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CONSTITUTIONAL LAW: THE RIGHT TO WEAR A TRADITIONAL INDIAN HAIR STYLE—RECOGNITION OF A HERITAGE

Peggy Doty

In recent years there has been an increase in awareness of the American Indian’s historical, cultural, and religious traditions. Not surprisingly, attempts to revitalize these customs have often resulted in litigation. One area in particular where this has occurred is in efforts of Native American students and inmates of penal institutions to claim cultural and religious rights to wear traditional Indian hair styles in violation of institutional regulations. There are arguments for allowing such hair styles, even though to do so violates the appearance codes of the regulated school or prison environment. Nevertheless, except in one case, Teterud v. Gillman, the courts so far have been reluctant to recognize any rights in this particular area.

Theories and Arguments

Related to Religion

The argument for wearing long hair as an exercise of religion, with the right protected under first amendment freedom of religious expression, most often stems from the view that the Indian’s daily secular activities are interrelated and integrated with his religious beliefs. This view of the interaction of daily activities and religion is part of the heritage of many Indians, as well as the particular Indians already involved in litigation. There is, however, some difference of opinion on the importance and validity of this theory.

Another religious argument with substance concerns the taking of a “Ceremonial Indian Vow.” This position emphasizes the seriousness and sincerity of the vow in conjunction with strong beliefs about breaking such a solemn oath, and is only pertinent to the religious right issue if the subject matter of the vow is of a religious nature. Again, as in the first view, there is disagreement as to the importance and effect of such a vow and the believed consequences for breaking it. Other than these two grounds, there is apparently no other substantial religious basis for wearing long braided hair, and even the grounds espoused have not received much legal recognition.

Another issue that has been raised in the Indian religion issue involves the extent to which the first amendment applies to a traditional Native American religion, i.e., one that is fundamentally
different from the Judeo-Christian religions the first amendment was designed to protect. On its face, this interrogatory indicates that a Native American religion would be excluded from the intended protection of the first amendment. This, however, would seem to be unlikely considering the purpose behind constitutionally guaranteed freedom of religion. The purpose was to protect such an exercise of religion from being unreasonably controlled by the government, a situation in England that helped prompt the early settlement of the United States by colonists rebelling against such religious restrictions. Thus, the motivation behind this constitutional guarantee would indicate that perhaps the first amendment might be more liberally extended to protect Native American religious beliefs.

Related to Culture

Another argument for the right to wear a traditional Indian hair style centers upon the cultural significance of such a right. Although each tribe or group of Indians should be considered individually, generally, the traditional style of long, braided hair was a common cultural characteristic among the many different Indian tribes.

Although there is no legally recognized right to preserve and assert a particular cultural heritage, there have been several arguments supporting the idea of allowing Indians to follow traditional cultural practices even while in such controlled environments as school or prison. One of these arguments covers the possible detrimental effects stemming from regulations that discourage any display of cultural pride such as wearing a traditional Indian hair style.

In the schools, the effects of policies directed at suppressing and discouraging Indian culture and tradition have often resulted in Indian student frustration and alienation, along with a loss of pride, initiative, and identity. This consequence is reported not only as a personal observation, but as a statistical fact throughout the transcripts of the hearings before the United States Senate Special Subcommittee on Indian Education, as well as in the report of that subcommittee. The findings of the subcommittee illustrate that the enforcement of such school hair style regulations prohibiting the wearing of a traditional Indian hair style in effect results in defeating an often claimed justification for those hair codes. This justification, espoused by some school officials and recognized by at least one court, supports enforcement of appearance codes by arguing that such regulations encourage the state objective of instilling pride and initiative among students, leading to scholastic achievement. The results of the hearings point out, however, that instead of
instilling pride in Indian students, the policies frustrate pride and
discourage motivation.

This detrimental effect is recognized among Indian prison inmates,
and as contributing significantly to at least one Indian inmate’s prob-
lems which led to his incarceration, as well as being counter-
productive to the rehabilitation goals of modern prisons. In light
of these undesirable effects caused by a seemingly innocuous appear-
ance code, a practical problem arises as to developing and enforcing a
hair code that would not harmfully affect any ethnic or racial groups.
A suggested solution to this problem would be either to have no hair
style regulations at all or to develop an “appearance” code that does
not restrict any appearance reflecting a person’s ethnic or racial
culture, possibly by providing reasonable exceptions appropriate for
the groups represented in a particular school or prison population.

