

History of The Association of Legal Aid Attorneys UAW Local 2325

(Revised August 1999)

Introduction

Background To NYC

Legal Aid Society

ALAA's Early Years:

1968-1972

Mid-70s: Two Strikes

Win Continuity

Economic Recovery,

Stability In Late '70s

1982 Strike

Percolation In The '80s

Eruption In The Early

'90s

1994 Strike

Since 1994

Introduction⁽¹⁾

The history of the Association of Legal Aid Attorneys/UAW Local 2325 (ALAA)--the first significant union of lawyers in the United States--reflects the accumulated sweat and tears shed by generations of New York City Legal Aid

attorneys, each seeking to exercise control over their conditions of work. Like workers elsewhere, they have found that these conditions can be affected only through *collective* action--union action. What makes ALAA unique is that its members have consciously and repeatedly seen their own interests as inextricably intertwined with those of their clients.

This theme has found expression in the union's fight for a broad variety of improvements ranging from continuity of representation, workload limits, adequate training, and more aggressive affirmative action, to better salaries, and health and safety protection. This same vision has ultimately drawn ALAA into broader battles for social justice and labor solidarity, into alliance with Legal Aid support staff members of 1199 National Health and Human Services Workers Union, SEIU, and, ultimately, into the UAW. While the union's tactics have varied, its commitment to these principles has remained firm, despite frequently terrible odds.

This brand of unionism is due not to the inherent saintliness of Legal Aid lawyers--although some surely qualify. Rather ALAA's birth date and particular character is due primarily to the Supreme Court's 1963 decision in *Gideon v. Wainwright*, which dramatically expanded the number of indigent criminal defendants who are entitled to counsel. As a result, by the late 1960s, The Legal Aid Society of New York (LAS)--founded in 1876 to provide free legal services to German immigrants--was soon transformed from a largely volunteer

charity into the city's primary public defender organization. Almost overnight, hundreds of young lawyers flooded the Society's ranks, bringing with them an idealism heavily influenced by the civil rights, student, and anti-war movements.

This spirit quickly clashed with assemblyline conditions in the criminal justice system, which many of ALAA's members and leaders-- frequently members of the National Lawyers Guild--placed within the broader context of institutional racism and injustice. The egalitarian ethos of the period also contributed to an unusually high level of direct membership participation and democratic control, which, indeed, has characterized ALAA to this very day.

However imperfect, the attempt to elevate quality over quantity, to realize the promise of *Gideon*, and to extend its spirit into civil and juvenile representation, has been the driving force of ALAA's history. It remains so in 1999, no less than in 1969.

Background To The New York Legal Aid Society

With some 300,000 cases a year, The Legal Aid Society is the world's largest public interest law firm, public defender or civil legal services organization. The Society's seven divisions--Civil, Capital Defender, Criminal Appeals (CAB), Criminal Defense (CDD), Federal Defender, Juvenile (JRD) and Volunteer/Community Law Office--work out of some 25 offices around the City. The Society is managed by

a President/Chief Executive Officer and is overseen by the Legal Aid Board of Directors, headed by a Chair and composed primarily of partners at New York's largest law firms.

The Civil and Volunteer divisions are funded by private donations and government funds, but the Society currently rejects about \$1 million from the Legal Services Corporation (LSC) because of Congressionally-imposed restrictions on its use. Criminal representation provided by CDD and CAB is funded almost entirely by a City contract to provide public defender representation constitutionally mandated by *Gideon*, for which some additional funds are provided by the State. The Capital Defender and Federal Defense divisions are funded by the state and the federal government, respectively. JRD is funded entirely by the state.

ALAA's Early Years: **1968-1972**

1968-1972 was a key period during which ALAA was first established. Following recognition in December 1969, and a brief strike in 1970, the union won its first contract.

The wave of new attorneys hired by Legal Aid in the years immediately following *Gideon* was shocked by the poor quality of representation they found. In 1967, recalls one of these lawyers, Jerry Lefcourt, Society policy required a plea bargain whenever a client had admitted guilt to their lawyer:

Once that defendant "admitted" at arraignment, he was going to get

pled. You were instructed when you did calendars . . . to frighten the defendants. . . . The deal was worked out [with the assistant district attorney] and the defendant was pled almost instantaneously. Right then, without any discussion between the attorney and client. When I was doing that I could not sleep at nights.

Preparation and resources were virtually nonexistent:

I had no training at all. There was no orientation. . . . There were no mock trials. We did arraignments for a month, and then we were thrown into battle. I had no clue as to what the right thing was to do. We had no research tools. There was no real offices, no telephones. We couldn't call witnesses. There were no anything. I never interviewed a defendant except in the prison or on the floor of the hallway right before a hearing or trial. In the back of my mind, I knew that I should do an investigation, but there were only one or two investigators operating out of Manhattan for the whole Society.

Moreover, a client saw a different Society lawyer (nearly all of whom were white and male) at each court appearance.

In response to these conditions, Lefcourt envisioned a union of Staff Attorneys in which "we should approach things in an organized way, citywide, to improve the position of our clients." In response to organizing efforts by Lefcourt and others,

[s]ome guys at 120 Schermerhorn [Brooklyn Criminal Court] were sort of on board. This is early '68, and I remember pounding the union into [future CDD attorney-in-charge] Bill

Gallagher. . . . Finally, in April 1968 we called a meeting in the Hotel Diplomat. I'd say that no more than forty percent of the [total 175] staff citywide turned out. . . . It was easy within the Criminal Division because we all knew people. Civil was the hardest to get; the Criminal Appeals people were pretty easy. At the second Hotel Diplomat meeting in May 1968, we had a much larger number, like 75%.

Staff Attorneys, however, were far from united on how to proceed, and many rejected the idea that lawyers should unionize:

I was one of the few staff people that was supporting the idea that this was a union Some people would knock the notion that lawyers could ever be in a union. They said that you couldn't use typical union tactics because you're assigned to represent somebody. . . . Most people were more comfortable with the word "Association." The early meetings focused only on winning the most basic tools of representation (offices, phones, training, vertical⁽²⁾ representation), on involving more Staff Attorneys, what form the organization would take, and whether to affiliate with anybody.

These initial discussions, however, only took off when Lefcourt was fired:

Everybody knew it was because of the organizing meetings, and that I refused to do what the supervisors wanted me to do at a few calendar calls. . . . [At] the third and final organizing meeting in June of '68, the union demanded a due process hearing on the allegations against me. Sam Dawson--who was in Brooklyn, our hotbed of organizing--

became the first president.

Ultimately, however, the federal district court opinion in *Lefcourt v. Legal Aid Society* ruled that, absent of state action or a union, the Society could fire at will. "We might have had a different ruling," observes Lefcourt, "if we had brought the action under the National Labor Relations Act, rather than the First Amendment. But many attorneys didn't want to think union."

Yet, Lefcourt's firing galvanized the organizing effort, and on December 30, 1969, following an election, ALAA was certified by the state Labor Relations Board as exclusive bargaining representative for all Staff Attorneys. The impact, says Lefcourt, was soon apparent: [A]lmost immediately, [the union's] effects were profound. Services to clients started to change drastically. . . [There were] . . . more lawyers, offices, telephones, larger investigative staff. . . . Now the tone was "why shouldn't they [indigent defendants] have the absolute best, why shouldn't Legal Aid lawyers be on an equal footing with the private bar?".

And, says Lefcourt, collective bargaining certification also helped ALAA to resolve its identity crisis: For many years there was no formal declaration that it had become a union, but that was clearly what it was becoming. I mean, when you start bargaining as a group--that's what unions do. It looked like one, it smelled like one, and then it became one.

1970 Strike

But it took more than recognition to get a contract, particularly since the Society resisted ALAA's first

efforts to improve the quality of criminal representation. Thus, when city jail inmates rebelled in the spring of 1970, one of their main demands was for better Legal Aid representation; the Society responded by threatening to terminate its criminal contract with the city unless it received more funding. After briefly toying with the idea of a public defender system, the city provided a small amount of additional money.

In subsequent contract negotiations, however, ALAA charged that little had really changed: "[I]nsufficient staff, a virtually nonexistent training and education program, lack of adequate office facilities, inadequate clerical and investigative staffs, inadequate research tools and no time for preparation" made it "virtually impossible for us to provide meaningful representation for our clients and forced us to daily violate our professional responsibilities." Without continuity of representation, argued ALAA, "no attorney-client relationship is possible."

Again, it took larger events to break the Society's resistance. In early May 1970, the country was shaken by Nixon's secret invasion of Cambodia and by the murders of four white antiwar protesters at Kent State University in Ohio and two African-American student protestors at Jackson State University in Mississippi. Across the country, student strikes closed down colleges and universities, while mass demonstrations took place in every major city.

On May 3-6, 1970, amidst this rising revolt, Legal Aid Staff

Attorneys struck, the first such action by American lawyers. The legal establishment was unsympathetic. The *New York Law Journal* cited "authoritative sources" who "blame[d] the strike on the increasing number of so-called 'militant' attorneys who have joined the society in recent years . . . [and whose] attitude . . . is that only through action can change be accomplished."

The 1970 strike yielded mixed results. The first, two-year contract established a 12-step salary scale essential to combating favoritism and to ensuring annual raises for most lawyers. Client representation, however, was not significantly improved. Thus, when future ALAA president Karen Faraguna first joined Manhattan CDD in September 1971, there was no supervision in the courts. Rather, more senior staff taught the ropes to junior attorneys. . . . The staff turnover was amazing. People would quit in a very short time, and a person was senior after a year!

The second contract, in 1972, brought raises for the most senior attorneys, but, as Faraguna explains, improvements were limited: For the first time, office space improved. But attorneys still shared desks. Books were purchased and the staff was given access to the court library. Our demand for private interview facilities, however, was not met for another decade or more.

Mid-70s: Two Strikes

Win Continuity

Representation

The 1973 and 1974 strikes deserve the credit for breaking down the

Society's obstruction of continuity of representation. Both strikes, however, brought heavy judicial retaliation against the ALAA and its members. The union was further weakened by uneven membership support for the 1974 strike and by deep municipal fiscal crisis in 1975.

1973 Strike

In 1973, a combination of management intransigence, advance planning by the union, and what Faraguna describes as a "further infusion of new attorneys prepared to fight for a stronger public defender," set the stage for the union's second strike.

Prior to the strike, which was deemed inevitable, contact was made with the media, in order to familiarize them with the issues. Reporters came to court, saw our "office space," and talked with staff. Unions were contacted for their advice; all supported us, hoping that we would join their organization. Upper Management took indefensible positions. To announce that the poor man's attorney did not need a library or a desk of her own proved destructive to its public image. To take a philosophical position opposed to the principle of "one client, one attorney" (continuity of representation) was foolish.

In May 1973, the union's moral high ground was further strengthened by the decision in *Wallace v. Kern*, a federal class action brought by the Center for Constitutional Rights (CCR), with ALAA's support, on behalf of all felony defendants incarcerated in the Brooklyn House of Detention. The court's decision painted an unflattering portrait of conditions at

Legal Aid. "Legal Aid attorneys," wrote the court, "compare favorably with private attorneys both in quality of their work and in their results," but their workloads were simply overwhelming:

The active caseload of [felony-certified] Legal Aid attorneys. . . . [averages] 94 total cases, or 56 cases if those awaiting grand jury action or sentences are excluded. . . . [N]o trial attorney could handle more than 40 cases and cover assignments and conferences.

Attorney training and longevity remained in short supply:

The average Legal Aid attorney is employed by the Society when he graduates from law school, attends a 21-day training course, serves an apprenticeship of a few months in the Criminal Court, then begins trying felony cases in the Supreme Court, and leaves after about two years for other employment.

Moreover, found the court, there was little continuity of representation, and lawyers were forced to confer with their clients in abysmal, non-confidential, interview space:

[T]he third floor pen where she [a Legal Aid lawyer] would meet a defendant for the first time (four floors below the courtroom where the plea negotiations take place) is a "horrendous situation, physically" an "absolutely unbearable situation for Legal Aid" and "a humiliating experience for the defendant," with 40 people listening to the defendant's conversation with his counsel.

The court pointed out that the Society's failure to reform these practices had been the subject of several highly critical recent reports.

A June 17, 1971 report of the Subcommittee on Legal Representation of the Indigent appointed by the Appellate Divisions of the First and Second Departments had recommended continuity of representation, finding that The Society's practice of fragmenting its representation so that one defendant may have as many as 5 or 6 different attorneys during the course of his case is most undesirable and should be stopped Insofar as the Society is not meeting that standard, its performance is, we believe inevitably deficient.

In regard to caseload, the Subcommittee found that: It would then, in our view, be appropriate for Legal Aid to decline to accept assignments over the number which it could treat in the comprehensive way here proposed. . . . the alternative is a continuation of a type of representation grossly overburdening to the Society, and which all, including the Society's attorneys, recognize as inadequate.

Another report, issued by Board of Correction Chair William J. vanden Heuvel in March 1973 found poor interview conditions and recommended "that maximum active caseloads be established by Legal Aid, beyond which it will refuse to accept cases," noting that "[t]his proposal is not new."

