MINUTES OF THE JOINT COMMITTEE OF THE SENATE AND HOUSE JUDICIARY COMMITTEE
June 23, 1982

The Joint Committee of the Senate and House Judiciary Committees was called to order by Chairman Senator Mike Anderson at 1:40 pm on June 23, 1982 in Room 108 of the Capitol. Co-chairman Representative Kerry Keyser was also in attendance. All Senate Judiciary Committee members were present. All House Judiciary Committee members were present except Representatives Anderson, Eudaily, Keedy and Shelden, who were absent. Representative Conn was excused. Lois Menzies and John MacMaster, Staff Researchers, were also present.

CHAIRMAN ANDERSON gave commitee members EXHIBIT A, which is information the committee had requested concerning Ranch/Industry Inmate Employees. EXHIBIT B, a memo from John MacMaster, Legal Researcher, was also presented to the committee. The memo concerns the design capacity of Montana State Prison.

SENATE BILL 5

SEN. VAN VALKENBURG, chief sponsor of the bill, stated this bill would authorize the warden to grant a temporary furlough up to ten days for an inmate already approved for parole, that the inmate had to obtain employment or living arrangements that the inmate was not able to fulfill immediately.

SEN. VAN VALKENBURG stated he was a member of the Prisoner Alternatives Study Committee. In May, that committee received information from the Department of Institutions concerning 62 people in the total responsibility of the Corrections Division who would fit the definition of parole to an approved plan, but who had not actually gone out on parole. The Parole Board wants inmates to have a job before they are allowed out on parole. It is very difficult to obtain a job now days, especially if you are in prison.

There is a coordinator that tries to obtain jobs for inmates outside of the prison. This works well, but SEN. VAN VALKENBURG feels it could work even better if this bill was adopted. This would allow an employer to talk directly to the inmate and perhaps have him work for a day. SEN. MANLEY has used inmates as employees on his ranch before. This became a problem, however. If an inmate could come out for one day and work, the employer could see how well the inmate works and perhaps hire him.

SEN. VAN VALKENBURG stated this bill would give the state a responsible chance to reduce the prison population by 20-30 prisoners. It would also allow the prisoners to look for a job in a more realistic manner.

DAN RUSSELL, Administrator of the Division of Corrections, supports the bill. RUSSELL stated that at any one time there are 20 inmates who could benefit from this bill. If a person cannot go in person to interview for a job, there is not much chance that person will obtain the job.

If the prisoner chooses not to return after the furlough is complete, it would be considered a felony escape. This would ruin his opportunity for parole and would probably not happen.

REP. GOULD was also in favor of the bill. He was also a member of the Prison Alternatives Committee. With the safeguards in the bill, he feels it is a good bill.

WARDEN HANK RISLEY stated he is familiar with this type of legislation in other areas. There are built in protections and safeguards. This bill concerns a prisoner who has been approved for parole and is eligible. He would have to report to the parole officer in the community he goes to. He is still considered a prisoner. RISLEY felt this is an excellent program and it does have safeguards. It would have an impact on the prison population.

There were no further proponents.

There were no opponents.

During the question period, SEN. CRIPPEN asked if a convict does go out and is unable to find a job within the ten days, is he assured that he will have another opportunity to go out again at a later date to try to obtain work. SEN. VAN VALKENBURG replied it was not his intention that the person would only have one furlough. He thought the warden could give the person an extension if the warden wanted to.

WARDEN RISLEY stated he would assume that the inmate would have already established interviews to go to. After attending those interviews, he would come back to the prison and set up more interviews.

REP. RAMIREZ questioned the wording of the bill, "or any other condition that is difficult to fulfill". SEN. VAN VALKENBURG replied an example of this would be if an individual has a program at a community mental health center. He felt this wording would provide flexibility in the bill.

REP. BROWN asked the sponsor if he would have objections to strike on line 23, page 1 "a", to which the sponsor replied no. He felt, however, the inmates might be constantly asking the warden for furlough. REP. BROWN replied there will be a number of requests for furlough any way, and the Warden is free to permit or deny

the requests.

In closing of this bill, the sponsor stated that the Parole Board is in favor of the bill.

SENATE BILL 6

SEN. VAN VALKENBURG, chief sponsor, stated this bill is an attempt to bring to the legislature's attention an item that has been discussed in the Prison Alternatives Committee. Although it has not been formerly acted upon or recommended in that committee, it would provide a device where the Parole Board could consider inmates for parole up to 90 days prior to their eligibility date for parole.

On page 3 of the bill a provision has been added to a requirement that the prison be in excess of 515 inmates and has exceeded that capacity for a period of more than 30 days.

This bill would terminate on September 30, 1983. The sponsor feels this bill would be a good experimental approach in reducing the prison population in an effective way. It might, however, backfire and cause problems. Therefore, it should have a termination date. When the legislature meets in the regular session, they can change the date if they find the bill has merit. Or, it might be necessary to terminate the bill or to let the bill terminate on its own in September of 1983.

Inmates who might be paroled under this bill are the same inmates who would be paroled three months later. If they are a good candidate for parole, they would also be a good candidate 90 days sooner. The figure 515, the sponsor feels, is a proper population figure for the prison presently. The figure, however, might change during this special session and could be amended. There is an acceptable level of double bunking at the prison and there is also an unacceptable level. Other states have found, including Montana in the last ten years, that parole can reduce the population. There are safe and effective means to do this. Incarceration of an inmate costs the state about $30.00 a day. Parole costs the state only $3.00 a day. The sponsor felt the state has a tough Parole Board that would not let people out that they don't feel are responsible enough to succeed.

Other states that have adopted this type of legislation include Oklahoma, Iowa and Michigan. This bill has a real potential to save the state money.

HANK BURGESS, Chairman for the Montana State Parole Board was in support of the bill. At a meeting of the Prison Alternatives

Committee the members were trying to find some serious ideas that would help reduce the prison population. The idea came up that perhaps there should be some type of a system for release that would not endanger the lives of anyone. Some type of mechanism like this bill would be valuable. Overpopulation presents many dangers in the prison to employees, staff, and the inmates themselves.

If the Parole Board were asked to assume a responsibility like this we would do it. If we were requested to receive inmates earlier we could do it. BURGESS would hesitate, however, to indicate how many they could release because they would have to have some experience doing it. He feels that the prison population could be reduced in about three months. BURGESS stated that whenever extra duties are placed on the Parole Board extra funds are also needed.

There were no further proponents.

There were no opponents.

During the question period, SEN. HALLIGAN felt the number "515" should be changed to 125% design capacity. The sponsor had no objections.

REP. RAMIREZ stated that an inmate that is serving a one year sentence could become eligible for parole on his first day. The sponsor agreed, but he felt that usually a prisoner is not sentenced to any time less than three years.

REP. RAMIREZ then asked WARDEN RISLEY about the certainty of sentencing. The Warden replied the sentencing statutes today call for the judge to set the sentence. An inmate who is considered dangerous and has been sentenced for ten years, is eligible for parole in five years. An inmate who is considered nondangerous and has been sentenced for ten years, is eligible for parole in 2 1/2 years. For the nondangerous inmate, good time is subtracted from the 2 1/2 years. This bill does not remove the certainity of the date which he is eligible for parole. Whether or not he receives parole is not certain. That is the Parole Board's decision. This bill just moves it up 90 days.

