In the

Supreme Court of the United States

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James Ingraham, by his mother and next friend, Eloise Ingraham, et al.,

Petitioners,

v. No. 75-6527

Willie J. Wright, I, et al.,

Respondents.

Washington, D. C.
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v.	:	No. 75-6527
WILLIE J. WRIGHT, I, et al., Respondents.	:	

Washington, D. C.,

Tuesday, November 2, 1976.

The above-entitled matter came on for argument at 2:32 o'clock, p.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM J. BRENNA, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice
JOHN PAUL STEVENS, Associate Justice

APPEARANCES:

BRUCE S. ROGOW, ESQ., Nova University Center for the Study of Law, 3301 College Avenue, Fort Lauderdale, Florida, 33314; on behalf of the Petitioners.

FRANK A. HOWARD, JR., ESQ., 1410 N.E. Second Avenue, Miami, Florida 33132; on behalf of the Respondents.

C O N T E N T S

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in 75-6527, Ingraham against Wright.

Mr. Rogow, you may proceed whenever you're ready.

ORAL ARGUMENT OF BRUCE S. ROGOW, ESQ.,

ON BEHALF OF THE PETITIONERS

MR. ROGOW: Mr. Chief Justice, and may it please the Court:

There are three issues in this case.

The first issue is whether or not the Eighth Amendment's cruel and unusual punishment clause has any application to public school students who are beaten by their teachers or principals.

The United States Court of Appeals for the Fifth Circuit held, in effect, that no matter how brutal, how severe, how excessive a beating is inflicted upon public school students, they may seek no relief under the Eighth Amendment. That is the first issue.

The second issue is: If the Eighth Amendment does apply, as we submit it does, whether or not the facts of this case show that these students' Eighth Amendment rights have been violated.

And the third issue, which is separate and distinct, is: Whether or not any corporal punishment inflicted by an instrument designed to cause bodily injury, whether or not that punishment must be preceded by some opportunity to be heard

under the Fourteenth Amendment's due process clause. The Court of Appeals decision was that there was no need for such a hearing.

QUESTION: Mr. Rogow, are you going to discuss those point by point?

MR. ROGOW: Yes, sir, I will, Mr. Justice Rehnquist. In fact, I turn now to the Eighth Amendment argument.

The effect of the Court of Appeals decision, as I mentioned, is to give carte blanche to teachers and principals to punish corporally, as severely, as excessively as they may do, and there will be no recourse under the Eighth Amendment.

The decision seems to focus on the issue of whether or not the punishment is imposed in a criminal setting or a civil setting, and the Court of Appeals held that the Eighth Amendment only applies in the criminal context.

We believe that decision misses the point of the Eighth Amendment. The focus of the Eighth Amendment is upon punishment, it is not upon who delivers the punishment.

The original purpose of --

QUESTION: You say it has no focus on who delivers it if -- if s stranger walks up to you on the street and hits you over the head with a club, that's probably some punishment, but does the Eighth Amendment apply there?

MR. ROGOW: No, it does not, Mr. Chief Justice, because --

QUESTION: You are talking about the authority of government in some way, aren't you?

MR. ROGOW: Exactly. Punishment imposed under color of State law. Which are the facts of this case, and which is the kind of punishment we're talking about here.

The original purpose of the Eighth Amendment was to preclude the barbaric kinds of punishments which were known in the Fifteenth, Sixteenth, Seventeenth, Eighteenth Centuries in England and on the Continent.

And, to be sure, the Drafters looked back -- looked at history and saw terrible punishments imposed in a criminal context, generally; and that is what they sought to ban in the eighth Amendment, because that is what they saw in the past. But that does not mean that there was to be no ban on punishments imposed by other people, acting under color of State law, if those punishments were excessive and severe.

QUESTION: Mr. Rogow, you were here this morning, weren't you, during the argument of that fight in the Columbus bar case?

MR. ROGOW: Yes, I was, Mr. Justice.

QUESTION: You heard some of the questioning there. Supposing the policeman in that case had simply pistol-whipped one of the plaintiffs there, would you say that could be a cruel and unusual punishment?

MR. ROGOW: If he had done it as a summary punishment:

arresting the person, taking him into custody and then summarily punishing him, depriving him of a right to be tried, then I could say that would be a violation of a due process right, but not cruel and unusual punishment.