And in April 1973, the City Criminal Justice Coordinating Council Executive Committee criticized the Society for lack of continuity, finding that: An acceptable one-to-one relationship between client and attorney has yet to be developed. At

present attorneys are assigned to court parts rather than to individual cases. Although this is a necessary budget-saving device, it hampers the intimate attorney-client relationship available to those who can retain private counsel. Moreover attorneys are unfamiliar with a case until it is assigned to them in court. There is no time to order investigations or to fully prepare case arguments. Valuable court time is lost in this manner for all parties--judges, prosecution, attorney and client. Clients are reinterviewed as they pass from court part to part, from one attorney to another. The rapport between attorney and client suffers in this process, impinging adversely on plea-bargaining, trial strategy and sentencing decisions.

Taking into account both its own findings and those of these three reports, the court ruled that, "the overburdened, fragmented system used by Legal Aid does not measure up to the constitutionally required level." It was precisely on account of such conditions, the 1968 Kerner Commission found, that poor people of color had developed a cynical attitude toward the criminal justice system: "[t]he belief is pervasive among ghetto residents that lower courts in our urban communities dispense 'assemblyline' justice; that from arrest to sentencing, the poor and uneducated are denied equal justice with the affluent. . ."

Thus, the court issued an unprecedented injunction pursuant to which "Legal Aid should not be permitted to accept assignments in any additional cases . . . until the average caseload of its attorneys assigned to trial parts is below 40 . .

. " On June 27, 1973, however, the Second Circuit vacated this injunction on the grounds that "[a]lthough the members of this court's panel were entirely sympathetic with the purposes which the district judge sought to accomplish by his order. . . . the court has no jurisdiction under Section 1983 since the Society was not acting under color of state law. . . . "

On July 2, 1973 therefore, with hopes for judicial intervention dashed, Staff Attorneys voted 178-79 to take matters into their own hands by striking for lower caseloads, private client interview facilities, stenographic help, more time for research, better salaries and--above all--continuity of representation.

The judiciary lost no time in attacking the strikers. Presiding justices of both the First and Second Departments of the Appellate Division lined up private attorneys to staff the Criminal and Family courts, denounced the strikers for "abandoning the responsibility to the indigent which [ALAA] members assumed upon their employment," and threatened that, if the strike did not end, "we will be compelled to take such action as is warranted by the circumstances."

Union president Faraguna retorted that the Society's poor representation had been "abandoning [clients] for years," and that "[w]e are on strike to implement the very [continuity] recommendations made by the Appellate Divisions' own committee." She explained that "[i]n the next five years we will represent one million indigent clients. We are determined to create conditions

under which they can be represented justly and effectively." She vowed that "[t]his strike will be won when no longer will you hear a judge ask a defendant: 'Do you want a lawyer or do you want legal aid?'"

Many "abandoned" criminal defendants agreed. Forty-one of 129 inmates scheduled for sentencing at the Brooklyn Men's House of Detention supported the strike by refusing to leave their cells. The Manhattan Tombs Inmate Liaison Committee issued the statement that: [Y]our strike has brought to public view the quality of legal representation the city provides to its poor and shows these services to be extremely inadequate There isn't any such thing as love between the men here at the Tombs and the Legal Aid Society as you may already know; but we would like to go on record as being in support of your actions and ask if there is anything at all that we can do to help matters along in any way.

The broader legal community was split. The *New York Times* reported that "from the Wall Street firms and the Association of the Bar of the City of New York--publicly at least--came not a word of support for their overburdened brethren." However, in a July 2 *New York Law Journal* advertisement, the National Lawyers Guild and National Conference of Black Lawyers asked private lawyers to refuse reassignment of the Society's struck work, pointing out that "[y]our acceptance of [the strikers'] assignments will decrease the effectiveness of the strike. We ask you to consider seriously the implications of the present crisis and to join us in supporting the

Association's action." An ad run by professors at Hofstra Law School and New York Law School "urge[d] members of the private Bar to support this important [strike] . . ." The New York Civil Liberties Union (NYCLU) and the Puerto Rican Legal Defense and Education Fund (PRLDEF) issued similar statements of support.

The strike ended just six days later, on July 9. ALAA won "horizontal" continuity within the same court, to "the maximum extent feasible." If a 60-lawyer experimental program for vertical continuity between Criminal and Supreme courts was deemed successful, the Society would be required either to obtain funding for its full implementation or to terminate its criminal defense contract with the city.

Fraguna observes that by agreeing to initiate even this limited continuity of representation, the 1973 contract represented "a total reversal of the Society's initial position." *New York Times* columnist Tom Wicker agreed, writing that "[t]he net effect . . . should be to treat a client's case more nearly as *his or her case* rather than as a file folder. That is what the constitutional right to legal counsel is all about."

The 1973 contract also established workload grievance mechanisms, badly-needed salary increases, eventual "substantial parity" with ADAs' salaries, shorter probationary periods, the right to be relieved when in disagreement with a supervisor about how to handle a particular case, Spanish language training, confidential interview conditions, greater office space, and such basic

equipment as desks, chairs and telephones.

In September, another federal court shed light on problems with Legal Aid representation in overturning the conviction and ten-year sentence of Louis Testamark. Testamark had been represented in nineteen calendar calls by ten different Legal Aid attorneys. Moreover, the Society had reassigned his case to a lawyer who had not met him before trial, who had failed to interview witnesses, who had not consulted him about possible defenses, who had not sought a bill of particulars, who had not addressed the jury, and who had not questioned or presented witnesses. As Testamark had explained to the state trial court judge when he asked for a new attorney:

I haven't seen this legal aid in here ever-since the case has been. . . . Every time I appeared in court, there has always been someone else here. And when I come to court, all they do is adjourn it. . . . And I have been here for ten months now, and things are getting worse, and nobody seems to understand anything, nobody wants to understand anything.

Incredibly, the state court had denied Testamark's request on the grounds that [i]f he [the attorney] spoke to you once, he's familiar with [your case]. . . He doesn't have to speak to you every day. That doesn't make him any more familiar with it. He speaks to the district attorney. That's what makes him familiar with it, with what's going to be the testimony here.

Direct Response To Judicial

Abuse

As it turned out, few representational improvements followed the 1973 contract and the *Testamark* decision. Although CDD had tripled in size since 1970, it remained starved for adequate city funding. The Society had not provided staff with offices, interview space or workload relief. Brooklyn judges undermined the contractually-mandated experiment in continuity, and judges generally displayed greater hostility toward CDD attorneys than they had before the strike.

In the fall of 1973, for example, Judge Bernard Moldow held Manhattan CDD Staff Attorney Elliott Wilk in contempt for being too aggressive in making an application for bail. In response, every Legal Aid lawyer in the Criminal Court building at 100 Centre Street stopped work, thereby initiating a tradition of direct, immediate union response to judicial abuse of a colleague that has continued to this day. When Administrative Judge Irving Lang visited the holding pen to ask that Wilk "allow" the other attorneys to return to work, the lawyer responded, "What can I do? I'm in jail."

In early June 1974, Staff Attorneys Donald Zuckerman and James Block were held in contempt and jailed by a night court judge for insisting that they had not finished interviewing defendants' relatives in preparation for a bail application. Colleague Mark Weinstein was cited for refusing to process cases while Zuckerman and Block remained under threat of contempt. The two

were released only when Court officers took up a bail collection.

On July 9, 1974, Staff Attorney Douglas Colbert was cited for contempt and jailed by Manhattan Criminal Court Judge Milton Samorodin for arguing that the judge should stay issuance of a client's bench warrant. Staff Attorneys immediately boycotted the 100 Centre Street courthouse, and refused to return until Colbert--who was held in a cell adjacent to the courtroom for two and a half hours--was released. Thereafter, no Legal Aid lawyers entered the judge's courtroom until the contempt hearing, eight days later. At that time, Guild attorney Marty Stolar, appearing for Colbert, easily overwhelmed the beleaguered Criminal Court judge, who was not renowned for his scholarship and was, in any event, mainly concerned with trying to preserve his dignity before a courtroom audience packed with Legal Aid lawyers. At the end of the hearing, the judge hurriedly imposed a \$100 fine and, gathering his robes about him, fled the bench. Judge Samorodin had not, of course, ever actually held Staff Attorney Colbert in contempt; and the fine, as his Honor surely anticipated, was never paid.

On August 13, 1974, Brooklyn CDD attorneys refused to appear in Criminal Court after Staff Attorney Joe Kaplan was inexplicably held in contempt and sentenced to a fine of \$50 or five days in jail, even though he had already acquiesced to the judge's denial of a motion to introduce preliminary hearing minutes at trial.

1974 Strike

Angered by these judicial attacks and encouraged by their rising militancy, ALAA members set a 1974 strike deadline for September 11. When Management equivocated on continuity and blamed the City for the Society's refusal to offer meaningful raises, attorneys voted 193-144 to walk out. Union president Joel Gorham emphasized that the strike was related to both issues.

As for continuity, said Gorham, "management is perfectly willing to let things go another 100 years. It's one thing this year, another next year. We work in the courts every day, and we're impatient." With respect to salaries, he argued that increases won in the 1973 contract meant that "[f]or the first time, the average length of experience of a Legal Aid Society staff attorney is over two years. This trend must not be reversed."

Echoing their 1973 attack on the union, the Presiding Justices harumphed that the strikers "are attorneys, professionals, not day laborers, and should act accordingly," and threatened disciplinary charges, recommendations of dismissal and replacement by attorneys appointed from the 18-B panel, private practitioners who, under the city's indigent defense plan, were supposed to handle homicides, co-defendant cases, or defendants whose representation by the Society would otherwise present a conflict.

Again, the union replied that "[w]e are striking today because the judiciary and the management of The Legal Aid Society have continued to ignore their responsibility to indigent

defendants in this state. . . . The Presiding Justices' statement amounts to the ancient practice of strikebreaking." Or, as one striking attorney put it, "[w]e're not out just for money, but we are out for the *right* to be out for money." The union filed charges at the National Labor Relations Board (NLRB) against the Presiding Justices and repeatedly offered to end the strike in exchange for binding arbitration, a proposal rejected by the Society.

So obviously just was the strikers' cause that it even found favor with United States Representative Edward I. Koch, who told a strike rally that "[t]o threaten a man--any man--be he lawyer or laborer, with loss of employment, loss of the right to earn his living at his chosen occupation for speaking his mind, for striking to improve his lot, is not only uncalled for but repugnant to our law."

Unlike 1973, however, Staff Attorney support was uneven; by the end of the 19-day strike, about one-third had crossed the picket line. Faraguna concludes that this was because "many people did not want another strike when improvements were in progress." In any case, the remaining strikers had little choice but to accept terms under which Management remained free to modify, or even to abandon, continuity in order to handle more cases. As the *New York State Bar Journal* later explained,

[w]hen it was over, the strikers returned to work with a lot less than they had at the beginning. They were out 20 days' pay. The future of their five-year-old union--called with proper professional dignity The Association of Legal Aid Attorneys

of the City of New York--was in jeopardy. And the two issues over which they walked out in the first place--cost-of-living increases and the right to represent their clients from the start to finish of each case--were still unresolved. . .

There was more negative fallout in June 1975, when the New York County Lawyers Association Committee on Professional Ethics issued an opinion--without identifying by whom it had been requested--that the strike had violated professional ethics. ALAA counsel noted that the opinion conflicted with NLRB rulings, and union president Lee Ginsburg criticized it as a "poorly reasoned . . . example of legal double talk," vowing that union members "will not be inhibited from pursuing their obligations and rights as employees and as lawyers."

Impact Of Mid-'70s Fiscal Crisis

Still more bad news loomed. Negotiations in 1975 convened amidst tremendous pressure from finance, insurance and real estate interests to slash services in response to New York City's first major municipal fiscal crisis. On July 1, the Society threatened to layoff 60-65 Staff Attorneys. ALAA offered to surrender \$1 million in scheduled salary step increases; to substitute compensatory time for night and weekend pay; and to defer the Society's pension fund contribution.

In early August, however, the Society laid-off 25 attorneys and 46 support staff. Although all affected staff were recalled before year's end, by February 1976, these layoffs created a wave of fear that convinced

union members to ratify a contract that waived the Society's 1975 pension contribution, froze the salary scale, and deferred the issue of step increases.

Thus did ALAA approach 1976 negotiations. Membership confidence had been weakened by the 1974 strike and by the 1975 layoffs; for two years there had been no wage or step increases, and no pension contributions. Members, therefore, rejected the Bargaining Committee's recommendation to strike, and accepted a poor salary offer. Salary at the newly-established Step 13 was barely higher than the old Step 12. The union's first serious attempt to win greater affirmative action was referred to a powerless joint committee. The one significant victory was management's final agreement to full vertical continuity of representation.

1976 Caroline Kearney Firing Revives Attorney Militancy

Staff Attorneys were again galvanized, however, when, on October 26, 1976, Management fired Caroline Kearney, a young Manhattan CDD attorney and alternate Union delegate, on the ground that she had arrived late to arraignments. In a November 17, 1976 *New York Law Journal* advertisement, ALAA charged that Kearney was actually fired for having joined other junior attorneys in charging that "Staff attorneys are not receiving adequate supervision or help from our supervisors . . . While this problem affects every one of us, unfortunately the greatest burden falls on the newer attorneys, particularly those hired within the

last year."

Many union members saw Kearney's firing as an example of a broader conservative retrenchment at the Society. Staff Attorney (and future NLG/New York City chapter president) Hal Mayerson, writing at the time, argued that

[t]his increased repression [reflected in the Kearney firing] . . . flows directly from management's view that the staff attorneys when confronted with the choice between retaining their job or giving their clients quality representation, will always choose their own needs over their clients . . . While the rights of all the citizens of this city are being attacked in an unprecedented manner by the bankers and financiers who now run the city government, the primary attacks are taking place against poor people, black and hispanic poor people. The criminal justice system is a primary center for these attacks . . . the state makes certain that institutions like The Legal Aid Society are underfunded . . . Management's response to the so-called fiscal crisis has been speed-up, harassment and intimidation.

