

San Francisco Democratic Party (SFDFCC) Questionnaire  
Answers of Judge Curtis Karnow

**SFDFCC Candidate Questionnaire**  
**Superior Court Judge - June 2018**

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What office and which seat are you running for?  
Judge OF The Superior Court, Seat 7  
Are you running for re-election? Yes  
What other elected positions have you held previously?  
None

**PART I: GENERAL QUESTIONS (200 words or less)**

1) Are you a registered member of the Democratic Party?

Yes. I am a lifelong Democrat.

2) Please describe your contributions to the Democratic Party and/or increasing civic engagement in the democratic process at the local, state and or/national level in recent years.

I have undertaken major efforts on civic education and outreach. The Chief Justice appointed me to her "Your Constitution: The Power of Democracy Steering Committee," as well as to the Judicial Council's Leadership Group on Civics Education and Public Outreach. Both of these groups work with schools to teach constitutional values, how the courts work, and provide a framework for lifelong civic engagement. With my wife (a teacher) I wrote the book HOW THE COURTS WORK: A PLAIN ENGLISH EXPLANATION OF THE AMERICAN LEGAL SYSTEM, and with my colleagues at the court I wrote and edited a book for kids and teachers, WHAT'S YOUR WEIRDEST CASE? JUDGES ANSWER QUESTIONS ON THE COURTS.

3) Are there any other civic causes or organizations that you are involved with currently or were involved in prior to taking the bench? Please describe.

Before I was appointed to the bench, I spend decades working with bar associations including in leadership positions with the State Bar pressing for changes in the law to make it more rational and expeditious, focused on access to justice. I testified before the Legislature, drafted rules for the courts working with lawyers and judges across the state. I was on the Board of the Legal Aid Society. For many years my wife and I have provided significant support for our local food banks.

4) Please list any organizations or elected officials who have endorsed you.

Governor Jerry Brown, Congresswoman Jackie Speier, Senator Scott Wiener, Assemblymembers, David Chiu and Phil Ting, State Board of Equalization member Fiona Ma, Mayor Mark Farrell, City Attorney Dennis Herrera, Assessor Carmen Chu, Board President London Breed, Supervisors Aaron Peskin, Katy Tang, Norman Yee, Former Supervisor Angela Alioto, Sheriff Vicki Hennessy, District Attorney George Gascon, Former City Attorney Louise Renne, City College Trustee Rafael Mendelman, City College Trustee John Rizzo, VP City College Board Alex Randolph, Commissioner, SF Board of Education Rachel Norton, San Francisco Firefighters Local 798, Community Alliance for Jobs and Housing, California Latino Judges, all 50 San Francisco Superior Court judges, and all First District Court of Appeal justices among many others.

## **PART II: SHORT-ANSWER QUESTIONS (250 Words or less)**

1) What do you perceive as the strengths of the Superior Court? What are the current weaknesses and how would you like to see the judicial system improved?

Our central strength is our diversity- about 11 former public defenders, as well as Asian-Americans, Latinos, Latinas, African-Americans (including our current presiding Judge), judges from the LGBTQ community, men and women, and on. We have judges who were appointed and judges who first were elected. Our second great strength is the enormous commitment we have made to alternative treatments and other community-based programs. I discuss these below. (Qus. 6, 10)

There are serious weaknesses. I discuss these in questions 11 and 12 (civil litigation) and questions 5 (bail in criminal cases).

2) Please summarize your qualifications and experience for the office you are seeking. Have you ever had any experience with management? If you are seeking re-election, what is your experience prior to serving on the bench?

Past Experience:

Clerkship with Judge Louis H. Pollak (E.D.Pa.) (Pollak had worked with Thurgood Marshall on *Brown v Board of Education*); Assistant United States Attorney. Private practice: specialized in antitrust, intellectual property litigation, computer and internet law. My first law firm job with was a small plaintiffs law firm specializing in securities and antitrust class actions. My last case as a lawyer was suing Microsoft in an antitrust case, accusing it of monopolizing software markets and driving up costs for consumers. Pro Bono work: working with Mexican-American Legal Defense Fund discrimination cases; guardianships for San Francisco families of color where a parent has been incarcerated; successfully but long running representation of Phil Zimmerman and his encryption software PGP against criminal investigation by US Government (accusing him of exporting "munitions" by posting his privacy software on the web).

I am an author of the Rutter Guide, a key authority for civil law in this state, and teach new and experienced judges. As a result, I routinely take calls from judges across the state to discuss difficult issues. I have written many papers and books focused on access to justice and the improvement of the legal system.

3) Have you ever had to support a legal position that was contrary to your personal moral beliefs? Please describe.

Every year there are some occasions where I rule contrary to my beliefs of what the law *should* be, but in conformity to what the law is; and in those situations, I make a record and urge the appellate court to change the law. I have gone to the extent of certifying important questions to the court of appeals, asking them to reverse me. But these are not decisions contrary to my personal *moral* beliefs. Those moral issue might arise for example were I operating under mandatory sentencing guidelines and the sentence was cruel and unusual, as occurred under federal guidelines some years ago, leading to the resignation of some federal judges.

