

CITY COUNCIL
CITY OF NEW YORK

-----X

TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON HIGHER EDUCATION

-----X

September 26, 2008

Start: 1:10pm

Recess: 2:04pm

HELD AT: Council Chambers
City Hall

B E F O R E:
CHARLES BARRON
Chairperson

COUNCIL MEMBERS:
Tony Avella
Gale A. Brewer
Helen D. Foster
Miguel Martinez
Larry Seabrook

A P P E A R A N C E S (CONTINUED)

Vincent Southerland
Assistant Counsel
NAACP Legal Defense Fund

Bessie Oster
Director of Convention Services
Phoenix House

Evelyn Malave
Legal Assistant
Legal Action Center, National H.I.R.E. Network

Ricardo Martinez
Program Coordinator
College and Community Fellowship Organization

Kim Marie Rodriguez-Loggins
Recipient of Services
College and Community Fellowship Organization

CHAIRPERSON BARRON: Good

afternoon. My name is Councilman Charles Barron. I'm Chair of the Committee on Higher Education and we want to welcome all of you to this hearing. So I want to officially open the hearing; very, very important hearing that we're having today. We'll hear testimony from some very interesting parties.

I just want to acknowledge one of our most consistent and greatest supporters of CUNY here on the Committee with me, Council Member Tony Avella from Queens. And we're going to move forward with this, Tonya Cyrus is our policy analyst and Tracy Udell is our counsel for the Committee. They do all the work to make me appear far more smarter than I really am. So I give all the credit to their research for much of the work that is done.

But today's hearing is extremely important. It's on an issue of those who are convicted or are charged with drug offenses and whether or not they should be able to apply for funding for financial aid. So I'm going to read my opening statement, then we'll hear from some witnesses, then we'll entertain any questions from

1

2

my Committee.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Once again, good afternoon and welcome to today's hearing. This afternoon's hearing examines a New York City Council Resolution calling upon the United States Congress to repeal the provision of the Higher Education Opportunity Act of 2008 that bars students with drug convictions from receiving federal financial aid for college. I might say that this Resolution from the City Council was submitted to our Committee by Council Member Helen Foster from the Bronx and we thank her for her support.

While the provision originally enacted in 1998 was reformed to apply only to offenses committed while a student is in school and receiving federal aid, we still find this law to be unacceptable and contrary to the spirit of the Higher Education Act.

The original Higher Education Act, signed in 1965 was enacted to help create higher education opportunities for lower and middle income families, provide program assistance to small and less developed colleges and utilize college and university resources to help deal with

1 national issues such as poverty and community
2 development. Denying students the opportunity to
3 earn a college degree does nothing to solve our
4 nation's drug and crime problems. In fact,
5 removing the career options that higher education
6 may offer can easily push at risk students into
7 cycles of failure and recidivism.

9 According to the Department of
10 Justice, people with only high school diplomas are
11 12 times more likely to break the law and become
12 incarcerated than college graduates. Denying
13 education to those who need positive options does
14 not make our streets any safer. Furthermore, due
15 to discriminatory enforcement of drug laws, this
16 penalty has a disproportionate impact on people of
17 color. While African Americans comprise just
18 12.3% of the U.S. population and proportionately
19 account for only 13% of drug users, they make up
20 37% of those arrested, 53% of those convicted and
21 67% of those sent to jail for drug offenses.
22 We're 13% of the population, yet we make up 67% of
23 those who are sent to jail for drug offenses.
24 Adding Latinos, people of color count for 22% of
25 all drug users, but 80% of people in prison for

1

2 drug offenses.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Finally, the penalty only hurts students from low income and middle income families who can not afford to pay for college. Sadly, these are the very people whom the originally Higher Education Act intended to assist. It has been 10 years since Congress first passed the Aid Elimination Penalty into law and in that decade, more than 200,000 students have lost federal financial aid due to drug convictions.

The U.S. Department of Education reports that between the years 2000 and 2005, almost 9,000 New Yorkers were denied the financial aid needed to pursue higher education because of the Aid Elimination Penalty. Education is a proven tool in ending the cycle of drug abuse, crime, poverty and incarceration. Removing the current penalty in the Higher Education Opportunity Act will help those who are in most need to have a real opportunity for a better future.

I do want to say; I read a study many years ago called the Imprisoned Generations. It was done by the New York City Anti-

1
2 Incarceration, something like that, I forget the
3 name of the group. Bob Gangi [phonetic] was the
4 head of it. But they said that while 80% of Black
5 youth who committed the same identical drug
6 offensive crime as white youth, 80% of the Black
7 youth get incarcerated and 80% of the white youth
8 get probation - for the same, exact drug related
9 crime. So there is definitely racial
10 discrimination in this and higher education is a
11 way out. With that, I'm going to turn it over to
12 my Council and they'll call on the first
13 witnesses.

14 TRACY UDELL: Vincent Southerland
15 from the NAACP, Bessie Oster from Phoenix House
16 and Evelyn Malave for the Legal Action Center.
17 Please state your names for the record and then
18 you may proceed. I have to swear you in first.
19 You could all raise your right hands. Do you
20 swear or affirm that the testimony you are about
21 to give is, to the best of your knowledge,
22 truthful and accurate?

23 VINCENT SOUTHERLAND: Thank you.
24 My name is Vincent Southerland. I'm here from the
25 NAACP Legal Defense Fund. I'd like to begin by

1
2 thanking you for providing me with the opportunity
3 to testify before you today. I'm an Assistant
4 Counsel to the NAACP Legal Defense and Educational
5 Fund. The Legal Defense Fund, since its founding
6 by Thurgood Marshall in 1940, has engaged in a
7 multi-layer of litigation, advocacy, public
8 education and outreach in an effort to transform
9 the United States' constitutional promise of
10 equality under the law into a concrete reality for
11 African Americans and ultimately all individuals.

