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REPORT OF THE NATIONAL DRUG POLICY BOARD SUBCOMMITTEE

ON

PRE-TRIAL DETENTION, IMMIGRATION DETENTION, AND PRISON SPACE

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REPORT
OF THE
NATIONAL DRUG POLICY BOARD SUBCOMMITTEE
ON
PRE-TRIAL DETENTION,
IMMIGRATION DETENTION, AND PRISON SPACE

September 1, 1987

EXECUTIVE SUMMARY

This report to the National Drug Policy Board from its Subcommittee on Prison/Detention Issues deals with the problems facing the United States Government regarding the adequacy of incarceration and detention space for Federal prisoners and detainees. It covers prison space for the Bureau of Prisons, pre-trial detention space for the United States Marshals Service, and illegal alien detention space for the Immigration and Naturalization Service.

SCOPE OF THE PROBLEM

Prisons

The Federal Prison System is severely overcrowded, and inmate population is rising at an average rate of 15% a year. Unalleviated, this overcrowding may cause a "gridlock" in the Federal criminal justice system, necessitating significant departures from current enforcement, prosecution, sentencing, and incarceration policies.

- There are almost 44,000 prisoners in the Federal Prison System (August 1987), with a rated capacity to incarcerate only 27,750. This has resulted in a current overcrowding rate of 58% system-wide.
- The Department of Justice estimates that, given current capacity and with only the additions envisioned in the Administration's current plan, overcrowding will increase to at least 72% by 1997.
- The United States Sentencing Commission has postulated even greater increases in inmate population (only 10% of which relate to the proposed sentencing guidelines themselves), which may yield as much as 183% overcrowding, based upon its highest population projection of 125,000 inmates by 1997.

Population projections produced by various sources point to a single conclusion: the demand for prison space will rise well beyond that previously estimated. Only the magnitude is as yet unknown.

Detention

The United States Marshals Service, which detains persons awaiting trial and sentencing, has 800 contracts in force with local jails to provide space for Federal detainees. However,

local jail overcrowding has discouraged local officials from making such space available in many instances, reduced availability in others, and caused space to be unavailable at any price in some cities--all requiring the Marshals Service to transport prisoners over long distances to outlying jails, increasing the possibility of escape, accident, and incident.

- The Marshals Service, in a recent study, found 21 cities facing an "emergency" jail status, meaning that there is no Federal jail space available where such space is required. Less severe but worsening shortages were identified in many other cities. The emergency jail status is projected to more than treble to 72 urban areas by 1992.
- The Marshals Service estimates that the average daily population requiring pre-trial detention will rise from 7,328 in 1986 to 15,300 in 1992. This represents a 115% increase in the number of detainees to be held every day.
- The approximate 8,600 bed shortfall by 1992 in the availability of pre-trial detention space for Federal detainees can be alleviated only by a mix of programs to augment capacity, including Federal construction and Federal support to local jail expansion.

The Marshals Service, in conjunction with the Office of Management and Budget and BoP, is now seeking to determine the most effective mix of Federal construction and local leasing to alleviate the detention problems in the cities with the gravest problems.

Illegal Alien Detention

Because of the fluctuations in the rate of illegal alien apprehensions, the Immigration and Naturalization Service recommends deferring decisions on detention requirements for "administrative" detainees and Mariel Cubans for one year.

The future rate of aliens illegally entering the United States is unclear. Consequently, the number of aliens to be charged by the INS with entry without inspection--and concomitant detention requirements for such illegal entrants--cannot be predicted with confidence at this time. While 1,767,400 illegal aliens were apprehended in FY 1986, the FY 1987 level is expected to be 1.1 million. The INS states that the Immigration Reform and Control Act of 1986, with its sanctions against employers who hire illegal aliens, contributed significantly to the drop in

apprehensions following its enactment. However, apprehensions returned to the historical rate in the summer of 1987. Additionally, INS notes for future planning that because only 7.8% of apprehended aliens are held in detention (one fourth of the percentage of 10 years ago), a greater detention rate may be advisable to buttress the border enforcement program.

A year from now the illegal entrant picture should be clear enough to permit a more informed judgment of their detention needs.

INS likewise recommends deferring decisions on detention requirements for Mariel Cuban criminal aliens. Some 3,600 are in custody now, with increases expected as Mariel Cuban aliens convicted of State and local felonies are returned to Federal custody. However, the panel review process, reinstated to identify those now in Federal custody who may be released, has just begun. Until that process is completed in a year, detention needs should not be decided.

Beyond the Mariel Cuban detainee population, convicted alien felons taken into INS custody also require more than simple detention; most require confinement in facilities with greater security and control than is afforded in minimum security INS facilities (Service Processing Centers). Some are held in local jails under contract with INS, but the overall shortage of local detention facilities available for Federal detention adds to INS' current detention availability problem. Hence, the majority are held in INS facilities and it is likely that this percentage will have to increase.

At this time, INS cites a need for 6,100 additional medium security detention spaces for the criminal aliens expected to be held in Federally operated detention by 1993. However, the supporting data are not adequately reliable: prior criminal, alien detention populations and future projections are based on percentage estimates, not on actual statistics¹.

¹ In FY 1985, 42,277 convicted alien felons were referred to INS; and 22,316 were taken into custody. In FY 1986, 26,723 criminal aliens were taken into custody from all referrals. The INS has no precise figures on criminal alien detainees prior to FY 1987 but estimates that 73% of other-than-Mexican detainees were criminal aliens in FY 1985 and 66% were criminal aliens in FY 1986. Therefore, INS calculates that 16,290 were held by INS in FY 1985 and an estimated 17,637 were detained in INS-operated facilities in FY 1986. In FY 1987, 30,000 will be taken into custody by INS; in FY 1988, 54,000 are expected to be taken into custody; in FY 1989, 80,000; and, by FY 1991, 114,000 are expected. Unclear are the assumptions underlying the

Owing to the criminality of a portion of the illegal and legal alien population, and to the new provisions of the Immigration Reform and Control Act of 1986, detention requirements for criminal aliens should be expected to increase. The IRCA may well affect the number of aliens illegally entering and staying in the United States, but it will do little to mitigate legal and illegal aliens' criminal behavior. The interrelationship of these factors will dictate the INS custody requirements, but the ultimate projections and best mix of methods to handle criminal aliens require refinement. Given the need for more precise data and more thorough planning, the Subcommittee considers the INS detention figure as a preliminary figure which may be reiterated or refined a year from now. Critical in the short term is the FY 1989 activation of the Oakdale II and Terminal Island detention facilities to provide an additional 800 bed spaces. These should be sufficient while the INS five year detention plan is being finalized.

Therefore, the Subcommittee recommends deferring decisions on criminal alien detention for the same one year period.

Aggravating Circumstances

Factors creating the prison and detention crises are not likely to diminish. These include the following:

- Federal investigative and prosecution resources have steadily increased since 1982. The total investigative and prosecution budget for drug law enforcement, as an example, increased from \$220 million in 1981 to \$625 million in 1986. There are 5,554 agents and 1,191 prosecutors focusing their efforts in the drug area alone. They have produced record arrests and prosecutions, and are expected to continue to do so.
- More Federal criminal prosecutions, particularly for drug violations, are being brought and will continue to be brought. The United States courts reported a 115% increase in the number of drug cases handled and a 94% increase in the number of defendants tried from 1985 to 1986.

¹(...continued)
anticipated criminal alien referral population and uncertain are the projected number to be detained in INS facilities for FY 1987 onward.

The Anti-Drug Abuse Act of 1986 created mandatory minimum prison sentences ranging from five years to life imprisonment for various classes of drug offenders. These so-called "mandatory minimums" will greatly expand the number of prisoners coming into the system, and they will remain incarcerated for longer periods of time.

The Immigration Reform and Control Act of 1986 and subsequent appropriations acts are expected to increase the Border Patrol by 50% by 1990 and augment criminal investigators, placing new emphasis on enforcement activities, including the employer sanctions for hiring illegal aliens. While these provisions are intended to discourage illegal aliens from entering and staying in the United States, it is unclear how they will ultimately affect Federal prison and detention.

ISSUES

The critical issues which this Administration must confront are what levels of detention and prison space are necessary to prevent the criminal justice system from breaking down, i.e., losing the discretion to follow current enforcement, detention, sentencing, and incarceration policies?

