

Jail Reforms For You Held Impractical

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Virginia's top prison official said yesterday that the broad reforms in prison disciplinary procedures ordered by a federal judge could keep guards from acting "swiftly and decisively" to quell an Attica-like prison riot.

Otis L. Brown, director of the Department of Welfare and Institutions, said the reforms ordered Saturday threaten "the day-to-day needs of maintaining order among dangerous men." He labeled the changes designed to protect inmates' constitutional rights, as "not practical in the prison situation."

Federal District Judge Robert R. Merhige Jr. of Richmond ordered the sweeping changes after concluding that prison officials "violate the most common notions of due process and humane treatment" in disciplining the state prison system's 5,700 inmates.

Judge Merhige also ordered "minimum standards" to protect prisoners' rights, such as allowing them to hire lawyers and cross-examine guards or other officials during disciplinary hearings.

The judge also struck down bread-and-water diets, barred the use of physical force as punishment and banned chaining and forced nudity as disciplinary actions.

In his orders, the judge allowed "such force as chains, handcuffs, tape or tear gas . . . when necessary or required to protect a person from imminent physical harm or to prevent escape or serious injury to property." He ordered the prison system to file reports of such incidents with him within five days after they occur.

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But Brown said yesterday that "every option must be made available" to officials and that "it will be most difficult to insure correctional and rehabilitative goals under pain of contempt of court citations" for violations.

Calling his concerns "extremely important matters which cannot be overlooked," Brown yesterday asked the state attorney general, Andrew P. Miller, to ask Judge Merhige to consider revising his orders.

Miller said later yesterday that he would file papers with Judge Merhige today or Wednesday, but he declined to disclose proposals in the papers.

Brown's comments came in a written statement, and a department spokesman said Brown would not be available for questions. Gov. Linwood Holton joined Brown in defending the system's progress toward prison reform.

Both Holton and Brown said many of the practices condemned by Judge Merhige "have been corrected by new policies." Holton said he had

not yet read Merhige's 78-page report of findings and orders.

In his ruling, however, Judge Merhige observed that while the state has taken some steps to eliminate the alleged abuses of the past, further efforts are needed. "The rules do not seek to define offenses," Merhige wrote. "As before, inmates may be penalized for 'abusive language,' a term particularly vague in its content in the prison milieu, where the norms of polite conversation do not prevail."

Judge Merhige said that under the new guidelines vast discretionary power over men's daily lives rests with the director of the division of corrections, now W. K. Cunningham Jr. Merhige said that Cunningham has improperly fixed punishments by seeking information about a prisoner not related to an alleged infraction.

He said that "Cunningham (retains) the power to 'revoke time off for good behavior,' to place someone in a solitary cell without a statement of reasons and to keep a man in maximum security indefinitely on his sole order."

"Just as the cruel and unjust punishment clause restrains the judiciary and the legislature, so also it limits the discretion of administrators," Merhige wrote. "The evidence here shows that these limits have been exceeded."

Cunningham yesterday again declined to comment.

Judge Merhige's ruling came in an American Civil Liberties Union lawsuit filed two years ago by five inmates challenging the prisons' disciplinary process—its regulations, adjudication of alleged infractions and punishments. The judge ruled in the prisoners' favor on all three counts.

He put the state, which has 35 penitentiaries, farms and road camps, under strict orders designed to curb the abuses he said exist. It was those orders that sparked Brown's reply yesterday.

Brown declared that any of Merhige's orders that are not current practice "are not being done because they are not practical in the prison situation, which contains a society vastly different from that found outside the walls."

He said, "Only correctional officials are trained to recog-

ize the difference between the prisons and administer that society in accordance with its own values."

Judge Merhige has said, however, that many guards "without a high school education or any special training in the goals and techniques of penology" can take or restore a prisoner's time off for good behavior.

Brown also cited "the need for flexibility in any system of rule, which would enable the prison administration to cope with a situation of imminent danger, such as that which resulted in violence and death (43 people died) at Attica state prison in New York in September.

"Because of the unique nature of prison life and the men with whom we are dealing, we must have the freedom to move swiftly and decisively when such action is necessary to eliminate even the smallest possibility of a prison disturbance," he said.

"Our job is not that of trying to decide . . . who was responsible for (an) incident. Our job is to prevent it from occurring in the first place. Every option must be made available . . ." wrote Brown.