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SUPREME COURT OF VIRGINIA
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IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 730592

A. E. SLAYTON, SUPERINTENDENT,
VIRGINIA STATE PENITENTIARY,

Appellant,

v.

JOHN ADAMS HAYES,

Appellee.

APPENDIX

ANDREW P. MILLER
Attorney General of Virginia

LINWOOD T. WELLS, JR.
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Supreme Court Building
Richmond, Virginia 23219

APPENDIX

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PETITION FOR WRIT OF HABEAS CORPUS

Filed December 27, 1972

A. Criminal Trial

1. Name and location of court which imposed the sentence from which you seek relief:

Circuit Court of Arlington County, Arlington, Virginia.

2. The offense or offenses for which sentence was imposed (include indictment number or numbers if known):

   a. Violation of condition of suspension of sentences and probation in C-7257 (original sentences imposed July 10, 1970 COB 117-17, 117-19).

3. The date upon which sentence was imposed and the terms of the sentence:

   a. Probation revoked April 28, 1972 and balance of penitentiary sentence imposed (Orders entered May 9, 1972 in Common Law Order Book No. 134, pages 503,505).

4. Check which plea you made and whether trial was by jury:

   Plea of guilty:_____; Plea of not guilty: X ; Trial by jury: NA ; Trial by judge without jury: NA .

5. The name and address of each attorney, if any, who represented you at your criminal trial:

John E. Killcarr, (appointed Counsel), Arlington Bar.

6. Did you appeal the conviction? No

* * *

B. Habeas corpus

9. Before this petition did you file with respect to this revocation any other position for habeas corpus in either a State or federal court? No

C. Other Petitions, Motions or Applications

13. List all other petitions, motions or applications filed with any court following a final order of conviction and not set out in A or B. Include the nature of the motion, the name and location of the court, the result, the date, and citations to opinions or orders. Give the name and address of each attorney, if any, who represented you:

a. None, except in the course of probation revocation proceedings in Arlington County Circuit Court, which are the subject of this petition. See Common Law Order Books 126 at 409, 128 at 319, 128 at 517, 129 at 282, 130 at 440-A and 440-B (readmitted to probation, December 21, 1971; T. Brooke Howard, retained attorney); 134 at 163, 134 at 503, 505 (probation revoked May 9, 1972; John E. Killcarr, appointed counsel).

D. Present Petition

14. State the grounds which make your detention unlawful, including the facts on which you intend to rely:

a. (The facts). The conditions of Petitioner's suspension and probation in cases No. C-7256 and C-7257 were that he be committed under the provisions of Section 311 of the Narcotic Addicts Rehabilitation Act of 1966 (42 U.S.C. § 3421) for treatment of his drug addiction after serving a portion of his penitentiary sentence. A further provision in each case was that the Probation Officer for the Circuit Court of Arlington County arrange for the available treatment aforesaid. Petitioner entered the Penitentiary on May 11, 1970 and was released on February 19, 1971. He then reported to his Probation Officer, but the stipulated arrangements for treatment had still not been made. Petitioner was not committed for qualified treatment under Section 311, supra, and as a result of the Commonwealth's failure to provide the stipulated, qualified treatment the Commonwealth moved the Court to revoke Petitioner's probation. Petitioner was ordered readmitted to probation on December 10, 1971, (see Order dated December 21, 1971, C.O.B. 130-440-A). At that time the original conditions of probation in Case No. C-7257 were enlarged to require submission to treatment at the Crossroads Drug Treatment Center.

(a) (1). Petitioner hereby alleges that the treatment at the Crossroads Drug Treatment Center was incomplete, inade-

quate, and otherwise critically lacking in legal conformance to the rehabilitation program prescribed by the Narcotic Addicts Rehabilitation Act, supra, as no accredited or trained psycological counseling was made available to him at any time.

(a) (2). Petitioner further alleges that confinement at the Crossroads Drug Treatment Center constituted cruel and unusual punishment in that he was forced to wear a broken glass on a string around his neck as a penalty for breaking it while washing dishes, that said penalty was to be undergone for a week or weeks, and that upon imposition of said penalty Petitioner left the Center without authorization on December 28, 1971.

(a) (3). Petitioner further alleges that the letter of consent from his sentencing Judge, Judge Charles S. Russell, which is an absolute prerequisite for Federal commitment under 42 U.S.C. § 3421, was not written until December 29, 1971, that he was never advised such commitment was to be secured, and that his lack of knowledge any adequate treatment might thus be forthcoming, coupled with the aforesaid denial of such treatment (see "Facts" supra) and the punishment described above in (a) (2) resulted in his violating probation.

(a) (4). Petitioner thus alleges that as the stipulated conditions of probation were made impossible to meet by the Center's failure to provide any psychological counselling, by the cruel and unusual punishment inflicted upon him there, and by the dating of the requisite commitment consent letter one day after he was held in violation of probation, the suspension cannot stand under Virginia Code Section 53-275. Cf. Griffin v. Cunningham, 205 Va. 349 (1964).

(b) Petitioner alleges that the Commonwealth made compliance with the original suspension and probation orders, supra, impossible by its initial failure (as set out above) to arrange for the stipulated treatment of his drug addiction upon his release from the Penitentiary, that such failure was a direct cause of his first probation revocation hearing; and that such failure thus became an active, causal, and impermissable prejudicial factor in the May 9, 1972 revocation.

(c) Petitioner alleges that he was denied effective representation by his appointed counsel at the final revocation proceeding by:

(1) Said counsel's failure to assert grounds (a) and (b), supra; and

(2) Said counsel's refusal, over petitioner's protest and in violation of Canon 7 of the Virginia Code of Professional Responsibility, to enter a plea of "guilty" of violation of probation and to allow Petitioner fully to express his contrition.

(d) For the reasons set out above and in addition to the authorities set out above, Petitioner relies upon the quarantees of Article I, § 8 of the Virginia Constitution; the Sixth and Fourteenth Amendments to the U.S. Constitution; Whitley v. Cunningham, 205 Va. 251 (1964) and cases cited therein; and Brown v. Slayton, 337 F. Supp. 10 (W.D. Va. 1971).

15. List each ground set forth in 14, which has been presented in any other proceeding:

a. None

16. If any ground set forth in 14 has not been presented to a court, list each ground and the reason why it was not:

a. Lack of advice

JUDGMENT APPEALED FROM

Entered April 10, 1973

THE 10th day of April, 1973 came the Petitioner, and his Court Appointed Attorney, Wallace G. Dickson and the Respondent, by the Attorney General of and for the Commonwealth of Virginia.

IT APPEARING to the Court that this case was continued to this date for further hearing on the Petition for Writ of Habeas Corpus, filed herein, and was argued by counsel.

UPON CONSIDERATION WHEREOF it is the opinion of the Court that the said Petition for Writ of Habeas Corpus should be, and the same hereby is, granted, to which said ruling of the Court the Respondent, by his Attorney, excepted.

IT IS THEREFORE ADJUDGED and ORDERED by the Court that the Petition aforesaid be and the same hereby is granted and that the said Petitioner, John Adam Hayes, be and he hereby is reinstated to probation, under the same sentence heretofore pronounced by the Court on the 10th day of July, 1970, in custody of the Probation Officer for the Circuit Court of Arlington County, Virginia for a period of Eight (8) years computed from this date, conditioned upon his good behavior and subject to the following specific provisions:

(a) That he refrain from the violation of any penal laws and ordinances;

(b) That he live a clean, honest and temperate life;

(c) That he keep away from all undesirable places;

(d) That he keep good company and hours;

(e) That he work regularly and that when out of work he forthwith notify the Probation Officer;

(f) That he will not leave or remain away from the County, City or Town where he resides (whether within or without the Commonwealth of Virginia) without permission of the said Probation Officer and that he will forthwith notify the said Probation Officer of any intended change of address;

(g) That he will follow the Probation Officer's instruction and advice on such matters as are authorized by law, including recreational and social activities;

(h) That he will report in person at the office of the Probation Officer in the County of Arlington, Virginia at least once in every two weeks period and if for any unavoidable reason he is unable to do so, he will communicate with the Probation Officer without delay;

(i) That he will make a written report monthly to the Probation Officer on such written form or forms as the Probation Officer may provide;

(j) That he will permit the Probation Officer to visit his home or any place of business at any time;

(k) That the Defendant pay all Court costs incident to this proceeding under the supervision of the Probation Officer;

(l) That the Defendant submit to and successfully complete such program of drug rehabilitation as the Probation Officer may prescribe.

BE IT REMEMBERED that at the conclusion of these proceedings the Respondent, by his Attorney, moved the Court to set aside the Judgment herein entered, which said motion the Court denied and to which said ruling of the Court the Respondent duly excepted.

ASSIGNMENT OF ERROR

Filed May 10, 1973

1. The Court erred in granting petitioner's claim for relief on the following grounds:

A. That as a matter of law the evidence was insufficient to justify the granting of relief to petitioner.

B. That the Court had no authority to grant the relief so granted in its Order of April 10, 1973, which said relief had the effect of the substitution of one sentence for another sentence

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Testimony of John Adams Hayes, Petitioner. Transcript dated March 14, 1973, filed May 16, 1973, pp. 14-36.

BY MR. DICKSON:

Q Would you state your name and present address for the record, please?

A John Adams Hayes, Field Unit 31, Tazewell, Virginia.

Q Mr. Hayes, did there come a time that you were convicted in this Court of a felony?

A Yes.

Q And subsequent to that conviction, were you sent to the Virginia State Penitentiary?

A Yes, sir.

Q Was that in October of 1970?

A Yes.

Q Or thereabouts?

A Approximately.

Q Subsequent to that confinement, under the terms of the confinement, were you placed on probation?

A Yes, sir.

Q You were later released from the penitentiary?

A Yes.

Q What at that time was your understanding of your obligation, your primary obligation under the conditions of the probation?

A The only condition that I was aware of was -- of my probation was that I enter -- at the time, I was under the assumption it was going to be Second Genesis. This is what my lawyer had spoken about.

Q This is what?

A A drug treatment program.

Q A drug treatment program?

A Yes.

Q And upon release, did you seek out your probation officer here in Arlington?

A Yes.

Q Do you recall who that was?

A Mr. Aldrich.

Q Mr. Aldrich.

Now, you were released according to the Court records from the State penitentiary in February of 1971.

A Right.

Q Now, at what point in time did your probation officer make the necessary arrangements for your entry into a drug treatment facility?

A The latter part of March. I believe it was about the 18th.

Q Of 1971?

A Yes, sir.

Q And did you at that time enter a facility in this area?

A Yes.

Q That was Crossroads?

A Yes.

Q Would you describe for the Court what occurred

what kind of program existed, and what kind of treatment you received at Crossroads during the month of March of 1971?

A Well, there was only me and two other addicts entering the program at the time and I entered one day and they entered the next day. There was an ex-addict, Mr. Shot, who was the director. He held the title of director, and that was all.

We went into a house in Fairfax. It was in Fairfax County, that they had given for this purpose, and it was pretty well messed up from kkids in the neighborhood breaking out and windows and so forth. During the day, all we did -- what we did was repair windows and paint different rooms, trying to fix the house up in some way.

Q Did you receive any psychological counseling at that time?

A No, sir.

Q Did you ever receive medical treatment from anyone?

A No, I did not.

Q Did you receive any counseling of any kind during the time you were there?

A No, sir.

Q Was there any program at that facility at that time about which you were aware which would have been set up to provide treatment for you in the realm of education or social programs, psychological programs, of any type?

A I believe Second Genesis was set up at that time.

Q I'm talking about Crossroads, where you had been placed.

A No, there wasn't anything like that there.

Q What did your daily activity consist of?

A Just working around the house, repairing it.

Q Did you do anything other than paint and restore windows? Was there other work you did?

A Fixed the floors and things like that; that's all.

Q Did Mr. Shot, the man who was director at that time, give you any counseling or advice or did he instruct you as to where you could receive counseling or advice?

A No, sir, he never -- I mean he talked to us but he never counseled, never any group counseling or therapy.

Q Did you ever receive any examination by a medical doctor?

A No, sir.

Q Did you take any testing, written or oral?

A No, sir.

Q Now, there came a time when you left that facility.