OPTIONS

Summarized below are a variety of options for decisions concerning Federal prisons and detention.

Federal Prison System

The Subcommittee recommends adopting a policy to seek a 20-30% overcrowding rate by 1993 to ensure the safety of inmates and staff in the future, to provide prison facilities which can be managed without the disturbances, violence and psychological damage experienced by severe overcrowding, and to provide for and permit population adjustments which are responsive, in a timely manner, with changes in current enforcement, prosecution, sentencing, and incarceration practices. The most critical issue facing Federal policy makers will be setting the overcrowding target rate for five-year planning and budgetary purposes.

Flowing from a policy decision on the appropriate target level for Federal prison overcrowding will be actions to either

increase prison space availability or constrain the number of inmates incarcerated:

1. Expand Federal prison space.

- The Department of Justice advocates 20% overcrowding as the maximum excess population manageable over a long period. Providing sufficient bed spaces based on the Bureau of Prisons' conservative population projection for this target will cost \$1.9 billion for construction and activation for 1989-1992.
- Obviously, financial costs are among those which vary for different maximum levels of acceptable overcrowding.

The table on the following page depicts the different annual funding requirements of the Federal Prison System for various levels of overcrowding in terms of rated capacity levels. These range from the lowest (0%) where the Federal prisons would comply in full with space standards established by the American Corrections Association (often relied upon by the courts in rendering decisions capping inmate populations in State prison and local jail systems) to 50% (almost as high as the 58% overcrowding level in August 1987 and twice that as would be provided in the President's FY 1988 budget);

Table 1. PRISON CONSTRUCTION COSTS AND ANNUAL OPERATING COSTS FOR
SEVERAL OVERCROWDING AND POPULATION PROJECTION SCENARIOS

Dollars in Millions

Assuming 76,000 inmates in FY 1997 (BoP estimate and Sentencing
Commission low estimate):

Overcrowding Rate.....	0%	20%	30%	40%	50%
Construction Cost.....	\$2,332	\$1,654	\$1,208	\$ 940	\$ 708
Activation Cost.....	111	222	171	133	100
Total One Time Costs.....	2,663	1,889	1,379	1,073	808
Annual Operating Cost.....	1,017	706	587	484	395

Assuming 100,000 inmates in FY 1997 (an average of the Sentencing
Commission's high and low estimates):

Overcrowding Rate.....	0%	20%	30%	40%	50%
Construction Cost.....	\$4,228	\$3,100	\$2,666	\$2,294	\$1,971
Activation Cost.....	600	440	378	325	280
Total One Time Costs.....	4,828	3,540	3,044	2,619	2,251
Annual Operating Cost.....	1,871	1,439	1,273	1,131	1,008

Assuming 125,000 inmates in FY 1997 (Sentencing Commission high
estimate):

Overcrowding Rate.....	0%	20%	30%	40%	50%
Construction Cost.....	\$5,921	\$4,510	\$3,968	\$3,503	\$3,100
Activation Cost.....	840	640	563	497	440
Total One Time Costs.....	6,761	5,150	4,531	4,000	3,540
Annual Operating Cost.....	2,634	2,094	1,886	1,709	1,554

Other options are:

2. Cap the Federal prison population at an appropriate
overcrowding rate by:

Setting lower prosecution declina-
tion standards. In this way, the
Federal Government would refuse to
prosecute many of the types of
cases that are normally prosecuted

today, thereby lowering the number of individuals incarcerated.

- Releasing those convicted earlier than is current practice to alternative confinement (halfway houses) and supervised parole prior to completing their terms of imprisonment, lowering prison overcrowding somewhat. Many non-violent inmates now serve the last two to three months of their sentences in halfway houses. Cost avoidances would accrue by increasing the amount of time an inmate spends in a halfway house in lieu of prison. In addition, the BoP could save some funds by requiring that halfway house inmates reimburse the government for room and board and moving some half-way house residents into forms of intensive probation.

- Considering legislation which would recommend alternative forms of punishment for first-time, non-violent, less serious offenders.

United States Marshals Service

The Administration faces four options in obtaining needed jail space: (1) lease space from local governments; (2) build jails together with local governments; (3) contract private sector firms to operate jails; and (4) as a last resort, build Federal jails where no other option is feasible. BoP and the Marshals Service are working together to develop the best combination of these options for several court cities in which space is already critically needed. The estimated overall cost for pre-trial detention space for the next five years is \$534 million.

Immigration and Naturalization Service

INS proposes to wait at least one year to assess the detention needs for illegal entrants and Mariel Cuban criminals. While the need for increased detention for other criminal aliens appears to exist, its dimensions

are not clear². To permit INS to better quantify its need and justify a five year plan, the Subcommittee recommends that INS further study its criminal alien detention program, develop a population projection methodology founded upon hard statistics, and present a comprehensive detention plan a year from now.

FUNDING REQUIREMENTS

The table on the following page summarizes the funding requirements for the prison and pre-trial detention plans. It begins with OMB's most recent "outyear" funding estimates, as contained in the FY 1988 allowance to the Justice Department. Traditionally, these serve as the foundation for any subsequent incremental funding. Funding requirements, dictated by current and anticipated circumstances, follow for the BoP and USMS. Adding the needed \$3.3 billion in enhancements to the "outyear" estimates provides the total costs, per fiscal year, for the plans.

It is important to remember that the prison population projections made by the U.S. Sentencing Commission are for eight years. Moreover, the inmate population trend lines are not simple linear projections. For comparative purposes, BoP has extended its inmate population projections in this report to cover the same eight years.

However, the funding estimates presented in this report cover only the next five fiscal years. Therefore, for prisons, consider the funding plans as an expression of what is required to be in place for the first five years of the eight year time period covered by the population projections. The Bureau of Prisons funding requirements are spread over the five year period, indicating the staggered construction and phased activation of facilities.

The Marshals Service funding requirements are shown in the 1989-1991 period, indicating the fiscal years in which budget

² To handle deportable alien felons, INS is expected to consider: (1) BoP constructing facilities to provide additional bed spaces in facilities with a medium security level, for operation by the BoP with INS support staff to assist in the transport and deportation hearing process; (2) increasing the minimum level security of some units within INS Service Processing Centers to handle additional criminal aliens, to the exclusion of a like number of illegal entrants; (3) and, increasing the number of immigration law judges to permit the conduct of more deportation hearings while criminal aliens are serving their sentences in non-Federal custody.

appropriations will be needed for Federal and CAP construction to commence so as to have detention bed spaces in place for the anticipated detainee population.

Table 2: FIVE YEAR FUNDING REQUIREMENTS

Budget Authority in Millions

	<u>Fiscal Years</u>				
	1989	1990	1991	1992	1993
PRESIDENT'S 1988 BUDGET (1)...	\$1,045	\$1,072	\$1,169	\$1,097	\$1,122
BUREAU OF PRISONS					
FIVE YEAR PLAN (2)...	613	463	450	742	503
U.S. MARSHALS					
FIVE YEAR PLAN (3)...	73	230	231	0	0
TOTAL, BOP & USMS	\$1,731	\$1,765	\$1,850	\$1,839	\$1,625

- (1) Includes the Buildings and Facilities and the Salaries and Expenses accounts of the Bureau of Prisons and the Support of U.S. Prisoners appropriation account of the U.S. Marshals Service.
- (2) Incremental funding based on BOP population projections as of August 1987 for 72,000 inmates with a 20% overcrowding target; includes cost of constructing, activating, and operating the new prison facilities.
- (3) Assumes acquisition of 3,140 bed spaces through the CAP program and 3,486 bed spaces through the construction of Federal Jails; includes the cost of constructing and activating these jails.

Federal budget constraints are severe. They are likely to remain so. Any increased resources for prison and detention space will be difficult to obtain in this fiscal environment and sufficient resources may not be available to meet all needs².

The Subcommittee suggests that serious consideration be given to proposing legislative amendments to the Justice Assets Forfeiture Fund and the Treasury Assets Forfeiture Fund which

² The Office of Management and Budget members of the Subcommittee wish to note that while they participated as members, their participation does not imply any acceptance or concurrence on the part of their agency to the funding requirements endorsed by the Subcommittee.

would permit a portion of the "carryover" fund balances to be provided to Federal prison and detention programs. "Carryover" funds are defined as those in excess of requirements to operate the program, including all asset management expenses, program-related costs, and equitable sharing disbursements made to State and local law enforcement agencies. By directing only excess funds to Federal prison and detention programs, no diminution of effort in the seizure/forfeiture area would take place yet the proceeds of crime could help underwrite the detention and incarceration of Federal criminals.

