

from office in 1983, eleven years ago, but my vote failed because the judges on the Board voted in lockstep to dismiss the charges. I have spent countless hours attending seminars and conferences all over the United States on judicial accountability. I know something about that subject.

I spent six punishing years under investigation and charges by the Disciplinary Board of the Supreme Court of Pennsylvania on Complaint of Justice Larsen, weathered a second investigation which was dismissed after Judge Newcomer in the United States District Court, asked aloud whether or not the Disciplinary Board had a secondary motive, they are his words, "secondary motive", in investigating Surrick, and am now the subject of a third investigation, not because of the way I practice law, but because of my criticism of the court system and Justice Larsen. As a result of this harrassment, I also know something about the Pennsylvania Disciplinary System which, as I have pointed out for years, has become politicized. I have practiced before Judges such as Louis Bloom and Leroy VanRoden who were so senile that they were really unaware of what was going on around them. I have practiced before Common Pleas Judges who were alcoholics and/or emotional basket cases, but who remain in place and materially affect people's lives.

I blew the whistle on the Supreme Court's \$25,000 a year

unvouchered expense accounts and brought to public attention Justice Papadakos' \$100,000 a year office space and his son on the Supreme Court payroll at something in excess of \$70,000 per year. I have argued scores of cases in our Appellate Courts, some of them landmark cases such as Ridleybrook and have also been a litigant in landmark cases such as Surrick v Upper Providence Township.

This is my fifth trip to either the House or the Senate Judiciary Committee to discuss judicial reform. In 1987 Common Cause/Pennsylvania awarded me its Public Service Achievement Award for my efforts on behalf of judicial reform in Pennsylvania. I have served as Team Leader on the Common Cause Judicial Reform Project Team and recently persuaded United We Stand America to make judicial reform its No. 1 priority in Pennsylvania. In 1993 I was a Candidate for the Supreme Court after overcoming Pennsylvania's Draconian election laws for third parties, and put 24,000 miles on my car in a five month period, travelling to every county seat in Pennsylvania. I made it a point to visit every President Judge that I could find in one and two judge counties to discuss with them their views on the state of Pennsylvania's judiciary. To say they are appalled by the Supreme Court is an understatement. During the campaign I was endorsed by nine daily newspapers, newspapers as powerful as the Allentown

Morning Call, more endorsements than either Republican Castle or Democrat Nigro received combined! Two other newspapers, the Scranton Times and the Lancaster Intelligencer, while not endorsing any candidate, said that the comprehensive reform package that I had offered was on the right track. The nine newspapers that endorsed me didn't endorse me because I am such a great guy - it's because of what I am advocating. I have practiced law in the Commonwealth of Pennsylvania for thirty-four years and been an A-rated lawyer by Martindale Hubbell for more than twenty years. I have been either Solicitor for or Special Counsel to over twenty municipalities in this Commonwealth, mostly involving litigation in our court system. Humbly, I suggest to you that I know what I am talking about when it comes to the Pennsylvania court system and the following are my thoughts for correcting many of the problems which are obvious and correctable.

In 1983, while a member of the Judicial Inquiry and Review Board, I voted to remove Justice Larsen from office for numerous violations of the Code of Judicial Conduct including political activity and racism. Justice Larsen retaliated by seeking to have me disbarred at the hands of the Disciplinary Board of the Supreme Court of Pennsylvania, a Board appointed and funded by the Supreme Court which maintains oversight re-

sponsibility. He also brought a libel action against me, the Pittsburgh Post Gazette, the Philadelphia Inquirer, etc. Recognizing that something was very wrong, I went to friends in the legislature and pointed out that something very bad was happening - that is - not only was Larsen getting away with egregious misconduct at the hands of a failed Judicial Inquiry and Review Board, he was pursuing with a vengeance someone who had voted his conscience. My friends in the legislature pretended what was happening wasn't going on. I turned to my friends in the judiciary with the same result. Governor Thornburgh, who appointed me and specifically asked me to do what I could to clean up the judiciary in Pennsylvania, was no better than my friends in the legislature and the judiciary. Looking back, the actions of all of these people remind me very much of the story of Tony and Luigi who worked in a factory, side by side, for twenty-five years. In telling the story, I'll have to use a little dialect for emphasis and run the risk that I will offend someone - probably not for using dialect, but because of my inability to use it appropriately. In any event, one day Tony turned to Luigi and he said, "Luigi -the boss - I been noticing he's been leaving an hour early every day for the last month. If he leaves early tomorrow, I'm gonna leave too"! Luigi said to Tony "Tony, don't do it. He says "If you get caught, you'll be in

big trouble". The next day the boss left early and Tony said to Luigi, "There goes the boss, I'm gonna go". So Tony left, followed the usual route home, noticed his front door was open, heard some noise in the bedroom, went up the stairs quietly and saw the boss in bed with his wife. He turned around and went out the door, closing it quietly and went to the local taproom and had a couple of beers until the usual time for him to come home, then he went home. The next day, Luigi said to Tony - "Hey Tony - if the boss leaves early today, you gonna leave again"? Tony responded "No, I almost got caught yesterday".

