DRUG ABUSE TREATMENT
(Part 2)

HEARINGS
BEFORE THE
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PREPARED STATEMENT OF JUDITH RESNIK, LECTURER, YALE LAW SCHOOL, SUPERVISING ATTORNEY, YALE LEGAL SERVICES, NEW HAVEN, CONN.

My name is Judith Resnik. I am a Lecturer in Clinical Studies at Yale Law School and a supervising attorney in the clinical program of Yale Law School. In that capacity, I, and other members of the clinical faculty of the law school, supervise law students who provide legal services to inmates incarcerated at the Federal Correctional Institution at Danbury, Connecticut (F.C.I. Danbury).

Over the course of the seven years of the "Danbury Project", we have offered services to some 2000 inmates. During the last eleven months that I have been at Yale, our caseload has been between 100 and 150 cases. First, second, and third year law students, under our supervision, provide assistance to these inmates at Danbury. Most of the work is in the area known as "post-conviction remedies". Typical cases include motions to reduce sentences or to vacate convictions, attacks on the conditions of confinement, and claims of statutory or constitutional illegality stemming from actions of the United States Parole Commission.[1] In connection with the clinical work, students are required to take a course, "Prison Legal Services", which Dennis Curtis and I teach each spring. In the fall, we also offer a seminar entitled "Federal Courts and Federal Prisons", in which we consider what role federal courts should undertake when confronted with prisoners' claims of illegal or unconstitutional confinement.

It is my understanding that the Select Committee on Narcotics Abuse and Control has become concerned about the provision of services for narcotic addicts within the federal prison system. I have learned about the drug programs at Danbury from many of my clients who have reported to me, at length, about their dissatisfaction with the lack of services. I come today to tell you their side of the story.

SENTENCING UNDER NARA

I first heard of the problems related to the drug program at Danbury upon my arrival last summer at Yale; one of the clients of our project had already brought a lawsuit alleging that he was receiving no drug treatment. Throughout the year, I have had repeated conversations with inmates at Danbury about the program—or lack of a program—there. On June 23, 1978, after receiving an invitation to testify from this Committee, I visited Danbury to re-interview inmates who have consistently objected to Danbury's lack of attention to their drug problems.

All of the inmates with whom I spoke were sentenced under Title II of the Narcotic Addict Rehabilitation Act (NARA), 18 U.S.C. § 4251 *et seq.* As you know, NARA permits a sentencing judge to commit an "eligible" convicted individual[2] to a federal institution for a study to ascertain whether that individual is "an addict and is likely to be rehabilitated through treatment." 18 U.S.C. § 4252. If the individual is found by the Attorney General to be suitable for rehabilitative therapy and absent a certification that adequate facilities or personnel for treatment are unavailable, the inmate may be sentenced to an indeterminate sentence not to exceed ten years or the maximum sentence permitted by law for the crime of which he or she has been convicted.[3] Once sentenced under NARA, an inmate must remain in the custody of the Attorney General for at least "six months" and must be certified by the Attorney General as having made "sufficient progress" to warrant his or her conditional release before becoming eligible for parole. *See* 18 U.S.C. § 4254.

The purpose of NARA is to "provide for the treatment and rehabilitation of narcotics addicts."[4] The Attorney General of the United States has certified

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[1] Some recent litigations in which we have participated and which have been reported include *Ross* v. *Wilkinson*, 565 F. 2d 1254 (2d Cir. 1977); *Grasso* v. *Norton*, 520 F. 2d 27 (2d Cir. 1975); *Drayton* v. *Nelson*, 445 F. 2d 305 (D. Conn. 1978), appeal pending; *Toomey* v. *Nelson*, 442 F. Supp. 387 (D. Conn. 1977); *Green* v. *Nelson*, 442 F. Supp. 1047 (D. Conn. 1977); *Moskowitz* v. *Wilkinson*, 432 F. Supp. 947 (D. Conn. 1977).

[2] Eligible individuals are defined by statute. *See* 18 U.S.C. § 4251 and *Marshall* v. *United States*, 414 U.S. 417 (1974).

[3] An inmate sentenced pursuant to NARA must receive whichever is longer—the ten year indeterminate NARA term or the "maximum sentence that could otherwise have been imposed." 18 U.S.C. § 4253(a). *See also Wilmore* v. *United States*, 565 F. 2d 269 (3d Cir. 1977); *United States* v. *Walker*, 564 F. 2d 891 (9th Cir. 1977); *United States* v. *Curtis*, 523 F. 2d 1134 (D.C. Cir. 1975), and *Baughman* v. *United States*, 450 F. 2d 1217 (8th Cir. 1971).

[4] *See* S. Rep. No. 1667, 89th Cong. 2d Sess., 12 (1966); H.R. Rep. No. 1486, 89th Cong., 2d Sess., 7 (1966); *See also Marshall* v. *United States*, 414 U.S. 417 (1974).

Danbury as a facility at which NARA treatment is available. However, all of the Danbury inmates with whom I have spoken have informed me that, despite the fact that they have been sentenced under NARA, no treatment is available for them at F.C.I. Danbury.

INMATE DESCRIPTIONS

A. Inmate R

Inmate R.[5] received a NARA sentence in 1971 and was committed to F.C.I. Danbury, where he remained until released on parole in 1973. From 1971 to 1973, Danbury had a structured program for NARA inmates. Treatment included: (1) biweekly encounter groups lasting an hour and a half; (2) seminars for addicts two hours a day, five days a week; (3) special group meetings held weekly for NARA inmates; and (4) required residency in the NARA special housing unit. The model upon which the Danbury NARA program drew was that of "Daytop" village,[6] a drug therapy approach fashioned after the residential self-help communities started in California in the late 1950's.[7]

Inmate R successfully completed this NARA program, was certified as eligible for parole, and released. In 1976, after a parole violation, Inmate R returned to F.C.I. Danbury. Upon his return, he found that NARA inmates no longer lived communally but were in either of two housing units and worked throughout the institution at "regular" jobs. No alternative treatment programs were available. Instead of the structured therapy approach which he had left, he was told to attend group meetings which were also open to all inmates in the institution. Finding these "general discussion groups" to have little relevance to his drug problems, Inmate R stopped attending the weekly sessions in the early fall of 1976. Soon thereafter, even these "rap hours" were discontinued. From 1976 through the middle of 1977, the existence of any programs depended upon the interests of staff members and the presence of individuals hired from nearby universities. For a brief period, yoga and relaxation classes were held.

