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PRISON VIOLENCE AND CAPITAL PUNISHMENT

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BEFORE THE
SUBCOMMITTEE ON CRIMINAL LAW
OF THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
NINETY-EIGHTH CONGRESS
FIRST SESSION

OVERSIGHT HEARING TO EXAMINE CAPITAL OFFENSES BY FEDERAL PRISONERS

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PRISON VIOLENCE AND CAPITAL PUNISHMENT

WEDNESDAY, NOVEMBER 9, 1983

U.S. SENATE,
SUBCOMMITTEE ON CRIMINAL LAW,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Paul Laxalt (chairman of the subcommittee) presiding.

Present: Senators DeConcini, Biden, and Thurmond.

Staff present: John F. Nash, Jr., chief counsel and staff director, and Beverly McKittrick, majority counsel.

Senator LAXALT. We will be in order. We are awaiting the chairman of the full committee, but apparently, he has been detained a moment, so we will go forward.

The Senate Judiciary Subcommittee on Criminal Law is holding this hearing because a few weeks ago, two Federal prison guards were brutally murdered while on duty at our Federal prison in Marion, Ill. All the early evidence indicates that those who did the killing did so without the slightest regard for the consequences, either to themselves or their victims.

Welcome, Mr. Chairman. I am just in the process of making a short opening statement, Mr. Chairman. We have not taken any testimony yet.

OPENING STATEMENT OF HON. PAUL LAXALT, A U.S. SENATOR FROM THE STATE OF NEVADA, CHAIRMAN, SUBCOMMITTEE ON CRIMINAL LAW

Senator LAXALT. In our Federal prison system there are a handful of inmates who possess what amounts to a license to kill. These are prisoners who are already serving more than one life sentence, usually for earlier murders. Unfortunately, current Federal law does not provide for a penalty greater than a life term. As a consequence, a few truly violent and remorseless men continue to prey on other prisoners or the correctional officers without the law being able to exact the ultimate punishment—death—for their continued monstrous acts.

At a minimum, the Congress must provide for the death penalty in these types of cases. It is of little solace to the two widows and five children of the guards slain last October, that the Senate Committee on the Judiciary has reported, for the fourth Congress in a row, a capital punishment statute. The fact remains, that no action has been taken on the floor of the Senate, and there is no activity

at all on this issue in the House Committee on the Judiciary. It seems clear to me that if 38 States have seen fit to reimpose the death penalty, the time has come for Congress to act. Terrorists, assassins, and the other killers who prey on the innocent cannot be allowed to ply their murderous trade with impunity.

The chairman of this committee, my good friend and colleague, Senator Strom Thurmond, has worked closely with Senator DeConcini of Arizona to bring this issue to the calendar of the U.S. Senate—and may the record indicate that both of these distinguished Senators are present at this hearing. Last August, the committee reported a capital punishment bill by a vote of 13 to 5. Included within the text of that bill is a new section, proposed by Senator Specter of Pennsylvania, which specifically provides for the punishment of death for those who commit murder while serving a term of life sentence. The tragic events at our Federal prison at Marion, Ill., underscores the absolute need for this provision, as well as the need for this Government to do everything in its power to deter acts of this kind in the future.

This morning, I am pleased to welcome Mr. Norman Carlson, Director of the Bureau of Prisons, and D. Lowell Jensen, Associate Attorney General at the Department of Justice, to provide this subcommittee with testimony about the problem of capital crimes committed by prisoners and the overwhelming management problems associated with this critical issue.

Before proceeding with this testimony, I welcome any comments that either of my colleagues may have.

Senator Thurmond.

OPENING STATEMENT OF HON. STROM THURMOND, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA, CHAIRMAN, COMMITTEE ON THE JUDICIARY

The CHAIRMAN. Thank you, Mr. Chairman.

The hearing today is for the purpose of examining the adequacy of sanctions against Federal prison inmates who commit serious crimes of violence against guards and other inmates.

On October 22, 1983, two guards were brutally murdered and two others seriously injured by two inmates in separate incidents in the U.S. penitentiary at Marion, Ill. Both inmates were at the time serving consecutive life terms. No meaningful penalty remains under current law to punish these additional crimes. While the statements of the witnesses today will focus on the details of these heinous crimes, I understand that such incidents are not uncommon. It is a situation that cries out for a prompt solution.

As the witnesses for today already know, I am a strong supporter of the death penalty for murder. S. 1765, reported by the Committee on the Judiciary on August 4, 1983, is a bill to provide a constitutional procedure for the imposition of the death penalty for all Federal capital crimes. I want to commend Senator DeConcini for his fine interest and support of this measure, which is now on the Senate Calendar. As soon as the crime package (S. 1762) passes, which we hope will be this year—the majority leader has promised to bring S. 1765 up shortly after we come back in January.

