

THE ENCYCLOPEDIA OF **STRIKES** IN AMERICAN HISTORY

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ATTORNEY STRIKES AT THE LEGAL AID SOCIETY OF NEW YORK CITY

Michael Z. Letwin

In 1970, Legal Aid attorneys in New York City became the first lawyers in the United States to go on strike, and they did so again in 1973, 1974, 1982, and 1994. Despite expectations to the contrary (and for reasons that cannot be fully explored here) few lawyers elsewhere have followed their example.

It is clear, however, that Legal Aid strikes in New York City took place in the wake of *Gideon v. Wainwright* (372 U.S. 335, 1963), in which the U.S. Supreme Court dramatically expanded the right of counsel for indigent criminal defendants. Instead of establishing a public defender office to meet the obligations imposed by *Gideon*, New York City's municipal government contracted with the Legal Aid Society, a privately funded charity established in 1876, as its primary public defense provider. To fulfill its city contract, the Society hired hundreds of public defenders.

Despite *Gideon*, however, New York City's criminal justice system dealt contemptuously with poor defendants. Grossly inadequate city funding for indigent defense meant low salaries and impossible caseloads, turning the attorneys into glorified production workers who could offer only perfunctory representation for an overwhelming number of clients, nearly all of them African American and Latino. This assembly line was epitomized by fragmented representation in which clients were seen by a different attorney on each of many court appearances in the same case.

By the late 1960s, the civil rights movement had condemned such poor-quality indigent defense as just another reflection—alongside police brutality and discriminatory sentencing—of institutional racism throughout the criminal justice system. But despite a series of official reports and mass inmate protests that sharply criticized such

representation in New York City, conditions did not change; politicians, judges, Wall Street lawyers, and Legal Aid management simply did not feel compelled to change them.

In 1968–69, these public defenders took matters into their own hands by founding the Association of Legal Aid Attorneys (ALAA), which conducted five major strikes between 1970 and 1994. Although widely decried as “unprofessional” by the city's political, judicial, and corporate elites, these strikes were catalysts for systemic improvement of indigent criminal representation in New York City, including continuity of representation (assignment of the same trial lawyer throughout a given case), retention of experienced attorneys through higher compensation, workload limits, affirmative action, and health and safety.

Thus, for more than three decades, labor relations in New York City's criminal justice system have been characterized by a recurring cycle of accumulated grievances, strikes, and their aftermath.

Industry Background (1876-1966)

In 1876, Der Deutsche-Rechtsschutz-Verein was established to provide free legal assistance to German immigrants, primarily in civil matters. In 1896, under the auspices of leading members of the private bar, it was renamed the Legal Aid Society. In the late nineteenth and early twentieth centuries, criminal defense representation was typically provided by private solo practitioners, often members of immigrant communities, for a fee. During the Progressive Era, however, the legal elite came to regard such attorneys as an impedi-

ment to swift and sure deterrence of immigrant crime. Lawyers for the rich were also concerned that poor immigrants felt "that they were being denied redress, protection and equality before the law," particularly in regard to ineffective criminal defense representation. The resulting political radicalization, warned Legal Aid Society president Charles Evans Hughes in a 1920 speech before the American Bar Association, threatened to "open a broad road to Bolshevism" in the United States.

Although initially concerned that the "public defender movement" was a socialist plot designed to undermine private profit, the legal elite ultimately agreed with other reformers "to accept the replacement of private lawyers in indigent [criminal] cases, because they feared that assigned counsel gave the poor legitimate grievances that contributed to social unrest and presented an ongoing impediment to the efficient administration of criminal justice." In 1914, the first such indigent public defender office was established in Los Angeles. Subsequent years witnessed a national shift to such agencies, the public or private character of which depended on the influence of the organized bar in a particular jurisdiction.

