



TESTIMONY OF:

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BROOKLYN DEFENDER SERVICES**

**Presented before
The New York City Council
Committee on Courts and Legal Services
Preliminary Budget Hearing
March 7, 2017**

I. Introduction

My name is Lisa Schreibersdorf. I am the Executive Director of Brooklyn Defender Services (BDS). I thank the City Council Committee on Courts and Legal Services, and in particular Chair Lancman, for this opportunity to testify about the important work that we do and the need for increased funding for indigent defense providers in New York City.

BDS is the largest legal services provider in Brooklyn, representing nearly 40,000 low-income Brooklyn residents each year who are arrested, charged with abuse or neglect of their children or face deportation. Our staff of 300 includes 180 attorneys and 120 support staff including social workers, investigators, paralegals, re-entry specialists, jail liaisons, community organizers and policy specialists as well as dedicated advocates for youth, veterans and parents. Our specialized defense approach allows us to provide targeted services for clients with mental illness or developmental disabilities, adolescent clients, trafficking victims, incarcerated clients, and veterans.

Below are three snapshots of our work from our three main practice areas in 2016:

- **CRIMINAL** – Five black teenagers in Brownsville were accused of raping a young woman in a Brooklyn park in January 2016. The young men, ages 14 to 18, were

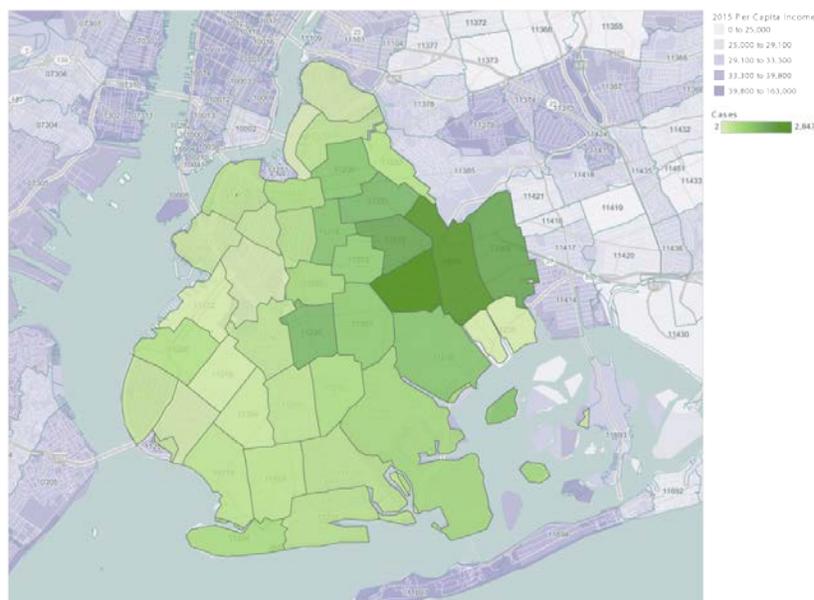
tried – and immediately convicted – in the court of public opinion. But as details emerged it became clear that all five were innocent. BDS Senior Trial Attorney Debora Silberman worked diligently to clear her high school student client's name, even though no exculpatory evidence – not a single police report or witness statement – was ever turned over to the defense. During the two months between arraignment and dismissal, our client and his lawyer received nothing but a scant formal felony complaint listing little more than the allegations. Debora and youth social worker Rebecca Kinsella worked with the family and supportive community members, including three of our client's teachers who came to the night court arraignment and paid his bail so that this teenager would not have to spend a single night on Rikers Island. While our client's name was eventually cleared and he returned to high school because of the results of our independent investigation and diligent courtroom advocacy, his life will never be the same. Debora subsequently published an op-ed in the *New York Times* about the case and why discovery reform and sealing for cases involving adolescents is so critical to protect the rights of the accused.¹ Stories like those of the Brownsville 5 illustrate the need for public defender offices like BDS to combine a multi-pronged approach to investigation, social work support, courtroom advocacy and policy advocacy to protect our client's constitutional rights.

