People's Alliance PAC 2021 Questionnaire for North Carolina District Court Judicial Candidates

Candidate's name: Carl Newman
Judicial Seat sought: Durham County District Court
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About you:

1. How do you characterize yourself politically? What values, policies, or platforms have influenced your decision to vote for one candidate over another?

   I am driven by the desire to reduce the amount of human misery, and that has always led me to vote for Democrats over any other party, and Progressive Democrats over centrists. As one of her delegates for the Democratic National Convention in 2020, I proudly describe myself as a Warren Democrat.

   As a lawyer voting for judges, I have always felt that integrity, temperament, and legal acumen are ultimately superior criteria to evaluate a candidate than partisanship or ideology - though that belief has yet to lead me to vote for anything other than a Democratic candidate in partisan judicial races.

2. Have you ever been convicted of a criminal offense (other than a minor traffic or minor drug offense)? If the answer is yes, please describe the circumstances and the outcome.

   No. I've gotten a few red light tickets, a few speeding tickets, and was once arrested as a minor for violation of curfew. In the latter, I was arrested with my best friend, who is now a brain surgeon. The judge lectured us about avoiding the slippery slope to a life of crime before throwing out the charges. He did not understand us, but I suppose he did understand how silly it was to arrest teenagers for violation of curfew two blocks from my house. I think what I'll take to the bench from that experience is just a sense of humility - I'll never know everything and often know very little about who the people appearing in court really are and there is more to everyone's life than their court case.

3. Have you personally ever been a party in a civil legal proceeding? If the answer is yes, please explain the circumstances and the outcome of the case.
   Yes. I was a plaintiff in a small claims case in 2013 in Chicago. My roommate and I sued our former landlord for our security deposit back, which we won - a total $625 for each of us. It is the only time that I have ever testified in court, and so I tell my clients about it regularly when I am preparing them to testify. I tell them that it wasn't a lot of money for a lawsuit, but it was a lot of money to me at the time; that I knew I was telling the truth; and that it is still one the most nervous moments of my whole life. I think about it constantly in my litigation practice and that experience would shape how I would treat every person who appears in my courtroom, if I become a judge. One of the things I've learned in practice is that the attorneys and the judge are the supporting characters in the story, and the parties are the ones there to get their day in court - everyone else in the courtroom is just having another day at the office. Every case has to be treated with a kind of reverence by the judge because for most litigants, whatever case they are in court for is the biggest case of their lives.

About your practice of law:

4. Please describe your practice as a lawyer. Describe the areas of your practice and your specialties. Describe the diversity of your client base as a part of your answer.

When I graduated from law school, I went directly into a fellowship project I designed myself at the Domestic Violence Legal Clinic in Chicago. The project was aimed at providing representation in litigation that arises after a "final" divorce judgment was entered - largely child support and some custody matters. Because of the ways various grants and funding streams were designed, generally no legal aid representation was available at the time in Chicago for that client population. Later, I worked as a direct service legal aid attorney at Prairie State Legal Services in central Illinois, where I represented a similar low income population in family law matters and housing cases, often defending against evictions. In both these legal aid roles, I primarily represented women of color, some with limited English proficiency, all of them living in households under 60% AMI. In my first few years of practice, I also gained some opinion writing as a clerk for the Third Circuit staff clerk's office, a judicial extern for a federal district court Judge, and as a clerk for an administrative law judge in the Social Security Administration.

The majority of my practice since 2015 has been in civil appellate cases, and I've been the primary (or only) attorney on nearly fifty appellate cases in state and federal court, largely for governmental entities. First for the City of Chicago, then as chair of the appellate practice at Cranfill Sumner & Hartzog. I relocated to North Carolina so that my wife could pursue her dream job at the National Health Law Program to litigate a combination of Medicaid and Americans With Disabilities Act cases nationwide. While I'm glad to have had some experience in private practice at Cranfill, it was largely a role to help me transition to North Carolina, and I returned to government practice as the General Counsel at the Durham Housing Authority. I left that role after less than a year, a few weeks after the last evacuated families returned home to McDougald Terrace. In my current position with the North Carolina Department of Justice, I represent local school boards in personal injury cases across Superior Courts and in the Industrial Commission.

