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MADISON AVENUE BOMBARDS the American consumer with "suggestions" for the purchasing subconscious. The goal, the sale of a product, is reached quite regularly. The process entails the human subconscious, which is so apparently susceptible to the power of suggestive influence. The subconscious assimilates the appeals it receives and responds in terms of affirmative actions and/or opinions. *Quaere,* is the process of criminal justice rightfully left to a suggestively damning influence cast, at trial, by the form of a prison uniform? That is, should criminal justice and a defendant's constitutional rights be subjected to the prejudicial influence that penal attire may have upon the human mind? Just as a smartly-packaged product sings out **Buy Me Buy Me** to the consumer's subconscious, does a prison uniform sing out **Guilty Guilty** to a juror's subconscious?

This paper will deal with the appearance, vis-a-vis clothing, of a criminal defendant and the right of that defendant not to be attired in prison garb during judicial proceedings. The purpose here is not to consider the practices of the various jurisdictions; rather this shall be an attempt to display the existence and implications of the right to stand trial in non-criminating clothing.

The Cloak of Innocence

> The term is said to derive from two sources, "Apparel" from the Latin "ad" meaning to and "par" meaning equal, to point out the means by which *outwardly* one keeps even or in line with his group or class. (emphasis added) [1]

The accusatorial system of criminal justice presumably practiced in the United States highly favors the oft-repeated phrase, a man is "innocent until proven guilty." To this end, courts have variously acknowledged the correctness of such a conclusion with regard to the right here involved.[2] However, are garments which are conspicuously, obviously

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[1] *In re* Steimes' Estate, 270 N.Y.S. 339, 150 Misc. 279, as cited in Black's Law Dictionary 123 (4th ed. 1951).

[2] Specifically courts have discussed the possibility that the appearance of a prison-uniformed defendant gives an appearance of guilt. Commonwealth v. Keeler, 216 Pa. Super. 193, 264 A. 2d 407 (1970); Brooks v. State, 381 F. 2d 619 (5th cir. 1967); Sharpe v. State, 119 Ga. App. 222, 166 S.E. 2d 645 (1969); Eaddy v. People, 115 Colo. 488, 174 P. 2d 717 (1946); People v. Shaw, 381 Mich. 467, 164 N.W. 2d 7 (1969) (dissent of Kavanagh, J.), aff'd. 7 Mich. App. 187, 151 N.W. 2d 381; People v. Zapata, 34 Cal. Rptr. 171 (D.C.A. 1963); O'Halloran v. Rundle, 266 F. Supp. 173 (D.C. Pa. 1967), aff'd, 384 F. 2d 997 (1967), cert. den. 393 U.S. 860, 21 L. Ed. 2d 128, 89 S. Ct. 138 (1968).

prison uniforms[3] "cloaks of innocence" such that a defendant wearing such clothing qualifies as "innocent until proven guilty"?

Is the law so obtuse that clothing, "apparel," as defined above, would be viewed as being of insignificant effect on the defendant's rights? Where a defendant is forced[4] to wear prison clothing in the presence of a jury at a trial (or at a voir dire), can it be properly concluded that no prejudicial harm to the defendant's case accrues?

Undeniably, for a jury or other lay body to view a defendant in clothing, conspicuously that of a penal institution, adds to the prosecution's arsenal in a subtle manner. Jurors are necessarily subjected to viewing the prison uniform. It is probable that such garb will be of interest to and perhaps stir a morbid curiosity in the individual jurors. Through the various channels of mass media and entertainment sources, jurors probably have a preconceived idea of what a prison uniform looks like. However, the impact of the official atmosphere, of what may be a first-time, first-hand observation of a prison uniform and a criminal defendant, cannot be measured. The reaction and association capacities of the human mind can and do, consciously and subconsciously, draw conclusions. The reaction of the juror is likely to be a negative one, and perhaps result in a hostile attitude towards the defendant; the juror may equate the uniform to guilt and the trial to formality. The supposed cloak of innocence suffers as a result. Hence, before the prosecutor utters a single syllable, the prison uniform can actually take the defendant a step toward conviction. Certainly, such a conclusion can be shrugged off and scoffed at as mere conjecture. But which attorney can deny that jurors do not always follow what they should or what they are expected to follow?

