
Above The Law

The public got a vivid look last week at disclosures in 28 volumes of secret testimony about the conduct of Supreme Court Justice Rolf R. Larsen. But an 18-month Inquirer investigation into the commonwealth's highest court shows far more questionable conduct

than the actions of a single justice. It shows court whose hallmarks are nepotism, politicking, misconduct and conflicts of interest. Here, in the first installment of a three-part series, is the record of a court that has often acted as if it were above the law.

By Daniel R. Biddle
Inquirer Staff Writer

Nine days ago, Pennsylvania Supreme Court Justice Rolf R. Larsen made headlines statewide by voting against the reopening of a state inquiry into his own conduct.

For most Pennsylvanians, Larsen's participation in the 5-2 court vote was a rare and graphic glimpse of conflict of interest at the highest level of the state judiciary.

In fact, it was not an isolated instance. For the Pennsylvania Supreme Court, it was business as usual.

That is the way the state Supreme Court works.

Some justices routinely participate in cases in which their friends or associates have an interest.

They routinely ignore judicial canons of ethics meant to regulate their conduct.

They routinely engage in politicking, influence-peddling and favoritism and exhibit a head-in-the-sand attitude toward policing themselves and the rest of the state court system.

Indeed, the court, which is charged with setting and enforcing standards not just for itself but for the state's entire court system, does not adhere even to minimum

standards governing conflict of interest.

All this was made clear in the course of an 18-month Inquirer investigation into the court itself and the statewide court system it administers.

The Inquirer has reviewed thousands of pages of case records, examined expense vouchers, court payrolls and campaign finance reports, interviewed former law clerks at length, and has obtained some of the justices' unpublished internal correspondence. In addition, it has interviewed hundreds of lawyers, litigants, court employees, prosecutors, judges, local and state officials and Supreme Court justices past and present. It has found that:

- Justices and their appointees commonly and repeatedly undermine the court's own code of conduct, which explicitly prohibits political maneuvering, favor-swapping, impropriety and even the appearance of impropriety.

- In the area of court administration, the seven justices preside over a system replete with nepotism, political patronage and uncontrolled spending.

- The justices have acquired, in recent years, a growing taste for personal luxury. They walk on \$7,000 carpeting and sit on \$2,000 chairs. Many of them rent palatial office

suites, some of which cost the people of Pennsylvania \$40,000, \$50,000 or even \$60,000 a year in rents.

- The justices have refused to set rules, limits or guidelines for their own hiring and spending. They enjoy unaudited travel allowances of \$15,600 a year — paid by the taxpayers — for expenses that are not reported, documented or audited by anyone. They hire employees who go unlisted on any state payroll. They have used some of those employees for anything from political campaigning to grocery shopping, and no one has called them to account.

In short, the court that shapes and interprets Pennsylvania's law has often acted as if it were above the law.

The Larsen vote nine days ago, and the subsequent publication of excerpts of testimony taken in the secret 28-month state investigation into Larsen's actions revealed not just conflict of interest, but also accounts of political maneuvering, racial bias, favor-swapping and allegations of impropriety.

The Inquirer's own investigation makes clear that those revelations were but the tip of an iceberg.

Nowhere is this clearer than in the dramatic gap between the law and the actions of the court.
(See COURT on 20-A)

COURT, from 1-A

tween the ethical standards of the judicial profession — including the Supreme Court's own written rules — and the court's actual practices.

Ethical standard: The Pennsylvania Code of Judicial Conduct says a judge should be unbiased in his judgments, unswayed by "partisan interests" or by "family, social or other relationships," and should act so as to promote "public confidence in the integrity and impartiality of the judiciary."

Actual practice: Some justices have voted in cases brought by lawyers who served as their campaign treasurers, fund-raisers or major campaign contributors. In many cases, they have voted in those lawyers' favor. Some have cast votes that favored their personal friends in cases brought before the court.

Ethical standard: Pennsylvania's Code of Judicial Conduct requires a judge to "disqualify himself in a proceeding in which his impartiality might reasonably be questioned."

Actual practice: Justices make it a point to almost never question each others' conflicts of interest, no matter how blatant. This unwritten but ironclad rule is so revered by the justices that they have a name for it: They call it the "rule of conscience."

Ethical standard: A good judge "should come to the court by fair means, beholden to no one — not to the governor, or to the legislature, or to trial lawyers, or any special interest group." That statement appeared last spring, in an article written by Chief Justice Samuel J. Roberts in the Institute of Judicial Administration Report.

Actual practice: Many of the biggest donations to the justices' election campaigns come from lawyers who have brought major cases to the Supreme Court for judgment. Some lawyers say they feel obliged to contribute to these campaigns, not necessarily because they think the candidate is well-qualified, but out of fear — fear that their clients might be at a disadvantage if they did not give.

Some lawyers and law firms make an art of campaign giving. Some give simultaneously to two or three or four candidates in the same race. Some wait until after the election and then send money to the winner.

Ethical standard: The state constitution makes the Supreme Court solely responsible for policing the ethics of every judge in Pennsylvania, from the humblest traffic court to the highest courts of appeal — 929 judges and magistrates in all.

Actual practice: The court allocates the skimpiest of resources to this important task. Its Judicial Inquiry and Review Board is so ill-equipped that one lawyer calls it a "toothless tiger." The review board has no chief prosecutor and only two investigators for the entire state. The state of New York, by contrast, has more than 30 lawyers and investigators.

Ethical standard: The court is constitutionally required to root out and punish misconduct among the state's 29,489 lawyers.