Inmate R became greatly dissatisfied with the lack of therapy available for what he recognized to be his difficult problem with drug addiction. He complained to prison officials but without success.[8] Therefore, in 1977 Inmate R filed a law suit in which he sought alternatively to obtain drug treatment at Danbury, be transferred to another federal prison where treatment would be available, or be released.[9]

Early in 1978, some changes occurred in the offerings of treatment at Danbury. By that time, inmates sentenced under NARA, those who received recommendations that they receive drug treatment from their sentencing judges,[10] and inmates with alcoholic problems were all living together in one of two housing units, Unit E and Unit G. In both of these units, discussion groups were begun. These groups were run by members of the prison staff, all of whom had held positions within the prison management for some time, and by persons who had social work degrees from the University of Connecticut.

The groups led by the prison staff had various names. One which Inmate R attended was entitled "Relaxation" therapy. For one and a half hours each week, eight inmates lay on the floor on blankets and listened to tape recordings of rain falling and of wind blowing. A second group which Inmate R attended was led by the University of Connecticut social workers. Although entitled "Drug Counselling", the social workers expressly stated that they were not qualified to be drug counselors and invited the inmates to talk about whatever they wanted. During the approximately six months when Inmate R was present, there were three oc-

[5] To prevent any intrusions on the privacy of those described, the inmates will be identified only by letters. I regret the resultant tone of depersonalization.

[6] *See Hartwell* v. *United States*, 353 F. Supp. 354 (D.D.C. 1972).

[7] Descriptions of the different types of therapeutic communities for drug treatment can be found in Jerome J. Platt and Christina Labate's, *Heroin Addiction: Theory, Research, & Treatment* (John Wiley & Sons, 1976), ch. 11. Dennis Curtis' testimony provides further details of the therapy program at Danbury in the early 1970's.

[8] In accordance with the Bureau of Prisons' administrative system, Inmate R stated his complaint about the lack of drug therapy by filing a written grievance. His claims were denied. Copies of the complaint and its appeals, as well as the responses by the prison officials, are annexed as Exhibit A.

[9] In December of 1977, other inmates were granted permission by the federal district court in Connecticut to intervene in that action; a motion for certification of the suit as a class action is now pending before the court.

[10] These inmates are referred to as "DAPS" because they are to be in "Drug Abuse Programs".

casions upon which the counselor showed films depicting the harm drug use causes. At the remaining weekly meetings, discussion centered around complaints that the prison authorities were not providing drug treatment.

In addition to the groups described above, other groups available for weekly attendance included the "Decision Making Group" and a group called "Achieving Your Potentials", both led by prison staff members. These groups were made available to all inmates requesting or recommended for drug treatment—which include those sentenced under the "regular adult" provisions of Title 18 [11] as well as those sentenced under NARA.

In April of 1978, a change occurred. Inmate R was informed that all NARA inmates and individuals whose sentencing judges had made drug treatment recommendations were to be housed together in Unit E. Those with alcohol problems were to be shifted to a separate unit. The "treatment" program was restructured; the "relaxation" group was dropped but the other "talking" groups remained.

After the April reorganization, Inmate R was approached by the unit manager of Unit E and told that he had to sign a "contract" in order to remain in Unit E. The contract was an agreement to attend 180 hours of group sessions. In return, prison authorities agreed that upon completion of the 180 hours, Inmate R would receive certification from the prison authorities as eligible for parole consideration.[12] In addition, Inmate R had to agree to attend whatever groups were assigned him by the unit manager. Inmate R requested he be given a copy of the contract; he was refused.

As noted earlier, Inmate R had been attending three of the groups on a regular basis, those titled "Relaxation", "Decision Making" and "Drug Counseling". However, he did not want to sign a contract of which he had been refused a copy. Inmate R was told that, if he refused to sign, he would be expelled from the unit, a letter describing his lack of cooperation with the "treatment" plan would be sent to the judge who had sentenced him, and a second letter, with a similar indictment, would be placed in his central prison file. This second letter would be available to examiners from the United States Parole Commission when they reviewed Inmate R's file; his lack of "cooperation" would be documented.

Nonetheless, Inmate R refused to sign and accordingly, in May of this year, he was transferred from Unit E to another unit. Because he has refused to sign the contract, he is no longer permitted to attend any of the group discussion sessions. Although he had already accumulated some 85 of the 180 hours required for certification as eligible for parole, Inmate R will not be able to participate in the "drug treatment program" and to clock additional hours. Therefore, he will not be certified and will be precluded from parole consideration.

Inmate R is not alone; a few other inmates sentenced under NARA or recommended for drug treatment by the judges who sentenced them have also refused to sign the "contracts" and have similarly been expelled from Unit E and precluded from attending any counseling sessions. Inmate R reports that the unit manager has carried out his threat and placed a letter in Inmate R's folder describing him as unamenable to treatment.[13] Inmate R further states that, although he wants to continue to attend the groups in which he had previously participated, he does not believe those groups can rightly be called "drug treatment." He believes that the entire new cast of the "treatment" program is in response to his lawsuit; that the authorities are trying to create the appearance of a treatment program and to disguise nonspecific general discussion groups as drug treatment. Finally, despite repeated requests by Inmate R and others for copies of the "contract", none have been given to the inmates.[14]

B. Inmate S

Inmate S arrived at F.C.I. Danbury in February of 1973 to be evaluated for suitability for sentencing under NARA.[15] At that time, he was a heroin addict

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[11] *See, e.g.*, 18 U.S.C. § 4205.

[12] *See* 18 U.S.C. § 4254.

[13] One of the DAP inmates, Inmate X, who refused to sign the contract was also told that his refusal would result in a letter being sent to the judge who sentenced him. The threat has been accomplished. Excerpts of the letter and of prison authorities' earlier report on his progress are annexed as Exhibit B.

[14] Members of my office have also requested copies of the contract and although some were promised, none were received until July 7, 1978, when the trial of Inmate R's lawsuit was about to begin.

[15] *See* 18 U.S.C. § 4252.

who had used the drug for over ten years. The NARA evaluation consisted of his participating in the Danbury treatment program. In March of that year, Inmate S was found to be an addict and likely to be rehabilitated through treatment. The court gave him a NARA sentence of ten years.

