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DUE PROCESS

Wolff v. McDonnell, 418 U.S. 539 (1974)

In *Wolff v. McDonnell*,[1] the United States Supreme Court examined prison disciplinary hearings in light of the due process clause of the fourteenth amendment,[2] and determined what rights must be afforded state prison inmates facing internal disciplinary proceedings which could result in the loss of good-time credit.[3] McDonnell, on behalf of himself and other inmates of the Nebraska Penal and Correctional Complex, filed a complaint for damages and injunctive relief under 42 U.S.C. § 1983.[4] The major allegations were that the disciplinary proceedings at the prison violated due process, that the regulations governing inmates' mail were unconstitutionally restrictive, and that the inmate legal assistance program did not meet constitutional standards.[5]

Under the system which inmate McDonnell challenged, forfeiture or withholding of good-time credits or confinement in a disciplinary cell was the punishment for serious misconduct. Deprivation of privileges was provided for less serious misconduct.[6] The district court found that the following procedures were in effect to establish misconduct.[7] The convict was called to a conference with the chief correction supervisor and the charging party, at which the prisoner was orally informed of the charge and a preliminary discussion of the merits occurred. A report was then prepared and sent to the Adjustment Committee.[8] A hearing was held before this committee in which the report was read to the inmate and discussed. If he denied the charge, the inmate was allowed to ask questions of the charging party, but he had no right to present, confront or cross-examine witnesses, or to be represented by counsel at the hearing. The committee would conduct additional investigations if it desired before punishment was imposed.

The challenged mail regulation called for the reading and inspection of all incoming and outgoing mail, with no exception made for attorney-prisoner mail. Apart from the right to counsel in the disciplinary proceedings themselves, the challenged legal assistance program at the prison directed the Warden to appoint one inmate as legal advisor. No other inmate was allowed to assist another in the preparation of legal documents without the specific written permission of the Warden.

The district court, after an evidentiary hearing, granted only partial relief. Based on the circuit court decision in *Morrissey v. Brewer*,[9] the court rejected the claim that the Nebraska prison disciplinary system violated due process.

[1] 418 U.S. 539 (1974).

[2] U.S. CONST. amend. XIV, § 1, provides in pertinent part: "...nor shall any State deprive any person of life, liberty, or property, without due process of law...."

[3] NEB.REV.STAT. § 83-1.107 (Supp. 1972) provides for the allowance and reduction of good-time. Good-time accumulates if a prisoner exemplifies good behavior and a faithful performance of duties. The accumulated time is then subtracted from the prisoner's maximum sentence, which in effect may speed up a prisoner's eligibility for parole. For a good discussion of good-time and the distinction between statutory good-time which is mandatory and meritorious good-time which is discretionary see Sawyer v. Siegler, 320 F. Supp. 690 (D. Neb. 1970).

[4] 42 U.S.C. § 1983 (1970) provides:
> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other persons within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the person injured in an action of law, suit in equity, or other proper proceedings for redress.

[5] The constitutional standard is found in Johnson v. Avery, 393 U.S. 483, 490 (1969), where the Court held that "unless and until the State provides some reasonable alternative to assist inmates in the preparation of petitions for post-conviction relief," inmates could not be barred from furnishing assistance to each other.

[6] NEB. REV. STAT. § 83-185 (Supp. 1972).

[7] McDonnel v. Wolff, 342 F. Supp. 616, 625-626 (1972).

[8] The committee functions as the prison's disciplinary body, and is composed of three prison officials.

[9] 443 F.2d 942 (8th Cir. 1971), *rev'd*, 408 U.S. 471 (1972). Here the circuit court rejected a similar due process claim with regard to parole revocation hearings.

