Interview with

Alexander Forger

Conducted by Martha Bergmark

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Martha Bergmark: We are here this afternoon to talk with Alexander Forger about his experiences as president of the Legal Services Corporation. The interview is being conducted on Thursday, September 12, 2002 here at the National Equal Justice Library in Washington, D.C. Alex was president of the Legal Services Corporation from the beginning of 1994 until February of 1997. I was honored to serve as his executive vice president during those years and am very much looking forward to this opportunity to hear about his memories of that experience. Welcome, it’s great to see you.

Alexander Forger: Thank you Martha, a pleasure to be here.

MB: I would like to get us started, if you would, by telling us something about your professional and personal history and how your history came to be interwoven of that of the Legal Services story.

AF: Well, having graduated from law school, I’ll start at that point, I had the good fortune of going to a firm in which Harrison Tweed was a major figure. He was a refreshing free spirit of the bar and was engaged on many fronts. At the time I joined the firm in 1950 he was then president of the Legal Aid Society, had been for a few years. He then became president of the bar association, city bar and he was a co-founder of Lawyers Committee for Civil Rights sometime thereafter. But he encouraged the young people to become involved. In those days there was no obligation to provide counsel so a
lot of legal aid work was criminal. We went up to the legal aid office and participated in
doing cases. And in the bar I followed along and ultimately got involved with the
Section on Individual Rights and Responsibilities and enjoyed the issues that were being
addressed there, as well as the people who were addressing them. And ultimately became
involved with the Lawyers Committee for Civil Rights as well. So I was very pleased to
tag along in some of the activities in which Tweed was involved. And through the legal
aid involvement it ultimately led to became a member of the board of Legal Aid Society
of New York which is the oldest and largest legal services provider and became president
and then chairman of the board. So I spent a good time of my non-practice activities
engaged in the issues in which legal aid was involved. While there along came the
beginnings of Legal Services Corporation, OEO and then LSC and so I witnessed from
that vantage point some of the action of the Legal Services Corporation. Not all of which
was endearing to me particularly the monitoring issues that went on and in a sense at least
in the 80s that the Corporation was not in hands that sought to have it grow and prosper.
So that was my quick upstart to that. As the Legal Services Corporation itself I have
been chairman of the firm and stepped down in ‘92 and my wife of some 47 years had
been ill and died of August of ‘93. I was at sort of loose ends for a number of months
there when along came the invitation to come to Washington as quote interim president. I
always said there was no such title as interim president, I was interim president of Legal
Services Corporation that was through Doug Eakeley the chair of Legal Services
Corporation, a new reconstituted who had been a practitioner in New York City at one of
the large firms and came on the board of Legal Aid Society being the only associate in a
law firm who became a member of the board. I got to know Doug in those days. When he
became chair he recalled that there was a need for somebody to take on the job temporarily and fortunately for me he thought about me.

**MB**: I remember going up to meet you in December of ‘93, well we were interviewing each other I guess and what I remember about that is coming to your office at Milbank at Rockefeller Center and the cab had to drop me off several blocks from Rockefeller Center because President Clinton was in town with his motorcades and what not so I had thought back to that as a kind of metaphor from time to time of both the good and the bad of our sojourn with the Clinton administration.

**AF**: Well I think you came up to visit because it was of the strong recommendation of Doug and others then becoming involved in Legal Services Corporation that I would be very smart to try to engage Martha to join forces and fortunately that worked out.

**MB**: It certainly did. So tell us about what were your expectations going in, before you actually got there as president of LSC, what were your thoughts in advance of that about what you thought might unfold.

**AF**: Well after a period of Ronald Reagan who sought and succeeded in cutting the Legal Services budget by some 25 percent in the early 80s he having had a bad experience through the California Rural Legal Services and migrant workers and the like, and then when Congress managed to sustain the Corporation notwithstanding the administration’s desire to cut further, then Reagan was succeeded by President Bush I who not being able to cut the budget seemingly populated the board with members who were not very supportive of the Legal Services Corporation, so with the change in administration and I don’t know whether it’s a Democratic/Republican issue but in any
event with the change of administration and a Democratic Congress as well, it seemed like this would be the dawning of the golden age of Legal Services with the opportunity to expand because it was still woefully under-funded and to be able to do a lot of innovative things in delivery of legal service. And indeed I recall the funding criteria committee had suggested that we recommend a budget of some $850 million over the $300 some odd that was then in place. I remember the Washington Post saying somebody over there is smoking pot, but at least it was a notion we could. Now the $850 or whatever figure it was simply an extension of the original funding taking into consideration inflation. So while in absolute dollars it looked like absurd it was truly just trying to keep the Corporation at its regular level. So there was this great expectation that with everybody friendly and supportive of legal services and an unquestioned need for the service and an expanded service this looked like a wonderful opportunity.

