Oral History of
ALAN MORRISON
Eighth Interview - March 23, 2008

MR. MARCUS: Okay. This is Dan Marcus interviewing Alan Morrison. I think this is interview number eight on Sunday, March 23. Alan, I think today we are going to discuss union democracy.

MR. MORRISON: Okay. We got involved in issues relating to workers in several different ways. One way was that Ralph was very concerned about truck safety. He was, of course, the moving force behind auto safety but he quite correctly recognized that truck safety was a big problem because when trucks and cars get in accidents, trucks win. And that means ordinary drivers get killed.

There were several aspects of truck safety that concerned him. One was the number of hours that truck drivers drive and the terms and conditions under which they drive. The Federal Highway Administration, I think it is, or Bureau of Motor Carrier Safety—they keep changing their names around, have something called the Hours of Service Rules. We got involved. Ralph hired a lawyer named Arthur Fox to work with him with a group of truck drivers called—it was called PROD and they were dissidents in the Teamsters Union, not so much from a political perspective, but from a safety perspective. They were very worried about safety and unsafe trucks.

Ralph hired Arthur and then Arthur came to work with us. He'd do work part-time for this dissident Teamsters group and part-time for the Litigation Group, but mostly doing litigation and other things. We got started working on truck safety from the inside. That is, literally from the inside of the cabs worrying about trying to get the drivers to focus on safety. The union (this is the Teamsters), in addition to all their other problems, were much more focused on wages than they were on safe driving conditions. The ethos of the union was that you drove what you drove and you drove hard and you drove long hours. In fact, the way the compensation was set up, it was to your advantage to drive long and hard and to push the limits. Ralph understood that they needed to get the drivers on board, among other things, because they had the inside information about what the safety problems were. And so he got this group of Teamsters and he helped them organize them and then Arthur Fox came to work with us working for them.

And one of the things that we did was to try to petition the Bureau of Motor Carrier Safety to change the rules on hours of service to lessen the number of hours the drivers could drive to be sure that they got actual rest time and do a whole bunch of other complicated things, all of which would have meant more safety for the drivers and, hence, for the public that is on the highways.

MR. MARCUS: And the dilemma, I assume, is how to do this while preserving their unusually high incomes.

MR. MORRISON: Yes. And also the companies didn't like it because this meant they had to put more people on and it was harder to make schedules and everything like that. The union was not interested in that. Anyway, to make a very long story short, we had a whole bunch of attempts at rule-making proceedings and got shot down and finally—

MR. MARCUS: When was this roughly?

MR. MORRISON: This was in the early and mid-'70s and continued into the early '80s. Then there was a huge period of time when nothing happened and finally, just before I left Public Citizen, the Congress got upset about this and they required the Department of Transportation to do some new rules on hours of service and they did a lousy job. The rules were, if not worse than the prior rules, at least no better. Public Citizen took them to court and a lawyer named Bonnie Robin-Vergeer took this case over and she just got hold of this thing and there was an enormous record of it. She took the case to the Court of Appeals and got the decision overturned. A very conservative panel—I think Judge Sentelle was on the panel—said, "This is just nuts." Sent it back. They did the same thing practically again. They sent it back and they sent it back again. Finally now they've gotten some rules that are better.

But this is one of the—it's the persistence of the long-distance runner.

MR. MARCUS: Something you can identify with.

MR. MORRISON: Yes, yes, yes. But the bureaucracies will just keep on and they'll outlast you. You have to have people with time—of course they had some other groups. There were some other auto safety groups that got involved with trucks that were formed in the interim period that were very helpful—Advocates for Highway Safety and some others. It just shows you that these problems don't go away and you've really got to keep on them.

That was one set of truck safety issues. The second set of issues, and these we were more successful at litigating—people were getting fired for complaining about safety. Turns out there are some provisions in the National Labor Relations Act and other laws that protect workers in this situation if they are acting in concert. Meaning that if you do this as a part of your effort to improve the safe conditions for all the workers, meaning you report what is going on, you actually get some protection. So we brought a bunch of cases, and won quite a few of them, on behalf of drivers who complained about unsafe vehicles and got fired. The unions often did not back them up. Some of these were unfair labor practice cases and some of them the union supported us on and went to the National Labor Relations Board, generally lost there, and we took a bunch of cases to court and won those. Important cases that gave workers the knowledge that if they reported unsafe vehicles, refused to drive them, which is what they often did, they would not lose their jobs. That was very important for safety and it was important for the workers as well.

Then we started to get into situations in which some of these grievances were subject to collective bargaining agreements and the union was not very favorably disposed. The

Teamsters, at the time, had provisions in their collective bargaining agreement that would send matters to arbitration and the arbitrations were resolved by two members from the Teamsters and two members from management. The effect of this was that if management held firm, which it always did, the worker would lose. Often the Teamsters who, as I said, didn't have safety as their highest item on their agenda, had to negotiate a whole bunch of these agreements and arbitrations. They would trade off, literally. They didn't care that much about an individual worker's safety and so they traded off for other things that the union cared more about. We had some very unsuccessful things with them and then we started taking them to court arguing that the arbitration a) couldn't override statutory law and b) it was essentially not arbitration in the ordinary sense that there were neutrals involved. We actually won quite a few of those cases. This is before the Federal Arbitration Act got as bad as the Supreme Court has interpreted.

That was very important, and then we started getting into union democracy issues. There were dissidents in the Teamsters Union who wanted to be able to vote on contracts. They wanted to have more say in the election. The process by which the elections were conducted was a process (and the details are a little shaky in my mind on this), but they voted for delegates at the local level and then the delegates to the International would elect the presidents, so there was an indirect vote and that was seen to be undemocratic; and the way the constitutions were set up, the delegates were chosen three or four years in advance when nobody was paying any attention to anything other than who was going to be the local secretary or treasurer and that was partially a patronage thing.

People were being disciplined for criticizing union officials.

MR. MARCUS: Now are you speaking here—when you say you got into this so that the focus was union democracy in the Teamsters Union?

