

THE PUBLIC DEFENDER SERVICE

for the District of Columbia



CHAMPIONS OF LIBERTY

Fiscal Year 2013

Congressional Budget Justification

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PUBLIC DEFENDER SERVICE
Fiscal Year 2013 Congressional Budget Justification

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LEGAL AUTHORITY AND MISSION

The Public Defender Service for the District of Columbia (PDS) is a federally funded, independent organization governed by an eleven-member Board of Trustees. Originally operating as the Legal Aid Agency from 1960 to 1970, PDS was created in 1970 by a Federal statute¹ enacted to comply with a constitutional mandate to provide defense counsel to indigent individuals.² The mission of PDS is to provide and promote quality legal representation to indigent adults and children facing a loss of liberty in the District of Columbia justice system and thereby protect society's interest in the fair administration of justice.

A major portion of the work of the organization consists of representing individuals who are charged in the District of Columbia's local criminal justice system with committing criminal acts. Also, PDS provides legal representation to people facing involuntary civil commitment in the mental health system, as well as to many of the indigent children facing the most serious charges in delinquency cases, including children who have special education needs due to learning disabilities. PDS attorneys represent indigent clients in the majority of the most serious adult felony cases filed in the Superior Court every year, nearly all individuals facing parole revocation under the D.C. Code, and all D.C. defendants requiring "stand in" counsel representation at Drug Court sanctions hearings. In addition, PDS provides technical assistance to the local criminal justice system, training for panel and pro bono attorneys, and additional legal services to indigent clients in accordance with PDS's enabling statute.

In 1997, the Congress enacted the National Capital Revitalization and Self-Government Improvement Act of 1997 (the Revitalization Act),³ which relieved the District of Columbia of certain "state-level" financial responsibilities and restructured a number of criminal justice functions, including representation for indigent individuals. The Revitalization Act instituted a process by which PDS submitted its budget to the Congress and received its appropriation as an administrative transfer of Federal funds through the Court Services and Offender Supervision Agency (CSOSA) appropriation. With the enactment of the Fiscal Year (FY) 2007 Appropriation Act, PDS now receives a direct appropriation from the Congress. In accordance with its enabling statute and the constitutional mandate it serves, PDS remains a fully independent organization and does not fall under the administrative, program, or budget authority of any Federal or local executive branch agency.

Since its creation, PDS has maintained a reputation in the District of Columbia criminal justice system for exceptional advocacy. The strength of PDS has always been the quality of the legal services that the organization delivers. Judges and prosecutors alike acknowledge and respect the excellent advocacy of PDS's attorneys, as do public defender agencies and criminal justice bars across the nation.

¹ Pub. L. No. 91-358, Title III, § 301 (1970); *see also* D.C. Code §§ 2-1601 – 1608 (2001).

² *Gideon v. Wainwright*, 372 U.S. 335 (1963).

³ Pub. L. No. 105-33, Title X (1997).

**PUBLIC DEFENDER SERVICE
BUDGET REQUEST SUMMARY**

FY 2013 Summary of Changes

	Permanent Positions	FTE	PDS 2013 Request (\$ in 000s)
FY 2012 Budget	235	232	37,241
Adjustments to Base:			
Pay Raises	0	0	1,658
General Pricing Level	0	0	192
Total, Adjustments	0	0	1,850
FY 2013 Base	235	232	39,091
Non-Recurring Expense	0	0	285
FY 2013 Request	235	232	39,376

FISCAL YEAR 2013 REQUIREMENTS

The Public Defender Service for the District of Columbia requests an operating budget of \$39,091,000 for Fiscal Year 2013. PDS also requests one-time funding of \$285,000 for a sorely needed new telephone system. The current system is not only at the end of its useful life but is no longer supported by the manufacturer, which has sought bankruptcy protection in court. In addition, PDS requests funding for five attorney positions: three Trial Division attorney positions to allow PDS to return to the level of support it provided to adult clients in criminal cases and two Juvenile Services Program positions to increase the level of representation PDS offers to children committed to the custody of the District of Columbia through the juvenile delinquency system.

PDS's operating budget request reflects an increase of five percent, or \$1,850,000, from PDS's FY 2012 enacted funding level of \$37,241,000. PDS's request will provide for inflationary increases for its current staffing level and funding for five positions that have been unfunded over the past two years. As explained below, PDS will use the funding to bring PDS's Trial Division closer to its FY 2009 staffing level, increasing the percentage of serious felony cases handled by PDS, and to increase PDS's staffing levels for its Juvenile Services Program to represent currently underrepresented children. This request is consistent with PDS's policy and funding priorities and directly supports the Administration's goal of improving indigent defense systems and expanding access to legal services.

Policy and Funding Priorities

PDS is a small, single program; the only local institutional public defender in the District of Columbia; and the only local institutional public defender in the President's Budget. PDS's priority is ensuring that all persons in the District of Columbia receive due process when threatened with a loss of liberty. All PDS divisions and employees either support or provide representation in furtherance of this mission.

In addition to making progress on deficit reduction and job creation, addressing the current national crisis in indigent defense is a priority for the Administration. In part to address this crisis, Attorney General Eric H. Holder, Jr. established the Access to Justice Initiative in March 2010,⁴ demonstrating the Administration's commitment to improving the availability and quality of indigent criminal defense across the country.⁵ Attorney General Holder has stated that the crisis in indigent defense is "not a passing issue for the Justice Department." Instead, "expanding access to legal services is, and will continue to be, a national priority." The goal is to make "our criminal defense system . . . a source of tremendous national pride."⁶ PDS is a model defender service in which the nation can already take considerable pride.

But absent an increase in funding to cover inflationary costs and allow PDS to more fully staff its Trial Division and to represent children who may otherwise forfeit their liberty, the Administration risks moving backward on its goal of improving the criminal justice system. If allowed to continue as a model public defender office, PDS will remain tangible evidence of the Administration's leadership in making "our criminal defense system . . . a source of tremendous national pride."⁷

PDS has reduced the size of its staff to manage operations for two years of flat budgets. To address rent and salary increases that are not in PDS's control, PDS has trimmed where it can. During FY 2011, PDS brought its spending on supplies below its FY 2008 level, its spending on accounting and payroll services below its FY 2008 level, its spending on transcripts below its FY 2009 level, and its spending on experts below its FY 2010 level. In addition, PDS has realigned its workforce to fulfill critical posts while reducing its complement of employees to twenty below its authorized FTE of 232 and 10 below its staffing level in FY 2009.

The costs to taxpayers of reducing the number of highly qualified professionals able to provide representation to individuals facing civil commitments and extended prison sentences are hard to calculate. But, as Attorney General Holder explains:

⁴ "A key priority of the Access to Justice Initiative is working with national indigent-defense advocacy groups and public defenders from across the country to address the crisis in the provision of indigent legal defense." www.justice.gov/atj/ex-initiative-work.html.

⁵ The Initiative recognizes that "[i]n the criminal justice system, public defender offices are underfunded and understaffed, often so severely that they cannot hope to provide their clients with effective assistance." *Id.*

⁶ Attorney General Eric H. Holder, Jr., Wilmington, NC, June 19, 2010, www.justice.gov/ag/speeches/2010/ag-speech-100619.html.

⁷ *Id.*

“ . . . problems in our criminal defense system aren’t just morally untenable. They’re also economically unsustainable. Every taxpayer should be seriously concerned about the systemic costs of inadequate defense for the poor. When the justice system fails to get it right the first time, we all pay, often for years, for new filings, retrials, and appeals. Poor systems of defense do not make economic sense.”⁸

Two FY 2011 PDS cases illustrate this point. PDS was appointed to two separate homicide cases. In each case, the government sought and secured an indictment for first degree murder and related charges. But for the work of PDS, both of these cases would have proceeded to trial with a high probability of conviction. Instead, after hundreds of hours of investigation, more than 100 hours of attorney time on pretrial litigation and hours of expert services poring over cell tower records and fingerprint evidence, PDS presented the evidence its lawyers, experts, and investigators had uncovered to the prosecution. In each case, PDS convinced the prosecution that it had charged and indicted the wrong person. Each case was dismissed within only weeks before the trial was scheduled to start. The cost of avoiding these two wrongful convictions was less than \$50,000. The costs involved in two trials – two wrongful convictions with lengthy sentences, appeals, other post-conviction proceedings and retrials – are unquantifiable.

As detailed below in the Accomplishments section, PDS plays a critical role in ensuring that all persons in the District of Columbia facing a loss of liberty receive due process. Failure to provide this fundamental right undermines the public’s confidence in the criminal justice system and leads to wrongful convictions. While PDS’s budget is a fraction of the cost of the entire criminal justice system in the District of Columbia, the high quality of PDS’s performance is recognized by all the participants in the system. The District of Columbia Court of Appeals and the Superior Court of the District of Columbia not only recognize this performance, they rely on it in countless serious cases. Reducing PDS’s capacity to provide representation to those who cannot afford counsel would diminish justice in the District of Columbia.