**MB:** Tell us about how that opportunity began to unfold in early ‘94.

**AF:** ‘94 we made some changes in the staffing because just as the board seemingly was not terribly friendly to Legal Services prior to the change of administration probably a lot of the members of the staff had a view as to how Legal Services should be administered, I having witnessed the monitoring function and the auditing where seemingly they would spend days trying to ascertain whether we had spent money on political activity or things that were not permitted. We thought it would be appropriate to get knowledgeable people who were supportive of the program. So together we gathered a number of people from the field or who had been consultants and released some of the members of the staff which ultimately led to a law suit by those who were released, claiming that it was either retribution or some kind of discrimination or
political. I think the legal basis was not as important as being able to say you new folks coming in you liberals you just don’t like people who have been administering this program in a non-partisan way. That led early on in one of our subcommittees in appropriation to one of our early hearings and Representative Moran from Virginia was in the chair and he excoriated us about our personnel policies. As it turned out a number of the people who we had released lived in his district and they had brought this matter to his attention and so he for the benefit of his constituents, I think as he acknowledged later, had to inquire as to what we had done and why we had done it. The Republicans sat back quietly and enjoyed the fact that we were being taken to task by a member of the Democratic Party and jumping ahead that law suit ultimately went away. I mean it was a thorn for a long period of time.

**MB:** And we did keep one of those people who was Ken Bolm certainly stayed with us as a critiquer of what we were trying to do.

**LF:** I think he became our principal critic over the next several years when I was involved. The next thing I remember in these early years was we had hoped to get re-authorized because the committee had its re-authorization had lapsed so you have to every year go through the budget process. And we went to Senator Kennedy’s staff to start the re-authorization process and the response there was that they were almost totally immersed in health care matters I think. Hillary Clinton was also engaged at that time in health care reform. And they would do authorization next year, which of course never came.

**MB:** There was no next year.
**LF:** So we lost that opportunity. Then the next issue in that same glory year was I guess the first hearing I attended on the Senate side with Senators Hollings and Gramm as the principal figures and it happened that the New Jersey legal services program had shortly before brought an action in respect of the welfare reform legislation saying that it was discriminatory because of the way it deprived children born once you are welfare of any benefit and Senator Hollings spent I guess it was first Senator Gramm, I forget which one it was Gramm who came in and berated us and then he left and Senator Hollings our supporter took over and berated us for being engaged in thwarting the will of Congress. I mean how was it that we could take on not in a legislative way but in a legal way trying to overturn, if you want to legislate you ought to run for the legislature, constitutional oh well I mean and we weren’t to oppose it, the question was well if we can’t question it who will and I think the answer was well the Attorney General can do that. And I remember Chairman Doug

**MB:** Who was from New Jersey at least that was his home state.

**AF:** Yes waving into that dialogue you know supporting the Constitution and the like but that cut no ice with the legislators they didn’t want to hear about it. And so that followed in the summer I believe it was maybe Hollings and Gramm introduced the bill to prevent Legal Service people from doing any welfare reform. It nearly passed but it did not I mean and so that was just the proviso of what was to come. That was in the summer maybe August September and then comes November election day that was the end of the golden age insofar as we perceived it.

**MB:** As golden as it was.
LF: As golden as it was. We had gotten an increase of $50, we went from $400 to 450 million for fiscal year which was as I recall begins October 1

MB: October 1 and that was one of those years when they passed that in the summer. We knew that I think President Clinton signed that in August of that year according to my little review of the literature.

LF: One of the strange things of the financial affairs of the Legal Services Corporation you are on October 1 fiscal year there were a series of continuing resolutions in that year perhaps.

MB: The next year there were. This was the year we got it on time.

LF: . . . up to $415 and one of the first things the new Congress did was to rescind

MB: Oh the supplemental, that was what they called a supplemental appropriation which in our case was a supplemental disappropriation.

LF: They rescinded in effect the $15 million that we had already started on that process s that was the budget process was something to behold.

MB: Well tell us a little bit about your memories post-1994 election, that was Newt Gingrich became chair of the House of Representatives and we were off and running in very new climate.

LF: Yes indeed. I guess all the staff turned over I understand that the minority, the staff of the minority has virtually nothing to do in the legislative process or very little. Suddenly everything changed and the Republicans on the House side changed over staffing committee chairmanships changed and we got into a very difficult era of appropriations. The religious right took credit for the success of the Republican victory and the Christian Coalition had as one of its planks the elimination of Legal Services
Corporation. So those that were swept into office with the support of the religious right and Christian Coalition which were a great number had taken the vow to eliminate the Legal Services Corporation. That and the National Endowment for the Arts, a couple of other priorities. So we faced that every year at least during my time through ‘97 it was always the issue of eliminate Legal Services and every appropriations bill that came out of the subcommittee reduced us in half generally and there was thank heavens that the Senate kept us alive.