At the instance of Senator Specter, the committee adopted an amendment to S. 1765 that would provide for the death penalty for a murder committed in a Federal prison by an inmate serving a life term. Alternatively, a sentence of imprisonment without parole would be required if the death penalty were not imposed.

I wish we could get prompt action on this general capital punishment bill. However, if that is not possible, perhaps we should consider a separate measure to deal with the problem of murder in the Federal prisons. I will be interested in hearing the views of the witnesses.

I wish to welcome these distinguished witnesses this morning. We are very honored to have them here and to get their opinions, which I am sure will be very valuable to our committee.

Mr. Chairman, I want to commend you for holding these hearings and for your fine interest and support of these measures.

Senator LAXALT. I thank the chairman.

Senator DeConcini, as the chairman has indicated, has been in the forefront on the Senate side and certainly within the framework of this committee, in sponsoring and advocating capital punishment legislation. I would like to yield to the Senator so that we may have the benefit of his remarks.

Senator DeCONCINI. Chairman Laxalt, thank you very much. I want to join Chairman Thurmond in complimenting you for scheduling these hearings. It is timely for us to take up this matter today.

I want to thank also Senator Thurmond, the chairman of our full Judiciary Committee, for his leadership on this bill. It is his bill that has been introduced this year to recreate the death penalty. I am quite disappointed that the death penalty has not already been considered by the Senate in this 1st session of the 98th Congress. I hope that this hearing, on a particularly senseless and depraved incident, will stimulate the Senate into prompt action on S. 1765. The narrow focus of today's hearing relates to one new Federal capital crime created by S. 1765. The additional capital crime under S. 1765 is murder in a Federal correctional institution by an inmate, serving a life term by death or life imprisonment. In my opinion, it is particularly important that we quickly add this crime to the list of those for which the death penalty can be imposed.

One of the arguments used by those who oppose the reinstatement of the death penalty is that it has not been conclusively proven that the death penalty is a deterrent to murder. In the case of someone serving a nonrevokable life sentence, however, execution is the only sanction which could possibly serve as a deterrent. Individuals, like the two we will discuss today, and others in similar circumstances, have little or nothing to lose by carrying out their depraved, deplorable actions. We must impose the death penalty on prisoners sentenced to life who murder guards or other inmates in order to bring some semblance of security to our Federal prison system.

Regardless of whether or not the imposition of the death penalty would have deterred either of the two murderers we are going to discuss today, it must be obvious to anyone that these are two depraved individuals who will go on killing people until they die.

It is our job as the protectors of the society at large, and of particularly those who we employ to work in our Federal correctional system, that these individuals do not kill again. There is only one way to insure that they do not, and everyone here, both opponents and proponents of the death penalty, know what we must do. I intend to do everything I can do to see that we start carrying out our responsibility of getting the death penalty bill on the floor of the Senate for consideration.

Thank you, Mr. Chairman.

Senator LAXALT. Thank you.

Senator Biden has just joined us. Do you have any remarks before we proceed to take testimony, Senator Biden?

Senator BIDEN. Only one by way of potential apology—and I say "potential" because I am not sure. The Senate minority leader just left the Senate floor suggesting that he heard that a bill that I have a keen interest in is going to come up at 10:30. If that is true, I will be leaving you, and I apologize for that. If it is not, I will stay for the entire hearing. But I am anxious to hear what you both have to say.

Senator LAXALT. Thank you.

We will proceed first with the testimony of Norman A. Carlson, who is the Director of the Bureau of Prisons. We welcome you, Mr. Carlson, to these hearings. And I might say that my staff has had occasion during the last few weeks to make an extensive review of your operations, and they have come back with extremely high marks for the caliber of your staff, as well as an appreciation for the tremendous problems that you are experiencing. They were quite impressed with the high degree of efficiency and conscientiousness with which you are approaching a very difficult task. So we are very proud and privileged to have you present your testimony.

STATEMENT OF NORMAN A. CARLSON, DIRECTOR, BUREAU OF PRISONS, U.S. DEPARTMENT OF JUSTICE

Mr. CARLSON. Thank you, Mr. Chairman, and members of the committee.

I welcome the opportunity to appear before you today in order to discuss a critical problem we face in the management of the Federal Bureau of Prisons. Simply stated, the issue is a lack of adequate sanctions to deal with the small number of dangerous and violent offenders who continue to prey on others while they are incarcerated.

