

# HAIR *and* JUSTICE

Sociolegal Significance of Hair in Criminal  
Justice, Constitutional Law, and Public Policy



Carmen M. Cusack



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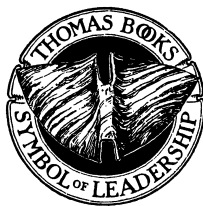


# HAIR AND JUSTICE

**Sociolegal Significance of Hair in Criminal Justice,  
Constitutional Law, and Public Policy**

*By*

**CARMEN M. CUSACK, J.D., PH.D.**



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## INTRODUCTION

**H**air, including beards, mustaches, eyebrows, pubic hair, body hair, hair extensions, hair holders, decorations, haircuts, religious head gear, and hairstyles, influences society. Hair possesses sociolegal significance for criminal defendants, victims, animals, authority figures, citizens, business owners, educators, administrators of justice, and other members of society. British singer Morrissey is quoted as having said, “I do maintain that if your hair is wrong, your entire life is wrong.” *Hair and Justice* explains the accuracy behind his claim as it relates to society, deviance, law, crime, culture, and justice. This book does not advocate that Morrissey’s point-of-view is correct; but, *Hair and Justice* establishes numerous examples of injustices arising because individuals appear to have the “wrong” hair at the wrong time. Yet, neither hair type nor hairstyle may consistently be equated with particular injustices. No singular hair characteristic or style is dispositive of just treatment. Evidence and facts ascertainable from hair are normally small or microscopic pieces of larger puzzles, which are evaluated under the totality of the circumstances. Thus, this book demonstrates that the significance of hair in society is relative, in flux, and constantly being debated.

Members of the justice system may be aware that injustices arise from biases toward and misperception about hair. Case law, administrative disclosures, policy reform and implementation, training, and social justice advocacy demonstrate widespread awareness and knowledge about correlations between hair and injustice. Society, vis-a-vis the justice system, attempts to progressively right these wrongs in order to protect Constitutional rights and improve criminal justice members’ service to the community. One way of improving the system is continuing to research and refine forensic training and methodology. Another way of remedying injustice is by exposing bias and standardizing justice procedures for all people. Yet, Constitutional arguments demonstrate that targeted actions sometimes better implement justice. In some cases, laws and policies limit authorities’ encroachment on Constitutional rights; however, rational, important, and necessary laws and policies often trump individual rights. This is especially true in schools, pris-



ons, or other locations where safety and order must be prioritized above full exercise of personal rights and freedoms.

Bias is not regulated or prohibited by the government unless bias impinges on rights or impedes justice. Jurors and witnesses, including law enforcement and expert witnesses, personally may be biased against particular hairstyles or hair characteristics. Biases against particular hair types are unacceptable when those biases relate to race and result in injustice. Inferential correlations between hairstyle and criminal activities are not impermissible, and may have evidentiary value. For example, jurors and police may infer that a defendant, who wears a hairstyle typically worn by gang members, is likelier to belong to a gang. However, impermissible racial biases arise when beliefs about race unfairly influence inferences about gang membership; for example, a person who wears cornrows, is suspected of being in a gang because he wears an “ethnic” hairstyle even though that hairstyle is not known to correlate with gang membership in the area where he lives.

*Hair and Justice* argues that members of a culture and society share perceptions about hair, which may be misunderstood or judged by outsiders and authorities. Shared symbolism, to an extent, shapes group cohesion. Individual perception is shaped by environmental and interpersonal factors; thus, group perceptions and individual perceptions have reciprocal effects. Thus, in many senses, perceptions of “wrong” or “right” hair are individualized and systemic. To limit group friction resulting from symbolic speech, institutions, such as prisons, schools, and the military, may attempt to control and regulate hairstyle. Yet, these policies are not without controversy. Although some courts agree that strict regulations infringe on Constitutional rights, many courts fail to view them as being unreasonable because they are important for maintaining safety and order. One reason that courts may enforce hair regulations is cultural relativism. Judges tend to be attorneys who have conservative appearances conforming to social norms. Many law firms avoid hiring attorneys with nonconforming appearances, including gender nonconformity or ethnic hairstyles. Almost every profession in the justice system, including first responders and the military, requires members to wear neat and uniform hairstyles that encourage esprit de corps.

Haircutting may be perceived by individuals and groups as having different meanings. For example, religious adherents from one group may view a haircut (e.g., shave) as an indignity, whereas another religious group may cut their hair to symbolize piety. For one mentally ill person, a haircut may be perceived as an opportunity to socialize, or a haircut (e.g., head shaving) may be a sign of mental breakdown. Hair removal, including haircuts, has been associated with punishment for hundreds of years. Some individuals



may be forced by the government or authority figures to cut their hair; just as children may be forced by their parents to cut their hair. However, any violent, inhumane, or cruel behavior involving hair removal, perpetrated by war criminals, the government, parents, educators, or any person, could be subject to investigation and prosecution.