QUESTION: Why would you say it wasn't a cruel and unusual punishment?

MR. ROGOW: I would say it wasn't a cruel and unusual punishment because -- it's a difficult question, Mr. Justice Rehnquist -- probably because it has not been addressed in that context. Generally there is a clear constitutional right that has been violated, but, as I reflect on it, I think that could begin to give rise to a cruel and unusual punishment. The only withdrawing I might do from that position might be that that kind of punishment is not authorized at all by law, where the kind of punishment we're talking about here is, at the outset, authorized by law; and then it's exceeded.

QUESTION: Mr. Rogow, you admit that during the time of the adoption of the Eighth Amendment that corporal punishment was the order of the day?

MR. ROGOW: Yes, it was, in a limited context, reasonable corporal punishment.

QUESTION: They even had it in criminal by whipping at the stake, didn't they?

MR. ROGOW: They did. And this Court has recognized, though, that the Eighth Amendment is a dynamic evolving

concept, and what may have been tolerated at the time of the adoption of the Eighth Amendment hasn't been tolerated as we have progressed in our society standards of decency and civilized notions have progressed.

QUESTION: And what about the -- do you take the position that all corporal punishment is violation?

MR. ROGOW: No, we do not, Mr. Justice Marshall, not in --

QUESTION: You're only arguing this case?

MR. ROGOW: We're only arguing this case, and we're saying that reasonable corporal punishment will not be a violation of the Eighth Amendment.

We are saying that physical corporal punishment imposed by an instrument will have to be preceded by an opportunity for a hearing. That is our Fourteenth Amendment argument, which is separate and distinct from this.

But we are not seeking to outlaw all corporal punishment in a public school context, Mr. Justice Marshall.

QUESTION: And what would be the issue at the hearing if there were one?

MR. ROGOW: The issue would be, at that hearing, whether or not the student did in fact commit the offense for which he is being punished.

QUESTION: And also even if he did, whether or not corporal punishment would be called for?

MR. ROGOW: Certainly the kind of punishment that ought to be inflicted, yes, Mr. Justice Brennan.

QUESTION: What constitutional interest, under your Fourteenth Amendment argument, is the student deprived of without due process of law if such a hearing is not held?

MR. ROGOW: He is deprived of a liberty interest, Mr. Justice Rehnquist, a liberty interest that is drawn, really, from nearly all the Amendments of the Constitution.

QUESTION: All twenty-six?

MR. ROGOW: No, I'm sorry. At least the first Ten, Mr. Justice Rehnquist.

The liberty interest, the right to be treated with human dignity is at least an interest in liberty.

QUESTION: Where is the right to be treated with human dignity -- where is that stated in the Constitution?

MR. ROGOW: It is not specifically stated.

QUESTION: It's among the penumbras.

MR. ROGOW: It's among the penumbras, and included among the penumbras are -- and let me list these rights that have been violated, that we think make up the constellation of factors involving liberty. The right to be free from bodily restraint, and a student is restrained; the right to be free from intrusion --

QUESTION: Now, what source -- will you name the Amendment which is the source?

MR. ROGOW: I can't name specific amendments. I can come to the Fourth Amendment, perhaps, for the physical kind of intrusion that's involved. But this Court has never required a specific Amendment to be named when one is talking about liberty, because the concept of liberty is broad; it includes an awful lot of privileges that are essential to the practice of liberty by free people and free children.

QUESTION: Your idea of liberty, then, is just what any one person thinks of it?

MR. ROGOW: No, it is not, Mr. Justice Marshall.

QUESTION: Or what one out of five think of it?

MR. ROGOW: It may be what --

QUESTION: Is that what you think liberty is?

MR. ROGOW: No, I think liberty is something that --

QUESTION: And you don't have to pinpoint it?

MR. ROGOW: I think we do have to pinpoint it, and I'm attempting to pinpoint it by looking at a host of factors, which this Court has looked at many times in deciding whether or not there is or is not a liberty interest.

The freedom from bodily restraint, from bodily intrusion, from officers acting under color of State law -- beatings, in effect -- the freedom from being stigmatized, ridiculed, psychologically harmed, having one's privacy invaded, having one's reputation, honor and integrity invaded. When the government does that, acting under color of State law, we submit

that those things constitute a deprivation of liberty.

