

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 Late submissions may not be published.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: **Jonathan Sahrbeck**
(name)

Submitted 4/28/18
(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 _____ or 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]

I cannot answer this question "yes" or "no" because the oath that every prosecutor takes statewide is to uphold justice, which means it is unnecessary to make such pledges. Currently, I work as a prosecutor in Cumberland County, and all prosecutors are held to higher ethical standards than other attorneys. Our focus is always on upholding and striving for justice, and the concept of placing the idea of "winning cases" above justice does not happen at the Cumberland County District Attorney's Office. Implementing a policy that we are already bound by would be redundant.

Mass Incarceration

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

YES _____ or NO _____

I cannot answer this question "yes" or "no" because it is overboard and relies on a false premise. I do acknowledge that in some places throughout the United States of America the practice of some prosecutors could possibly contribute significantly to mass incarceration. In Cumberland County, however, I disagree that the practices of prosecutors have contributed to a problem of mass incarceration. There are currently approximately 376 inmates at the Cumberland County Jail and approximately 700 prisoners at the Maine Correctional Center in Windham in a county with a population of approximately 280,000. Cumberland County is not suffering a problem of mass incarceration.

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 _____ or 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]

I cannot answer this question "yes" or "no" because it is vague and relies on a false premise. Though these "many experts" have an opinion that a defendant "pressured" into accepting a plea, a prosecutor is again bound to seek justice and uphold the law. The decision to bring charges against a defendant needs to be grounded in a good faith basis that the facts support the charge. In addition, it is standard that these charges are brought when there is going to be a reasonable likelihood of success at trial and consultation with the victim. Again, I cannot pledge to a practice that we are already ethically bound to do as prosecutors.

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 _____ or 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]

I cannot answer this question "yes" or "no" because it is overbroad. The Cumberland County District Attorney's Office already is leading the way with diversionary programs that try to limit a defendant's exposure to the negative side effects or collateral consequences of the criminal system. These programs include the creation of "deferred dispositions," the shoplifter alternative, filings, and juvenile diversion programs. As

District Attorney, I would continue to explore the use of these programs and other programs if it is in the interests of justice and without sacrificing or risking public safety. The bottom line remains, however, that if person wants to avoid the negative side effects or collateral consequences of the criminal justice system it is up to individual to conduct himself or herself in a manner that does not violate the law.

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?

YES _____ or NO X_____

Requiring or asking an Assistant District Attorney to consider the costs of incarceration is contrary to a prosecutor's mission to seek and uphold justice and protect public safety. I cannot imagine a world where either one achieves a just result or public safety is protected if one is considering the costs of incarceration. This type of practice is dangerous to victims in the community in which dangerous defendants may avoid prosecution because "it costs too much," or defendants are unfairly prosecuted since "the costs are justified."

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]

A 2013 Study of Recidivism in Maine showed that the average rate of recidivism within one year was around 25%. The study also showed that there were numerous factors that made it difficult to pin-down why somebody would reoffend or violate his or her probation. The keys to achieving low recidivism is to teach defendants the tools they need to function as a productive member of society. If he or she has a drug problem, they need to tools to cope with and conquer their disorder. If he or she has mental health issues, they need to receive the necessary treatment to manage it. If he or she is physically capable of working, they need to stay employed in order to make productive use of their time. If he or she is a parent, they need to focus on their children so that the children do not follow in similar footsteps. There is no one solution to this complex problem.

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 _____ or NO _____

I cannot answer this question "yes" or "no" because it relies on a false premise. Until I see evidence that this is a problem of racial disparity at the Cumberland County District Attorney's Office in any of the activities listed in the question, I cannot commit to anything that tries to solve a problem that I do not see as existing.

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 _____ or NO X _____

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]

In 2016, Maine prosecutors participated in implicit bias training at the Maine Prosecutors Conference that was led by Rachel Talbot Ross from the Maine NAACP. At the training we were made aware of implicit biases. From discussions about this presentation and our practices in Cumberland County, we have seen no evidence that we have problems of "subconscious" or "unintentionally" attitudes based on race. If there was evidence presented that prosecutors made decisions based on race, than this issue of whether training would be necessary would be revisited.

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 _____ or 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]

I cannot answer this question "yes" or "no" because it relies on a false premise. Prosecutors already operate under the Maine Bail Code to examine substantial flight risk and dangers to the community as part of our analysis for recommending bail. Pledging to

release defendants on personal recognizance is already written into how to ethically operate as a prosecutor. It is again unnecessary to make policy pledges in areas where law and ethical obligations already exist.

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 _____ or 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]

I cannot answer this question "yes" or "no" because it relies on a false premise. There is no evidence that the Cumberland County District Attorney's Office makes any decisions on charges, no complaints, pleas, convictions, or diversion program placement based on race, religion, gender, or sexual orientation. Unless I see a reason to start and add a process of collecting data based on the suggested criteria, I cannot pledge one way or the other to start collecting this information and making it public. If there is evidence of this issue occurring in Cumberland County, than it could be feasible to begin to collect this information.

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 _____ or 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]

I cannot answer this question "yes" or "no" because it relies on a false premise that prosecutors are only bound by office policies and nothing broader. All prosecutors are bound to support, uphold, and defend the Constitutions of the United States and the State of Maine as well as ethical obligations that each prosecutor takes to uphold justice. I am unaware of the necessity of anything more specific. If policies existed, as a public office, mechanisms are in place that would allow a person to obtain this information.