As a result of a one-day protest strike, Kearney was reinstated.

Economic Recovery, Stability In Late '70s

Kearney's victory and municipal economic recovery helped ALAA to rebound in the late 1970s. During this period, the union made important economic improvements, won confidential client interview conditions, conducted its first coordinated negotiations with support staff members of 1199, began to seriously raise the issue of

more aggressive affirmative action, affiliated with parent union District 65 and became increasingly engaged in political activity.

Late '70s Contracts And Early Battles For Racial Diversity

In a May 1977 *New York Law Journal* ad, ALAA criticized management for being an "increasingly . . . top-heavy bureaucracy that stands as an impediment to the real needs of our clients," and for rejecting the union's demands for greater affirmative action, higher salaries, better training, office and interview space. On June 22, three hundred Staff Attorneys rallied for these demands at Legal Aid's 15 Park Row headquarters.

Speaking to the attorneys, Bruce Wright, one of the City's few African-American judges--and a favorite target of Mayor Koch and the tabloid press for his evenhanded treatment of criminal defendants--accused the Society of institutional racism for maintaining an overwhelmingly white attorney staff--scarcely seven percent of Legal Aid's lawyers were people of color.

ALAA president Mike Russek attributed the Society's position on this issue to the "class point of view" of the Legal Aid Board of Directors, noting that 35 of its 39 members were corporate Wall Street lawyers. As Russek put it, "[t]hey don't even like the fact that we are organized."

The 1977 contract increased health benefit contributions by the Society, raised salaries by an average 11 percent, and restored annual step increases. The Society, however, refused to discuss the union's

principal non-economic demands: a joint hiring committee to implement affirmative action; higher attorney-to-support-staff ratios; and regular evaluation of supervisors, and, where warranted, their dismissal.

In January 1978, ALAA members overwhelmingly adopted a resolution that accused management of "institutional racism" for dismissing five attorneys of color who had failed the bar, even though it had retained four white attorneys in the same position. Overall, attorneys of color made up only 8.73 percent of Staff Attorneys and were even more poorly represented within management. The union, supported by PRLDEF, minority bar associations, and Deputy Mayor Basil Paterson, forced management to rescind the terminations; all five passed the next bar exam. This battle led to establishment of a short-lived Minority Caucus and an interracial ALAA Affirmative Action Committee.

The 1978 contract included an average 10.6 percent salary increase and a new pension plan that reduced the vesting period from twenty years to the current five. In the same year, the union helped to organize Nassau County Legal Aid Attorneys, reestablished an ALAA legislative committee; pressed for improved CDD training, and successfully campaigned for confidential client interviews in Manhattan Criminal Court.

District 65 Affiliation

Of particular importance was the March 1978 vote to affiliate ALAA with District 65, Distributive Workers of America (later a local the

United Auto Workers). Arguing for affiliation, outgoing ALAA president Michael Russek appealed to the members' social conscience by observing that "District 65 . . . has been in the forefront of the civil rights movement and was the first significant opponent of the Vietnam War within the American labor movement."

He also emphasized District 65's political strength; its ability to provide financial assistance; its proven record of support for the Union's campaign on behalf of the fired attorneys of color; its commitment to "organizing . . . legal and defender services attorneys and legal workers nationally"; and its agreement to grant ALAA broad autonomy, including the right to secede.

1979 And 1980 Contracts

In 1979, ALAA conducted its contract negotiations in coordination with 1199 support staff at Legal Aid and with the Legal Services Staff Association (LSSA)--both of whom shared ALAA's October 1 contract expiration. The resulting ALAA contract established health and pension plans jointly administered by union and management, and required the Society to hire an affirmative action officer. Less, however, was achieved in regard to salaries, where inflation had eaten into earlier wage gains.

In the same year, the union prosecuted a partially-successful workload grievance in the Brooklyn office of JRD; campaigned for the reelection of Civil Court Judge Bruce Wright; and criticized the Society's Executive Director,

Archibald Murray, who, in his capacity as a member of the Health and Hospitals Corporation Board, voted to cut indigent patient services.

When bargaining resumed in 1980, the union-management relationship was badly frayed. Management refused to offer more than a 6.6 percent salary increase and demanded cuts in attorney health benefits. As in previous years, the Society announced that it would offer no more than that expressly provided for increased compensation by the City. Management also stated that it was "philosophically opposed" to flex-time, job sharing, and part-time work--all of which ALAA had demanded on behalf of an increasing number of members with childcare responsibilities.

Attorneys sought to generate pressure for their demands with a rally at Society headquarters, a mass sickout, and a picket line at the October 28 annual meeting of the Legal Aid Board of Directors. In the end, however, members accepted the Bargaining Committee's recommendation to accept the offer of improved health benefits and a 7 percent raise, while preparing for a strike in the following year.

1981 Contract And 1199 Support Staff Strike

During contract negotiations in the spring of 1981, management made a 4.3 percent salary offer, which Archibald Murray defended on the ground that the city had demanded wage restraints for municipal employees and contractors. On July 20, ALAA members responded with a strike authorization vote, establishment of strike committees

and publication of a weekly bargaining newsletter. For the first time, ALAA and 1199--both of which were without a contract--exchanged mutual pledges to support each other's contract objectives.

In addition to seeking higher salaries, ALAA charged that "[t]he conditions under which we work at LAS have deteriorated over the years to a point where many staff attorneys question the ability of the Society to provide adequate representation in all cases," examples of which included a major "shortage of attorneys. . . [and] support staff, the lack of decent office conditions and equipment and the inadequate initial and continuing training of attorneys."

In response, the union proposed guaranteed minimal staffing levels for CDD, CAB and JRD, where attrition saddled staff with higher caseloads and with more institutional responsibilities, such as arraignments and "catch" assignments (day-long staffing of one all-purpose courtroom by the same lawyer handling Legal Aid cases on which the assigned attorney is unable to appear.)

Management remained unresponsive. On October 1, however, ALAA members--many expressing the fear that a strike would end The Legal Aid Society--again accepted the offer despite the negative recommendation of both Bargaining and Executive Committees.⁽³⁾ On October 7, 1199 support staff rejected management's offer of a \$20 weekly raise and an 8 percent annual increase in each of two years.

ALAA asked its members to "lend

any and all support they can," but treated observance of the 1199 picketlines as a matter of individual conscience. Civil Division Staff Attorneys who honored the picket lines were docked. Other ALAA members expressed their support by going to their offices only when picket lines were down, and by fundraising. After six weeks, 1199 members ratified a contract providing for a wage increase of the higher of \$24 a week or 8 percent in the first year, and \$22 a week or 8 percent in the second.

1982 Strike

The 1982 strike, during ten cold winter weeks, served to fully reestablish the strength that ALAA had lost in the unsuccessful 1974 strike and the 1975 fiscal crisis--all in the face of great resistance and retaliation from management, the city elite, Edward I. Koch (by then the mayor), and the courts. Over the long-term, however, the Society responded by seeking permanent strike-breaking capacity through bloating the number of Legal Aid supervisors, while the city pursued the same objective through a dramatic increase in 18-B representation.

Initial Negotiations

Negotiations over a contract wage reopener began during the summer of 1982, when the union sought salary increases to make Staff Attorneys more comparable to the ADAs. At the same time, harsher mandatory sentencing laws enacted in the 1970s had exerted growing pressure on Legal Aid workload and continuity. Between 1980 and 1982,

the number of criminal trials had grown by 41 percent. Institutional assignments had multiplied. In September 1982, this trend was compounded by the Society's surrender to the Manhattan District Attorney's demand for a lobster shift (overnight arraignments)--without even consulting the union. Under these rising pressures, illness and emotional stress pushed annual staff turnover to 15 percent.

In contract negotiations, therefore, ALAA proposed that the Society address the severe attorney shortage; reduce the number of CDD attorneys on extended probation, which had risen to about one-third, and "act affirmatively to affect legislation and procedures which impact on our clients and our ability to do our job."

But instead of taking measures to ease the crisis, management increasingly penalized individual Staff Attorneys. Manhattan CDD Staff Attorney Steven Leventhal was suspended for two weeks for asking a judge to relieve him from several cases due to an excessive workload. In October, LAS labor counsel Robert Batterman⁽⁴⁾ alleged that the Society's 4.3 percent salary offer was fair because Staff Attorneys were allegedly "comparable" to prosecutors.

Brewer Firing Lights Fire

The next day, the Society fired Brooklyn CDD attorney Weldon Brewer for telling a judge that he had been unable to file a motion because his workload was too high: 65 cases, including 36 felonies--a 50 percent increase since 1978. As Brewer explained,

[o]n September 10, I had 10 cases in

four different courtrooms. Now how can I instill confidence in those clients when some aren't going to see me at all? Or when some will get only a hurried conversation, where I won't have any time to answer questions? And let's suppose one of those 10 clients has to decide whether to plead guilty that day. It's a serious undermining of the relationship between attorney and client.

Brewer was not atypical; all 18 members of his complex (the CDD office sub-unit) had declared themselves unable to take additional cases and that their caseloads made a mockery of continuity.

Brewer's firing quickly became a symbol for everything that was wrong with Legal Aid representation. Hofstra Law School ethics specialist Monroe H. Freedman said that Brewer "has taken up the fight where Mr. Gideon left off," and former U.S. Attorney General Ramsey Clark agreed to represent Brewer. On October 22, enraged by the firing, ALAA members rejected management's salary offer and voted by a 2-1 margin to strike.

In regard to salary, the union criticized management's refusal to apply comparability with ADAs past the first five Legal Aid steps. As striker Charles S. Bobis put it, "[i]f they can come up with an assistant district attorney who after 10 years earns only \$37,000, I will go back to work posthaste. There is no such animal." The union also made clear that ADA salaries were a floor for Legal Aid compensation, rather than a ceiling, especially since Society funding had dramatically increased,

while salary offers since 1978 had dropped by 50 percent.

Solidarity--Within And Without

Staff Attorney support for the strike was strong; by the fifth week, only five percent of the members had crossed the line, compared with 30 percent by the third week of the 1974 strike. Scabs were dealt with harshly, according to union spokesperson Gary Sloman, "because the basic view is that people who are working are stabbing us in the back." This support for the strike was evident in membership rejection of four successive management offers. Chelsea Civil attorney Candice Carpenter, who had originally voted against the strike, later explained:

The more I see of what they [management] are trying to do, in what are obviously attempts to break the union, the more angry I get at them. I'm totally flabbergasted by the strength of the union, of staying together. It's amazing power. It's opened my eyes to so many things. Who would have thought in law school that I'd be in a union and have these big teamsters come up to little ol' me on the picket line and say, "Okay, I'm not crossing."

In a subsequent analysis, two of the strike leaders, Steve Banks and (future ALAA president) Jean Schneider, explained how the Union quickly harnessed this momentum into organized activity: [The strike] began with little or no prior preparation . . . almost overnight city-wide picket lines were organized . . . a daily communications network was established [and] [f]rom scratch an

impressive fund-raising apparatus was developed and a program of outreach to and solicitation of support from members of Legal Aid's Board of Directors, bar groups, political organizations and politicians, judges, labor organizations, client organization and other constituency groups, was initiated and forcefully carried out.

Support staff members of 1199 continued to work, but supported the strike in a wide variety of ways. The strike was endorsed by the county criminal courts bar associations, including the New York Criminal Bar Association, which "urge[d] our members, and other private lawyers, not to accept court assignments to indigent defendants now represented by a striking Legal Aid attorney."

In the strike's fifth week, nearly a thousand strikers and supporters rallied at City Hall Park. Ramsey Clark told a November 22 rally of 300 strikers and supporters in City Hall Park that the strike represented "a struggle for equal justice" in a system which permitted millions of dollars for defense of the rich, but provided only "pennies for [defense of] the poor." On November 26, 81 city judges issued a statement citing the crucial role of Society attorneys in both civil and criminal cases and called for the quickest possible resolution of the strike.

Visitors to the picket line included Lt. Governor Mario Cuomo, City Clerk David Dinkins, City Council member Ruth Messinger, Judge Bruce Wright, contingents of court officers and other unionized court employees, and delegations of labor and community leaders. Teamsters employed by United Parcel Service

and by heating oil companies refused to cross ALAA's picket lines at Society offices and at courthouses.

In a message to the strikers, Coretta Scott King wrote:

Martin Luther King, Jr. [who was assassinated in 1968 while visiting Memphis to support striking sanitation workers] gave his life in a trade union struggle, and if he were with us today, I believe he would also be among your strongest supporters. . . . Together we shall overcome.

Society supervisors, meanwhile, appeared on pending criminal cases without files, and were soon unable to accept new criminal cases at arraignments. The refusal of 18-B attorneys to cross the lines to take struck Legal Aid cases--and the inexperience of many of those who did--caused numerous criminal defendants to be arraigned without counsel. As long trial and sentencing delays piled up, the jails became overcrowded. Commenting on this logjam, the union made clear that [n]one of us gloats over the impact of our strike on our clients--we all work at Legal Aid because we believe in our clients' rights to quality representation . . . Yet we must recognize that our strongest leverage with management is our ability to close down the courts and this necessarily means putting aside the short term needs of our clients for their long term need for experienced, conscientious lawyers. It is management's refusal to agree to our demand for a decent wage increase, and indeed its refusal to bargain at all, which has prolonged the strike, not any action by the union.

