

Durham for All 2018 Judicial Candidate Questionnaire

Thank you for taking the time to complete this questionnaire. Please return this completed form along with a brief statement describing your work history, community service, and prior political experience as soon as possible, but by July 31st. You can email your responses to Sendolo Diaminah at ajagunna@gmail.com.

Please note that following the July 31st deadline, Durham for All may publish all or part of your responses to this questionnaire and/or your statement of experience.

Pretrial Release

1. Do you believe that Durham County judges currently rely on secured bonds too heavily, not heavily enough, or approximately correctly in setting conditions of pretrial release?

This question requires an analysis of each bond set on a case by case basis. It also raises the possibility of calling into question another judge's discretion reached by an analysis of facts presented. It would be improper for me to comment on the decision making authority of another judge. Even if I was present at each bond hearing, it would be improper for me to comment on a particular judge's decision or authority to autonomously make decisions based on the facts presented.

2. Do you believe that the current use of secured bonds disproportionately impacts the poor and people of color? If so, do you believe that a judge should adopt practices to ameliorate this result? What practices would be helpful?

By default, our criminal legal system disproportionately affects poor people and people of color. Therefore secured bonds will necessarily be utilized in numbers that disproportionately impact people of color. A judge, however, does not control who comes before the court. Are our judges following the statutes and guidelines when applying the law, and using their discretion effectively? Judges have the discretion to weigh and assess the facts presented to them in court. The bail statutes are clear on what

factors are to be considered when assessing whether or not to impose secured bonds. Also, secured bonds are to be used as a last resort.

In the larger issue of systemic and institutional racism in our legal system, I do believe that judges should be well educated on the topic and recognize and understand the impact and effects their decisions have in the pursuit of justice.

I do not believe it is the role of judges to legislate from the bench, however I recommend the use of benchcards and continued education to remind judges of the guiding principles set forth in the statutes and societal impacts and consequences while using their discretion in imposing such things as bail and fines and fees.

Discretion is arguably the most powerful tool a judge has.

3. Do you believe the current jail population in Durham County is not large enough, larger than it needs to be, or about right?

I believe that as long as we utilize our current system of pretrial incarceration, the population is always too big. Jail is often not the place for many of our incarcerated individuals that suffer from mental illness, poverty, addiction, and more.

4. Do you believe that a bond schedule, in which specific charges correspond to a presumptive secured bond amount, is a tool judges should use in setting conditions of pretrial release? Why or why not? If you favor the use of a bond schedule, under what circumstances do you believe it should be followed or not followed?

Bond schedules are statutory. They are the main tool provided to judges in the administration of our current system of incarceration and bail. I recognize issues of poverty, disparate outcomes, and collateral consequences associated with our current system of pretrial release must be addressed. I have been an advocate of bail reform and belong to National Bail Fund Network.

In regards to following bond schedules, they are guidelines. Judges follow or deviate from them, using the discretion allowed to them by law. Judges make decisions about bond based on facts presented. From murder to possession, I've seen bonds raised and lowered based on facts presented at hearings. I believe that discretion should remain with the judge as trier of fact to determine whether or not the suggested bond is proper.

5. What changes, if any, would you like to see in our local pretrial release policy? Do you believe that it is appropriate to presume release for all misdemeanors not involving domestic violence? What about low-level, non-violent felonies?

I believe that pretrial release should always look to the least restrictive measures to ensure appearance in court. When a person's liberty is at stake, especially because they are innocent until proven guilty, any policy that may restrict that liberty should be under constant review.

I do support presumed release for all misdemeanors not involving domestic violence as the least restrictive method to ensure appearance in court. However, I believe each individual should be assessed on a case by case basis. There are misdemeanors that involve dangerous weapons and violent behaviors outside of domestic violence and I believe facts should be presented in favor of release and a determination made by a judge.

6. Would you support a policy in which judges re-set cases involving misdemeanors and Class H/I felonies with notice to the defendant, rather than issuing a warrant, upon a first missed court date?

Yes, I believe there are many factors that affect a person's ability to attend court on a timely basis. I am an advocate of services to meet people's needs to ensure their appearance in court.