But that, Mr. Justice Marshall, is my due process argument. And I would like to get back to my Eighth Amendment argument, and then address these due process issues once again.

The Court has recognized in the Eighth Amendment concept -- because we think this is important -- that a principle to be vital must be capable of wider application than the mischief which gave it birth. The Court said that in Weems vs. United States, where it held unconstitutional, as an Eighth Amendment violation, twelve years at hard labor for fraudulently signing a public document.

And in Robinson vs. California, the Court held that imprisonment for drug addiction could amount to cruel and unusual punishment.

So the Court has recognized that the Eighth Amendment is a dynamic evolving concept, and that it focuses upon punishment. And that's what we have in this case. We have excessive punishment that the Fifth Circuit would tolerate and say the Eighth Amendment offers no relief from.

QUESTION: Can the Eighth Amendment go backwards as well as forward? If something is a cruel and unusual punishment ten years ago, if evidence shows that it's -- there's a great deal of need for it and the need can't be met in other ways, could then something become not cruel and unusual?

MR. ROGOW: There certainly could be changing in

evolving standards, of what would be tolerated by society. So there could be some change because, as I said, the Fifth Circuit is flexible and dynamic, -- I'm sorry, the Eighth Amendment is flexible and dynamic. The Fifth Circuit was not so flexible in this case.

[Laughter.]

Because we think the Eighth Amendment applies, we turn to the facts of this case, which we think shows a violation of the Eighth Amendment, and these are the facts. At least four of the people who testified, four of the children, these are 13, 14, 15-year-old children, had to receive medical treatment.

One of them, James Ingraham, suffered a severe hematoma. He was unable to sit down for three weeks. Another, Roosevelt Andrews, lost the use of his hand and had to seek medical attention. Another one had a lump on his forehead from the paddle, which had to be lanced, surgically treated, and left a scar. Another, Daniel Lee, --

QUESTION: As I understand it, the testimony of these boys was all uncontradicted.

MR. ROGOW: Yes, it was, Mr. Justice Stevens.

QUESTION: Well, does the record explain why the people who administered the discipline did not testify?

MR. ROGOW: Because there was a 41(b) dismissal under the Federal Rules of Civil Procedure; in effect, a motion

for a directed verdict at the end of the plaintiffs' case was granted.

QUESTION: I see.

MR. ROGOW: And so the case was resolved at that point in the district court.

Daniel Lee fractured his hand, and had a dislocated knuckle, which the district court looked at and in the record saw that there was a scar even still left from that.

People missed school. Some of the descriptions that are involved in this record are unique, we think, in the annals of punishment in the educational setting. Children hollering, crying, praying, screaming; and yet still being punished. And one, Rodney Williams, said that he was begging for mercy as he was hit with the paddle, and then he was hit with a belt and, in his words, "and tears was coming out of me".

There were repeated blows, fifty blows to one student for allegedly making an obscene telephone call. There were --

QUESTION: Granted all this, Professor, does the Eighth Amendment still apply?

MR. ROGOW: It applies.

QUESTION: Well now, there are three parts to the Eighth Amendment, aren't there? Excessive bail and fines, both of which are in the criminal context.

MR. ROGOW: Yes, they are.

QUESTION: And you're stating that cruel and unusual

punishment necessarily goes beyond the criminal context?

MR. ROGOW: Because the focus is upon the punishment, and merely, as I said before, Mr. Justice Blackmun, --

QUESTION: Do you think the Founders felt that when they formulated the Eighth Amendment?

MR. ROGOW: It's hard for me to state what exactly the Founders felt, but I believe that they must have thought that punishment imposed by the government cannot be so severe and so excessive that it would amount to the kind of violations of human dignity which they saw occurring in the past, in England and on the Continent.

QUESTION: Is there a concept of custody that attends your definition of punishment under the Eighth Amendment? That is, must the person inflicting the punishment, presumably on behalf of the government, have the person in some sort of custody where, in effect, he can't get away?

MR. ROGOW: Not -- it is not necessary, to my analysis of the Eighth amendment; but there is, in some limited way, that custody concept even here, in a public school setting.