Actual practice: Some of the court's disciplinary actions convinced some attorneys that an errant lawyer stands a better chance of escaping punishment if the lawyer has political connections or knows one of the justices personally.

Ethical standard: The court and its judicial review board are supposed to make sure the court system hires its employees "only on the basis of merit, avoiding favoritism," as the code of conduct requires.

Actual practice: Nepotism, favoritism and political patronage are openly practiced and cheerfully tolerated at nearly every level of the system. Supreme Court justices and other judges hire relatives, campaign workers, and the friends, relatives and business associates of their campaign donors and political allies. Instead of rooting out these practices, high-ranking members of the court's review board have been among the most flagrant practitioners.

Some of the justices openly defend such hiring. One is Justice James T. McDermott, who, when asked about it in a recent interview, smiled and said: "Nepotism will never die."

Ethical standard: The American Bar Association's model code of conduct says that judges should always disclose any financial or personal interests they may have in a case that comes before them.

Actual practice: The Pennsylvania court does not require its members to disclose any financial ties, personal gifts, business relationships, personal relationships or other potential conflicts of interest in Supreme Court cases.

Often, when a justice's official actions favor a business associate, close friend, campaign treasurer or financial contributor, no trace of it appears in the public record.

Here are some of the cases *The Inquirer* has studied in detail:

The Coal Case

Late in 1980, at the request of Pennsylvania coal companies, Commonwealth Court Judge James C. Crumlish Jr. ordered the state to wait a full year before seeking federal approval of new environmental regulations.

The Department of Environmental Resources (DER) and some environmental groups appealed to the state Supreme Court and asked for an immediate hearing because of an imminent danger of mine fires, water pollution and other hazards.

The coal industry opposed an expedited hearing. The new regulations were so restrictive, the industry said, that they might put some coal companies out of business.

It was a tough legal battle, with
(Continued on next page)

Continued from preceding page
strong arguments and strong feelings on both sides.

The Supreme Court refused DER's request for an expedited hearing. In fact, it did not hold the hearing until more than a year later, in March 1982 — by which time the original injunction had expired. The high court then ruled, 6-1, that the issue had become moot in the interim.

That is not all that had happened in the interim.

In that one-year interval:

• Justice Robert N. C. Nix Jr., who was facing re-election, got a \$5,000 campaign contribution from Harry A. Kalish, a senior partner in Dilworth Paxson Kalish & Kauffman — one of the two big law firms representing coal companies in the pending case. It was the largest individual donation Nix' campaign received. He later got an additional \$1,000 from the Dilworth firm.

• Kalish personally worked as one of Nix' key fund-raisers. Another Nix fund-raiser, retired city judge Nochem S. Winnet, said that Kalish had often met with Nix and other campaign aides — sometimes in Nix' Supreme Court chambers — to plan strategy and line up financial support.

• William D. Hutchinson received \$3,100 from the Dilworth Paxson firm in his successful campaign for the Supreme Court.

• Hutchinson also got \$2,000 in campaign donations from coal operator Ray S. Walker and his wife. Walker was then board chairman of Bradford Coal Co., a prominent member of the Pennsylvania Coal Mining Association — the industry group that Dilworth Paxson represented in the pending Supreme Court case.

• James T. McDermott received a total of \$6,100 from Dilworth Paxson lawyers in his successful Supreme Court campaign.

• About three months before the coal-case hearing, Justice-elect McDermott went for a daylong tour of the coal region of Schuylkill County, riding in a white Lincoln Continental limousine driven by a uniformed chauffeur. His host for the day was his friend John M. Elliott, who is a Dilworth Paxson lawyer, and whose brother, Thomas J. Elliott, was one of four Dilworth Paxson lawyers handling the coal case before the Supreme Court.

In a recent interview, McDermott said the trip included a visit to an active strip mine near Pottsville "to see how coal was mined from the surface" and to hear a mine operator explain the process.

The environmental impact of strip-mining was an important issue in the pending Supreme Court case.

John Elliott provided the limousine and the chauffeur, McDermott said. (The car and driver came from Luxury Limousine Ltd. of Philadelphia. A spokesman for the state Public Utilities Commission, which regulates the limousine industry, said the company's records showed the trip cost \$472.50.)

McDermott was accompanied on the trip by Superior Court Judge-elect Stephen J. McEwen Jr. and by Inquirer columnist Tom Fox, who is a friend of McDermott's. McDermott said the group also visited an old mine shaft and listened to their host, Elliott, tell stories of coal-mining history.

On March 1 of last year — three months after the limousine trip and 3½ months after the lower-court injunction had expired — the justices finally heard arguments in the case.

On April 22, the court ruled that the issue had become moot, with Nix, Hutchinson and McDermott all voting with the six-man majority. Nix wrote the majority opinion.

"These appeals must be dismissed for mootness," Nix wrote, because the lower-court injunction had expired on the previous Nov. 26. "No purpose is presently served by passing upon the legitimacy of orders that at this point have no legal force and effect."

Nix failed to note that his own court had caused the "mootness."

That point was not lost on Douglas R. Blazey, the chief DER counsel. Though reluctant to lay blame on the justices, Blazey said in a May 1982 interview: "If they'd heard it earlier, it would not have been moot."

Kalish confirmed, in an interview in February, that he was a key fundraiser for Nix in the 1981 campaign. He said only one other man, Nochem Winnet, had done as much as he had to collect lawyers' donations for Nix. Kalish said that he and Winnet were "sort of chairmen" of lawyer fundraising for Nix.

In a March 4 interview, Nix also said that Kalish had been "most supportive" in the campaign and had been one of perhaps a half-dozen top fund-raisers. However, when the issue of the coal case was raised, Nix began to minimize Kalish's campaigning, saying it "was comparable to the role played by many, many other individuals in the state."