7. What is your position on the Automated Notification System that sends text messages or phone calls to remind people of upcoming court dates? Do you believe it is effective or ineffective? Would you support the expansion of this program?

Absolutely. If this system proves to be effective in reducing the number of people who miss their court appearances (and, consequently, the number of people incarcerated for this same issue), it is a worthwhile endeavor and one that should be institutionalized.

That being said, I see ANS as one tool to help reduce the number of people who miss their court dates and have warrants issued for their arrest. It is important that, as our community seeks ways to reform the criminal justice system, that we keep in mind that even positive reforms can have a disparate impact. When considering ANS through a lens of equity, we should keep in mind that cell phone access is not available to everyone. So we should be careful not to rely completely on this system of notification,

and continue to consider other ways to reach those who don't have access to particular technology.

8. Under what circumstances do you believe that it is appropriate to set a cash-only bond as an alternative to a secured bond? Do you believe that bondspeople should be utilized in all or most cases where a monetary condition is imposed to help assure an individual's presence in court? Why or why not?

I believe a cash-only bond is appropriate when a judge has determined the need for some type of additional guarantee, other than a promise to appear, to ensure a person's appearance in court. I also believe that when setting cash-only bonds, a judge should take into consideration the defendant's ability to pay.

9. Do you prefer the money bail systems in states such as Kentucky and Massachusetts, where money bail is posted directly with the clerk of court and returned when the case is resolved, or the manner in which secured bonds are generally handled in North Carolina, where individuals pay a non-refundable premium to a bondsperson?

I welcome the ability for defendants to pay bail directly to the court and avoid fees where possible.

10. Do you support abolishing money bail? Why or why not?

As far as money bail directly affects poor people and has a direct affect on pleas and outcomes and justice, I am in favor of abolishing any system that perpetuates disparate outcomes and has a negative effect on justice.

11. Is it important for a judge to impose the least restrictive conditions of pretrial release possible to secure public safety, or are you more inclined to err on the side of imposing greater restrictions? Why or why not? How would you determine what conditions are necessary and appropriate?

It is always necessary, both statutorily and morally, to seek the least restrictive conditions. Individuals in pretrial are presumed innocent. Where an individual's liberty is in jeopardy, great care must be taken to ensure that our legal system carefully balances safety and liberty.

Sentencing

1. Some commentators have argued that there is a problem of mass incarceration in the country generally and in North Carolina specifically. Do you agree or disagree? Why?

Yes, mass incarceration is a problem in the US and in North Carolina. The US has between 4 and 5% of the world's population and yet we are responsible for 22% of the world's incarcerated population (See https://www.washingtonpost.com/news/fact-checker/wp/2015/04/30/does-the-united-states-really-have-five-percent-of-worlds-population-and-one-quarter-of-the-worlds-prisoners/?noredirect=on&utm_term=.9806b17998e). Analysis of data about incarceration in the US reveals a sharp increase in our prison populations as a result of the war on drugs, with even sharper increases following the Clinton administration.

The fact that the US incarcerates so many of its people is a problem that is exacerbated by the fact that our prison populations are primarily people of color. My response to this question would not be complete without mentioning that mass incarceration alone is not our only criminal justice issue. Mass criminalization exists side by side in this conversation as the collateral consequences of contact with the criminal legal system can be just as detrimental as incarceration.

2. If you believe that the level of post-sentencing incarceration is too high, have the practices of Durham County judges contributed to this problem? If so, what would be different about your policies and practices? What role do you believe judges can or should play in rolling back incarceration levels?

I cannot comment on the practices of Durham County judges specifically. Judges cannot and should not legislate from the bench. I would however be willing to engage in a conversation around systemic and institutional issues in our criminal legal system.

3. Do you believe that individuals in Durham County are being punished too harshly as habitual offenders? Why or why not? If so, under what circumstances?

Punishment of habitual offenders is the purview of Superior Court and the aggravating factors Superior Court judges must consider are imposed by the laws the govern habitual offender status.

