federal courts at which resolution of personal appearance issues were completed.

Table 17.--Summary Frequencies for Court Hierarchy Resolutions of Personal Appearance Issues.

	State						Federal						Total	
	Trial		Appellate		Supreme		District		Appellate		Supreme			
	N	Row %	N	Row %	N	Row %	N	Row %	N	Row %	N	Row %	N	Col %
Hair	3	4.6	3	4.6	3	4.6	20	30.8	34	52.3	2	3.1	65	39.4
Clothing	7	7.	17	17.	29	29.	19	19.	19	19.	9	9.	100	60.0
Total	10	6.1	20	12.1	32	19.4	39	23.6	53	32.1	11	6.7	165	100.0

Thirty-two percent of the personal appearance cases located were resolved at the United States Federal Appellate Court level. Hair issues were also predominantly resolved at this level, with a substantial number also resolved at the United States Federal District

level. On the other hand, clothing issues appeared in the state system somewhat more often than in the federal system and most frequently were decided at the highest court level. Those cases appearing in the federal system were disposed of at the district court and at the appellate court with equal frequency.

The court level at which the majority of cases were resolved, by category, is as follows. (See Table in Appendix B-5) Cases in the Symbols category were most frequently resolved at the state supreme and appellate court levels. Religious teacher cases were predominantly resolved at the state supreme court level. Cases in the Entertainment and Recreation and Courtroom Demeanor categories were generally terminated at the state supreme court level, but the latter category also had a sizeable number completed at the state appellate court level. Cases in the Lay Teachers category were predominantly resolved at the federal district and appellate court levels. Prisoners cases were divided between the federal trial and appellate court levels. The majority of cases located in the Students and Employees categories were generally resolved at the federal appellate and district court levels. Even though eleven cases were reviewed by the United States Supreme Court, generally under a writ of certiorari, no category had the majority number of cases resolved at this level. This result is not unexpected because such a small percentage of cases of any sort reach this court.

The combined results of Tables 16, 17 and Appendixes B-4 and 5 lead to a number of assumptions regarding individuals and personal appearance cases located in this sample. Individuals who brought their

complaints regarding personal appearance restriction to court perceived that these infringements were of sufficient importance to bear the financial expenses associated with legal and court costs and to expend the time necessary to initiate a case and pursue it to its termination. This also suggests that they had a basic knowledge of the legal system and its options in order to pursue their freedom in personal appearance selection.

Several points are noted with respect to the courts and personal appearance cases. While several judges considered a number of student hair cases a waste of valuable court time, courts did hear and decide complaints regarding personal appearance. Earlier cases were tried in state courts, while later cases were also tried in federal courts as constitutional rights regarding personal appearance became better recognized. Appeals were taken to appellate courts and opinions were published on those appeals. Personal appearance cases were heard and resolved by the highest court in the land. The majority of cases heard by the Supreme Court involved contemporary emotional issues, for example, Nazi uniforms and swastika, American flag, black arm bands, and topless and nude dancing.

Question Eight

What personal appearance choices do courts recognize as permissible? Table 18 shows the frequencies of judicial decisions and the more common reasons for recognizing personal appearance choices.

Decisions in court cases are based upon the type of relief or action sought by the complaining person, the facts presented to the

Table 18.--Summary Frequencies of Judicial Decisions and Common Reasons for Recognizing Personal Appearance Choices.

Decisions and Most Common Reasons Specified by Courts	Sub-Total N	Sub-Total %	Totals N	Totals %
Court Recognized Freedom of Personal Appearance			81	49.1
Rules/decisions were too narrow, vague arbitrary, capricious, unreasonable, discriminatory, or not explicit.	20	24.7		
Rules/decisions were unconstitutional.	17	21.		
School/employer/Army did not justify rule.	12	14.8		
Garb may have prejudiced trial outcome.	7	8.6		
Contempt citation was not warranted, cancelled or cancelled after serving partial sentence.	6	7.4		
Actual flag was not desecrated.	6	7.4		
Other reasons	13	16.		
Court Did Not Recognize Freedom of Personal Appearance			75	45.45
Decisions Not Resolved or Not Clear			9	5.45
Totals			165	100.

court, and the application of appropriate legal principles. Courts recognized freedom of choice for the individual in eighty-one cases involving personal appearance. Even though decisions in nine cases were either not resolved or not clear, findings show that courts did recognize freedom of choice in about half of the total number of cases appearing in this sample (see Table 18). The category showing the largest number of cases recognizing freedom in personal appearance is the Symbols category with twelve of nineteen or 63% of the cases in that category. The smallest number of cases recognizing this freedom is in the Employees category with nine of thirty-one or 29% of the cases in that category (see Table 19). The percentage of cases in which freedom of personal appearance was recognized in the remaining five categories is about equal. Individuals who brought hair issues to court won in twenty-seven of the sixty-five hair cases and those who brought clothing issues won in fifty-four of the 100 clothing cases.

The most commonly stated judicial reason for recognizing freedom in personal appearance was that rules or decisions restricting personal appearance were too narrow in scope, language of restriction was too vague or not sufficiently explicit, rules were explicit but considered arbitrary and unreasonable, rules were abruptly changed and considered capricious, and rules favored one individual or group more than another. These reasons were stated in twenty or 24% of the cases in which personal appearance was recognized (see Table 18). Cases decided for these reasons were located in all categories except in the Employees category. Clothing issues were slightly more numerous than hair issues.

Table 19.--Category Frequencies of Judicial Reasons for Recognizing Personal Appearance Choices.

Total Number of Cases	Reason Court Permitted Personal Appearance Freedom/Number		Number Won	Col %
	SYMBOLS: Government			
	Law was unconstitutional	2		
	Law was vague	2		
15	Actual flag was not desecrated	6	10	66.6
	SYMBOLS: Group Membership			
	Law was unconstitutional	1		
4	Nazi uniform constitutionally protected	1	2	50.
19			12	63.
	STUDENTS			
	Rule was unconstitutional	1		
	Rule was arbitrary[a]	5		
Hair	School did not justify need for rule	7		
	College surpassed its authority	1		
28	Not resolved	3	14	50.
	Rule was unconstitutional	1		
Clothing	Rule was arbitrary[a]	5		
	Not resolved	1		
11	Not clear	1	6	54.55
39			20	51.28
	TEACHERS: Religious			
8	Garb did not disqualify teachers	4	4	50.
	TEACHERS: Lay			
	Rule/decision was arbitrary[a]	3		
Hair	Hair was constitutionally protected	1		
	School surpassed its authority	1		
8	College surpassed its authority	1	6	75.
Clothing				
4	Dismissal was arbitrary[a]	1	1	25.
20			11	55.

[a]Includes: arbitrary, capricious, unreasonable, unenforceable and discriminatory.

Table 19.--Continued.

Total Number of Cases	Reason Court Permitted Personal Appearance Freedom/Number		Number Won	Col %
	EMPLOYEES			
Hair:	Employer did not justify rule/decision	4		
	Rule violated Civil Rights Act	1		
	Not resolved	1		
24	Not clear	1	5	20.83
Clothing:	Rule/decision was unconstitutional	1		
	Rule violated Civil Rights Act	2		
7	Army did not justify rule	1	4	57.1
31			9	29.
	ENTERTAINMENT & RECREATION			
	Law/ordinance/stipulation was unconstitutional	10		
	Law was too narrow/unenforceable	2		
	Bathing attire was not objectionable	1		
25	Not resolved	1	13	52.
	COURTROOM DEMEANOR			
Hair: 2	Contempt citation was not warranted	1	1	50.
Clothing:	Request was not explicit	1		
	Contempt citation was not warranted/			
13	or was cancelled	4		
	Contempt citation cancelled after serving partial sentence	1		
	Issue not applicable under state law	1		
	Not resolved	1	7	53.8
15			8	53.3
	PRISONERS: In the Courtroom			
12	Garb may have prejudiced trial outcome	7	7	58.
	PRISONERS: In Prison			
Hair: 3	Haircut was cruel and discriminatory	1	1	33.3
Clothing:				
1			0	
16			8	50.

