

DRUG ABUSE TREATMENT (Part 2)

HEARINGS

BEFORE THE

SELECT COMMITTEE ON

NARCOTICS ABUSE AND CONTROL

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PREPARED STATEMENT OF DENNIS E. CURTIS, PROFESSOR (ADJUNCT) OF LAW, DIRECTOR OF CLINICAL STUDIES, YALE LAW SCHOOL, NEW HAVEN, CONN.

My name is Dennis Curtis. I teach and am the Director of Clinical Studies at Yale Law School. Students in Yale's clinical program provide legal services under attorney supervision to inmates at the Federal Correctional Institution at Danbury, Connecticut (F. C. I. Danbury), to patients at a state mental hospital, and to clients of civil legal assistance programs in the New Haven area. Our program at F.C.I. Danbury began in April of 1970, and we have provided legal services to more than 2000 inmates since that time. Many of our clients have been in the drug program established at Danbury pursuant to the Narcotic Addict Rehabilitation Act of 1966, 18 U.S.C. § 4251 *et seq.* (NARA). Through our clients, we have become familiar with the history and functioning of the drug program at Danbury F.C.I. We have negotiated with Danbury staff on behalf of many NARA inmates, and in several instances we have filed lawsuits concerning various deficiencies in the NARA program. At present we are counsel to a group of inmates who allege that there is no real drug program at Danbury, and that they are therefore being denied the treatment which the NARA act contemplates.

HISTORY OF THE NARA PROGRAM AT DANBURY

A recap of the history of the NARA program at Danbury will help illustrate some of the problems with the Bureau of Prison's implementation of the NARA act—problems which we believe this committee should address.

A. The Daytop Program, 1970-75

Danbury began accepting inmates pursuant to Title II of NARA in March of 1968. At that time, the treatment for NARA inmates was conducted by two staff counselors, each of whom held a therapy group for an hour and a half a week. However, in January of 1970, just about the same time the Yale clinical project at Danbury began, a new program, based on the "Daytop" or Synanon model of a self-help therapeutic community, was begun.

The concept of the Daytop program was that drug addiction resulted from personality deficiencies. The way to cure drug addiction was first to tear down an addict's personality to show him his inadequacies and to demonstrate that his resort to drugs was his own fault. The next step was to remold the inmate's personality, to instill self confidence and an idea of self-worth, so that the inmate would be strong enough to avoid the temptation to resort to drugs. Implementation of this concept required structure, discipline, and continuous, close supervision by trained staff and peers.

All NARA inmates live together in one of two NARA "houses", or dormitories. The inmates worked in prison jobs only half days and spent the rest of their time in NARA community activities. The full-time professional staff of NARA included a psychiatrist as well as two psychologists. Under their supervision, the community was administered by ex-addict counsellors trained at the Daytop program in Seymour, Connecticut. The program involved continuous interaction among inmates, who, guided by staff, developed the ethic of group self-help.

Much of the responsibility for daily life in the program was given to the inmates themselves. New inmates began at the lowest levels of the inmate hierarchy and worked their way up to positions of responsibility and authority in the community. Senior inmates ran orientation programs for new inmates, participated in screening potential candidates for the houses, imposed discipline, and even took part in parole certification decisions.

The houses had an elaborate system of rewards and punishments. Inmates had the authority—indeed the obligation—to enforce discipline. Inmates who broke the strict house rules were immediately confronted and punished by other inmates. Even minor transgressions were punished. For example, an inmate who had not cleaned his ashtray might have to wear it around his neck for a few days. For more serious violations, such as showing hostility towards another inmate, punishments would be greater. An inmate who did not try to change his "street values" might receive a "haircut" in which the inmate had to remain seated in a chair while six or eight other inmates reviled him with shouts, curses, and obscenities. A particularly recalcitrant inmate might be the focus of a "general meeting" in which all of the 50 or 60 other NARA inmates subjected him to verbal abuse. All of these techniques were to encourage inmates to confront one another and to point out inadequacies, to inform on each other, and to be honest about their feelings with each other and with staff.

