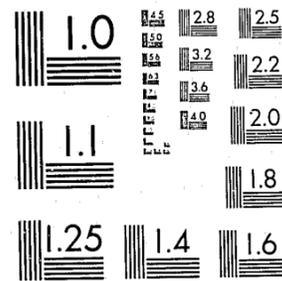


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**BUREAU OF PRISONS/DISTRICT OF COLUMBIA
DEPARTMENT OF CORRECTIONS:
REIMBURSEMENT DISPUTE**

HEARING
BEFORE A
SUBCOMMITTEE OF THE
COMMITTEE ON
GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES
NINETY-EIGHTH CONGRESS
FIRST SESSION

—————
JUNE 2, 1983
—————

Printed for the use of the Committee on Government Operations



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ACQUISITIONS

**BUREAU OF PRISONS/DISTRICT OF COLUMBIA
DEPARTMENT OF CORRECTIONS: REIMBURSE-
MENT DISPUTE**

THURSDAY, JUNE 2, 1983

HOUSE OF REPRESENTATIVES,
GOVERNMENT INFORMATION, JUSTICE,
AND AGRICULTURE SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:35 a.m., in room 2247, Rayburn House Office Building, Hon. Glenn English (chairman of the subcommittee) presiding.

Present: Representatives Glenn English, Ronald D. Coleman, Robert E. Wise, Jr., Edolphus Towns, Thomas N. Kindness, and Tom Lewis.

Also present: William G. Lawrence, counsel; Euphon L. Metzger, clerk; and John J. Parisi, minority professional staff, Committee on Government Operations.

OPENING STATEMENT OF CHAIRMAN ENGLISH

Mr. ENGLISH. The subcommittee will be in order.

This morning we will be receiving information concerning a dispute between the Federal Bureau of Prisons and the D.C. Department of Corrections. Under a longstanding reimbursement agreement, the Bureau houses D.C. prisoners in various Federal correctional institutions.

The Bureau claims that the District owes more than \$22 million in back payments, but the D.C. Department of Corrections asserts that there are billing errors which must be resolved before they will be willing to tender payment.

Several factors complicate attempts to resolve the dispute. GAO notes that there is no burning incentive on the part of either party to resolve it. The District of Columbia would prefer to defer payment of such a large sum if it could. For the Bureau's part, collection would require a large amount of work but return nothing to the Bureau; any sums recovered would simply go to the general fund of the U.S. Treasury.

As the GAO report states, it is not important to point fingers and affix blame for the confusion, because it is the result of many factors, including mismatched accounting systems. What is important this morning is to insure that this dispute will be promptly and fairly resolved.

We have been given a copy of the report on this matter which was prepared by the GAO at our request. We have become accustomed to the fine work of GAO in support of this subcommittee, and this report certainly meets those high standards.

First, Mr. Kindness, do you have a statement you would like to make?

Mr. KINDNESS. Thank you, Mr. Chairman.

I would like to compliment you, Mr. Chairman, on getting on to this problem. I think we have a situation to deal with this morning which sort of falls in the cracks in terms of oversight of the Congress and it is important that such a matter be dealt with in a manner that will help to conclude it and avoid the repetition of the problem in the future.

Whatever mechanisms are necessary to accommodate that, I think this subcommittee would be prepared to recommend. There is the possibility that, through approaching this in a cooperative sort of atmosphere, that the matter can be resolved more quickly.

I think, obviously, it will require close followup and perhaps legislative action following the next hearing, if the matter is not resolved.

But I want to compliment the chairman for this very constructive approach to the solution of this problem. I look forward to the testimony of our witnesses this morning.

Mr. ENGLISH. Thank you very much, Mr. Kindness.

Our first witness this morning is Mr. Ronald F. Lauve, Senior Associate Director of GAO's General Government Division.

Mr. Lauve, we want to welcome you this morning. If you will, please introduce the people who are with you.

STATEMENT OF RONALD F. LAUVE, SENIOR ASSOCIATE DIRECTOR, GENERAL GOVERNMENT DIVISION, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY WELDON McPHAIL, SENIOR EVALUATOR, GENERAL GOVERNMENT DIVISION, AND JEFFREY A. JACOBSON, ATTORNEY, OFFICE OF THE GENERAL COUNSEL

Mr. LAUVE. Thank you.

On my left is Mr. Weldon McPhail, Senior Evaluator in the General Government Division. On my right is Mr. Jeff Jacobson, who is an attorney in our Office of the General Counsel.

We appreciate being here, and what I would like to do for you is to discuss very briefly some of the more salient features of our report, lay some groundwork for you, cover briefly the recommendations that we made, and cover also the responses of both agencies to those recommendations.

As you know, our report was issued yesterday to the Attorney General and the Mayor of the District of Columbia. According to Bureau records, more than \$22 million is involved.

The problem first surfaced in late 1976 when the Department of Corrections discovered discrepancies between the Bureau's bills and the Department's records. It decided that, from then on, each bill would be analyzed. According to a Department official, two types of problems were found in the Bureau's bills.

One problem involved arithmetic errors. These occurred when an inmate was reassigned and more than one institution billed for the

same person on the same day. In these instances, the Department of Corrections deducted these charges from the bill.

The second type of problem involved billings for individuals whom the Department of Corrections either, one, could not find records for in its own system, or, two, had determined were the responsibility of the Bureau because they were "Federal" prisoners. These problems led to disputed billings.

Such disagreements have arisen in most quarterly bills since the Department of Corrections began checking bills in 1976.

Several attempts have been made by the Bureau and the Department of Corrections to resolve the outstanding debts, but neither agency has followed through on the initiatives. For example, in 1978, the Bureau attempted to verify a comprehensive list of inmates whose status was in dispute.

This information was forwarded to the Department of Corrections in January 1979. We asked officials of both agencies why the balance for this particular quarter was still unresolved several years later. They said they had been waiting for the other to do something.

In May 1981, officials of both agencies met and agreed on a procedure for insuring that the Department of Corrections would get monthly billings from all the Bureau's institutions. For one reason or another, this system has not functioned as anticipated. This is unfortunate since the billing procedures agreed upon offer some potential for moving toward a solution to the problem.

Another disagreement involves interest charges on overdue debts. In January 1982, the D.C. Government paid the Bureau \$12.5 million to partially offset the deficit. The Bureau applied part of the \$12.5 million to the payment of interest charges on the past debt.

The remainder was applied to the oldest outstanding balances, those from 1976 forward. However, a District official told us that the money was to cover undisputed indebtedness for housing prisoners during the fourth quarter of fiscal year 1980 through the third quarter of 1981.

Presently, the two agencies remain at odds with each other concerning the application of the payment.

In our report, we made several recommendations that should help solve the problems I just mentioned. We also recommended that the Mayor of the District of Columbia and the Attorney General set a timetable for resolving the disputed charges and outstanding debts.

In addition, we recommended that the Attorney General require the Director of the Bureau of Prisons to formulate legislation to authorize the Bureau to use reimbursements collected from the D.C. Government to offset the Bureau's operating expenses for housing D.C. prisoners.

