

# Va. Penal Reforms Ordered

## Judge Says Inmate Rights Are Violated

By William Nye Curry  
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Finding that Virginia state prison officials "violate the most common notions of due process and humane treatment," a federal district judge has ordered sweeping reforms in the way the officials discipline inmates.

The judge, Robert R. Merhige Jr., of Richmond, decreed an end to a multitude of traditional prison practices, such as diets of bread and water. Judge Merhige outlawed physical force as a form of punishment, and he set forth far-reaching "minimum standards" for officials to follow to protect inmates' constitutional rights.

And his action, which immediately affects 5,700 inmates in 35 state facilities, also called for officials to suspend any present punishment not meeting those minimum standards.

Judge Merhige's findings and orders were contained in a 78-page opinion filed in Richmond Saturday. It was the result of 10 days of trial a year ago in which five prisoners challenged the constitutionality of the prison system's disciplinary process—prison regulations, the adjudication of alleged violations and the punishment imposed. Merhige ruled in their favor on all these points.

Judge Merhige said, "The judge found three general classes of constitutional deprivation . . . Discipline has been imposed for the wrong reasons. It has been imposed in cases of what may have been validly punishable misconduct but without the requisites of procedural due process. And punishment of a sort that the Constitution bars in any event has been imposed."

He said, "The evidence adduced has disclosed as to each of these points a disregard of constitutional guarantees of so grave a nature as to violate the most common notions of due process and humane treatment by certain (prison officials)."

The prisoners' American Civil Liberties Union lawyer, Philip J. Hirschkop, hailed the ruling as "the best prison opinion in the country." He said two similar findings in New York and Missouri have been overturned on appeal, but Merhige has the factual evidence "to make it stick" if there is an appeal.

Virginia Attorney General Andrew P. Miller said he has not yet studied the ruling to decide on any appeal. He said he expects to meet today with Otis L. Brown, director of the Department of Welfare and Institutions, to discuss that possibility, among others.

See RULING, A15, Col. 1

Brown, in a telephone interview, said he has not thoroughly reviewed Judge Merhige's orders but that "I'm sure there will be some problems" in carrying them out.

W. K. Cunningham Jr., director of the division of corrections, declined to comment. According to Merhige's opinion, Cunningham's vast power over prisoners' lives invites intrusions on their right, and cannot continue.

The Merhige ruling, which applies only to Virginia's prison system for now, reflects a growing nationwide challenge to longstanding prison conditions once taken for granted. The challenge has taken a form varying from the Virginia prisoners' lawsuit to the inmate insurrection this fall at the Attica state prison in New York.

(The ruling does not cover Virginia's 96 county jails and 66 other lockups.)

For 25 pages, Judge Merhige

summarized case histories in which he found abuses. The judge noted that the testimony of convicted men can be open to doubt, but he also observed, "All of the unreliable testimony in the case has not however, come from members of the plaintiff class (the prison population)."

Merhige said, "The court has observed a disturbing number of inconsistencies in the officials' accounts of applicable rules . . . Testimony by prison administrators illustrated the accuracy of Tolstoy's observations about the limits of bureaucratic power.

"A specific order invariably deteriorates in content as it travels from chiefs to subordinates on the line. Higher prison officials, generally speaking, displayed a confident perception of the rules and procedures applicable in various situations. Lower officers who in fact implement the rules were, however, less sure about the regulations governing the prisoners' conduct and their own."

The result, Judge Merhige said at one point, is that "administrators have not been in complete control of their subordinates." And, he went on, new prison regulations issued last year are not sufficient to prevent further instances where officials have exceeded the legal limits of discretion.

Judge Merhige made these specific findings, among others:

- Prisoners were held in solitary confinement — one for 265 days — without "even the rudimentary elements of a hearing or opportunity to defend any allegations made against (them)."
- Punishments were imposed because prisoners at-

tempted to help fellow inmates file suits and take other court actions.

- Letters to attorneys and legislators were not mailed by prison officials, in violation of First Amendment rights.

- One inmate's term was extended a year and 11 days after he read aloud a letter to another inmate. He was given no hearing.

- Others were punished for talking to their attorneys about prison conditions and challenging racial segregation of prisoners in court.

- "Disciplinary action was accorded . . . in some instances simply upon the whim of a guard."

• "Regulations which are cruel and unusual punishment. . . . Restraint of two prisoners with chains and handcuffs constituted physical torture" and is "unconstitutionally excessive."

• "Four men were penned like animals in a small cell, designed for one, for 14 days without respite."

Judge Merhige held that such instances as these are not isolated but "have been a consistent course of conduct by prison administrators and those beneath them . . ." The judge then issued the orders designed to overcome the shortcomings he said exist. Most far-reaching, perhaps, was a "panoply of guarantees" to protect inmates' rights during disciplinary action, except those with minor punishments, such as a small fine.

First, Judge Merhige said, an "impartial tribunal" shall hear allegations of infractions, and, unlike the practice in the past, officials who report the infraction may not sit on the tribunal.

The inmates shall have a right to a hearing, which includes the right of defending himself and the cross-examination of witnesses. "The court appreciates the concern of prison officials," Merhige wrote, "that interrogation by prisoners of the guard force may be at variance with their respective positions in the penal hierarchy."

Inmates should be permitted to have lay counsel to present their case, and if there is a possibly of "the loss of substantial rights" the inmate may obtain a lawyer.

The judge said the above "minimum standards" must be followed "when solitary confinement, transfer to maximum security confinement or loss of (time off for good behavior) are imposed, or a prisoner is held (locked in his cell) for more than 10 days."

Judge Merhige gave the prison system 15 days to submit to him a list of rules governing inmates' behavior "and the

minimum and maximum punishments to be accorded" for violations. He ruled out "such ill-defined offenses as 'misbehavior' and 'agitation.'"

The rules must be circulated to inmates, too, the Judge said. He also gave the system a limited period to rehear past violations in accord with his ruling. Until then, existing punishments will be suspended, he ordered.

Time off for good behavior that has been revoked shall likewise be restored, he said. The physical restraint of inmates shall be only for the inmates' protection, not punishment, and be based on a doctor's written report.



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