The Burger Court Opinion Writing Database

Ingraham v. Wright

430 U.S. 651 (1977)

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

April 13, 1977

Dear Lewis:

Re: 75-6527 Ingraham v. Wright

Even though I have not fully digested all of the material you and Byron have produced in this difficult case, I will be joining you. You can treat this as a "probable kill."

Regards,

WEB

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 28, 1977

RE: No. 76-6527 James Ingraham, etc. et al. v. Wright

Dear Byron:

Please join me.

Sincerely,

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

November 16, 1976

75-6527 Ingraham v Wright

Dear Chief,

Upon the understanding that you have now assigned the opinion in No. 75-6527, Ingraham v. Wright, to Lewis, I have reassigned the opinion in No. 75-1262, United States v. County of Fresno, to Byron.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

Ingraham 75-6527

Supreme Court of the United States

Memorandum

3/16, 1977

Lewis -

These changes are all highly satisfactory to me. If you incorporate them, I shall have no problem whatever in joining your opinion.

P.S.

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 17, 1977

Re: No. 75-6527, Ingraham v. Wright

Dear Lewis,

I am glad to join your excellent opinion for the Court in this case.

Sincerely yours,

P.S.

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 16, 1976

Dear Chief:

I appreciate having the opportunity to see the light, but my notes show that I was in the minority on the Eighth Amendment point in No. 75-6527, Ingraham v. Wright. Someone else should perhaps take this on.

Sincerely,

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 14, 1977

MEMORANDUM TO THE CONFERENCE

Re: No. 75-6527 - Ingraham v. Wright

In due course, I shall file a dissent in this case.

B.R.W.

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: 3-25-77

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-6527

James Ingraham, by his Mother and Next Friend, Eloise Ingraham, et al., Petitioners, *v.* Willie J. Wright, I, et al.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[March —, 1977]

MR. JUSTICE WHITE, dissenting.

Today the Court holds that corporal punishment in public schools, no matter how severe, can never be the subject of the protections afforded by the Eighth Amendment. It also holds that students in the public school systems are not constitutionally entitled to a hearing of any sort before beatings can be inflicted on them. Because I believe that these holdings are inconsistent with the prior decisions of this Court and are contrary to a reasoned analysis of the constitutional provisions involved, I respectfully dissent.

I

A

The Eighth Amendment places a flat prohibition against the infliction of "cruel and unusual punishments." This reflects a societal judgment that there are some punishments that are so barbaric and inhumane that we will not permit them to be imposed on anyone, no matter how opprobrious the offense. See *Robinson* v. *California*, 370 U. S. 660, 676 (1962) (Douglas, J., concurring). If there are some punishments that are so barbaric that they may not be imposed for the commission of crimes, designated by our social system as the most thoroughly reprehensible acts an individual can commit,

JV

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 1, 9-18

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: _____

Recirculated: 4-14-77

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-6527

James Ingraham, by his Mother and Next Friend, Eloise Ingraham, et al., Petitioners, *v.* Willie J. Wright, I, et al. | On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[March —, 1977]

MR. JUSTICE WHITE, with whom MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL join, dissenting.

Today the Court holds that corporal punishment in public schools, no matter how severe, can never be the subject of the protections afforded by the Eighth Amendment. It also holds that students in the public school systems are not constitutionally entitled to a hearing of any sort before beatings can be inflicted on them. Because I believe that these holdings are inconsistent with the prior decisions of this Court and are contrary to a reasoned analysis of the constitutional provisions involved, I respectfully dissent.

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pp 9, 14, 16–17

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: _____

Recirculated: 4-15-77

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75–6527

James Ingraham, by his Mother and Next Friend, Eloise Ingraham, et al., Petitioners, *v.* Willie J. Wright, I, et al. | On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[March —, 1977]

MR. JUSTICE WHITE, with whom MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL join, dissenting.

Today the Court holds that corporal punishment in public schools, no matter how severe, can never be the subject of the protections afforded by the Eighth Amendment. It also holds that students in the public school systems are not constitutionally entitled to a hearing of any sort before beatings can be inflicted on them. Because I believe that these holdings are inconsistent with the prior decisions of this Court and are contrary to a reasoned analysis of the constitutional provisions involved, I respectfully dissent.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 28, 1977

Re: No. 75-6527, Ingraham v. Wright

Dear Byron:

Please join me.