But what of this "cloak of innocence"? Is it a substantive right or merely a discretionary, procedural matter? The concept of a "cloak of innocence" is such an ingrained parameter of criminal justice that where the right to appear innocent is concerned, presumptions which would detract from the viability of the right must be avoided. The right involved is such a substantive and particular one that its violation necessarily results in prejudicial proceedings, regardless of any finding that the rest of the trial was fair and non-prejudicial or that facts

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[3] For judicial description and acknowledgment of the distinctive appearance of prison clothing, see: Keeler, Eaddy, Shaw, *supra*, n. 2; also United States v. Social Service Dept., 263 F. Supp. 971 (E.D. Pa. 1967); Watt v. State, Okl. Cr., 450 P. 2d 227 (1969); French v. State, Okl. Cr., 416 P. 2d 171 (1966); Dennis v. Dees, 278 F. Supp. 354 (E.D. La. 1968), reversing State v. Dennis, 250 La. 125, 194 S. 2d 720 (1967); People v. Garcia, 269 P. 2d 673 (D.C.A. Cal. 1954); Xanthull v. State, Tex. Cr. 403 S.W. 2d 807 (1966); State v. Woods, 179 Kan. 601, 296 P. 2d 1114 (1956).

[4] Of cases found on the subject, in only one instance did a defendant choose prison clothing over his own. Thomas v. State, 451 S.W. 2d 907, 909 (Tex. Ct. App. 1970), where the court said "He preferred to wear the jail clothing, because he thought his regular clothes were too dirty."

seem to support the jury's finding anyway.[5] The idea involved incorporates the role of the jury. If an uncontrolled influence is thrust upon the jury and there is uncertainty as to the prejudicial effects of such influence, it is manifestly unfair to refuse to recognize the possibility of prejudicial influence. Inference of guilt is not enough.

Yet is it a valid assumption that the cloak of innocence, (and the right not to appear in prison garb) is not a mere procedural right, but one based on a substantive right? The answer, simply, must be yes. Courts have said that the right is a mere procedural one, with the court or other authority having discretionary power to determine whether or not a defendant may wear civilian rather than prison clothing.[6] Other courts have intimated that the right exists but is a waivable one, such that untimely assertion of that right estops future claims[7] or that defense counsel, in any event, should have done something about the matter at a point earlier in proceedings.[8] In finding no prejudicial effects on defendants' cases, courts have said that objection to prison apparel made on appeal is not soon enough.[9] Neither are objections made at the beginning of trial.[10] Even a pre-trial objection is not sufficient.[11] In the interest of a more uniform application of rights relating to prejudicial proceedings, when is sooner, if not after, during or even before trial? Or should the matter be left to those courts which mention but do not ever answer the question?[12]

Where it is the subconscious of the jury that is involved and a situation prevails such that a defendant may be better off not appearing in court at all (rather than be the subject of a prejudicial display), the mere procedural question, if indeed one exists, should be dispensed with as subservient to the higher ethics of criminal justice. If we say that a man is innocent until proven guilty, then why cannot the supposed cloak of innocence be assured to an individual separate and apart from the pettiness of procedural discretion? The very system which

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[5] Sharpe, *supra* n. 2; Shultz, *infra* n. 14; Yates, *infra* n. 6.

[6] Sharpe and Shaw, *supra* n. 2; Xanthull, *supra* n. 4; Yates v. Peyton, 207 Va. 91, 147 S.E. 2d 767 (1966).

[7] Sharpe and Shaw, *supra,* n. 2; Watt, *supra* n. 3; Yates, *supra,* n. 6; Clark v. State, 195 S. 2d 786 (Sup. Ct. Ala. 1967); People v. Du Bose, 89 Cal. Rptr. 134 (1970).