The bottom line - nobody in authority wants to acknowledge the full extent of the real problems with Pennsylvania's judiciary. The problems were there in 1983 and they're still here in 1994. Let me put it this way. Anybody who accepts at face value that the Rendell administration hastily commandeered an airplane to fly Vince Fumo from the Jersey shore on July 4th weekend to Justice Zappala in Ohio so that Fumo could "make nice" with Zappala is no different than Tony. Now we can all play like Tony and pretend it didn't happen, but all of us in this room probably have the same opinion of what happened and it isn't pretty. There has been a complete lack of ethical standards and indeed rampant corruption on the Supreme Court of Pennsylvania. What are we going to do?

The genesis of the all-too-obvious problems in the Pennsylvania judicial system, spotlighted by the Larsen Impeachment Trial's revelations of Justices accusing justices of fixing cases, chummy relationships between politicians and Justices, Disciplinary Board sleaze, etc is the Constitutional Convention of 1968 which created Article V, the Judiciary Article. That was another era when judges were held to higher standards and we weren't overrun by lawyers crawling all over each other to earn a dollar. The Supreme Court was given unlimited power over a unified court system. Power corrupts and absolute power corrupts absolutely. The Supreme Court has been corrupted by absolute power and Justice Larsen has shown his brethren the way.

There are two separate problems which require your immediate attention. The first is how we select our Appellate Court Justices and Judges. Statewide election of judges just doesn't work. I have run statewide and I can tell you that because judicial elections draw little attention, the public has not the slightest idea who they are voting for. Selection of the candidates is controlled by the political parties in small nominating conventions dominated by the large metropolitan areas and that's why we have a Supreme Court with five justices from Pittsburgh and two from Philadelphia, all of whom have bubbled up through big city political machines

and none of whom have the rock-solid values that are found in the rural areas. I call statewide election of judges cigar store Indian contests because each party gets its cigar store Indian who doesn't say anything and whoever raises the most wampum wins. Of course, the last election makes a liar out of me because even though Vince broke the bank for Nigro, his horse was so lame that he still couldn't get across the finish line. You can change campaign financing and you can change the rules concerning what a judicial candidate can say, but you won't change reality -most voters won't have the slightest idea who they are voting for in an off-year election for statewide judicial office.

Merit selection is dead. For ten years, good government groups have mounted a heroic assault on this legislature trying to convince enough legislators that merit selection is the answer. Barry Kauffman at Common Cause told me after merit selection failed in June in this legislature, that it looked as if the proponents of merit selection were forty votes short. I can tell you right now after talking with a number of legislators, next year it'll be sixty votes. Legislators are not going to vote to take away their constituents' right to vote for what many consider to be an elitist proposition. Rural legislators and their constituents know that they know how to select good judges and they will not

understand the right to vote being taken away from them. It's just not going to happen.

What's the alternative? Last year when I ran for the Supreme Court, the newspapers that endorsed me did so because of the "Surrick Plan for Seven Judicial Districts" and the other reforms which I advocated in a coherent and comprehensive package. Many legislators that I have talked to have told me that regional election of Appellate Court judges is a viable and acceptable alternative to the present method of electing judges statewide or merit selection. It is an idea whose time has come. Here are the essentials.

The keystone of judicial reform in Pennsylvania is regional election of Appellate Court justices and judges. Under the "Surrick Plan for Seven Judicial Districts", the state would be divided into seven judicial districts of approximately equal population along county lines without disturbing the integrity of any county. The Plan shows districts ranging from approximately 1.6 million to 1.8 million. The idea is not proportional representation -it is to create diversity on our Appellate Courts. Stated simply, rural and less urban areas have a right to participate in the Appellate Court selection process. The districts would be subject to realignment every ten years, the same as reapportionment, by the legislature

upon recommendation of a Courts Commission which will be outlined later. Upon the passage of a Constitutional Amendment creating regional Districts, the present malevolent Supreme Court should be abolished upon election of successors. Let's end the hemorrhaging brought about by wilful men who care more about themselves than about the system. I believe the Superior and Commonwealth Courts are best left intact to be replaced by election upon retirement or vacancy according to a schedule to the Constitutional Amendment.

Also, the following three items should be addressed.

1. Retention Election should be abolished. It has proved to be a sham. Research of the records indicates that it is virtually impossible to defeat a sitting judge. Recently a Supreme Court Justice, whose qualifications and ability to serve should have produced a resounding "no" vote was retained. This same Justice was quoted as saying "Retention election is routine".
2. The constitutional age limit of seventy should be abolished. There is no reason why a qualified jurist should not serve past age seventy so long as the jurist is able. Justice Juanita Kidd Stout, who was unceremoniously dumped from the Supreme Court by her bretheren because she didn't do their bidding comes to mind. The creation

of disability procedures which will be addressed hereafter would take care of any problems created by age.