RECOMMENDATIONS

To meet successfully the crises in prison and detention space and to provide for future management of the increasing populations and other exigencies, this report suggests several steps which can be implemented immediately:

1. Commit to a comprehensive, integrated, five year plan for the Bureau of Prisons and the U.S. Marshals Service.
2. Determine the prison overcrowding target rate so that the facilities and budget planners can devise annual plans against a policy which permits them to address the inmate population as it grows.
3. Amend the Assets Forfeiture Fund legislation to allow carry-over income--in excess of the requirements for the custody and maintenance of seized assets pending forfeiture, and other statutorily permitted, program-related expenses--to be transferred for prison and detention programs.
4. Establish a standing task force under the Department of Justice to continually monitor prison and detention space requirements and offer related action plans.

REPORT OF THE NATIONAL DRUG POLICY BOARD SUBCOMMITTEE

ON

PRE-TRIAL DETENTION, IMMIGRATION DETENTION, AND PRISON SPACE

I. The Jail/Prison Space Issue

The Federal criminal justice system is approaching a potential "gridlock." Unless avoided, this "gridlock" might undermine, if not cripple, the criminal justice process in the United States; necessitating significant departures from current enforcement, detention, prosecution and incarceration policies.

The causes of this impending "gridlock" are four-fold: the rapid disappearance of Federal detention space; a serious shortfall in space to incarcerate sentenced Federal prisoners; the impact of new legislation on enforcement programs, prosecution practices and prison sentences; and, the anticipated effects of the proposed guidelines of the U.S. Sentencing Commission. The specific factors contributing to the crisis include:

- increased government emphasis on the enforcement of laws against violent crime, white collar crime and, particularly, drug offenses;
- the increased number of Federal law enforcement agents, prosecutors, and judges in the criminal justice system (more were added within the last seven years than in any previous seven year period);
- a decreased number of State and local detention spaces available for Federal use due to population restrictions imposed by

Federal and State courts, State jail standards, and increased enforcement of State and local criminal laws;

- a marked increase in criminal cases in the Federal system;³
- a continued, high overall conviction rate (85%);
- an increase of 20% annually in the imposition of prison sentences; and,
- an increase in the number of Mariel Cubans and convicted alien felons coming from State penal systems.

Adding to the resource enhancements provided to Federal law enforcement, the Congress overhauled Federal criminal sanctions with the enactment of the Comprehensive Crime Control Act of 1984. And, last October, the Congress passed the Anti-Drug Abuse Act of 1986 which further increased penalty provisions in the criminal area, particularly those dealing with drug violations.⁴

³ The Bureau of Justice Statistics of the Department of Justice reported in a recent study that during the period June 1985 to June 1986, Federal Courts sentenced 40,740 defendants, imposing incarceration on 20,777 individuals. The average prison sentence for all offenders was 5 1/2 years, 32% longer than in 1979. The study identified a 38% increase in the length of sentences for drug crimes and a 43% increase for fraud crimes. The study also revealed that Federal parole revocations for major new crimes increased from 6.8% in 1979 to 15.4% in 1986.

⁴ Major penalty enhancements are embodied in both the Comprehensive Crime Control Act of 1984 and the Anti-Drug Abuse Act of 1986. As an example, the latter statute at Title 1, Subtitles A and G, prescribes that mandatory minimum terms of imprisonment be imposed based upon factors such as weight of drugs involved, prior convictions and whether death or serious bodily injury occurred coincident to the illicit drug transactions. Enhanced sentences range from a mandatory five year term to a mandatory life term, depending on the factors applicable in the case. Moreover the sentencing courts' options

Recently, the United States Sentencing Commission proposed a major revision of judicial sentencing by articulating guidelines which, when adopted, would mandate ranges of sentences for all Federal crimes. The impact of the Sentencing Commission's recommendations has been projected by a multi-faceted computer model; two inmate population projections are made, founded on separate sets of assumptions regarding judges' adherence to the proposed sentencing guidelines. However both projections foretell a significant increase in prison population as a result of the combined effects of the new statutes, primarily, and the sentencing guidelines, secondarily.⁵

The Sentencing Commission calculates that 90% of the projected increase in inmate population relates to the newly

⁴(...continued)
are constrained as incarceration under these mandatory sentences may not be mitigated by parole or suspension, except on the motion of the Government citing the defendant's cooperation with law enforcement.

⁵ The inmate population prediction model used by the United States Sentencing Commission was developed jointly by the Bureau of Prisons and the United States Sentencing Commission. It is a very complex model employing over 100 data elements from a sample of 10,500 defendants. The model can be characterized as a discrete event simulation model, wherein each sampled defendant's offense and criminal history characteristics are examined by the model. These characteristics determine the appropriate path the individual will follow through the criminal justice process. The model then applies the appropriate sentencing guidelines to each sampled offender and determines the individual's resultant sentence. The model then aggregates the 10,500 individuals' data and projects future inmate population upon them.

enacted statutes, with only an additional 10% expected as judges implement the guidelines, if enacted as proposed.

Additional external problems are now exacerbating and will continue to exacerbate the pre-trial detention space problem. The majority of State criminal justice systems are extremely overcrowded. Indeed, thirty-eight (38) Federal and State court orders have been entered against State correctional systems requiring the alleviation of a variety of conditions, most of which stem from overcrowding.⁶ A number of States, including California, Michigan, and New York, are presently embarking on large prison construction projects. Officials of all three States indicate, however, that these expansion programs will only

⁶ The New York Times noted on August 17, 1987, in an article entitled "Texas Prison System Closes" that the Texas prison system, the nation's third largest state system, was closed to new inmates 19 times in 1987 for exceeding court imposed population ceilings. The Texas Department of Corrections reported no additional prisoners eligible for early release and, as sentenced prisoners are backed up in local jails, the number of Federal detainees accepted is reduced in those local jails.

In another example, Mid South magazine reported in its August 16, 1987, feature article on the Shelby County (Memphis, Tennessee) jail. It noted that 1,660 prisoners were packed into the new 1,165-bed facility. Although commonly called the "Glamour Slammer", most inmates are fearful for their lives and their safety in the jammed cellblocks. Because over 400 convicted felons are awaiting transfer to the overcrowded state prison, the availability of space in this jail to accommodate Federal detainees has declined significantly.

In a third example, the Bureau of Prisons was forced in July 1987, to accept 150 sentenced prisoners from the seriously overcrowded Commonwealth of Puerto Rico prison system in exchange for Puerto Rico agreeing to hold 150 Federal detainees awaiting trial in San Juan. Unfortunately, the jail spaces were exhausted almost instantly, as the Federal detainee level reached 191 during the first week of August.

meet their needs and the Federal Government will not be able to secure space in their institutions. In the short term, no help can be anticipated from State correctional systems in taking any overflow of Federal pre-trial detainees from local jails. In fact, a diminishing capacity to detain Federal defendants in other State and local facilities is anticipated in the foreseeable future, particularly in the local jails of major metropolitan areas. Some States, including the District of Columbia, have requested and received temporary Federal assistance with their overcrowded prisons in the form of their inmates being housed in Federal prisons. In the District of Columbia, a Federal judge has ordered that the Federal Prison System incarcerate local prisoners due to overcrowding at the Lorton correctional facilities and the "special relationship" between the District and the Federal government.

Illegal aliens present detention problems in several ways. Illegal entrants, by and large, require only minimum security detention, when detention is required, and for only short periods of time before deportation is effected. Criminal aliens, irrespective of legal or illegal entry, are convicted felons referred for INS deportation following their State or local incarceration. These illegal aliens present more difficult handling and detention problems. Their number is increasing and the INS has not the resources to accommodate them. The shortage of local jail spaces means that INS is experiencing greater difficulties in having these aliens detained on a contract basis.

Finally, Mariel Cuban criminals are the most difficult to detain. They may be excluded from the United States, but, now that they are here, cannot be deported, owing to Cuba's reneging on its agreement to accept their return. This particular class of criminal aliens requires high security level detention. Their numbers are growing as those who complete State prison and local jail sentences are brought into Federal custody.