[8] State v. Bentley, 472 P. 2d 864 (Sup. Ct. Mont. 1970); Sharpe, and Shaw, *supra* n. 2; State v. Hendrick, 164 N.W. 2d 57 (Sup. Ct. N.D. 1969); Du Bose and Clark, *supra,* n. 7; Yates, *supra* n. 6.

[9] Claxton v. People, 434 P. 2d 407 (Sup. Ct. Colo., 1967); Watt, *supra,* n. 3; Wilkinson v. State, 423 S.W. 2d 311 (Tex. Ct. App. 1968); Yates, *supra* n. 6; also Du Bose, *supra* n. 6, which says the same though the matter was raised in conference with the trial judge.

[10] Sharpe and Shaw, *supra* n. 2; Garcia and Xanthull, *supra* n. 3; Clark, *supra* n. 6; State v. Wilwording, 394 S.W. 2d 383 (Sup. Ct. Mo., 1965).

[11] Collins v. State, 70 Okl. Cr. 340, 106 P. 2d 273 (1949).

[12] People v. Arntson, 10 Mich. App. 718, 160 N.W. 2d 386 (1968); State v. Abbott, 21 Utah 2d 307, 445 P. 2d 142 (1968).

grants the "innocence" seems to seek to infringe and, in some instances, to erase the right entirely.

A defendant would not ordinarily prefer to appear guilty. Surely a guilty plea could be employed to such end. But where no guilty plea is entered, then it is the role and duty of the prosecution to prove the defendant guilty by relevant evidence and testimony, to the satisfaction of a jury. Irrelevant and prejudicial evidence are so labelled for a reason. Should such evidence be allowed into the trial, against the spirit of the accusatorial system of criminal justice and contrary to a definitive parameter of the system? How farcical a justice is one which would seek to itself perpetuate injustice.

The mind of the layman in the jury box is not educated to discern between the prejudicial and non-prejudicial evidence it received during the course of a trial. To this end, cases such as *Turner v. Louisiana*[13] are decided, having stated that a jury cannot be subjected to possible influence or prejudicial associations during the course of trial. Few things would seem to be more prejudicial to a presumption of innocence than is a prison uniform.

> Every person is presumed to be innocent of the commission of crime and that presumption follows them through every stage of the trial until they shall have been convicted.[14]
>
> The presumption of innocence requires the garb of innocence . . .[15]

The Sixth Amendment

> In all criminal prosecutions, the accused shall enjoy the right to . . . an impartial jury. . .[16]

The jury is a very basic part of the criminal justice process, for the Constitution[17] grants criminal defendants the right to an impartial jury. That means not any jury, but a jury without prejudice so far as prejudice can be detected by the very practical, protective and tactical voir dire.[18] This is not to say that a totally prejudice-free jury is guaranteed, or that a favorably disposed jury will result. However, as to a given case and a specifically identified defendant the voir dire process attempts to select jurors who would best serve the particular case by elimination of individuals because of discernible, detected or suspected

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[13] 379 U.S. 466 (1965), where a jury deliberated in the custody of deputies who had offered important testimony at the trial.

[14] Shultz v. State, 131 Fla. 757, 179 S. 764, 765 (1938).

[15] Eaddy, *supra* n. 2 at 718.

[16] U.S. Constitution, Amend. VI. The right to an impartial jury is extended to state proceeding, incorporated into the due process clause of the 14th amendment, Duncan v. Louisiana, 391 U.S. 145, 88 S. Ct. 1444, 20 L. ed. 2d 491 (1968).

[17] *Id.*

[18] Recognizing of course that some citizens are precluded from juror eligibility by statutory determination, such as age and occupation.

prejudices. Peremptory and regular challenges are provided for this purpose so that both prosecution and defense have the opportunity to examine prospective jurors and either accept or challenge such individuals as jurors.

