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## Hilary McConnaughey '11

### *Punishment Narratives: Tracking Supreme Court Jurisprudence Concerning Solitary Confinement*

#### **Introduction**

Over the past two decades, United States citizens have witnessed the rise in supermax prisons throughout the country. As institutions that base their existence on confining inmates to their cells for 23 hours a day, supermax prisons reflect a punitive approach toward punishment that the American public readily endorses. While this narrative surely is not the only one present within the population, it certainly has become dominant in the political and legal discourse. Accordingly, the Supreme Court effectively mirrors American sentiments on punishment. Understanding the Court's reasoning and justifications for its rulings is crucial in order to put into perspective how theories of punishment change over time.

Supreme Court cases shape the future of punishment as a whole in this country because all following pertinent cases will then be reviewed against past decisions that the Court has made. Watching how opinions on this matter evolve sheds light on past matters of the United and what direction the country seems to be taking in choosing between a harsher or more empathetic punishment standard. This directly relates to how society conceives of punishment and what it deems as appropriate when evaluating treatment of incarcerated individuals.

This essay intends to understand the narratives the Supreme Court hears and selects as its own legal discourse, which in turn sheds light on American society's general perspectives. Specifically, the research presented here aims to answer the following question: how do Supreme Court cases involving solitary confinement reflect the American public's changing attitudes toward punishment? After careful analysis of legal documents, I argue that the four court cases selected here demonstrate that sentiments have evolved in a way that encourages a system of control as opposed to compassion. This is evident through both the use of language itself and the methods of argument employed, specifically in regard to the question of whose interests should be prioritized, whose discretion ranks superior, and other external factors that the Court may take into consideration.

Supreme Court justices, while not directly elected by citizens of this country, must be nominated and approved by the people who have been democratically chosen to run the nation. The Court consists of a wide spectrum of political and personal viewpoints, and one can assume that all of these voices are given ample opportunity to be heard, regardless of the potential of a politically stacked bench. The verdicts of these cases are significant due to the impact they have on the nation and because they deem what the Supreme Court considers important at the time. Accordingly, the vote breakdown of each case has sociological value because a 5-4 outcome indicates that the issue is very much contested whereas a unanimous decision shows how that aspect of solitary confinement must be assumed to be an integral part of punishment. The vote breakdown helps to establish the prevalence of the narrative the Court creates.

This paper presents research of four Supreme Court cases concerning solitary confinement, their amicus briefs, and their court opinions. First, I will examine the

theories assessing how the justices make their rulings, highlighting the role of amici curiae<sup>1</sup> whenever possible since these documents most reflect society's different narratives and do so without primarily relying on legal precedent. Second, I explain my methodology to set the framework and standards used to analyze the selected data. I next lay out key definitions frequently referred to in the case documents and in this paper. The main body of this essay will be in the fourth section where I showcase the data and discuss its significance, particularly the patterns that arise over time. I conclude with any possible complications or confounding variables not previously considered in the research, along with opportunities for further study.

### **Literature Review/Theories**

The purpose of this essay is to investigate the narratives of the Supreme Court detailing solitary confinement as a means to understand how American society perceives of punishment in general. Manifold theories of punishment are present within the intellectual discussion, and some have gained more popularity and acceptance during specific historical periods. Bloomberg and Lucken (2000) provide a general outline of this evolution, highlighting how the United States originally associated punishment with public justice, only to be replaced by deterrence, followed by reform, until the present day notions of justice have created a 'culture of control.' While they caution that they do not fully explain the development of punishment over time, the scholars agree that a "civilizing process" has taken place throughout the recent centuries (Bloomberg & Lucken, 2000, 5). A discussion of punishment is first necessary to address how these philosophies infuse the minds of Supreme Court justices and become part of the legal discourse when writing opinions.

Émile Durkheim treats the role of punishment as a vital process to reaffirm norms to the rest of society, which reinforces how one ought to behave (Lukes & Scull, 1983). With this mindset, punishment should not be about the individual who committed wrongs but about the community within which that individual resides: "Punishment does not serve, or else serves only secondarily, in correcting the culpable, or in intimidating possible followers...its true function is to maintain social cohesion intact" (Durkheim, 1933 [orig. 1893], 108). Durkheim approved of punishment not for any deterrent or reformatory potential but for its ability to bring the rest of society together. Social theorist Michel Foucault's philosophies in *Discipline and Punish*, written less than a century after Durkheim, highlight a shift in thinking about the role such sanctions play, which evolved through three main styles of punishment: "ancien regime, a representational mode, and the modern period of the prison" (Ransom, 1997, 31). The objective of the first was to induce physical distress, while the second emphasized the manipulation of the mind. From then on, punishment entailed a much more a cerebral process than a carnal one. Foucault (1977) explains the representational model as a sort of general recipe for the exercise of power over men; the 'mind' as a surface inscription for power, with seminology as its tool; the submission of bodies through the control of ideas; the analysis

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<sup>1</sup> Translated from Latin as 'friend of the court,' an amicus curiae is a written document intended to emphasize a particular aspect of a case that has not previously been addressed in the petitioner's or respondent's brief. Anyone with an invested interest in the outcome of a case can author such a text, and they usually do so in a way that includes information besides legal precedent.

of representations as a principle in a politics of bodies that was much more effective than the ritual anatomy of torture and execution (102).

Under this approach, punishment varied depending on the offense committed. Humiliation and shaming tactics took center stage as opposed to physical harm. Prisons quickly became more popular as they provided a more uniform way of dealing with criminals. This transition to the widespread use of prisons in the 18th century marked the onset of modern America's current thoughts and articulations of punishment in general. Foucault's discursive theory in turn formed the foundation of modern day sentiments and corresponding narratives about governmentally sanctioned punitive action.

Foucault scholar John Ransom (1997) argues that prisons became the overwhelmingly popular method to punish because they offered "opportunities for bending and shaping the human being in new ways...In this closed environment characterized by the exercise of unrestricted power, prisoners' habits, attitudes, personalities, and gestures all become objects of manipulation and coercion" (32-33). People began to see prisons as a venue to monitor unlawful individuals, and this constant threat would impact them in a way so that they would feel compelled to align with normal procedure within the institution. While himself a critic, Foucault (1977) remarks that the prison became the ultimate way to demonstrate control and restore obedience in each inmate, whom he refers to as "the individual subjected to habits, rules, orders, and authority that is exercised continually around him and upon him, and which he must allow to function automatically within him" (128-129). Prisons today are an integral part of the American criminal justice system, but Foucault helped to elucidate what it was about this institution that resulted in its association as the primary instrument where punishment is inflicted. The shift toward resorting to imprisonment for many criminal offenses shaped the way society views punishment as a whole. Accordingly, this mindset has impacted how one speaks about the subject, especially as the general public sometimes seems to consider the terms 'prison' and 'punishment' as synonymous.