As a lawyer I made it my business to turn down work which conflicted with my moral beliefs. My firm turned down lucrative tobacco defense work, and I fired a client for expressing anti-Semitic views.

4) What do you perceive are the primary causes to the high rates of incarceration among communities of color? Do you believe the Court has a role to play in criminal justice reform?

Incarceration is failure mode. It is the sole option available to a judge in some cases, but it is important to understated that incarceration may come at the end of a long line of systematic failures to attend to a human being's basic needs. Think of courts as the emergency room in a hospital: By the time the defendant walks into court, it may be too late address the underlying causes. But often, the courts *can* do something, and they emphatically have a role in criminal justice reforms. I personally have engaged in that reform with my work on bail (see next question) and my court has extensive experience, nationally recognized, in stepping up to break endless cycles of recidivism by addressing root causes. See answer to question # 6.

The question addresses communities of color. Courts can maximize their efforts only if they understand implicit bias in the courts and the criminal justice systems more generally. That's why I developed the courses on the subject. See Question # 9.

5) Do you believe that the current bail schedule has disproportionate impacts on low-income communities of color? How could this system be reformed and how?

I researched and wrote the paper urging bail reform which over the last few months is cited in the key state appellate opinion, and *extensively* relied on in the federal order, both of which challenge the state's current bail system. My paper is available at:

<http://scholarship.law.berkeley.edu/bjcl/vol13/iss1/1>

It is fair to say that no one has a better record than I do on thinking through the issues and providing the analytical framework to challenge the current system. To summarize my findings: under the current system dangerousness is addressed by setting money bail, but as my paper showed this doesn't work. Reform involves distinguishing the dangerousness of the person from the issue of risk of flight; if the person is too dangerous to be released, then no setting of money bail makes sense, because then wealthy dangerous people are released and poor less dangerous people are incarcerated. When it comes to risk of flight, courts should determine the wealth of the person, and set high bail for the wealthy and low bail for the less wealthy. However, there are usually far better alternates than setting bail, such as routine reporting, tracking devices, pretrial diversion programs and other means to stay in touch with defendants waiting for trial. These need funding, but with these programs often no bail need be set to ensure people turn up for their next court hearing.

6) San Francisco is facing a car break-in epidemic that is organized by crime networks. What do you perceive are the factors leading to this problem? What is the court's role in preventing offenders returning to crime?

Courts play a powerful role in reducing recidivism. And the San Francisco Superior court is second to none in the programs it has fostered in attacking the underlying causes of crime. These causes are often poverty, drug use, and other conditions that result such as homelessness. Simply herding defendants through the usual criminal procedures is often ineffective, which is why our court has developed the Community Justice Center which provides services include drug treatment, mental health programs, support groups, counseling, career development and job training. The CJC emphasizes immediate intervention with the goal of preventing cycles of recidivism while improving the lives of participants and residents in the community. This, and our other collaborative courts are leaders in the nation: judges from across the country come to San Francisco to learn from our innovations. In addition to the CJC, we have the programs listed in Question 10.

7) Do you believe there is enough diversity in the court system? If not, how are you working to improve representation?

First, the San Francisco Superior court is probably the most diverse court in the state, and perhaps in the county. And statewide (during Jerry Brown's governorship), there has been a higher percentage of woman, African-American, Hispanic and judges from the LGBTQ community appointed than have applied. The Daily Journal and the American Bar Association have noted the Governor's "tendency of choosing public defenders". [http://www.abajournal.com/news/article/california\\_gov.\\_jerry\\_brown\\_appoints\\_a\\_high\\_perce ntage\\_of\\_former\\_public\\_def/](http://www.abajournal.com/news/article/california_gov._jerry_brown_appoints_a_high_perce ntage_of_former_public_def/).

But the question here focusses on the court system as a whole, and there is much more work to be done. Because (at least over the last 7 years) diverse lawyers are often successful in being appointed, the goal must be to increase the number of *applicants*. That's in turn requires (1)

increasing diverse enrollment at law schools, (2) training diverse lawyers to make it clear that judgeships are attainable, and (3) mentoring diverse lawyers for the 15-25 years it usually takes to become known, accomplished, and respected in the legal field so as to be eligible for appointment. And I start 'at home'- mentoring the diverse young lawyers who work in my department and working with young lawyers of every background through bar associations.

8) How does your background and experience prepare you for legal cases pertaining to the rights of women, people of color, people with disabilities, and LGBTQ?

I grew up in the diverse city of Hong Kong (attending a predominately Chinese school) and have worked in the diverse city of San Francisco since 1982. My work at Legal Aid, my pro bono work on guardianships for people of color, my work on nationwide appellate work for the Mexican American Legal Defense Fund, and my years of work on implicit bias in the legal system, have all prepared me for these cases—which, actually, are just cases any judges will handle, whether in the criminal or civil courts. As a member of the Supreme Court's Ethics Opinions committee, I am sensitive to the respect and consideration to which litigants and lawyers are entitled, and the training judges need. I am developing a course on the use of the internet in domestic violence cases, to train judges on the means by which victims are stalked and harassed with digital tools. The point is to enable judges to understand testimony, the impact of these attacks on victims, and to devise effective orders to stop it.

