

Statement of the
Uptown People's Law Center

Reassessing Solitary Confinement

**BEFORE THE
UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL
RIGHTS AND HUMAN RIGHTS**

**PRESENTED ON
June 19, 2012**

Recommendation

The Law Center recognizes that segregating some prisoners, for severe misconduct and for limited periods of time, is a necessary tool for corrections professionals. However, solitary confinement must be limited to short terms (less than 90 days), with clear criteria on why men will be placed in solitary, and what they have to do to be released. Mentally ill prisoners must not be punished by being held for decades in solitary; they must receive treatment.

The use of highly restrictive solitary confinement has now vastly outgrown its origins. There is no evidence based rationale for keeping approximately 80,000 prisoners in this country in conditions of isolation for decades. The over-use of these isolation units is particularly troubling when applied to juveniles and the mentally ill—which make up a huge portion of the population of these units. A national Commission to establish limitations on the use of these isolation units is long overdue.

The Uptown People's Law Center thus calls on Congress to establish a Commission to produce recommendations on the use of solitary confinement in prisons and jails receiving federal funds throughout the country. This Commission should be modeled after the Commission established by the bipartisan and highly successful, Prison Rape Elimination Act. PREA has led to an increase in awareness of prison rape by public officials, and a renewed commitment to ending this terrible blight which has infected our prisons for all too many decades.

Constitutional Violations Are Rampant in Solitary Confinement

The Uptown People's Law Center has represented prisoners in solitary confinement in Illinois' maximum security prisons since 1982 (see, for example, *Walters v. Edgar*, 163 F. 3d 430 (7th Cir. 1998)). More recently, the Law Center has represented the men confined to Illinois' supermax prison (Tamms Correctional Center) since the day it opened in March 1998.

During the course of our work, we have exchanged letters with every prisoner at Tamms, most for many years. We have had dozens of in-person visits with men at Tamms. We have spent time with their mothers, fathers, sisters, wives and children. More recently we have spent

significant time with prisoners who have been released from prison having completed their sentences, now living in our communities, after having spent years, and in many cases more than a decade, in the profound isolation imposed on prisoners at Tamms. We can say, without reservation, that Tamms has profoundly damaged the mind of every prisoner who has been punished by being sent to live in solitary confinement there, especially those men who have never been told why they are in Tamms.

The culture of control and isolation which is inherent in supermax prisons sets the stage for a wide variety of human rights violations, in addition to violations of the most sacred rights guaranteed by the Constitutional of the United States.

The courts have repeatedly found that officials at Tamms supermax have violated fundamental constitutional rights of the prisoners housed there. These findings include the denial of the right to practice one's religion (*Nelson v. Miller*, 570 F.3d 868 (7th Cir. 2009)); retaliation for filing grievances (*Pearson v. Welborn*, 471 F.3d 732 (7th Cir. 2006)); and unwarranted censorship of outgoing mail (*Arnett v. Markel*, 363 Ill.App.3d 1136, 845 N.E.2d 752(5th Dist. 2006)).

The Law Center has also filed three class action cases relating to conditions at Tamms. Two remain pending. In *Rasho v. Godinez*, pending in the United States District Court of the Central District of Illinois, we allege that prisoners with mental illness throughout the state of Illinois are not properly treated. One of the central points of that case is that Illinois continues to confine seriously mentally ill prisoners at Tamms, for years on end, without meaningful mental health treatment, and watches as these men continue their descent into madness. The second pending class action case is *Almodovar v. Snyder*, pending in the Circuit Court of Sangamon County, in which we allege that prisoners at Tamms are not given meaningful review of their continued placement at Tamms—in violation of both Illinois' own laws and in violation of the due process guarantees of the Fourteenth Amendment to the Constitution of the United States.

The principle case we have pursued relates more directly to who is at Tamms and why. In *Westefer v. Snyder*, 735 F.Supp.2d 735 (S.D.Ill. 2010), we alleged that prisoners had been sent to

Tamms in violation of their right to due process—prisoners were not provided notice of the reason for their transfer, a hearing at which they could contest those reasons, or a meaningful decision explaining the outcome of the hearing. Instead, an all too typical “hearing” consisted of a prisoner being brought into a room with no advance notice of why he was there, then being asked why *he* thought that he had been sent to Tamms. The due process claims were certified as a class action on behalf of all prisoners transferred to Tamms.

In addition, we brought claims on behalf of individual prisoners who claimed that their transfer to Tamms was retaliatory punishment for the filing grievances and lawsuits. In the Fall of 2009, a federal jury in southern Illinois found that four of the individual plaintiffs had, as we alleged, been sent to Tamms to punish them for exercising their First Amendment rights, and that there was no legitimate reason for them to have ever been sent to Tamms in the first place. Unfortunately, by the time the jury rendered this verdict, those four men had spent a total of more than 30 *years* in profound isolation. The damage had been done. Under the Prison Litigation Reform Act, since none of them had suffered any *physical* injury, they were only entitled to \$1.00 as compensation for having had their mental health severely damaged.

