



## FAQ On LAS Criminal Budget Shortfall

August 1, 2000

Association of Legal Aid Attorneys/UAW 2325

568 Broadway, Rm. 702A, New York, NY 10012-3225 • 212.343.0708

---

### Introduction

This FAQ supplements previous ALAA bulletins and meetings regarding the current shortfall in city criminal funding for LAS. Additional questions forwarded to the Union will be addressed as they arise.

### Scope and Cause of the Shortfall

#### *How much is the current CDD/CAB revenue shortfall?*

The CDD/CAB shortfall for FY01 (7/1/00-6/30/01) is approximately \$2 million.

#### *What caused this shortfall?*

The shortfall reflects Giuliani's deliberate policy of slashing \$30m from the Society's annual criminal city funding since 1994,<sup>1</sup> one recent example of which is its refusal to pay for dramatically higher Legal Aid workload during "Operation Condor."<sup>2</sup>

---

<sup>1</sup>The Giuliani administration's campaign of retaliation against the Society and its unions began during the October 1994 strike, and is detailed in the ALAA History excerpt (attached hereto as Appendix A; all appendices to this report have been previously distributed to staff).

<sup>2</sup>The NYPD's "Operation Condor" is purportedly aimed at such "quality of life" violations as marijuana and trespass. In fact, Condor represents a quota system under which officers collectively rack up millions of dollars in overtime for thousands of indiscriminate and/or often false arrests.

Among the victims (who are overwhelmingly people of color) was Patrick Dorismond, an unarmed

### *What happened to that \$30m?*

These funds went directly to the runaway (nonunion) RFPs<sup>3</sup> and the 18-B panel—both

---

Haitian-American shot to death by police shortly after the Diallo murder acquittal.

<sup>3</sup>"Runaway shops" typically include "factories and other business enterprises that move away from unionized . . . areas . . . to non-union . . . areas," Paul Le Blanc, *A Short History of the U.S. Working Class* 174 (1999), or "[a] unionized plant transferred to another location . . . in order to evade bargaining obligations or to destroy a union." R. Emmett Murray, *The Lexicon of Labor* 159 (1998).

Here, the Giuliani administration itself established runaway defenders, for the classic union-busting purpose of "farming out work or a phase of production, hitherto done by union members in a union workplace [LAS]" *id.*, at 45.

This has also paralleled Giuliani administration efforts to "privatize" numerous unionized governmental functions, a prominent recent example of which are planned RFPs for (inevitably nonunion contractors) to run up to 20 city schools. Wyatt, *New York City to Privatize Worst Schools*, NY Times, July 27, 2000.

Giuliani's runaway defenders 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 Joe Vaccarino and ex-attorney Laurie Zeno);

of which cost more for poorer quality work than that provided by LAS staff.

***Didn't the City Council restore our funding?***

The City Council restored<sup>4</sup> only \$5.6 million of the \$12 million additional funds that the Society calculated to be essential for this fiscal year.<sup>5</sup>

***Why didn't the Society simply anticipate the shortfall by spending more conservatively?***

During the last fiscal year, the Society and the unions agreed on necessary improvements in the ALAA and 1199 collective bargaining agreements, and badly-needed new attorney hiring.

While we hoped—and fought—for additional funds to sustain these policies, the Society was further undermined by continuing Giuliani administration retaliation, limited City Council restoration, and the city's recent announcement that it will not pay COLA (cost of living) increases for this fiscal year until conclusion of municipal labor negotiations, the actual timetable for which remains unclear.<sup>6</sup>

---

**."New York County Defenders Association"** (ex-Brooklyn CDD supervisors Michael Coleman, Carolyn Wilson and Kevin McConnell); and

**."Battiste, Aronowsky & Suchow"** in Staten Island.

For further discussion of the background and nature of the runaway defenders please see *ALAA History* excerpt (attached hereto as Appendix A) and *Questions & Answers Concerning NACDL Resolution on NYC Legal Aid* (attached hereto as Appendix B).

<sup>4</sup>"Restoration" refers to funds added by the City Council to the mayor's proposed budget.

<sup>5</sup>The Society's testimony before the City Council, previously distributed to all staff, is attached hereto as Appendix C.

<sup>6</sup>Most municipal worker contracts expired earlier this year. However, despite a \$2.9b city budget surplus, the administration has rejected across-the-board increases to any group of workers. Rather, the city has pursued such contract goals as "significant givebacks" from the UFT (teachers), Gendar, *Contract Changes Must, City Warns Teachers Union*, N.Y. Daily News, July 27, 2000, and a four percent pay cut from police.

***Why didn't we know about this before now?***

Staff has received regular reports on the status of criminal funding. However, the outcome was unclear until early July, at which time staff was immediately made aware of the current shortfall.