Just as Americans' view of punishment has changed, so too has the sentiment regarding solitary confinement. Despite the Supreme Court sanctioning the method in *McElvaine v. Brush* (1891), the issue had rarely been given much legal consideration again until the second half of the 20th century (Filter, 2001, 56). As it was first intended, inmate isolation was hoped to "heal spirits" of those proved deviant from societal norms and laws (Cusac, 2009, 59). Segregation was presumed as a method that both eliminated inmate interaction, which might further corrupt an individual, and ensured "moral regeneration" through solitary contemplation (Colvin, 1997, 49). Thus, there was usually a religious component to this mode of thinking. Despite trials of penal isolation that led to inmate insanity, the practice became more and more popular in the beginning of the 19th century; Colvin (1997) attributes this as reactionary from a lack of internal control within prisons as opposed to an ideological acceptance of it (82). Therefore, penal isolation may have initially become more mainstream as a matter of prison procedure to maintain order as opposed to it genuinely reflecting cultural norms. Nonetheless, the American people have gradually embraced this practice as an integral part of the punitive process. For this paper, solitary confinement serves merely as a case study that is intended to shed light on society's perception of punishment in general; however, reviewing its role in history helps to place it within a context for where the United States stands today on the disciplinary aspects of social control.

While Foucault argues that the rise of prisons symbolize the shift from relying on bodily harm to controlling the mind, others argue that the popularization of solitary confinement proves otherwise. Australian criminologist W. E. Lucas (1976) goes so far as to say that the method classifies as modern-day torture (153). Even some Americans find their criminal justice system's use of penal isolation as extreme maltreatment toward individuals (Thoenig, 1972). Admittedly, locking individuals away for 23 hours a day does little to impose the threat of monitoring that Foucault describes as the main way of creating control within the institution. Hence, the purpose of prisons seems to have strayed from any functional, let alone reformatory, role and taken on a more 'lock 'em up and throw away the key' approach. This is especially true within supermax prisons, which apply solitary confinement for 23 hours a day to all inmate populations for the duration of their sentences within that institution. As penal isolation takes on this more prominent place within these new kinds of prisons, it has in turn impacted the discourse surrounding the issue.

Today, many theorists describe a 'new penology,' referring to it as postmodernism. Simon and Feeley (2003) coin this term and argue that punishment is currently applied in a way that focuses on the administrative aspects of justice, likening it to an industry. The 'new penology' that they describe aptly aligns with Bloomberg and Lucken's (2000) concept of prisons as a 'culture of control.' Simon and Feeley (2003) claim that "...order operations research came to replace sociology as the frame of reference for crime policy analysts. The language of rights gave way to the language of administration; the language of social work was replaced by flowcharts" (Simon & Feeley, 2003, 92). Although Garland (2003) disagrees with the concept of postmodernism in punishment, he does believe that present-day practices have lost focus of the inmates who endure the sanctions. This idea is reflected both in the manners in which people speak of punishment and how it is carried out: "One of the characteristics of this new penology is that criminological discourse becomes more statistical, more actuarial, ever more concerned with aggregate groups and populations, and decreasingly interested in the individual offender as a clinical case" (Garland, 2003, 55). Despite how these scholars differ in their beliefs on the ways in which today's penology is classified, they both agree that shifts in thought and practice involving punishment have taken place. Their works are particularly useful to this essay because they underscore the narratives that criminologists and sociologists of law use to describe punishment, which offer insight when reviewing the legal discourse in Supreme Court cases.

Phillips and Grattet's (2003) article *Judicial Rhetoric, Meaning-Making, and the Institutionalization of Hate Crime Law* provides a substantial framework on which to base this essay. Their research on how courts conceptualize hate crimes<sup>2</sup> is aligned with the objective of this paper, which uses solitary confinement as a case study to analyze also this issue. They argue that as courts hear more cases involving hate crimes, judges make sense of them through institutionalization. They explain,

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<sup>2</sup> Phillips and Grattet (2003) define hate crime as "statutes [that] include a 'bias-motivation' standard...and reference an array of status categories such as race, religion, ancestry, national origin, gender, ethnicity, sexual orientation, age, and physical and mental disability. Offenses committed because of such real or imagined status affiliations are eligible for a penalty enhancement or are reclassified as a more serious crime" (572-573).

Institutionalization is a process by which rules become "taken for granted" by social actors. As a rule becomes more "taken for granted," we suggest that the amount of rhetorical work devoted to justifying the rule should decline; if the meaning of a rule is obvious, there is no need for lengthy explanations. Thus settling should be reflected in changing patterns of rhetorical work (Phillips & Grattet, 2003, 586).

Institutionalization is thus the process through which an individual accepts and adopts a narrative that might before have been unfamiliar. The narrative then becomes ingrained in the person's psyche to the point where the subject's origin or role becomes unquestioned. Phillips and Grattet (2003) go on to assign significance to institutionalization because it helps explain judges' rationale for their verdicts: "Thinking about legal 'meaning-making' as a manifestation of the broader concept of institutionalization offers a way of understanding how legal actors come to affix meaning and develop stable patterns of interpreting and rhetorically justifying legal rules" (Phillips & Grattet, 2003, 596). As the Supreme Court hears more cases involving solitary confinement, the justices tailor their narrative about the issue so that they find its use legitimate under certain conditions but not others. Hence, their opinions about these cases should highlight that which is already understood as accepted norms of punishment versus those still in question.

In addition to institutionalization, Phillips and Grattet (2003) attribute another 'process' to assess the narratives of judicial actors, which they refer to as construct elaboration. They define the term as follows:

Construct elaboration refers to the refinement and clarification of a legal construct. Through construct elaboration, courts delineate the circumstances in which a construct can be invoked, ruling certain behaviors and mental states in or out of the construct's domain. Construct elaboration articulates and establishes a foundation for the rule or concept. As a result of construct elaboration, a concept becomes richer, more developed, and more embedded (Phillips & Grattet, 2003, 577-587).

Institutionalization begins to implant a narrative in someone's mind, but construct elaboration helps to fix it both within an individual and within institutional structures, such as courts. These theoretical nuances that represent when a concept is applied and when it is not in turn modify the language that surrounds this concept. In terms of solitary confinement, certain parts of this idea become assumed as an accepted aspect of punishment, leaving less room to question its use. The courts adhere to this same reasoning, and over time this is evident when reviewing Supreme Court cases regarding penal isolation.