Courts found personal appearance restrictions, or decisions made as a result of restrictions, unconstitutional in seventeen or 21% of the cases where freedom of personal appearance was recognized. Cases decided upon this determination appeared in the following categories: Symbols, Students, Lay Teachers, Employees and Entertainment and Recreation. The majority of issues were clothing related.

Other frequently stated reasons which recognized freedom of choice include: regulations or sanctions were not sufficiently justified by school administrators, employers or Army; prison garb worn during a trial may have negatively impacted trial results; contempt of court citations issued by judges were not warranted or were excessive; and the actual American flag was not desecrated.

Judges recognized freedom in personal appearance for other reasons in thirteen cases. These reasons, appearing on Table 19, include: colleges or schools exceeded their authority, religious clothing did not disqualify teachers from teaching in the classroom, restrictions violated the Civil Rights Act, prisoner's haircut was cruel and discriminatory, bathing attire was not objectionable and personal appearance issue was not applicable under state law.

The findings in this study clearly indicate that judicial decisions in cases involving a variety of personal appearance aspects demonstrate a balance between complete freedom of choice or applied regulations or sanctions and the limits to which this freedom or applied regulations or sanctions can be permitted in this country. Regulations and sanctions must be specific, justifiable, warranted, and must not be contrary to principles established in the United States

Constitution. Findings do indicate, however, that employers have more rights in deciding the personal appearance of those in their employ than employees have in choosing the personal appearance of their choice.

Question Nine

Will courts consider behavior as well as personal appearance issues in deciding cases? Table 20 shows frequencies of available facts about behavior presented by the parties to the court and court decisions including references to behavior.

Table 20.--Summary Frequencies of Behavioral References in Conjunction with Personal Appearance Issues.

Behavioral Facts Available to the Court			Behavioral References by Court			Totals	
N	Row %	Col %	N	Row %	Col %	N	Col %
17	77.3	44.7	5	22.7	33.3	22	41.5
21	67.7	55.3	10	32.3	66.7	31	58.5
38	71.7	100.	15	28.3	100.	53	100.

Behavior was not a factor in court cases appearing in the Government Symbols, Religious Teachers, Employees and Prisoners categories (see Appendix B-6).

Forty-three cases of 165, or 26% of the cases, referred to positive or negative behavior in conjunction with personal appearance issues. Of this number, twenty-one were hair related and twenty-two were clothing related. The sum total of behavioral references

appearing on Table 20 exceeds the total number of cases located in which information about behavior appeared because behavior references may have appeared in both the facts available to the court and the decisions in which court referred to behavior.

Table 20 shows that behavioral facts made available to the court by litigants substantially outnumbered behavioral references by judges. Thirty-eight behavioral references were made by parties involved in cases, and fifteen behavioral references appeared in judicial decisions. Cases involving clothing and hair were about equally divided.

Based on Appendix B-6, litigants in thirty of thirty-eight cases in which facts were made available to the court stated that disruptive behavior did not accompany or result from their personal appearance. Of this number, twenty-one cases were decided in favor of freedom in personal appearance. Where no disruption resulted, courts did appear to refer to and support freedom in clothing choices more than in hair choices.

Also appearing in Appendix B-6 are the categories in which behavior is presented as part of facts or decisions. They include the categories of Group Membership Symbols, Students, Lay Teachers, Entertainment and Recreation, and Courtroom Demeanor. Behavioral references were made in nineteen of thirty-nine Students cases, or 48.7%, resulting in the largest number of cases located in an individual category. However, it ranked third in the percentage of cases having behavioral references. The category showing the largest percentage of behavior references is that of Courtroom Demeanor with 66.6%, followed

by Teachers with 50% of the cases having behavioral references.

Thus far in this summary, discussion pertaining to the existence and possible impact of behavior and personal appearance upon judicial decisions has had a narrow approach, namely, behavior prior to the case entering the courtroom (see Appendix B-6). In examining the Courtroom Demeanor category, a broader perspective is utilized. Ten behavioral related cases were reported in this category, six of which involved attorneys. These cases involved the perceptions or reactions of judges to behavior resulting from the personal appearance of individuals who appeared before them or who were in the proximity of the courtroom. When it was established that personal appearance did not cause disruptive behavior, appellate courts generally cancelled lower courts' sanctions.

It is fairly evident from these findings that personal appearance which either caused or resulted in behavior problems was not significant in cases which went to court. Those applying regulations or sanctions were sensitive to impending behavioral problems, perceiving personal appearance to be the cause, more frequently in the courtroom and in the classroom settings. Actual disruption resulting from personal appearance choices did occur in only six cases and judges held in favor of regulations or sanctions in these cases.

In both settings, normative expectations regarding personal appearance were fairly rigid before the mid-1960's. After that time, established rules became ambiguous because of the changes in the cultural climate and this ambiguity was visible through personal appearance. This rigidity caused many people to demonstrate their

individuality which had, in the past, been less assertive and more conforming.

Question Ten

Do courts consider traditional beliefs or emerging values in deciding personal appearance choices or limitations? Table 21 shows frequencies of judicial references to traditional beliefs and emerging values by appearance issue and category.

Of the 165 cases appearing in this study, various courts referred to traditional beliefs or emerging values in fifty cases. References to traditional beliefs occurred in thirty cases and references to emerging values occurred in twenty cases. References to traditional beliefs were evidenced in seven categories and were relatively more numerous in the courtroom and prison settings. Emerging values, seen in six categories, were relatively more frequent when courts referred to sutdent complaints. Issues appearing in the Entertainment and Recreation category received the same number of references to traditional beliefs and emerging values, which may indicate the mixed sentiments existing in that area.

Even though judicial references to traditional beliefs were located in cases as early as 1879, the majority of references were made between 1965 and 1979, a time frame which also coincides with references to emerging values (see Table 22). A number of the same personal appearance issues were considered in light of both types of references which may indicate that these were the most controversial personal appearance issues of the era. These issues included references to the flag as

Table 21.--Summary Frequencies of Traditional Beliefs and Emerging Values.

Category	References To Traditional Beliefs				References To Emerging Values				Grand Totals	
	Hair	Clothing	Sub Total		Hair	Clothing	Sub Total			
	N	N	N	Row %	N	N	N	Row %	N	C%
Government Symbols		3	3	75.		1	1	25.	4	8.
Students	3	1	4	33.3	5	3	8	66.7	12	24.
Teachers										
Religious		2	2	28.6						
Lay	1	1	2	28.6	1	2	3	42.9	7	14.
Employees	3	1	4	66.7	1	1	2	33.3	6	12.
Entertainment/ Recreation		4	4	50.		4	4	50.	8	16
Courtroom Demeanor		7	7	77.8		2	2	22.2	9	18
Prisoners	3	1	4	100.					4	8.
Totals	10	20	30	60.	7	13	20	40.	50	100.