12 LDF works to secure the full social
13 and economic integration of all Americans into our
14 society, to ensure social justice and to breakdown
15 the barriers that prevent the most vulnerable
16 among us from realizing full civil and human
17 rights. Education, equal access to primary,
18 secondary and higher education is at the
19 cornerstone of these efforts.

20 54 years ago, the United States
21 Supreme Court spoke to the critical value of
22 education, declaring that education is perhaps the
23 most important function of state and local
24 governments. It is required in the performance of
25 our most basic public responsibilities, even

1
2 service and the armed forces. It is the very
3 foundation of good citizenship. Today, it is the
4 principal instrument in awakening the child's
5 cultural values and preparing him for later
6 professional training and helping him to adjust
7 normally to his environment. In these days it is
8 doubtful that any child may reasonable be expected
9 to succeed in life if he is denied the opportunity
10 of an education.

11 Speaking for the unanimous Court in
12 Brown versus the Board of Education, Chief Justice
13 Earl Warren forever changed the course of our
14 democracy with the stroke of a pen. The
15 trajectory of our nation was shaped by the opening
16 of doors to education.

17 Now we find ourselves engaged in
18 the continuing struggle, a struggle that is
19 involved in some ways and still characterized by
20 our collective efforts to once again open the
21 doors to education. Today, my focus is higher
22 education.

23 Indeed, higher education is the key
24 to success in an increasingly complex and globally
25 interconnected world. The Aid Elimination

1
2 Provision of the Higher Education Act, which bars
3 students with previous drug convictions for
4 receiving financial aid, will impede access to
5 higher education for thousands of students. At a
6 time when our nation is asking how can we help
7 young people to get on a positive and constructive
8 path, the Aid Elimination Penalty slams the door
9 in the face of those who find themselves enmeshed
10 in the criminal justice system with a drug
11 conviction while having once been the recipients
12 of federal financial aid.

13 Who are these students? Well, if
14 the current statistics on crime, arrests and
15 incarceration rates reveal anything, they are
16 overwhelmingly and disproportionately people of
17 color. A look at the raw numbers makes both the
18 over-incarceration trend and the racial
19 disparities clear.

20 Since the early 1970s, America's
21 prison and jail population has risen an alarming
22 rate. A nearly 500% increase in the number of
23 individuals incarcerated has left more than 2.2
24 million people behind bars, of which 900,000 are
25 African American. Data from a 2007 study produced

1
2 by the Sentencing Project tells us that African
3 Americans are incarcerated at a rate at nearly six
4 times that of their white counterparts. Hispanics
5 are incarcerated at a rate nearly double that of
6 whites.

7 The war on drugs accounts for the
8 dramatic increase in the involvement with the
9 criminal justice system. America's war on drugs
10 has ravaged communities, undermined trust in our
11 government and law enforcement officials and
12 created a permanent and persistent underclass of
13 undereducated and unprepared citizens.

14 There has been 1,100% increase in
15 the number of drug offenders behind bars since
16 1980. Against this backdrop, we're faced of drug
17 arrests that have more than tripled in the last 25
18 years, accounting for 1.8 million arrests in 2005.
19 And despite comprising nearly 14% of regular drug
20 users, African Americas are 37% of those arrested
21 for drug offenses and 67% of those in state prison
22 for drug offenses.

23 As of 2006, African Americans were
24 three and a half times more likely to be arrested
25 for a drug offense than whites. When juxtaposed

1
2 with the tremendous disparities and access to
3 opportunities for higher education among people of
4 color, what remains is a system designed to
5 exacerbate an already harsh reality.

6 According to the National Center
7 for Education statistics in the Fall of 2006,
8 African Americans comprised 5.5% of the total
9 number of students enrolled at four year Title IV
10 institutions while white students comprised 30% of
11 those enrolled. The financial burden of attending
12 school serves as a persistent obstacle to
13 enrollment and graduation for all students and for
14 students of color in particular.

15 A vast majority, nearly 75% of all
16 students at public, four-year Title IV
17 institutions were recipients of financial aid. Of
18 those, nearly half received federal grants.
19 Studies serve the financial barriers serve as one
20 of the greatest obstacles of students of color
21 attending post-secondary institutions. Moreover,
22 low income students are more likely to be African
23 American, Hispanic or Asian. And for African
24 American students in particular, as the cost of
25 college education rises, the financial strain

1

2 creates a greater dependence upon financial aid.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Even after African American students are able to overcome the financial stresses of initial enrollment, the challenges of obtaining a degree remain tremendous. A near 36% of all African American students who enrolled in four-year colleges in 1995-1996 attained a Bachelors Degree within five years, as compared to 58% of white students. And during the 2002-2003 school year, approximately 67% of all degrees conferred went to white students while approximately 22% went to students of color.

Clearly a statutory provision that aids to eliminate aid to those students caught in the criminal justice system is nothing short of disastrous, particularly for African Americans and other students of color. The Higher Education Act's Elimination Penalty turns back the clock on the promise of higher educational opportunities for all. And it does so by allowing an individual's one time status as a drug offender to define, in the most absolute terms, a life that may otherwise be filled with promise and potential.

1
2 Even beyond the statistics, which
3 highlight the overwhelming impact this nation's
4 war on drugs among African Americans and other
5 people of color, the forced and consequences of
6 the law betray both common sense and this nation's
7 Constitutional promise.