PDS’s Resource Request

Telecommunications System (\$285,000)

The Public Defender Service for the District of Columbia requests \$285,000 to purchase components of a new integrated telephone and data network system – components that will support PDS’s goals of maintaining PDS’s current level of telephone service and permitting system growth in future years.

PDS needs to replace its current Nortel CS1000E telephone system. This system is technically obsolete, unreliable, and expensive to maintain, and Nortel, which has been involved in bankruptcy proceedings for the past three years, has an uncertain future. The optimal telephone solution for PDS – a Voice over Internet Protocol (VoIP) telephone system and data network – is a technically proven, cost effective communications system that can support telecommuters,

⁸ Attorney General Eric H. Holder, Jr., Department of Justice National Symposium on Indigent Defense: Looking Back, Looking Forward, 2000 – 2010, February 18, 2010, www.ojp.usdoj.gov/BJA/topics/Speeches/Eric%20Holder%20Remarks%20Indigent%20Defense%20Summit%202.18.10%201.pdf.

headquarters, and satellite or “virtual office” workers. The VoIP telephone system would provide more stability and capacity than PDS’s existing telephone service; the new system would incorporate features such as “single number reach” (calls from any one employee’s office telephone number can ring on multiple telecommunication devices), integration of email and voice mail, videoconferencing, and phone number portability (employee can login on any phone and have work calls directed to that phone).

PDS has already laid the groundwork for getting a new telephone system. In FY 2010, PDS, working with consultants, conducted an analysis of its telephone needs and identified the system’s requirements. In addition, once PDS selected the integrated VoIP telephone system and data network as the best option, in FY 2011, PDS purchased equipment that would be needed for the supporting infrastructure.

PDS therefore requests \$285,000 to pursue a provider-hosted VoIP solution. In FY 2013, PDS would obtain basic telephone service and do so in a manner that does not compromise PDS’s efforts to put a more robust and efficient telephone system and data network in place that includes the flexibility to add more nimble services. The \$285,000 would allow PDS to acquire the telephone service (\$200,000), install the required cabling (\$65,000), obtain the training to use the new system (included in the service cost), and pay for the first year’s maintenance of the system (\$20,000).

Trial Division (\$300,000)

PDS requests funding for three attorney positions to restore capacity in the Trial Division to handle serious cases. PDS has reduced the staffing level of the Trial Division, primarily through attrition, in order to meet other critical client and administrative needs. One of these critical needs was assisting the District of Columbia Court of Appeals in its efforts to reduce the backlog of appeals, which also allowed PDS to reduce the amount of time clients wait to have their appeals resolved. PDS met this need by fully staffing the Appellate Division.⁹ Fully staffing this division and absorbing inflationary increases in fixed costs and salaries over the past two years has meant that PDS has been unable to fully staff the Trial Division.¹⁰ PDS’s inability to hire its full complement of trial attorneys has adversely impacted its capacity to provide representation in criminal trial matters, particularly in the most serious cases – the cases that PDS is best suited (due to training, experience, and resources) to handle.

Since FY 2005, PDS has represented, on average, clients in 75 percent of the homicide cases in the District of Columbia, in 56 percent of the “while armed” offenses that carry potential life sentences and are to be tried within 100 days of the initial court appearance, and in 28 percent of

⁹ This effort has helped PDS to reduce the number of appellate cases with outstanding briefing orders by 65 percent over a two-year period. Continuing at its current staffing level, the Appellate Division is on track to eliminate its backlog and bring down the waiting time for resolution of appeals. The Appellate Division has made these strides without compromising the quality of its representation.

¹⁰ In FY 2009, PDS’s appropriation was sufficient to fund 222 employees, but current funding supports only 212. Seven of the ten fewer positions came from the Trial Division, reducing its size by almost 15 percent.

the serious juvenile cases. During FY 2011, PDS handled only 69 percent of the homicide cases, only 48 percent of the “while armed” offenses, and only 23 percent of the serious juvenile cases. Funding for three trial attorney positions will enable PDS to reverse the decline in coverage of the most serious adult and juvenile cases in the District of Columbia courts, permitting a first-year rebound to more than 30 percent of the serious delinquency offenses and more gradual increases to 55 percent of the “while armed” cases and to 75 percent of the homicide cases.¹¹

Juvenile Services Program (\$200,000)

PDS requests funding for two attorney positions to allow the Community Defender Division’s Juvenile Services Program (JSP) to provide representation to certain children in the District’s juvenile justice system who are currently unrepresented or underrepresented and facing a loss of liberty.

With a small staff, JSP provides legal representation to youth committed to the custody of the District of Columbia through juvenile delinquency proceedings. With an office on the site of the city’s secure commitment facility, New Beginnings, JSP represents the youth in their disciplinary hearings, provides advocacy for youth on institutional issues, provides daily legal rights orientation for newly committed youth, and serves as a local observer filing grievances on behalf of children and reports relating to abuse by facility staff.

In June 2009, the District’s Department of Youth Rehabilitation Services (DYRS) eased the requirements for revoking a youth’s community status and remanding a youth to a secure facility. The process is analogous to adult parole revocation proceedings and involves a “community status review hearing.” Just as adults have a right to counsel at parole revocation proceedings, children have a similar right to counsel at community status review hearings.¹² The practice standards promulgated by the Superior Court of the District of Columbia and adopted by Administrative Order 04-13 for attorneys representing children charged with delinquency require attorneys to advocate zealously on behalf of clients at all post-disposition reviews, including these community status review hearings.¹³

The hearings are held at DYRS’s two secure facilities – one of which is 30 miles outside of the District – and the proceedings are presided over by a panel of DYRS employees. Typically, the process is initiated when DYRS takes a committed child who is currently in the community into custody based on allegations of problems with the child’s placement in the community. A hearing is set to review the placement, and counsel is given notice. Usually, the lawyers receive less than 48 hours notice of the hearing. For most lawyers with a regular Superior Court caseload, these hearings will conflict with previously scheduled court proceedings.

¹¹ At PDS, new, inexperienced trial attorneys generally are assigned to work in juvenile court and then move to adult court. New, more experienced attorneys generally start in adult court. Once in adult court, attorneys take on cases of increasing levels of seriousness based on the attorneys’ individual capacity. More time would be required therefore to see the impact on coverage of the most serious adult cases.

¹² 29 D.C.M.R. § 1210.5

¹³ D.C. Superior Court Administrative Order 04-13 at 24-25.

For reasons of efficiency and effectiveness, PDS relies primarily on JSP attorneys present at the facilities and almost immediately accessible to the children to handle the community status review hearings for clients represented by PDS before their commitment; this approach avoids delays or conflicts with court cases for the youths' original PDS trial attorneys and allows PDS to represent more children at these hearings. Current staffing levels however, permit PDS to represent only about one quarter of the committed children at any one time (currently, approximately 250 children, not all of whom are subject to community status review hearings). For children with non-PDS trial counsel, no mechanism is in place to ensure the appearance of those who are court-appointed attorneys, and fewer than 10 percent of non-PDS clients have court-appointed counsel present at their hearings. PDS has tried to facilitate the process by assisting DYRS in notifying counsel of the impending hearing but, just as for PDS lawyers, the court conflicts are overwhelming. Where PDS has been able to reach assigned counsel, all have requested that PDS undertake representation for the hearing. To implement this solution, PDS needs funding for two additional lawyers.

In FY 2011, there were 245 community status review hearings. Dividing this caseload between two lawyers creates a high but manageable caseload given advances in technology and access to relevant information about the youth through both the Superior Court of the District of Columbia's and DYRS's databases.

With offices already located at the institutions and its history of working in the juvenile detention facilities, PDS is ably suited to provide this service to children who are currently unrepresented or underrepresented in their community status review hearings. Furthermore, PDS can represent the youth more efficiently than the panel attorneys with their competing court obligations.

PROGRAM DESCRIPTIONS

Legal Services

PDS and private attorneys, both appointed by the District of Columbia courts pursuant to the Criminal Justice Act (CJA),¹⁴ provide constitutionally mandated legal representation to indigent people facing a loss of liberty in the District of Columbia. PDS handles a majority of the most difficult, complex, time-consuming, and resource-intensive criminal cases, while private attorneys (CJA lawyers) handle the majority of the less serious felony, misdemeanor, and regulatory offenses. PDS is a model program applying a holistic approach to representation. PDS uses both general litigation skills and specialty practices to provide complete, quality representation in complex cases. While PDS is a single program, PDS divides its attorneys and professionals into specific functions to promote overall representation in individual cases. PDS staff attorneys are divided into seven practice groups: the Trial Division, the Appellate Division, the Mental Health Division, the Special Litigation Division, the Parole Division, the Civil Legal Services Division, and the Community Defender Division. On a day-to-day basis, the attorneys in the various divisions provide advice and training to each other, and they often form small teams to handle particularly complex cases.