Inmate S described the NARA program in existence at Danbury in 1973 as an intense experience.[16] All NARA inmates lived together in one "house" and spent some five hours a day "grouping". As a result, Inmate S "got in touch with every feeling he ever had". The pressured and intensive nature of the program sparked some protest and by an alternative program ("Program B") was developed which was less exacting.[17] By 1975, when Inmate S left Danbury on parole, Program A was being phased out and the B program, which involved less segregation of NARA inmates from the prison population at large in which the treatment was less structured—and in some minds, less coercive—had gained predominance.

In 1976, after violating the conditions of his parole, Inmate S returned to Danbury. He recalls that he went directly to Unit E where he met the unit manager, who informed him that "the name of the game now is jailing." He was told that NARA inmates no longer were treated differently than the population at large, no "grouping" was available, and that he was to be placed in another unit—G.

Inmate S is still in Unit G. Despite the supposed concentration of all inmates sentenced pursuant to NARA in Unit E, Inmate S has not been transferred. No one approached him to sign any contract; no one asked or suggested that he attend any counselling programs or sit in on any group sessions.[18] He works in the cable factory, lives in a unit with other NARA inmates, DAP inmates, alcoholics, and "regular" inmates. He has been treated in a manner which he believes is indistinguishable from the non-NARA inmates. However, in mid June, he was surprised to learn from his case manager that he was supposed to be attending group sessions.

C. Inmate T

Inmate T arrived at Danbury in 1976 after having been sentenced under NARA. He resides in Unit E with some 110 other inmates. On April of 1978, he was approached by the unit manager who asked him to sign a contract agreeing to "group" for 180 hours so as to be certified as eligible for consideration for parole. *See* 18 U.S.C. § 4254. Inmate T believed that, if he refused to sign, he would not be certified for parole eligibility, he would be excluded from Unit E, and a letter accusing him of failure to cooperate would be sent to the judge who sentenced him. Inmate T signed the contract; he also requested a copy of it but was refused.

Inmate T attends three groups each week. One is labeled "Drug Counselling" but its leader, a social worker, has told the members of the group that she is neither a drug therapist nor qualified to lead a drug group; rather, she encourages the inmates to feel free to raise any problems. The second group is run by the unit manager and is called "Opting Out". The group meets once a week for an hour. The unit manager either plays tape recorded discussions about the problems caused by drug abuse or talks about those issues himself. The third group is led by another prison staff member. It meets for an hour and a half weekly; some ten inmates attend. The topics of conversation generally include complaints about prison conditions and the lack of drug therapy.

Inmate T is troubled that Danbury has not provided treatment for his drug problem. His concern prompted him to join the lawsuit which another inmate had brought based upon the lack of treatment. Inmate T believes that, because of his participation in the lawsuit, prison authorities have refused to change his custody classification and withheld privileges from him. Inmate T feels that he, and the other NARA inmates, receive nothing to help their drug problems and that they are treated no differently than other inmates. Inmate T stated that the group sessions are worthless, that the people who run them are not qualified to do so and

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[16] A description of the program can be found in *Hartwell* v. *United States*, 353 F. Supp. 354 (D.D.C. 1972).

[17] Unlike Program A, in which all inmates worked only half days and spend the rest of their time in their "house", inmates in Program B held regular prison jobs but spent several hours a week in group therapy sessions at which the problems of drug addiction were the focus.

[18] Inmate S was certified last year as having made "sufficient progress" toward rehabilitation so as to be eligible for parole. *See* 18 U.S.C. § 4254. It is possible that prison authorities believe that, since Inmate S has been certified, he no longer should receive counseling. However, the NARA statute does not state that once an inmate is certified, treatment is to end.

do not know "the first thing about drugs." Describing the sessions as phony pretenses for drug therapy, Inmate T commented: "We're convicts, it's true, but we're not fools."

D. Inmate U

Inmate U arrived at F.C.I. Danbury in January of 1976 and was assigned to G Unit. He was sentenced pursuant to NARA and had anticipated receiving drug therapy. Instead, he was sent to Yoga classes and to "rap" sessions which had "nothing to do with drugs." After a while, he decided that the sessions were useless and stopped going.

Inmate U's NARA sentence has expired and he is now serving time pursuant to a concurrent "regular adult" sentence. He continues to live in Unit G and has never been approached to sign a contract or to attend any group sessions. He mentioned that some 75 people live in G Unit, that many have drug problems, some are serving NARA sentences, and none are offered any kind of therapy.

E. Inmate V

Inmate V was sent to Danbury in February of 1977 to be studied for sentencing under NARA. The 90 day study was intended to evaluate if he was a suitable candidate for rehabilitative treatment. However, since there was no drug treatment program at Danbury at that time, all Inmate V did for his "study" was to work and live like any other inmate at Danbury. After that 90 days and one brief conversation with a prison psychiatrist, Inmate V was found to be an addict and "likely to be rehabilitated through treatment."[19] This conclusion was reported to the court, which then sentenced him under NARA.

Inmate V lives in Unit E, the "NARA" unit. He agreed to sign a contract last April because he was told that, if he refused to sign, the unit manager would report his refusal to the judge who sentenced him, would record his failure in his central folder, and would submit a negative report to the paroling authorities. Inmate V asked for a copy of the contract but was refused it. As best he can recall, the contract requires him to agree to participate in group meetings for 180 hours. He noted that a couple of inmates had refused to sign the contract and had been transferred out of E Unit, but said: "I can't risk that."

Under his contract, Inmate V is obligated to attend three groups a week, all of which are run by prison staff. There is little which goes on in groups that he believes has any relevance to his drug problem. "All that we do is talk." Aside from the three weekly group sessions, his life at Danbury is indistinguishable from that of inmates not sentenced under NARA.

F. Inmate W

Inmate W received a NARA sentence in 1975, was released on parole in 1976, and after violating his parole, was returned to confinement in June of 1977. Assigned to Unit E at Danbury, Inmate W has attended general group discussion sessions since February of this year. In April, he was approached by his unit manager and asked to sign a contract. He reports:

"I had to sign. I need to be certified (for parole eligibility). If I refused to sign I am sure I would not get a positive progress report from my unit."

Inmate W requested a copy of the contract but was refused. As required by the contract, Inmate W goes to one session a week; it is led by a social worker who comes to the prison for the sessions. During the hour and a half, the ten inmates just have a "general discussion". "Sometimes we talk about NARA and how we are gypped".