We felt that such legislation, if enacted, would provide the Bureau additional incentive to resolve disputed charges and outstanding debts with the D.C. Government.

Under existing law, the Bureau cannot use the funds it collects from the D.C. Government; rather, it must deposit the money in the U.S. Treasury. In contrast, money the Bureau collects for hous-

ing prisoners for States is deposited in the Bureau's account and can be used to offset its operating expenses.

We also pointed out that under existing law, the Attorney General is authorized to enter into contracts with States for housing non-Federal prisoners, but that the Attorney General does not have the authority to enter into such a contractual agreement with the D.C. Government.

Nevertheless, written procedures could be developed governing the billing and payment for housing prisoners. If such procedures had been in effect in January 1982, disagreement over how the \$12.5 million payment was to be applied might not have arisen.

In responding to a draft of our report, both the D.C. Government and the Department of Justice agreed that the dispute over outstanding payments should be resolved and effective procedures for future payments should be established.

Although both agencies stated that they will work to resolve the disputed billings, the tone of their comments caused us some concern. Each agency contended that it has taken initiatives to resolve the disputes, but that the other agency had not responded adequately.

Unfortunately, this reflects the same attitude that has been a barrier to solving the problems of disputed billings.

In addition, the Department of Justice offered alternatives to our proposal that legislation be formulated to authorize the Bureau to use reimbursements it collects from the D.C. Government.

The Department's proposed approach would involve legislation which would simply reduce the District's appropriation by the estimated cost of housing D.C. prisoners and transfer that amount to the Bureau.

According to the Department of Justice, under this approach the cumbersome billing and collection process, which is expensive to both agencies, would be eliminated.

We disagree with Justice's proposal. Under its proposal, the Bureau would receive funds on the basis of its estimate of the cost of housing D.C. prisoners rather than on actual expenses.

It is not clear what recourse, if any, would be available to the D.C. Government if it contested the estimates or what would happen if the estimates exceeded actual costs.

Further, we believe that Justice's proposal could conceivably escalate the forum for any future disputes from an administrative level between the two agencies to the congressional appropriation process which we believe would be a most undesirable effect.

Justice also proposed the possibility that the Bureau pursue and exercise the right of offset against the District's appropriation to recover long-overdue debts, including interest charges. We disagree with this proposal, too.

First, a well-established fact is that the two agencies disagree over the amount owed. Before any offset could take place, disputes should be resolved. If resolved, we see no need for an offset because the District has already agreed to pay the amount the agencies agree on.

In summary, the problem has gone unresolved far too long—over 6 years—and now involves over \$22 million. Our point is not to lay blame. Both agencies must share the responsibility. Rather than

dwell on who caused the problem, we believe both agencies should put their differences aside and resolve the matter immediately.

Thank you, Mr. Chairman. That concludes my statement. We will be glad to respond to questions.

Mr. ENGLISH. Thank you very much, Mr. Lauve.

I would assume from your statement that you believe that this problem is resolvable, it can be resolved. Is there somewhere the information available to make a final decision? Can all this information be pulled together?

Are you aware of where it might be located?

Mr. LAUVE. Yes, sir, we think the information is available. There are basically three things. One is the judgment and commitment order which gives certain information on the individual involved in the crime, the sentence imposed, the dates.

There is also a sentence computation face sheet which gives some additional information, and there is also a document that gives the transfer dates and the locations involved.

Now, in our report we pointed out the information was available, some of it in both places, but primarily the judgment and commitment order would be a key document that could be used.

Although it would be a time-consuming thing to do, the information is available.

Mr. ENGLISH. Well, is it the sort of thing that can be solved by assigning some accountants on a temporary basis, both sides assigning some temporary accountants to look into it, would they be able to resolve it?

Mr. LAUVE. I don't think you would necessarily need accountants. Accountants may come in to some portion of it when you compute the bills, but to gather the necessary information would not necessarily require accountants.

Mr. ENGLISH. So, auditors, but not necessarily accountants?

Mr. LAUVE. I wouldn't think so, no, sir.

Mr. ENGLISH. Is the D.C. Government funded by the Congress to make payments to the Bureau of Prisons for inmate support?

Mr. LAUVE. Yes, sir, it is my understanding there is money through the appropriations process that goes to the D.C. Government for that purpose.

Mr. ENGLISH. Well, what has happened to the money then that was allotted for this purpose, while this issue is being resolved?

Mr. LAUVE. I would suppose it is still in the hands of the District Government. I do not know. Perhaps Mr. McPhail?

Mr. MCPHAIL. We are uncertain in terms of where the money goes, and it is not clear to us where it is.

Mr. ENGLISH. Is there any indication that the money may have been spent for other purposes?

Mr. MCPHAIL. The scope of our audit did not go that far. Basically, what we were trying to do is determine if, in fact, the D.C. Government was being charged correctly and if it was paying for D.C. prisoners housed in the Bureau of Prisons. We did not attempt to determine whether money may have been spent for other purposes.

Mr. ENGLISH. On the other hand, you were not able to identify money which has been set aside and is being saved for that purpose, until this issue is resolved?

Mr. MCPHAIL. Our understanding is a request is made by the District to pay for the prisoners. Once the money is received, we are not quite certain how it is then paid back in terms of actual housing of the prisoners.

Mr. LAUVE. No, sir, we did not make an attempt to track the money once it got into the D.C. Government.

Mr. ENGLISH. No one told you that it is being saved or put aside for—

Mr. MCPHAIL. That is correct.

Mr. ENGLISH. As far as the Bureau of Prisons is concerned, do they receive money appropriated by the Congress to deal with these same inmates?

Mr. LAUVE. They do through their appropriations process. It is my understanding the number of prisoners, which is the basis for appropriations, will include the number of prisoners from the D.C. Government at the Federal correctional facilities.

Mr. ENGLISH. In effect, what we have is the same prisoner money being appropriated both to the Bureau of Prisons and D.C. Government for the same prisoner?

Mr. LAUVE. Yes, sir.

Mr. ENGLISH. That is double-funding.

Mr. LAUVE. It is double-funding in the sense that roughly the same amount of money should be going to the District Government, which in turn is supposed to be collected by the Bureau of Prisons and deposited into the U.S. Treasury. The double-funding is not actually a duplicate payment as such.

What is happening now is the money that is in the hands of the D.C. Government, for disputed amounts plus the unpaid amounts, ultimately is to be in the U.S. Treasury, that is where the shortage is coming up.

The Treasury is short.

Mr. ENGLISH. I see. How much time do you think it should take to resolve this issue? What is a reasonable amount of time? If we decide we want to have another hearing to look into this matter, and how well the problem has been solved, what would be a good time period for us to hold that hearing, in your opinion?

Mr. LAUVE. That is a difficult question to answer. I would like to do two things. One is just throw out a rough estimate of probably several months. There is a lot of paperwork involved, there is a lot of tracing, a lot of agreements that have to be reached, go on, a lot of discussions, and negotiations.

