

A PUBLIC DEFENSE PERSPECTIVE: AN INTERVIEW WITH
HEATHER PINCKNEY, DIRECTOR OF PUBLIC DEFENDER
SERVICE FOR THE DISTRICT OF COLUMBIA

Aasha Rajani*

INTRODUCTION

The Public Defender Service for the District of Columbia (“PDS”) has been a fixture in Washington, D.C. since its establishment as a Legal Aid Agency (“LAA”) in 1960. Even before the United States Supreme Court decision in *Gideon v. Wainwright*,¹ which guaranteed legal counsel to indigent defendants, PDS, then known as LAA, was representing individuals who could not afford counsel in serious criminal, juvenile, and mental health legal cases.

It is often described as a model public defender office for its unique organizational and funding structure and the caliber of its staff, which includes lawyers, social workers, investigators, and community outreach specialists.² PDS is federally funded and governed by an eleven-member apolitical board of trustees which preserves its autonomy.³ The organization prides itself on meeting the holistic needs of each of the clients it represents. This client-centered approach is possible because of its unique organizational structure, which includes a blend of legal services as well as legal support divisions.⁴ The latter consists of professionals who work closely with attorneys and provide

* Aasha Rajani is an evening law student at Georgetown University Law Center and an extern for the Civil Legal Services Division at PDS. This interview would not have been possible without the support of her supervisor, Chief of the Civil Legal Services Division, Robert Hornstein and special projects manager, Tanya Hatton. She is immensely grateful to Director Pinckney for being incredibly generous with her time to provide this candid interview.

¹ *Gideon v. Wainwright*, 372 U.S. 335 (1965).

² See, e.g., *Mission and Purpose*, PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA (last visited April 29, 2023), <https://www.pdsdc.org/about/mission-purpose>.

³ *Id.*

⁴ *The Story of PDS: 60 Years as a Model Defender Program*, PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA (last visited April 29, 2023), <https://www.pdsdc.org/about/historical-timeline>.

technical assistance on individual cases.

PDS provides adult and juvenile clients with lawyers for whichever stage they are at in their contact with the criminal legal system—trial lawyers, appellate lawyers for handling direct appeals and other appellate litigation, parole lawyers, civil lawyers for a range of collateral civil matters, mental health division lawyers to handle involuntary civil commitment cases and post-commitment proceedings, lawyers to support reentry into society, and special litigation lawyers for defending complex constitutional and statutory rights in federal courts.⁵ These legal services across the various divisions are made possible by wraparound support provided by an indispensable staff of investigators who diligently investigate cases and provide trainings and licensed social workers and counselors who work with clients through a broad range of emotional, social, psychiatric, and substance-abuse related problems.

In addition to direct client representation, PDS has passionately defended constitutional and statutory rights during some of the major historical events of the past sixty years. Examples include providing legal representation to protesters following the assassination of Martin Luther King Jr. in 1968⁶ and anti-war demonstrators during the 1971 May Day protests,⁷ pushing for reforms in the Criminal Justice Act for appointing and compensating legal representation in the 1980s,⁸ and filing litigation that led to changes by the United States Parole Commission for resolving parole and supervised release revocation cases in the 2000s.⁹

Throughout its more than sixty-year tenure, PDS has been led by lawyers fiercely committed to standing up for the needs of their clients. In September 2022, Heather Pinckney took the helm after Avis Buchanan, who served as Director of PDS from 2002 to 2022, decided

⁵ *Legal Services Divisions*, PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA (last visited April 29, 2023), <https://www.pdsdc.org/about/legal-services-divisions>.

⁶ *The Story of PDS: 60 Years as a Model Defender Program*, PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA (last visited April 29, 2023), <https://www.pdsdc.org/about/historical-timeline>.

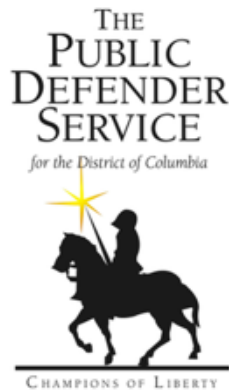
⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

to retire.¹⁰ Born and raised in Washington, D.C., Director Pinckney started her legal career as a trial attorney at PDS and has since continued to be led by her relentless belief that everyone, no matter their circumstances, deserves effective counsel. Prior to returning to PDS, she served as a managing partner of a law firm, Harden & Pinckney, and as the Executive Director of the Black Public Defender Association. She received her Juris Doctor from George Washington University Law School.