JULY 21 UPDATE

As noted earlier, the descriptions provided above were related to me on June 23rd, 1978. On July 10th, the trial of the lawsuit which inmate R had filed began, but due to court calendar problems, was suspended and will not resume until early August. At the trial, I learned of some changes which had occurred at Danbury and so, to provide current information to this committee, I returned to Danbury on July 21st. The eight inmates with whom I spoke informed me as follows:

Before this spring, NARA inmates were certified as having made "sufficient progress"[20] to be eligible for parole by their unit managers. While no clear criteria

[19] *See* 18 U.S.C. § 4253.

[20] *See* 18 U.S.C. § 4254. The testimony of Dennis Curtis explains the relationship between NARA sentencing and the parole process.

were set forth, certification was routinely granted when the inmates had been incarcerated for the time specified in the United States Parole Commission's guidelines for NARA inmates.[21] The unit managers did not make parole certification dependent upon NARA inmates' attendance at any specified minimum number of group sessions. The institutional performances and programs of NARA inmates, like other inmates, were reviewed every 90 days by classification teams. Comprised of inmates' unit managers, case workers, counsellors, education department representatives, and sometimes correctional officers. During these reviews, the teams did not instruct NARA inmates to go to groups; rather the inmates were typically told to "continue present programming"—whether or not the inmates were attending groups.

In April of this year, a change occurred which has radical effects upon NARA inmates. They have all been instructed that certification for parole will not occur unless they have spent a mandatory 180 hours in groups. For those who have, by chance, attended groups in the past, that participation will be counted. However, those who have not gone to groups, and have never been told that they should, will simply have to start accumulating hours now.

The inmates are angry about the shift in policy for several reasons. First, they believe it is utterly unfair to apply the policy retroactively and to disregard their months of past incarceration and their efforts to perform as they had been instructed by their unit managers and classification teams. Second, many inmates were at Danbury when no groups of any kind were available, or when there were only one or two hours of yoga classes a week. These inmates feel that they are being made to suffer by prolonged incarcerations because of past program failures over which they had no control. Third, those involved in the court action find it ironic that groups have only become available as the case approached trial; as evidenced by Inmate R's administrative grievances,[22] treatment has been requested long ago.

A fourth criticism of the new 180 hours requirement stems both from the content and the management of the groups. Prison staff or social workers conduct the groups. The inmates are commanded to be present during the weekly sessions, which last for either a half or one hour. The meetings in July bore the following titles: "Community Readiness Group", "Introductory Opting Out Group", "Drug Counselling Group", "Spanish Therapy", "Intake Orientation", "Group Counselling", "Relaxation", "Communications", "Correctional Admission and Orientation", "Achieving Your Potential", "Rational Emotive Therapy", "Transactional Analysis", and "Static Group". Attendance is taken at the beginning of each meeting; once inmates' names have been recorded, they are free to leave. Inmates walk in and out during the sessions, take breaks to get food and return eating chips or drinking coffee, and chat in small groups. Tapes are often played. Occasionally, these tapes contain information about drugs. Frequently, the tapes cannot be heard over the several informal conversations occurring simultaneously. The composition of the groups change constantly as inmates are suddenly assigned to new groups, dropped from other groups, and shifted about.

Of the groups scheduled for the week of July 24, 1978, almost all listed more than twenty inmates who were required to attend. One exception was the group entitled "Spanish Therapy" to which only nine inmates were assigned. As "Spanish Therapy" is offered only once that week, NARA inmates who do not speak English can spend only one hour in a group in which they understand the language. However, these inmates may be able to clock more than that one hour towards their mandatory 180 hours. According to both the schedule for the week and to the English speaking inmates with whom I spoke, Hispanics are routinely assigned to English groups. Although these inmates thus "group" without comprehension, the hours pass and their "progress" towards rehabilitation is recorded.

A final criticism of the new regime comes from the difficulties encountered in simply attending the groups. When staff are absent, because of illness, vacation, or other responsibilities, groups are cancelled and inmates lose the chance to accumulate the needed hours. When groups are running as scheduled, some occur during daytime hours. Inmates who work in the factories are excused from their job assignments, but suffer loss of pay. Also, the missed hours limit promotion opportunities.

The inmates with whom I spoke were greatly upset by the new rule that 180 hours of "grouping" equals "sufficient progress" towards rehabilitation so as to be eligible for parole.[23] They do not know how or why 180 hours became a magic

[21] *See* 28 C.F.R. § 2.20 (1977).
[22] *See* Exhibit A.
[23] *See* 18 U.S.C. § 4254.

number. They do not know how they are assigned to the groups which they are required to attend. Instead, they are placed in groups in a seemingly random fashion—one week assigned to two hours of "rational emotive therapy" meetings, another week to additional hours of "communications". No one has interviewed them to learn why they used addictive drugs; no one asks them what problems they are currently experiencing. The inmates believe that the sudden proliferation of groups is related to the attention which the lack of treatment at Danbury has been receiving and that the assignment of inmates to "therapy" relates more to the need to count bodies and create the appearance of a program than to a desire to address their needs as narcotics addicts.

THE AFTERCARE PROGRAM

Several of the inmates with whom I spoke had been released on parole and then recommitted after having been found to have violated parole conditions. On route to their relase on parole, all were housed in halfway houses, called "community treatment centers" (C.T.C.'s) in the federal system. Subsequent to parole release, all were required to participate in NARA aftercare. The inmates described most aftercare programs as consisting primarily of surveillance; they were required to give urine specimens at regular intervals to demonstrate that they were drug free. In addition, some attended weekly counseling sessions.

All the inmates were critical of the procedures for taking urine specimens. They said that errors were common. Inmates reported that switching and tampering with urine samples were easily accomplished and frequently done.

"I know that switching occurred, I came in with 'dirty' urine and got 'clean' reports.

"Another time, I had not taken any drugs but got a positive report. After discussion with my counselor, we figured out that I had a gin and tonic and that the quinine in the drink caused the test result." [24]

The consequences of a finding of drug use by an inmate can be severe. Parole may be revoked or rescinded. A description of the problems encountered by an inmate who believed that a testing error was responsible for a finding that he had used amphetamines while on furlough can be found in *Drayton* v. *Nelson*, 445 F. Supp. 305 (D. Conn. 1978), appeal pending.

