

**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 Late submissions may not be published.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: Seth Levy

Submitted: 4/28/2018

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

My mission is to redirect the criminal justice system as the District Attorney so that the focus is pursuing justice rather than winning cases and building a high conviction rate. I will restructure the office. I will create a two-track system in which cases will be assigned to the intervention track of restorative justice and treatment or, alternatively, the more traditional prosecutorial track. I will diversify my staff to be representative of the communities it serves; hire an outside consultant to conduct an evaluation for implicit bias; and conduct inter-cultural diversity trainings for my staff.

Mass Incarceration

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

YES

Prosecutors have used plea bargaining to obtain high rates of convictions. The primary focus of these convictions has been punishment and incarceration. The process of plea bargaining is a very efficient and dangerous mechanism for incarceration because prosecutors are not often required to meet the burden of proof. It is further abused by over-charging which puts undue pressure on defendants to plead to offenses.

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

The charging instruments must be written to reflect the evidence available. My staff will be instructed to draft charging instruments with this objective. Desired outcomes will center around doing what is just, not on obtaining convictions. I will implement a team-based culture in the office, which will include team review of cases to make sure that drafting of charging instruments fall within the directed guidelines of the office.

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

Treatment and diversionary programs are a cornerstone of my platform. I have been a member of the Co-Occurring Disorders and Veterans Court for over 7 years. I will start a similar diversion court in Cumberland County; I will also start a Young Adult Court for 18 to 24 year olds that will focus on treatment and restorative justice practices; I will use restorative justice on a broad scale to resolve non-violent offenses; and I will work with the sheriff's office, Maine Pretrial Services and other service providers to conduct a risk and needs assessment to release defendants struggling with mental illness and substance use disorder into the community and become immediately engaged in services.

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

I recognize that the system as it has developed over the last 40 years has allowed District Attorney offices to ignore the fiscal impact of their policies. I believe sounder policies that emphasize treatment and restorative justice will lead to significant reduction in costs. However, I will not direct my office to justify the cost of the resolution of a case. I believe that the needs of the primary stakeholders in every case (the victim, the public, and the defendant) must be considered and not the cost. I am open to maintaining and publicizing data which tracks the cost of the resolution of a case.

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]

My office will start a Co-occurring Disorders and Veterans Court in Cumberland County; a diversion Young Adult Court for 18 to 24 year olds (modeled after the court in San Francisco); Eliminate cash bail for low risk offenders so that people do not stay in jail just because they are poor; Collaborate with the sheriff's office and Maine Pretrial Services to triage individuals who have been arrested to identify needs and risk, and release them into services shortly after arrest; Keep children out of jail and advocate to shut down Long Creek Youth Development Center and replace it with community based treatment facilities; expand restorative justice to resolve non-violent crimes.

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

As discussed below, my office will do a comprehensive assessment of these issues, looking back 10 years and then I will implement a data tracking system going forward to help us see where disparities are occurring and then to address them.

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

I will bring in outside organizations to provide these trainings. This will be required.

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?

YES

My office will not seek cash bail for low risk offenders. We will collaborate with other government and non-government providers to allow for the immediate release of individuals and place them under pretrial supervision so they can remain with families, in the community and be connected into services to get the treatment they need. There is mounting evidence that cash

bail has limited impact on reducing flight risk or harm to the community.

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

Yes, I support this idea and believe it to be very important. Data collection has been minimal and inadequate to provide necessary information to assess the system's impact on race, gender and class. We need to know how cases are prosecuted -- from the first police encounter, to the charging instrument to the resolution of a case, in order to determine the effects of the system. I will implement a data tracking process in my office. I will make data and assessments public.

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?

Possibly

Conceptually, this is an intriguing idea and promotes transparency. But this would be a massive undertaking and require significant resources which may not be the best use of resources available. While I support transparency, I do believe it is more critical at this juncture to save lives and I would want to put available resources into diversionary treatment programs, and also victim outreach support services. Also, some of the issues identified in the question may require the disclosure of privileged information which needs to be protected absent a court order. However, I would be open to exploring the possibilities.

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 and NO

My platform and vision are to a great extent the result of the extensive and regular conversations I have had with many, many individuals from diverse communities throughout the county and state. This will continue once I am elected because these relationships are essential to implementing the reforms I want to make. I have certainly been influenced by the ideas of these individuals and will continue to be, but I will take responsibility for determining the priorities of my

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

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?

I understand the implications that dishonesty by a law enforcement official at trial or in preparation of a report can have on the outcome of a defendant's case. If my office becomes aware of a dishonest statement by a police officer during the prosecution of a case, then my office will be instructed to disclose any such discovery to the defense. The issue of how to address prior incidents of dishonesty by a police officer is more complicated. There may be Brady issues that arise for the defendant but also privacy and due process protections present for the protection of a police officer. I have not yet formed a position about this latter issue and am currently reviewing 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

Prosecutors need to be trained to understand the collateral consequences for immigrants convicted for crimes. Certain crimes and their standard punishments could result in deportation -- and we need to understand that could essentially mean a death penalty for people escaping persecution and violence, especially for immigrants here seeking asylum. My office will set clear policy and establish clear lines of communication with community partners such as ILAP so that immigration consequences are understood in every case.

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

YES

This policy should be implemented immediately for the safety of our communities. Immigrants need to feel safe reporting and that there will not be consequences if they do report crime. My office will draft policy that prohibits questioning of immigration status for crime victims and witnesses. We will work with local, county, and state law enforcement so they understand the importance of this policy in maintaining safety for all communities.

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

At the earliest point of contact, triage assessments must be made so that we can connect juveniles with appropriate services. Throughout the process my office will take a compassionate approach to dealing with juveniles that come into the system. Children need support and I pledge to run an office that puts all hands on deck to keep kids out of jail and link them with the treatment alternatives necessary to get them on the right track.

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

My office will publish clear policies and will go beyond training office staff, to work with law enforcement and make sure all parties are clear of what constitutes a violation of Brady, and maintain 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

Yes, it is my intention to set office policy that makes clear our commitment to honoring Brady and its progeny. My office will take investigations of failure to comply seriously and work hard to

prevent such missteps from happening.

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.

I've developed a practice devoted to serving the needs of people struggling with substance abuse disorders, mental illness, and poverty. I've been a guardian ad litem for children and understand that so much abuse goes unreported. I've represented Veterans pro bono, and for seven years have acted as Defense Counsel for the Co-Occurring Disorders and Veterans Court. I have extensive experience when it comes to advocating for diversion and treatment alternatives.

The next District Attorney must be a strong litigator and stand up for victims, I have considerable trial experience and a success rate over 90%. As a victim of a serious violent crime at 11 years old, I understand what it means to be a survivor. It is unacceptable that survivors of violent crime do not feel safe reporting. We must support victims if we want to make our communities safer, that means elevating victim voices. And for nonviolent crimes, through restorative justice, I have had success bringing victims and offenders together so that victims have a greater say in the process and offenders take accountability for their actions to repair harm. Doing this work on a case by case basis isn't enough, now is the opportunity for reform.

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.