



**TESTIMONY OF:**

**Lisa Schreibersdorf – Executive Director  
BROOKLYN DEFENDER SERVICES**

**Presented before  
The New York City Council  
Committee on Courts & Legal Services  
Preliminary Budget Hearing  
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My name is Lisa Schreibersdorf. I am the Executive Director of Brooklyn Defender Services (BDS). BDS provides innovative, multi-disciplinary, and client-centered criminal, family and immigration defense, civil legal services, social work support and advocacy to more than 45,000 indigent Brooklyn residents every year. I thank Committee on Courts and Legal Services, and in particular Chair Lancman, for this opportunity to testify.

As interest in reforming our justice system grows among policymakers, BDS offers the wisdom and expertise of our staff, and the stories of our clients. We can provide the facts and real experiences to inform smart changes to make our laws more fair, effective, and humane, and serve as a resource on systemic reforms that will improve outcomes for our clients before, during and after contact with the criminal, family or immigration system.

For Fiscal Year 2016, we have a few asks of the City Council. First, we would like to emphasize the truly ground-breaking work of the New York Immigrant Family Unity Project (NYIFUP). The Council has been active in attempting to baseline the \$4.9 million to ensure the continuation of the critical deportation defense services for detained immigrants. Even if this effort is not successful, we hope the Council will renew this grant for another year. Of this total allocation, BDS's portion of the provider allocation was \$1.551 million this past year and we hope to continue the same funding into next year.

BDS has also requested the Council's support for our request for \$650,000 to implement a comprehensive Civil Justice Program that would expand our civil legal and social services in the areas of housing, education, employment and benefits.

As this committee is fully aware, access to civil legal services is essential if we are to guarantee fairness in our courts and to guarantee that vulnerable people receive the benefits and rights to which they are entitled. Despite valiant efforts on the part of the Office of Court Administration and the HRA Commissioner, there is still a shortfall in the availability of legal services over a wide spectrum of issues.

Our 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 way too many who live in overcrowded, squalid conditions. With the gentrification of Brooklyn, a large percentage of our clients are on the verge of homelessness due to rising rent and increasing desirability of neighborhoods that only a few years ago were affordable.

Our clients, for many reasons, do not tend to access traditional civil legal services. In part, they are unfamiliar with what they may be entitled to or how to access such services. At other times, our clients are not able to obtain assistance due to a pending criminal or family case that requires special expertise on the part of the housing or benefits attorney. Another phenomenon is that civil legal services groups are often funded for particular areas of representation and our clients may not fit into these niches.

Poverty creates its own cycles of non-action, depression and stress. It is an unfortunate phenomenon that clients we refer to other organizations may not ever make it there. It is frustrating to us to find our clients in a downward spiral when we know we can help them by offering specialized civil legal services dedicated to meeting the needs of our clients, on site and without limitation.

Our request for \$650,000 will help us get very close to meeting 100% of our clients' needs, including housing, benefits, education, employment, forfeiture of property and addressing the hundreds of collateral consequences of criminal, family or immigration cases.

### **Criminal Defense**

The sixth amendment of the United States Constitution gives every person charged with a crime the right to an attorney. People who are unable to afford an attorney are provided one free of charge. This is the primary function of Brooklyn Defender Services. Last year, the more than 100 criminal attorneys at BDS represented 42,400 clients. In Brooklyn, there are approximately 100,000 arrests per year. Many of our clients come to us with mental health and substance abuse issues, and/or are veterans or victims of domestic violence or other trauma. About 25% of our clients are under the age of 21. Our many social workers and advocates help identify issues that brought the client into the system in the first instance and assist them with these issues whenever possible. Often, these interventions improve the outcome of the criminal case and serve the client well in his or her life.

Eighty-five percent of our clients are charged with misdemeanor offenses. Such charges include shoplifting, marijuana possession, trespassing and assaults (like bar fights). In such cases, much of the damage to the client's life can come in the form of collateral consequences. For example, a person can face deportation, even if they only have a misdemeanor charge. People living in public or other subsidized housing can face eviction. Many clients have very low paying jobs and face termination for missing even one day of work or for getting a conviction. Some cases, including marijuana possession, threaten a parent's right to keep their child or a person's right to return to their home.

BDS seeks to provide substantial resources to our clients to address collateral and related issues because, in our experience, they can be more harmful to our clients than the direct impact of the criminal charge itself. Such disenfranchising consequences affect large numbers of people in certain small areas of Brooklyn such as Brownsville and East New York, profoundly impacting those communities as a whole.