Using this team approach, PDS undertook more than 15,000 legal matters in FY 2011. As described below, these matters encompassed a wide range of legal representation, including in

¹⁴ D.C. Code §§ 11-2601 – 2608 (2001).

homicide trials, special education proceedings, parole revocation hearings, disciplinary hearings for detained children and adults, a class action suit on behalf of children in the custody of the District of Columbia, involuntary civil commitment proceedings, and groundbreaking appellate representation. The level of performance achieved by PDS staff in FY 2011 was a continuing demonstration of what was reflected in the results from a survey of judges conducted in 2008 pursuant to PDS's Strategic Plan. As was the case with the 2004 judicial survey, 100 percent of those responding agreed that PDS staff "provide and promote quality legal representation to indigent children and adults facing a loss of liberty." In a slight improvement over the 2004 survey results, 100 percent of those responding agreed that PDS staff are "skillful in both oral and written advocacy."

Trial Division

Staff attorneys in the Trial Division zealously represent adults in criminal proceedings in the District of Columbia Superior Court or provide zealous legal representation to children in delinquency matters. Attorneys are assigned to specific levels of cases based on experience and performance. As a result of intensive supervision and ongoing training, attorneys generally transition over the course of several years from litigating juvenile delinquency matters to litigating the most serious adult offenses. The most seasoned attorneys in the Trial Division handle the most complex and resource-intensive adult cases. For example, senior PDS attorneys routinely handle cases involving DNA evidence, expert testimony, multiple-count indictments, and novel or complex legal matters. This group of highly trained litigators provides representation in the majority of the most serious adult felony cases filed in the Superior Court each year.¹⁵

Less senior Trial Division staff attorneys handle the most difficult or resource-intensive delinquency cases (cases involving children with serious mental illnesses or learning disabilities or children facing serious charges) and handle some general felony cases and a limited number of misdemeanor cases.¹⁶ Trial Division staff attorneys also provide representation in a wide range of other legal matters through PDS's Duty Day program and the Superior Court's Drug Court program.

Appellate Division

The attorneys in the Appellate Division are primarily responsible for handling the appellate litigation generated in PDS cases, providing legal advice to CJA attorneys in appellate matters, and responding to requests from the District of Columbia Court of Appeals for briefs in non-PDS cases involving novel or complex legal issues. Another important function of the Appellate Division is to provide a wide range of technical assistance and training to other PDS divisions.

¹⁵ PDS was assigned to 69 percent of the Felony One cases and to 48 percent of the Accelerated Felony Trial Calendar (AFTC) cases in FY 2011. Felony One cases include all homicides, and AFTC cases include all "while armed" offenses that carry potential life sentences and are to be tried within 100 days after the initial court appearance.

¹⁶ PDS provides representation in misdemeanor cases on a limited basis. PDS's authorizing statute permits PDS to represent "Persons charged with an offense punishable by imprisonment for a term of 6 months, or more." D.C. Code § 2-1602(a)(1)(A) (1981). Sentences for most misdemeanors in the District of Columbia are for lesser terms.

The Appellate Division attorneys' knowledge and experience allow them to assist in complex cases without having to perform long hours of original research each time difficult legal issues arise. The reliance on this division by the District of Columbia Court of Appeals is demonstrated by the Court's emphatic and repeated requests that PDS expand its staff of appellate specialists to assist the Court in reducing its backlog while maintaining the division's high level of quality.¹⁷

Mental Health Division

Attorneys in the Mental Health Division (MHD), formerly located on the grounds of St. Elizabeths Hospital¹⁸ in the District of Columbia, handle the majority of the involuntary civil commitment cases that arise in the Superior Court.¹⁹ PDS is initially appointed when a person is detained in a mental hospital upon allegations that the person is a danger to himself or others as a result of mental illness. MHD lawyers also represent persons in post-commitment proceedings, including commitment reviews and outpatient revocation hearings; in involuntary commitment proceedings of persons found incompetent to stand trial because of mental illness or mental retardation; and in matters relating to persons found not guilty by reason of insanity in Superior Court or in United States District Court cases. The lawyers in this division also provide information to the District of Columbia Council on proposed mental health and mental retardation legislation, conduct training sessions on the rights of persons with mental illness involved in civil commitment actions, and provide legal assistance to CJA lawyers appointed by the court to handle involuntary civil commitment cases.

¹⁷ In the last two years, the Appeals Division reduced the number of outstanding briefing orders – orders from the D.C. Court of Appeals setting filing deadlines for appellate briefs – by 65 percent. In April 2010, the division had outstanding briefing orders in 135 cases. In December 2010, the division reduced that number to 108 cases. Approximately one year later, on November 1, 2011, the division had outstanding briefing orders in only 59 cases. As of January 3, 2012, the division owed opening briefs in only 47 cases. This benefits PDS clients by expediting the filing of their appellate briefs, and this progress assists the Court in achieving its goal of reducing the amount of time litigants wait for decisions on their appellate matters.

¹⁸ MHD began the process of moving in FY 2010, and the process continued into FY 2011 using resources provided for this purpose in FY 2009. With the closure of the old St. Elizabeths Hospital campus for redevelopment, PDS has, with the assistance of the Government Services Administration, identified off-campus, commercial office space for MHD. While this option is not as satisfactory as the original proposal to occupy space in the St. Elizabeths Hospital's down-sized facilities, which would have located the division close to clients, records, and treating doctors, the lease of commercial space will place the division close to PDS headquarters. PDS expects to begin occupying the space in FY 2012 and expects to obligate all the relocation resources by the time authority to do so expires on September 30, 2012.

¹⁹ In FY 2011, PDS was appointed to 66 percent of the involuntary commitment cases filed in the District of Columbia.

Special Litigation Division

The Special Litigation Division (SLD) handles a wide variety of litigation that seeks to vindicate the constitutional rights of PDS clients, to ensure equal justice to all in the D.C. courts, and to change unfair systemic criminal justice practices. An example of such litigation is the *Jerry M.* lawsuit brought on behalf of the children committed to the care of the District of Columbia following delinquency proceedings challenging the quality of the care being provided. Another example is litigation securing the exoneration of clients who were wrongfully convicted of serious crimes. SLD attorneys also support PDS trial lawyers in the litigation of systemic criminal justice issues, including eyewitness identification issues, forensic science issues, and issues pertaining to the suppression of exculpatory information by the prosecution. SLD attorneys have appeared before all the major courts in the District of Columbia – the D.C. Superior Court and the D.C. Court of Appeals in the local system, and the U.S. District Court for the District of Columbia, the U.S. Court of Appeals for the D.C. Circuit, and the U.S. Supreme Court in the Federal system.

Parole Division

The Parole Division provides required representation to nearly all individuals facing parole revocation before the U.S. Parole Commission pursuant to the D.C. Code.²⁰ In addition, this division provides legal assistance to D.C. inmates housed throughout the country in Federal Bureau of Prisons facilities who write letters requesting counseling regarding parole eligibility matters and other related issues.

Civil Legal Services Division

The Civil Legal Services Division (CLS) provides services to address issues facing children in the delinquency system that often hinder their successful reintegration into the community. CLS has a team of special education attorneys expert in advocacy under the Federal Individuals with Disabilities Education Improvement Act (IDEIA), which mandates special accommodations in public schools for children who cannot be adequately educated in a traditional classroom setting due to learning disabilities or other physical or intellectual challenges. In addition, CLS includes attorneys who address other rehabilitative needs of these children and the needs of adult clients by providing representation in civil matters arising out of their criminal charges – civil matters such as those related to public benefits entitlement, housing, child support, and health care services. CLS also provides expert consultation for attorneys with clients in the criminal justice system who face immigration consequences as a result of their contact with the criminal justice system.²¹

²⁰ In FY 2011, PDS handled more than 95 percent of parole and supervised release revocations.

²¹ Locally in the District of Columbia, the courts have recognized since 2000 that defense attorneys have an obligation to advise their clients of possible immigration consequences of their decisions concerning plea offers. *See Goodall v. United States*, 759 A.2d 1077, 1083 (D.C. 2000). In FY 2010, the U.S. Supreme Court in *Padilla v. Kentucky*, -- U.S.--, 130 S. Ct. 1473 (2010), applied for the first time the ineffective assistance of counsel standard in *Strickland v. Washington*, 466 U. S. 668 (1984), to a lawyer's failure to advise a client about a consequence of a conviction where the consequence is not part of the sentence imposed by the court. PDS's model approach to criminal defense and its previously developed expertise in collateral

Community Defender Division

The Community Defender Division provides services through three programs: 1) the Juvenile Services Program represents children at institutional disciplinary hearings at the District's youth detention centers and works with community organizations to develop reentry programs that address the special needs of children; 2) the Institutional Services Program serves as the PDS liaison to individuals convicted of D.C. Code offenses and held in Federal Bureau of Prisons facilities, to provide information to assist these individuals and monitor their conditions of incarceration; and 3) the Community Reentry Program responds to the legal and social services needs of newly released individuals, assisting them in making a successful transition back into the community; the program gives special consideration to returning individuals who are not served by the Court Services and Offender Supervision Agency.