**MB:** I think it was Congressman Rogers who described it as our glad pass to elimination.

**LF:** I remember Mr. Kasich, I think, head of the House budget suggested cutting us in half saying that we could supplement that in many ways and we wouldn’t really be hurt it’s time that others picked that up. And then his staff called me over to say Mr. Kasich said this, how can that happen and so one could only say well IOLTA if you get interest rates up to 18 percent that went out or if we had mandatory pro bono but it was those issues throughout all the hearings that we had there was a parade as you know of the anecdotes all of the mystique that surrounds Legal Services that we are basically representing rapists and criminals and I guess Mr. Gekas accused us of having killed the . . . girl in foster care in New York. Of destroying the farmers and driving the pickle growers out of business and there was no end of the terrible things that Legal Service lawyers did and in each instance at these hearings after it was, I remember the first time I appeared before Gekas in the Judiciary he asked me if I thought it was appropriate to use federal funds of Legal Services Corporation to promote gay and lesbian parades in Boston. Well I was pretty recent at the job and I said I wasn’t aware that that was being
done. And of course it wasn’t. Whether or not it’s good or bad it just wasn’t done but that’s the game that is played. The Ken Bolms of the world and others passed along the Farm Bureau passed along all of these anecdotal stories that the legislators with great glee would pick up and I remember Benjamin Gilman was another one who had the fine reputation as a legislator particularly in the farm world but he had wrote a very stinging letter complaining about a Legal Services entity in New York having defied the state labor department and having refused to negotiate in fair terms any settlement that was brought on behalf of some migrant workers against one of the growers. That they were driving the grower out of business and as we looked into the issue what happened was the grower was refusing to pay them the minimum wage and they were under conditions being deprived of economic benefit and the case was settled with the plaintiffs getting 98 percent of what they asked. So I responded and told Mr. Gilman that and he said well this was an election year and the growers were major contributors to his campaign. And that was one of the other threads that really I picked up through this experience in Washington was to be become an ardent proponent of campaign finance reform because we had no constituency who mattered or could influence the legislature. I remember at one of the White House meetings it was suggested that we should adopt the same tactics as the National Endowment for the Arts and bring people in, well they bring in all of the Hollywood stars who are major contributors and highly regarded. We could bring in migrant workers or poor folks from the inner city who don’t vote, who don’t contribute and who don’t matter. So there was absolutely no political reason it had to be a moral ethical and spiritual some other kind of reason decency, fairness.
MB: And there were those legislators that did uphold that weren’t there, the memories I have are of those legislators who had no reason by way of celebrity lobbyist or otherwise to be fighting for this program and yet they did.

LF: Ron Widen who became a Senator after one of the appropriation committee recommendations of $200 million for us took to the floor and got something like 80 or 90 signatures to help overturn that. McCullom who initially was a strident force demanding accountability ultimately became a supporter as we ultimately became a scaled down entity. There were a great many Hatfield, I remember, was just great and I guess most of the eastern coast Senators were supportive strange as that may have been.

MB: And there were those I thought rose to the occasion Pete Domenici who was exactly who I was going to mention, people to the fore when it came time to craft a resolution of this so we went into it not knowing how it was going to come out, whether Legal Services would even survive so tell us a little about how that came about, how did we come to make it through was it the 104th Congress in somewhat tattered condition but nevertheless still breathing.

AF: One of the strangest part was when we had the recision on the 15 and then the budget process took a long time and you theoretically were entitled to rely on your prior budget. WE got half way through the fiscal year when Congressman Rogers then came up with his budget if adopted on the basis of what we had already spent and the recision we would be bankrupt.

MB: Right, I forgot that.

AF: Would have been insolvent. And somehow or other we couldn’t get that through to the staff. I don’t think he had intended by that route to us out of business but
that was the consequence. I remember trying to get to speak to him, Congressman Rogers, offering by letter to go to Kentucky during recess and I got nowhere. So I think I spoke to Regula and went out to Ohio because he was on the subcommittee and he said no the staff can’t do that and he got in touch with the staff. They in turn got in touch with Rogers who became very infuriated that I had the audacity to go talk to some other Congressman. But in those days they grieved about the kind of work Legal Services lawyers were doing but they hadn’t yet gotten to the point of trying to restrict legislatively the kind of work we could do. It was still basically carving away at the money on the notion that what they wanted to see so they said was the Legal Services Corporation return to its real basic core, as I said of helping a little old lady across the street. They didn’t like class action. They didn’t like doing anything migrants or aliens

**MB:** Or prisoners

**AF:** Prisoners. They didn’t like us getting money when we were successful in cases and they resented these beds of activism called support centers national and state support centers but they kept grinding away every year at the appropriation. And I guess we got back from $415 the day we arrived, Martha, to $270

**MB:** $278

**AF:** And we lingered in and about that range for some time. We even had some trouble with the administration it seems to me that the administration in its second year or so having been burned on health care and a couple of other issues and having seen what happened with 104th I think the administration moved very much to the center of the spectrum and was anticipating a re-election and the need not to appear to be too far to the left with this growing body of the right and so there were very little opportunities that the
administration took to go to bat for Legal Service Corporation. And I remember going to a close friend of mine in Washington who knew the President well saying can you please get the President to say something about Legal Services Corporation. And at one point he did mention it in a speech but OMB we even had our difficulties with OMB and urging them to do more than they were willing to do so the administration wasn’t there having us as a prime priority.

**MB:** Well it was . . . sort of side battles that developed you know. You will recall the effort to cut the budget of management and administration and the Inspector General’s role in that but everybody kind of had their horse in it and pushing their own agendas and meanwhile my image of it was there was this ship going down with all these little issues running around on the deck.

