

NO. 5611-R

DOCKET ENTRIES

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DATE	PROCEEDINGS	Date Order or Judgment Made
1968		
Feb. 2	Complaint filed	
Feb. 2	Order permitting commencement and prosecution of action in forma pauperis, entered & filed Feb. 2, 1968	
" 5	Summons issued.	
Feb. 6	Marshal's return on summons, executed, filed.	
Feb. 13	Notification and request for designation of three-judge court, filed	
" 26	Motion to dismiss filed by respondent.	
Mar. 5	Order designating Honorable Albert V. Bryan and Hon. John D. Butcher, U. S. Circuit Judges to serve with Hon. Robert R. Merhige, Jr. constituting a District Court of three judges, entered by Chief Judge, Fourth Circuit Feb. 29, 1968, received and filed March 5, 1968. (Copies mailed to judges and all counsel)	
" 12	Pre-trial order ent. 3-12-68. Copies mailed counsel of record and Judges Bryan and Butcher.	
Mar. 21	Brief for plaintiffs filed. Copies mailed Judges Bryan and Butcher and delivered to Judge Merhige.	
April 1	Motion of defendants to dismiss, filed	
" "	Answer of defendants filed.	
" 11	Order vacating three-judge court in this case; all matters to be directed to the attention of the U. S. District Judge for Richmond Div., ent. 4-11-68 Copies mailed as directed.	
✓ July 23	Motion of plfs. Leroy Mason and Thomas Wansley for temporary restraining order filed.	
" "	Minutes of the Court filed.	
✓ " 24	Answer to motion of plfs. filed by respondent.	
✓ " "	Order that written memoranda addressed to the Court with legal authorities pertinent to the issue be supplied on or before 7-25-68 at 5 P. M.; upon reflection thereon, the Court will determine what further procedures shall be had, ent. 7-24-68. Copies mailed counsel.	
" 25	Notice to take depositions of defts. Otis Brown, C. C. Peyton and W. K. Cunningham, filed by plfs.	
✓ July 26	Memorandum filed by plfs.	
✓ " "	Motion to vacate notice to take depositions filed by respondent.	
✓ " "	Memorandum of Authorities filed by respondent in support of their answer.	
✓ Aug. 1	Order granting motion of plfs. for temporary restraining order and setting hearing on August 13, 1968, at 10 A. M.; requesting defts. to have plfs. available for conferences with their counsel at reasonable times and places before the hearing; defts. to deliver custody of plfs. to U. S. Marshal at this courthouse at 10 A. M. on Aug. 13, 1968; at conclusion of hearing to receive plfs. from U. S. Marshal, ent. 8-1-68. Copies mailed as directed.	
✓ " 6	Notice to take deposition of Otis Brown, C. C. Peyton and W. K. Cunningham filed by plfs.	
Aug. 8	ORDER directing that C. C. Peyton, Supt., Va. State Penitentiary, make certain inmates available for conferences with Philip J. Birschkop, counsel for plaintiffs, ent. 8 filed Aug. 8, 1968. Copies mailed counsel	
	Motion that deft. be ordered to produce the following inmates at hearing of matter on Aug. 13, 1968. Calvin Arey, Thos. McLarn, et al filed by plfs.	
Aug 9		
" 12	Preliminary Statement of Evidence filed by plfs' counsel.	
Aug 13	IN OPEN COURT: Merhige, J. Appearances: Parties and by counsel. Plaintiff's motion for a temporary restraining order, granted, as to the following: (Continued on page 2)	