In this interview—a first in-depth conversation with *American Criminal Law Review*—Director Pinckney discusses her professional journey, shares her vision for PDS, and offers insight into the importance of public defense work.



INTERVIEW

- 1. You began your career as a trial attorney at the Public Defender Service for the District of Columbia (“PDS”) and now serve as the Director. Can you share a bit about what interested you in a career in criminal defense and the trajectory that led you to this moment?**

¹⁰ Keith L. Alexander, *D.C. Public Defender Service Names Veteran Lawyer As Its New Director*, WASHINGTON POST (June 21, 2022), <https://www.washingtonpost.com/dc-md-va/2022/06/21/pinckney-director-public-defender-service/>.

I was born and raised in Washington, D.C., and I always knew that I wanted to help people. I had experience working for community-based organizations. I worked for an organization fighting against apartheid in South Africa; the Washington Legal Clinic for the Homeless doing civil defense work; and the Civil Rights Division at the Department of Justice working on educational opportunity law.

Once in law school, I met two people interning at PDS—Dehlia Umunna, now Clinical Professor of Law at Harvard Law School, and Judge Lloyd Nolan, a magistrate judge on the D.C. Superior Court—who shared that if you really want to help people, you should go work at PDS. At the time I did not have a concept of what PDS was but upon further research of the type of cases they took on, I applied and came in as a law clerk during law school. Right after law school I joined PDS as a trial attorney, and didn't leave until I planned to open my law practice.

PDS was the perfect mix of advocacy, community, and trial work. When I started at PDS in the Trial Division, I spent my first year representing juvenile clients in delinquency cases. Soon after, I was working on serious felony cases, including Accelerated Felony Trial Calendar (“AFTC”)¹¹ cases in which our clients were entitled to a trial within 100 days. Finally, I moved to Felony I¹² cases which include our most serious cases involving murder and sexual assault.

I left PDS in 2008, as the Deputy Trial Chief overseeing the team of trial attorneys, with the idea that I could still do this work through my own business. I, along with my business partner, applied and became what we call Criminal Justice Act or CJA Attorneys¹³ group in D.C.

¹¹ AFTC is for cases in which the accused is held without bond for offenses designated as “Dangerous Crimes” or “Crimes of Violence” such as assault with intent to kill, armed robbery, burglary, aggravated assault, kidnapping, and armed carjacking. The AFTC calendars were designed to deal with preventive detention cases which would have to be tried within 100 days.

¹² There are two different categories of offenses adjudicated in D.C. Superior Court—felony and misdemeanor. In order to effectively manage cases, the Court established three felony calendars: Felony I, Accelerated Felony, and Felony II. Felony I calendars include the most serious offenses—first-degree murder and serious sexual assaults.

¹³ The Criminal Justice Act (“CJA”) was enacted in 1964 and establishes a comprehensive system for appointing and compensating legal representation for accused persons who are financially unable to retain counsel in federal criminal proceedings. Attorneys who are on the “panel” approved to appointment to criminal cases from the court are called CJA attorneys. *See* UNITED STATES COURT:

This allowed us to maintain connection to the public defense work we loved but also work on other types of cases in civil and family law.

I spent almost thirteen years in private practice and simultaneously taught trial work and practice at George Washington Law School and all across the country, mostly to public defenders because I know that, unlike PDS, most offices do not have the resources to provide their attorneys effective training and support.

My hope always was that if I ever came back to PDS, it would be in the capacity to lead it. In November 2021, Avis Buchanan, the prior director announced she was going to retire. The decision to come back, though it would mean I would be giving up substantial autonomy in my work in private practice, was ultimately influenced by the people and culture at PDS, and in June 2022, I accepted an offer to return as the Director.