The Daytop program was an intense, 24-hour-a-day program. Every part of the inmate's life was grist for the therapeutic mill. Group meetings were frequent, sometimes taking up to 8 to 10 hours a day. Life in the Daytop program was, obviously, harsh and demanding. Not surprisingly, many inmates had trouble handling the intense pressure.¹

B. Sentencing procedures

Despite the intensity and harshness of the NARA regimen, for most inmates the NARA program looked like a good deal at the time of sentencing. Then, as now, 18 U.S.C. § 4252 provides that:

"[I]f the court believes that an eligible offender is an addict, it may place him in the custody of the Attorney General for an examination to determine whether he is an addict and is likely to be rehabilitated through treatment."

In practice, the "examination" by the Attorney General consisted of sending an inmate to Danbury, where he lived in the NARA dormitory from one to three months. The evaluation of whether an inmate was "likely to be rehabilitated through treatment" essentially boiled down to a decision by the inmate that he wanted to participate in the program. The Danbury staff invariably found that "volunteers" to the program were "likely to be rehabilitated through treatment." Inmates who did not "volunteer" were sent back to the court to be sentenced under regular provisions of the sentencing laws.²

I have put the word "volunteer" in quotes because the decision to participate in the NARA program cannot truly be described as voluntary, since it resulted from pressures exerted by various components of the criminal justice system. The first incentive for an inmate to participate in NARA stemmed from the relationship between the (then) United States Parole Board and the Daytop staff. Then, as now, 18 U.S.C. § 4254 provided that:

"[A]n offender committed under section 4253(a) may not be conditionally released until he has been treated for six months following such commitment in an institution maintained or approved by the Attorney General for treatment. The Attorney General may then or at any time thereafter report to the Board of Parole whether the offender should be conditionally released under supervision. After receipt of the Attorney General's report, and certification from the Surgeon General of the Public Health Service that the offender has made sufficient progress to warrant his conditional release under supervision, the Board in its discretion may order such a release."

During the first years of the Daytop program—1970 to 1973—the Parole Board³ routinely rubber-stamped the decision of the Danbury NARA staff to release an inmate on parole; the certification of the Surgeon General (actually made by Danbury staff) resulted in automatic parole. Second, the NARA staff had a policy, sometimes explicitly stated, that inmates would be paroled after successful completion of only a year in the Daytop program. Thus, an inmate faced with a decision whether or not to participate in NARA knew, after being at Danbury during the "study" period, that he would be paroled in a year if he could successfully complete the Daytop program. In contrast, if the inmate were sentenced under so-called "regular" adult provisions, the decision to release him would be made by the Parole Commission which at that time had the reputation among inmates as an arbitrary, capricious, and unsympathetic agency. A guaranteed release in about a year looked like a very good deal to most inmates faced with the opportunity for a NARA sentence.

Thus, NARA was appealing despite its provisions for both a mandatory sentence of "an indeterminate period of time not to exceed ten years, but in no event shall it exceed the maximum sentence that could otherwise have been imposed"⁴ and its requirements of mandatory supervised aftercare in the community.⁵ Most

¹ See *Hartwell v. United States*, 353 F. Supp. 354 (D.D.C. 1972). General descriptions of the NARA program are found in Norton and McCullough, *The NARA Unit at Danbury* (attached as Appendix A); and Rankin, *The NARA Unit at Danbury: A Short History of a Unique Treatment Program for Heroin Addicts*, Am. Journal of Correction, March-Apr. 1971.

² In my experience at Danbury, I do not know of any evaluations of unwilling inmates as "likely to be rehabilitated through treatment". However, other NARA programs apparently did not have the same policy. See, e.g., *Watson v. United States*, 408 F. 2d 1290 (D.C. Cir. 1969).