8 First and perhaps most startling is
9 the message conveyed to those who have had
10 interaction with the criminal justice system
11 through drug convictions that education shall be
12 foreclosed as a means for self improvement. While
13 punishment and deterrence are functions of the
14 criminal justice system, rehabilitation is also an
15 important and often overriding goal.

16 The prevalence of drug courts,
17 first time offender programs and other
18 alternatives to incarceration are clear indicators
19 of the emphasis placed on a rehabilitative
20 function of involvement with the criminal justice
21 system. Yet rather than providing individuals
22 with the necessary tools to end their addiction to
23 illegal substances and their entanglement with the
24 criminal justice system, or to learn from past
25 mistakes and improve their lives, the government's

1
2 current policy compounds the problem, it works to
3 entrench an undereducated class while reinforcing
4 the very same inadequate social conditions and
5 lack of opportunities that may have pulled a drug
6 offender into the criminal justice system in the
7 first place.

8 It eliminates a path of
9 rehabilitation, employment prospects, economic
10 opportunities and social networks, which not only
11 foster individual growth but allows for a more
12 full and active participation in our democracy.
13 In the end, this message will be most heavily
14 received by the African American community, a
15 community in which rates of arrest, conviction and
16 incarceration for drug offenses are
17 disproportionately the highest and among whose
18 members in need of federal financial aid for
19 higher education remains the greatest.

20 I come to you as a public defender
21 and I came to LDF as a public defender. And I was
22 a public defender in the South Bronx and I saw a
23 lot of my clients who wanted to go to college and
24 who were caught up in the criminal justice system,
25 had drug convictions and were unable to apply for

1
2 federal financial aid. And didn't think they had
3 a chance. This basically shuts the door on that
4 entire opportunity of rehabilitation. It tells
5 them that you're not worth the risk, you're not
6 worth the time, you're not worth a college
7 education.

8 The Provision also fails to
9 differentiate between classes of drug offenses or
10 even the nature of the controlled substances
11 involved. Despite there being a distinction
12 between sale and possession of drugs and the
13 number of drug convictions one may have, the same
14 can not be said of the nature of those involved.

15 So if a student is convicted of a
16 misdemeanor for possessing a marijuana cigarette,
17 which in New York City by the way is a violation,
18 a non-criminal infraction, something that does not
19 even give you a criminal record, will be treated
20 the same as a person who is convicted of
21 possession of a pound of crack/cocaine. A student
22 who sells marijuana to a neighbor, again, a
23 misdemeanor, again, in some cases a non-criminal
24 violation, an infraction, is treated the same as
25 someone who sells heroine or crack/cocaine to

1

2

another person in the neighborhood.

3

4

5

6

7

8

While the criminal law makes a distinction based on the severity, nature and characteristics of a drug offense, for some inexplicable reason the federal government fails to do so in determining basic eligibility for financial aid.

9

10

11

12

13

14

15

16

17

In the end, we must continue to call upon the United States Congress to repeal the Higher Education Act's Aid Elimination Penalty. The continued practice of stripping individuals of financial aid for drug convictions not only runs counter common sense but also offends a very promise embodied by the spirit of our Constitution, the notion that educational opportunities should truly be open to all.

18

19

20

21

22

23

24

25

Its disproportionate impact on African Americans and other students of color, its failure to recognize the redemption quality of education and the lack of foresight and common sense tied to the Aid Elimination Penalty require nothing less than our full attention and continued commitment to our struggle for equal access to higher education. Thank you.

2 BESSIE OSTER: Good afternoon
3 ladies and gentlemen. My name is Bessie Oster. I
4 am the Director of Convention Services at Phoenix
5 House. I'm here today to whole heartedly endorse
6 the City Council's Resolution 858 to repeal the
7 Higher Education Act of 1965 barring students with
8 drug convictions from receiving federal financial
9 aid.

10 As you may know, Phoenix House is
11 one of the largest non-profits substance abuse
12 prevention and treatment organizations in the
13 country. We treat men, women adolescents. We do
14 prevention in schools and communities. And in New
15 York City, we treat about 2,000 every day.

16 When it comes to treating
17 adolescents, Phoenix House is nationally
18 recognized for innovative and effective
19 programming. In New York City, we operate
20 adolescent programs across the continuum of care,
21 from school and community based preventions to
22 residential treatment academies.

23 Last year we began providing
24 continuing care to support youth as they make the
25 transition back home after completing treatment at

1
2 our residential academies. I'm very pleased to
3 report that our continuing care program has a
4 college counseling component. This fall, for the
5 first time, we're helping our program graduates
6 enroll in college.

7 A year ago, for many of the kids
8 who are enrolled in our residential academy and in
9 our continuing care program, most people wouldn't
10 have considered these kids college material. Many
11 of the kids enrolled at the Phoenix academy have
12 grown up and some of New York's toughest
13 neighborhoods, Brownsville, East Harlem and the
14 South Bronx.

15 They come to Phoenix House for the
16 multitude of needs, dependence on drugs, mental
17 health issues, lack of family support, gang
18 involvement and learning disorders. And without
19 guidance, resources and opportunities, these teens
20 quickly become entangled in the criminal justice
21 system and begin a downward spiral to perpetual
22 poverty and life devoid of achievable
23 opportunities. But these kids can get better.
24 Given the right opportunities, they can break the
25 cycles of poverty and re-enter society stronger

1

2

than ever.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Just yesterday afternoon I spoke to a young man names John who completed high school at Phoenix Academy and is now a freshman at Kingsboro Community College. He described how higher education has brought him to a better way of living, he believed that such opportunities give hope to his peers at Phoenix house and offers a way to re-enter society, such that young men and women can no longer feel like outsiders.