Recognition of Indian culture is further encouraged in a discussion
of the effect of the current growing interest in cultural patterns and
values of America’s past and the relevance it should have to Indian
culture. After noting that the objective of preserving cultural values
in the United States presents the question of whose cultural values,
the authors go on to comment, in reference to a congressional act
dealing with cultural preservation, that “[t]he declaration of Con-
gress that the ‘historical and cultural foundations of the nation’
should be preserved in order ‘to give a sense of orientation to the
American people’ is inclusive. It speaks to and of all Americans—not
only white Americans but . . . American Indians as well.”

Another cultural argument for allowing Indians to wear traditional
hair styles involves the claim that the first amendment protection for
freedom of speech extends to actions that so specifically convey a
particular message that they can be considered analogous to speech.
In Tinker v. Des Moines Independent School District, the Su-
preme Court recognized that the wearing of black armbands by
students in protest of the Viet Nam War was an expression closely
akin to pure speech and was entitled to first amendment protection.
A case even more in point with these Indian rights issues is Braxton
v. Board of Public Instruction, where a Florida court found that
the first amendment protected a black school teacher’s right to wear
a beard as “an appropriate expression of his heritage, culture, and
racial pride.” In accordance with the lines of reasoning in Tinker
and Braxton, the wearing of long braided hair has been claimed to
be a definite expression of pride in being an Indian and, therefore,
is also entitled to protection under the first amendment. The wearing
of a traditional American Indian hair style, viewed as an attempt to
convey a distinct and specific message, can be distinguished from
other “school hair-length” cases denying the wearing of long hair as merely a broad symbol of general discontent, rather than as a sign of a particular communication.\(^{33}\) Thus, the wearing of a traditional hair style as part of an Indian’s cultural heritage and as a clear expression of that culture can legitimately be argued to be protected under the first amendment through application of the decisions of \textit{Tinker} and \textit{Braxton}.

The foregoing seems to give support to a view that Native Americans should be allowed to wear traditional hair styles. The goal of institutions such as schools and prisons for the development of self-worth would be furthered by such tolerance.

However, a contrary view arguing against the recognition of different cultures in public schools should be mentioned. That view contends that an integrated school system cannot favor different ethnic and racial groups and remain one organization.\(^{34}\) While, on its face, this position may seem to have a logical and practical strength, it nevertheless seems contrary to the accepted idea that one of the functions of American education is to provide exposure to and exchange of many different ideas.\(^{35}\) One of the acknowledged conclusions of the landmark school desegregation case, \textit{Brown v. Board of Education},\(^{36}\) was that “only by amalgamating children of various races, colors, cultural, ethical, and environmental backgrounds can the public schools become the effective ‘market place of ideas’ for the benefit of all students.”\(^{37}\) As Justice Douglas observed in \textit{Tinker v. Des Moines Independent School District},\(^{38}\) “our constitutional system repudiates the idea that a state may conduct its school ‘to foster a homogeneous people.’”\(^{39}\) Finally, \textit{Keyishan v. Board of Regents}\(^{40}\) further emphasized the importance of education, including a wide exposure to many different views.\(^{41}\)

\textbf{Court Decisions}

There are four reported cases concerning the wearing of a traditional Indian hair style by an American Indian.\(^{42}\) They deal with challenges to school or prison dress and hair regulations\(^{43}\) with the Indians asserting primarily their religious right, and secondarily, their cultural right to wear a traditional Indian hair style. This tendency to focus on the religious issue is based on the legal strength of the first amendment right to free exercise of religion,\(^{44}\) while the culturally based arguments lack such a legal basis.\(^{45}\) Furthermore, any legal acknowledgment of cultural customs is usually related to a religion, and culture itself is not really challenged except in its connection with religious beliefs.\(^{46}\)
Two of the reported cases deal with American Indian students' hair length and public schools' appearance codes. In *New Rider v. Board of Education*, three Pawnee Indian junior high school students claimed the prerogative of wearing traditional Indian hair styles in violation of the school's hair code as part of their freedom of religion right, as well as part of other rights protected under the first and fourteenth amendments of the United States Constitution.