Nix also said that he was unaware of Kalish's own \$5,000 campaign donation, which was the largest donation from an individual listed on Nix' campaign reports.

At any rate, Nix contended that none of this cast doubt on his impartiality when ruling in favor of the coal companies represented by Kalish's law firm.

McDermott had a similar attitude about his role in the case. He contended that his close friendship with lawyer John Elliott, his campaign funds from the Dilworth Paxson firm and his coal-country limousine ride constituted no impropriety, nor even the appearance of impropriety. Justice Hutchinson was traveling last week and repeated attempts to reach him for comment on the case were unsuccessful.

In an interview, lawyer Elliott said "I think I was the one who made the arrangement for the car," but he said he had "no specific recollection" of visiting a strip mine and insisted that the limousine trip was not improper.

But Patrick C. McGinley, one lawyer who represented the environmental groups in the dispute, did not see it that way at all. He was furious when, long after his clients' case had been lost, he learned about the donations made by the coal companies' attorneys.

"Incredible!" McGinley said, his voice rising in anger. "How can they accept that? Talk about a conflict of interest! I mean, I'm a lawyer. Think of how it appears to clients: Three of

the judges got thousands of campaign dollars from the people we're against!"

The Filbert Partnership Case

On the day following the coal decision, the Dilworth Paxson law firm brought another case to the Supreme Court.

This time Nix' campaign contributor and fund-raiser, Harry Kalish, had a more personal interest. He was the leading attorney for a group of 14 building owners, of whom his wife, Ada, was the largest shareholder.

According to records of the 1301 Filbert Limited Partnership, Ada Kalish owned 25.7 percent of the old Essex Hotel building at 1301 Filbert St. in Philadelphia. Harry Kalish had also helped to finance the partnership and had negotiated with city officials in its behalf, according to city records.

On April 22, Kalish, John Elliott and two other Dilworth Paxson lawyers asked the Supreme Court to hear an appeal of the partnership's suit against the City of Philadelphia. The partners contended that their building had, in effect, been condemned by the city's plans to excavate a gaping hole for the Center City Commuter Tunnel in front of the building's entrance. Two lower courts had rejected the suit.

The partners said the tunnel project had spoiled their plan to reopen a hotel in the building, because it had driven away potential lenders and "destroyed the hotel's commercial viability."

The city countered that the hotel's money problems were not caused by the tunnel plans, but by unforeseen renovation costs and by the partnership's own management practices.

The Supreme Court denied the Filbert petition in November 1982. But one justice wrote a report urging his colleagues to grant a hearing for Harry Kalish's appeal.

That justice was Robert Nix.

And another justice, by his own account, supported Nix' report. That was James McDermott.

Deputy City Solicitor Marjorie Stern Jacobs, who represented the city, said she had been unaware of Nix' support for Kalish's side of the case. This was because Nix had voiced his support in an allocatur report — a type of report that the court keeps confidential.

Nor was Jacobs aware of Kalish's role in Nix' 1981 campaign. She only found out much later, when a reporter told her.

"That's interesting. . . . That is interesting," Jacobs said when the Nix-Kalish relationship was described to her.

Jacobs then stressed that she had no reason to think that any impropriety had occurred in the Filbert case.

Still, had she known that Kalish had raised campaign funds for Nix and had himself donated \$5,000, she said she would have at least reported it to her superiors, to consider whether the city should seek Nix' recusal from the case. As it was, she was never given that opportunity.

Kalish, in a February interview, said he had campaigned for Nix because he viewed him as "an excellent jurist," and that his campaign work and his \$5,000 donation had no bearing on Nix' votes in any Supreme Court cases brought by Kalish or his law firm.

"I just don't think it amounts to a row of pins," Kalish said.

As in the coal case, Nix asserted

that he had acted properly in urging a hearing for Kalish's *Filbert* appeal.

He said he was unaware that Kalish was listed as the first of four Dilworth Paxson lawyers on the *Filbert* Supreme Court brief, and that he was also unaware of Ada Kalish's financial interest in the case.

Had he known of Ada Kalish's interest in the case, Nix said, "I would have just not interjected myself in it."

McDermott confirmed that he was close to John Elliott, the Dilworth lawyer whose name accompanied Kalish's on the *Filbert* petition.

"John Elliott is a great friend of mine," McDermott said.

He contended that the friendship, the \$6,000 in campaign donations from Elliott's law firm and Elliott's hosting of the Schuylkill County limousine trip did not create grounds for McDermott to disqualify himself in either the *Filbert* case or the coal case.

"I'm not for sale," McDermott said.

He did agree that the combination of circumstances — the Elliott friendship, the limousine trip and the campaign money — might make an opposing lawyer question McDermott's impartiality.

"You have a point, that somebody could feel uncomfortable with that," McDermott said. "But there's really no basis for it."

The Mrs. Paul's Case

More than two years ago, newspaper stories first reported allegations that Justice Rolf R. Larsen had used his position as a justice for partisan political purposes.

Larsen had tried to help certain candidates win election to the Supreme Court. He had also plotted, unsuccessfully, to defeat Nix in Nix' 1981 retention campaign, the stories said, and had used the prestige of his office to seek important government jobs for friends.

Because the state Code of Judicial Conduct prohibits political partisanship by a judge, the Judicial Inquiry and Review Board launched the investigation that concluded on May 5.

From December 1980 until the inquiry ended this month, the Philadelphia law firm of Blank Rome Comisky & McCauley defended Larsen against these allegations.

One of the firm's senior partners, Marvin Comisky, was Larsen's principal attorney in that case.