The court ruled that prison officials could open mail from attorneys if contraband was not disclosed by normal techniques, and if there was a reasonable possibility that contraband was included in the mail. In addition, the attorney mail marked "privileged" could only be opened in the presence of the inmate. Finally, the restrictions placed on the inmate legal assistance program were found to be constitutional.[10]

The court of appeals reversed with respect to the due process claim,[11] relying on the intervening Supreme Court decisions of *Morrissey v. Brewer*[12] and *Gagnon v. Scarpelli*,[13] decided after the district court opinion in this case. *Morrissey* held that due process imposed certain minimum requirements which must be satisfied before parole could be revoked.[14] *Scarpelli* decided that these established requirements were applicable to probation revocation hearings as well.[15] The court of appeals thus reasoned that in view of these decisions, prisoners facing disciplinary hearings should be afforded these same minimum due process rights. The circuit court also ordered removed from prison records any determinations of misconduct established in proceedings that failed to comport with due process, and generally affirmed the district court judgment regarding correspondence with attorneys. Furthermore, the court of appeals reversed the district court on the inmate legal assistance issue, arguing that the record did not support the assumption that permission for inmates to assist each other was freely given.[16]

Mr. Justice White, writing for a six man majority,[17] reversed the liberal grant of rights decreed by the circuit court with regard to procedures required in a prison disciplinary hearing. Specifically, the Court held that there was only a limited right to present evidence and call witnesses, and that prisoners had no right to confrontation, cross-examination, or counsel in a prison disciplinary proceeding. The Supreme Court also ruled that prisoners had the unconditional right to at least twenty-four hours written notice of the claimed violation, and a written statement of the evidence relied upon together with the reasons for any disciplinary action. The majority further ruled that it was constitutionally permissible for prison officials to open, in an inmate's presence, incoming attorney mail that could not be otherwise examined for contraband. Finally, the Court affirmed the circuit court's holding on the inmate legal assistance issue.

Before reaching the merits of the case, Justice White considered the jurisdictional question of whether the validity of the procedures for depriving prisoners of good-time credits could even by considered in a civil rights suit brought under 42 U.S.C. § 1983. This question was answered in the affirmative in *Preiser v. Rodriguez*[18] where the Court pointed out that habeas corpus was not an appropriate remedy for damage claims, which could be pressed under § 1983 in conjunction with suits challenging the conditions of confinement rather than the fact or length of custody.

The majority stated certain guidelines that were applicable to their discussion of due process in prison disciplinary hearings. The Court argued that since prison disciplinary proceedings were not part of a criminal prosecution, all of the rights due a defendant in

[10] The district court neglected to inquire whether the inmates were ever given permission to assist each other; the court assumed that they were given such permission. 342 F. Supp. at 621.

[11] 483 F.2d 1059 (8th Cir. 1973).

[12] 408 U.S. 471 (1972) (due process in parole revocation hearings).

[13] 411 U.S. 778 (1973) (due process in probation revocation hearings).

[14] 408 U.S. at 489. These procedures included: (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a neutral and detached hearing body; (f) a written statement by the factfinders as to the evidence relied upon and reasons for revoking parole. *Id.*

[15] The Court added to the required minimum procedures of *Morrissey* the right to counsel, when a probationer makes a request based on a claim of innocence or that the issues and defenses are complex or otherwise difficult to develop.

[16] 483 F.2d at 1065.

[17] Justice Douglas wrote a dissenting opinion; Justice Marshall wrote a separate dissenting opinion in which Justice Brennan concurred.

[18] 411 U.S. 475 (1973). Here state prisoners brought a § 1983 suit seeking an injunction to compel restoration of good-time credits. The Court held that the sole remedy was by writ of habeas corpus, because the prisoners were challenging the very fact or duration of their confinement.

such criminal proceedings did not necessarily apply. More succinctly Justice White stated that "[T]here must be mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application."[19] The Court reasoned that simply because a prisoner retained certain rights under the due process clause[20] did not mean that those rights could not be subject to restrictions imposed by the particular regime to which the prisoner had been committed.[21]

From these guidelines, the majority ruled that the Constitution did not demand that all of the *Morrissey-Scarpelli*[22] procedures be made applicable to disciplinary cases in state prisons. The Court drew a questionable distinction between deprivation of good-time and revocation of parole. The latter imposed an immediate change in the condition of the parolee's liberty, while the former did not pose an immediate change to the prison inmate. In reality, the two situations are identical in that both deprive a person of liberty; the parolee is affected immediately and returned to prison, while the prison inmate suffers an extension of his maximum term and postponement of the date of eligibility for parole.[23]

In further substantiating their refusal to extend the full range of procedures provided in *Morrissey,* the Court pointed out that the State had a different stake in the structure and content of the prison disciplinary hearing than it did in a parole revocation proceeding. In this regard, the Court showed concern for the tense, closed, and tightly controlled environment of a state prison. The necessity for close supervision and the maintenance of order were paramount security considerations: "[I]t [was] against this background that disciplinary procedures must be structured by prison authorities."[24] The Court allowed flexibility in the disciplinary procedures and did not impose the rights[25] which might call for adversary proceedings typical of the criminal trial.