**AF:** Another one of the constituencies we had to deal with you remind me how could I ever forget was the Inspector General. The notion was Legal Services Corporation is totally unaccountable, it’s not accountable, we in Congress have to be accountable, how, re-election I guess is the only way they are accountable, who knows what they’re doing and why. I remember this group will hang back in the back of the House until the vote is secure and then they can come forward, I mean it’s all theater. But the notion that we weren’t accountable to anyone, well of course we were accountable. We got our budget, we reported how we spent it, we did monitoring, not in the way invasive way that had been there before, but along came the Inspector General and the Inspector General’s role as he saw it was to be totally independent of us although he was an employee and he sat in our midst and his purpose was to make certain that we were in compliance with regulations and we were monitoring and the funds were well spent. I remember the first
major issue that came up, if I may Martha, the president of the corporation had a parking spot assigned in the building. I had no car and I said well why not assign that to someone who commutes and it so happened the executive vice president

**MB:** That would be me

**AF:** Commuted and that was you so I said why don’t you use the space. Well that became a big issue. There was no authorization for an executive vice president to use the parking space. Well what Mickey Mouse stuff. The other major issue was frequent flyer miles, to whom do they belong. Do they belong to LSC and the federal government or did they belong to the individual. And it was as if we were taking stock options and running rampant with perks that we didn’t deserve and after many, many months of study and analysis and legal briefs it was concluded that even if we were to turn them over to the federal government, our frequent flyer miles, it would cost more in the administration than would be benefitted by the government. And in any event, we weren’t the federal government, we were an independent corporation, so I mean that went away, but it was

**MB:** We did dedicate our hours to many, many profoundly important issues.

**AF:** It was a constant thorn and I’m sure the Inspector General believed that he could ferret out all sorts of ill-doings on our part. And he independently reported and at some point opposed our budgets so that was a piece of the group that just sitting right there in our midst overhearing all conversations and creating these issues for us which Congress loved. And Ken Bolm and they would play this, Legal Services runs amuck with frequent flyer miles.

**MB:** And meanwhile though we had legislation pending that was you know all kind of proposals for how much to cut us but also was this whole series of restrictions on
activities. And one of the themes since then has emerged, those who have chased in particular at the restrictions have carried forward the notion that perhaps there was a deal cut or a compromise reached in terms of how the Legal Services Corporation would go forward. Any memories or thoughts about how that transpired and whether we had a role in it.

**AF:** Well that requires me to go back to the beginning of ‘94. I called the NLADA Harrison was

**MB:** Harrison McIver was director of PAG, private advisory group,

**AF:** Then there was the bar committee Slade. During the 12 years prior to our coming back to Legal Services Corporation it was under a hostile administration and the principal supporter and spokesperson particularly if you had a hostile board of directors were those outside groups that had been supportive and had been inter-relating with government and staff people on the congressional committees and who related well to the field, knew the field, knew the people, knew the issues and so it was those groups that I call the family that sustained this entity for those 12 years. Then when an independent board came in I sensed that there was some reticence in the family letting go and the board taking full charge. I think I used to analogize it to the foster parent having to give up to the natural parent the child that it had nurtured for 12 years. And a lot of the relationships, at least during my time, continued quite naturally between these outside entities that had the supporters of the corporation for all those years dealing with staff and Congress people. As we got into beyond let’s cut them in half and eliminate all the funding, if we can’t do that well let’s at least clip their wings and put a lot of restrictions on it. Particularly NLADA became very much involved as a resource in helping the
corporation sort through a lot of these proposed proposals that came forward bringing it to the knowledge of all the years they had as to the consequences of what they were doing and how it might be otherwise. But it was clear that from the congressional point of view if they couldn’t knock us out by starving us financially they would then go the other route and see that we couldn’t do many things that they thought were offensive. So a lot of this activity went back and forth and I think a lot of congressional people did not fully comprehend the consequences of some of the things they were proposing. I remember all of the discussion on class action. I had a sense that many of the people that were advocating the elimination of class actions had not real understanding of what a class action was. For them a class action was social engineering, putting in liberal legislation as distinct it from it being a vehicle or a tool of economic significance in raising an issue that affected a large number of people rather than do it seriatim one person at a time. It was an efficient way to resolve a legal problem that affected large numbers of people. I suppose some were diabolical and would say well fine we don’t want large numbers helped by this, let them do it one at a time. But I think there were some others that thought really it was legislative social engineering.

MB: I think some of the restrictions were just almost became symbolic to particular legislators. I remember it was Senator Domenici who insisted that there be restriction against class actions and that was the one he happened to cling to and then there were other legislators that were hell bent on other particular restrictions.

AF: Well prisoners, I forget, who was it, was it Smith on the subcommittee, the guy from Carolina,

MB: Oh gosh
AF: In any event we’ll think of him, but it was a prisoner thing and I remember we were refusing to segregate people with AIDS . . . and so we should stop doing prisoners. Why should we waste government money on helping those who had offended society and were put away. I mean forget that maybe you need divorce proceedings or child custody that would help those outside but one of those was his that Charlie someone from Carolina

MB: But Ken Bolm’s goal was to have a poster child for every restriction. You know there was a sort of poster case anecdote that could be used to justify every one of those

AF: The migrant workers for example, I guess they never did ban migrant workers but they said you cannot go to migrant camps and stir up litigation.

MB: That’s the one I remember Senator Hatfield really sort of stepping up and standing in the way of doing away with funding for migrants. So we had our cadre of legislators who were championing particular restrictions and then we had our cadre of defenders on particular issues and back and forth they went.

AF: All the support centers went out early because that

MB: When you think of the impact of it all on the delivery system the competition I want to ask you your recollections about that, our job of then implementing all of those restrictions and the kind of impact that had on the delivery systems but certain the de-funding of support was another major one.