Although substantial evidence was presented on the freedom of religion right argument, the Tenth Circuit Court of Appeals never really discussed that issue specifically. The court affirmed the trial court's reversal of its original holding and found that no substantial constitutional questions were presented by the students' attack on the hair regulation.

The appeals court, relying on several other prior holdings, went on to state that the regulation and management of state schools should be left in the hands of the school authorities and state courts, and that a federal court should avoid getting involved with the operations of a state's public school system unless the exercise of a constitutional right is impinged. The court skirted the religious exercise issue during its argument, negating the free speech issue by citing as authority an earlier non-Indian student hair-length case, *Freeman v. Flake*. The court pointed out that it recognized that specifically did not concern a claim of any racial or religious discrimination, and that although the *New Rider* students argued this distinction, the decision in *Freeman* would be reaffirmed. This indicated that although the *Freeman* holding concerned only the first amendment right of free speech, the precedent would apply equally to any other first amendment rights. In other words, the decision implied that because it has been held that long hair is not protected under the freedom of speech clause of the first amendment, it follows that long hair, even though related to religion and racial heritage, also is not protected under the freedom of religion clause of the first amendment. Finally, after balancing the claimed constitutional right and the public interest, the court further found that the hair code involved in this case bore a rational relationship to the state objective of "instilling pride and initiative among the students leading to scholarship attainment and high school spirit and morale," as well as helping maintain order and discipline in operation of the school. As discussed earlier, it is somewhat irrational to believe that pride and initiative can be instilled in American Indian students by forbidding the wearing of a traditional Indian hair style which in fact is claimed to be an expression of pride in their culture and heritage.
Hatch v. Goerke\textsuperscript{60} varies from the other cases in that the challengers of the school’s hair regulation\textsuperscript{61} were the student’s parents. The plaintiffs, the mother being an American Indian, argued generally that the enforcement of the code infringed on their rights to rear their children according to their own religious, cultural, and moral values. In this case, the Tenth Circuit Court of Appeals partly answered the religious freedom question in finding an important distinction between this case and that of Wisconsin v. Yoder. Yoder allowed Amish parents to withdraw their children from compulsory public education after a certain grade on the basis that such continued education created conflicts with the basic religious tenets and practices of the Amish faith. In distinguishing Hatch from Yoder, the court found that the school appearance regulations in this case did not create a clash with religious beliefs like the all-encompassing, religiously based concept of rearing children recognized in Yoder. However, the Tenth Circuit Court of Appeals, as in New Rider, again avoided addressing the religious freedom question fully by once more relying on such decisions as Freeman, with additional authority this time of the New Rider decision which reaffirmed Freeman. Based on those decisions, the federal court abstained from getting involved in state operations of public schools, leaving the regulation of student hair length to be handled through state procedures.\textsuperscript{65}

The other two cases in this area concern the reforcement of prison hair regulations against inmates. United States ex rel. Goings v. Aaron\textsuperscript{66} deals with an Oglala Sioux Indian inmate’s right to wear long hair as part of his religion and culture. However, the decision in this case deals more with the importance of the inmate’s taking of a “Ceremonial Indian Vow” to be more religious, with the plaintiff claiming that to force him to cut his hair would break his vow and subject him to serious consequences. Opposing evidence was presented as to the beliefs surrounding the severity of breaking such a vow. The Minnesota District Court decided that since the prisoner was being released in 55 days from the time of the decision, he could just renew the vow after his release, but that until his release, he would be subject to the prison regulations. Thus, the court treated the issue as moot and chose to enforce the prison regulations in keeping with the majority of cases on prison regulations and constitutional rights. Moreover, the court found that the evidence presented indicated a lack of sincerity in Goings’ recently acquired religious beliefs. In contrast, the more recent decision of Teterud v. Gillman found that the Indian inmate’s sincerity in his also recently awakened religious beliefs was not sufficiently contradicted by the evidence and
the court seemed to apply a more lenient standard. Finally, in balancing the interests in Goings, the court found that even if the prisoner had had a sincere religious belief, his religious freedom, as in most cases with non-Indian inmates, is subject to reasonable limitations in the prison environment.