A Yes.

Q Then there came a time you returned to that facility some four or six months later.

A Yes.

Q When did you leave that facility?

A The first time?

Q Yes.

A I believe the date was March 25th.

Q Approximately one week after your entry there?

A Right.

Q Now, did you have reason for leaving?

A Well, it just seemed -- it didn't seem like any program or any type of treatment or anything.

Q Now, when you returned to that facility, that was in December of '71; is that correct?

A Yes.

Q And how long were you in that facility on that second occasion?

A Three weeks.

Q Do you recall the date on which you left that

facility the second time?

A I believe it was December 28th.

Q December 28th?

A Yes.

Q So you had been there three weeks prior to December 28th?

A Yes.

Q Now, can you describe for me and the Court what kind of program or what changes had been made or what kind of program you found to be there on the second entry in December of 1971?

A Well, there was approximately thirty young people in there, addicts, and the people that were running it -- there were two addicts that I had gone in the program with the first time.

Q The people running it?

A The people running it.

Q These two people that were running it were among the three originals, including yourself?

A Yes. I believe the director's title was given to two girls. One was named Brenda and the other was Monica; I don't know their last names. You didn't see them very much, and these two ex-addicts when I went in

were the ones that were really controlling the house, you know.

Q They were the ones that issued you instructions as to what the activities would be?

A Yes.

Q What were your activities for those three weeks?

A Well, I washed dishes, worked in the kitchen. I washed dishes the whole time I was there and at night -- not every night, but I believe it was twice a week -- a seven-day period; I don't remember what days that we had encounter meetings.

Q What did the encounter meetings consist of? Who was present at the encounter meetings?

A We usually broke up in two groups because of the amount of people in the house and one or the other, one of the two ex-addicts would go in and were directors of the meetings.

Q They had encounter meetings?

A Yes.

Q How would you describe those encounter meetings? What did they consist of? What occurred during those meetings?

A People would just talk, you know, about things

that happened, anything, to them they disliked. Like, I didn't like working in the kitchen. I told one of the coordinators, which was one of these addicts, that I would like to get to work someplace else, you know; that after I had been working in there about a week, and he told me to holler about it at the encounter meetings and stand up and holler that I wanted out of the kitchen.

Q Did you do that?

A I did every time I went in one of them. And then after the encounter meeting, I would ask if I was going to get out and he would just say to keep hollering.

Q Did you discuss or did anyone in the encounter meetings discuss your problems, other than instructing you to yell about not wanting to be in the kitchen any longer?

A No. After I yelled, he would usually say, "How do you feel? Better?" I would say, "No, I don't feel any better." He would say, "You just keep hollering about it and you'll feel better."

Q Did you keep hollering about it?

A I kept hollering about it as long as I was there.

Q You stayed in the kitchen as long as you were there?

A Yes.

Q Now, were there any other sessions other than the encounter group? Were there any other sessions that you could describe as being counseling sessions or therapy sessions?

A No, sir.

Q No other meetings with any individuals?

A Nobody else.

Q Was there any medical examination performed on you at any time?

A No, sir.

Q Were there any educational, sociological, psychological programs established at that facility for your benefit at that time?

A Not that I know of.

Q Were you entered in any such program?

A No, sir.

Q Were you told you might be entered in one later?

A No, sir.

Q Did you have access to a medical physician during the time you were there?

A I don't think so. I never saw one.

Q You were never told you could see one if you needed one?

A No.

Q And none ever examined you?

A No, sir.

Q Did you have access to or were you told that you could have access to a psychiatrist for counseling or a psychologist?

A Neither one.

Q Or a social worker?

A No.

Q Any professional staff?

A No, sir.

Q Were you ever observed by a professional staff of that variety on the premises while you were there?

A Not of that variety, no.

Q Did anyone discuss with you your addiction problem on either of these occasions when you were with Crossroads?

A No, sir, they didn't talk about addiction. They said they didn't want to. It was something they didn't talk about. They didn't talk about it.

Q Now, were any of these facts brought out in the revocation hearing which occurred on the 28th of April, 1972, in this Court?

A Well, just that I worked in the kitchen and I didn't like it at Crossroads and --

Q (Interposing) Now, on the second occasions when you were at Crossroads for three weeks, and according to your testimony, you left on the 28th of December --

A (Interposing) Yes.

Q (Continuing) -- did you have a reason for leaving on that occasion?

THE COURT: On the second occasion?

MR. DICKSON: The second occasion, Your Honor, the 28th of December, 1971.

A Just frustration; that is all.

BY MR. DICKSON:

Q Did you feel the program was assisting you or helping you in any way?

A Not me. No, I did not. I didn't feel it was doing anything except really depressing me. I mean I couldn't even sleep. I was just depressed. I couldn't get anything out of it at all.

Q When you agreed to the conditions, the original conditions set up in your probation order concerning the admission or submission voluntarily yourself in a drug program, did you have the intent then to submit yourself

to a drug program?

A Yes, I did.

Q Subsequently, on your release from the penitentia did you seek out your probation officer and ask him about when you could get in a drug program?

A Yes.

Q At that time, did you consider yourself a person that needed help and assistance in your adjustment in life?

A Yes, sir.

Q On any occasion when you were in this drug program, Crossroads, did you receive such help?

A No, sir.

MR. DICKSON: That is all I have.

CROSS EXAMINATION

BY MR. WELLS:

Q At the revocation hearing on April the 28th, I believe the transcript indicates that you testified generally that your problem was that you had to wash dishes all the time. Is that right?

A That was one of the things. Like I just told him, they were using this to harass me, what they called a concept -- you just keep harassing a person.

MR. WELLS: Your Honor, we have been referring t

the hearing on April the 28th and I ask that all the records, including the transcript of that hearing, be made a part of the record in the case today.

THE COURT: I think it ought to be.

MR. DICKSON: No objection.

THE COURT: The Court will make the entire criminal file, two files, C-7256 and C-7257 including the transcript, a part of the record in this case to be considered in the finding of fact and conclusion of law that will come from this case.

Go ahead.

BY MR. WELLS:

Q When you testified at the hearing on April 28th with regard to washing dishes, you were not at that time making any of the complaints you seem to be making now; that you were not receiving what you considered to be proper psychological, emotional, and medical treatment.

A Well, I thought I said I wasn't getting anything out of the program. It just wasn't -- it wasn't nothing for me except lots of harassment and things like that.

Q Isn't that true?

A I am saying I said that.

Q Isn't it true what was really bothering you was

the fact you were having to wash dishes?

A Washing dishes didn't bother me that much.

Q Well, were you a heroin addict?

A Yes.

Q When you were at Crossroads for one week before you escaped in the latter part of March of 1971, did you use heroin during that week?

A No, sir, I didn't.

Q After you escaped and before the time you returned, did you use heroin?

A Just before I returned, I did, yes.

Q How many times?

A Several.

Q More than three?

A Yes. Around -- somewhere in the neighborhood of ten.

Q When were you arrested? In December?

A September.

Q You went, presumably from -- through the month of April, May, June, July, that many months before you used heroin again; is that right?

A Until the middle of August.

MR. DICKSON: Objection. At this point, although

the defendant here admits using heroin during this period of time, I object on the grounds of the Fifth Amendment. The Fifth Amendment rights are being violated here. He is being asked by this question now to designate the times and places on which he may have used heroin and I think it comes close to asking him for an admission itself as part of the commission of a crime.

MR. WELLS: I'm asking the question, Your Honor; as he is stating, the program was not adequate and complete It didn't affect him. I am asking him the question in order to determine whether or not it had some beneficial effect on him and he does not invoke the Amendment and until he does, I would like to continue asking the questions along the same line.

THE COURT: Since this is the very reason he has counsel, objection sustained.

BY MR. WELLS:

Q Do you feel that the encounter meetings that were held before the second time you escaped helped you?

A I wasn't in any encounter meetings before.

Q You just said you had encounter meetings.

A You asked before the second time.

Q I'm sorry. I meant to say when you came back

the second time, you had encounter meetings?

A Yes.

Q Did they help you?

A No, sir.

Q Did you ever ask anyone there to see a medical doctor?

A No, sir.

Q Did you ever ask anyone there to see a psychiatrist or psychologist?

A No, I didn't.

Q Do you know whether or not other individuals who were there -- the second time -- I believe you testified that the second time you were there, there were approximately thirty people. Do you know whether any individuals were obtaining any kind or engaged in any kind of educational program?

A I don't know if they were or not. I don't know anything about it.

Q What were they doing during the daytime?

A Just working around the house.

Q On the house?

A Yes.

Q All day, every day?

A All day every day except a half a day on Sunday.

Q Were you able to talk with your probation office while you were at Crossroads?

THE COURT: Could he get in touch with him over the telephone?

MR. WELLS: Yes.

A I knew you were not allowed to call anybody. And whether I could call him or not, I don't know. I never asked to. I never seen him while I was there.

BY MR. WELLS:

Q All right. I take it your answer refers to both the first time you were there and the second time?

A Yes, both times.

Q Did you know whether or not heroin was available at Crossroads the second time you were there?

A No, sir, I don't think it was available.

MR. WELLS: I have no other questions.

REDIRECT EXAMINATION

BY MR. DICKSON:

Q Your testimony is you were not permitted to make any phone calls when you were at Crossroads; is that correct?

A Yes, that is true.

MR. DICKSON: That is all I have.

THE COURT: Mr. Hayes, when you were at Crossroad the second time, that was, as I understand it, December of 1971.

THE WITNESS: Yes.

THE COURT: You were there about three weeks?

THE WITNESS: Yes.

THE COURT: Now, did anyone in connection with the Crossroads program or your probation officer, any perso in the probation department, outline to you what they were going to do for you at Crossroads at the time you went in there?

THE WITNESS: No, they didn't.

THE COURT: No one said a word to you about what you were going to do?

THE WITNESS: I mean I heard other people in the house talk. I mean I guess you just know that you've got to stay there and do what they tell you to do. No one told me what I was to do. They told me where I was supposed to work at, you know, and I figured I would just stay there and do what they told me to do.

THE COURT: It is your testimony that during the three weeks you were there, you did not see a psychologist,

psychiatrist or a counselor of any kind at all. Is that correct?

THE WITNESS: Yes, that is correct.

THE COURT: You answered one of Mr. Dickson's questions that you did not see a doctor or a professional staff of that type there. Were there some other professional people, any other professional people there?

THE WITNESS: Yes. I used to see -- I don't remember the name -- Joe Something. He was, I think, a probation officer of Fairfax County and he didn't have anyplace to live and he was sleeping on the couch there. He used to -- a lot of times I would come out and he would be changing his clothes and going back out. That is why I didn't want to say none at all. I guess you would consider him a professional.

THE COURT: Now, during the three weeks that you were there the second time, did you make any effort to register a complaint of these conditions that you told us about today to your probation officer? Did you ever try to call him -- I realize you said you weren't allowed to make phone calls but did you ever try to make one?

THE WITNESS: No, I didn't. It's a truth-honesty [illegible] and although I did leave there, when I was there I

tried to live by it the best I could.

THE COURT: I understand that. It was on December 28th when you left?

THE WITNESS: Yes.

THE COURT: That is when you went to Pennsylvani

THE WITNESS: No.

THE COURT: Prior to that?

THE WITNESS: Yes.

THE COURT: When you left on December 28th, you came to your probation officer?

THE WITNESS: No, I didn't. I called for him an he wasn't there. A probation officer by the name -- I think by the name of John Smith or Smith or something like that in Fairfax said he wasn't there. I talked to him and he said to come on down and talk to him and I just figured all he was trying to do was get me down there so he could lock me up, so I didn't go down.

THE COURT: All right, sir.

That is all I have. You may step down.

MR. WELLS: I have some additional questions.

RECROSS EXAMINATION

BY MR. WELLS:

Q Could you write letters from Crossroads?

A No, sir, you can't.

Q You could not write letters?

A You were not allowed to write letters.

MR. WELLS: I think that is all.

FURTHER REDIRECT EXAMINATION

BY MR. DICKSON:

Q I have one or two additional questions on points raised on cross examination.

Mr. Hayes, as an addict or former addict looking for treatment, was the only kind of treatment you were looking for simply to cure yourself of addiction or were there other things that you needed help on?