CONGRESSIONAL INTENT AND JUDICIAL INTERPRETATION OF NARA

The description of the drug program at Danbury and of the aftercare facilities used by the Danbury inmates contrasts sharply with what was intended when NARA was proposed and enacted. NARA had been proposed by the Johnson administration as a new approach to the criminal activities associated with drug abuse; its purpose was to "establish programs of comprehensive treatment, including institutional care and aftercare." [25] The bill was crafted so as to include only a limited group of people; excluded would be "those persons who are not deemed suitable subjects for rehabilitation or persons whose criminal activity warrants severe punishment." [26]

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[24] In addition to the possibility of inaccurate reports caused by inmate switching of samples, unclean receptacles, lax procedures, and counselor indifference, research on forensic laboratories indicates that the testing procedures themselves can be the source of error. A law review article reports that forensic laboratories often employ unreliable procedures, equipment, and personnel. Further, the tests for drugs are often nonspecific and inaccurate.

"We feel that on the whole most forensic analysts are drawing specific conclusions from non-specific tests. In general, it can be said that forensic analysts are proving only that a known drug contains some chemical properties similar to those of the known drug XYZ. However, tests run by most of these analysts are not specific enough to indicate that the known drug actually is XYZ."

Stein, Laessig, Indricksons, "An Evaluation of Drug Testing Procedures Used by Forensic Laboratories and the Qualifications of Their Analysts." 1973 Wisc. L. Rev. 727, 785 (1973). *See also* Oteri, Wienberg, and Pinales, "Cross-Examination of Chemists in Narcotic and Marijuana Cases," 2 Contemp. Drug. Prob. 225 (1973) and Nix and Hume, "A Spectromphotofluorometric Method for the Determination of Amphetamine," 15 J. Forensic Science 595 (1970).

Further substantiation of the lack of proficiency of forensic laboratories comes from a just-published study by LEAA. *See* Peterson, Fabricant, and Field, Final Report, "Laboratory Proficiency Testing Program" (May, 1977).

[25] Statement of Barefoot Sanders, Assistant Deputy Attorney General, Hearings on Bills Providing for Civil Commitment and Treatment of Narcotics Addicts Before Subcommittee No. 2 of the Committee on the Judiciary, (1966) at p. 368.

[26] Statement of Mr. McClory, Hearing Before the Subcommittee on Criminal Laws and Procedures of the Senate Committee on the Judiciary, 89th Cong., 2d Sess., 112 Cong. Rec. 25418 (October 21, 1966). *See generally* H.R. Rep. No. 1489 (89th Cong., 2d Sess., 1966) and Cong. Rep. No. 2316 (89th Cong., 2d Sess. 1966), both contained in 1966 U.S. Code Cong. and Admin. News, pp. 4245 *et seq.*

Urging passage of the bill during Congressional hearings, a member of the House described it as an "humanitarian reaching out of the helping hand unto a segment of our society that is trapped and helpless in the grip of one of the most merciless and vile diseases of our society * * *. Where crime is produced by addiction, the remedy is rehabilitation rather than incarceration in appropriate cases. That is the underlying rationale as well as the operation of these first two titles [of NARA]." [27]

Further, it is clear from the 1972 amendments to NARA that your colleagues believed NARA was functioning as intended and providing treatment for those subject to its provisions. *See* Senate Report No. 92–1071, 1972 U.S. Code Cong. and Adm. News, pp. 3188 *et seq.*

The perception of the NARA program as providing inmates with special treatment programs is shared by the judiciary. Chief Justice Burger, writing for the majority of the Supreme Court and upholding the provision of NARA which excludes from eligibility those who had committed two or more prior felonies, stated that Congress had designed NARA to provide "treatment of drug addiction." [28] In deciding that the statutory exclusions were rationally based, Chief Justice Burger discussed the possibility that individuals who had committed several serious crimes might be considered "potentially disruptive elements within the sensitive environment of a drug treatment program." [29] Footnoting that conclusion, he described NARA programs as he understood them to be.

"Virtually all drug programs include group therapy and involve extensive personal interaction among those in the treatment program. In addition, there are strict institutional rules regarding virtually every aspect of the addict's daily existence which he is expected to follow, and the existence of such authority is considered vital to successful treatment, both in the program itself and particularly during the aftercare period." [30]

THE NEED FOR TREATMENT

One justification which might be advanced for the lack of treatment for the drug addict at Danbury is the assumption that treatment is not possible. The premise is that, in 1966 and again in 1972, Congress was naive in believing that treatment of narcotics addiction was possible and now it must be admitted that treatment does not work. In this view, it is time to abandon the rehabilitative model and return to incarceration.[31]

There are two flaws with this rationale. The first is a legal one. If treatment can no longer be given, or if there are defects with the present NARA structure, NARA should be modified or repealed by this Congress rather than by *de facto* administrative action.[32] Further, those already sentenced under NARA must be provided with treatment or be resentenced, because in my opinion, their current sentences give them a statutory entitlement to treatment which cannot be withdrawn without due process.[33]

The second reason why the inmate at Danbury should receive treatment comes not from their statutory and constitutional rights but from their needs as drug addicts. Though we cannot guarantee any particular therapy as a panacea for drug addiction,[34] experts on the treatment of addicts do report that some therapy programs can help. I recently consulted with Dr. Herbert Kleber, Professor of Clinical Psychiatry at Yale University Medical School and Director of the

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[27] Statement of Robert McClory, after the Submission of the Conference Report on NARA, 112 Cong. Record at 28548 (October 21, 1966).

[28] *Marshall* v. *United States*, 414 U.S. 417, 423 (1974).

[29] *Id.* at 428. *Apparently this potential for disruption does not disturb the Danbury staff.* At Danbury, as I have noted, both NARA and non-NARA inmates have lived in the same units and have received the same "treatment."

[30] *Id.* at 428–429 (citations omitted).

[31] Or, as Inmate S quotes a prison official, *supra* at 11; "the name of the game now is jailing."

[32] In the proposed revisions of the federal criminal code, the NARA sentencing alternative would be deleted and the decision about what inmates should receive drug therapy would be shifted from the judiciary to the Bureau of Prisons. *See* Report of the Committee on the Judiciary of the United States Senate to accompany S. 1437 (November 15, 1977), Title 28, Section 572 at pp. 1153–1154.