After quantitatively coding a series of hate crime cases and reviewing judicial opinions and rulings, Phillips and Grattet (2003) conclude that judges are susceptible to the effects of institutionalization and construct elaboration. While they analyzed only hate crime law, their logic serves as the premise for this essay: as the Supreme Court hears increasingly more cases involving solitary confinement, the justices articulate their rulings in a way that assumes that solitary confinement is necessary but tactics such as duration, placement, and transfer procedures still have room for interpretation. The rulings of the Supreme Court on confinement tactics impact how Americans conceive this issue. Accordingly, the portions of the supporting case documents that the justices choose

to cite in their opinions, such as amicus briefs and petitions of certiorari<sup>3</sup>, indicate where these narratives originate. The qualitative approach to this research diverges from Phillips and Grattet's, and this direction was taken to engage more in Foucault's discourse analysis. Such a method allows for a more in-depth study of the narratives used when describing the role and nature of punishment in American society.

### Methodology

By investigating a series of Supreme Court cases, all related to each other on a particular issue, one can develop a longitudinal study that showcases the evolving nature of U.S. jurisprudence. I have chosen four cases ranging a span of 27 years (1978-2005) that demonstrate patterns suggesting American society's perceptions of punishment in general. This topic was chosen for my own personal interest and because it has been given considerable judicial attention since the Prisoner Rights Revolution<sup>4</sup> in the 1970s. These cases are *Hutto v. Finney* (1978), *Hewitt v. Helms* (1983), *Sandin v. Conner* (1995), and *Wilkinson v. Austin* (2005). When selecting the cases, I most relied on Cohen (2008) and Filter (2001), whose articles address the most significant cases discussing this topic. In addition, Lobel's (2008) article, "Prolonged Solitary Confinement and the Constitution," provides a legal history of solitary confinement to confirm that these cases indeed serve as the most groundbreaking verdicts involving penal isolation. Based on these scholars' consensus as to what the most noteworthy cases are and a website ([www.oyez.com](http://www.oyez.com)) that documents Supreme Court cases, I was able to confidently select the four Supreme Court cases to research in a purposive sample selection process. I thus narrowed down the amount of court cases to choose from so that they fall in potential violation of only two categories: the 8th Amendment (prohibiting cruel and unusual punishment) and the 14th Amendment (affirming an individual's right to due process<sup>5</sup>).

The significance of these cases' contents and their verdicts justify their being included in this essay's research. *Hutto v. Finney* (1978) focuses on the duration of penal isolation, specifically if it should last longer than 30 days at a time. *Hewitt v. Helms* (1983) involves the concept of an inmate's liberty-interest and whether this idea is a valid reason why prisoners should have a legal standing to resist placement in administrative segregation. These terms will be explained in detail later in this essay. In *Sandin v. Conner* (1995), the justices debated about whether due process applied to an inmate when assigned to disciplinary segregation. *Wilkinson v. Austin* (2005) deals with the issue of due process protections when an inmate is transferred to a supermax prison. While this last case may seem a bit of an outlier, a supermax prison is simply an institution that uses extreme isolation for all of its inmates. These complexes are a modern-day way of using penal isolation to the fullest extent possible, and their very existence marks how American citizens and criminal justice agents alike have come to accept solitary confinement as an essential part of an inmate's sentence. Each case thus presents a

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<sup>3</sup> A petition of certiorari, also known as a petition of cert, is the most common appeal to the United States Supreme Court. This document outlines the main issues of the case in hopes that it is accepted for judicial review.

<sup>4</sup> Under the Warren Court during this time period, the Supreme Court heard many criminal rights cases and usually ruled in favor of the prisoner. This progressive trend was dubbed the Prisoner Rights Revolution.

<sup>5</sup> Due process is the principle that people have legal rights and that the government must respect them. If a government were to treat an individual without regard to these rights, one's due process would be violated.

specific issue concerning solitary confinement, and its documents help to explain whether these nuances constitute either a legitimate or illegitimate kind of punishment. To ease one's memory of the specifics of each case, Table 1 in the Appendix includes a brief summary of them to be referred to whenever necessary.

The key data used to administer this study consist of case documents, including the assenting and dissenting Court opinions, the petitioner and respondent's briefs, the amici curiae of those who have an invested interest in the outcome of such cases, as well as the verdict breakdown of the selected cases. In regards to the amicus curiae, I considered how many were presented for each side of the case, what organizations wrote these briefs, and what their line of reasoning was for persuading the justices to their side. While most of the cases consist of only three or four amicus briefs, Hutto includes seven, which was unmanageable for this research. I thus created a standard on how to select which amici briefs to analyze, which consisted of four main factors: one, the longevity of the interest group/organization; two, the size of the interest group/organization; three, the length of the amicus brief; and four, the parties who have been involved in the case for the longest duration. This purposive sample selection process was trumped by one main caveat: I automatically chose the United States Solicitor General as one of the amicus briefs to investigate. O'Brien's (2008) cue theory labels the involvement of Solicitor General (as a litigator, author of amicus brief, or advisor) as one of the three main reasons for the Supreme Court to hear a case (230). In addition, this position historical tends to end up on the winning side of Supreme Court cases (Segal, 1988, 135). Based on this research, I reasoned that the Solicitor General may indeed hold an elevated status compared to other authors of amicus curiae, so its office's briefs were included as part of this paper's research.

For Court opinions, I examined if they refer to any of each case's amicus curiae and what the general rationale is behind the verdicts. I investigated if the narratives described in the overall opinions of the Court rulings reflected those found in the amicus briefs, and I attempted to locate patterns between the documents and cases. The content of the briefs and opinions, as well as their tone and methods of persuasion, all were taken into account to assess how the legal discourse has changed over time, which in turn reflects the American public's perception of punishment in general.

I conducted my research by discourse analysis. This qualitative approach is necessary because there are too many complex and intervening factors when taking a court ruling into consideration. No one variable can have statistical significance because there are too many confounding variables that also affect the Court's verdict. Discourse analysis is useful in finding patterns or trends in thinking throughout a series of Supreme Court cases. It is also helpful in ascertaining variations in thought over time.

Before diving into the research, it will be helpful to clarify important terms commonly referenced in the case documents. Table 2, located in the Appendix, should help clarify some of the key phrases and provide explanation for why there may be debate regarding in prison management and punishment in general.