In Durham, all seven district court judges end up both generalists, in the sense that judges have to be able to hear the full range of district court cases, and specialist in that a District Court only encompasses certain kinds of cases. While my criminal law experience is limited primarily to appellate work, I have significant experience with evictions, family law, and a variety of civil cases. Every judge takes the bench with some subject area gaps, and the law changes anyway so it is primarily important that a judge can learn new law on the job - something that has always been part of my practice. Frankly, integrity and temperament may be even more important in what qualifies as a good judge because judges are first and foremost public servants, with a unique position: they have to strive to create a courtroom where everyone trusts the process has been fair even though at least half of the parties who come in walk out without getting what they wanted.

5. Have you ever been publicly or privately disciplined by the North Carolina State Bar or any other professional or occupational licensing authority in North Carolina or any other state? "Disciplined" should be read to include reprimands, censures, and warnings in addition to license suspension, surrender, revocation, and disbarment. Is the State Bar or any governmental authority considering a complaint against you at the present time? Have you ever been found in contempt of court? For each "yes" answer, please tell us what happened and describe the outcome of the matter.

I have never been disciplined, nor has any complaint been filed against me in any disciplinary body.

I briefed, argued, and won an appeal on an issue of first impression in Illinois, Lesner v. Police Board of the City of Chicago, 2016 IL App (1st) 150545, which held that the City of Chicago Police Board was able to fire an officer in a case where the police superintendent had not sought termination. https://www.chicagolawbulletin.com/archives/2016/06/16/cpd-board-discharge-6-16-16 The case was subsequently cited in the US Department of Justice's investigative report into police misconduct in Chicago as a positive step forward in police accountability. https://www.justice.gov/opa/file/925846/download (Page 88). The dissenting judge on the panel, in an argument that the officer had not himself even made, suggested that the City had a "conflict of interest" in that it had argued at the Police Board hearing for a long-term suspension of the officer and had argued on appeal that the Police Board had the power to order a greater disciplinary consequence than the City had requested at the original disciplinary hearing. I have always interpreted that language as an accusation that I had violated the rules of professional conduct, though I explained to the dissenting judge at oral argument why his position was incorrect. https://www.illinoiscourts.gov/courts/appellate-court/oral-argument-audio/ As it happens, that was my second appellate argument. It was a formative experience for me as a lawyer, because I was never given an opportunity to challenge the incorrect assertion in his dissenting opinion.

In early 2014, a motion for sanctions under Rule 11 was filed in response to a petition for an emergency order of protection I filed in Peoria while I was a legal aid attorney, alleging in essence that certain material facts had been excluded from the petition. After brief additional discussion with my client after I received the motion, I withdrew the petition, the motion was withdrawn by my opponent, and my office withdrew our representation from that client.

6. Please describe the nature and extent of any pro bono work you have done. Is there a pro bono matter to which you have contributed that best illustrates your values?

My pro bono practice has been limited because I have not spent much time in private practice. In law school I participated in tax clinics for low income families and in the first few years out of law school I worked with and then ran a pro bono project to provide basic estate planning documents for low income seniors. I did full time legal aid work for a few years before I started doing government practice (and my government practice has always had strict limits on outside legal work). A few of my legal aid cases stand out to me - including a tenant in Peoria, Illinois who I represented in a case where the housing authority was trying to evict her for having too many children's toys on her yard (which I won at an administrative hearing - she gave me a Christmas ornament she made by hand); another where I represented a tenant in Pekin, Illinois where the housing authority was trying to evict her for being a hoarder (which I lost and think about every time I see any homeless person), and perhaps the case I think about most often is a bench trial for a change of custody hearing I won. I remember it simply because I remember learning from it that the case was my client's and not mine. She won it. I was just there when she did, and knew how to steer the case so she could. The most valuable lesson I learned from my direct service legal aid work and pro bono work has always been that lawsuits are about the parties, not about me.

Concerning law and policy:

7. North Carolina incarcerates an extraordinary number of people, including persons convicted of non-violent crimes. Those who are incarcerated are disproportionately people of color. What if anything should the legislature and our courts do to address the issues of mass incarceration and racial bias in the administration of justice?