Many Legal Aid criminal clients agreed. A petition from 416 Rikers Island inmates stated that [t]he striking attorneys are balking at the very idea of "Assembly Line justice". Underlying the demand for salary increase is the less publicized demand for lighter caseloads and a less hectic pace. . . . We, as detainee/defendants, should all support this strike! It is imperative that they win, because in the long run, we win!

One criminal defendant's mother said that "[t]hey [the strikers] are definitely underpaid, and overworked . . . I know what's right and what's wrong--and they're right."

Antiunion Counterattack, ALAA Resistance

However, a sinister alliance of management, city government, court administration and the press soon launched a counter-attack designed to break the strike and the union itself. Before the strike was even a day old, management threatened to cut off Staff Attorney health benefits and to discipline attorneys, particularly probationers, for "abandoning" clients.

The Society's Board called the strike "indefensible economically and incompatible with the Society's mission of providing legal representation to the poor of New York City." Management counsel Robert Batterman threatened to seek legislation prohibiting strikes by Legal Aid attorneys and sought an order restraining union disciplinary proceedings against scabs--who were given free representation by the Wall Street firm of Board member Robert Patterson. In late October, the union responded by filing an unfair labor

practice charge against management, and in early November filed a federal lawsuit to enjoin administrative judges from coercing strikers into returning to work.

Mayor Koch, however, raised the ante by denouncing the strikers as "unethical" and instructing City Criminal Justice Coordinator John Keenan (who had already stated publicly that "I don't think they [Legal Aid attorneys] should have the right to strike") to study "replacing" the Society with a governmental public defender agency. *New York Times* editorials labeled the strike "foolish" and urged Koch to "maintain the pressure by getting standby legislation that permits him to replace the society with a public defender system at any time." ALAA publicly challenged this plan to replace the unionized Legal Aid Society, asking:

What, then, distinguishes any City attempt to replace Legal Aid with, for example, the closing of a factory and moving of it to another state solely to avoid unionization? This is the classic runaway shop situation and is illegal under current labor law.

Striker Kevin O'Connell attacked the accusation that striking was unethical: "Quite frankly, I get very upset when I hear management making the statements about clients being hurt. They don't have clients. They sit in their office and push papers. Not one of them knows what it's like to come into court and do the work."⁽⁵⁾ Similarly, Hofstra Law School ethics Professor Monroe Freedman wrote that the *Times* editorial "was erroneous in suggesting that New York City's Legal Aid attorneys are violating

their ethical obligations by striking. . . . No contract can override the Legal Aid lawyers' constitutional and ethical obligations to assure that their clients are receiving effective assistance of counsel."

On December 13, 1982, ALAA proposed "open arbitration," under which, explained the union, "the arbitrator [would be] free to reach a decision which is fair and reasonable under the totality of the circumstances." Management countered with "baseball arbitration," in which the arbitrator "would have been able to choose only between the last offers made by the management and the union." The Society also refused to include the issue of Brewer's dismissal or other non-compensation issues. On December 16, the members voted 321-141 to reject management's arbitration proposal.

On December 21, Koch's "Keenan Commission" released its report. Although designed to help break the strike, the report was forced to concede that creation of a public defender system with simultaneous abandonment of Legal Aid is not the course to take. It involves numerous startup costs and on-going expenses . . . There would seem to be little point in jettisoning an established organization, well qualified to perform the desired function, equipped as it is with able personnel and fortified by long experience. . . . [and] known for its vigorous independent representation of indigents.

The report also found the Society to be of higher quality and more cost-effective than 18-B representation. The commission,

however, called for replacement of ALAA's right to strike with arbitration binding on the Society and the union, but not on the city.

Victory And Backlash

On January 3, 1983--ten weeks into a strike that had paralyzed the criminal courts--a settlement was finally reached. It included an 11.2 percent salary increase over two years (compared with management's 4.31 percent pre-strike offer), establishment of a joint union-management working conditions committee, and selection of caseload arbitrators. Weldon Brewer would remain suspended with pay pending an arbitrator's decision (which ultimately held that his "insubordination" merited dismissal).

These improved terms reflected the indisputable fact that ALAA members had stood together, despite intense pressure, for ten long, difficult weeks. Democratically controlled by the rank-and-file, and organized by a broad and dedicated leadership, only 46 (or 8.5 percent) of ALAA's 540 members had crossed the line; the Civil Division, Volunteer Division and Brooklyn CDD could each boast of not having had a single scab. Notwithstanding concerted efforts at intimidation, no striker was disciplined by management, the city, the courts or the bar.

Thus, despite the loss to each striker of thousands of dollars in salary, ALAA members emerged from the strike prouder, more active and more confident in their union. As Jean Schneider wrote a year later, "[o]ur most significant successes . . . have come from a new awareness, born during the strike, of what we

can achieve through collective action." Over the next year, for example, union members won withdrawal of management's threat to fire a Queens CDD probationer; compelled rejection of the city's demand for Saturday criminal hearings in Manhattan; and "convinced management that it is worth their while to communicate with us about working conditions issues that affect us and to try to work *with us* to arrive at solutions."

The settlement, however, did not end attacks on the union. Shortly after the strike, the Ethics Committee of the Association of the Bar of the City of New York issued an opinion--at Koch's instigation--suggesting that striking Legal Aid attorneys were ethically obliged to continue to represent their current criminal clients and might even have to pick up new clients. In 1987, the Association's Ethics Committee--then chaired by a partner at Batterman's firm--refused to reconsider that opinion, despite a three-year effort for its modification by both union and management lawyers on the Association's Labor Committee.

Percolation In The '80s

The balance of the 1980s were characterized by ALAA's renewed political activism, by rising caseloads generated by the "crack crisis," by relatively favorable economic settlements and by a growing union focus on non-economic demands, particularly affirmative action.

Immediate Aftermath Of 1982 Strike

In April 1984, realizing that the Koch administration's threats to cancel the Society's contract would not guarantee ALAA's submission, the Board, under its new president, Arthur Liman, commissioned a "Quality of Work Life Study" which ultimately recommended sweeping changes in management style, including a far greater role for ALAA.

In the end, however, few of these recommendations were implemented. More promising was the 1984 contract, which raised salaries by five percent in each of two years; sped up caseload grievances; broadened union involvement in affirmative action; established a half-time work experiment for attorneys rearing children; lengthened parental leave from three to ten months; created a health and safety committee; and established more reasonable criteria for certifying lawyers to handle felony cases.

"War on Drugs" Spawns Speedup

In the summer of 1985, however, this newfound calm was disrupted when NYU Law School professors Chester Mirsky and Michael McConville issued a report on indigent criminal defense in New York City. Although focused primarily on the poor quality of 18-B representation, the "Mirsky-McConville Report" also asserted that Legal Aid frequently avoided ("shed") difficult cases at arraignment, failed to provide consistently conscientious representation, and had become "a guilty-plea misdemeanor workshop."

Both the Society and ALAA strongly challenged the report as an unfair portrayal of Legal Aid representation.

Without question, however, Legal Aid attorneys were being overwhelmed by the escalating "drug war" against crack cocaine. In the spring of 1986, union workload grievances compelled the Society to pull CDD attorneys out of some arraignment shifts in Manhattan and Brooklyn, and to retract Board President Maurice Nessen's unilateral decision to extend the Manhattan CDD lobster shift.

1986 Contract and Renewed Militancy

Strain again returned to the collective bargaining process. Although the 1986 contract provided across-the-board salary increases and created greater half-time work opportunities, Staff Attorneys were angered by the Society's refusal to offer more than a one-time bonus to step 13 senior attorneys, a position which was widely perceived to reflect Nessen's contemporaneous remark that working for Legal Aid was a "young man's job" to be gotten "out of your system" before moving on. Similarly provocative was the Society's claim that affirmative action was solely a management responsibility and that Legal Aid did not have a "race-related retention problem"; the Society, however, ultimately agreed to a new--albeit toothless--union-management affirmative action task force.

Following the 1986 contract, ALAA became increasingly concerned with affirmative action. In 1987, the union elected its first

president of color, John Yong.⁽⁶⁾ On May 28, 1987, hundreds of ALAA members attended a union demonstration protesting the dismissal of 17 law graduates--including 15 attorneys of color--who had failed the bar examination for the second time. In response to the union's charge that the Society had breached its "commitment to affirmative action," management ultimately agreed to provide greater support for those attorneys who failed their first bar exam.

On August 25, 1987, one hundred Manhattan CDD Staff Attorneys left their courtrooms to come to the aid of colleague Tom Klein, who had been held in contempt and jailed for three hours --"by force if necessary"--after having accused Acting Supreme Court Justice Frank J. Blangiardo, a notoriously anti-Legal Aid judge, of unfairly favoring the prosecutor during a robbery trial. Led by ALAA member Jeremy Schneider, the lawyers packed the contempt hearing and refused to handle night court arraignments until Klein was released on the order of Appellate Division Justice John Carro.

In late November 1987, as a result of similar direct action, Brooklyn CDD attorneys won improved conditions in the Criminal Court holding pens after issuing a collective threat to boycott arraignments unless the court administration rid the pens of rats, roaches and filth.

**Speedup And Growing
Reliance On Assigned (18-B)
Counsel**

The highly-politicized "drug

wars" led the courts and city to use the threat of greater 18-B representation to speedup CDD attorneys. By the end of 1987, therefore, Legal Aid--the designated "primary defender"--represented only 29 percent of felony defendants, compared with the 18-B panel's 40 percent. In response to the city's continuing pressure to have Staff Attorneys sacrifice quality for speed, management finally echoed ALAA's position.

CDD division chief Caesar D. Cirigliano stated that "[u]nfortunately, the courts want only one thing now--move the bodies through the system. . . . We're not making widgets. We're representing people, and that takes time." Archibald Murray said that "[i]t's as if they [the city and judges] believe that the function of the lawyer is to grease the way of his client into prison." Board Chair Alexander Forger emphasized that "[i]t's the lawyer's responsibility not to acquiesce to that--not to obstruct, but at least to try to get a couple minutes of justice."

1988 Contract

On May 19, 1988, meanwhile, 250 lawyers rallied in support of ALAA's bargaining proposals. On August 15, the bargaining climate was dramatically inflamed when Brooklyn CDD attorneys and support staff held a joint wildcat strike over the lack of office air conditioning and ventilation on the hottest day of the summer. On August 25, 500 ALAA members from around the City marched on LAS Park Row headquarters to protest the resulting dockings and

warning letters.

Just two weeks after the 1988 contract expired, and in the face of rising membership militancy, management agreed to an aggregate 13 percent two-year wage increase, including an immediate 14.3 percent raise for first-year lawyers and a base-rate increase for those at Step 13. Outraged, the City refused to reimburse \$1 million of the cost, in response to which the Board vowed never again to make an offer for which it did not have advance City approval. Many ALAA members, however, remained frustrated that management had rebuffed the union's demands for stronger affirmative action and equal benefits for lesbian and gay attorneys.

Racial Justice Battles Birth New Leadership

Throughout the mid- and late-80s, ALAA's Affirmative Action Committee became increasingly active. In the Civil Division it initiated a long-term and ultimately successful campaign over the failure of Attorney-in-Charge Kalman Finkel to recruit, retain and promote attorneys of color. Committees in Brooklyn and Manhattan CDD gave support to attorneys of color. The same period saw establishment of an ALAA Lesbian and Gay Caucus.

In 1987, the Brooklyn CDD Affirmative Action Committee began to address broader issues by publicly criticizing the acquittal of Bernhard Goetz, who had repeatedly shot several young black men in a subway car. In 1988, Brooklyn CDD delegate Michael Letwin testified before the State Judicial Commission on Minorities that "the entire

relationship between the criminal-justice system and the minority communities is based on institutionalized racism of the most profound sort," and that "The Legal Aid Society . . . must begin to recognize and correct its institutional racism, an effort that the Association of Legal Aid Attorneys has all too often found the Society's management unwilling to do."

Between 1987-1989, the Brooklyn committee's members participated in protests against racist murders in Howard Beach, Staten Island, and Bensonhurst. In September 1989, it publicly contrasted the "preferential treatment" accorded white teenagers charged with murdering Black teenager Yusef Hawkins with the demonization of African-American teenagers accused of attacking a white Central Park jogger. In ALAA's first *New York Times* op-ed piece, Letwin charged that, "[t]he lenient treatment of the defendants charged in the [Bensonhurst] killing . . . is further proof that it pays to be white when you go to court." In 1989, ALAA also supported long and difficult strikes at Eastern Airlines and at the Pittson, West Virginia mines, and became increasingly involved in abortion rights, and endorsed the first mayoral candidacy of David Dinkins.

In the December 1989 union elections, Brooklyn CDD and the Civil Division served as a launch pad for the "Action and Democracy" slate, a cross-divisional coalition to re-energize ALAA based on themes generated in Legal Aid offices throughout the city: direct, militant grassroots decision-making and action; collective, professional and

pro-active leadership; the centrality of affirmative action; and commitment to a deeper alliance with 1199 support staff. Letwin became union president on this platform in January 1990.