Once a jury is formed, it cannot be said that either prosecution or defense had a more influential hand in selecting the jury, barring of course, any misdeed in the selection of the jury panel or other systematic exclusion of certain types of members of the community.[19] Thus theoretically the jury as selected by fair process is essentially an impartial body upon whose wisdom and judgment the outcome of legal proceedings will depend, in keeping with the Constitutional mandate of jury trial and impartial jury.

Thus, it is left to the prosecution and defense to present their respective cases to the jury. The evidence, testimony and argument of each side and the court's charge generally constitute the material upon which jury deliberation is based, along with impressions and interpretations the jury itself gathers in the course of the trial. If it is only up to the prosecution and defense to present evidence in a trial, then truly any other influence[20] is prejudicial per se.

During trial the jury essentially is subjected to two sales pitches. It is clear that a myriad of impacts is made upon the jury in the process. Just as pre-trial publicity can be found prejudicial,[21] why cannot an equally external but more insidious influence upon the respective psyches of the jurors be likewise found to be prejudicial? When the criminal process forces a defendant to wear prison clothing at the trial, the probability of negative psychological impact on the jury is too powerful to overlook. Under the circumstances, the juror or venireman who views the obviously prison-uniformed[22] defendant cannot be expected not to react to the visual stimulus, regardless of inadvertency or innocent intent. The suggestive quality of the influence remains as part of the impressions made on the jurors, impressions which will later be applied to the deliberative process. As one court said:

> A defendant in prison garb gives the appearance of one whom the *state* regards as *deserving* to be so attired. It brands him as convicted in the state's eyes. It insinuates that the defendant has been arrested not only on the charge being tried but also on other charges for which he is being incarcerated. . . . *in no case* should

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[19] Patton v. Mississippi, 332 U.S. 463 (1947); Hernandez v. Texas, 347 U.S. 475 (1954), holding unconstitutional systematic exclusion of qualified persons from jury panels on the basis of color, national origin or descent.

[20] For example, pretrial publicity, Rideau v. Louisiana, 373 U.S. 723, 77 S. Ct. 205, 14 L. ed. 2d 204 (1963).

[21] *Id.*

[22] *Supra,* n. 3.

> appellant have undergone the severe prejudice of appearing before the jury as this man was required. (Emphasis added.) [23]

It is the duty of the system of criminal justice to provide the impartial jury. When that same system provides the "impartial" jurors with extraordinarily suggestive but irrelevant "evidence" as to the status of defendant, it is patently obvious that the system has failed to provide an impartial body. What may have been an impartial body once is rendered incompetent by the failure of that system to protect the prosecution, the jury and primarily, the defendant, from prejudicial influence. There is nothing sacrosanct about the acts of the system. Prejudicial influence on anyone's part is nevertheless prejudicial. Furthermore, prejudice is not impartial. It cannot be.

The Fifth Amendment

> No person . . . shall be compelled in any criminal case to be a witness against himself.[24]

Thus, the concept of a privilege against self-incrimination is guaranteed. However, the privilege has limitations; it is generally applied where testimonial, communicative evidence is involved, as opposed to physical evidence. For example, handwriting,[25] appearing and speaking at police lineups,[26] and blood, urine and breath samples[27] are evidential areas which long have been held to be immune from the privilege of self-incrimination. However, involuntary confessions are held to be inadmissible under the same right.[28] (As to defendants being required to wear prison clothing during judicial proceedings, a conflict exists.[29])

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[23] Keeler, *supra* n. 2 at 409.

[24] U.S. Constitution, Amend. V. States generally have equivalent provisions. However, under Mallory v. Hogan, 378 U.S. 1 (1964), the privilege against self-incrimination was incorporated into the 14th amendment due process of law clause and held applicable to State proceedings.

[25] Gilbert v. California, 388 U.S. 263, 87 St. Ct. 195, 18 L. ed. 2d 1178 (1967).