Table 22.--Category Frequencies of Traditional Beliefs and Emerging Values.

Court References to Traditional Beliefs Year, Decision, Issue, Reason	Court References to Emerging Values Year, Decision, Issue, Reason
SYMBOLS: 19 Cases	
1972 Lost, Flag Patch on Seat of Pants, Intent was different if one wore flag on sleeve or seat of one's pants	1974 Won, Flag Patch on Seat of Pants, Changing views on flag etiquette
1973 Lost, Flag Patch on Seat of Pants, Wearing flag on seat was contemptuous	
1973 Lost, Flag Patch on Seat of Pants, Flag symbol was basic to our society	
Total: 3	Total: 1
STUDENTS: 39 Cases	
Hair Issues:	
1965 Lost, Believed that unusual hair may disrupt school	1969 Won, No data or expert testimony which correlated behavior with long hair were presented
1970 Lost, A school matter should be settled by school	1970 Won, Conformity for its own sake cannot be tolerated
1972 Hair issue won, but clothing rules remain to deter immodest appearance	1970 Lost, but court added that one cannot assume that long hair is meant to express political or societal values
	1970 Won, Conformity to set standards should not be a part of the educational atmosphere
	1974 Won, Hair not proven to negatively impact learning

Table 22.--Continued.

Court References to Traditional Beliefs Year, Decision, Issue, Reason	Court References to Emerging Values Year, Decision, Issue, Reason
STUDENTS: Continued	
Dress Issues:	
1923 Lost, Face Powder, School was the place to learn respect for authority	1966 Won, Freedom Button, Schools cannot ignore matters merely because they do not want to deal with them
	1969 Won, Black Arm Band, Students had a right to peacefully express their views
	1970 Won, Blue Jeans, Not proven to deter learning
Total: 4	Total: 8
TEACHERS: 20 Cases	
Religious: 8 Cases	
1894 Won, Religious garb pronounced faith but did not disqualify teachers	
1918 Lost, Religious garb was daily reminder to students of church tenets	
Total: 2	
Lay: 12 Cases	
Hair Issues:	
1973 Lost, Society sets limits	1967 Won, Beard may have been a symbol of masculinity or nonconformity

Table 22.--Continued.

Court References to Traditional Beliefs Year, Decision, Issue, Reason	Court References to Emerging Values Year, Decision, Issue, Reason
LAY TEACHERS: Continued	
Clothing Issues:	
1975 Lost, Jacket/Shirt/Tie, Teacher establishes role model for students	1972 Won, Black Arm Band, Students should not be shielded from national issues until they enter the voting booth
	1976 Lost, Skirt Length, Skirt was not contrary to contemporary community standards but teacher did not fulfill her contract
Total: 2	Total: 3
Combined Totals: 4	Combined Totals: 3
EMPLOYEES: 31 Cases	
Hair Issues:	
1972 Lost, Policemen should be neat and disciplined to gain respect from public	1972 Won, Outward appearance should not determine self worth
1975 Lost, Applicant was free to cut his hair or work elsewhere for police	
1975 Lost, A uniform appearance for police, including hair, was good for internal unity and external recognition	
Clothing Issues:	
1979 Lost, Pantsuit, Company should be able to project certain image	1977 Lost, Tie, But employer should be able to change its dress code as need arises
Total: 4	Total: 2

Table 22.--Continued.

Court References to Traditional Beliefs Year, Decision, Issue, Reason	Court References to Emerging Values Year, Decision, Issue, Reason
ENTERTAINMENT AND RECREATION: 25 Cases	
1939 Won, Customary Street Attire, Individuals were free to choose their personal appearance as long as it did not offend public standards	1953 Won, Burlesque Dancing, Decency standards change with time and place
1970 Lost, Theatre-- Che , Che went beyond accepted norms even for off-Broadway productions	1968 Won, Topless Dancing, Decency standards change with time and place
1972 Lost, Topless/Nude Dancing, Laws are necessary to protect health/welfare/morals of public	1970 Won, Theatre-- Hair , People were not given opportunity to determine merits of play for themselves
1978 Lost, Nude Bathing, Nude bathers did not have the right to bathe on public beaches	1971 Won, Hippy Sitting on Grass, Ordinance labelled a group of people whose life style and appearance differed from residents
Total: 4	Total: 4
COURTROOM DEMEANOR: 15 Cases	
1964 Lost, Hat, Attorneys were bound to obey judges orders	1971 Won, Jacket with "Fuck The Draft" on back, If bystanders found it offensive, they could have turned their heads
1969 Won, Skirt Length, Attorneys were bound to obey judges orders but, dress requirements were not explicit	1978 Won, T-Shirt with "Bitch, Bitch" on front, Shirt was not appropriate courtroom dress, but traditional and contemporary usage of word were different
1969 Decision Unclear, Won't Rise For Judge, Rising for judge was symbolic	

Table 22.--Continued.

Court References to Traditional Beliefs Year, Decision, Issue, Reason	Court References to Emerging Values Year, Decision, Issue, Reason
COURTROOM DEMEANOR: Continued	
1974 Won, Jacket/Tie/Slacks, While rules were necessary, appearance did not warrant contempt citation	
1975 Lost, Tie, Courtroom attire for attorneys had traditionally been a jacket and tie	
1975 Lost, Clerical Garb, Due to significance attributed to religious, visible through their clothing, such attire may have swayed minds of jurors	
1980 Lost, Jacket/Tie, Traditionally, courts had controlled attorneys' appearance. They had certain restrictions which others did not have	
Total: 7	Total: 2
PRISONERS: 16 Cases	
Hair Issues:	
1879 Won, Pig Tail, Cutting Queue was cruel action, Queue symbolized his religious beliefs	
1970 Lost, Rules were intended for sanitary/personal image purposes	
1976 Lost, Incarceration implied certain restrictions	

Table 22.--Continued.

Court References to Traditional Beliefs	Court References to Emerging Values
Year, Decision, Issue, Reason	Year, Decision, Issue, Reason
PRISONERS: Continued	
Clothing Issues:	
1971 Lost, Jewelry, Rules were necessary to deter theft and conspicuous consumption	
Total: 4	

wearing apparel, hair lengths and diverse styles of hair, facial hair preferences, ties, skirt lengths, and topless dancing.

Question Eleven

What personal appearance forms and motives will the courts identify as constituting symbolic meaning? Table 23 shows the frequencies for the total number of cases, the number of cases in which individuals sought Symbolic Speech and Conduct protection for personal appearance issues and the number of cases won and lost.

Table 23.--Frequencies of Court Determination of Personal Appearance and Symbolic Meaning.

Total Number Of Cases/ Issue		Individuals Sought Symbolic Speech/ Conduct Protection			Cases Lost			Cases Won		
		N	Row %	Col %	N	Row %	Col %	N	Row %	Col %
Hair	65	5	7.7	13.9	5	100.	26.3	0	0	0
Clothing	100	31	31.	86.1	14	45.2	73.7	17	54.8	100.
Total	165	36	21.8	100.	19	52.8	100.	17	47.2	100.

In thirty-six cases, or 21.8% of the total number of cases, individuals perceived that their choice in personal appearance publicly conveyed a non-verbal message, that the intended message was recognized by others, and that they had a constitutionally protected right to express their views through personal appearance selection (see Table 23). This table is based on a narrower definition of symbolic meaning than is used in the Clothing and Textile field. For example, it does not include personal appearances choices based on personal preference. It does include those issues which are protected as Symbolic Speech and Conduct

under the First Amendment, and several issues under Freedom of Expression as safeguarded by the Fourteenth Amendment.