MR. MORRISON: It was *principally* in the Teamsters Union, but we hired another lawyer to work with Arthur in the late '70s named Paul Levy who had a big background in labor. Very able. Very able lawyer. He and Arthur had, in addition to that, they had a union corruption case up in Baltimore that they got involved in. Teamster Local where Leo DaLesio was stealing huge amounts of money and had padded payrolls and had all of his friends and family on it and they recovered a half a million dollars for the local union and the pension fund. Big long trial up in Baltimore. They were doing other things on behalf of dissidents in the Teamsters Union which made us very unpopular with organized labor. Not just the Teamsters, but organized labor because we were setting precedents that were applicable across the board. They couldn't limit it to the Teamsters Union. In fact, this was one of the few areas where we at Public Citizen got in conflict with other parts of the organization because our lobbying group, Congress Watch, works very closely with organized labor. There were some tense times at various times in which people in organized labor would go to Joan—

MR. MARCUS: Joan Claybrook?

MR. MORRISON: Claybrook, yes–complaining, "How can we work together if you are stabbing us in the back?" I took the position (and I know this was Ralph's position early and more or less Joan's position although she wasn't as strong on it as Ralph was and I was) that it was very important for Public Citizen to criticize unions as well as corporations. If unions were doing undemocratic things, we could not stand by when there were laws that said that workers needed protection. We also worked with labor unions in our work on occupational safety and health before OSHA. Sid Wolfe, the director of our Health Research Group, did a lot of stuff on occupational safety and we had a large number of cases mostly involving chemicals in the workplace, Benzene, Cotton Dust, I can't remember all of them. Those have continued on over the many years and we worked with Tony Mazzochi and—

MR. MARCUS: Peg Seminario!

MR. MORRISON: Yes, absolutely. Absolutely.

MR. MARCUS: I remember her from it.

MR. MORRISON: So we had that relationship with labor but they were unhappy because we were doing this and then we had worked with labor. I remember very clearly working with labor on the statute—the Paperwork Reduction Act. Remember we talked about it? Some of the regulatory reform stuff we worked with Larry Gold very closely at the AFL-CIO and also on campaign finance, so it was important that we work with them. On the other hand, we could not be in a position of being tools of labor just like I thought we could never be in the position of being accused of being the tools of trial lawyers. When we thought the trial lawyers were taking too much money in attorneys' fees in class actions, we had to step in there and say no. Yes to class actions but no to this fee deal.

I felt very strongly as a matter of principle and I also felt that these workers really needed people to help them out because all the people—in the world of labor and management, you were either for labor or management and people like us didn't come around very much. We were for organized labor but we were also for the worker. This caused a lot of tension, but we brought a number of cases against the Teamsters and against other people as well. Those other groups, they didn't understand it any more than the Teamsters understood it. Some of them would say, "Well those are the Teamsters. They're worse. Stick with them." We said, well no. We had some situations in which there was a payroll padding case and there were others involving similar kinds of union democracy issues where there were schemes to cut out the union members to prevent them from participating in elections. We were quite clear we were not going to do what the Right-to-Work folks did and start complaining about money being allocated for political purposes. We stayed very far away from them. We had a lot of other cases, censorship in the union newspapers and all sorts of other things like that. In the Teamsters, we had a whole bunch of cases involving the right to vote on contracts and how they were manipulating those things around and we actually did very well in those cases. The Teamsters was a more democratic union as a result of those things. But it wasn't good enough and PROD had merged into another thing.

MR. MARCUS: Is PROD an acronym for something?

MR. MORRISON: Yeah.

MR. MARCUS: Who knows what it is?

MR. MORRISON: Professional Drivers Over the Road or something.

That became Teamsters for a Democratic Union and we represented them in a lot of their fights and eventually the Justice Department brought a RICO case against the Teamsters and it was partially as a result of things that we had done, but we don't take anywhere near full credit. TDU took deservedly a fair amount of credit for it. Once the Justice Department put the Teamsters into receivership, there were huge issues about how the receivership was going to be run. The case was pending before Judge David Edelstein who was quite a character, very irascible and unpredictable. He did all sorts of bizarre things, and he set up quite arbitrary rules that hurt TDU, and so we ended up representing TDU in a lot of cases there in the Southern District as part of the Teamsters RICO reorganization. Then eventually there were some elections and we represented people—there were huge fights about the rules for the election and some of the rules were set up in a way to make it very difficult for individual members to participate in the process and they had some disclosure rules that were intended to deal with the candidates but looked like they picked up TDU, as I recall. There was a whole lot of stuff going on there and it was also very important for us to be involved through TDU, to monitor what the Justice Department was doing, and by this time the Republicans were in and some of them were quite inclined to let the union go out of receivership because they thought that the Teamsters would support them.

We really—Paul, principally (Arthur had left by the late '80s; Paul continued on)—really kept on top of this and there were some very, very difficult fights continuing through the late '90s when the union finally got out of receivership. The Teamsters Union got out of receivership and about that time some of the difficulties we had internally with Public Citizen and organized labor and our work on behalf of the Teamsters came to a greater head. That was because Public Citizen had become very active in globalization of trade work, NAFTA, World Trade Organization, GATT, and so forth. The Teamsters were a very important part of that coalition. A lot of our Teamsters work was done. It wasn't all done, but we made a decision internally to ramp down the Teamsters work. Paul was not happy about it, but things happen and you've got to make decisions in life. One of the few times we actually had to drop things that we really would have liked to kept doing it but it was light years different in terms of the atmosphere and in terms of how the Teamsters Union itself was and organized labor in general. They had come to a lot of changes under the Landrum-Griffin Act through this work and this time, and we had made a lot of progress. So while we were—Paul particularly was unhappy about it—we decided that it was in the best interest of the organization and the overall work we were doing and so we backed off. I think they are doing some union democracy work, but not as much.

MR. MARCUS: So you consoled yourself with the fact that, while things weren't perfect, you had made a tremendous amount of progress.

MR. MORRISON: Tremendous progress in the Teamsters Union and I think everybody recognized—I mean, there were two issues—one is there was this corruption which we had something to do with, but mostly it was completely undemocratic.

MR. MARCUS: That's what I'm going to ask you because obviously the government has had a lot of these union corruption cases and they are very complicated and you couldn't avoid getting into that area to some extent. You mentioned the Baltimore case which you had which was a straight corruption or fraud case.

MR. MORRISON: Yeah. Financial finagling.

MR. MARCUS: But the basic thing that got you going on this was rights of workers in the union itself.

MR. MORRISON: It was safety. Safety got us in the door and then when we got in the door we looked around and said, "Oh my gosh!" The safety problems were magnified because the union was not providing adequate safety representation to the workers.

MR. MARCUS: That was a symptom of a lack of democracy.