The most recent case, Teterud v. Gillman, discusses and answers the religious rights question in more depth and more directly than any of the other three cases. Interestingly enough, this case is the only one that recognizes any rights of an American Indian to wear a traditional hair style in a case concerning a one-half Cree Indian inmate’s challenge to the enforcement of the Iowa State Penitentiary’s hair regulation against himself and other American Indian inmates. Under the Supreme Court’s definition of religious beliefs followed in United States v. Seeger, the Iowa court here concluded that Teterud’s religious views came within that interpretation and constituted a valid religion worthy of recognition. Based on evidence emphasizing various religious and cultural functions that an Indian’s traditional hair style could fulfill, the court found that hair plays a central role in a religion of the Plains Indians and that therefore “[a]n Indian’s hair length can have a sufficient religious significance to make a forced cutting of that hair an encroachment on the Indian’s First Amendment rights.” Acknowledging Teterud’s sincerity in his beliefs, the court further held that “if an individual Indian’s belief in the Indian Religion is honest, made in good faith, and sincere, he should be allowed to wear his hair in the traditional style.” Unlike most other prison hair code cases, this decision held that the enforcement of the particular prison hair regulations against Teterud was not justified on the grounds that “long hair was unsanitary, created hazards around machinery, increased difficulty in identifying inmates, or could hide contraband.” Finally, after reviewing Goings and New Rider, the court in Teterud specifically disagreed with those holdings and went on to declare that Teterud’s “interest in wearing the traditional Indian hair style is predicated upon a sincere religious belief which must be constitutionally protected.”

Religious Aspects

A review of the cases points out that in focusing on the religious aspects of the four cases, there are similarities as well as distinctions. The two school-related cases, New Rider and Hatch, basically decided the issue of protection under the first amendment freedom of religion clause, finding no solid claim of constitutional restraint. The decisions in New Rider and Hatch both relied on an earlier
non-Indian student hair-length case that did not involve religious or racial issues at all, with New Rider implying that freedom of expression and freedom of religious exercise are essentially the same issue. As discussed previously, the court in New Rider indicated that since Freeman had held long hair not to be protected under the first amendment free speech clause, then long hair was not protected under the freedom of religion clause either, regardless of any distinctions.\textsuperscript{86}

The two prison cases show more distinction in their decisions. Dealing with the religious issue, Goings found no protection under the first amendment because the prisoner's newly acquired religious beliefs were not considered by the court to be sincere. On the other hand, the Teterud decision held that, based on the evidence, the inmate's religious beliefs were valid, sincere, and entitled to constitutional protection under the first amendment freedom of religion clause.

Since Teterud is the only case that recognizes a religious right to wear a traditional Indian hair style, it is understandable that it varies in several ways from the other three cases. Teterud is the only decision that found the hair regulations not to satisfy the claimed justification.\textsuperscript{87} In contrast, Goings found that religious freedom was subject to reasonable rules of conduct in and out of prison.\textsuperscript{88} As discussed supra, New Rider held that the hair code was in keeping with the state's school objective of instilling pride, encouraging scholarship and morale, and maintaining discipline.\textsuperscript{89} The Hatch decision merely found that the regulation did not create a clash with any significant religious beliefs, and thus should be enforced.\textsuperscript{90}

Both the plaintiffs in New Rider and the plaintiff in Teterud presented evidence as to the interrelatedness of religion and the traditional Indian hair style as well as to other daily activities.\textsuperscript{91} The court in New Rider hesitated to recognize such an all-encompassing religion\textsuperscript{92} and found the evidence to be insufficient in supporting the validity of that belief. In Teterud, the court disagreed with New Rider and found the belief of an interrelation between religion and the daily aspects of living to be valid, sincere, and worthy of constitutional protection, according to the evidence presented which was very similar in theory to the evidence offered in New Rider.\textsuperscript{93}

\textit{Cultural Aspects}

As indicated before, it is difficult to separate the acknowledgment of culture or the lack of it from religious rights.\textsuperscript{94} Although this is
true in the four cases dealt with, there are some distinguishable cultural aspects.