A number of motives for the symbolic communication specified in these cases were identified. First, personal appearance was manipulated to convey political viewpoints regarding the Civil Rights Movement, Vietnam War, Selective Service System, Mexican-American struggle for racial pride and power, and the American Socialist Party's ideology. Second, expressions of personal values and norms were manifested in symbolic expression through personal appearance selection, but the courts did not recognize the individual's right to symbolic protection for this particular reason. Third, liberation from existing sexual standards, exemplified in various art forms, manifested itself in partial or total nudity in certain situational settings.

In seventeen cases, courts recognized and upheld the right of the individual to publicly communicate certain views via his personal appearance (see Table 24). Cases were located in the Government and Group Membership Symbols, Students, Lay Teachers, Entertainment and Recreation, and Courtroom Demeanor categories. There were significantly fewer hair than clothing issues seeking Symbolic Speech protection and none received it.

Court decisions in nineteen cases found that personal appearance forms and motives did not constitute Symbolic Speech protection for several reasons. Symbolic Speech does not include personal appearance which does not convey a message, disruptive behavior, behavior contrary to criminal laws, disrespect for national symbols, infringement upon the rights of others, or obscenity.

Table 24.--Category Frequencies of Court Determination of Personal Appearance and Symbolic Meaning.

Category/ Issue/ Total	Court Rules Against Personal Appearance as Symbolic Speech/ Number Lost/%	Court Rules in Favor of Personal Appearance as Symbolic Speech/ Number Won/%	Totals N	Totals R %
Symbols				
Government	1 Flag Vest	1 Army Uniform		
	1 Flag Poncho	1 Flag Shirt		
	3 Flag Patches (Seat of Pants)	1 Flag with Peace Symbol on Helmet		
		1 Flag Patch Upside Down on Jacket Sleeve		
Group Membership		1 Nazi Uniform/Swastika		
Total 19	Cases Lost 5/50.	Cases Won 5/50.	10	52.6
Students				
Hair	5			
Clothing	1 Freedom Button	1 Freedom Button		
	1 Black Beret	1 Black Arm Band		
Total 39	Cases Lost 7/77.8	Cases Won 2/11.1	9	23.1
Lay Teachers				
Clothing	1 Jacket/Shirt/Tie	1 Black Arm Band		
Total 20	Cases Lost 1/50.	Cases Won 1/50.	2	10.
Entertainment/ Recreation	1 Burlesque Dancing	1 Burlesque Dancing		
	1 Theatre "Che"	2 Theatre "Hair"		
	1 Topless/Nude Dancing	2 Topless/Nude Dancing		
	2 Nude Dancing	3 Topless Dancing		
	1 Nude Bathing			
Total 25	Cases Lost 6/42.85	Cases Won 8/57.1	14	56.
Courtroom Demeanor				
Clothing		1 Jacket with Inscription		
Total 15		Cases Won 1/100.	1	6.66

CHAPTER VI

SUMMARY AND CONCLUSION

Statement of the Problem

Personal appearance issues appearing in courts of law were selected for investigation in order to combine the writer's areas of interest, socio-cultural aspects of clothing and textiles, and law. Professional writing, authored by attorneys and law students, was found in this area. This writing deals with the legal nature of a limited number of dress related cases and is not directed toward the layman. While law is recognized as one aspect of the socio-cultural area in clothing and textile literature, no detailed investigation of personal appearance issues arising in the courts of law in the United States was discovered. This thesis identifies and categorizes personal appearance related issues which appear in selected judicial proceedings between 1879 and 1980, with emphasis on the last two decades.

Methodology

The sources of data for this study included the official and unofficial reported decisions of the federal and state courts, annotations and Law Review articles or papers. Relevant cases in West's National Reporter System were located through implementation of the American Digest's Topic and "Key Number" classification system. This

system organizes subjects and provides abstracts for a speedy location of similar points of law within each classification. The General Digest, a chronological coverage which also provides case citations and abstracts was used. Other legal books were also consulted to locate references to pertinent citations.

Conclusion

Frequency counts were made and percentages calculated to analyze the data according to the objectives of the study, and the results are presented below.

Objective 1. To identify and categorize personal appearance related issues through examining selected cases which have been brought into courts of law in the United States between 1879 and 1980, with emphasis on the last two decades.

One hundred sixty-five personal appearance related cases were located; 100 of these involved clothing related issues and sixty-five involved hair related issues. Six categories were established based on roles and situational settings and are presented in order of decreasing frequency: Students, Employees, Entertainment and Recreation, Teachers, Prisoners, and Courtroom Demeanor. Symbols, a seventh category with the second smallest number of cases and cuts across bases used in other categories, was established. A number of specific roles and situational settings were identified in each category.

While the total population in this study is not known, the number of cases in three categories, in particular, were limited in this study. Cases appearing in the Students, Entertainment and Recreation, and Prisoners categories indicate the types of issues and decisions

commonly found in these categories.

The number of males bringing cases about personal appearance to courts in the United States between 1879 and 1980 outnumbered females three to one. Cases in the Symbols, Students, Lay Teachers, Employees and Prisoners categories were predominantly complaints raised by males. Ninety-seven percent of the hair related cases were raised by males. Questions involving clothing related issues were likely to be raised by both males and females. About half of the cases involved restrictions placed upon individuals in a work environment.

Personal appearance issues entering the courts, the majority of which occurred between 1965 and 1980, involved the right of individuals to express political, religious, racial, and moral viewpoints through their personal appearance, to make individual choices regarding personal appearance, to select appearance aspects which were perceived by others to be inappropriate or detrimental in certain settings, and to appear innocent in a court of law.

The number of cases brought by males and the many references in the opinions to the acceptance of different modes of dress and adornment for females but not for males, indicates that change in dress and adornment was more readily accepted for women than for men. Cases involving prison garb worn during a trial were unrelated to the sex of the individual.

Objective 2. To determine the circumstances under which individuals perceive that their freedom in personal appearance selection was infringed by other members of society.

In 132 of the 165 cases appearing in this study, formal

sanctions were applied prior to personal appearance issues entering courts of law. The majority of applied sanctions involved serious consequences for those to whom sanctions were directed. Three types of formal sanctions were identified and include laws and ordinances, legal procedures and dress and grooming codes.

Students were generally suspended, expelled or denied school enrollment because they violated school dress and grooming codes. Teachers and other employees were more often suspended, dismissed, discharged, disqualified or transferred for noncompliance with prescribed dress policies. Individuals in the Symbols and Entertainment and Recreation categories were frequently arrested and convicted because some aspect of their personal appearance broke the law. Those who did not comply with judges' personal appearance standards were generally issued contempt of court citations, received sentences and/or were fined. Prison inmates were compelled to comply with prison dress and grooming regulations. Seven of 165 cases specified that no sanction was applied. In twenty-six cases, the subject of sanctions was either not stated or not applicable.

Dress codes were located as early as 1879 but the majority of them appeared between 1965 and 1980, a period of numerous changes in our society. As a result of changes involving personal appearance, the number of dress and grooming codes increased and many individuals who were sanctioned for violating them took the matter to court. Sanctioned individuals perceived that liberty included the right to appear as one chooses and they were not willing to have that liberty infringed by others.

Objective 3: To identify remedies available in courts when personal appearance is an issue.