Legal Support Services

Legal Support Services is composed of various professionals within PDS who work closely with attorneys on individual cases: the Investigations Division, the Office of Rehabilitation and Development (ORD),²² and the Defender Services Office (DSO). Investigators ensure that each case is carefully investigated prior to a client's decision to accept a plea offer or proceed to trial.²³ ORD's forensic social workers provide presentencing assistance to address mitigation issues and to provide program alternatives for appropriate clients.²⁴ Other legal support services include a multi-lingual language specialist to facilitate communication with non-English speaking clients, a librarian to manage PDS's specialized collection and electronic access to research, and two paralegals who work on cases and projects.²⁵

Investigations Division

The Investigations Division supports all the legal divisions of PDS, in particular the Trial Division, by providing thorough and professional investigative work, which includes locating

consequences of criminal convictions have made PDS staff much sought-after speakers, and PDS materials on this subject have been widely distributed.

²² This division used to be known as the Offender Rehabilitation Division. The division was renamed in November 2010 to better reflect its work while allowing it to retain the acronym people have used to refer to the division for more than 40 years.

²³ See *e.g.*, *Kimmelman v. Morrison*, 477 U.S. 365 (1986) (failure to investigate and present Fourth Amendment claim was constitutionally ineffective assistance of counsel).

²⁴ See *Wiggins v. Smith*, 539 U.S. 510 (2003) (decision of counsel not to expand their investigation of petitioner's life history for mitigating evidence beyond presentence investigation report and department of social services records fell short of prevailing professional standards).

²⁵ As explained above, PDS operates as a single program, allowing it to shift resources between specialties as needed. Currently, PDS has 12 forensic social workers, 26 investigators, two paralegals, one translator, one forensic specialist, and one library technician who support the lawyers in their casework. In addition, 12 administrative assistants support the 156 lawyers and professional staff who provide direct client services.

witnesses, conducting field interviews, taking written statements, serving subpoenas, collecting police reports, copying court and administrative files, and preparing exhibits for trials and other hearings. In addition to producing exceptional investigation in PDS cases, the staff conducts initial and ongoing training to court-certified CJA investigators who provide investigation services to the panel attorneys.

Office of Rehabilitation and Development

The Office of Rehabilitation and Development (ORD) is composed of experienced forensic social workers who assist in recommending appropriate sentences to the Superior Court. The ORD staff are skilled and experienced “mitigation specialists” who often directly address the court at sentencing to provide the court with information about viable alternatives to incarceration such as community-based, rehabilitative treatment. Because the ORD staff are well-versed in all of the D.C. area rehabilitative programs (e.g., drug treatment, job training, education programs, and parenting classes), the forensic social workers are frequently asked to provide consultation for judges, CJA lawyers, and others in the criminal justice system. In addition to their invaluable advocacy work, the staff of ORD prepare a comprehensive annual *Directory of Resources for Adults* and a biennial *Directory of Youth Resources* that list a wide range of services available to adults and children in the criminal justice system. These directories, available on the PDS website,²⁶ are used by CSOSA, the Superior Court, and many other agencies and organizations working with clients in the criminal justice system.

Defender Services Office

The Defender Services Office (DSO) supports the court appointment-of-counsel system by determining the eligibility for court-appointed counsel of virtually every child and adult arrested in the District of Columbia and coordinating the availability of CJA attorneys, law school students, pro bono attorneys, and PDS attorneys for appointment to new cases on a daily basis.²⁷ The DSO operates six days a week, including holidays. PDS attorneys work a similar schedule to be available for client representation and other needs of the court system.

Administrative Support

PDS has a number of divisions that provide technical assistance to PDS staff. Though small, these divisions support the overall effective functioning of PDS using both internal expertise and outside contracts for short-term selective expertise. These divisions include Budget and Finance, Human Resources, Information Technology, and Administrative Services.²⁸ In concert with individual attorneys and the PDS executive staff, these divisions provide such services as: procurement of expert services for individual cases, financial accountability,²⁹ strategies for

²⁶ PDS’s website can be found at www.pdsdc.org.

²⁷ This office is currently staffed with 12 professionals who in FY 2011 conducted eligibility interviews and assisted in the appointment process for more than 30,000 cases.

²⁸ These four divisions are currently staffed with 30 professionals.

²⁹ While a clean audit is an expectation and not an accomplishment for PDS’s Budget and Finance Division, it is worthy of note that PDS continues to receive clean financial audits.

developing PDS's human capital and wellness, recruitment, development of an electronic case management system, maintenance of PDS's IT infrastructure, and copying and supply services.

Though PDS is made up of a number of divisions and legal practice groups, each group and each employee's work are valued for the manner in which they enhance direct client representation. PDS's single program approach allows PDS to manage and adjust its staffing to bring the ideal mix of general skills and specialized expertise to each case according to the client's needs.

PDS ACCOMPLISHMENTS

PDS continues to maintain its longstanding tradition of providing exceptional representation to clients and helping to ensure that case outcomes are not driven by an individual's ability to pay for an attorney. Most recently, the exceptional quality of the advocacy of PDS's staff was recognized in several instances:

- An unprecedented 12 current and former PDS attorneys have been appointed by the President or selected as judicial officers since the beginning of FY 2011.
 - One former PDS attorney became a judge on the U.S. District Court for the District of Columbia – he is the second PDS alumnus ever to be appointed to the Federal bench;³⁰
 - five PDS alumni and two PDS attorneys became D.C. Superior Court judges;³¹
 - two PDS attorneys became D.C. Court of Appeals judges;³² and
 - one PDS alumnus and two PDS attorneys were hired as D.C. Superior Court magistrate judges.³³
- Attorney General Eric H. Holder, Jr. described PDS as the best public defender office in the country at a Harvard School of Public Health conference in May 2011.³⁴
- The Foundation for Criminal Justice, a nonprofit that supports the mission of the National Association of Criminal Defense Lawyers, gave the Foundation's first-ever Guardian of Liberty Award to PDS.
- Supreme Court Justice Ruth Bader Ginsburg, writing for the majority, quoted PDS's amicus brief several times and cited to it additional times in a key Supreme Court case.³⁵

³⁰ The Honorable Robert L. Wilkins.

³¹ The Honorable Jennifer A. DiToro, the Honorable Todd Edelman, the Honorable Peter A. Krauthamer (formerly PDS Deputy Director), the Honorable Milton Lee, the Honorable Maribeth Raffinan, the Honorable Judith Smith, and the Honorable Yvonne Williams.

³² The Honorable Corinne Beckwith (Appeals Division supervisor and former U.S. Supreme Court law clerk) and the Honorable Katherine Easterly (Special Litigation Division attorney).

³³ Magistrate Judges Errol A. Arthur, Lloyd Nolan, and Elizabeth Mullin.

³⁴ www.hsph.harvard.edu/forum/childhood-and-youth-eric-holder.cfm, Segment 7, Programs That Work, (May 2011).

³⁵ *Bullcoming v. New Mexico*, -- U.S. --, 131 S. Ct. 2705 (2011), ruling that the introduction of a forensic laboratory report by someone other than the scientist who signed the testimonial certification or performed or observed the test reported in the certification violated the

- A Superior Court judge commented that a PDS alumna’s cross-examination of a fingerprint examiner, which was based on a model cross prepared for her by PDS, was the best cross-examination he had ever seen.

PDS’s skills have also been recognized over time

- by requests from defender offices around the country for assistance, pleadings, and other materials developed by PDS’s specialty practice groups;
- by the hundreds of applications PDS receives each year from talented individuals seeking to become PDS staff attorneys and PDS law clerks and interns;
- by a request from the U.S. Supreme Court for a PDS attorney to brief and argue one of its matters;
- by reliance of every court in the District of Columbia, including the U.S. Supreme Court, on PDS *amicus* filings;
- by awards received by both PDS and its staff from various bar and defense organizations; and
- by the consistently high ratings District of Columbia trial and appellate judges gave PDS when surveyed about the quality of legal representation PDS provides.

Performance

In an environment that increasingly requires that PDS do more with less, PDS has been able to demonstrate the qualities that have been repeatedly cited in recent years.³⁶ PDS continues to work to maintain – and improve upon – its hard-earned reputation for providing quality criminal defense advocacy.

Performance Measures

PDS tracks certain performance measures to report on progress toward achieving PDS’s goals and objectives. PDS’s annual measure of the percentage of clients visited within 48 hours of appointment has steadily improved since the establishment of a baseline in FY 2006. PDS’s actual performance and fiscal year targets are as follows:

Confrontation Clause of the U.S. Constitution. (Mr. Bullcoming’s trial attorney in New Mexico was a former PDS attorney.)

