

Moving On: A Nader Protégé With Friends in High Places

Alan Morrison exits for Stanford after 32 years vexing the powerful.

BY TONY MAURO

It was fitting that one of Alan Morrison's final acts on behalf of the Public Citizen Litigation Group was to irritate the powerful—something he has done regularly for more than three decades.

The 66-year-old Morrison, who is leaving Washington, D.C., this summer to teach at Stanford Law School, filed a motion in February asking Supreme Court Justice Antonin Scalia to recuse himself in *Cheney v. United States District Court for the District of Columbia*. Scalia's widely criticized duck-hunting trip with Vice President Dick Cheney in January while the case was pending had created "an appearance of impropriety," Morrison wrote.

But it was also apt that, in a memorandum rejecting the motion, Scalia dished it right back at Morrison. Scalia released a "Dear Nino" letter Morrison had sent him last October inviting Scalia to come and talk to his students at Stanford later this year.

Describing Morrison as "a friend," Scalia wrote, "I saw nothing amiss in that friendly letter and invitation. I surely would have thought otherwise if I had applied the standards urged in the present motion."

The episode captures an essential truth about Morrison, one of the nation's top public interest lawyers, as he looks back over his 32 years with the Ralph Nader-founded Public Citizen Litigation Group. He is fearless about challenging government and corporate interests, yet also has no fear of befriending—or at least being cordial to—their advocates and icons.

"There's no reason not to deal with people in a civil manner," Morrison says. "I don't consider myself a rebel. I like having people return my phone calls."

Even in his parting, a range of luminaries returned his phone calls and formed a host committee for a June 3 farewell dinner for Morrison that will also fund a fellowship in his name. The list spans the spectrum of the legal establishment—from former Whitewater Independent Counsel Kenneth Starr to Harvard Law School professor Laurence Tribe, Reagan Solicitor General



ROBERTO WESTERBROOK

FAMILIAR FACE: Alan Morrison of Public Citizen Litigation Group has argued 16 times at the U.S. Supreme Court.

Charles Fried to Clinton SG Seth Waxman, Reagan White House Counsel Fred Fielding to Clinton Chief of Staff John Podesta.

"Alan Morrison is deeply respected throughout the entire Washington community," says Starr, now partner in the D.C. office of Kirkland & Ellis. "His conservative friends may not always agree with him, but they know he is a person of complete intellectual honesty."

Morrison commands respect as past president of the elite American Academy of Appellate Lawyers as much as at any woolly reunion of Nader's Raiders. Scalia is not Morrison's only friend on the Court. He has known Justice Ruth Bader Ginsburg for decades; she told a Public Citizen publication that Morrison represents "the best of the legal profession, the most dedicated, the least selfish."

Morrison and Justice Stephen Breyer have also been friends for years, and they jog together regularly—though not in the days just before Morrison argues before the Court.

“There’s no magic number of days,” he says. “You just have to use common sense. But I feel strongly that justices should not lock themselves up in the cloisters. They should be able to go to law schools and talk to their friends, not just their law clerks.”

That said, Morrison adds that “on reflection, in a perfect world, I wouldn’t have sent that letter” to Scalia inviting him to Stanford, even though it would have been hard to anticipate then that Scalia would throw it back in his face in the midst of the duck-hunting controversy. “But do I think I did anything wrong by sending it? No.”

Morrison’s ability to move comfortably between roles as both insider and outsider is one key to his success as director of the litigation group. How has he done it?

Eric Glitzenstein’s theory is that it is because everyone—judges and adversaries included—respects Morrison’s “love of the law.”

Glitzenstein, partner in D.C.’s Meyer & Glitzenstein, has worked with Morrison for more than two decades, and recalls Morrison’s iconoclastic side. While working at the Freedom of Information Clearinghouse, an early Morrison project, Glitzenstein was called “scurrilous” by his government adversary. Morrison consoled him by saying, “If they don’t call you scurrilous, you haven’t done your job.”

But Morrison also saw the need for a higher purpose in whatever litigation he undertook. “Judges always appreciated that he was not just arguing for the public good, he was also helping to develop the law and was even trying to help the judges work out a common sense approach to some problem,” Glitzenstein says.

FATEFUL MEETING

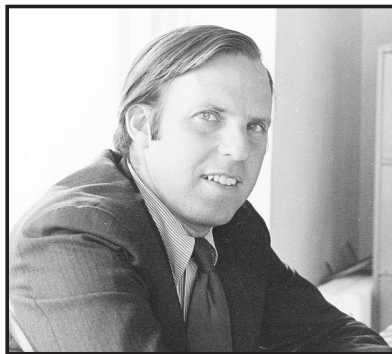
A graduate of Princeton University and Harvard Law School, Morrison was an assistant U.S. attorney in the Southern District of New York when he was invited to interview with Nader in late 1971.

Courting Change, a soon-to-be-published history of the litigation group’s early days by Barbara Hinkson Craig, recounts Nader’s first meeting with Morrison. It was an interview on the run, as Nader raced from a speech at George Washington University back to his Dupont Circle office.

Nader asked Morrison what he wanted to do if he took the job of launching his public interest law firm. Morrison took a folded piece of paper from his pocket with a list of disparate targets—from cleaning up the legal profession to private antitrust actions to union democracy. He carried the paper in his wallet until a few years ago and was able to cross off several of his goals. Morrison also mentioned two areas of the law he did not want to take on, because they were already well-covered—civil rights and the environment. “Ralph was behind me from the start,” Morrison says.