The Warden stated that Kentucky also is a state that has this type of legislation. He is familiar with the Michigan system. He feels this would help reduce the prison population, as it would allow the board to review a case earlier. Reducing a person's prison sentence automatically and making him parole eligible, does not impose a danger on the community by throwing out prisoners who are a threat. The decision-making process is still there for the board.

CHAIRMAN ANDERSON asked the Warden what number he felt was adequate that the prison could hold. The Warden replied he does not have a specific number in mind. The facilities have a total capacity figure they are using of 515. The legislature could set a figure above that if they thought it was appropriate. CHAIRMAN ANDERSON stated the legislature was called in for this special session because the number was too high. The Warden replied when he came to work on August 3 the number of inmates was 685, which was too high. The number 515 is without double bunking.

REP. RAMIREZ stated that literature the legislators have received talks about a manageable level of bunking without any new facilities. What is the manageable level of double bunking? The Warden replied there is no manageable level of double bunking from his perspective. If the legislature decides we will live with a certain amount of double bunking that's what we have to go by.

The sponsor of the bill indicated the Department of Institutions provided the Alternatives Prison Task Force a briefing paper which stated 610 was a manageable level. The Legislative Fiscal Analyst took that information and had converted it to an acceptable level of double bunking, which is printed on page 10 of the Legislative Fiscal Analysis. This would mean double bunking in one of the existing close security units and everything else would be single bunking. It is possible to get down to 610 by opening two new prerelease centers, changes in parole eligibility, and by putting some people in the dairy dormitory. The sponsor felt that 610-625 would be the highest number that should be reached. The Department has said that this is a manageable level.

REP. BENNETT asked what the immediate effect on the population would be if this bill were to pass. DAN RUSSELL replied an impact of 80 people at any one time would be affected by it.

SEN. MAZUREK asked about the ratio of success in the states that have adopted this type of legislation. The Warden replied that from what he has heard through other professionals, the rate of success or failure on parole for that group that becomes eligible 90 days early is no different then if they would have waited the additional 90 days.

REP. DAILY asked what the annual population increase is, percentagewise. It was replied about 7.1% since 1930. REP. DAILY further asked if the population increase will have an effect on this bill. The sponsor replied this is temporary legislation. If the bill is passed it will terminate in September, 1983. It will be an experimental program.

REP. BROWN stated the committee might want to change the bill so that it would state the "design capacity" of the prison, instead of placing a number in the bill. The sponsor replied they might want to define what "design capacity" is and have statutory law stating it.

REP. TEAGUE questioned if this bill would increase the workload of the parole officers a lot. JACK MCCORMICK replied they would be affected. In Montana each parole officer has approximately 75 charges, which is a mixture of probation and parole people. The probation people are easier to handle compared to the parole people.

REP. DAILY asked if there could be a possible discrimination problem concerning an inmate who was number 516 and was paroled and the inmate who was number 515 and was not paroled. The sponsor replied he didn't think so. Legislators are permited by the courts to differentiate between the classes of people. If there is a legitimate purpose in making the differentiation, he feels that would be upheld. The federal courts are doing this in other states by court order.

There were no further questions or comments on the bill.

SENATE BILL 5

HANK BURGESS, Chairman for the Montana State Parole Board, was allowed to speak on this bill even though it was heard earlier in the meeting.

BURGESS stated he was in favor of the bill. The Parole Board would make the decision and would be competent. This bill would be an advantage to a number of inmates to go to cities to interview for work. Many inmates presently have a difficult time finding work. They must use the telephone or go through the counselor to find work.

REP. HANNAH asked BURGESS if he sees a problem with the Parole Board having to deny people parole because there is no place to put them. BURGESS replied he could see a problem where they would want to be paroled instead of being placed in a prerelease center. The Parole Board would deny a person parole, however, if they had to, because of the inadequacy of the plans of a parolee. The Board would ask that the plans be modified.

HOUSE JOINT RESOLUTION 4

REP. GOULD, sponsor of the resolution, stated this resolution concerns when a person is revoked from parole, returned to prison, and given a hearing. The person can request a hearing at any time. The rule at the present time is they must have a hearing within one year. The significance of this bill is there is a contract between the Parole Board and the convict that is being released. The Parole Board feels they need a one year "stick". It would be a year before they would look at a parolee again if he violated the parole. This would make the contract more binding.

HANK BURGESS, Chairman for the Montana State Parole Board, was in support of the bill. BURGESS stated he and REP. GOULD were both concerned when a motion was passed in the Prison Alternatives Committee requesting the Parole Board review their rule about people whose parole had been revoked, to serve one year before the case is reviewed again. He tried to defend the present system feeling one year was adequate time. Others felt that if it was moved back to six months there would be a basis to move people out of the prison quicker. At the time he tried to explain it would not work.

There is a process now that individuals who have parole revoked can make a request to the Warden for an early hearing. If the Warden feels the request has merit, the Board usually honors the request and has an early hearing. The Parole Board would appreciate it to have the one year on annual review parole ratifications.

Presently there is a state statute that covers those who have been turned down for parole stating they cannot return for a full year. BURGESS would like to have the same rule placed on those people who have had their paroles revoked. It is appropriate they serve additional time.

There were no further proponents.

There were no opponents.

Questions included SEN. BROWN asking if there is any proposed legislation to repeal the rule the Board has. BURGESS stated no, but this would nullify it if any resolution was brought up.

REP. SEIFERT asked if the board has the authority now to make a review prior to the annual review. BURGESS stated they do not have to wait the full year; they can call someone back or honor a request to have a hearing. The full year would be a full calendar year.

REP. GOULD stated he has spoken to hearing officers about this resolution. Very rarely is a person's parole revoked unless it is a serious offense. It is not revoked for being intoxicated once or twice.

EXECUTIVE SESSION

HOUSE JOINT RESOLUTION 4

The House Judiciary Committee went into executive session. REP. BROWN moved Do Pass on House Joint Resolution 4.

REP. YARDLEY felt the committee was overreacting to the interim committee. He did not feel the resolution was necessary at this time.

Being no further discussion on the resolution a roll call vote was taken. Representatives voting yes on the motion Do Pass were: KEYSER, ABRAMS, BENNETT, BROWN, CURTISS, DAILY, HUENNEKENS, MATSKO, MCLANE, TEAGUE, and RAMIREZ. Representatives voting no on the motion Do Pass were: SEIFERT, HANNAH, IVERSON, and YARDLEY. The motion of Do Pass carried 11 to 4.

SENATE BILL 5

The Senate Judiciary Committee went into executive session.

SEN. HALLIGAN moved Do Pass on Senate Bill 5. The motion passed unanimously.

SENATE BILL 6

SEN. HALLIGAN moved to amend page 3, line 3, striking "exceeds its design capacity of 515" and to replace it with "is 125% of the design capacity". He felt there is an acceptable manageable level of double bunking.

SEN. BROWN disagreed with the amendment because of the automatic termination date within the bill. The number should be left as it is in the bill and during the regular session of the legislature it could be changed. SEN. HALLIGAN disagreed.

The amendment passed with Senators ANDERSON and CRIPPEN voting no.

SEN. BOB BROWN stated he was against the bill because he thought it was confusing concerning the double bunking. SEN. CRIPPEN stated he was also against the bill because the bill is overlooking the reason the special session was called.

SEN. TVEIT felt it was a good bill on a temporary basis. The January session can change the bill if they want to.

SEN. O'HARA felt by the time the plan is implemented and the regular session is in progress, there will not be enough time to see if the plan has worked or not.