Eruption In The Early '90s

The 1990s immediately saw the re-emergence of highly combative relations within the Society as management took advantage of rising health insurance costs and a sense of municipal fiscal crisis to undermine attorney compensation, while continuing to resist ALAA's demands for more aggressive affirmative action. Meanwhile, state and city government sought to further counter the union's influence by funding small nonunion organizations to represent indigent clients without being subject to ALAA's demands for quality representation. During 1990-1992, the new union leadership organized to confront these challenges by attempting to put into practice the themes upon which it had been elected. While economic gains were limited, ALAA won major non-economic improvements.

Speedup And The JRD Crisis

Pressure from governmental funders to increase Staff Attorney workloads and undermine ALAA protections significantly increased in early 1990. On March 9, Staff Attorneys picketed in protest over work quotas in CAB, where, said the union, attorneys were "drowning in a flood of cases generated by the crack crisis."

Beginning in February,

meanwhile, a three-way conflict had emerged between ALAA, the Society, and the state's Office of Court Administration (OCA). The year before, management had settled a major JRD workload grievance by reducing caseloads and demanding that the state either pay for more lawyers or face suspension of JRD's intake. Now, the state not only refused to provide the additional funds, but threatened to replace JRD's Manhattan office with a nonunion contractor, Lawyers for Children. Citing OCA's refusal to provide the necessary funds, management announced the layoff of six JRD attorneys who had just been hired as part of the grievance settlement.

ALAA and 1199 promptly responded with a joint public campaign against these twin threats. Characterizing OCA's request for proposal (RFP) as union-busting, ALAA argued that: "The union has been the only organization in the city with the power to challenge unreasonable caseloads. They'll [Lawyers for Children] handle whatever caseload they're told. After all, the only reason they're getting the contract is so the OCA doesn't have to deal with a union."

On March 26, 1990, 300 Staff Attorneys and support staff gathered at Park Row to picket against the layoffs. On May 30, the unions picketed OCA offices, where they held a press conference with leaders of other unions. By the end of June, ALAA later recounted, these demonstrations, intensive lobbying at the city and state levels, and its public accusation that Lawyers for Children lacked the affirmative

action plan required by state law, "made it politically too costly for the OCA to stick by its initial decision to terminate the JRD contract." The campaign also forced management to guarantee jobs for the six threatened lawyers, if necessary by transfer to other Society divisions.

Just as the JRD crisis was resolved, ALAA was confronted with the city's decision to fund a nonunion "model program," Neighborhood Defender Services of Harlem, to represent members of CDD's client population. ALAA responded by carefully distinguishing itself from Legal Aid management's smug dismissal of NDS' innovative "early intervention" approach. But it voiced concern about the program's potential to undermine the union:

We believe that [NDS] deserves credit for pioneering ways to better serve indigent defendants, and that Legal Aid management should create an atmosphere that encourages such experimentation within the Society. However . . . we are concerned that this project has come about in the context of an attack on the union representation that exists at Legal Aid. . . . because the union, often on its own, has been the most ardent advocate for quality representation of indigent clients in New York City.⁽⁷⁾

Fighting for Diversity And Compensation In 1990 Negotiations

These threats from nonunion contractors, however, soon paled before the most contentious and protracted contract negotiations since 1982. In early July 1990, amidst an atmosphere of renewed municipal

fiscal crisis, ALAA sought wage increases to match the ADA salaries, explaining that "quality legal representation to poor people can only be maintained when those who represent them are fairly compensated."

As in previous years, the union's most prominent non-economic demand was stronger affirmative action, a proposal that was strengthened by the creation of the Attorneys of Color of Legal Aid (ACLA), a caucus formed earlier in the year with the union's strong support and initially co-chaired by Sallie Manzanet (Bronx CDD), Millie Pinott (Volunteer Division) and Magda Rosa-Ríos (Volunteer Division).

Since people of color made up more than 90 percent of the Society's clients, but only 18 percent of Legal Aid Staff Attorneys and 9 percent of the managing attorneys, ACLA representative Azalia Torres told the press that, "[e]specially in this climate of racial tension, Legal Aid must begin to reflect the diversity of our communities," while Letwin reiterated that "[t]he Legal Aid Society simply cannot afford to send the message to its clients that it is part of a judicial system that is widely perceived as being racially unbalanced and unfair."

Management, however, remained intransigent on affirmative action, and refused, even after the contract expired on October 1, 1990, to make any economic offer. ALAA responded with public rallies on October 1, informational pickets, an invasion of the Society's October 23, 1990 annual meeting and disruption of Management's Christmas party at

Park Row. In early October, the union warned that "[i]f management refuses . . . to consider our proposals, they will force us to strike," a prospect that gained particular prominence on October 4, when Supreme Court Judge George Roberts expelled Staff Attorneys Troy Yancey and Robin Frankel from his Manhattan courtroom for displaying "Ready to Strike" buttons. Across the city, Staff Attorneys defiantly wore the buttons to their own courtrooms.⁽⁸⁾

In December 1990, two months after contract expiration, the Society finally made its economic offer: reduced attorney health benefits and no wage increase--the equivalent of a net three percent union give-back. Management claimed poverty, but, as in the past, refused to reveal how the Society allocated its \$120 million annual budget. On January 29, 1991, union members counterattacked with a one-day strike, the date of which was kept secret until the night before. Striking Queens CDD attorney Chandra Gomes told the *Daily News*, "I love this job. I want to do something to help people. All I want is to be treated fairly, like everyone else." Sonja White, of Manhattan CDD, told the *Times*, "[i]n a nutshell, it's about respect."

The Society answered by threatening to terminate health coverage for any attorney who refused to authorize payroll deductions toward the cost of insurance premiums. When, in late-February, attorneys voted 515-138 to reject this ultimatum, the Society unilaterally cut the benefits. ALAA was now faced with a dilemma. Its members regarded health give-backs

as unacceptable. Most attorneys, however, were understandably reluctant to strike. By early spring, therefore, the union implemented an alternative strategy of resistance based on "inside"⁽⁹⁾ and corporate campaigns that included picketing the law firms of Legal Aid Board officers and bombarding Board members' clients with a mass letter-writing campaign.

Ironically, the city itself unintentionally helped to break this logjam. In early March, Deputy Mayor Milton Mollen had offered to fund salary increases if ALAA would agree to an "arraignment bureau" that would surrender the continuity of representation won in ALAA's 1973 and 1974 strikes. "It's reprehensible," answered ALAA, "that anyone in the city administration is trying to diminish our clients' rights by trying to blackmail us during a labor dispute."

Having failed to buy off the union, Mollen suggested then that the Society compromise on ALAA's economic demands, thus undercutting management's insistence that the city would not permit it to exceed the pattern of municipal labor contracts. When the Society hemmed and hawed, the union vowed to disrupt Legal Aid's April 24 fund-raising dinner at the Waldorf-Astoria Hotel.

Under this threat, the Society offered to restore essential health benefits, rescind unilateral employee deductions and, for the first time ever, guarantee existing benefit levels for the life of the contract. Except for a small increase at Step 13, however, salaries were frozen. In other areas, the Society agreed to

landmark improvements in job security, equal benefits for lesbian and gay attorneys, and health and safety.

When compelled by management's terms to "recommend" the offer as a condition of allowing the membership to consider it, the Bargaining Committee achieved ratification by 267-162--but only on a basis that unilaterally repelled the Society's last-minute attempt to renege on its economic offer and to coerce ALAA into dropping a Civil Division affirmative action grievance.

Although the union had successfully endured, these difficult contract negotiations served to undermine members' morale. Deeply concerned about health benefits, salaries and other working conditions, and without a prepared strategy, ALAA had ended up divided about how--or even whether--to resist Management, a schism reflected within the Bargaining Committee. On the other hand, contract negotiations had generated greater membership activism and broad agreement on the need for unified strategy in 1992.

Political Action

Throughout these early 1990s crises, ALAA continued to address larger social-justice issues. On February 1, 1990, a union demonstration focused media attention on the police-instigated beating in the Brooklyn court pens of a defendant charged with child sexual abuse. On August 15, 1990, front-page press coverage reported ALAA's charge that guards on Rikers Island had inflicted a "secret mass beating" in which "[t]he walls

were covered with the inmates' blood" and one inmate was fatally injured. "There was," charged ALAA, "no resistance, there was no provocation. It was like declaring open season on inmates." These revelations caused Mayor Dinkins to order an investigation. ALAA also took an increasingly public stance against the "war on drugs," which it characterized as a reflection of "institutional racism."

In January 1991, a contingent of ALAA and 1199 members joined in activities against the Gulf War. In 1991, ALAA strongly supported a successful 16-week strike by its sister unionists at Legal Services for New York, opposed Clarence Thomas's Supreme Court nomination, criticized the provision of Glock automatic pistols to the NYPD, and organized against the epidemic of police abuse.

Defending Members Against Management and Judiciary

Following the lengthy 1990 contract negotiations, ALAA again turned to immediate issues. In early June 1991, 75 Manhattan CDD attorneys protested the termination of Steven Hoffner, a well-regarded probationary attorney, by picketing Park Row and forcing Management to explain its actions at two mass meetings. On December 9, 1991, the union called on the Society to protect staff and clients against a rising epidemic of drug-resistant TB, and publicized the risk of exposure to criminal defendants held in court pens, telling the *New York Times* that "[i]t was always inhumane to keep people like that. But now [such conditions] pose . . . a threat to the

entire city."

On December 3, 1991, judicial abuse of Staff Attorneys resurfaced when Staff Attorney Michelle Myers was handcuffed for alleged lateness and for "smiling" at Criminal Court Judge Bernadette Bayne; Myers had asked that her client, charged with a misdemeanor, be unshackled for a pre-trial hearing. On December 12, Brooklyn CDD union members protested by walking off the job and picketing Criminal Court. Several days later, 100 Brooklyn CDD attorneys voted to boycott Bayne's courtroom to protest both Myers's treatment and the contempt citations issued by judges against four other Staff Attorneys--all of whom were either incarcerated or handcuffed for periods ranging from a few minutes to two hours for "being late."

When, in February 1992, the State Commission on Judicial Misconduct dismissed the Society's complaint against Bayne regarding this incident, ALAA told the *New York Law Journal* that "[u]ntil there exists a genuine remedy 1,000 Legal Aid attorneys facing judicial abuse in the future will remain compelled to defend our rights--and those of our clients--with immediate, direct action."⁽¹⁰⁾ A few days later, ALAA mobilized more than one hundred attorneys and support staff to picket Legal Aid HQ over the firing of Duane Williamson, an African-American attorney whose termination reflected a pattern of discrimination against attorneys of color in JRD.

Solidarity Yields 1992 Gains

Soon, however, ALAA became bogged down in eight months of

fruitless mid-contract salary negotiations regarding pay comparability with ADAs, causing 150 ALAA and 1199 members to picket Park Row on April 1, 1992. Frustrated both by their experience in 1990 contract negotiations and by the illusory wage reopener, union members told the 1992 Bargaining Committee that--in sharp contrast to the previous settlement--they wanted a significant wage increase, to continue existing health benefits without employee premium contributions or an HMO, and settlement of the contract by its October 1, 1992 expiration date. These and other proposals were reflected in ALAA's bargaining demands.

To achieve these objectives, the Bargaining Committee proposed a two-part strategy designed to forge broad Staff Attorney consensus. The first was a "no contract, no work" October 1 strike deadline--backed by development of finances, strike committees and creative strike tactics--to give the union "some muscle at the bargaining table from the moment negotiations begin." The second was an "inside strategy" prior to October 1, conducted in alliance with Local 1199 support staff (which had been working without a contract since September 1991), that offered various ways for members to build momentum for either an acceptable settlement or a strike.

The viability of this deepening inter-union alliance was due largely to the leadership of senior 1199 delegate Akil Al-Jundi (1940-1997), a Manhattan CDD staff member and Attica Brother; Brooklyn CDD 1199 delegate Bernette Carway-Spruiell;

1199 vice-president Angela Doyle and 1199 organizer Cynthia Wolff.

On June 17, 1992, ALAA members endorsed this approach by a 266-180 vote and immediately adjourned to form office-based strike committees.

The strategy took immediate effect. On June 22, 1992, several hundred ALAA, 1199 support staff and Criminal Justice Agency workers (who were also without a contract)⁽¹¹⁾ picketed the Society's annual dinner at the Waldorf-Astoria Hotel, bearing buttons that decided "1199 and ALAA--United in Spirit, United in Action."

On July 15, the three units held a one-day strike. The strike flyer refuted management's claim that only the city could provide funds for salary increases, pointing out that "Legal Aid isn't broke; despite the fiscal crisis, its revenues have risen from \$101 million to \$130 million in just four years and its managers have received a 5-percent wage increase since 1990."

Chairing the rally, Al-Jundi noted the historic nature of the joint strike:

Many of us waited and worked for years to unite our unions and to make a day where Legal Aid attorneys and support staff would come together . . . [A]fter years of allowing ourselves to be divided, today we have broken a barrier and proved them wrong. . . [A]nd it means a hell of a lot.

1199 President Dennis Rivera pledged his union's full support for both unions, promising that [i]f you are prepared to build a new relationship with [management], based on being a fighting union. . . . we will spend every dime, we will

put every resource behind you. That's the commitment that we make to you. And the only one thing we ask in return is that you remain united, that you make your decisions in a democratic way, with your own rank-and-file leadership.