[26] U. S. v. Wade, 388 U.S. 218, 87 S. Ct. 1926, 18 L. ed. 2d 1149 (1967).

[27] Schmerber v. California, 384 U.S. 757, 86 S. Ct. 1826, 16 L. ed. 2d 908 (1966).

[28] Bram v. U.S., 168 U.S. 532, 18 S. Ct. 183, 42 L. ed. 568 (1897) as to inadmissibility in Federal courts. This was extended to State courts in Brown v. Mississippi, 297 U.S. 278, 56 S. Ct. 183, 80 L. ed. 682 (1936).

[29] For the time being the conflict shall remain for the Supreme Court has yet to speak on the matter. It denied certiorari in O'Halloran v. Rundle, 266 F. Supp. 173 (E.D. Pa. 1967), aff'd. 384 F. 2d 997 (1967), cert. den., 393 U.S. 860, 21 L. Ed. 2d 128, 89 S. Ct. 138 (1968), where the lower court said, regarding Collins v. State (*supra*, n. 11) (prison garb at trial): "In . . . (that case) however, the appearance of the defendant before the jury otherwise than as a presumptively innocent citizen served no probative purpose." O'Halloran concerned fingerprinting during trial. In upholding such action, the court distinguished Collins on the evidential bearing of such prosecution action. So, the Supreme Court has neither ruled on the question or even commented on it in any sort of dictum at all; the lower courts, hence, are left to continue the conflict.

The distinction drawn by such cases as far as the protection of the privilege is not primarily relevant to the question at hand. The undesirable effect here is entirely based on irrelevant concerns. The fact that a defendant is in prison attire, under the doctrine of innocent until proven guilty, has no factual relation to the crime charged.[30] It is unnecessary to the proper prosecution of a criminal case that a defendant be attired in prison garb. Furthermore, it is highly unfair and prejudicial to a defendant to have to stand trial[31] or to appear at the voir dire[32] in a prison uniform.

The evil of requiring a defendant to wear a prison uniform takes several courses. Among them, a defendant is demeaned and placed at a psychological disadvantage during his "fair" trial.[33] The defendant by the time of the voir dire and actual trial has already been singled out as the central character giving rise to the trial. Regardless of any prior proceedings, the accused nevertheless is deemed innocent. It is inherently unjust to demean an innocent man while he is credited with theoretical innocence. Appearing in a prison uniform in court before a jury makes the defendant even more conspicuous than he otherwise would be. Can a system of justice presume to place the defendant in a more psychologically demoralizing state "in his own mind" [34] apart from any reaction of any other party?

Another effect is a stronger, more serious argument against the practice. That is, the Fifth Amendment guarantee against self-incrimination is not only offended but flagrantly violated. If in his wildest imagination[35] a juror can be said to be susceptible to the visible stimulus of a prison uniform and acquire, as a result, a bias against the defendant, then justice cannot tolerate forcing a defendant to appear in prison attire. In effect, the defendant is being forced to give evidence against himself, in direct contradiction of the Fifth Amendment. The bias accruing may well be immune from an effective defense, for the resulting bias will relate not to any real connection between the defendant and the crime, or any prosecution attempt to relate the defendant to the crime, but will relate only to mental processes of jurors acting upon irrelevant data. Although some courts rely on a judge's charge to the jury[36] to neutralize the effect, the insidious working of such mental

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[30] Keeler, *supra* n. 2; Dennis, *supra* n. 3, Brooks v. State, *supra,* n. 2.

[31] Keeler and Eaddy, *supra* n. 2; Brooks, *supra* n. 2, Dennis, *supra* n. 3; Shaw dissent, *supra* n. 2.

[32] Shaw dissent, *supra* n. 2; Dennis, *supra,* n. 3.

[33] Keeler, Eaddy and Zapata, *supra,* n. 2; Wilwording, *supra,* n. 10.

[34] Keeler, *supra* n. 2 at 409.