QUESTION: But your -- it's not necessary to your analysis?

MR. ROGOW: No, I don't tie it to custody.

QUESTION: Well, what if one's superior in the local government office simply pistol-whipped him? So there would be cruel and unusual if performed by a jailer on an inmate -- would

that be a cruel and unusual punishment?

MR. ROGOW: If it were done for the purpose of punishment, perhaps it could reach to that -- to the level of an Eighth Amendment violation.

QUESTION: What if the Clerk would walk out -- excuse me.

QUESTION: Say in one of our conferences one of us hit the other in their nose?

MR. ROGOW: I don't think that kind of force --

QUESTION: Why not?

MR. ROGOW: -- does not rise to the excessive --

QUESTION: Why not?

MR. ROGOW: -- to the excessive punishment that we're talking about.

QUESTION: We're agents of the federal government, run federal business.

MR. ROGOW: But you are not punishing someone under authority given to you by federal law or by State law in this case.

QUESTION: Well, the authority is to confer, and sometimes the conferences can get quite heated.

[Laughter.]

QUESTION: That's also to try to get this degree.

MR. ROGOW: But the authority is to confer, --

QUESTION: There is provocation.

[Laughter.]

MR. ROGOW: The authority is to confer, Mr. Justice Stewart, but the authority is not to punish. And in the case that we're talking about, the authority that a school master has is to punish. When he exceeds that authority, then -- in such a severe and excessive way, then one gets over into an Eighth Amendment violation.

QUESTION: Counsel, what do you do about the loco parentis argument, is that gone?

MR. ROGOW: No, it is not gone.

There are several things that I do with that, Mr. Justice Marshall.

The first is to explain it in its historical concept. First of all, it was the product of a voluntary school or educational system, where parents could choose to send their children or not send their children to school. That is not the situation today. Children must be sent to school. And, to some extent, that ties in with the custody notion that is involved here.

And, secondly, if parents had some way, at least, to say, "I withdraw my" -- this assumed delegation to a teacher, then perhaps one could say, well, there may not need to be a hearing before the punishment is imposed, because the parent has already given their authority to do it.

But there cannot be that withdrawal, the way the law

stands today. So a parent is committed to sending his children to school. He has no say, or she has no say about what kind of punishment is inflicted in that school. And we submit that the loco parentis argument does not permit, because there has been this assumed delegation, excessive beatings, and it doesn't permit a beating without an opportunity for a hearing.

QUESTION: Are you comparing this to military service under the draft, for example? And would you say there, that a person in the military service, who was required, for some disciplinary reason, to stand up for 48 hours or some such thing, would be within the reach of the Eighth Amendment?

MR. ROGOW: The person could be. If the punishment was excessive.

QUESTION: Well, I assume -- make it 96 hours, and certainly that would be excessive, would it not?

MR. ROGOW: It -- as I say, it depends upon the facts of the fact. It would seem to me that the 96 hours of standing would be excessive punishment, and is a punishment the Eighth Amendment --

QUESTION: If that were ordered by a superior officer, and circumstances were that he had to comply, then you say the Eighth Amendment would be invoked?

MR. ROGOW: It could be invoked, yes, Mr. Chief Justice.

QUESTION: Well -- go ahead.

QUESTION: Mr. Rogow, you ask for damages in your complaint. This is a Florida case, isn't it?

MR. ROGOW: Yes, it is, Mr. Justice Brennan.

QUESTION: Is there any possibility -- are there other tort remedies under Florida law for this kind of thing?

MR. ROGOW: Yes, there are.

The due process right to be heard, which we argue, is not tied at all to the Eighth Amendment argument. We are not saying one could justify severe and excessive beatings by giving a hearing before one administers those kinds of beatings. What we are saying is, when one is beaten with an instrument designed to cause bodily injury, that beating infringes upon liberty rights. The liberty rights --

QUESTION: Do you mean a slap?

MR. ROGOW: No, I do not mean a slap, Mr. Justice Brennan.

QUESTION: Well, I just mean to say that a slap might be an instrument invoked --

MR. ROGOW: No.

QUESTION: -- which would invoke procedural due process.

MR. ROGOW: No, it would not. It is --

QUESTION: Or a karate chop would not be?

MR. ROGOW: If the karate --

[Laughter.]

