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MAY 23 1977

MAY 20 1977

*Charlie  
I have  
not  
replied  
6/20*

May 19, 1977

Honorable Lewis F. Powell, Jr.  
Associate Justice  
United States Supreme Court  
Washington, D.C. 20543

Dear Mr. Justice:

Thank you for your kind note on Ingraham v. Wright. I greatly appreciate it. I refrained from responding earlier not because of my lack of appreciation, but because I recognize how enormously busy you are at this time of the year. Even a note seemed to me to be an intrusion. Since I finally received a reprint of my Cornell article, I thought I would send it along to you with this brief note.

I completely agree with your opinion in Ingraham, and I would go one step further. I do not think it too late to construct a theory of section 1983 so to include all procedural due process claims with respect to constitutionally protected interests, but only certain substantive claims. I would then hold that any substantive constitutional right to be free from grossly excessive discipline is not included in section 1983. That would shut these claims out of the federal courts. This reasoning might, I recognize, cost the vote of Justice Stewart, but it might pick up Justice Stephens.

The source of right your court found in Bounds v. Smith is a mystery to me. How it can be fairly inferred from the constitutional text structure or history, as is required by your splendid opinion in the San Antonio case?

I shall write again when the term is over.

Very best wishes,

*Henry*

Henry Monaghan