9) Do you believe there should be implicit bias training for judges?

Yes, which is why I am the leader in this state on the subject. I initiated, developed and teach courses on implicit bias. On this project I worked with Judge Zeke Zeidler (LA), President of the International Association of LGBTQ Judges for four terms (who has endorsed me). My courses examine implicit bias as part of a general theory of cognitive fallacies, for which there is a great deal of research, and which allows me to present the issue in a non-threatening way in order to achieve real result and changes in behavior, sensitive to the sometimes covert expression of bias, and to ensure that everyone in the courtroom feels he or she is in a safe, respectful, and fair environment where issues will be decided with justice. I teach the course to the large number of lawyers who are interested in our pro tem programs, and to judges across the state.

10) What is the court's role in decriminalizing those with mental illness or the homeless who are caught up in our criminal justice system?

As indicated above, San Francisco Superior court is at the forefront of these efforts. We have seen the pointless cycle of repeatedly using dated criminal processes to send defendants through the system. Often this is not the solution, most especially when the underlying causes are poverty, drug use, and associated symptoms such as homelessness. We must deal with the causes. For this reason, we took the initiative with the collaborative court noted above (Qu. #6) to take defendants out of the traditional criminal justice system and get them the help they need. And it is working. We also have these nationally recognized courts:

- **Behavioral Health Court:** for people with serious and persistent mental illness: focus: community re-integration
- **Drug Court:** Links non-violent offenders with substance use disorders to outpatient and/or residential treatment
- **Family Treatment Court:** comprehensive, coordinated services to families impacted by parental substance use: Focus: family stability and prevent children's re-entry into foster care.
- **Intensive Supervision Court:** Provides high-risk high-needs probationers with community supervision as an alternative to prison
- **Juvenile Reentry Court:** reduces recidivism of youth returning from long-term commitments with case planning and aftercare services for high needs youth returning from out-of-home placement
- **Veterans Justice Court:** Focus: specialized needs of veterans facing criminal charges by providing the social service, educational and vocational support they need to lead productive and independent lives.
- **Young Adult Court:** Focus: youths ages 18-25.

11) How should the court ensure a fair hearing in the case of pro per or unrepresented litigants in family court or housing court?

This is one of the most serious problems in our civil litigation system. The legal system is complicated and frightening for many people; sometimes rights are given up because a pro per did not know to assert them. The issues arise in housing and family courts, but also in ordinary civil cases. While the dollar number varies county from county, in San Francisco if a case is worth less than around \$250,000, it will be difficult to get a lawyer to handle it on a contingency.

There are at least two approaches here. The first is Civil Gideon, a program by which the state funds lawyers, generally form family and housing court. In 2011 the state enacted the "Sargent Shriver Civil Counsel Act" which began funding this on an experimental basis. Under the Act, seven pilot programs at about \$9 million per year were set up to provide legal representation to low-income residents in civil cases—mostly housing cases. But this must be expanded beyond pilot programs, and much more funding is required.

Second, courts must provide services to pro pers—which is exactly what the SF Superior Court does. Our housing courts provides lawyers on day of trial to help tenant settle their cases. Our Access Center provides forms, help filling them out, explaining legal options and court procedures, together with resources to find lawyers. We provide help for Family Law, dissolution of marriages and domestic partnership and related issues, paternity, child and spousal support, domestic violence restraining orders, and many other areas. These programs can, and should, be expanded to cover other areas of law, and judges, lawyers, and community leaders should agitate for increased funding for the critical programs. (See funding issues at Qu. 12)

12) What do you perceive are the biggest obstacles the court faces in civil litigation?

How can this be improved to best serve the general public?

I'll mention two issues. They both have to do with access to justice.

(1) Although one of three branches of government, the courts are severely underfunded and only secure roughly 1-2% of the budget. For years we have seen our revenues decrease, resulting in some lay-offs, furloughs, and judges (such as myself) actually paying back some of their salary to keep the doors open and fund our staff. We don't have the funding we want for our collaborative courts and all the services they provide, we can't keep the clerk's office open for the hours the public deserves, and sometimes for lack of staff we can't have all the courtrooms open we would like.

(2) More importantly is the complexity of civil law and how it impacts pro pers. As an author of the Rutter Guide (the bible of California civil law), I understand how legal procures can confound pro pers, which may rob them of their day in court in some cases. I have spent my career simplifying procedures and indeed was assigned to the complex court—where a single case such as the North Bay Fires case can involve thousands of parties and lawyers—because I have developed fast ways to resolve discovery disagreements (often the most time consuming and expensive phase of litigation), work towards settlement, expedite cases and offer rapid resolution with expedited jury trials, the rules for which I helped develop.