## **Data Analysis/Discussion**

### *Methods of Argument*

How one constructs an argument can be very telling to the kind narrative that person employs. For this reason, what one chooses to include is just as important as what one



does not. From the petitioner and respondents' briefs, as well as their respective amici curiae, the Supreme Court hears a range of reasons for why one side should be favored as opposed to the other, and the justices' opinions must reflect what they feel to be the most important and pressing aspects of the case. As originally intended, the judiciary was to be the "guardian of the Constitution" and take cues only from this written document and the verdicts of prior cases (Hamilton et al., 2008 [orig. 1788], 378). In reality, however, this is not always the case, so most briefs choose to address matters beyond these mere traditional legal models such as precedent. The Court takes into consideration the Constitution before reaching a verdict, but it also relies on previous cases, the current political climate, and pleas from interested parties in the form of amici curiae. The briefs are intended to persuade the bench, and their authors attempt to do so in a variety of ways.

First, many choose to use outside sources to bolster their argument. Hewitt's respondent brief (1982) included personal accounts of prisoners whom endured solitary confinement as a means to underscore the intolerable treatment inmates face (8-9). While the petitioner and respondents' briefs tend to emphasize more the facts of the case, it is the amicus curiae that can fully utilize the power of outside sources to support their line of reasoning.<sup>6</sup> For example, Helms' amicus brief from the State Bar of Michigan (1982) quoted Jessica Mitford's (1974) book *Kind and Usual Punishment: The Prison Business* about the questionable character of prison guards who make routine decisions about inmates' placement in penal isolation: "...beyond those men and women who become guards because they have no alternative, this occupation appeals to those who like to wield power over the powerless and to persons of sadistic bent" (32-33). Those in favor of solitary confinement use the same tactic, as evident when the Criminal Justice Legal Foundation's<sup>7</sup> (1995) amicus brief for Sandin quoted Simon, Liberty, and Property in the Supreme Court: *A Defense of Roth and Perry* (1983); the brief noted that "The real burden accrues not from the task itself, ...but from the fact that its performance is judicially commanded and judicially enforced" (11). In both instances, the authors of the briefs used outside sources to make their respective points: the former, that discretion for solitary confinement should not be left up to those who opt to be prison officials because they likely have a more aggressive disposition than the average individual; and the latter, that judicial mandates on prison procedures such as segregation detrimentally interfere with prison management. While these topics fall outside the scope of traditional legal consideration, these arguments help to put the entire case into a contextual framework. Such competing narratives are used to vie for the Supreme Court's favor, which then expound the presumptive societal mood.

Second, some choose to present subtle threats to the bench, insinuating that detrimental consequences will ensue should the justices choose to rule for the opposite side. The Amici States writing for Sandin argued that a more uniform standard for placing inmates in disciplinary segregation, the proposal supported by the respondent,

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<sup>6</sup> To use as a reference, Table 3, located in the Appendix section of this paper, links the authors of each amicus curiae to their respective case.

<sup>7</sup> As stated on its website, "The Criminal Justice Legal Foundation was established in 1982 as a nonprofit, public interest law organization dedicated to restoring a balance between the rights of crime victims and the criminally accused. The Foundation's purpose is to assure that people who are guilty of committing crimes receive swift and certain punishment in an orderly and constitutional manner." See <http://www.cjlf.org/>.

will only inundate the court with prisoner litigation because “procedural challenges to hundreds of routine actions by prison administrators will be converted into civil rights violations redressable in the federal courts” (New Hampshire et al., 1995, 27). Likewise, the Criminal Justice Legal Foundation (1995) also writing in support of Sandin predicted that “a court that excessively interferes with prison discipline may be sentencing the weaker prisoners to a fate far worse than anything we would tolerate under the Eighth Amendment” (11-12). Both briefs implied threats that are intended to draw the bench to their side. They presented the negative repercussions of favoring the opposing position, many times referring to possibilities that potentially lie outside the scope of what the Supreme Court should consider when making a verdict. Nonetheless, these ideas are implanted inside the justices’ minds, and they sometime touch on these points in their court opinions, largely in the context of whose interest should hold the greatest priority.

### *Word Choice/Expanding Definitions*

Word choice sets the tone of an argument, and the authors of legal documents purposely select certain terms to elicit a specific feeling from the reader. Doing so reflects their individual narrative. For example, the United States’ (1981) amicus curiae for Hewitt almost exclusively referred to segregation as ‘detention.’ This could have been chosen for two reasons: one, to trivialize the issue as something insignificant to prison life; or two, to align the sanction closer to a school suspension. The latter is consistent with Hewitt’s overall aim to compare this case to how the Supreme Court ruled in *Goss v. Lopez* (1975), a case that addressed proper procedure for school suspension.<sup>8</sup> Ironically, the term ‘detention’ connotes the idea of punishment far more than ‘administrative segregation,’ which is how the respondent and his briefs refer to the issue at hand. Regardless, the Solicitor General chose to refer to solitary confinement as detention because it suited his interests. Others do the same. In fact, two authors of amicus briefs supporting the inmate respondents, both labeled penal isolation as the ‘hole’ since that was how prisoners described it (State Bar of Michigan Amicus Brief for Helms, 1982, 7, n1; Edwin F. Mandel Legal Aid Clinic<sup>9</sup> Amicus Brief for Conner, 1995, 37, n1). Not only does this word evoke negative imagery, it also signifies to the judges that the prisoners themselves do not distinguish between the terms ‘administrative segregation,’ ‘disciplinary segregation,’ ‘solitary confinement’ or otherwise. To them, the conditions and treatment are all the same, so these semantics should not create loopholes for proper placement protocol. This was the central issue of Hewitt, whether or not the placement procedures for administrative segregation should be the same as disciplinary segregation; by referring to both as the ‘hole,’ the authors attempted to make them one and the same. In this way, each side’s respective narrative clearly manifests.

Words are charged with intensity, and each party uses the opportunity for discourse to their advantage. The Edwin F. Mandel Legal Aid Clinic (1995), in support of Conner, frequently used words such as ‘shackled’ and ‘stigma’ to present the negative aspects of prison life for those assigned to solitary confinement (9). Conversely, Sandin’s amicus curiae, the Criminal Justice Legal Foundation (1995), insisted that “An undisciplined prison is a chamber of horrors,” even going so far as to cite an outside source including

<sup>8</sup> See Hewitt Petitioner’s Brief, 35; United States Amicus Brief for Hewitt.

<sup>9</sup> The Edwin F. Mandel Legal Aid Clinic is a part of the University of Chicago Law School. See their website, <http://www.law.uchicago.edu/clinics/mandel>.

the word ‘savage’ (6, 10). The interest group maintained its wariness of a potentially unruly prison due to a lack of punitive measures, referencing multiple Hobbesian<sup>10</sup> notions: “Discipline is essential to keep prison life from turning into a true state of nature... The social contract that binds us in normal society is not enough; tight discipline must be the order of the day in prisons” (Criminal Justice Legal Foundation Amicus Brief for Sandin, 1995, 9-10). It is clear how this sentiment echoes Bloomberg and Lucken’s (2000) description of the modern day prison system and its emphasis on control. Supporters of restraint repeatedly emphasize discipline as the sole means to create the kind of regimented order currently prevailing in prison culture. The Supreme Court seems to have adhered to this more punitive stance, and as the bench continues to accept this narrative over any others, it will become inexorably intertwined in the United States’ legal discourse.