A Well, there were things I would like to do -- I like -- it seemed to me like a halfway house or community thing, anything like that, should teach a way of life there, you know.

Q Did you have personal problems other than your addiction either as a result of the addiction or as a cause of the addiction? Did you have other personal problems or problems with your family, your friends, your wife, or anybody else?

A Yes.

Q Were you seeking some help and guidance relative

to those problems?

A Yes.

Q Were you provided any of this kind of counseling or guidance or help at this treatment center?

A No, sir. I never talked to anyone about it.

MR. DICKSON: That is all I have.

We have no other testimony, Your Honor.

THE COURT: Any evidence, Mr. Wells?

MR. WELLS: No, sir.

THE COURT: Do either of you gentlemen propose to call Mr. Kilcarr, who is sitting in the Courtroom?

MR. DICKSON: I hadn't.

THE COURT: Mr. Kilcarr, do you want to testify in this case? I will hear from you if you do.

MR. KILCARR: Yes, Your Honor.

Whereupon,

Testimony of John E. Kilcarr. Transcript dated March 14, 1973, filed May 16, 1973, pp. 36-43

THE COURT: You heard Mr. Hayes' complaint, and I would like the record to hear you. You were the counsel representing him?

THE WITNESS: Yes. I was appointed to represent

Mr. Hayes for violation of probation, Your Honor. I picke him up in jail. I think it was the day he was picked up, Your Honor. I visited him on a number of occasions in the jail. I listened to his complaints. I listened to his wants, Your Honor.

If I recall, Mr. Hayes wanted to get in the Prelude program. If I recall, his main objection to Crossroads was not what he stated here today but was to the effect that he had to wear some kind of a glass object around his neck -- he'd broken a bottle or broken a dish or some kind of cup, and he was instructed --

MR. DICKSON: (Interposing) Let me object at this point. I don't mean to interrupt Mr. Kilcarr's testimony unnecessarily but I would like to object to the statement that his only objection to the treatment he received was wearing a glass thing around his neck because I think, Your Honor, if you read the transcript of that revocation hearing, I think in his testimony he went beyond that objection and I think Mr. Kilcarr is relying on memory as he suggests, and what he recalls and it is only that. And I want on the record that it is simply his recollectior

I think that the Court --

THE COURT: (Interposing) That is on the record

and so stated.

Go ahead.

THE WITNESS: He wasn't getting along with the people and he thought he would perform much better at Prelude and he thought the program that was being set up at Prelude would be more beneficial to him, Your Honor.

I therefore went and saw Mr. Edward Johnson, I believe the name was, who was running Prelude and I had a long conversation with Mr. Johnson. I advised Mr. Johnson that my client, Mr. Hayes, wanted into the Prelude program and that he was a violator of probation and had left the Crossroads program. He had also been involved in the Genesis program and I then convinced Mr. Johnson to go over and at least interview Mr. Hayes.

It had been a long period of time there that Mr. Johnson could not get over to see Mr. Hayes and on the occasion that I visited the jail with Mr. Hayes, I inquired of him if Mr. Johnson had arrived to interview him and he had not, Your Honor, and I went back to Prelude and got in touch with Mr. Johnson.

Mr. Johnson did go over to speak with Mr. Hayes and Mr. Johnson finally made a report. I think the report is in the file. He said that he would take Mr. Hayes out

on probation and put him in the Prelude program. This was in accordance with what Mr. Hayes wanted. He felt that he did need the assistance, as he testified here today, and that he thought he could find this assistance in Prelude. That is what I attempted to do. That is what my client wanted done, and there was no question of having his sentence overturned or anything of that nature. He wanted to go in the Prelude program.

I thought this was a good idea, in my talking and counseling with him, and I thought he would do fine in the Prelude program and I told Mr. Johnson that.

Essentially, that was it, Your Honor. I haven't well, essentially, that was it, Your Honor. I have not heard from Mr. Johnson or Hayes subsequent to that.

I think the transcript is going to show what occurred the day he came up for his resentencing with Judge Russell, if I recall correctly, Your Honor. I think Judge Russell spent about a half hour to forty-five minutes discussing the problem and then Judge Russell's subsequent decision thereon.

I was appointed, Your Honor, simply for the revocation and I attempted to prevent the revocation and I did my best for my client. That is essentially what I

recall of it. Mr. Dickson is right; this is strictly from memory. Many cases pass my desk and court appearances, but that is essentially what I remember about Mr. Hayes.

He was very adamant about the fact they subjected him to going around at Crossroads with this thing around his neck, a broken object, a glass or a bottle or something, Your Honor. He thought it was degrading to him, and I agree with him. I think it was degrading, also, that he wasn't receiving what he felt should come from the program.

That is essentially what I remember about it.

THE COURT: All right.

Does either counsel have any questions?

MR. DICKSON: Mr. Kilcarr, in your investigation into the Prelude program, as I understand your testimony, you made an attempt to get this defendant in that program.

THE WITNESS: Yes.

MR. DICKSON: Was it your contention at that time that the Prelude program differed from the Crossroads program in orientation and scope and methods to the point where you felt personally that he might do better if he wasn't doing well out there?

THE WITNESS: At the time that Mr. Hayes came up

for presentencing, if I recall correctly, Prelude was just in its infancy. It was just beginning and Mr. Hayes was going to be, I believe, something like the fourth or fifth man or person to be placed with it. Mr. Johnson just became director or assistant director of the program and the program in and of itself had not got under way.

When I talked to Mr. Johnson, he said he was going to use different approaches than what was used in Genesis and Crossroads and he informed me, if I recall correctly, that they had concentrated on mistakes the other two had made. This is only a paraphrase, what I can recall.

I do not know what the program was. I do know it was being backed by the County, by the Commonwealth Attorney's office, and it was an attempt to, let's say, force some correction or rehabilitation. He would know more about it than I do, why he wanted into it.

MR. DICKSON: You talked to Tom Geb about this?

THE WITNESS: Yes, I talked to him by phone once and I saw him in the hallway. He was the one that directed me to Mr. Johnson, who was the one taking them in at that time.

MR. DICKSON: Subsequent to your conversation with

them and subsequent to their interview with the defendant in the Arlington jail, did there come a time when they informed you in writing and informed this Court they were willing to take him there?

THE WITNESS: Yes. They were willing to take him there.

MR. DICKSON: They were willing to take him there?

THE WITNESS: Yes. There was a long conversatio with Mr. Johnson prior to him making the recommendation that he would at least attempt to work with the man and they could take him. I asked him to appear that day in Court. Mr. Johnson was in Court with another gentleman -- I forget the name; I think the director -- but I think I called one of them as a witness or at least directed him to the Court and asked Judge Russell if he wanted to go into it further.

I believe Judge Russell did not want to go into it any further. We had the personnel there as witnesses on behalf of Mr. Hayes.

MR. DICKSON: It is true, Mr. Kilcarr, that you, during the course of the two months or so that you represented him, interviewed him on at least three or four

occasions in jail?

THE WITNESS: At least.

MR. DICKSON: As well as interviewing or consulting with the people of the Prelude program?

THE WITNESS: Yes.

MR. DICKSON: In an attempt to get him in that program?

Statement of the Court. Transcript dated March 14, 1973, filed May 16, 1973, pp. 56-57

I don't have a quarrel with cruel and unusual but I don't think it is borne out by the evidence. I don't believe Mr. Dickson agrees with this, from his argument. There is absolutely no evidence in here on that and so it comes down, in my opinion, to that one narrow issue. That is, whether or not when his probation was reinstated in December of 1971, whatever the State records reflect, and he was ordered to enter and complete the Crossroads program, whether or not it is implied in that order that there was a condition that the State provide for him the type of treatment set forth in the Federal statute that Mr. Dickson referred to.

The Court Order of this Court does not specifically say that. His counsel has certainly implied this, and the evidence is abundantly clear that at least in three weeks he did not receive any of this type of treatment.

Now, does that mean he is now being incarcerated illegally so that the habeas corpus ought to be issued? That is the way I see the issue.

Transcript of Iola Scrafford, witness for the Respondent, Transcript dated April 10, 1973, filed April 26, 1973, pp. 4-43.

DIRECT EXAMINATION

BY MR. WELLS:

Q Mrs. Scrafford, would you state your name and your present occupation?

A Iola Scrafford, I am the coordinator of the Fairfax County Drug Abuse Program known as Crossroads.

Q Would you speak more loudly because I have difficulty hearing you.

THE COURT: May I ask you to spell your last name please?

THE WITNESS: S-c-r-a-f-f-o-r-d.

BY MR. WELLS:

Q Mrs. Scrafford, what was your occupation in the month of December, 1971?

A I was coordinator of Crossroads.

Q Let me caution you before I ask any additional questions not to answer any questions that would involve your telling this Court something that someone else told you.

A All right.

Q And with that cautionary word, I intend to ask a line of questions.

Were you familiar with the program at Crossroads as it existed in December of 1971?

A Yes.

Q Would you describe the program at Crossroads in December of 1971?

A You are asking for almost total recall which I can only — are you interested only in the residential program or the total program. There are two prongs to our program. One is an out-patient program the other is residential. Both existed at that time. The residential program was instituted in March of 1971. In December of 1971, I believe we would have had — oh, anywhere from 18 to 20 residents at the time. It's modeled very much after a traditional therapeutic community. We do not claim to be a psychiatric or medical model. We are primarily involved in behavior modification.

Q All right. Do you know of your own knowledge whether or not the petitioner, John A. Hayes, was involved in that program in 1971?

A According to our records, yes.

Q Of your own knowledge, do you know whether or not he was?

A Yes.

Q Of your own knowledge, do you know which program he was

involved in, the residential as distinguished —

A Residential.

Q You indicated, I think, that the program did not involve what I would describe as straight, pure, medical treatment. Is that correct?

A Definitely not. We are not —

Q Did it include psychiatric treatment by a psychiatrist?

A No. Let me say that according to the way we were set up at that time, we had a contract with the Narcotic Rehab Act. Anyone who was committed to the program was then also committed to what it would be known as NARA. After the commitment, we were able to obtain a medical examination and a psychiatric evaluation. This could not be done prior to commitment because there would be no funds to pay for it.

Q All right. Now when you say "commitment" —

A I am talking about a civil comitment through the Federal Court to Crossroads Program.

Q Of your own knowledge, do you know whether that occurred in the case of the petitioner?

A No, it did not. We had instituted the proceedings for it. It was to be at Federal Court the following Friday after he left. We had to obtain a letter of consent from the presiding judge who, I believe, was Judge Russell at the time. We got the letter dated

December 29th, but John had left the day before on December 28th.

Q All right. So that the Court understands your testimony — and if what I say is not correct, I want you to so say — are you tellin the Court that the petitioner would not have received: number one, medical treatment; and, number two, psychiatric treatment until such time as he was committed civilly?

A No, that's not accurate. I am saying the medical examination and psychiatric evaluation. If he had become physically ill, we have an arrangement with Fairfax Hospital that he could have been taken there. It would have been for an acute illness; or, you know, if he had exhibited any bizarre behavior we could have called in our consultant psychiatrist. But essentially he is not normally in the program until he goes through the medical examination and the psychiatric evaluation.

Q Let me just state to you that at the prior hearing the petitioner described the treatment at Crossroads as: number one, not including medical treatment; and number two, not including psychiatric treatment. On the assumption that if he had stayed in Crossroads, if he —

MR. DICKSON: Your Honor, I am going to object to any questions regarding any assumptions on behalf of this witness. I don't know that assumptions are admissible.

MR. WELLS: I will rephrase the question.

BY MR. WELLS:

Q In what manner, if in any manner, does treatment change between or did treatment change in December of 1971 as contrasted between the time before the time one is committed and after the time one is committed?

A No, the esential change would be that during the psychiatric evaluation it would be determined that the client needed treatment in view of the psychiatric modality, rather than the type we had. We would request, you know, that he be transferred to another modality.

Q Tranferred where?

A To a psychiatric hospital.

Q Well, then I take it that the program at Crossroads as a particular location did not include and would never include psychiatric care. Is that correct?