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 _____ or 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]

I cannot answer this question "yes" or "no" due to the vagueness of the terms "regularly" and "meaningful." If I am elected District Attorney, just as I have as an Assistant District Attorney, I understand the necessity of creating a culture that reaches out to as many people as possible to take on the dangers and issues in our community, mainly the opioid epidemic. During this campaign, I have reached out to law enforcement, non-governmental organizations, and other civic and community groups to learn about their concerns and thoughts on how to address these issues. All groups, including those listed in the questions, need to be part of the conversation to address these issues and concerns we face together, and I will commit to speaking to anybody who is willing to participate in solving our community's problems.

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 _____ or 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]

I cannot answer this question "yes" or "no" because it is vague. I can tell you that in the Cumberland County District Attorney's office, every stage of the criminal process is explained to victims of crimes in a manner that we hope they understand. Assistant District Attorneys, Victim Witness Advocates, and Trial Assistants are all available to answer any victims' questions. We respect the statutory mandated rights of victims and we are here to assist in their time of need. As far as pro se defendants, the process can be explained to them, but as a prosecutor we cannot give legal advice or advocate on their behalf. We are ethically barred from doing so. Given that, pro se defendants will not be treated differently as defendants represented by counsel, but at the same time, our communication with them is limited due to ethical obligations.

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 _____ or 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]

I cannot answer this question "yes" or "no" because it is based on a false premise and overbroad. If a prosecutor becomes aware that an officer is "misrepresenting facts" or "lying in police reports," it is a prosecutor's ethical duty to bring this to the attention of law enforcement and the court. As previously mentioned, it is a prosecutor's ethical duty to uphold justice, not simply "win convictions." In addition, prosecutors are well aware of our ongoing obligations under *United States v. Giglio* and *Brady v. Maryland* to continue to bring exculpatory and possible impeachment evidence to the attention of the courts and defendants.

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 _____ or NO X

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 Supreme Court in *Padilla v. Kentucky* made it clear that immigration consequences need to be discussed with defendants by his or her attorneys, otherwise it can be grounds for a claim of "ineffective assistance of counsel." I think it is unnecessary to have two brands of justice, one for citizens and one for defendants who may have immigration issues. In a similar vein, I would reject the notion of creating a policy that would treat defendants who may have immigration issues more harshly than those without those issues. Collateral consequences are not just for consideration for those facing immigration issues. If I am elected District Attorney, my Assistant District Attorneys will be instructed to take into consideration collateral consequences for any person pleading guilty, to act with compassion and understanding, but not to risk or sacrifice public safety or the interests of victims.

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

YES _____ or 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]

I cannot answer this question "yes" or "no" because it is impossible to answer in a vacuum. During trial preparation or an investigation, certain avenues of questioning may be broached. I cannot imagine a situation where immigration status is discussed, but it could perhaps come up as an important factor in the investigation. For instance, in the investigation of a hate crime, a person could be targeted due to their immigration status. In that circumstance, law enforcement cannot be expected to be barred from asking a person's status if it is a possible motive for a crime. Also, it is feasible that a person gives information that is false and therefore that could be exculpatory or be used as impeachment evidence and it would need to be turned over to defense counsel. Though it would be discouraged to ask such a question since it most likely irrelevant to a criminal case, it is impossible to answer this question "yes" or "no" as posed.

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 X or 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]

Despite the fact that Department of Corrections, which the District Attorney has no control of or power over, handles decisions on diverted youths within DOC, trauma histories and other special needs are always considered in the process on any decisions that are made by prosecutors here. The Assistant District Attorneys in the Cumberland County District Attorney's Office are well trained and well aware of considering trauma histories and other issues when making any decisions regarding youth incarceration, diversion or other dispositions. If I am elected District Attorney, all juvenile prosecutors will continue to receive this training and other Assistant District Attorneys will be encouraged to learn as well.

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 _____ or 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]

I cannot answer this question "yes" or "no" because it relies on a false premise that prosecutors are not already bound by *Brady v. Maryland* to turn over this type of exculpatory evidence. There is a constitutional and ethical on-going obligation to turn over exculpatory evidence when it becomes available to the prosecution, even if it is not requested by defense counsel. Training on *Brady* material is a fundamental foundation for all prosecutors and it would continue to be if I am elected District Attorney.

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 _____ or 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]

I cannot answer this question "yes" or "no" on the false premise that police officers "withheld arguable *Brady* material." Anthony Sanborn is a convicted murderer and despite numerous efforts to show otherwise, there is no finding that the Portland Police withheld anything exculpatory from the defense during any point of the original prosecution and up through the post-conviction review. Mr. Sanborn withdrew his post-conviction review petition in its entirety except for the portion addressing the "cruel and unusual punishment" claim regarding his sentence, which was reduced from 70 years to 42 years, 3 months and 9 days, due to him being 16 years old at the time he murdered the victim. Given that, it is impossible to answer a question insinuating that law enforcement withheld anything exculpatory and therefore there is nothing to "investigate."

As the District Attorney, if was to find out that law enforcement, be it the District Attorneys Office or the police, violated the Maine Rules of Evidence or withheld the *Brady*

material, I would bring it to the Court's attention immediately or dismiss the charges myself.

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]

The next District Attorney needs to be a prosecutor who understands the needs of victims and public safety, who is tough on crime but compassionate when necessary, and needs to be ready to take on the dangers that our community faces. I am the most qualified prosecutor in the race given my experience on all levels including adult and juvenile court, in numerous places throughout Maine and Massachusetts, and dealing with a variety of issues, including drugs, domestic violence, juveniles, and human trafficking. I grew up in Cumberland County and have connections that reach far beyond the legal world that will allow me to build coalitions that can address the issues facing our community to ensure public safety is protected and justice is upheld. I am also the only independent candidate in the race which frees me from any political influences, unlike the other candidates.

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.