*Hair and Justice* discusses criminal acts, deviance, defiance, rebellion, and power in contexts demonstrating that hair is an intricate and important issue and piece of evidence in criminal justice, Constitutional law, and public policy. No hair analysis tool has been more useful in the justice system than DNA evidence because it can be used to devalue junk forensic evidence, prove guilt, and demonstrate innocence. However, DNA testing is not useful in every situation. For example, DNA evidence cannot be used to disprove gang membership that appears to be evidenced by a particular hairstyle (e.g., shaved eyebrow lines).

*Hair and Justice* discusses dozens of cases in which eyewitnesses have described perpetrators' and defendants' hair. Some descriptions are accurate, exculpatory, or suggested by police procedure. Eyewitness identification procedures not only affect particular defendants' cases, they may potentially influence law enforcement policy and case law. Eyewitness testimony may be used to convict defendants; however, eyewitness testimony is often unreliable. Thus, value given to eyewitness testimony may conflict with or further shape the extent to which society will tolerate misunderstandings or misperceptions about hair.

Most of the evidentiary value arising from hair evidence, including eyewitness testimony and trace evidence, is circumstantial, unlike DNA evidence, which is likelier to be considered direct evidence. Circumstantial evidence is neither definitive nor conclusive. For example, microscopy, which analyzes microscopic details in hair, may only suggest that two hairs or fibers are highly similar. For several decades, the Federal Bureau of Investigation (FBI) overstated the value of hair evidence in hundreds of cases leading to criminal convictions; however, those cases are under review.

*Hair and Justice* discusses specific details about the tremendous value of animals and animal hair in society and the justice system. Animal hair has been used to convict offenders; identify smuggled pelts or mislabeled textiles; prosecute animal abusers; exonerate falsely accused offenders; and identify dangerous animals. K-9 units may be able to detect animal furs or other contraband hidden under animal hair and fur. Animals working in the justice system experience challenges due to their fur. For example, courthouse dogs may cause allergic reactions; and canines may overheat. Despite the drawbacks, the justice system continues to expand its use of working animals and reliance on technological advancements cataloging animal hair



characteristics and DNA. DNA databases will likely continue to utilize a greater portion of criminal justice resources in the future.

A variety of matters relating to sex come before courts, including child sexual abuse, animal crush films, child pornography, rape, obscenity, sado-masochism, adult industry practices, transgenderism, nude dancing, and public nudity. Pubic hair evidence is important to sex crime investigation and to the development of DNA databases. Trace evidence of pubic hair and DNA testing are also relevant in civil and family matters. Recently, hair has become more prominent in criminal justice discussions about gender and sexuality due to heightened political awareness of incarcerated and detained transgender populations. Although the peril of having long hair or feminine appearance in incarceration has been acknowledged through legislation, safety protocol implementation has failed to generate meaningful improvements for inmates.

Second- and third-wave feminists have demonstrated sexual liberation by growing long hair and body hair. For example, second-wave feminists grew armpit hair contemporaneously with hippies, who grew long hair. The musical *Hair: The American Tribal Love-Rock Musical* portrayed longhaired hippies engaging in group sex and political rebellion. Though the musical was alleged to be obscene, it became culturally iconic. Feminists during the hippie era derided depilation as a form of misogyny and sexual subordination. In the 1990s, riot grrrls wore a mix of girly hairstyles, shaved heads, armpit hair, and miniskirts in order to combat artificial gender constructs that limited females. Feminists have long debated the significance of outwardly manifested gender conformity. Some feminists allege that long hair or ponytails signifies subordination or pacification. Hair pulling, especially on ponytails, has been rumored to be a hate crime targeting women that expresses dominance during rape and domestic violence. Research in *Hair and Justice* shows that male victims are also subordinated in the same manner; and that female aggressors also pull victims' hair. Feminist rhetoric has criticized subordination of Middle Eastern women, who are forced to wear religious head gear; yet, feminism also upholds individuals' rights to make personal decisions about hairstyle and gender presentation.



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Whisper Cusack conceived the topic of this book, and it was carefully supervised by Ralph Cusack and BSB.







Carmen M. Cusack wore dreadlocks, religious headgear, wigs, body hair, synthetic hair, radical colors, varying lengths, and other relevant hairstyles for extended periods while researching the material for this book. She wishes to thank her enthusiasts.







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# HAIR AND JUSTICE







## **Chapter 1**

### **RELIGION**

#### **INTRODUCTION**

**B**ias against religious practitioners, who wear religious head gear or hairstyles, account for some hate crime victimization and disparate treatment. Courts continually revisit government policies affecting religious adherents, including prison inmates, to consider whether policies restricting religious practice are necessary, or even rational. Some people, who wear religious head gear, may feel entitled to Constitutional protection from profiling. However, governmental programs seem to be legal when they target religious adherents, who allegedly have connections to terrorists.