In the Southwest United States, Operation Alliance⁷ has doubled the number of Federal criminal arrests, thereby using State and local detention space that might be available for the Immigration and Naturalization Service or routine United States Marshals Service cases.

The Bureau of Prisons, United States Marshals Service, and the Immigration and Naturalization Service have done virtually all that they can possibly do for one another, within current resource levels, to manage detainee/prisoner overcrowding with available Federal resources. Such cooperative ventures will continue and, indeed, new resources, if provided, will be employed in many instances in joint projects.

⁷ Operation Alliance has added approximately 1,200 new permanent investigators and 60 Federal prosecutors to the five judicial districts along the Southern Border.

II. The Federal Prison Space Problem

The Federal Bureau of Prisons is responsible for the housing and care of all prisoners convicted of Federal crimes and, in certain metropolitan areas, for detaining some individuals charged with Federal violations. Presently, there are almost 44,000 inmates housed in prison facilities having a total "rated capacity" of 27,750. This means that the Federal Prison System is already overcrowded by a sizable 58%, and some individual institutions, owing to their low and medium security levels and the greater influx of prisoners classified at those security levels, are overcrowded by more than 100%. Prison overcrowding is commonly related to increases in inmate idleness, violence, and litigation. Overcrowding has been judged as a major contributing factor to the worst disturbances experienced in State institutions. In fortunate contrast, to date the rate of assaults and other measurable incidents have not risen apace with Federal prison overcrowding.

The current level of Federal prison overcrowding coupled with substantial growth in future prison population can create a crisis of major proportions in the criminal justice system. The Attorney General has advised the President that insufficient prison space constitutes a "material weakness" in the Department's system of internal controls. The Attorney General has set companion objectives to (a) expand the capacity of the Federal Prison System to keep pace with projected increases in inmate population, and (b) simultaneously reduce overcrowding to 20% by

FY 1995.⁸ The Prison/Detention Issues Subcommittee has determined that, based upon currently funded construction and projected increases in the prison population through 1997, reaching this goal will be impossible without a substantial resource increase to the Bureau of Prison's facilities expansion program.

Since 1981, the Federal Prison System's capacity has been increased by approximately 4,500 beds through the construction of new housing units at existing prisons, the acquisition and conversion of existing properties to correctional facilities, and the construction and activation of new prisons. In addition to these projects, Congress has appropriated funds to build seven new prisons and several additions to existing facilities which will house almost 7,000 additional inmates. Construction has already begun on five of these prisons and sites have been selected for the remaining two. The President's FY 1988 budget request now before Congress requests construction funds for two major prisons and expansion projects to house an additional 2,400 inmates.

⁸ "Rated capacity" represents the number of inmates that an institution should house based on contemporary correctional standards, particularly those established by the Joint Commission on Accreditation for Corrections. While the ideal goal is to eliminate overcrowding, the Attorney General has established a level of 20% overcrowding as acceptable. The 20% goal recognizes the pressures of the current fiscal climate as well as the expertise of the Federal Bureau of Prisons in managing overcrowded institutions. Nevertheless, it should be noted that the Federal Bureau of Prisons has handled 55% overcrowding to date without major incident. This has been accomplished by maintaining high level security prisons at rated capacity and overcrowding the lower level security institutions as much as 100%.

Prison Space Shortfall

While the expansion program of the Federal Prison System has been substantial, it will not meet both the future population increases and the critical goal of reducing overcrowding. The Bureau of Prisons projects that, under current trends, the Federal prison inmate population will increase to 71,892 inmates by FY 1995. For comparability to the Sentencing Commission's 1997 projections, this BoP estimate is extrapolated to yield 76,000 inmates in 1997. The BoP projections which consider increased law enforcement efforts and newly enacted enforcement and penalty statutes but do not include the Sentencing Commission guidelines, as they are not now in effect and, if implemented, may differ from their present content.

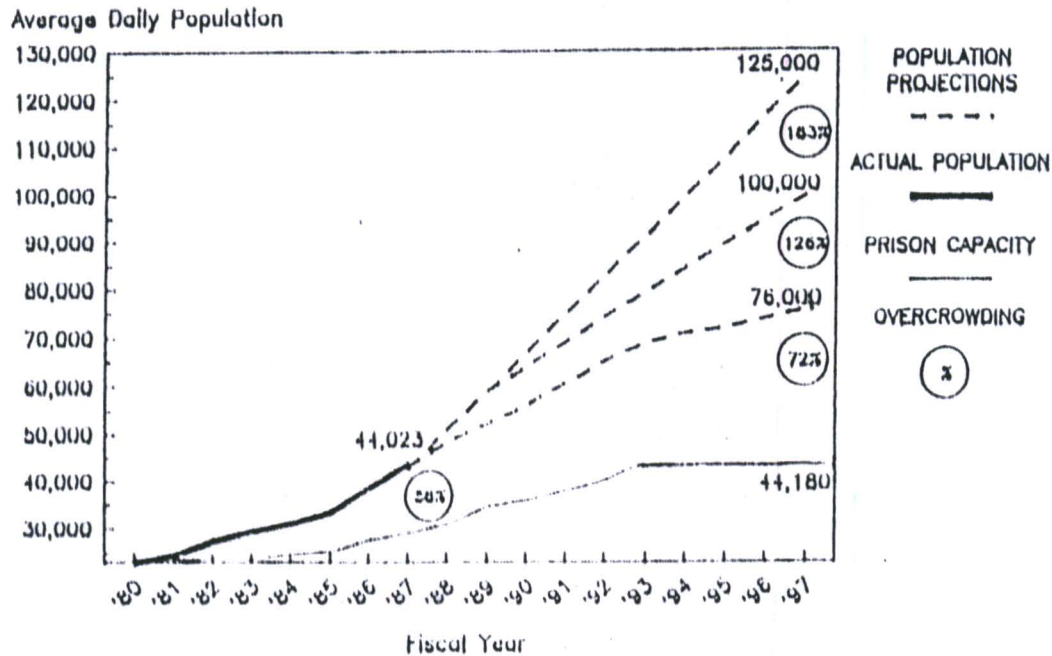
The United States Sentencing Commission's recently completed impact analysis projects even higher future Federal inmate populations. The Commission's analysis includes varying policy assumptions which yield inmate population projections from 78,000 to 125,000 inmates by FY 1997. The "low-growth" projection incorporates the effects of enacted statutes and the currently proposed guidelines; it assumes that judges will depart frequently from the guidelines. The Sentencing Commission's "high-growth" projection is based upon greater rates of prosecution, conviction and plea bargains, and assumes close adherence by sentencing judges to the proposed sentencing guidelines. (The "mid-range" projections used in this report are

presented to ease discussion of Sentencing Commission estimates. This level averages the high and low estimates.)

In any scenario, it appears that a tidal wave of inmates will hit the Federal Prison System between 1990 and 1995. The only question is whether it will hit at high or low tide.

For purposes of illustration, let us review the impact of three potential population scenarios for FY 1997. The graph below shows that if the Administration were to request and receive funding for only its current FY 1989-92 "outyear" estimates for new prison construction, overcrowding would increase from the current level of 58% to 72% (low estimate), 126% (mid-range estimate) and 183% (high estimate) respectively. These scenarios obviously fail to meet the Attorney General's priority objective of keeping pace with projected increases in the inmate population while simultaneously reducing current overcrowding to 20%. It is the strong belief of the Department of Justice, based on its expertise regarding "conditions of confinement" litigation, that continued and increasing overcrowding of the Federal Prison System will invite Federal court intervention. The distinct possibility exists that "population caps" may be established by the courts which would place the Federal criminal justice system into a "gridlock," requiring significant loss of operating discretion and necessitating departures from current enforcement, prosecution, sentencing, and incarceration policies.

COMPARISON OF PROJECTED FEDERAL PRISON POPULATION LEVELS WITH PRISON SYSTEM CAPACITY FUNDED AND PLANNED THROUGH FY 1997



Options

Five options are presented below. They are not mutually exclusive; a mix of them in varying degrees may be used.

1. Emergency Building Program

To reduce prison overcrowding to the Attorney General's goal of 20% by 1997, it will be necessary to add at least 24,400 beds to the Federal Prison System over and above those now under construction or requested in the President's FY 1988 budget. This is assuming, however, that the low Bureau of Prisons projection of 76,000 inmates is correct. The mid-range Sentencing Commission projection would result in a 45,000 bed shortfall. If accurate, a high-range Sentencing Commission projection of 125,000 would result in a 70,000 bed shortfall.

