Department of Justice

STATEMENT

OF

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DEPUTY ATTORNEY GENERAL

BEFORE

THE

SUBCOMMITTEE ON DISTRICT OF COLUMBIA
COMMITTEE ON APPROPRIATIONS
UNITED STATES SENATE

CONCERNING

DISTRICT OF COLUMBIA PRISON OVERCROWDING

ON

APRIL 16, 1986

Mr. Chairman and Members of the Subcommittee:

I am pleased to have this opportunity to provide the views of the Department of Justice on the chronic problem of prison overcrowding in the District of Columbia. I appreciate being able to describe the Department's role in attempting to assist in the resolution of this problem.

Pending Litigation

As you know, on July 15, 1985, after years of litigation between the D.C. Department of Corrections and jail inmates, United States District Judge William B. Bryant issued an order that would have become effective on August 24, closing the D.C. Jail to any new residents because of what the Court found to be unconstitutional conditions of confinement. Because the jail was being used as a prison, approximately 2,500 persons, on average, were housed in a facility designed for 1,355. The United States is not a party to this litigation, but has long urged the city to build a new prison which would have prevented the intolerable overcrowding crisis at the jail.

Judge Bryant has presided over this case (Campbell v. McGruder, (C.A. No. 75-1668 and No. 1462-71), for fifteen years.

He has made several unannounced visits to the jail. In his July 15 decision, he graphically described the conditions in which the District has long confined inmates in the D.C. Jail. What is equally telling is Judge Bryant's description in another decision, issued remarkably, nearly ten years ago, of the attitude the District has taken whenever directed by the Court to cure overcrowding at the D.C. Jail:

> Notwithstanding the present crisis and the appalling prospects of a worsening situation, there has been no planning for dealing with this problem by the City or the Department [of Corrections]. Rather, the tedious history of this litigation reflects only occasional and sporadic efforts, usually when a court proceeding has been scheduled, followed by almost total inactivity once the matter is no longer before the court as a crisis situation . . . .

Campbell v. McGruder, 416 F. Supp. 111, 114-115 (D.D.C. 1976).

Events of the past decade have justified Judge Bryant's criticism. In ten years no adequate detention facility has been built, even though the District's jail population has escalated steadily. Thus, in his July 15 order, Judge Bryant found the attitude of the D.C. Department of Corrections essentially unchanged despite his admonition of an imminent court-imposed population limit on the D.C. Jail.

In other pending cases, involving the Central and Maximum security facilities at Lorton, (Twelve John Does v. District of Columbia, No. 80-2136; John Doe v. District of Columbia, No. 79-1726), the District recently advised Judge June L. Green that

it was violating the population limits it had agreed should be imposed on those facilities. D.C. officials were found in contempt by Judge June Green in these cases just three weeks ago. Judge Green has now ordered the appointment of a Special Master to administer the Central Facility at Lorton because of the District's past, repeated violations of orders and decrees in this litigation.

Contempt proceedings are also pending before Judge Bryant in Campbell v. McGruder as a result of the District's admitted violations of court orders in that case.

Contempt proceedings were also concluded last month before Judge Henry F. Greene of the Superior Court of the District of Columbia as a result of the District's transfer of an individual to a work release program in violation of a court order. (United States v. Fernando Jones, No. F 8412-85.). Again, the District admitted it violated the court's order because of pressure to move inmates out of the D.C. Jail to comply with Judge Bryant's order. Judge Greene found that his order had been violated, and he enjoined future violations with a warning that District officials might face criminal contempt proceedings if further violations occurred since they would be considered willful.

District of Columbia Litigation
Against the Federal Government

On February 13, 1986, District officials filed a motion with Judge Bryant to join the United States and the Attorney General as parties defendant in the Campbell v. McGruder litigation. The District sought a temporary restraining order to require the Attorney General to take all newly sentenced D.C. Code violators

into federal custody. In our response, filed with Judge Bryant on February 14, we set forth in some detail the statutory scheme and legislative purpose of confinement of D.C. prisoners. We noted that Congress has unequivocally established the D.C. Jail, the workhouse at Occoquan, and the reformatory at Lorton, for the express purpose of housing those prisoners convicted of crimes in the District of Columbia and those persons detained prior to trial in the courts of the District of Columbia. At no point in the history of the District of Columbia, did Congress ever say or do anything which indicated that it intended prisoners, convicted in or detained for trial by the District of Columbia courts, to be housed in federal prisons rather than in the very institutions which the Congress created in the District of Columbia or at Lorton and Occoquan for their incarceration. On the contrary, Congress specifically directed these prisoners to be incarcerated in the D.C. Jail or at Lorton and Occoquan and ordered D.C. officials to take them into their custody. We pointed out to Judge Bryant that Congress has appropriated what must be, by now, hundreds of millions of dollars for the maintenance and support of these institutions and of the prisoners incarcerated within them. It is therefore not correct for the District of Columbia to now say that all sentenced prisoners are a federal, as opposed to a District of Columbia, responsibility. This contravenes the concept of home rule.