³ Hereinafter "Parole Commission", as denominated by the Parole Commission and Reorganization Act of 1976, 18 U.S.C. 4201 *et seq.*

⁴ 18 U.S.C. § 4253(a).

⁵ 18 U.S.C. § 4255.

inmates felt that participating in aftercare would not pose problems and that the ten year maximum would result only in their spending a longer time on parole than they would have with a shorter "regular" sentence.

In sum, there was pressure for inmates to opt for NARA sentencing, and once sentenced, there was intense pressure to conform to the rules of the Daytop program, for only by conforming could they earn certification and release. Not surprisingly, these pressures led to what inmates called "gaming" or "acting as if". That is, if an inmate did not believe in the Daytop concept, or if he did not feel at times like confronting other inmates, he would fake his responses and his motivation to maintain good standing in the program. Of course, many inmates did believe in the Daytop concept and sincerely wanted to end their drug addiction. Further, the program demanded a great deal even from those who were "gaming."

C. The "B" program

Despite the incentives to stay in the NARA program, some inmates could not cope with the hardships of Daytop and refused to participate. At first, no other treatment was available at Danbury for these program failures, or "splittees", as they were called. Staff refused to certify dropouts as having "made sufficient progress to warrant . . . conditional release under supervision."⁶ These inmates were therefore ineligible for parole even if the Parole Commission wanted to release them.

As the number of "splittees" grew, pressure to provide an alternative program mounted. Danbury authorities finally decided to give the "splittees" a way of earning certification by affording them drug treatment less harsh than Daytop. The new program became known as the "B" program and consisted of group therapy meetings held by staff counsellors several times a week. Group B participants were not required to live in the NARA dorms, and unlike Daytop participants, they could avail themselves of institutional jobs and educational opportunities. The Daytop program still remained the quickest route to parole; "B" program inmates had to spend 18-20 months before staff would grant them parole certification, while the Daytop participants had only to put in 12 months before receiving certification.⁷

The B program significantly altered the structure and the clientele of the drug program at Danbury. Many inmates other than NARA inmates at Danbury had drug problems. Either from a desire to obtain treatment or because they believed NARA staff to have special clout with the Parole Commission, these inmates pressed to be admitted to the drug treatment program. The B program began admitting non-NARA inmates and soon consisted largely of non-NARA inmates. This mixing of NARA and non-NARA inmates has continued to the present day, but is contrary to the intent of Congress in enacting the NARA act. The legislative history of the Act shows that the target group for treatment comprised those inmates whom Congress thought most likely to benefit—that is, inmates who did not have extensive criminal records, and who had not committed crimes of violence.⁸

THE EFFECT OF THE PAROLE COMMISSION GUIDELINES

As noted previously, one of the major reasons for inmates to volunteer for the NARA program was the expectation that they would be released from incarceration earlier under NARA sentences than under regular sentences. The expectation of earlier release was generally realized because, until late 1973, the Parole Commission followed the decisions of Danbury staff on when to release inmates. However, in November of 1973, the Parole Commission upset the entire basis for the arrangement between Daytop staff and inmates when the Commission decided to institute a system of guidelines for parole release which focused on an inmate's prior record, his personal history, and the severity of his crime rather than upon any measurement of his progress towards rehabilitation.⁹

⁶ 18 U.S.C. § 4254.

⁷ In respects other than the amount of time served, the procedure for release for inmates in the two programs was the same. Upon certification for parole by Danbury staff, the Parole Commission automatically released the inmate. Thus, it was usually still advantageous to be a NARA inmate—whether in Daytop or the B program.

⁸ Statement of Mr. McClory, Hearing Before the Subcommittee on Criminal Laws and Procedures of the Senate Committee on Judiciary, 89th Cong., 2d Sess., 112 Cong. Rec. 25418 (Oct. 21, 1966). See also *Marshall v. United States*, 414 U.S. 417, 428-29 (1974).