BDS's clients reflect the demographics of the criminal justice system in which a majority of those arrested are people of color. Twenty-four percent of our clients – about 10,000 – are youth under 21 years of age and at least 15% live in public or Section 8 housing. About 17% of BDS's clients – 7,600 per year – are undocumented.

### ***Specialized Units***

For many of BDS's clients, poverty, trauma, mental illness, and alcohol or drug abuse are the driving forces behind their involvement in the criminal or family court systems. In order to address the unique needs and barriers that many of our clients face, BDS 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 and family court issues.

### ***Brooklyn Adolescent Representation Team***

Within court systems and institutional defender organizations, juvenile justice involvement has long been addressed through a unique process, with specialized resources and partner organizations in the community. However, this approach has historically been applied only to those under 16. Importantly, social science literature tells us the needs of 16-21 years are just as great. 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 aged 16-21 whom we represent in criminal cases. BART consists of 12 dedicated, experienced, adolescent-focused criminal defense attorneys, three specialized adolescent social workers, and three youth advocates. BDS' Education Advocacy Team also supports our adolescent clients' access to education, providing advocacy and guidance regarding school discipline, special education, school reentry and alternative pathways to graduation.

The project serves approximately 9,000 adolescents every year, including 2,300 who are 16 or 17. Nearly all are Black or Latino. All are indigent, and many are not otherwise connected with social service providers or educational institutions. Most come from one of a few neighborhoods in Brooklyn, including Brownsville, that are disproportionately impacted by the criminal justice system.

Scientific evidence indicates that adolescent brains are not fully developed in ways that directly impact their involvement in the criminal justice system. In his 2013 State of the Judiciary, Chief Justice Jonathan Lippman noted that the U.S. Supreme Court “has recognized that the parts of their brains that govern reasoning, impulse control and judgment are still developing and, as a result, most adolescents lack the capacity to fully appreciate the consequences of their actions.” He also highlighted studies demonstrating that incarceration increases the likelihood that 16 and 17 year-olds will commit crimes in the future, including violent crimes. Our adolescent clients come to us with many issues, including undiagnosed and untreated learning disabilities, emerging mental health problems, child welfare system involvement, abuse, neglect, sexual exploitation, gang involvement and substance abuse. BART is uniquely equipped to meet these youths on their own level, with specialized staff trained to address their needs, and help them navigate the system and focus on paths to success.

### ***Trafficking Team***

Our Trafficking Team is made up of experienced criminal defense attorneys who specialize in understanding and identifying the complexities related to human trafficking. They represent BDS’ clients in Brooklyn’s Human Trafficking Intervention Part, and are skilled in identifying collateral social and legal service needs – including issues of immigration, safety and trauma. Working closely with dedicated social workers, immigration attorneys, interpreters and other service providers, our trafficking attorneys seek to minimize the punitive nature of criminal justice contact and provide meaningful services for victims of trafficking who find themselves facing criminal charges.

### ***Mental Health Team***

BDS represents many clients who have a diagnosed mental illness. Our Mental Health Team 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. It is also part of our mission to insure that these clients not only receive a fair and just disposition but also the best care and treatment possible. Research has proven that clients with a mentally illness who are offered an opportunity to participate in mental health courts are significantly less likely to get re-arrested than similar offenders with mental illness who experience traditional court processing. BDS played an important role in the development and launch of the Brooklyn Mental Health Court over 10 years ago. This Court serves as the model for treatment courts all over the world.

Our expertise in the area of persons with mental illness is vast; in addition to our work in the criminal court system, our Family Defense Practice represents about 2000 families at all times,

of which half are at risk of losing their children solely because of their mental illness. Our team of licensed social workers and a full time jail-based client liaison provide logistical support for our clients during their legal cases and provide supportive counseling as well, which is particularly critical for clients with mental health issues who are spending time incarcerated. These team members communicate 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. Similar to the rest of our caseload, our mental health cases arise from a wide range of alleged criminal offenses ranging from trespass and drug possession to felony matters. We find that people who have a mental illness are unfortunately quite vulnerable to arrest and typically receive significantly worse outcomes at every step of the criminal legal process than other clients. Our Mental Health Team observes daily the tragic – and unnecessary – nexus between inadequate access to mental health care and involvement in the criminal justice system.

**Ask: BDS requests that the New York City Council continue to support our model of defense representation that includes comprehensive civil and social wraparound services.**

### **Family Defense**

The Family Defense Project, which formed in 2007 to be an institutional provider for parents and families in Article 10 cases, is now the primary attorney for parents in child welfare cases. BDS' Family Defense Project's (BFDP) in-court and out-of-court advocacy has enabled more than 5,000 children to leave foster care and safely reunite with their families.