³⁶ For example, the cover article of the September 2009 issue of *Washington Lawyer*, “*Gideon: Right to Counsel*,” described PDS as the “gold standard” and as “one of the only offices in the United States that consistently meets nationally recognized standards for indigent defense.” Bob Kemper, *Gideon: Right to Counsel?: Landmark Decision Falls Short of Promise*, *Washington Lawyer*, September 2009, at 26. Also, in 2010, the Southern Center for Human Rights declared that PDS “has demonstrated what it means to champion the rights of the underserved.”

www.schr.org/action/resources/save_the_date_schrs_14th_annual_frederick_douglass_awards_dinner_in_washington_dc.

Percentage of Cases in Which Attorney Consulted with Client Within 48 Hours

	Target	Actual
FY 2008	95%	89%
FY 2009	92%	91.2%
FY 2010	93%	92%
FY 2011	100%	95.4%
FY 2012	100%	N/A

Since FY 2004, when PDS established a baseline for the pretrial restraint measure below, the number of individuals represented by PDS who are charged with detainable offenses has increased;³⁷ many of those individuals are typically held in detention pending trial due to the seriousness of the charged offense. Notwithstanding that increase, in FY 2011, PDS achieved a reduction in some form of pretrial restraint in 53.8 percent of its cases. A reduction of the client’s statutory exposure to pretrial restraint on liberty was 60.7 percent more likely to occur within the first 21 days after the initial hearing as compared to a 49-percent chance of reduction more than 21 days after the initial hearing. PDS’s actual performance and fiscal year targets are as follows.

Percentage of Cases in Which Reduction in Pretrial Restraint Was Obtained³⁸

	Target	Actual
FY 2008	75%	66%
FY 2009	70%	64%
FY 2010	67%	59% 66.5% within first 21 days after initial hearing
FY 2011	99%	53.8% 60.7% within first 21 days after initial hearing
FY 2012	99%	N/A

³⁷ The D.C. Council lowered the standard prosecutors must meet to justify pretrial detention without bond of those charged with certain offenses (lowering it from substantial probability to probable cause – i.e., a “reasonable probability” but less than “more likely than not” – that the person has committed the charged offense), making it easier for prosecutors to persuade the court to order such detention.

³⁸ PDS revised its FY 2011 and FY 2012 performance measures targets for both measures to reflect that PDS’s goal is to visit all clients within 48 hours of appointment and that virtually all clients desire to be released. Achieving the first target is less subject to third-party influence, but the combination of prosecutorial charging decisions and release arguments, detention laws, and the disproportionate number of serious cases PDS handles makes the second target essentially unattainable. PDS’s ultimate goal in the release context is to seek its clients’ objectives, even when the likelihood of achieving them is small.

Case Management:

In FY 2009, PDS began a multi-year project to update its case management system, Atticus. PDS formed an internal project management team, set goals and objectives, and engaged an experienced outside consultant to conduct a thorough case management requirements assessment. The consultant gathered data from every PDS division and made recommendations regarding the system platform. The data set of requirements and the recommendation of an operating platform were evaluated and refined by the project team and presented to senior management for approval. A Request for Proposal was issued and the contract awarded in FY 2010. During FY 2011, PDS completed the design phase of the project on schedule. Also, PDS completed the conversion of the software platform on which the system operates from a no-longer-supported software product to the more current .Net platform. This platform change will allow PDS to leverage the latest technologies to include new functions, such as document management, that are currently found in similar case management systems.

When PDS embarked on Atticus's creation twelve years ago, PDS did not envision having Atticus serve as a data warehouse. The upgrade of Atticus that is currently in progress, however, will when completed allow PDS to acquire, analyze, and evaluate division-specific information; manage trial expenses such as experts, transcripts, case-related travel; and use the information and trends gleaned from the data to identify the most effective and cost-efficient practices and train and assign staff accordingly. When the upgrade is completed, PDS expects to identify trends that impact the workload of each legal division, allowing PDS to make proactive staffing changes within PDS and to hire in anticipation of changes in the workload. PDS also expects to use aggregate outcome data from each of its practice areas to more accurately track performance and to compare PDS's performance over time with that of other defender institutions and other defender systems to identify best practices.

PDS also makes use of the Department of Interior's National Business Center DataMart application to acquire, analyze, and evaluate data pertaining to personnel costs. DataMart, which provides an access layer to the NBC environment that gathers unit cost information on PDS's largest expense categories, is extremely helpful in providing real-time information to senior management in the formulation and execution of strategic decisions.

Collaborative Work

Although widely known for zealously participating in the adversarial process of the criminal justice system, PDS also works closely with criminal justice agencies and the courts to make the justice system function more efficiently and fairly. In addition, PDS is always seeking to engage new partners in programs to increase services to PDS clients and improve indigent defense.

Case Initiation Project

As a member of the District's Criminal Justice Coordinating Council (CJCC), PDS is a partner with the U.S. Attorney's Office, the D.C. Metropolitan Police Department, the Pretrial Services Agency, and the D.C. Superior Court in a project to change the charging process from a paper system to an electronic one. The new system is designed to reduce the need for in-person involvement by police officers in the U.S. Attorney's Office's charging process and streamline records-sharing and administrative processes for the criminal justice system as a whole. PDS, as

the organization that assists the court with its appointment of counsel function, is an essential participant in the project.

D.C. Safe Surrender

In FY 2011, PDS participated in the D.C. Safe Surrender program, which allowed individuals with non-violent felony and misdemeanor bench warrants to turn themselves in in exchange for receiving favorable consideration. This was the replication of a program the D.C. criminal justice community, working through the CJCC, ran in 2007 at the behest of the U.S. Marshals Service, although several administrative changes were made for 2011. Eight hundred fifty-six people – far more than expected – came to turn themselves in, making the program a resounding success. The U.S. Marshals Service reduced the risk of harm associated with searching for and arresting individuals with outstanding warrants, and the individuals themselves could resolve their cases. PDS represented almost every individual who came to the D.C. Superior Court on one of the three Saturdays devoted to the program. One gentleman came all the way from Nevada to resolve his outstanding warrant. In addition, several people with warrants in more serious cases turned themselves in despite knowing that they would almost certainly not be released.

National Training Program for Public Defenders

The Department of Justice Bureau of Justice Assistance provided a grant in FY 2010 to the American Bar Association, the National Association of Criminal Defense Lawyers, and George Mason University to host training sessions for supervisors and staff attorneys in four regions of the country and to develop a training curriculum to be used at the training sessions and beyond. The goal of this project is to improve indigent defense representation across the country. The project is led by an advisory group, including a representative from PDS. All the members of the group are national experts in the field or lead nationally recognized programs. The first training session, which included sessions on presenting and defending against forensic evidence, was held in FY 2011 in Indiana; the trainers included current and former PDS attorneys.

Legislation

In FY 2011, PDS provided expertise to the District of Columbia Council crafting legislation to establish the operating principles for the District's first-ever forensics science lab. Historically, public state and local crime laboratories have been housed in local police departments under the supervision of non-scientists and beholden to law enforcement. Recently passed legislation in the District of Columbia has created the first independent public forensic laboratory. The laboratory will have a Science Board made up of independent forensic scientists and traditional scientists with expertise in scientific research, statistics, and quality assurance. This groundbreaking legislation adopts many of the recommendations of the 2009 National Academy of Sciences Report, "*Strengthening Forensic Science - A Path Forward*" and may well serve to make the District's laboratory a national model.

PDS is also working on a multi-year, District of Columbia Council-initiated project with the U.S. Attorney's Office, the District's Office of the Attorney General, academics, and the Sentencing and Criminal Code Revision Commission to update the city's criminal code. During FY 2011, the group concentrated on the code's structure of fines, which were inconsistent from one

criminal charge to another and sometimes disproportionate to the offense. Legislation proposed by the Commission's working group is now pending before the Council that would enact a comprehensive, rational fine structure that has more of a correlation with the associated incarceration penalties.