Sincerely,

T. M.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 11, 1977

Re: No. 75-6527 - Ingraham v. Wright

Dear Lewis:

Please join me in your recirculation of April 8.

Sincerely,

H. A. B.

Mr. Justice Powell

cc: The Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

2nd DRAFT

From: Mr. Justice Powell

Circulated: MAR 12 1977

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 75–6527

James Ingraham, by his Mother and Next Friend, Eloise Ingraham, et al., Petitioners, *v.* Willie J. Wright, I, et al.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[March —, 1977]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case presents questions concerning the use of corporal punishment in public schools: first, whether the paddling of students as a means of maintaining school discipline constitutes cruel and unusual punishment in violation of the Eighth Amendment; and second, to the extent that paddling is constitutionally permissible, whether the Due Process Clause of the Fourteenth Amendment requires the schools to supplement traditional common law safeguards with prior notice and an opportunity to be heard.

I

Petitioners James Ingraham and Roosevelt Andrews filed the complaint in this case on January 7, 1971, in the United States District Court for the District of Florida.[1] At the time both were enrolled in the Charles R. Drew Junior High School in Dade County, Fla., Ingraham in the eighth grade and Andrews in the ninth. The complaint contained three counts, each alleging a separate cause of action for depriva-

[1] As Ingraham and Andrews were minors, the complaint was filed in the names of Eloise Ingraham, James' mother, and Willie Everett, Roosevelt's father.

pp. 1, 18, 20, 21, 23-29.

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: _____

Recirculated: MAR 17 1977

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-6527

James Ingraham, by his Mother and Next Friend, Eloise Ingraham, et al., Petitioners, *v.* Willie J. Wright, I, et al.	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[March —, 1977]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case presents questions concerning the use of corporal punishment in public schools: first, whether the paddling of students as a means of maintaining school discipline constitutes cruel and unusual punishment in violation of the Eighth Amendment; and second, to the extent that paddling is constitutionally permissible, whether the Due Process Clause of the Fourteenth Amendment requires prior notice and an opportunity to be heard.

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Petitioners James Ingraham and Roosevelt Andrews filed the complaint in this case on January 7, 1971, in the United States District Court for the District of Florida.[1] At the time both were enrolled in the Charles R. Drew Junior High School in Dade County, Fla., Ingraham in the eighth grade and Andrews in the ninth. The complaint contained three counts, each alleging a separate cause of action for depriva-

[1] As Ingraham and Andrews were minors, the complaint was filed in the names of Eloise Ingraham, James' mother, and Willie Everett, Roosevelt's father.

March 30, 1977

Ingraham

Dear Potter:

I enclose two copies of the pages on which I propose changes - mostly by the addition of footnotes - in light of Byron's opinion.

As you will note, after having the printer set my initial changes, I have done some further editing.

Sincerely,

Mr. Justice Stewart

lfp/ss

8, 15-21, 25-27, 31

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: _____

Recirculated: MAR 31 1977

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-6527

James Ingraham, by his Mother and Next Friend, Eloise Ingraham, et al., Petitioners, *v.* Willie J. Wright, I, et al. | On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[March —, 1977]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case presents questions concerning the use of corporal punishment in public schools: first, whether the paddling of students as a means of maintaining school discipline constitutes cruel and unusual punishment in violation of the Eighth Amendment; and second, to the extent that paddling is constitutionally permissible, whether the Due Process Clause of the Fourteenth Amendment requires prior notice and an opportunity to be heard.

I

Petitioners James Ingraham and Roosevelt Andrews filed the complaint in this case on January 7, 1971, in the United States District Court for the District of Florida.[1] At the time both were enrolled in the Charles R. Drew Junior High School in Dade County, Fla., Ingraham in the eighth grade and Andrews in the ninth. The complaint contained three counts, each alleging a separate cause of action for depriva-

[1] As Ingraham and Andrews were minors, the complaint was filed in the names of Eloise Ingraham, James' mother, and Willie Everett, Roosevelt's father.

April 6, 1977

No. 75-6527 Ingraham v. Wright

Dear Bill:

Thank you for your thoughtful letter of April 1.