[33] *See generally Memphis Light, Gas, and Water Division* v. *Craft*, 46 U.S.L.W. 4398 (U.S. May 1, 1978); *Mathews* v. *Eldridge*, 424 U.S. 319 (1976); *Morrissey* v. *Brewer*, 408 U.S. 471 (1972); *cf. Meachum* v. *Fano*, 427 U.S. 215 (1976) and *Montanye* v. *Haymes*, 427 U.S. 236 (1976).

[34] *See* generally Platt and Labate, *Heroin Addiction, supra.*

Substance Abuse Treatment Unit of the Connecticut Mental Health Center in New Haven, Connecticut. He told me that research on treatment of drug addicts suggested that addicts had problems distinct from those afflicted with other psychopathologies and that drug addicts required specialized treatment approaches. Dr. Kleber described many addicts as extremely immature individuals, unable or unwilling to accept the responsibilities of adult life and confront unpleasant life situations. Dr. Kleber stressed that, while many different kinds of personality disorders might lead to addiction, once addicted, a secondary set of problems develop. These derivative difficulties are what drug addicts share and what makes generalities about the kinds of treatment needed for drug addicts possible. Therapy has to focus on the "here and now" and has to be extremely structured. Further, treatment by ex-addicts is often most effective because former addicts are sensitive to the many techniques addicts use to avoid therapy.

Based upon his experience of treating some 4000 to 5000 addicts over the last twelve years, Dr. Kleber described the elements which he believed were the essential components of any drug therapy program. First, addicts have to be treated separately from non-addicts, because combining addicts with the general psychiatric population results in the addicts manipulating groups so as to avoid dealing with the problems of addiction. Second, since addicts use drugs for many different reasons, individualization within a general therapeutic format is necessary. Each addict must be screened, interviewed, and given a program designed to deal with why he or she is addicted. Periodic evaluations of progress are required. Third, personnel trained to work with drug addicts are essential. Treatment of drug addiction is a specialized area; general mental health workers do not have the skills or expertise to handle the difficult issues posed by the drug addict. In addition, the addict members of the community must themselves participate in providing therapy, and they too must be trained. Fourth, a drug program must provide a structured environment. Therapy occurs when addicts test the limitations imposed and are confronted by staff and peers.

All of the above elements are designed to implement a treatment concept. To be effective, a drug treatment program must reflect a decision by qualified personnel of what it is trying to do and how it is to achieve its goals. The program must have a concept of what the sources or manifestations of addiction are and how to resolve the conflicts or redirect the addicted individual.

The program at F.C.I. Danbury does not contain any of the basic elements described by Dr. Kleber, nor does it meet the expectations of Congress or the judiciary as to what treatment NARA is supposed to provide. There is no concept of how addicts behave and what treatment structures are required for treatment. Inmates are not evaluated before assignment to groups. Group sessions have no relation to the rest of the inmates' routine at Danbury. Neither the staff nor the other addicts are trained to implement any therapeutic approach. Rather, NARA inmates live their lives at Danbury much like the rest of the prison population. They receive job assignments like those of other inmates, eat with the rest of the population, attend classes and participate in recreational activities as do "regular" inmates. NARA inmates are distinguished from the general population in only three ways: 1) they—and the other inmates identified as having drug problems[35]—live in one of two housing units, 2) they all have indeterminate sentences, often longer than they would have received had they not been "given" the "benefits" of NARA,[36] and 3) all NARA inmates have now been told that they must attend 180 hours of group sessions prior to certification for parole.

In theory, NARA inmates are a special group, selected after study and placed in the program only after a federal district judge has determined that an individual would be likely to be rehabilitated.[37] In practice, at F.C.I. Danbury, NARA inmates do not receive help in ending their drug addiction.

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[35] The fact that all inmates with drug problems receive the same treatment, regardless of whether they were sentenced pursuant to NARA, is of questionable legality. The purpose of NARA was to provide special programs for a selected group of inmates specifically found to be amenable to treatment. *See* 18 U.S.C. §§ 4252, 4253 and *Marshall* v. *United States*, 414 U.S. 417 (1974). If resources for treatment are limited, NARA inmates have a legal claim that the statute by which they were committed entitles them to have priority in the receipt of treatment.

[36] *See United States* v. *Walker*, 564 F. 2d 891 (9th Cir. 1977) and *Baughman* v. *United States*, 450 F. 2d 1217 (8th Cir. 1971).

[37] Even after the study, the district court must decide whether an inmate is a suitable NARA candidate and is likely to be rehabilitated. *See Wilmore* v. *United States*, 565 F. 2d 269 (3rd Cir. 1977) and *United States* v. *Arellanes*, 503 F. 2d 808 (9th Cir. 1974).

EXHIBIT A

-1-

4/1/77

FEDERAL BUREAU OF PRISONS

REGIONAL APPEAL

RESPONSE FOR ADMINISTRATIVE REMEDY REQUEST

INSTRUCTIONS: TYPE OR USE BALL POINT PEN. IF MORE SPACE IS NEEDED, USE ATTACHMENT SHEET IN QUADRUPLICATE.

TO: Regional Director, Bureau of Prisons

From: _____ (Unit E) Danbury
LAST NAME, FIRST, MIDDLE INITIAL REG. NO. INSTITUTION

*Part A—REASON FOR APPEAL:

I, _____, the above signed inmate at the Federal Correctional Institution D[illegible]y, Connecticut state and request herein the following: (1) I am incarcerated at this institution under Title 18, Section 4253, Narcotics Addict Rehabilitation Act. (2) That under the aforementioned sentencing structure I am to be incarcerated for, the purpose of treatment; having been determined by a United States Court to be likely to be rehabilitated under such treatment as provided for under N.A.R.A. (3) That I am not receiving treatment as prescribed by the N.A.R.A. and that this lack of prescribed treatment is a violation of my constitutional rights. (4) Therefore, I hereby request that such treatment as provided for under Title 18 Section 4253, be afforded to me. (5) That I receive a written reply to this BP-10 answering the questions laid forth herein.

4/6/77
DATE

_____
SIGNATURE OF REQUESTOR

*THE COMPLETED FORM NO. BP-DIR-9 MUST ACCOMPANY THIS APPEAL.

Part B—RESPONSE

_____
DATE

_____
SIGNATURE OF REGIONAL DIRECTOR

ORIGINAL: TO BE RETURNED TO OFFENDER AFTER COMPLETION.

[illegible] the complaint to you to be filed with the Warden first.