Individuals in eight cases took personal appearance issues to court as a means of requiring employers, including school administrators, to pay salaries which had already been earned or in an attempt to receive monetary compensation for emotional injury. The alleged emotional injuries were the result of personal appearance restrictions or applied sanctions imposed by school or prison officials. In the remaining 157 cases, individuals sought some form of legal action which would allow them to continue to present the personal image of their choice, as a means of not serving sentences which resulted from trials involving some facet of their personal appearance, or to review trials in which personal appearance may have negatively affected trial results.

Those actions which were not based on monetary awards included: asking the court to order the person applying personal appearance requirements or sanctions to stop enforcing the requirements or imposing sanctions; having contempt of court citations cancelled or criminal convictions reversed; challenging city ordinances, state or federal statutes, formal regulations, the denial of operating licenses and orders of judges; requiring employers, including school authorities, to restore the role held prior to noncompliance to imposed regulation or sanction; or seeking release from prison.

Personal appearance issues were found to be recognized under the First, Fifth, Ninth, Fourteenth and Twenty-first Amendments. Courts based decisions in two thirds of the personal appearance cases appearing in this study on constitutional grounds, and in particular, the

First and Fourteenth Amendments. Hair issues were more frequently considered under the Fourteenth Amendment, and clothing issues under the First Amendment.

Decisions in the remaining cases were based on nonconstitutional issues, such as the Civil Rights Act, the power of the court to control the courtroom, statute interpretation, insufficient evidence and cause, and discretion of the military.

Objective 4: To describe the judicial system to the layman interested in personal appearance cases.

Personal appearance cases utilized the state court system almost as frequently as the federal court system. This indicates that personal appearance issues not only involved state constitutions and statutes, and regulations imposed by cities, but were also within the jurisdiction of the federal courts. This was not the pattern seen from 1879 through 1980, however. Before 1966, personal appearance cases appearing in this study were heard in state courts, but as individual rights under the federal constitution became better recognized, personal appearance cases also appeared in federal courts. Hair issues appeared more often in federal courts and clothing issues more often in state courts.

The majority of cases located in this study were resolved at the United States Federal Appellate and District Court levels, ninety-two of 165 cases. The majority of hair related issues were resolved at these levels and the number of clothing related issues were resolved about equally in both systems.

In analyzing data regarding state court systems according to frequency counts and percentages, it should be remembered that the

majority of all cases in the United States are tried and resolved on the trial court level. Because the trial courts generally do not write or publish opinions, the total number of cases in which personal appearance is an issue that are heard and resolved at this level is unknown. Of the cases resolved in the state system appearing in this study, the largest number of cases was resolved at the state supreme court level.

Objective 5: To identify parameters which the courts associate with aspects of personal appearance.

Courts recognized freedom of choice regarding personal appearance in eighty-one of 165 cases. Nine cases were not resolved. Courts recognized freedom of choice in clothing slightly more frequently than in hair. The three most common judicial reasons for recognizing this freedom are listed in order of declining frequency. Rules or decisions sanctioning personal appearance were too narrow, vague, arbitrary, capricious, unreasonable, discriminatory, or not sufficiently explicit. Rules or decisions sanctioning personal appearance were held unconstitutional. Rules imposed by schools, employers or the army were not justified to the satisfaction of the court.

An interesting conclusion can be drawn from these findings. While legal decisions which consider the same point of law are based on decisions made in the past, decisions involving personal appearance were not found to be inflexible. In some cases, courts recognized that attitude changes produced different interpretations for established ways. In other cases, courts held that intolerance or abuse of authority abridged protected rights.

References to behavior occurred in forty-three personal

appearance cases and were found more often in facts presented by the parties to the court than in court references to behavior. Where it was established that disruptive behavior did not occur, courts generally appeared to refer to and support freedom of choice in clothing selection more than in hair style selection. References to behavior occurred more often in cases involving the roles of students and lay teachers, and in the courtroom setting. In these roles and settings, expectations may be better defined and personal appearance issues which fall outside prescribed limits may result in more assertive reactions by involved individuals. Behavior was not a factor in cases appearing in the Government Symbols, Religious Teachers, Employees or Prisoners categories.

Court references to traditional beliefs or emerging values occurred in fifty cases. In thirty of these cases, personal appearance choice was limited by the traditional beliefs held by the court. Cases referring to traditional beliefs were relatively more numerous in the courtroom setting and in the role of prisoners. In twenty cases, personal appearance selection was recognized because the court considered it in light of emerging values. These cases were relatively more frequent in the role of students. The issues appearing in the Entertainment and Recreation category may have been the most perplexing because the same number of references were made to traditional beliefs as to emerging values. Based upon these findings, the personal appearance issues which were both limited due to references to traditional beliefs and recognized because of references to emerging values include: the flag as wearing apparel, hair lengths and diverse styles, facial hair

preferences, ties, skirt lengths and topless dancing.

Individuals in thirty-six cases perceived that they had a constitutionally protected right to express certain viewpoints through their personal appearance. In seventeen of these cases, courts identified the following appearance issues as constituting Symbolic Speech and Conduct protection: army uniform, flag shirt, flag with peace symbol on helmet, flag patch upside down on jacket sleeve, Nazi uniform and swastika, freedom button, black arm bands, burlesque, topless and nude dancing, theatre Hair, and jacket with inscription.

There were also cases in which the same symbols were used but not considered symbolic by other courts. No hair issues were considered symbolic. Cases were located in all categories except that of Prisoners.

Recommendations for Further Study

During the course of this study, a number of topics were located which could be pursued in greater depth, the results of which would contribute to existing information in the field of Clothing and Textiles.

In a number of opinions located in the Students category, judges referred to a set pattern of decision making regarding student hair related issues which were dependent upon the federal circuit in which the case was heard. Because research revealed the existence of some 100 of these cases, twenty-eight of which are included in this study, a time study is feasible to establish whether decisions within these federal circuits held constant or changed with time throughout the hair controversy time frame.

Another topic which a great deal has been written about recently is the reaction of different judges on various court levels to personal appearance in the courtroom. A survey designed to include a particular court level or system could determine the existence and kinds of personal appearance standards established by individual judges, court levels or court systems. It could also be designed for more comparative results, for example, between states.

A broader topic but one also pertaining to the courtroom setting involves exploratory research which examines the impact and affect of personal appearance and the physical environment upon judges, jurors and participants. A more holistic approach combining Clothing and Textiles and Housing could provide greater insight into the total picture for both areas. Hazard and Gutman have already examined certain aspects of furniture placement within the physical environment of the courtroom.

Research regarding defendants and witnesses who have been compelled to try on articles of clothing or alter their personal appearance for the purpose of identification prior to a trial, while on the witness stand or under cross examination, discussed in "Limitations," is also attainable. An analytic comparison of personal appearance alteration in this situation would also permit insight into the impact of personal appearance on judges or juries.

Contemporary issues particularly relevant to the field of Clothing and Textiles involve safety aspects of consumer products. An analysis of subject matter regarding flammability and protective clothing could be obtained through data located in case law. The results of this analysis could be beneficial and result in new methods of problem solving in these areas.