I am happy to try to accommodate your suggestions, and enclose pages 21 and 22 of my 5th draft. I have indicated on these changes prompted by your letter.

I have taken some liberty with the language but believe the substance accords with your wishes. I will not circulate again until I hear from you.

Sincerely,

Mr. Justice Rehnquist

lfp/ss
Enc.

pp. 21-23, 27

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: _____

Recirculated: APR 8 1977

6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-6527

James Ingraham, by his Mother and Next Friend, Eloise Ingraham, et al., Petitioners, *v.* Willie J. Wright, I, et al. | On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[March —, 1977]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case presents questions concerning the use of corporal punishment in public schools: first, whether the paddling of students as a means of maintaining school discipline constitutes cruel and unusual punishment in violation of the Eighth Amendment; and second, to the extent that paddling is constitutionally permissible, whether the Due Process Clause of the Fourteenth Amendment requires prior notice and an opportunity to be heard.

I

Petitioners James Ingraham and Roosevelt Andrews filed the complaint in this case on January 7, 1971, in the United States District Court for the District of Florida.[1] At the time both were enrolled in the Charles R. Drew Junior High School in Dade County, Fla., Ingraham in the eighth grade and Andrews in the ninth. The complaint contained three counts, each alleging a separate cause of action for depriva-

[1] As Ingraham and Andrews were minors, the complaint was filed in the names of Eloise Ingraham, James' mother, and Willie Everett, Roosevelt's father.

Stylistic Changes Throughout.
18, 25-26, 31

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: APR 15 1977

Recirculated: _____

8th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-6527

James Ingraham, by his Mother and Next Friend, Eloise Ingraham, et al., Petitioners, *v.* Willie J. Wright, I, et al.	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[April —, 1977]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case presents questions concerning the use of corporal punishment in public schools: first, whether the paddling of students as a means of maintaining school discipline constitutes cruel and unusual punishment in violation of the Eighth Amendment; and second, to the extent that paddling is constitutionally permissible, whether the Due Process Clause of the Fourteenth Amendment requires prior notice and an opportunity to be heard.

I

Petitioners James Ingraham and Roosevelt Andrews filed the complaint in this case on January 7, 1971, in the United States District Court for the District of Florida.[1] At the time both were enrolled in the Charles R. Drew Junior High School in Dade County, Fla., Ingraham in the eighth grade and Andrews in the ninth. The complaint contained three counts, each alleging a separate cause of action for depriva-

[1] As Ingraham and Andrews were minors, the complaint was filed in the names of Eloise Ingraham, James' mother, and Willie Everett, Roosevelt's father.

April 22, 1977

Sims v. Waln, No. 76-374, heretofore held
for Ingraham v. Wright, No. 75-6527

MEMORANDUM TO THE CONFERENCE:

No. 76-374, Sims v. Waln, is a § 1983 action brought by a 16-year old junior high school student against her principal and his assistant. The school, located in Springfield, Ohio, had a policy permitting paddling of students for disciplinary infractions up to a maximum of three "cracks." Ohio law in effect at the time permitted the infliction of reasonable corporal punishment in the public schools, "whenever such punishment is reasonably necessary in order to preserve discipline. . . ." Ohio Rev. Code § 3319.41. The petitioner was subjected to two "cracks" on one occasion, and on another was suspended for resisting similar punishment. After a full trial, the District Court denied relief on the ground that petitioner's federal claims were insubstantial. The Sixth Circuit affirmed.

Petitioner makes three claims: (i) that paddling, even if "reasonable," in a per se cruel and unusual punishment under the Eighth Amendment; (ii) that the imposition of paddling without prior notice and an opportunity to be heard violates the Due Process Clause of the Fourteenth Amendment; and (iii) that the imposition of paddling regardless of parental instructions violates parental rights protected by the Fourteenth Amendment. Our decision in Ingraham v. Wright, No. 75-6527, forecloses the first two claims. The third was resolved against petitioner in our summary affirmance in Baker v. Owen, 423 U.S. 907, aff'g 395 F. Supp. 294 (MDNC 1975); see Ingraham, slip op., at 10 & n. 22. I therefore will vote to deny.