2. For someone who has never heard of PDS, can you describe its mandate?

We take care of the most vulnerable people in Washington, D.C. Our clients are typically facing serious criminal charges and we represent them through a client-centered approach. This means that we are meeting the full needs of our client, which includes the criminal case before us, but also the collateral consequences that occur as a result of the criminal case. Thus, our team of lawyers, social workers, and investigators work together to serve as advocates and provide holistic support to each client.

3. PDS represents clients in Washington, D.C. and has often been lauded as a model public defender office. What makes it unique?

There are several factors that perhaps contribute to us being called a model public defender office.

CRIMINAL JUSTICE ACT (CJA) GUIDELINES (2009),
<https://www.uscourts.gov/rules-policies/judiciary-policies/criminal-justice-act-cja-guidelines#:~:text=Enacted%20in%201964%2C%20the%20CJA,counsel%20in%20federal%20criminal%20proceedings.>

First, PDS is governed by an independent Board of Trustees, not the judges that we appear before.

Second, PDS has an intensive training program to prepare lawyers for the courtroom and for the responsibilities of being a defender. Before any trial lawyer is assigned a single case, they receive approximately 2 months of training.

Third, PDS has been fierce about keeping client caseload manageable. The work that public defenders do is crushing at times. They serve as social workers, friends, confidantes, family counselors, team managers, and of course legal advisors. In order to give each client the representation required by the Constitution and legal ethics, it is important not to have 150 to 200 clients at one time, which is unfortunately the case for public defender offices in other parts of the country. Keeping our caseloads manageable allows our lawyers to be the thoughtful and consistent advocates they really want to be.

Fourth, we pay our lawyers a decent living wage for what they do which is in parity with pay given to prosecutors. PDS is located in an expensive city and our lawyers come from amazing law schools across the country, many with deep law school debt. We believe that for the incredible work they do, they should earn a decent amount of money to take care of themselves and families. Other public defender offices across the country are also now fighting for pay parity with the district attorney's office since both sides handle the same number of cases.

Fifth, as I mentioned above, PDS approaches our work through a client-centered lens, addressing all aspects of our client's needs in addition to their legal needs. We are lucky because we have the budget and resources to develop such programming.

I feel society has a very narrow understanding of how a criminal charge affects our client's lives more broadly and we have often been criticized for taking on more than our role requires. Furthermore, the system that we work in, which includes the judges, prosecutors, and probation officers, approaches this work on a volume basis. They have to move and close cases quickly, and this conflicts with the approach our office takes. Our public defenders are accused of slowing down the process.

We believe the process should be slowed down. We should not be moving people through the system. There should be thought, effort, time, dignity, and humanity afforded to each person.

4. What is your vision for PDS during your tenure?

It is my vision that PDS remains as exemplary as it is but advances its community engagement.

My hope is to get each attorney at PDS more connected to the community they are serving, outside of just the one client. I want community groups to be able to feel like they can come in and support our client populations because we have had a hand in showing them that our clients are not the monsters that the media sometimes portrays them to be. Our clients have redeeming qualities and just want to work and take care of their families like everyone else. I also want community members to see PDS as a partner and a resource, not an organization they call when a bad situation enters their life.

We have started a couple of different types of programming to advance our community engagement work. First, we have an internal racial-justice group, formed after the death of George Floyd, that helps to implement anti-racist policies and principles across PDS. And second, we have monthly community engagement programs where community organizations come and share their programming and resources that we can use to better support our clients. For example, this month we had D.C. filmmakers host a viewing of “Barry Farm: Community, Land and Justice,” a documentary film that chronicles the history of Barry Farm, a Southeast D.C. neighborhood, and its residents.¹⁴ The viewing is important because it helps PDS employees understand how the neighborhoods where our clients are from, predominantly Black and brown, have evolved over time, displacing residents to make way for commercial districts and housing.

