

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

May 20, 1976

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

No. 75-44 Burrell v. McCray

Dear Chief:

As the sun is almost down (I promised to let you know by then), I write to say that I will "join four" in a DIG of the above case.

I do this with reluctance, and - in all candor - only because I regard this disposition as preferable to a formal Court opinion reaffirming a shaky rule that in my view is not in the best interest of anyone: the prisoners, the courts, our federal system, or the public.

The rule exists almost by virtue of default. It cannot be supported by the history or purpose of § 1983, and the precedents which support it represent the accretion of several PC opinions none predicated upon argument and full consideration by the Court.

I voice the above views as an explanation of why I am willing to DIG this case when, under normal standards, it is difficult to justify such action. But given the choice of a Court opinion enshrining what I believe to be singularly bad law, or DIG'ing the case without a more conventional reason, I reluctantly come down in favor of the latter.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference