

The Burger Court Opinion Writing Database

Hewitt v. Helms

459 U.S. 460 (1983)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

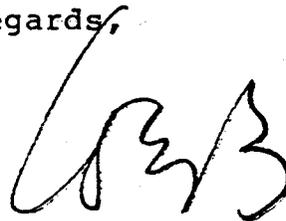
December 22, 1982

Re: No. 81-638, Hewitt, et al. v. Helms

Dear Bill:

I join.

Regards,



Justice Rehnquist

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

November 18, 1982

RE: No. 81-638 Hewitt v. Helms

Dear John:

Thurgood, Harry, you and I are in dissent in the above.
Would you be willing to undertake the dissent?

Sincerely,

Bill

Justice Stevens

Copies to:

Justice Marshall
Justice Blackmun

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

February 15, 1983

RE: No. 81-638 Lowell Hewitt v. Aaron Helms

Dear John:

Please join me in your dissent.

Sincerely,



Justice Stevens - Bill Brennan

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 13, 1982

Re: No. 81-638 - Hewitt v. Helms

Dear Bill:

I await the dissent.

Sincerely,

T.M.
T.M.

Justice Rehnquist

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 17, 1983

Re: No. 81-638-Hewitt v. Helms

Dear John:

Please join me in your dissent.

Sincerely,



T.M.

Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 30, 1982

Re: No. 81-638 - Hewitt v. Helms

Dear Bill:

I shall wait to see what John has to say in this case.

Sincerely,



Justice Rehnquist

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 7, 1983

Re: No. 81-638 - Hewitt v. Helms

Dear John:

I am with you so far as parts II and III of your dissent are concerned. In view of my votes in prior cases, I, of course, cannot join part I. I shall have a very brief separate writing to this effect around within the next two or three days.

Sincerely,



Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 9, 1983

Re: No. 81-638 - Hewitt v. Helms

Dear John:

Please join me in Parts II and III of your dissenting opinion.

Sincerely,



Justice Stevens

cc: The Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Blackmun**

Circulated: FEB 9 1983

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-638

**LOWELL D. HEWITT, ET AL., PETITIONERS v.
AARON HELMS**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT**

[February —, 1983]

JUSTICE BLACKMUN, concurring in part and dissenting in part.

The Court's prior cases of course recognize that a valid criminal conviction and sentence extinguish a defendant's otherwise protected right to be free from confinement. *E. g.*, *Connecticut Board of Pardons v. Dumschat*, 452 U. S. 458, 464 (1981); *Vitek v. Jones*, 445 U. S. 480, 493 (1980); *Greenholtz v. Nebraska Penal Inmates*, 442 U. S. 1, 7 (1979); *Meachum v. Fano*, 427 U. S. 215, 224 (1976). Although prison inmates retain a residuum of liberty, see *Wolff v. McDonnell*, 418 U. S. 539, 555-556 (1974), this liberty is not infringed by conditions of confinement that are "within the normal limits or range of custody which the conviction has authorized the State to impose." *Meachum v. Fano*, 427 U. S., at 225; see *Montanye v. Haymes*, 427 U. S. 236, 242 (1976); *Vitek v. Jones*, 445 U. S., at 493. In *Meachum* and *Montanye*, we held that certain prison transfers were "within the normal limits or range of custody" even though conditions of confinement were more severe in the prisons to which the inmates were transferred. Because I believe that a transfer to administrative segregation within a prison likewise is within the normal range of custody, I agree with the Court that respondent has not been deprived of "an interest independently protected by the Due Process Clause," *ante*, at 7.

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Supreme Court of the United States
Washington, D. C. 20543

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JUSTICE MARSHALL

'82 DEC 22 AIO:13

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 21, 1982

81-638 Hewitt v. Helms

Dear Bill:

I join your opinion, but do have a suggestion.

As to the process due, I agree that "an informal, non-adversary evidentiary review" is sufficient - as you state on p. 14. You go on to say, in addition to notice, that the inmate should have "an opportunity to submit a statement to the prison official" who will make the decision.

Use of the word "statement" could be construed to mean only a written statement. As many prisoners have little or no education, a rigid requirement in this respect could handicap an inmate in presenting his side of an issue. A modest change in your language could make it clear that the inmate should have an opportunity to submit his views to the responsible prison official, perhaps suggesting that ordinarily this would take the form of a face-to-face discussion in which the question at issue can be fully aired.

Sincerely,



Justice Rehnquist

lfp/ss

cc: The Conference

January 4, 1983

81-638 Hewitt v. Helms

Dear Bill:

I do not believe that you cited my opinion a couple of Terms ago in Rhodes v. Chapman. There may be language in it that would be supportive of your view as to the degree of discretion that must be left with prison administrators.

Sincerely,

Justice Rehnquist

lfp/ss

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: DEC 13 1982

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-638

**LOWELL D. HEWITT ET AL., PETITIONERS v.
AARON HELMS**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT**

[December —, 1982]

JUSTICE REHNQUIST delivered the opinion of the Court.

Respondent Aaron Helms was serving a term in the State Correctional Institute at Huntingdon, Pennsylvania, (SCIH) which was administered by petitioners. He sued in the United States District Court for the Middle District of Pennsylvania, claiming that petitioners' actions confining him to administrative segregation within the prison violated his rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The District Court granted petitioners' motion for summary judgment, but the Court of Appeals for the Third Circuit reversed. We granted certiorari, — U. S. —, to consider what limits the Due Process Clause of the Fourteenth Amendment places on the authority of prison administrators to remove inmates from the general prison population and confine them to a less desirable regimen for administrative reasons.

In the early evening of December 3, 1978, a prisoner in the state penitentiary at Huntingdon, assaulted two guards. The prisoner was subdued with the assistance of other guards, but one guard received a broken nose, and another a broken thumb. Later in the evening, the violence erupted into a riot during which a group of prisoners attempted to seize the institution's "control center." One group of inmates attacked a prison guard and a trainee, using table legs,

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

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8, 10 + 11

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-638

**LOWELL D. HEWITT ET AL., PETITIONERS v.
AARON HELMS**

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[December —, 1982]

JUSTICE REHNQUIST delivered the opinion of the Court.

Respondent Aaron Helms was serving a term in the State Correctional Institute at Huntingdon, Pennsylvania, (SCIH) which was administered by petitioners. He sued in the United States District Court for the Middle District of Pennsylvania, claiming that petitioners' actions confining him to administrative segregation within the prison violated his rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The District Court granted petitioners' motion for summary judgment, but the Court of Appeals for the Third Circuit reversed. We granted certiorari, — U. S. —, to consider what limits the Due Process Clause of the Fourteenth Amendment places on the authority of prison administrators to remove inmates from the general prison population and confine them to a less desirable regimen for administrative reasons.

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 23, 1982

Re: No. 81-638 Hewitt v. Helms

Dear Chief:

Thank you for your join in this case. I will review the treatment of postconfinement review in the opinion to look for any of the problems which you suggest may exist. I have accommodated Lewis' suggestion, to which you also refer, in a somewhat halfhearted way in the most recent circulation. I wanted to make it clear that whether or not the inmate's submission was to be written or oral was up to the prison authorities. Like you, I am not ready to transfer the management of the prisons to the inmates!

Sincerely,



The Chief Justice

cc: The Conference

p. 15

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-638

LOWELL D. HEWITT ET AL., PETITIONERS *v.*
AARON HELMS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[December —, 1982]

JUSTICE REHNQUIST delivered the opinion of the Court.

Respondent Aaron Helms was serving a term in the State Correctional Institute at Huntingdon, Pennsylvania, (SCIH) which was administered by petitioners. He sued in the United States District Court for the Middle District of Pennsylvania, claiming that petitioners' actions confining him to administrative segregation within the prison violated his rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The District Court granted petitioners' motion for summary judgment, but the Court of Appeals for the Third Circuit reversed. We granted certiorari, — U. S. —, to consider what limits the Due Process Clause of the Fourteenth Amendment places on the authority of prison administrators to remove inmates from the general prison population and confine them to a less desirable regimen for administrative reasons.

In the early evening of December 3, 1978, a prisoner in the state penitentiary at Huntingdon, assaulted two guards. The prisoner was subdued with the assistance of other guards, but one guard received a broken nose, and another a broken thumb. Later in the evening, the violence erupted into a riot during which a group of prisoners attempted to seize the institution's "control center." One group of inmates attacked a prison guard and a trainee, using table legs,

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To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

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Pp 12-13

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-638

**LOWELL D. HEWITT ET AL., PETITIONERS v.
AARON HELMS**

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[January —, 1983]

JUSTICE REHNQUIST delivered the opinion of the Court.

Respondent Aaron Helms was serving a term in the State Correctional Institute at Huntingdon, Pennsylvania, (SCIH) which was administered by petitioners. He sued in the United States District Court for the Middle District of Pennsylvania, claiming that petitioners' actions confining him to administrative segregation within the prison violated his rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The District Court granted petitioners' motion for summary judgment, but the Court of Appeals for the Third Circuit reversed. We granted certiorari, — U. S. —, to consider what limits the Due Process Clause of the Fourteenth Amendment places on the authority of prison administrators to remove inmates from the general prison population and confine them to a less desirable regimen for administrative reasons.

In the early evening of December 3, 1978, a prisoner in the state penitentiary at Huntingdon, assaulted two guards. The prisoner was subdued with the assistance of other guards, but one guard received a broken nose, and another a broken thumb. Later in the evening, the violence erupted into a riot during which a group of prisoners attempted to seize the institution's "control center." One group of inmates attacked a prison guard and a trainee, using table legs,

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P
P 2, 8, 13, 15, 16, 17

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

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5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-638

**LOWELL D. HEWITT ET AL., PETITIONERS v.
AARON HELMS**

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[February —, 1983]

JUSTICE REHNQUIST delivered the opinion of the Court.

Respondent Aaron Helms was serving a term in the State Correctional Institution at Huntingdon, Pennsylvania, (SCIH) which was administered by petitioners. He sued in the United States District Court for the Middle District of Pennsylvania, claiming that petitioners' actions confining him to administrative segregation within the prison violated his rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The District Court granted petitioners' motion for summary judgment, but the Court of Appeals for the Third Circuit reversed. We granted certiorari, — U. S. —, to consider what limits the Due Process Clause of the Fourteenth Amendment places on the authority of prison administrators to remove inmates from the general prison population and confine them to a less desirable regimen for administrative reasons.

In the early evening of December 3, 1978, a prisoner in the state penitentiary at Huntingdon, assaulted two guards. The prisoner was subdued with the assistance of other guards, but one guard received a broken nose, and another a broken thumb. Later in the evening, the violence erupted into a riot during which a group of prisoners attempted to seize the institution's "control center." One group of inmates attacked a prison guard and a trainee, using table legs,

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Supreme Court of the United States
Washington, D. C. 20543


CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 18, 1982

Re: 81-638 - Hewitt v. Helms

Dear Bill:

I will be happy to undertake the dissent.

Respectfully,



Justice Brennan

cc: Justice Marshall
Justice Blackmun

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 14, 1982

Re: 81-638 - Hewitt v. Helms

Dear Bill:

Because I have difficulty with both your analysis of the nature of the interest in liberty and also with your discussion of the process that is due, I will be writing separately.

Respectfully,



Justice Rehnquist

Copies to the Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: Justice Stevens

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-638

LOWELL D. HEWITT, ET AL., PETITIONERS *v.*
AARON HELMS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[February —, 1983]

JUSTICE STEVENS, dissenting.