A Only — well, it's not totally correct. Our staff there is supervised by the consultant psychiatrist of the program. And he would, you know, determine at that time whether anyone, you know, would be appropriate for our program. If psychiatric, you know, if continuous psychiatric treatment is involved that person would not be appropriate for our program.

Q And I take it he would be transferred to a different location?

A Right.

Q And he would receive some other kind of treatment?

A Correct.

Q Did you have any personal contact with the petitioner in December of 1971?

A I can't remember. I don't believe I saw him in December. I knew him. I think I had talked to him on his previous stay there which would be earlier, some months earlier.

Q You did talk with him about his — I believe that date was in March?

A I believe I just spoke to him before he went into the house. And I think I had seen him several times there at the house when I visited.

Q How long in the period of December, 1971 did it normally take from entrance into Crossroads until the time one was civilly committed?

A At that time, because of the backlog in the Federal Court, we sometimes had to wait six to eight weeks before we could get on the Court docket, the Federal Court. That has since changed in that we have every Friday now available to us for these civil commitments. But from what I understand, there was only one Federal judge at that time.

Q The petitioner, at the other hearing, as I recall his testimony testified to something like this; that he was requested, or forced,

or asked to wash dishes on what may have seemed to be a large scale and under circumstances that I suppose one might say encompassed a great deal of time. His testimony, as I recall, was also to the effect that he was told that if he objected to that the thing was to simply shout that out to the group.

Now can you state whether or not if that testimony — assuming that testimony is correct — can you tell us whether or not that is a treatment in respect to narcotics rehabilitation?

A I don't, you know, have any personal knowledge of this particular instance. But it is a self-help —

MR. DICKSON: Objection, Your Honor, the question was a very lengthy question and the witness has just stated that she had no personal knowledge on which to ground an answer. And I object.

THE COURT: I want to be sure. On the way that you are interpreting her answer, your objection is well founded. But I am not at all sure that that is what the witness meant, so I will — let me, on my own if the Attorney General will permit it, ask you this.

When you say you don't have any personal knowledge —

THE WITNESS: Of that instance.

THE COURT: — whether or not the facts that Mr. Wells has related to you, you have no personal knowledge whether those facts

did exist in December of 1971?

THE WITNESS: No, what I meant was that I have no personal knowledge that that occurred to John Hayes. I can tell about, you know, what one expected in the program as far as washing dishes.

THE COURT: Why don't you ask your question that way?

BY MR. WELLS:

Q Would you tell us then, if you can along with your answer, the theory, if there was a theory, of why one would wash dishes if that occurred, and why one would be told if that should happen, if he objected to washing dishes so to voice his objection by screaming it to the group who was there?

THE COURT: Now you are limiting this to December of 19 —

MR. WELLS: Seventy-one.

THE COURT: Seventy-one. And a further period of — was it March of '72?

MR. WELLS: Yes.

THE COURT: He was there twice, as I remember the prior testimony.

MR. WELLS: Yes, he was there twice. I have not asked questions concerning March of '71, Your Honor, because the Court had — maybe I misinterpreted what the Court was saying. But I had thought the Court had in effect made a preliminary ruling that what occurred in March of 1971 would not be considered one way or the other on the

basis of the testimony of the petitioner that he was only there for a period of one week.

THE COURT: I think you've got it backwards. He was there one week in December, wasn't he; and three weeks in March?

MR. DICKSON: No, sir.

THE COURT: Was it just the opposite?

MR. DICKSON: Yes.

MR. WELLS: Have I misinterpreted what the Court said or would the Court rather not answer that question?

THE COURT: No, I want to look at my notes. I had here that in December — right, it would be three weeks in December and one week in March.

MR. DICKSON: Yes, sir.

MR. WELLS: Three weeks in December and one in March.

THE COURT: Well, let's hear from Mr. Dickson about whether or not I made any such ruling. Could you recall any such ruling that Mr. Wells is talking about?

MR. WELLS: I don't want to get into — the Court didn't say that a rule but it did indicate it. I took it to be —

THE COURT: That's always very risky for me to indicate anything if I don't rule on it. So let's assume that there has been no ruling made and I wish you would ask the witness regarding the two periods of time involved; namely December of '71 and March —

is it March or February of '72?

MR. DICKSON: Your Honor, I believe both dates were in '71, March of '71 and December of '71.

THE COURT: March of '71 and December of '71.

MR. WELLS: So the Court will know what I'm doing, I will begin on December of '71. I will go ahead and finish that and go back to March.

THE COURT: All right, sir.

BY MR. WELLS:

Q I asked a question, do you recall what it is?

A Yes, the process of washing dishes, whether this would be an accepted activity. Is that —

Q Yes, that is a better way of phrasing it than the way I asked it.

A Crossroads began as a traditional therapeutic community, as it still is. The best way I know how to describe it would be to say that it would be part kibbutz and part, you know, basic training. It is a self-help community. We have no paid employees there to do housework or to cook. That is all part of the therapeutic regime. As people come in, they are assigned certain duties, depending upon where they are in their, you know, process of treatment. The newest resident would have what we call K.P. duty and he would be assigned dishes. As the -- the — the longer he is there, the

higher he goes up in the realm of responsibility. That still exists today. They would be common in any therapeutic community in the area, such as Second Genesis, DAYTOP in New York, and so forth.

Q Well, let me ask you this question. Are you saying, or are you not saying that washing — that dishes as a specific example, is a part of the therapeutic program or does it come about as a result of not having paid employees to do that?

A No, it's part of the therapeutic regime, being responsible for certain duties.

Q Did you, in December of 1971, yourself personally visit Crossroads?

A I don't remember if I was there in December or not; normally I do go out about once a month. But I can't be certain because December would be a month I wouldn't be sure of.

Q Now in March of 1971 did you hold the same position that you did in December of 1971?

A Yes, I did.

Q Can you state whether or not you were familiar with the program at Crossroads in March, 1971?

A Whether I what?

Q Whether you were familiar with the program at Crossroads in March, 1971.

A Yes, that is when it began.

Q Would you describe the beginnings of Crossroads in March of 1971?

A We began with just a few residents who, of course, had all the work to do with the Director. It certainly wasn't as comprehensive as it is now, but it began with much the same philosophy.

Q Let me ask this question. The petitioner, I think, the last time indicated that he and two other individuals came in at approximately the same time. As I recall his testimony, I think he said he came in one day and the next day two other individuals came in. He testified that of course they were not employees but rather they were in the same position that he was. They were addicts. He testified that when he came back in December, it was the addicts, the same two addicts, that he had entered the program with. But these addicts were in December, 1971, were apparently running the house. Do you know whether or not that is true?

A No, we had two paid directors at that time. As I said before, the longer someone is in the program, the more responsibility they get. And it would be true that they might be working as expeditors or coordinators, supervising activities under the supervision of the Director. They would have much higher positions, true.

Q So I take it that your answer is that although you don't

know whether it is true, it could be?

A Right.

Q Did the Director live in the house?

A Yes.

Q Do you know — was there a Director in the house in March of 1971, living in the house?

A Yes.

Q Was there a doctor living in the house in December, 1971?

A I believe in December — I am trying to think of dates — there were either two or three.

Q Of your own knowledge, was there any way by which a resident of Crossroads could make a complaint to anyone in March of 1971?

A Certainly to me in March. I was out there, I would say, once a week in the beginning of the program. At any time, I would have been available to any resident.

Q Was there anyone else to whom a resident might make a complaint if he so wished?

A Any of our out-patient counsellors would also have been visiting the house at that time.

Q Do you know, of your own knowledge, whether or not you could — whether a resident could use the telephone in the residence in March of 1971 and then later in December of 1971?

A I don't know.

Q Do you know, of your own knowledge, whether in either March or December of '71 one could write a letter to whomever he pleased? And when I say "one" I mean a resident.

A Yes.

Q To whomever he pleased outside the house?

A That I don't know for sure either.

MR. WELLS: I have no further questions. Answer the questions of the counsel for the petitioner.

CROSS-EXAMINATION

BY MR. DICKSON:

Q Mrs. Scrafford, is it fair to say that the program called Crossroads in Fairfax County of which you are Coordinator is substantially improved today over what it was in March of '71?

A As much as any program would improve from the beginning until, you know, it matured. Yes, I think it's a much more comprehensive program.

Q Has your staff, that is the staff under your direction as Coordinator, been increased in number since March of 1971?

A Yes; as our case load has been increased, we have increased the staff.

Q And has your staff become more experienced since March of 1971 in the counselling and handling of the problems that they are confronted with by the residents there?

A Well, they would naturally become more experienced within that program. But we do have staff turnover, so this would be a perpetuating thing.

Q Now, in March of '71 what at that time did your staff consist of?

A Would have had two counsellors at the out-patient program —

Q Let me — please direct all of your answers to the residential program in which this petitioner was placed.

A In December of '71 we would have had —

Q March of '71.

A March of 1971 we would have had one Director who began the program and a consultant psychiatrist to the Director, as well as my services would be available to him.

Q So, essentially, you had one Director, a consulting psychiatrist or psychologist?

A Psychiatrist and psychologist.

Q So there was one of each of those?

A Right.

Q And then yourself?

A Right.

Q A total of four?

A Right.

Q Was the psychiatrist, the consulting psychiatrist, a member

of the staff or was he simply available upon your request for some consultations?

A He was available not on my request but regularly once a week for two hours. We had a contract for two hours every week.

Q Now during March of 1971, do your records reflect that — first of all, let me ask who was the consulting psychiatrist?

A Doctor James Thorpe at that time.

Q Doctor James Thorpe.

Do your records reflect whether or not Doctor James Thorpe visited the Crossroads Residential Treatment Center during the month of March, 1971?

A No, he did not. He merely consulted with the staff.

Q He consulted with the staff?

A Right.

Q He did not consult with the residents?

A No.

Q Does he not consult from time to time with any of the residents?

A No, our consultant psychiatrist still consults with only the staff; sees patients as they are staffed, if he deems that it would be advisable.

Q When you say he sees patients —

A This would be —

Q Do you mean that on occasion staff requests that he interview residents of the treatment center?

A If we feel that their behavior is so bizarre that this may be a more serious problem than we can cope with.

Q Now who was the consulting psychologist in March of 1971?

A Howard Weinstein.

Q And do your records reflect that this doctor — is it doctor or —

A Doctor.

Q — Doctor Weinstein visited the treatment facility, the residential facility, during the month of March, 1971?

A I would have no record. I am not certain about March but he did —

Q Your records — you don't have records that would show one way or the other?

A Right.

Q Does your own memory, your own recollection, tell you that he did visit the treatment facility during the month of March, 1971?

A I can't be sure of that. He was involved for a time with some of the therapy groups there. I can't be sure of the dates.

Q If I told you that the petitioner had testified that to his knowledge, during the time that he was there in March of 1971 he never saw a psychologist or a psychiatrist visit the treatment facility,

would you say that that could be a true statement?

A It could be.

Q Now at the time, March of '71, who was the Director of the residence?

A Our first Director was Joe Schott.

Q Joe Schott?

A Yes.

THE COURT: Was it Joe or Jack?

THE WITNESS: Joe.

THE COURT: Joe.

MR. DICKSON: S-h-o-t-t-, I believe.

THE WITNESS: S-c-h-o-t-t.

BY MR. DICKSON:

Q And can you tell the Court please what Mr. Schott's qualifications were as Director, how was he selected or based on what criteria?

A He had been working with RAP, Incorporated in the District and was recommended to me at that time by the Director of Second Genesis.

Q Did he have educational or professional background?

A No, he had had what most ex-addicts who had been through it, similar treatment himself.

Q I see. And do you know when he had been through such a

program?

A I am not sure of the dates.

Q You don't know then the length of the program that he went through?

A No, it was at Eagleville Hospital. And would say this would have been a much shorter term program, as it still is now, than would be, you know, in a therapeutic community.

Q Was it Mr. Schott who, as Director, actually resided in the facility?

A He resided at that time, yes.

Q Did there come a time when he did not reside there?

A Only after he resigned. He resided there, I believe it was in December of '71.

Q Now in March of '71, it is your testimony that the program was conceived and instituted?

A Pardon me?

Q Instituted in March of '71?

A Yes.