SEN. BROWN felt this is one option that could be used and would be a cheap alternative. It comes down to what is acceptable for a good manageable level.

SEN. HALLIGAN moved Senate Bill 6 Do Pass As Amended. A roll call vote resulted. Those Senators voting yes on the motion were: BERG, S. BROWN, MAZUREK, HALLIGAN and ANDERSON. Those voting no on the motion were: B. BROWN, CRIPPEN, OLSON, TVEIT, and O'HARA. The result was 5 to 5. The bill did not pass as amended.

The Joint Committee of the House and Senate Judiciary Committees then went back into a joint meeting to hear more bills.

HOUSE BILL 15

House Bill 15, sponsored by REP. KITSELMAN, is aimed at the security guards personnel. REP. KITSELMAN stated he visited the Idaho State Prison in Boise. The appearance of the campus there is good. It was easy to determine who the guards were. When visiting the Montana State Prison, however, REP. KITSELMAN stated he had trouble determining who the guards were and who the prisoners were.

This bill addresses the dress code of the guards and the inservice training. Many of the guards at the Montana State Prison are out of shape. The bill would allow them time to get back into shape as part of their regular paid duties. REP. KITSELMAN stated an amendment on line 11 of the bill should be added as follows: "minimum of four hours per calendar month not exceeding ten hours."

REP. KITSELMAN quoted the Supreme Court Case of Kelley v. Johnson, 425 U.S. Supreme Court, 1975, concerning the length of a police officer's hair. EXHIBIT C.

House Bill 15 is based on the safety of the guard and the uniformity they would have.

There were no proponents.

There were no opponents.

During question time, REP. BROWN asked what the additional cost of the bill would be to the state. REP. KITSELMAN replied it would be $3.50 for a haircut. The uniforms (grey slacks, white shirt and blazer) would not be changed at this time, but he hoped it would be at a later date.

REP. RAMIREZ wondered if there was an additional cost that could not be seen within the bill. For example, the Warden could not free up enough people with present staffing without changing the regular shift. REP. KITSELMAN replied this bill would bring the guards

into shape. It is designed to promote professionalism and would be for their protection. He feels it would have a minimum financial impact. REP. RAMIREZ stated that a guard on duty from 6 pm until 2 am, when would he have time to do the exercises? The sponsor felt that time could be found.

SENATOR CRIPPEN asked for a definition of "correctional personnel", would that include all the staff? The sponsor replied they would look at the entire group of personnel. In the Montana National Guard, they have annual physical fitness tests.

REP. HANNAH asked if the sponsor could see a problem with changing the bill so that the guards could get into shape on their own time and have an annual testing program concerning weight. REP. KITSELMAN replied that would be okay yet he would like to still have a general dress code.

REP. DAILY asked about the money that would have to be appropriated for a new gym. The sponsor replied there is a gym on the facilities that the guards could use, or the guards could possibly obtain access to a local school gym.

REP. HUENNEKENS thought the warden could address this issue and save the taxpayers money. The sponsor stated the comparison between the Idaho and the Montana prisons was vast. REP. HUENNEKENS stated that during the tour of the Montana prison, many of the guards were there on a voluntary basis to show the legislators around. The sponsor stated he still had difficulty in determining the guards that were on duty from the prisoners.

There was no further discussion on the bill.

SENATE BILL 4

SENATOR RYAN, sponsor, stated this bill would prohibit judges in justice, city and municipal courts from using the services of probation and parole officers. SEN. RYAN stated he is a parole officer and last month approximately one-half of his caseload was done for lower jurisdictional courts, which demand the same services as the district court. The services are a full case history of a criminal after he has been found guilty or pleads guilty. This entails educational reports, family history, all reports from law agencies on the individual (including out-of-state reports). If all this information is important for lower courts to know, perhaps the case should have been brought into district court instead.

Parole officers and the lower courts do not have the power to limit the convicted person's movement; however in district court, a parole officer can limit the convicted person's movements. The person

cannot travel outside of a designated area without permission. The district court can also limit the person's carrying of firearms, but the justice court cannot. The lower courts are placing people under a parole officer's supervision that takes the same time and efforts as a felony-convicted person, yet the parole officer cannot limit his movements anyway. The convicted person knows this.

After this special session, the caseload will probably not go down for parole officers. In adopting this bill, it will free up some of the parole officers time to deal with the inmates out for parole from the prison.

There were no further proponents.

There were no opponents.

During the question period, REP. SEIFERT asked who would provide the service if it is to be provided. The sponsor replied counties have probation officers that work for them in the juvenile division. In the past, the parole officers have volunteered time to do this when the case was more involved. After awhile, however, the court began to demand it upon everyone.

SEN. MAZUREK asked if this is a statewide problem or just in Cascade County. The sponsor stated it is more prevalent in Cascade County but other counties in the state would also pick up on it.

The sponsor also noted that they are Parole/Probation Officers and the wording "parole or probation officers" is incorrect. The "or" should be eliminated from the bill.

SENATOR CRIPPEN was concerned with what the representatives of the JP system think about the bill since none were in attendance to testify. Who would perform the service? SEN. RYAN replied the service may not be performed at all. Before, the parole officers did the service on an informal basis when the judge had a need for it, but now 1/2 of his work is done for the JP court.

CHAIRMAN ANDERSON asked if it is meaningful work that is done for the JP Courts, to which the sponsor replied he felt it was a type of delaying tactic.

REP. KEYSER stated it seemed foolish that the JP and lower courts are using the parole officers time in the first place.

REP. YARDLEY stated if the bill was passed the parole officers would not be able to do the work on a voluntary basis. The sponsor stated if the JP had a real need for help with an involved case, they probably could help out.

CHAIRMAN ANDERSON asked what is the biggest impact of the parole officers by just stopping to do the service. The sponsor replied he did not think it was worthwhile from what is achieved. It belongs with the lower courts.

There were no further comments or questions on the bill.

EXECUTIVE SESSION

SENATE BILL 4

The Senate Judiciary Committee went into executive session on Senate Bill 4.

SEN. CRIPPEN stated he was not comfortable in voting for this bill because the JP courts were not there to give their opinion of the bill. He was concerned with how the bill would tie into the Governor's call. Many bills could be best handled during the regular session.

It was asked what type of cases are handled in the lower courts. SEN. MAZUREK mentioned all misdemeanors that the maximum sentence of six months in the county jail or a fine of $500.00 would be in the lower courts. This includes DWIs, criminal trespassing, bad checks, and fish and game violations.

CHAIRMAN ANDERSON asked if the bill would tie into the special session by decreasing the workload of the parole officers in order to spend more time with the inmates that would be out on parole. SEN. MAZUREK replied he thought so, or it would at least reduce the number in Cascade County.

SEN. B. BROWN felt the bill should be handled during the regular session.

SEN. O'HARA was concerned with input from the JP courts. SEN. RYAN said during his work he has had contact with them.

SEN. S. BROWN did not feel the bill violated the call of the special session. SEN. OLSON, however, thought that a bill of this magnitude should be discussed when the regular session is held.

SEN. MAZUREK asked if JP courts in other counties use this. It was replied they do, but to get a total picture of the whole state there are 14 people under supervision under JP court status, so it is very few people under supervision. This would still be eight hours minimum for presentence investigation. Many of the proposals in front of the legislature presently would have an impact

on the parole officers.

