

10 QUESTIONS

for

Justice Seamus P. McCaffery

PENNSYLVANIA SUPREME COURT

INTERVIEW BY JEFF LYONS

Pennsylvania Supreme Court Justice Seamus P. McCaffery's path to the bench was far from typical. He was born in Northern Ireland, and his family moved to Montreal when he was 3 before settling in Philadelphia when he was 5. The 1968 graduate of Cardinal Dougherty High School enlisted in the U.S. Marine Corps just after graduation, and he was on active duty for two years. (He spent a combined 40 years in the Marine Corps, Marine Corps Reserve and Air Force Reserve, retiring as a colonel). On his return to Philadelphia from active duty, he joined the Philadelphia Police Department, serving for nearly 20 years as a beat cop, sergeant and homicide detective. He went to college at night while he was a police officer, earning his B.A. from LaSalle University and his J.D. from Temple. He met his wife, a Harvard-educated attorney, while he was a detective, and she works as his "right hand" in the Supreme Court. Justice McCaffery was elected to the Philadelphia Municipal Court in 1993, and was appointed administrative judge of Municipal Court in 2001. He was elected to the Pennsylvania Superior Court in 2003, and was then elected to the Supreme Court of Pennsylvania in 2007, where he still sits. But he is perhaps best known as the judge on the "Eagles Court" where he dealt with unruly fans arrested during football games at Philadelphia's Veterans Stadium.

JEFF LYONS: How did you end up as judge of Eagles court in the basement of Veterans Stadium during football games?

JUSTICE SEAMUS P. MCCAFFERY: I was approached initially by a city council member. In 1996, I had started the nuisance night court program. I had my regular caseload during the day, and at night I would go to various communities where we would coordinate with law enforcement and do quality-of-life

enforcement. We handled matters such as public urination, disorderly conduct and underage drinking, things along those lines – quality-of-life issues that were really having a negative impact on the community. That program was highly publicized at the time, and my background as a former police officer and former Marine were well known. On some nights, I'd actually ride my Harley Davidson to court. During 1998 – it was the Monday Night Football game against the San Francisco 49ers – there were 60 fistfights

in the stands. That was the evening a guy from Delran, N.J., fired a flare gun. The fan violence had become so disruptive and so embarrassing to the Eagles organization and the City of Philadelphia that I got a phone call from the city council member saying that [Eagles owner] Jeff Lurie and [Eagles team president] Joe Banner would like to meet with me. I met with them at the stadium, and they told me they'd like me to do the same thing there that I was doing on the streets of Philadelphia. It had never been done anywhere. They even said they'd build a



courtroom in the stadium. And that's where we came up with the saying, "Have gavel, will travel."

My work as "the Eagles Court judge" was featured on "Dateline NBC," "Good Morning America," MSNBC, "60 Minutes," "Inside Edition" and "Cold Pizza." As a result of Eagles Court and its ensuing notoriety, Time Warner flew me out to Hollywood and offered me \$1.5 million to do a "Judge Judy"-type of show. Banyan Productions offered me another opportunity to be on television, but, because I had been giving serious consideration to running for the Supreme Court, I declined the offers, deciding I'd rather stay in the public service sector.

Eagles Court was a lot of fun and it served a purpose. One of the interesting facts that came out of Eagles Court was that 95 percent of the people arrested were not from Philadelphia. But Philadelphia was getting broad-brushed as the city with horrible, horrible fans. But when you looked at where the arrestees came from, it was Bucks County, Montgomery County, Delaware County, the state of Delaware and New Jersey. We even had people from as far away as Montana. And we had a U.S. senator's chief of staff! I live in Philadelphia. My sons and their families live in Philadelphia. I'm a Philadelphian, and a proud one at that. Even though I was born in Ireland, I take great pride in this city. And we were just getting constantly bashed by everybody. The bottom line was that while it was Philadelphia fans who were so rowdy, they were not Philadelphians. And it was the city's image that was always suffering. City Council, the Eagles organization, and I all felt that this approach, using Eagles Court to try to cut down on fan violence, a quality of life issue, would go a long way toward improving life in the city and its image as well. Believe it or not, throughout my campaign for Superior Court and my campaign for Supreme Court, people were constantly coming up to me and recognizing me as "the Eagles judge." Today, when people come up to me on the street and say that, I say "not any more!" It's like when Chief Justice Castille still gets people who stop him and ask "Are you still the D.A.?"

