

Berkeley Progressive Alliance
Questions for Alameda County DA candidates

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Money Bail

1. Are you in favor of doing away with money bail? Why?

ANSWER: I am in favor of reforming the system of bail that relies solely on money for several reasons. We should abandon what has become a "debtors' jail system," the system is outdated and in great need of reform. We have seen, through our Pre-Trial Release Programs, that individuals who want to make change are able to do so in the community and not necessarily in the jail. I have been leading this County in bail reform. Alameda County's pre-trial detention hovers at approximately 24% as opposed to the statewide average of 70%. *I do not believe a person should be detained in custody because they do not have the means to post cash bail.*

In determining suitability for release, California law says the Court must first take into account whether the individual is a danger to the victim of the crime or to the community, the seriousness of the crime, the criminal record of the accused, and lastly, the likelihood that the individual will return to court. Cash bail and bail schedules generally do not create an opportunity for review or determination of each of the four components individually. By reforming the "bail" situation, the Court will be making individualized evaluations to determine if the individual can and should be released. Under my leadership as DA, we have created several collaborative courts (more than any other DA Office in CA) to which we refer those charged with crimes, if need be.

If the Court finds the person is a danger to the victim or community by virtue of his or her acts, the Court must state why on the record to ensure that people are not being held in custody indiscriminately.

2. How do you (or will you) monitor those in your office to prevent abuse of the current money bail system?

ANSWER: We have a written policy. The case of People v. Humphreys was just decided by the Court of Appeals regarding the bail system that is in line with what we have been doing for more than a year. I have meetings with judges, Deputy District Attorneys, and the Public Defender's office to monitor the state of the bail system. There is a printed calendar of every court that has the cases that are being heard. My staff keeps a log on the calendar whether the person is in custody or not,

whether it is the first or second appearance, and any other relevant data. We review the calendars weekly. This is why Alameda County has so few people being detained before trial.

Juveniles

3. Under what circumstances do you think a juvenile should be prosecuted as an adult?

ANSWER: I have only charged juveniles as adults in the most extreme cases involving repeated violent offenders, as I believe that charging a minor as an adult is the absolute last resort. We look to the seriousness of the crime and the age of the juvenile. Before a minor is tried as an adult, we painstakingly review his/her case, including psychological evaluations.

The only crimes we consider for adult court are extremely serious. That is why I work very hard at preventing juveniles from getting into more serious crimes – in the juvenile system, we refer youth to Restorative Justice and jobs and mentoring and I am now engaging men from the community – men who have served time in prison for murder and other crimes – to be “coaches” on the street working with young people to re-direct them from crime back to school or into the trades for living wage jobs. Prevention is a cornerstone of my administration.

4. Death Penalty

What determinates would go into such a decision to ask for a death penalty?

ANSWER: I convene a committee and we discuss every case that could be eligible for capital punishment. My policy is that we will only ever make that recommendation rarely and in cases where there will be no question that the individual charged is guilty of the crime, and only in the most heinous or callous of crimes. Out of 128 cases eligible for capital punishment, I have made the recommendation only twice.

Rape

5. In light of all the media attention surrounding sexual harassment and rape, what criteria will your department use to decide whether to prosecute these crimes?

ANSWER: I became a lawyer and entered the DA’s Office to reform how victims — particularly victims of sexual assault, domestic violence, and other interpersonal crimes — were treated. I have done that in many, many ways.

I have written many of the laws and have been involved as an advocate for changing laws and policies that have made California a leading state in how we respond to sexual assault, domestic violence, child sexual abuse, human trafficking, and other interpersonal crimes of violence. I have taught students about the laws regarding Sexual Assault. I have been an ardent, outspoken speaker and leader in changing the paradigm of how the justice system will respond to and uphold the rights of victims, as well as those accused. In 1993, I was the co-creator of the Alameda County Sexual Assault Response Team (SART) and found funding to have a SART in three hospitals: Highland, Washington, and Valley Care. I filed charges in the first sexual assault case involving DNA evidence.

A conviction was obtained and the case went to the Supreme Court, upholding DNA as a scientifically reliable forensic science.