C.A. 5611 - R Leroy Mason et al V. C.C. Peyton, et al

D. C. 110 Rev. Civil Docket Constitution

DATE 1968	PROCEEDINGS	Date Order or Judgment Noted
Aug 13	(Continued from page 1) It is ADJUDGED and ORDERED that the defendants , their agents, and all others be, and they are hereby, enjoined from: (a) Preventing any inmate of the penitentiary from conferring at reasonable times, and in such manner as not to interfere with the orderly administration of the penitentiary, with any attorney who represents that he has matters of a legal nature to take up with said inmate or inmates. Concomitant with the responsibility of the defendants in this regard, all attorneys who are members of the Bar of this court are admonished to use their best efforts to cooperate with the defendants to the end that their responsibilities as attorneys are fulfilled in such a manner as to be conducive to a minimum of inconvenience to the defendants; (b) Using any instrumentality against any inmate which might result in injury to said inmate, except in the case of self defense or where there is imminent clear and present danger of physical danger of physical violence by an inmate or inmates that cannot be otherwise restrained; (c) From the use of tear gas or deleterious chemicals against any individual inmate except in the most extraordinary circumstances and after approval in writing of the superintendent, or his duly authorized assistant, of the Virginia State Penitentiary; (d) From denying any inmate the use of mattresses and bedding as a form of punishment for such periods of time as may endanger the health of any said inmate; (e) That no inmate be placed in isolation or solitary confinement as punishment in such manner or for such a period of time as would be detrimental to this physical and mental health, as determined by a qualified, practicing Physician; (f) That all inmates shall have reasonably prompt access to the courts; (g) That all inmates be afforded such toilet articles and other necessities as required to alleviate any detriment to said inmates' health as determined by a qualified practicing physician; (h) From confining any inmate in a room or area which may be detrimental to this physical and mental health as determined by a qualified physician.	
Aug. 13	Proposed stipulation, Item I, filed by plaintiffs.	
" "	Proposed stipulation, Item II, filed by plaintiffs.	
" "	Proposed stipulation and Statement of Respondents filed by plaintiffs.	
" "	Order enjoining defendants from certain things, entered and filed. Copies mailed as directed.	
" 19	Discovery deposition of C. C. Peyton on behalf of plaintiffs, received	
Sep. 12	Interrogatories to Otis L. Brown filed by plff.	
" 20	Motion for extension of time to 11-12-68 to file answers to interrogatories filed by defts.	
" "	Notice of hearing objections to interrogatories filed by defts.	
" "	Objection to certain interrogatories filed by defts.	
Sept. 25	EXAMINATION IN OPEN COURT: Mathias, J. Appearance: Parties by counsel. Respondents motion for extension of time in which to answer interrogatories, and objections to certain interrogatories, heard. Court directed respondents to answer all interrogatories as best they can, and extended time for filing answers 75 days from Sept. 25, 1968.	
Sep. 30	Plaintiffs' motion for rule to show cause for contempt and for restraining order, filed	
Oct. 8	Answer of defts., moving to dismiss motion filed by plffs. on 9-27-68, filed.	
" "	Order setting hearing on violation of order of 8-13-68, on 11-1-68 at 11 A.M. that Leroy Mason and Thomas Waseley be delivered to this Court for said hearing; that Calvin Aray, Robert Landrum, Roger Pogram, Paul Scott	

(see Pg 3)

DATE	PROCEEDINGS	Date Order or Judgment Noted
1968		
Oct. 8	Marvin Cherry and E. Stovall, be made available for transportation to this Court as may be required on the day forasaid, ent. 10-8-68. Copies mailed counsel of record.	
" 9	Supplemental petition filed by petitioner, Calvin Aray.	
" 14	Order that defts. file with this court within 10 days from this date legal authorities upon which they intend to rely in support of paragraphs 1 and 2 of their answer filed on 10-8-68; hearing now set for 11-1-68 at 11 a.m. is amended to Friday, Nov. 1, 1968 at 12:00 o'clock noon, ent. 10-14-68. Copies mailed all counsel of record.	
" 16	Interrogatories filed by defts.	
Oct. 24	Memorandum of Authorities filed by respondent	
Nov. 1	Memorandum of the Court filed.	
" "	Order ent. as follows: Plfs. shall file within 20 days from this date a more particular statement concerning the time and manner in which they and other prisoners have been punished as alleged in first full paragraph on page 2 of their motion filed on 9-30-68; in addition, they shall file a more particular statement concerning allegations contained in second full paragraph on page 2 of their motion; they shall include in all such information names of all agents of defts. who allegedly participated in any violation of the orders of this court; defts. shall make available to counsel for plfs., between the hours of 9 and 4 o'clock on any weekday, any prisoner with whom counsel wishes to confer; defts. are directed to see to it that any such conferences are held in complete privacy, to the end that counsel may more fully effectuate this order in supplying defts. with information directed; all parties to file with the court by no later than 3 days prior to the hearing the names of any witnesses whom they anticipate calling in reference to said hearing to be held on plfs' motion filed 9-30-68, which the court will hear simultaneously with any other issues raised by the pleadings; defts. are directed to forthwith file with the court a statement concerning the manner and form in which this court's order of 8-13-68 was promulgated amongst the employees of the Virginia State Penitentiary; further, that a hearing is set for Thursday, Dec. 12, 1968, at 10 A. M.; that Leroy Mason and Thomas Wansley be delivered to this court for said hearing, and that Calvin Aray, Robert Landman, Roger Pagram, Paul Scott, Marvin Cherry and E. Stovall, all of whom are now in custody of the defts., Peyton, be made available for transportation to this Court as may be required on the day aforasaid, ent. 11-1-68. Copies mailed all counsel of record	
Nov. 14	In accordance with Court's Order of Nov. 1, 1968; Statement filed	
" 22	Statement for plaintiffs filed.	
" 25	Notice to take depositions of: Newberry, Guarda Catron, O. W. Young, Sikes, Sgt. H. C. Span & Mr. Oliver filed by plif	
" 26	Reporter's transcript of proceedings of 10-29-68 filed.	
Nov. 25	Interrogatories to defts. Cunningham filed in open court by plifs.	
" 29	Supplement to statement of plifs. filed.	
Dec. 4	Respondent's motion to quash notice of taking of depositions. rec'd. filed.	
" "	Respondent's motion for pre-trial conference rec'd. filed.	
" "	Respondent's Objections to interrogatories rec'd. filed.	
" "	Respondent's motion that respondent be allowed to take depositions of certain prisoners. rec'd. filed.	
" "	Notice of hearing of the objections to interrogatories and motion to quash	
" "	Notice of taking of depositions. rec'd. filed.	
" "	Verification of complaint and motion for rule to show cause filed by plifs. counsel.	
" "	List of witnesses filed by plifs.	
" "	Motion for order to facilitate discovery filed by plifs.	