Eagles Court still exists, but it's not at Lincoln Financial Field. Court is held at 11th and Wharton Streets in South Philadelphia, and mainly occurs during games against Dallas, the Giants, the Redskins and maybe Oakland. A lot depends on the time of the game.

When you look back at your career, what are your proudest accomplishments?

My commission in the United States Marine Corps, my 40

years in the military, and I guess the proudest moment was being sworn into the Supreme Court with my mother and father present. That was so meaningful because my mother went as far as eighth grade, and my father 10th grade. Both of them were born and raised in Ireland, and of course, I was born in Ireland too. They were there to witness their son literally go from beat cop in Philadelphia all the way to the Supreme Court. And they were there to see me go from a Marine Corps private to retirement as a full colonel. They saw these parallel careers, which made me exceptionally proud. My father died shortly thereafter.

How did you get to be the "gadget guy" of the Pennsylvania Supreme Court?

Years ago, I became really interested in information technology. In 1985, Air Force commanders were brought to a big conference in Atlanta, Ga. We were told by the commanding general that if you were not computer savvy by 1989, you might as well retire. I saw what computers and information technology could do. I'm now one of those people who carries two phones – I have a BlackBerry and an iPhone. I'm the first on our court to bring the iPad to the bench. If you go to a Supreme Court argument, you'll see the justices appear with all of these big three-ring binders. Those are our bench books. In Harrisburg, at our last session, I walked out with the little iPad 2. All my colleagues have since purchased them. We're using technology in ways that no one ever thought of, and I am now looking for new ways to implement technology advances into the First Judicial District via our Reform Initiative.

To me, information technology is money, and by that, I mean savings; we're talking efficiency; we're talking coordination of all assets. A lot of it is going to be, in my opinion, the way of the future for the courts. I have spent a lot of time and effort making sure that we can get as much technology into the court systems as possible. Teleconferencing and videoconferencing are two examples of types of technology which represent a potentially huge cost savings for the court system.

One of the things we're working on is called the citywide AMD Program (Accelerated Misdemeanor Diversion) Program. It allows police officers in all the neighborhoods in Philadelphia and the defendants to meet with social services folks and see if the defendants need mental health care, drug treatment or job training. And a judge will sit in the Criminal Justice Center and be able to hear all these cases via teleconference. We're finding that when a judge can do that, a large cost savings is realized from not having to transport



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prisoners from correctional facilities to the courthouse. It's also a safety issue, so we won't have to worry about judges or magistrates or district judges being alone in some of the places across the state where cases are heard and there is virtually no security in place. Gadgets and information technology are the way of the future. Some of my colleagues aren't even into email, and I'm trying to make them aware of some of the incredible technology options that now exist. I believe in it and I think it's something that's really going to help the courts – not only in Philadelphia, but in the appellate courts and all the courts across Pennsylvania.

Just to explain a bit more – instead of carrying a large bench book or shoulder bags filled with documents, all of the documents I need for our September session will be downloaded to my iPad. So instead of carrying around a large bag, I now not only have my bench memos easily accessible, but I'm also able to access LexisNexis and WestLaw – I can do actual research on my iPad. No matter where I am, in the office or out of the office on the weekends, I can be working all the time, if need be. Every single document I need is on hand, and if something is missing, my staff can just send it right to me. And it's all on a small, easy-to-use iPad.

What's the relationship like between the Supreme Court and the First Judicial District?