#### **HATE CRIMES**

In 2013, 5,928 hate crimes were reported by law enforcement to the Federal Bureau of Investigation's (FBI's) Uniform Crime Reporting (UCR) Program (FBI, 2014). UCR does not include the dark figure of crime, such as unreported incidents. Of 7,242 total hate crime victims, 17.4% were targeted because of religion. This figure may be lower than actual reported cases because of how UCR classifies religion. Beginning January 1, 2015, UCR adopted more expansive religious classifications, used by the Pew Research Center and the U.S. Census Bureau, to better identify victims. Religion is not a main motive for hate crime perpetration. One explanation may be that religion is not necessarily immutable, like race; although, hairstyle and head coverings may enunciate religion. Thus, hate crimes may be classified as



racial rather than religious. To better identify religiously-oriented hate crimes, the FBI now classifies anti-Arab motives (FBI, 2014).

Terrorist attacks on September 11, 2001 led to increased hate crime perpetration against Muslims, Arabs, and other groups (Stromer, 2006). Male Sikhs, who wear Punjabi turbans, have been increasingly victimized due to their misclassification with Muslims by perpetrators. Sikhism, primarily practiced in Southeast Asia, is practiced by a small U.S. population, who wear full beards tucked into head turbans. Their appearance is further discussed in Chapter 9. They are not Muslim; and they bear little resemblance to Muslims, yet they are such a small population in the U.S. that few people will have an opportunity to observe differences between the two groups. In 2001, the U.S. Census (2012) reported 57,000 Sikhs self-identified for the census.

[A]fter the terrorist attacks of September 11, 2001, the Sikhs were the most visible target. Americans saw Osama bin Laden on television, wearing an Afghani turban and sporting a long beard, praising the terrorists who slammed planes into the World Trade Center, the Pentagon, and a field in Pennsylvania. Angered by the terrorist attacks, the nation went to war against the Taliban in Afghanistan who were shown on television sporting the same turbans as Osama bin Laden. Since the terrorist attacks, over six hundred identity-related crimes were committed in the backlash against Muslims and other people mistaken for Muslims, such as Sikhs. Osama bin Laden's violence against America exposed an underlying internal social tension. . . . Today, [Sikhs] are still being attacked by strangers for no other reason than for having been mistaken for Muslim terrorists (or due to general anti-immigrant prejudice inflamed by the terrorist attacks). Consequently, these attacks should be classified as hate crimes. (Stromer, 2006)

Thus, the FBI's new policy identifies growing awareness about hate crime perpetration against Sikhs as well as Hindus (Kaleem, 2013).

Hair coverings have been linked with hate crimes, such as battery, murder, rape, and vandalism in the U.S. as well as abroad (Ingraham, 2015). In 2008, 2,680,000 Jews and 1,349,000 Muslims self-identified for the U.S. Census (U.S. Census, 2012). Although hate crimes motivated by bias against Muslims became significantly likelier after September 11, 2001, hate crimes against Jews historically represented



the largest percentage of religious hate crimes. Christian and Muslim populations throughout the world have attacked religious Jews in Europe, Asia, and Africa; for example, hate crimes against Jews doubled during 2014 according to the Metropolitan Police in London, England (Barrett, 2015).

Religious adherents are not only attacked by biased individuals, they may be attacked by purported members of their own groups when they attempt to assimilate or fail to maintain particular religious or political values (Metwaly, 2014). Many hate crimes are allegedly motivated by patriotism even though hate crimes negate American values. For example, one Muslim woman was attacked in a parking lot (Vives, 2014). The aggressor choked and scratched her as he ripped off her hijab (i.e., hair veil) and chastised her for wearing it. The victim said that she moved from Iraq to the U.S. for freedom and to avoid persecution. She had bragged to her relatives in Iraq about American religious freedom, tolerance, and integration. Despite the attacker's intention to ostracize the victim, members of the community, including Orthodox Jews and Muslims, condemned the attack and expressed support for the victim, elective modesty, and First Amendment rights.

### **GOVERNMENT IDENTIFICATION**

The First Amendment protects free speech and freedom of religion; it also prevents the government from becoming entangled with religion. The Fourteenth Amendment protects equal rights, and the Fifth Amendment protects due process. In some cases, Constitutional rights have been held to protect individuals' rights to wear religious head and hair coverings while appearing in government identification photos. State licensing departments permit drivers to wear religious head coverings that do not obstruct drivers' faces in identification photos. However, some courts have explained risks posed to the public and to officers by use of specific head coverings; some religious advocates feel that these rationales are pretextual and that bans are actually designed to Westernize or oppress Orthodox Muslims.

Some Muslim women wear burqas and niqabs. A burqa is a garment that entirely covers a woman's body and face; and a niqab is a face veil. Modesty is the purpose of wearing these garments. Group