Larsen also has previous ties to the Blank Rome firm. Some of its lawyers and their wives contributed \$5,000 to Larsen's 1977 Supreme Court campaign.

When the Blank Rome firm brought a case before the Supreme Court in 1981, the Philadelphia District Attorney's Office asked Larsen to recuse himself, citing the fact that the law firm was defending Larsen in the review board case.

Instead, Larsen became deeply involved. Ultimately, his actions had the effect of thwarting the wishes of the court's majority and keeping Blank Rome's client from facing the threat of jail.

The client was David Bohannon, an official of Mrs. Paul's Kitchens Inc., the Philadelphia food-processing firm. A Philadelphia grand jury wanted to question Bohannon and two other Mrs. Paul's officials. Someone had tampered with a special bottle used to measure the waste that the company's Manayunk plant dumped into the Schuylkill. By doctoring the bottle, prosecutors said, Mrs. Paul's had avoided paying about

\$250,000 in city sewage fees.

In early 1981, Philadelphia prosecutors had succeeded in convicting some of the company's officials and indicting others. The company later pleaded guilty to the tampering charge, in a plea bargain.

But the prosecutors had hoped for more. They had hoped, by working their way up a chain of responsibility, to find out whether the tampering was ordered by a top-level company official.

The chain broke when Bohannon and two other mid-level officials already under indictment refused to testify to the grand jury, citing their Fifth Amendment rights against self-incrimination.

To gain their testimony, the prosecution granted them immunity, but the three still refused to talk. The presiding judge ordered them jailed, either until they answered the grand jury's questions or until the grand jury's term expired on May 31, whichever came first.

In April, the three Mrs. Paul's officials appealed to the Supreme Court. Bohannon was represented by a team of Blank Rome lawyers that included Comisky — who was then and is now Larsen's attorney.

By this time, District Attorney Edward G. Rendell had formally asked Larsen to recuse himself.

Larsen had refused.

The grand-jury dispute was argued on April 21, with five of the seven justices participating. (Chief Justice Henry X. O'Brien was ill and Justice Bruce W. Kauffman had recused himself because his law firm represented Mrs. Paul's in other cases.)

By the end of April, internal court records show, four of the five participating justices — all except Larsen — wanted to affirm the contempt order against Bohannon and a sec-

ond company official, plant manager Richard Wolf, but not against the third official, former plant superintendent Richard Drapeczuk.

Thus, the majority believed, Bohannon and Wolf should be jailed until they testified or until the grand jury's term expired on May 31.

Everyone knew the grand jury's expiration date was near. "It was made absolutely clear in oral arguments that our backs [were] against the wall," said Howell Rosenberg, who was then the chief of special investigations in the Philadelphia District Attorney's Office. But, by early May, the court had not officially acted.

Weeks passed.

The court did nothing.

While it delayed, the grand jury in Philadelphia was helpless to compel the Mrs. Paul's officials to testify.

May 31 arrived. The grand jury's term ended. Still the court did nothing.

In a final, written report, the grand jurors berated the Supreme Court for failing to act:

"As a result," the jurors wrote, "our investigative goal has been totally frustrated. It is clear at this point that the Grand Jury will not be able to learn from the three witnesses whether or not they were directly ordered to engage in the tampering scheme . . . by their superiors at Mrs. Paul's Kitchens."

Why had the justices delayed?

According to court officials and internal records, the principal cause for delay was Larsen.

Larsen was writing dissenting opinions in the cases of Bohannon and Wolf. In Richard Drapeczuk's case, he was writing the court's majority opinion.

Larsen took more than seven

(Continued on next page)

Continued from preceding page
weeks to write those opinions. By not filing the opinions until June 1 — more than two weeks after the grand jury disbanded — Larsen had prevented the Supreme Court from compelling Bohannon, a Blank Rome client, to testify or go to jail.

That was not the end of it. For on June 17, according to internal court records, Larsen filed what seemed to be a majority opinion, reversing all three of the contempt orders. He had only been assigned to write the court's decision on Drapczuk, but instead — using the "we" voice reserved for majority opinions — he had written an opinion reversing the contempt orders against all three men.

Larsen's "majority opinion" needed other justices' approval before it could become official. But the majority had never wanted to free Bohannon or Wolf; the other justices rejected the Larsen opinion. Finally, on July 31, the court ruled that all three witnesses were in contempt. Larsen dissented.

By then, of course, it hardly mattered. The grand jury had been out of existence for two full months.

The Inquirer made repeated requests to interview Larsen about this and other Supreme Court cases. On March 7, his attorney, Comisky, responded: "I checked with Justice Larsen. The two of us decided that it was not appropriate to give any interview at the moment ... on any subject."

Former prosecutor Rosenberg told a reporter that, of all the white-collar-crime cases his office had handled in recent years, "Mrs. Paul's was the only live one that was totally slaughtered by the appellate process ... At first blush," Rosenberg said, "it looks like Justice Larsen, who we asked to recuse because he is represented by Mr. Comisky, was solely responsible for the outcome. ... It's like he's thumbing his nose at everyone."

Rosenberg also blamed the other justices, for letting Larsen delay so long. "There was absolutely no reason in the world for the rest of the court to wait," he said.

There are rules about conflict of interest in Pennsylvania, as in many other states. The Pennsylvania Code of Judicial Conduct tells a judge when to "recuse," or withdraw from participation in a case.

But in Pennsylvania, if a Supreme Court justice acts in favor of his friend, campaign treasurer, business partner or a major campaign contributor, it almost always goes unchallenged by the other justices.