SEN. MAZUREK asked what the department's position is on this bill. JACK MCCORMICK stated the department is looking at corrections at such a huge fashion that they didn't really have a position on this bill; however, the department has recommended this bill on previous occasions.

SEN. O'HARA asked why the bill did not pass before if it was proposed during earlier sessions. The sponsor could not remember.

SEN. MAZUREK was concerned with what the JP courts thought and wanted members of the committee to call JP members about the bill. The sponsor stated if JP's were allowed to testify by telephone he would like to be able to hear their testimony about the bill.

The meeting recessed at 4:15 pm to reconvene at the call of the chair.

Carl A Seifert
Kerry Keyser, Co-Chairman
Vice Chairman

Maureen Richardson
Maureen Richardson, Committee Secretary

EXHIBIT A

June 22, 1982

Ranch/Industry Inmate Employees
By Security Classification

	Classification		
	Minimum	Medium	Total
Ranch	20		20
Dairy	16	5	21
Packing Plant	9	14	23
Equipment Maint.	8	3	11
Industries	10	26	36
Tag Plant		18	18
Total	63	66	129

Exhibit B

Montana Legislative Council
State Capitol
Helena, MT. 59620
(406) 449-3064

TO: Joint Judiciary Committee

FROM: John MacMaster, Legal Researcher JM

RE: Design capacity and possible capacity of Montana State Prison buildings, and number of inmates, of the type the buildings were designed for, in the buildings.

DATE: June 23, 1982

The last column on the attached table is based on the prison's figures for the day Wednesday, June 23, 1982. The number of inmates in any given building can and does change from day to day, and can change quite a bit from week to week and month to month. This is due to the reclassification of inmates into other levels requiring movement of them into another type of housing. It is also due to movement of previously reclassified inmates into other types of housing when spots open up for them. This is largely the cause of the discrepancy between various studies of inmate population figures by building.

JM:hm
Attachment

Building	Number of Inmates Designed for	Maximum Number of Inmates, of the Type Designed for, It/They Could be Made to Hold (by Double Bunking)[1]	Number of Inmates of the Type Designed for, It/They Now Hold
Maximum Security[2]	42 plus 4 solitary confinement detention cells	84 plus 4 solitary confinement type detention cells[3]	33 plus 4 in solitary confinement cells
Close I and Close II combined (same type of building)	192	384	255
Unit A, B, and C buildings combined (same type of building)	288	576	311

Footnotes:

[1]Double bunking is the only way to make a building hold more inmates than it was designed to hold. Double bunking is subject to being found unconstitutional should it be challenged in court. Key issues are amount of time double-bunked inmates are allowed out of their cells, and the quality and range of services, treatment, and facilities available to them. Double-bunking would at the least severely tax other facilities, such as dining, laundry, and recreation, as well as the prison staff.

[2]This type of building, and most of its cells, is designed and used mainly for temporarily housed prisoners with disciplinary, protective, psychiatric, and other problems. It is not for permanent housing, other than of death row inmates. Thus, the number of inmates in it can and often does fluctuate widely.

[3]Many prison personnel believe a riot would be certain if the maximum security building was double-bunked.

Exhibit A

UNITED STATES REPORTS

VOLUME 425

CASES ADJUDGED

IN

THE SUPREME COURT

AT

OCTOBER TERM, 1975

OPINIONS OF MARCH 24 (CONCLUDED) THROUGH (IN PART) JUNE 1, 1976

ORDERS OF MARCH 29 THROUGH MAY 27, 1976

HENRY PUTZEL, jr.
REPORTER OF DECISIONS

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1978

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

Stock No. 028-001-00394-0 / Catalog No. JU 6.8:425

KELLEY, COMMISSIONER, SUFFOLK COUNTY POLICE DEPARTMENT *v.* JOHNSON

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 74-1269. Argued December 8, 1975—Decided April 5, 1976

A county regulation limiting the length of county policemen's hair *held* not to violate any right guaranteed respondent policeman by the Fourteenth Amendment. Pp. 244-249.

(a) Respondent sought the protection of the Fourteenth Amendment, not as an ordinary citizen, but as a law enforcement employee of the county, a subdivision of the State, and this distinction is one of considerable significance since a State has wider latitude and notably different interests in imposing restrictive regulations on its employees than it does in regulating the citizenry at large. P. 245.

(b) Choice of organization, dress, and equipment for law enforcement personnel is entitled to the same sort of presumption of legislative validity as are state choices to promote other aims within the cognizance of the State's police power. Thus, the question is not whether the State can "establish" a "genuine public need" for the specific regulation, but whether respondent can demonstrate that there is no rational connection between the regulation, based as it is on the county's method of organizing its police force, and the promotion of safety of persons and property. Pp. 245-247.

(c) Whether a state or local government's choice to have its police uniformed reflects a desire to make police officers readily recognizable to the public or to foster the esprit de corps that similarity of garb and appearance may inculcate within the police force itself, the justification for the hair-style regulation is sufficiently rational to defeat respondent's claim based on the liberty guarantee of the Fourteenth Amendment. Pp. 247-248.

508 F. 2d 836, reversed.

REHNQUIST, J., delivered the opinion of the Court, in which BURGER, C. J., and STEWART, WHITE, BLACKMUN, and POWELL, JJ., joined. POWELL, J., filed a concurring opinion, *post*, p. 249. MARSHALL, J., filed a dissenting opinion, in which BRENNAN, J., joined,

post, p. 249. STEVENS, J., took no part in the consideration or decision of the case.

Patrick A. Sweeney argued the cause for petitioner. With him on the brief was *Howard E. Pachman*.

Leonard D. Wexler argued the cause for respondent. With him on the brief was *Richard T. Haefeli*.*

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

The District Court for the Eastern District of New York originally dismissed respondent's complaint seeking declaratory and injunctive relief against a regulation promulgated by petitioner limiting the length of a policeman's hair. On respondent's appeal to the Court of Appeals for the Second Circuit, that judgment was reversed, and on remand the District Court took testimony and thereafter granted the relief sought by respondent. The Court of Appeals affirmed, and we granted certiorari, 421 U. S. 987 (1975), to consider the constitutional doctrine embodied in the rulings of the Court of Appeals. We reverse.

I

In 1971 respondent's predecessor, individually and as president of the Suffolk County Patrolmen's Benevolent Association, brought this action under the Civil Rights Act of 1871, 42 U. S. C. § 1983, against petitioner's predecessor, the Commissioner of the Suffolk County Police Department. The Commissioner had promulgated Order No. 71-1, which established hair-grooming standards applicable to male members of the police force.[1] The

**James vanR. Springer* filed a brief for the International Brotherhood of Police Officers as *amicus curiae* urging affirmance.

[1] Order No. 71-1 (1971), amending Chapter 2 of the Rules and Procedures, Police Department, County of Suffolk, N. Y., provided: "2/75.0 Members of the Force and Department shall be neat and

regulation was directed at the style and length of hair, sideburns, and mustaches; beards and goatees were prohibited, except for medical reasons; and wigs conforming to the regulation could be worn for cosmetic reasons. The regulation was attacked as violative of respondent patrolman's right of free expression under the First Amendment and his guarantees of due process and equal

clean at all times while on duty. Male personnel shall comply with the following grooming standards unless excluded by the Police Commissioner due to special assignment:

"2/75.1 HAIR: Hair shall be neat, clean, trimmed, and present a groomed appearance. Hair will not touch the ears or the collar except the closely cut hair on the back of the neck. Hair in front will be groomed so that it does not fall below the band of properly worn headgear. In no case will the bulk or length of the hair interfere with the proper wear of any authorized headgear. The acceptability of a member's hair style will be based upon the criteria in this paragraph and not upon the style in which he chooses to wear his hair.

