

# The Burger Court Opinion Writing Database

## *Murch v. Mottram*

409 U.S. 41 (1972)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

October 20, 1972

Re: No. 72-55 - Murch v. Mottram

Dear Bill:

Please join me in your per curiam.

Regards,

W.B.

Mr. Justice Rehnquist

cc: The Conference

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zation of the Hoover Institution Archives.

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

October 24, 1972

Dear Bill:

In No. 72-55 - Murch v. Mottram,  
please join me in your dissent.

W. O. D.

Mr. Justice Brennan

cc: Conference

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To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
✓ Mr. Justice Rehnquist

1st DRAFT

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

Submitted: 10-24-72

Recirculated: \_\_\_\_\_

FRANK F. MURCH ET AL. v. ROBERT H. MOTTRAM

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 72-55. Decided October —, 1972

MR. JUSTICE BRENNAN, dissenting.

I dissent and would affirm because in my view the  
Court of Appeals reached the correct result on the facts  
presented.

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To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

2nd DRAFT

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

Circulated: \_\_\_\_\_

FRANK F. MURCH ET AL. v. ROBERT H. MOTTRAM Recirculated: 10/24/72

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 72-55. Decided October —, 1972

MR. JUSTICE BRENNAN, with whom MR. JUSTICE  
DOUGLAS concurs, dissenting.

I dissent and would affirm because in my view the  
Court of Appeals reached the correct result on the facts  
presented.

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To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Black  
Mr. Justice Powell  
Mr. Justice Rehnquist

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Justice Brennan, J.

FRANK F. MURCH ET AL. v. ROBERT H. MOTTRAM

Circulated: \_\_\_\_\_

Recirculated: 10/1/72

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 72-55. Decided October —, 1972

MR. JUSTICE BRENNAN, with whom MR. JUSTICE  
DOUGLAS and MR. JUSTICE MARSHALL concur, dissenting.

I dissent and would affirm because in my view the  
Court of Appeals reached the correct result on the facts  
presented.

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

*NOTE  
I made a  
note - if you  
wish to keep  
these in it -  
even the unangled*

October 27, 1972

Re: No. 72-55, Murch v. Mottram

Dear Bill,

I am glad to join the Per Curiam  
you have circulated in this case.

Sincerely yours,

*P.S.*

Mr. Justice Rehnquist

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

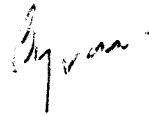
October 20, 1972

Re: No. 72-55 - Murch v. Mottram

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

Copies to Conference

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

October 30, 1972

*Ad. file*

Re: No. 72-55 - Murch v. Mottram

Dear Bill:

Please join me in your dissent.

Sincerely,

*Th*

T.M.

Mr. Justice Brennan

cc: Conference

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

October 19, 1972

Re: No. 72-55 - Murch v. Mottram

Dear Bill:

Please join me in your proposed Per Curiam  
circulated October 19.

Sincerely,

H. A. B.

Mr. Justice Rehnquist

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

*W.F.P.  
2/2/72*

October 19, 1972

Re: No. 72-55     Frank F. Murch et al v.  
                               Robert H. Mottram

Dear Bill:

Please join me.

Sincerely,

*L. Lewis*

Mr. Justice Rehnquist

cc: Conference

*Bill - your PC in conference*

Stanford, California 94305-5010

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2nd DRAFT

# SUPREME COURT OF THE UNITED STATES

FRANK F. MURCH ET AL. v. ROBERT H. MOTTRAM

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 72-55. Decided October —, 1972

PER CURIAM.

Respondent Mottram sought habeas corpus from the United States District Court in Maine, challenging on various constitutional grounds the validity of a criminal conviction obtained in the Maine state courts. After a full evidentiary hearing, the District Court denied relief both on the ground that respondent had deliberately bypassed state procedures established for the post-conviction adjudication of such claims, and on the ground that the constitutional claims were without merit. *Mottram v. Murch*, 330 F. Supp. 51 (Me. 1971). The Court of Appeals for the First Circuit reversed, holding that respondent had not waived his right to raise the constitutional issues, and ruling in favor of respondent on one such issue. *Murch v. Mottram*, — F. 2d — (CA1 1972). We have concluded that, under settled principles governing the availability of federal habeas for state prisoners, the finding of the District Court as to waiver must be sustained, and we therefore reverse the judgment of the Court of Appeals.

Mottram was convicted in 1960 of larceny and as an habitual offender, and these convictions were upheld on appeal. *State v. Mottram*, 158 Me. 325, 184 A. 2d 225 (1962). On that appeal Mottram did not litigate the constitutional issue upon which the Court of Appeals based its decision. Respondent was paroled in 1963, but parole was revoked in 1965. Following that revocation, Mottram brought in state court the action which later became the main focus of concern of the Court of Appeals and the District Court. The original petition

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3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

FRANK F. MURCH ET AL. v. ROBERT H. MOTTRAM

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 72-55. Decided October —, 1972

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