

10 QUESTIONS

for

Shelley R. Smith

PHILADELPHIA CITY SOLICITOR

INTERVIEW BY JEFF LYONS

Shelley R. Smith is one of the highest-ranking women in the city. She has the ear of Mayor Michael Nutter and leads the city Law Department. She has represented the city and the mayor's office in more than 60 federal trials and policy matters. She has worked in the Law Department's Corporate & Tax Group, Labor & Employment Unit, Affirmative Litigation Unit and Civil Rights Unit. Smith also served as senior law clerk to former Pennsylvania Supreme Court Chief Justice Robert Nix. She is a former chair of the Philadelphia Bar Association's Commission on Judicial Selection and Retention.

JEFF LYONS: This is your second stint with the City Solicitor's Office. The first time around, you spent a lot of time in the courtroom. Do you miss being in the courtroom?

SHELLEY R. SMITH: Not really. I was a trial lawyer for about 10 years here and I tried close to 70 federal constitutional court cases. The last year I was a trial lawyer here I tried cases virtually back to back over 13 months that were progressively longer each time. By the end of that year I was pretty burned out and I was ready for a change. For a while after that I still tried maybe a case a year, but I was ready for a change. I enjoy what I'm doing now – the management of the office and the policymaking and working with the mayor. The demands of this position wouldn't allow the time for me to try a case even if I had a burning desire to do it – which I don't. I don't miss the pressure or stress of being a trial lawyer.

How many different departments and lawyers are you responsible for?

Our office is divided into three groups – corporate, litigation and health and human services. Across all of those groups are about 165 lawyers. We have a total staff of 325 people.

How often are you in touch with the mayor?

On average, probably once every other day, at least. It goes through phases where we're working on particular issues for him or issues

in which he has a keen interest. The Board of Revision of Taxes (BRT) would be an example of one of those. The dissolution and restructuring of the row offices, the labor negotiations. Those kind of things tend to produce more meetings with him. We have cabinet-like meetings once a week, maybe twice a week. The mayor is a big e-mail person. Everybody who knows him certainly knows that. He has two BlackBerrys. He e-mails frequently. I've known the mayor for a long time and we have a very comfortable relationship in terms of communication. Either one of us will reach out to the other.

How much has your office been involved with everything that's gone on with the BRT?

We've been very involved. Even before any lawsuit was filed, there were legal issues that had to be resolved regarding how the structure of the BRT could be changed, and what would be the consequences for the employees, for example, who were formerly exempt employees who were on the school district's payroll, though their peers in other city agencies were represented civil service employees. We had to sort all of those things out before the ordinance was drafted and passed by





that will, as I said, profoundly and directly impact Philadelphians in the short- and long-term. So the real value of this job is that I have the opportunity to come to work and feel like I'm really making a difference, one way or the other.

Then there's the challenge of the labor negotiations. We really are now, nationally, at a crossroads of balancing public employee benefits and the cost of those benefits to the public those employees serve. Our pension plan is underfunded. Health care costs have steadily risen since defined benefit plans became the de facto standard for our employees nearly 20 years ago. These are critical issues for that Philadelphians, and, frankly, Americans, will have to resolve if local governments are to remain solvent. The financial future of the city, state and country is going to depend on how they shake out. Considering those questions from a macro policy perspective is fascinating and intellectually rewarding for me.

Finally, of course, are the people. I work with fantastic people. The lawyers in this office are so committed to what they do. And to come back

Council. We also consulted with Council – whom we also represent – in the drafting of the ordinance. Then, shortly after it was passed, the members of the BRT filed a lawsuit, so we were responsible for defending the lawsuit.

We have a tax unit that handles all tax matters once they get out of the Department of Revenue. The way that property tax collection works is that the Board of Revisions sends a homeowner a property assessment. If the homeowner had an issue with it, he or she would appeal it to the Board. Assuming at some point it gets to court, we would litigate it on behalf of the city, and of course, the BRT is one of the many city agencies for which we generally provide counsel. If your real estate taxes become delinquent, as millions of dollars of real estate taxes have, then it's our office that's responsible for going after those delinquent taxes. We do some of that collections work ourselves, and we contract with a couple of vendors to split up the work because there are thousands of accounts.

What's the best part about this job?

It's the variety. First of all, the nature of the work that we do for the city is so important. Nearly everything we do makes a profound impact every single day. We joke that we pick up a newspaper every morning to see what we're going to have to deal with all day long. Practically everything that we deal with is front-page news. The issues are complex and they have a direct impact on the community. In my role specifically, I consult with the mayor and the deputy mayors on significant policy issues that again directly impact the citizens every day. The cases we handle are important – civil rights cases like the Fox News officers' alleged brutality, the "stop-and-frisk" case that was recently filed; election issues concerning the rights of disabled or otherwise disenfranchised voters, the legality of Ethics Board fines for campaign violations; the legitimacy of the local gun ordinances; the development of casinos and the new Family Court; the interpretation of local legislation that seeks to level our local economic playing field and to take the politics out of routine city business. Every day, in every matter, we're making decisions

and manage the office where I worked for so long, I'm really very proud of that. I loved working here as a trial lawyer. To come back here and be in charge of this office is very gratifying for me.

Have there been any new developments with DROP (Deferred Retirement Option Plan)?