Sadly, this law, which targets young people with drug convictions, was probably intended to demonstrate a get serious attitude towards drugs, but in effect only limits those who most need educational opportunities. Basically, this law keeps oppressed young people down by limit opportunities to transcend the reality in which they grew up.

In the field of social services, there is no silver bullet; it can be hard to pinpoint exactly which interventions work most effectively. Though when it comes to education, there are high correlations with a myriad of positive outcomes, including employment status,

1
2 earning potential, health and even marital status.

3 Education is the ultimate
4 opportunity. It has the capacity to equalize all
5 members of society across gender, race and
6 economic status. It is the initial stepping stone
7 through which many other positive life outcomes
8 fall into place. Indeed, adults with college
9 degrees are at least three times less likely to be
10 unemployed than adults with a high school
11 education or less.

12 More education leads to more money.
13 Individuals with at least some post-secondary
14 education earn on average almost two-thirds more
15 than high school graduates. Study after study
16 shows that the more educated an individual is, the
17 lower their cost to society. Drop outs are more
18 likely than their peers who graduate to be
19 unemployed, live in poverty, receive public
20 assistance, be in prison, be unhealthy, divorced
21 and single parents of children who drop out of
22 school themselves. Our communities and nation
23 also suffer from the drop out epidemic due to loss
24 of productive workers and the high cost associated
25 with an increasing incarceration, health care and

1

2 social services.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Hopefully my message is clear: the cost to society is much higher if we don't provide educational opportunities for financial aid for those who need it most, including students with drug convictions.

Please consider supporting Resolution 858 so that organizations like Phoenix House can help some of the City's most disenfranchised young people become part of an educated work force that gives back to the City. Thank you.

EVELYN MALAVE: Hello. For the record my name Evelyn Malave and I am a legal assistant representing the Legal Action Center and its project the National H.I.R.E. Network. I want to thank you Council Members for inviting us here today.

The Legal Action Center is the only non-profit law and policy organization in the country whose sole mission is to fight discrimination against people with past drug and alcohol histories, criminal records and HIV/AIDS. Its project, The National H.I.R.E. Network,

1
2 H.I.R.E. stands for Helping Individuals with
3 criminal records Re-enter through Employment, is a
4 national clearinghouse of information, a technical
5 assistance provide and an advocate for polices
6 that increase and improve employment opportunities
7 for people with criminal records.

8 One of our core issues is
9 increasing access to higher education for people
10 with criminal records. Thus, I'm delighted to be
11 here today to share our thoughts with you.

12 Above all, we want to express our
13 support of the Council's recognition of this
14 important issue and we hope to serve as a resource
15 to the Council as it continues to look at what it
16 can do to increase access to higher education for
17 every person in our society.

18 As you know, the latest update on
19 the Higher Education Act in 2006 has repealed part
20 of the 1998 amendments that denied and delayed aid
21 to students with previous drug convictions, drug
22 convictions that they received while they were not
23 receiving aid. However, this is really only a
24 partial solution because people who are convicted
25 of drug offenses while receiving aid may still

1
2 legally have their aid denied or delayed.

3 Additionally, an estimated tens of thousands of
4 students who have been made eligible by the 2006
5 changes do not know it.

6 And so, while we applaud this
7 partial victory for people with criminal
8 histories, we believe that this issue still
9 requires our attention and efforts.

10 First of all, for access to federal
11 financial aid to be truly equal, the Higher
12 Education Act must be amended so that it no longer
13 denies or delays aid to anybody on the basis of
14 their conviction history. Secondly, we must take
15 steps to ensure that positive changes to the law
16 work in action as well as on paper. I would like
17 to list for you our reasons why we believe we
18 still need to take action to push for this law to
19 be amended, so the base of our support of
20 Resolution 858.

21 First of all, the law manufacturers
22 disparate impact on African Americans, Latinos and
23 other racial minorities. It thrusts unresolved
24 racial disparities in our criminal justice system
25 such as racial profiling, on to the higher

1
2 education financing system. Hence,
3 disproportionately denying educational
4 opportunities to people of color.

5 African Americans and Latinos are
6 more likely to be convicted of possession of
7 drugs, although studies have consistently shown
8 that their rates of substance abuse are equal to
9 the rates of substance abuse of Caucasians. For
10 example, the Substance Abuse and Mental Health
11 Services Administration's 2007 National Survey on
12 Drug Use and Health show that for rates of
13 substance abuse among Caucasians for persons 12 or
14 over was 9.4%, African Americans at 8.5% and
15 Latinos had an 8.3% rate of substance abuse. But
16 according to the Bureau of Justice Statistics,
17 45.1% of the state prison inmates serving time for
18 a drug offense are African American, while only
19 26.4% were Caucasian and 20.8% were Latino.

20 This law also effectively adds on a
21 punishment for poor and middle class people with
22 drug convictions, while people who can afford to
23 pay for college without any financial aid are not
24 affected at all. In the criminal justice itself,
25 adds on another layer of disparity in this regard.

1
2 Poor and middle class people are more likely to be
3 convicted of drug offenses once they are arrested
4 because they are less likely to be effectively
5 represented by Council.

6 Advocates of the current law may
7 argue that it merely delays a student's access to
8 financial aid because there is indeed a provision
9 that says students may regain access by
10 satisfactorily completing a drug rehabilitation
11 program that meets the laws requirements.

12 However, that is much easier said than done.
13 Again, another SAMHSA study reported that only 10%
14 of the individuals who needed drug or alcohol
15 treatment in 2007 received care. These are not
16 odds that we can rely on if we are to support
17 legislation that requires people to seek treatment
18 in order to access their education.