APPENDICES

APPENDIX A

GLOSSARY OF TECHNICAL TERMS

GLOSSARY OF TECHNICAL TERMS

APPELLANT. The party who takes an appeal from one court or jurisdiction to another. (Black's Law Dictionary, 4th ed., p. 126)

APPELLATE. Having the power or authority to review and decide appeals as a court. (Random House Dictionary of the English Language, 1969, p. 72)

APPELLEE. The party in a cause against whom an appeal is taken; that is, the party who has an interest adverse to setting aside or reversing the judgment. (Black's Law Dictionary, 4th ed., p. 126)

CASE LAW. The aggregate of reported cases as forming a body of jurisprudence, or the law of a particular subject as evidenced or formed by the adjudged cases, in distinction to statutes and other sources of law. (Ibid., p. 272)

CIRCUIT COURTS. In several of the states, the name given to a tribunal, the territorial jurisdiction of which may comprise several counties or districts, and whose sessions are held in such counties or districts alternately. These courts usually have a general original jurisdiction. (Ibid., pp. 307-8)

CITATION OF AUTHORITIES. The reading, or production of, or reference to, legal authorities and precedents, (such as constitutions, statutes, reported cases, and elementary treatises), in arguments to courts, or in legal textbooks, to establish or fortify the propositions advanced. (Ibid., p. 309)

CIVIL LAW. The body of laws of a state or nation regulating ordinary private matters, as distinct from laws regulating criminal, political, or military matters. (Random House Dictionary of the English Language, 1969, p. 271)

COMMON LAW. Is the origin of the Anglo-American legal systems. English common law was largely customary law and unwritten, until discovered, applied, and reported by the courts of law. In theory, the common law courts did not create law but rather discovered it in the customs and habits of the English people.

The strength of the judicial system in pre-parliamentary days is one reason for the continued emphasis in common law systems on case law. In a narrow sense, common law is the phrase still used to distinguish case law from statutory law. (Jacobstein and Mersky, 1977, p. xxv)

COMPLAINT. The plaintiff's initial pleading and, according to the Federal Rules of Civil Procedure, is no longer full of the technicalities demanded by the common law. A complaint need only contain a short and plain statement of the claim upon which relief is sought, an indication of the type of relief requested, and an indication that the court has jurisdiction to hear the case. (Jacobstein and Mersky, 1977, p. xxvi)

CONTEMPT OF COURT. Any act which is calculated to embarrass, hinder, or obstruct court in administration of justice, or which is calculated to lessen its authority or its dignity. (Black's Law Dictionary, 4th ed., p. 390)

CONTROVERSY. A litigated question; adversary proceeding in a court of law; a civil action or suit, either in law or in equity; a justiciable dispute. (Ibid., p. 400)

COURT OF APPEALS. An appellate tribunal which, in Kentucky, Maryland, the District of Columbia, and New York, is the court of last resort. In Virginia and West Virginia, it is known as the "supreme court of appeals"; in Connecticut, the Supreme Court of Errors; in Massachusetts and Maine, the Supreme Judicial Court. In other states the court of last resort is known as the Supreme Court. In Texas the Courts of Civil Appeals are inferior to the supreme court. (Ibid., p. 428)

CRIMINAL LAW. That branch or division of law which treats of crimes and their punishments. (Ibid., p. 448)

CRIMINAL PROSECUTION. An action or proceeding instituted in a proper court on behalf of the public, for the purpose of securing the conviction and punishment of one accused of crime. (Ibid., p. 449)

DAMAGES. Monetary compensation awarded by a court for an injury caused by the act of another. (Jacobstein and Mersky, 1977, p. xxvii)

DEFENDANT. The person defending or denying; the party against whom relief or recovery is sought in an action or suit. (Black's Law Dictionary, 4th ed., p. 507)

DIGEST. Is an index to reported cases, providing brief, unconnected statements of court holdings or facts of cases, which is arranged by subject and subdivided by jurisdiction and courts. (Jacobstein and Mersky, 1977, p. xxvii)

DISTRICT COURT. Courts of the United States, each having territorial jurisdiction over a district, which may include a whole state or only part of it. Each of these courts is presided over by one judge, who must reside within the district. These courts have original jurisdiction over all admiralty and maritime causes and all proceedings in bankruptcy, and over all penal and criminal matters cognizable under the laws of the United States, exclusive jurisdiction over which is not vested either in the supreme or circuit courts. (Black's Law Dictionary, 4th ed., p. 562)

DUE PROCESS OF LAW. A term found in the Fifth and Fourteenth Amendments of the Constitution and also in the constitution of many states. Its exact meaning varies from one situation to another and from one era to the next, but basically it is concerned with the guarantee of every person's enjoyment of his rights. (Jacobstein and Mersky, 1977, p. xxvii)

EN BANC. Refers to a session where the entire bench of the court will participate in the decision rather than the regular quorum . . . the Circuit Courts of Appeal usually sit in groups of three judges but for important cases may expand the bench to nine members, when they are said to be sitting en banc. (Ibid., p. xxviii)

ENJOIN. To require; command; positively direct. To require a person, by writ of injunction from a court of equity, to perform, or to abstain or desist from some act. (Black's Law Dictionary, 4th ed., p. 623)

EQUITY. Justice administered according to fairness as contrasted with the strictly formulated rules of common law. It is based on a system of rules and principles which originated in England as an alternative to the harsh rules of common law and which were based on what was fair in a particular situation. One sought relief under this system in courts of equity rather than in courts of law. (Jacobstein and Mersky, 1977, p. xxviii)

FEDERAL QUESTION. Cases arising under Constitution of United States, Acts of Congress, or treaties, and involving their interpretation and application, and of which jurisdiction is given to federal courts, are commonly described as involving a "federal question." (Black's Law Dictionary, 4th ed., p. 740)

HABEAS CORPUS AD SUBJICIENDUM. A writ directed to the person detaining another, and commanding him to produce the body of the prisoner (or person detained), with the day and cause of his caption and detention . . . to do, submit to, and receive whatsoever the judge or court awarding the writ shall consider in that behalf . . . This is the well-known remedy for deliverance from illegal confinement . . . (Ibid., p. 837)

HEADNOTE. Is a brief summary of a legal rule or significant facts in a case, which, among other headnotes applicable to the case, precedes the printed opinion in reports. (Jacobstein and Mersky, 1977, p. xxix)

INDICTMENT. A formal accusation of a crime made by a grand jury at the request of a prosecuting attorney. (Ibid., xxx)

INJUNCTION. A judicial process or order requiring the person or persons to whom it is directed to do a particular act or to refrain from doing a particular act. (Random House Dictionary of the English Language, 1969, p. 732)

JUDGMENT. The official and authentic decision of a court of justice upon the respective rights and claims of the parties to an action or suit therein litigated and submitted to its determination. (Black's Law Dictionary, 4th ed., p. 977)

JURISPRUDENCE. The philosophy of law, or the science which treats of the principles of positive law and legal relations. (Ibid., p. 992)

LEGISLATION. The act of giving or enacting laws; the power to make laws; the act of legislating; preparation and enactment of laws; the making of laws by express decree. (Ibid., p. 1045)

MANDAMUS. This is the name of a writ . . . which issues from a court of superior jurisdiction, and is directed to a private or municipal corporation, or any of its officers, . . . commanding the performance of a particular act therein specified, and belonging to his or their public official, or ministerial duty, or directing the restoration of the complainant to rights or privileges of which he has been illegally deprived. (Ibid., p. 1113)

MISDEMEANOR. Offenses lower than felonies and generally those punishable by fine or imprisonment otherwise than in penitentiary. (Ibid., p. 1150)

NUISANCE. That which annoys and disturbs one in possession of his property, rendering its ordinary use or occupation physically uncomfortable to him . . . Everything that endangers

life or health, gives offense to senses, violates the laws of decency, or obstructs reasonable and comfortable use of property. (Ibid., p. 1214)

OBITER DICTUM. Is an official, incidental comment, not necessary to the formulation of the decision, made by the judge in his opinion which is not binding as precedent. (Jacobstein and Mersky, 1977, p. xxxi)

ORDINANCE. Is the equivalent of a municipal statute, passed by the city council and governing matters not always covered by federal or state law. (Ibid., p. xxxii)

PERSONAL APPEARANCE. Includes that which covers the body for protection, modesty and/or personal expression; that which can be manipulated on the body; and that which is displayed by physical stature and proportion of body form.

