

MEMORANDUM

TO: Charlie Ames ✓ DATE: June 21, 1977
FROM: Lewis F. Powell, Jr.

that a theory - that Ingraham v. Wright a principled way -

Attached is a copy of Professor Monaghan's letter of May 19, that you have seen previously.

I am interested in the second paragraph of the letter, and - if you can find the time before departing my Chambers - I would appreciate your comments on Professor Monaghan's suggestion. I must say that it is a bit too cryptic for me to be sure what he has in mind.

He would include all procedural due process claims with respect to constitutionally protected interests. This, of course, is the present rule. Our arguments are addressed to whether there exists such a protected interest.

Professor Monaghan would limit 1983 to "certain substantive claims", but it is not clear how he would identify these - unless he would rely (as we did in Ingraham) on the existence of an adequate common law remedy.

I am not anxious to lead a crusade to cut back substantially on § 1983 substantive claims where there is any rational basis

MAY 25 1977

Boston University

for believing Congress intended to embrace them in the
 federal court jurisdiction it created. But I would like to
 find a theory - that could be applied in a principled way -
 that would not allow a prison inmate who claims his package of
 cigarettes was taken by the warden to assert a federal claim
 (we have had such a case).

We could, of course, put 1983 back in some reasonable
 perspective if Monroe v. Pape had not been given such expansive
 interpretation.

LFP
 L.F.P., Jr.

ss