To meet a 20% overcrowding goal based upon the lowest estimate of 72,000 inmates by 1992 will require the construction of:

- twenty-two (22) new medium security Federal corrections institutions with maximum security camps;
- five (5) minimum security Federal prison camps;
- two (2) maximum security United States Penitentiaries, with satellite camps;
- two (2) Metropolitan Detention Centers; and,
- ten (10) expansion projects at existing prisons.

Because of the lead time required for site acquisition, construction, and activation, funds for these facilities must be requested over the four year period, commencing in FY 1989 and continuing through FY 1992.

Appended at Appendix A to this report is a set of five regional maps which show the location of existing prison facilities; sites approved for facilities' construction; active construction site prospects; and, potential secondary sites. The maps also provide the years in which the new Bureau of Prison facilities are needed for activation, through 1995.

In contrast, the current President's budget "outyear" allowances for FY 1989-92 plan for approximately \$400 million in construction funds for an addition of about 7,200 beds, far short of the 24,400 required to meet a 20% overcrowding target for

72,000 prisoners in 1992 and to prepare for the expected 76,000 inmates in 1997. It should be noted that the rationale for the President's 1988 budget allowance was based upon a plan which did not include the inmate population impact of the recently enacted Anti-Drug Abuse Act of 1986, not to mention the sentencing guidelines. Simply stated, the factors which will drive the inmate population far beyond previous estimates have changed radically.

Cumulative funding requirements for new prison construction and activation to meet the 20% target over the FY 1989-92 period is approximately \$1.9 billion. Annual operating costs and other uncontrollable increases will further increase resource requirements. It is clear that the aggregate resource levels substantially exceed those currently contained in OMB's current planning estimates. The total cumulative difference between OMB's current planning estimates and the Bureau of Prisons' minimum requirements is approximately \$2.3 billion.

The following table shows funding for overcrowding rates ranging from 0% (compliance with American Corrections Association standards), through the Attorney General's 20% overcrowding target, to a 50% overcrowding rate for FY 1997, the year in which the last of the proposed construction would be activated and operational. Each overcrowding rate is depicted for the low population projection made by BoP (76,000), the "mid-range" average of Sentencing Commission estimates (100,000) and the Sentencing Commission's high estimate (125,000).

Table 1. PRISON CONSTRUCTION COSTS AND ANNUAL OPERATING COSTS FOR SEVERAL OVERCROWDING AND POPULATION PROJECTION SCENARIOS

Dollars in Millions

Assuming 76,000 inmates in FY 1997 (BoP estimate and Sentencing Commission low estimate):

Overcrowding Rate.....	0%	20%	30%	40%	50%
Construction Cost.....	\$2,332	\$1,634	\$1,200	\$ 940	\$ 708
Activation Cost.....	321	312	171	133	100
Total One Time Costs.....	2,653	1,946	1,371	1,073	808
Annual Operating Cost.....	1,017	706	587	484	393

Assuming 100,000 inmates in FY 1997 (an average of the Sentencing Commission's high and low estimates):

Overcrowding Rate.....	0%	20%	30%	40%	50%
Construction Cost.....	\$4,228	\$3,100	\$2,606	\$2,294	\$1,971
Activation Cost.....	800	440	378	323	280
Total One Time Costs.....	4,828	3,540	3,044	2,617	2,251
Annual Operating Cost.....	1,871	1,439	1,273	1,131	1,008

Assuming 125,000 inmates in FY 1997 (Sentencing Commission high estimate):

Overcrowding Rate.....	0%	20%	30%	40%	50%
Construction Cost.....	\$5,921	\$4,510	\$3,968	\$3,503	\$3,100
Activation Cost.....	840	640	563	497	440
Total One Time Costs.....	6,761	5,150	4,531	4,000	3,540
Annual Operating Cost.....	2,634	2,094	1,886	1,709	1,554

It should be noted that no specific percentage overcrowding target is guaranteed to ensure safety and control in prisons or, conversely, trigger violent incidents when exceeded. Staffing levels, prison design, conditions of facilities (construction, sanitation, state of repair), staff training, and prison

management influence the situation as do the characteristics of the inmates themselves. A high or low overcrowding rate will yield uncertain results. There is, therefore, no "magic" to an overcrowding target rate--other than the great usefulness it has for financial planning and facilities acquisition to achieve a policy goal measurable in terms of inmate population. The Attorney General advocates a 20% overcrowding goal, based on his acceptance of the advice of experienced corrections officials in the Bureau of Prisons. OMB budget officials state that while overcrowding should be reduced from the current 58%, the selection of any single overcrowding target is unnecessary. (However, for the FY 1988 President's budget, OMB supported funding requests and approved Congressional budget testimony seeking resources which would have permitted the Federal Prison System to achieve a 26% overcrowding rate).

2. Cap the Federal Inmate Population

An alternative to a massive construction/activation program is to drastically limit new prisoner intake and/or reduce current prisoners' incarceration periods. A policy decision could be made to house only certain numbers of inmates in the next five years. This self-imposed "cap" on prison population would be achieved in two ways:

First, by declining to prosecute certain types of cases or raising the declination threshold levels of cases that are currently prosecuted Federally; and,

Second, by releasing certain classes of lower risk individuals earlier than normal.

This option, however, would not yield a pro rata cost avoidance; it would require additional monies to fund more half way houses as well as to expand probation services to monitor those released.⁹ The option presents particular dangers owing to the types of prisoners that are in the Federal system. Most inmates "graduate" to the Federal system, i.e., they have criminal histories which include their having been previously incarcerated in State prisons and local jails. Not incarcerating some of these and/or releasing the requisite number of others earlier than is the current practice, even with proper supervision, could have dramatic deleterious political and legal consequences for the Government.

3. Private Sector Detention

The Bureau of Prisons currently uses private sector facilities to house short-term sentenced aliens. The Prison/Detention Issues Subcommittee examined the greater use of private sector detention firms as a partial solution to the impending crisis.

At this time, it does not appear that this option would significantly reduce the cost of incarceration. Private sector

⁹ The Administrative Office of the United States Courts reported that 63,092 persons were under the supervision of the Federal Probation System as of June 30, 1984, including approximately 6,000 under parole supervision.

claims of meaningfully reduced costs have not been validated; in fact, the costs of the Federal Bureau of Prisons are comparable to those of private firms. Also, there are unresolved legal and policy questions that increase the difficulty of any significant transfer of the Federal Government's imprisonment responsibilities to the private sector.

One area of private sector involvement that does warrant further analysis are private financing mechanisms for new prison construction. Under this approach, the Federal Bureau of Prisons would enter into lease/purchase arrangements for new facilities, thereby spreading over a longer period of time the initial high Federal capital expenditures required.

4. Military Facilities

The Department of Defense was an active and welcome participant in this prison and detention study. Facilities requirements for prisons and jail facilities were examined in the context of existing Department of Defense detention facilities, with an eye toward identifying low use military facilities with the requisite capacity, security, and sites for transfer to civilian use. The Department of Defense anticipates that all their existing, relatively modern, confinement facilities, including the new facilities being constructed by the Department of the Navy, will be required for military prisoners and mobilization contingencies for the foreseeable future. While the transfer of such properties will be further examined, even if the Department of Defense

were to identify excess confinement facilities or other suitable properties, the number of bed spaces provided would satisfy only a small portion of the civilian needs. The Department of Defense reaction to a joint Bureau of Prisons/ U.S. Marshals Service letter request for facilities is expected in six months.

In certain instances, the acquisition and conversion of suitable existing property and structures can be less expensive than new construction. In addition, such facilities can be brought on-line in a much shorter period of time. The BoP continually reviews Federal surplus and other properties for possible acquisition and conversion to correctional facilities. The Bureau of Prisons has had excellent success in the conversion of surplus Air Force Bases to minimum security Federal Prison Camps such as those which now exist at Big Spring, Texas, and Boron, California. Also acquired and activated within a five month period as a Federal Prison Camp was a surplus Air Force facility in Duluth, Minnesota. In similar actions involving non-military facilities, a former State mental hospital in Rochester, Minnesota, was converted to a 500-bed facility for inmates requiring general medical/surgical and psychiatric treatment, and a former seminary in Loretto, Pennsylvania, was converted to a 500-bed prison institution. Just recently, an agreement was reached to house minimum security inmates in a renovated barracks at Tyndall Air Force Base in Florida. Currently, the Bureau of Prisons is reviewing several surplus and other existing proper-

ties for potential conversion to minimum security correctional facilities.