Hatch is the only one of the four that specifically includes cultural values in the alleged rights asserted by the plaintiff parents, and then it is only generally included in the broad allegations with no substantial argument discussed or answered in the court's decision. In comparison, the plaintiffs in New Rider did not specifically allege a cultural right, but a subtle claim was included incidental to the other issues, particularly the right to religious exercise. Goings dealt with some cultural aspects in focusing part of the discussion on Goings' taking of a "Ceremonial Indian Vow" to return to the old Indian traditions and religion. Finally, in contrast to the other cases, the decision in Teterud seemed to deal more directly with cultural rights because the court determined one of the issues to be "whether or not an Indian's cultural and traditional beliefs constitute a religion...", but this was again in connection with religion. However, the court goes beyond the religious point in saying that an Indian may wish to wear a traditional hair style for a variety of reasons, and it is not the court's duty to speculate as to the reasons. The court qualifies this in relation to religious beliefs by stating that as long as an Indian's belief in an Indian religion is in good faith, honest, and sincere, that Indian should be allowed to wear a traditional hair style. Nevertheless, none of these cases seem to clearly recognize any cultural rights separately from religious rights as justifying an Indian's wearing his hair in a traditional style.

There does seem to be some legal recognition of a cultural right that should be acknowledged, at least as argued in the dissent to the denial of certiorari in New Rider. That dissent, along with other sources such as the hearings before the United States Senate Special Subcommittee on Indian Education and the report of that subcommittee, recognized the detrimental effect of suppressing Indian culture and, therefore, in addition to other reasons, encouraged the acknowledgment and allowance of an Indian cultural right to wear a traditional hair style. However, this was a dissent and only represents a legal minority. Nevertheless, there was similar evidence presented and recognized in Teterud which indicated at least a stronger minority opinion which could become that of the majority.

Conclusion

Although the majority of court decisions hold that an Indian has no constitutionally protected rights to wear a traditional Indian hair
style as part of a cultural heritage or a religious belief, the holding in *Teterud*, plus the dissent opinion in *New Rider*, indicate the possible beginnings of a change in attitude. Furthermore, arguments expressing the importance of a right to a cultural expression and traditional identity encourage the recognition of less prohibitive attitudes toward allowing Indians to show pride in their specific cultures and to freely exercise their traditional religions. Following these modes of thinking, perhaps Indians in the future will be allowed or even encouraged to wear traditional hair styles as the exercise of a cultural and/or religious right.

NOTES

3. 385 F. Supp. 153 (S.D. Iowa 1974) (allowed an Indian inmate to wear a traditional Indian hair style as part of his religious beliefs and culture although in violation of the prison hair code). For similar non-Indian cases, see *Kuyumjian v. Grandway Dep't Stores*, CCH *Employment Practices* 5086 (1972) (recognized long hair as a symbol of the plaintiff's personally developed religion); *Braxton v. Board of Public Instruction*, 303 F. Supp. 958 (S.D. Fla. 1969) (allowed a black male teacher to wear a beard as an expression of his culture and racial pride).
5. U.S. CONSTR. amend. I: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ."
6. See cases cited in note 2, *supra*.
7. See, e.g., *Spencer et al., Stoutenburgh, Terrell, Wissler, supra* note 2.
9. This disagreement is illustrated by contrasting evidence presented in several of the cases concerned. In *Teterud*, an anthropologist testified to the interrelatedness of the Plains Indians' religion and daily lives, and pointed out that one of the spiritual customs of these Indians is to cut off their hair to show grief or humility after a close
relative has died. Another anthropologist, noting that long braided hair was a traditional Cree custom, explained the importance of the physical appearance of the Cree Indians in relation to spiritual matters, stating that the Cree would unbraid their hair on very serious religious occasions. While in contrast to this, a fullblooded Yankton Sioux Indian testified that male Indians’ hair length was a matter of individual preference, and noted that her experiences attending many Indian religious ceremonies across the United States indicated that Indian males do not necessarily wear long hair in those ceremonies. Teterud v. Gillman, 385 F. Supp. 153, 155 (S.D. Iowa 1974).

In Goings, the petitioners testified that although the Indian inmates met regularly to discuss Indian culture and to engage in religious services, he was the only one wearing long hair. In addition, an Oglala Sioux testified that as a former military pilot, he had had short hair and that he annually participated in religious ceremonies. United States ex rel. Goings v. Aaron, 350 F. Supp. 1 (D. Minn. 1972).