- **FAMILY** – Dominique is a young mother who grew up in foster care. In December 2013, having just been discharged from foster care at age 21, she gave birth to a baby boy Zacharia. At the time, she was homeless. The hospital called in a case against her, and ACS filed a petition alleging that: Dominique had a cognitive disability based on the hospital's cursory evaluation; had been diagnosed with oppositional defiance disorder as an adolescent in foster care; and that she had failed to plan for the birth of her son. Instead of offering Dominique services, ACS removed her son from her care. For three years, Dominique fought for the return of her son with Senior Attorney Piyali Basak and Social Worker Maya Clark. With the support and guidance of her defense team, Dominique engaged in parenting classes and evaluations to prove she could care for her son and obtained NYCHA housing and a network of services. The law firm WilmerHale joined BDS as *pro bono* co-counsel at the fact finding stage and called an expert who evaluated Dominique to testify that she did not have any mental health issues that would affect her parenting. Although we lost the hearing, WilmerHale is assisting in our appeal of the decision. More importantly, the evidence presented at trial convinced ACS that Dominique's second child Kayden could be safely released to her care at birth, followed by the return to her of Zacharia. Dominique is now parenting both of her children together in NYCHA housing.
- **DEPORTATIONS** - Dale Levy is a lawful permanent resident (LPR) from Jamaica who has lived in Brooklyn for 25 years. Mr. Levy graduated from Canarsie High

¹ Debora Silberman, "Five Black Teenagers, Innocent, Face a Lifetime of Guilt," *N.Y. Times*, March 4, 2016, available at <https://www.nytimes.com/2016/03/04/opinion/five-black-teenagers-innocent-face-a-lifetime-of-guilt.html?smid=tw-share>.

School, where he was co-captain of the soccer team. He married his high school crush, and today they have three U.S. citizen children. Mr. Levy's U.S. citizen wife petitioned for his green card, but the application was denied due to his sole criminal conviction: attempted possession of cocaine in 1997. In 2016 Mr. Levy was detained by ICE, making his wife a single-parent to three young children. Thanks to the New York City Council funding for the New York Immigrant Family Unity Project (NYIFUP), Mr. Levy was appointed a free immigration lawyer to help him fight his case and reunited with his family. With his single 20-year old drug arrest blocking his path to a green card, Mr. Levy's NYIFUP attorney Zoey Jones filed an application for "prosecutorial discretion," requesting that ICE choose to close his deportation case given his strong equities. These requests are almost never granted for detained clients with criminal history. After nearly 6 months of detention, Mr. Levy was released on a bond and shortly thereafter, ICE granted the application for prosecutorial discretion, allowing him to start to rebuild his life with his family and community.

BDS' criminal, family and immigration clients are among the poorest people in New York City. Many of our clients are suffering from mental illness, struggle with drug addiction or are very young. All of our clients are deeply impoverished, including many who do not have enough food and far too many who live in overcrowded, squalid conditions. With the gentrification of Brooklyn, a large percentage of our clients are homeless or at risk of homelessness due to rising rent and increasing desirability of neighborhoods that only a few years ago were affordable. The vast majority of our clients come from just five neighborhoods in Brooklyn: East New York, Brownsville, Crown Heights, Bedford-Stuyvesant and Flatbush. It is no coincidence that those are also the five poorest neighborhoods in Brooklyn.



Map showing overlap of income and BDS clients

We are currently in the process of opening a new community office at the crossroads of East New York and Brownsville, thanks to a grant from the IOLA Fund of the State of New York. The office will allow us to better serve our existing criminal defense, family defense and immigration defense in their own neighborhoods, allowing BDS to more effectively challenge harmful government intervention into our clients' lives and address all of their complex legal needs. We are particularly excited that the office will serve as the hub for our new Speaker's Initiative family engagement proposal, discussed in more detail on pages 8-9.

Criminal Defense Cases

In order to address the unique needs and barriers that many of our clients face upon arrest, BDS's criminal defense practice has a number of dedicated and specialized units which provide targeted services to adolescents, clients with mental illness, victims of trafficking, veterans and clients with overlapping criminal, family court, and immigration issues.