There has always been a need for the Supreme Court to have a liaison justice due to the size of the Philadelphia system. One of my colleagues said to me a long time ago that every time he tried to look into what was happening in Philadelphia and the First Judicial District that it was like putting his hand in Jell-O. He said he just couldn't grasp what was going on. I know the court system here better than any other justice, having spent 20 years as a cop here, as well as many years as a trial judge and then the administrative judge of Municipal Court sitting, in which

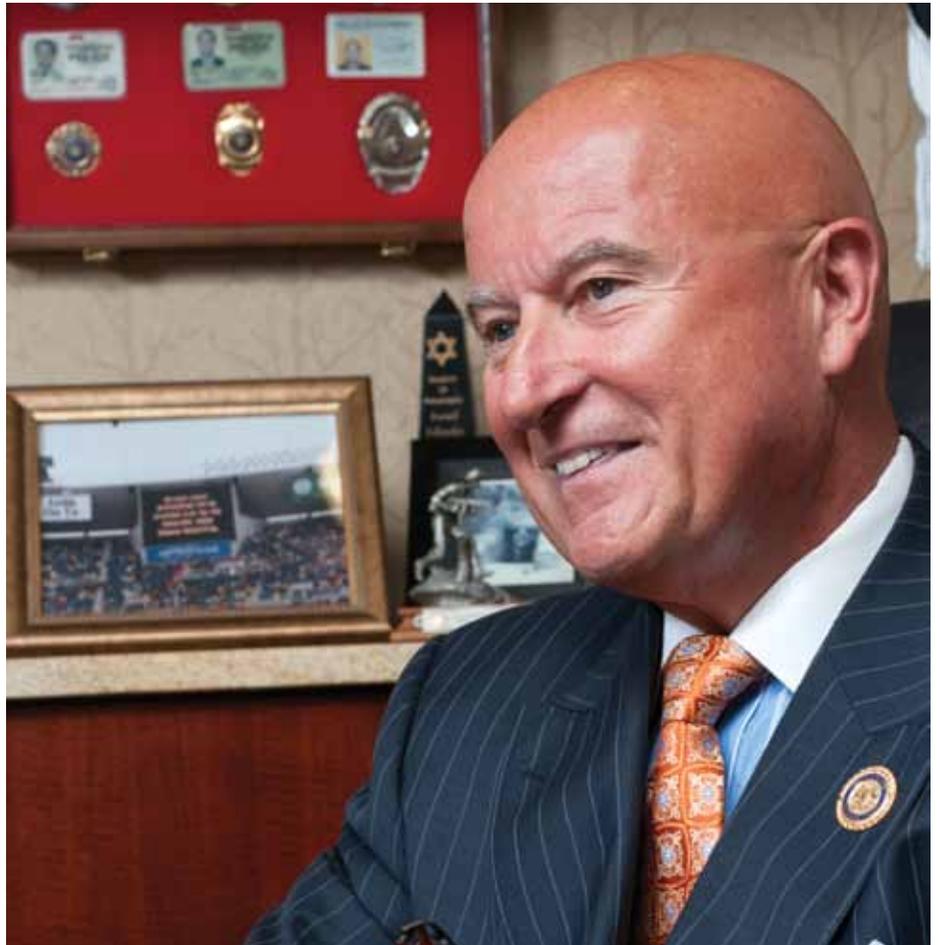
capacity I sat on the Administrative Governing Board. From these various experiences and roles, I have a complete understanding of how the system works. That's why the chief justice assigned me to oversee the Reform Initiative.

What has the reaction been to the Reform Initiative?

When the four-day exposé appeared in *The Philadelphia Inquirer*, there were a great many naysayers, people in the First Judicial District, and elsewhere, who just did not believe that the data was correct. They felt the FJD was being unjustly accused and they felt it was being maligned from outside. And other people, mainly those in both the private defense bar and those from the Defenders Association, felt the system was working well, which is

understandable because the unchecked chaos in the system was resulting in quite beneficial results for their clients.

But the average person on the street, victims, the law enforcement community and everyone else involved, myself included, understood the need for dramatic change. We saw a police department hampered by constraints of the city budget managers who said "we have to cut down on overtime." And to cut down on overtime, the police commissioner ordered all of his officers to go to court on day work. There's a two-prong problem there. One, we had officers who were getting five to 10 court notices a day. Obviously, it is impossible to appear in five or 10 courtrooms in the same day. The result was that maybe five or six of those cases had to be continued because that



officer wasn't in that courtroom. Those continuances meant that the victims had to come back again to court, and cases had to be rescheduled. On average, it costs \$450 per rescheduling. Those monies were being wasted, but the police department was cutting down on overtime.