⁹ See C.F.R. § 2.1 et seq.; O'Donnell, Chuvain, and Curtis, *Toward a Just and Effective Sentencing System* (Praeger, 1977); and Goldberger, Genego, and Jackson, *Project, Parole Release Decisionmaking and the Sentencing Process*, 84 Yale L. J. 810 (1975).

The Parole Commission developed a matrix to calculate the months each inmate should spend in prison. The Commission looks first to the severity of an inmate's crime and places the crime in one of six categories from "low" to "very high". Next, the Commission calculates an inmate's "parole prognosis", or likelihood of success on parole, by computing a numerical score based upon an inmate's prior criminal record, employment record, and history of drug or opiate dependence. This "salient factor" score is used to place the inmate in one of four parole prognosis categories, from "poor" to "very good". The intersection of an inmate's "offense severity" and "parole prognosis" on the matrix yields the range of months to be served before release on parole. For example, an inmate who is convicted of stealing an automobile (not for resale) a "moderate" offense, and who has a salient factor score of 7, putting him in the "good" parole prognosis category, would be required to serve 12-16 months in prison.¹⁰

In adopting its guidelines, the Parole Commission expressly rejected the notion of measuring rehabilitation as a factor in the parole decision-making process. Neither the salient factor score nor the calculation of offense severity attempts to measure whether an inmate is progressing towards rehabilitation. Indeed, all of the items comprising the salient factor score and all of the information relevant to assessing the severity of an inmate's offense are known at the time of sentencing. Essentially, nothing an inmate does while in prison has any effect in advancing his release date, although it is possible for disciplinary violations or poor work reports to retard his release date.¹¹

In adopting its guidelines, the Parole Commission also served notice that its decision, rather than that of Danbury's staff, would govern when an inmate would be released on parole. While the Commission published guidelines for NARA offenders which were somewhat more lenient than the guidelines adopted for offenders sentenced under regular adult procedures,¹² NARA inmates who had completed their year in the Daytop program or their 18 months in the B program could no longer count on being released upon certification by the staff. The relationship between inmates and staff was altered because all perceived that the staff could no longer help an inmate by guaranteeing parole, but could still preclude inmates from parole eligibility by withholding certification.

Naturally, some inmates became disenchanted with a drug program which no longer could guarantee release, and disaffection with the Daytop program grew, as did the number of complaints about the program's harshness. High officials in the Bureau of Prisons also became concerned about the intensity and psychological pressures inherent in the Daytop Program and decided to abolish it.¹³ Late in 1975, the program was abruptly terminated.

THE NARA PROGRAM AFTER DAYTOP

Daytop was the last structured, coherent drug program based on the concept of the therapeutic community to exist at F.C.I. Danbury. From the end of Daytop until today, there has been no program which qualifies as drug treatment—no inmate peer pressure created by continuous interaction among inmates, no structured environment, no individualization of treatment, no thera-

¹⁰ See 28 C.F.R. § 2.20.

¹¹ Footnote 1 to the guidelines states that the guidelines are "predicated upon good institutional conduct and program performance." (28 C.F.R. § 2.20). See also 28 C.F.R. § 2.6, which indicates that inmates who lose good time for disciplinary infractions are unlikely to receive parole.

¹² The time differences under the guidelines for NARA and non-NARA inmates who have similar personal characteristics and who committed the same crime can be significant. For example, a "regular adult" (non-NARA) inmate who is convicted of possession of \$1000 worth of heroin, and whose personal characteristics place him in the "best parole risk" category will serve 26-36 months under current guidelines. In contrast, a NARA inmate who is in the "best parole risk" category and who committed exactly the same crime will serve 20-27 months under present guidelines.

¹³ The determination that NARA inmates should serve less time than do "regular" inmates was made by the Parole Commission in its original guidelines. The Commission has not provided any empirical or analytical information about how the number of months to be served were decided or why NARA's have to serve different time periods than do non-NARA's. The shorter time periods to be served by NARA's continue to make the NARA sentencing option a desirable one from the point of view of an offender. See 38 Fed. Reg. 31942 *et seq.* (Nov. 19, 1973) for original guidelines, and 42 Fed. Reg. 39808 *et seq.* (August 5, 1977) for current guidelines.