In June 2010, the District Court found in favor of the *Westefer* plaintiff class. Under the applicable law (*Sandin v. Conner*, 515 U.S. 472 (1995)) the court had to determine whether a transfer to Tamms imposed an “atypical and significant” hardship on prisoners. The Court answered that question with a resounding “yes.”

The Court began its discussion with a reminder of how Tamms was initially conceived:

Even before the supermax prison at Tamms was opened in 1998, the 1993 final report of the Illinois Task Force on Crime and Corrections, which recommended the construction of the supermax prison, cautioned,

Reputable human rights organizations . . . have expressed legitimate and serious concerns about practices in existing super-maximum security facilities. The Task Force recommends that our Super-Max facility be required by statute to conform to certain requirements concerning constitutional and humanitarian safeguards. Since *these highly restrictive environments, if misused, can create conditions tantamount to long-term isolation*, the Department of Corrections will have to establish clearly defined rules and regulations to govern the admission and release of inmates from the Super-Max facility and to monitor its operation and administration

closely. Illinois Task Force on Crime and Corrections, Final Report, at 87-88 (1993) (Plaintiffs' Exhibit 19) (emphasis added). As the Court hopes will be apparent from its discussion of the evidence in this case, including the Court's first-hand observation of conditions at Tamms during a tour of the facility in the company of IDOC officials and counsel for the parties to this case, the Task Force's concerns about confinement in the supermax prison at Tamms becoming an experience of long-term isolation for IDOC inmates were and are well-founded.

The Court went on to make findings of fact based on the extensive evidentiary record regarding the impact of long term isolation on the mental health of prisoners:

Strickland * * * testified that while he was at Tamms he began experiencing auditory hallucinations or "hearing voices" and suffered delusions that correctional personnel at the supermax prison were poisoning his food. Id. at 10. Ultimately Strickland was transferred out of Tamms to the Psychiatric Unit of the Dixon Correctional Center, where he remained for approximately a year before being transferred to Pontiac.

Another prisoner intentionally created a fake escape attempt to relieve some of the isolation he experienced at Tamms:

Rodney Guthrie testified that he had no history of psychiatric disorders before being transferred to Tamms and that, following his transfer to the supermax prison, he fell into a severe depression caused by the isolation at Tamms that ultimately prompted him to have himself classified as an escape risk in a desperate bid to escape from that isolation.

Based on the testimony of a dozen prisoners, the Court found:

[T]he intense deprivation of human contact at Tamms exacts a toll on the psychological well-being of the inmates of the supermax prison.

Last week, the United States Court of Appeals for the Seventh Circuit found that the injunction entered by the District Court Judge to remedy these constitutional violations was overly detailed. However, the Seventh Circuit did not disturb any of the factual findings entered by the District Court, and reaffirmed that prisoners sent to Tamms were entitled to a due process hearing—because the restrictions imposed at Tamms were so severe compared to those imposed, even at other maximum security prisons.

Conclusion

Segregating some prisoners, for severe misconduct and for limited periods of time, is a necessary tool for corrections professionals. However, that is not what Illinois, nor most of the other supermax facilities throughout the country, does. Rather, the use of solitary in Illinois has metastasized. Not only does Illinois confine over 100 men at the Tamms supermax, but there are several *thousand* men confined in segregation, under extreme conditions, at the State's century old maximum security prisons—Menard, Pontiac, and Stateville. With the increasing use of months long lockdowns at these older prisons, conditions begin to approach the isolation of a supermax, with prisoners locked in their cells 24 hours a day. However, Tamms presents a special case.

The Governor of Illinois has now proposed closing Tamms supermax prison in its entirety. In the course of public hearings on the Governor's proposal, the Director of the Department of Corrections has admitted that there are less than 25 men at Tamms who need enhanced security. The remainder can be housed, without any security concerns, in Illinois' maximum security prisons. We believe the numbers are the same in every state in the country. Mississippi reduced its segregation population by 90%, saving millions of dollars—and saw the incidence of violence drop dramatically.

We urge Congress to take action on this issue at the national level. Evidence based policies must be applied to solitary confinement. There must be clear criteria for assignment to solitary, clear limits on how long prisoners can be kept in solitary, and clear goals prisoners can meet to win their release from solitary. Juveniles and those with mental illness should never be placed in solitary. The federal government should take the lead in ensuring that corrections systems are smart on crime, and make efficient use of taxpayer dollars, inflicting punishment only under carefully controlled circumstances, through fully transparent mechanisms.