The Court then focused on specific rights that must be provided to inmates in prison disciplinary proceedings if the minimum requirements of due process were to be satisfied. First, the Court found that adequate notice was not being provided to inmates and ruled that twenty-four hour advanced written notice of the claimed violation must be given to the inmate.[26] This requirement would give the prisoner sufficient time to clarify what the charges were and prepare a defense. Secondly, in accord with *Morrissey,* the Court held that there must be a "written statement by the factfinders as to the evidence relied on and reasons for the disciplinary action."[27] This requirement, according to the majority, served two purposes. One was to protect the inmate against collateral consequences resulting from a misunderstanding of the nature of the original proceeding,[28] and the other, to insure that administrators will act fairly in the disciplinary hearing.

Justice White persistently referred to the written statement as a written record of the proceedings, but the holding of the Court did

[19] 418 U.S. at —. By institutional needs Justice White wasapparently referring to the necessity of maintaining security and discipline in a rehabilitative context.

[20] *See* Haines v. Kerner, 404 U.S. 519 (1972) (Court does not dismiss prisoner's inartfully drawn petition); Wilwording v. Swenson, 404 U.S. 249 (1971); Screws v. U.S., 325 U.S. 91 (1945).

[21] *See e.g.,* Parker v. Levy, 417 U.S. 733, 94 S. Ct. 2547 (1974); Broadrick v. Oklahoma, 413 U.S. 610 (1973); Civil Service Commission v. Letter Carriers, 413 U.S. 548 (1973).

[22] *See* notes 15, 16 *supra.*

[23] Prior to the Court's attempt to draw this distinction, they had engaged the question of whether the interest of prisoners in disciplinary procedures was included in the "liberty" protected by the fourteenth amendment. They said

> The State itself has not only provided a statutory right to good-time but also specifies that it is to be forfeited only for serious misbehavior. . . . We think a person's liberty is equally protected, even when the liberty itself is a statutory creation of the State.

418 U.S. at —.

The Court thus recognized that the deprivation of good-time is a deprivation of liberty. Should immediacy or the inherent deprivation of liberty itself be the criteria for those essential due process rights?

[24] 418 U.S. at —.

[25] The majority was mindful of the fact that the instant case did not concern a criminal proceeding, but rather a disciplinary hearing. The issue in *Morrissey* did not concern a criminal matter either, but nevertheless the Court mandated a wide range of essential due process rights.

[26] 418 U.S. at —.

[27] *Id.*

[28] Deprivation of good-time is a factor given serious consideration by a parole board. The Court was apparently concerned that parole boards were sufficiently apprised of the circumstances surrounding removal of good-time credits.

not necessarily imply that a transcript of the hearing need be made. The holding simply mandated a statement showing the evidence relied on and reasons for actions taken.[29]

In discussing further rights which might be applicable to disciplinary hearings, the Court found that there was no unrestricted right of an inmate to call witnesses or present documentary evidence in his defense. A prisoner should be allowed to exercise these rights "when permitting him to do so will not be unduly hazardous to institutional safety or correctional goals." [30] The majority balanced the inmate's interest in avoiding loss of good-time against the needs of the prison and concluded that they must provide the prison administrators with some amount of flexibility. The Court considered these unrestricted rights potentially disruptive and argued that prison administrators were in the best position to evaluate individual situations and determine when to restrict the calling of witnesses and the presentation of evidence. However, the possibility of disruption is arguable in view of the tightly controlled environment which the majority acknowledged. In addition, the Court increased the possibility for administrative arbitrariness by suggesting rather than mandating that the hearing committee state its reasons for refusing to call a witness. Justice Douglas' dissent criticized this aspect of the majority opinion because it left a prisoner's exercise of a fundamental constitutional right within the unreviewable discretion of prison authorities.[31]

In denying to the inmates the rights of confrontation and cross-examination, the majority considered the institutional interests paramount to the due process arguments. Assuming that these rights if exercised in a prison context held great potential for disruption and havoc, the Court held that "adequate bases for decision in prison disciplinary hearings can be arrived at without cross-examination." [32] The majority rested this decision in part upon the existence of what it characterized as diverse and experimental prison practices, saying that in such a situation it was better to leave these matters to the "sound discretion" of state prison officials.[33] Thus the Court appears unwilling to assume a leading role in providing reform for the prison system.