Nader resigned as president of Public Citizen in 1980, but Morrison says, “We’ve continued to work very closely. I’m eternally grateful to him for turning me loose.”

Nader returns the favor, calling Morrison “the most respected lawyer who argues before the Supreme Court. Just ask any of the justices.”



PEDALING CHANGE: After three decades with the Public Citizen Litigation Group, Alan Morrison, shown at left in his early days with the group, has become a respected appellate advocate who counts Supreme Court justices among his personal friends. But close contact with the powerful hasn’t halted his daily bike commute to his Dupont Circle office.

Morrison has argued 16 cases before the Court, including *INS v. Chadha*, a major separation-of-powers case that struck down the legislative

veto in 1983. Morrison became known in Washington as probably the leading expert outside academia on separation-of-powers issues. He also took on the line-item veto, sentencing guidelines, and the Gramm-Rudman-Hollings budget restrictions, which he describes as “gimmicks” that did violence to separation of powers, even if some of them were viewed as public-minded government reforms. “I have a quaint view of the document,” says Morrison of the Constitution.

But most of the cases he has taken on are in far less visible corners of the law, including federal pre-emption and class action rules, where the connection to public interest law has not always been immediately apparent. The Supreme Court Assistance Project, which Morrison launched 13 years ago, has helped dozens of lawyers polish their briefs and arguments in cases in these areas.

In the area of federal pre-emption, Morrison has often taken the view that state laws are not pre-empted by federal statutes—a position that works for the benefit of consumers often but not always.

“We saw who was using pre-emption as a ‘get out of jail free’ card,” says Morrison. “It was banking, the tobacco companies, pesticide and medical device companies” that, he claims, hid behind more lax federal regulatory regimes to avoid stiffer liability under state law. “When you saw who was raising it, you knew what was going on.”

THE PERSONAL APPROACH

The litigation group’s docket is in large part a reflection of Morrison’s own interests and instincts. He recalls one case that arrived in the form of a letter that did not fit the group’s usual subject areas.

“Ralph used to read all his mail, and I got used to doing that, too,” Morrison says. A California woman wrote Public Citizen asking for help in her legal battle with Terminix, the pest control company. Carla Virga, upset with the company’s service, had created a Web site for similarly disgruntled customers. The company sued her for trademark violation.

“I said, ‘I don’t care how busy we are, we need to do something to help this woman,’ ” Morrison says. Soon, staff attorney Paul Levy was pushing back against Terminix, and the company withdrew its suit in the first of what proved to be many similar Internet trademark battles. “A whole line of cases flowed from that one letter,” Morrison says.

More broadly, Morrison thinks government agencies are far more responsive to the public than before, largely because of his group’s litigation starting in the 1970s. “It was exciting. It was just the beginning of the era when agencies had to pay attention to the part of the law that said they had to protect the consumer.” The advent of lawyer advertising, strengthening campaign finance regulations, opening up government, and revamping presidential recordkeeping—including electronic records—are all reforms Morrison points to as successes of the litigation group, though there is always more to do. “We’re marathon runners, though I’ve never run a marathon.”

Nearly every workday, Morrison has run a shorter distance, though. For his 4.5-mile commute from home in Northwest D.C. to Dupont Circle, Morrison bikes in one direction and runs the other. “In the morning it helps me work out the wording of a brief or a speech, and in the evening it calms the frustrations of the day.”

Some of those frustrations apparently built up in his final months at the litigation group, and he decided to leave somewhat earlier than he had planned to. “Some choices were being made that I would have made differently, and it didn’t make sense for me to keep making those points,” Morrison says, without discussing specifics. But he is “very happy” that his successor will be Brian Wolfman, who has been with the group since 1990.

Wolfman says Morrison’s issues were “small differences”—mostly about how to allocate resources—that don’t detract at all from his legacy. “The ability to learn from Alan has been absolutely invaluable for all of us. We will miss him,” Wolfman says.

“Change is good,” says Morrison, who is eager to teach and “shake the students up, ask them why, why, why” as he has part time or during sabbaticals at institutions including Harvard, Tulane, and the University of Hawaii.

He does not completely rule out arguing again at the Supreme Court if the right case comes along, and he also is sure he will be e-mailing friends at Public Citizen telling them, “Hey, take a look at this case.”

Morrison beams as he describes his daughter Nina’s entry into the family business. She is an attorney with the Innocence Project in New York City. His other daughter, Becky, is a private chef and caterer. His wife, Anne, works with nonprofit organizations.

Throughout his career, Morrison says, he was never tempted by the astronomically higher salaries he could have made if he had put his tenacity and litigating skills to work for a private firm. At Public Citizen he was paid no more than \$80,000 a year, he says, and even when he supplemented that with an adjunct law school teaching gig, “I’m still making less than a first-year associate at a New York firm.”

But Morrison says the rewards have been incomparable. Pointing to Craig’s book about the litigation group’s early days, he says, “I hope young people read it and say to themselves, ‘You know, there’s a better way to spend my life.’ You work here, and there’s no competition, you don’t have to make partner.” One young lawyer on his staff once told him the job was so fulfilling and fun, “I don’t think we should get paid.”

Morrison recalls the words of his friend the late public interest activist Joseph Rauh Jr., who once said, “They made all the money; we had all the fun.” ■