When respondent Helms was transferred to “administrative segregation,” he was placed in solitary confinement in B-Block at the State Correctional Institution at Huntingdon, Pennsylvania. The conditions in B-Block are significantly more restrictive than those experienced by inmates in the general prison population.¹ Indeed, in all material respects conditions in administrative custody are the same as those in disciplinary segregation.² The reasons for placing one in-

¹ In an uncontroverted affidavit, respondent Helms described those conditions as follows:

While confined in segregation I had no access to vocational, educational, recreational, and rehabilitative programs as I would have had while out in the general population. Exercise was limited to between five and ten minutes a day and was often only three or four days a week. Showers were virtually nonexistent in segregation in December and January. The changing of clothes was also only once or twice a week while I could have changed more often in population. Had I been in general population I would have had access to various exercise facilities such as the gym and the yard and would have been able to do this for most of the time out of my cell which would have been approximately 14 hours a day. While in segregation I only got out of my cell a few minutes for exercise, showers and an occasional visit. I was virtually confined there 24 hours a day otherwise. The State has not challenged the factual accuracy of this description.

² Compare 37 Penn. Code § 95.106(1) and § 95.106(2) (virtually identical

STYLISTIC CHANGES THROUGHOUT. Substantive Changes
SEE PAGES:

2-3, 7, 9, 10-18

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: Justice Stevens

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PS
Please
in
the
file
for
the
case
of
the
State
of
Penn.

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-638

LOWELL D. HEWITT, ET AL., PETITIONERS *v.*
AARON HELMS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[February —, 1983]

JUSTICE STEVENS, dissenting.

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¹In an uncontroverted affidavit, respondent Helms described those conditions as follows:

"While confined in segregation I had no access to vocational, educational, recreational, and rehabilitative programs as I would have had while out in the general population. Exercise was limited to between five and ten minutes a day and was often only three or four days a week. Showers were virtually nonexistent in segregation in December and January. The changing of clothes was also only once or twice a week while I could have changed more often in population. Had I been in general population I would have had access to various exercise facilities such as the gym and the yard and would have been able to do this for most of the time out of my cell which would have been approximately 14 hours a day. While in segregation I only got out of my cell a few minutes for exercise, showers and an occasional visit. I was virtually confined there 24 hours a day otherwise."

App. 35a.

The State has not challenged the factual accuracy of this description.

2/10
Lowell
Helms

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 1, 6-7

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: Justice Stevens

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-638

LOWELL D. HEWITT, ET AL., PETITIONERS *v.*
AARON HELMS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[February —, 1983]

JUSTICE STEVENS, with whom JUSTICE BRENNAN joins,
and with whom JUSTICE BLACKMUN joins, as to Parts II and
III, dissenting.

When respondent Helms was transferred to "administra-
tive segregation," he was placed in solitary confinement in B-
Block at the State Correctional Institution at Huntingdon,
Pennsylvania. The conditions in B-Block are significantly
more restrictive than those experienced by inmates in the
general prison population.¹ Indeed, in all material respects

¹In an uncontroverted affidavit, respondent Helms described those con-
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virtually nonexistent in segregation in December and January. The
changing of clothes was also only once or twice a week while I could have
changed more often in population. Had I been in general population I
would have had access to various exercise facilities such as the gym and the
yard and would have been able to do this for most of the time out of my cell
which would have been approximately 14 hours a day. While in segrega-
tion I only got out of my cell a few minutes for exercise, showers and an
occasional visit. I was virtually confined there 24 hours a day otherwise."
App. 35a.

The State has not challenged the factual accuracy of this description.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

December 20, 1982

No. 81-638 Hewitt v. Helms

Dear Bill,

Please join me.

Sincerely,



Justice Rehnquist

Copies to the Conference