While conversion of facilities to minimum security institutions is usually feasible, it generally is not cost-effective to convert surplus properties to the higher security levels required for the typical Federal prison institutions. Cost benefits accrue, instead, when appropriate physical security is designed into the construction of such facilities.

5. Higher Prison Overcrowding

The Attorney General's objectives for the Federal Bureau of Prisons expansion program is to reduce overcrowding to 20% of rated capacity. Obviously, the establishment of a higher level of acceptable overcrowding between 20% and the current 58% level could reduce the size and financial cost of the expansion program. There are other real costs, to be sure, but they are not so readily quantified.

The overcrowding rate in the Federal Bureau of Prisons has gone from approximately zero in 1981 to the current level of 58%. Fortunately, the total numbers of escapes, assaults and other negative indices, when examined on a rate basis, e.g., number of assaults per 1,000 inmates, have remained fairly stable. This achievement is due to the outstanding management of the Federal Prison System and the dedication and perseverance of its line staff. Since 1981, there have been major increases in staff productivity which were specifically noted by the President in

his recent report to the Congress on the Management of the United States Government. However, in light of these past productivity achievements and the continuation of the unprecedented growth in workload, only marginal additional savings will be made to offset the requirement for substantial resource increases in the future.

It should be understood that there is no clear answer to the question, at what precise level of overcrowding does the Federal Prison System break down.

The 20% overcrowding goal is a professional judgment based on the experience of correctional experts in the Federal Bureau of Prisons. Federal court decisions have linked overcrowding with unconstitutional conditions of confinement, but have specifically held that high population density alone does not violate a prisoner's rights. The high population density, however, is cited as the major reason for imposed caps in all State overcrowding suits and, most recently, in the District of Columbia¹⁰. The point at which overcrowding becomes unmanageable or unacceptable is unclear. However, negative indices of overcrowding in prison systems do not follow slowly moving trend lines. Traditionally, they "explode" with the occurrence of one or more major prison disturbances. In this context, the phenomenon is analogous to "the last straw on the camel's back." By the time such a threshold is reached, it is simply too late to

¹⁰ In fact, studies conducted by the American Corrections Association which are used to define prison and jail construction and operation standards recommends no overcrowding beyond rated capacity levels.

start building new prisons. A review of the States' penal system problems in the United States clearly shows that overcrowding has invited court intervention.

The Subcommittee has concluded that, whatever inmate population projection proves correct, fiscal constraints in the budget process, and the time involved in building and activating new prison facilities, will result in some overcrowding in Federal institutions.

In summary, it is the position of the Bureau of Prisons and the Department of Justice that a 20% overcrowding rate is not only appropriate, but is fundamentally essential. This position is drawn from the Bureau's years of experience in managing prisons. The Office of Management and Budget points out that tight fiscal constraints may not allow the Administration to reach the 20-30% target. Furthermore, OMB notes that significant degradations in inmate care might not result with a relatively low increase in overcrowding, e.g., an additional 10% overcrowding system-wide.

The most crucial decision in the corrections area that can be made by this Administration will be setting an appropriate overcrowding target level for planning and budgetary purposes. The Subcommittee recommends the adoption of an overcrowding target of 20-30% as a policy which will yield prisons which can be managed safely and afford the requisite flexibility to meet future enforcement and prosecution demands.

III. The Federal Detention Space Problem

The United States Marshals Service is charged with the responsibility for providing for the temporary care, custody, and housing of persons remanded to it by the Federal courts for subsequent production in pending trials and sentencing hearings.

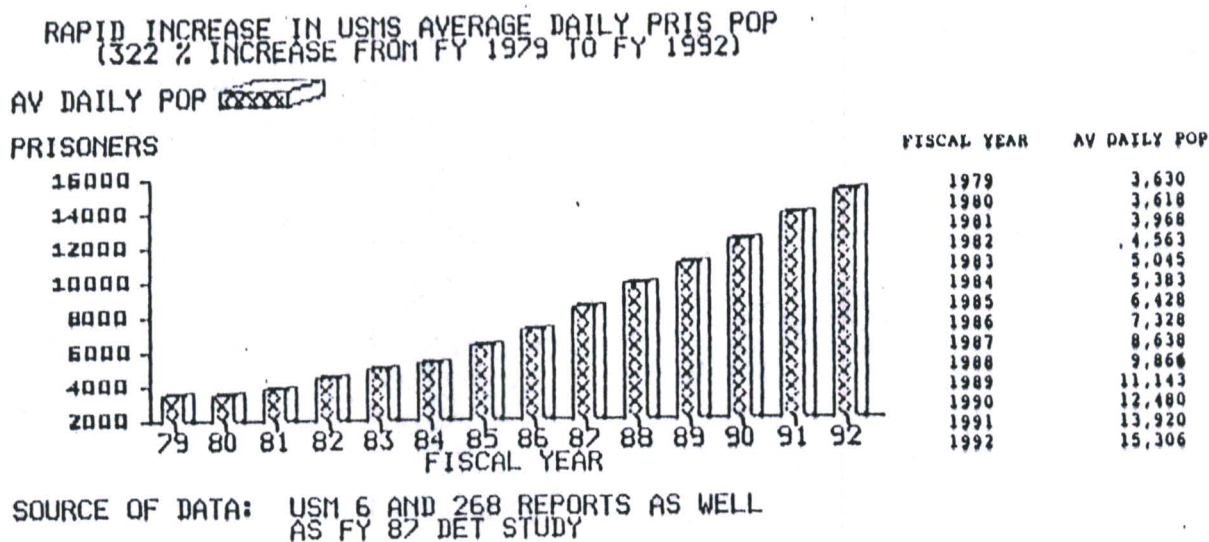
The Federal criminal justice system cannot operate without an adequate level of detention space in or near each Federal court. Not all those arrested can or should be placed on bail. Those held for court appearance must be near their attorneys and have ready access to the court holding them in order to preserve their constitutional rights to due process and their right to the effective assistance of counsel. A number of Federal courts have already ordered the Marshals Service to house detainees near the court as opposed to transporting them long distances.¹¹

As a general rule, some detention space is required to support each of the 260 Federal court cities. In cities where there are small Federal detainee populations, the need has historically been satisfied by the use of a county jail. In cities where there is a large Federal detainee population, such as New York, Chicago, Miami, San Diego, and Los Angeles, a

¹¹ Orders have been entered in the Western District of Washington, the Eastern District of California, and the District of Oregon. In addition, judges have suggested orders in the District of Puerto Rico, the District of Wyoming, and the Northern District of New York. Suits are now pending in the Northern District of California and the District of Rhode Island.

dedicated Federal detention center operated by the Bureau of Prisons has been established.

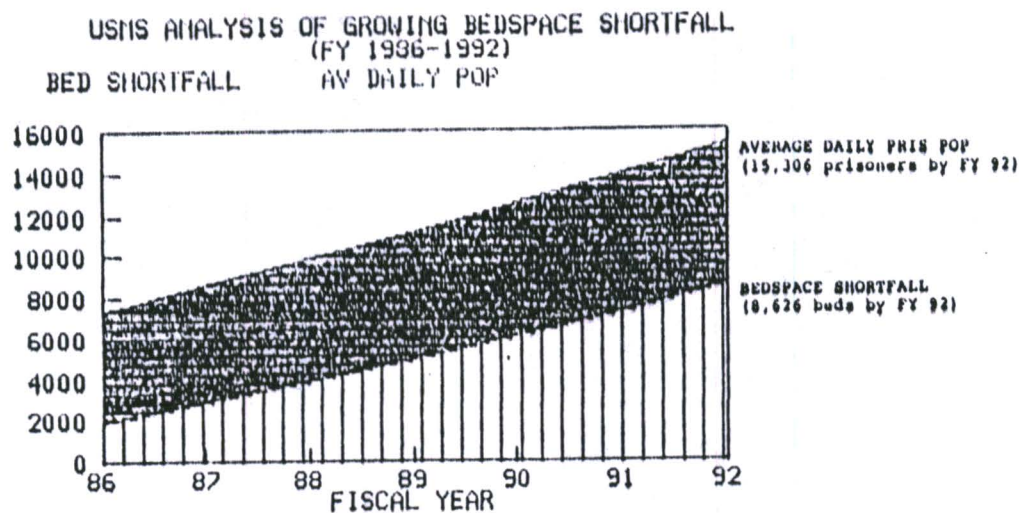
The Marshals Service estimates an average daily population of 8,638 detainees by the end of 1987. The number of Federal detainees in the daily custody of the Marshals Service is expected to increase to approximately 15,306 by 1992. The following chart graphically shows the projected increases in daily detainee population in the Federal system for the next five years.