My testimony today relates directly to the tragic incidents that occurred at the U.S. penitentiary, Marion, Ill., on October 22. Those incidents dramatically illustrate the problems we have in attempting to cope with criminals for whom there is no meaningful deterrent. In my opinion, the lack of a Federal death penalty makes a mockery of the Federal criminal justice system when we attempt to deal with multiple murderers who continue to prey on innocent victims, both staff and inmates.

The U.S. penitentiary, Marion, Ill., is the most maximum security facility of the 43 institutions comprising the Federal prison system. With an inmate population of 330, Marion was opened in

1963 to replace Alcatraz. Inmates sent to Marion are the most volatile and dangerous of the 30,400 offenders confined in Federal custody. In addition to the 200 Federal inmates currently at Marion, there are 93 State prisoners and 29 District of Columbia inmates housed under reimbursable agreements.

Contained within Marion is a prison within a prison—the control unit. This small, self-contained housing unit is the end of the road for those inmates who, by their continued assaultive behavior toward staff and other inmates, have demonstrated their inability to function in the general population of any prison, including Marion. The majority of inmates presently in the control unit have been involved in fatal or near-fatal assaults on staff or inmates in State or Federal prisons.

On Saturday, October 22, two experienced, highly regarded correctional officers were brutally murdered and two others seriously injured during separate, totally unprovoked assaults that occurred in the control unit at Marion. The first officer was murdered shortly after 10 a.m., while he and two other officers were returning an inmate to his cell from a shower. The inmate apparently used a knife to inflict approximately 40 stab wounds. The officer died as a result of the injuries he received.

This senseless act was committed in full view of and without regard to staff and inmate witnesses present.

The second correctional officer was brutally stabbed at approximately 8:30 p.m. on the same date, while he and two other officers were returning an inmate to his cell from the recreation area. While being escorted, an inmate was apparently able to slip off his handcuffs and use a homemade knife to stab one officer. The other two unarmed staff members rushed to the aid of the injured officer. One of these staff members was injured and another stabbed to death while attempting to aid their fallen comrade.

The investigation into these incidents is presently ongoing.

In my opinion, Mr. Chairman, cases like the ones I have described graphically illustrate the need for a Federal death penalty.

Recent events at Marion have been a tragic experience—not only for the families involved and the slain officers' friends and coworkers, but for all of us in Federal law enforcement. What could make these tragedies even more appalling would be a determination that those responsible were already serving life sentences and are in effect immune from any further sanction for their acts. They could then sit back and scoff at a criminal justice system which is powerless to deal with their actions. Nothing short of total and complete isolation could prevent them from striking out again at inmates or officers for the rest of their lives. That degree of isolation is of questionable practical or constitutional validity.

Where assailants are already serving multiple consecutive life sentences, they can act with impunity since a life sentence is the most severe penalty that the Federal criminal justice system presently authorizes as punishment for murder. One more life sentence means absolutely nothing to such individuals.

Without debating the arguments justifying the various theories of criminal sanctions—retribution, deterrence, or incapacitation—individuals serving life sentences are immune from further punishment. Repeated, barbaric acts against both staff and inmates dem-

onstrate that they are not deterred from further violence. Another life sentence adds nothing to the scales of justice. They are already incapacitated to the maximum extent which our system allows.

What we have at present, Mr. Chairman, is a situation of capital punishment which rests in the hands of the most vicious prisoners. We in the criminal justice system are powerless to act. It is they who choose to execute others while society remains silent. It is that sense of powerlessness which frustrates those of us involved in the administration of the Federal prison system. For the multiple murders they have committed and for their victims, there is no justice because the assailants are not punished. For those who must come in contact with these individuals for the rest of their lives, there is no safety because there is no deterrence.

While I have not come to my conclusion quickly or without considerable soul searching, I believe that society can demand the death penalty for the repeated taking of human lives. The tragic murders of the correctional officers at Marion dramatically illustrates the need for that ultimate sanction. In my opinion, inmates who murder, then murder again, must be held accountable for their violent actions.

That concludes my statement, Mr. Chairman. I would be pleased to answer any questions you or your colleagues may have.

Senator LAXALT. Were these two incidents unrelated? Is that the gist of your testimony?

Mr. CARLSON. The investigation thus far, Senator Laxalt, indicates that they were unconnected.

Senator LAXALT. And they occurred the same day?

Mr. CARLSON. They occurred the same day, one in the morning at approximately 8:30 a.m., and the second during the evening hours, about 10:10 p.m.

Senator LAXALT. You made reference, Mr. Carlson to a prison within a prison. Does that mean that you have an overall prison population of approximately 345 inmates and within that facility there exists a special unit which houses the more dangerous prisoners?

Mr. CARLSON. That is correct. The institution at Marion, Senator Laxalt, has a capacity of approximately 330 inmates. The control unit contains approximately 45 inmates. It is a self-contained housing unit within the prison.

Senator LAXALT. And these inmates are the most violent offenders incarcerated at your institution?

Mr. CARLSON. That is correct, Senator Laxalt.

Senator LAXALT. And these incidents occurred within this control unit?

Mr. CARLSON. That is correct.

Senator LAXALT. And of course, this is all under investigation. How, under those conditions, would they be able to fashion weapons to commit these crimes?

Mr. CARLSON. Senator Laxalt, it is extremely difficult to prevent inmates from taking virtually any object, sharpening it on concrete and making it into a lethal weapon. By simply taking a piece of metal and repeatedly striking it across concrete, it will become a sharpened instrument, which can be lethal, as it was in this particular case.

Senator LAXALT. And that's the problem we have throughout the system, of course.

Mr. Carlson That is correct.

Senator LAXALT. You made reference to total and complete isolation. I suppose those who philosophically oppose capital punishment say, "Well, if they are this dangerous, why not just isolate them completely?" But you also made reference to constitutional problems. Can you elaborate on that?

Mr. CARLSON. Mr. Chairman, the control unit at Marion operates under a decision that was handed down by the Seventh Circuit Court of Appeals approximately 5 years ago, *Bono v. Saxbe*, which mandates that we provide inmates within the control unit with 7 hours of recreation a week, plus several showers a week. Inmates have to be taken out of their cells to comply with the court's interpretation of the Constitution.

Senator LAXALT. And that was with reference to this particular facility?

Mr. CARLSON. That is correct.

Senator LAXALT. And this particular control unit?

Mr. CARLSON. That is correct, Senator Laxalt.

Senator LAXALT. So the outcome of that decision, by compelling prison officials to allow control unit prisoners to have what amounts to regular recreational periods, can endanger the lives of correctional officers and other inmates?

Mr. CARLSON. That is correct, Mr. Chairman. The court has mandated that we provide that period of recreation for inmates, so they have to be taken out of their cells to comply with the requirements of the order.

Senator LAXALT. So there is no alternative, either in the State or Federal system now, constitutionally, for complete, total isolation, as was the case years ago.

Mr. CARLSON. That is correct.

Senator LAXALT. There is no such thing as solitary confinement any longer.

Mr. CARLSON. Not for any appreciable period of time. There can be for short periods of time, but certainly nothing for the duration that we are talking about for individuals such as may have perpetrated these crimes.

Senator LAXALT. So you are left, really, as a practical matter without a remedy other than the one that you have recommended?

Mr. CARLSON. In my opinion, that is correct.

Senator LAXALT. Senator DeConcini?

Senator DECONCINI. Mr. Chairman, thank you, and thank you, Mr. Carlson. I express, I am sure, the outrage of all of us as to this tragedy and hope you will express our sympathies to the families and the fine personnel that you and I have had a chance to visit there at that particular institution.

When I heard of this event, I could not help but recall my visit there, I want to ask you a question about the control unit there. Is there consideration of structural changes so that a prisoner could be separated from the population but have a shower that no one had to take him and where he could have access at a certain period of time to a recreational area by himself?

I wonder, until we pass the death penalty—and I am not optimistic that that is going to happen soon—if you have given thought to what can be done. From your testimony and the facts that are presented here, it is obvious these men are going to strike again, and as you say, with impunity. Have you thought about the construction changes?

Mr. CARLSON. Senator DeConcini, we have, and we will make further physical modifications to that unit. As you recall, you and I toured that unit some 5 years ago. We walked down the ranges where both of the murders occurred. We can provide additional security features through the use of hardware, fencing, and bars and grilles, but the fact remains that inmates still must be taken out of their cells for visits with their attorneys, for example, and with their families. I know of no way we could totally isolate them from contact with staff members. It is simply impossible.

Senator DECONCINI. If the money were available could you do it through a mechanical procedure, so that an inmate did not have to be confronted personally unless he was ill?

Mr. CARLSON. We, as I say, are making some modifications and plan to make even further modifications in a new unit that we are going to build at the U.S. penitentiary at Leavenworth for this type of individual. But again, they have access to visitors. We do not think it is advisable to bring the visitors into the unit, because that raises another spectrum of problems for us. I feel that there will always be some contact between staff and inmates. I think that is a given.

Senator DECONCINI. I was impressed, Mr. Carlson, with the high security there and the protection that appeared to be there.

Can you tell us a little bit about the provocation that prompted this? Were there eyewitnesses of it and what happened. Would answering my question jeopardize the trial of the individuals?

Mr. CARLSON. Senator DeConcini, these incidents are under investigation at the present time, and I am not at liberty to talk further about the specifics of the incidents.

Senator DECONCINI. Thank you very much.

Tell us just a little bit for the record the story of the victims of these barbaric acts. These two men that were killed, how long had they been on the force, what kind of families did they have, what kind of training did they have, and what kind of loss is it to the service?

Mr. CARLSON. The first victim, Correctional Officer Clutts, had been with the Bureau of Prisons for over 19½ years. He started at Marion when we opened the institution in 1963. Ironically, he was scheduled to retire in May 1984, so it was within a very few months of his proposed retirement. He was an excellent officer, highly regarded by the staff, had a good reputation with the other inmates in the institution, and was considered a firm but fair officer. He had worked in this particular unit much of his career because he requested assignment there. He liked to work in the unit and from the perspective of the warden and others who had frequent access to it, they felt that he was one of the best officers ever assigned to the control unit. He could communicate with the inmates, as I say, and yet maintain a high degree of professionalism. The second officer, Mr. Hoffman, had been with the Bureau ap-

proximately 10 years. The irony there was that his son had just begun working as a correctional officer at Marion, and was one of the officers who responded to the alarm and found his father's body in the cellblock.

Both officers were highly regarded by the staff and had been extremely dedicated to their profession, working at Marion. They were both natives of the area and had given their entire professional careers to the Bureau of Prisons.

Senator DECONCINI. When those guards escort such prisoners as these to certain places, do they wear any protective armament?

Mr. CARLSON. No; they do not.

Senator DECONCINI. Is that just impractical to do?

Mr. CARLSON. We are now considering the possibility of having them wear a bulletproof vest. The problem, however, Senator, as you realize, is that the vest is only to protect the midpart of the body. It leaves the neck open, which is another extremely vulnerable part of the anatomy. I do not personally think that a vest in and of itself, is going to solve the potential problem.

Senator DECONCINI. Are the two inmates accused of these crimes now in the control unit again?

Mr. CARLSON. The investigation is ongoing. The two suspects have been transferred to other institutions.

Senator DECONCINI. Thank you, Mr. Carlson.

Senator LAXALT. Are your officers within the unit permitted to be armed at all?

Mr. CARLSON. No; they are not, Senator Laxalt.

Senator LAXALT. So that as a practical matter, they have absolutely no protection in a situation like that?

Mr. CARLSON. That is correct.

Senator LAXALT. Thank you, Mr. Carlson.

Mr. Jensen, we would like to hear from you.

**STATEMENT OF D. LOWELL JENSEN, ASSOCIATE ATTORNEY
GENERAL, U.S. DEPARTMENT OF JUSTICE**

Mr. JENSEN. Thank you very much, Mr. Chairman, and Senator DeConcini.

The brutal murders that Director Carlson has just described are indeed an outrage. But also outrageous is the fact that a decade's inaction has left current Federal law in a State where it is likely that our criminal justice system will be powerless to impose any meaningful sanction for these vicious crimes.

The consequences of these murders, as you have just heard, are clearly serious and tragic in every dimension, for the victims and their families, for the inmates at Marion, and for the Federal officers charged with the difficult responsibility of maintaining safety and security at the prison. Yet if it is established that those who committed these crimes are inmates already serving life sentences, they alone, of all those touched by these despicable crimes, will suffer no consequences, for our law offers no penalty more severe than that to which they are now subject—a life sentence.

Under current Federal law, no matter how reprehensible a murder may be, a judge or jury may not even consider application of the death penalty. This is because Federal law has never been

amended to provide procedures for imposition of the death penalty which the Supreme Court, in a series of decisions beginning with the 1972 case of *Furman v. Georgia*, has determined are required under the Constitution.

Thus, for the most heinous Federal crimes—assassination of the President, treason or espionage with devastating results for the Nation's security, or brutal murders, such as those of the Marion prison guards—the most severe penalty now available is imprisonment for life. Imposition of a life sentence for such crimes is no assurance that a life sentence will in fact be served.) A person sentenced to life imprisonment is eligible for parole after 10 years, as is a person sentenced to a term of more than 30 years, and after serving 30 years of a life sentence, parole release at the present time is mandatory unless the Parole Commission makes an affirmative finding of serious prison misconduct or of a probability that the offender will commit another crime if released. Moreover, the 10-year parole eligibility date and 30-year mandatory release date are interpreted to apply equally to those persons serving a single life sentence and those serving multiple, consecutive life sentences.

We are confident, of course, that the Parole Commission would not permit the early release of an inmate already under a life sentence, who murdered again and again while incarcerated. But what we are faced with in that situation is a complete inability, absent the availability of the death penalty, to assess any additional penalty to punish or deter these prison murders. The inmate who has committed multiple murders knows he is likely to spend all or most his days in prison, and so by precluding the ultimate sanction of death, current law in effect gives the offender carte blanche to continue to murder as opportunity and his perverse motives dictate.

The fact that the most monstrous Federal offenders are effectively insulated from further punishment can only contribute to the terror and violence to which our corrections officers and prison inmates are daily subjected. The murders of the Marion officers are by no means isolated incidents in our prison system. In the control unit at Marion that has just been described, the most secure unit within our highest—level security facility, are more than 20 inmates who have killed while in Federal prison. Until the murders of officers Clutts and Hoffman, all the victims of these murders had been other prisoners.

To date, more than two-thirds of the States have enacted death penalty laws designed to meet the Supreme Court's decisions over the last 10 years. Ironically, one of these States is Illinois, where the Marion penitentiary is located. But because Marion is an enclave over which there is exclusive Federal jurisdiction, there is not even the opportunity for a State prosecution which could result in imposition of the death penalty. This situation is not unique to Marion. Five other penitentiaries, those in Atlanta, Leavenworth, Terre Haute, Lewisburg, and Lompoc, Calif., as well as 19 other Federal correctional facilities, are subject to exclusive Federal jurisdiction.

The fact of exclusive Federal jurisdiction at Marion and other facilities is not the problem, however. It simply means that we cannot abdicate to the States our responsibility to provide a just

and proportionate punishment for the most egregious crimes committed by the most incorrigible offenders. Federal criminal laws are enacted to allow the vindication of important Federal interests. These interests include protecting the lives of Federal correctional officers and Federal prisoners. We have a grave responsibility to these persons and others who are victims or potential victims of the most serious Federal crimes. But it cannot be met if our criminal sanctions are inadequate as punishments and deterrents. It would be ludicrous to suggest that the Federal Government avoid its responsibilities by calling on the States whose legislatures have had the courage and resolve to enact death penalty laws to prosecute the worst Federal crimes.

The investigation of the Marion murders raises the possibility that the offenses were committed by prisoners already serving consecutive life sentences. These cases are examples of the most compelling circumstances justifying the death penalty. For inmates serving life sentences, the most severe penalty current law can offer, imposition of yet another life sentence is meaningless in terms of punishment and deterrence. Moreover, such offenders are hardly incapacitated by prison sentences.

Senator LAXALT. Will the gentleman yield on that point?

Mr. JENSEN. Certainly.

Senator LAXALT. Don't we now have within our Federal prison system today, inmates who have killed as many as three people while incarcerated? And aren't these inmates, who received consecutive life sentences for these subsequent murders, able to kill again with absolutely no further punitive sanctions available under Federal law?

Mr. JENSEN. That is correct. As described, a sequential recidivist murder committed by a prison inmate in the prison, and the imposition of another life sentence, simply merges for all legal purposes, into the previous life sentence. It is not a sanction. It can be considered, as I indicated, by the Parole Commission, and obviously should, but in terms of the imposition of a direct sanction, there is none.

As I indicated, offenders in this kind of category are hardly incapacitated by prison sentences. They merely find their victims among the inmates and prison guards who surround them. But the need for an available death penalty is not confined to only these cases.

In April 1981, I appeared before the Judiciary Committee to voice the administration's strong support for enactment of constitutional procedures that would allow, in appropriate circumstances, the imposition of the death penalty for the most serious Federal crimes. My testimony was part of extensive hearings the committee held on the death penalty. The product of the committee's efforts, S. 114, however, was never acted upon by the full Senate.

Again in this Congress, the Judiciary Committee has approved a bill to restore the availability of the death penalty at the Federal level. This bill, S. 1765, is a further refinement of the carefully drafted legislation of the last Congress. Indeed, among the amendments to the bill adopted by the committee were provisions based on legislation introduced by Senator Specter to address specifically

the very problem we are discussing today—the commission of murders by Federal inmates already under life sentences.

This pending death penalty legislation includes among the specific aggravating factors that may be considered at the death penalty hearing, the circumstances that the victim of a homicide was a Federal correctional officer and that the defendant was an inmate serving a life sentence. In certain respects, we believe the bill's provisions concerning prison murder could be further strengthened. But even in its present form, this legislation would, if enacted, for the first time in a decade allow imposition of the death penalty in those compelling situations in which imposition of an additional life sentence on an inmate would be nothing more than a meaningless gesture.

