

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

United States of America,
Plaintiff,

v.

Criminal No. 96-86-1-M

Carlos Martinez,
Defendant.

O R D E R

The defendant is indigent and apparently homeless. He has been detained pending trial in the custody of the Attorney General of the United States. The Attorney General delivered the defendant for jury trial inappropriately dressed in shorts and a sweatshirt. The court determined that the defendant should not be prejudiced by his appearance, and directed the United States Marshal to make an effort to obtain clothing suitable for wear in a United States Court from the Salvation Army or Goodwill organizations, and directed appointed defense counsel to accompany the Marshal to assist in obtaining clothing appropriate to the seriousness of the matter on trial.

The Marshal objects on regulatory and other grounds. Accordingly, the court, in aid of its jurisdiction, formalizes its order to make clear that the Marshal's performance of this duty is pursuant to court order, is considered by the court to be official business, that the Executive Branch in the first instance bears the responsibility to present indigent defendants appropriately attired for trial, and that this trial will not go

forward unless and until the defendant is suitably clothed.

In this court's opinion, indigent defendants do have a right, probably under the due process clause, not to be involuntarily presented to a criminal jury in disreputable and inappropriate clothing.

As the jury panel is present and time constraints do not permit the government to brief the Marshal's apparent position that it is not the Attorney General's responsibility to insure that indigent defendants in her custody appear in court suitably dressed, and the court is unable to research the issue prior to jury selection, the court has taken it upon itself to resolve the problem as noted.

SO ORDERED.

Steven J. McAuliffe
United States District Judge

December 17, 1996

cc: Nancy Hart, AUSA
Sven Wiberg, Esq.
United States Probation
United States Marshal