- The **Brooklyn Adolescent Representation Team (BART)** is a collaborative effort to provide comprehensive, high quality legal, advocacy and social work services to the criminal justice involved adolescents and young adults aged 16-21 whom we represent in criminal cases. BART consists of 15 dedicated, experienced, youth-focused criminal defense attorneys, three specialized adolescent social workers, and two youth advocates. *The BART project serves approximately 6,500 adolescents ages 14 to 21 every year, including 1,350 who are 16 or 17.*
- The **BDS Padilla Unit** advises BDS's criminal defense attorneys and their noncitizen clients on the immigration consequences of guilty pleas to help avoid or minimize negative immigration consequences. About a quarter of BDS's criminal defense clients are foreign-born, roughly half of whom are not naturalized citizens and therefore at risk of deportation or loss of opportunity to obtain lawful immigration status as a result of their criminal case. Our five criminal-immigration attorney specialists provide support and expertise on more than 1000 cases that survive arraignment involving non-citizen clients and is called at least once, and often multiple times, in each arraignment shift to advise on the ramification of a plea offer at arraignment.
- Our **Trafficking Unit** is made up of experienced criminal defense attorneys who work closely with dedicated social workers, immigration attorneys, interpreters and other service providers to minimize the punitive nature of criminal justice contact and provide meaningful services for victims of trafficking who find themselves facing criminal charges. *The BDS Trafficking Team represents close to two hundred BDS clients in Brooklyn's Human Trafficking Intervention Part every year.*

- **BDS' Mental Health Unit** has two specialized criminal defense attorneys, as well as a dedicated mental health social worker and other specialized staff to address these clients' unique needs, as well as those of their families. The specialized attorneys represent mentally ill clients at competency evaluations, hearings and other court appearances during the pendency of their case. These team also communicates with Department of Health and Mental Hygiene (DOHMH) staff persons to assist in advocating for, accessing, and coordinating mental health treatment for detained BDS clients with serious mental illness and transitioning clients to the community upon discharge.
- The **Education Advocacy Unit** supports our adolescent clients' access to education, providing advocacy and guidance regarding school discipline, special education, school reentry and alternative pathways to graduation. They also support and represent our family defense clients to ensure that our clients' children receive the educational services they are entitled to.
- The **Family/Criminal Integrated Unit** consists of former family defense attorneys trained in criminal law to represent clients who have related family and criminal cases, allowing for one lawyer to provide comprehensive representation to parents to help keep their families together and alleviate the negative consequences of the criminal and child protective systems. The unit represents around 50 misdemeanor or felony clients with open family cases at any given time.
- The **Integrated Domestic Violence Unit** represents more than 400 clients per year in the Kings County Integrated Domestic Violence Court, a specialty court that hears related family, criminal and matrimonial cases and allegations of domestic violence.
- **BDS' Veterans Unit** assists veterans with criminal justice involvement to upgrade their discharge status and access the services to which they are entitled under federal law. The Unit combines courtroom advocacy with social work support and civil justice advocacy in Kings County Veterans Treatment Court. Last year the unit represented more than 200 veteran clients.
- Our **Jail Services Unit** seeks to mitigate the burdens that confinement creates for criminal defense and to protect our clients against collateral consequences. Through our jail programming we are able to streamline our clients' access to education, housing, family, immigration and re-entry services while attempting to meet their most immediate daily needs. Our established presence in city jails allows BDS to monitor and document the conditions New Yorkers encounter when incarcerated and advocate for the rights and welfare of our clients and other incarcerated people.

Family Defense Cases

BDS's continuum of services includes representation of respondents in abuse and neglect proceedings in Brooklyn Family Court. Ninety percent of these cases charge parents with neglect (not abuse) and most of these cases are poverty-related involving mental illness, intellectual disabilities, substance abuse, lack of child care or services, homelessness, and domestic violence. Our family defense clients live primarily in the low-income neighborhoods of East New York, Brownsville and Bedford Stuyvesant.

In 50% of our family defense cases, our clients' children never enter foster care. Our zealous advocacy, including investigating cases, finding alternative solutions and getting services in place, has significantly reduced the likelihood and duration of foster care placement. In fact, since 2007, when the child welfare institutional providers were created, the foster care census has gone down from over 17,000 to under 10,000 children ten years later. By both challenging allegations in abuse and neglect petitions and helping families get the benefits and services they need to stay safe and stable, we are able to achieve family reunification for 70% of our clients.

