

Book
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Prison Conditions in Virginia

It is most unfortunate that Virginia officials have responded so negatively to the prison reform order entered last Saturday by Judge Merhige. On the evidence put before the judge, it is hard to see how anyone could reach any conclusion other than that in the past prison officials have consistently and arbitrarily violated "the most common notions of due process and humane treatment." Otis L. Brown, director of the Department of Welfare and Institutions, has a point in claiming that many of the gross examples which Judge Merhige outlined have already been eliminated. But he is stretching the bounds of truth by implying that the judge's order could keep prison guards from acting "swiftly and decisively" enough to quell a potential riot.

Judge Merhige's opinion makes it quite clear that at least until the last two years the conditions in Virginia's prisons were precisely those that nurture riots. Punishments were handed out "swiftly and decisively" but also arbitrarily and unfairly. The rules prisoners were expected to obey were not clearly formulated. Formalized disciplinary procedures were used only occasionally and sometimes the official making the charge of misconduct against a prisoner sat on the board deciding the validity of the charge. Men were punished for such things as instigating a law suit to desegregate the prison system, filing a petition for a court hearing, writing to a lawyer, reading a letter from a state senator aloud, and discussing a court decision on prison conditions. Punishments included tying prisoners to bars, depriving them of their clothes for days at a time, and putting them on inadequate diets. Occasionally, men were placed in solitary confinement because they were physically or mentally ill.

Mr. Brown, of course, does not concede these findings of fact by the judge, noting his great distress that the judge believed the inmates rather than the guards. But Judge Merhige did not believe all that the inmates said or disbelieve all that prison officials said. Time and again in his long opinion he makes clear precisely why he thought specific officials were not being candid. To sketch one instance: A man named Mason, who

had not been a disciplinary problem, contacted a lawyer in early 1968 about desegregating the prison system. That summer he was charged with refusing to work for which he spent 20 months in maximum security and lost 90 days good conduct time. Yet the prison superintendent testified he didn't know whether Mason had refused to work and thought the confinement was to protect him from other prisoners. The judge decided the real reason for the punishment was the desegregation law suit.

To the credit of Mr. Brown and Governor Holton, many of the practices barred by Judge Merhige in his order have already been eliminated in the prisons. But there is more to do and Mr. Brown is far out of line in arguing that prison officials must be given complete freedom in running their institutions. It is that complete freedom which led to the very abuses spelled out so vividly by Judge Merhige; all the good intentions and promises at the top of a system do not necessarily work their way down to the bottom. If the experiences of recent months at Attica and elsewhere demonstrate anything, it is that troubles arise in prisons because the men there feel they are being treated unfairly in the way the institutions are run.

It is possible that some parts of the judge's order will give prison officials problems that they believe they cannot handle. If so, the judge can amend his order given a showing that this is required. But none of that order, so far as we can tell, will deprive prison administrators for one instant of the power to act "swiftly and decisively" in an emergency. It is true that he barred the use of tear gas and handcuffs, ordered an end to placing of more than one man in a solitary confinement cell, and established minimum due process requirements before punishments are imposed. But for each of these an exception is noted to deal with emergencies. Instead of complaining about the order and trying to wiggle out from under it, Virginia's officials ought to be using it in an effort to bring to the state a model prison system. Judge Merhige has given them both a mandate and an incentive to do just that.