AF: Another major one they cut out was our ability to receive counsel fees where we had been successful in certain kinds of litigation. That didn’t seem was hard for me to justify their doing that because they were encouraging us to get support outside of the
federal government. We should not be totally dependent and so here was a way, if we prevailed, why not but that was the notion of that encourages litigation. They really did not like litigation even though I think our statistics showed that something like 12 percent ended up in a litigation process to the end. It may start with it and resolve it but what they failed to understand was the overwhelming majority of cases were brief consultation, telephone calls, a letter, a modest kind of negotiation, some kind of direction or help that was essential for the 80 percent or 90 percent

MB: The kinds of activities that have earned programs enormous overwhelming support at local levels for what they did.

AF: What they wanted us to do was no class action, no litigation, no prisoners, no immigrants, I mean everybody had a pet peeve. Then I remember Mr. Gekas who proposed his own bill. You remember that Martha and I think instead of saying you can’t do the following, he said you can do the following things

MB: And we’ll send the money to a block grant to the states to do those specific things.

AF: For three years and you’re out. And one of the issues was probate. I mean every poor person is just waiting to probate a big estate but I mean it was that or quiet title, maybe copyright and title, and whatever, but the

MB: Some of the pressing needs of the low income of America.

AF: It was absurd, I mean it was utterly absurd. But another one that reached many was the fact that we helped this was part of the rationale of the Christian Coalition and the religious right was you help poor women get divorces and when you bring about the divorce they are thrust then on the welfare system so what you are doing is a
disservice for women, you are forcing them into a sense of dependency and that’s not the American way.

**MB:** Well tell us about I know that your work with the Interfaith Alliances is one that grew out of your reaction to having the Christian Coalition come in and say de-fund Legal Services and a belief that that was really not the view of the faith-based community in America. Tell us about your

**AF:** Well I became quite frustrated in looking for support for the Legal Services. The bar was wholly supportive but they were dismissed as self-interest. You folks in the bar are just trying to promote Legal Services so you don’t have to discharge your own responsibility and if you would do that we wouldn’t need a Legal Service Corporation. Notwithstanding all of our statistics showing that the bar was doing a magnificent task and doing hundreds of thousands of cases and pro bono was on the minds of everyone but the once you got I’m losing my train of thought once we got beyond the pro bono aspect I tried also to enlist corporate America. I mean it had to be somebody that Congress would respond to or respect and the bar wouldn’t do it. The public at large had very little awareness of what was involved and maybe when they had activities requiring lawyers they didn’t like to pay bills and the like so I tried corporate America. And Bill Gates said that he would be supportive of some advertising literature if we were able to line up something like ten other Fortune 500 companies. And we tried for a while and did not succeed. Major corporations then maybe they’ve changed somewhat now were prepared to support museums and the ballet, the theater, maybe even child abuse but something about lawyers for poor people didn’t resonate very well and I suspect they thought their shareholders wouldn’t be taken with that and it wasn’t a safe thing to them, so couldn’t
do that. And as we kept hearing this Christian Coalition and how we were somebody being spiritually off base in what we were doing particularly in the matrimonial world there was a new group called the Interfaith Alliance which was formed here in Washington for the initial purpose of being a counterweight in the religious world to the religious right and the Christian Coalition and it was then and is now comprised of representatives of virtually every established religions whether it’s Muslims or Buddhists or whatever and it would take a position in support of what they believed to be a correct religious point of view and would take on the religious coalition. I mean in terms of gays and lesbians having any aspect of representation I know from a few of the view of some of the more fundamentalists in the established denominations that’s sinful and those folks should not have existence I guess much less have legal representation. In the divorce arena we pointed out that much of what we did in matrimonial stemmed from abuse, that it was only right to allow women in most instances to terminate a relationship that was abusive or had no future or a missing husband and let them start with a new life to take children but there are still those that believed that we’re just forcing people into welfare and fundamentalists religious right don’t care much about welfare or I don’t think are really concerned terribly with the state of poverty.

**MB:** I do think there is still a tremendous educational effort that needs to go on in the faith-based community about the importance of legal advocacy when you need it and that is an appropriate vehicle.

**AF:** There isn’t a religious group that doesn’t justice as one of its pillars, no matter where you go it’s justice and although people will interpret it differently.
MB: So before we leave the story of the tumultuous congressional process that led us to the reformed Legal Services Corporation, I want to just bring attention and ask you your recollections about the government shut-down, that was a process that went on way longer than the 1995 normal congressional year because of the clash between the Gingrich Congress and the administration over that. So I’m wanting to know if you have any sort of closing words as we sort of slopped over in 1996 and wound up with a congressional resolution and then I want to ask you as to 1996 as this turned internal to the corporation the implementation of all that is to me the story of 1996. But we’re not quite down with the endless saga of

AF: The shutdowns, to use the over-used word unbelievable, that the government would shut down so frequently these continuing resolutions had run out, you didn’t know what your status was, you didn’t know whether you could spend money now or whether you had to cut back

MB: Or even whether we should come to work.

AF: Well that was another issue and then it was are we affected by the continuing resolution are we an employee of the federal government or are we different, are we not allowed to come to work and pay people or not pay people and it was just bizarre, it was really peculiar.

MB: It was never-never land there.

AF: We came to work but we weren’t sure we were supposed to be at work.