Enactment of legislation to reinstate the availability of the death penalty in the Federal criminal justice system is long overdue. Society has a right, one confirmed repeatedly by the Supreme Court, to exact a just and proportionate punishment on those who deliberately flout its laws; there are some offenses which are so harmful and so reprehensible that no sanction other than the death penalty, not even life imprisonment without the possibility of parole, would represent an adequate response to the defendant's conduct. In the Federal system, these offenses may include not only brutal murders such as those committed at Marion, but also offenses of treason and espionage that may put at risk the very security of this Nation.

S. 1765 would provide constitutional procedures whereby the death penalty could once again be applied to these offenses under appropriate circumstances. This carefully crafted legislation assures stringent safeguards against arbitrariness, disproportionality, and the influence of prejudice in assessing this most severe sanction. The need for restoration of the death penalty in the Federal system can no longer be ignored. The administration recommends, in the strongest terms, the enactment of S. 1765 to achieve this result.

Mr. Chairman, that concludes my statement. I would be happy to respond to any questions.

Senator LAXALT. Let me ask you this, General.

If the Congress were to promptly enact a constitutional procedure for the death penalty—and as Senator DeConcini has indicated, that is somewhat unlikely, not so much because of the situation here in the Senate, but because we have a terrible problem on the House side—however, if this were to happen, in your opinion, could it constitutionally be applied to the inmates who committed the murders at Marion on October 22, 1983?

Mr. JENSEN. That, of course, raises an issue which would be the subject matter of litigation in any such instance. My understanding of the present state of Federal law is that that is not an issue that has been resolved in terms of the ability to impose such a penalty in a retroactive fashion. I know, coming from California as a prosecutor, that that issue under that State constitution was interpreted by that State supreme court to prevent such imposition on offenses by way of a retroactive imposition. I do not think that that is the state of Federal law, so I think that that issue is yet to be resolved.

Senator LAXALT. For the purpose of my colleagues who were unable to attend this hearing, as well as for our own edification, would you explain Mr. Carlson, in more detail, how these inmates were able to extricate themselves from their handcuffs and acquire deadly weapons in the course of routine internal prison activity?

Mr. CARLSON. Senator Laxalt, as you indicated, inmates who are being moved in the control unit are handcuffed in front of them; in other words, the cuffs are placed on their hands in front of their bodies. In one of these cases, the investigation thus far tends to indicate that the inmate may have obtained a key from another inmate, either a hand-fabricated key, which are relatively simple to make, or perhaps a key which was somehow brought into the unit from the outside. As you know, handcuff keys are very small and can be easily concealed in various parts of the body.

In the other incident, the Board of Inquiry that I appointed tends to indicate that the inmate was able to slip through the cuffs. It is possible for inmates who have very large wrists and arms and small hands to easily maneuver handcuffs over the hands, particularly if the handcuffs are not fully tightened. As you know, in law enforcement, when you cuff people, you try not to put the cuff on any tighter than absolutely necessary out of humaneness. I think from time to time perhaps our staff did not put cuffs on as tight as they should, simply to try not to harm the inmate in any way. It is entirely possible that this could have been the way that he slipped through the cuffs.

In terms of the weapons, Senator Laxalt, any piece of metal, or a piece of wood can be sharpened on concrete and made into a lethal weapon.

Senator LAXALT. Tell me this. You indicated that both of these guards had served for a long while and served well and apparently were highly respected by the rest of the prison population. What kind of sanctions are there on the inside among other inmates in this situation? Do they simply sit idly by and say, "Well, that is just the way it is"?

Mr. CARLSON. That is correct. They show no remorse at all that these things occur. That happens if it is an inmate murder or in the case of a staff murder.

Senator LAXALT. So none of them felt any sense of outrage at all.

Mr. CARLSON. I was at the institution for the funerals and went through the unit cell by cell, within 2 days after the incident. No inmate expressed any remorse while I was there.

Senator LAXALT. Senator DeConcini?

Senator DECONCINI. Mr. Chairman, let me just probe a moment. I realize this incident is under investigation, but there have been a lot of rumors. May I ask when the investigation will be completed?

Mr. JENSEN. It should reach the stage of investigation through grand jury very shortly.

Senator DECONCINI. When will you be able to share with the committee the details of the investigation?

Mr. JENSEN. At an appropriate moment when there has been a public charge, and the public information that would be accessible then could be shared with the committee.

Senator DECONCINI. The rumor that I have heard, and I will understand if you cannot comment, is that there was a rivalry be-

tween the two defendants as to who was going to be the toughest or the meanest. Is there any truth to that?

Mr. JENSEN. As the Director has indicated, at this stage of the investigative process, we would not be able to make any commentary on motivation.

Senator DECONCINI. I understand.

Thank you, Mr. Chairman.