Our existing case load of clients is presently over 2,000. These cases are resource intensive, involving attorneys, social workers, paralegals and parent advocates, and last an average of three years. Twenty percent of our family defense clients have related criminal cases and by providing joint representation to clients in both criminal and family court through our **Family/Criminal Integrated Defense Unit** we can provide much more efficient and effective services to our clients. In addition to our collaboration with criminal attorneys, our family defense clients greatly benefit from on-site assistance in immigration, housing, benefits and educational matters which are at the heart of many of our cases.

Immigration Cases

BDS' vibrant Immigration Practice is composed of 17 full-time immigration attorneys, five paralegals (one of whom is accredited by the Board of Immigration Appeals), and four legal assistants. We are a Board of Immigration Appeals-recognized legal service provider.

- **The New York Immigrant Family Unity Project (NYIFUP)** is New York City's groundbreaking, first-in-the nation program providing quality counsel to immigrant New Yorkers who are detained and facing deportation and separation from their families and communities. BDS is proud to be a NYIFUP provider, along with The Bronx Defenders (BXD) and The Legal Aid Society (LAS). Since the project's inception three years ago, BDS NYIFUP attorneys have defended more than 700 people in deportation proceedings. As of December 2015, 52 percent of pilot clients have been reunited with their families. NYIFUP attorneys have won 71 percent of their trials. NYIFUP is projected to increase the percentage of immigrants who will win the right to remain in the United States by 1,000 percent, compared with prior success rates for detained, unrepresented immigrants.

- **BDS's Immigrant Youth and Communities Project** has represented thousands of Brooklyn immigrants in their applications for lawful immigration status and in defending against deportation in non-detained removal proceedings. Highlights of our work include assisting more than 320 young clients in their pursuit of Special Immigrant Juvenile Status (SIJS), Adjustment of Status, U visas, Deferred Action for Childhood Arrivals (DACA) and other immigration benefits or removal defense, and assisting more than 1,000 Haitian New Yorkers with their applications for Temporary Protected Status, work authorization, and other immigration benefits or removal defense.

Civil Justice Practice

BDS's Civil Justice Practice aims to reduce the civil collateral consequences for low-income people who have had interaction with the criminal, family or immigration systems. Through legal advocacy in court and at various agencies, we assist people in remaining in their homes, maintaining their public benefits, staying in school, keeping their jobs, and protecting their consumer rights. In order to achieve these ends, we practice in almost all of New York City's courts at every level from trial to appeals. We also assist criminal defense attorneys and their clients by identifying potential civil ramifications of guilty pleas and strategizing ways to minimize the risk of eviction, loss of employment, and professional consequences as a result of a criminal conviction. Finally, in addition to our in-house work, we engage with the community and hold external educational clinics in close partnership with community-based organizations and elected officials. In the past year the Civil Justice team represented or connected BDS clients with services in nearly 3,000 cases.

FY2018 Budget Asks

NYIFUP Funding

This year, City-wide NYIFUP providers are jointly asking for a significant increase in funding so that we can continue to provide superior legal representation to all of the detained people facing deportation in New York City. We fear that the numbers of New Yorkers requiring these services will jump significantly in the months to come based on increased intake numbers since the new federal administration took office in January. This is our highest priority, as NYIFUP attorneys, social workers and paralegals are already working beyond capacity in the courts and the communities to quell fear and provide legal advice to people rightfully fearful of deportation.

The NYIFUP Coalition jointly requests \$4,000,000 to fully fund the New York Immigrant Family Unity Project in FY2018 to ensure that every detained New Yorker has legal representation when facing deportation.

Immigrant Opportunities Initiative (IOI)

Brooklyn Defender Services requests funding for our Immigrant Youth and Communities Project to provide immigration legal services to low-income Brooklyn youth and adults. With IOI funding, BDS can maintain and grow our Project staff to provide community education, legal screening, advice and full representation to low-income Brooklyn immigrant youth and adults borough wide, in their pursuit of affirmative immigration benefits such as citizenship, lawful permanent residence, asylum, Special Immigrant Juvenile Status, special trafficking and victims' visas, VAWA relief, TPS, and DACA, and in their defense against deportation in non-detained deportation proceedings.