The Inquirer asked several justices and former justices why this was so.

All had the same answer — "the rule of conscience."

According to this unwritten but ironclad rule, no justice questions or protests another justice's participation in a case — even if he perceives an obvious conflict of interest.

Justices Nix and McDermott broke with that tradition in a sharp dissent to the May 6 ruling to block reopening of the Larsen investigation. They accused Larsen of "deliberate and callous disregard" for the state Constitution by voting in that case.

Before that, Nix and McDermott could only recall a single case where the rule had not been observed. McDermott had recently written an opinion in which he criticized Justice Hutchinson's vote on an issue, because that issue had been before the General Assembly when Hutchinson was a state representative.

Bruce W. Kauffman, who served on the court from February 1980 to Jan-

uary 1982, said he could remember no instance in which any justice made an exception to the unwritten rule.

This was so, he said, even when a litigant formally petitioned one of the justices to disqualify himself.

"I approve of the conscience rule," Kauffman said. "... you could tell me that your mother and father are appearing in front of you. ... For me to turn around and say, 'You should not have participated,' would not be fair."

If one of the justices actually took part in a decision directly involving his own parents or children, Kauffman was asked, would the other justices make no protest at all?

He answered: "I would guess that that's probably what would happen."

Kauffman added that he had faith in the court's members.

"Any system can be abused by an unscrupulous individual, no matter how good the rules are," he said. "I would like to presume that judges are honest, decent people and when in doubt will recuse themselves."

But another former justice, Roy Wilkinson Jr., who filled a vacancy on the court from April 1981 to January 1982, saw an obvious problem with the unwritten "rule of conscience."

"The man with no conscience is the one you don't want to sit on a case. It's just absolutely the wrong way. ... It's the court's responsibility" to enforce ethical standards for its own members, Wilkinson said. "They can't hide behind [the rule] ..."

According to the Code of Judicial Conduct, judges *must* recuse themselves in any case in which they have "a substantial financial interest." But the Supreme Court renders this rule almost unenforceable, not only by observing the "rule of conscience" but also by failing to require financial disclosure.

All federal judges, including members of the U.S. Supreme Court, are annually required to disclose their finances in great detail. According to several surveys by national judicial organizations, at least 35 states also require some form of financial disclosure by judges.

Pennsylvania does not.

Consequently, litigants, lawyers and taxpayers have no readily available way to know when a Pennsylvania judge has a financial conflict.

The State Ethics Act, passed in 1978, required state officials to disclose their finances, and two of the Supreme Court justices — Nix and Hutchinson — have in fact filed voluntarily with the state Ethics Commission.

However, in April 1981 the Commonwealth Court ruled that the Ethics Act does not apply to judges.

The state Ethics Commission immediately appealed that ruling to the Supreme Court. But now, two years later, the Supreme Court has still not ruled.

Meanwhile, the ruling of the lower court stands, exempting all Pennsylvania judges from the ethics law.

Even without an ethics law, the Supreme Court could, by the stroke of a pen, adopt its own rule to require financial disclosure for judges — but it has not.

By definition, the idea of a conflict of interest goes beyond the realm of personal finances.

Maurice Rosenberg, a Columbia University law professor who has written extensively about judicial conduct, says: "Conflict of interest has to do with more than money. It has to do with social acquaintances,

with professional camaraderie, with political indebtedness. It's stuff like that that ought to be put in the open and brought under control."

To some degree, the Pennsylvania code of conduct recognizes this. The code states that a judge should not participate in any case "in which his impartiality might reasonably be questioned." It specifies that these conflicts of interest are "not limited to" family and money ties.

The American Bar Association's Standing Committee on Ethics and Professional Responsibility issued an informal opinion in August 1981 stating that a judge should withdraw from any case "in which a litigant is represented by a judge's own attorney."

This was exactly the situation in the *Mrs. Paul's* case, where a litigant was represented by Larsen's attorney.

In the view of Frank Greenberg, a former member of Illinois' judicial review board and an outspoken commentator on judicial conduct, judges should also disqualify themselves from any case involving the judge's campaign treasurer or a major campaign contributor.

"I don't even think that's a borderline [case]," Greenberg told *The Inquirer*. "You have the doctrine of avoiding the appearance of impropriety."

Some lawyers say that the legal system suffers every time a judge fails to disclose a conflict of interest or acts in favor of a personal associate, in cases like those cited here.

"Lawyers are constantly on the alert for [their own] conflicts of interest," said H. David Rothman, a Pittsburgh criminal defense lawyer who has practiced in Pennsylvania for 25 years. "We get reamed out regularly if we violate the rules. . . . Judges should not be held to any less of a standard. They should be held to a *greater* standard. They're the ones who make the ultimate decisions. . . ."

"Our Supreme Court has been a disgrace," says Montgomery County Court Judge Anthony Scirica. "It should stand for the integrity of the judicial system . . . [but] it's been so political in the last few years. You can write good opinions, get decisions out promptly, but if the public distrusts it, you simply undermine the whole linchpin of the judicial system. And I think that's where we're at."

Some of the Supreme Court justices' actions even seem at odds with the views of their own staff members.

Mary E. Groff, a part-time staff lawyer for the court's Judicial Inquiry and Review Board, told *The Inquirer* that the Code of Judicial Conduct

makes it improper for a judge to hold campaign meetings in his chambers — as Nix has done, according to two of his key campaign supporters. In her comments, Groff was responding to general questions that included no specific reference to Nix.

And Richard E. McDevitt, who as executive director is the review board's top full-time official, has said he believes a judge should disqualify himself from a case if his campaign received a "substantial" contribution — such as \$1,000 or more — from a lawyer involved in the case.