Community Partnerships to Help People with Criminal Histories with Reentry

In FY 2011, PDS held its seventh "Community Reentry and Expungement Summit" in the District of Columbia. As with each previous Summit, PDS served more than 700 people in the community by providing free legal advice and access to valuable reentry resources. In addition, an appreciable number of parents, siblings, and spouses of incarcerated persons as well as members of the defense bar and representatives from community-based programs attended who were looking for meaningful resources with which to assist their respective loved ones or clients. PDS recruited and trained almost 50 pro bono attorneys from the D.C. Bar along with student law clerks to staff the Summit. The goals of the Summit were to provide assistance to individuals with old arrest records or minor convictions in sealing eligible records and to make available reentry support services for persons not eligible for record sealing. Realizing that most in attendance would likely not be eligible for record sealing and therefore would need additional support, PDS brought together more than 50 service providers for this year's Summit.³⁹ Attendees received assistance with job searches, interview skills, civil legal services, parole

³⁹ The service providers included: Addiction Prevention and Recovery Administration; Byte Back; Capital Area Asset Builders; Coalition for the Homeless; Community College of the District of Columbia; Community Education Group; Court Services and Offender Supervision Agency – Vocational Training & Education/Employment; D.C. Central Kitchen; D.C. College Savings Plan; D.C. Department of Disability Services; D.C. Department of Employment Services; D.C. Department of Human Services – Strong Families Program Division; D.C. Department of Mental Health; D.C. Family Court Self Help Center; D.C. Jail Advocacy Project; D.C. Office of the Attorney General – Child Support Services Division; D.C. Rehabilitation Services Administration; D.C. Superior Court Fathering Court Initiative; East of the River Clergy Police Community Partnership; East of the River Family Strengthening Collaborative; Edgewood/Brookland Family Service Collaborative; EXCEL Institute; Far Southeast Family Strengthening Collaborative; FLAME Financial; Good Ground – Good Life, Inc; Fort Foote Baptist Church Harbor Light Community Development; Health Services for Children with Special Needs; Housing Counseling Services; Income Maintenance Administration; La Casa Multicultural Center; La Clinica Del Pueblo; Latin American Youth Center Youth Build; Leadership Training Institute Respect for Life Transition Program; Mayor's Office on Ex-Offender Affairs; Mayor's Office on Latino Affairs; Miller & Long Construction; Neighborhood Legal Services Program; Never Give Up Foundation; New Course Catering; New Endeavors by Women; North Capitol Collaborative, Inc.; Oxford Houses; Our Place, DC; Prince George's County, MD Economic Development Corporation; Prince George's County, MD One-Stop Career Center; Restorations Ministries; Returning Citizens United, Inc.; Samaritan Inns; Serenity, Inc.; Strive, DC; The Reentry Network for Returning Citizens; Toni Thomas Associates Community Empowerment Training Academy; Unity Health Care; U.S. Department of Veterans Affairs – Incarcerated Veterans Reentry; U.S. Department of Veterans Affairs – Veterans Justice Outreach Initiative; Washington Legal Clinic for the Homeless; Washington Metropolitan Area Transit Authority – Elevator/Escalator Apprentice Program; Welcome Home Program; Wider Opportunities for Women; Women's P.U.R.P.O.S.E. Empowerment Group.

consultations, and referrals for reentry assistance, including the Work Opportunity Tax Credit, the Federal Bonding Program, disability benefits, and public housing opportunities. The day ended with a training session primarily targeted to criminal justice professionals (defense attorneys, civil legal services practitioners, and aspiring public interest lawyers) that focused on the recent changes in the juvenile confidentiality statutes in the District of Columbia. The training provided guidance to more than 70 people who attended regarding how to identify and mitigate the collateral consequences associated with juvenile arrests and court involvement. PDS plans to hold the eighth annual Summit in 2012.

Electronic Transcript Orders

PDS is working with the D.C. Superior Court to establish an electronic transcript order and delivery system. As an institution that uses transcripts on a regular and frequent basis, both for trial and appellate cases, PDS will increase its efficiency by being able to order transcripts, track the ordering process, and accept delivery of transcripts electronically. The system, which has undergone testing, is expected to be in place by the spring of FY 2012.

Advancing Criminal Law

Since even before the establishment of the District of Columbia court system in 1970, PDS's Appellate Division has been at the forefront of appellate litigation in criminal cases. PDS's appellate cases have had an impact on the District's criminal justice system, as the decisions that result often establish or clarify legal standards in criminal and juvenile delinquency cases. Most good appellate cases start with the trial attorney's creation of a carefully preserved record during the trial. The Trial Division and the Appellate Division interact on a regular basis to help trial lawyers correctly establish the case record in anticipation of an adverse trial ruling (or, in a few cases, a challenge from the prosecution). Evidence of PDS's quality trial work, informed by the Appellate Division's expertise, and of the quality of the Appellate Division's briefs is its remarkable reversal rate of 25 percent.⁴⁰

Court of Appeals Litigation

Four recent cases are representative of PDS's appellate litigation.

In its FY 2010 budget request, PDS reported on the Appellate Division's successful petition to the Supreme Court to grant certiorari in *Robertson v. United States, ex rel. Watson*.⁴¹ The case challenged a D.C. Court of Appeals decision holding that a criminal prosecution, specifically a prosecution for criminal contempt, can be brought in the name of and on behalf of a private citizen rather than in the name of and on behalf of the government, i.e., the United States. At the time the Supreme Court agreed to hear the case, it understood the United States to be endorsing the idea that the Congress could make the prosecution of Federal criminal cases a matter in which private individuals supplant the traditional role of the executive branch and subject other individuals to criminal prosecution in order to avenge private grievances.

⁴⁰ The reversal rate for criminal appeals handled by all other attorneys (pro bono, retained, and panel attorneys) is less than five percent. This data is based on a review of criminal appeals cases since 2005.

⁴¹ *Robertson v. United States ex rel. Watson*, -- U.S. --, 130 S. Ct. 2184 (2010).

After PDS filed its brief on the merits on behalf of petitioner Robertson, the United States changed its litigating position. This dramatic change of position by the United States radically altered the national significance of the case, and two months after oral argument, the Court dismissed the writ of certiorari as improvidently granted. Chief Justice Roberts, joined by three justices, dissented from the decision to dismiss with a forceful vindication of PDS's position. Chief Judge Roberts wrote, "Our entire criminal justice system is premised on the notion that criminal prosecution pits the government against the governed, not one citizen against another. The ruling below is a startling repudiation of that basic understanding."⁴²

In the subsequent proceedings before the D.C. Court of Appeals in FY 2011, the Court adopted PDS's position that the prosecutions must be "brought in the name and pursuant to the sovereign power of the United States."⁴³ PDS's Trial Division, in consultation with the Appellate Division, is currently litigating the implementation of the Court of Appeals decision at the trial level in the Superior Court.

Correcting a hotly contested ten-year practice of permitting individuals to prosecute criminal contempt charges in the Superior Court is an example both of the quality of PDS's litigation and of the resources required to effectively vindicate the rights of individual defendants. Without an institutional defender that can combine appellate and trial litigation expertise, cases such as Mr. Robertson's cannot be undertaken, and systemic wrongs will persist.

Another example of a critical role for an institutional defender is litigating the conduct of judicial officers in individual cases. In the District of Columbia, judges of the Superior Court control the appointment of counsel in cases where the defendant cannot afford counsel. If a panel attorney is appointed under the Criminal Justice Act program, the amount that attorney will be paid for the representation provided is ultimately decided by the judge before whom the case is tried. Thus, challenging the conduct of a judge in a particular case can present personal financial concerns for panel attorneys.

In *In re M.C.*,⁴⁴ PDS persuaded the D.C. Court of Appeals to order the recusal of a Superior Court judge because of improper *ex parte* communications received by the judge. Like *Robertson*, this case began with effective trial level litigation. The trial judge was presiding over the trial of M.C. on charges relating to a shooting incident in which one of the complainants had a pending delinquency case of his own. The trial judge received two *ex parte* email messages from the Superior Court judge in the separate case that contained information about that complainant that potentially bolstered his credibility as a prosecution witness in M.C.'s case. The PDS trial lawyer learned of the disclosure when the email messages were inadvertently attached to an unrelated court order. After seeing the email exchange between the two judges, the PDS trial lawyer filed a motion asking that the trial judge recuse herself from presiding over the trial. The judge denied the motion, conducted the trial, and convicted M.C. PDS's Appellate Division raised the issue on appeal, and the Court of Appeals held that the Code of Judicial Conduct for the District of Columbia Courts required recusal where there was an appearance of

⁴² *Id.* at 2188.

⁴³ *In re Robertson*, 19 A.3d 751 (D.C. 2011).

⁴⁴ *In re M.C.*, 8 A.3d 1215 (D.C. 2011).

lack of impartiality related to a pending judicial proceeding, reversed the adjudication, and remanded the case for retrial before a different judge.

Another area in which PDS has been at the forefront in the District of Columbia is pressing the trial courts to accept the growing body of scientific research challenging the accuracy and reliability of eyewitness identification. At the trial level, PDS's Special Litigation Division has developed model pleadings urging the admission of expert testimony to explain to juries what the scientific research reveals about the process of eyewitness identification and the reason this evidence has been the source of so many wrongful convictions. PDS has also provided training locally and participated in training nationally to educate lawyers about the growing body of research. In FY 2011, PDS took that expertise to the D.C. Court of Appeals, obtaining a reversal in *Russell v. United States*,⁴⁵ a case in which the D.C. Court of Appeals held that the trial court abused its discretion in precluding Mr. Russell from presenting expert testimony concerning the reliability and accuracy of eyewitness testimony in a trial on armed robbery, armed carjacking, and other charges. Concluding that recent developments in the scientific community and in District case law required more in-depth consideration of the factors affecting admissibility than had been given, the Court reversed the conviction and remanded the case to the trial court. With the *Russell* decision, PDS has updated its model pleadings and continues to litigate for an expansion of the use of experts in eyewitness identification cases at the trial level.