At a hearing on the District's motions on February 14, Judge Bryant expressed in no uncertain terms his view of the District's inadequate efforts to resolve the current crisis, indicating that he had seen a number of places that D.C. could use to house

prisoners on a temporary basis. On March 4, 1986, Judge Bryant issued an order denying the motions of the District of Columbia.

Department of Justice Position

It appears that the District's primary short-term strategy has been to ask the federal government to resume taking D.C.'s prisoners into federal custody until D.C.'s expansion at Lorton is completed, and until a new 700-800 bed prison is built. We have consistently indicated that D.C. must take substantial and immediate, albeit temporary, measures, to increase prison capacity before we would consider resuming any extraordinary relief of taking more D.C. prisoners into federal custody. Although the District appeared to be moving in the direction of creating such temporary facilities, District officials now appear to adopt the position that a 400-bed expansion at Lorton and the construction of a new prison, which admittedly will not be completed for at least three years, represent the extent of anticipated effort to add prison capacity beyond already scheduled halfway house expansion. It continues to be our view that this action by D.C. is inadequate.

It is the Department of Justice's position that it would be instructive for this Subcommittee to again review the Bureau of Prisons' December 16, 1983, "Review of District of Columbia Prison Operations at Lorton, Virginia." This was the last major federal study of D.C.'s prison operations. You will note that Assistant Attorney General Kevin D. Rooney, in transmitting this 1983 report to this Subcommittee, observed that 1,400 additional detention beds should be constructed within the District of

Columbia by the end of 1985, in order to adequately meet the needs of the detention population. Years later, the District has still not constructed a new prison within the District of Columbia. Review of the other recommendations made in that 1983 study (which had followed 1968 and 1972 Bureau of Prisons' studies of D.C.'s operations) reflects that many of the most significant recommendations, such as the desperate need for an adequate prisoner classification system, have not been adopted by the District of Columbia.

This Subcommittee should also review the most recent study of the District's corrections system, Professor Sean McConville's "Review of the Correctional Policies of the District of Columbia," dated February 24, 1986. Professor McConville, an internationally respected expert in corrections, has made an important contribution to understanding the severe problems facing the District of Columbia correctional system. While the Department of Justice does not necessarily endorse all of Professor McConville's conclusions and recommendations, he has provided a thoughtful analysis of the serious problems that continue to exist.

Initial Exchange of Correspondence with Mayor Barry

I am providing the Subcommittee with a copy of the exchange of correspondence I have had with Mayor Marion Barry on this issue, which I would like to describe for the Subcommittee.

As a result of Judge Bryant's July 15 order, the District found itself in an intolerable position. In letters dated July 17, 1985, to the Attorney General, and July 29, 1985, to the Director of the Bureau of Prisons, Mayor Barry requested the

assistance of the Department of Justice. Meetings were held with D.C. officials on August 15 and August 20, 1985, and I dispatched a letter to Mayor Barry on August 21, 1985, which the District used to obtain a stay of Judge Bryant's order.

In my August 21 letter, I indicated that newly sentenced D.C. Code violators would be designated to federal facilities starting on August 24, thereby relieving the immediate crisis. I specifically noted, however, that in "view of the present population of the Federal Bureau of Prisons, this accommodation can only be for a short time, until modular cell construction or other alternatives can be completed by the District of Columbia." I also noted that during the design and construction phase of a new prison, "additional short-term responses must be pursued aggressively". I stated that such "interim relief could include such measures as the construction of modular jail facilities and an enhanced utilization of existing resources." I also agreed to join Mayor Barry in urging Congress to permit designation of part of the pending thirty million dollar appropriation for a new prison "to support the immediate construction of modular cells."