PLAINTIFF. A person who brings an action; the party who complains or sues in a personal action and is so named on the record. (Black's Law Dictionary, 4th ed., p. 1309)

PRECEDENT. An adjudged case or decision of a court of justice, considered as furnishing an example or authority for an identical or similar case afterwards arising or a similar question of law. (Ibid., p. 1340)

PROMULGATE. To publish; to announce officially; to make public as important or obligatory. (Ibid., p. 1380)

STARE DECISIS. Is the doctrine of English and American law which states that when a court has formulated a principle of law as applicable to a given set of facts, it will follow that principle and apply it in further cases where the facts are substantially the same. It connotes the decision of present cases on the basis of past decisions. (Jacobstein and Mersky, 1977, p. xxxvi)

STATUTE. An act of the legislature declaring, commanding or prohibiting something. (Black's Law Dictionary, 4th ed., p. 1581)

SUPREME COURT. A court of high powers and extensive jurisdiction, existing in most of the states. In some it is the official style of the chief appellate court or court of last resort. In others (such as New York) the supreme court is a court of general original jurisdiction, possessing also (in New York) some appellate jurisdiction, but not the court of last resort. (Ibid., p. 1609)

SUPREME COURT OF THE UNITED STATES. The court of last resort in the federal judicial system. It is vested by the constitution with original jurisdiction in all cases affecting ambassadors, public ministers, and consuls, and those in which a state is a party, and appellate jurisdiction over all other cases within the judicial power of the United States . . . (Ibid., pp. 1609-10)

WRIT. A precept in writing, couched in the form of a letter, running in the name of the king, president, or state, issuing from a court of justice, and sealed with its seal, addressed to a sheriff or other officer of the law, or directly to the person whose action the court desires to command, either as the commencement of a suit or other proceeding or as incidental to its progress, and requiring the performance of a specified act, or giving authority and commission to have it done. (Ibid., p. 1783)

APPENDIX B

TABLES OF SUPPORTING DATA

Table B-1.--Category Frequencies of Hair and Clothing Issues by Sex.

Sub-Divisions	Male/Number/Issue	Female/Number/Issue	Both/Number/Issue	Total
		SYMBOLS:		
		Government		
Clothing	14 Flag Cape Flag Poncho Flag Vest Flag Shirt Flag on Helmet Flag on Jacket Sleeve Flag on Hip Pocket Flag on Seat of Pants Flag on Knee of Pants Army Uniform	1 Flag on Seat of Pants	0	15
		Group Membership		
Clothing	4 Secret Society Badge KKK Hood and Gown Nazi Uniform & Swastika	0	0	4
Totals	18 94.7%	1 5.3%	0	19 100%
		STUDENTS:		
Hair	26 Hair Sideburns	1 Hair	1 Hair	28

Table B-1.--Continued.

Sub-Divisions	Male/Number/Issue	Female/Number/Issue	Both/Number/Issue	Total
		STUDENTS: Continued		
Hair	Beard Shave Indian Braids			
Clothing	3 Khaki Uniform Black Berets Blue Jeans	5 Cap and Gown Face Powder Uniform Pantsuit and Culottes Slacks	3 Freedom Buttons Black Arm Bands	11
Totals	29 74.35%	6 15.4%	4 10.25%	39 100%
		TEACHERS:		
		Religious		
Clothing	0	6 Religious Garb	2 Religious Garb	8
		Lay		
Hair	8 Hair Mustache Goatee Beard Sideburns	0	0	8

Table B-1.--Continued.

Sub-Divisions	Male/Number/Issue	Female/Number/Issue	Both/Number/Issue	Total
		Lay Teachers: Continued		
Clothing	3 Jacket/Shirt/Tie Tie Black Arm Band	1 Skirt Length	0	4
Totals	11 55%	7 35%	2 10%	20 100%
		EMPLOYEES OTHER THAN TEACHERS:		
Hair	24 Hair Beard Mustache Sideburns Goatee Dyed Hair Wigs	0	0	24
Clothing	4 Hairnet Prescribed Belt Nudism Tie	3 Height/Weight/Glasses/ Uniform/Cleaning Allowance Career Uniform Pantsuit	0	7
Totals	28 90.3%	3 9.7%	0	31 100%

Table B-1.--Continued.

Sub-Divisions	Male/Number/Issue	Female/Number/Issue	Both/Number/Issue	Total
		ENTERTAINMENT AND RECREATION:		
Clothing	2 Nude Bathing	9 Burlesque Dancing Hippy Sitting on Grass Topless/Nude Dancing	14 Customary Street Attire Nudism/Nude Bathing Bathing Attire Theatre Performances Topless/Nude Dancing	25
Totals	2 8%	9 36%	14 56%	25 100%
		COURTROOM DEMEANOR:		
Hair	2 Haircut Beard	0	0	2
Clothing	8 Head Coverings (Filaas) (Taboosh) Jacket with Inscription Jacket/Tie Clerical Garb Nudity	5 Hat Skirt Length Slacks Sweater/Open-Necked Blouse T-Shirt with Inscription Won't Rise for Judge	0	13
Totals	10 66.7%	5 33.3%	0	15 100%

Table B-1.--Continued.

Sub-Divisions	Male/Number/Issue	Female/Number/Issue	Both/Number/Issue	Total
		PRISONERS:		
		In the Courtroom		
Clothing	12 Prison Garb Worn During a Trial	0	0	12
		In Prison		
Hair	3 Pig Tail (Queue) Haircut/Shave	0	0	3
Clothing	0	0	1[a] Beard/Goatee/Jewelry (Combined)	1
Totals	15 93.75%	0	1 6.25%	16 100%

[a]Classified as "Clothing"

Table B-2.--Summary Results for Racial Classification.

Category	Issue	Year	State	Decision/Reason
Students	Freedom Button	1965	Miss.	Lost/Disruption
	Refusing to Shave	1970	Ga.	Lost/Dress code not discriminatory
Teachers	Goatee	1969	Fla.	Won/Principal's request was discriminatory
	Mustache	1970	Ala.	Won/Principal's request was arbitrary
	Hair, Mustache, Goatee, Beard	1972	Miss.	Won/Principal's request was arbitrary
Employees	Beard	1970	N.Y.	Lost/Dress code not religious discrimination
Courtroom Demeanor	Head Covering (Filaas)	1970	Md.	Won/Trial judge was biased
	Beard	1973	S.C.	Lost/Judge not required to ask jurors if they had heard biases
	Head Covering (Taboosh)	1980	Mich.	Case pending review by Mich. Supreme Court
Prisoners in Prison	Haircut, Shave	1970	Fla.	Lost/Prison rules did not infringe rights

Table B-3.--Category Frequencies and Types of Sanctions.