The logic the Court used to reach its position regarding confrontation and cross-examination was criticized by Justice Marshall. He pointed out in a vigorous dissent that his disagreement stemmed "from the majority's view that these rights [were] just not all that important." [34] Justice White responded that these rights were obviously essential in criminal trials where an accused may suffer serious deprivations such as a loss of liberty, or moral turpitude may be attributed to his conduct which may result in the loss of a job. According to Justice White, however, these rights were not universally applicable to all hearings.[35]

Justice White's position suggests that these rights are not as crucial in a prison hearing as they are in a criminal trial. This reasoning is tenuous in light of the circumstances of the instant case. The withdrawal of accumulated good-time could mean an additional prison sentence of eighteen months, unquestionably a more serious penalty than the loss of a job.[36] Furthermore, Justice White's position is unsubstantiated by authority or the logic which mandates the imposition of due process rights.[37]

The majority also refused to impose the re-

[29] The Court also stated that the written statement may also properly exclude some evidence when necessary to maintain institutional or personal safety. Such a determination is entirely within the discretionary power of the prison officials.

[30] 418 U.S. at —.

[31] Id. at — (Douglas, J., dissenting).

[32] *Id.* at —. The Court, however, did not cite any specific examples of where granting these rights actually created the disruption they predicted.

[33] *Id.* at —.

[34] *Id.* at — (Marshall, J., dissenting).

[35] Justice White's position on this point is based solely on his own separate opinion in Arnett v. Kennedy, 416 U.S. 134 (1974) (White, J., concurring in part and dissenting in part).

[36] 418 U. S. at — (Marshall, J., dissenting).

[37] *See* Goldberg v. Kelly, 397 U.S. 254, 269 (1970), where the Court stated, "[i]n almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses." In Green v. McElroy, 360 U.S. 474, 496 (1959), cross-examination and confrontation were decreed applicable whenever "[g]overnmental action seriously injures an individual, and the reasonableness of the action depends on fact findings." *See also* Morrissey v. Brewer, 408 U.S. 471 (1972); *In re* Gault, 387 U.S. 1, 56–57 (1967).

quirement of counsel on the prison disciplinary hearing. The Court argued that the presence of counsel would give the proceedings a more adversary cast and thus reduce their utility as a means to enhance correctional objectives.[38] The majority cited *Scarpelli* for the proposition that counsel would prolong the decision-making process and increase the financial burdens of the state.[39] In denying the right to counsel, the Court attempted to remain consistent with its position of not interjecting into the disciplinary system a right that could interfere with the flexibility and control of prison officials.

Thus, with respect to the issue of due process in prison disciplinary hearings, the Supreme Court finally consolidated the various approaches taken by circuit courts.[40] The Court chose to follow the more restrictive approach set out in *Braxton v. Carlson* and *Sostre v. McGinnis*.[41]

The Court also discussed several other issues. Concerned that a ruling to the contrary would place an intolerable burden on the administration of all prisons in the country, the majority reversed the court of appeals decision to expunge prison records. In *Morrissey* due process requirements were made applicable only to future revocations of parole. The Court denied retrospective application in the instant case as well. The majority also held that mail from an attorney may be opened by prison officials, but only in the presence of the inmate. In this way the state could enforce the prison regulations against contraband without the danger of censorship because the presence of the inmate would insure that the mail would not be read. Finally, the contention that the inmate legal assistance program at the Complex was constitutionally deficient was remanded to be considered by the district court in light of the *Johnson v. Avery* standard.[42]

Justice Douglas' dissent strongly criticized the majority's holding concerning an inmate's due process rights in a prison disciplinary hearing. Recognizing, as the majority conceded, that prisoners are persons within the meaning of the fourteenth amendment, then they, argued Justice Douglas, should have a full hearing with all the *Morrissey-Scarpelli* due process safeguards.[43] He proposed that prisoners be allowed confrontation and cross-examination, unless prison officials found good cause for not allowing these rights. Douglas pointed out that leaving such discretionary power in the hands of a prison disciplinary board for reasons of security and discipline was "outmoded and indeed antirehabilitation."[44] Leaving the exercise of fundamental constitutional rights in the unreviewable discretion of prison authorities, he contended, fostered feelings among the inmates that prison authorities were authoritarian and arbitrary.[45]

[38] 418 U.S. at —.