**Closing the Shortfall**

***I've heard that to close the shortfall it will be necessary to cut the criminal budget by 50-60 staff attorney positions; will I be laid-off or involuntarily transferred?***

While there are no guarantees, ALAA believes that the short answer is "no."

On Tuesday, July 18, the ALAA Executive Board (EB)<sup>7</sup> unanimously proposed, and the Delegate Council (DC)<sup>8</sup> overwhelmingly adopted, reaffirmation of the Union's opposition to layoffs and/or involuntary Staff Attorney transfers between or within divisions.<sup>9</sup>

As an alternative, the DC adopted the EB's proposal that budget cuts be fairly borne throughout all of CAB and CDD, through such steps as:

- Normal attrition;
- Increased supervisory workload, and reassignment as necessary between boros and divisions;
- Truly voluntary inter-divisional attorney transfers, with the right of return;
- Unpaid, voluntary, attorney leaves of ab-

---

*Greenhouse, Unions Angered by City's Proposal That Police Officers Defer Two Weeks' Pay*, N.Y. Times, July 29, 2000.

<sup>7</sup>The EB is made up of the Union officers (president, secretary-treasurer, recording secretary, and eight constituency-based vice-presidents (and their alternates)) and issue and caucus representatives.

<sup>8</sup>The DC is made up of the officers, see fn. 8, *id.*, and approximately 80 delegates (or their alternates) representing each LAS unit.

<sup>9</sup>Based on this position, the DC also voted that the Union will not formulate criteria for involuntary intra-division transfers.

sence with paid medical benefits and the right to return to the same office (subject to targets and caps by office designed to achieve the necessary results);

- Consideration of potential health insurance savings, without sacrificing benefits, through such steps as merged coverage for Staff Attorneys and Management/Exempt staff<sup>10</sup>; and

- Equitable sharing of budget reductions between and within CDD/CAB, combined with careful and deliberate scrutiny of all spending and resource allocation.

***Where did these alternatives come from?***

The foregoing position is based on membership feedback, on continuing discussion with management, and on analysis of materials provided by the Society to an EB subcommittee,<sup>11</sup> the members of which include George Albro (Secretary-Treasurer), Charlotte Hitchcock (Recording Secretary), Mitch Briskey (VP/CAB), Barbara Byrne (Alt. VP/CDD Qns.), and Tim Mulligan (Alt. VP/CDD Manh.). Clinton Hughes (Junior Attorney representative) has recently joined the subcommittee.

***What about drawing on the Society's endowment?***

Since the endowment consists of funds specifically raised for civil representation, it cannot be used to fund Legal Aid's criminal work.

***What is management's response?***

Management has expressed receptivity to ALAA's position and will meet with Union representatives again this week.

***Should I voluntarily transfer to another division or boro?***

Staff Attorneys may wish to exercise their

contractual rights to apply for transfer to other divisions or boros,<sup>12</sup> particularly in light of the relatively large number of open positions currently available. However, given the budgetary alternatives discussed above, ALAA does not recommend that attorneys transfer due solely to the current shortfall.

***How long will positions in other divisions be kept vacant?***

Many positions in other divisions have deliberately been left open in the event of transfers from CDD/CAB. However, since those divisions must service clients and meet contractual obligations to funding agencies, those interested in transfer are advised to apply immediately.

***Would I retain my seniority if I voluntarily transfer to another division?***

Yes.

---

<sup>10</sup>Support staff are members of the health plan that covers all 120,000 1199 members.

<sup>11</sup>Since the 1994 strike, the Society has provided the Union with full access to LAS books. CBA Article I, § 4.

---

<sup>12</sup>CBA, Article III, § 8, states that: "The Society will promptly post and notify the Union of all expected Staff Attorney and supervisory vacancies. The Society shall give due consideration to 1) an attorney's request to work in a particular county because it is her county of residence or more convenient to her county of residence; 2) a senior Staff Attorney's request for a change of workplace or division and for the appointment to new staff positions created by the Society. Every attorney who has completed her original commitment and who desires a transfer to another division will be interviewed. Transfer requests and applications for promotion will be granted to Staff Attorneys whose qualifications are equal to those of outside candidates, subject to staffing needs and affirmative action considerations."

***Can I return to my original office?***

ALAA and LAS have agreed that, in the current circumstances, there will be no time limit on the right to accept the first available position in your original division and/or office.

***I understand the Union's position that involuntary transfers and/or layoffs are unnecessary. But what rules govern their implementation were they ever to occur?***

CBA Article III, § 13<sup>13</sup> governs notice to the union, transfers to other open positions, layoff, and recall.

***Have there ever been layoffs at LAS?***

The only Staff Attorney layoffs at LAS took place in early August 1975 when, in the context of a municipal fiscal "crisis," the Society laid-off 25 attorneys and 46 support staff, all of whom were recalled by the end of the year.