MR. MORRISON: Yeah, and they were focused on other things.

MR. MARCUS: Yeah.

MR. MORRISON: Now, I think we talked before about our Internet cases?

MR. MARCUS: Yes.

MR. MORRISON: When Paul got off the union democracy case—it was at this very time when that termite case came in that I got Paul involved, because with the union democracy work he'd been doing a lot of First Amendment kind of cases. The Landrum-Griffin Act is described as the Bill of Rights for workers against the unions which are, in effect, the government. I got Paul onto these cases and the reason I raise it is just Friday an opinion came down in a case in which Paul represented a guy who really doesn't like Wal-Mart, the stores. He started a Web site, calling it—and taking out T-shirts and mugs—calling it Wal-Qaeda, Walocaust and all sorts of really unflattering things about Wal-Mart. So Wal-Mart threatened him with a trademark infringement suit. Paul brought an anticipatory trademark case against them in Atlanta where this guy lives and Friday the judge issued an eighty-six page opinion saying that no reasonable person could believe there was confusion between these marks and Wal-Mart's. It is a devastating opinion and Paul did a fabulous, fabulous job. As I've said to him many times, "If we were still doing union democracy work, you would never have gotten into this area and made the law." He's made tremendous law on the Internet with respect to both

trademarks and the right of free speech on the Internet. People go on and get out there and criticize and do it anonymously. It is fitting that we talked about union democracy today in that context because of the case that just came down on Friday.

MR. MARCUS: Great.

MR. MORRISON: The Teamsters was headquartered here so we were able to bring most of these cases here. We had some cases against the International Brotherhood of Electrical Workers. I remember we had a case of censorship in union newspapers. A lot of these election cases and, again, these arbitration cases whether they were preempted by the National Labor Relations Act and whether—various other claims that could be litigated. So there was a lot of preemption, administrative law and other things as well in these things. Some cases involving the Labor Department as well, and a bunch of cases involving the NLRB, principally, but not entirely, involving the Teamsters Union.

MR. MARCUS: Okay. Do you want to move on to another subject? Do you want to talk about—I think that probably finishes our list of sort of substantive areas that we were going to cover for Public Citizen. You wanted to talk about the Supreme Court Assistance Project.

MR. MORRISON: Yeah, I do.

MR. MARCUS: So why don't we talk about that next.

MR. MORRISON: Sure. I'm sitting in my office one day in the mid- to late-'80s and I got a call from a legal services office, as I recall, in Norfolk, Virginia, someplace in that area. And they had a case in the Supreme Court which had been granted. They were the respondents and they wanted us to file an *amicus* brief in support of them. So I said, "Send me the papers." They sent me the papers and three things were apparent. Number one, there was nothing we could say beyond what they had said—it was a Social Security case of some kind and we didn't know anything much about Social Security and if we did, they had written a pretty good brief. They had sent a draft of something. We didn't know anything about it and we didn't have any perspective different from theirs. Second thing, these were able lawyers but they didn't know very much about the Supreme Court. Third, they should have gotten to us before *cert.* was granted. This was a case that might have been kept out of the Court, because it may not have been *cert.*-worthy.

MR. MARCUS: They didn't understand how you write an opposition.

MR. MORRISON: Absolutely. Because they'd never done it.

MR. MARCUS: So the brief on the merits was good.

MR. MORRISON: It was okay, yeah. Although even that could have been improved.

MR. MARCUS: But if they had understood the *cert.* criteria and the lore of the Supreme Court, they could have perhaps persuaded the Court not to take the case.

MR. MORRISON: Right. And, of course, having won below, they can't do any better. So there is nothing that could go, but bad, if the review is granted. Maybe they'll make some national law but probably not. So I said you don't need us now, you needed us before. Yes, I looked over their brief and yes, I think we did a moot court for them, but that was not what they needed. They didn't need an *amicus* brief and it got me thinking that we had by this time probably done twenty-five case on the merits that our office had argued and probably been involved in another twenty or twenty-five cases—when you include *amicus* briefs, probably fifty or seventy-five others maybe. So we had a pretty good understanding about what the Court was about and certainly a lot more understanding than people who had never been in a case before or only had one. I said we could provide assistance to people that would be really valuable to them, and it would take very little of our time as compared to handling the whole case ourselves. I also knew that in most of these cases, it probably didn't make sense for us to take over the case in terms of time and I also thought that in most cases, the lawyer who's got the case will never want to give it up because it is his or her first and probably only time they will ever get to argue a case in the Supreme Court.

As I'll tell you in a couple of stories that I'll give you about this, it's often a good thing to have the local lawyer argue the case.

MR. MARCUS: Contrary to popular belief today.

MR. MORRISON: In some kinds of cases.

MR. MARCUS: Yes.

MR. MORRISON: The question was how do we find out about these cases? How do we get involved in them early? My idea was that we should hire somebody; initially I thought it didn't need to be a lawyer. I quickly concluded that it did—who would go to the Supreme Court and read every paid *cert.* petition that was filed and look for cases in which there was a public interest issue and a likelihood of Supreme Court grant because a) there was a State or U.S. solicitor general on the other side, b) there was a big corporation, or c) some other reason to think that there was a reasonable chance that it was going to be granted, including, often, members of the so-called Supreme Court Bar, lawyers who were hired to bring these cases. The person would go up and read these cases and write me a memo, read the cases virtually as soon as they are docketed, write me a memo on whether we should get involved in it at all. But they were short. They were one or two pages. It didn't have to be long because I figured out quite quickly that in ninety-five percent I could figure out the cases either yes or no and in the other five percent if I needed more I would need more and no matter how much they wrote, they wouldn't have figured out what I needed anyway. So these typically were intended to be one-, two- or three-page memos.