Q At that time, if you will please, can you describe the kind of problems which existed for you as a Coordinator in getting the program on its feet? I am asking you to describe for us such problems as budgetary problems, as staffing problems and intake problems and such, as existed at the program's inception.

A Actually, I can't address myself to any of those problems. We were given the budget. We had the physical facility. Our intake was done at the clinic. I would say that the only problem we had was that the house had been vandalized prior to our moving in there. And there was some work involved in putting it back together in good physical repair.

Q And who was it that did the repair work on the facility?

A Some of the residents, plus some of the maintainence people who had to take care of the more complex work, such as the electric wiring, plumbing.

Q During the time that this repair work was going on, that was in March of '71?

A Yes.

Q When the program first began?

A Right.

Q How many residents were in that facility, do you recall?

A I can't remember the exact number. But, you know, it would be few. It would take quite awhile to work up —

Q Perhaps two or three or three or four?

A Somewhere around there.

Q And these residents were called upon to do some painting and cleaning out, broken window replacements and such jobs?

A As they still are.

Q During the course of time that this repair work was being performed by the residents, were they also required to participate in any sort of therapeutic program?

A Three times a week, they had group therapy.

Q And what did that group therapy consist of at that time? Was there a professional person present during those therapy sessions?

A No, and this would be not true in any therapeutic community.

Q Were you present during those therapy sessions?

A No.

Q So I assume that the same situation is true today, that the group therapy goes on several times a week?

A Right.

Q And there are no professional psychiatrists or psychologists present during these sessions?

A Again, we are hung up on semantics. I look upon some ex-addicts who go through a treatment program to be very professional in their work.

Q Well, what I meant was no psychiatrist.

A No, no psychiatrist or psychologist.

Q Professional credentials in terms of background, education and training.

A Right. No, they only work in a supervisory capacity.

Q Now, Mrs. Scrafford, you testified that you don't know of your own personal knowledge whether the residents of the facility in March of '71 were permitted to use the telephone for contact with the outside world. If I told you that the petitioner's testimony at an earlier hearing was that they were not permitted to contact anyone outside the residential facility by telephone, would you agree that could be true?

A That could be. Traditionally — and I will say this still exists and it would in a psychiatric hospital — that there would be banned on outside contact until the client is thoroughly evaluated.

Q Now who was present at the treatment facility in March of '71 who was qualified to conduct an evaluation of the residents there at the time?

A No one was present there. We used the Fairfax-Falls Church Mental Health Center in our psychiatric evaluations which would be scheduled after the civil commitment. And we had a private physician who did our physical examinations.

Q These examinations were conducted, as you say, subsequent to commitment?

A Right.

Q Now would you please describe for us what constitutes commitment under this program?

A All right, this existed at that time. We no longer have what we call a NARA in-patient contract because that's being phased out. We had a NARA contract for in-patient treatment. In order to get this, you had to petition the Court, the Federal Court, that that patient be committed to the Narcotic Addicts Rehabilitation Program. Before we could do that, we had to get clearance from the committing Court that there would be no outstanding petitions against this client. This would be known as a letter of consent. Once we got that, we could schedule them in Court where they would go through the commitment to the program; first for 30-day evaluation and this would be after — I mean include — the examination psychiatric.

If the psychiatrist and the physician found this person to be an addict within the meaning of the law, he would then be committed to the program for three years.

Q Now can you tell the Court please, Mrs. Scrafford, why this procedure was not followed in the case of John Adams Hayes?

A I only have my records to go by that we received the letter of consent on December 29th, which means we would not have scheduled it at the time, or prior to that date. According to my records, John left Crossroads on December 28th.

Q I believe the record also reflects, Mrs. Scrafford, that he was first committed to your program sometime in March of 1971. He was released from the penitentiary in February of '71 and reported

here to parole officials, probation officials, here in Arlington County.

A Yes.

Q Now is there any explanation in your personal knowledge or disclosed by your records which would reflect any reason why he wasn't properly committed to the NARA Program shortly after February, 1971?

A We did not receive a contract until April 21, 1971.

THE COURT: That would be a contract with the Federal authority administering the NARA Program?

THE WITNESS: Right. The negotiations had been in but we did not receive the contract until April 21.

BY MR. DICKSON:

Q Now does this contract provide monies to pay the costs of the psychiatric and medical examinations you spoke of?

A It's a 100 percent cost reimbursable program.

Q So that prior to your contract with NARA, you had no funding for the purpose of getting the psychiatric or medical examinations performed on the residents there?

A Yes, we had some limited money through Criminal Justice; but this would be for those, you know, that we decided were in urgent need of that. It was money that we used very judiciously. If we knew someone was going to be committed to NARA, we would hold

off at that time until the commitment went through.

Q Now in the course of intake procedures, Mrs. Scrafford, has there been any change in intake procedures since March of 1971 until today?

A Only that we have more people doing intake.

Q Well, do you receive or intake residents into your treatment facility from all jurisdictions or any jurisdiction other than from Fairfax County?

A Our policy, you know, is only Fairfax County. But because we do have a Criminal Justice grant which is a regional grant, we will accept clients from any other jurisdiction if that jurisdiction does not have a drug program in Northern Virginia.

Q Now since March of '71, there have been additional drug programs instituted in Northern Virginia. Is that not true?

A Right.

Q In March of '71, had you any working relationship with any program in the County of Arlington, Virginia?

A We took residents from Arlington as referred by Mr. Geib; yes, for residential care.

Q Now did you refer, in March of '71, any Fairfax residents to the Arlington program?

A I can't remember. There would be no residential program at that time.

Q There was none in Arlington?

A No, no, not in March of '71.

Q Now there is such a program in Arlington at this point in time —

A Right.

Q — is that not correct?

A Yes.

Q And one in the City of Alexandria?

A Right.

Q And one in the County of Fairfax?

A Right.

Q And are there others in the Northern Virginia area?

A No, only these three.

Q Those three.

Now would the institution of the additional residential treatment center in Arlington and subsequent to the beginning of 1972, I am not sure when the Arlington program was instituted.

A I believe it was June of '72, I think.

Q Now have these three facilities worked out inter-jurisdictional arrangements under which you can refer for residential treatment across jurisdictional lines?

A Yes.

Q And so you are operating on more of a regional basis today

than you could have operated in '71 when you didn't have as many facilities?

A Right.

Q Now in the process of making a selection as to which program Arlington, Alexandria or Fairfax. -- I withdraw the question.

I want to ask an additional question first. Do you ever refer for treatment Virginia residents to other States or other programs in other parts of the Country?

MR. WELLS: Your Honor, I have borne with all these questions and I am just having difficulty in seeing how they are at all relevant to the petitioner in this case.

THE COURT: How is it relevant whether or not they transfer them to other States?

MR. DICKSON: Well, Your Honor, I am trying to show through this course of questioning that today, but not in 1971, there are more alternatives for treatment and consequently individuals are referred for treatment to a variety of programs, many of which were not available in 1971; the consequence of which is that their procedure now allows them to select different treatment centers based on different concepts of treatment for different individuals who have different kinds of problems.

The Court might recall in the last hearing I made this point emphatically, that what we were doing in Northern Virginia just

a couple of years ago was trying to fit a three-fingered glove on a man with five fingers.— all people under just one program.

THE COURT: Wouldn't the Attorney General concede that it's better today than it was then?

MR. WELLS: Your Honor, I would be more than glad to stipulate that the facility is better today than it was in '72, if that's what you're trying to get at.

THE COURT: I assume that is the sole purpose of this.

MR. DICKSON: No, Your Honor, it's not solely my purpose to prove that this facility is better today than it was then, but that the total program and the options of the total program — not just in Virginia but their options include out-of-state facilities on occasion for more selective individualized treatment of their referrals.

MR. WELLS: Well, if I could ask one question of the witness, I may be able to stipulate that. If I may have your permission.

MR. DICKSON: Yes.

BY MR. WELLS:

Q Is what he just finished saying true?

A Not totally accurate. The only thing that exists now that didn't then is Prelude. We had the option of Second Genesis and we have for a long time before we became better established used

Odyssey House in New York. We refer to Psychiatric Institute in the District. I think there have been any number of modalities that were available. Prelude is now available to us and it was not at that time.

THE COURT: All right, does that answer it all right?

MR. DICKSON: That concludes that line of questioning, Your Honor.

BY MR. DICKSON:

Q Mrs. Scrafford, you testified that one of the normal features of the first few days or weeks of treatment in the traditional therapeutic community, such as Crossroads a self-help community so described, was to assign duties such as K.P.?—

A Right.—

Q — to the residents?

Now was it also part of the therapeutic program to carry on a course of conduct which might be described as harassment of the residents by the people in the residence? We heard testimony — let me tell you that we heard testimony from the petitioner that he was assigned the duty of washing the dishes daily, and that he occasionally or frequently was interrupted at 3:00 o'clock in the morning from his slumber and required to go back into the kitchen where his total clean-up job had been destroyed with flour dumped on the floor; and was then required to start all over again in the

middle of the night the whole clean-up process.

So that my question is was that description of conduct the normal in a therapeutic community?

A No.

Q That kind of harassment would not be normal?

A I would not be familiar with it, you know, nor would approve of it.

Q Were there any steps, we are again talking about March of '71, were there any steps taken on admission or acceptance of the resident to begin the treatment or was he simply assigned duties? You testified that the examination didn't occur until after they had been committed.

A Right.

Q Prior to the commitment, did your program do —

A Right.

Q — otherwise?

A Right. Group therapy would be three times a week. I understand the normal schedule of a day in any therapeutic community — and this is the way it was instituted — would be the work day, a morning meeting which generally discussed current topics or whatever would be primarily interested. There would be group meetings three times a week. There would be verbal reprimands which would be called "hair cuts". There would be recreation.

Weekends would be open for such activities as could be planned — going to the theater, going to the movies, outings, going to the beach and so forth.

Q Did all of these things occur from the beginning of the program?

A No — well, I know the meetings, group meetings, you know, were there three times a week at the beginning.

Q How much of this program which you have just described was actually in effect in March of 1971?

A I think, you know, again if you are saying the first day I think certain work duties were there, plus the group therapy. This would be, you know, ongoing in any program, even if the facility wasn't physically up to par.

Q And as the program began to roll forward —

A There would be more in the way of recreation available, right.

Q Do you know of your own knowledge, or do your records reflect, how many meetings this petitioner was brought into during the time that he was there?

A No, we have no records other than we know that a group meeting happens three times a week and it would be assumed that every resident would be participating.

Q That is an assumption that you have made —

A Right.

Q — because that is a program you have laid out.

A Right.

Q But you can't testify as to whether this petitioner was present —

A No.

Q — at those meetings; or whether he was requested to be present?

A No.

Q If he said that he had attended none, would you say that that could be correct?

A I'd say unlikely, but I couldn't argue it. I have no proof to the contrary.

Q Now during your intake procedures, according to your testimony, as a part of intake there is no psychiatric or medical evaluation made?

A Right.

Q That is only made after commitment which would be six or eight weeks away in 1971?

A Right.

Q Today it's done on a weekly basis under the —

A For those who go into NARA, we have a program for those under 18 that do not. They still have to wait. We do not do a psychiatric evaluation on every client. I think the counsellors are

sensitive enough to know when it would be necessary. And our psychiatrist, as the case is presented to him — you know — with the total family history would make that —

Q That is today?

A Right.

Q But in '71, it is your testimony — if I am not incorrect — that no psychiatric or medical evaluation was made until after commitment.

A For those who were going to be committed.

Q Right.

So, what did your intake procedure consist of?

A Just simply the vital information, plus the short social history.

Q And upon whose shoulders rested the decision whether to accept or to refuse to intake a certain resident?

A This would be done at a staff meeting with our entire staff and our psychologist.

Q Now was that done in the case of Mr. Hayes, the petitioner?

A I would assume, but again, you know, unless I had the staff -- we do have records of that. And I would have to look back to see what date he was staffed.

Q Could it be true that that was not done prior to intake?

A It would be most unusual.

Q Well, he was one of the first to be accepted. He and two others were the very first residents. Would that help your recollection?

A Right. I think I remember now. I received all the information about John from Second Genesis. They referred him to us because he was a Fairfax County resident and they deemed that he was appropriate for their facility. And we would go along with their recommendation. That I remember.