4. Do you believe that there are particular types of offenses or individuals in Durham County that are generally punished too severely or too leniently? Which offenses or which individuals and why?

Each individual that comes before the court must be afforded due process and have their case evaluated on their particular set of facts and circumstances. I will not comment generally on punishments meted out in individual cases. I support efforts to ensure that there are courts that offer people the chance to be held accountable without suffering lifelong collateral consequences of a conviction. Those courts such as Misdemeanor Diversion Court, Mental Health Court, and Drug Treatment Court are all places and examples of where justice can be served without punishment.

5. How important do you believe mitigating factors are in determining an appropriate sentence? Are there particular mitigating factors that you believe are important to consider? If so, which ones? How should these factors be weighed against the nature of the offense itself?

Mitigating factors are always important in weighing appropriate sentencing. However, only in DWI cases are mitigating factors enumerated. In criminal cases mitigating factors are taken on a case by case and factual basis. Each offense and situation has the potential to include mitigating factors that are specific to the factual basis. Therefore I do not have a list of mitigating factors to be considered but will weigh each individual on a case by case basis.

Fines & Fees

1. Do you believe that judges should assess a defendant's ability to pay before setting a fine or fee? What is your opinion of the policy adopted by District Court judges in Mecklenburg County, where the judge waives court costs if a defendant meets a standardized threshold of indigency?

Yes, ability to pay should be a factor in the fines and fees assessment. For the past two plus years I've been part of the fines and fees committee responsible for some of the changes mentioned in this question. In April 2017, I was part the fines and fees conference put on by the ACLU and responsible for the bench cards currently moving their way through our judicial system. These bench cards provide judges with a ready reference they can consult when setting fines and fees. Over the last five years, I've not only stated support for the reform of fines and fees in the criminal legal system, I've actively worked to make change possible.

2. Should a judge consider whether a person presently has the ability to pay a purge, or is able to take reasonable measures in the immediate future to do so, before incarcerating that individual for civil contempt? Do you believe that a court should require an individual to ask relatives or others who have no legal obligation to pay the individual's debts to meet a required payment schedule? Why or why not?

As judge I would consider each person's situation on a case by case basis. By law, a judge is only supposed to consider an individual's own income when setting an amount. This is true unless grounds exist to impute income from another source. A factual basis for imputing income must be argued and assessed by the judge. Whether a judge determines that a factual basis exists to impute income from others to the defendant rests in the judge's discretion and their analysis of the facts presented.

3. In what types of circumstances, if ever, is it appropriate to impose jail fees? Does it vary according to the type of crime, the financial circumstances of the defendant, or any other factors?

Jail fees are generally assessed or not by judges, and whether a judge assesses those fees up to that judge. I am not familiar with the factors judges are currently considering when they decide whether to assess these fees. I favor including a section on a bench card that reminds a judge to take into account the ability of a defendant to pay these fees, as well as the impact the accumulated fees will have on an individual when they are released. Jail fees are a financial punishment in addition to incarceration.

4. Are you aware of whether or not the current judicial system collects more money through costs and fees than is necessary for its reasonable overhead? If it does, do you think that this method of general fundraising is a problem, or do you believe it is appropriate for the State government to cover other costs through this funding source? If you do believe it is inappropriate for the State to raise general funds in this manner, should a judge adopt practices and policies to ameliorate the problem? Finally, do you believe that it is appropriate for costs and fees to cover overhead for the judicial system, or are such legal financial obligations more properly classified as fines, in that they constitute punishment?

Not only do I believe the current method of collecting fines and fees is inappropriate, I've argued twice in Superior Court that the fines and fees

statute is unconstitutional on its face and as applied to my clients. The State Constitution provides that the overhead of the court system will not fall on the backs of defendants and that fines (punishments) will go to the schools.

The law allowing assessment of fines and fees no longer comports with the Constitution. The fines collected are not funding NC's public schools, and fees are being applied to overhead.