L.F.P., Jr.

ss

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 25, 1977

Re: No. 75-6527 Ingraham v. Wright

Dear Lewis:

I thought I would try by this letter to indicate my reaction to your opinion in this case, and am sending a copy of it to Potter since you told me during our phone conversation that some of the changes which appear in the latest draft have come from him.

My vote at Conference was to affirm, which is the result which you reach, but I also indicated that I felt there was no protected liberty or property interest that could be invoked by the school child. I still remain of that opinion, but am not intractable. My only hesitancy with your opinion relates to the holding that there is a protected liberty interest; I think your treatment of its Eighth Amendment issue and the due process issue is admirable.

Since you and Potter both agree that there is a protected liberty interest in the school child, I am confident that my view to the contrary would not pick up a majority of the Court. This, as I see it, leaves me with two alternatives: (a) to suggest some changes to the third draft of your opinion which would make me happier with its treatment of the liberty interest and allow me to join in the conclusion that there is a liberty interest in this case, or (b) to concur in all of your opinion except part IV A, and to write separately to explain why I do not believe there is a protected liberty interest involved.

I will not in the absence of a request from you further amplify the sort of changes I would like to see in part IV A

of your opinion which might convert me to it, other than to say that I would like to see a more explicit and circumscribed approach to the question of why such an interest is held to exist. It seems to me that starting with Roth and Sinderman, and continuing with Paul v. Davis and Meachum v. Fano last year, the Court has staked out a very sensible position to the effect that before the question of whether a particular person received "due process" from the state is reached, the person must first show that he was deprived of either life, liberty, or property. In this sense, I of course thoroughly agree with the second sentence in section IV A on page 19, and it might well be that just some flushing out of these ideas would make the treatment palatable to me. The reason I do not advance any specific suggestions is that I fear any changes in this direction which I suggest might lessen your chance of getting John Stevens' vote, who has written to you that he might join your opinion. John dissented in Meachum last year, and, as I read his dissent, took the position that any "grievous loss", presumably subjectively measured, was sufficient to amount to a liberty or property interest under the due process clause.

If you are able to get five votes including your own for your present opinion without me, I will concur in everything except part IV A of the opinion. Otherwise, I would like to see some changes in IV A along the lines that I have preliminarily suggested herein. I will circulate none of this to the Conference generally until further communicating with you, and cannot imagine any conceivable circumstances under which I would join a dissent which would reverse the holding of the Fifth Circuit. Therefore, even though your opinion in its present draft does not command an absolute majority of the Court, you can count on mine as a vote to affirm the Fifth Circuit.

Sincerely,

Mr. Justice Powell

Copy to Mr. Justice Stewart

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 1, 1977

Re: No. 75-6527 - Ingraham v. Wright

Dear Lewis:

I think my vote at Conference was to the effect that there was no protected liberty interest involved in this case. Were I to adhere to that vote, of course, I could not join Part IV-A of your presently circulating draft opinion. I do very much agree with all of the rest of the opinion, however, and I think you have made out a stronger argument for the existence of a protected liberty interest than I thought could be done. If you are willing to make what seem to me some minor changes in Part IV-A, I think I could join the opinion.

I have thoroughly approved of the Court's recent practice in insisting on careful inquiry as to whether, in procedural due process cases, there is any protected liberty or property interest before deciding what process was due. The Chief's opinion in Morrisey v. Brewer and Potter's opinions in Roth v. Board of Regents and Perry v. Sindermann used this approach. Your IV-A has that element too, and I thoroughly approve its reference to Byron's opinion in Meachum v. Fano and to that case's observation that not every "grievous loss" is a deprivation of liberty.

I think an important part of the analysis in Meachum . was the inquiry into whether state law had created a liberty interest. As I see it, the reason we need not undertake that analysis in this case is that, as your opinion points out, freedom from physical restraint and corporal punishment may be fairly viewed as being historically included in the liberty protected by the Due Process Clause. The first part of our opinion in Meachum proceeded on this basis. To indicate clearly that the opinion in this case does not cut back on Meachum, I would propose the addition of a footnote along the following lines:

> "Since freedom from bodily restraint and corporal punishment is certainly 'liberty' within the meaning of the Due Process Clause, we need not inquire, as we had to do in Meachum v. Fano, whether state law has provided a liberty interest."