[35] Or in a more rights-conscious vein, reasonability, see: Keeler, Eaddy, Shaw dissent, *supra* n. 2; Brooks, *supra* n. 2; Dennis, *supra* n. 3.

[36] Sharpe, *supra* n. 2; Du Bose, *supra* n. 7; Atkins v. State, 210 S. 2d 9 (Fla. 1968), cert. den. 218 S. 2d 748 (Fla. 1969).

processes render the effect of such a charge questionable, despite the best intentions of the judge and the jury.

Evidence presented at trial must be competent, probative and relevant.[37] The defendant is entitled to a cloak of innocence, *supra,* free from appearance of guilt.[38] It is unreasonable to presume that a defendant in a prison uniform does not create the possibility of injurious surmise. The criminal process should not allow the chance of injurious suggestion to exist. This would seem to be one area which presents little or no difficulty in removing the "chance" factor—simply do not allow defendants to appear in prisoners' attire.

The seriousness of the Fifth Amendment violation is inescapable. It is the defendant who is directly involved, beyond his control and usually contrary to his wishes. The danger of incrimination is patent—many defendants request permission to wear other clothing, by way of pre-trial procedures,[39] objections during trial,[40] and post-trial objections and appeals,[41] with courts responding variously.[42] The fact remains that *any* exposure of the uniform-garbed defendant to the jury can produce prejudice. The amount of time involved in the exposure should be an irrelevant concern though courts have considered it on the way to finding non-prejudicial defendants' appearances before veniremen and jurors.[43] It does not take a juror long to make subconscious conclusions when exposed to a prison garbed defendant. Hence the exposure could be minimal, but the results maximal.

The right not to be a witness against one's self is not an unimportant or collateral right. It is the right which more than any other places the duty on the prosecution to prove its case, which is the basis of an accusatorial system of justice. If by calling a practice procedural rather than substantive a basic right can be denied, then truly the ideals of the Constitution are cast aside and judicially overruled. So here again the substantive nature of the right must prevail over procedural considerations. A travesty upon the Constitution would otherwise result. However, this is not to imply that proper application of procedural process, neither arbitrary nor discretionary, could not be valid in control of such right.

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[37] Brooks and Keeler, *supra,* n. 2.

[38] See cases cited *supra,* n. 2.

[39] Keeler, *supra* n. 2; Collins, *supra* n. 11.

[40] See cases cited, *supra* n. 11.

[41] See cases cited, *supra* n. 9.

[42] Allowed: Keeler, *supra* n. 2; Hendrick, *supra,* n. 8; Wilwording, *supra,* n. 10; Garcia, *supra,* n. 3. Refused: Social Services and Watt, *supra* n. 3; Brooks, *supra* n. 2; Shaw, *supra,* n. 2; Collins, *supra* n. 11. Change at court's insistence: Thomas, *supra,* n. 4.

[43] Hendrick, *supra* n. 8; Woods, *supra,* n. 3.

The right of the defendant not to incriminate himself is in no way to be disregarded, or, where the right is violated, excused, simply because the jury would find out anyway that the defendant was imprisoned.[44] The defendant's imprisonment could be due to various irrelevant factors. For instance, it could be that defendant could not raise enough money for bond, or that he was previously convicted of a separate, unrelated crime. Each separate trial for each separate crime should guarantee the defendant the same protection and rights in each instance.

Hence the Fifth Amendment properly should not be one which courts can use to justify and rationalize irregular practices which, in effect, are violations of substantive constitutional rights. It is unclear why many courts continue to sanction such practices. The only clear result is that constitutional rights of the defendant are thereby usurped.

Practical Implications

Although mere practical considerations should not control the recognition and acquiescence in constitutional rights, nevertheless it is useful to look at the practical implications.