On the other hand, if I were the Bureau of Prisons and D.C. Government, I would expedite the matter as soon as I could.

Mr. ENGLISH. Six months, twelve months?

Mr. LAUVE. I would think far less than 12 months. I would say that 3 months, perhaps, is too short, but certainly if we are talking about 3 months, I would think that sometime during the 3 months, say a month and a half, there should be some progress made and there should be some accountability for progress made in the direction of solving the problems.

Mr. ENGLISH. January might be an appropriate time, right after Christmas.

Mr. LAUVE. That is certainly up to you, Mr. Chairman.

Mr. ENGLISH. Will the General Accounting Office also continue to monitor and to follow up this report?

Mr. LAUVE. Yes, sir, we will.

Mr. ENGLISH. Mr. Kindness?

Mr. KINDNESS. Thank you, Mr. Chairman.

In the course of dealing with a matter of this sort, that has had the history that it has had, it would seem to me that it might be appropriate for this subcommittee to have another hearing sooner than January, something like the middle of September, perhaps, just to be sure whether there is any help that we can afford in urging the matter along. But, in order to get the scope of this matter more clearly in mind, I would like to ask whether the General Accounting Office, in the course of this study, made any comparisons of billings from the Bureau of Prisons to States, and the District of Columbia, Department of Corrections?

Are the billings to the D.C. Department of Corrections much larger than the billings to most States?

Mr. LAUVE. Let me give you a little bit of perspective, then I will ask Mr. McPhail if he can possibly answer that. Looking at the amount that is outstanding is perhaps a place to start.

I think it was March of 1982, about 85 percent of the amount owed the Bureau was owed by the District Government, the remaining 15 percent was owed by States and territories.

In terms of the total amount billed, we only have figures for one point and at that particular point, there were 1,300 D.C. prisoners in Federal correctional facilities, about 950 prisoners from States and territories.

I think you could assume that the amounts owed at that particular time, most of it payable by the District Government, are out of kilter when compared to the number of prisoners involved.

Mr. KINDNESS. That would tend to indicate, but not conclusively, that there may not be such billing problems or problems with the settlement of billings with States as compared to the District of Columbia.

Are you aware of any problems with other States?

Mr. MCPHAIL. Our understanding is the States pay pretty much on time and the Bureau normally does not have a big problem with the States. It appears that the District is somewhat late in terms of its payments.

Mr. KINDNESS. In terms of the availability of the records that are required to resolve this dispute, it is my impression that everything is available right here in the District of Columbia and not scattered around the country, with which to deal in resolving this dispute, is that correct?

Mr. MCPHAIL. I am not so certain that that is in fact the case. That is the position that the Bureau will maintain. There are a number of records that are available in a central location.

There is some concern, as I understand, from D.C. officials in terms of the amount of movement which occurs in the Bureau. It is difficult for the District to track prisoners who are under the jurisdiction of the Bureau of Prisons.

At the same time, the movement makes it very difficult for them to get the information. There are also some problems with the D.C.

computer system which is not clear, or they are having difficulty with that.

Also, problems with the staff that the District of Columbia has in terms of actually tracking some of these people down.

Mr. KINDNESS. So, if the Bureau of Prisons were to transfer a D.C. prisoner from one institution to another, and bill for 1 day from two facilities, that doubling up is one part of the problem that the D.C. Department of Corrections doesn't have the tools with which to deal, right?

Mr. LAUVE. If you recall earlier in the statement, there were two types of problems, one was an arithmetic error. The example that you just described would fall into that category, as we understand it.

Where, if the person is moved from one institution to another, and the bills were submitted by both institutions, the District Government would pick that up, deduct that charge from the bill, and from the payment, and in the past, the Bureau of Prisons has not objected to these kinds of adjustments.

Mr. KINDNESS. If I understand correctly, the Bureau of Prisons does not have any central facility for these billings, it is all done from the various institutions, is that correct?

Mr. LAUVE. Yes, that is correct.

Mr. KINDNESS. So that they would have no automatic correction for these double-day billings for one prisoner?

Mr. LAUVE. No, they would not have an automatic correction, in that sense. Under the present system, each institution sends a bill to the D.C. Government. That bill includes certain information, the names of the D.C. prisoners, certain identifying numbers, the dates of incarceration, the computed per diem rates, so forth and so on.

If there is duplication, the District Government would catch that. Under the present system, which has been in effect since 1981, if there are no D.C. prisoners in institutions, a negative report is required.

Now, it is our understanding that once reports have come in from all the institutions, that is, once all the institutions have reported they either have D.C. prisoners or don't, then the District Government starts its payment process. But there is something required from each Bureau institution.

Mr. KINDNESS. Going back to the availability of information needed to resolve the dispute, that information which is available centrally, in the District of Columbia, has that been checked at all by the General Accounting Office personnel to determine how far back it goes and whether it goes back to 1976, when this dispute arose.

Mr. LAUVE. We know that—we have been told that the records are available, some of which may be in the data storage centers, but the records are available as far back as 1976.

We did not check them. We did not verify that every record is available.

Mr. KINDNESS. Well, now, when you are speaking of the data storage centers, you are speaking of records of the Bureau of Prisons?

Mr. McPHAIL. That is correct.

Mr. KINDNESS. But I am speaking of the District of Columbia, D.C. records or those to which they have ready access here in the court system.

Mr. McPHAIL. It would be very difficult to answer your question directly, because it is not clear whether this information is available in the D.C. Department of Corrections. Again, the Bureau moves prisoners frequently and it sometimes has difficulty, I think, in tracking its own records. So in terms of looking at it from a billing perspective to make certain that the billing is correct, it would be very difficult, I think, to rely solely on the District's Records Office.

Mr. KINDNESS. I would assume you have not up to this point in time had reason to make such an estimate but would you care to hazard a guess as to what the cost would be to actually pin down every nit in this controversy.

Mr. LAUVE. No, I really wouldn't.

Mr. KINDNESS. Sounds pretty expensive to me. The difference in view of the amount owed between the Bureau of Prisons and the D.C. Department of Corrections seems to range somewhere between \$22 million and something right under \$400,000.

There is one indication some \$390-some-thousand cropping up in the D.C. Department of Corrections view as the figure that might be in controversy.

That is an awfully big spread. Have you gotten any indications that they are a little bit closer than that?

Mr. McPHAIL. I have not presently received any indication of that. As a matter of fact, the last figure we received was closer to \$24 million that was owed. Unless something has happened in the last several weeks, to change that estimate, the figure still remains pretty firm, about \$24 million.

Mr. LAUVE. There is a distinction here we need to point out and that is there are two categories of debt. One is the disputed amounts which arise from a number of problems that I described. The other is unpaid bills where perhaps the District has already acknowledged or is intending to pay a portion of. These are the two major categories where there are some distinctions. The breakdown between the two categories has fluctuated a great deal over the last few years.

At one point, disputed amounts were very large, at another point, the unpaid bills were the larger of the two. Right now, I don't know the exact figures for either category, other than what we have been told, and that is the range of \$22 to \$24 million.