The problem was we needed to get funding for this because we didn't have anything in our budget to hire someone. It really took a while and finally the Public Welfare Foundation here in Washington gave us an initial grant to do this for a couple years. One year we got an Equal Justice Fellow, but we never could raise grant money for this. But we decided that it was so important that we wanted to do it anyway and so we hired a recent law school graduate and have continued to do that since—it's now eighteen years. They identify cases and we do as much or as little as the situation and the lawyer wants. We get the cases and we call them and we offer help. We are pretty good at identifying most of these cases. We've had more trouble identifying potential *cert.* petitions because they have to be filed before we can get access to them. We identified pretty well on the respondent's side. We offer to help them. We tell them—the first thing that's the most important thing is that there is no trouble getting an extension of time—which is, of course, what they want to know. We developed a mantra for oppositions, "unique and boring and short." We know this is a very important case to you but you don't want to tell the Court that it is a very important case. We work with them. Sometimes they write drafts, sometimes we would write drafts. Sometimes we'd do research. Among the things that we would tell them is jurisdictional and procedural issues that they might not have been aware of. Issues about mootness, ripeness and standing and all kinds of other things. We counseled them against writing long oppositions defending the decision below and we helped them in any way possible. Talked to them about things like schedules and when is a good time to file, when is a bad time to file. All the kinds of things that we know that they don't know. Typically, we'll have the Fellow who is working on the Supreme Court Project for a year will be in communications with principal counsel, and sometimes that person will work on the draft, but typically we'll have another more experienced lawyer in the office working on the draft and helping with the strategy.

MR. MARCUS: When you say "working on the draft," with the lawyer?

MR. MORRISON: With the lawyer who is the principal lawyer on the case.

MR. MARCUS: Do you ever end up—I know that's not the purpose of the program, but do you ever end up taking over the case?

MR. MORRISON: Yes, yes. And sometimes it happens at the *cert.* stage and sometimes it happens at the writing of the brief on the merits and sometimes it happens at the very end right before they get to argument. They suddenly realize that they can't do it. We tell them at the beginning, "It's your case." We start in with the presumption that it's their case.

MR. MARCUS: We're not trying to take this case from you, right.

MR. MORRISON: And that has been enormously helpful in getting their cooperation and in getting them to recognize we're not there to steal your case, we're here to help you. In, I would say, I don't know what the number is now, but three-quarters of the cases, we end up doing just that. We help them at the *cert.* stage and then if review is granted we talk to them about how to write, about the brief and give them the information about

timing and all the rest of the stuff. Sometimes we will do some independent research and send it to them. Sometimes we'll know things in advance and we'll just have it and send it to them. We'll often work through them with drafts of the brief, outlines, we'll discuss with them in advance. The abilities of these lawyers range from top-notch to really bad. You can't tell based on their experience or anything else. Some of the most junior people turn out to be really good. Even the ones that are very able tend to know their subject very well, but have more difficulty trying to translate it into a way that this Court, who are not experts in Social Security or Bankruptcy, or ERISA or whatever else it is, understand it. We are not experts typically either, but we're sort of in a better position to understand what they have to do to make the Court understand.

We provide whatever service they want. Sometimes we write a lot of the brief. Sometimes we write none of it. Sometimes we, as you say, we take over—we're asked to take over the case. Sometimes it just sort of moves in that direction.

MR. MARCUS: Do you usually do moot courts?

MR. MORRISON: We always do moot courts, assuming they want them. And almost everybody does. As a result of this, we also do moot courts for a lot of other people as well in other kinds of cases that we are not directly involved in.

MR. MARCUS: Now what happens—I see how this is basically to help respondents whom we like preserve their victories by avoiding *cert.* and if *cert.* is granted, winning the case. What happens if your Fellow, whatever you call the guy who is doing this thing, goes up there and reads the *cert.* petition and says, "Hey, this is a petitioner who we like and who is involved in an issue that is important to Public Citizen." While it's not the focus of your program, do you ever approach petitioners because of reading the *cert.* petitions?

MR. MORRISON: Absolutely. Absolutely. Ideally, and this has happened in some cases we refer to as our recidivists, that we've helped before. They will come back to us. We met them initially as respondents and they will say, "I've got a petition. Can you help me with the petition?" So we then help them with the petition or sometimes the first time we meet them is they've filed a successful petition.

Typically here is what happens on the petition side: First, by the time the petition is filed, the case has pretty well been fixed in terms of what can be done. But once in a while there will be things that we will see that we will want—we think there might be a problem we might want to help out at the petition stage. But often if we see these petitions, we will simply contact the petitioner's lawyer and say, "Here's your petition. It's very good. We'll be glad to read the opposition and help you with a reply, and by the way you have ten days and it's tricky and here's what you can do. But if it is granted, we want to be able to help you on the merits." So we would move into it that way.

As you observed, it's a little different timing and function aspect, but it's also very valuable and we help them and, of course, we do the same thing if the petition is granted.

We help them with that. There are usually some cases every year in which we will simply have missed them or occasionally from the in forma pauperis docket which we don't look at because there are six thousand of them and most of them are criminal cases. We also find that there are issues, as I think I suggested earlier, we don't do many civil rights cases, employment discrimination, housing discrimination, but in our Supreme Court Assistance Project, we do those cases. And the same with environmental cases. Then we get called a fair amount to either do moot courts or to help out with the briefs in various other cases that we do. Sometimes we help out states and municipalities when they've got cases. Sometimes other people on whose side we would like to help out—we're quite agnostic in terms of who we help—we don't refuse to help anybody because of who they are or if we think they are on the right side of an issue. So we've done a lot of those cases either formally as part of the Supreme Court Assistance Project or as part of a broader work at the Supreme Court.

The office now, this year the office, which I think has seven lawyers and two Fellows now—has got four cases on the merits that we argued this year—including one that started off helping other people out and they recognized that we should complete the work that we did on the brief and argue the case. The other ones were all Public Citizen cases. Some of them we identified in the Courts of Appeals—for example, a case that Brian Wolfman argued this week involving the question about whether under the Equal Access to Justice Act paralegals are to be compensated at market rates or at cost (an issue of burning importance to the public). Brian argued it. I said, "Brian, I don't think it's going to be on the front page of the *Times*, even when it's decided."

MR. MARCUS: Well it's fascinating to me to realize that an important part of Public Citizen's Supreme Court practice is keeping cases out of the conservative Supreme Court.

MR. MORRISON: Well, it was not only the conservative. It was always true if you won below.

MR. MARCUS: Oh, of course, if you won, right. Even in the Warren Court, if you had a good Court of Appeals decision—

MR. MORRISON: Absolutely, you don't want to—it can only go one way. Especially from the client's perspective. And of course it's a wonderful tool for recruiting lawyers.

MR. MARCUS: Yes. Have any of your Supreme Court Fellows or whatever you call these guys, gone on to get permanent jobs at Public Citizen?

MR. MORRISON: The answer is yes. We initially had—we don't have very many openings. Turnover is very low. The pay is so bad that nobody has time to look for another job. Or do anything else. No, the people stay.