These early reformers, the legal elite, and institutional defenders all agreed that public defense institutions should adopt a nonadversarial approach. In the words of one leading public defender advocate, the prosecution and defense worked together to ensure that "no innocent man may suffer or a guilty man escape." Without the financial incentive to prolong a case, it was argued, public defenders would encourage most defendants to plead guilty, if necessary by seeking to withdraw from cases in which "guilty" clients were intransigent. Rather than seeking "technical" defenses or go to trial, public defenders encouraged their clients to testify, thereby ensuring that only an innocent person was acquitted, and appeals were brought only on merit.

Pursuant to this model, the New York Legal Aid Society gradually took on a growing but still limited number of criminal defense assignments. This qualitatively changed only as a result of the U.S. Supreme Court's 1963 decision in *Gideon*, which greatly broadened the right of counsel to criminal defendants, regardless of their ability to hire a lawyer.

Most major cities responded to *Gideon* by establishing or expanding a governmental public defender office. Instead, New York City government contracted with the already-existing Legal Aid Society to serve as its primary public defender organization. To fulfill this contract, the Society hired hundreds of young public defenders, many of them heavily influenced by the civil rights, student, and anti-war movements.

These new defenders were appalled by the contrast between *Gideon's* lofty promise and the grim reality of daily Legal Aid practice. As Gerald Lefcourt recounted in a 1994 interview with the author, when he joined the Society in 1968:

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 . . . no real offices, no telephones. We couldn't call witnesses. There was 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 [Legal Aid] Society.

Moreover, clients (mostly African American or Latino) saw different Legal Aid lawyers (mostly white males) at each court appearance.

Lefcourt and others responded by organizing the Association of Legal Aid Attorneys, an independent union that was certified as the lawyers' exclusive bargaining representative in December 1969. (The Association of Legal Aid Attorneys affiliated with District 65, an independent general union in 1978, and the union became a local of the United Auto Workers [UAW] in 1996.) Several months later, city jail inmates rebelled, in part to protest the poor quality of Legal Aid representation. The Society responded by threatening to terminate its contract with the city to defend criminals 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. Regarding this as merely a token gesture, on May 3-6, 1970, amid international protest against the

U.S. invasion of Cambodia, Legal Aid attorneys in Manhattan conducted the first lawyers' strike in the United States.

The legal establishment reacted with hostility. 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."

This brief strike yielded mixed results. To counteract favoritism and promote attorney job retention, the union's first contract included a twelve-step salary scale; direct client representation, however, was not significantly improved.

The 1973 Strike

Three years later, Legal Aid attorneys hoped that such conditions would be remedied by the unprecedented federal court decision in *Wallace v. Kern* (392 F. Supp. 834), which ordered a limit on Legal Aid's criminal caseload. On June 27, 1973, however, these hopes were dashed when the federal appellate court overturned the decision on jurisdictional grounds. On July 2, therefore, Legal Aid attorneys voted 178 to 79 to strike for lower caseloads, private client interview facilities, stenographic help, more time for research, better salaries, and, above all, continuity of representation.

The strikers were immediately attacked by the presiding appellate court justices. As reported in the July 6, 1973, *New York Law Journal*, these justices denounced the strikers for "abandoning the responsibility to the indigent which union members assumed upon their employment," recruited private attorney strikebreakers, 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 Karen Faraguna answered this attack by arguing, as reported in the July 17 *New York Times*, that the inadequate quality of Society representation had been "abandoning [clients] for years," and that, as reported in the July 9 *New York Law Journal*, "we are on strike to implement the very [continuity] recommendations made by the Appellate Divisions' own committee." She also pointed out, reported the July 3 *New York Daily*

News, that "in 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. . . . This 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?'"

Perhaps the most effective answer came from forty-one inmates who refused to leave their cells for court appearances.

The broader legal community was split. As for the mainstream bar, 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 "your acceptance of [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 advertisement in the July 19 *New York Law Journal*, signed by professors at New York and Hofstra law schools, "urge[d] members of the private Bar to support this important [strike]." Similar statements of support were issued by the New York Civil Liberties Union and the Puerto Rican Legal Defense and Education Fund.

