

SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY,
AND THE ADMINISTRATION OF JUSTICE

REPORT ON VISIT TO THE MARION FEDERAL PENITENTIARY

JUNE 19, 1990

On May 18, 1990, the Subcommittee on Courts, Intellectual Property, and the Administration of Justice conducted a one day oversight visit to the Federal Penitentiary in Marion, Illinois, the highest security federal prison in the United States. The Subcommittee delegation included Chairman Robert W. Kastenmeier, Ranking Minority Member Carlos Moorhead, and Representative George Sangmeister, as well as two Subcommittee counsel. Mr. J. Michael Quinlan, the Director of the Federal Bureau of Prisons, accompanied the Subcommittee delegation.

The visit to the Marion Federal Penitentiary was the subcommittee's second prison oversight visit this Congress. The Subcommittee visited the Atlanta Penitentiary, and the Marianna and Butner Federal Correctional Institutions during the first session of the 101st Congress. The primary purpose of the visit to these three facilities was to assess conditions of prison overcrowding.

By contrast, the purpose of the Subcommittee's visit to the Marion Penitentiary was to assess conditions of confinement at the Marion Penitentiary, where inmates are held in "lock down."¹

¹The Federal Bureau of Prisons prefers not to use the term "lock down" to describe the highly controlled operation of the Marion Penitentiary. Nevertheless, the "lock down" term is used in this Report because it is the most commonly used term to describe that policy.

The Marion Federal Penitentiary is of great importance to the administration of all Federal prisons and to state institutions as well. Unlike the three prisons visited by the Subcommittee earlier in the 101st Congress, and in fact, unlike the vast majority of prisons in the United States, Marion is not overcrowded, but actually operates below its rated capacity. Marion is unique, however, because of the nature of the inmate population and the manner in which the institution is administered. The Subcommittee delegation talked to staff and inmates at the prison to hear their views about life in the institution and will follow up on specific concerns that these individuals raised. In addition, the delegation investigated complaints that the water supplied to the penitentiary is contaminated.

I. The Mission of the Marion Penitentiary

We face a difficult question in the Federal Prison system as to how to confine maximum security inmates. Many states and in fact many other countries face this same question. As a matter of general policy in the United States, we send individuals to prison as their punishment, not to be punished. Yet, there are certain offenders who are particularly dangerous to other inmates, to correctional staff, and to the public, and who thus require heightened constraints on their confinement. Some are members of violent gangs, some have uncontrollable, destructive or assaultive behavior and others are escape risks. In addition, there are inmates who must be protected from the general

population in prison because of the nature of their crimes, because they have cooperated with authorities or because they possess other characteristics that necessitate protective measures.

Some correctional systems divide up the high security, dangerous inmate population into small groups and disperse them throughout a prison system. In the United States, the most dangerous Federal prison inmates, as well as state prison inmates who cannot be handled in state facilities, are instead concentrated at the Marion Federal Penitentiary. The benefit of a policy that concentrates dangerous, disruptive inmates is that other prisons in the Federal and state systems are safer for inmates and staff, and can be operated in a more open and humane manner. In addition, the fear of being sent to Marion may deter inmates at other prisons from engaging in unlawful or aggressive activities. As a result, however, Marion becomes a very volatile and difficult to manage institution.

II. The Marion "Lock Down" Policy

The Marion Penitentiary opened in 1963 and has functioned as a Level 6 maximum security institution since 1978. The institution has been operated as a "lock down" facility since a series of violent incidents in 1983 and 1984.

Prior to the "lock down" Marion was run like other high security federal prisons -- inmates spent their days engaged in work and other activities and were locked in their cells at

night. Particularly disruptive inmates were placed in a control unit for extended time periods or in segregation for short periods of time. The Marion prison administration had great difficulty operating the maximum security prison as inmate gangs increasingly gained control of the institution. Violent attacks on both inmates and correctional employees escalated in 1983 and 1984 and a number of prisoners and guards were killed in the violence.

Beginning in 1984, and continuing through today, most inmates at Marion are held in their cells for 20 to 23 hours a day, depending on the unit they are in. There is only one inmate per cell at Marion and while most have bars on the front, some cells are closed, making verbal communication with other inmates more difficult. All inmate movement in the institution is tightly controlled.

Most inmates can, through good behavior, work their way out of the Marion prison and into other facilities. An inmate must spend a number of years, however, at Marion before he will be transferred to another institution. It generally takes close to three years of incident-free behavior to progress through the Marion "program," which involves residence in a series of increasingly open housing units in the prison.

Over 600 inmates have moved through the institution since the "lock down" was imposed in 1984 and only 17.8% of these inmates have returned to Marion. However, 30 inmates have been at Marion since the early 1980's and have not progressed through

the Marion program.

III. Assessment of "Lock Down" Policy

Critics of the "lock down" policy at Marion, including Amnesty International, the American Friends Service Committee, and the People's Law Counsel, consider the conditions at the prison to be unnecessarily punitive. They are concerned that the amount of time inmates spend in their cells constitutes sensory deprivation and causes psychological damage to the inmates. Questions have also been raised in the past as to whether all the inmates at Marion warrant placement in a maximum security facility.