Since the presidential election last fall, our office has received increasing requests from the community to present Know Your Rights trainings and free legal services to the community. The clamor from the community for advice and services has increased even more dramatically since the first immigration Executive Order was announced. We are now receiving near daily requests for assistance from elected officials, community-based organizations, city agencies, religious institutions and the press. We want to increase our capacity to serve New York's diverse immigrant communities, but we require a significant increase in funding to allow us to take on additional cases outside of our criminal, family and deportation defense caseloads.

We ask that the Council support our IOI ask of \$200,000 to expand our ability to provide immigration legal services, including Know Your Rights trainings and legal screenings, to low-income New Yorkers.

Family Support Initiative

BDS is requesting Speaker's Initiative funding for the Family Support Initiative: a Pre-Entry to Re-Entry Program to Assist Incarcerated Brooklyn Parents, Caretakers and their Families. Recognizing that incarceration has major, long-term impacts on families – especially when incarcerated parents and young children are involved – Brooklyn Defender Services is proposing the creation of an innovative, multi-service initiative that will serve individuals facing incarceration and their families from pre-entry to re-entry.

New York City Council funding will support a wide range of coordinated services – focused primarily on Brooklyn residents incarcerated at Rikers Island – to assist them in maintaining critical family connections and involvement with their children. Services will include:

- Pre-entry planning, services and referrals (including social workers, educational referrals, etc.) to ensure that families are prepared for the impact created by the incarceration of a parent or caregiver.
- In the case of primary caretakers, BDS can assist clients in executing Temporary Care and Custody Agreements to allow family members to care for minor children during a period of brief incarceration (potentially staving off ACS

involvement), or protect parents' rights, while incarcerated, to participate in decision-making around their children's education.

- Family support services during incarceration, including the creation of a BDS-operated bus service to provide convenient, accessible and affordable access for families to visit incarcerated loved ones at Rikers Island.
- Expansion of BDS' Jail Services program to oversee the above-noted programs, serve as liaisons and provide other support services for parents and caregivers incarcerated at Rikers Island, including assistance with enforcing incarcerated clients' visitation rights through CHIPS when they have ACS involvement.
- Utilizing BDS' community office, located in East New York, to offer legal and social work services to the families of our incarcerated clients - allowing for easier delivery of information and assistance on issues that impact families during criminal justice involvement and incarceration, including offering presentations (such as Know Your Rights around visitation) in the communities with the highest populations of incarcerated parents.
- Re-entry Services – Ensuring a smooth (and supported) transition back into the community is especially critically for parents, caretakers and their families, so City Council funds will support and expand BDS re-entry services that include:
 - Assistance with securing housing or shelter
 - Referrals for vocational training programs and employment readiness
 - Assistance with resume writing and job applications
 - Benefits assistance, including re-instatement and enrollment
 - Fostering connections with mental health, substance abuse and counseling services
 - Providing short-term case management, mentorship and other supportive services to individual clients as needed

We ask that the Council support our Speaker's Initiative funding request for \$350,000 to fund our Family Support Initiative.

Conclusion

The New York City Council has demonstrated its leadership and support for immigrants and low-income people of color in the City in years past and particularly in recent months. The way to protect the rights of everyday people is by providing them education, legal counsel and support. BDS does this work in our communities every day, but the need for our services is more acute than ever.

Renewed support from the Council will enable us to continue to ensure the best possible outcomes for our most vulnerable clients and their families. For that reason, we ask the Council to support our FY18 requests for increased NYIFUP funding for all three NYIFUP providers, continued support of BDS's Immigrant Youth and Communities

Project through the Immigrant Opportunities Initiatives, and our request to the Citywide Civil Legal Services Speaker's Initiative for funding for re-entry and family engagement services for BDS clients.

The City Council is moving towards systemic reforms in our fundamentally unfair justice system. Indeed, there is a growing national consensus that mass incarceration and mass deportation are a disaster for families and communities, and that inequality in access to justice is an urgent priority. However, even with the best intentions, reforms can have unintended consequences, or miss the deeper issues at the root of the problems. To understand the full weight and impact of any proposed solutions to over-criminalization and its collateral consequences, it is critical that you work with our City's public defense organizations, whose multi-disciplinary staffs see first-hand every day the effects of City, State, and Federal policies on real humans. BDS stands ready to assist in informing, implementing, and executing real reform. Together, we can truly meet the needs of the most vulnerable New Yorkers.