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Civil Action # 5611-R (Cont'd.)

D. C. No. Rev. Civ. Court Complaint

DATE 1968	PROCEEDINGS	Date Order Judgment Made
Dec. 4	IN OPEN COURT: Merhige, J. Appearances: Counsel for petitioners, respondent by Asst Atty Gen. Respondent's motions to take depositions of prisoners, granted. Respondent's motions to quash notice of taking of depositions by petitioners, denied. Respondent's objections to interrogatories, over ruled. Respondent's motion for a pre-trial conference, denied. Respondent's motion for a continuance, denied. Petitioner's motion for a show cause order and rule, granted.	
" "	Order directing C. C. Peyton, W. K. Cunningham and Otis Brown to appear before Judge R. R. Merhige, Jr., in this court on 12-12-68 at 10 a. m. to show cause if any there be why an order should not be made holding said depts. and/or their agents for criminal contempt of this court, and to be dealt with accordingly. ent. 12-4-68. Certified copy of this order delivered to U. S. Marshal for service on C. C. Peyton, W. K. Cunningham and Otis Brown. Copies of order mailed counsel of record.	
" 6	Notice to take depositions of Robert Landman, Calvin Arey, Thomas Wansley, Marvin Cherry, B. Stovall, Cecil Evans, Harold Fuller, Samuel Mackman, James E. Mamuel, Eugene Toran, William Hemphill, Emory Shifflett, Ardan F. Blanks, William Moon, filed by respondent.	
" "	Answers to Interrogatories filed by respondents, William K. Cunningham, Jr. filed.	
Dec. 6	Answer to Interrogatories filed by respondent Carroll R. Minor	
" "	List of witnesses that depts. may call, filed.	
Dec. 10	Reporters Transcript on Hearing on Motions of December 4, 1968 filed.	
Dec. 9	Depositions of Harold J. Spann, Oily Woodrow Young, David Lee Scites and Richard M. Oliver filed.	
Dec. 10	Deft's motion for Order directing that all depositions, etc. be delivered to Clerk's Office, and thereby be sealed, rec'd. filed.	
" 10	Deft's motion for continuance in criminal contempt case rec'd. filed.	
" 10	Deft's notice of demand for jury trial, rec'd. filed.	
" 10	Deft's motion to vacate, rec'd. filed.	
Dec. 11	Reporter's transcript of proceedings of August 13, 1968, rec'd. filed.	
Dec. 11	Marshal's return on order of December 4, 1968 filed.	
Dec. 11	Petitioners' motion for disciplinary action for Assistant ATG, Reno Harp, III, for violating Court rule of Dec. 6, 1968, filed.	
Dec. 11	IN OPEN COURT: Merhige, J. Appearances: Parties by counsel. Petitioners motion that court take disciplinary action against respondent, taken under advisement. Respondents motions to dismiss, for continuance, for jury trial, and returning depositions to clerk, all taken under advisement.	
Dec. 11	Order directing respondents to deliver the custody of Robert Landman, Roy Hood, Bobby Lee Taylor, Roger Pegrum, Calvin Arey and William Hemphill to the U. S. Marshal at Courthouse at 9:00 A.M. on Thursday, Dec. 12, 1968 and deliver George Lembur to U. S. Marshal at State Farm Southside at the said time and at conclusion of hearing receive the same prisoners from the U. S. Marshal. ent. & filed 12-11-68. Copies mailed as directed except Hirschkop which was hand delivered.	
Dec. 12	TRIAL PROCEEDINGS: Merhige, J. Appearances: Parties and by counsel. Respondent's motion to vacate show cause order, granted. Respondent's motion to continue, denied. Petitioner's motion to enlarge restraining order, argued. Petitioner adduced evidence. Case continued to 12-16-68 at 1:00 P. M. for hearing on motion.	
Dec. 12	Order directing respondent to deliver Thomas C. Wansley and Leroy Mason to the United States Marshal for hearing at 1:00 P.M. on December 16, 1968 and at conclusion of hearing receive the prisoner from the U.S. Marshal. ent. & filed 12-12-68. Copies mailed as directed.	