McDevitt stressed that this was his informal opinion and was not directed at any particular judge or case.

"If you had (in court) some big contributor or somebody who was active in the campaign," he said, "I think you should offer to recuse yourself."

Burger vs. Ford and Brancati

In 1978, one of Justice Rolf Larsen's real-estate partners brought a case before the Supreme Court.

The real-estate partner was August C. Damian. He was also part-time solicitor for the township of Penn Hills, near Pittsburgh.

The case had arisen from a political squabble in which the township manager, Charles Burger, sought an injunction to prevent his own firing. As solicitor, Damian represented Mayor John W. Ford and Council member Amedeo N. Brancati, who were trying to prevent the injunction.

This was not one of those cases where the court dragged its feet before making a decision. It heard arguments on Sept. 26, and on Oct. 16 it ruled, unanimously.

Larsen's real-estate partner, Damian, won the case.

According to court records, Larsen participated in every phase of the decision, including the final vote.

How close, personally and financially, were Damian and Larsen?

Were they close enough, in the words of the state's Code of Judicial Conduct, that Larsen's "impartiality might reasonably be questioned"?

This is how close they were:

In 1974, Larsen, Damian and Damian's wife, Clema, bought three pieces of real estate in Pittsburgh's Bellevue suburb. They paid a total of \$144,000, according to Allegheny County records.

The three continued as real-estate partners after Larsen's election to the court in 1977, and their investment grew in value. By 1982, according to county records, the Bellevue properties — including an apartment complex and a three-story town-house building — had an estimated total market value of more than \$1.3 million.

(Damian has not responded to The Inquirer's requests for an interview. Larsen has declined to be interviewed.)

As later became clear, Larsen and Damian were also close politically. In 1980 Larsen telephoned the new mayor of Penn Hills to urge that Damian be kept on as town solicitor.

The new mayor, Phyllis T. Kernick, gave confidential testimony, under oath, before the Judicial Inquiry and

Review Board. She also talked to The Inquirer about her encounter with Larsen.

Kernick had said publicly that she wanted to fire Damian, because he was from an opposing political faction and she considered his fees too high.

She was startled, she said, by "a Supreme Court justice calling a little mayor in a home-rule municipality, asking for some say in who was solicitor."

Pennsylvania's Code of Judicial Conduct contains a provision that a judge "should not lend the prestige of his office to advance the private interests of others."

Yet, according to Kernick, Larsen "asked if I wouldn't consider reappointing Damian" and called him "a fine attorney, well-qualified." Kernick recalled.

Kernick rejected Larsen's advice, although more than a year later she did rehire Damian, in what she said was a trade-off with her local political opposition.

Kernick said that Larsen's phone call stunned her, and that she still worries about the consequences of rejecting his request.

"God help me," Kernick said, "if I ever have to go before the Supreme Court."

By favoring their friends and campaign contributors in certain cases, justices have created the impression that the Supreme Court of Pennsylvania cannot be relied upon to be impartial.

Many lawyers and public officials have told The Inquirer that they, like Phyllis Kernick, were afraid that offending one of the justices would hurt their chances of getting fair treatment from the court.

"One of the things a lawyer can't do is criticize the court. You'd only get me in trouble. Please don't have me critical of them." That assessment came from Douglas R. Blazey, the chief counsel for the Department of Environmental Resources, who helped represent DER in the coal case.

Some had fears but spoke out anyway, saying that the public ought to know about the court's problems.

"Lawyers know. What's really sad is, the public doesn't know," said Howell Rosenberg, the former Philadelphia prosecutor who tried to have Larsen recuse himself in the *Mrs. Paul's* case.

Former Justice Thomas W. Pomeroy Jr., who served on the Supreme Court from 1968 to 1978, provided an insider's view of the court's reputation. Pomeroy said he had been surprised at the way politicians approached him for favors when he was on the bench.

By all accounts, Pomeroy was not the sort of justice who encouraged such behavior. He had a reputation for working hard, shunning the perquisites of office and staying out of politics.

Even so, Pomeroy said, he was approached "by people who thought I ought to use my influence in a particular way. I resented it heavily."

"These people were Republicans and I am, at least nominally, a Republican. They were quite brash about it. They didn't say I owed it to them, but said, 'This case is up this week, or next week, or whatever. ...'"

It didn't happen often, Pomeroy said. But there was something else that troubled him: "They expected it."

Although many lawyers and government officials deplore the court's reputation for political favoritism, a few seem to exploit it.

The code of conduct says that a judge must not "knowingly permit others to convey the impression that they are in a special position to influence him."

Yet one man even boasts of his ability to curry favor with Supreme Court justices.

Harold Lefcourt is his name.

Lefcourt likes to describe the meeting he had with Justice Nix in Nix' Supreme Court chambers in October 1981.

"These Supreme Court justices, they're as political as anyone else," Lefcourt said in an interview, as he recounted the circumstances of the meeting.

As public-relations director for the Bucks County Commissioners, Lefcourt was interested in a case that was pending before the Supreme Court.

The case concerned whether Lefcourt's bosses, the county commissioners, had the legal power to make deep cuts in the staffs of the Bucks County Common Pleas Court judges, as a money-saving measure.

The Supreme Court heard arguments in the case on Oct. 28, 1981 — six days prior to Nix' retention election.

It was around this time — in late October, Lefcourt recalled, "just before the end of the campaign" — that Lefcourt met with Nix.

"Now here's a judge using his Supreme Court chamber in City Hall for strictly a political ball game," Lefcourt recounted. Lefcourt said he had gotten a phone call from an old acquaintance who asked him to come to Philadelphia for a meeting in Nix' City Hall chambers. The old acquaintance was a senior partner in the Dilworth Paxson law firm, Harry Kalish.