At the time of my August 21 letter, the federal system itself was operating at 39 percent above rated capacity. At that time, the Bureau of Prisons was housing about 1,500 D.C. prisoners -- over 20 percent of all those convicted of D.C. Code violations and incarcerated within the D.C. Department of Corrections. At that time, the following population counts were reported:

D.C. Jail	2422
Lorton	4294
Halfway Houses	408
Total D.C.	7124
Federal Prisons (D.C. Inmates)	1500
Total	8624

Although I indicated that we could make this accommodation only for a "short time", the Department of Justice did not stop providing this assistance until January 15, 1986.

On January 13, 1986, I advised Mayor Barry that the federal assistance we had provided since August 21, 1985, would be terminated on January 15. I noted that this federal assistance had been specifically predicated upon representations that the District government was determined to take immediate action to accomplish the construction of a prison in the District of Columbia, and to explore short-term responses such as construction of modular jail facilities and enhanced utilization of existing resources. At the time of my January 13 letter, the following population counts were reported:

D.C. Jail	1555
Lorton	4282
Halfway Houses	396
Total D.C.	6233
Federal Prisons (D.C. Inmates)	2400
Total	8633

As these figures clearly demonstrate, D.C.'s compliance with Judge Bryant's order to reduce the population of the D.C. Jail has been brought about solely because of the assistance provided by the federal government. The number of D.C. prisoners being

held by the federal government increased by 900 during this period (from 1,500 to 2,400). The total number of D.C. prisoners being held by D.C. decreased by 891 during this same period (from 7,124 to 6,233). Although the District's consistent position has been that the Justice Department has been unresponsive to the District's requests for help, the record clearly demonstrates otherwise.

It is the position of the Department of Justice that the District of Columbia has not made a parallel effort to that made by the federal government in order to resolve this correctional crisis. I advised Mayor Barry in January that the over-burdened federal system could no longer absorb large numbers of D.C. prisoners.

It should be noted that the D.C. Department of Corrections Daily Population Report for March 24, 1986, reflected the following:

	Capacity	Inmates Present
D.C. Jail	1,378	1,668
Lorton	3,973	4,365
Halfway Houses	360	481
	5,711	6,514

The D.C. Department of Corrections Daily Population Report for August 24, 1985, shows the capacity of both the D.C. Jail and Lorton to be the same as it is now, seven months later. The halfway house capacity has increased from 289 to 360. The net result is that after 7 months of this continuing crisis, D.C.'s prison capacity had increased by 71 beds, all in halfway houses.

Any objective observer must conclude that adding 71 beds in 7 months is not a "parallel" effort to the effort the federal government has made to resolve this crisis.

I met with Mayor Barry and other D.C. officials on January 16, 1986, at the Mayor's request. The Department of Justice was asked to resume the federal assistance which had stopped the day before, which I declined to do. Deputy Mayor Thomas Downs suggested McMillan Reservoir as a possible site for a new prison, and I agreed to look into whether it could be declared excess and made available. I also indicated that D.C. needed to move forward with some emergency, temporary measures to expand their prison capacity until their new construction was completed at Lorton and their new prison was completed in the District of Columbia. It was not then, or thereafter, the view of the Department of Justice that the addition of 1,000 prison beds would be sufficient.

As noted above, I sent the Mayor a letter on February 12. To prepare that letter, the Department of Justice had convened a series of emergency meetings to expedite making available the McMillan Reservoir site suggested by the District. The Secretary of the Army and the Administrator of the General Services Administration and their staffs gave immediate attention to this issue. I communicated to the Mayor that a 22-acre tract would be declared excess to the Army's needs and that the Attorney General, in conjunction with the Administrator of the General Services Administration, could make this property available to D.C. as a site for a new prison. The District's reaction was that my action was not helpful because construction could not begin at

the McMillan Reservoir site until October 1. I had pointed out, however, that D.C. officials could enter the site for engineering and other studies between now and September 30, and that study and design of the new prison could start immediately. Since actual construction could not begin by October 1 even if D.C. started study and design today, the District's stated reason for rejecting the McMillan Reservoir site is without merit.

Temporary Expansion on the Old D.C. Jail Site

I also indicated in my letter of February 12 that the old D.C. Jail site (at 19th and Independence Avenue, S.W.) would be made available by the United States, after consultation with the Department of the Interior. I noted that no authorization had been granted by the United States to use this land for expansion of D.C. General Hospital, or for any purpose other than a jail.