Q BUt they referred him to Crossroads because of the jurisdictional —

A Right.

Q — matter.

He was a Fairfax resident, therefore, it was a Fairfax facility?

A It was more than jurisdictional. We each have a NARA contract. Our contract covers all residents in Fairfax County. Second Genesis' covers all residents in Northern Virginia, excluding Fairfax County. So by our Federal contract, he would have to come to Crossroads.

Q What steps, if any, were taken back in 1971 — March through the end of the year -- by way of precautions to see that people just didn't walk away from the facility?

A It's not a lock-up facility. Anyone may leave who does

not want to stay.

Q This is true regardless of the degree of their addiction?

A We don't take anyone in who is physically addicted. They would have to be detoxified first.

Q And how do you come to know whether or not a person has been detoxified?

A We have to do that on the history and his physical condition. First of all, you know, symptoms of withdrawal would start if he were addicted and we would take him to the hospital. We have a standing arrangement with the hospital to use their detoxification unit.

Q It was your testimony that in '71 you were dealing with a backlog situation and there was a good deal of delay in getting commitments and letters of consent, and then the funding to provide the medical and psychiatric treatment provided by the NARA Program?

A The backlog for the commitments, yes.

Q And is it fair to state that that backlog continued throughout the course of 1971?

A I can't be sure of the date. At one time during that year, the Federal Court did get a second judge. And as soon as that was done, we were able to get commitments every week.

Q During the course of this delay that was apparently existing during that time, the six or eight weeks as you described it in '71,

what kind of arrangement or what kind of treatment or what kind of program did exist at that time for those residents who appeared to be having problems, or appeared to be shaky as a result of their drug use? What was done at that time to see to it that they were provided the necessary counselling and medical treatment?

A It was always available for those who needed it. As I said before, the medical examination and the psychiatric evaluation would simply be, you know, an evaluation process. If someone became physically ill or showed any physical distress at all we do have a house physician who is available that they would be taken to. In fact, not too far — at that time, I think we —

Q Excuse me, who was the resident to complain to if he had some ailment?

A To the Director of the house who was living there.

Q And at that time that was Joe Schott?

A Right. And I do have records of many trips taken to the physician who was not far from there. I don't remember if John would be one of them. But we had a contract with Doctor Lieberman who was not too far from the house. And no resident was ever denied medical treatment.

Q Well, was this resident ever given any medical treatment?

A I don't know. I would have to check the records back there. According to his record here, I don't see any — you know — physical

complaints whatsoever.

Q If he had a physical complaint, to whom would he have communicated it, to Joe Schott?

A First to Mr. Schott.

Q If he had an emotional problem, to whom would he communicate that?

A To Mr. Schott.

Q Is it possible that during March or December of 1971, if a resident had a problem he would be directed simply to bring it up at the group therapy session?

A That was often done, yes.

Q Now at those sessions, you testified there is no medical doctor present?

A Right.

Q And there is no psychiatric or psychological professional present?

A Right, nor would there be at any therapeutic community.

MR. DICKSON: That is all I have, Your Honor.

THE COURT: Anything further from the Attorney General?

REDIRECT EXAMINATION

BY MR. WELLS:

Q I am confused on one thing. I don't know this. Why wouldn't you have a psychiatrist in a group session?

A It's just generally not part of the therapeutic community concept. These are self-help groups. I don't know that you — in fact, I can't even — the only precedent that I can tell you is Doctor Judy Densen Gerber, the psychiatrist who is head of Odyssey House. No psychiatrist attends the group therapy sessions there. They are a self-help session, directed by people who have gone through the program.

Q All right.

Now this last additional question. I believe you testified that you received your contract in April of 1971?

A Right.

Q Why would you have began taking people into the residence in March of '71 in view of the fact that you didn't have a contract until the time after, that being April?

A Let me say that we did have the funds for the house and for treatment as outlined in our Criminal Justice grant. When we began to get the NARA contract, we decided to use, to put those 18 and over under NARA in order to get additional funding. But there was funding available. This was just an added contract.

MR. WELLS: All right, I have no further questions, Your Honor.

THE COURT: Mrs. Scrafford, I wanted to ask you about the letter that you received from Judge Russell, the letter of consent.

I believe you testified it arrived on the 29th, was it, of December?

THE WITNESS: I believe it was dated on the 29th.

THE COURT: Yes, the 29th of December, 1971. Had the petitioner remained at the house, what would have been the next step after you received this letter?

THE WITNESS: The next step would have been a call to the U.S. Attorney's Office to schedule him for the civil commitment.

THE COURT: All right. Let's assume that the civil commitment went through properly. Would there have come a time where in the routein situation, including his case, that he would have had a psychiatric evaluation?

THE WITNESS: Oh, immediately, within the 30 days following the commitment. By law he must have that psychiatric evaluation to determine whether he should be in the program or not. Yes, that would have had to have been done.

THE COURT: And what has been your experience as to the normal alternatives? I know that he can remain in the program if that's indicated. But suppose it's not indicated, then where would he be sent? Would he come back to the committing court or to the Federal Court, or who would make the determination where he should go?

THE WITNESS: If the Federal Court -- if during the process of evaluation he would be judged not to be an addict within

the meaning of the law, this would be the only criteria that would exclude him. It would be rare for this to happen because his own history would determine that. But if it should, then the Federal Court would refer him back to the program who, you know, has made the recommendation. Then we in turn would have to notify his probation officer that he was not considered appropriate for our program.

THE COURT: All right, I thank you. You may step down. Call your next witness.

MR. WELLS: Mr. Rollo please.

Whereupon,

Testimony of Joseph A. Rollo, witness for the Respondent. Transcript dated April 10, 1973, filed April 26, 1973, pp. 43-53.

DIRECT EXAMINATION

BY MR. WELLS:

Q For the record, would you state your full name and your present occupation?

A Joseph A. Rollo, and I am a graduate student at Catholic University.

Q What was your occupation in March of 1971?

A I was employed by the Fairfax County Drug Program, as a

counsellor.

Q Did you in that capacity have any relationship with Crossroads Drug Treatment Center?

A Yes, I did.

Q And what was the capacity?

A I was a drug counsellor. I was hired by the program and worked in the capacity at the day care facility or out-patient program and also for a time the in-patient program or residential.

Q Was this all in March of 1971?

A Correct.

Q Did you -- can you state whether or not you lived in the residence at Crossroads in March of 1971?

A I did.

Q Were you in the month of March, 1971 — did you in March of 1971 have occasion to meet or see the petitioner, John Hayes?

A That's correct.

Q Your answer is "yes"?

A Yes.

Q Did you talk with him?

A Yes.

Q On approximately how many occasions did you talk with him?

A Probably around 25.

Q In terms of total time, how much time would you say that you

talked with him?

A It's difficult to say because, as I said, I lived at the facility and therefore a great deal of my time was spent there. Now in the course of an evening, many hours and weeks possibly I spent. I don't know how many total hours though.

Q Did he ever make any complaint to you about his not being treated as he thought he ought to be treated at the center?

A I can't remember that he did specifically. But I am sure that he must have during the time that I was at the facility.

Q Do you recall whether or not he ever complained about the lack of psychiatric treatment specifically?

A I can't say specifically.

Q Can you recall whether or not he ever specifically complained about the need for medical care and the fact that he was not getting it?

A Not specifically.

Q Were you at Crossroads in December of 1971?

A I was in the residential facility. I was employed, I guess, in the out-patient aspect of the program.

Q Did you ever, in that capacity, visit Crossroads?

A Yes.

Q Do you recall whether or not in December of 1971 you saw the petitioner, John Hayes?

A December?

Q Yes, December and at Crossroads.

A Yes.

Q In December of 1971 did you ever have any conversations with him?

A Yes.

Q Would you give the Court an estimate as to the number of conversations you had with him?

A At the facility?

Q Yes.

A Several.

Q Was it more than ten or less than ten?

A Less than.

Q Did you have any conversations with him at anyplace other than the facility?

A Yes.

Q Where were these places?

A The Arlington County Jail and the out-patient facility in Fairfax City.

Q Did he ever make any complaint to you in December of 1971 relative to his treatment at Crossroads?

A Yes.

Q And what complaint, if any, did he make?

A In the Arlington County Jail we spoke, I believe, twice about his inability initially to procure any treatment. I guess that would be back in March of 1971.

He told me the problems that he had encountered and why he felt he should be allowed again to reenter the residential facility again and why he thought he could do better and what problems he had encountered originally in the residence facility.

Q When you talked with him that time, was that when he was trying to get back in, in December of 1971?

A Yes, sir.

Q Well then, is your testimony to the effect that he did have complaints about the lack of treatment in March of 1971?

A In December he had complaints about the treatment in March.

Q But at the same time, he wanted to get into the program in December of 1971?

A Correct.

Q How much time on a normal day would you spend at Crossroads at the residence in December of 1971?

A Well, I slept there. So excluding, say eight hours for sleep, probably about four or five hours.

Q Did you ever see the petitioner being harassed or what most people might describe as being hassled?

A You or I describe as being hassled?

Q As you describe as hassled.

A Yes.

Q What specifically did you point to as falling within that category?

A I suppose that there were times when he was hassled, reprimanded, whatever, by the other residents and by the Director or possibly by myself for incidents of, say not cleaning the kitchen properly, leaving his clothes and simple things like that.

Q All right, can you give any explanation as to why there would be harassment or why there would be this hassling?

A You want a theoretical background? Do you want an explanation as to why it happened there or it happens?

THE COURT: We want it there, don't you?

MR. WELLS: Why it happened there.

THE WITNESS: I imagine this is part of the concept of the therapeutic community.

MR. DICKSON: Your Honor, I am going to object to his imagination.

THE COURT: I don't think he has been qualified as an expert to be qualified to express this kind of an opinion. Sustained.

MR. WELLS: We have no objection to the striking of the

uestion and answer.

BY MR. WELLS:

Q Well, let me ask one last question. Did the petitioner ever complain to you about his treatment at Crossroads while he was at Crossroads in December, 1971?

A I don't think that I can remember specifically one way or the other.

MR. WELLS: No further questions.

THE COURT: Cross examine?

CROSS-EXAMINATION

BY MR. DICKSON:

Q How do you spell your last name?

A R-o-l-l-o.

Q Rollo?

A Rollo.

Q Is it your testimony that you cannot remember specifically whether the petitioner expressed to you during March of 1971 — whether he expressly requested help with regard to some problem such as medical, psychiatric, emotional or whatever? You do remember talking with him, however?

A Yes.

Q Now is it possible that he could have expressed problems such as emotional, psychiatric or medical?

A Could I answer that in more than just a yes or no?

Q I would like to know whether your memory is such that it could be one or the other. You are saying that you can't remember that he did. Can you remember that he did not?

A No.

Q Now do you know of your own personal knowledge whether this petitioner was ever seen by the doctor, or psychiatrist, or the medical physician or the psychologist during the time he was in the facility in March of '71?

A I couldn't say specifically.

Q Do you remember what his duties were during March of '71?

A Basically. Duties at the house probably similar to the other residents, housekeeping. There was some work that needed to be done to move into the facility. There was minor carpentry work, jobs of that nature.

Q At that time in March of '71, what was your function at the residence?

A Well, primarily or originally I was living at the house in order to insure that it wasn't vandalized anymore. I moved to the house sometime in February.

Q Were you a member of the staff of Crossroads?

A Yes.

Q What was your job description?

A Counsellor.

Q You were a counsellor?

A Right.

Q And in March of '71, what training had you had prior to that date which qualified you then to be a counsellor?

A I have a Bachelor of Psychology. I had been previously employed by a Massachusetts drug program for three months in the summer of 1970. And after htat, I worked briefly in Fall River, Massachusetts in their city's drug program. Excuse me, that would be New Bedford, Massachusetts in their drug program. I came to the program in Fairfax in November, 1971 where I was supervised until at least March, the time we are speaking of.

Q And then you went into the out-patient program from the residence?

A I had been originally assigned to out-patient duties as a drug counsellor.

Q Now do you recall a time at Crossroads when two residents who came in at the same time as this petitioner were advanced to the position of counsellors or directors?