Less than \$400,000 is new to me as of today.

Mr. KINDNESS. Well, I forget where it cropped up in the information I read in preparation for the hearing, but that is an older figure. Apparently there was a time when the D.C. Department of Corrections indicated that there was a figure of that sort, that was due to the Bureau of Prisons, but there has been no clear indication of how much closer together they get than that.

Mr. LAUVE. At one point, I believe it was around June of 1982, there was some correspondence to the Bureau of Prisons, from the D.C. Government, that I think showed around \$9 million in dispute. In fact, at the point right after January 1982, when the \$12.5 million payment was made, it is my understanding that the D.C.

Government thought itself basically current in terms of paying nondisputed amounts.

The remaining two categories were, one, disputed amounts, which at that time I don't have a precise figure for, and the other was the amount of unaudited bills that had been received, so the amount that would ultimately be owed was several millions of dollars, but at that January 1982 point, \$12.5 million was intended to bring the District current on the nondisputed amounts.

So we have figures bouncing all over from time to time on disputed amounts, undisputed amounts and unaudited bills.

Mr. KINDNESS. Thank you.

Mr. ENGLISH. Mr. Lewis?

Mr. LEWIS. No questions, Mr. Chairman.

Mr. ENGLISH. Mr. Coleman, do you have some questions you would like to ask?

Mr. COLEMAN. Thank you, Mr. Chairman.

I just wanted to ask one question. The decision, or the statute, that we are talking about—section 5003 of title 18—is an interpretation that D.C. was left out of the statute, get reimbursed with money going to the Bureau of Prisons.

Mr. LAUVE. I think that statute refers to States and territories. I will ask Mr. Jacobson to explain the intricacies of that.

Mr. JACOBSON. Mr. Coleman, when that statute was passed back in 1952, it really didn't have a definitional section as to what any of those terms meant, and basically it says States and territories and possessions of the United States.

Of course, that was a time before home rule and the D.C. Code already had its own provision for the Federal Government housing D.C. prisoners, had its own formula for how the Federal Government was going to be reimbursed and in essence, had a mandate that the Federal Government house D.C. prisoners and then be reimbursed.

After the Congress passed that 1952 statute, dealing with States and territories, authorizing contracts, the only subsequent amendment to that statute was one to allow the Canal Zone to participate in the same types of contracts.

The legislative history to both of those statutes nowhere suggested that the D.C. Government was included in any of the terms covered by that legislation and also the D.C. statutes which have been on the books since the beginning of the century, have never been changed.

So, our reading is that those are two separate and distinct authorities dealing with two separate and distinct governmental entities.

Mr. COLEMAN. States, territories and possessions are covered by the statute. You are saying it is impossible to believe that in 1952 they could have intended the District of Columbia to be covered by that statute.

Mr. JACOBSON. I could not find any evidence in the legislative history that anybody intended—

Mr. COLEMAN. Nobody thought about it?

Mr. JACOBSON. That is possible. Although one thing to recognize is that in 1952, before home rule, the relationship between the D.C. Government and the Federal Government was a little bit different.

In essence, the Congress was in effect supervising the D.C. Government in the appropriation of moneys for the D.C. Government. Consequently, I don't think it is unreasonable to think that Congress wouldn't have seen any reason to include the D.C. Government in these provisions since the Congress was already dealing with the D.C. Government under the original status of the District of Columbia.

Mr. COLEMAN. Would you suggest that we include them?

Mr. LAUVE. Yes, it would allow—you have to change the Federal statute and somewhere the D.C. Code would have to be changed, too.

It would be a basis for contracting, yes, sir.

Mr. COLEMAN. I view your statistics as some of the best evidence, suggesting that we ought to change that statute. Those numbers, 85 percent versus 1,300—900 prisoners on a specific day, that was the instance.

Mr. LAUVE. That is correct.

Mr. COLEMAN. I think that makes the case to change the statute. We have a little more incentive when the Bureau of Prisons can utilize those funds.

Mr. LAUVE. That is correct, there are a couple of other things. I wouldn't want to leave the impression that is the only thing that needs to be done. There needs to be some administrative improvement, there needs to be more energy expended to solve these problems to make sure that the right records are gathered, that the transfer of information is timely.

Yes, that is one step that should be taken.

Mr. COLEMAN. Thank you, Mr. Chairman.

Mr. ENGLISH. Thank you very much.

Mr. Towns?

Mr. TOWNS. No questions at this moment, Mr. Chairman.

Mr. ENGLISH. Mr. Lauve, we appreciate your testimony and your help. I might also say, Mr. McPhail, it is my understanding this is your first hearing. You did very well.

Mr. McPHAIL. Thank you.

Mr. ENGLISH. You are certainly to be commended. We are happy to have you and we are looking forward to having you back many times in the future.

Mr. McPHAIL. Thank you.

Mr. ENGLISH. I think what we will do is bring our next witnesses up in a panel. We have Mr. Wade Houk, Assistant Director for Planning and Development, Federal Bureau of Prisons, in Washington; and Mr. William D. Golightly, who is the Assistant Director for Administration, D.C. Department of Corrections, here in Washington, D.C.

Since we do have a vote on, it might be wise if we cast this vote before we receive your testimony. So we will recess here for about 10 minutes, and be right back.

[Recess taken.]

Mr. ENGLISH. Mr. Houk, we will let you proceed with your statement. I might tell you and Mr. Golightly both that should you care to summarize your statements, without objection, your full and complete written statement will be made a part of the record.

STATEMENT OF WADE HOUK, ASSISTANT DIRECTOR OF PLANNING AND DEVELOPMENT, FEDERAL BUREAU OF PRISONS, WASHINGTON, D.C., ACCOMPANIED BY CHARLES NEILL, DEPUTY ASSISTANT ATTORNEY GENERAL, JUSTICE MANAGEMENT DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. HOUK. Thank you.

I appreciate the opportunity of appearing before your committee today. I would like to introduce on my left, Mr. Charles Neill, who is Deputy Assistant Attorney General in the Department of Justice and serves as the Controller of the Department of Justice.

I believe that the GAO report is substantially accurate in its description of problems regarding billings and payments for the housing of D.C. prisoners in Federal institutions.

In my view, three major factors have contributed to this situation.

First and foremost is the process of prisoner identification for billings and payments. We will be working closely with the D.C. Department of Corrections in the next several weeks to completely eliminate this problem.

The second issue relates to the interest charges assessed by the Bureau of Prisons on late payments. While we have charged interest in the past, because of Treasury Department regulations, we believe that the recent Debt Collection Act of 1982 may now preclude these interest charges to State and local governments. The Department of Justice will be requesting an opinion from the Comptroller General shortly to clarify that situation.

There is a third complicating factor not directly mentioned in the GAO report which I believe is of extreme importance. It is that sometimes the District of Columbia has not made payments to the Bureau of Prisons, not as a result of any dispute over bills between the Bureau of Prisons and the D.C. Department of Corrections, but rather because of cash flow or cash balance situations affecting the D.C. Government as a whole.