MR. ROGOW: I see situations in which the hands can

be used as instruments to do as much danger as a paddle, for instance in this case.

QUESTION: Well, is the distinction between injury and pain: Would you make any distinction there?

MR. ROGOW: I would not focus on injury or pain, I would focus on punishment, Mr. Chief Justice. I don't want to have to measure aftewards whether or not there is an entitlement to a hearing.

What we are saying is when one is beaten by an instrument, there is a right to a hearing.

I must add that I am limiting this case to the facts of this case. This case deals with an instrument, it doesn't deal with karate chops, it doesn't involve that kind of situation.

QUESTION: I wouldn't go with the limitation you're making on the hands. Would you like to be "gently" slapped by Muhammad Ali?

[Laughter.]

MR. ROGOW: No, I would not, Mr. Justice Marshall.

QUESTION: Well, I mean it's -- I don't think you should limit it to that.

If you want to, go right ahead.

QUESTION: But your Fourteenth Amendment argument is tied to punishment.

MR. ROGOW: Punishment.

QUESTION: Just as your Eighth Amendment argument is.

MR. ROGOW: Punishment. Yes. Yes. Done under color of State law.

QUESTION: And any difference in definition of punishment for your Fourteenth Amendment argument than for a punishment in your Eighth Amendment argument?

MR. ROGOW: Certainly. Because the Eighth Amendment argument is severe and excessive punishment. The Fourteenth Amendment due process argument is punishment which is the punishment which is permissible, even under Florida law: corporal punishment, reasonable corporal punishment.

QUESTION: In other words, five slaps with a ruler on the hand could still require a hearing before it could be administered?

MR. ROGOW: Yes. Yes, it would.

And let me say this, that under Florida law the statutes and the School Board regulations, they already require some consultation with the principal prior to the administration of corporal punishment, that kind of corporal punishment.

So the hearing that we're asking for would not be any intrusion, really, into the public school workings on a daily basis. We submit that there must be a minimal opportunity for a hearing, something similar to Goss vs. Lopez, and there must be a decision as to whether or not the punishment should be administered by a neutral and detached person.

The Court of Appeals for the Fifth Circuit, in absolutely precluding Eighth Amendment and Fourteenth Amendment relief, it seems to us, goes much too far.

I'll reserve the rest of my time for tomorrow morning in rebuttal.

MR. CHIEF JUSTICE BURGER: Very well.

We have about eight minutes, I think we'll let you go ahead, Mr. Howard.

ORAL ARGUMENT OF FRANK A. HOWARD, JR., ESQ.,

ON BEHALF OF THE RESPONDENTS

MR. HOWARD: Mr. Chief Justice, may it please the Court:

The Court is being asked in this case to take two long further steps into still another area of school discipline, public school discipline.

The Court is being asked to expand the bounds of the Eighth Amendment as they have been understood, at least under the decisions of this Court, to provide federal actions whenever a student or a student's parent perceives that a punishment has been immoderate or unacceptable to the student or the parent.

And, secondly, the Court is being asked to mandate constitutional due process procedures in every case of corporal punishment by extension of the rule that the Court adopted in Goss vs. Lopez, providing for due process in

suspension cases up to ten days.

We see the case as an opportunity, first, for the Court to clarify and to reaffirm the scope of the Eighth Amendment as being limited to punishments inflicted either as a consequence of or collateral to the criminal process; and, secondly, if not to overrule Goss vs. Lopez, at least to confine it within its rationale, and not to open that rule to threaten the discretion of educators in still more and more and more day-to-day decisions which are being made throughout the nation in the schools.

QUESTION: How do you square that with what the Court said in Strickland? That is, if the Court were now to say that the same general procedures provided for in the Strickland v. Wood case were to apply here, would that be any extension of -- or would you regard that as an extension of the law?

MR. HOWARD: Well, I would see the Wood vs. Strickland case as an additional reason for the Court not to take yet another step in the due process procedural field, because --

QUESTION: Would that be another step, or would it be the same step applied to a different context?

I think it would be another step, Mr. Chief Justice. I am not recalling the specific facts of Wood vs. Strickland now. As I recall it, it was a suspension case.

QUESTION: Yes.