5. PDS, since its inception, has often played a role in addressing

¹⁴ “Barry Farm: Community, Land and Justice” is a 50-minute documentary by filmmakers Dr. Sabiyha Prince and Sam George. It tells the story of Barry Farm, the migration of newly freed Black Americans to the area in the 1860s and what is happening to the residents and homes of Barry Farm today in the context of gentrification and residential development in Washington, D.C. BARRY FARM: COMMUNITY, LAND AND JUSTICE IN WASHINGTON DC (DC Legacy Project 2022). See Chelsea Cirruzzo, “Barry Farm: Community, Land, and Justice” *Documentary screens this weekend*, AXIOS (June 17, 2020), <https://www.axios.com/local/washington-dc/2022/06/17/documentary-land-justice-barry-farm-dc>.

systemic issues in the criminal justice system. Most recently, PDS representatives served as advisors for the D.C. Revised Criminal Code Act. Can you talk about PDS’s advocacy role within the broader legal system and why a systems-level approach is important? What are some of your current priorities at the systems-level?

PDS is working on the front lines of the criminal justice system every day and therefore, we believe we have an important voice to add to system-level conversations such as reforming the D.C. criminal code.¹⁵ There is probably no other group in the criminal legal system that touches the client with the full 360-degree lens that public defenders do and yet we are often not asked to the table, which is slightly infuriating.

We established our Special Litigation Division specifically to litigate constitutional and statutory rights of PDS clients and challenge the pervasive unfair practices in our criminal system. Additionally, because our clients are sent to Bureau of Prison facilities all over the country, our work has never really been truly local.¹⁶

¹⁵ The Revised Criminal Code Act of 2022 is a bill overhauling and modernizing D.C.’s criminal code, which has not been comprehensively updated since 1901. *See* Martin Austermuhle, *The D.C. Council Is Set To Overhaul The Entire Criminal Code. Here’s Everything You Need To Know*, DCIST (November 15, 2022), <https://dcist.com/story/22/11/15/dc-council-will-vote-overhaul-criminal-code/>. In November 2022, the D.C. Council passed the revised code. *See id.* Washington D.C. Mayor Muriel Bowser vetoed the bill in January 2023, and the D.C. Council subsequently voted to override the Mayor’s veto. *See id.* The United States Congress blocked the revised criminal code from going into effect in March 2023, the first time Congress overturned local D.C. legislation in more than thirty years. *See id.* President Biden supported Congress’ position and opted not to step in and, ultimately, to veto the measure. *See id.*

¹⁶ The Lorton Reformatory was a former prison complex in Lorton, Virginia established in 1910 for Washington, D.C. *See* Joanne Tang, *Here’s A Fascinating Story About the Old Lorton, Virginia Prison*, GREATER GREATER WASHINGTON (July 9, 2020), [https://ggwash.org/view/78346/the-old-lorton-virginia-prison-is-being-turned-into-homes-heres-its-fascinating-story#:~:text=The%20Lorton%20Reformatory%20opened%20in,other%20people%20given%20short%20sentences](https://ggwash.org/view/78346/the-old-lorton-virginia-prison-is-being-turned-into-homes-heres-its-fascinating-story#:~:text=The%20Lorton%20Reformatory%20opened%20in,other%20people%20given%20short%20sentences.). After the National Capital Revitalization and Self-Government Improvement Act of 1997, felons from D.C. were transported to Federal Bureau of Prison facilities. *See id.* The last prisoners were removed from Lorton Reformatory in 2001. *See id.*

One way we like to do system-level work is by supporting other public defender and legal aid offices across the country who are not as resourced as us, with the hope that we are able to share resources and start reforms in other places. For example, we receive calls from other offices on strategies for systematically attacking *Brady*¹⁷ in their jurisdictions and our lawyers often share our pleading documents and the approach we have taken here.

6. Last year, you wrote an article applauding the nomination of Justice Ketanji Brown Jackson as the first Black woman to serve on the U.S. Supreme Court and acknowledged the importance of having a former public defender on the highest Court in the nation. Can you discuss how Justice Jackson's background might allow her to make a unique contribution to the Court?

All of us were unbelievably excited by Justice Jackson's nomination. She is a woman; she is Black; and she was a federal public defender. People ask me what do you identify with most and I say, I am Black first and foremost. I live with that and work through that every day. Being Black and a Black mother in this country is a perspective that we have not seen on the Supreme Court but is a perspective that matters.

Second, I am also a woman, a Black woman. There is a different way we look at things, different ways we process things. Finding your place at the table and advancing in your legal career as a woman is not easy and Justice Jackson brings that perspective to the Court.