____ 5. Remarks:

REQUEST FOR ADMINISTRATIVE REMEDY FCI-DANBURY

PART B-RESPONSE

TO: [redacted]

Your Request for Administrative Remedy and Regional Appeal have been reviewed. You state you are not receiving treatment as prescribed by law (18 USC 4253) and you request such treatment.

Paragraph c, 18 USC 4253, states "treatment" includes confinement and treatment in an institution and under supervised aftercare in the community and includes, but is not limited to, medical, educational, social, psychological and vocational services, corrective and preventive guidance and training, and other rehabilitative services designed to protect the public and benefit the addict by eliminating his dependence on addicting drugs, or by controlling his dependence, and his susceptibility to addiction.

You are assigned to the NARA unit at Danbury and drug treatment as prescribed by law is available to you there. It is up to you to take advantage of this opportunity for treatment. Your appeal is denied.

If you are dissatisfied with this response, you may appeal to the Office of General Counsel, Washington, D.C., within 30 days of receipt of this response.

May 9, 1977
Date

Gerald M. Farkas, Regional Director

5/22/77 BP

3864 BP

FEDERAL BUREAU OF PRISONS

CENTRAL OFFICE APPEAL

RESPONSE FOR ADMINISTRATIVE REMEDY REQUEST

INSTRUCTIONS: TYPE OR USE BALL POINT PEN. IF MORE SPACE IS NEEDED, USE ATTACHMENT SHEET IN QUADRUPLICATE.

To: Assistant Director, General Counsel and Review

From: _____ _____ _____ Danbury F.C.I.
LAST NAME, FIRST, MIDDLE INITIAL REG. NO. INSTITUTION

*Part A—REASON FOR APPEAL:

I am appealing the Regional Director's denial of my BP-10, dated May 9, 1977. I state that I am not receiving treatment as prescribed by the N.A.R.A. act (Title 18 Section 4253). The only drug treatment offered at Danbury F.C.I. at this is in YCC. instruction. The are no treatment programs aimed specifically at N.A.R.A. designees.

I am again requesting such treatment as prescribed under the above statute.

RECEIVED
JUN 6 1977
OFFICE OF GENERAL COUNSEL
BUREAU OF PRISONS

May 23, 1977
DATE

_____
SIGNATURE OF REQUESTOR

*THE COMPLETED FORMS NO. BP-DIR-9 AND BP-DIR-10 MUST ACCOMPANY THIS APPEAL.

Part B—RESPONSE

_____
DATE

_____
ASSISTANT DIRECTOR, GENERAL COUNSEL AND REVIEW

ORIGINAL: TO BE RETURNED TO OFFENDER AFTER COMPLETION.

Part C—RECEIPT

Return to: _____ _____ _____ _____
LAST NAME, FIRST, MIDDLE INITIAL REG. NO. INSTITUTION

I acknowledge receipt this date of the above inmate's appeal from the response received from the following complaint: _____

_____

_____

_____
DATE

_____
SIGNATURE OF RECIPIENT OF CENTRAL OFFICE APPEAL

OPTIONAL FORM NO. 10
JULY 1973 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : Pat Danbury

DATE: June 6, 1977

FROM : James A. Finney
Administrative Remedy Officer

SUBJECT: Your Administrative Remedy Appeal #3864

On 6/6/77 we received your Administrative Remedy Washington Appeal on the subject of medical. If the issue raised is not a sensitive one (PS 2001.6A, Sec. 6), it must first be filed locally with the Warden on Form BP-DIR-9. If you are not satisfied with the Warden's response, you may appeal to the Regional Director on Form BP-DIR-10 and must attach a completed copy of the Warden's response on Form BP-DIR-9. If you are not satisfied with the Regional Director's response, you may appeal to the General Counsel in Washington on Form BP-DIR-11 and you must attach completed copies of both the Forms BP-DIR-9 and 10.

We can not proceed with your appeal because it is incomplete for the following checked reason(s):

____ 1. There is no evidence that you filed your complaint first with the Warden on Form BP-DIR-9. We are, therefore, returning the complaint to you to be filed with the Warden first.

____ 2. There is no evidence that you appealed to the Regional Director on Form BP-DIR-10 which is required before your appeal to the General Counsel will be considered. We are, therefore, referring your appeal to the _____ Regional Director in _____ for reply.

____ 3. There is some indication that you have filed with the Warden and the Regional Director, but you have not submitted the necessary evidence (completed Form BP-DIR-9, completed Form BP-DIR-10, or if you have not received a timely reply from those filings, a receipt constitutes evidence). We are, therefore, returning your appeal, but it may be refiled if you submit the necessary evidence.

____ 4. Issues which you claim to be sensitive must be filed first with the Regional Director. There is no evidence that you have done so. We are, therefore, forwarding your complaint to the _____ Regional Director in _____. If he agrees that it is a sensitive issue, he will reply to you. If he does not agree that it is a sensitive issue, he will return the complaint to you to be filed with the Warden first.

____ 5. Remarks:

BP-DIR-[illegible]
REV. 10-74

FEDERAL BUREAU OF PRISONS
CENTRAL OFFICE APPEAL
RESPONSE FOR ADMINISTRATIVE REMEDY REQUEST

INSTRUCTIONS:
TYPE OR USE BALL POINT PEN. IF MORE SPACE IS NEEDED, USE ATTACHMENT SHEET IN QUADRUPLICATE.

To: Assistant Director, General Counsel and Review

From: _____ (LAST NAME, FIRST, MIDDLE INITIAL) _____ (REG. NO.) Danbury F.C.I. (INSTITUTION)

*Part A—REASON FOR APPEAL:

I am appealing the Regional Director's denial of my BP-10, dated May 9, 1977. I state that I am not receiving treatment as prescribed by the N.A.R.A. act (Title 18 Section 4253). The only drug treatment offered at Danbury F.C.I. at this time is YOGA instruction. The are no treatment programs aimed specifically at N.A.R.A. designees.

I am again requesting such treatment as prescribed under the above statute.

RECEIVED
JUN 6 1977
OFFICE OF GENERAL COUNSEL
BUREAU OF PRISONS

RECEIVED
DEC 22 1977
OFFICE OF GENERAL COUNSEL
BUREAU OF PRISONS

May 23, 1977
DATE

SIGNATURE OF REQUESTOR

*THE COMPLETED FORMS NO. BP-DIR-9 AND BP-DIR-10 MUST ACCOMPANY THIS APPEAL.

