

Opinion

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What lawyers want to know: candidates for Senate speak

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What are your criteria for approving federal judge and U.S. Supreme Court nominees?

In voting on Supreme Court and other federal judicial nominations, I will look for judges who apply the law to the facts of the particular case and demonstrate impartial, independent judgment. It is especially important that we select and confirm judges and justices who have common sense and understand that the decisions they make affect people's lives. I will examine each nominee's professional experience and qualifications and his or her published views on a wide range of issues.



Should the Patriot Act be renewed? Why or why not? What are your thoughts on surveillance cameras now being disseminated by Homeland Security?

We must balance keeping America safe with protecting individual civil rights and civil liberties. The post-9/11 Patriot Act was an attempt to protect Americans from terrorists, but it sacrificed some of our most treasured civil liberties. President Obama recently called for the reauthorization of three key provisions of the act, while remaining open to much-needed changes. This stance reflects the importance of providing law enforcement with the latitude it needs to fight terrorism, while also remaining cognizant of the risks posed by such legislation. In the Senate, I will work to ensure that any proposed Patriot Act reauthorization strikes the appropriate balance between protecting our national security and safeguarding the privacy and freedom of all Americans. With respect to surveillance cameras being funded or distributed by Homeland Security, limited use of cameras in public places may both deter terrorist acts in such

places and enable law enforcement to collect useful information to prevent attacks. However, strict guidelines must be established and followed to ensure that law enforcement does not misuse information collected by surveillance cameras.

Should there be a legal distinction for terrorists when it comes to the death penalty?

No, I oppose capital punishment in all cases. In 2005, when Gov. Mitt Romney made a major push to reinstate capital punishment, I testified against his bill. I also testified before the Joint Committee on the Judiciary against capital punishment in 2007. In recognition of my anti-death penalty advocacy, the Massachusetts Citizens Against the Death Penalty awarded me the annual Herbert and Sara Ehrmann Award in 2008.

Please describe your stance on mandatory-minimum sentences, particularly for drug cases.

As a prosecutor for over 20 years, I have seen first-hand how mandatory-minimum sentences can ensure consistent and predictable sentencing regardless of the identity of the defendant. However, I also understand that those who receive mandatory-minimum sentences are deprived of the many rehabilitative benefits offered to inmates who are not serving such sentences, such as work release and other important programs. We have also had little post-release supervision. We must recognize that most inmates are released back into society at some point, and thus it is imperative that they receive the proper tools to re-enter our communities in a positive and productive manner. I favor laws allowing those serving mandatory-minimum sentences to participate in work release and other programs. I also believe that good, model behavior in prison, and all of the factors taken into account by the Parole Board in determining whether one is fit for parole, should not be ignored merely because an inmate is serving

a mandatory-minimum sentence. I believe we should re-establish appropriate parole eligibility. Finally, I believe that federal drug sentencing laws are in many instances unduly harsh and should be re-examined. In particular, the disparity in sentencing between crack and powder cocaine should be adjusted.

How would you address the deep budget cuts to the judicial branch? How important is this?

Recent state budget cuts to the court system threaten to undermine the quality and access to justice. These cuts do not merely affect the parties to cases; they threaten to damage public safety and our economy by injecting heightened delay and uncertainty in our civil justice system. As a U.S. senator, I will work to provide states with needed federal funding to ease state budget strains. I will also focus on economic growth strategies as a top priority, to promote economic recovery that will, in turn, improve state revenues.

Please describe your view of the independence of the judiciary. How important is it for judges to be able to make their decisions free of outside influences? In general, does this work well or do too many judges abuse it by making "activist" decisions?

Our justice system is founded on the premise that all persons are equal before the law and that judges will base their decisions on an impartial application of the law to the particular facts of a case. Judges should reach these decisions free from undue political, economic and media influence. In my experience, federal and state judges in Massachusetts do not abuse their independence by issuing "activist" decisions. When a judge's ruling lacks a sound legal basis, the appeals process serves as an effective means of correcting errors.

What is your view on the Defense of Marriage Act and the lawsuit filed alleging that it is unconstitutional?

As attorney general, I filed a first-in-the-nation suit by a state against

the federal Defense of Marriage Act in July 2009. I believe that DOMA violates the equal protection rights of same-sex couples and that it also unconstitutionally infringes the sovereign rights of states to define marriage and family relationships. As a U.S. senator, I will work to repeal DOMA because it is unconstitutional and also represents unfair, discriminatory public policy.

Please describe your thoughts on the debate over the legal definition of torture and the implications for members of the government who may have engaged in (what some deem) excessive actions.

I commend President Obama for his swift action when he came into office to ban harsh interrogation techniques that rise to the level of torture. I support diligent, vigorous efforts to prosecute violence and terrorism in a manner that comports with our country's morals and values. Regarding previous violations of torture laws and excessive use of force, I am open to such investigations if appropriate, in so far as they would further the national security interests and individual liberties of American citizens. I believe Attorney General Holder is engaged in that effort now.

What is your view on tort reform? Does the law need to be changed to limit big-dollar verdicts in tort cases?

Although some other states have historically seen excessive, multi-million-dollar jury awards in tort suits, Massachusetts courts and juries have generally exercised reason and restraint. Our civil justice system is not perfect, but it generally achieves a balance between giving victims access to the courts and justice and ensures that damages awards are proportionate to the harm caused. I do not believe that tort reform alone can solve these issues, and as a senator I will focus on a range of more effective strategies to promote economic growth and job creation.