Since its inception, BFDP has continued to develop and improve its model of high quality legal representation for parents involved in the child welfare system. It is the only indigent defense program for child welfare cases in Brooklyn. With the addition of BDS's on-site immigration, housing, and educational services, as well as other areas of expertise, BFDP is able to provide comprehensive one-stop legal and social services to clients, with Family Defense Practice attorneys working collaboratively with criminal defense attorneys on shared cases, improving outcomes for clients in both courts.

**Ask: BDS requests that the New York City Council continue to support BDS' role as a leading institutional provider of defense representation to parents in child welfare cases and the comprehensive services available through BDS' model of defense.**

### **Immigration**

In 2014, the City Council approved a grant for the launch of the New York Immigrant Family Unity Project (NYIFUP), a pilot program in New York City to provide legal representation to indigent immigrants in detained deportation proceedings. In October 2013, BDS and our consortium partner were selected by CJC's contractor, the Vera Institute of Justice, after a competitive bidding process to be the legal service providers in this momentous program, which provides public defenders for all poor immigrants residing in New York who have been detained

and are facing deportation. The pilot program is the first of its kind in the country, and BDS was proud to be involved from its inception.

At BDS, we have long recognized the value of providing on-staff immigration legal services to our clients. In recent years, as the immigration landscape has become less flexible and more complex, immigration legal services have become even more vital both for zealous criminal defense and advocacy for our clients and to promote their best interests in other respects. Today, BDS' vibrant Immigration Practice is composed of 14 full-time immigration attorneys, four paralegals (one of whom is accredited by the Board of Immigration Appeals), a community liaison, and an administrative assistant. We are a Board-of-Immigration-Appeals recognized legal service provider.

BDS takes an innovative approach to the representation of immigrants. Our immigration attorneys are an integral part of our office, functioning in an embedded capacity to work closely with our public defenders through every step of any case involving immigration issues. Our immigration attorneys are thus able to draw on the vast resources, knowledge and experience of our public defense practice to forge creative and sophisticated solutions to immigration-related issues.

Because we are one of Brooklyn's largest legal service providers with in-house immigration expertise, we are well-poised to deliver our immigrant legal services to other underserved Brooklyn immigrants. In addition to our in-house work, BDS created and implemented our community-based Haitian Immigration Legal Assistance Program (HILAP), to help Brooklyn Haitians receive and retain Temporary Protected Status and other immigration protections after the Haitian earthquake in early 2010. In 2012, we also launched our Immigrant Youth Project, which includes Deferred Action for Childhood Arrivals (DACA) clinics in partnership with Brooklyn Bar Volunteer Lawyers Project and community-based organizations. Since 2010, BDS has held more than 70 community law clinics, recruited and trained more than 360 volunteer attorneys and provided immigration legal advice and assistance to more than 2,700 New Yorkers. To maximize our reach and the services afforded to our clients, we work closely with other community based groups, elected officials, churches, and social service providers.

**Ask: BDS requests that the New York City Council renew its allocation of – and continue to ask the Administration to baseline – \$4.9 million for NYIFUP in FY 2016 so that New York can remain the national leader in ensuring that every detained immigrant facing deportation will have a lawyer if he or she cannot afford one.**

### Civil Justice Practice

The Civil Justice Practice aims to reduce the civil collateral consequences for low-income people who have had interaction with the criminal, family or immigration justice 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 appellate courts. 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 educational 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.

The need for our Civil Justice Practice is clear. When your constituents call with problems obtaining Medicaid, SCRIE and DRIE, or other forms of assistance, you and your staffs stop at nothing to resolve their cases. Unfortunately, as you probably know, most people—including many of the most vulnerable New Yorkers—do not reach out to their elected officials for any reason. This is especially true with people who have been involved with the criminal, family or immigration justice systems, and who might see the entire government as the enemy. Our clientele includes a broad swath of the most marginalized Brooklyn residents. We represent thousands of clients and families who would not otherwise seek civil legal assistance or who may not be eligible for such services, making us a unique point of access for people in Brooklyn. Additionally, because clients are served in more than one practice area, BDS' model is efficient—clients do not have to undergo multiple screenings for indigence or eligibility and social work and other services do not need to be repeated.

People who are arrested face many obstacles, even if their case is resolved in their favor. Our goal is to help clients with these issues as they arise. We also work to change these systems by challenging their legality and advocating for changes in the law.

