

U.S. Judge Bids Virginia Halt Abuse of Prisoners

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WASHINGTON, Oct. 31 — A Federal judge in Virginia has issued a sweeping injunction against that state's prison system, barring as cruel and unusual punishment of inmates the regular use of bread and water, chains, physical punishment, enforced nudity and the censorship of mail.

The order of Federal District Judge Robert H. Merhige Jr., accompanied by a 78-page opinion, was filed yesterday without public notice at his court in Richmond. It was released here today by Philip J. Hirschkop of suburban Alexandria, Va., the lawyer who tried the case.

The prohibitions were effective immediately.

Mr. Hirschkop, who was engaged by the American Civil Liberties Union, called the court's action "a bill of rights for inmates."

"I think you have to expect the state to appeal this decision," he said, "unless Governor Holton can prevail upon his Attorney General and others to accept it. I really expect an appeal, but I do not think that any important part of Judge Merhige's order will be stayed

pending the appeal. This is going to be affirmed."

Key state officials received advance notice of Judge Merhige's findings several days ago so that his ruling could be put immediately into effect.

Judge Merhige declared in his opinion that the evidence presented during a two-week trial last November disclosed

Continued on Page 46, Column 4

Continued From Page 1, Col. 4

"a disregard of constitutional guaranties of so grave a nature as to violate the most common notion of due process and humane treatment."

He specifically enjoined the State Department of Welfare and its Division of Corrections from doing the following:

¶Imposing bread and water punishment on any inmate for any infraction of prison rules.

¶Using chains, handcuffs, hand-restraining tape or tear gas "except when necessary or required to protect a person from imminent physical harm or to prevent escape or serious injury to property." Testimony at the trial disclosed that such restraints were used commonly on "obstreperous" inmates, often without disciplinary hearings.

¶Using physical force "against any inmate for purposes of punishment."

¶Forcing nudity or bodily restraint of any kind as a means of punishment or otherwise "for any period longer than it shall be reasonably necessary to secure the services of a doctor" to determine whether an inmate must be restrained to protect himself from self-inflicted injury.

¶Placing more than one inmate in the same solitary confinement—Virginia's solitary cells are 6½ by 10 feet—"except in an emergency."

¶Interfering with or imposing punishment for efforts by inmates to file court documents, to have confidential communication with lawyers, even when confined to solitary, and to write legislative or other government officials.

The judge also ordered the restoration of "good time," or credit toward early release for



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Judge Robert H. Merhige Jr.

good behavior, to all prisoners who had been docked such time without hearing or "without compliance with minimum standards of due process," such as written charges and written findings by disciplinary boards.

Judge Merhige gave the defendants, who are the top correctional officials and the directors of many of the 36 state prison facilities, 60 days to institute uniform due-process hearing procedure for cases involving the docking of good time.

All prisoners now in solitary or "padlocked cells" as a result of discipline that cost them good time were ordered freed from such confinement pending a rehearing.

In most Virginia prisons, particularly the maximum-security

penitentiary in Richmond and the medium-security state prison farm at Goochland, Judge Merhige said, a prisoner who is docked good time and placed in solitary is effectively denied any reaccumulation of good time as long as he remains in solitary. Such punishment, he said, has been meted out for "indeterminate" periods.

In a specific reference to the so-called C-cell, the solitary confinement cell block at the Virginia State Penitentiary in Richmond, where a week of the trial was held, Judge Merhige directed that prisoners being held there be afforded full due-process hearings with 30 days or be released to the general prison population.

The judge ordered the State Division of Corrections to prepare and distribute to the court, as well as to Virginia's 6,000 state prisoners, a complete list of rules and regulations setting forth "standards of behavior expected of each inmate" and the minimum and maximum punishments for each rule violation.

Violations Found

"In many instances," the judge found, "punishment has been of such a nature as to be abusive and violative of the most generic tenets of due process and humane treatment."

Judge Merhige ruled that Virginia's prison system had consistently violated the Eighth Amendment to the Constitution, which prohibits cruel and unusual punishment.

He noted that prisoners committed to solitary confinement were sometimes placed on bread and water, were in every case given a diet of no more than two meals a day, were allowed to shave and take showers only once a week and were denied exercise, sometimes for months.