The most influential class I took in law school was a seminar on federal criminal sentencing, and my thinking about prison as an outcome for legal cases has only sharpened since. The entire philosophical basis for carceral punishment is deeply flawed. We don't even generally agree on why we have prison at all, offering four different rationales: retribution, rehabilitation, general deterrence, and specific deterrence. I believe that rehabilitation is a laudable goal, but it is not related to the modern carceral experience at all - people don't become better people by going to prisons that are designed to punish rather than offer opportunities to change. General deterrence has a very weak empirical basis (if any); put simply, if putting 2 million people in prison actually deterred crime, we would know by now. Retribution has always been too old testament for me, and is fundamentally victim-focused when our entire criminal justice system is built on the concept that crimes are crimes against the state, not against the victims. If the victims are the focus, then Retribution is a sensible goal, but the victims gain nothing by incarceration, so the match is poor at best. A real restorative justice model would seek to remedy the victim's harm rather than inflict harm on the offender. The only goal that has ever made sense to me is specific deterrence, but I approach it with profound humility. The task of determining which of two convicted persons is likely to become a recidivist is an exercise in predicting the future, and I do not know what the future holds; I do know that a focus on reducing recidivism empirically results in horrifying racial disparities.

Every judge I know of who is asked "What is the hardest part of your job?" answers: "Sentencing." Without an intellectual basis of any meaningful satisfaction, the carceral system is left to operate on the unspoken and unarticulated bases that class and race determine outcomes, rendering the system as a whole in dire need of drastic reform. Our courts need to provide a constant bulwark against these forces, in the sense of leniency and a critical eye towards prison as a solution to any problem.

8. Should the North Carolina General Assembly abolish the death penalty?

Yes. The death penalty is immoral, racist, ineffective, expensive, slow, and eventually the United States Supreme Court will finally come to decide it is unconstitutional.

9. What, if anything, should be done to improve access to justice for people with limited financial means or who mistrust the system? How should courts handle requests to waive court costs, fines, failure to appear fees, probation supervision fees and attorney's fees in criminal court, prayers for judgment continued, and similar requests?

The nickel and dime game of fees and costs for criminal defendants should be dramatically reversed and the reliance on fines generally should be revisited by local, state, and federal legislatures as they all perpetuate inequities in legal outcomes based on the parties' income and wealth. These fees are a devil's bargain at best in North Carolina because we have one of the worst funded state court systems in the country. Courts should not themselves perpetuate a system that taxes the poor parties when the state itself should be investing in the cost of justice. The legislature needs to fund our courts, not the parties.

Studies have shown that the single thing that actually makes pro se litigants respect court decisions is the feeling that they have been heard. Taking additional time to listen and talk to litigants who have infrequent and unrepresented interactions with the legal system is actually the best way to get them to feel as though the outcome was fair and to abide by it. Sincerely engaging with parties who find the court system itself mystifying is part of what keeps the system from collapsing. One of the most important jobs any judge

has is to ensure that the parties have a real sense that they have been heard, and its especially important that the losing party have a real understanding of why.

The pandemic has offered a great experiment for digital court, and that can be a valuable tool for improving access to justice going forward. The potential for WebEx to be used to reduce the difficulty of balancing a court appearance against a job is enormous - attendance for short hearings can be completed from a cellphone in a supply closet instead of having to switch shifts or use limited time off. Our courts need to make it easier for parties to request appearance by WebEx for that reason.

On the other hand, while in Illinois, I was part of a committee at the Chicago Bar Association who opposed a proposed rule change that would have allowed for bail hearings to be done by video conference. Academic research on the topic had demonstrated that failure to meet the defendant live and in person led to higher bails. It's likely that it would also lead to longer prison sentences. Essentially, the "distance" created by digital appearances likely creates a kind of subconscious uncertainty that influences judges to treat those they see digitally as somehow more dangerous than defendants who appear before them. For that reason, I'm deeply skeptical of efforts to make criminal proceedings of any kind remote, unless specifically requested by a Defendant.

10. What is your position on bail? What, if any, changes need to be made to the current bond schedule?

    The legislature should eliminate cash bail. The only reasons to hold any detainee pretrial should be a demonstrated risk of flight based on prior attempts to abscond/failure to appear or the severity of the crime charged. The exceptional level of empirical data showing that bails are set higher in proportion to how dark the Defendant's skin is or that bails are set at different levels by the same judge immediately before and after lunch for similar crimes have well demonstrated that the cash bail system is simply a failure. Efforts that I witnessed in Illinois (which attempted to shift to a schedule and reduce judicial discretion) were intended to reduce the effects of biases creeping into the amounts set, but the consequences were 1) that judges pushed back against the schedules because they trusted their own intuitions over the data and 2) that the schedules made recognizance bonds almost nonexistent for felonies, where there had been at least some defendants who received them in the past. There aren't enough tweaks to ever fix the system, and abolition of cash bail is the only long-term viable solution. The momentum is towards that now in part because of increased availability of GPS monitoring, but even that should not be reflexively ordered in my opinion.