Unfortunately, district court judges do not have the ability to correct the problem even if the statute conflicts with the Constitution. While some monies collected are appropriate, a district court judge cannot separate out, a la carte, appropriate fines from inappropriate ones. Until the statute is altered to comport with the requirements of the Constitution, i have argued that the collection of fines and fees is unconstitutional.

In regards to money collected by and for the court system, it is inconclusive as to how funds collected are classified. The data available does not present a clear financial picture of our judicial system.

Probation Responses

1. What do you believe are the appropriate sets of responses for a positive drug screen for marijuana while an individual is on supervised probation?
I believe that community corrections may be the proper place for resources to address what may be substance abuse or mental health issues.
2. Do you believe Durham County probation officers are making appropriate use of 2-3 day punishments in the county jail ("dips" under the Justice Reinvestment Act)? Should they be used more or less and why?
While the analysis seems to indicate that CRVs are effective, I would prefer to reserve comment until I have a further understanding of the any legal issues with judges delegating their authority to probation officers when it comes to incarcerating people.
3. In your opinion, what is the best manner to handle technical violations of probation (those not involving formal charges for a new offense)? What should a judge try to accomplish in choosing from an array of possible responses?

There are a host of possible technical violations, and I believe community corrections is the proper venue to address them. I support funding community corrections so that it has resources to address myriad issues from employment to transportation. Hopefully these technical violations can be resolved before formal violations need to be addressed by a judge.

Diversion

1. Do you believe that is it appropriate to impose monetary conditions in connection with participation in a diversion program? Why or why not?

I prefer diversionary programs that do not impose additional barriers for people of limited means. Monetary conditions affect poor people disproportionately. These additional fees are essentially punishments, and can keep people from successfully completing a diversion program.

2. What is the appropriate response to an individual who is unable to pay for the drug treatment required by the terms of his or her supervision?

Community corrections should receive sufficient funding to cover the expense of treatment for those who cannot afford it, or to help individuals find employment to enable them to pay for drug treatment, if appropriate.

3. What is the appropriate response where a supervised individual is unable to pay the community service fee of \$250 but completes the requisite community service?

Individuals should first be allowed to access or find their own non-profit with which to do their community service, thereby avoiding the \$250 community service fee. In the alternative, and upon completion of community service, consideration should be given to a waiver of the fee based on ability to pay.

4. Do you believe that an individual should get the benefit of a deferral or conditional discharge where the individual has complied with all requirements of the program other than those that require money, and the individual does not have the ability to pay the amount required? Why or why not?

Yes, access to justice should not be determined by an individual's financial status.

5. Do you believe that the current age limitation on Durham's pre-charge diversion program (only individuals between the ages of 16 and 21 are eligible) should be expanded or abolished? Why or why not?

I am in favor of expanding pre-charge diversion to all that are eligible regardless of age. This is one way to reduce the flow of individuals into the court system. This is a direct action against mass criminalization and a worthwhile effort.

6. Do you believe Durham's pre-charge diversion program, which is limited to misdemeanors (not including traffic, gun, or sexual offenses), should be expanded to include other types of offenses? If so, which ones?

I believe the pre-charge diversion program should be expanded to include certain low-level, non-violent felonies. While I don't have a list of all possible offenses that should be eligible for the program, initially I believe a case by case review of first time, non-violent H & I felonies would be appropriate.

7. Should pre-charge diversion be available to individuals with some prior criminal history, or only those with no record of convictions or arrests? Why or why not?

Yes, prior criminal history should not be used to automatically disqualify an individual from a diversionary program. Absolutes are a collateral consequence that hinders our society from moving reform forward.

Mental Health and Substance Abuse

1. As a general matter, are there any criminal charges that you believe should be treated as primarily public health concerns rather than criminal justice concerns? Why or why not? Which charges and/or individual circumstances do you believe should be considered or addressed differently than they currently are? What changes would you make to the way that drug possession and drug distribution charges are handled in our criminal courts?

Yes, I often speak of drug use, addiction, and mental health as public health concerns that are not addressed by incarceration. We need to raise awareness and have a cultural shift in how we treat these matters. I believe that treatment of addiction and mental health issues instead of incarceration, even when crimes have been committed may be more effective than incarceration and punishment.

