

Cumberland County District Attorney Candidate Forum First Parish Church - Portland, Maine May 7, 2018

Questionnaire Instructions

To participate in the May 7th Forum, return your completed questionnaire no later than April 28, 2018 as an attachment in this MS Word 97/200/XP format or Rich Text format to attorney@angusferguson.com. All the completed questionnaires will be distributed online and to the media. Please mark either "Yes" or "No" in response to each "binary" question. Please respond in no more than 200 words to the followup "essay" questions. Incomplete responses will be noted as such. Late submissions may not be published.

Prepared by Candidate: Jon C. Gale Submitted 4/27/18
(name) (date)

Mission and Vision

1. Will you pledge to articulate a mission and vision for the Cumberland County District Attorney Office that places the focus on justice, rather than winning cases, and aligns the work of the Office - including internal and external communications, training, policies, and hiring and promotion practices - to reflect that mission and vision?

YES

If "YES" please explain specifically how you will implement this policy. If "NO" please explain your policies and plans for this issue. [Use this space to respond in 100-200 words or less]

The prosecutor has greatest power in the criminal justice system, and with that power the greatest responsibility to do what is right. Our job is to keep people safe, and do so with practices that best promote effectiveness, efficiency, and fairness to all people involved in a given case.

With clarity I will articulate from the outset that our job the following:

1. When reviewing the facts and applying the law, do the best to determine what is a just result, and work toward that end. When we believe in a case we will vigorously prosecute, but we must be open-minded at all times to information that may change our position.
2. When determining what would be the right result, always ask, what does the victim (when there is a victim) desire as a result of prosecution?
3. Always ask, what will be the most effective way to reduce the likelihood of re-offense? This inquiry must include considerations of the allegation, the motivation to commit the crime, and the circumstances that affected the motivation. Potential solutions will consistently include diversion, rehabilitation, and alternative means of resolving cases.

I will also articulate that transparency when allowed by law is crucial to driving just results. Training, employee reviews, and hiring practices will all be consistent with the ultimate goal of effective, efficient and just resolution of cases and reduction of criminal activity.

Mass Incarceration

2. Do you agree that prosecutors' practices have contributed significantly to mass incarceration?

YES

3. Many experts say that overcharging by prosecutors unfairly pressures defendants into pleas, even with weak or insufficient evidence. Would you pledge to file only those charges that you are confident the evidence supports?

YES

If "YES" please explain specifically how you will implement this policy. If "NO" please explain your policies and plans for this issue. [Use this space to respond in 100-200 words or less]

I am staunchly against overcharging for any reason, and agree that it is currently a tactic used by some prosecutors to gain leverage in negotiation. This policy will be clearly stated. We will bring the charges we believe accurately reflect what the defendant did. Consistent communication with all ADAs will ensure the policy is followed.

4. Criminal justice contacts – however brief – can have negative psychological and employment effect, and often fail to address the underlying causes of crime (e.g. addiction, mental illness, poverty). Will you work to expand diversionary programs so that, whenever possible, adverse impact of the criminal justice system is avoided or limited?

YES

If "YES" please explain specifically how you will implement this policy. If "NO" please explain your policies and plans for this issue. [Use this space to respond in 100-200 words or less]

Really, the first question we must ask is this: how will a conviction reduce the likelihood of recidivism? In many it has no impact on recidivism. Then, how will a conviction alternatively increase it? Loss of income, housing, etc. often serves to increase the odds of future criminal activity. What ways can we best address the root causes of crime – mental health problems, substance abuse, poverty? Deferred dispositions, filings, restorative justice practices, use of specialized courts all very often provide a method for promoting more effective outcomes in answering those questions. This does not apply to all cases, but to a large portion of criminal activity, the results are more effective, efficient, and just.

5. A non-partisan official audit estimated that Maine spent almost \$160,000 per juvenile inmate and over \$42,000 per adult inmate for an average annual cost to taxpayers in 2012 about \$53,000 per inmate per year of incarceration. Will you institute a policy that Assistant District Attorneys must enter and justify the cost of incarceration on the record in plea and sentencing proceedings?

NO

Please describe here what policies your office will institute to address the problems of the growing cost to taxpayers of increasing populations in Maine correctional facilities and damage to the employment and families from jail and prison time in light of the lack of real rehabilitation services and the high rates of recidivism following release from Maine correctional facilities. **[Use this space to respond in 100-200 words or less]**

While I will not require prosecutors to put the justification of the cost on the record in all cases, I completely agree with the analysis that incarceration costs more in the short run and the long run to society than does treatment and rehabilitation. My policy will be as follows: The first question our prosecutors will ask will be, what can I do to best minimize the chances this defendant will re-offend? Jail and prison are expensive and usually less effective in reducing recidivism. Treatment and rehabilitation are a part of the answer, and cost less than jail. Then consider the secondary and tertiary negative impacts on society that are driven by incarceration. While in jail, the defendant is not being productive, not parenting children and/or paying child support, not maintaining a home. They are released far more dependent on society than when they went in, and are more apt to be in situations increasing the odds of re-offense.