Councilwoman Marion Tasco, on behalf of the mayor, introduced an ordinance back in September to eliminate the DROP program. We issued an opinion to City Council in October advising them that it was legally possible to eliminate the DROP program. They had questions about the impact on collectively bargained employees and general legal issues about the ability to change pension benefits for existing employees. Now that ordinance is in Council and has been referred to committee. The committee will hold one or more hearings and then it'll recommend it out of committee or not with whatever recommendation it deems appropriate. Council, which has a representative on the pension board, recognizes that something has to be done about DROP because it's very expensive. I think they wrestle with the problem that the existing ordinance does not preclude elected officials from taking part in it – though state law now prohibits that, the legislation at the time did not preclude elected officials from taking part in it, so elected officials felt free to take part in it. The perception about that participation has driven a very negative discussion about a benefit that in large part was for appointed employees, not elected officials. I think Council members wrestle with how to deal with DROP and a conversation about it that's being driven by that narrative, because they don't want to punish employees who, in truth, have not been the prominent targets of the criticism. The average city employee is not going to get a DROP payout of \$450,000. Their salaries aren't that high. Nevertheless, Council recognizes that the program has to change because overall our pension benefits are very expensive. Wherever we can make changes that will reduce the cost of the pension plan to the city, I think we have to look at doing it. I don't know if it will pass in the form as it was introduced. They may decide to modify it.

What issues are coming up that will require a lot of attention from your office?

I don't know if there's any one thing. Normally, as I've outlined here, we juggle a dozen different critical issues at any given time. I personally devote much of my attention to labor negotiations issues, like the recent removal of the paramedics from the firefighters union; the ongoing struggle to get labor arbitration awards that respect the requirement of PICA (Pennsylvania Intergovernmental Cooperation Authority) that the city have the ability to pay for those awards. Consistent with that concern, we're appealing the firefighters award, as we did the last firefighters award in 2005, because it didn't meet our ability to pay. There are changes to Medicare lien reporting requirements in the new health care law that will require our cooperation in litigation to ensure compliance, which will be significant for us because of the number of litigation matters we have involving Medicare liens. The "stop-and-frisk" case will be time-consuming, certainly, as will the Family Court development.

Beyond that I think, I don't see any one single major thing we'll be working on. The big issues we dealt with in the first year and half of the administration were the gun litigation over the ordinances. The Supreme Court fairly recently denied allocatur in that case, so we've reached the end of the litigation line, for the moment, and are now focused on the Police Department's enforcement of the ordinances that were allowed to remain.

Do you consider yourself to be a role model or a mentor to other diverse attorneys in this office or in private practice throughout the city?

My goal has always been to be the best lawyer I can be, and if I've fulfilled my end of that bargain, I expect you to fulfill yours. I often tell young female lawyers who worry that they will be, or feel that they have been, bullied because they're young or they're female or they're diverse, or different in whatever way: You can't go into a situation thinking, "They're going to treat me differently." You just have to know your stuff and know that you are prepared to do what you're there to do and then do it, and put blinders on to the rest of it. People will always try to push other people's buttons or find others' weaknesses, particularly in an

adversarial situation, and they'll often use whatever ammunition their predispositions lead them to use, but their baggage is their baggage. If you're the best lawyer you can possibly be, all the other stuff will take care of itself. And if you are the best lawyer you can be, and you're doing your job, and you're not being treated appropriately, you have a right to complain, and should complain, about that simply on that basis, that you are entitled to professional and personal respect and decency.

I have mentoring relationships with a few attorneys whom I've worked with along the way. I'm pretty receptive when people reach out to me and ask for assistance or advice about professional situations. I should probably do more of it, but I find mentoring relationships to be more productive when

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people reach out naturally rather than when the relationship is more contrived.

There have been a number of Bar Association Chancellors who have served as city solicitors. Have you gotten any advice from them?

When I was first appointed I met with several of the former solicitors, who all got together to share their advice. Since then I talk to Mark Aronchick here and there, Marty Weinberg here and there. Other former solicitors, when I see them, offer their advice. Pedro Ramos and I are very good friends. Nelson Diaz and I are very good friends. I get some advice from all of them. Mark was one of a couple of former solicitors who recently related to me his experience after he left this office to return to his law firm. They asked him if he was

ready to do some "real work." And he said to them "do you know what I've been doing all this time?" I think one challenge common to all the former solicitors is recognition of the need to balance the ethical and professional obligations that accompany the practice of law with the challenges of practicing law in what can sometimes be a very interesting political environment. The political demands on the solicitor's office can often be very challenging. Everybody has gone through that and everybody has had challenges with Council and difficulties with the mayors they've worked for. Obviously, the value of talking to them is realizing that my experiences, however odd or uncomfortable or aggravating they may seem, are not really new or unique. It's just part of the territory. Those conversations have been very helpful.

What do you do to relax?

I practice yoga in a led class at least twice a week and some at home. I play tennis. I swim. I used to bike a lot and I'm trying to do more of that. I love to go to the movies. And frankly, I love to curl up on the couch and watch TV. I just got a TiVO and I'm really excited. I used to be a slave to the TV schedule and in the digital age, nobody else but me probably was. I'm not a huge TV watcher but over the course of the year there are four shows that I probably watch - "Mad Men" being my favorite. But if I do nothing else, I practice yoga whether I'm here or away. I like to travel. I try to go to Martha's Vineyard every summer and lately I've been trying to take one trip in the winter to some warm place, as we did when I was young. I went through a period where I skied every winter for three years. And then on the third trip, I was in Vail, and standing on top of the mountain, I had just gotten off the lift and I was standing there thinking, "I don't feel like it. I don't want to." Pride wouldn't let me get on the lift and go back down, but I was cold and the jacket was heavy and skis are awkward, and my overwhelming thought was, "I don't want to do this anymore." I skied down and did not go back up and have not been back on a ski mountain. I'm a beach person. All I want to do is throw a bathing suit into a suitcase and go. ■

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