The GAO report also states that the Bureau of Prisons has little incentive to resolve disputed bills because payments are not directly credited to our operating proceedings.

We specifically feel that this is not the case, and that we have expended considerable efforts. Nevertheless, the bottom line is what counts and the actions to date of both agencies have not resolved the situation.

I agree with the General Accounting Office observation that it is time for both agencies to put aside their differences, stop pointing fingers at each other and get this matter resolved.

The Director of the Bureau of Prisons, Norman Carlson, asked me to convey to this subcommittee his personal commitment to bring the situation to a prompt and final resolution. We will continue to meet with the officials of the D.C. Department of Corrections and the D.C. Comptroller's Office to promptly resolve all past bills in dispute and to jointly improve billing and payment procedures for the future.

Mr. Chairman, I would be pleased to respond to any questions which you or other members of the subcommittee might have.

Mr. ENGLISH. Thank you.

Mr. Golightly.

STATEMENT OF WILLIAM D. GOLIGHTLY, ASSISTANT DIRECTOR FOR ADMINISTRATION, D.C. DEPARTMENT OF CORRECTIONS, WASHINGTON, D.C., ACCOMPANIED BY WINIFRED MYRICK, COMPTROLLER

Mr. GOLIGHTLY. Thank you very much, Mr. Chairman, members of the committee, for the opportunity to make a comment today with respect to the draft GAO report and the problems which we have been having respecting the bill of the Federal Bureau of Prisons.

I do not have a prepared statement. On my right, I do have with me Miss Winifred Myrick, who is the Comptroller for the Department.

Rather, what I would prefer to do today is simply to describe to you the two documents which we have submitted in advance, because I think they do indicate what the current status is and what in our view would be an appropriate resolution of the problem.

Mr. ENGLISH. Is that the document that is entitled "Accounts Payable"?

Mr. GOLIGHTLY. That is correct.

Mr. ENGLISH. Bureau of Prisons?

Mr. GOLIGHTLY. Yes, sir.

Mr. ENGLISH. Without objection, we will make that part of the record.

Mr. GOLIGHTLY. Thank you.

[The material follows:]

D. C. DEPARTMENT OF CORRECTIONS
Accounts Payable - Federal Bureau of Prisons

As of May 31, 1983

1/1/83

Period	Total Amount Billed	Amount Paid	Payment in Process	Unaudited	Disputed
T.Q. to 3rd qtr. FY'81	\$ 39,297,590.54	\$ 30,046,471.85	\$ 2,118,036.27	\$ 6,935,534.87(a)	\$ 197,547.55
4th qtr. - FY'81	4,217,062.25	4,089,777.00	- 0 -	- 0 -	127,285.25
1st. qtr. - FY'82	3,051,947.00(b)	3,015,330.00	- 0 -	- 0 -	36,617.00
2nd. qtr. - FY'82	4,154,992.00	4,150,890.00	- 0 -	- 0 -	4,102.00
3rd. qtr. - FY'82	4,344,460.00	4,323,246.00	- 0 -	- 0 -	21,214.00
4th qtr. - FY'82	4,573,134.00	- 0 -	- 0 -	4,573,134.00	- 0 -
1st. qtr. - FY'83	4,351,600.00	- 0 -	- 0 -	4,351,600.00	- 0 -
	<u>\$ 63,990,785.79</u>	<u>\$ 45,625,714.85</u>	<u>\$ 2,118,036.27</u>	<u>\$ 15,860,268.87</u>	<u>\$ 386,765.80</u>

14

(a) Includes \$4,822,252.29 for which supporting documentation received by this Agency on May 31, 1983.

(b) A contingent liability has been established for an estimated \$1,134,080 due for bills not received.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPUTY MAYOR FOR FINANCE

1350 Pennsylvania Avenue, N.W. — Room 423
Washington, D.C. 20004

Mr. Norman A. Carlson
Director, Bureau of Prisons
320 First Street, N. W.
Washington, D. C. 20534

Dear Mr. Carlson:

Disputed bills for prisoner care and interest charges claimed thereon by the Federal Government have occasioned considerable correspondence and discussion among the Office of Management and Budget, the Federal Prison System and the District of Columbia. As you are aware, there is a report on this about to be issued by the General Accounting Office.

I believe it is to our mutual interest to resolve this question. With this in mind, we have prepared a suggested format for agreement, which is attached. While the District is not inclined to accept any interest liability, the agreement does provide a vehicle for resolution of this and future disputes.

We will be awaiting your reply.

Sincerely,

Alphonse G. Hill
Deputy Mayor for Financial
Management

Attachment

AGREEMENT ON PROCEDURES FOR PRISONER COST REIMBURSEMENT
BETWEEN THE FEDERAL PRISON SYSTEM AND THE DISTRICT OF
COLUMBIA

Explanation:

Under provisions of the District of Columbia Code 24-425 all prisoners convicted in the District of Columbia are committed to the custody of the Attorney General of the United States or his authorized representative. There are currently a substantial number of District of Columbia prisoners who are serving sentences in the Federal Prison System (FPS). The District of Columbia Department of Corrections (DCDC) routinely has in its custody federal prisoners pursuant to D. C. Code 24-425.

The cost of care for District of Columbia prisoners and United States prisoners is prescribed in D. C. Code 24-421 and 24-423.

It is therefore agreed:

By the parties that the efficient discharge of their respective obligations requires the following billing procedures:

1. A single quarterly bill compilation, instead of the current individual institution billing, shall be delivered by each party to the designated business offices not later than forty-five (45) days after the end of a quarter.
2. The bills shall incorporate all costs for care of prisoners including medical.
3. All bills submitted to the District of Columbia must include DCDC or PDID numbers for verification purposes.
4. The bills shall be receipted by the respective business offices, and an audit will commence immediately.
5. The audit result will be delivered to each party no later than three (3) weeks after receipt of bill.
6. Each party shall render full payment no later than sixty (60) days after receipt of the audit.

7. On disputed amounts, each party shall provide the necessary information to verify the status of the prisoners within forty-five (45) days after the receipt of audit results. If within forty-five (45) days the information is not received, the disputed amount will be considered not payable.
8. Currently outstanding bills will be subjected to immediate audit and payment made in accord with items six (6) and seven (7) above; past and future payments by the parties shall not involve an interest payment.

For the Federal Prison System:

For the District of Columbia:

Norman A. Carlson
Director

Alphonse G. Hill
Deputy Mayor

Date

Date

Mr. GOLIGHTLY. On that particular tabulation, what is indicated is what has happened over a period of the last couple of years. In the very first column is simply a totaling of the bill, and the second column is the amount that has been paid on that, leaving, of course, the difference.

One of the columns, the third one, indicates that payment is in process. That means this amount has been released and is now going forward to be paid.

In the unaudited column are, first of all, two very recent bills which have been received, which are now in the process of being audited.

