

# Brooklyn Family Defense Lawyers Partner with Law Firms to Advance Due Process Rights of Low Income Families

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In law school, students are taught that the United States Constitution protects the fundamental liberty right of parents to make decisions about their children without unnecessary interference from the State. The United States Supreme Court has repeatedly upheld this basic constitutional principle.<sup>2</sup> But respect for this fundamental right is shockingly absent in the child welfare and family court systems in New York City, which disproportionately affect families who are poor and Black or Latina.<sup>3</sup> Remediating this injustice is at the core of the Brooklyn Family Defense Project's (BFDP) mission.

Family defense work is a civil rights practice as much as a family law practice: we advocate on behalf of the most disenfranchised families against unwarranted state interference. BFDP, an interdisciplinary law office, protects the due process rights of low income families while also helping them get the benefits and services they need to keep their families safe and intact. Teams of attorneys, social workers, and parent advocates help families address concrete problems to avoid the unnecessary trauma of breaking up families. Since its inception in 2007, BFDP has represented more than 3,000 families in Brooklyn Family Court and helped over 2,000 children leave foster care. BFDP handles more than half of all the Brooklyn respondents in child welfare cases – about 850 new cases each year.

Contrary to common belief, the vast majority of child welfare cases involve allegations related to families' poverty. BFDP's clients face enormous barriers to keeping their families together because they lack the resources they need to meet their children's basic needs. BFDP advocates tirelessly for the solutions that help children the

most – those that provide families with the resources needed to stay together safely, instead of resorting to removal and placement in foster care, which is traumatic and frequently more harmful to children than even suboptimal conditions in their own homes.<sup>4</sup>

BFDP's clients also face an overcrowded and overburdened family court system resulting in lengthy delays and procedural hurdles in getting cases heard on a timely basis, such as fact finding hearings to determine whether abuse or neglect even occurred and hearings involving the most fundamental issues, such as whether children should be removed from their home, whether children should be administered psychotropic medication, and whether a family should have unsupervised visits.

Building upon a wealth of front line experience, BFDP has become a leading advocate for systemic change in the child welfare and family court systems. Although we have an expansive mission, our resources are limited. We rely on our pro bono supporters to achieve many of our most important victories. To give just a few examples, BFDP has recently partnered with several law firms and New York University School of Law's Family Defense Clinic, to mount several significant cases for low income families' right to due process, including appellate work at the Second Department and motion practice in Brooklyn Family Court.

In partnership with Wilmer Cutler Pickering Hale and Dorr LLP, in 2010, BFDP launched a legal challenge to the City's practice of forcing unrepresented parents to agree to the removal of their children without informed consent and without first seeking court permission as required by law. The challenge, which alleged violations of our client's procedural due

process rights, resulted in a settlement with the City which radically changed its policies and practices to require caseworkers to go to court before removing children when no immediate emergency exists. As a result, fewer children unnecessarily suffer the trauma of being removed from their homes, only to be returned a few days later after a Judge rules that the removal was unwarranted.

This year, BFDP regularly challenged in Family Court and at the Appellate Division the City's systemic practice of removing children from their homes after a finding of neglect has been made without coming to court first and has challenged the Family Court's practice of allowing such removals without first holding a hearing. In partnership with Stroock & Stroock & Lavan, LLP, BFDP filed a motion for leave to appeal to the New York State Court of Appeals seeking to reverse the Appellate Division's determination that a hearing is not necessary in certain removal cases even though the fundamental right to family integrity is implicated. This past summer, Simpson, Thacher & Bartlett LLP placed a summer associate fellow at BFDP who focused on due process issues, including research on the rights implicated when a parent is required to undergo a mental health examination by the state. Finally, BFDP also participated in an amicus brief filed with the US Supreme Court that was drafted by Morrison & Foerster LLP and the NYU Family Defense Clinic in *Camreta v. Greene* -- a Fourth Amendment case with important implications for the due process rights of young children at school.

BFDP has also worked in partnership with law firms to assert the rights of mentally ill parents and parents with cognitive delays. Wilmer Cutler Pickering Hale and Dorr LLP assisted

BFDP in the defense of a mother who was safely parenting two of her children in a Termination of Parental Rights case involving her two other children. BFDP is also co-counseling a fact finding trial with O'Melveny & Meyers LLP in which we introduced the expert testimony of a psychologist who testified that a cognitive delay alone is not sufficient for a finding of neglect.

There are many ways for law firms to get involved with BFDP's work. BFDP has a wide variety of cases presenting many pro bono opportunities in family court, or for larger federal cases or appellate practice. For those interested in developing leadership skills, BFDP recently created an Associates Advisory Board of law firm associates who assist BFDP on communications, policy, and fundraising matters. To learn more about BFDP's

practice, we are offering a CLE to any one interested on November 29<sup>th</sup> from 6 to 8 p.m. at Kaye Scholer located at 425 Park Avenue.

For more information about BFDP's practice, the November 29th CLE, pro bono opportunities, the Associates Advisory Board, or upcoming events, please visit our website at [www.bfdp.org](http://www.bfdp.org) and/or contact Lauren Shapiro at [lshapiro@bfdp.ls-nyc.org](mailto:lshapiro@bfdp.ls-nyc.org) or Jessica Marcus at [jmarcus@bfdp.ls-nyc.org](mailto:jmarcus@bfdp.ls-nyc.org).

1 The Brooklyn Family Defense Project, an office of Legal Services NYC, is assigned by the family court to represent respondents in abuse and neglect (Article 10) cases in Brooklyn Family Court.

2 See, e.g., *Troxel v. Granville*, 530 U.S. 57, 65 (2000); *Santosky v. Kramer*, 455 U.S. 745, 753-54 (1982); *Wisconsin v. Yoder*, 406 U.S. 205, 229-34 (1972); *Prince v. Massachusetts*, 321 U.S. 158, 165-68 (1944); *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 535 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 400-02 (1923). In addition, the purpose of Article Ten of the New York Family Court Act is to "provide due process

of law for determining when the state, through its family court, may intervene against the wishes of a parent on behalf of a child so that his needs are properly met." FCA § 1011.

3 For example, in Brooklyn, Black children represent 36.1% of the child population, but are the subject of 49.5% of the child welfare investigations. Of the 3,899 children in foster care in Brooklyn as of March 2011, 62.2% were Black. New York City Children's Services, Community Snap Shot 2010. [http://www.nyc.gov/html/acs/html/statistics/statistics\\_cd\\_snapshot.shtml](http://www.nyc.gov/html/acs/html/statistics/statistics_cd_snapshot.shtml)

4 New York law is clear that it is in the best interests of children to remain with their families. The legislature has found that "it is generally desirable for the child to remain with or be returned to the birth parent because the child's needs...will usually best be met in the home of its birth parent, and that parents are entitled to bring up their own children unless the best interests of the child would be thereby endangered." Social Services Law, section 384-b (1). The State must undertake efforts "to prevent ...children's removal from their homes whenever possible." *Nicholson v. Scoppetta*, 3 NY3d 357, 378 (2004). There is a "strong public policy of both keeping families together and protecting the health and safety of children." *In re Marino S.*, 100 NY 2d 361, 369 (2003).

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