In New Rider, an anthropologist testified as to the religious and cultural significance of long braided hair as well as the frequently reported warrior style of a hair ridge among the Pawnees. She explained that not only was the hair style traditional, but it was related to specific Pawnee dance and religious beliefs that everything a Pawnee does each day has religious significance. While, on the one hand, another anthropologist and author also testified that the Pawnee culture and religion are highly integrated with most of the tribal practices and traditions, she went on to say this did not include a particular custom of wearing long braided hair. New Rider v. Board of Educ., 480 F.2d 693, 697 (10th Cir. 1973), cert. denied, 414 U.S. 1097, reh. denied, 415 U.S. 939 (1974).

10. This argument was an issue in United States ex rel. Goings v. Aaron, which concerned the enforcement of the Minnesota State Penitentiary hair code against an Oglala Sioux Indian inmate. 350 F. Supp. 1 (D. Minn. 1972).

11. An Oglala Sioux Indian testified that “a vow of the type petitioner had taken ... was certain to be important to petitioner, particularly in view of the Indian teachings that to break a vow of this sort would make him fearful that great misfortune would be nearly certain to follow.” In contrast to this, a Jewish rabbi, aware of the tradition of long hair in Judaism, testified that a broken vow to cut one’s hair could be renewed and such would in effect amount to a reinstatement. 350 F. Supp. 1, 3 (D. Minn. 1972).

12. SPENCER ET AL., STOUTENBURGH, TERRELL, and WISSLER, supra note 2; Dr. William Bittle, professor of anthropology, University of Oklahoma; Ms. Judy Jordon, anthropologist specializing in American Indian studies. Dr. Bittle also suggested that the scalplock, sometimes with an amulet braided into it, which was worn by some Indians, could be considered religious in a very broad sense, but that hair style was really tied in with the warrior status and war.

13. See cases cited in note 2 supra.

14. This was included in the petition for writ of certiorari made by the plaintiffs in New Rider that was denied at 414 U.S. 1097 (1973). Petition for Writ of Certiorari to the United States Supreme Court, on file at the Oklahoma Indian Rights Association, Norman, Okla.


16. SPENCER ET AL., STOUTENBURGH, TERRELL, WISSLER, supra note 2.

17. See Petition for Writ of Certiorari, note 14 supra. See also the dissent to the denial of the petition at 414 U.S. 1097 (1973).

De Facto Segregation and the American Indian, at 1657.


20. The hair regulation concerned in New Rider was that “Hair should have no odd coloring or style. It should be tapered or blocked in the back and cannot touch the shirt collar or ears and should be one-fourth inch above the eyebrows; sideburns must be no lower than the earlobe and face clean shaven . . .” 480 F.2d 693, 695 (10th Cir. 1973).

The hair code involved in Hatch included a provision that boys’ hair should be kept trim and neatly groomed and should not extend below the eyebrows or the collar. 502 F.2d 1189, 1191 (10th Cir. 1974).

21. In New Rider, the Tenth Circuit Court of Appeals emphasized the testimony of Marvin Stokes, Superintendent of Schools at Byng, Okla., on the relationship between compliance with similar school dress-hair regulations and scholarship attainment, as well as instilling pride and initiative in students and found that “the hair code regulation bears a rational relationship to a state objective, i.e., that of instilling pride and initiative among the students leading to scholarship attainment and high school spirit and morale.” 480 F.2d 690, 697 (10th Cir. 1973).

22. In Teterud v. Gillman, the psychiatrist that treated Teterud, the Cree Indian inmate, described him “when he first came for treatment as having a passive-aggressive personality which was based in part upon childhood rejection, including feeling of being ‘unworthy as an Indian’ and being ‘just another God-damn Indian Kid.’” Furthermore, in accordance with the view that an Indian should be allowed to recognize his culture rather than perpetuating policies of suppression, “Dr. Johnson advised Teterud that his low opinion of himself could change and that he should ‘start taking pride in being a red man, or an Indian, as opposed to feeling bad about it.’” 385 F. Supp. 153, 155 (S.D. Iowa 1974).

23. In Teterud, “Dr. Johnson further testified that the compelled cutting of Teterud’s hair would generally be counter-productive to rehabilitation and, therefore, that the cutting of Teterud’s hair would have no beneficial effect.” Other testimony in this case pointed out the positive effect instilling racial and cultural pride had on successful rehabilitation among inmates that are members of minority groups.