19 Additionally, I would like to point
20 out that judges already have the power to strip a
21 person of their financial aid benefits if they
22 believe that that case warrants that kind of
23 action. That's just one more reason that this law
24 is excessive and unnecessary.

25 Basically we should be making

1
2 access to higher education easier and not harder.
3 Indeed, as the United States struggles to maintain
4 a competitive edge in the global economy, every
5 stakeholder must have a vested interest in this
6 goal. But what we have now is an excessively
7 punitive and counter productive law that is
8 affecting thousands of would be students with drug
9 convictions and deterring many more of tens of
10 thousands that are actually now eligible for aid.

11 I actually used to, through the
12 Legal Action Center, work at Ryker's Island once a
13 week and I was helping people get their rap
14 sheets, so meeting with people and signing them up
15 so they can get a copy of their rap sheet.
16 Occasionally I would talk to them about what they
17 were planning to do when they got out. One kid
18 said, he was maybe about 18, that he really wanted
19 to go to college. This was this year by the way.
20 He really wanted to go to college but he knew that
21 he couldn't because of the federal financial aid
22 ban. He's actually eligible. I had called my
23 office just to double check and told him. He was
24 very excited but how many more people don't know
25 that they're eligible?

1
2 So not only do we need to advocate
3 for legislation that will not compromise in
4 opening the door for higher education for people
5 with drug histories, we also need to make it clear
6 to the public exactly what the current law says.

7 And so to conclude, our
8 recommendations are in support of Resolution 858,
9 we should amend the Higher Education Act so that
10 it no longer prevents students from accessing
11 federal financial aid on the basis of conviction
12 history.

13 Two, we should initiate a public
14 education campaign. We need a large scale public
15 education campaign to education people about their
16 eligibility for aid. Many people are not aware of
17 the 2006 changes and the law that would allow
18 them, if they had previous drug convictions that
19 they did not receive while receiving aid, that
20 they are eligible. We recommend a bus campaign
21 like the current bus campaign on voting rights
22 that was launched by the Fortune Society, the NEW
23 YORK CITYLU, Statisticians Against Recidivism and
24 the Brennan Center for Justice. We need something
25 very vocal and that will get people's attention.

1
2 Third we recommend making the FAFSA
3 clear on the issue. The FAFSA contains over 100
4 questions and additional worksheets; it's very
5 confusing. It needs to be simplified.

6 And fourth, we recommend supporting
7 organizations like the College Initiative, the
8 College and Community Fellowship and the CUNY
9 Catch Program that assists people with criminal
10 records in achieving their higher education goals.
11 Thank you for your time and again, we're happy to
12 serve as a resource.

13 CHAIRPERSON BARRON: I want to
14 thank you very much for your testimony and also to
15 recognize Council Member Larry Seabrook from the
16 Bronx and Council Member Miguel Martinez from
17 Manhattan, are both here as well. I just have a
18 few questions and I'll turn it over to my
19 colleagues.

20 Do you have any information, either
21 anecdotal or statistical information on the number
22 of students who did no longer applied for
23 financial aid, dropped out of school because they
24 were in and when they found out this challenge of
25 applying for financial aid because of the drug

1
2 related concerns. Do you have any anecdotal or
3 any statistical information on what happened? How
4 many students were there and what kinds of things?
5 What happens to those students, do they just kind
6 of drop out? Do they try to apply for other kinds
7 of things, loans?

8 VINCENT SOUTHERLAND: The only
9 anecdotal evidence or statistic I can give you
10 were from my experiences as a public defender in
11 the Bronx. When I would have clients, primarily
12 African American and other people of color, who
13 were either college students already enrolled in
14 college and happened to have a drug conviction and
15 couldn't get around it any other way but either
16 plead guilty and take the drug conviction and then
17 just have to drop out of school. That, for
18 someone in their position, completely changes the
19 trajectory of their life.

20 They're in school, doing well, have
21 a bump in the road in terms of their problem with
22 a substance abuse problem and their whole lives
23 are kind of diverted. They just entered the
24 workforce. A lot of times it's much more
25 difficult once you start working to get back into

1
2 school and get back into that mode. You're
3 thinking, you have a drug conviction now, it
4 already scars you in terms of getting employment
5 down the road so why bother, is kind of the sense
6 that I got.

7 BESSIE OSTER: I would just add
8 that the way we do college counseling at Phoenix
9 House is that we ask the kids to bring in sort of
10 a checklist of things that they're going to need
11 in order to fill out their federal financial aid
12 form. We have a college counselor who sits down
13 with them who is very versed in working with kids
14 who may have a legal history. But the fourth
15 question on the federal financial aid form, it is
16 do you have any sort of a current drug conviction.
17 It's like this warning light that is a huge
18 deterrent for young people who may be filling out
19 this application on their own. It's sort of like
20 you get to question three and it's sort of like
21 I'm not eligible.

22 The way it's worded, if you
23 understand the subtly of it and it's referring to
24 drug convictions while you're currently receiving
25 financial aid. That subtly, I think is lost on a

1
2 lot of kids that feel like they somehow screwed up
3 their potential to get aid. So my anecdotal
4 experience is really around the effect that that
5 form has. I totally agree with your
6 recommendation.

7 CHAIRPERSON BARRON: Right. I
8 think that was a good recommendation about the
9 form. Phoenix House, you can actually have
10 students who may have a drug problem but not a
11 drug conviction.

12 BESSIE OSTER: Right.

13 CHAIRPERSON BARRON: So how to they
14 deal with that? Do they think that because they
15 have a drug problem that they can't apply now even
16 though they don't have a drug conviction?