3. Consideration should be given to the creation of Regional Chancery Courts to provide a forum for corporate business matters which require expertise and consideration not presently available in the Courts of Common Pleas. It is suggested that the creation of such a Court would enhance the business climate in the Commonwealth of Pennsylvania

The second area which must be immediately addressed is the absolute power of the Supreme Court which has led to the present low state of affairs. The quality of justice in Pennsylvania has lagged behind the rest of the country because our Supreme Court Justices become enmeshed in activity such as trying to control the Philadelphia court system, negotiating with powerful politicians about pay raises, buying and implementing computer systems, giving themselves disguised pay raises in the form of unvouchered expense accounts, leasing palatial office space, paying law clerks twice what a law clerk for the Supreme Court of the United States makes and so on, ad nauseum, instead of writing scholarly opinions, fostering and enhancing the majesty of the law, defining public policy issues and enhancing public respect based on probity, moral rectitude, and intellectual accomplishment. It's time to end the creation of fiefdoms and

the excesses of the raw exercise of power. This can all happen by restructuring as follows:

4. A Courts Commission should be created under Article VI consisting of representatives from each of the seven judicial districts. This is the cornerstone of limiting the Supreme Court's unlimited power which has caused all of our problems. The Courts Commission, which would have far reaching and independent responsibilities, would consist of twenty-five members selected as follows:

- a. Seven lawyer or judge members appointed by the Supreme Court.
- b. Seven members appointed by the Governor, no more than three of which could be lawyers or judges.
- c. Seven lay persons appointed alternately by the Speaker of the House and the President Pro Tem of the Senate, alternately, so long as they are members of opposite political parties. If of the same party, the ranking minority member of the House or Senate shall select. The twenty-one members of the Courts Commission thereby selected shall pick four other members, two of whom shall be Deans of Law Schools and two of whom shall be Chairs of public service groups such as the League of Women Voters, Common Cause, Pennsylvanians for Modern Courts, etc. The term of each mem-

ber shall be four years and no member shall be removed except for cause. Removal may only be by the appointing authority.

5. The Courts Commission shall oversee the following department:

(a). A Department of Court Administration which shall staff and oversee the administration of all the courts of the Commonwealth.

(b). A Department of Judicial and Attorney Accountability which shall, through fulltime professional Hearing Examiners, consider all charges brought by the Pennsylvania Disciplinary Counsel which proceedings shall be open to the public. A right of appeal shall exist from the decision of the Hearing Examiner to the Courts Commission whose decision shall be final. The Courts Commission may remove a Judge or Justice for violation of the Code of Judicial Conduct or disbar a lawyer for violation of the Rules of Professional Conduct or impose a lesser sanction. A vote of two-thirds of the Courts Commission shall be required for removal of a Justice or Judge, or disbarment of a lawyer with a simple majority of the Courts Commission being sufficient for lesser sanction.

- (c). A Department of Judicial and Attorney Responsibility which shall promulgate and update a Code of Judicial Conduct and Rules of Professional Responsibility.
 - (d). A Department of Judicial Compensation which shall recommend compensation for judges throughout Pennsylvania, which compensation shall be provided for by the legislature, upon request of the Courts Commission.
 - (e). A Department of Audit and Budget which shall, utilizing statewide funding, prepare a budget for each Court for approval by the Courts Commission and audit all expenditures including Justices' and Judges' expense accounts.
 - (f). A Department of Judicial and Attorney Disability which shall monitor the physical and mental health of all lawyers, justices and judges to determine their competence to practice or serve. The Department may recommend to the Courts Commission removal or suspension based upon medical evidence of physical incapacity or mental disability. A two-thirds vote of the Courts Commission shall be required for removal of a justice, judge or lawyer for permanent disability and a majority vote for medical leave.
6. There shall be created under Article VI of the Constitu-

tion the office of Pennsylvania Disciplinary Counsel which shall maintain a presence in each Judicial District. Chief Disciplinary Counsel shall be appointed by the Attorney General of Pennsylvania. Chief Disciplinary Counsel shall have the responsibility for monitoring the conduct of judges, justices and lawyers and shall bring charges, where appropriate, before the Courts Commission. The term of office of the Pennsylvania disciplinary Counsel shall be five years. Disciplinary Counsel shall only be removed by the appointing authority for cause and shall be immune from state judicial process for all official actions.

My conversations with legislators have led me to conclude that most legislators badly want to do something to clean up the judicial mess in Pennsylvania. They won't vote for merit selection. Regional election of Appellate Court Justices and Judges plus the remedial steps which I have recommended to curb the power of the Supreme Court is gaining favor. Many good government and special interest groups that I have talked to have indicated that the program that I am advocating is an acceptable alternative to merit selection if merit selection is indeed a dead issue. I believe the grass roots support that you are seeking for legislation to correct

the Pennsylvania judicial system is there. I believe the media support is there. All it will take is for a Bill to be introduced after the first of the year to amend the Constitution. The Bill is being drafted and will shortly be presented to this Committee with my belief that it will find favor with your colleagues and become part of our Constitution. Thank you for listening.