When the strike ended just six days later on July 9, the ALAA had won continuity of representation within the same court, to "the maximum extent feasible," and an experimental program for continuity between misdemeanor and felony courts. *New York Times* columnist Tom Wicker, who had covered the *Gideon* case, wrote approvingly that "the 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, salary increases, eventual "substantial parity" with assistant district attorneys, shorter probationary periods, greater Spanish-language training, confidential interview conditions, greater office space, and the provision

of office equipment, such as desks, chairs, and telephones.

In practice, however, the 1973 strike yielded few representational improvements. Although the number of Legal Aid public defenders had tripled since 1970, the agency remained starved for adequate city funding and attorneys still lacked adequate offices, interview space, or workload limits. Moreover, judges undermined the contractually mandated continuity experiment and were increasingly hostile to Legal Aid attorneys' vigorous advocacy.

The 1974 Strike

In response to these conditions, union members set a strike deadline for September 11, 1974. When management nonetheless equivocated on continuity of representation and blamed the city for the Society's refusal to offer meaningful raises, attorneys voted 193 to 144 to walk out.

Echoing their 1973 attack on the union, the presiding appellate justices declared, according to the *New York Daily News*, that Legal Aid strikers were "attorneys, professionals, not day laborers, and should act accordingly," and threatened to bring disciplinary charges, recommendations of dismissal, and replacement by private attorneys.

The same newspaper also reported the union's reply that "we 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." 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. Speaking at a strike rally, then-House member Edward I. Koch responded to the presiding justices by declaring, as recounted years later in a 1982 *News World* article, that "to 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."

But by the end of the nineteen-day strike,

about one-third of the attorneys had crossed the picket line because, Faraguna recalled in an interview years later, "many people did not want another strike when improvements were in progress." Thus, the remaining strikers returned to work, even though 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,

When 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.

In June 1975, the union sustained another blow, when a committee of the New York County Lawyers Association issued an opinion that the strike had violated professional ethics. Attorneys nonetheless conducted a one-day strike on October 26, 1976, to reinstate a colleague deemed to have been fired for her union activity.

The 1982 Strike

In negotiations over a 1982 contract wage reopener, the union, which by now had affiliated with District 65, UAW, again sought salary comparability with assistant district attorneys. At the same time, Rockefeller drug laws enacted in the mid-1970s had further exacerbated attorney workload, in response to which management increased the pressure on individual attorneys. One of these was Weldon Brewer, an attorney fired in 1982 for having told a judge that he was unable to file a motion due to his high caseload.

Brewer's firing quickly became a symbol for everything that was wrong with Legal Aid representation. Legal ethics specialist Monroe H. Freedman, of Hofstra Law School, writing in an op-ed piece in the November 7, 1982, *New York Times*, declared that Brewer "has taken up the fight where Mr. Gideon left off," and former U.S. Attorney Gen-

eral Ramsey Clark agreed to represent Brewer. On October 22, enraged by the firing, ALAA members rejected management's salary offer and voted by a two-to-one margin to strike.

Staff attorney support for the strike was strong; by the fifth week, only 5 percent had crossed the picket line, compared with 30 percent by the third week of the 1974 strike. Scabs were dealt with harshly, union spokesperson Gary Sloman told the *New York Law Journal*, "because . . . people who are working are stabbing us in the back."

Support staff represented by Local 1199 continued to work, but supported the strike in a wide variety of ways. The strike was endorsed by local criminal bar associations, including the New York Criminal Bar Association, which in a letter appearing in the *New York Law Journal*, "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. On November 22, UPI reported a speech by Ramsey Clark, who told a rally of 300 strikers and supporters that the strike represented "a struggle for equal justice" in a system that permitted millions of dollars for defense of the rich, but provided only "pennies for [defense of] the poor." On November 26, eighty-one 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 picket lines at courthouses and Legal Aid offices. In a message of support reported in the union's November 24, 1982, strike bulletin, 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 private 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 same issue of the union strike bulletin made clear that:

None 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.