Senator LAXALT. I do not believe I have anything further. Thank you, Senator DeConcini.

I want to thank both of you for coming in.

Mr. JENSEN. Thank you for this opportunity, Senator.

Mr. CARLSON. Thank you.

Senator LAXALT. It seems to me that this is a clearcut case demonstrating an obvious need for the kind of remedy that we would like to achieve through this legislation. If Senator DeConcini has not already done so, I would suggest that he initiate a "Dear Colleague" letter.

Senator DECONCINI. Would the Chairman join me in that?

Senator LAXALT. Certainly, I would be pleased to do that. I think we should summarize the results of this hearing and indicate what is going on here. I do not know how any rational person regardless of his general philosophy on capital punishment—would not apply capital punishment to this kind of situation. I think it would also be very helpful if both Mr. Jensen and Mr. Carlson, using whatever methods are available to them, could bring this message to the public. It is clear to me that if we are ever going to get any capital punishment legislation—and these incidents certainly demonstrate an urgent need for it—it will be because public concern and interest in this issue will compel House Members to act. If we could get a capital punishment provision on the House floor, I believe it would pass overwhelmingly. Our problem is the committee structure.

Senator DECONCINI. Maybe on the continuing resolution?

Senator LAXALT. Perhaps. And as we have often said, if some key House Members cannot see the light, maybe a little heat ought to be applied, maybe a lot of heat.

Senator DECONCINI. Yes.

Mr. JENSEN. We certainly appreciate the opportunity to appear here at this hearing, to make what I think we all share, a sense of outrage that this kind of situation exists under Federal law.

Senator DECONCINI. If the gentleman would yield, have you been asked to appear over on the House side?

Mr. JENSEN. There was a hearing. I appeared last session and testified on the issue of the death penalty, but there was no action thereafter. But there was a hearing and there was testimony, but there was no further action.

Senator LAXALT. Though we certainly do not want to intrude on House business, would it not be helpful as a result of this hearing, Senator DeConcini, to indicate to some of the principal House Members, particularly on the Judiciary Committee, that they might be enlightened by hearing this testimony?

Senator DECONCINI. I think that is a good idea, yes. Why don't we send it over?

Senator LAXALT. We might just do that. We can send them a letter, as well.

We thank you very much.

Thank you, Senator.

We will, of course, keep the record open, for any additional comments or questions. Our colleagues as well as Senator DeConcini or I may have additional questions, gentlemen, that we will address to you.

I would like also, before we finally conclude here, to include within the record the statement of Senator Specter.

[The following was received for the record.]

PREPARED STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Thank you, Mr. Chairman. I wish to commend you for calling this hearing so promptly after the brutal murders of two correctional officers at the federal prison at Marion, Illinois. The serious problem of inmate prison violence is one too often overlooked by the planners of our criminal justice policies.

On October 22 of this year, two correctional officers at the Marion facility were stabbed and killed in separate incidents. Four other guards were wounded. The murdered officers, aged 53 and 51, were both husbands and fathers. They worked in a wing which housed 60 of the most dangerous and hardened criminals at Marion. From all accounts, it appears that they were killed with brutality and cunning.

Disturbingly, the two inmates charged with the murders each have astounding criminal histories of violence. Each has been convicted of three prior murders, each has been convicted of murders of other inmates while in prison, and each was serving multiple life terms.

These two murders starkly illustrate that there are some prisoners who truly feel that they have nothing left to lose and are immune from further punishment, even if they commit another murder. In such a situation, only the threat of capital punishment can serve as a deterrent to those bent on prison violence. And only capital punishment, therefore, can save the lives of those correctional officers and inmates placed in danger every day.

For these reasons, I introduced S. 1565 on June 29, 1983. That bill provides for capital punishment (or life imprisonment without possibility of parole) for those federal prison inmates who commit murder while serving a life sentence. The bill has been incorporated into the capital punishment provisions of the President's crime package, has been approved by the Judiciary Committee, and awaits action on the floor of the Senate.

The tragedy of Marion, is, unfortunately, not an isolated incident. According to the Federal Bureau of Prisons, 136 inmates have been killed by other prisoners in federal prisons in the past ten years. Equally disturbing are the nearly 2,000 violent assaults on federal correctional authorities and over 3,500 assaults by inmates on other inmates during this time.

Clearly, strong action must be taken to stop this frightening level of barbarism and brutality. For those truly beyond redemption or rehabilitation, only capital punishment, the ultimate deterrent, will suffice. Thank you, Mr. Chairman.

Senator LAXALT. The subcommittee stands in recess.
[Whereupon, at 10:53 a.m., the subcommittee was adjourned.]

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