2. Do you believe our county's use of mental health and drug treatment courts should be expanded? Why or why not?

Yes, drug treatment and mental health courts use should be expanded because our jails and prisons are not the most effective way to address drug and mental health issues.

Juvenile Justice

1. Should cases involving 16- and 17-year-olds be handled differently than adult cases prior to "Raise the Age" going into effect December 1, 2019? If so, how?

I support of "Raise the Age," and I believe that the District Attorney may have the ability to effective more progressive change in this area than the law that will go into effect late next year. District Attorneys have prosecutorial discretion and the ability to quickly adjust in response to trends and potential law changes.

2. Should a judge take any steps to give meaning to this law prior to the effective date? Why or why not? If so, how?

Judges should not attempt to legislate from the bench. I must apply the law to the facts presented in court. I believe the DA to be the most appropriate person to address how Durham prosecuting these young adults until the law going into effect.

3. In sentencing individuals under the age of 25, do you believe recent studies in neuroscience showing that individuals do not reach full maturity with regards to rational decision-making and emotional development until their mid-twenties are relevant to the choice of sentence? Why or why not? If you do, how would you use this science in selecting an appropriate sentence?

As trier of fact, I would certainly give weight to an admissible study on rational decision making by individuals under the age of twenty-five. However, a case by case analysis of the facts presented would be necessary in order to give consideration of this or any study as a mitigating factor in sentencing.

Immigration

1. A key issue in the recent primary race for Durham County Sheriff was whether to honor ICE detainers at the County jail. Candidate Clarence

Birkhead stated that he would not honor ICE detainers in the absence of a judicial warrant, [stating](#) there was “nothing in the federal law that says I must participate.” What is your position on the legality of holding individuals pursuant to an administrative warrant signed by an immigration officer rather than by a judicial official?

I agree with Clarence Birkhead. A judicial warrant has undergone due process and a probable cause analysis while an administrative warrant has not.

Public Support for Criminal Justice Policy Change

1. Would you commit to being part of a multi-agency group of public officials tasked with designing coordinated policies for dismantling mass incarceration and racial inequities in Durham's criminal justice system?

Yes, for the past 5 years my career has been based on ending systemic and institutional racism and ending mass incarceration and criminalization. I intended to continue my work within the constraints placed on judges. I would however welcome the opportunity to work with this type of collective.

2. Chief Justice Martin recently gave public voice to his support for Raise the Age legislation. Do you believe it is appropriate for District or Superior Court judges to similarly voice support for legislation affecting the criminal justice system? If so, what changes to our current criminal justice laws would you publicly support?

District and Superior Court judges do not enjoy the same ability to speak out on pending legislation as does Chief Justice Martin. If I feel strongly on a subject I will consult the canons and judicial standards on an issue by issue basis and make a determination as to whether speaking out is appropriate.

3. Would you publicly support the bill recently introduced to decriminalize possession of less than four ounces of marijuana?

In theory, I support marijuana possession reform; I do not think this is the proper bill.

Other

1. Is there anything else you would like to tell us about you that you believe makes your candidacy unique?

My reason for going to law school, and my legal career has been in pursuit of being in service to my community. I was a small business owner and through a series of events in my community, I was exposed to how attorneys can be of service to those without a voice.

My legal career has taken some unexpected paths, but ones that always led to service. My legal career started in indigent defense and for the last four years has centered around criminal justice and civil rights issues. My personal experiences have also shaped my views on community and community safety. My wife and I have been married for 27 years and have raised 3 children in Durham. Even though I was a victim of gun violence, I still see the humanity in people and don't view anyone as the sum of their worst mistakes. I believe we can hold people accountable for their actions and that justice involvement does not have to be a barrier to opportunities to thrive. I also bring a unique equity lense with which I have used to empower members of my community. I believe that a community where everyone has the opportunity to achieve is a safe community.

I believe that my values, commitment to service, and body of work align with what Durham has shown it values in our elected leaders. I welcome the opportunity to be of service to the community as your next District Court Judge.