It was the same Harry Kalish who was then contributing many hours of his time and \$5,000 of his money to Nix' campaign, and who would soon receive Nix' support in the case involving Mrs. Kalish's Center City real-estate partnership.

Lefcourt said that Kalish had called him because "I know him since 1952," and because "If you want to know the [Bucks County] political scene ... there's nobody here who knows it like me." Lefcourt also said: "I didn't want to go, but as a favor to him [Kalish], I gotta go."

At the meeting, Lefcourt said, Kalish introduced him to Nix and to another man who, like Kalish, sat through the meeting without saying much: that man was Nochem S. Winnet, the retired city judge whose role in Nix' campaign closely paralleled Kalish's.

Nix asked Lefcourt for campaign help in Bucks County and, without mentioning the pending case by name, assured him that the Supreme Court appreciated the commissioners' "problem" with court payrolls, Lefcourt said.

"Nix says, 'Harold, we know of your problem, and we've already taken

steps ... to eliminate that problem."

According to Lefcourt, Nix then went on to say that the Supreme Court was planning a new system that would put all county court budgets under state control — to "take it out of the commissioners' hands." Lefcourt quoted Nix as saying,

No one mentioned the Bucks County case by name, but at one point, Lefcourt said, Nix referred to the dispute by asserting that the Bucks judges' budget demands included "all kinds of extraneous requests."

Lefcourt said Nix also expressed fears that the Republican politicians in Bucks County might oppose him.

"He said, 'Gee, Hal, I'm worried,'" Lefcourt recalled.

Lefcourt said he offered to mobilize the Pennsylvania State Constables Association on behalf of Nix' campaign. Until the summer of 1981, Lefcourt had been publicity director for the association.

"We could help you statewide," Lefcourt said he told Nix. "We'll get a letter of support for you statewide."

Lefcourt said it took him three days to secure the constable association's endorsement. He mailed out a letter asking some 5,000 Pennsylvania constables to vote for Nix in the retention election. The letter, a copy of which was obtained by The Inquirer, was dated Oct. 30, 1981 — two days after the Supreme Court had heard arguments in the Bucks County case, and four days before Election Day.

The letter said in part:

"Dear Constable: This letter is an urgent plea to your full and active support for the RETENTION of JUSTICE ROBERT N. C. NIX as a member of THE PENNSYLVANIA SUPREME COURT. ...

"It is of utmost importance to the future of the position of the elected and appointed CONSTABLE, that you make every effort to urge your friends and constituents to vote a resounding YES for the RETENTION of JUSTICE ROBERT N. C. NIX."

The letter appeared to be signed by John R. Seib, the constable from Erie who is president of the association.

Seib, in a telephone interview, confirmed that Lefcourt had contacted him in late October about endorsing Nix. But Seib said that Lefcourt was no longer the constables' publicist and was not authorized to sign Seib's name or to send out the letter.

"He (Lefcourt) called and informed me that he had had this meeting with Justice Nix, and told Justice Nix that the constables were behind him," Seib said. "... The insinuation was ... that if we help him (Nix), he'll be there to help us."

Seib said that the endorsement letter distressed him because it seemed to undercut his own efforts to take constables out of politics. "Right away," Seib said, "it looked like we were playing the politics game."

As for the Bucks County commissioners' dispute with the county judges, the Supreme Court later resolved it in what amounted to a compromise. Both the commissioners and the judges said they were reasonably happy with the outcome.

The Supreme Court's decision was unanimous, with Nix voting to concur in the result. (A concurring vote indicates that a justice differs with some part of a decision but supports the outcome.)

The decision was issued in December 1981 — after Nix had been re-elected to a new 10-year term on the court.

Nix has confirmed most of Lefcourt's account — that he met with Lefcourt and sought Lefcourt's political support — and that he knew at the time that Lefcourt had sided with the Bucks commissioners in the case.

"I saw nothing wrong with the discussion," Nix said in a March 4 interview.

The Code of Judicial Conduct says that a judge running for retention, as Nix was in 1981, "should not himself ... solicit publicly stated support."

In campaign guidelines that accompany the code of conduct, the Supreme Court's Judicial Inquiry and Review Board has said: "Political activities must be completely disassociated from the judicial function. ... It is inappropriate for a campaign committee to meet in the Chambers of the candidate."

In a March 4 interview, Nix said he was not sure that the meeting had taken place in his Supreme Court chambers. But Lefcourt, Kalish and Winnet all recalled, in separate interviews, that it did.

Nix also said he was unsure of the time of the meeting, but thought it was in the summer — when the Bucks County Commissioners' case was already pending in the Supreme Court, but well before the case's Oct. 28 Supreme Court hearing.

Lefcourt and Winnet said the meeting was late in October; Kalish said it was "probably not too far from the date of election" — Nov. 3. All three described it as a campaign meeting.

Winnet remembered Nix telling Lefcourt that he was worried about the election. "We dwelled on the fact of his fears," Winnet said. "That was his (Lefcourt's) purpose for being there — to help him."

Kalish said, "Lefcourt was willing to give Nix a hand. He had a lot of political know-how in Bucks County."

Nix said he did not remember mentioning the Bucks commissioners' "problem" or saying anything about the possible outcome of their Supreme Court case.

"There was no discussion of the case, according to my recollection," Nix said.

Nix asserted that the meeting was not really a campaign meeting, but conceded that it could be viewed that way. Asked if the meeting appeared to violate the code of conduct's guidelines, Nix answered, "If

it occurred, it could be argued that it was in conflict, a campaign matter."