"2/75.2 SIDEBURNS: If an individual chooses to wear sideburns, they will be neatly trimmed and tapered in the same manner as his haircut. Sideburns will not extend below the lowest part of the exterior ear opening, will be of even width (not flared), and will end with a clean-shaven horizontal line.

"2/75.3 MUSTACHES: A short and neatly trimmed mustache may be worn, but shall not extend over the top of the upper lip or beyond the corners of the mouth.

"2/75.4 BEARDS & GOATEES: The face will be clean-shaven other than the wearing of the acceptable mustache or sideburns. Beards and goatees are prohibited, except that a Police Surgeon may grant a waiver for the wearing of a beard for medical reasons with the approval of the Police Commissioner. When a Surgeon prescribes that a member not shave, the beard will be kept trimmed symmetrically and all beard hairs will be kept trimmed so that they do not protrude more than one-half inch from the skin surface of the face.

"2/75.5 WIGS: Wigs or hair pieces will not be worn on duty in uniform except for cosmetic reasons to cover natural baldness or physical disfiguration. If under these conditions, a wig or hair piece is worn, it will conform to department standards." App. 57–58.

protection under the Fourteenth Amendment, in that it was "not based upon the generally accepted standard of grooming in the community" and placed "an undue restriction" upon his activities therein.

The Court of Appeals held that cases characterizing the uniformed civilian services as "para-military" and sustaining hair regulations on that basis, were not soundly grounded historically.[2] It said that the fact that a police force is organized "with a centralized administration and a disciplined rank and file for efficient conduct of its affairs" did not foreclose respondent's claim, but instead bore only upon "the existence of a legitimate state interest to be reasonably advanced by the regulation." *Dwen* v. *Barry*, 483 F. 2d 1126, 1128–1129 (1973). The Court of Appeals went on to decide that "choice of personal appearance is an ingredient of an individual's personal liberty"[3] and is protected by the Fourteenth Amendment. It further held that the police department had "failed to make the slightest showing of the relationship between its regulation and the legitimate interest it sought to promote." *Id.*, at 1130–1131. On the basis of this reasoning it concluded that neither dismissal nor summary judgment in the District Court was appropriate, since the department "has the burden of establishing

[2] *E. g.*, *Stradley* v. *Andersen*, 478 F. 2d 188 (CA8 1973); *Greenwald* v. *Frank*, 40 App. Div. 2d 717, 337 N. Y. S. 2d 225 (1972), aff'd without opinion, 32 N. Y. 2d 862, 299 N. E. 2d 895 (1973). The District Court's dismissal was based on cases upholding the discretionary power of the military and National Guard to regulate a soldier's hair length. See *Gianatasio* v. *Whyte*, 426 F. 2d 908 (CA2), cert. denied, 400 U. S. 941 (1970); *Raderman* v. *Kaine*, 411 F. 2d 1102 (CA2), cert. dismissed, 396 U. S. 976 (1969).

[3] 483 F. 2d, at 1130. While it recognized the distinction between citizens and uniformed employees of police and fire departments, the Court of Appeals stated that the individual's status did not bear on the existence of his right but on whether the right was outweighed by a legitimate state interest. *Id.*, at 1130 n. 9.

a genuine public need for the regulation." *Id.*, at 1131.

Thereafter the District Court, under the compulsion of the remand from the Court of Appeals, took testimony on the question of whether or not there was a "genuine public need." The sole witness was the Deputy Commissioner of the Suffolk County Police Department, petitioner's subordinate, who testified as to the police department's concern for the safety of the patrolmen and the need for some standards of uniformity in appearance.[4] The District Court held that "[n]o proof" was offered to support any claim of the need for the protection of the police officer, and that while "proper grooming" is an ingredient of a good police department's esprit de

[4] On remand, the complaint was appropriately amended to reflect the interim renumbering and modification of the hair-grooming regulation. The former sections 2/75.0–2/75.3, see n. 1, *supra*, were modified to provide as follows:

"Members of the Force will be neat and clean at all times while on duty. Male personnel will comply with the following grooming standards unless excluded by the Police Commissioner due to special assignments:

"A. Hair will be neat, clean, trimmed and present a groomed appearance. Hair will not go below the ears or the collar except the closely cut hair on the back of the neck. Pony tails are prohibited. In no case will the bulk or length of the hair interfere with the proper wear of any authorized headgear.

"B. If a member chooses to wear sideburns, they will be neatly trimmed. Sideburns will not extend below the lowest part of the ear. Sideburns shall not be flared beyond 2" in width and will end with a clean-shaven horizontal line. Sideburns shall not connect with the mustache.

"C. A neatly trimmed mustache may be worn." Rules and Procedures, Police Department, County of Suffolk, N. Y., 2/2.16 (hereinafter Rules and Procedures).

Sections 2/75.4–2/75.5, see n. 1, *supra*, were simply renumbered as 2/2.16, subdivisions D and E, respectively. Deputy Commissioner Rapp's testimony on remand was directed to the regulation as modified. For present purposes, the differences are immaterial.

corps, petitioner's standards did not establish a public need because they ultimately reduced to "[u]niformity for uniformity's sake."[5] The District Court granted the

[5] Illustrating one safety problem, Rapp showed that an assailant could throw an officer off balance by grabbing his hair from the rear and levering against the patrolman's back. After noting that the prohibition against "ponytails" was thus a proper one, the District Court stated:

"The remainder of 2/2.16A, however, bears no relationship to safety but rather related to hair styling. The potential danger in hairdress is the ability of the offender to grip the hair and hold the fate of the police officer in his hand. Bulk and length of the hair is not regulated except as it interferes with 'the proper wear of any authorized headgear.' Thus the regulation would permit bulky and lengthy hair on the top of the head, thereby presenting the very problem that was demonstrated. In the remaining subdivisions, sideburns, mustaches and wigs are regulated and beards are barred. No proof was offered to support any claim of the need for the protection of the police officer in the pertinent regulations." Pet. for Cert. 7a.

The District Court's findings with respect to the relationship between morale and grooming standards are as follows:

"The high morale of police personnel is a matter of grave concern to the department. Proper grooming is an ingredient of the esprit de corps of a good law enforcement organization. The self-esteem generated in the individual and the respect commanded from the public it serves promotes [*sic*] the efficiency of the organization's work. However, with the exception of the general requirement that hair, sideburns and mustaches be neatly trimmed, the regulations do not provide standards for proper grooming. Rather, the standards do nothing more than demand uniformity. Uniformity for uniformity's sake does not establish a public need. Defendant offered no proof that beards, goatees, hair styles that extend below the ears or collar, or sideburns that extend below the lowest part of the ear or beyond 2" in width and do not end with a clean-shaven horizontal line affect the morale of the members of the police department or earn the disrespect of the public." *Id.*, at 7a–8a.

While noting Rapp's testimony that uniformity was required for identification, the District Court stated: "It would appear, however,

relief prayed for by respondent, and on petitioner's appeal that judgment was affirmed without opinion by the Court of Appeals. 508 F. 2d 836.

II

Section 1 of the Fourteenth Amendment to the United States Constitution provides in pertinent part:

> "No State shall . . . deprive any person of life, liberty, or property, without due process of law."