The December 21, 1982, strike bulletin reported that 416 Rikers Island inmates signed a petition stating that "the 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!" Similarly, the November 23, 1982, bulletin reported the comments of one criminal defendant's mother, who declared that "[the strikers] are definitely underpaid, and overworked. . . . I know what's right and what's wrong—and they're right."

Soon, however, the strikers came under fire from the alliance of Legal Aid management, city government, court administration, and the press. Before the strike was even a day old, management threatened to cut off strikers' health benefits and to discipline attorneys, particularly probationers, for "abandoning" clients. In a November 5 statement, 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 a court 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.

The November 10 *New York Daily News* reported that Mayor Koch, who as congressman had supported the Legal Aid attorneys in their 1974 strike, had now raised the ante by denouncing the strikers as "unethical" and instructing City Criminal Justice Coordinator John Keenan (who, according to the *New York Law Journal*, 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." The union's December 8 strike bulletin 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." On December 21, according to the *New York Law Journal*, Koch's "Keenan Commission" conceded 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 private (18-B) representation. The commission, however, called for replacement of the ALAA's right to strike with arbitration binding on the Society and the union, but not on the city—which funded the Society's criminal defense work.

Finally, on January 3, 1983—ten weeks into a strike that had paralyzed the criminal courts—the parties reached a settlement. It included an 11.2 percent salary increase over two years (compared with management's 4.31 percent prestrike 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 upheld his dismissal).

These improvements were the result of a long strike that had been characterized by a high degree of democratic rank-and-file control, in which only 46 (or 8.5 percent) of the union's 540 members had crossed the line. As a result, no striker was disciplined by management, the city, the courts, or the bar. And although the strike cost each striker thousands of dollars in salary, they had emerged prouder, more active, and more confident.

Shortly after the strike, however, a committee of the Association of the Bar of the City of New York issued an opinion—at Koch's urging—suggesting that striking Legal Aid attorneys were ethically obliged to continue to represent their criminal clients.

The 1994 Strike

The 1982 strike won eight years of relative labor peace. From 1990 to 1992, however, conflict erupted when, after years of rising attorney workload, due largely to a dramatic increase in prosecution for crack cocaine, management sought to reduce attorney health benefits and other compensation. The ALAA and 1199 support staff, working in unprecedented alliance, conducted a series of escalating protests, one-day strikes, and other actions.

By 1994, however, a strike seemed unlikely. In June, the Society had convinced the city to deal with the costly and poor-quality criminal representation provided by private (18-B) lawyers by increasing Legal Aid's role. As a result of relent-

less labor strife, the Society's board of directors came under the control of a more union-friendly leadership, which agreed to raise senior attorney salaries, implement more aggressive affirmative action, improve health and safety, and otherwise lift the quality of representation. A settlement was anticipated by October 1, when the union's contract would expire.

In the middle of September, however, the expected agreement was effectively vetoed by Mayor Rudolph Giuliani, who declared it inconsistent with his hardline position in upcoming municipal labor negotiations. Although the Society emphasized that it would self-fund the agreement, the mayor issued an ultimatum: even modest salary increases would provoke his severe displeasure. Fearing retribution from its primary source of funds, the Society agreed.

When the union contract expired on October 1, the mayor personally vowed to cancel Legal Aid's contracts if the attorneys struck; his criminal justice coordinator privately reminded the union that when Giuliani worked for Ronald Reagan he had helped break the 1981 air traffic controller (PATCO) strike.

At a mass meeting on the morning of Monday, October 3, union members weighed their options. Despite the mayor's threats, most would neither accept a net cut in compensation nor surrender their National Labor Relations Act rights, as private sector employees, to strike. Moreover, many believed that Society management would capitulate before Giuliani could actually carry out his threat, or simply felt that they had no choice but to fight back. Thus, attorneys voted overwhelmingly to strike, before marching down the middle of Broadway to join picket lines already erected by striking 1199 support staff.