MR. MARCUS: Some people think you just can only hire lawyers with trust funds.

MR. MORRISON: Or spouses.

MR. MARCUS: Spouses, right.

MR. MORRISON: Very few openings. Sometimes years go by without anybody leaving.

MR. MARCUS: When someone leaves you tend to look for a lawyer with more experience than your Fellow would have.

MR. MORRISON: The trouble is that it's very hard to find them although in recent years we've had more luck in hiring lawyers with more experience. Several of the lawyers—well, I think—a number of the lawyers who are there now were hired after having three, four, five, six years of experience in other jobs which, of course, is much better but it's not always possible. The salary differential gets bigger and bigger and proportionately more and, in addition, as people have children and are thinking about high school and college it becomes even more difficult to make do on a Public Citizen salary.

So originally we had decided that if we had a vacancy it would be—we originally weren't going to hire anybody who had been a Fellow for a year and the reason I did it was it would be very awkward if they competed for a job to start in September and we told them in March or April that they weren't going to get it, that somebody from the outside was going to get it. Then we had a really good Fellow and we had a vacancy. We offered her a job and she ended up deciding she wanted to go clerk for Paul Friedman for a couple of years and so we couldn't tell her that she shouldn't. Then we didn't hire—and now in recent years I think they have occasionally had somebody who they have moved over, but not very many. Partially because of questions of timing or they just don't have it. We tell them essentially that it's not likely that they'll have a chance for a permanent job—it's only for a year. Some of them actually are pleased because some of them have clerkships. Last year's Fellow is now clerking for Judy Rogers on the D.C. Circuit and other people have gone on to do other things as well. So the one year has actually worked out very nicely for them. The Equal Justice Fellows had a requirement—that the Fellowships have to be two years. And frankly, we said we don't want to have to hire the Fellows because a year is a good period of time for them to do it, but after a year they are not learning that much more, and we'd rather give the opportunities to more people so they didn't have any Equal Justice Fellows after that.

We've never been able to raise—get much foundation money for it. I do not understand why. We made the pitch; look you may not like litigation but these are cases—you're in the Supreme Court, you've got to do the best you can. The other side has got all this money and all these efforts and everything like that. What are you going to do about it? And foundations give us almost no money at all for that.

MR. MARCUS: But some of your other projects have significant foundation support?

MR. MORRISON: No, very little. A little bit for the Open Government and a few other things. The Litigation Group has not much luck in raising money. We've had a few—some money, but not much. Some of the attorney's fees—actually, the union democracy turned out to be—because we won a lot of cases, pretty good on the money side in terms of fees. Because we won cases and got fees. When I left Public Citizen in 2004, they had a dinner in my honor and we used it as an opportunity to raise money for the Fellowship. It was renamed the Alan Morrison Supreme Court Fellowship. We raised close to a half a million dollars.

MR. MARCUS: No kidding? That's great.

MR. MORRISON: Which is not enough—the interest is not enough to pay the salary every year but it comes reasonably close and so it's there.

MR. MARCUS: So that really sort of assures the continuation of the program.

MR. MORRISON: I think the program—it's a wonderful program. It's substantively wonderful for all the people we help, but it's wonderful for the office.

MR. MARCUS: It's good for the other lawyers in the office in terms of their professional…

MR. MORRISON: Also, they get more Supreme Court arguments that way.

MR. MARCUS: Yeah, it's great.

MR. MORRISON: Also, they learn a lot about different things. They get to teach other lawyers how to do things. You had asked earlier on about the arguments and whether it is a good thing to have outsiders argue cases or not. We have two stories about that.

One of the first cases that we ever took on in the Project was a case from the Second Circuit involving a Connecticut statute under which if—let me try to get this straight—it had to do with a lien on the sale of a house and apparently under Connecticut law, if I get this right, you could get a lien on somebody's real property simply by filing an affidavit saying that they owed you money. The lien was such that you could not sell the property or mortgage it during this time and you got it by the person simply filing a complaint with an affidavit in court and it was virtually automatic. The case involved, if I remember it, a dispute between two neighbors and one of them—it was an assault and battery case and it had nothing to do with real property and they filed the lien—they filed the complaint with the lien and it tied up this person's property.

MR. MARCUS: So this is a notice and due process case?

MR. MORRISON: Yes. The plaintiff's lawyer was a former legal services lawyer in New Haven who went into the federal court and she got an injunction against the enforcement of the statute saying it took her client's property without due process of law. She won in

the Second Circuit and Jon Newman wrote a dissent and the State filed a *cert.* petition and it was granted. This did not look good. This was the first case that we identified. We called up the woman to offer help and she said, "I can't believe this." She knew who I was and she said, "I have been trying for the last three days to figure out how I could get in touch with you to get you to help me with this case." Turns out she was a really good lawyer. Really smart and knew what she was doing. We told her about a bunch of things and helped her out and did moot courts for her, but she did really well. Gets to oral argument and this is one of the cases that taught me the lesson that you have to be very careful about who should take over the case. Much of the argument was consumed with the discussion of the intricacies of Connecticut state procedures. Connecticut law is really arcane. It and Virginia are really arcane. She knew everything because that's what she did. If I had argued this case I would probably never have thought to try to learn all that stuff, let alone would I have been able to master it to the same extent. She completely wowed them and explained to them how devastating this lien was, and she won the case nine to nothing. Great, great job. So that was the first lesson I learned. You've got to think about which cases to have local counsel argue.

The second, and this had nothing to do with the outcome of the case, but it's a great story anyway. We talked about our residence requirements for the bar admission cases early on. The case that ultimately got to the Supreme Court was a case called *State of New Hampshire v. Piper.* Mrs. Piper was a woman who lived in Vermont.

MR. MARCUS: Right on the border.

MR. MORRISON: Her husband was also a lawyer and they decided they didn't want to practice in the same jurisdiction so she wanted to open up an office in New Hampshire. She couldn't because she didn't reside there. She got a New Hampshire lawyer who, it turned out, I had known at some point at some other time or maybe he applied for a certain job. Anyway, we got in touch with him and we worked with him on the case. We filed an *amicus* brief on the case and did a moot court for him. He was a very able lawyer.