This section affords not only a procedural guarantee against the deprivation of "liberty," but likewise protects substantive aspects of liberty against unconstitutional restrictions by the State. *Board of Regents* v. *Roth*, 408 U. S. 564, 572 (1972); *Griswold* v. *Connecticut*, 381 U. S. 479, 502 (1965) (WHITE, J., concurring).

The "liberty" interest claimed by respondent here, of course, is distinguishable from the interests protected by the Court in *Roe* v. *Wade*, 410 U. S. 113 (1973); *Eisenstadt* v. *Baird*, 405 U. S. 438 (1972); *Stanley* v. *Illinois*, 405 U. S. 645 (1972); *Griswold* v. *Connecticut*, *supra*; and *Meyer* v. *Nebraska*, 262 U. S. 390 (1923). Each of those cases involved a substantial claim of infringement on the individual's freedom of choice with respect to certain basic matters of procreation, marriage, and family life. But whether the citizenry at large has some sort of "liberty" interest within the Fourteenth Amendment in matters of personal appearance is a question on which this Court's cases offer little, if any, guidance. We can, nevertheless, assume an affirmative answer for purposes of deciding this case, because we find that assumption insufficient to carry the day for respondent's claim.

Respondent has sought the protection of the Four-

that the uniform (issued by the department) supplies the necessary identification for police work."

teenth Amendment, not as a member of the citizenry at large, but on the contrary as an employee of the police department of Suffolk County, a subdivision of the State of New York. While the Court of Appeals made passing reference to this distinction, it was thereafter apparently ignored. We think, however, it is highly significant. In *Pickering* v. *Board of Education*, 391 U. S. 563, 568 (1968), after noting that state employment may not be conditioned on the relinquishment of First Amendment rights, the Court stated that "[a]t the same time it cannot be gainsaid that the State has interests as an employer in regulating the speech of its employees that differ significantly from those it possesses in connection with regulation of the speech of the citizenry in general." More recently, we have sustained comprehensive and substantial restrictions upon activities of both federal and state employees lying at the core of the First Amendment. *CSC* v. *Letter Carriers*, 413 U. S. 548 (1973); *Broadrick* v. *Oklahoma*, 413 U. S. 601 (1973). If such state regulations may survive challenges based on the explicit language of the First Amendment, there is surely even more room for restrictive regulations of state employees where the claim implicates only the more general contours of the substantive liberty interest protected by the Fourteenth Amendment.

The hair-length regulation here touches respondent as an employee of the county and, more particularly, as a policeman. Respondent's employer has, in accordance with its well-established duty to keep the peace, placed myriad demands upon the members of the police force, duties which have no counterpart with respect to the public at large. Respondent must wear a standard uniform, specific in each detail.[6] When in uniform he must

[6] Rules and Procedures 4/1.0–4/1.3.

salute the flag.[7] He may not take an active role in local political affairs by way of being a party delegate or contributing or soliciting political contributions.[8] He may not smoke in public.[9] All of these and other regulations [10] of the Suffolk County Police Department infringe on respondent's freedom of choice in personal matters, and it was apparently the view of the Court of Appeals that the burden is on the State to prove a "genuine public need" for each and every one of these regulations.

This view was based upon the Court of Appeals' reasoning that the "unique judicial deference" accorded by the judiciary to regulation of members of the military was inapplicable because there was no historical or functional justification for the characterization of the police as "para-military." But the conclusion that such cases are inapposite, however correct, in no way detracts from the deference due Suffolk County's choice of an organizational structure for its police force. Here the county has chosen a mode of organization which it undoubtedly deems the most efficient in enabling its police to carry out the duties assigned to them under state and local law.[11] Such a choice necessarily gives weight to the overall need for discipline, esprit de corps, and uniformity.

The county's choice of an organizational structure, therefore, does not depend for its constitutional validity on any doctrine of historical prescription. Nor, indeed, has respondent made any such claim. His argument does

[7] *Id.*, 6/2.2.

[8] *Id.*, 2/2.5.

[9] *Id.*, 2/5.1.

[10] See, *e. g.*, *id.*, 2/14.0 *et seq.* (Code of Ethics).

[11] The Court of Appeals itself found that while there was no desire on the part of local governments like Suffolk County to create a "military force," "[t]he use of such organization evolved as a *practical administrative solution* . . . ." 483 F. 2d, at 1128–1129 (emphasis added).

not challenge the constitutionality of the organizational structure, but merely asserts that the present hair-length regulation infringes his asserted liberty interest under the Fourteenth Amendment. We believe, however, that the hair-length regulation cannot be viewed in isolation, but must be rather considered in the context of the county's chosen mode of organization for its police force.

The promotion of safety of persons and property is unquestionably at the core of the State's police power, and virtually all state and local governments employ a uniformed police force to aid in the accomplishment of that purpose. Choice of organization, dress, and equipment for law enforcement personnel is a decision entitled to the same sort of presumption of legislative validity as are state choices designed to promote other aims within the cognizance of the State's police power. *Day-Brite Lighting, Inc.* v. *Missouri*, 342 U. S. 421, 423 (1952); *Prince* v. *Massachusetts*, 321 U. S. 158, 168–170 (1944); *Olsen* v. *Nebraska*, 313 U. S. 236, 246–247 (1941). Having recognized in other contexts the wide latitude accorded the government in the "dispatch of its own internal affairs." *Cafeteria Workers* v. *McElroy*, 367 U. S. 886, 896 (1961), we think Suffolk County's police regulations involved here are entitled to similar weight. Thus the question is not, as the Court of Appeals conceived it to be, whether the State can "establish" a "genuine public need" for the specific regulation. It is whether respondent can demonstrate that there is no rational connection between the regulation, based as it is on the county's method of organizing its police force, and the promotion of safety of persons and property. *United Public Workers* v. *Mitchell*, 330 U. S. 75, 100–101 (1947); *Jacobson* v. *Massachusetts*, 197 U. S. 11, 30–31, 35–37 (1905).

We think the answer here is so clear that the District Court was quite right in the first instance to have dis-

missed respondent's complaint. Neither this Court, the Court of Appeals, nor the District Court is in a position to weigh the policy arguments in favor of and against a rule regulating hairstyles as a part of regulations governing a uniformed civilian service. The constitutional issue to be decided by these courts is whether petitioner's determination that such regulations should be enacted is so irrational that it may be branded "arbitrary," and therefore a deprivation of respondent's "liberty" interest in freedom to choose his own hairstyle. *Williamson* v. *Lee Optical Co.*, 348 U. S. 483, 487–488 (1955). The overwhelming majority of state and local police of the present day are uniformed. This fact itself testifies to the recognition by those who direct those operations, and by the people of the States and localities who directly or indirectly choose such persons, that similarity in appearance of police officers is desirable. This choice may be based on a desire to make police officers readily recognizable to the members of the public, or a desire for the esprit de corps which such similarity is felt to inculcate within the police force itself. Either one is a sufficiently rational justification for regulations so as to defeat respondent's claim based on the liberty guarantee of the Fourteenth Amendment.