I also have the feeling that the reasons for concluding that there is a liberty interest could be more tightly articulated. I am prepared to agree that the combination of factors you set out on page 21 are sufficient to constitute a protected liberty interest under the Fourteenth Amendment: School authorities, acting under color of state law, punish a child in their custody by deliberately restraining the child and inflicting appreciable pain. I would want to be as certain as we can that this holding did not open up the door to constitutional claims such as those based upon a teacher's decision to require a pupil to remain after school as a form of punishment, or upon a teacher's negligently slamming the door on the toe of a student. These students, of course, would be just as much in the state's "custody" as was Ingraham in this case.

I think the key to this distinction is already present in Part IV-A where you use the word "punish", because to me, at least, that word connotes a deliberate decision to inflict a penalty on a particular individual who is believed to have broken a rule or to have otherwise misbehaved. This is the sort of official action in which it is sensible to think that the Fourteenth Amendment requires at least consideration of what process is due, whereas in the case of any negligent action on the part of the officials which simply results in bodily injury the notion of procedural protection simply doesn't make sense.

I would favor a revision in the last sentence of Part IV-A substantially as follows, thereby making explicit which seems to me already implicit in that part of your opinion:

> "But at least where school authorities, acting under color of state law, deliberately decide to punish a particular child believed to warrant such action, by restraining the child and inflicting appreciable physical pain, we hold that Fourteenth Amendment liberty interests are implicated."

I should add that in footnote 37 on page 20 you cite Professor Monaghan's draft article, "Of 'Liberty' and 'Property'" to be published in the Cornell Law Journal. I do not believe I could join the opinion if that citation is intended as a favorable reference to that article, as a whole. The article is quite critical of Paul v. Davis, which I wrote, and Meachum v. Fano, which I joined (and both of which you joined). I have no objection to the quotation from the article in footnote 43 on page 25.

Sincerely,

WWR

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 8, 1977

Re: No. 75-6527 - Ingraham v. Wright

Dear Lewis:

Please join me.

Sincerely,

WHR

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 15, 1977

Re: 75-6527 - Ingraham v. Wright

Dear Lewis:

Although I find your due process discussion most persuasive and probably will join it, I will wait for Byron's dissent before coming to a final conclusion.

Respectfully,

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 14, 1977

Re: 75-6527 - Ingraham v. Wright

Dear Lewis:

Although I still have high regard for your analysis in Part IVB, after rereading both opinions, I have decided to join Byron's entire dissent. I have also written a very brief additional comment which I hope to circulate promptly.

Respectfully,

John

Mr. Justice Powell

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 14, 1977

Re: 75-6527 - Ingraham v. Wright

Dear Byron:

Please join me in your dissent. I have also written a few additional paragraphs which are completely consistent with what you have said, and which I will circulate promptly.

Respectfully,

John

Mr. Justice White

Copies to the Conference

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

From: Mr. Justice Stevens

Circulated: 4/14/77

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-6527

James Ingraham, by his Mother and Next Friend, Eloise Ingraham, et al., Petitioners, *v.* Willie J. Wright, I, et al.	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[April —, 1977]

MR. JUSTICE STEVENS, dissenting.

MR. JUSTICE WHITE's analysis of the Eighth Amendment issue is, I believe, unanswerable. I am also persuaded that his analysis of the procedural due process issue is correct. Notwithstanding my disagreement with the Court's holding on the latter question, my respect for MR. JUSTICE POWELL's reasoning in Part IV–B of his opinion for the Court prompts these comments.

The constitutional prohibition of state deprivations of life, liberty, or property without due process of law does not, by its express language, require that a hearing be provided *before* any deprivation may occur. To be sure, the timing of the process may be a critical element in determining its adequacy—that is, in deciding what process is due in a particular context. Generally, adequate notice and a fair opportunity to be heard in advance of any deprivation of a constitutionally protected interest are essential. The Court has recognized, however, that the wording of the command that there shall be no deprivation "without" due process of law is consistent with the conclusion that a postdeprivation remedy is sometimes constitutionally sufficient.[1]

[1] *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U. S. 663; *Fuentes* v. *Shevin*, 407 U. S. 67, 82, 90–92; *Ewing* v. *Mytinger & Casselberry*, 339