I again advised, in my February 12 letter, that it was still my view that D.C. should take some temporary measures to increase its prison capacity. I noted that this "immediate expansion of prison capacity could take the form of a school or other temporary facilities that have been successfully utilized in other jurisdictions." I offered the assistance of one of the Bureau of Prisons' architects most familiar with the use of temporary facilities, and I provided studies and literature about the successful use of such facilities in other jurisdictions around the country. I have provided copies of this material to the Subcommittee. I urged the use of the old D.C. Jail site without further delay for some temporary expansion of prison capacity.

The District of Columbia Response

On March 10, 1986, Mayor Barry wrote to the Attorney General, identifying three sites that he had determined would be suitable for construction of the new prison. I directed my staff to immediately discuss these sites with the affected agencies and see whether they could be made available. We have subsequently determined that none of these three sites is available.

The Mayor in his March 10 letter also disclosed that construction of modular housing was finally going to proceed, but only at Lorton, and that the first 200 beds would not be ready for another 180 days. That means that in September, 1986, the District of Columbia will have added 200 modular beds at Lorton - over one year after they procured the Department's August 21, 1985, commitment to take D.C. prisoners into federal custody based on assurances of immediate action. The District of Columbia will then have added 200 beds to its capacity, beyond the 250 bed expansion of halfway houses that it also committed to Judge Bryant in August, 1985.

The Mayor's March 10 letter indicates that the 400-bed Lorton expansion was only intended to address what the Mayor called D.C.'s "intermediate needs." The Mayor stated that "to satisfy our short-term needs we have begun identifying government-owned facilities within the city which are suitable for housing minimum custody inmates. The first such facility, located at 525 9th Street, N.E., will be occupied this week."

It appeared to us that this was a major break-through, and we were encouraged that the District was finally ready to create

some temporary, emergency facilities as we had been urging since last August. The Mayor's representatives then contacted us to solicit our agreement to use of a new site south of the present D.C. Jail as a location for construction of a new prison. We quickly cleared that site with the Department of the Interior and the General Services Administration, and advised the Mayor's representative that it was acceptable. We were given other sites where temporary facilities might be created by the District, and we were in the midst of discussing details for both short-term and long-term solutions when the District announced that negotiations were terminated.

Other than receiving copies of documents filed in Court, we have had no further communications on this issue with District representatives. Apparently the District has now added 64 cells for use on weekends at the Superior Court cell block for prisoners serving weekend sentences, beyond the 71 beds that had been added to halfway houses since last August. This 64-bed expansion is the type of short-term effort that is necessary until modular cells are constructed and until a new prison is opened. We are hopeful that the District will take other steps to expand their prison capacity within the District of Columbia on a temporary basis.

Impact on the Federal System

It is important for this Subcommittee to recognize the impact on the federal prison system that has already occurred as a result of the extraordinary assistance we have provided to the District of Columbia. During the period between August 21, 1985,

and January 15, 1986, we took 1,707 new D.C. prisoners into the federal system. This placed an extraordinary burden on the federal prison system. It also placed an extraordinary burden on the United States Marshals Service, which was required to assign 23 Deputy U.S. Marshals to transport D.C. prisoners to the Federal Correctional Institution at Petersburg, Virginia, where they were initially classified and assigned. We are today holding 2,400 D.C. prisoners in federal prisons. Since federal prisons generally have a capacity of 500-700 inmates, this means that the Bureau of Prisons is devoting, in effect, nearly four institutions solely to incarcerating D.C. prisoners. This is all the more extraordinary when one considers that the federal prison system is currently incarcerating only 800 prisoners from all 50 states.

There are currently 38,500 inmates confined by the Federal Bureau of Prisons, which is 47% over capacity. This reflects a 60% increase during the past five years. This overcrowding of the federal prison system is unacceptably high, and it places unduly severe management and operational burdens on the staffs of our institutions. We must reduce this overcrowding in order to ensure a safe and humane environment for both the staff and inmates of federal prisons.

The dramatic increase in the numbers of D.C. Code violators confined in federal prisons is reflected in the following:

Fiscal Year	Total
1975	572
1976	729
1977	957
1978	1,092
1979	1,099
1980	1,133
1981	1,277
1982	1,411
1983	1,390
1984	1,386
1985	1,607
March 1986	2,400

These figures demonstrate the extraordinary efforts we have made to assist D.C. in resolving this prison crisis.

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

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