The Court of Appeals relied on *Garrity* v. *New Jersey*, 385 U. S. 493 (1967), and *amicus* in its brief in support of respondent elaborates an argument based on the language in *Garrity* that "policemen, like teachers and lawyers, are not relegated to a watered-down version of constitutional rights." *Id.*, at 500. *Garrity*, of course, involved the protections afforded by the Fifth Amendment to the United States Constitution as made applicable to the States by the Fourteenth Amendment. *Malloy* v. *Hogan*, 378 U. S. 1 (1964). Certainly its language cannot be taken to suggest that the claim of a member

of a uniformed civilian service based on the "liberty" interest protected by the Fourteenth Amendment must necessarily be treated for constitutional purposes the same as a similar claim by a member of the general public.

The regulation challenged here did not violate any right guaranteed respondent by the Fourteenth Amendment to the United States Constitution, and the Court of Appeals was therefore wrong in reversing the District Court's original judgment dismissing the action. The judgment of the Court of Appeals is

Reversed.

MR. JUSTICE STEVENS took no part in the consideration or decision of this case.

MR. JUSTICE POWELL, concurring.

I concur in the opinion of the Court and write to make clear that, contrary to the concern expressed in the dissent, I find no negative implication in the opinion with respect to a liberty interest within the Fourteenth Amendment as to matters of personal appearance. See *Poe* v. *Ullman*, 367 U. S. 497, 541–543 (1961) (Harlan, J., dissenting). When the State has an interest in regulating one's personal appearance, as it certainly does in this case, there must be a weighing of the degree of infringement of the individual's liberty interest against the need for the regulation. This process of analysis justifies the application of a reasonable regulation to a uniformed police force that would be an impermissible intrusion upon liberty in a different context.

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN joins, dissenting.

The Court today upholds the constitutionality of Suffolk County's regulation limiting the length of a police-

man's hair. While the Court only assumes for purposes of its opinion that "the citizenry at large has some sort of 'liberty' interest within the Fourteenth Amendment in matters of personal appearance . . . ." *ante*, at 244, I think it clear that the Fourteenth Amendment does indeed protect against comprehensive regulation of what citizens may or may not wear. And I find that the rationales offered by the Court to justify the regulation in this case are insufficient to demonstrate its constitutionality. Accordingly, I respectfully dissent.

I

As the Court recognizes, the Fourteenth Amendment's guarantee against the deprivation of liberty "protects substantive aspects of liberty against unconstitutional restrictions by the State." *Ante*, at 244. And we have observed that "[l]iberty under law extends to the full range of conduct which the individual is free to pursue." *Bolling* v. *Sharpe*, 347 U. S. 497, 499 (1954). See also *Poe* v. *Ullman*, 367 U. S. 497, 543 (1961) (Harlan, J., dissenting).[1] It seems to me manifest that that "full range of conduct" must encompass one's interest in dressing according to his own taste. An individual's personal appearance may reflect, sustain, and nourish his personality and may well be used as a means of expressing his

[1] We have held that the Constitution's protection of liberty encompasses the interest of parents in having their children learn German, *Meyer* v. *Nebraska*, 262 U. S. 390 (1923); the interest of parents in being able to send their children to private as well as public schools, *Pierce* v. *Society of Sisters*, 268 U. S. 510, 534–535 (1925); the interest of citizens in traveling abroad, *Kent* v. *Dulles*, 357 U. S. 116, 125 (1958); *Aptheker* v. *Secretary of State*, 378 U. S. 500, 505 (1964); the interest of a woman in deciding whether or not to terminate her pregnancy, *Roe* v. *Wade*, 410 U. S. 113, 153 (1973); and the interest of a student in the damage to his reputation caused by a 10-day suspension from school. *Goss* v. *Lopez*, 419 U. S. 565, 574–575 (1975).

attitude and lifestyle.[2] In taking control over a citizen's personal appearance, the government forces him to sacrifice substantial elements of his integrity and identity as well. To say that the liberty guarantee of the Fourteenth Amendment does not encompass matters of personal appearance would be fundamentally inconsistent with the values of privacy, self-identity, autonomy, and personal integrity that I have always assumed the Constitution was designed to protect. See *Roe* v. *Wade*, 410 U. S. 113 (1973); *Stanley* v. *Georgia*, 394 U. S. 557, 564 (1969); *Griswold* v. *Connecticut*, 381 U. S. 479, 485 (1965); *Olmstead* v. *United States*, 277 U. S. 438, 478 (1928) (Brandeis, J., dissenting).

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. For instance, the assumption that the right exists is reflected in the 1789 congressional debates over which guarantees should be explicitly articulated in the Bill of Rights. I. Brant, The Bill of Rights 53–67 (1965). There was considerable debate over whether the right of assembly should be expressly mentioned. Congressman Benson of New York argued that its inclusion was necessary to assure that the right would not be infringed by the government. In response, Congressman Sedgwick of Massachusetts indicated:

"If the committee were governed by that general

[2] While the parties did not address any First Amendment issues in any detail in this Court, governmental regulation of a citizen's personal appearance may in some circumstances not only deprive him of liberty under the Fourteenth Amendment but violate his First Amendment rights as well. *Tinker* v. *Des Moines School Dist.*, 393 U. S. 503 (1969).

principle . . . they might have declared that *a man should have a right to wear his hat if he pleased* . . . but [I] would ask the gentleman whether he thought it necessary to enter these trifles in a declaration of rights, *in a Government where none of them were intended to be infringed.*" *Id.*, at 54–55 (emphasis added).

Thus, while they did not include it in the Bill of Rights, Sedgwick and his colleagues clearly believed there to be a right in one's personal appearance. And, while they may have regarded the right as a trifle as long as it was honored, they clearly would not have so regarded it if it were infringed.

This Court, too, has taken as an axiom that there is a right in one's personal appearance.[3] Indeed, in 1958 we used the existence of that right as support for our recognition of the right to travel:

"The right to travel is a part of the 'liberty' of which the citizen cannot be deprived without due process of law under the Fifth Amendment. . . . *It may be as close to the heart of the individual as the choice*

[3] There has been a substantial amount of lower-court litigation concerning the constitutionality of hair-length and dress-code regulations as applied to schoolchildren. Some of the cases have found the rationales offered for such regulations to be sufficient to support their constitutionality. See, *e. g.*, *King* v. *Saddleback Junior College Dist.*, 445 F. 2d 932 (CA9), cert. denied, 404 U. S. 979 (1971); *Gfell* v. *Rickelman*, 441 F. 2d 444 (CA6 1971); *Ferrell* v. *Dallas Independent School Dist.*, 392 F. 2d 697 (CA5), cert. denied, 393 U. S. 856 (1968). Other cases have found similar regulations unconstitutional. See, *e. g.*, *Richards* v. *Thurston*, 424 F. 2d 1281 (CA1 1970); *Breen* v. *Kahl*, 419 F. 2d 1034 (CA7 1969), cert. denied, 398 U. S. 937 (1970). None of the cases, however, have indicated that the Constitution may offer no protection at all against comprehensive regulation of the personal appearance of the citizenry at large.

of what he eats, or wears, or reads." *Kent* v. *Dulles*, 357 U. S. 116, 125–126 (1958) (emphasis added).