I took on the crisis of untested forensic sexual assault kits, many of which contain perpetrator DNA. Since determining that there were approximately 1,900 in Alameda County alone, I have eliminated the untested rape kit backlog in Alameda County and advocated to President Obama for federal funding of rape kit testing. \$130 million in bi-partisan, new money has been allocated for law enforcement and communities to test all untested kits, and to create multi-disciplinary working groups and processes to ensure testing of kits. Testing sexual assault kits ensures victim-survivors are treated respectfully and thoughtfully, providing them with justice; testing kits for DNA identifies serial offenders who continue to sexually assault others.

The question does not specifically address the issue of sexual assault of minors and other victims of sexual assault who are also victims of human trafficking. In 1996, I tried a case involving a 12-year-old girl who was being trafficked by a 39-year-old man. Since that time, I have been leading the fight, in Alameda County, in California, and in the U.S., that human trafficking – sexual assault of our children – is happening in all of our communities. My work combatting human trafficking is very well documented. I brought the issue to the White House, where they believed human trafficking was only trafficking of foreign nationals. I created a Research Institute to study Human Exploitation And Trafficking known as the H.E.A.T. Institute. It is funded through grants and awards I have received. I started the first H.E.A.T. Vertical Prosecution Unit in the country. As District Attorney, my office has prosecuted more than half of the human trafficking cases in California, and I have created support, recovery, and housing for sex trafficked individuals. Above all else, the priority is to provide justice for victims of sexual crimes, including human trafficking, in the most efficient, humane, and empowering way possible.

Victimless Crimes

6. What is your policy with regard to prosecuting non-violent political resistance and protest?

ANSWER: My office supports individuals engaging in non-violent political or other protests. This is true even if the peaceful protest involves breaking some laws, such as blocking access to public streets and highways or other low-level crimes. However, if someone engages in violence or extensive property damage as part of a protest, we will prosecute if there is evidence beyond a reasonable doubt that the individual did the violence or damage. We have prosecuted a very small percentage of individuals who have engaged in political, legal, or other protests.

Crimes involving police

7. Should the DA's recommended sentencing for a crime be different if the victim is a police officer? If so, why?

ANSWER: When law enforcement officers break laws, such as driving under the influence and other crimes, they are treated the same as other offenders of those crimes and punished as others would be. There may be factual situations where the abuse of power by an officer is treated more seriously because it involves someone who holds power and authority, but that is always a case-by-case analysis. My office will continue to treat each case with equal consideration.

8. Is there a different standard for choosing whether to prosecute a police officer or a civilian of a crime?

ANSWER: There is no different standard. Every case is reviewed on a case-by-case evaluation. My office applies the same standards when prosecuting all types of offenders. Both officers and civilians who break the law are treated equally and will be held accountable. I have, however, built the concept of equity into our practice. The result is that many non-law enforcement-based offenders are diverted to programs or provided resources and opportunities to change their behaviors. Programs such as Justice Restoration and the Early Intervention Courts take into account the backgrounds of individuals and bring equity into the decision making. In that sense, law enforcement are rarely if ever involved in these programs.

Police Latitude

9. When are police justified in using pain compliance to force non-violent protestors to obey? If unjustified pain compliance is used, how will the DA office deal with such charges?

ANSWER: Every case is evaluated on a case-by-case basis. Unjustified pain compliance is often dealt with as a personnel matter, unless the use of force on the part of the officer rises to an assault or other crime.

10. Under what circumstances would the DA office prosecute police for extreme use of force? Provide an example of the “least” extreme use of force where prosecution is justified.

ANSWER: The law outlines under what circumstances a police officer can use force – if they objectively and subjectively fear for their own safety or the safety of others. We have prosecuted police officers for pointing their guns at civilians while off-duty as a use of force. We have prosecuted police for assault committed while off-duty. Again, every case, whether law enforcement or not, needs to be evaluated on a case-by-case basis.

Jail or Rehabilitation, Charging and Plea Deals

11. What steps will you pursue to reduce the recidivism rate?

ANSWER: I have been building anti-recidivism programs for many years, even before becoming the DA. For low-level offenders, we do not file charges but rather send the individual to a class or to programs. We have several diversion programs for individuals who have been charged, with the outcome being charges are dismissed. I was part of the creation of Mentor Diversion, which diverted young men, primarily young men of color, from the criminal justice system into job tracks and/or school. The program, in effect for more nearly 20 years, has a consistent 5% recidivism rate. Several years ago, I engaged Community Works, a community organization, to partner with us in providing Restorative Justice for youth involved in juvenile crime. That program has consistently a 15% recidivism rate. I have been honored by Community Works and Children of Incarcerated Parents for my commitment to provide resources and programs to reduce or eliminate criminal pathways for individuals. I have been the Visionary of the Family Justice Center, a remarkable place of response, resources, and empowerment for healing from and ending the cycle of domestic

violence, sexual assault, human trafficking, and elder abuse, especially working with children who witness domestic and other forms of violence so they don't repeat the cycle themselves.

