**[Burrell v. McCray Oral Argument Notes 04-27-76 LFP178F300009-11][[1]](#footnote-1)**

**[1st Page – Image LFP178F300009]**

75-44 burrell v. mccray Cert to CA 4 (Maryland) Argued 4/27/76

Q – Whether a prisoner must exhaust administrative remedies before instituting a 1983 suit.

**[Second Page – Image LFP178F300010]**

Burch (Attorney General of Maryland)

Three cases – consolidated.

Only McCray case was decided on merits. (He has filed 55 actions! None of other *petitions[[2]](#footnote-2)* resulted in any relief. The Attorney General said these 55 suits have cost Maryland some $350,000).

The Corrections *Review* Commission could have granted the relief requested as declaratory and injunction relief. (Counsel for McCray says only damages were requested).

For 90 years – from enactment of 1983 until Monroe – there was requirement of exhaustion.

Argues that since state remedies must be exhausted before Federal Habeas Corpus, logic requires exhaustion before bringing less fundamental claims into federal court under 1983.

Maryland Commission is independent body that conducts *disciplinary[[3]](#footnote-3)* hearings.

**[Third Page – Image LFP178F300011]**

Burch (continued)

Judicial review is available from decisions of Commission – which go first to the Secretary of the Corrections Board (?)

(McCray was confined in solitary without clothes. It was feared that he would use clothes to hang himself)

Court of Appeals

Morgan (for Respondents)

Administrative remedy is not adequate

Under statute, Commission has no enforcement authority. It makes recommendations to Secretary who has power to take action as recommended.

1. All footnotes have been added by the editor. Interpretations of which the editor is particularly uncertain are indicated in italics and alternative interpretations may be indicated in footnotes. Items in small caps were printed or typed in the original rather than handwritten. [↑](#footnote-ref-1)
2. This word could also be “petitioners.” [↑](#footnote-ref-2)
3. “D/P” which I interpret as disciplinary. [↑](#footnote-ref-3)