“Robert Sarver, the former Commissioner of Corrections of Arkansas and West Virginia, testified that from the standpoint of criminology and penology, the instilling of racial and cultural pride in a member of a racial minority would be an important factor in successful rehabilitation.” Id. at 155.


26. Id. at 415.

27. U.S. Const. amend. I: “Congress shall make no law . . . abridging the freedom of speech. . . .”


29. It is important to point out that this was the holding in Tinker where at least there was no finding that the operation of the school was substantially endangered by the symbolic speech.


31. Id. at 959.


34. 480 F.2d 693, 698 (10th Cir. 1973).


37. 480 F.2d 693, 699 (10th Cir. 1973). It is interesting to note that this summary of the Brown conclusion is cited in the very case that the argument against favoring different ethnic and racial groups is raised, although not in relation to each other.


40. 385 U.S. 589 (1967).


42. Cited at note 2, supra, and the subjects of this note.

43. The hair regulation concerned in New Rider was that "[h]air should have no odd coloring or style. It should be tapered or blocked in the back and cannot touch the shirt collar or ears and should be one-fourth inch above the eyebrows; sideburns must be no lower than the earlobe and face clean shaven. . . ." 480 F.2d 693, 695 (10th Cir. 1973).

The hair code in Hatch included a provision that boys' hair should be kept trim and neatly groomed and should not extend below the eyebrows or the collar. 502 F.2d 1189, 1191 (10th Cir. 1974).

The hair code concerned in Goings was "...

44. U.S. Const. amend. I.

45. However, it could be broadly argued that under the fourteenth amendment, a freedom or liberty to follow a traditional culture cannot be deprived without due process of law and that as part of the equal protection of the law, an Indian has just much right to follow his cultural beliefs as do other Americans of the more recognized Judeo-Christian religions and cultures:

". . . nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV § 1.


47. 480 F.2d 693 (10th Cir. 1973).
48. New Rider hair code, see note 43 supra.

49. U.S. Const. amend. I.


51. See arguments note 9 supra.

52. The trial court originally found in issuing a preliminary injunction, that the wearing of long braided hair is an expression of Pawnee Indian tradition and heritage as well as a symbol of their religious identity. 480 F.2d 693, 696 (10th Cir. 1973).


54. Freeman v. Flake, 448 F.2d 258 (10th Cir. 1971).

55. 480 F.2d 693, 698 (10th Cir. 1973).

56. See note 52 supra.

57. See discussion at note 20, supra.

58. See discussion at note 21, supra. The superintendent also explained that better groomed students generally created less trouble and that a dress-hair code that recognized each ethnic group would create a disruptive atmosphere.

59. See notes 17 through 23 supra and accompanying text.

60. 502 F.2d 1189 (10th Cir. 1974).

61. For an explanation of the hair code, see note 20 supra.


63. Id.

64. The court in this decision found that the duty of supervising a student’s hair length was for the state and should be handled through state procedures. 448 F.2d 258 (10th Cir. 1971).

65. 502 F.2d 1189, 1192 (10th Cir. 1974).


67. See note 11 supra.

68. 350 F. Supp. 1, 4 (D. Minn. 1972). The hair code concerned was “. . . [h]air cuts must be in accordance with the following guidelines: Hair must not extend over the ears on the sides, over the collar in the back, over the eyebrows in the front . . . ” Id. at 2.


70. 350 F. Supp. 1, 4 (D. Minn. 1972): “A prime consideration in the case obviously is whether the petitioner is sincere in pressing his claim on the grounds of his religious beliefs insofar as regards long hair, and on this issue the court is constrained to find that there is substantial doubt and to hold against petitioner. According to his testimony, he had gone 26½ years of his life without following Indian customs, the last ten of which he has spent in confinement. No other Indians at the Institution are motivated by religious customs the way he claims to be . . . Further, he did submit to the cutting of his hair after his furlough . . . Nevertheless, the court cannot believe that in such a short period of time the petitioner has become so devoutly religious in his own tribal ways that he cannot forego growing his hair to the desired length for another brief period.”

71. 385 F. Supp. 153, 157 (S.D. Iowa 1974): “It suffices to say that if an individual
Indian’s belief in the Indian religion is honest, made in good faith, and sincere, he should be allowed to wear his hair in the traditional style.