In September of 2017, I introduced the Justice Restoration Project. We are the only prosecutor's office in the country to be selected for a "Pay for Success" program where private investors provide money to programs designed to change paradigms. Our goal is to change the paradigm of young adults committing crimes and to break the cycles of incarceration. JRP first changes the attitudes of probation, prosecution, and other professionals from "hoping the young people don't fail" to "helping them create pathways of their own success." JRP will involve independent evaluation, and as we show that our way of doing business with young offenders is more effective in reducing incarceration and recidivism than the traditional method, we will pay back our investors.

Repeatedly jailing low-level offenders without providing supportive services and opportunities for employment and education is not the answer. The criminal justice system and our citizens are best served when we embrace new ideas and approaches to addressing crime, punishment, and rehabilitation.

12. What is your position on the DA's office overcharging a defendant in order to extract a plea deal? Is this a valid bargaining technique?

ANSWER: I have a strict policy that cases will not be "overcharged" in order to get a plea to a lesser crime or sentence. In my office, ethics is the highest value, as it should be. We do not use the authority or power with which we are entrusted to manipulate the outcomes. We are bound by the canons of ethics to charge what we believe the evidence shows and that which can be proved beyond a reasonable doubt.

13. What is the primary goal in recommending sentencing (punishment, public deterrent, rehabilitation)?

ANSWER: Sentencing does not necessarily mean incarceration, as is the case in Alameda County. It can mean participation in a drug court / drug treatment program. It can mean going to domestic violence treatment program. It can mean volunteer work. There is a price to breaking the law, if someone is apprehended and convicted. However, if we can provide the pathway for eliminating recidivism or provide opportunities to build skills, we will. There are, however, some crimes that are serious in nature and the punishment is set in the Penal Code, such as murder. I also believe that California law has built into the sentencing structure enhancements that can far outweigh the primary sentence. I do believe we should be examining those enhancements to determine if they are still appropriate as automatically imposed, or if the sentencing judge should have more discretion in setting the sentence.

Systemic Problems

14. How will your office handle crimes that involve the mentally ill, or mentally challenged? What is your policy in charging those who have mental disabilities?

ANSWER: I have a Mental Health Unit that primarily deals with people with mental health issues up and through those who are severely mentally ill. The County Community Correction Partnership, of which I am a decision maker, awards nearly \$24 million to community based programs every year, of

which approximately \$10-\$12 million is to provide services for those with mild to moderate and/or moderate to severe mental health or mental disabilities. Additionally, through reinvestment of savings through the passage of Prop 47, the County receives \$6 million to provide mental health and substance abuse treatment for low-level offenders. I have worked with community members and businesses to hold the County's Behavioral Health Department accountable for providing funding for effective service providers to deter those with mental health or mental illness from jails to programs.

15. Do you agree that policing involves systemic racism? If so, how will your office deal with the injustice of this system?

ANSWER: I do believe that the criminal justice systems have involved systemic racism. It is now California Law that all law enforcement must file a report on all contacts with members of the community that articulate race, gender, and other demographics that have been the source of racist or unequal treatment. This both sheds light on these contacts and holds police accountable for how they carry out their jobs. I have taught and wholeheartedly believe in procedural justice, as well as the 21st Century Policing Policies created under the leadership of Ron Davis, commissioned by President Obama.

16. Do you acknowledge that systemic racism exists in the DA office? If so, how will your office deal with the injustice of this system?

ANSWER: Internally, three years ago, I formed a working committee named "The Fair and Equitable Policing and Prosecution." This very diverse group of DA employees – lawyers, police officers, victim advocates, administrative staff—evaluated every policy, protocol, and practice of the DA's Office to uncover any implicit bias that might have crept into our decision making. I can only apologize for the past practices of some in my office from years ago. But, under my leadership, we treat people equally and factor in equity in how we carry out our responsibilities. The working group continues to meet as we continue to challenge ourselves to always act with fairness and equality. I also have a very diverse staff and particularly those in leadership. My goal is always to have an office that looks like the communities we serve.