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DATE	PROCEEDINGS	Date Order or Judgment Made
1968		
Dec. 13	Order for delivery of Thomas C. Wansley on Dec. 12, 1968 ent 12-12-68 and served on Respondent by Marshal. Copies mailed as directed on December 13, 1968 as directed in order.	
Dec. 13	Marshal's return on Order of Dec. 12, executed.	
Dec. 13	Marshal's return on Order of Dec. 11, as to C. C. Peyton executed.	
Dec. 16	Original and one copy of reporter's transcript of proceedings filed.	
Dec. 19	Original and one copy of transcript of proceedings of December 12, 1968 filed.	
Dec. 31	TRIAL PROCEEDINGS: Merhige, J. Appearances: Parties by counsel. Evidence on petitioner's motion for enlargement order heard. Motion taken under advisement.	
1969		
Jan. 9	Answers to interrogatories filed by respondents.	
" 10	Copy of plf's Brief (Memorandum of Law) filed.	
" 13	Motion of plfs. by counsel re certain orders, pleadings, etc., filed.	
" 15	Deposition of Sheriff James D. Swinson received and filed.	
" 16	Response to motion filed by respondent.	
Jan. 16	IN OPEN COURT: Merhige, J. Appearances: Defendant by counsel. Deft's motion for a continuance, granted. Case continued to a date to be determined later.	
" 27	Reporters transcript of proceedings received and filed.	
" 29	Notice of taking depositions of Otis L. Brown, Director, W. K. Cunningham, C. C. Peyton, R. M. Oliver, Mrs. Leak W. Parrish, M. L. Royster & G. A. Reynolds filed by plfs.	
" 31	Notice to take deposition of Drs. Lawrence Rose and Thomas Rodenhauer filed by plfs.	
" "	Memorandum of defts. filed.	
Feb/ 5	Order separating prisoner treatment allegations from segregation allegations, entered, filed. Copies Mailed counsel.	
" 6	Order that whereas this Court has ordered a severance of issues in this case, and established another suit, to-wit: Mason v. Peyton, CA 53-69-2, same is not to in any manner affect the taking of depositions or any proper discovery procedure for which notice had been given prior to the aforementioned severance order ent. 2-6-69. Copies mailed counsel.	
Feb. 26	TRIAL PROCEEDINGS: Merhige, J. Appearances: Parties and by counsel. Petitioner introduced interrogatories into evidence, along with certain depositions. Witnesses excluded. Opening statements. Defendant adduced evidence, rested. Closing arguments. Case taken under advisement by court.	
Feb. 26	Discovery depositions of Otis L. Brown, Leak W. Parrish, G.A. Reynolds and Richard Oliver taken by plaintiffs. Received.	
" 28	Pltf's. proposed opinion and order filed.	
Mar. 11	Reporter's transcript of testimony of W. K. Cunningham on 2-26-69, filed.	
" 14	Motion and Notice of Motion objecting to evidence proffered and moving its exclusion, filed by defts.	
" 19	Reply to defts' proposed findings, filed by plfs.	
" 24	Answer to Motion filed by plfs.	
Apr. 15	Motion of plfs. to render its decision forthwith compelling integration of the Va. State penal system, filed.	
Apr. 16	TRIAL PROCEEDINGS: Merhige, J. Appearances: Parties by counsel. All motions to dismiss denied. Defts motion to exclude from record a certain letter is sustained. Finding of facts and conclusions of law stated from bench. Order and injunction to be entered.	
Apr. 16	Minutes of court filed.	
Oct. 16	Order denying the defendants' motion to dismiss; the defendants J. B. Cox (substituted for the named C. C. Peyton, deceased), W. K. Cunningham and Otis L. Brown, their successors in office, agents and servants and employees take the necessary steps to desegregate as to race all penal facilities and operations under their supervision and that desegregation as to all field units and farms be completed within a period of 90 days from Oct. 16, 1969; desegregation as to race in the Virginia State Farm be completed as expeditiously as possible consistent with the statements	