Nix confirmed that Lefcourt had offered to get him the support of the constables association. He said he had previously helped the Supreme Court's administrative office draft proposed constable regulations — a few of which were opposed by the constables' group. Nix said he promised nothing to Lefcourt, but voiced concern about "rumblings or stirrings" of anti-Nix sentiment among constables.

"I ... explained my position [regarding] the constables, and it apparently satisfied him," Nix said.

Nix is not Lefcourt's only acquaintance on the Supreme Court. Another is Larsen.

Lefcourt had, by his own account, campaigned enthusiastically for Larsen in 1977, and three years later, the Larsen-Lefcourt acquaintance indirectly saved Lefcourt's job. It came at a time when Lefcourt, a Democrat, was about to be fired by the county commissioners' Republican majority.

Again, the case was the prolonged dispute between the commissioners and the county court judges.

It was New Year's Eve 1980, and the commissioners were in a bind. A judge from a nearby county had been assigned to hear the budget dispute, and had issued an injunction preventing the commissioners from cutting the Bucks County court payroll.

Time was of the essence: The commissioners had to pass their 1981

budget before Jan. 1. With hours to spare, on the afternoon of Dec. 31, 1980, Lefcourt and county solicitor Robert L. White hurried to Superior Court in Philadelphia to try to get the injunction lifted.

They failed. Superior Court Judge Edmund R. Spaeth let the injunction stand.

Then, as Lefcourt recounted it, he and White got on the phone in a frantic effort to find a state Supreme Court justice who would grant them a last-minute hearing.

Again they failed. Lefcourt said that he and White were unable to find a justice who was willing to intercede.

Finally, though, Lefcourt reached Larsen in Florida.

Lefcourt said he explained the commissioners' predicament to Larsen, and that Larsen responded, "That's a crock of s---, Hal. ... You do what I tell you to do."

Lefcourt said that Larsen instructed him and White to tell the Supreme Court prothonotary to record a Larsen order overturning the injunction. As a result, the commissioners were able to pass their budget.

Also as a result, the commissioners ditched their plans to fire Lefcourt. Commissioner Elaine Zettick said publicly that they did so because of Lefcourt's success in getting Larsen to intervene on New Year's Eve.

Asked how he knew Larsen well enough to call him and ask for Supreme Court intervention, Lefcourt said, "I helped him when he ran for Supreme Court. ... The guy was great. ... He came here, I took him to

a luncheon introduced him to people."

Myers vs. PennDOT

For several years, the Ralph Myers Contracting Corp., a western Pennsylvania firm, had argued with the state Department of Transportation (PennDOT) over \$4,517 in interest on a highway-construction contract.

More was at stake than the relatively small amount of money involved. Myers' attorney, Leonard M. Mendelson, said that the issue affected how PennDOT computed the interest on debts to any of its numerous contractors.

"We certainly felt it was a case which was of great public importance," Mendelson said.

The court's record shows that Larsen was among the justices who, on Nov. 11, 1981, voted unanimously in favor of Myers Corp.

The record does not, however, show the fact that Larsen did more than cast a simple vote — that he also wrote a 4½-page confidential report formally urging the rest of the court to hear Myers' appeal. That report, like Nix' report in the *Filbert* case, never became a public record.

Neither does the court record show the fact that Larsen had a conflict of interest.

Mendelson, the attorney for Myers Corp., had been official treasurer of Larsen's 1977 Supreme Court campaign.

Mendelson was also one of Larsen's

biggest campaign donors, having contributed \$2,500 and loaned another \$2,500 to the campaign.

Larsen, furthermore, had been promoting Mendelson's career in the recent past. In testimony to the Judicial Inquiry and Review Board, Larsen has acknowledged urging the White House and a Pittsburgh congressman to consider Mendelson for a U.S. District Court judgeship.

In a February interview, Mendelson was asked if his closeness to Larsen should have made Larsen disqualify himself from *Myers vs. PennDOT*. Mendelson said the state's pending investigation of misconduct charges against Larsen made it "improper for me to respond to that question."

Larsen has declined to be interviewed.

As routinely happens, neither Larsen nor the court as a whole informed either the opposing party or the public that Larsen and Mendelson were closely connected.

Many people in the legal profession say that close relationships between judges and lawyers are inevitable. Some defend the right of lawyers to make sizable donations to a judge's campaign — and then appear in court before that judge.

Philadelphia lawyer Edwin P. Rome said he saw no "invidious inference" in this.

Rome is a senior partner in Blank Rome Comisky & McCauley, the Philadelphia firm that represented Larsen before the inquiry board, and whose lawyers have contributed to

Larsen's campaign, and whose client benefited from Larsen's actions in the Mrs. Paul's case.

"Let's face it," Rome said in a 1981 interview, "we're not living in Utopia."

Justice Nix made a similar argument

"You have to finance a campaign," said Nix, "and the only ones interested in judges' campaigns are primarily lawyers. If you took away lawyers as a source of campaign contributions, you would almost take away a judge's right to finance his candidacy."

Nix made these remarks in an interview on Oct. 16, 1981. This was within two weeks of Nix' meeting with Harry Kalish and Harold Lefcourt, at a time when Lefcourt's employers were awaiting the outcome of an important Supreme Court case. It was also at a time when the coal case was pending, and Nix' campaign, among others, was getting money from Kalish's law firm — the firm representing some of the coal companies.

"You just can't isolate and get the pure kind of influence-free atmosphere that you're trying to get. I think it's impossible to achieve," Nix said. "You have to rely on the integrity of the jurist."