DA office management

17. What fraction of DA resources will go into white-collar crime? Which crimes receive the greatest resources and which are a low priority?

ANSWER: I have a very active Consumer, Environmental and Worker Protection Division. There are 19 deputy district attorneys and 19 investigators. We have just created a Mediation Practice for consumers who have been wronged by businesses on lower-level cases. The Division primarily does civil work. My office was the first in the State to designate a Unit for Consumer Protection. It has since grown to include Environmental Protection, Land Use, Real Estate & Mortgage Fraud, Medical Fraud that focuses on medical providers illegally prescribing opioids, major theft and embezzlement, and general consumer Fraud. Environmental Protection and Consumer Fraud are the most active Units. We have sued companies such as BP Oil for oil spills and the like; Schnitzer Steel for putting toxic particles and waste into the air; Walmart, Home Depot, Lowe's, and other businesses that put toxic materials into the land fill rather than safe disposal. An example of a strong consumer case which we took to trial was against Overstock.com for misrepresenting the value, cost, and

comparative costs of products, incorrectly claiming to have the lowest prices. We have had bait / switch cases – advertise for XX amount as a way to get consumers into the store or to purchase a higher priced item. In major fraud cases, we prosecuted the Financial Director of A.C. Transit, who embezzled funds from the Allen Temple Baptist Church Foundation accounts. In the Real Estate Unit, we were involved in the mortgage fraud cases and were able to assist home owners from foreclosure due to fraud. These are just a few examples. The Mediation Unit will handle smaller cases, such as consumer disputes against a business where there is consumer fraud but on a smaller scale.

18. How will your staff select between punishment and rehabilitation?

ANSWER: On misdemeanor and low-level felony crimes, including robberies without a weapon or injury to the victim, access to programs the county funds or other community based programs that lead to “rehabilitation” is always included. We have several programs, some of which substitute filing charges, some are diversion with the case being dismissed, some are in conjunction with serving a time under supervision by probation. Some crimes are state prison mandatory. These are the most serious crimes. However, I am working with a group of men – Returning Citizens – all but two of whom have been to prison for murder, and one for multiple murders. These men and I meet regularly and at least one time a month for dinner. We discuss what can be done to help people re-enter the community in a safer, more supported manner. We discuss what I can do to support them as mentors and coaches for those young people and older people who are returning to community. Through my work on the Community Corrections Partnership, I led the strategic planning process with members of the community to allocate \$24 million dollars annually for services that provide a safe, stable and supported re-entry. I and my office has adopted two maxims: “Nothing stops a bullet faster than a job” and “we believe in redemption.”

19. What metrics do you (or will you) use in supervising the DA office to make sure assistant DAs comply with the policies that you set? What metrics do you (or will you) use to rate staff performance?

ANSWER: I have an office staff of nearly 400 and eight branch offices. They are attorneys (160) and investigators (70), and the remaining are administrative staff and victim-witness staff, as well as several unique teams, such as the H.E.A.T. Watch Unit, SafetyNet (working with exploited and trafficked youth), the Young Women’s Saturday Program (for exploited and trafficked youth) and the Family Justice Center. The team structure I have in place has branch supervisors, unit supervisors and team supervisors responsible for monitoring and supervising teams of staff. I meet every other week with the leaders of the office and receive reports from them. I have an open-door policy and talk to people in the community with whom we work and are serving. I have a criteria for those considered for promotion. We have an annual all DDA / Inspector meeting where we have training and discuss policies and protocols. We produce a weekly legal update show that is also distributed to more than 40 offices around the state, so lawyers are up on the law. I have written policies for all staff and a professionalism manual for attorneys. When personnel issues arise, which remarkably is rare given the size of the staff, the Chief Assistant is the point of contact to the reporting party or the employee. I then become involved to determine what action will follow.

Please type your responses to the Questionnaire and submit them in pdf or Word documents using these question numbers. Be sure to include your name and contact info at the top. E-mail the completed document containing your responses to: BPA2016@aol.com

We will post each candidate's responses online prior to our endorsement meeting and our members will be encouraged to read them.

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