PDS's Appellate Division also plays a crucial role in maintaining the integrity of the criminal justice system in the District of Columbia. The division frequently litigates cases involving claims that the government failed to fulfill its due process obligation to make timely pretrial disclosure of materially exculpatory information known to the government. In FY 2011, in *Miller v. United States*,⁴⁶ PDS claimed that the government violated its obligation to disclose such exculpatory, or *Brady*, information in an exceptionally pointed manner. For more than a year, the government suppressed secret grand jury testimony from an apparently neutral witness to a shooting that the person who fired the gun and seriously wounded his victim was left-handed. In fact, in the grand jury, the witness not only testified that he saw the shooter use his left hand, but demonstrated for the grand jury how the shooter reached behind him with his left hand to retrieve a gun and then continued to use his left hand to commit the crime. This testimony was extremely favorable to the defense in two respects. First, the defendant was right-handed, a fact that was known to the government from the inception of the case and made it almost inconceivable that he was the shooter, if the witness had testified truthfully and accurately in the grand jury. Second, an obvious suspect in this crime – someone caught in the get-away vehicle minutes after the shooting -- but who was testifying at the trial as a government witness, was himself left-handed, a remarkable coincidence if this witness was not the shooter. The D.C. Court of Appeals soundly rejected the government's claim on appeal that it never had to disclose this information pretrial because this information could not have affected the jury's verdict and, not surprisingly, agreed with PDS that evidence about a perpetrator's "handedness" is precisely the kind of evidence that can prevent a jury from convicting an innocent person. Without a dissenting vote, the Court denied the government's petition for rehearing *en banc*.

⁴⁵ *Russell v. United States*, 17 A.3d 581 (D.C. 2011).

⁴⁶ *Miller v. United States*, 14 A.3d 1094 (D.C. 2011).

Last, PDS's Appellate Division obtained a reversal of a far-reaching decision substantially curbing bias cross-examination. In 2010, in a published opinion, *McClary v. United States*,⁴⁷ the D.C. Court of Appeals upheld a PDS client's conviction and rejected PDS's contention that the trial court had impermissibly interfered with the right to cross-examine for bias. In a startling and far-reaching ruling, the Court held that once the trial court allowed cross-examination of one reason a government witness might curry favor with the government, it did not have to allow cross-examination about another reason for currying favor with the government. In this instance, the D.C. Court of Appeals granted PDS's petition for rehearing and reversed itself on this important constitutional question, this time concluding in a published opinion that the trial court committed constitutional error in restricting cross-examination for bias.⁴⁸

Case Accomplishments⁴⁹

The core work of PDS is the representation of individual clients facing a loss of liberty. The systems for involuntary commitments, parole revocation proceedings, and criminal and juvenile delinquency proceedings are adversarial in nature, and PDS has able adversaries in the District's Attorney General's Office and the United States Attorney's Office for the District of Columbia. A fair justice system depends on having all components (judges, prosecution, and defense) fulfill their respective roles. PDS plays a pivotal part in ensuring that all cases, whether they result in plea agreements or trials, involve comprehensive investigation and thorough consultation with the client. For those matters that proceed to trial or to an administrative hearing, PDS litigates each matter to the fullest, ensuring that the proceeding constitutes a full and fair airing of reliable evidence. As it has every year since its inception, in FY 2011, PDS won many trials, fought a forceful fight in others, and found resolution prior to trial for many clients. Whatever the outcome, PDS's goal for each client was competent, quality representation. The following cases, absent identifying information where required by the ethical rules or confidentiality statutes, are a small sample of how competent, quality representation can change lives.

As it has in previous years, PDS again in FY 2011 protected the innocent from wrongful conviction. As described above, in separate homicide cases, the government sought and secured indictments for first degree murder and related charges against two individuals. If not for PDS, both of these cases would have proceeded to trial with a high probability of conviction. Instead, after hundreds of hours of investigation, during which PDS investigators located and spoke with dozens of witnesses; after more than 100 hours of attorney time during which PDS lawyers litigated discovery issues securing cell phone records, 911 records, and other documentation in the possession of the government; and after hours spent analyzing the evidence obtained with outside experts; PDS presented the evidence its lawyers, experts, and investigators had uncovered to the government. In each case, PDS convinced the government that it had charged and indicted the wrong person. Each case was dismissed within only weeks before the start of trial.

⁴⁷ *McClary v. United States*, 3 A.3d 436 (D.C. 2010).

⁴⁸ *McClary v. United States*, 28 A.3d 502 (D.C. 2011).

⁴⁹ These cases and their outcomes are far too varied and numerous to recount here, and the ethical rules that protect all clients' confidences, regardless of their economic circumstances, often preclude PDS from providing detailed examples. Thus, information about those cases that have not resulted in published decisions is provided without identifying information.

Sometimes even a finding by a trial court that a person has been wrongly charged and that her record must be sealed cannot protect her from the negative impact of being caught up in the criminal justice system. Ms. J.'s arrest for possession of a firearm was ordered sealed by a D.C. Superior Court judge after the presentation of compelling evidence of her actual innocence. However, alerted to the initial charge as a result of a police search of her residence, the D.C. Housing Authority (DCHA) sought to terminate her housing voucher. The DCHA argued that the sealed arrest record was admissible in the administrative proceeding and could serve as a basis for terminating Ms. J.'s voucher. PDS's Civil Legal Services Division persuaded both the administrative law judge and, on appeal, the DCHA's executive director, that the D.C. Superior Court's rulings should be honored, preventing an innocent woman from losing her housing based on a wrongful arrest.

Before PDS ever represented R.W., he had already faced significant hardships. Abandoned by his mother at birth and neglected by a subsequent caretaker, R.W. suffered a myriad of psychological disorders. But, through the involvement of a team of PDS professionals who could address his delinquency case, his educational issues, and his mental health issues and develop an effective rehabilitation plan, R.W. is now a gainfully employed high school graduate. PDS's representation began in 2010 but did not end when he was sentenced in his juvenile delinquency case. Instead, PDS followed R.W. through his successes and his struggles on probation. During R.W.'s probation, PDS first identified appropriate residential treatment. Upon R.W.'s completion of the residential program, PDS then identified community-based educational and therapeutic service and volunteer opportunities that ultimately led to his emergence as an employed adult, fully reintegrated into the community.

Appropriate schooling is often the key to the successful rehabilitation of children. PDS's special education advocates have helped hundreds of children get the educational services they need to succeed. Some, like R.W., need multiple services over a longer period of time. Others, like M.W., another PDS client, by simply being placed in the right school can change from a disruptive student to an honor roll student with applications pending at local community colleges within a year. But without special education advocates who can match a child's needs with the available alternatives, children like R.W. and M.W. will simply flounder in their educational placements unable to achieve their actual potential. The work of PDS's special education advocates avoids these unproductive placements, saving the community from the long-term costs associated with the failure to complete high school.

Once someone is in the criminal justice system, he often faces heightened suspicion. Such heightened suspicion can lead to costly over-incarceration that has no public safety value if advocates fail to investigate. PDS's Parole Division lawyers are exceptional advocates who test the government's evidence and locate favorable witnesses often overlooked by the government in parole proceedings. In one such case, Mr. L. faced a parole revocation hearing because his court supervision officer (CSO), who had known Mr. L. for less than a week, became convinced that Mr. L. was the person he saw in a news report about a local bank robbery that included a video segment showing the robber wearing dark sunglasses and a black jacket. The CSO called the police, issued a parole warrant, and sought to have Mr. L.'s parole revoked with a sentence of an additional six years imposed. At the revocation hearing, his PDS counsel demonstrated that the police never linked Mr. L. to the robbery and presented the favorable testimony of the bank teller. The U.S. Parole Commissioners, upon review of PDS counsel's arguments at the hearing,

rejected the recommendation for revocation and an additional six-year sentence, and Mr. L. was released.

Heightened suspicion can also lead to draconian conditions of release serving no public safety purpose but with the potential to destroy families. Mr. G. was sentenced in Florida for sexual misconduct that had occurred 15 years earlier. The Florida judge who sentenced Mr. G. and was familiar with the facts and circumstances of the case specifically ordered that Mr. G. not be placed in sex offender treatment. Nonetheless, when Mr. G. moved to Washington, D.C. and his probation was transferred to the Court Services and Offender Supervision Agency (CSOSA), CSOSA barred contact between him and his three children as part of “sex offender treatment.” Represented by PDS’s Special Litigation Division, Mr. G. sought relief in Federal court. Agreeing with PDS, the court enjoined all restrictions on Mr. G.’s contacts with his children, allowing him free and unfettered access for the first time in six months. She ruled that the no contact with his own children condition of probation imposed by CSOSA on Mr. G. as part of its sex offender treatment “appears to violate the plaintiff’s constitutional rights as protected by the substantive component of the Due Process Clause.” The judge went on to find that Mr. G. suffered irreparable harm and that an injunction was in the public interest.

