

## S.F. Public Defender Is Taking a Principled Stand by Fighting Cuts

By Ted Cassman

**S**an Francisco Public Defender Jeff Adachi recently announced that his office will be compelled to refuse appointments in some major felony cases under a 25 percent budget cut proposed by Mayor Gavin Newsom and the Board of Supervisors. Critics suggest that Adachi is being unreasonable and that he is not a “team player.” Adachi’s stand is principled, correct and cost effective for San Francisco County.

Our nation confronts its most severe economic crisis in more than 60 years. All of us will feel the negative impacts of this recession. For individuals and families, we will be fortunate if this means that we merely tighten our belts and defer unnecessary purchases. For government at all levels, it means numerous difficult, unwelcome decisions. As President Obama explained, government policymakers will be forced to “choose between bad and worse.” Government agencies will see their budgets shrink

and will be forced to reduce services available to their constituents.

Public defender offices are by no means exempt from these consequences and throughout the country offices have already experienced budget cuts. Consequently, attorneys must bear larger caseloads and serve more clients while working longer hours. This is certainly true in San Francisco, where Adachi reports the recent elimination of five positions.

The San Francisco public defender’s office, like public defenders in virtually every California county, represents the majority of individuals charged with criminal offenses. This year the public defender will be called upon to handle more than 24,000 individuals. The services of the public defender include not only defending the accused, but important programs designed to reduce recidivism thereby effecting greater cost savings to the city and county of San Francisco. With a staff of only 95 attorneys and a total staff of 168, the task is daunting.

The question is fairly posed: Why

is the public defender’s budget any more sacrosanct than other city departments? Or, put differently, why can’t Adachi just cut staff and lawyers and muddle through the crisis like every other department, instead of threatening to decline new clients?

There are three interrelated considerations that render the services of the public defender unique among government agencies. First, the public defender is the only city department that provides services that are mandated by the state and federal constitutions. Second, the canons of legal ethics impose duties of loyalty and professionalism that every attorney owes to every client. Attorneys who fail to provide competent and effective services face potential discipline, including disbarment. Third, the public defender has worked tirelessly to seek solutions to recidivism, which in the long run provide greater cost savings than any proposed budget cut.

Every citizen has a fundamental constitutional right to effective assistance of counsel. Without that right, each of the other protections afforded to those accused of crime — the right to a fair trial, the right to call witnesses for the defense, the right to confront the prosecution’s witnesses and the presumption of innocence — would be severely undermined, if not eviscerated. Neither the public defender nor a court may permit an accused to forego the right to a fair trial. It’s not an option.

As the U.S. Supreme Court recognized in the landmark decision of *Gideon v. Wainwright*, because of the complexity of modern trials with the interplay of the rules of evidence, constitutional limitations and nuanced legal strategies, “lawyers in criminal courts are necessities, not luxuries.” Thus, the constitutional guarantee of a “fair trial cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.”

As a practical matter, in most cities and counties, the majority of defendants in criminal cases are represented by a public defender. Therefore, to the extent the guarantee of a fair trial means anything at all to most people charged with crime, it is because a public defender stands beside him or her.

For these reasons, the San Francisco public defender’s office is not just another branch of the city’s bureaucracy. The public defender’s office exists to ensure that the government does not imprison any

person without fair proceedings in which proof of guilt is established beyond a reasonable doubt.

We cannot diminish our commitment to that function without creating an unacceptable risk that innocent men and women will be incarcerated because they lack sufficient resources to hire an attorney. The risks of error and unjust convictions are inherent in every justice system. As New Mexico Gov. Bill Richardson recently noted while signing legislation to abolish the death penalty in his state, over the last decade more than 130 individuals sentenced to death were subsequently exonerated. The risk of errors is especially severe in a justice system that is subject to the whims of a budgetary axe.

**A**dditionally, under the Rules of Professional Conduct adopted by the American Bar Association and applicable to California attorneys, a public defender is ethically required to avoid situations where excessive caseloads or limited resources create a conflict of interest that compels him or her “to choose between the rights of the various indigent defendants he or she is representing.” Where circumstances obstruct a defender’s ability to provide effective assistance to clients, he or she must seek relief from within the public defender’s office, from the court, or by refusing new cases.

The recent California Court of Appeal decision in *In re E.S.* drives this point home. Overwhelmed by an oppressive caseload and inadequate resources, a public defender proceeded to trial without interviewing available witnesses who cast doubt on the allegations of the prosecution’s only eye-witness and without pursuing other fertile avenues of defense. Invoking the principles set forth above and emphasizing that it was the public defender’s responsibility to obtain relief from his caseload or to ensure that a different attorney was appointed to represent the client, the court of appeal set aside the conviction and ordered a new trial. As a result of that public defender’s unwise decision to proceed to trial on the cheap, a possibly innocent young man spent months unnecessarily confined and the county was forced to pay for two trials instead of one.

Attorneys in the Office of the Public Defender, like their counterpart panel attorneys who agree to represent indigent defendants and minors at a fraction of the legal fees earned in retained cases, do so out of a sense of social, political and ethical commitment to those who are the least fortunate of our citizenry. These lawyers have chosen a path very different from their counterparts in the corporate, civil courts. Adachi has implemented services designed to reduce criminal behavior and recidivism, and improved

the quality of practice in his office demonstrably, creating a level of professionalism that makes the retention of experienced attorneys not only necessary to assure quality of practice, but cost effective for San Francisco. The Superior Court and the city and county of San Francisco have been fortunate to attract experienced and committed defenders willing to undertake this difficult and constitutionally mandated work. A 25 percent reduction to the budget of the public defender will dramatically and unconscionably impact the public defender’s ability to responsibly represent his clients; responsible representation reduces the reversal rate, which in turn saves the city millions. The failure to adequately fund indigent defense is a betrayal of our commitment to justice for our most vulnerable citizens and is a less efficient, more costly budgetary strategy.

Adachi has taken a principled stand that is compelled by his ethical responsibilities and constitutional mandate. San Francisco’s mayor and Board of Supervisors should reconsider the proposed budget cuts. Justice always comes with a price, and apparent economies that imperil constitutional rights will almost always prove illusory.

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