	Category/Number		Sanctions/Number	
I.	Symbols			
	Government	15	Arrested and Convicted	15
	Group Membership	4	Arrested and Convicted	3
			Refused Parade Permit	1
	Total	19		
II.	Students			
	Hair	28	Suspended/Expelled	21
			Denied Enrollment	4
			Sent Home/Isolated	1
			Not Stated	2
	Clothing	11	Suspended/Expelled	7
			Sent Home/Isolated	3
			Not Stated	1
	Total	39		
III.	Teachers			
	Religious	8	Disqualify Teacher	4
			Not Pay Salary, or Fine/ Indict School Authorities	4
	Lay	12		
	Hair- 8		Suspended/Dismissed	6
			Transferred	1
			Not Stated	1
	Clothing- 4		Suspended/Dismissed	3
			Not Stated	1
	Total	20		
IV.	Employees			
	Hair	24	Suspended/Discharged	10
			Called to Active Duty	5
			Refused Employment	2
			Faced Suspension	1
			Question Dress Code	5
			Not Stated	1
	Clothing	7	Suspended/Discharged	4
			Called to Active Duty	1
			Refused Employment	1
			Question Dress Code	1
	Total	31		

Table B-3.--Continued.

Category/Number			Sanctions/Number	
V.	Entertainment and Recreation	25	Arrested and Convicted	10
			Received Summons	1
			Denied Operating License	4
			Denied Land Charter	1
			Ordered to Revise Play	1
			Ban on Nude Bathing	1
			Not Stated	7
	Total	25		
VI.	Courtroom Demeanor			
	Hair	2	Cited for Contempt and Sentenced	1
			Not Stated	1
	Clothing	13	Verbal Reprimand	1
			Banned from Courtroom	1
			Given Sentence	1
			Cited for Contempt	2
			Cited for Contempt/and Removed	1
			Cited for Contempt, Sentenced/ Fined	6
			Not Stated	1
	Total	15		
VII.	Prisoners			
	In the Courtroom	12	N.A.	
	In Prison	4		
	Hair- 3		Compelled to Shave, Have Haircut, Trim Goatee	3
	Clothing- 1		Forbidden Jewelry	1
	Total	16		

Table B-4.--Category Frequencies with which Hair and Clothing Issues Were Heard by State and Federal Courts.

Category	State Courts			Federal Courts		
	Trial	Appellate	Supreme	District	Appellate	Supreme
I. Symbols						
Government	19	7	6	3	4	2
Group Membership	5	2	4	1	1	2
Total	24	9	10	4	5	4
II. Students						
Hair	2	1	1	26	16	0
Clothing	6	0	4	5	4	1
Total	8	1	5	31	20	1
III. Teachers						
Religious	9	2	6	0	0	0
Lay						
Hair	2	1	1	7	3	0
Clothing	1	1	0	3	2	0
Total	12	4	7	10	5	0
IV. Employees						
Hair	5	1	0	21	15	1
Clothing	0	0	0	7	2	0
Total	5	1	0	28	17	1
V. Entertainment and Recreation						
Total	18	6	8	11	5	4
VI. Courtroom Demeanor						
Hair	2	0	2	0	0	1
Clothing	17	7	6	1	1	1
Total	19	7	8	1	1	2
VII. Prisoners						
In the Courtroom	7	1	1	11	5	0
In Prison						
Hair	1	0	0	2	2	0
Clothing	0	0	0	1	0	0
Total	8	1	1	14	7	0

Table B-5.--Category Frequencies for Court Hierarchy Resolutions of Personal Appearance Issues.

	Category	State Courts			Federal Courts		
		Trial	Appellate	Supreme	District	Appellate	Supreme
I.	Symbols						
	Government	1	5	5	0	2	2
	Group Membership	1	0	1	0	1	1
	Total	2	5	6	0	3	3
II.	Students						
	Hair	0	1	1	10	16	0
	Clothing	1	0	4	2	3	1
	Total	1	1	5	12	19	1
III.	Teachers						
	Religious	0	2	6	0	0	0
	Lay						
	Hair	0	1	1	4	2	0
	Clothing	0	1	0	1	2	0
	Total	0	4	7	5	4	0
IV.	Employees						
	Hair	2	1	0	6	14	1
	Clothing	0	0	0	5	2	0
	Total	2	1	0	11	16	1
V.	Entertainment and Recreation						
	Total	3	4	7	4	3	4
VI.	Courtroom Demeanor						
	Hair	0	0	1	0	0	1
	Clothing	1	5	5	0	1	1
	Total	1	5	6	0	1	2
VII.	Prisoners						
	In the Courtroom	0	0	1	6	5	0
	In Prison						
	Hair	1	0	0	0	2	0
	Clothing	0	0	0	1	0	0
	Total	1	0	1	7	7	0

Table B-6.--Category Frequencies of Behavioral References in Conjunction with Personal Appearance Issues

Category/ Number of Cases	Facts Available to the Court	Decision/Behavior Reference by Court	N	Row %
Symbols: Group Membership	1 KKK, No disruption	Lost, Garb/behavior were frightening		
	1 KKK, No disruption	Won, Fear of violence was not actual violence		
	1 Am. Socialist Party	Won, Fear of violence was not actual violence; Party members were permitted to wear Nazi uniforms		
Total 19			3	15.8
Students: Hair	5 No disruption	4 Won, 1 Lost		
	2 Did cause a disruption	2 Lost		
	1 Disruption not mentioned	Lost, Hair may disrupt		
	1 Disruption not mentioned	Won, No disruption		
	1 School had problems in past	Lost		
	1 Disruption not mentioned	Won, No disruption		
	1 School perceived hair to be a disruptive influence	Won		
	1 School perceived hair to be a disruptive influence	Won, Disturbances could have been counteracted		

Table B-6.--Continued.

Category/ Number of Cases	Facts Available to the Court	Decision/Behavior Reference by Court	N	Row %
Students: Clothing	1 School uniform	Decision not clear/ Uniforms substituted because of discipline concerns		
	1 Freedom buttons No disruption	Won, No disruption		
	1 Freedom buttons, Did cause disruption	Lost, disruption prevented school functioning		
	1 Black arm band, Peaceful protest	Won, Peaceful		
	1 Black berets, did cause disruption	Lost, Disruption		
	1 Blue jeans, No disruption	Won		
Total 39			19	48.7
Teachers: Lay Hair	4 Beard, No disruption	2 Won, 2 Lost		
	1 Goatee, "	Lost		
	1 Mustache, "	Won		
	1 Hair, Mustache, Goatee, Beard No disruption	Won		
Clothing	1 Tie, No disruption	Lost		
	1 Jacket, Shirt, Tie, No disruption	Lost		
	1 Black arm band, No disruption	Won		
Total 20			10	50.

Table B-6.--Continued.

Category/ Number of Cases	Facts Available to the Court	Decision/Behavior Reference by Court	N	Row %
Entertainment & Recreation:	1 Nude Bathing, Increasingly large numbers of nude bathers began to frequent beach, no rest rooms, no life guards, or parking	Lost, Numerous bathers were a threat to environment		
Total 25			1	4.
Courtroom Demeanor:				
Hair	1 Haircut	Won, No disruption		
Clothing	1 Hat	Lost, Hat worn on second day was even more offensive		
	1 Skirt length, No disruption	Won		
	1 Head covering, No disruption	Won		
	1 Jacket with inscription, No disruption	Won		
	1 Tie, Disruption	Lost		
	1 Sweater, open-necked blouse, No disruption	Won		
	1 T-Shirt with inscription, No disruption	Won		
	1 Nudity, Disruption	Lost		
	1 Jacket, tie, Disruption	Lost		
Total 15			10	66.6

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