Once again, the Society responded by playing hardball. On August 26, it announced that Staff Attorneys might lose their health benefits altogether unless the contract was settled by October 1. "Is this a threat?" mused management counsel Bob Batterman. "I don't know. It's a statement of alternatives in a very unpleasant set of facts." The Legal Aid Board, meanwhile, sought to avoid responsibility, claiming that "[t]his is basically a negotiation between management and the staff and the city."

ALAA answered that threatening health benefits was tantamount to "insidiously playing on people's fears. The question is whether [the Board] will have the will to stop this union-bashing. They are in a different world. They are partners in these big firms . . . but they don't know what it's like to represent indigent clients. As far as they're concerned, we're another species." The union defused this threat by securing the UAW's agreement to provide emergency health coverage if management cut off attorney benefits. In a final push, all 28 Manhattan CDD attorneys assigned to weekend arraignments boycotted work on September 12-13, 1992 during which Manhattan CDD Staff Attorney Maquita Moody spoke movingly at a union rally: I just finished a trial--I want to remind you what kind of work you

do. . . . My client was a predicate [felony defendant]. . . . He hadn't had an arrest for nine-and- half years. And he was accused of telling an undercover buy and bust to go across the street and buy a vial of crack from somebody else. He was out [on bail], he got five years to life. He's got kidney problems, he's on dialysis. And a jury after 24 and a half hours found him guilty. Now how do you think I feel and how do you feel when that happens to you? We work so hard, and they don't pay us any money, and the mental and emotional strain we go through. . . . They don't want us to be able to go the doctor, they don't want us to be able to see a psychiatrist, we can't pay our rent . . .

On September 19, 200 union members attended demonstrations and 400 turned out on September 23. On September 30, just before contract expiration, reform-oriented Legal Aid President Michael Iovenko convinced the Board to make a new offer, which ALAA ratified by 536-268 on October 2.

For the first time, the Society agreed to expand the concept of "substantial comparability" with ADA salaries through the tenth step, thus generating 6.35 percent in new money, far better than the 1990 contract's 2.5 percent and superior to NYC municipal union settlements of the same period. The agreement also provided for protection from TB, mandatory racial diversity training, and health benefits for lesbian and gay domestic partners. These positive results, and the membership's direct role in achieving them, left union morale and credibility far higher than in the

previous negotiations.

Incensed, the city's Office of Management and Budget refused to reimburse Legal Aid for about \$2 million of the contract's cost. It also barred Staff Attorneys from participating in the municipal workers' health plan, making it necessary for individuals who chose to retain full "indemnity" (non-HMO) coverage to pay heavy health insurance premium contributions.

1994 Strike

The momentum generated by ALAA and 1199 during 1990-1992 carried forward toward the 1994 contract. What the unions could not know, however, was that Rudolph W. Giuliani's election as Mayor in Fall 1993 foreshadowed the greatest attack on poor people, people of color, unions, and dissenters of any stripe in New York City since 1950s McCarthyism--and that one element of this attack would be to provoke ALAA into an unwanted and unsuccessful strike in which it and 1199 support staff would stand virtually alone.

Background

Between 1992 and 1994, ALAA activism continued to grow, as did its alliance with 1199. On March 8, 1993, 100 Brooklyn CDD attorneys picketed Supreme Court and packed the courtroom of Justice Carolyn Demarest after she had imposed a \$50 fine on Staff Attorney Sonya Zoghlin for appearing 15 minutes late. ALAA told the press that "this demonstration is about principle, not about money," pointing out that "many judges show less respect for Legal Aid lawyers than for private

attorneys, partially because of the type of clients they represent [and because] . . . Legal Aid attorneys are very tenacious when it comes to defending their clients, and this sometimes tends to slow court proceedings."

On March 29, 1993, following the murder of a woman by her parole officer husband, 40 ALAA and 1199 members picketed Brooklyn Family Court to demand that off-duty law enforcement officers be prohibited from bringing guns into the courthouse. On December 3, 1993, ALAA honored picket lines set up by strikers at Legal Services of New York (LSNY).

On May 6, 1994, 130 Brooklyn CDD attorneys held a sickout after colleague Monica Sheehan was disciplined on the unsubstantiated charge that she was "rude, discourteous and inappropriate."

On July 20, 1994, ALAA members in the Civil Division's Brooklyn Neighborhood Office picketed over unmanageable housing caseloads and brought a related NLRB complaint. Union delegate Michael Williams told the press that "[w]hen clients have significant violations--like lead paint, or heat or hot-water problems--we simply won't be able to go back to court two or three times to force the landlord to get repairs done."

ALAA accompanied this activism by strengthening and expanding its leadership structure. For the first time, each major office or division would elect its own vice-president. Collective leadership would be bolstered by supplementing the Executive Committee with a standing Bargaining/Advisory

Committee made up of officers and six issue and caucus representatives. Management's longtime attempt to block continuity within ALAA's leadership was countered by making explicit that the membership had the right to elect officers notwithstanding the Society's limits on the duration of union leave.

Despite--or perhaps because of--this ferment, a strike appeared unlikely in 1994, particularly given the clear determination displayed by ALAA and 1199 in 1992.

In June, moreover, the city had accepted the Society's proposal to reduce costly and unreliable 18-B assigned counsel representation. This plan, which followed the scathing exposé of 18-B fraud and its poor quality representation that had appeared in the *New York Times*, gave Legal Aid control of "the basket" of incoming cases in Manhattan arraignments, thereby increasing Legal Aid's share of indigent criminal representation to the 75 percent rate prevalent in the Bronx and Queens. Taking its lead from Manhattan CDD Staff Attorneys, ALAA supported this plan as a means of strengthening such principles as vertical continuity.

At the same time, Board president Michael Iovekno welcomed ALAA's suggestions for more productive negotiations, thereby generating uncommonly good will early in 1994 contract bargaining. Substantively, the Society agreed to remove the artificial ten-step limit on senior attorney salary comparability with ADAs. For the first time, bilateral subcommittees quickly reached agreement on ALAA's proposals for greater affirmative action, health and

safety, and quality of representation. In this context, settlement of 1199's contract was expected to follow soon thereafter.

In mid-September, however, the Giuliani administration began to derail this process by declaring that it would not fund even a modest ALAA settlement.

On September 13, seeking to generate counter-pressure on the Society, hundreds of ALAA and 1199 members held a lunchtime picket at courthouses and offices around the city. That evening, following extensive membership discussion, the ALAA Executive Committee reaffirmed the union's 1992 "no contract, no work" policy, effective October 1. On September 27, ALAA warned the press that "[t]he likelihood of a strike is very real," a point punctuated in a September 29 rally of hundreds of union members at Park Row

Behind the scenes, however, ALAA urgently sought to avert a strike. On September 30, the union dropped its demand for the same 4.5 percent salary increase given supervisors in July, and substituted a two percent bonus in each of two contract years--barely enough to offset the rising cost of health benefits. When the Society notified the administration that Legal Aid would be able to absorb this insignificant cost without additional city funds, the Mayor demanded that the Society reject ALAA's proposed compromise as inconsistent with its no-increase policy for upcoming municipal labor negotiations. He further vowed dire retaliation were the Society to disobey, or the union to strike. Fearful of retribution, the

Society rejected ALAA's proposal.

Weekend Strike And Giuliani's Threats

Since October 1 fell on a Saturday, ALAA sought to use the weekend as a final opportunity to convince management that settlement, even against Giuliani's wishes, was far better than the alternative. At midnight Friday, September 30, 150 ALAA and 1199 members chanting "strike" marched into Manhattan Criminal Court arraignments and escorted their working colleagues out to a candlelight vigil that continued late into the night.

On Saturday and Sunday, union members from across the city joined the Manhattan picket line. Like earlier generations of Legal Aid lawyers, the mood was grave but defiant. ALAA told the press:

If you cannot attract and retain experienced attorneys to represent indigent clients, then the experienced lawyers will be working only for those who can pay--and that's not the kind of equal justice we believe in. Poor people deserve no less than the Menendez brothers or O.J. Simpson when it comes to quality legal representation. Until Legal Aid lawyers are treated fairly, the highest quality legal representation is reserved for the rich.

Susan Roche of Queens CDD said she was on strike to "get the respect for the work I'm doing and the clients I'm representing." Young Ran Ra of Manhattan CDD said, "We walked out so we would be able to keep attorneys with experience who could provide the best representation to our clients."

The administration replied by threatening to wipe out both Legal Aid and the union. City Criminal Justice Coordinator Katie Lapp privately warned that Giuliani would cancel the Society's contracts if ALAA members voted Monday for an all-out strike. She stressed the Mayor's determination by recounting his prominent part in breaking the 1981 PATCO air traffic controller strike. Giuliani uttered the same threats publicly, vowing that "[w]hat my administration will do . . . if they refuse to go to work . . . is to cancel the [Legal Aid] contract."

May 3 Strike Vote

It was in these circumstances that ALAA members convened at New York University on the morning of Monday, October 3. While the subsequent strike vote may, in retrospect, appear hard to fathom, the decision facing ALAA members was far from obvious. Indeed, for nearly two hours, the members freely and openly debated the choices.

After repeatedly conveying Giuliani's threats, the Bargaining Committee expressed the view that "the offer before us is simply unacceptable. . . . [A]lthough we are quite aware of the risks involved--and we must take the Giuliani threats seriously--we simply are at a point now that for us to accept an offer like this is far worse a threat. . . ."

Some members argued that a strike would be catastrophic. Manhattan JRD attorney Tom Curtis said that "the strike is an obsolete weapon and in the case of this strike it would be stupid to be brought back to this floor by the 18-Bs and the other people who would walk in and do the cases without us."

David Lewis of the Federal Defender Division said, "I do not wish to see [Legal Aid] commit suicide. I believe that is a genuine possibility." Many of those opposing a strike advocated continuation of the "inside" strategy.

Underscoring the concerns expressed by Lewis, Letwin cautioned that, when voting, members should take into account that "all the things he said might . . . be true." Most members, however, agreed with the Bargaining Committee that the union could neither accept a net cut in compensation nor buckle under the same threats of replacement made ever since the first ALAA strike in 1970. With lingering memories of extended 1990-1991 contract negotiations, few members supported the middle road of a prolonged guerilla warfare. Thus, Bob Massi, the Brooklyn CDD vice-president, argued that "[i]f you vote to send us back to the table, even with a [delayed] self-executing strike date . . . your Bargaining Committee will have absolutely no leverage at all."

Moreover, strike proponents argued that management would capitulate before Giuliani could actually carry out his threat. As Bronx CDD attorney Chuck Ippolito predicted, "We take a strike vote, you guys take a walk with me this afternoon, and sometime tonight our employers are going to call our lawyer and they're going to say what the best offer is."

Similarly, Manhattan CDD attorney Len Egert argued that "[w]e're going to have an agreement, if we vote to strike, way before

anything like that [cancellation of the Society's contract] happens. . . . And when we vote to strike, they're going to come back with that real offer--quick."

Volunteer division vice-president Judy Whiting reported that "[w]e've made major efforts" to contact leading political figures. As a result, if Giuliani acted before a settlement, said Letwin, "we at least hope that those [municipal] unions . . . will stand by us because they understand that it is a test too."

For many members, however, repeated insults and attacks by management over the previous four years had simply broken the camel's back, regardless of a strike's immediate outcome. Richard Armstrong, Manhattan CDD vice-president, warned that "you will never, ever, get any respect from your managers, and from this Legal Aid Society, if you accept this contract today."

Manhattan JRD attorney Carol Fegan, a former flight attendant who had gone through the 1989 Eastern Airlines strike and resulting bankruptcy, said that "I can match my mortgages against anybody's in this room, and I am a middle-aged person who gets more scared as the years go by about my future, [but] . . . I would vote yes for this strike. . . . Because [management] won't stop. . . . [E]ach contract gets worse." Even should the worst come to pass, said senior 1199 delegate Akil Al-Jundi, "we would have taken a stand. . . . [S]ometimes, you come to the conclusion that enough is enough is enough. . . . [Y]ou're not in it only for yourselves. You're in it for those who led the struggle before you, and

for those who will come afterwards."

Manhattan CDD attorney Maquita Moody told her fellow members that, like an innocent client, "you're not guilty. . . . because you want a living wage. . . . because you want health care benefits. . . . [a]nd because you represent the poor." For Donna Lewis of Queens CDD, "deep down in my gut something tells me there's no other way to go. And when there is no other way to go, you simply have to go ahead."

Thus, armed with coverage by the United Auto Workers (UAW) strike fund, members voted 482-304 on the first ballot, and 681-56 on the second, to extend the strike into the regular work week. The immediate mood was spirited, but sober.

Steve Wasserman, of the CDD Special Litigation Unit said, "I'm just very, very proud to be part of this democracy. I have more faith in it than any other democracy I've ever been associated with. . . . And I will be with this group till the end."

Maggie Kay, a senior attorney in Bronx CDD, said, "It's about time. We've taken nothing for too long. I'm tired of it. It is time. God bless the union."

Quickly adjourning after the strike vote, 800 Staff Attorneys--surrounded by TV cameras--marched down the middle of Broadway, past City Hall, to Manhattan Criminal Court, where they joined 1199 support staff already staffing the picket lines.

PATCO Revisited: Giuliani Cancels Legal Aid Contracts

Within minutes, Giuliani boasted to live television news that "[t]he canon of ethics says that you can't

abandon cases, so I don't know where lawyers come off striking. And here they are abandoning cases for an entire city. I'm not going to let them do that." He then announced both termination of all the Society's city contracts--criminal and civil--and his decision to issue requests for proposal (RFPs) for the Society's criminal work. "Hopefully," said Giuliani, "this will be the last time lawyers strike against the public interest."