"...Warden Brewer... seems to indicate that Teterud was sincere in his beliefs. On the other hand, the Court must note that Teterud was raised a Catholic in an orphanage during his youth. The record further discloses that it was not until adulthood that Teterud became interested in his Indian ancestry and heritage. In addition, prior to trial Teterud was an active member of the Church of the New Song, a religious organization which this court recognized as such. ... The thrust of the defendants’ challenge of Teterud’s sincerity stems from the fact that the plaintiffs’ reawakened interest in Indian customs and life appears to be of very recent vintage. This challenge must be viewed, however, in light of the additional fact that Teterud has spent the bulk of his life in various institutions wherein his active desire to pursue the Indian way of life may have been somewhat constrained. The Court can never know with assurance whether Teterud is sincere or insincere. The defendants, however, have not presented sufficient evidence to show that Teterud’s beliefs are not made in good faith.”

72. See cases at note 69 supra.
75. Id. at 154: “Hair length may grow to the shirt collar, and bottom on the ears. May grow over the ears if desired.”
76. Id. at 153: “In United States v. Seeger, ... 380 U.S. [163] at 176, 85 S.Ct. [859] at 859, [13 L.Ed.2d 733 (1965)], the Supreme Court interpreted religious beliefs as follows: "Within that phrase would come all sincere religious beliefs which are based upon a power or being, or upon a faith, to which all else is subordinate or upon which all else is ultimately dependent.”
77. Id. at 156: “The Indians’ beliefs are based upon the existence of a Great Spirit, a power or being greater than man and, thus definition.”
78. Id. at 155.
79. Id. at 157. It should be noted that the decision is not limited only to Cree Indians, but is extended to include Plains Indians generally.
80. Id. at 156.
81. Id.
82. See cases at note 69 supra.
84. Id.
85. 502 F.2d 1189, 1192 (10th Cir. 1974); 480 F.2d 693, 698 (10th Cir. 1973).
86. 480 F.2d 693, 698 (10th Cir. 1973).
87. The justification was based on the grounds “that long hair was unsanitary, created hazards around machinery, increased difficulty in identifying inmates or could hide contraband.” 385 F. Supp. 153 (S.D. Iowa 1974).
89. See discussion at notes 21 and 56 supra.
90. 502 F.2d 1189, 1192 (10th Cir. 1974).
91. See discussion at note 9 supra.
92. 480 F.2d 693, 700 (10th Cir. 1973): "We believe that we would create a veritable quagmire for school boards ... were we to hold that the subject dress-hair regulation implicates basic constitutional values. We need only ponder ... what exceptions beyond those urged here might be constitutionally mandated upon the appellees should the appellants prevail here... [W]e might ask how a school board could draft a dress-hair regulation ... which would not impinge upon or interfere with
a personal held belief that is sincere and meaningful in the life of its possessor (a student), parallel to that filled by the orthodox belief in God.”

93. See discussion of evidence presented at note 9 supra.


95. The parents claimed the enforcement of the hair regulation violated their right to raise their children according to their own religious, cultural, and moral values. 502 F.2d 1189, 1191-92 (10th Cir. 1974).

96. Sidney Moore, Sr., age 69, testified that “[w]hen he was a boy he wore long braided hair. . . . He referred to such hair style as the 'old traditional ways.' He sees a resurgence among the young Indian people to 'regain their tradition, to learn their culture.'” 480 F.2d 693, 696 (10th Cir. 1973). See also note 9 supra.

97. 350 F. Supp. 1, 3 (D. Minn. 1972)


99. Id.

100. Id.


102. See note 18 supra.

103. See note 19 supra.

104. See text accompanying notes 17 through 23 supra.

105. “Petitioners were not wearing their hair in a desired style simply because it was the fashionable or accepted style, or because they somehow felt the need to register an inchoate discontent with the general malaise they might have perceived in our society. They were in fact attempting to broadcast a clear and specific message to their fellow students and others—their pride in being Indian. This, I believe, should clearly bring this case within the ambit of Tinker . . . where we struck down a school policy which refused to allow students to wear black armbands in protest of the Vietnam War. We recognized that such armbands were closely akin to pure speech and were entitled to First Amendment protection . . . at least where, as here . . . there was no finding that the operation of the school was substantially endangered by the symbolic speech. . . .” 414 U.S. 1097, 1098 (1973).