Part B—RESPONSE

You have refiled your Central Office Appeal which was returned to you on June 6, 1977. You claim ~~xhax~~ the lengthy delay in refiling was due to your inability to obtain a copy of the required BP-9. Since a copy of the BP-9 was placed in your Central File on April 1, 1977, and could have been obtained from your casemanager at any ~~xx~~ time, we find the six month delay in refiling to be excessive. Your appeal is therefore denied as untimely.

January 16, 1978
DATE

Clair A. Cripe
ASSISTANT DIRECTOR, GENERAL COUNSEL AND REVIEW

ORIGINAL: TO BE RETURNED TO OFFENDER AFTER COMPLETION.

EXHIBIT B

BP-Class-3
(Rev.10/74)

UNITED STATES DEPARTMENT OF JUSTICE
BUREAU OF PRISONS
FEDERAL CORRECTIONAL INSTITUTION
DANBURY, CONNECTICUT 06810

-a-

Inmate Reviewed and/or Received Copy

SIGNATURE AND DATE 5/20/77

PROGRESS REPORT

IRH _____ Interim _____ Annual _____ Other Initial Hearing

Name: _____ Reg.No.: E

Offense: Probation Violation Age: 41

Sentence: 5 years, with 5 yrs. probation Began: 2-19-76 Months Served: 18

Days EGT: 0 Days FGT: 0 Tentative Release: 8-15-79

Last Board Action and Date: None

Detainers: March 5, 1976 a detainer for probation violation (H-1108) indicating a 2 1/2 to 5 year sentence from State Court.

Codefendants: - disposition not verified, received information that he received probation.

NEW INFORMATION

No new information.

INSTITUTIONAL ADJUSTMENT

was received at the FCI, Danbury, Connecticut on 3-16-76. He was classified on 4-14-76 to close custody, and assigned to the Laundry and was placed on the Industry waiting list. He was officially assigned to the Glove Factory on 4-27-76 and his custody reduced to medium and he was also provided approval for park visits in July 1976.

It should be pointed out to the Parole Commission that in May 1977 the above-named individual was presented a "Zero Defects Award" for the month of April 1977. His performance in the Glove Factory prompted his supervisor to submit his name and recommendation for this important achievement recognition. The Parole Commission is referred to the letter in Mr. file dated 5-12-77 for details concerning this award.

BP-Class-2
(Rev.11/74)

-b-

UNITED STATES DEPARTMENT OF JUSTICE
BUREAU OF PRISONS
FEDERAL CORRECTIONAL INSTITUTION
DANBURY, CONNECTICUT 06810

PROGRESS REPORT

Committed Name: Reg.No.: E Date: 7-15-77

has not received any incident reports and his attitude and overall adjustment are above-average. Mr. states that in his spare time he does alot of reading and listens to music.

Mr. since his arrival here, has been concerned about the above detainer from the state authorities in He states that the above detainer is in actuality a concurrent sentence in all ways and that if paroled by the Commission he does not feel that it would have to be to the detaining authorities. indicates that he would like the opportunity to discuss this with the Parole Commission since it has been a major concern to him for a considerable period of time.

RELEASE PLANNING

Upon release, Mr. will return to where he will reside with his commonlaw wife, Miss and their one child.

Residence: With

Employment: Pending. This individual has experience in construction work and he does not feel he will have difficulty in finding employment.

CTC: Prior to parole, we will transfer Mr. to a contract halfway house for a 60 day transitional experience.

Aftercare: Since Mr. is not a NARA commitment, aftercare is is not mandatory, but it is recommended.

Advisor: Request that the USPO act in this capacity.

USPO:

EVALUATION AND RECOMMENDATION FOR RELEASE

Even though Mr. has achieved an outstanding institutional adjustment based on his clear conduct record, work performance, and attitude (receiving a Zero Defects Award) it is this Unit's policy not to recommend individuals for parole until they fall within the bottom of the

MP-Class-2
(Rev.11/74)

-C-

UNITED STATES DEPARTMENT OF JUSTICE
BUREAU OF PRISONS
FEDERAL CORRECTIONAL INSTITUTION
DANBURY, CONNECTICUT 06810

PROGRESS REPORT

Committed Name: Reg.No.: E Date: 7-15-77

Parole Commissions guidelines.

Completed by:

, ACSW
Drug Abuse Unit E

cc:

UNITED STATES DEPARTMENT OF JUSTICE
BUREAU OF PRISONS
FEDERAL CORRECTIONAL INSTITUTION
DANBURY, CONNECTICUT 06810

-d-

May 16, 1978

The Honorable
United States District Court

RE:

Dear Judge :

The following is offered as a progress report on . The above-named individual was sentenced by you on February 19, 1976 to a five-year Regular Adult sentence following his conviction on a charge of Narcotic Violation. The sentence began on February 19, 1976 with a release date of October 27, 1979 less earned good time. He appeared before the United States Parole Commission Examiners for his Initial Hearing on August 19, 1977 and was continued for a Statutory Review Hearing in February 1979.

Your Honor recommended that "the subject has extensive drug history and the Court has recommended that he be confined at either Danbury or Lexington for drug treatment". On March 16, 1976, Mr. was received at Danbury and he was immediately assigned to Unit E, a Drug Abuse Unit. A treatment program was developed for Mr. by the classification team on April 14, 1976. He is presently assigned to our Glove factory.

Inmates assigned are expected to complete the introductory or Opting-out Phase of the Drug Abuse Unit E program. It is mandatory under the standards set up for the specialized drug abuse units. This is the optional program approach. The program standards are a total of 180 hours, consisting of 40 hours Introductory or Opting-out Phase, 100 hours in-Group counseling, and 40 hours Pre-release group.

-e-

A contractual agreement spelling out the goals which the staff and Mr. have agreed upon as being effective approaches to his problems of dependency was attempted. He failed to follow through, refused to cooperate, and facilitate counseling with the Unit team leading to a stalemate because of his lack of participation and negative program involvement.

It is the opinion of Mr. 's Unit team that he is not fully utilizing those resources available to him at Danbury. He has been encouraged to become involved, but does not appear to be sincerely motivated to benefit from this specialized Drug Abuse Unit. In view of the above, we are in the process of transferring Mr. to a General Unit so that his space may be utilized by another inmate more desirous of drug counseling.

Sincerely,

W. R. Nelson,
Warden

END