During the oral argument, then-Chief Justice Rehnquist said to him (maybe Rehnquist wasn't the Chief then. I don't remember), "Well now, so and so, you're in New Hampshire. Suppose you want to find out what the New Hampshire Supreme Court did? How would you do it?" This was, of course, in the mid-'80s and we didn't have anything like the Internet. He said, "Well there are two services. One comes out once a month, one comes out once a week and you subscribe to one or the other." Of course I would never have known that in a million years if I had argued the case or thought to ask him. Rehnquist says to him, "No, no no. I mean, suppose you want to find out something right away. Don't you read the newspapers? Don't you read the Manchester newspaper?" He looks him right in the eye and he says to him, "Mr. Chief Justice, I never read the Manchester newspaper for anything." Well I, of course, wouldn't have had the temerity to say that, and it was an unbelievably effective comeback for an inappropriate question. Rehnquist was in dissent as he continued to be. But the guy won the case. I always tell those stories as stories about, yes, you should argue the case, but sometimes it's not such

a good idea to have the outsider come in. But having said that, no question in any one of these cases, I always advise people, whether they are going to retain me or get me to help them out or not, get somebody to help you out with the Supreme Court briefs, everything at every stage. It may not be worth the time and the money to get them up to speed on everything, but to get them to come in and give their expert advice along the way is incredibly valuable. We found out at Public Citizen that you can do this with relatively modest investments of time. You've got to read the briefs, you've got to read the opinion and you may have to read some cases, but even if you do even less than that, you can still be very, very helpful. Sort of things not to say and not to do and this is too long and that's the wrong…have you thought about this and thought about that. The moot courts are very useful and they are very important, but I have a story on the moot courts to tell about one of these project cases.

This was a case involving an arbitration and securities case. The Supreme Court granted review to decide the question of whether it was permissible to order punitive damages in a securities arbitration. The arbitrator had awarded substantial punitive damages in this case and the brokerage house took the case up and the Court agreed to hear it. We offered help at various stages. One of the problems with a lot of these lawyers, especially those in small firms, but not only small firms, they don't get you things in time to be able to read them and make comments about them. And/or they are insufficiently self-confident that they don't want to hear your comments. They just want to do it themselves.

So we got the brief. The brief was okay and a guy comes in for an oral argument with a young, female associate. It was a small firm in Chicago as I recall. It was clear that he had not written the brief and he didn't know very much about it and he wasn't very good. So he starts to do the moot court and I asked him a hypothetical question, as we always do. He says—he doesn't answer the question. And then he says, "Well, that's not this case!" So I tell him my Justice Scalia story where Scalia says those are the five worst words you could say to the Justices; "That is not this case. Of course, we know that is not this case. We're not dumb. We want to know the next case. You have to answer it. If you must say, it's not this case, tell us after you've answered the question." So he says, "Well it's not this case. I don't have to answer that question." I said, "I think you do." Another couple minutes goes by and he says, "I'm leaving. This is insulting. You're not treating me with respect." I said, "We're trying to—we do this a lot and we're trying to give you an idea of what's going to happen in front of the Court. You really need to hear this. They don't really want to get those kind of answers. Can we continue for a while and see? I'll try to tone down my comments." So he said, "Okay." Another five minutes goes by, I've tried to be a little more mild and he says, "Didn't work, okay, I've had enough of this. I'm getting out of here." So I said, "Okay, sorry you feel this way." Goes up there the next day, gets up to argue. They started asking him questions and he's not answering their questions. They stop asking him questions. At some point, they are not asking him any questions anymore. He sits down. A few months later an opinion comes down. He wins nine to nothing.

The moral of the story is there are some cases even a bad lawyer can't screw up.

MR. MARCUS: Right.

MR. MORRISON: So, you know, it gives you a little humbling experience. I do think that the moot courts are useful, they are important, they get people ready for the kind of thing that they are going to have to do. You make them think about why they are there and what are they trying to accomplish and make them realize how little time they have before the Court and how little that they are actually going to get to say. The most important thing I always tell people is how are you going to use your time? The little time you have, how are you going to use it? What do you want to say and what do you want to *not* say? You can't refuse to answer questions but you don't have to stick your neck out and talk about things you don't want to talk about. Anyway, the project has been enormously successful. In a number of years they do twenty or so moot courts out of eighty cases that are being argued. It actually produces—it doesn't have any grants but in cases that we do and win we get fees out of it because some of them are fee-generating. Brian's case this week on the paralegals, he's going to get fees. Of course, they are Equal Justice Act fees. Public Citizen, by necessity, does not over-lawyer any cases and therefore when we get fees, we don't get big fees. But it's very valuable and I think that it's been a great contribution. Other places are—Georgetown has got an Institute but they do just moot courts.

MR. MARCUS: Right. So sometimes one of your lawyers you are helping will have a moot court with you and also have a moot court at Georgetown.

MR. MORRISON: Yes and we participate in some of their moot courts.

MR. MARCUS: You sit on some of their moot courts?

MR. MORRISON: And there are cases in which they're mooting people—they are completely agnostic on who they will moot—on which side. That is, they will represent the forces of Death and Evil.

MR. MARCUS: You won't help those forces—even with a moot court, you won't help them?

MR. MORRISON: Exxon Valdez. We did a moot court for the plaintiffs in the Exxon Valdez case. We would not have done one for the other side.

MR. MARCUS: Okay. Let me ask you—before we leave Public Citizen to talk about the D.C. Circuit and the D.C. courts, let me ask you a couple of questions about the future. Sort of two related questions. One is to what extent is the Litigation Group institutionalized so that after Alan Morrison leaves in 2004, it's an institution that is going to continue into the future. And you might want to say a little bit about the leadership that you trained to succeed you. The second thing, which is related, is a big question which is, what happens to Public Citizen in the future, after Ralph Nader? And to what extent are the two tied together? It's a little like the NAACP and the Legal Defense Fund which, of course, parted ways a long time ago.

MR. MORRISON: The last question can be answered in an interesting way: Ralph has had nothing to do formally with Public Citizen since the fall of 1980.

MR. MARCUS: That's right, that's right. You told me that before. But it's still identified with him.

MR. MORRISON: Of course. Most of the time, it's a happy identity, except when he's running for president. Not only did he step down as president, he stepped off the board, too. And he has had no formal role at any time. He used to write letters for us, for Public Citizen. I think he's not writing any letters. The letterhead says, except during presidential election time, "Ralph Nader, Founder," on it.

MR. MARCUS: So it has already survived Ralph Nader's departure.