The Marshals Service recently completed a comprehensive detention requirements study, the results of which lists each Federal court city, its present detainee population, its

anticipated future population, its present and projected bed space shortfall, the percent of detainee population to jail capacity. The Marshals Service also notes for each district the anticipated availability of local jail facilities for Federal detainees through 1992 in each Federal court city. The complete district by district survey is attached as Appendix B.

The detention space study reveals a shortfall of 8,626 detention spaces which will be needed for Federal use by 1992. The following chart illustrates the projected shortfall.



FISCAL YEAR	PROJECTED USMS DAILY POP	PROJECTED BEDSPACES AVAILABLE	PROJECTED USMS BEDSPACE SHORTFALL
1986	7,293	5,436	1,857
1987	8,638	5,707	2,931
1988	9,866	6,055	3,811
1989	11,143	6,294	4,849
1990	12,400	6,446	6,034
1991	13,920	6,693	7,227
1992	15,306	6,680	8,626

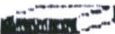
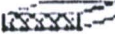
The detention study also points to an alarming diminution of detention space availability, particularly in several high population metropolitan areas of the nation. At this time, there are 77 United States Court cities with serious or critical jail space problems and 21 cities with "emergency" problems. An

The Marshals Service geographically depicts the districts with court cities which will be in emergency status by FY 1992 on the following map. (The list of cities and projected detention status are presented in Appendix B.)

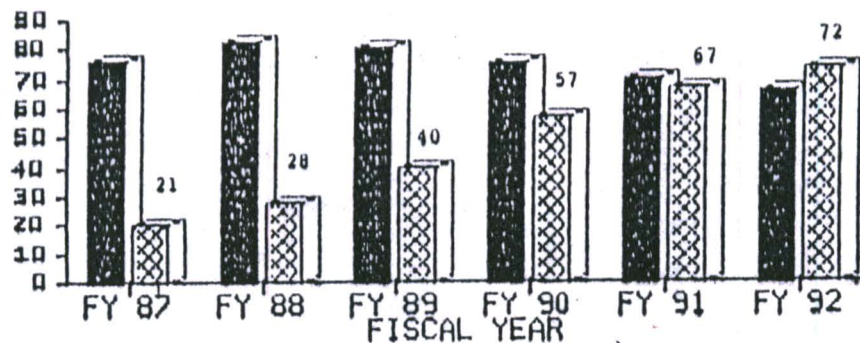


"Serious" and "critical" conditions exist in other court cities. These mean that the needed additional jail space may exist, but has become exceedingly more difficult to acquire and, if acquired, is in multiple sites necessitating multiple transportation and custody arrangements. Through 1992, the Marshals Service expects that the number of cities with serious and critical jail space problems will remain fairly constant. The following chart illustrates the shift from serious to emergency status.

ALARMING SHIFT OF DETENTION SPACE AVAILABILITY
(BY FY 1992, 72 CITIES IN EMERGENCY STATUS)

SERIOUS/CRIT  EMERGENCY 

COURT CITIES



FISCAL YEAR	EMERGENCY	SERIOUS/CRIT	TOTAL CITIES
1987	21	77	98
1988	28	83	111
1989	40	81	121
1990	57	76	133
1991	67	70	137
1992	72	66	138

(82% of total prisoner pop affected
with 67% in cities in emergency status)

The seriousness of the detention space shortage in any court city can change rapidly. Changes in local law enforcement policies on drunk driving or illicit drug possession, for

example, could create or dissipate an emergency quickly. In Washington, D.C., the "Operation Clean Sweep" crack-down on drug sales and possession exacerbated the detention crises at Lorton. The Administration should take care that sufficient flexibility and guarantees of detention space are included in specific detention plans.

Current Detention Programs

Since 1977, the Marshals Service has satisfied detainee housing requirements through contracts with State and local jails, buttressed by the Cooperative Agreement Program (CAP). Through intergovernmental agreements under CAP, State and local governmental entities commit to construct and subsequently to provide in the future detention space at negotiated daily use rates. Provided through the Support of U.S. Prisoners appropriation administered by the Marshals Service, CAP monies fund the Federal share of local jail construction. The care of United States prisoners portion of this appropriation reimburses State institutions and local jails for local detention space.

In spite of CAP funding for new jail spaces, the availability of space for temporary housing has not kept pace with the rapidly growing Federal detainee population. Jail space is becoming more difficult to find--and, even where contracts exist, to retain--because many localities are experiencing huge demands

for that space for their own detention and incarceration needs.¹² The national confinement rate in jails has grown from 96 per 100,000 people in 1969 to 210 per 100,000 today, a rise of 118%.¹³ During this time, the State and local space to house prisoners grew only 60%. According to the National Institute of Corrections, major jails in the United States (those with 100 or more beds) are now operating at 105% capacity. For many States, such as California, this situation is far worse, with inmate populations in certain institutions as high as 140% over capacity. It should be noted that the laws of several States do not permit jails to exceed their designed capacity and thus they will never become overcrowded, even though enforcement and incarceration policies may have to be adjusted to accommodate those statutes.

In this environment, it is very difficult for the Marshals Service to find local officials who are receptive to housing Federal detainees. The rapid growth in State and local prisoner populations has filled many detention facilities virtually to their capacities, thus limiting the space available for Federal use.

¹² A June 6, 1987, Los Angeles Times article, entitled "Central Jail's Overcrowding: It's Bad and Getting Worse," reports the jail population in the Los Angeles area growing furiously - 33% in the last year and one half. The article further reports that while Central Jail was built for 5,236 inmates, its population was 8,416.

¹³ Study by Robert Johnson, Professor of Justice, American University, Washington, DC.

The Marshals Service has encountered a number of local governments which are raising substantially the costs charged to the Federal Government for contract jail space. In Albuquerque, New Mexico, for example, the City Council and County Commissioners voted to increase the daily rate charged for housing detainees from \$62.50 to \$90.00, a 44% increase. The Marshals Service, unwilling to pay the exorbitant rate hike, removed its prisoners to rural facilities where four escapes occurred within a few weeks. Through public pressure and hard negotiations, a rate of \$68.00 per day was finally reached, allowing the temporary return of some prisoners for court appearances.

Cooperative Agreement Program (CAP)

When local governments are willing to house Federal detainees but lack sufficient detention space, the Marshals Service can utilize the Cooperative Agreement Program to finance new jail construction or facility renovation projects in return for the contractual guarantee of a number of jail spaces in the detention center for later Federal use. Actual daily use of these "reserved" spaces is then charged to the Government at negotiated rates, just as is the case when existing facilities are obtained under contract.

The Marshals Service has acquired over 3,200 guaranteed detention spaces in over 70 State and local facilities utilizing CAP funds. To date, the average CAP cost per space has been under \$20,000 (generally in suburban and rural jails), far below

the average cost of construction of a dedicated Federal detention center (in a major metropolitan area) of \$68,000 per bed space.

However, the Marshals Service has not been successful in acquiring all required detention space by using CAP funding because not all local governments are willing to participate in or fund their share of the program. Moreover, the amount of funding appropriated in each year is insufficient to meet the Federal share of the projects' costs. This is particularly critical in metropolitan areas where jail construction in a downtown area can cost over \$80,000 per detention space. The current FY 1987 CAP budget is only \$5 million; four times that amount is needed and could be used effectively in FY 1988 and beyond.

Federal Detention Centers

In Federal court cities where the CAP program is not workable or where the cost of local operations are significantly higher than that of a Bureau of Prisons institution, a dedicated Federal detention center is warranted. The Bureau of Prisons currently operates four Metropolitan Correctional Centers housing 2,500 pre-trial detainees and six pre-trial detention centers at Federal Correctional Institutions housing 900 detainees for various Federal court cities. These Federal facilities are cost effective because the average expenditure to house a Federal detainee in several urban jails now exceeds \$80 per day as

compared to less than \$50 per day to fund a bed-space in a Federal facility.