Just as the jury can be waived,[45] the right to appear in civilian clothing at trial should be a waivable right. However this should not be viewed as having a procedural basis, but rather a constitutional basis. The present difficulty surrounding the matter is largely one of various courts recognizing various applications of the right. Why can't the right be waived in the same manner in which a jury is waived?[46] Once waived, the right becomes essentially irretrievable but this is not objectionable where the right is clearly presented and clearly waived. Cases have dealt with defendants claiming that their right to appear in "innocent" clothing was denied even though no jury was involved.[47] The courts involved found no prejudice; this appears to be the proper view since the right viewed here is based to a large degree on the right to an impartial jury and a surrounding idea that the judge is not susceptible to the same suggestive conviction wielded by prison uniforms. A question regarding waiver can be raised by challenging the competency of counsel and settling such a charge by a defendant should not be such a vexatious problem. There is no reason for vexatious result.

A second question is, who should supply clothing for defendants who do not wish to waive the right but have no acceptable clothing? In-

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[44] The point is discussed both pro and con: Sharpe, *supra* n. 2; French and Garcia, *supra* n. 3; Wilwording, *supra* n. 10; People v. Jones, 10 Cal. App. 3d 237, 88 Cal. Rptr. 871 (1970); State v. Naples, 94 Ohio App. 33, app. dism., 158 Ohio St. 231 (1952); State v. Alton, 365 P. 2d 527 (Sup. Ct. Mont. 1961).

[45] Adams v. U.S., 317 U.S. 269, 63 S. Ct. 236, 87 L. ed. 268 (1942).

[46] Timmons v. State, 223 Ga. 450, 156 S.E. 2d 68 (1967).

[47] Social Services, *supra*, n. 3; Zapata, *supra* n. 2.

trinsic to this problem is the question of what is "acceptable" clothing? The problem may conceivably extend to style, etc.; it is then that discretion has a role to play in the matter. Or, this question may lead to claims by indigents that their own clothing is of such condition that they are too shabby or otherwise unsightly. The case of *Thomas v. State*[48] dealt with such a situation. Whether the court should be required to go as far as the *Keeler*[49] court suggests, that the court itself try to locate suitable clothing for defendant, is another matter. However, it would not be a difficult situation to resolve once uniform application of rights is established. It is well to look to the problems which may arise but that is no reason for denying a right. Practical details can always be worked out.

Conclusion

> A general statement of the law is as follows:
> Since the defendant, pending and during his trial, is still presumed innocent, he is entitled to be brought before the court with the appearance, dignity, and self-respect of a free and innocent man, except as the necessary safety and decorum of the court may otherwise require. He is therefore entitled to wear civilian clothes rather than prison clothing at his trial. It is improper to bring him into the presence of the jury which is to try him, or the venire from which his trial jury will be drawn, clothed as a convict.[50]

It should be noted that this general statement does not base its claim on constitutional grounds, because the "law" is based on court opinions, which in general have not found results of prison uniforms to be prejudicial to defendants[51] with notable exceptions.[52] It can only be hoped that the inherent constitutional problem involved is soon recognized, for it should be on such a base that the right is recognized, protected and applied.

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[48] Thomas, *supra*, n. 4.

[49] Keeler, *supra*, n. 2.

[50] 21 Am. Jur. 2d, Criminal Law § 239.

[51] Sharpe and Shaw, *supra*, n. 2; Watt, French, Garcia, Xanthull and Woods, *supra* n. 3; Yates, *supra*, n. 6; Clark and Du Bose, *supra*, n. 7; Bentley and Hendrick, *supra*, n. 8; Claxton and Wilkinson, *supra*, n. 9; Wilwording, *supra*, n. 10; Collins, *supra*, n. 11; Jones and Alton, *supra* n. 44; People v. Thomas, 1 Mich. App. 118, 134 N.W. 2d 352 (1965); Rose v. State, 450 P. 2d 527 (Okla. 1969); People v. Romo, 64 Cal. Rptr. 151 (1967).

[52] Keeler and Eaddy, *supra* n. 2; Dennis, *supra*, n. 3; Brooks, *supra*, n. 2.