11. What can be done to improve language access for parties, victims, and witnesses during court proceedings?

    Two interpreters at the same time. Interpretation is often an art, not a science. The court systems have been so cheap in providing the minimum of language access that it has never occurred to us to have more than one translator present at once to verify that interpretation is accurate, including differences in dialect and vocabulary. Because we as a legal system have done such a poor job for so long on language access, we are settling for the bare minimum of being able to partially communicate in any language other than English and that is not even equal, much less equitable. Flipping the default - assuming that every form and sign should be translated in advance and equally available - also changes the disorienting experience for those who have little experience with the legal system and limited proficiency with the language that system defaults to.

12. Do courts have the authority to shorten prison sentences and release prisoners in the interests of justice and in response to emergencies like the current pandemic?

    For me, this is the most difficult question on this questionnaire, because I would want the answer to be yes, but I would have to be persuaded that the power to resentence based on factors unrelated to the crime of conviction or the defendant can be a sufficient justification on their own to change the judgment of the sentencing court. Primarily my concern would be that is asking the courts to do the parole board's work.

    On the other hand, a number of courts nationwide and in North Carolina have used facts about an individual prisoner - their own health conditions or risk factors - are potentially mitigating factors that should be considered because of Covid and certainly courts have the authority to engage in that kind of case-by-case analysis - that's really what all sentencing should be in any event.

13. What does racial equity mean to you and how will racial equity inform your work as a district court judge? Have you any special training in issues related to racial disparities and equities?

    There's a common rhetorical tool used in racial equity trainings: two people are out in the ocean and they need to get to land. One is in a canoe and the other is floating in the water. Equality is giving them both an oar, equity is giving them whatever it will take to get them both to shore.

    I've participated in a variety of racial equity trainings in the last three years, many of them offered internally at the North Carolina Department of Justice. I am committed to the idea that it is life-long-learning work.

    As a district court judge, there are two different angles that I would bring race equity. The first is to remember that I was born on the canoe, and the second is to remember that it isn't easy to swim to shore. The racial dynamics of family, housing, and criminal law are all such that behavioral expectations are silently set at white norms - for how to parent, how to rent property, how to dress for court, and how to engage in a world where the risk of violence can be acute. Those expectations need to be constantly re-examined and when appropriate reset.

14. What are your thoughts on Durham's current diversion programs? If you believe these programs should be changed in any way please describe how and why.

    Diversion programs are a trendy solution to create partial solutions to systemic problems in the law - drug court being one of the most common examples. Creating a small subset of cases that get superior attention and resources is good, relative to no one getting that level of attention and resources, but diversion programs should be used as pilot programs as a means to change the rules for everyone, not as a lottery system to give a small number of people exceptional outcomes. "It's better this than nothing" is a never a satisfying response to me, even though I understand that partial solutions are often pragmatic decisions. Certainly the mental health and adult drug treatment programs in Durham are better than having no diversion programs, but the attempt to package court involvement with access to supports outside of the law is something that ought to be moved towards the general population of criminal defendants.

15. What population, if any, is currently underserved, and what remedies can be implemented?

Spanish-speaking and other litigants with limited English proficiency need more language access to even feel like being a participant in our legal system is a real option. It's difficult for me to imagine how any individual with limited English proficiency as a criminal defendant could believe that they have equal access to our courts, have a right to be treated as innocent until proven guilty, or that their voices can even be heard by judges who only hear them through interpreters. The use of an interpreter should never be presented as an inconvenience for the rest of the courtroom.

16. What should the court do when both the defense and prosecution agree upon a bond request or agree on a lawful plea?

Perform a sincere inquiry into the Defendant's position as allowed, but accept it so long as it is not independently a violation of any law or standard. It simply isn't the role of a judge to create conflict where the parties have none. It's also important to have some epistemic humility as a judge – there will always be more in a case than the judge will ever know, and the reasons for a particular agreement might fall into that category.