17 BESSIE OSTER: It's interesting.
18 The young man who I was describing in my
19 testimony, he really talked about feeling like a
20 sort of outsider to society because of his drug
21 history and because he'd gone to high school at
22 the Phoenix Academy which is a New York City high
23 school but it's actually located in Westchester
24 County. He just conveyed this feeling of sort of
25 alien-ness and until he was able to go to college.

1

2

That really enabled him to re-enter society in a meaningful way and enabled him to sort of get past that history.

3

4

5

It just sort of spoke volumes that that process sort of pulled him out of what was a pretty bad place for him, personally. I don't know whether that exactly answers your question but...

6

7

8

9

CHAIRPERSON BARRON: Yes.

10

11

EVELYN MALAVE: A couple of things,

12

13

first of all I want to say that while I was looking into whatever information I could find or statistics last night, I came across a Congress created advisory committee report. It was entitled the Student Aid Gauntlet, making access to college simple and certain. It had several recommendations. Creating an easy FAFSA was one of them. It really was broadly addressing how to make financial aid easier for everybody.

14

15

16

17

18

19

20

21

But I noticed that it literally

22

said, we should remove irrelevant questions from the FAFSA such as do you have any drug

23

24

convictions. It didn't say to support Resolution

25

858 but I kind of read that into it.

1
2 And secondly, I think that I work
3 at Legal Action Center in the H.I.R.E. Network and
4 I'm often coming across people that have criminal
5 records and are looking for jobs. We focus a lot
6 on how much employment matters to re-entry but
7 education really does to. There is only so far
8 you can really get on a high school education
9 right now in this country.

10 I don't think we should be creating
11 some kind of second class where if you get out of
12 prison, you can get a job but you shouldn't go to
13 college. It goes all the way into the
14 correctional system. We shouldn't be cutting aid
15 to prison education programs. One statistic I did
16 have is that one of the programs I mentioned, the
17 College Initiative; it reported a 3.2 recidivism
18 rate for its students in its 2007-2008 year.

19 Even if you look at that 3.2 rate,
20 which is very low, only 1.8% of that was parole
21 violations, which could be anything from missing
22 your curfew to getting re-arrested. It's obvious
23 that higher education is a factor in
24 rehabilitation and it's just the way people are
25 going to be getting by in today's society.

1
2 CHAIRPERSON BARRON: Do you have
3 anything? I want to thank you very much. I want
4 to open up to my colleagues and I also want to
5 welcome Council Member Gale Brewer from Manhattan.
6 To say that the reason this hearing was critical
7 for us was even when you look at the Rockefeller
8 drug laws, which were instituted in I think 1972.
9 Prior to that, actually crime was going down.
10 They were closing down prisons. They were
11 shutting prisons down.

12 They took a public health issue and
13 criminalized it, which was drugs. Prior to that
14 it was mostly a public health issue. When you had
15 a drug problem you went to treatment and
16 rehabilitation but once they turned that into a
17 criminal issue, then it affected education and
18 certainly this piece here. But Council Member
19 Tony Avella you had something?

20 COUNCIL MEMBER AVELLA: Thanks Mr.
21 Chair. I just have a quick question for Legal
22 Action Center. I'm sorry I don't know how to
23 pronounce your last name.

24 EVELYN MALAVE: Malave.

25 COUNCIL MEMBER AVELLA: Malave. On

1
2 page five of your testimony, you mention how the
3 ban is unnecessary because judges already have the
4 power to strip an individual of eligibility for
5 federal benefits. How does that work? Are we
6 talking about federal judges? Are we talking
7 about state courts because obviously different
8 states have different regulations? I wonder if
9 you could elaborate on that a little bit more.

10 EVELYN MALAVE: I might have to get
11 back to you on that, to be honest. I have that
12 from our resources but I have to look into it
13 more.

14 COUNCIL MEMBER AVELLA: I would
15 appreciate it. I think definitely that's an
16 important point...

17 EVELYN MALAVE: Definitely. We can
18 talk afterwards. I can get your card.

19 COUNCIL MEMBER AVELLA: ...because
20 it does vary from state to state. I think that
21 information would be helpful.

22 EVELYN MALAVE: Yeah. I think it's
23 sort of interesting, right? Because on one level
24 there are some people that might say that that's
25 important, we should be able to punish people in

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

that way. A lot of people talked tonight about the level of the drug offense. So it would be interesting to look into that.

COUNCIL MEMBER AVELLA: Yeah. If you could get that information and also share with the Chair, we'd appreciate it.

EVELYN MALAVE: Absolutely.

COUNCIL MEMBER AVELLA: Mr. Chairman, I apologize but I have a meeting across the street at 2:00.

CHAIRPERSON BARRON: No problem. I appreciate it. Thank you. This is short. We don't have many more testimonies anyway. Yes.

COUNCIL MEMBER BREWER: Thank you. The reason I support it is that I was on the very task, Therapeutic Community Board, which is a drug treatment program for 25 years. I was on the Board of the Andrew Glover's Center for 20 years. So I'm familiar with; I've had 30 foster care kids so I know a lot about this issue.

My question is, again back to the same testimony, it's my lack of knowledge. But you mentioned something about drug treatment and sometimes that can be not a barrier. Can you

1
2 explain what has been the past sort of practice in
3 this area? In other words, is everybody who has a
4 conviction not allowed to get any aid or are there
5 some exceptions? Maybe you know.

6 EVELYN MALAVE: The way it works,
7 and it actually says this when you go to the
8 online FAFSA, is that if you show that you
9 satisfactorily completed a drug rehabilitation
10 program that meets specific requirements. Those
11 specific requirements are basically like, is the
12 drug rehabilitation program recognized, is it
13 standard. If you can show that then you will be
14 able to access your aid.