In January 1995, ALAA members voted to shield junior Staff Attorneys and 1199 support staff jobs and compensation from Giuliani's massive post-strike budget cuts by reducing the number of supervisors, and by agreeing that CDD and CAB Staff Attorneys would surrender a week's compensation.

In April 1995, faced with Governor Pataki's threatened \$10 million cut in the Society's "Aid to Defense" funds, Legal Aid issued pink slips to 84 attorneys; these notices were withdrawn prior to implementation, as state funds were restored.<sup>14</sup>

***What about intra-divisional transfers?***

CBA Article III, § 8(B) states: "Whenever possible, an attorney who is permanently transferred from one [1] office to another will receive three [3] weeks written notice of such transfer and, upon request, a written statement of the reasons therefore." No specific criteria governs such transfers.

<sup>13</sup>Attached hereto as Appendix D.

<sup>14</sup>See Appendix A.

**Impact on Current Compensation*****What is the impact on pension contributions?***

Pension trustees from both ALAA<sup>15</sup> and LAS agree that the Society is in compliance with ERISA (the federal pension law) and CBA Article II, § 6, which requires the Society to make Staff Attorney pension contributions "on a semiannual basis . . . as defined in the Pension Trust Agreement and Pension Plan."

The Society typically makes these contributions approximately eight weeks after the period for which they are earned. The shortfall has delayed the first annual contribution to early August, but LAS hopes to make the second contribution as early as September.

***What is the impact on health benefits?***

The Society is in compliance with its contractual obligations to maintain existing health attorney health benefits.

***What is the impact on TransitChecks?***

Since TransitChecks are not mandated by ALAA's current CBA, available funds have been used first to ensure contractually-required salary, pension, and health benefits.

However, on May 16, to protect existing TransitCheck benefits, the DC voted to charge the relatively small cost of TransitChecks for this quarter against compensation increases contained in the new ALAA contract that takes effect October 1, 2000.

As a result, TransitChecks for July-September for Staff Attorneys, Management and Exempt employees, in all divisions, will probably be distributed in August.<sup>16</sup>

<sup>15</sup>ALAA's pension trustees are: Bryan Coakley (CDD/Qns.), Richard Horowitz (CDD/Qns.), and Helen Frieder (Civil/Bx).

<sup>16</sup>The Society made this determination on Wednesday, July 5, after learning that the city would not immediately make available anticipated COLA funds. The Society took immediate steps to so inform ALAA, which ultimately learned of the situation late Thursday, July 6, and alerted all staff on Friday, July 7.

## **Workload Impact**

### ***What is the impact on CDD workload?***

Management, ALAA and 1199 share the view that the shortfall seriously threatens the Society's ability to maintain its current intake of 200,000 cases, and that it is necessary to seek a formula for additional city funding increases to handle cases above a fixed number.

Given, however, the administration's blind assault on Legal Aid, on its unions and clients, and on indigent criminal defense generally, there is considerable risk that the city will respond by using this as pretext to give still additional Legal Aid funds to more expensive—but Giuliani friendly—runaway defenders and 18-B panel.

This is one important reason that—prior to any intake reduction—managers should assume a fair share of caseload and institutional assignments.

### ***What is the impact on CAB workload?***

The shortfall will make it increasingly difficult to maintain the size and scope of our appellate and prisoners' rights programs (both of which rely on city funds), in regard to both timely completion of existing work and additional intake.

Last Fall, the city used this very pretext to award additional funding to "Appellate Advocates"—even though city cuts had caused a CAB backlog, and despite the fact that LAS' RFP bid for its own work was far lower than that submitted by the runaway defenders.

## **Restoring LAS Funds**

### ***What is our strategy to increase LAS criminal funding?***

Most immediately, ALAA, 1199 and the Society will continue joint efforts, through a concerted campaign during the fall's modification of the city budget, to close the acute gap in LAS funding. These efforts include:

- Lobbying for greater City Council budget restoration;
- Negotiation with the city to link the level of LAS criminal funding to workload; and
- Prosecution of federal litigation to end, and reverse, the Giuliani administration's ongoing attack on LAS.<sup>17</sup>

This campaign, in turn, relates to the long-standing battle for full restoration of \$30 million (plus inflation) in annual city funding lost by LAS since 1994. While far from assured, the likelihood of success rises with the approach of Giuliani's departure in late 2001.<sup>18</sup>

### ***What can individual LAS staff do to help win greater funding?***

LAS staff participation is essential to an effective campaign. Please look out for upcoming efforts, and contribute your ideas, time, and energy.

---

<sup>17</sup>Plaintiffs are now awaiting the federal court's response to their request for an order to convene Rudolph Giuliani's deposition. For further discussion of this federal lawsuit, see *Memorandum of Law in Support of Legal Aid's Motion for Preliminary Injunction* (attached hereto as Appendix E).

<sup>18</sup>In a growing panic for precisely this reasons, runaway defenders are reported to have begun financial contributions to prospective mayoral candidates; details will follow.