**Ask: BDS requests that the New York City Council support our request for \$650,000 for a Civil Justice Program for FY 2016.**

### CASE EXAMPLES

The following cases from FY 2015 demonstrates how BDS's comprehensive legal service model impacts the outcomes of our clients:

**Mr. J** was arrested for a non-violent drug offense in the public housing development where he lives. In consultation with a housing attorney from our Civil Justice Practice, the criminal defense attorneys assigned to Mr. J's case secured a disposition with as little adverse housing impacts as possible. Specifically, the offense was downgraded to a violation, and the attorney was able to get the record sealed. When the New York City Housing Authority (NYCHA) filed an eviction proceeding against Mr. J based on the offense, our housing attorney persuaded the Authority to spare the client eviction because he was not convicted of any crime and his record was sealed. This is good news for the client and the city, which otherwise might have had to pay for emergency shelter housing and other costs to address the adverse outcomes associated with homelessness.

**Ms. G** had ongoing criminal and family court cases with BDS attorneys when she voiced concerns about her housing situation. Her criminal defense attorney immediately referred her to our Civil Justice unit, which conducted an intake and explored available options for addressing her rental arrears. The civil unit determined that she had been receiving

FEPS, a rental subsidy that is only available to households with minor children, until her daughter was placed in foster care. As a result, the New York City Human Resources Administration (HRA) discontinued her FEPS enrollment and reduced her overall public assistance. The reduction left her unable to pay her full rent and the numerous programs and services mandated by the criminal and family courts did not allow her time to find additional income. The reality was she would be evicted and homeless if we could not restore FEPS eligibility. Our civil attorney coordinated with Family Defense about the status of Ms. G's family court case and determined that the absence of Ms. G's daughter could be defined as "temporary" given the permanency planning goal in the family court matter, namely, to reunite the family. The civil attorney determined that under applicable social service law and regulation, once eligibility for benefits is established, including FEPS, a temporary absence does not interrupt eligibility. He was then able to persuade HRA to reinstate FEPS for Ms. G, ensuring that her daughter would have a home to return to. Ms. G, a single mother who is working hard to regain custody of her daughter, was entirely unaware that she could seek civil legal assistance until she was referred internally, has called BDS's wraparound service model "the Dream Team."

Sixteen-year old **DN** was arrested for a non-violent felony. His criminal defense attorney secured an alternative to incarceration program that, among other requirements, monitored his school attendance and completion. A special education student classified with a "Speech-Language Impairment," DN struggled with school engagement. Having experienced the loss of his grandmother during the case's pendency, DN also became depressed. DN was at risk of not completing the program and facing a lengthy jail alternative. Working as a Team, BDS' Education Attorney, Social Worker and Youth Advocate supported DN's school engagement. The Team worked with DN's school to offer appropriate special education services and facilitate enrollment in a NYC DOE Young Adult Borough College (YABC). DN's social worker also referred DN to grievance counseling. With the Team's support, DN completed his program mandate and earned his high school diploma. Although his case is complete, DN is still working with the Youth Team and is currently applying for vocational training.

Seventeen-year old **MP** was working with a BART Team Attorney and Youth Social worker when his high school issued a Superintendent Suspension. After notifying his advocates, MP was referred to BDS' Education Attorney for representation. The Education Attorney met with MP and diligently prepared for the Superintendent Suspension hearing, at which his school was requesting a 90-day suspension for a non-violent infraction. As a result of the Education Attorney's advocacy, MP received a 30-day suspension. The attorney also worked with MP while he attended the Alternative Learning Center (ALC), where MP was praised as a model student. The Team then worked with MP to transfer to a new school following his suspension, where he is now thriving, and ensure the credits he accrued at the ALC appropriately transferred. Drawing upon the Team's efforts, MP's criminal defense attorney was able to secure a favorable disposition in the criminal matter.

## Conclusion

BDS is a leader in the fight for justice for all Brooklyn residents. Funding from the New York City Council has allowed us to expand and diversify our capacity to provide comprehensive, wraparound services to those in acute need. People involved in the criminal justice and child welfare systems include, in disproportionately large numbers, those who have been denied a fair chance by society at large. Renewed support from the Council, as requested above, will enable us to continue to ensure the best possible outcomes for individuals and their families. That said, the Council has the power to do a lot more to secure justice for poor New Yorkers.

Under the leadership of Speaker Melissa Mark-Viverito, the Council is moving towards systemic reforms in our fundamentally unfair justice system. Indeed, there is a growing national consensus that mass incarceration is a disaster, 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 overcriminalization 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.