Third, she was a federal public defender. Most good public defenders have an ability to see a humanity in their clients and truly see the person behind the case. They are thinking about how a criminal case will truly affect someone.

I am happy she is there. I am hopeful that she makes an impact. I am also realistic. She is not coming onto a bench that looks like her. Her background, however, will serve her well as she sits on the Court.

¹⁷ *Brady v. Maryland* was a landmark Supreme Court case that held that the prosecution must turn over all evidence that might exonerate the defendant to the defense. 373 U.S. 83 (1963).

7. **This year marks sixty years since *Gideon v. Wainwright* which guaranteed the right to legal counsel to anyone accused of a crime, regardless of their ability to pay. And yet, public defense today appears to be in a state of crisis. We often hear about public defender offices that are understaffed, overburdened with caseloads, underpaid, and undervalued. Is that a characterization you agree with? What would need to happen for us to get closer to fulfilling *Gideon's* promise?**

We have failed *Gideon* across the country.¹⁸

I taught for a program called Gideon's Promise¹⁹ while I was first an attorney at PDS. Gideon's Promise provided training to public defender offices, and I would consistently meet fellow public defenders with caseloads of 100 to 200 cases at a time. Sometimes there was one public defender assigned to two counties. These were public defenders who were one year out of law school and often without any supervisors and support staff such as investigators and social workers. It is a joke to expect anyone to provide the "zealous..." representation outlined in *Gideon* without any support. This was a complete contrast to my experience with PDS at the time. PDS should not be an anomaly.

The situation is much worse now. The fact that in 2023 we are still not paying public defenders a living wage shows that we do not care about the things that were talked about in *Gideon*. Lawyers who serve as public defenders love the work but have to leave the work because the salary does not allow them to live a decent life. This, of course, often is not the case for lawyers who become prosecutors.

There is a lot that needs to be done to realize *Gideon's* promise. The Department of Justice, which reestablished the Office for Access to Justice in 2021 to address the access-to-justice crisis in the criminal and

¹⁸ *Gideon v. Wainwright* was a landmark United States Supreme Court case, which held that the Sixth Amendment of the United States Constitution requires the government to provide an attorney to indigent criminal defendants. 372 U.S. 335 (1965).

¹⁹ Gideon's Promise, formerly known as the Southern Public Defender Training Center ("SPDTC"), is a nonprofit organization founded by Jonathan Rapping to train and mentor public defenders working in under-resourced communities in the South. See GIDEON'S PROMISE (last visited April 29, 2023), <https://www.gideonspromise.org/>.

civil justice systems,²⁰ recently said they will dedicate more resources to this work, and I welcome it. Much more, of course, needs to be done.

8. What are your thoughts on the growing movement to elect progressive prosecutors?²¹ What sort of impact could this movement have on public defense lawyering?

A progressive prosecutor to me is someone who is willing to take on the racism, the sexism, and the class issues on the criminal legal side—someone who is willing to hold police officers and judges accountable. I just have not seen a lot of that.

The movement is, however, very effective at branding itself as something new and exciting in the criminal justice space that will bring about positive change. Public defenders could use their branding experts. When progressive prosecutors say we are not going to prosecute cases for marijuana possession anymore, that is often lauded as a big win. We should never have been prosecuting and holding people in jail for marijuana possession to begin with.

That being said, I do think some people who serve as so-called “progressive prosecutors” have good intentions. For example, Philadelphia District Attorney Larry Krasner was a career public defender before he switched over. Upon taking office, it was said that he immediately made several changes that have benefited public

²⁰ The Office for Access to Justice (“ATJ”) was established in 2015 by the Obama administration. *See* Maggie Jo Buchanan, Maha Jweied, Karen Lash, *The Need to Rebuild the DOJ Office for Access to Justice*, CENTER FOR AMERICAN PROGRESS (November 24, 2022), <https://www.americanprogress.org/article/need-rebuild-doj-office-access-justice/>. That same year, President Obama signed a presidential memorandum elevating the ATJ’s successful Legal Aid Interagency Roundtable (“LAIR”) to a White House initiative and called on federal agencies to work together to help the most vulnerable and underserved people by recognizing the importance of legal services to their programs. *See id.* In May 2021, President Biden signed a presidential memo restoring ATJ and reinvigorating LAIR after both were suspended during the Trump administration. *See id.* ATJ is currently led by Rachel Rossi, a former public defender. *See id.*