Court opinions also consist of words consciously selected to evoke particular emotions through symbolism and imagery. For example, the Hewitt majority ruled that administrative segregation does not constitute a significant enough change in confinement for a prisoner to have a liberty interest in remaining in the general prison population. In the case’s dissenting opinion, Justice Stevens introduced notions of God in order to appeal to the humanitarian reasons to avoid excessive penal isolation.<sup>11</sup> Author of the majority opinion, Justice Rehnquist, also employed language in a specific way as a means to pull on the heartstrings of the audience. He described the brutal violence that took place within the prison that warranted Helms’ placement in solitary confinement in the first place (459 U.S. at 463). By doing so, Rehnquist sought to rationalize the Court’s defense of administrative segregation; the bench emphasized in detail the graphic destruction that took place in order to rationalize further its more punitive stance and emphasis on control. Bloomberg and Lucken’s (2000) thesis thus continually rings true throughout the present research.

The definitions of some terms are fluid, and the bench has noticeably expanded the concept of solitary confinement when it legitimized administrative segregation in Hewitt. As the justices interpreted administrative segregation in context of penal isolation as a whole, they altered the country’s legal discourse. They summarized in their majority opinion,

It is plain that the transfer to less amenable and more restrictive quarters for non-punitive reasons is well within the terms of confinement ordinarily contemplated by a prison sentence. The phrase ‘administrative segregation’ as used by the state authorities here, appears to be something of a catchall: it may be used to protect the prisoner’s safety, to protect other inmates from a particular prisoner, to break up potentially disruptive groups of inmates, or simply to await later classification of transfer. (459 U.S. at 468).

The justices recognized that administrative segregation should be left to the discretion of prison officials, despite the fact that this placement offers ‘less amenable and more restrictive’ conditions of confinement. They did not find this increased

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<sup>10</sup> Political philosopher Thomas Hobbes (1588-1679) often referred to the ‘state of nature’ as the lawless place where every man lives as his instinctual self, without regard for others. He argues that people have willingly entered into a ‘social contract’ that limits some of their freedom but they gain government protection and security in return.

<sup>11</sup> See 459 U.S. at 483: “I had though it self-evident that all men were endowed by their Creator with liberty as one of the cardinal unalienable rights.”

deprivation as warranting an inmate's liberty interest. Instead, the bench contended that "Helms was merely transferred from an extremely restricted environment to an even more confined situation" (459 U.S. at 465, emphasis added). After this ruling, administrative segregation was considered just another form of solitary confinement sanctioned by the judiciary, thus expanding the concept as opposed to narrowing it. Hence, the definition of solitary confinement is not consistent with Phillip's and Grattet's (2003) theory of construct elaboration. The Court has simply condoned the use of penal isolation in all its forms throughout the recent decades.

### *Priorities of Interests*

From this research, many themes became apparent, one of them being the focus of whose interests trump the other's. The supporting briefs touched on this point, as the Amici States for Sandin flatly concluded their appeal with "an inmate's interest in the conditions of his or her confinement are unremarkable" (New Hampshire et al., 1995 48). Supporters of Wilkinson concurred with this sentiment but instead chose to frame it as states having a dominant interest over prisoners: "the nature of the government's interests are paramount, as the goal is to prevent the prisoner from inflicting further harm on society" (California et al., 2005, 12).<sup>12</sup> Those supporting the side of the departments of corrections argued that preserving the status quo was necessary; their rationale was apparent when they stressed that prison officials sufficiently "exercise[d] professional judgment," "maintain[ed] good order and security," and provided "safe and efficient operation of prison" (Wilkinson Petitioner's Brief, 20; Sandin Petitioner's Brief, 34; Hewitt Petitioner's Brief, 14). Thus, a fundamental premise for one's argument centers on the idea that one's side should be considered most significant, and the Supreme Court justices' verdicts favor whom they indeed find to have the most compelling interests.

Over time, the Court clearly has prioritized the interests of the general population over the individual inmate in question. As author of the Hewitt majority opinion, Justice Rehnquist noted that the "respondent's private interest was not of great consequence, but the governmental interests in the safety of the prison guards and other inmates and in isolating respondent pending investigation of the charges against him were of great importance" (459 U.S. at 461). The Court reinforced this perspective in the most recent case of Wilkinson. In the justices' majority opinion, Justice Kennedy wrote that "Ohio's interest is a dominate consideration" (544 U.S. at 227). From these opinions, it is clear that Simon and Feeley (2003) and Garland's (2003) description of a 'new penology' is indeed transpiring. This is most evident when considering the social implications and psychological damage of inmates who endure solitary confinement. The bench has consistently ignored these matters, even though the discussion of prisoners' mental health has remained a talking point on the side of prisoner rights supporters. Indeed, the Burger Court utterly disregarded Sandin's Respondent's Brief (1995) that warned of inmates' mental health complications after experiencing prolonged solitary confinement (50). The Wilkinson Court opinion also never mentioned the Professors and Practitioners of Psychology and Psychiatry Amicus Brief (2005) that discussed the likely possibility for impaired mental states of prisoners who undergo these isolating conditions. The fact that the case had a 9-0 vote breakdown also shows how ignoring this scientific research was not even slightly controversial among the justices. Focus on efficiency and prison

<sup>12</sup> See also Wilkinson Petitioner's Brief, 2005, 15.

management has indeed replaced consideration for the individuals sentenced within these institutions.

How society allows inmates to be treated within prisons sheds light on what the American collective perceives the purpose of punishment in general. It is therefore crucial to understand different parties' positions on prisoners as a whole. The United States' (1995) amicus brief supporting petitioner Hewitt discussed the inferior worth of convicted criminals over the majority population. The Solicitor General distinguished prisoners as those who have earned their place in an institution that strips them almost completely of their rights: "the question involves not the rights of the general public, but rather the rights claimed by individuals who have previously, with all due process, been convicted of crimes sufficiently serious to warrant their present incarceration" (United States Amicus Brief for Hewitt, 1983, 10). Ten years later, a group of 19 states authored an amicus curiae for Wilkinson that reinforced such sentiments: "...the decisions at issue here 'take place in a closed, tightly controlled environment peopled by those who have chosen to violate the criminal law and who have been lawfully incarcerated for doing so.'" (California et al. Amicus Brief for Wilkinson, 2005, 18). In both these cases, the authors not only made it clear that inmates deserved their sentence in prison, but also insinuated that what goes on once they were inside was either not a pressing concern to the rest of society or that it was justified by their being convicted in the first place. The Supreme Court ruled in favor of both of these positions, implying a future that stresses punishment over prisoner rights.