Racial Disparities

6a. Will you commit to tracking and working to eliminate any racial disparities caused by decisions made by the Office, including disparities in charging decisions, bail recommendations, diversionary program placements, and plea bargains?

YES

6b. Will you require that prosecutors participate in implicit bias training to reduce the possibility that subconscious and unintentional attitudes about other people based on characteristics such as race influence the prosecution of cases in Cumberland County?

YES

If "YES" please explain specifically how you will implement this policy. If "NO" please explain your policies and plans for this issue. [Use this space to respond in 100-200 words or less]

Understanding systemic and implicit bias and racism could not be more important in any particular workplace than in an office that makes decisions about life-altering convictions and the loss of freedom. Whatever training available that would maximize our office-wide understanding of these

issues would be used under my leadership. We will track statistics, examine them, learn from them, and make any changes that make us better at equally treating every defendant.

Poverty Penalties and Bail Reform

7. Will you limit requests for money bail and pledge to recommend, for all legally permissible cases, presumptive release of defendants without financial conditions unless there is an individualized showing of substantial and identifiable flight risk or danger to the community?

NO

If "YES" please explain specifically how you will implement this policy. If "NO" please explain your policies and plans for this issue. [Use this space to respond in 100-200 words or less]

Most misdemeanor charges and many felonies do not require cash bail in my view and I would dramatically reduce the use of financial restrictions. However, I would not categorically do so limiting cash bail to flight risk and danger to the community cases. Unless there is an enforcement system in place to maximize compliance with conditions, there are too many other situations that would require a cash component. Example: a defendant with a history of fraud is charged with defrauding a victim of \$50,000. Without having a mechanism in place to ensure compliance with conditions that he not engage in activities that could increase odds of a new victim being defrauded, I would request a financial condition to counterbalance the motive to re-engage in fraud while on release.

Transparency and Accountability

8. Will you pledge to collect and post online quarterly statistical information broken down by race and gender on felony and misdemeanor charging decisions, convictions, no complaints, and diversion program placements?

YES

If "YES" please explain specifically how you will implement this policy. If "NO" please explain your policies and plans for this issue. [Use this space to respond in 100-200 words or less]

While resources will have to be dedicated to this project, and implementation may take more time than the first quarter of my term, this will be a priority of mine. I have already discussed with one prosecutor in the Cumberland County office who has experience gathering and organizing data about my desire to collect these statistics and publicize them.

9. Will you pledge to publish on the Office website all policies, protocols or memos regarding prosecution policies, for example, police-involved incidents, bail recommendations, fines and fees, discovery requests, diversion programs, plea bargains, civil asset forfeiture, immigration considerations, restitution, indigency determinations and so forth?

YES

If "YES" please explain specifically how you will implement this policy. If "NO" please explain your policies and plans for this issue. [Use this space to respond in 100-200 words or less]

The District Attorney works for the people of Maine. Policy should be transparent. Building documentation of policy and publishing it will be of value for clarity and transparency.

10. Will you pledge to develop and implement a plan to personally, regularly and meaningfully engage and communicate with the Cumberland County community, including people of color, the immigrant community, community-based organizations and criminal justice reform advocates, and involve them in the project of determining the priorities of your office, starting within 100 days of taking office?

YES

If "YES" please explain specifically how you will implement this policy. If "NO" please explain your policies and plans for this issue. [Use this space to respond in 100-200 words or less]

As the elected official I will commit to engage and communicate myself with all constituencies in my district, including all of the groups mentioned above. The District Attorney serves the people, and the more communication and transparency, the greater the trust the public will have in the office.

11. Will you ensure that every stage of the criminal process is communicated to *pro se* defendants and victims in terms they understand and take time to explain the process without legal jargon?

YES

If "YES" please explain specifically how you will implement this policy. If "NO" please explain your policies and plans for this issue. [Use this space to respond in 100-200 words or less]

To a degree this is accomplished through the judiciary and through court-appointed lawyers in the lawyer of the day program for pro-se defendants, and via the victim witness assistants in the office for the victims. That said, the DA's office should always promote the understanding of process for those engaged in it.

12. News reports and academic research indicate that police officers misrepresent facts and lie in incident reports and in court testimony. New Hampshire prosecutors reportedly keep lists ("Laurie" lists) of police officers who commit such misrepresentations, thefts or fraud pursuant to a 2004 directive of the Attorney

General. Will you take steps to identify dishonest law enforcement officers and take appropriate actions?