MR. HOWARD: This is a --

QUESTION: Yes, it's also a matter of a very short time.

MR. HOWARD: Yes, sir.

QUESTION: As a disciplinary measure.

MR. HOWARD: Well, I --

QUESTION: Without any corporal punishment.

MR. HOWARD: -- I am urging the Court to accept the view that corporal punishment is a lesser order of discipline, even, than suspension.

QUESTION: Well, we're dealing, I suppose, if I understand you, with the procedural due process aspect of this case. But neither Goss nor Strickland involved any Eighth Amendment issue at all.

MR. HOWARD: That's true, sir. Yes.

But I agree with counsel, that we have two separate --

QUESTION: Yes.

MR. HOWARD: -- issues here. And --

QUESTION: Mr. Howard, State or federal in Florida, are there any restrictions on corporal punishment in the school system?

MR. HOWARD: At the time the case arose, Mr. Justice, the statute in Florida was a very short section, which, by negative implication, authorized corporal punishment in defining the authority of the teacher.

Since that time, in fact just this year, the State

Legislature has enacted a fairly comprehensive set of laws dealing with student conduct, and it now extensively defines corporal punishment, and provides procedures for how it is to be administered.

QUESTION: But, at the time -- this record, as I read it, was a little bit horrible, and it stands uncontradicted, and there is nothing for us -- for me to do but to view it, that that's possible under Florida law.

MR. HOWARD: I would disagree, Mr. Justice, respectfully, that, with your characterization of the record, I disagree with --

QUESTION: But that little fellow's hand, I think that something happened to his hand.

MR. HOWARD: Well, Mr. Justice, in considering the phrase, under any definition, "cruel and unusual", we have, in this case, I submit, a few incidents of immoderate and even severe, if you will, punishment. But in the context of what the case sought to establish, and the size and variety of the school system, and the fact that most of the punishments which the record reflects were trivial, I submit to you that the evidence did not come anywhere near showing cruel and unusual punishment, however you may choose to define that --

QUESTION: But at that time the teacher could do whatever he wanted.

MR. HOWARD: No, sir, he could not, under the --

QUESTION: Well, I asked you what were the restrictions.

MR. HOWARD: Well, there was a Dade County School Board policy in effect at the time, which provided that the teachers must consult with the principal before corporal punishment could be administered; that the punishment should take place in the presence of another adult; the student should be informed of the reasons for the punishment, and what the misconduct was.

QUESTION: Well, what was the punishment?

There were no restrictions on the punishment. Could he be paddled 125 times?

MR. HOWARD: There were no explicit restrictions --

QUESTION: That's what I mean, yes.

MR. HOWARD: -- except statements that it must be -- it must not exceed reasonable, moderate bounds --

QUESTION: I see.

MR. HOWARD: -- which has been the common law definition, as I understand it.

The best test of the record, I might say, Mr. Justice, is that the district judge who was the man, the court, most in a position to assess the facts, dismissed this case at the close of the plaintiffs' evidence, and used the plaintiffs' test. He accepted the standard that the Eighth Amendment did apply, and found that the facts did not rise to that level.

Coming then to the Eighth Amendment issue, the issue,

as we see it, is simply whether or not the amendment applies at all. The Fifth Circuit in this case, the en banc court, held that it did not, and gave some careful analysis to the history and the rationale of the Eighth Amendment.

One Circuit disagrees, the Eighth Circuit has held, in a case that went only on the pleadings, that the Eighth Amendment can apply. There was no analysis, no reasoning to support the conclusion.

QUESTION: Mr. Howard, suppose there were two inmates in a mental institution, one was there because of a criminal commitment, the other one was there because of a civil commitment, in the same institution. Would the Eighth Amendment apply to one and not to the other?

MR. HOWARD: Mr. Justice, I'm aware of the Jackson vs. Bishop case, of course; I would say, first, with respect, that this Court has never gone so far as to say that punishment, even to prisoners, violates the Eighth Amendment.

Now, I must say that I don't have a lot of doubt what the outcome of that issue might be.

MR. CHIEF JUSTICE BURGER: We will pick up there at ten o'clock tomorrow morning.

[Whereupon, at 3:00 p.m., the Court was recessed, to reconvene at 10:00 a.m., Wednesday, November 3, 1976.]