#### *Discretion and the Question of Arbitrariness*

Questions of the morality of solitary confinement were rarely addressed within the cases' documents. Instead, discussion centered on the topic of discretion and the side effects of the decisions made by those in power. Two sides of debate thus formed. One favored the status quo, insisting that it is the job of prison officials to make routine decisions regarding inmate placement, so judicial interference is both unnecessary and inappropriate. The other argued that such discretion undoubtedly was based on subjective standards, thus resulting in the erroneous placement of inmates in isolation. The department of corrections exemplified the former position while the individual inmates took on the latter.

Respondents' case documents concentrated most of their efforts on contending that the absence of formal procedures concerning an inmate's status within a prison would generate random and subjective outcomes. Such haphazard approaches to concerns as serious as prisoners' conditions of confinement might even lead to greater unrest within the prison, they argued.<sup>13</sup> Hewitt's Respondent's Brief (1983) warned of the serious implications caused by arbitrary placement protocols: "...erroneous decisions may invalidate the original interests sought to be served by placing someone in administrative custody, who will come out more resentful or violent than when he went into this restricted status." Furthermore, prisoner rights supporters argued that this kind of subjectivity within prison management was obsolete and no longer aligned with the American public's interests. Sandin's Respondent's Brief (1995) elaborated:

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<sup>13</sup> See the Edwin F. Mandel Legal Aid Clinic Amicus Brief, 1995, 14: "the lack of such [a hearing or] notice contributes to the perception that disciplinary authority will be exercised arbitrarily. The perception of arbitrary discipline creates, or at least exacerbates, disciplinary problems."

There was a day when prisons could and did operate entirely arbitrarily with no authority except the personal authority of the prison staff, and no recourse from their actions and decisions. That day is past. The exercise of arbitrary authority to punish, in prison or out of it, is alien to the basic norms of American society (61-62).

This perspective clearly claims that the demand for uniform justice has become a mainstream norm within the United States so that it is also an ingrained part of American discourse. The authors of these legal documents attempted to sway the Supreme Court to assume their narrative, but the justices have consistently promoted regulation in the form of control, not uniformity. Petitioners and their supporters all emphasized that authority should be left up to prison managers because they presumably know the safest and most effective ways of maintaining order within their facilities. The Solicitor General recognized the subjective nature of personal discretion when he stated that “...the types of events that trigger a perceived need for administrative detention are no more static than they are objective” (United States Amicus Brief for Hewitt, 1983, 20). Despite this, they all came to the conclusion that current standards are sufficient in guaranteeing a fair process. The departments of corrections also argued that the Court should not intervene with prison protocol (Wilkinson Petitioner’s Brief, 74). In their discourse, prison officials stressed their competency for making routine decisions such as an inmate’s assignment to solitary confinement, as evident when briefs made claims asserting that the “decisionmaking process that should be left largely, if not entirely, to prison administrators” (States Amicus Brief for Wilkinson, 2005, 28).<sup>14</sup>

Time and again, the Supreme Court upheld current procedure within the prisons, endorsing prisoner officials’ discretion when assigning inmate placement. The question of arbitrariness thus was deemed inferior to the notion that best practices were already in place within these institutions. As the Hewitt opinion aptly summarized, “Prisoner officials have broad administrative and discretionary authority over the institutions they manage, and lawfully incarcerated persons retain only a narrow range of protected liberty interest” (459 U.S. at 461). More recent cases only reaffirm this sentiment. The Wilkinson opinion underscored the Court’s hesitancy to intervene on prison protocol: “Courts must give substantial deference to prison management decisions before mandating additional expenditures for elaborate procedural safeguards” (545 U.S. at 228). By repeatedly sanctioning current procedure within prisons, the Court limits the legal opportunities for inmates to resist undesirable situations during their sentence, especially their placement in solitary confinement. As time goes on, a punitive narrative has clearly manifested as America’s dominant discourse when discussing punishment.

### *Fiscal Concerns*

Recently, money has come to the forefront as a significant consideration for Supreme Court justices upon which to base their rulings. Petitioners’ arguments often detailed the financial burden that would entail if protocol were to change within the prisons.<sup>15</sup> Sandin’s Petitioner’s Brief (1995) implied that American citizens did not want their taxpayer’s money allotted toward substantial prison expenses: “Federal judicial review or assignments to disciplinary segregation...imposed untoward costs on the legal system, and undermines the values of ‘[o]ur system of federalism.’” The authors of Sandin’s

<sup>14</sup> See also Wilkinson Petitioner’s Brief, 2005, 40.

<sup>15</sup> See Hewitt Petitioner’s Brief, 1983, 13. See also Wilkinson Petitioner’s Brief, 2005, 46.

amicus briefs especially chose to focus on the cost of implementing such uniform and straightforward standards for inmates involved with customary prison proceedings. In the very first sentence, the Criminal Justice Legal Foundation emphasized finances as the organization's main point of interest: "Adequate punishment of the massive amounts of crime we now have in the United States requires a massive expenditure of public funds" (Criminal Justice Legal Foundation Amicus Brief for Sandin, 1999, 1). The group reiterated that cases such as Sandin are "excessive," both because they involve inmate complaints that should be left up to the prison officials, and because they deplete resources that could be used elsewhere.<sup>16</sup> Emphasizing monetary consideration has thus become the forefront to the punitive debate.

Fiscal concerns can at times distract from the creation of more uniform, and potentially more objective, procedures. This became especially apparent in *Wilkinson*, when the respondent called for a more fact-oriented hearing procedure as opposed to the subjective discretion of prison officials before placement in disciplinary segregation. The *Amici States* (2005) argued that the proposed fact-based criteria would burden prison officials with unnecessary and tedious responsibilities, all at taxpayers' expense. They insisted that:

The Sixth Circuit's prescription for factually oriented procedural requirements will not substantially aid in the accuracy of super-max housing decisions. Rather, they will encumber prison officials with detailed and time-consuming tasks, contribute to an adversarial atmosphere, and even confuse inmates about the nature of the decision being made. And all this will come at the further expense of burdening already scarce prison resources (3).