YES

If "YES" please explain specifically how you will implement this policy. If "NO" please explain your policies and plans for this issue. [Use this space to respond in 100-200 words or less]

Dishonesty in law enforcement leads to unjust results, erodes public confidence in the police, and is ultimately destructive to any ordered society. Without question, if an officer is found to be dishonest in reporting and/or engaging in an investigation, and/or dishonest in testimony, our office will inform the chief of the department of the officer about the dishonesty and require a discussion with the leadership of that department about it.

Immigration

13. Will you pledge to adopt a written policy and training which encourages prosecutors to consider the unintended immigration-related consequences of prosecutorial decisions at all stages of a case and to use their discretion to reach immigration-safe dispositions for noncitizens whenever possible and appropriate?

YES

If "YES" please explain specifically how you will implement this policy. If "NO" please explain your policies and plans for this issue. [Use this space to respond in 100-200 words or less]

Our prosecutors will be directed to always consider immigration consequences in sentencing decisions and plea negotiations.

14. Will you pledge to adopt a written policy which prohibits questions about the immigration status of crime victim or witness?

NO

If "YES" please explain specifically how you will implement this policy. If "NO" please explain your policies and plans for this issue. [Use this space to respond in 100-200 words or less]

No judge will accept a plea without knowing the immigration status of a defendant. If dealing with a defendant who is pro se, the prosecutor in fact should always ask about immigration status. The prosecutor should suggest to any person who may be negatively impacted by prosecution to direct them to seek counsel on the issue, and agree to a continuance to do so. Without inquiring of the status, the prosecutor cannot take status into consideration in negotiating the case.

Juvenile Justice

15. Will you pledge to require, when possible, that juvenile trauma histories, other special needs, gender issues and so forth be considered at all points in the process when evaluating whether a youth should be incarcerated, diverted, or subject to other dispositions?

YES

If "YES" please explain specifically how you will implement this policy. If "NO" please explain your policies and plans for this issue. [Use this space to respond in 100-200 words or less]

All factors listed, among others, will be taken into consideration as our policy in determining the best course of action in any juvenile case.

Discovery

16. Maine's Rules of Criminal Procedure and U.S. Supreme Court decisions following Brady v. Maryland, 373 U.S. 83 (1963) require prosecutors to produce all evidence favorable to defendants even if known only to law enforcement or not requested by defense counsel. Will you institute and enforce particular policies, staff trainings and procedures to comply with these legal discovery requirements?

YES

If "YES" please explain specifically how you will implement this policy. If "NO" please explain your policies and plans for this issue. [Use this space to respond in 100-200 words or less]

Evidence in the State's control that is exculpatory is required under the Brady rule to be provided to defense counsel. Because the provision of such evidence need not be requested by defense counsel, it is required to be provided proactively. An understanding of this requirement, and adherence to the rule, will be a condition of working as a prosecutor in our office. I will review previous training on this requirement and current understanding of it for every ADA, and will ensure there is compliance.

17. The recent Anthony Sanborn case disclosed that police officers had withheld arguable Brady material, secreting a box of evidence in a retired officer's attic for decades. Will you take strong steps to investigate and sanction failures to comply with the Maine Rules on discovery in criminal cases and the Brady line of U.S. Supreme Court cases?

YES

If "YES" please explain specifically how you will implement this policy. If "NO" please explain your policies and plans for this issue. [Use this space to respond in 100-200 words or less]

We will comply with Brady, we will inform the leadership of the department of any officer who engages in activity to withhold evidence from defense counsel, and we will refer information to the Attorney

General's office of intentional violations of discovery rules.

Relevant Qualifications

18. In 200 words or less, please describe how your education and experience qualify you in particular to serve as Cumberland County District Attorney. **[Use this space to respond]**

I graduated from Colby College in 1990 as a philosophy major, and from the University of Maine School of Law in 1995. For several years after law school I was a prosecutor, and have been a criminal defense attorney since 2004. During my career I have both prosecuted and defended serious charges including drug trafficking, gross sexual assault, aggravated assault, domestic violence assault, and manslaughter. As a defense attorney, I have represented indigent Mainers throughout my career, and have been asked by the judiciary to handle some of the most challenging cases brought to court. At the invitation of the Maine ACLU, I represented a protester in the Black Lives Matter case, and worked as a lead counsel in the protester's defense. I serve currently on the board of the Restorative Justice Institute of Maine, and served for eight years on the Portland Citizens Review Subcommittee, which reviewed internal investigations of citizens' complaints against the Portland Police Department. My wife Nori and I have lived in Maine almost all of our adult lives, and have been in Portland since 1999.

Please answer all questions above and email your responses to attorney@angusferguson.com on or before April 28, 2018 at the latest. Call Angus 749-6618 with any questions or concerns.