Joining in the attack was Paul Crotty, a recently-departed Legal Aid Board officer who had remained bitter that the 1992 ALAA contract had been too generous. Now Giuliani's Corporation Counsel, Crotty publicly demanded that the Board "fire those lawyers for going out on strike." While he "conceded that the courts would face disruption" if the city proceeded with RFPs, Crotty "insisted upon punishing the Legal Aid Society."

Blocked by police from entering Giuliani's evening press conference, Letwin told reporters that the Mayor's announcement was

not only an attack on us and our clients, but it's an attack on quality services for poor people in New York City. This mayor is destroying the institutions that poor people rely on, whether it's the hospitals or the schools or, now, legal representation . . . This is strike-breaking at its worst. I think this is going to backfire. We are the first ones to stand up to this bully and we hope New Yorkers will stand up and say, 'Enough.' The broader issue is whether we're going to have equal justice in this country . . . New Yorkers deserve the best quality

representation. Someone has to stand up and say the war on the poor is over.

He then put these accusations directly to Giuliani, who had appeared on the City Hall steps.

ALAA members bravely withstood the Giuliani administration's initial barrage. Brooklyn CDD Staff Attorney Bob Massi replied that "[w]e are the only ones who represent the poor and downtrodden in New York and. . . Giuliani does not consider these people to be a part of his New York. . . . You can't terminate a contract with an organization because it's having a labor problem. That's like saying you don't have a right to strike."

Manhattan CDD attorney Susan Light said "[t]his is what we do, stand up for people's rights, and to expect us not to stand up for our own, that would be ridiculous." CAB attorney Mitch Briskey said that Giuliani "is not the King of New York City. He does not have the right to order us back to work. All we're asking for is a fair contract."

As in the past, some press reports treated the strikers sympathetically, while the city elite lined up with the Mayor. Paul Weiss partner Arthur Liman, a former LAS president and onetime Iran-Contra prosecutor, announced that Giuliani "had a responsibility" to end the walkout.

The *Daily News* editorialized that "[w]hile [strikers] have every right to bargain and demand higher wages, their ability to shut down something as vital as the courts gives them too much power . . . they must be held to the same no-strike law as other key city employees. . . . They must never

again be permitted to hold the city hostage."

May 4 Blacklist Ultimatum And Contract Settlement

The next day, Tuesday, October 4, ALAA sought to generate counter-momentum by bringing strikers and their allies to a press conference on the City Hall steps. Foreshadowing subsequent Giuliani administration attempts to repress First Amendment expression, hundreds of police physically blocked the media from contact with the strikers, who defiantly chanted "Rudy, Rudy is his name, union-busting is his game."

Letwin told the press:

New Yorkers deserve the best representation possible, and that's why people come to [work at] Legal Aid. We don't come here for the money. People who work at Legal Aid can be making \$85,000 a year as first year associates on Wall Street. We take pay cuts because we believe in this work. We are the conscience of this city in terms of standing up for the rights of all New Yorkers, and that's really the issue at stake here.

He also emphasized that, contrary to Giuliani's claims, existing Legal Aid funds were quite sufficient to meet ALAA's modest demands: "The Society, using its existing budget, can match the increase it gave to its own supervisors, 4.5 percent just as recently as July, without going to the city for additional funding."

Speaking for CWA Local 1180, a union representing municipal employees, Ed Ott stated that "[w]e in the labor movement have to decide whether or not there is a bottom line we won't go past. This is

a Mayor who's asking us to give up our health benefits, no wage increases, our jobs, and all for absolutely nothing in return."

Manhattan Boro President Ruth Messinger said that "[t]his is not 1981 and this is not Patco. And the Mayor of this city must understand that New Yorkers will not tolerate union-busting." State Senator Catherine Abate, City Council members Sal Albanese and Ken Fisher and others also showed up to defend the union.

Notably absent, however, were the major city unions that Giuliani's attack on ALAA was designed to intimidate. Publicly, DC 37 Executive Director Stanley Hill advised "[b]oth sides [to] go back to the bargaining table." Privately, DC 37 and the United Federation of Teachers (UFT)--the two largest municipal unions--conveyed to Giuliani their "neutrality," presumably hoping to earn his favor in upcoming negotiations on his demands for \$200 million savings in their members' healthcare benefits.⁽¹²⁾

Sonny Hall, president of Transport Workers Union Local 100 (subway and bus workers), said "The Legal Aid lawyers' strike was indeed a careless act, although they had an excellent case for their demands . . . Our concern is not why the mayor said no, but how he said it."

As the *New York Times* explained, the municipal union leaders were unwilling to antagonize the administration:
Whether the Legal Aid workers realized it, they had walked off their jobs at a critical point in the city's relationship with its work force. Mr.

Giuliani, having just completed a round of budget cuts and staff reductions, has now gone back to the workers, seeking more job cuts and asking them to start contributing toward their health-care benefits. . . . Until now, the municipal unions have worked unexpectedly well with the Republican Mayor, recognizing both the city's fiscal difficulties and their own shortage of political support among the general public. But hard times and pent-up wage demands can be a volatile mix for labor leaders to handle unless they convince their members that the pain is shared and no one has a choice. The Giuliani administration seemed to fear that by striking, the lawyers threatened the spirit of collective sacrifice.

Or, as CUNY professor Stanley Aronowitz pointed out, "[l]abor's strategy has become Giuliani's strategy. The big fry make their deals." Also notably silent were City Council Speaker Peter Vallone and Governor Mario Cuomo--both Democrats.⁽¹³⁾

The strikers received support in some corners of the organized bar. NYCLU director Norman Siegel appeared at ALAA's October 4 press conference.

The National Lawyers Guild/NYC Chapter offered its "support for your decision to strike over wages," denounced "Giuliani's decision to cancel the [LAS] contract" as being "designed to disenfranchise the city's legal indigent defendant population and also cripple some of the most progressive elements in the New York City Bar," and offered to co-sponsor a press conference with the National Conference of Black

Lawyers to back the ALAA.

Leonard J. Levenson, an 18-B attorney and elected officer of the New York Criminal Bar Association, offered his support by "applaud[ing ALAA's] strike action," and by vowing that "I will not serve as a strike breaker and will not accept any increased case load occasioned by your strike."

Many private lawyers, however, regarded the 1994 strike as an opportunity for enrichment, rather than solidarity. "I've got to make a living," offered Brooklyn attorney William Blasi, who made a point of arriving in court to pick up struck cases. Manhattan private attorney Mitchell Salloway celebrated: "More cases. More money. More food on the table."

Rather than rally attorneys to the strike, Joyce David, Kings County Criminal Bar Association president and a former ALAA member, rationalized that "[i]t's a shame, but times are tough and people have to make a living."

Late that afternoon, emboldened by this alignment of forces, Giuliani issued the public ultimatum that any striking attorney who did not return to work by the following morning would be permanently blacklisted from all future city-funded representation:

If you want to show us that you'll live up to your ethical obligations of not walking out on your clients, you have until tomorrow to do that. If you don't then you're not part of a responsible workforce that we could rely on in the future . . . There are many lawyers in the city looking for work.

Privately, he demanded that the

Society's Board avoid settlement in order to have the chance to make good on this threat.

While most ALAA members continued to respond courageously, ALAA's leadership realized the union could not put its very existence at the mercy of Giuliani's escalating--albeit illegal--threats. On Tuesday evening, after learning that the Board leadership was similarly concerned for the Society's future, ALAA met Society at the offices of New York Assembly Speaker Sheldon Silver, where they negotiated a slightly better package than that rejected by union members a day earlier.

Pursuant to this tentative agreement, the ALAA Bargaining Committee directed members to report to work the next morning, hoping thereby to deprive Giuliani of an excuse to blacklist ALAA strikers. On the evening of October 5, ALAA members convened at 1199's auditorium and ratified the agreement by a vote of 544-150-3, after which Letwin told the press that "[t]he mayor used the strike for his own political purposes. . . . Nonetheless we stood up for what we believed in, and we got a better contract."

Many members, however, reacted bitterly at being forced to capitulate. Queens CDD Staff Attorney Young Ran Ra said that "When I took this job I knew I wouldn't be paid well, but there may come a time when I can't work here. A lot of people are contemplating leaving because of what has happened." Bronx CDD attorney Luis Roman said, "[i]f I'm back here tomorrow, the sign on my door will read 'Dump Rudy

Headquarters." Mary Beth Mullaney, a new Manhattan CDD attorney, voiced the mixture of pride and sadness felt by many ALAA members:

Seven months ago I left my family and friends in Irmo, S.C. . . . to work as a staff attorney for the Legal Aid Society in New York. It is the job I had most wanted. On Oct. 1, I went on strike with about 800 of my colleagues. . . . I was asking Legal Aid Society management to redistribute funds already within the society. I struck because management gave itself a 4.5% salary increase, while giving staff lawyers nothing and cutting our health benefits. . . . There was nothing unethical about the strike. The lawyers work for a private firm that continued to represent clients during the strike. I also question the Mayor's moral authority to accuse us of abandoning our clients. . . . I am ridiculed by my family and friends for the work I do. But I am proud of it because I am fighting to uphold individual rights for everyone, not just those who can afford it.

But Giuliani, now robbed of an excuse for mass firings, asserted that ALAA's settlement meant nothing without his approval, that "[t]hey [Legal Aid attorneys] have a hope, not a reality of keeping their jobs," and that any "new [contract] between the Society and the city . . . [must] prohibit strikes in the future." Asked about the likelihood of issuing RFPs for the Society's work despite the strike's brief duration, Giuliani replied, "[i]t's very likely."

Public Analysis

Giuliani's "victory" over the strikers was the subject of

widespread comment. The *New York Times* praised the Mayor for his "firm foundation in fiscal reality The [strike] was a foolish challenge." Ed Koch, who had supported the 1974 strike, before unsuccessfully trying to break the 1982 strike, now celebrated Giuliani's "courage in taking on the striking Legal Aid attorneys."

Lawrence Kudlow, economics editor of the far-right *National Review* and a chief budget economist during the Reagan administration, gleefully predicted that "Giuliani's action on the Legal Aid lawyers was a very significant development; to some extent it's a New York City version of Reagan's PATCO confrontation . . . I'm sure it has sent a lot of public union officials scurrying."

Writer and former public defender James S. Kunen came to ALAA's defense in the *Times*: "The strike was fated to fail because these advocates for the indigent were demanding the one form of compensation their fellow citizens are unwilling to give them: respect." Labor analyst Robert Fitch concluded that

what's surprising is not that Giuliani broke the [ALAA] strike by threatening to fire everybody and is now picking his teeth today with the attorneys' bones. It's that the rest of the city's municipal labor movement--once regarded as the most militant and powerful in America--mostly looked on while the mayor gnawed away on the carcasses of their fellow trade unionists.

Since 1994

As unforeseen as the 1994 strike and the Mayor's viciousness was that

a significant number of Legal Aid staff--including some former ALAA activists--would legitimize Giuliani's attack on the union by becoming bidders for large portions of the Society's funding. Equally unforeseeable, however, was the establishment of a reform administration within the Society whose presence would open opportunities for empowerment of ALAA and its members far beyond that which had existed at any other time in its history. In the wake of the strike, ALAA became a UAW local, an affiliation that has proved extremely beneficial.

Quality Representation Under Increased Attack

In the days, weeks and years that followed the strike, the Giuliani administration has pressed its attack on Legal Aid and its unions. Its plan to use the strike as a cover with which to undermine indigent criminal representation was laid out in an internal memo of October 5, 1994, the day that the strikers returned to work. These included ending ALAA's right to strike, breaking continuity of representation through an "arraignment bureau" and replacing annual salary increases with "merit" pay. Blocked by an NLRB investigation from pursuing a permanent no-strike clause, Giuliani relentlessly pursued these objectives by other means.

Within days of the strike, Giuliani announced his demand for an immediate \$13 million cut in the Society's \$79 million city criminal funding. The Mayor specified that Legal Aid achieve this by drastically reducing the number of CDD and CAB supervising attorneys, thus

creating a pool of experienced criminal defense lawyers, most of whom chose to blame their predicament on the Society and ALAA, rather than on the administration. While ALAA and 1199 lobbied fiercely against this cut, a fearful Legal Aid Board offered only mild resistance. Organized bar reaction was similarly meek.

Faced with this fait accompli, the union was forced to renegotiate the October 5 contract settlement; on January 23, 1995, members voted by 369-88 that each CDD and CAB Staff Attorney would surrender a week's compensation in order to protect 1199 support staff and junior Staff Attorneys from involuntary layoff. On January 30, support staff finally voted 311-59 to ratify their contract, which provided for a two percent salary increase and a \$300 bonus. And in early February, the Society signed a new city criminal contract that reduced its funding by 16.5 percent, from \$79 million to \$66.4 million. The *New York Times* applauded these cuts for promising "cheaper, more efficient defense services." ALAA stepped into the vacuum caused by these cuts by agreeing that its members would take on additional responsibility for training, hiring and other non-disciplinary work previously performed by managers.

Immediately thereafter, the administration of Governor George Pataki compounded this cut by threatening \$10 million in the Society's "Aid to Defense" funds, thus causing Legal Aid to issue pink slips to 84 attorneys in early April. Faced with the threatened layoffs, 22

recently-demoted supervisors sued the Society and the union for agreeing that demoted supervisors would have to accept less layoff seniority than bargaining unit members in the event of additional layoffs. When state funds were restored in April, all layoff notices were rescinded; the former supervisors' suit was subsequently dismissed on the merits.