The second part of that component is public safety. If you have thousands of police officers who are in court, in Center City, at the Criminal Justice Center, that means those hundreds of sectors in the City of Philadelphia are not being patrolled. Years ago, when I was a police officer, the best time for criminal activity was at night, three or four o'clock in the morning when people were sleeping. Now, the best time is daytime because the neighborhoods aren't being patrolled. When I was a police officer, we had 42 police officers at roll call in a squad. Now, during the daytime, there are two or three. You can imagine what happens when you have such a limited number of officers on the street.

A lot of the judges felt that the system was working well, so don't mess with it. We in the Supreme Court understood the status quo could no longer be tolerated. We learned, through Bill Chadwick's investigation, that *The Inquirer's* data was in fact correct. When the chief justice found out that the data was correct, he decided we should do something and do something in a big way to change this big ship. He calls it an ocean liner, and it's a tough proposition to move an ocean liner. But once we were able to show how we were going to make these changes and how they were going to positively affect the citizens, the budget and all the other things, then the judges in the system understood that what we were doing was "not a bad idea." And more and more of them started to understand and appreciate that with the right changes, we could have a much more efficient, fair and cost-effective court system. And that's just what we have found.

What changes are coming to the First Judicial District?

We're starting Phase 2 in September. We're now looking at pre-trial bail issues. I believe that more people are sitting in our jails now, pre-trial, than need to be. People who are poor and can't afford bail are in jail. People who can afford bail are out of jail, but they're more likely to flee than the people in jail who can't afford bail. When you evaluate the system, you say to yourself "we need to look not at an individual's ability to pay, but rather assess whether the individual poses a risk of flight." We're now doing a full evaluation of the system. We've brought in people from Harrisburg and Pittsburgh and professionals from Washington, D.C., for a total evaluation of our pre-trial issues. Passive restraints are going to be used more as we attempt to figure out what system works best. At the end of the day, we want a system here that's going to better predict risk of flight, and thereby cut down on failures to appear and increase the likelihood that the defendants will show up for court.

The next area involves private counsel cases, a program

which is not being adequately funded. We have capital cases, through PCRA or direct appeals, that have to be remanded. If we can find a way to get adequate funding such as to ensure quality representation for those indigent defendants who are not represented by the Defenders Association, then we can secure better representation at the trial level, thus cutting down on the number of appeals and PCRA cases that we are seeing today. It makes a great deal of sense to put the money at the start of the whole process and make sure we have properly paid and properly certified capital counsel so these men and women can represent defendants properly at the trial level.

The other thing we want to find out is why our lawyers are not being paid nearly as much as lawyers in smaller counties. We need a good, solid funding source so the city can ensure that everybody, every indigent person out there, is going to get fair and competent counsel.

The introduction of more advanced information technology is also on our list of things to do in Phase 2.

With the economy being what it is, where do you see that additional funding coming from?

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In Philadelphia alone, we have \$200 million in outstanding uncollected monies. Sen. John Rafferty from Montgomery County and Sen. Mike Stack from Philadelphia County, a Republican and a Democrat, respectively, have come together to introduce legislation to do what they do in Family Court and Traffic Court, namely, they intercept taxes of people who are delinquent in paying the courts and also go after people's drivers' licenses. The reality is that we need some sort of a method to ensure the collection of these monies. The naysayers and skeptics say "you're never going to get all that money back." Of course we're not going to get it all back. But just imagine a percentage -

imagine 50 percent - that's \$100 million. The Pennsylvania Commission on Crime and Delinquency is supposed to get 40 cents on every dollar collected from court fines for payment as compensation to victims of crime. The state legislature understands that this is an unbelievable amount of money that is going uncollected, and they have finally started to say "We need to start collecting." We just cannot ignore this any more. We need the city, i.e. the mayor, the managing director and the deputy mayor to say "OK, we are committed to doing something about collecting these outstanding monies."