Assuming, however, that the inmate population at Marion is appropriately classified and that inmates may pose a threat to each other and to the staff, we are still left with the question of whether a "lock down" policy is appropriate in our society. Is there a way to operate Marion (or any maximum security prison) that would provide inmates with greater freedom of association, the opportunity to move more freely throughout the institution, and to participate in more productive activities outside of their cells without placing the lives of staff and inmates in jeopardy?

The Subcommittee is concerned about the amount of time inmates spend in their cells in relative isolation and the limited opportunity for productive and recreational activity that is available in the highly controlled environment. Nonetheless, the Marion Penitentiary is a well administered prison and the

level of violence directed at staff and inmates at Marion has significantly decreased since the "lock down" policy was implemented in 1984. In that respect, there has been a notable improvement in the operation of the facility since the period of unrest in the early 1980's.

It is also evident that the current administration at the Marion Penitentiary responds to certain needs of the inmate population and addresses inmates concerns within the context of its current policy. For example, the administration recently built a ceremonial sweat lodge for Native American inmates. In addition, each inmate is allowed to keep a fair number of personal items in his cell, including books and papers, and the Warden at Marion asserts that he walks through the prison every week and talks to inmates, responding to their requests and concerns when appropriate.

If the current "lock down" policy is the only available way to keep violence in the prison down, then Congress and the American people have no choice but to tolerate it. At the same time, we must continue to develop a more humane approach to the incarceration of the maximum security prison population. This is particularly true because the Federal Bureau of Prisons serves as a model for state prisons and for other countries in the world. In fact, according to a survey conducted by the Bureau of Prisons, 36 states now operate Marion-style prisons or units within prisons and the lack of standards or controls on the operation of these maximum security "lock down" prisons is cause

for great concern.²

The Federal Bureau of Prisons is planning to build a new maximum security prison in Florence, Colorado to replace the Marion Penitentiary. The architectural plans will incorporate and reflect policy decisions about the administration and operation of the planned facility. The Subcommittee will carefully review the plans for the new facility to determine whether the changes in policy and the resulting changes in the prison environment will address the subcommittee's concerns about the "lock down" policy at Marion.

IV. Concerns Expressed by Marion Prison Inmates

In the Subcommittee's tour of the prison, the delegation had the opportunity to talk with a number of inmates who raised specific concerns about the prison. The inmates asserted that the "lock down" program is excessively punitive and dehumanizing; that inmates are subjected to extended periods of isolation; that the process of assigning inmates to Marion is unjust; the water supply is contaminated; and that the administration at Marion arbitrarily determines that certain inmates cannot, despite their incident-free behavior, progress through the "program" at Marion

²There is a danger that state systems will copy the Marion model, but will not include a mechanism for inmates to progress and eventually work their way out of the institution. State "lock down" programs may also lack recreational opportunities or opportunities for inmates to associate with each other and with staff. Moreover, states may not have developed appropriate classification systems and there may be few controls on who is sent to the "lock down" facilities.

and obtain placement in another prison. These and other concerns raised will be examined by the Subcommittee, as will the status of certain Marion inmates and the reasons for their placement in the Marion Penitentiary.

V. Special High-Profile Inmates at Marion

There are a number of high profile inmates at Marion including some who have been convicted of politically motivated crimes against the United States. While these individuals need protection from other inmates and must be confined inside a secure perimeter, they may not themselves be violent or disruptive. With respect to these individuals, the question should be addressed whether there are any alternatives to the isolation that currently characterizes their confinement.

VI. The Marion Water Supply

The Subcommittee has received numerous allegations that the water supplied to the Marion Federal Penitentiary from the Crab Orchard Lake is contaminated with PCB's, Trihalomethanes or other toxic substances. The Environmental Protection Agency has tested the water for the Bureau of Prisons and has informed the Subcommittee that the water is safe for consumption and for other residential use. Nonetheless, the Warden at the Marion Penitentiary acknowledged that the water is "aesthetically displeasing," and the Subcommittee would concur that the water is distasteful. The Bureau of Prisons is developing a new water

supply for the Penitentiary, so that within two years, the safety and taste of the water will no longer be at issue. This is certainly the best solution to the current water controversy.

Nonetheless, the Subcommittee, with the assistance of the Illinois State Environmental Protection Agency, conducted an independent test of the water during its visit to the Marion prison. The Agency for Toxic Substance and Disease Registry will be analyzing the test results for the Subcommittee to determine whether the water does in fact meet necessary standards of safety. The results of this independent study should be available in the near future.

VII. Conclusion

The Subcommittee recognizes the very difficult task that the Federal Bureau of Prisons faces in operating an overcrowded prison system and in particular, in managing the very dangerous prison population at the Marion Penitentiary. The agency has proven responsible in its management of Federal prisons, including the Marion Federal Penitentiary, which is operated efficiently and safely.

Congress must rely on the Bureau of Prisons for its expertise in prison management. Nonetheless, Congress itself is ultimately responsible for guiding the Bureau of Prisons in the development of appropriate responses to the difficult questions that arise in the confinement of maximum security inmates. The Subcommittee's visit to the Marion Penitentiary was extremely

worthwhile and educational. It will provide the Subcommittee with the necessary information to assist the Bureau of Prisons in these difficult policy areas and to help the Bureau develop the best possible methods for confinement of high security inmates.