15 COUNCIL MEMBER BREWER: So they
16 have a listing of what defines. There's day
17 treatment, there is residential treatment, there
18 are all different kinds of treatment.

19 EVELYN MALAVE: They're specific
20 about it. I think that the problem is two fold.
21 One, that not everybody that is convicted of a
22 drug offense has a drug problem. I'm just going
23 to put that out there. They might need
24 counseling, they might need other kind of services
25 but they might not be addicted. The second thing

1
2 is, like as the SAMHSA study showed, only 10% of
3 people who really needed aid in 2007 received it.
4 It's more difficult to access services.

5 COUNCIL MEMBER BREWER: Okay. Do
6 you know if people who have access services have
7 successfully gone on? Is there any statistic to
8 that affect?

9 EVELYN MALAVE: Not that I know of
10 off hand but again, I can get back to you on that.

11 COUNCIL MEMBER BREWER: Okay.
12 Thank you.

13 CHAIRPERSON BARRON: Thank you very
14 much for your testimony. We'll have another panel
15 come up. Thank you. Any questions from anyone
16 else?

17 TRACY UDELL: Next we will have Kim
18 Rodriguez-Loggins from the College and Community
19 Fellowship and Ricardo Martinez from the College
20 and Community Fellowship. Please raise your right
21 hands. Do you swear or affirm that the testimony
22 you are about to give is, to the best of your
23 knowledge, truthful and accurate?

24 MULTIPLE VOICES: Yes.

25 TRACY UDELL: Please state your

1
2 names for the record before you begin your
3 testimony.

4 RICARDO MARTINEZ: Hi. I'm Ricardo
5 Martinez. I am the Program Coordinator for the
6 College and Community Fellowship Organization.
7 The College and Community Fellowship Organization,
8 known throughout New York City as CCF, was founded
9 in 2000 and was the first organization in New York
10 State to offer higher education strategies to
11 formerly incarcerated individuals as a primary way
12 to support them rehabilitate their lives.

13 CCF is charitably housed at the
14 City University of New York, Graduate Center. The
15 philosophy of our program is that lives are
16 rehabilitated through education, communities, self
17 expression and leadership development. In regards
18 to Resolution 858, which we support, we have asked
19 one of our participants to testify on behalf of
20 the organization.

21 I would like to introduce Kim Marie
22 Rodriguez-Loggins, who has an Applied Science
23 degree with a Major in Nursing from the College of
24 Staten Island, which she achieved through CCF's
25 assistance. Here is Kim.

2 KIM RODRIGUEZ-LOGGINS: Hi, my name
3 is Kim Rodriguez-Loggins and I'd like to thank the
4 Higher Education Committee of the New York City
5 Council for affording me this opportunity to
6 testify and speak about the need to increase
7 opportunities for higher education.

8 When first asked to speak about the
9 need to increase access to higher education, the
10 first thing that came to my mind was basic
11 psychology, Abraham Maslow's Hierarchy of Needs.
12 I'm a registered nurse so if someone thinks about
13 the hierarchy of needs, if you look at the bottom
14 of it. If someone can't breathe, you have to make
15 them feel safe and secure; get them assistance.
16 You can not have them hyperventilating. Or if
17 someone is hungry, you need to make them feel safe
18 and secure; then you go to the next level which is
19 love in a sense of belonging. If you don't have
20 love and a sense of belonging, you can not achieve
21 self esteem. If you can not achieve self esteem,
22 you can not have self actualization.

23 Prison supplies three hots and a
24 cot. It's a separate culture, a community. Think
25 if you left a community or released from prison

1
2 and all the dynamics involved. In New York State,
3 more than 27,000 people are released from prison a
4 year. Many go back. Why? Not enough resources,
5 maybe no where to go, back to the same people,
6 places and things, no money. They need to A, eat
7 and they need to feel safe.

8 How can you look for a job if you
9 have no where to live, nothing to eat and you
10 don't feel safe? Physiological needs need to be
11 met. If nothing changes, nothing changes. Title
12 IV of the 1965 Higher Education Act allowed
13 incarcerated students to apply for low income
14 tuition assistance. The result, by 1992 was 350
15 college programs in the United States prisons.
16 However this policy was attacked in the 90s. In
17 amiss of the tough on crime debates supported by a
18 faulty assumption that educating people in prison
19 came at a high cost. In fact, crime rates were
20 decreasing and the amount of Pell money spent on
21 higher education in prison equaled on one-tenth of
22 1% of the total Pell budget.

23 In the end, Congress passed in 1993
24 Crime Bill, which made prisoners ineligible for
25 federal financial aid. Governor Pataki followed

1
2 suit by eliminating TAP eligibility. This was re-
3 enforced by the re-authorization of the Higher
4 Education Act in 1994 and most prison college
5 program classes closed their doors.

6 In addition, in 1998 Congress
7 limited access to Pell grants for students outside
8 prison based on certain felony convictions.
9 Thousands of students, mostly African American and
10 Latinos were stripped of access to higher
11 education, which would have significantly
12 increased their chances of successfully returning
13 to the community. These are the same people whose
14 opportunities have long been limited by failed
15 educational policies.

16 There is a correlation between lack
17 of access to education and the likelihood of
18 imprisonment. Many people in New York State
19 prisons come from the most troubled school
20 districts in New York City. In fact, more African
21 American men in New York State have entered the
22 prison system for drug offenses since 1998 than
23 have graduated from the State University of New
24 York with undergraduate, Masters and Doctoral
25 degrees combined.

1
2 Prison re-entry issues have gained
3 the attention of both national and local policy
4 makers, who are committed to assisting people once
5 released from prison by assisting them with food,
6 clothes, shelter; again, Abraham Maslow's
7 Hierarchy of Needs, the bottom parts of them. And
8 I commend all these programs for the great jobs
9 that they're doing.