A I disagree with that one point because, if my memory serves me correctly, Mr. Hayes and the two other individuals you are speaking of, one left the program after John left. And I don't believe he was there at the time when John came back.

Q How about the other one?

A The other was in, I guess, a position of more responsibility somewhere higher in the hierarchy, than one who had initially come into the program.

Q So in December of '71, that person would have been in a position of authority and control over this resident?

A Right.

MR. DICKSON: The witnesses are not under the rule, Your Honor.

THE COURT: No one asked it.

BY MR. DICKSON:

Q During March and/or December when you were connected with this program on a different basis, especially those two months, but nevertheless connected, from your own memory can you recall a time when during either of these months when a physician or a psychiatrist was on the premises at the residence to treat or be available for any of the residents that might want to talk with him?

A I wouldn't remember specifically.

Q Do you recall a rule that was in effect that residents during 1971, that the residents were not permitted to use the telephone?

A Right.

Q Were they permitted to write letters?

A I believe there was a 30-day ban on both telephone calls and letter writting.

Q So there was no way they could communicate with anyone other than the residents and the Director or the others who lived in the facility?

A No, that's not true. I lived in the facility but I worked at Crossroads, the day care center of the out-patient facility, and I could have been the liaison.

Q If they couldn't use the phone and they couldn't use any other form of communication except to talk to people who were there, then the answer to my question would have been —

A Yes.

Q That's true?

A Right.

Q They would have to rely on you or some other person in the facility to get word out?

A Right.

Q And you can't recall whether you were asked by the petitioner to get such word out at any time during March or December? It's your testimony you can't recall either way?

A Right.

MR. DICKSON: That is all I have, Your Honor.

THE COURT: Any other questions?

Finding of facts and conclusions of law, by Court. Transcript dated April 10, 1973, filed April 26, 1973. pp. 73-76

THE COURT: Gentlemen, I have gone through the three files very carefully. And I find -- and incidentally, they should be made a part of the record if they were not at the original hearing; I frankly forget whether they were or were not. But they will be made now a part of the record in the event that either party appeals from the ruling.

I find in the pre-sentence investigation report of July 10th, 1970 the following language. This is by the probation officer in the summary and evaluation section of the report. It says, "We are in complete agreement with Mr. Mark Fine, Regional Head of the NARA Program, and with a number of drug addicts on the street that have known subject in this case that he has been and is a heroin addict and that his behavior has been related entirely to his drug habit." The record as made by the file and by the evidence shows that on July the 10th, 1970 the petitioner was sentenced to 8 years on a charge of robbery and 8 years on a charge of attempted robbery. Six and a half were suspended in each instance and the defendant was placed on probation for a period of 5 years after his release from the penitentiary. A specific condition of his probation was that he be committed under the Narcotic Addicts Rehabilitation Act for treatment of his drug addiction.

It is further found that he was released from the penitentiary in February, 1971 and that he promptly reported to his probation officer in Arlington, as directed. He entered the Crossroads Program in Fairfax County around mid-March and he left the Crossroads Program on March 25th, approximately one week after his entry. His reasons for leaving, as given in the testimony, were frustration, no counselling, no medical or psychiatric care and harassment.

A show cause order was issued by this Court on July the 1st, 1971 and a bench warrant issued for the defendant to show cause why his probation should not be evoked. This order was entered on the basis of a letter of June 21st, 1971 from James W. Ullrich, Jr. And a hearing was conducted December the 10th, 1971, the defendant and his retained attorney present. Evidence was taken and the Court entered an order reinstating the defendant to probation. I construe that order as a finding that he had not as of that time violated previous terms of his probation. One of the conditions was that he submit to a complete program of narcotic rehabilitation at Crossroads.

The evidence further discloses that he entered the Crossroads Program a second time promptly, and remained there until December 28th when he again left on his own volition, approximately three weeks after his entry. Thereafter he was returned to Arlington County on a fugitive warrant. A court-appointed counsel

was made available to him in the person of Mr. John E. Kilcarr and a hearing on the Commonwealth's motion to revoke probation was held on April 28th. He was found guilty of violation of probation and the suspended sentence of six and a half years was ordered into execution. The contention of the defendant essentially is that he left the Crossroads Program in December of 1971 because of, basically the same reasons as before, harassment.

Evidence before the Court is that he was awakened in the morning, I think he specifically mentioned 3:00 a.m., to redo the kitchen chores that he had previously done. He testified, and there was some corroboration of this, that he received no testing, no psychological guidance, no psychiatric counselling. There was indeed an explanation as to why this was the case. And it may well be that had he remained there that he would have received it. But I am satisfied from the record — and I have to concede that it is close — that I am satisfied from the record that under the circumstances of his being an addict his leaving did not constitute a violation of his probation.

Accordingly, habeas corpus will be granted. And he will be returned to probation, but not for the five years that was previously ordered. I think the evidence in the case indicates the wisdom of a longer probation time. And it will be ordered for the term of eight years from that date, upon the condition that he submit to a complete program of narcotic rehabilitation provided by NARA.

Testimony of John Adams Hayes. Transcript dated April 10, 1972, filed September 12, 1972, pp. 6-11

DIRECT EXAMINATION

BY MR. KILCARR:

Q You heard my opening remarks to the Court, what I told the Court about you leaving Crossway on two occasions after knowing that that would end your suspended sentence. Is that not correct?

A. Yes, sir, it is correct.

Q Would you tell His Honor some of the reasons why you could not function at Crossroads?

A Well, I was there -- the first time I was there, I went into there with two other people. We were the first three to ever go into the program. And when I went back, the two other guys that I went in there with, they were more or less running the program. And one of them, I knew on the street, you know, and he kind of like, I don't know if it was the thing or he wanted to put extra pressure on me to help me or just to see me leave again. But he did that. And I had my job there. It was washing dishes. I

was in dishpans. I stayed in there the whole time I was there. It's the type of job that anybody in the house -- what it is, it's a punishment-type job.

When I went in there, I wasn't going to receive any type of punishment for leaving the first time since it been just a period of time. They were going to give me a chance to start fresh.

They put me in dishpans and they -- when they did this, I kind of felt like it was punishment. But I figured well, I guess I ought to be punished for something, anyway, because I know I did leave so I really didn't mind that too much except I stayed in there. You're only supposed to stay in there a week. I was in there for three weeks, you know. And, like, I washed dishes for about thirty people three times a day and wouldn't get out of there until 9:00 o'clock at night.

After I washed dishes, I'd have to wipe the cabinets down and mop and wax the floor every night. I had to be through at 9:00 because every night they'd have some type of meeting. Usually I'd get out of the meeting at 12:00 and go up to bed.

At 2:00 o'clock in the morning, they come and wake me up in bed and bring me down to the kitchen and

three or four of the coordinators, the people that run the house, they'd be there and they'd give me what is referred to as a haircut. It's a verbal term, like, you know, cussing out, whatever you want to say. And then they'd have the dishes and all the cabinet drawers pulled out and the silverware thrown on the floor and dishes on the floor; everything in the whole kitchen was disorganized and thrown all over the floor. And the sinks -- then they'd take something like flour or something and throw it all over so you'd have to wash everything again.

And then they said the cabinets didn't have the glasses organized. I wouldn't get out until 4:30 in the morning. I had to wash all the dishes over again, then get up at 5:30, 6:00 o'clock. They'd get me up. I had to help the cook start breakfast, which really I wasn't supposed to do because I was in dishpans. Yet they made me do it.

This happened about seven or eight times the whole time I was there. Like, man, I just got to feeling like -- after one week, I figured, well, at the next group encounter meeting I'll ask to get out of the kitchen. I asked and nothing happened. They just left me there.

I just got discouraged one day and I left and I

wasn't gone long. I called up Fairfax and spoke to the probation officer there. I think it was Mr. Smith. I think he suggested that I come back; that he said they already had a warrant out after me and that I should just come and turn myself in.

I know, sitting here now, that's what I should have done. But then to turn myself in to jail, it's something. He said if I turn myself in, I'd probably be able to go back to Crossroads. But, man, I just didn't believe him so I thought if I turned myself in, it wouldn' be nothing -- just turn myself in and I'd be sent on down the road.

THE COURT: How long were you out?

THE WITNESS: I left -- I was sent back to Crossroads December 10 and I left there about, I think, the 29th or 30th. And then I was locked up January 29th.

BY MR. KILCARR:

Q Did you discuss all this with Mr. Johnson at the time you had the interview, Mr. Hayes?

A Yes, sir.

Q Did he explain the program they have here at Prelude?

A Yes, sir. I told Mr. Johnson that if it was the

same thing as Crossroads, there was no sense me even speaking to him about it because I knew I wouldn't be able to make it there.

I told him, like, all this that had happened in January of '70. And, man, ever since then -- first I had to do eighteen months and then after I did that, I was sent to Crossroads. Then I left. I was out on the street The police were looking for me. Then I got locked up.

I stayed in jail three months and was sent to Crossroads. I left again and was out on the street. The police locked me up again and now I'm here.

This whole thing, it's just getting me, man, like --

Q (Interposing) How could you function under the program itself at Crossroads -- not harassment but the program, as far as rehabilitation? Was that helpful to you, John?

A Yes, sir. I mean, the program, I liked the program.

MR. KILCARR: That's all I have, Your Honor.

CROSS EXAMINATION

BY MR. HASSAN:

Q You said all this started in January, 1970?

A Yes, sir.

Q You didn't go into Crossroads, did you, until eptember, 1971?

A I went in Crossroads the first time, March of '71. ut I was locked up in January, '70. I had to do eighteen onths.

Q July, 1970, you were sentenced to Southampton.

A Yes, sir. I had been in jail since January that ear.

Q But this program of which you're complaining, his treatment at Crossroads didn't start in January of 70.

A I said this whole thing started January, 1970.

Q It didn't start until you were sentenced.

Do you feel that a drug treatment program is what ou need?

A Yes, sir, I do.

Statement by Court, transcript dated April 10, 1972, filed September 12, 1972, p.13

Consequently, it is the recommendation of the Commonwealth that he be sent to Southampton to complete the six-and-a-half-year sentence that he performed eighteen months of at Southampton before he started in on this program at Crossroads.

THE COURT: I am inclined to think that is what ought to be done. I have a great deal of doubt that they'd take him back in at Southampton, Mr. Hassan, as he was out of there conditioned on taking their treatment. At that time, they were not offering it. Now they are offering it and he hasn't taken the treatment so he hasn't performed the condition on which they released him from Southampton.

Order Entered July 15, 1970

THE 10th day of July, 1970 came the Commonwealth of Virginia, by its Attorney, the Probation Officer for the Circuit Court of Arlington County, Virginia, the Defendant in custody of the Sheriff and his Retained Attorney, T. Brooke Howard.

IT APPEARING to the Court that the Defendant was previously found "Guilty" of "Attempted Armed Robbery."

WHEREUPON the Defendant was asked if he had read and understood the report and further if he had discussed the report with his Counsel, to all of which the Defendant replied in the affirmative.

THEREUPON the Attorney for the Defendant was asked if he desired to have the Probation Officer or any other witness sworn to testify regarding the matter before the Court to which the Attorney for the Defendant replied in the negative.

WHEREUPON the report of the Probation Officer was filed as a part of the record in this case.

AND IT BEING DEMANDED of the accused if anything for himself he had or knew to say why judgment should not be pronounced against him according to Law, his counsel made a statement to the Court.

WHEREUPON the Court taking into consideration said statement and all of the evidence in the case, the report of the said Probation Officer and argument of counsel, doth ascertain and fix the punishment of the accused to be confinement in the penitentiary of this Commonwealth for a period of eight (8) years and payment of the costs of these proceedings.

IT IS THEREFORE the Judgment of this Court that the said John Adams Hayes be and he hereby is sentenced to be confined in the Penitentiary of this Commonwealth for a period of eight (8) years and pay the costs of these proceedings, the execution of six and one half (6 1/2) years of the said Penitentiary sentence being hereby suspended and the Defendant placed on probation for a period of five (5) years, in custody of the Probation Officer for the Circuit Court of Arlington County, Virginia, following his release from the Penitentiary; a condition of this probation being that the Defendant be committed under the provisions of Section 311 of the Narcotic Addict Rehabilitation Act of 1966 (42 U.S.C. 3421) for treatment of his drug addiction and complete such treatment to the satisfaction of the Court.