Up on the top of the column is the amount of money that was originally carried as disputed. We have just received the documentation we sought for that, so we have moved it over to the unaudited column, and are now proceeding to do that audit.

Essentially at this time, we do have in our possession the bills which are necessary to make a proper determination as to what is payable to the Federal Bureau of Prisons. You will see in the right-hand column an amount called disputed and that is the \$386,000, which was referred to earlier by the panel.

That particular amount is down significantly from an earlier report prepared on essentially the same basis we had, where it showed something on the order of \$9 million in February 1982.

This is basically because we have now gotten everything that we need in order to make our determination, and we just simply did not feel that we had it at the prior date.

That is in essence the description of the tabulation of accounts payable.

The other item which we have submitted is a proposed agreement with the Federal Bureau of Prisons. Without going into the mechanics of this particular agreement, I would simply indicate that it is a first cut, a draft, which the Federal Bureau of Prisons will respond to in terms of setting up something a little bit more concrete than we have right now, with established timetables and performance deadlines so we will not get ourselves into the position that we have been before.

I am thoroughly in agreement with my colleague, we have been doing this long enough and it is time that, rather than hurling accusations at one another or account books or anything, it is time for us to get this problem resolved.

Thank you. We are available for questions.

Mr. ENGLISH. Thank you very much, Mr. Golightly.

What I would like to ask is, it seems like over the 6 years this has gotten to be quite a sum of money, whether it is \$20 or \$24 million, whichever it might be. Have there been any discussions at all about it or have you thought about reaching an agreement and paying the amount that is not in dispute, say, \$20 or \$22 million, whatever it may be? It appears that the amount that is in dispute right now is about \$386,765.80.

It looks like you could just go ahead and pay everything else, that is not in dispute, and then argue over this. Has that been discussed at all?

Mr. GOLIGHTLY. I think Mr. Lauve made the distinction earlier between that which was in dispute and that which has not been

paid. That which has not been paid in turn breaks down into a number of other categories, and they are listed on this particular sheet here.

One is payment in process, another is that which we are currently auditing, and then the other is the actual disputed amount. The disputed amount itself may go a little higher, simply because in the course of the audits, we are going to pick up some other things that we disagree on, but we are probably not talking much more than, I would say, about \$500,000 or \$600,000 total that column will reach by the time those bills are audited.

We will make payment on those items that we believe we can release without dispute.

Mr. ENGLISH. Even taking that into account, your payment in process, there is about \$2 million, that would still leave about \$18 to \$20 million there that there doesn't seem to be any dispute over.

Mr. GOLIGHTLY. There doesn't seem to be any dispute, because we don't know whether there is any dispute right now. We are auditing those bills at the present time.

Mr. HOUK. If I might add a point to that. Those bills go all the way back to the transition quarter of fiscal year 1976. The bills had been submitted at one time throughout this period to the D.C. Department of Corrections, which I believe had audited them and at one point found certain discrepancies or inmates they believe were not their responsibility. The disputed bills were returned to the Bureau of Prisons and there has been, as the GAO report indicates, a continual exchange of information, additional identifying data, to permit the D.C. Department of Corrections to confirm whether or not it is their inmate.

Now, as of this date, we believe that all of that information has been provided to the D.C. Department of Corrections and they will be reauditing and now reviewing that additional information to make a final determination.

Based upon our initial review of that information, my assumption and I think also Mr. Golightly's is that the majority, or an extremely high portion of the unpaid amount will be recognized as a legitimate bill.

Mr. ENGLISH. Do you agree, Mr. Golightly?

Mr. GOLIGHTLY. Yes, sir, essentially I do.

Mr. ENGLISH. Still that brings me back to my problem, I guess, as to why we don't clear away what we seem to agree on as a legitimate billing and concentrate our efforts on the disputed amounts.

Mr. GOLIGHTLY. Because in order to determine what the disputed amounts are, we must first audit the bill.

Mr. ENGLISH. Even though you don't dispute it?

Mr. GOLIGHTLY. We don't know whether we dispute it until we audit it. It is a process of going through those bills, item by item by item, inmate by inmate by inmate, to make sure they are in fact D.C. inmates as opposed to some that might be questionable. Once we have done that, then we know how much is in dispute. Then we will go ahead and clear out the amounts that are not in dispute.

Mr. ENGLISH. We have been doing this for 6 years, haven't we?

Mr. GOLIGHTLY. We have made some progress on it here. There has been some testimony offered that where we believe we can be certain of the items, we are current, and we continue to believe

that we are current. In terms of those things where we clearly are saying, we do not have a problem with this bill and we can pay it, it has been paid, and we will continue to stay on that basis.

But, if we do not have the documentation that we need in order to make a determination on a bill, it is very difficult for us to say, yes, we will release this bill for payment.

Mr. ENGLISH. Do you have all of the documentation that you need now?

Mr. GOLIGHTLY. Yes, we do.

Mr. ENGLISH. So there is no question about documentation?

Mr. GOLIGHTLY. No, sir, there is not.

Mr. ENGLISH. And when do you think that that matter will be resolved then?

Mr. GOLIGHTLY. I will go with a date that may cut it too tight for us, but I think in about 3 months we should be able to close the books on this in terms of having everything looked at to determine exactly what it is we owe, and what exactly is in dispute, and how we are going to resolve those amounts that are in dispute.

Mr. ENGLISH. Would you give us a written report on that as soon as you get it completed?

Mr. GOLIGHTLY. We will be very happy to.

Mr. ENGLISH. You think at a January hearing you would have good news to give us?

Mr. GOLIGHTLY. I would certainly hope so, because we are just as sick as everyone else of this problem.

Mr. ENGLISH. OK, fair enough.

Mr. Houk, what is the nature of the agreements which exist between the Bureau and the D.C. Department of Corrections? The conditions and everything that you have in this agreement, are they in writing, so that everyone understands clearly what it is that they are to be charged for?

Mr. Houk. Mr. Chairman, no, they are not and I think that is one of the problems that the General Accounting Office accurately observed. We want to conclude a much more specific and extremely detailed agreement on both the billing and payments process. I believe Mr. Golightly has submitted to the committee a draft that the D.C. Deputy Mayor for Finance had submitted to Director Carlson.

We are looking at that now and I have had some preliminary discussions with Mr. Golightly and we want to refine that into more detail. We believe that because of the nature of the commitments of some of the inmates to the Federal system, that there may be some inmates, in terms of the identifying data, that simply fall through the cracks because of the way the current criminal justice system works in assigning identifying numbers. So, in addition to developing an agreement, we will review the entire process by which identifying data is obtained for the bills.

Mr. ENGLISH. Mr. Kindness?

Mr. KINDNESS. Thank you, Mr. Chairman.

Mr. Golightly, what would be a really normal processing period for one of these quarterly bills, assuming no hitches, no problems, no disputed information? There would be some processing time, I assume, approaching 60 days or perhaps more than that. What would that be in your opinion?

Mr. GOLIGHTLY. That is one of the factors which has been introduced into the agreement; we believe that it will take us about 3 weeks to audit a bill.