MB: Were we indispensable, they had a word for people who were it was okay to come to work or not, it was really never-never land there. But meanwhile in the midst of that we were trying to figure out to do competitive bidding and we were trying to figure
out how to interpret some of these restrictions that were coming down the pike and we were trying to figure out what to say to our grantee programs about how they should position themselves, you know what was likely to happen.

AF: At that stage, before we get into that, at that stage it was all these restrictions pressing in on us without regulations. The field now knowing what it could do and when and we not knowing for sure the full implications of those restrictions. But Congress knew they wanted all these restrictions in there. Meanwhile we had shut down and opened and shut down and did not know if we had any money. It was an extraordinary, as I look back on my experience I frequently characterized it as Alex in Wonderland.

MB: That’s right.

AF: Every year it was some other kind of it was an insight into the working of my government that most people have no opportunity to see and maybe they should not see it.

MB: Well that was a particularly messy period I think that we were in the midst of.

AF: Well fortunately we managed to struggle through that. I don’t know how it came about. I know the field was anxious with headquarters but back to the earlier question you asked about who participated in the work with Congress in bringing about the resolutions on the restrictions. As I venture back into the family it was inconceivable to me that anyone could truly believe that we sat down or our representatives or anybody on our behalf sat down and negotiated with Congress. We don’t negotiate, you show up at the table, you have your hat in your hand, you are ready to be lashed for all of the things you haven’t done, that they say you do, you try to be respectful and you take what
they give you. You hope that the administration can be out there battling or some of your allies in Congress but for us to say give us life and we’ll refuse to do all of these things for people is absurd. I think all of us would have said if it were one or the other we would stick by principle and say you can’t do this to poor people. As indeed the U.S. Supreme Court said with respect to welfare reform. They didn’t care so much about constitutional issues so the stories about well the Legal Services Corporation traded flexibility and the ability to represent poor people in order to keep its life going is not true.

MB: And with that why don’t we change tapes and while . . . the military, do you believe that, when Florida happened that’s all I could think about was the military employees in South Texas. . . . yes they did. So yes I do think those are the kind of anecdotes that I think begin when you look at them they kind of give a picture of what

AF: I forget how ultimately it was resolved but I think there was enough there to demonstrate that many people who had signed their absentee ballots were not legitimate voters. Military who were there for a time and left or were voting elsewhere

MB: But what really teed off Senator Gramm was that the TRLA had been involved in it at all, right.

AF: Yes I mean that’s why are you getting into politics and we said sorry it’s civil rights, not politics. It was a border town, it was predominantly Spanish, Mexican, they had a sheriff’s election and they some WASP won the election

MB: Right despite overwhelmingly majority of Hispanics

AF: Huge write-in vote from the absentee ballots rather. I don’t know whether that was overturned. Was that ultimately overturned? I think we were acquitted in some way.
**MB:** You know what I remember about it was John McKay when he came into office had promised Slade Gorton that he would do bad things to TRLA so he spent his first few months there trying to find his opportunity to do in TRLA and the rest of us were kind of saying well gee John you know here are the options but what are you doing. What I cannot now remember how the law suit worked. I think TRLA lost I mean I don’t think TRLA prevailed in their challenge to it which was part of it.

**AF:** I think there was enough there to . . .

**MB:** Didn’t they get a preliminary injunction or something anyway . . .

**AF:** We’ve settled TRLA but that was turned into another one of these we’ve got to end this corporation because here they are in politics and what frequently happened as you recall, Martha, are these Dear Colleague letters that somebody would get a case like this and say Legal Services has gone berserk they are engaged in politics it’s against the Republican candidate, Dear Colleague, we cannot tolerate this any longer and this went to everybody in Congress and then we would try to get one of our friends to

**MB:** To write the other way

**AF:** Yes, another Dear Colleague letter and I guess Ken Bolm or the other guys were busy writing these did you know Dear Colleague let me tell you what they’ve done now and it’s seemed to me every week we encountered one of those wonderful stories of how we

**MB:** And then we would scurry off to deal with it. Well we’re now into our second hour of taping as you already know and but we need to talk I think still about that 1996 period of implementing the aftermath of the 104th Congress’ actions.
AF: Well as I recall Martha, what emanated from Congress was just some simple declarative statements about what we shall not do henceforth. You shall not engage in class actions, you shall not represent prisoners, you shall not get legal fees, you shall require competition, I mean there wasn’t much more to it than bare bones and what was left for the Legal Services community was to try to fashion the regulations by which they would be guided because you simply couldn’t say you shall be engaged in competition, what does all that mean, it took a whale of a lot of process to try to work through that and I recall that as a year of absorbing the time of a great number of people both in and out of the corporation, particularly CLASP and NLADA and lawyers from the outside trying to fashion a sensible set of guidelines for the field because we knew folks would be very anxious from Congress to say we had failed to abide by the regulations to formulate and I think in particular I mean it’s easy enough to say you can’t take fees, you have to decide which cases and what matter and how long or you can’t represent prisoners, but when you say you shall be engaged in competition that’s something quite different. And that was a favorite . . . of Rogers from the first time I met him saying that competition was healthy and it was good and since we don’t have any accountability said he in our program this is a way of achieving some accountability and make all of these entities prove every year that they are qualified to handle and do it efficiently. Well just the concept of the investments that are made by existing entities to represent the poor in a community how do you bring about competition where you’ve got one program in Peoria and you try to generate somebody else who is willing to put all the capital required without knowing that you could have a ten-year run, I know there was a limit on the amount of time you would grant one of these maybe it was two or three years, something
of that nature, so the concept was simple, we’ll make people compete, and those folks who have not been efficient will lose out and we’ll bring in better people. So to draft those regulations in a way that was understandable and then for the field to try to get ready for competing in a way and Congress said an we always thought what it was after was the lowest bidder whoever can do it at $7.20 a case will get it instead of $8.00 where the whole issue we were trying to promote throughout was yes efficient but also quality representation. Poor people were entitled to have representation of quality that anybody else had so there was the notion that this was another way of eroding quality not only as eroding of the kinds of activities we could be in but eroding the quality of it.