¹⁴ Interview with Dr. George Steinfeld, former head of the Danbury NARA program.

peutic community, and no concept of how residential drug therapy is conducted. Professional staff has dwindled to zero and no ex-addict counsellors have been employed.

The end of Daytop at Danbury coincided with the introduction by the Bureau of Prisons of a new management technique, the "unit system", which involved a reshuffling of all inmates into semiautonomous living units, each with its own manager, counsellors, caseworkers, and correctional officers. Under the unit reorganization, all NARA inmates, as well as other inmates with drug problems, were assigned to units E and G. Dr. George Steinfeld, a clinical psychologist, who had been the director of the Daytop program before its abolition, was given the task of designing a new drug program. He drafted and submitted two proposals, neither of which was implemented. Early in 1977, Dr. Steinfeld left Danbury.

Between the late fall of 1975, when Daytop ended, and the summer of 1977, the only group regularly available for NARA inmates was yoga class. A few counseling sessions were offered in late 1976 by a psychologist nominally attached to one of the "drug treatment" units but these meetings were soon discontinued. The "drug treatment" units contained both NARA and non-NARA inmates. The non-NARA inmates were admitted to the unit on the basis of a prior drug history, upon a recommendation for drug treatment by their sentencing judges, or because of alcohol problems.

The advent of the parole guidelines made the NARA certification process a meaningless ritual. By 1976, Danbury staff recognized this and accepted the fact that the Parole Commission guidelines and not the prison staff controlled the decision to release on parole. The staff's adjustment to the guidelines was reflected by a policy of granting certification for NARA inmates only after the inmate had served the amount of time indicated by the Parole Commission's guidelines. As one inmate who had been through the Daytop program and who had returned after a parole revocation was told in early 1976: "Do your time and keep out of trouble and you will get out when your guideline time is up."

RECENT DEVELOPMENTS

Beginning in the summer of 1977, University of Connecticut social workers came to Danbury and ran several group sessions per week. Although these sessions were termed "Drug Counselling", the social workers who conducted the groups told us that they were not drug therapists and that their group sessions were not designed as drug therapy.¹⁴ The same social workers still lead groups at Danbury, and the institution still claims that the groups are prominent features in its "drug treatment program."

In the late spring of 1978, Danbury staff instituted yet another program. Under the new regime, NARA inmates must log 180 hours of group meetings prior to certification for parole. Forty hours are "orientation", one hundred hours are "treatment", and the final forty hours are "pre-release planning". NARA inmates must sign a "contract" promising to complete the program.¹⁵ If the inmates sign the contract and put in the 180 hours, staff apparently will certify inmates for parole.

The required 180 hours of so-called "drug treatment" consists of a smorgasbord of "self-improvement" offerings such as general counseling, relaxation therapy, "TA" (Transactional Analysis), "AYP" (Achieving Your Potential), "RET" (Rational Emotive Therapy), and "Opting Out". Insofar as NARA inmates are concerned, there are at least three problems with these offerings. First, the programs are not designed for those trying to overcome a drug habit. Second, even if the offerings did have benefit for some inmates, the few hours a week the courses are given insure that they will be ineffective. Third, the assignments to groups are made on a random basis without any evaluation of individual needs. In some instances, assignments appear to be made purely to equalize attendance at the various groups.¹⁶

¹⁴ Interview with Ms. Enes Moran and Dr. Albert Allssi, May 1978.

¹⁵ The staff has refused to give inmates copies of the "contract" which they have signed.

¹⁶ As detailed in the testimony of Judith Resnik, physical presence at these groups suffices to gain credit for an hour of "drug treatment". Inmates can read, sleep, and eat during these group sessions. Many wander off before the session is over. Others chat, making it difficult for the rest to engage in a group activity.

END