To my mind, the right in one's personal appearance is inextricably bound up with the historically recognized right of "every individual to the possession and control of his own person," *Union Pacific R. Co.* v. *Botsford*, 141 U. S. 250, 251 (1891), and, perhaps even more fundamentally, with "the right to be let alone—the most comprehensive of rights and the right most valued by civilized men." *Olmstead* v. *United States*, *supra*, at 478 (Brandeis, J., dissenting). In an increasingly crowded society in which it is already extremely difficult to maintain one's identity and personal integrity, it would be distressing, to say the least, if the government could regulate our personal appearance unconfined by any constitutional strictures whatsoever.[4]

[4] History is dotted with instances of governments regulating the personal appearance of their citizens. For instance, in an effort to stimulate his countrymen to adopt a modern lifestyle, Peter the Great issued an edict in 1698 regulating the wearing of beards throughout Russia. W. & A. Durant, The Age of Louis XIV, p. 398 (1963). Anyone who wanted to grow a beard had to pay an annual tax of from one kopek for a peasant to one hundred rubles for a rich merchant. *Ibid.* Of those who could not afford the "beard tax," there were many "who, after having their beards shaved off, saved them preciously, in order to have them placed in their coffins, fearing that they would not be allowed to enter heaven without them." J. Robinson, Readings in European History 390 (1906).

There are more recent instances, too, of governments regulating the personal appearance of their citizens. See, *e. g.*, N. Y. Times, Feb. 18, 1974, p. 22, col. 4 (Czech police stop long-haired young men, telling them to get haircuts); *id.*, July 23, 1972, p. 4, col. 1 (Libyan Government tells youths to trim hair and wear more sober clothes or submit themselves for training in the army); *id.*, July 7, 1971, p. 22, col. 8 (over 1,000 young men rounded up and given haircuts by South Korean police in what was described by government officials as a "social purification" campaign); *id.*, Oct. 13, 1970, p. 11, col. 1 (police force more than 1,400 South Vietnamese youths to cut

II

Acting on its assumption that the Fourteenth Amendment does encompass a right in one's personal appearance, the Court justifies the challenged hair-length regulation on the grounds that such regulations may "be based on a desire to make police officers readily recognizable to the members of the public, or a desire for the esprit de corps which such similarity is felt to inculcate within the police force itself." *Ante*, at 248. While fully accepting the aims of "identifiability" and maintenance of esprit de corps, I find no rational relationship between the challenged regulation and these goals.[5]

As for the first justification offered by the Court, I simply do not see how requiring policemen to maintain hair of under a certain length could rationally be argued to contribute to making them identifiable to the public as policemen. Surely, the fact that a uniformed police officer is wearing his hair below his collar will make him

their hair). It is inconceivable to me that the Constitution would offer no protection whatsoever against the carrying out of similar actions by either our Federal or State Governments.

[5] A policeman does not surrender his right in his own personal appearance simply by joining the police force. See *Tinker* v. *Des Moines School Dist.*, 393 U. S., at 506. I agree with the Court of Appeals that the "status of the individual raising the claim bears [not on the existence of the right, but rather] on the question of whether the right is outweighed by a legitimate state interest." 483 F. 2d, at 1130 n. 9. Thus, the need to evaluate the governmental interest and the connection between it and the challenged governmental action is as present when the party whose rights have allegedly been violated is a public employee as when he is a private employee. See *CSC* v. *Letter Carriers*, 413 U. S. 548, 564–567 (1973). To hold that citizens somehow automatically give up constitutional rights by becoming public employees would mean that almost 15 million American citizens are currently affected by having "executed" such "automatic waivers." Statistical Abstract of the United States 1975, p. 272.

no less identifiable as a policeman. And one cannot easily imagine a plainclothes officer being readily identifiable as such simply because his hair does not extend beneath his collar.

As for the Court's second justification, the fact that it is the president of the Patrolmen's Benevolent Association, in his official capacity, who has challenged the regulation here would seem to indicate that the regulation would if anything, decrease rather than increase the police force's esprit de corps.[6] And even if one accepted the argument that substantial similarity in appearance would increase a force's esprit de corps, I simply do not understand how implementation of this regulation could be expected to create any increment in similarity of appearance among members of a uniformed police force. While the regulation prohibits hair below the ears or the collar and limits the length of sideburns, it allows the maintenance of any type of hairstyle, other than a ponytail. Thus, as long as their hair does not go below their collars, two police officers, one with an "Afro" hair style and the other with a crewcut could both be in full compliance with the regulation.[7]

[6] Nor, to say the least, is the esprit de corps argument bolstered by the fact that the International Brotherhood of Police Officers, a 25,000-member union representing uniformed police officers, has filed a brief as *amicus curiae* arguing that the challenged regulation is unconstitutional.

[7] The regulation itself eschews what would appear to be a less intrusive means of achieving similarity in the hair length of on-duty officers. According to the regulation, a policeman cannot comply with the hair-length requirements by wearing a wig with hair of the proper length while on duty. The regulation prohibits the wearing of wigs or hairpieces "on duty in uniform except for cosmetic reasons to cover natural baldness or physical disfiguration." *Ante*, at 240 n. 1. Thus, while the regulation in terms applies to grooming standards of policemen while on duty, the hair-length provision effectively controls both on-duty and off-duty appearance.

The Court cautions us not to view the hair-length regulation in isolation, but rather to examine it "in the context of the county's chosen mode of organization for its police force." *Ante*, at 247. While the Court's caution is well taken, one should also keep in mind, as I fear the Court does not, that what is ultimately under scrutiny is neither the overall structure of the police force nor the uniform and equipment requirements to which its members are subject, but rather the regulation which dictates acceptable hair lengths. The fact that the uniform requirement, for instance, may be rationally related to the goals of increasing police officer "identifiability" and the maintenance of esprit de corps does absolutely nothing to establish the legitimacy of the hair-length regulation. I see no connection between the regulation and the offered rationales[*] and would accordingly affirm the judgment of the Court of Appeals.

[*] Because, to my mind, the challenged regulation fails to pass even a minimal degree of scrutiny, there is no need to determine whether, given the nature of the interests involved and the degree to which they are affected, the application of a more heightened scrutiny would be appropriate.

OHIO *v.* GALLAGHER

CERTIORARI TO THE SUPREME COURT OF OHIO

No. 74–492. Argued December 2, 1975—Decided April 5, 1976

The Ohio Supreme Court held that testimony relating the statements of an accused in response to questions by a parole officer in an interview in a jail is inadmissible at trial if, prior to the questioning, the parole officer failed to advise the accused of his rights under *Miranda* v. *Arizona*, 384 U. S. 436. When, as here, it is not clear from the whole record whether the state court rested its decision upon the Fifth and Fourteenth Amendments to the United States Constitution or upon the Ohio Constitution, the judgment is vacated and the case is remanded to permit the Ohio Supreme Court to explicate whether or not its judgment relies on federal law.

38 Ohio St. 2d 291, 313 N. E. 2d 396, vacated and remanded.

Herbert M. Jacobson argued the cause for petitioner. With him on the brief was *Lee C. Falke*.

Jack T. Schwarz, by appointment of the Court, 421 U. S. 985, argued the cause and filed a brief for respondent.*

PER CURIAM.

We granted certiorari[1] to determine whether the admission in evidence of statements made by an accused in response to in-custody questioning by his parole officer violates the rule of *Miranda* v. *Arizona*, 384 U. S. 436 (1966).

On June 21, 1972, the respondent, Terry L. Gallagher, was arrested and later charged with the armed robbery

Evelle J. Younger, Attorney General, *Jack R. Winkler*, Chief Assistant Attorney General, *S. Clark Moore*, Assistant Attorney General, *Frederick R. Millar, Jr.*, and *Theodora Berger*, Deputy Attorneys General, filed a brief for the State of California as *amicus curiae* urging reversal.

[1] 420 U. S. 1003 (1975).