Federal Pre-Trial Detention Plan

Presently, there are over 260 cities where Federal courts routinely hold criminal trials; each needs its own detention space. Today, 16% of the average daily detainee population is held in local facilities with emergency detention space shortages affecting 8% of Federal court cities. As noted earlier, there will be an emergency detention space shortage in 72 major cities by 1992, and 67% of the projected detainee population will have to be held in those cities. This will adversely affect nearly 30% of the 260 major Federal courts unless some corrective actions are implemented.

Options

Three options will be presented; they are not mutually exclusive and a mix of them, in varying proportions, is feasible.

1. Expand Federal Detention Capacity

To satisfy the pre-trial detention needs of the Marshals Service, the subcommittee recommends a multi-faceted approach to detention needs, including detention centers operated by BoP, satellite jails adjoining existing BoP institutions, and expansion of the Cooperative Agreement Program. The United States Marshals Service estimates that the funding requirement

for the aggregate five year expansion to provide the 8,626 beds required in 1992 will cost approximately \$534,000,000. The United States Marshals Service analytical summary of near term proposed detention projects from FY 1989 to 1992, with the 1993 need also depicted, is attached as Appendix C.

The advantages of a multi-faceted construction approach are twofold:

First, a program of this type would provide long range construction of sorely needed, dedicated Federal detention facilities in urban areas where no CAP program now exists or where overcrowding trends have gradually forced the local entities to refuse Federal detainees. As a general rule, while initial construction costs of these urban facilities will be higher because of urban construction costs, the long range operating costs for such facilities managed by the Bureau of Prisons should continue to remain lower than charges which would be made by local entities if any local space were available. Because construction generally accounts for 10% of a facility's cost over its life-cycle, the overall cost avoidances for the life of these institutions of Federally operated detention units will be significant. New Federal urban detention centers would also satisfy requirements to keep detainees close to the courts in which they are to be tried and close to their respective defense counsel. In addition, Federal jails would guarantee bed space capacity for Federal detainees for a longer period and will

preclude the disruption occasioned by urban jail administrators declining to renew contracts with the Marshals Service.

A second major benefit will be that substantial increases in CAP monies will permit local entities to upgrade and expand their jail space. By providing a local entity with sorely needed support for jail renovation or expansion, we not only obtain a guarantee for Federal detention spaces, but also provide local detention/incarceration space when not occupied by Federal detainees.

This combined approach of Federal detention construction and expanded CAP utilization will cost \$534,000,000 over the next five years.

2. Private Sector Detention Services

Another option is to finance jail construction by private developers. This alternative may provide detention spaces faster than could be acquired either under the CAP program or a Federally constructed facility. However, the cost of this option is generally higher than financing through Treasury borrowing, primarily due to interest rates for private developers which are higher than public bond interest rates. The Marshals Service currently has no statutory authority to enter into such contracts and would require a small staffing increment to properly manage these private sector contracts. Additionally, the Marshals Service would need statutory authority to execute lease purchase contracts so that the title of the facility could be passed to

the Government; its operation could either be turned over to the Federal Bureau of Prisons or another private sector contractor.

A variation of this option would be to contract with private sector firms to not only provide the jail space but also to operate the entire facility for the Marshals Service.

Disadvantages of this option would be that operating costs for private sector firms are presently higher and, secondly, the Government of the United States would assume the legal responsibilities for private sector employees who are not supervised on a daily basis by Federal officials.

3. Intergovernmental Cooperative Ventures

A third option is a cooperative or joint building venture with State and local governments. Legislation could create a corporation or body which would be directly responsible for planning and overseeing construction of Federal and State jail space for the next five to ten years. Advantages to such a program would be to expand and upgrade Federal detention and local jail capacities, both of which are in short supply, while sharing costs with local governments. Institutions could be separated into Federal and local modules or separate institutions and could be maintained within the same funding range. This concept might be particularly attractive in dealing with the local jail capacity shortage and should be attractive, from a cost standpoint, to local entities as well.

IV. Alien Detention Space

At this time, the long term trend is unclear for the number of aliens expected to illegally enter the United States. The passage of the Immigration Reform and Control Act (IRCA) of 1986 greatly enhanced the nation's immigration laws. However, as a consequence, projected apprehensions of illegal entrants are unsettled. In FY 1986, the Immigration and Naturalization Service apprehended 1,767,400 illegal aliens. In the Spring of 1987, arrests for illegal entry dropped dramatically at the borders, particularly along the Southwest border, due in part to the effect of employer sanctions imposed under the new law. Nevertheless, in mid-summer, border apprehensions increased closely approaching prior levels. This increase was due, in part, to the seasonal increase of illegal entry by agricultural workers to harvest fruits and vegetables. The resultant FY 1987 apprehension rate is estimated to be 1.1 million illegal aliens. Because the future rate of illegal entry, related apprehensions, and subsequent detention needs are not clear, no decisions regarding INS' long term detention needs should be made for at least one year, during which time the trends should become more apparent.

The Mariel Cuban immigration detention problem continues to worsen and will continue to intensify Federal prison space problems. The Federal Prison System presently houses 2,400 Mariel Cubans awaiting deportation. These inmates are considered quite dangerous and require detention in medium security prison

institutions.¹⁴ Another 1,100 are held in State or local institutions (under contract with the BoP), and in INS Servicing Processing Centers, because of the overcrowding in Federal prisons. In addition, the Federal system receives Mariel Cubans daily from State and local penal institutions, following the completion of their criminal sentences. Until some political arrangement is reached again with the Cuban Government, and these prisoners can be returned to Cuba, the Federal Prison System will continue to hold these prisoners indefinitely for the Immigration and Naturalization Service.

Many of these prisoners are violent or are mentally ill. Based upon a series of unfortunate incidents involving Mariel

¹⁴ The Immigration and Naturalization Service currently has 3,621 Mariel Cuban criminals detained in detention facilities around the United States. Of this number, 2,382 Mariel Cubans are detained in either the United States Penitentiary, Atlanta (1,403) or Oakdale Federal Alien Detention Center (979). It is estimated that from FY 1988 through FY 1992 total releases to INS custody of Mariel Cubans from Federal, State, and local correctional facilities will generate a net inflow of 240 Mariel Cubans per year. This number takes into account the movement of Mariel Cubans to Community Relations Service halfway houses or United States Public Health Service halfway houses; the "reparole" of Mariel Cubans to their families; and movement of detainees to St. Elizabeth's Hospital. "Detainers" have been placed on 3,659 Mariel Cuban criminals serving State and local prison sentences as of April 1987. The 1987 Justice Department Supplemental appropriation includes a \$9 million increase to fund the detention of Mariel Cuban criminals who are returned to the Attorney General's custody after completing sentences in State and local prisons. This adds to INS' base budget which will provide \$12 million for the detention of Mariel Cubans in 1987 and \$13 million in 1988. The projected FY 1987 cost to the Federal Government for incarceration of Mariel Cuban criminals is \$67.5 million. This includes the costs to INS, the Bureau of Prisons, the Community Relations Service, the Public Health Service and reimbursements to States.

Cubans, including a history of violence in the Atlanta Federal Penitentiary and the burning of the Krome Refugee Camp in Miami, it is clear that Mariel Cuban criminals cannot be detained in minimum security institutions. Security requirements and the overcrowding of State and local facilities make it impossible for them to be incarcerated indefinitely in non-Federal custody. However, a very small number have committed lesser offenses in the United States, but nonetheless are being held indefinitely by the Federal Government. For this reason, the INS has reconvened review panels to investigate the case of each Mariel Cuban prisoner to see if some can be released to less restrictive and less expensive custody without endangering the general public.

Until all cases have been reviewed, the Subcommittee concurs with the INS and OMB recommendation against making any decision on Mariel Cuban detention needs. The INS review should be complete in six months, and those released will permit the incarceration of other Mariel Cubans. For those released to less restrictive custody, more halfway house space may be needed.

Finally, criminal aliens present a growing problem. These are aliens who entered legally and illegally, who were convicted of felonies in the United States, and who are serving or have completed their Federal, State or local sentences.

INS Service Processing Centers currently have a rated capacity of 2,239 beds. This bed space is not appropriate for criminal aliens, inasmuch as these minimum security facilities are intended for "administrative" (including illegal entrant)