IT IS A FURTHER PROVISION that the Probation Officer for the Circuit Court of Arlington County, Virginia arrange for the available treatment under the Narcotic Addict Rehabilitation Act aforesaid during the said five (5) year probationary period, and the Court hereby consents to the foregoing provisions of probation.

Order Entered July 15, 1970

THE 10th day of July, 1970 came the Commonwealth of Virginia, by its Attorney, the Probation Officer for the Circuit Court of Arlington County, Virginia, the Defendant in custody of the Sheriff and his Retained Attorney, T. Brooke Howard.

IT APPEARING to the Court that the Defendant was previously found Guilty of "Armed Robbery."

WHEREUPON the Defendant was asked if he had read and understood the report and further if he had discussed the report with

his counsel, to all of which the Defendant replied in the affirmative.

THEREUPON the Attorney for the Defendant was asked if he desired to have the Probation Officer or any other witness sworn to testify regarding the matter before the Court to which the Attorney for the Defendant replied in the negative.

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WHEREUPON the Court taking into consideration said statement and all of the evidence in the case, the report of the said Probation Officer and argument of counsel, doth ascertain and fix the punishment of the accused to be confinement in the penitentiary of this Commonwealth for a period of eight (8) years and payment of the costs of these proceedings.

IT IS THEREFORE the Judgment of this Court that the said John Adams Hayes be and he hereby is sentenced to be confined in the Penitentiary of this Commonwealth for a period of eight (8) years and pay the costs of these proceedings, the execution of six and one half (6 1/2) years of the said Penitentiary sentence being hereby suspended and the Defendant placed on probation for a period of five (5) years, in custody of the Probation Officer for the Circuit Court of Arlington County, Virginia, following his release from the Penitentiary; a condition of this probation being that the Defendant be committed under the provisions of Section 311 of the Narcotic Addict Rehabilitation Act of 1966 (42 U.S.C. 3421) for treatment of his drug

addiction and complete such treatment to the satisfaction of the Court.

IT IS FURTHER ORDERED by the Court that this case run concurrently with the like sentence imposed in the Circuit Court, Arlington County, Virginia, on July 10, 1970 in case No. C-7257.

IT IS A FURTHER PROVISION that the Probation Officer for the Circuit Court of Arlington County, Virginia arrange for the available treatment under the Narcotic Addict Rehabilitation Act aforesaid during the said five (5) year probationary period, and the Court hereby consents to the foregoing provisions of probation.

Order Entered December 21, 1971

THE 10th day of December, 1971 came the Commonwealth of Virginia, by its Attorney, the Probation Officer for the Circuit Court of Arlington County, Virginia, the Defendant in custody of the Sheriff and his Retained Attorney, T. Brooke Howard.

IT APPEARING to the Court that the Defendant was on the 10th day of July, 1970 sentenced to confinement in the Penitentiary of this Commonwealth for a period of eight (8) years; the execution of six and one half (6 1/2) years of the said penitentiary sentence being thereby suspended and the Defendant placed on probation for a period of five (5) years following his release from the penitentiary, a special condition of the said probation being that the Defendant submit to and complete a specified program of narcotic rehabilitation to the satisfaction of the Court.

WHEREUPON this case came on to be heard on the Commonwealth's motion to revoke the Defendants probation and order the suspended execution of sentence in this case into execution.

UPON CONSIDERATION of the report of the Probation Officer, argument of counsel and other evidence adduced, the Court is of the opinion that the Defendant should be reinstated to probation under the same sentence heretofore pronounced by the Court on the 10th day of July, 1970.

IT IS THEREFORE the Judgment of the Court that the Defendant be and he hereby is re-admitted to probation in custody of the Probation Officer for the Circuit Court of Arlington County, Virginia for a period of five (5) years computed from this date, and conditioned upon his good behavior and subject to the following specific provisions:

(a) That he refrain from the violation of any penal laws and ordinances;

(b) That he live a clean, honest and temperate life;

(c) That he keep away from all undesirable places;

(d) That he keep good company and hours;

(e) That he work regularly and that when out of work he forthwith notify the Probation Officer;

(f) That he will not leave or remain away from the County, City, or Town where he resides (whether within or without the Commonwealth of Virginia) without permission of the said Probation Officer and that he will forthwith notify the said Probation Officer of any intended change of address;

(g) That he will follow the Probation Officer's instruction and advice on such matters as are authorized by law, including recreational and social activities;

(h) That he will report in person at the office of the

Probation Officer in the County of Arlington, Virginia, at least once in every two weeks period and if for any unavoidable reason he is unable to do so, he will communicate with the Probation Officer without delay;

(i) That he will make a written report monthly to the Probation Officer on such written form or forms as the Probation Officer may provide;

(j) That he will permit the Probation Officer to visit his home or any place of business at any time;

(k) That the Defendant pay all Court costs incident to this proceeding under the supervision of the Probation Officer.

(l) That the Defendant submit to and complete the program of narcotic rehabilitation at the Crossroads Drug Treatment Center.

Order Entered December 21, 1971

THE 10th day of December, 1971 came the Commonwealth of Virginia, by its Attorney, the Probation Officer for the Circuit Court of Arlington County, Virginia, the Defendant in custody of the Sheriff and his Retained Attorney, T. Brooke Howard.

IT APPEARING to the Court that the Defendant was on the 10th day of July, 1970 sentenced to confinement in the Penitentiary of this Commonwealth for a period of eight (8) years; the execution of six and one half (6 1/2) years of the said penitentiary sentence being hereby suspended and the Defendant placed on probation for a period of five (5) years following his release from the penitentiary, said

sentence to run concurrently with a like sentence imposed by this Circuit Court on that date in a case styled Commonwealth of Virginia vs. John Adam Hayes, C-7257, a special condition of the said probation being that the Defendant submit to and complete a specified program of narcotic rehabilitation to the satisfaction of the Court.

WHEREUPON this case came on to be heard on the Commonwealth's motion to revoke the Defendant's probation and order the suspended execution of sentence in this case into execution.

UPON CONSIDERATION of the report of the Probation Officer, argument of counsel and other evidence adduced the Court is of the opinion that the Defendant should be reinstated to probation under the same sentence as heretofore pronounced by the Court on the 10th day of July, 1970.

IT IS THEREFORE the Judgment of the Court that the Defendant be and he hereby is re-admitted to probation in custody of the Probation Officer for the Circuit Court of Arlington County, Virginia for a period of five (5) years computed from this date and conditioned upon his good behavior and subject to the same specific provisions as set forth in the Courts order of this date in the case of Commonwealth of Virginia vs. John Adam Hayes, C-7257.

Order Entered May 9, 1972

THE 28th day of April, 1972 came the Commonwealth of Virginia, by its Attorney, the Probation Officer for the Circuit Court, Arlington County, Virginia, the Defendant in custody of the Sheriff and his Court Appointed Attorney, John E. Kilcarr.

IT APPEARING to the Court that the Defendant was heretofore found "Guilty" of "Attempted Armed Robbery" and sentenced to confinement in the Penitentiary of this Commonwealth for a period of eight (8) years; the execution of six and one half (6 1/2) years of the said Penitentiary sentence being suspended and the Defendant placed on probation for a period of five (5) years; a condition of this Probation being that the Defendant be committed under the provisions of Section 311 of the Narcotic Addict Rehabilitation Act of 1966 (42 V.S.C. 3421) for treatment of his drug addiction and complete such treatment to the satisfaction of the Court.

WHEREUPON this case came on to be heard on the motion of the Commonwealth to revoke the Probation of the Defendant, and the suspended execution of sentence in this case be ordered into execution, and was argued by Counsel.

THEREUPON the Court taking into consideration the report of the Probation Officer, argument of Counsel and other evidence adduced is of the opinion that the Defendant has violated the terms of his Probation in that he failed to complete treatment for his drug addiction to the satisfaction of the Court.

IT IS THEREFORE the Judgment of the Court that the Defendant is "Guilty" of violations of the conditions of the suspension of his sentence and of his Probation, and that he be ordered to serve the balance of the penitentiary sentence heretofore imposed in order of the Court entered on July 15, 1970, namely confinement in the Penitentiary of this Commonwealth for a period of six and one half years (6 1/2), and payment of the costs of these proceedings; said sentence to run concurrently with a like sentence imposed in the Circuit Court, Arlington County, Virginia on July 10, 1970 in Case No. C-7256.

Order Entered May 9, 1972

THE 28th day of April, 1972 came the Commonwealth of Virginia, by its Attorney, the Probation Officer for the Circuit Court, Arlington County, Virginia, the Defendant in custody of the Sheriff and his Court Appointed Attorney, John E. Kilcarr.

IT APPEARING to the Court that the Defendant was heretofore found "Guilty" of "Armed Robbery" and sentenced to confinement in the penitentiary of this Commonwealth for a period of eight (8) years; the execution of six and one half (6 1/2) years of the said Penitentiary sentence being suspended and the Defendant placed on probation for a period of five (5) years; a condition of this Probation being that the Defendant be committed under the provisions of Section 311 of the Narcotic Addict Rehabilitation Act of 1966 (42 V.S.C. 3421) for treatment of his drug addiction and complete such treatment to the satisfaction of the Court.

WHEREUPON this case came on to be heard on the motion of the Commonwealth to revoke the Probation of the Defendant, and the suspended execution of sentence in this case be ordered into execution, and was argued by Counsel.

THEREUPON the Court taking into consideration the report of the Probation Officer, argument of Counsel and other evidence adduced is of the opinion that the Defendant has violated the terms of his Probation in that he failed to complete treatment for his drug addiction to the satisfaction of the Court.

IT IS THEREFORE the Judgment of the Court that the Defendant is "Guilty" of violations of the condition of the suspension of his

sentence and of his Probation, and that he be ordered to serve the balance of the penitentiary sentence heretofore imposed in the order of the Court entered on July 15, 1970, namely confinement in the Penitentiary of this Commonwealth for a period of six and one half years (6 1/2) and payment of the costs of these proceedings.

LETTER OF RUSSELL, JUDGE

Dated December 29, 1971

Circuit Court of Arlington County
Virginia

WALTER T. McCARTHY
JUDGE
WILLIAM L. WINSTON
JUDGE
PAUL D. BROWN
JUDGE
CHARLES S. RUSSELL
JUDGE

December 29, 1971

COURT HOUSE
ARLINGTON, VIRGINIA

COPY

Brian P. Gettings, Esq.,
United States Attorney
Eastern District of Virginia
United States Post Office Building
Alexandria, Virginia

Re: John Adam Hayes
Consent of Supervisory Authority
Permitting Commitment under the
Narcotic Addict Rehabilitation
Act of 1966

Dear Mr. Gettings:

John Adam Hayes Appeared before me in the Arlington County Circuit Court on July 10, 1970 and was found guilty of attempted armed robbery. He was sentenced to confinement in the penitentiary for a period of eight years; the execution of six and one-half years was suspended and he was placed on probation for five years (two cases, sentences concurrent) upon the usual terms of probation and upon the additional condition that the defendant be committed to the NARA program and complete such treatment to the satisfaction of the Court. He has requested and is hereby given permission as required by Section 311 of the Narcotic Addict Rehabilitation Act of 1966 (42 USC 3421) to be committed under this Act for treatment of his drug addiction.

I understand and have informed John Adam Hayes that:

1. This consent is a conditional release of the Arlington County Circuit Court's supervision of John Adam Hayes while he is committed to the Surgeon General for examination, treatment or post-hospitalization.

2. The Court will not revoke its consent upon the discovery that the patient has returned to the use of drugs unless there are other compelling reasons to revoke it.

3. The Court recommends the escorted transportation of John Adam Hayes to the examination facility and back to the committed district.

Sincerely yours,

Charles S. Russell
Judge

CSR:mr
cc: T. Brooke Howard, Esq.
Probation Officer, Mr. Joseph A. Rollo

Letter mailed to Mrs. Iola Scrafford, Coordinator Crossroads Program, 4100 Chain Bridge Road Fairfax, Virginia 22030, instead of Brian P. Gettings, Esq., as directed by Mr. Joseph A. Rollo.