Clearly, petitioners do not wish to change the system because it might pose a nuisance to the prison staff. This narrative has resonated more with the Supreme Court in recent years, as evident in its inclusion of monetary considerations as justification for its rulings in both *Sandin* and *Wilkinson*. The bench even referenced the *Hewitt* decision as a culprit for excessive prisoner litigation, leading to "the involvement of federal courts in the day-to-day management of prisons, often squandering judicial resources with little offsetting benefit to anyone" (515 U.S. at 482). The *Wilkinson* opinion (2005) echoed such sentiments, arguing that the state's interests come before a prisoner's, and a noteworthy "component of Ohio's interest is the problem of scarce resources" (544 U.S. at 228). The narrative concerning punishment has thus oriented itself toward a more practical, pragmatic stance as opposed to one revolving around ethics and fair treatment. This aligns well with Simon and Feeley (2003) and Garland's (2003) classification of a 'new penology,' one that treats prison as an industry that must be run as efficiently as possible, with little regard for the individuals inside them.

## **Conclusion**

As time progresses, the bench has increasingly favored departments of corrections over inmates. Current prison procedure and practices have been granted judicial approval while inmates' rights and legal interests become more restricted. This has manifested in

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<sup>16</sup> In its *amicus curiae*, the Criminal Justice Legal Foundation, argues that "By using up scarce resources, excessive prisoner litigation detracts from the ability of the state to properly punish crime and protect the law-abiding public, and is therefore contrary to the interests CJLF was formed to protect" (4).

the status of solitary confinement through the acceptance of administrative segregation as an insignificant change in conditions of confinement (*Hewitt v. Helms*, 459 U.S. 460), the upholding of prison guards' placement protocol for disciplinary segregation (*Sandin v. Conner*, 515 U.S. 472), and affirmation of transfer to Supermax prisons which mandate all inmates 23 hours of isolation a day (*Wilkinson v. Austin*, 544 U.S. 74). While the justices agreed to hear these cases concerning conditions of confinement, they have largely just reinforced the status quo. This is evident through the justices' use of language, as well as the content of what they choose to include in their opinions.

The vote breakdown indicates how the Court's punitive philosophy has only become more steadfast over time. *Hutto*, *Hewitt*, and *Sandin* all consisted of a 5-4 split, favoring the petitioners. *Wilkinson*, on the other hand, resulted in a unanimous decision; all the justices agreed with the correctional facility manager, signifying that solitary confinement is no longer controversial as a form of punishment in and of itself. Now the concept is addressed only when there is opportunity for further refinement of the concept, whether it is due to placement procedures or a potential infringement on an individual's due process. Penal isolation is now an assumed part of punishment, which is why the justices have less of a need to rationalize the practice in court. It may indeed be so embedded in both American culture and the public's own narrative that society can expect a similar system, if not one that will be harsher and stricter in the future.

In contradiction to Phillips and Grattet's (2003) theory on construct elaboration, the concept of solitary confinement did not become more refined through frequent use. In fact, just the opposite situation occurred. *Hewitt* provided the opportunity for the Supreme Court to strike down the use of penal isolation for non-punitive reasons, also known as administrative segregation. Since such an assignment can last indefinitely as opposed to disciplinary segregation, the more restricted use of the former practice would have greatly limited the prevalence of solitary confinement within prisons. However, the Court chose to favor the departments of corrections' status quo, which essentially expanded the legitimated use of isolation. The bench could have mandated a more uniform and objective criteria for assignment to disciplinary segregation in *Sandin*, but it instead opted to condone the current system. Again, the Court did not choose to capitalize on curtailing solitary confinement for penalizing measures. The purpose of supermax prisons is to detain inmates in isolation for 23 hours a day, and the *Wilkinson* case marks the nation's overall acceptance and endorsement of solitary confinement as an integral part of this punishment process. The Supreme Court did not consider the ethics of supermax prisons in this case, but if it had implemented a mandate of a strict placement procedure for these extreme prison conditions, it would have signified that such facilities should be used only in extreme and rare circumstances. The fact that the justices did not rule in this way indicates that they hold solitary confinement as a legitimate form of punishment and will continue to champion it through the judiciary process.

There are some drawbacks to this study that further research could ameliorate. First, I did not actively count the frequency of key words or phrases that I seemed to think were significant themes. For example, in addition to pure content analysis, I could have tracked the amount of times the word 'arbitrary' was mentioned in any of the case documents, and such numerical data could have presented a stronger argument that this theme was indeed noteworthy. An additional study that included this information could thus bolster my findings. Second, the themes discussed in this paper are based entirely on my own



subjective notions of what seemed striking or particularly remarkable. The topics previously discussed in the Analysis section stood out to me, but I could easily have overlooked others that could have been just as influential in contributing to the nation's evolving discourse concerning punishment. For that reason, I readily acknowledge that I did not emphasize legal precedent and prior cases as much as I could have. In my opinion, this kind of support should be expected within case documents, so I did not find it as extraordinary as I did the use of external sources, for instance. This bias may then warrant my research to be less instructive to American society's actual dominant narrative. Again, the inclusion of numerical data tracking the frequency of particular words would have thus validated the reasons to include certain themes over others.

Supreme Court opinions add to the dominant narrative of American society, and what they choose to emphasize as their rationale for their verdicts speaks to the sentiments of the nation in general. By acknowledging finances as a legitimate concern but then ignoring the potential for severe mental impairment after prolonged solitary confinement, the Supreme Court is making a decisive stance to adopt the more punitive narrative over the one aiming for fair and regulated use of penal isolation. This corresponds to punishment as a whole because the Court endorses current prison management practices and leaves the authority entirely up to the officials' hands. These cases presented the bench with many opportunities to curtail a more disciplinary-oriented approach within prison institutions, but the justices repeatedly ruled in a way that removed themselves from any involvement in prison operations.

By repeatedly favoring financial and operational concerns over ethical considerations, the Court's legal discourse overlooks a crucial voice within the American society, one that warns of the grave implications of a punitive approach toward punishment. As part of the 'modern' West, United States citizens tend to think of themselves as a population who has progressed with every passing generation. The present research indicates that perhaps this mentality is not merited, however. Foucault details that the origin of punishment focused on physical distress and trauma. He critically examines the role of prisons that were intended to monitor the inmate population, but these institutions have surely strayed from that purpose. Prisons today serve simply to contain inmates, as evident with solitary confinement's growing popularity. Such isolation can be just as damaging to one's mental health as physical torture can be to the body. In this sense, the use of punishment has come full circle, and inflicting pain may indeed have been reinstated as an unspoken but accepted part of the American criminal justice system.

The narrative emphasizing regulation and compassion in regards to punishment also cautioned the Court about the social implications for championing solitary confinement through the judicial process. As Hewitt's Respondent's Brief (1983) exceptionally summarizes, the United States has failed in considering the long-term repercussions of penal isolation:

On the emotional level, the effect of solitary confinement to prison personnel teaching the prisoner how to use explosives, or how to sharpen his aim with a gun... It [the prison] is handling the prisoner a gun to use whenever he gets the opportunity, either in the prison population or later when released into society (51).