²¹ The progressive prosecutor movement began around 2014, in which a growing number of reform-minded prosecutors began using their prosecutorial discretion to implement a range of policies that include cash bail reforms, declining to prosecute certain low-level offenses, etc. *Cf.* 60 AM. CRIM. L. REV. (2023) (symposium Issue covering the topic of “Reform-Minded Prosecution”).

defenders and our clients. It is said that he attempted to stack his office with people who are honest and genuine in their case work and negotiations with public defenders. Additionally, he had his staff go through the wrongful conviction cases and look for the cases where the prosecutor's office did not turn over evidence. This benefits public defenders because it is often our clients that are negatively impacted by such games.

I am often asked whether one should become a public defender or a prosecutor. I would say become a public defender in a jurisdiction that needs good leadership and lead an office. The population that public defenders serve needs you more and the impact you will have is far greater. Prosecutors, even progressive ones, are still sending people to prison and can't say loudly that they will not send people to prison because that is not the constituency they serve. I truly doubt that a prosecutor would be elected to the position if they say that people deserve redemption, justice, mercy and no jail time. On the other hand, there is power in public defenders because we are able to step into various roles, be honest with politicians and communities, and educate the public about the clients we represent.

The last point I will make is that for me, being progressive means seeing the client as human and starting from there as opposed to starting from the criminal conviction. If I can outline the type of prosecutor I would like to see in the court room, it would be someone who is fair and just; willing to negotiate and work alongside public defenders; and most importantly, sees our clients as humans and actual members of that same community.

**9. Why should law students consider a career in public defense?
What advice would you give to students seriously considering
a career in public defense?**

I love this younger generation who have a spirit of activism and abolitionism, particularly post-George Floyd and Michael Brown. They are upset at the systemic and institutional racism, and I think for young people who are part of this movement, there is a space for them in public defense work. This could include being a lawyer, but also investigators, social workers, mitigation specialists, paralegals. As PDS employees, we work long and hard hours but the work is also especially fulfilling. We get close to the ground and to our clients and learn intimate details

about their lives so that we can better support them. Through this process, we also learn a tremendous amount about ourselves.

One thing I will caution young people in this space is that, particularly for those who become public defenders, it is important to remember that as passionately as you feel about the movement to reform the system, you are not there to solely advance your own agenda. Your primary job is to represent the client and you must be careful to not allow one's personal agenda to overtake that responsibility. I have seen some young people struggle because they come into this work and while rightly attacking the actors in the system, they get caught up personally and forget how to connect with the needs of the person that they are representing.

I see the criminal legal system as a building that is on fire. Public Defenders however, are working to try and rescue all those still stuck inside the building before it is finally burned to the ground. There is space for both those things to coincide together. I appreciate how April Frazier Camara²², the President and CEO of the National Legal Aid & Defender Association (“NLADA”) describes our work: we are liberators, trying to liberate as many people as possible.

10. What keeps you up at night?

There has been a resurgence of hate that I did not think had ever totally left but nevertheless is alarming to see. People are feeling bolder to be explicit in their racism and sexism. The banning of books in Florida and the attempt to retell African American history is worrying. Every step we have taken forward over the past few decades is now being challenged, and all of this ultimately plays into the public defense work we do. We have an even tougher time now to show the humanity and dignity of our clients who are accused of crimes. Nevertheless, it is important for us public defenders to continue to highlight the stories of our clients against the backlash we are seeing in society today.

11. What are you most excited about?

I am most excited about this influx of new blood and energy in the

²² National Legal Aid & Defender Association, *April Frazier Camara* (last visited April 29, 2023), <https://www.nlada.org/april-frazier-camara>.

criminal legal space and beyond. We are in a moment in history where anything is possible. There is a segment of young people who are better than the previous generation, who are smarter than us, who are willing to engage in the tough conversations around racism and sexism in our society, and who are really going to change the world.