MB: And we had our first round of competition in ‘96.

AF: And that didn’t product it did not produce many contending forces. And I think where there was competitors the staff made a recommendation and then I think there was an outside panel that would review that and make a judgment. I don’t know whether that was the year Montgomery County came along but that was an interesting case. There weren’t many that came out in the competition initially. But Montgomery County had a legal services deliverer that had been in place for a number of years and it was competed by a Philadelphia law firm that had experience in representing large numbers of clients. It represented the teachers’ union in Philadelphia so they had maybe 20,000 clients and so dealing with large numbers of clients was not unusual for them. They had to go through and meet all the ramifications and qualifications it couldn’t be a for profit, they had to create a separate entity and go through all of the hoops to do that which they did and the staff concluded it should stay with the existing deliverer and it went to the independent group and Clint Bamberger was one of the threesome there and
I believe they unanimously disagreed with the staff and said it should go to the Philadelphia firm. They had concluded that the Montgomery program had not really been up to speed technically. They did not care for the hotlines or telephone intake, they believed it should be one lawyer with one client which was obviously the best way to go if you had unlimited funds but they thought it would be far more efficient for the Philadelphia group that had experience with multi-clients and technology and could do that much more efficiently. I guess it was up to the president of the corporation to make that decision. And I as president after a lot of consultation agreed with the outside panel and that Montgomery should go to the Philadelphia. Well that set off a hornet’s nest of activity. The folks in the Montgomery program were outraged at that fact that they would lose this after they had been doing this for 25 years and they said well we can learn to use telephones and do those sorts of things if we have to although I don’t think that’s a good way to practice. I mean even their attitude seemed to me not to be one that recognized that more could be done in terms of efficiency. So as we were working through how the Philadelphia firm could quality and take this over, it so happened that Congressman John Fox, a Republican, had been on that board of the old provider and it was in his district. He incidentally had been rather heroic in the congressional action perhaps the year before in casting a very important vote in favor of the Legal Services Corporation. And I recalled being at an ABA meeting and introducing him and saying that this was an issue of profiles in courage and that’s the real stuff of independence and integrity.

**MB**: He really had to stand up to the Republican leadership

**AF**: Correct, to take that issue on. P.S. he lost the next election.

**MB**: By about ten votes.
AF: Right so I think he paid the price. But he came storming in on behalf of the Maryland and said how could we do that, there was no due process, there has to be a better way and there is no hearing, his brother who happened to be a major figure in litigation in the American bar joined him and they had a meeting of the board in which they told the board why this was a terrible decision and not in the best interest of poor people and then the union weighed in as well. The union had a few of its members were in the old Montgomery program and their principle issue was job security and what the union did according to the Philadelphia firm was to say to the Philadelphia firm if you take this assignment and become the grantee we will see to it that you lose your contract with the 20 odd thousand teachers. And in speaking to the senior members of the Philadelphia firm they said we would be inclined as a matter of instinct to take that gamble. But he said we have 23 or 30 people on our staff who service the federation and we will we just can’t have those people lose their jobs so

MB: So they withdrew their bid.

AF: So they withdrew their bid. And that would have been one of the best illustrations I think of competition but it never came to pass. And I guess there was some other efforts which led I guess to the consolidations issues of consolidation where there was a notion of having some programs combined.

MB: I think that became the lead issue of your successor John McKay as president of the corporation, that became his strong theme of his presidency was to bring about mergers and consolidation of programs.

AF: This was in formation in the sense that in our time, Martha, there was also the wonderful restriction that if you get a, you, program in the field, if you dollar from Legal
Services Corporation federal money you have to impose all of your other funding with the same restrictions, so if you get a million dollars from outside and you get a dollar from Legal Services you can’t do class actions, you can’t represent prisoners, you can’t do welfare reform, and all those sorts of things.

**MB:** I think that was by far the most far reaching of the restrictions.

**AF:** Indeed. And I guess partly as a consequence of that many of the grantees, like the Legal Aid Society in New York said we will give up our federal money because we are not going to give up our ability to represent poor people in as many ways as we think is appropriate. The unfortunate part was those in less affluent areas, say Mississippi perhaps, were perhaps 99 percent dependent on the federal money, so they didn’t have the luxury of saying we won’t accept these restrictions, we will rely on our other sources of income. So they had to do that and this led in many states to a consolidation or a designation of perhaps one program would be the federally funded program and somebody else in the state would be a non-federally funded program. So that sort of helped break up the legal

**MB:** Yes it certainly was an impetus for great change in the delivery system

**AF:** Between competition as such the failure to be able to do so many of these other kinds of representations and this horrendous restriction on federal money created a marked change and when you add to that the fact that the national support centers were eliminated which was a great resource to help the individual programs be more effective instead of having to research everything on their own, a major change was brought about in those years with respect to the delivery of legal services. Then after our time a lot of the state issues came up and consolidation and but
MB: So having steered us through those turbulent waters, those couple of years of upheaval you left your position as president I think it was Valentine’s Day, February 14, 1997, and I’m wondering what since then if you’ve got any sort of thoughts for the equal justice community now having dredged up all those memories of what we experienced. What your feelings are now about that experience and about what’s happened since.