MR. MORRISON: Oh, yes. One of the things that Ralph did with every one of his groups is he cut them loose. He cut them loose for two reasons. One, he didn't want to be in the business of managing a lot of groups. Second is he had new ideas and new things he wanted to do. He didn't want to be burdened with running groups and he thought that people ought to do them on their own. When he hired me and others at Public Citizen to run the Groups within Public Citizen, he basically said, "I'm hiring good people and you're expected to run with them yourselves." When Joan retires, I think Public Citizen will continue on. It will be different but it will continue on just as it continued on without Ralph.

MR. MARCUS: Has she been the only head of Public Citizen since Ralph?

MR. MORRISON: Well Sid Wolfe—Joan was working in the Carter administration at the time.

MR. MARCUS: Oh, right. Sid Wolfe actually ran it for a while?

MR. MORRISON: He was also the head of the Health Group and he was the president of Public Citizen. He grumbled, didn't want to do it.

MR. MARCUS: He doesn't strike me as the kind of guy who likes running big organizations.

MR. MORRISON: Absolutely correct. And he did it for about a year and a quarter. Joan took off a year after she left DOT to do other things and figure out what she was going to do and she came back to Public Citizen. She had been director of our lobbying group and done other things related to Ralph's work before that.

MR. MARCUS: So she's been running it for a long time.

MR. MORRISON: Since '82. A very long time.

MR. MARCUS: Yeah. Twenty-five years.

MR. MORRISON: Yeah, yeah, yeah. Twenty-six now. Anyway, as far as I was concerned, I don't think I was as good at it, at cutting away, as Ralph is, but I firmly believe that people should move on after times. And when I had been at Public Citizen for twenty-one years I took six months off to teach at University of Hawaii Law School in the beginning of '93. I had previously taken a year off back in '78 to '79 to teach at Harvard, but I was intending to come back so somebody was just caretaker there for me at the time. When I left at that time—

MR. MARCUS: The '93 time?

MR. MORRISON: January '93. I'd been there just a little under twenty-one years. I agreed with Joan—Joan and I talked to David Vladeck, who had been there since '76, would be in charge and take over. Not just in my interim, but period.

I had thought about my successor before and it was unclear to me whether David or Bill Schultz would take over. Bill left in about '88 or so after being there for only about thirteen or fourteen years. David had been there fifteen or sixteen by this time. I was going to teach in Hawaii and I thought it was a particularly good time to make the transition because, first, I would not be there physically for the six months that I was gone, which meant that he could do what he wanted to do without me being in his hair. I was really far away. I was five or six time zones away and I wasn't about to pop in and I certainly wasn't going to leave Hawaii to come back to Washington in the middle of the winter. So we made the transition and as far as I was concerned, it was a permanent change.

I came back and whatever else people said about—

MR. MARCUS: And your role when you came back was kind of a senior counsel—

MR. MORRISON: Senior lawyer, right. I don't know whether we have a good way of practicing law at Public Citizen or not, but for whatever reason, probably either to credit or blame, we all look at litigation the same way. We all think about cases the same way. We all think about writing briefs, making arguments, writing complaints the same way. That may be because one of the things that I did was that I supervised every single case for most of the time I was there, at least for the first fifteen years. Nothing went out of the office of any substance that I hadn't seen and read multiple times usually. It was a lot of work, but I felt that part of what I gave young lawyers is the promise that they would get close supervision, and I felt comfortable giving them a lot of responsibility knowing that I would at least see and read everything carefully, even if I didn't do the basic legal and factual research.

I didn't know whether Bill or David would be in charge and when Bill left to go—first I think he went to work for Henry Waxman first. Yeah. Then he went to the FDA and then he went to the Justice Department.

MR. MARCUS: Right.

MR. MORRISON: It was clear that David would be my successor and that was fine with everybody. He had done a lot of things by that time and it was very useful. It was very good to have him there and it was easy because we had the six-month buffer period when I was not there—not that he didn't ever call me, but he was running it and people got used to him and he was somebody that everybody knew and had worked with and it was fine.

MR. MARCUS: And by that time he had real stature, not just physically.

MR. MORRISON: Then about three or four years after that, I was minding my own business one day when David came to my office and told me that he had been asked to go to Georgetown for a year and a half because Nina Pillard was going to the Justice Department, to OLC, and they needed somebody to teach, I think, procedure. Maybe ConLaw. I can't remember what it was. Whatever it was, they wanted him to come and do it and would he do it. He asked me what he should do and I said to him, "Look, I'm here. I can take over again and so I will do it." So I took over again for a-year-and-a-half or two years.

Then he came back and I think then he left again.

MR. MARCUS: To go to Georgetown?

MR. MORRISON: Permanently.

MR. MARCUS: Permanently, yeah. When, about—I think it was actually—

MR. MORRISON: '98.

MR. MARCUS: I taught—no it was later. I mean, he went to Georgetown maybe the first time in '98.

MR. MORRISON: Yeah, maybe.

MR. MARCUS: But he went there permanently the year after I was there, so it would have been 2002, I think. Fall of 2002.

MR. MORRISON: Okay. Oh, yes, I now remember because here's the sequence. He came back and took over again and then in the summer of 2001 I went to Stanford for the first time. I went there for a year and then I stayed an extra half a year. Then while I was there the first year, David got the offer to go back and decided to go back—to go to Georgetown permanently in the fall of 2001—

MR. MARCUS: 2002.

MR. MORRISON: Fall of 2002—2002, right. Yes, you're correct. We worked it out that it would be handled on an interim basis. Somebody would—they would muddle through until I got back in January. I came back in January 2003 and then that summer I decided that I really had had enough and I wasn't going to do it.

So I resigned effective early 2004 and then taught at NYU in the spring of 2004 and then went to Stanford for the three years starting in the summer of 2004.

MR. MARCUS: Now were you involved in the selection of your successor at that point?

MR. MORRISON: The answer is, "No." Part of the reason I left Public Citizen was because I had some substantial disagreements with Joan about how the organization ought to be run. I also (and this is no secret) told her that I thought that she had been the president too long and she should no longer be the president, and it was not good for the organization for somebody to be there that long. She disagreed and the board is not an active board and the board did not really press her to leave. This is the board that we've had and it's been a problem. You need an active board when you need an active board. Most nonprofits would prefer to have their board be completely inactive except when they need them or to raise money. It's very hard to shift off and on.