10 But College and Community
11 Fellowship guides people through the stages of
12 higher education while promoting their leadership,
13 self advocacy, artistic expression, civic
14 participation and long term economic security.
15 These are the tools that lead to the highest level
16 of the Abraham Maslow's Hierarchy of Need, which
17 is self actualization.

18 College Community Fellowship
19 improved chances of deep social re-integration by
20 supporting higher education degrees. They offer
21 academic counseling, tuition assistance, access to
22 mentors, tutors and opportunities to develop
23 leadership skills. The College and Community
24 Fellowship is an incredible group of people who
25 illustrate the value of educational opportunity in

1
2 moving people towards self actualization. Our
3 internal data confirms what other studies show.

4 With every year of education, the
5 risk of criminal recidivism decreases, yet higher
6 education for people in prison and people with
7 criminal histories is severely limited. It costs
8 about \$4,220 for College and Community Fellowship
9 for a student annually to run the program. To
10 return a person back to prison costs the State
11 about \$37,000 per person a year.

12 College Community Fellowship's
13 greatest achievement has been the ability to put
14 the program's graduates on the path to self
15 actualization. Education transforms both
16 individuals and communities. Higher education
17 increases employability, decreases recidivism, has
18 a positive effect on health and overall quality of
19 life as well as social integration. What do we
20 have?

21 We create a people who are
22 producers and not consumers. All of this plays a
23 role in decreasing recidivism. Within three years
24 of release, the rate of recidivism is 5.18%
25 nationally, 43.8% in the New York State. The

1
2 Recidivism rate after eight years of operation
3 with CCF is less than 2%. The public benefits of
4 education more people include increased tax
5 revenues, greater workforce productivity and a
6 decrease on reliance of public assistance.

7 There is a story that we have and
8 Ricardo has the booklet of a daughter who is
9 jumping up and down in the audience. She was
10 waving because her mother was getting her degree
11 so she was jumping up and down. The mother, I
12 quote says "I not only realized my own dreams at
13 that moment but my daughter's as well. The
14 greatest gift I could give her was for her to see
15 her mother receive her degree, against all odds we
16 face together." That's powerful. Think that
17 young girl will go to college? Absolutely.

18 What do you want for your family,
19 for yourself? People released from prison want
20 the same things; we're all human. Given the
21 opportunity to flourish, many do. In a country
22 where second hand chances and opportunity are
23 professed values, access to higher education must
24 include access for people in prison and people who
25 have been convicted of crimes.

1
2 We can not bar the most vulnerable
3 people from the very thing that has the greatest
4 potential to change their lives. Resolution 858
5 is a step towards access to higher education. The
6 members and staff of College and Community
7 Fellowship will be happy to work with the New York
8 City Council to find additional ways to improve
9 this in the right direction. And I thank you all
10 for affording me this opportunity. God bless.

11 CHAIRPERSON BARRON: Thank you very
12 much for a very powerful testimony. WE certainly
13 appreciate it. Any questions, Miguel, anybody?
14 We thank you for your testimony.

15 It's startling to hear. I know the
16 number usually changes. The \$37,000 to
17 incarcerate, which is less than some of the
18 highest tuitions in the state, must less. So we
19 appreciate that information. Any further
20 information you can submit to our Committee with
21 that kind of data on it would be greatly
22 appreciated.

23 KIM RODRIGUEZ-LOGGINS: Sure.

24 CHAIRPERSON BARRON: Thank you very
25 much for your testimony.

1
2 KIM RODRIGUEZ-LOGGINS: Thank
3 you.

4 CHAIRPERSON BARRON: Well that
5 concludes our hearing. What we're going to do is
6 certainly try to get a vote on this Resolution.
7 While we usually get a roll call vote on it in the
8 City Council and it passed out of Committee, this
9 Resolution will be to support Bonnie Franks
10 Resolution, the Congressman that's calling for the
11 repeal.

12 But aside from this Resolution, we
13 really need to develop that campaign of education.
14 I think we really need to publicize this more and
15 get people more aware of it. So I'm hoping that
16 our office will be calling you so we can do some
17 of the PR work. This is just the beginning of
18 some of the legislative work on it.

19 CUNY is very supportive. They
20 don't have a huge number of students that are
21 affected by that but they do have some. So I know
22 that we'll receive the support of CUNY as well on
23 this issue. I want to thank everybody for coming.
24 Thank my colleagues and certainly thank my counsel
25 and my policy analyst for this most important

1

2 hearing.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

We have to get busy and get this done and get this on the front burner of some issues. A lot of us are on social service and so called welfare and they criticize us for being on welfare. When people want to try to get their education and get off of welfare, then there are all of these blockers. No one should ever be ashamed of receiving a welfare check since Wall Street is getting the \$700 billion welfare check. That is the largest welfare check in the history of this globe.

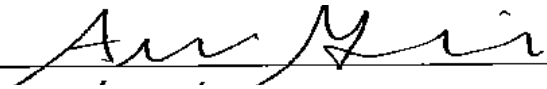
So Wall Street is on welfare. You should not be ashamed of getting our little peanuts from the government, the free money. Matter of fact, we should tell them like the Conservatives tell us. Tell Wall Street, pull yourself up by your bootstraps. Don't ask for government assistance, especially when you're a multi-billionaire.

But let's make this issue a front burner issue because this truly affects our people and we need to be able to put it out there. Thank you very much and this hearing is adjourned.

C E R T I F I C A T E

I, Amber Gibson, certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature



Date _____ October 7, 2008