AF: Well I guess it’s an experience that not many people can partake of which is too bad in a sense because it gives you a better insight into the myriad problems that are involved in trying to bring justice and access to justice to poor people. If you polled the country I would suspect that 98 percent of the people would say I believe that the justice system should be available to everybody irrespective of their financial means. The big hurdle is…

MB: That is what the polls show, the polls show that even if you say and if it’s government funded still more than 80 percent support that idea having pledged allegiance all their lives to with justice to all.

AF: I remember I think there was a poll in Star County I remember, in Ohio was it, where there was would you support the Legal Services Corporation, which was yes notwithstanding their Congressman’s point of view. But how to translate that into some element of action I think that from the federal point of view the Legal Services Corporation as an entity probably is here for the duration. The government having tried both to de-fund it and then to constrict it with regulations so it could not be effective in the way in which we would like it to be, there is not much more they can do to it. And I think the world would be embarrassed to try to eliminate it such as it is and I think the major role that Legal Services Corporation can play along with the family is not so much
funding a lawyer for a poor person but being the catalyst and a resource for expanding the opportunities that the justice system offers through certainly technology. We tried to get separate funding in our day for technology and that wasn’t acceptable. But technology has to be a major factor in facilitating access. Pro bono certainly seems to be on the increase with the realization in the bar that they have that obligation to do that, though they can’t do it alone. I think the events of September 11 have shown an outpouring of support by the private bar to help people who need their assistance and indeed it may sensitize some of the community because many people who never thought of themselves as poverty may now find themselves in the poverty level but with the Legal Services Corporation and the likes of NLADA to mobilize those resources in the states and in the communities with the courts, the legislatures, the bar associations and you know even if you can engage I’m sure the law schools are much involved if you can engage the business world there are folks like Jack Martin who have been in the forefront of this for many, many years but if you can somehow or other touch some of the corporate leaders many of whom now are hiring fancy lawyers because they need them, but to have them become an element of support for this then it seems to me very difficult to withstand and withhold that simplification of law, use of computer technology kiosks and all of those things. Preventative educational activities I think that would sit well with Congress to the extent that you are allowed to go to migrant camps and talk to people about problems and how to avoid them. But I think from ‘93 to now I would guess the percentage of people of the overall population below the poverty line who need legal services probably is constant. I know in our day we talked about 38 million people, maybe it’s 35 maybe it’s 40 population has grown. The legal needs continue to be there. In New York City alone
we have 9,000 children homeless in families. The Legal Aid Society there is now holding the mayor in criminal contempt for failure to provide some adequate housing instead of having these families have to live in shelters or sleep on the floor, so the problems are every bit as much there. One is maybe less sympathetic to the homeless fellow sleeping on the grate but when you have all these families through very little problem of their own

MB: Certainly the children aren’t at fault.

AF: No and why penalize the children and have them grow up to still another loss of opportunity, so the need is great and we can’t rely on the federal government even if they doubled the appropriation I guess the problem isn’t resolved. It would be nice to eliminate poverty but that will always be with us I suspect. So it’s finding ways without necessarily triaging to take the battered spouse instead of the homeless person and whatever, which is what programs have had to do as they have been cut back and I remember we had to downsize in legal services and give up some space because the management budget was cut every way to try to make us less effective. With the notion either intentional or uninformed that the less money that was expended through the federal system the better off poor people were. That’s just hard to reconcile. So I commend NLADA in particular and Martha Bergmark for carrying out this program of state activity and continuing to fight the good battle. I think one of the great rewards of that era for me aside from the opportunity of an education that you would not get through any classroom or text book to see how Congress functions and why it functions is the knowledge that there are so many people out there in the field who are willing to devote
their professional careers not for the purpose of gaining worldly goods which they never
will in that endeavor but for doing good.

**MB:** And there certainly are legions of those and you have been really a leader
and an inspiration to so many of us for your part in that.

**AF:** It’s been very modest, the real heroes are the guys who do it every day. So as
I say what can we do for the future just keep doing what you’re doing.

**MB:** On toward justice for all.

**AF:** Justice for all irrespective of their ability to pay.

**MB:** Thank this has been really fun.

**AF:** A great reunion.

**MB:** Indeed.

**AF:** Made me think of some good things and some . . .

**MB:** It was quite an adventure. It was Alex in Wonderland.

**AF:** Alex in Wonderland. I’m not as angry today as I was, as you may recall in
‘97 when I left

**MB:** We had infuriating circumstances.

**AF:** When I left I was so angry at the whole seemingly irrational political process
and many who were supposedly our supporters who were not who seemingly were not
prepared to risk their own reputations in support of a wonderful cause, who can be
against justice for all you know, no one can be.

**MB:** Thank you.

**AF:** Thank you.