[39] In *Scarpelli*, the Court listed these burdens as being costs "for appointed counsel, counsel for the State, a longer record, and the possibility of judicial review." 411 U.S. at 788.

[40] The Ninth Circuit is by far the most liberal. This is apparent in Clutchette v. Procunier, 497 F.2d 809 (9th Cir. 1974), where the Court required (a) written notice in advance; (b) a written statement of reasons and a written record of the proceedings must be provided; (c) full power and right of an inmate to call witnesses; (d) a general right of cross-examination, which may be limited, however, where there is a legitimate fear that retribution will result; (e) that counsel must be provided where a prison rule violation may be punishable by state law; (f) an impartial hearing board, and a member of the board may not participate in the case as an investigating or reviewing officer, or be a witness.

In contrast are Braxton v. Carlson, 483 F.2d 933 (3d Cir. 1973) and Sostre v. McGinnis, 442 F.2d 178 (2d Cir. 1971). These circuits agreed that (a) oral notice is sufficient; (b) no written statement of reasons nor a written record need be provided to the prisoner; (c) prisoners had no right to present witnesses at a hearing; (d) due process did not require cross-examination; (e) there was no right to counsel, nor even lay substitutes; (f) the hearing board must be impartial. *See also* Meyers v. Aldredge, 492 F.2d 296 (3d Cir. 1974), where the court affirmed that oral notice was sufficient, and also stated that there was no right to counsel where counsel substitute was provided.

The Seventh Circuit held in U.S. *ex rel.* Miller v. Twomey, 479 F.2d 701 (7th Cir. 1973), that (a) written notice was required in advance; (b) there must be an opportunity to request the calling of witnesses; (c) there must be an impartial hearing board.

The First Circuit in Baxter v. Palmigiano, 487 F.2d 1280 (1st Cir. 1973), elaborated that (a) where prison authorities had already extended the right to confront and cross-examine witnesses, then there is no reason to force authorities to call adverse witnesses when the prisoner could have; (b) there is a right to retained counsel, even where a staff assistant is available.

[41] *See* note 40 *supra*.

[42] *See* note 5 *supra*.

[43] *See* notes 15, 16 *supra*.

[44] 418 U.S. at —, (Douglas, J., dissenting).

[45] Indeed, Douglas points out the Court's language in *Morrissey*, where the majority argued

The crux of his position was that placing the constitutional rights of an inmate in the hands of a prison administrator's discretion was like placing a defendant's rights in the hands of the prosecutor.[46]

Justice Marshall, joined by Justice Brennan, expressed similar criticism. They argued that the inmate was stripped of the essential tools necessary for the presentation of a meaningful defense. They evidenced concern for the wrongfully charged inmate and pointed out that the majority's reliance upon the prevention of disruption and havoc was hardly related to an inmate's right to call defense witnesses.[47] Prison security must be made to accommodate fundamental constitutional principles, they argued, and not the reverse. Marshall cited *Clutchette v. Procunier*[48] for the proposition that "concern for the safety of inmates does not justify a wholesale denial of the right to confront and cross-examine adverse witnesses." [49] He pointed out that the disciplinary process was almost always initiated by a correctional officer rather than a fellow inmate, and the State of Nebraska even informed accused inmates of the particular correctional officer who made the charge.[50] Marshall argued that this minimized the concern for security and disruption emphasized by the majority opinion, and that a legitimate concern for secrecy would affect only a small fraction of disciplinary cases.