If a prison's main objective is merely to contain convicts and keep them separate from the rest of society, it will fail in curtailing both future violence and crime. Public

safety will perpetually be in jeopardy when prison policies do not address the root issue of illegal conduct. The Supreme Court and its punitive legal discourse neglect the fact that these individuals will reenter society once they serve their sentence. Justice institutions must then aim to prepare criminals for successful assimilation into American society; at the very least, they should not contribute to recidivism by wantonly assigning inmates to solitary confinement, leading to inmate frustration and resentment. Sandin's Respondent's Brief (1995) best captures this point:

Both society and the inmate have a stake in rehabilitation. Concededly, there is no constitutional right to rehabilitation; but it is beyond the nation's ability to keep all, or even most, wrongdoers locked up in perpetuity. For all but the worst offenders, the day will come when the return to the streets of lawful society... Treating prisoners in a lawless fashion cannot promote their allegiance to the rule of law... To command obedience, the law itself must be credible and fair (63).

Society thus shares a role in preventing future crime, and a punitive legal discourse may not be the most appropriate way of realizing this responsibility.

In sum, the Supreme Court expanded the concept of solitary confinement so that it is warranted for a variety of infractions and can be an expected part of a person's sentence. Consequently, solitary confinement has not been refined in scope or application, but it has become institutionalized in the courtroom and as it is perceived by the American public. Phillips and Grattet's (2003) concept of construct elaboration underscores how isolation has become integrated as a routine placement for a prisoner. Justice Rehnquist acknowledged this when he stated that "administrative segregation is the sort of confinement that inmates should reasonably anticipate receiving at some point in their incarceration" (459 U.S. at 468). It is clear that penal isolation has become embedded in American punitive culture, and the judicial justification for it as a form of punishment is frequently employed as a means of practicality and efficiency and is fundamentally dissociated from ethical considerations and societal implications.

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**Appendix**

**Table 1: Summary of Supreme Court Cases**

<b>Case</b>	<b>Year</b>	<b>Summary</b>	<b>Verdict</b>
Hutto v. Finney	1978	Inmate Finney was placed in solitary confinement for more than 30 days. Respondent claimed this constituted cruel and unusual punishment. Hutto's official title: Commissioner, Arkansas Department of Correction	5-4 for Finney, ruling upheld
Hewitt v. Helms	1983	After a fight broke out in a Pennsylvania state prison, inmate Helms was assigned to administrative confinement until authorities could investigate who was responsible for the brawl. Helms argued that this was against his rights to due process and that he had a 'liberty interest' in remaining in general population. Hewitt's title: Superintendent	5-4 for Hewitt, reversed ruling of lower court
Sandin v. Conner	1995	Inmate Conner was relocated to disciplinary segregation after he abetted a fight within the Hawala Correctional Facility in Hawaii. Conner felt this was a violation of his right to due process. Sandin's title: Unit Team Manager, Halawa Correctional Facility	5-4 for Sandin, reversed ruling of lower court
Wilkinson v. Austin	2005	Ohio's inmate placement policies were called into question when Austin was transferred to a supermaximum facility. The inmate claimed that this infringed on his right to due process. Wilkinson's title: Director, Ohio Department of Rehabilitation and Correction	9-0 for Wilkinson, affirmed in part, reversed in part, and remanded

**Table 2: Key Terminology Discussed in the Selected Supreme Court Cases**

<b>Phrase</b>	<b>Definition/Varying Interpretations</b>
Liberty interest	When the Supreme Court discusses an inmate's liberty interest, it is referring to whether the individual has legitimate legal standing to protest conditions of confinement. By their very definition, prisoners have few rights, and so the Court must decide which rights the prisoner still retains versus those he forfeits upon his sentencing. Many of these cases discuss whether an inmate's grievance constitutes part of their liberty interest and is significant enough to warrant judicial backing.

Disciplinary segregation	Solitary confinement is considered the most severe and undesired form of punishment within prisons, which is why it is frequently used for disciplinary measures (Conner’s Amicus Brief, Edwin F. Mandel Legal Aid Clinic, 8). Disciplinary segregation can entail being detained in a cell with very little natural light and/or ventilation for 23 hours a day. After <i>Hutto</i> , the Court ruled that disciplinary segregation can be assigned for no longer than 30 consecutive days, but prison guards can institute brief relief periods before submitting the inmate to another 30-day disciplinary segregation sentence. Therefore, the duration cap on this form of solitary confinement is more flexible than officially noted in prison policy.
Administrative segregation	The actual cell and amenities provided under administrative segregation are identical to disciplinary segregation, although the former can continue indefinitely. In theory and even in formal policy, those placed in administrative segregation have many of the same opportunities as the general population, including attending religious services and showering regularly (Helms’ Amicus Brief, State Bar of Michigan, 9-10). Whether or not this indeed takes place has been hotly debated, but almost all agree that the reason for placement in administrative segregation is largely for non-punitive reasons. This could include separating an inmate from the general population, or visa versa, on the grounds that violence will ensue otherwise or that an investigation is taking place regarding that particular inmate (Helms’ Respondent’s Brief, 45).

**Table 3: List of Amici Brief Authors for the Selected Supreme Court Cases**

Case	Amici Brief Authors for Petitioner	Amici Brief Authors for Respondent
Hutto v. Finney (1978)	United States; Pennsylvania; Texas; Mississippi; California; Iowa	Lawyers’ Committee for Civil Rights Under Law; ACLU et al.
Hewitt v. Helms (1983)	United States	Susquehanna Legal Services; State Bar of Michigan
Sandin v. Conner (1995)	Criminal Justice Legal Foundation; New Hampshire et al.	Edwin F. Mandel Legal Aid Clinic; ACLU and ALCU Hawaii
Wilkinson v. Austin (2005)	United States; California et al.	Corrections Professionals; Professors and Practitioners of Psychology and Psychiatry

**Table 4: Chief Justices and Authors of Majority Opinions for the Selected Cases**

<b>Case</b>	<b>Citation</b>	<b>Majority Opinion Author</b>	<b>Sitting Chief Justice</b>
Hutto v. Finney	437 U.S. 678	John Paul Stevens	Warren E. Burger
Hewitt v. Helms	459 U.S. 460	William H. Rehnquist	Warren E. Burger
Sandin v. Conner	515 U.S. 472	William H. Rehnquist	William H. Rehnquist
Wilkinson v. Austin	544 U.S. 74	Anthony Kennedy	William H. Rehnquist