Within minutes, as reported by the *New York Times*, Giuliani went on live television to declare that "The 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." Although Legal Aid supervisors were prepared to fully staff the courts, Giuliani unilaterally terminated all of the Society's city contracts, which, he said, would be replaced by new agreements with other contractors. As a

result, he was quoted in the *New York Daily News* saying, "This will be the last time lawyers strike against the public interest."

Although some press reports portrayed the strikers sympathetically, the city elite enthusiastically supported the mayor's hardline position. According to the *Wall Street Journal*, Arthur Liman, a former Legal Aid Society president and onetime Iran-Contra prosecutor, said that Giuliani "had a responsibility" to end the walkout. The *Daily News* editorialized that "while [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."

The next day, Tuesday, October 4, the ALAA sought countermomentum with a mass press conference on the City Hall steps. Foreshadowing Giuliani's later restrictions on First Amendment expression, hundreds of police prevented the media from contact with the strikers, who defiantly chanted "Rudy, Rudy is his name, union-busting is his game."

Notably absent, however, were Governor Mario Cuomo or City Council Speaker Peter Vallone, both of whom were leading Democrats. Also missing were leaders of the major municipal unions. On October 5, the *New York Times* reported that Stanley Hill, executive director of the American Federation of State, County and Municipal Employees DC 37, had publicly advised both sides to return to the bargaining table. Six days later the *New York Post* reported that 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." Privately, the leadership of both DC 37 and the United Federation of Teachers (UFT) assured Giuliani that they were "neutral" about the attorneys' strike, presumably in hopes of softening the mayor's demands for \$200 million in cuts in their members' health care benefits. As the *New York Times* explained:

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. . . . The Giuliani administration seemed to fear that by striking, the lawyers threatened the spirit of collective sacrifice.

Or, as City University of New York professor Stanley Aronowitz pointed out, "Labor's strategy has become Giuliani's strategy. The big fry make their deals."

Similarly, many private lawyers regarded the 1994 strike as an opportunity for enrichment rather than solidarity, as they told *Newsday*. "I've got to make a living," explained attorney William Blasi, who was anxious to pick up struck cases. Mitchell Salloway, another private attorney, rejoiced that, for him, the strike meant: "More cases. More money. More food on the table."

Further emboldened by such support, Giuliani announced that any striking attorney who did not return to work by the following morning would be permanently blacklisted from all future city-funded representation. Under these overwhelming threats, the strikers returned to work on Wednesday morning, and that evening, they voted 544 to 150 to ratify a slightly improved agreement.

This brief but intense battle left attorneys feeling a mixture of bitterness, defiance, and pride. One junior attorney, Young Ran Ra, told the *New York Times* that "when I took this job I knew I wouldn't be paid well, but . . . [a] lot of people are contemplating leaving because of what has happened." Luis Roman said, "if I'm back here tomorrow, the sign on my door will read 'Dump Rudy Headquarters.'" Mary Beth Mullaney spoke for many when she said, in a letter printed in the *New York Times*,

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. . . . There was nothing unethical about the strike. . . . 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.

However, the *New York Times* praised Giuliani's "firm foundation in fiscal reality" and declared that the strike had been "a foolish challenge." Writing in the *New York Post*, former Mayor Ed Koch praised Giuliani's "courage in taking on the striking Legal Aid attorneys." *Newsday* quoted Lawrence Kudlow, economics editor of the right-wing *National Review* and a chief budget economist in the Reagan administration, who 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."

Opposition to the mayor's conduct fell to commentators such as writer and former public defender James S. Kunen, who wrote in the *New York Times* that "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." In *Newsday*, radical labor analyst Robert Fitch predicted that municipal unions would suffer from their abandonment of the Legal Aid strikers:

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.

The mayor, however, seemed determined to inflict further punishment for the brief strike. According to *Newsday*, he declared that the attorneys "have a hope, not a reality of keeping their jobs," and he vowed that any "new [contract] between the Society and the city . . . [must] prohibit strikes in the future." When blocked by an NLRB investigation from pursuing a permanent ban on Legal Aid strikes, he demanded an immediate \$13 million cut in the Society's \$79 million city criminal defense

funding. This cut led Legal Aid criminal-defense attorneys to surrender a week's compensation in order to prevent the layoff of 1199 support staff and junior attorneys. The *New York Times* applauded these cuts for yielding "cheaper, more efficient defense services."