The dissenters would therefore hold that the inmates' right to confront and cross-examine adverse witnesses should be recognized, subject only to a very limited exception when necessary to protect the identity of a confidential inmate informant. Marshall and Brennan also agreed that when this exception was exercised, the disciplinary board had an obligation to call the witness *in camera* and probe his credibility, rather than accepting his unchallenged word.[51]

The majority opinion adopted the traditional role which courts have assumed in dealing with prison affairs. This role has been one of self-imposed restraint, which has come to be known as the "hands off" doctrine.[52] This approach vested wide discretion in prison officials to control prisoners in their custody. Numerous rationales have been submitted in support of this doctrine. Among the most frequently discussed are that prison management is the responsibility of the executive branch and should not be interfered with by the judiciary, that courts lack expertise in the field of prison management, and that courts might embarrass high officials by showing the public the real conditions within a prison.[53]

This judicial attitude of restraint began to erode with respect to certain matters of prison administration in the late 1960's. This was evidenced especially in the ruling of the United States Supreme Court in *Johnson v. Avery*. The Court in *Johnson* paved the way for judicial inspection of administrative unfairness in prison systems, saying that "[i]n instances where state regulations applicable to inmates of prison facilities conflict with [federal constitutional] rights, the regulations may be invalidated." [54] The Supreme Court in other decisions recognized constitutional protections guaranteed to prisoners, such as religious freedom,[55] right of access to the courts,[56] and

that society had an interest in treating the parolee fairly partly because "fair treatment in parole revocations will enhance the chance of rehabilitation by avoiding reactions to arbitrariness." 408 U.S. at 484. Douglas contended, and arguably so, that the same principle applied to inmates as well. *See also* PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: CORRECTIONS 83, 88 (1967).

[46] 418 U.S. at —, (Douglas, J., dissenting). This fear has substantial basis. In Arkansas recently an entire prison system was held to be a violation of the eighth amendment prohibition against cruel and unusual punishment. Holt v. Sarver, 309 F. Supp. 362 (E.D. Ark. 1970), *aff'd*, 442 F.2d 304 (8th Cir. 1971). *See also* the case studies in Hirschop and Millman, *The Unconstitutionality of Prison Life*, 55 Va. L. REV. 795, 795–812 (1969).

[47] 418 U.S. at —.

[48] *See* note 40 *supra*.

[49] 497 F.2d at 819.

[50] 418 U.S. at — (Marshall, J. dissenting).

[51] *Id.* at — (Marshall, J. dissenting).

[52] For a general discussion of this doctrine and the historical backround of procedural due process in prison disciplinary hearings see Kraft, *Prison Disciplinary Practices and Procedures: Is Due Process Provided?* 47 N.D.L. REV. 1, 11–14 (1970); Comment, *Procedural Due Process for Intraprison Disciplinary Hearings: An Arkansas Analysis*, 27 ARK. L. REV. 44, 46–51 (1973).

[53] Note, *Due Process Safeguards in Prison Disciplinary Proceedings: The Application of the Goldberg Balancing Test*, 49 N.D.L. REV. 675, 683–85 (1972–73).

[54] 393 U.S. at 486.

[55] Cruz v. Beto, 405 U.S. 319 (1972); Cooper v. Pate, 378 U.S. 546 (1964).

[56] Younger v. Gilmore, 404 U.S. 15 (1971).

equal protection from invidious discrimination based on race.[57]

However, the Supreme Court in *McDonnell* departed from this trend toward judicial involvement in prison affairs. The Court could have seized the opportunity to mandate that prisoners be given those due process rights that would minimize what has been characterized as the authoritarian and arbitrary nature of prison disciplinary proceedings.[58] Instead, the Court placed in the hands of prison administrators wide discretion which may result in a longer prison sentence.

Surely a prison administrator has an interest in maintaining security as well as promoting efficiency within the system. The danger arises, however, when an overemphasis on efficiency may lead to a denial of fair procedure and an imposition of arbitrariness, which can only serve to embitter inmates.[59] The Court declared that their conclusions were "not graven in stone," and that a different holding might be warranted by future internal changes in the prison disciplinary system.[60] The wait for the internally initiated changes may be a long one indeed.

[57] Lee v. Washington, 390 U.S. 333 (1968).

[58] *See* note 45 *supra.*

[59] *See* Sands v. Wainwright, 357 F. Supp. 1062, 1094 (M.D. Fla. 1973), *vacated and remanded for lack of a three judge court,* 491 F.2d 417 (1973), where it was stated that the Constitution follows an inmate into prison. The court pointed out that due process rights such as confrontation and cross-examination become vital in administrative proceedings where ordinary rules of procedure are relaxed.

[60] 418 U.S. at —.