In a related matter - you've already seen that we've saved the City of Philadelphia anywhere from \$9 million to \$15 million just via rule changes that have allowed our county jails to send prisoners upstate. That has now opened up a lot of jail cells. The chief justice and I have been talking about addressing the huge failure-to-appear rate in Philadelphia by mandating that, absent a reasonable excuse for not showing up for, you are going to jail. Defendants are put on notice, given a subpoena, and told when and where to show up in the current culture, if you fail to show up for court, virtually nothing happens, and

defendants know it. Soon, if you fail to show up without a good, reasonable explanation – you’re in the hospital, there’s a death in the family or whatever it may be – you’re going to jail. And we think that will send the right message and cut way down on failures to appear, once the word gets out. It’s been proven around the nation. There’s a program out of Hawaii that showed an incredible amount of success. I’m not talking about an exorbitant amount of jail time. I’m talking about maybe a five-day jail sentence. If you fail to appear, you’re going to jail for five days. That will get everyone’s attention and that will get the word out on the street that the court system is not going to be undermined by people who are just ignoring their obligations to come to court.

Hundreds of police forces across the country have adopted a procedure of recording in its entirety, the interrogation of a subject in custody. The Supreme Courts of Minnesota and Alaska have made this a requirement by Supreme Court rule. Although current Pennsylvania law requires the person being interrogated to consent to the recording, would you support a Supreme Court rule in Pennsylvania requiring the interrogation be completely recorded when the person interviewed gives his or her consent?

As a former homicide detective and somebody who worked in organized crime law enforcement, and I’m not speaking for the court, I don’t see a problem requiring that. I actually think that could provide a dual benefit. One, it would cut down on allegations of coercion. But it would also protect police officers who get accused of coercion and/or brutality. I say that because there are many times when police officers are accused of doing things – and I know this for a fact because I was one – and they did not do what they are accused of, but it is a “he said/she said” kind of thing. Filming an interview could be a very positive thing for both defendants and law enforcement. Not speaking for the Supreme Court, I would not be averse to that type of rule.

With your extensive military background, we assume that you would agree that the military justice system treats the defendant in a very fair manner. Under that system, the discovery material provided to the defendant is very extensive. Would you be in favor of criminal discovery rules for defendants in Pennsylvania courts to be as extensive as that under the UCMJ?

I was never a JAG in the military. I was always ground combat. I’m not really familiar with the UCMJ discovery rules, but I am absolutely in favor of full and complete discovery turnover. Through the chief justice’s efforts, we’re in discussions right now with the district attorney’s office about getting more information out to defense counsel, even pre-arraignment. I am in favor of getting as much discovery turned over as possible. The reality is, the defense has a right to know. When a lawyer receives all of the available discovery, they can see what the commonwealth has and have reasonable and reliable conversations with their client to say, basically, “this is what they have. This is a reasonable offer that the commonwealth is making and I am recommending that you take it.”

Under the current system, the defense often doesn’t have all the available information. Now in the federal system, they literally give you discovery during the trial, which I find pretty shocking. But I am really in support of full and complete discovery being turned over as early as reasonable.

What do you do to relax?

Motorcycles, veterans causes, weightlifting, working out. After 40 years in the military, I constantly have to stay in shape – I am committed to continuing that, despite having retired from the military. I’m relatively young on our court – I’m 61 – and I have another nine years left before I am mandated to leave the Supreme Court bench. I have six grandchildren, with whom I love to spend time, and I love motorcycles, the beach and shooting.

I have two Harleys – a 2010 CVO, a beautiful Screaming Eagle, and I have a 2009 Nightster. They’re my two “therapy” bikes. By the way – I’m not the only one on the bench who rides. Justice Baer also has a Harley Davidson. ■

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Justice Seamus P. McCaffery (foreground) and Justice Max Baer prepare for a motorcycle ride near McCaffery’s summer home at the Jersey shore. Photo provided by Justice Seamus P. McCaffery.