

# Judge Refuses To Ease Rule On Prisoners

11-23-71

By a Washington Post Staff Writer  
RICHMOND, Nov. 22—U.S. District Judge Robert R. Merhige Jr., refused a request from Virginia penal officials today that he remove his Oct. 30 injunction barring cruel and unusual punishment in the Virginia state prison system.

Merhige said he recognized that system officials had made a very good start in correcting past abuses in the state penitentiary and other prison installations, but added:

"I am satisfied that the spirit as well as the letter of court orders has been violated (by state penal authorities) in the past and that is at the back of my mind."

The judge took under advisement arguments by the Virginia attorney general's office that he amend the section of his order guaranteeing inmates access to outside counsel in disciplinary hearings. He left prison employees under the threat of a contempt of court citation for disobeying terms of his controversial 78-page opinion on prisoner rights.

That order barred such practices as imposition of a bread and water diet, use of chains and tear gas as punishment and denial of due process standards to convicts accused of rule violations.

Assistant Attorney General Vann F. Lefcoe said most of the practices outlawed by Merhige's ruling were not an issue in today's pleading since most have long since been abandoned by the Virginia Division of Corrections.

He said the major issue today was the effect of leaving prison employees "operating under fear" of court prosecution for misunderstanding or misapplying a technicality in the order.

"We cannot operate this system under this injunction under the pain of contempt of

court," he said.

Merhige ordered the injunction in a suit brought by Richmond prison inmates, who complained of inhumane treatment and infringement of their constitutional rights by prison guards and officials.

Attorney General Andrew P. Miller told the court the state has no wish to appeal Merhige's decision if it can be amended here and there to provide penal officials with the freedom of action necessary to maintain security and discipline.

Attorney Philip J. Hirschkop argued for the convict plaintiffs that the injunction should be left standing because, while some improvements at the prison system have been made, he was still getting letters of complaint from prison inmates about violations of Merhige's court order.

He contended that recent promotions of two guards against whom the most flagrant abuses of physical punishment and authority had been alleged in Merhige's court order means "they cannot say they're really trying."