Mr. KINDNESS. Three weeks?

Mr. GOLIGHTLY. Yes, sir. That is assuming that we have everything going in a good, orderly, routine manner; quite frankly I will tell you one of the big problems is our own records office at the D.C. Detention Center, because the Detention Center is fantastically overcrowded and as a consequence this has produced a tremendous volume that we don't normally have there.

So when I say 3 weeks, if we have a problem of that nature, we are going to have to throw additional resources to it.

Mr. KINDNESS. But that sort of ideal circumstance of 3 weeks would be sort of a minimum time?

Mr. GOLIGHTLY. That is correct.

Mr. KINDNESS. Where disputed information or the disputed billing portion of the billing occurs. Is it contemplated that there would be anything in the agreement terms that would call for the no-disputed portion of a billing to be processed and paid, while the disputed portion is examined and worked out, or is it contemplated that the agreement would provide that you get everything settled before the billing would be responded to with payment?

Mr. GOLIGHTLY. The agreement and the current practice both contemplate that we will release those things which are clearly not in dispute. That amounts, obviously, to the bulk of the bill.

Mr. KINDNESS. Could you describe for us the normal process as it would operate now, processing these billings, is it a manual operation of checking the identifying information for each entry, or is this computerized in some degree?

Mr. GOLIGHTLY. It is both manual and computerized but I think I would like Ms. Myrick to definitively respond to it.

Ms. MYRICK. Once we receive the bill, we have an automatic system, a cross-reference card file. We take the names, we run the printout, if they were there last month and we referenced the card file, then we say this is a legitimate bill. For those names that did not appear and that are new names we have to have our record office research those to tell us whether this is really our prisoner. So it is both manual—

Mr. KINDNESS. You don't have direct control over that information; you have to rely on another agency?

Ms. MYRICK. Another unit within our own organization.

Mr. KINDNESS. Another office and that is where the problem is, a part of the problem may well arise because of demand on their time.

Mr. GOLIGHTLY. That is correct.

Mr. KINDNESS. Thank you.

Mr. Golightly, if the disputed and unaudited figures were to be worked out, let's say within the 3 months' period, that you described as perhaps cutting it a little close, for the D.C. Department of Corrections, would there be a cash flow problem that ought to be taken into account in any agreement that is reached between the Bureau of Prisons and the District of Columbia?

Mr. GOLIGHTLY. There may be. Obviously a considerable amount of funds have built up here in terms of an instant demand, and it

would depend on how quickly and in what type of systemic way we go about this. It may be that we can release part of the funds now and part of them later, and so forth. As I am sure the committee is aware, the District of Columbia, as with any entity that collects revenue, will have cash flow problems from time to time.

Mr. KINDNESS. For example, if it were all to be cleared today, the likelihood is that there would have to be some management of that cash flow in order to complete payment?

Mr. GOLIGHTLY. In all probability there would. I cannot answer that question definitively.

Mr. KINDNESS. Is it contemplated that would be a part of the interim agreement to be worked out between the Bureau of Prisons and the D.C. Department of Corrections?

Mr. GOLIGHTLY. In terms of the schedule for payments, that is a distinct possibility.

Mr. KINDNESS. I would suggest that it might be wise on the part of the subcommittee to remain open to the possibility that a hearing in September might be helpful to see where we stand in order to help us assure that things move along all right toward a finalization of resolving these problems.

I would yield back with that suggestion.

Mr. ENGLISH. Thank you very much.

Mr. Coleman.

Mr. COLEMAN. I didn't understand the cash flow problem. I thought Congress appropriated money specifically for that purpose. Did they or did they not?

Mr. GOLIGHTLY. Yes, sir, they did.

Mr. COLEMAN. What happened to the money?

Mr. GOLIGHTLY. The money and authority still exist but when you get into the operation of a government which also collects money from a property tax and a whole variety of taxes, you have periods of time when those funds may or may not be available, although by the end of the year they should all be in place.

Mr. COLEMAN. I suppose a lot of local governments do that. It seems to me an escrow account or something ought to be set up so we know that those funds are going to be utilized. The authority has been set aside, there is no question about the authority; that money has not been appropriated or used for any other purpose by the Department or the District.

Prior to 1976, the Bureau of Prisons was reimbursed, were they not, just the Treasury being reimbursed by the D.C. Government; is that correct?

Mr. HOUK. No, not to my knowledge.

Mr. COLEMAN. You were never reimbursed?

Mr. GOLIGHTLY. Not by D.C. Payments were made to the miscellaneous or general receipts fund of the Treasury. This is, as GAO observed, different from our relationships with other States and territories where payments are made directly to our appropriation.

Mr. COLEMAN. My question would be for the counsel; was section 5003 enacted in 1952? Does GAO have that answer?

Mr. JACOBSON. 1952.

Mr. COLEMAN. A determination after the enactment or at some point, perhaps the Bureau of Prisons may have said that they were

entitled to the funds. Did they ever do that? Ask to be reimbursed and the funding go directly to the Bureau of Prisons?

Mr. HOUK. Not to my knowledge.

Mr. COLEMAN. Nobody ever made that request?

Mr. HOUK. No, at this time Congressman, as I believe the Department of Justice response indicated to GAO, we don't really seek that legislation. As was explained, the Bureau of Prisons in its annual estimates presented to the Appropriation Committees, estimates total inmate population which includes the D.C. Code violators that do come into our system. Consequently, we are funded within our budget for that support level and we don't really see an absolute necessity to change that situation.

Mr. COLEMAN. I do see a need to change the situation. I just think there is more incentive for your agency to move on this issue with the District of Columbia.

As I pointed out before with the gentleman from GAO, Mr. Lauve, I said that I thought that those numbers were indicative of part of the problem, given that specific point in time.

Mr. KINDNESS. Would you yield?

Mr. COLEMAN. Yes.

Mr. KINDNESS. I understand that the other side of that argument would be that the Bureau of Prisons might feel that based on recent expenses over the last 6 years at least, they would be running up to \$15 million, \$22, \$24 million short of operating funds, if that were the case, though because during the existence of this dispute, they would be able to meet the operating costs attributable to those prisoners who were in dispute.

Mr. HOUK. That is correct, Congressman.

Mr. COLEMAN. My question is, is the same problem of that magnitude happening elsewhere with States?

Mr. HOUK. No, it is not, Congressman. However, as we are extremely optimistic that the unaudited bills will be resolved in a short period of time and if the continuing procedure is an extremely effective one for payments, including the cash balance situation in the D.C. Government as a whole, then I would say that it would be similar. What we are concerned about is the reimbursement process. Let's say there were no disputed bills but because of a D.C. cash balance problem a payment still cannot be made. Then, of course, we are going to be spending the funds on a daily basis for those inmates that will not be included in the base of our budget that will cause extreme difficulties for the Bureau of Prisons.

Mr. KINDNESS. That would require coming back for a supplemental appropriation in order to cover that gap.

Mr. NEILL. Every governmental agency has a problem, whether it is Federal or local, in the time span it takes to process billing and you are always going to have some sort of outstanding balance in this problem.