Training

In FY 2011, PDS continued its commitment to advancing quality defense for those who cannot afford to hire their own attorneys. As it has in the past, PDS produced a “Summer Series” on specialty topics over the course of two months for local attorneys; hosted its ninth Forensic Science Conference; produced local training for certified panel investigators; and produced the 46th Annual Criminal Practice Institute Conference. Annually, PDS provides more than fifty hours of training for hundreds of non-PDS attorneys representing indigent clients in the District of Columbia.⁵⁰

Annual Forensic Practice Conference

In FY 2011, PDS devoted its annual forensic practice conference to teaching practitioners about forensic DNA evidence. In June 2011, more than 100 members of the defense bar attended “Decoding DNA: The Fundamentals of DNA Defense,” hosted by the law firm of Arnold & Porter LLP. In an effort to improve the quality of legal representation provided to criminal defendants in Superior Court, PDS arranged for a mix of local experts and nationally renowned speakers to address a wide variety of topics, including: the basic biology of DNA, rights under the District’s Innocence Protection Act, legal issues in DNA testing, issues in DNA sample mixture and statistics, judicial blood orders, laboratory consumption of biological material, DNA evidence collection, and the value of independent testing. Aside from imparting a great deal of information on this complex topic, including some on a CD containing several practice aids, the

⁵⁰ In addition, PDS staff attorneys, forensic social workers, and investigators are routinely asked to be presenters at training programs sponsored by the District of Columbia courts, the D.C. Bar, and various defender organizations locally and nationally. Through these programs, PDS provides assistance to local counsel and to defender offices around the country, most recently in Birmingham, Alabama; Indianapolis, Indiana; Lexington, Kentucky; and Los Angeles, California.

conference succeeded in establishing important ties to subject matter experts whom PDS plans to consult in the future.⁵¹

CONCLUSION

PDS employees are consistently effective in pursuing the organization's mission of providing high quality criminal defense representation to individuals in the District of Columbia criminal courts. PDS's excellent reputation is based on PDS's performance, the results PDS achieves, and the variety and depth of resources PDS makes available to clients and to others who have a role in the operation of the criminal justice system. PDS requests funds essential to assist the District in meeting its constitutional obligation to provide criminal defense representation in the District's courts.

⁵¹ Attendees rated this year's conference as "outstanding," "excellent," "extremely informative," "very understandable," "terrific, straightforward," and "applicable in numerous ways to matters apart from DNA."

BUDGET DISPLAYS

BUDGET DISPLAYS

PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA

FY 2013 Summary of Changes

	Perm. Pos.	FTE	Amount (\$ in 000s)
FY 2012 Appropriation.....	235	232	37,241
Adjustments to Base:			
New Positions	-	-	-
Pay Raises.....	-	-	1,658
General Pricing Level Adjustments.....	-	-	192
Total, Adjustments.....	-	-	1,850
FY 2013 BASE.....	235	232	39,091
PROGRAM CHANGES:			
Non-Recurring Expenses	-	-	285
TOTAL, Program Changes	-	-	285
FY 2013 REQUEST.....	235	232	39,376

FY 2013 Salaries and Expenses
Summary of Requirements by Grade and Object Class
(\$ in 000s)

Grades:	2011 Enacted		2012 Enacted		FY 2013 Budget Request	
	Pos	Amount	Pos	Amount	Pos	Amount
ES	3	466	3	466	3	466
AD-15	15	2,227	15	2,227	15	2,249
AD-14	80	8,702	80	8,702	81	9,120
AD-13	43	3,776	43	3,776	44	4,232
AD-12	28	2,117	28	2,117	27	2,385
AD-11	21	1,434	21	1,434	21	1,519
AD-10	2	119	2	119	2	131
AD-09	18	921	18	921	17	939
AD-08	4	208	4	208	4	196
AD-07	17	717	17	717	17	728
AD-06	2	90	2	90	2	92
AD-05	2	77	2	77	2	79
AD-04	-	-	-	-	-	-
Total Appropriated Positions	235	20,854	235	20,854	235	22,136
EX/ES FTE		3		3		3
GS FTE		229		229		229
Average EX/ES Salary		155		155		155
Average AD Salary		91		91		96
Average AD Grade		13		13		13
Object Class						
11.1 Full Time Permanent	235	20,854	235	20,854	235	22,136
11.3 Other Than FT Perm.		-		-		-
11.5 Other Pers.Comp.		290		290		270
11.8 Special Pers. Services		987		987		900
12.0 Benefits		5,856		5,856		6,339
13.0 Unemployment Comp.		100		100		100
Personnel Costs	235	28,087	235	28,087	235	29,745
21.0 Travel & Training		379		379		386
22.0 Transportation of Things		10		10		12
23.1 Rental Payments to GSA		2,425		2,425		3,061
23.2 Rental Pmts.to Others, & Misc.		812		812		842
23.3 Comm., Utilities & Misc.		380		380		494
24.0 Printing and Reproduction		79		79		99
25.1 Consulting Services		1,194		1,194		800
25.2 Other Services		1,737		1,737		1,662
25.3 Purch.from Gov't Accts.		499		499		484
25.4 Maintenance of Facilities		115		115		98
25.7 Maint. of Equipment		255		255		345
26.0 Supplies and Materials		516		516		488
31.0 Furniture and Equipment		753		753		575
32.0 Buildout		-		-		-
Non-Personnel Costs		9,154		9,154		9,346
TOTAL	235	37,241	235	37,241	235	39,091
31.0 Non recurring Expense - PDS New Telephone System		-		-		285
Grand Total		37,241		37,241		39,376
OUTLAYS		33,517		33,517		35,438

APPROPRIATION LANGUAGE

Public Defender Service for the District of Columbia

Appropriation Language Fiscal Year 2013	Explanation
<p>For salaries and expenses, including the transfer and hire of motor vehicles, of the District of Columbia Public Defender Service, as authorized by the National Capital Revitalization and Self-Government Improvement Act of 1997, [\$37,241,000] \$39,376,000: Provided, That notwithstanding any other provision of law, all amounts under this heading shall be apportioned quarterly by the Office of Management and Budget and obligated and expended in the same manner as funds appropriated for salaries and expenses of Federal agencies.</p>	
<p>Provided further, That, notwithstanding section 1342 of title 31, United States Code, and in addition to the authority provided by District of Columbia Code Section 2–1607(b), upon approval of the Board of Trustees, the District of Columbia Public Defender Service may accept and use voluntary and uncompensated (gratuitous) services for the purpose of aiding or facilitating the work of the District of Columbia Public Defender Service. (District of Columbia Appropriations Act, 2012)</p>	<p>PDS seeks language to clarify PDS’s authority to accept volunteer and pro bono services.</p> <p>The Congress severed PDS’s ties to the District of Columbia government with enactment of the Revitalization Act 1997 and its 1998 amendments when the Congress shifted control of several criminal justice functions from the District of Columbia to the Federal Government.⁵²</p> <p>One matter left unaddressed by the amendments is PDS’s receipt of private and</p>

⁵² See The Revitalization Act, § 11201 (closing Lorton Correctional Complex and transferring sentenced felons to the custody of the Federal Bureau of Prisons), § 11231 (abolishing the District of Columbia Board of Parole and transferring authority for parole supervision to the United States Parole Commission), § 11233 (establishment of the District of Columbia Offender Supervision, Defender, and Court Services Agency within the executive branch of the Federal Government), and § 11241 (direct funding of the Superior Court of the District of Columbia, the District of Columbia Court of Appeals, and the District of Columbia Court System by the Federal Government), 111 Stat. at 734–52.

	<p>pro bono services to assist it in carrying out its mission.</p> <p>Since the 1970s, PDS has had an intern and law clerk program that attracts college students and law students to PDS for a semester or a summer. Consistent with the authority provided by PDS's authorizing statute, PDS's Board of Trustees approved this program pursuant to its authority to "accept public grants and private contributions made to assist it in carrying out the provisions of this chapter."⁵³</p> <p>Also since the 1970s, PDS has relied on the pro bono services of local law firms: representing individual PDS lawyers, providing training space and facilities, and providing advice to PDS management on matters involving the D.C. Rules of Professional responsibility and employment matters.</p> <p>PDS seeks more specific language than "private contributions" to make clear PDS's ability to receive volunteer services from interns and law clerks and pro bono assistance from law firms.</p>
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⁵³ D.C. Code § 2-1607(b).

ORGANIZATION CHART