Mayor Giuliani also announced plans to transfer an additional 25 percent of the Society's city criminal funding to nonunion contractors, thereby ensuring, reported the *New York Times*, 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."

But strikebreaking was not the mayor's only purpose. The autumn 1995 *City Journal*, a publication of the Manhattan Institute, a Giuliani administration think tank allied with the right-wing Heritage Foundation, charged that the Society was dominated by the union and "leftist" poverty lawyers whose successful representation of public housing tenants, the homeless, and juvenile offenders had interfered with the Giuliani administration's efforts "to improve the city's quality of life." But "with Legal Aid cut down to a more appropriate size," the mayor 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."

Recognizing such motives, Council member Adam Clayton Powell IV, representing East Harlem and the Bronx, was quoted in the *New York Times* as denouncing the transfer of Legal Aid funds to nonunion contractors 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 [Giuliani] to be taking this type of action simply as retribution for the strike that they undertook last year is really appalling." Similar statements were issued by former mayor David Dinkins and 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 he has the temporary power of the bully. . . . The Legal Aid Society has taken a bold step [of opposing new Giuliani indigent defense contractors]. 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 stated that they "reaffirm 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."

By July 1998, the Giuliani administration used such contracts to slash Legal Aid criminal funding by an additional \$13 million, without any significant decrease in the Society's overall workload, leading one judicial oversight body to report, according to *Newsday*, that the Society "is obligated to represent almost the same number of clients for substantially fewer dollars," thereby overwhelming Legal Aid attorneys with impossible caseloads, arraignments, and other work. In the process, this poststrike de-funding seriously weakened continuity of representation and other gains long fought for by the ALAA.

Ironically, however, this same period led to dramatic improvement in the Society's internal labor-management relations, including the Legal Aid board's deliberate rejection of the mayor's demand to break the ALAA, and its appointment of new management whose primary mission was to ensure labor peace.

As a result of such changes, ALAA contracts in 1998 and 2000 yielded an average 6 percent compensation increase—by far the greatest in the ALAA's history, and far higher than that negotiated by municipal unions for the same period. Moreover, both the ALAA and 1199 won a unique level of influence over the Society's hiring, promotion, legal practice, budget, and other critical issues. Not until after Giuliani left office in 2001, however, were the Society and its unions able to recoup some of the millions in lost city funds. And Giuliani's nonunion contractors have outlived his administration, thereby posing an ongoing threat to the unionized Society.

Since it was founded in 1876, the Legal Aid Society in New York City—the oldest and largest legal aid agency in the United States—became the national model for small, private nonprofit charities representing indigent clients in civil (and later juvenile) cases. In the 1960s, however, it was largely transformed into the world's largest indigent-criminal defense (or public defender) agency. Within just a few years, this nearly unique transformation led to the first attorney strikes in the United States. Therefore, New York City's Legal Aid strikes, which took place between 1970 and 1994, have been a response to the often-dismal state of indigent criminal defense representation.

See also: Three Strikes Against the New York City Transit System, 277.

Bibliography

- Letwin, Michael. "History of The Association of Legal Aid Attorneys UAW Local 2325." Available at www.alaa.org/pages/History.pdf. Revised August 1999.
- Lindenauer, Susan E. "Equal Justice: The History of the New York Legal Aid Society." *Update on Law-Related Education* 18, no. 3 (Fall 1994).
- "Legal Aid Society." In *The Encyclopedia of New York City*, ed. Kenneth T. Jackson, 661–62. New Haven: Yale University Press, 1995.
- Legal Aid Society. *Encyclopedia of Company Histories* (n.d.). Available at www.answers.com/topic/the-legal-aid-society.
- Mirsky, Chester L. "The Political Economy and Indigent Defense: New York City, 1917–1998." In *1997 Annual Survey of American Law*, 891–1017.