Mr. COLEMAN. There is one statement by GAO that says, legislation does not permit the Attorney General to enter into such a contractual agreement with the D.C. Government. If what the counsel told me is in that statute is correct, then I don't happen to agree with that kind of a ruling. In other words, if a State decided not to call itself a State anymore and call itself a republic, does that mean you can no longer have a contractual agreement with them?

That is how I see what has been interpreted to mean you can't have a contractual agreement with the District of Columbia, because it didn't say District of Columbia?

Mr. HOUK. That is my understanding.

Mr. COLEMAN. If the statute says States, territories and possessions, for heaven's sake who are we leaving out? What else could we possibly control?

Mr. HOUK. There is nothing in the law that would preclude the Bureau of Prisons and the D.C. Department of Corrections from concluding an extremely detailed memorandum of understanding or operating procedures. I think GAO has correctly commented that the absence of a detailed agreement has probably been one of the complications in recent years.

Mr. COLEMAN. Thank you.

Mr. ENGLISH. Thank you very much, Mr. Coleman.

Mr. HOUK, shouldn't it be the responsibility of the Bureau of Prisons not to bill for double days rather than the responsibility of the D.C. Government to discover whether or not it was billed for double days?

Mr. HOUK. Certainly, sir, we attempt to and believe that we do a very good job in presenting accurate billings. In quarterly billings of this magnitude, though, affecting some 1,300 inmates, and with some inmates transferring from one institution to another, it is possible that errors are introduced. We do everything possible to try to keep those errors to a minimum and we feel that we have done a good job of that.

Mr. ENGLISH. Specifically, can you tell us what efforts have been made to resolve this dispute? Again, the 6-year thing seems to be an extremely long period of time to let this ride.

Mr. HOUK. The question is difficult to respond to. I have reviewed all of the correspondence back and forth between the Bureau of Prisons and the D.C. Department of Corrections and there have been concerns expressed by both agencies that bills have been submitted but never received or return requests for additional information have been sent but never received.

It is difficult for me to really document or try to lay principal blame in either agency. That is why I think the GAO is correct in saying that pointing fingers at this point is not a wise thing. I do know that there has been considerable effort expended in the Bureau of Prisons to try to resolve the issue. I believe that this hearing is certainly going to provide an impetus to get it resolved quickly.

Mr. ENGLISH. Well, it is pretty obvious from the comments that were submitted to the General Accounting Office by Assistant Attorney General Kevin Rooney that there are substantial frustrations involved in the dispute. I know Mr. Rooney stated that it is difficult to collect from the D.C. Government because it is, quote, a source which historically has demonstrated an unwillingness to pay its debts. I think those types of comments would probably cause a little frustration in trying to work out this kind of agreement.

Can this sort of attitude be put aside in time to get this resolved?

Mr. HOUK. It will absolutely be put aside. I take full responsibility for the comments in Mr. Rooney's response to the GAO report

and as I mentioned earlier, my Director, Norman Carlson, wants the issue resolved; he wants it resolved promptly. We will do that. I am sure that based on the meetings and recent discussion I have had with Mr. Golightly of the D.C. Department of Corrections, he views the situation similar to us and I think it will be resolved.

Mr. ENGLISH. In light of what Mr. Kindness has suggested, I want to try out one additional suggestion that might solve the problem here. I think what we are interested in is the earliest possible date to see this thing resolved. We would like to know exactly how it is going to be done and we would like to know it will be done to the satisfaction of both parties. I am wondering if Mr. Kindness would think about a proposal that the two parties get together at the end of September, provide this committee with an outline of exactly how they expect this matter to be resolved; or, if it has been resolved—it may have been resolved at that point—how it was resolved; so we could submit the details for the record. We would like it explained by both parties, so we can know that is the agreement you come to on the matter.

Mr. KINDNESS. I think that would be very helpful and perhaps would negate the necessity for another hearing. But I think we should remain open to be of whatever assistance we can be in getting at the remaining problem, if there is such. At that time I think that would be a very constructive approach.

Mr. ENGLISH. Any of you gentlemen see a problem with that?

Mr. GOLIGHTLY. We have no problems.

Mr. HOUK. We have none whatsoever.

Mr. ENGLISH. That might save us a hearing day if you are able to resolve it and everyone has agreed, that might take care of the problems.

Any further questions, Mr. Kindness?

Mr. KINDNESS. I failed to go into one area I would like to clarify with Mr. Houk. You indicated that the Department of Justice would be shortly requesting an opinion concerning the propriety of interest charges to State and local governments under the Debt Collection Act. There is a little problem I think with the legislative history on the Debt Collection Act where the language referring to charging interest to a person owing a debt to the United States is a little unclear perhaps because when you look to the definition of "person" in the Debt Collection Act, there is an exclusion of State and local governments from the definition of person.

I happened to be rather interested in that at the time in the full Judiciary Committee when that measure went through; and we were successful in only that much of the exclusion of State and local governments from at least the direct requirement of the payment of interest, but there was no further provision that prohibited an agreement between the United States or an agency of the United States and a State or local government which would call for payment of interest.

There are indeed many circumstances involving loans and even grants where there is not an appropriate use of funds and repayment or reimbursement is required, where interest can be a part of the agreed-upon terms, so that we are not successful in getting State and local governments completely out from under interest charges.

I would suggest that although an opinion is to be sought on that point, it may well be that that substantial amount of money that is, must be involved in controversy here by interest charges, perhaps ought to be approached from a standpoint of getting some agreed resolution on it rather than relying on the opinion because I am afraid it is not going to be all that clear. That is one legislator's opinion.

But I believe that is a big chunk of the remaining unresolved area, and perhaps going ahead with the attempt to resolve it by agreement may be a wise approach.

Mr. HOUK. We will certainly pursue that. I don't believe the Bureau of Prisons has any inherent desire to assess interest. We have been responding basically to specific regulations of the Treasury Department and possibly in addition to this opinion being sought from the Controller General, we can engage in more discussions with the Treasury Department and see if interest charges could be administratively waived.

Mr. KINDNESS. But the Debt Collection Act just states thou shall require interest in the case of individuals, corporations, what have you; but it doesn't say thou shall not?

Mr. HOUK. We are in a similar situation with all our contractual arrangements with State governments and territories where per Treasury regulation we are now assessing interest. My personal view is that sometimes it is not cost-effective, particularly when a State may be having some financial problems and may have been later only on one payment for 60 days.

The administrative costs for assessing that interest, then having it collected in some instances exceeds the value to the Federal Government of the interest charge. Again that is a personal opinion.

Mr. ENGLISH. I thank you.

Mr. Coleman, do you have any further questions?

Mr. COLEMAN. No.

Mr. ENGLISH. I want to thank both you, Mr. Houk and Mr. Golithly, and those accompanying you for your testimony here today. It has been helpful to us and we will be looking forward to a written agreement in September to resolve this matter.

Thank you very much.

[Whereupon, at 11:05 a.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

END