By July 1998, the Giuliani administration had slashed Legal Aid criminal funding to \$53 million, without any significant decrease in the Society's overall workload. Some of these funds have gone to 18-B assigned counsel, whose cost has increased since 1994 from \$49 million to \$62 million.

Giuliani Establishes Runaway (Nonunion) Defenders

The bulk, however, has gone to runaway (nonunion) contractors specifically established to bid for Society work pursuant to Giuliani administration RFPs first issued on October 19, 1995 for 25 percent of the Society's criminal funding. Although the administration claimed that the RFPs introduced "healthy competition" into indigent defense representation, it explicitly barred Legal Aid from bidding. More candidly, Giuliani reiterated that their underlying purpose was to generate permanent strikebreakers so that the city would "no longer be at the mercy of one group that could decide in the future to go out on strike, and then all of a sudden you have a massive backup in the criminal justice system."

Lurking behind administration policy was the Manhattan Institute, a

Giuliani think-tank. In an article in the Institute's *City Journal*, ex-radical Sol Stern argued that the RFP was a key device to weaken "the Legal Aid Society . . . [by] mov[ing] immediately to bid a separate contract for each [Society] function." This was necessary, explained Stern, because the Society was allegedly dominated by ALAA and a "leftist" poverty law ideology:

There is an implication that the poor are being screwed by the "system," but I say that they're being screwed by crime and violence and lack of accountability and the inability to integrate into mainstream society. This is a bunch of left-wing kook lawyers intent on playing out a socialist ideology that hurts the people they claim to represent.

Stern further complained that LAS had won undeserved due process rights for public housing tenants faced with eviction, had unfairly forced the city to house the homeless, and had opposed harsher treatment of juvenile offenders--all of which undermined the Giuliani administration's efforts "to improve the city's quality of life." But, said Stern, "[w]ith Legal Aid cut down to a more appropriate size," the administration could "undertake a broad legal and political counterattack against the pernicious consent decrees and court mandates . . . [and] campaign more effectively in the Legislature for needed reforms in such areas as juvenile justice and homeless policy."

Although the mainstream bar reacted to this attack with cowardice, others came forward to oppose the Giuliani/Manhattan Institute's RFP agenda. *El Diario/La Prensa*

denounced the RFPs, which "can only be interpreted as an attack against our society's vulnerable segments."

Gary Abramson, chief attorney of the Orange County Legal Aid Society, pointed out that Giuliani "appears to be acting more out of animosity toward Legal Aid than from a point of fiscal responsibility or honest interest in uninterrupted court operation."

In early November 1995, City Council hearings on the RFPs, Councilmember Adam Clayton Powell IV, representing East Harlem and the Bronx, characterized the RFPs as "another vicious attack in a long line of vicious attacks on the poor, the African-Americans and Hispanics who get caught up in this system. For you [the Giuliani administration] to be taking this type of action simply as retribution for the strike that they undertook last year is really appalling."

Columbia Law School dean Lance Leibman stated that Experts around the country have studied the best way to supply legal services to the poor, and those experts have always concluded that the methods used in New York by The Legal Aid Society supply outstanding services and quality at the right price to the taxpayer. This is a system that is working, and it would be a great mistake to change it in this way.

Maryland Law School Professor and former ALAA member Douglas L. Colbert wrote that "the lawyers' decision to strike was intended to hold onto their most senior lawyers. Like prior Legal Aid lawyer strikes, which were necessary to accomplish

reasonable caseload limitations and continuous representation by the same lawyer, last year's strike was tied to maintaining adequate client representation."

On November 30, 1995, a statement issued by 47 Supreme, Criminal, Civil, and Court of Claims judges said that "[w]e believe it would be a mistake for the city to fragment the representation of criminal defendants, and that such fragmentation would adversely affect the effective administration of justice for several reasons." Similar statements were issued by former Mayor David Dinkins, the Central Labor Council. The *Amsterdam News* wrote:

Giuliani has been more cruel than human, on the cutting edge of the kind of psychosis that he regards poor whites, Blacks and Hispanics as butterflies, whose wings he can tear off with impunity while has the temporary power of the bully . . . The Legal Aid Society has taken a bold step [of opposing the RFPs]. It is imperative that they be supported.

The bluntest statement, jointly issued by the Center for Constitutional Rights, the National Conference of Black Lawyers, National Emergency Civil Liberties Committee, and the National Lawyers Guild, "reaffirm[ed] our support for The Legal Aid Society and its unions in reversing Mayor Giuliani's attacks, in particular, call for attorneys to withhold any and all aid and comfort to new strikebreaker indigent defense agencies."

To neutralize such opposition, the administration awarded the RFP contracts to runaway shops managed and staffed by former LAS

personnel, many of them well-regarded attorneys,⁽¹⁴⁾ including three out of four of ALAA's 1988-89 officers.⁽¹⁵⁾

In exchange for these contracts, the beneficiaries named themselves as collaborators willing to bestow legitimacy on the dismemberment of LAS by embracing the administration's violation of continuity of representation, and to falsely accuse Society staff of "inefficiency" and strike-related "disruption." Their very participation proved invaluable in confusing the loyalties and perceptions of many who would otherwise have instinctively understood and resisted the administration's objectives.

Having obtained contracts, the runaways have acquired an urgent and independent need to elevate their "legitimacy," particularly within the courts and the broader legal community, in order to survive beyond Giuliani's possible year 2000 Senate Race or 2001 mayoral term-limit, whichever comes first.

Not surprisingly, the administration's policies have inflicted severe damage on the quality of indigent criminal representation, as reflected in reports by independent agencies. In 1998, for example, the Indigent Oversight Panel of the Appellate Division, First Department, reported that the Society "is obligated to represent almost the same number of clients for substantially fewer dollars," while the runaway defenders are abundantly funded to handle a limited caseload, thereby overwhelming Legal Aid attorneys with impossible caseloads, arraignments and other work.

Impact On Legal Aid

This asphyxiation of Legal Aid has seriously weakened vertical continuity and other essential elements of high-quality representation. Staff Attorneys' ability to resist has been further undermined by the runaway defenders' willingness to curry favor with the administration by abandoning vertical continuity; participating in arraignment body count contests; pandering to judges, court administration and even district attorneys; replacing seniority with "merit"-based salaries unilaterally set by management; and, in some offices, permitting part-time private practice.

Ironically, this same period of relentless attack has witnessed a dramatic improvement in the Society's labor-management relations. In the immediate post-strike period, the Legal Aid Board named Daniel Greenberg, a longtime legal services attorney and former president of the New York City Chapter of the National Lawyers Guild, to lead the Society. This decision reflected a deliberate rejection by the Board of the administration's demand that it try to break ALAA. As the *American Lawyer* put it in April 1995, the October 3 vote by Legal Aid attorneys to strike signaled how bad . . . [Society labor relations] had gotten. . . . Though short-lived, the strike helped convince the board that the new executive director should be very different--most importantly, it should be someone able to improve relations with staff attorneys . . . The 52-member board voted in

Greenberg unanimously at its November [1994] meeting. . . .

Today, both the Society and the unions have lawsuits pending against the administration for its interference with 1994 collective bargaining and for its subsequent RFPs. During the term of its 1994-1998 contract, ALAA also achieved significant improvements in health and dental benefits; the first significant midterm "comparability" increases for senior Staff Attorneys; and participation in numerous joint union-management committees to hire, promote, improve legal practice, budget and address other important issues. In short, even under the brutal conditions inflicted by the Giuliani administration, Legal Aid attorneys and support staff have had, through their unions, the opportunity for greater empowerment than ever before.

UAW Affiliation and Political Action

A year after the strike, ALAA members, increasingly aware of the need to play a more active role in the labor movement, voted by 221-56 to affiliate with the United Auto Workers (UAW), which, due largely to efforts of Region 9A Director Phil Wheeler, had provided consistent and essential political support for the Society and ALAA members. As UAW local 2325, ALAA has played an increasingly active role in politics, ranging from efforts to help establish the Labor and Working Families parties, to support efforts by workfare participants to unionize, to assist Detroit newspaper strikers, and to help build coalitions for law reform and against police abuse. In the Fall of 1997, ALAA and 1199

organized the Campaign to Defend Legal Aid, a grassroots membership mobilization assisted by the UAW, which successfully won additional restoration of Society criminal funds cut by the Giuliani administration.

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Conclusion

Thirty years after its birth, ALAA remains a work in progress. Throughout, however, it has remained faithful to the principles of equal justice, labor solidarity, and social justice. Moreover, this direction, and the strategy and tactics of pursuing it, have always been democratically determined by its membership. Whatever mistakes it may have produced, the union's highly democratic internal life has served as the indispensable laboratory from which ALAA members draw lessons from the past with which to better face the future.

Endnotes [Convert to footnotes]

1. This history draws upon contemporary documents and news accounts and the contributions of numerous current and former ALAA members, including George Albro, Steve Banks, Karen Faraguna, Carol Gerstl, Gerald Lefcourt, Jean Schneider, Elliott Wilk, Bob Zuss and many others. It also draws on an earlier summary of ALAA contract bargaining written by Jane Friedson. Pat Bath, Legal Aid Society Public Information Officer, provided valuable background materials. The article was researched and written by Michael Letwin; Rosa Borenstein and John Lewis assisted in its preparation.

2. "Vertical" continuity of representation begins at a client's first arraignment in Criminal Court and continues, in felony cases, through transfer to state Supreme (felony trial) Court.

3. Although the details of ALAA's structure have varied over the years, its fundamentally grass-roots, democratic character has remained constant. Currently, the membership is the highest body and convenes approximately once a year or as otherwise necessary to elect officers and to vote on such issues as collective bargaining agreements. The Executive Committee (EC), made up of about 75 officers and delegates (or their alternates), governs the Union between membership meetings. All members are invited to attend and participate (but as a representative body, only EC members may vote). The Bargaining/Advisory Committee (BC) is a standing coordinating body made up of the officers (and their alternates) and seven additional members who represent key Union caucuses or issues.

4. From the early 1970s through 1994, the LAS Board of Directors retained Batterman, a partner at Proskauer Rose Goetz & Mendelsohn to negotiate its labor contracts, during which his aggressive style made him a lightning rod for staff dissatisfaction.

5. Ironically, in 1996, O'Connell, by then a Legal Aid supervisor, helped establish one of runaway nonunion agencies called into existence by Giuliani to break the

Union.

6. Unfortunately, Yong later collaborated in the Giuliani administration establishment of runaway defenders to undermine ALAA after the 1994 strike.

7. In 1997, NDS fulfilled this role by bidding for Legal Aid's work under Giuliani's post-strike RFPs.

8. In April 1991, the Appellate Division, First Department, overturned Roberts, ruling that "the mere act of wearing a button which has some expression of political import, under the circumstances herein, is an exercise of speech protected under the First Amendment to the United States Constitution and Article 1, Section 8 of the New York State Constitution."

9. Coined in the late '80s, an "inside strategy" refers to a contract campaign in which workers conduct disruptive, militant action while remaining on the job.

10. In January 1995, Bayne was denied reappointment upon expiration of her term; in 1998, ALAA helped secure defeat of Bayne's bid for Civil Court.

11. CJA workers prepare the pre-arraignment reports used in determining bail for criminal defendants. Like Legal Aid, CJA is a nonprofit city contractor.

12. Ray Markey, president of DC 37 Local 1930, recalls that when he rushed to the executive director's office to seek support for striking ALAA and 1199 members, he found Randy Levine, Giuliani's labor chief,

already enlisting Hill's support. In the end, members of DC 37, the UFT and numerous other municipal unions ended up with a two-year wage freeze and replacement of union jobs with workfare participants. Collaboration with Giuliani finally caught up with Hill in November 1998, when, surrounded by the indictment of his cronies for stealing DC 37 funds, he was forced to admit that his administration had stuffed ballot boxes to ensure ratification of this unpopular contract. DC 37 is now in trusteeship and Hill has resigned.

13. In November 1994, Republican George Pataki defeated Cuomo, despite Giuliani's support. In 1998, Democratic gubernatorial candidate Vallone restored \$2.5 million more to the Society than the administration had proposed.

14. The seven runaway shops are: "Appellate Advocates" in the Second Department (ex-CAB deputy chief Lynn Fahey); "Bronx Defenders" (ex-Legal Aid attorney Dan Arshack and Neighborhood Defender Services deputy chief Robin Steinberg); "Brooklyn Defender Services" (ex-Brooklyn CDD supervisor Lisa Schreibersdorf); "Center for Appellate Litigation" in the First Department (Fahey's husband and ex-CAB manager Bob Dean); "Queens Law Associates" (ex-Queens CDD supervisor Laurie Zeno); "New York County Defenders Association" (ex-Brooklyn CDD supervisors Michael Coleman, Carolyn Wilson and Kevin McConnell); and "Battiste, Aronowsky & Suchow" in Staten Island.

15. These were: John Yong
(president), Alan Rosenberg
(Secretary) and Steve Dean
(Treasurer). Fortunately, few other
representatives--current or former--
defected.

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Last modified: [DATE]

Michael Letwin - President
568 Broadway, Room 702A
New York, NY 10012-3225
(212) 343 - 0708
Contact: alaa@alaa.org
Contact Webmaster: co280@nyu.edu