Joan initially asked Scott Nelson, who had been at Miller, Cassidy and had been on the other side of the Nixon tapes case. David was still the Director of the Group, then this must have been somewhere about in the spring of 2001, I would think it was. Around that time. Scott called me and said Miller, Cassidy was about to be absorbed by Baker & Botts. He did not want to go to Baker & Botts and he didn't want to go to any of the big firms. He was looking for a job at Sierra Club Legal Defense Fund, which is now Earthjustice, and he wanted to know whether he could use me as a reference. My first thought was, "I'm not letting you go to Sierra Club Legal Defense Fund." I said to him, "Let me call you back in a few minutes, Scott." I walk into David's office. I say to him, "David, Scott Nelson, etc., etc. I think we should try to get him to come to work for us."

David said, "Of course."

So I said to him, "Scott, I'm not going to give you that reference because I want you to come to work for us here."

He said, "Well, I didn't think about it." I said, "Just think about it."

Anyway, he came to work with us. Turns out he had been Brian Wolfman's roommate at law school.

MR. MARCUS: He came to work in what capacity?

MR. MORRISON: As a Senior Lawyer.

MR. MARCUS: As a Senior Lawyer, ah, yeah. But you were thinking in terms of him as a possible replacement for David, huh?

MR. MORRISON: Well, see, at this time we didn't even know David—this was before David had decided to go to Georgetown permanently. So David was just delighted to have him on the staff and I was about to leave to go to Stanford.

Anyway, the bottom line was that he came and he's done really good work. Unfortunately, he's had some medical problems. He had them before he left Miller and he came with his medical problems, he had to work them out before he came to Public Citizen. He thought they were worked out. He came to Public Citizen and was doing all right and then when I stepped down, Joan decided that he, rather than Brian Wolfman, should be the Director. Scott agreed reluctantly, because he didn't really want to do it—he didn't know what else would happen and—

MR. MARCUS: So this is 2004.

MR. MORRISON: Fall of 2003. And it turned out that his health would not let him do this. He has some internal thing for which stress is very bad and stress—the job is stressful generally, but it is also stressful because you've got to deal with other people within Public Citizen and competing interests in doing things, and it was just physically bad for his health. He stepped down and then Joan decided that Brian Wolfman should be in charge and Brian took over in the beginning of 2004, has been there ever since, and has done a terrific job. I always had great confidence in Brian. I had plenty of confidence in Scott, too, but I thought Brian actually would have been a better choice originally because he'd been there longer and so forth and so on. He didn't want the job either because he didn't want to be a manager. He much preferred to do these cases.

MR. MARCUS: To be a lawyer, yeah.

MR. MORRISON: Yes, yes, which is, of course, true for a lot of people. He's done a wonderful job. Things are not the same as they were when I was there, but they are not big changes. He looks at things differently, which is hardly surprising since he's twenty years younger than I am. (I guess about twenty years younger, maybe more.) The world has changed. Change is a good thing and so I'm happy both that I left a legacy. If you look at the things that we're doing now, everything is a lineal descendant of what we did back then. Of course we didn't have an Internet back then. We didn't have electronic records back then, but the cases are the same, but they're different. The profession cases today—they've got a lawyer's advertising case that they argued in the Second Circuit. They've got another fascinating case in which somebody sued Morgan, Lewis & Bockius in the federal court in Philadelphia. Morgan Lewis has partners who are not U.S. citizens. No, I'm sorry—it has partners who are U.S. citizens but who reside abroad. They make the argument that there is no diversity jurisdiction because of this quirky way, because of these U.S. partners abroad, which means you can't sue any of the big law firms in the federal court and you have to sue them in the state court. The federal court threw his case out and the case is going to be argued in the Third Circuit.

MR. MARCUS: That's a perverse argument. My God.

MR. MORRISON: It's a perverse argument, but here's the thing. This is a case that no one but Public Citizen would ever take up on appeal. Everyone would just say, "We'll just sue them in state court and we won't bring the lawsuit." This is a matter of principle. And if we lose this case, undoubtedly someone will go and get the statute changed. Normatively, it can't be the right result. One of the great things is they have the ability to continue to press for remedying these kind of injustices wherever they happen to see them. I couldn't be happier that the office has continued on. It's strong, it's doing great work, and the people are terrific. They are all different from when I was there. Paul Levy has now been there thirty years. Brian has been there since '89—no, '91, I think, and others have been there a long time.

MR. MARCUS: Let me ask you sort of another life-after-Public Citizen Litigation Group question which is: looking back now after twenty-five, thirty years, what has been the pattern of what has happened to the young lawyers who have come to Public Citizen Litigation Group and worked with you? What have they gone on to do? Are most of them still in the public interest world? Some of them are teaching.

MR. MORRISON: Some are teaching.

MR. MARCUS: Is there anything that you can generalize?

MR. MORRISON: Most of them are doing public interest work of one kind or another. Some of them—Kathy Meyer and Eric Glitzenstein set up their own environmental firm. Patti Goldman is with Earthjustice. Bill Schultz had a career with the FDA and Waxman and the government and now he's with a private firm, but he's doing very similar kind of work that he did with us. He's working on the tobacco bill.

MR. MARCUS: He's probably representing a couple of bad guys, but he's doing a lot of good stuff.

MR. MORRISON: He's representing mostly generic drug manufacturers who, most of the time, are better than—they need to be represented. They are the under represented. Let's see. Some of the people have gone into teaching. Some are not practicing law anymore. Mark Lynch went to work at the ACLU after he left us and then went to Covington. He's one of the few who has gone to a big firm. Several people went into the government because the government was paying better. Some of them have left the government and gone—Paul Wolfson went to the SG's office for a while, now he's at Wilmer. Collette Mattzie was in the Appellate Division, she's now at a small plaintiffs' firm. Mike Tankersley is still at the FTC. So I would say most of them have stayed in the public sector of some kind. A few not. We haven't had—if you take out the Fellows, the people who were there for one year—there probably haven't been more than forty or fifty people in all these years.

MR. MARCUS: Is Hitchcock still there or has he headed on to something else?

MR. MORRISON: Con has gone on. He worked first with a lawyer and now he's independent but cooperates with a lawyer who is doing principally private plaintiff's pension benefit cases. Suing under ERISA and actually suing plans or companies for people who don't get their proper pension. So that's sort of the first cousin of what we were doing here.

Some of them have left, frankly, for monetary reasons.

MR. MARCUS: Sure. They couldn't afford it anymore.