

**Nomination of Judge Brett Kavanaugh to be  
Associate Justice of the United States Supreme Court  
Questions for the Record  
Submitted September 10, 2018**

**QUESTIONS FROM SENATOR COONS**

1. With respect to substantive due process, what factors do you look to when a case requires you to determine whether a right is fundamental and protected under the Fourteenth Amendment?
  - a. Would you consider whether the right is expressly enumerated in the Constitution?
  - b. You indicated that you would consider whether the right is deeply rooted in this nation's history and tradition. What types of sources would you consult to determine whether a right is deeply rooted in this nation's history and tradition?
  - c. Would you consider whether the right has previously been recognized by Supreme Court or a court of appeals?
  - d. Would you consider whether a similar right has previously been recognized by Supreme Court or circuit precedent?
  - e. Would you consider whether the right is central to "the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life"? See *Planned Parenthood v. Casey*, 505 U.S. 833, 581 (1992); *Lawrence v. Texas*, 539 U.S. 558, 574 (2003) (quoting *Casey*).
  - f. What other factors would you consider?
2. Does the Fourteenth Amendment's promise of "equal protection" guarantee equality across race and gender, or does it only require racial equality?
  - a. If you conclude that it does require gender equality under the law, how do you respond to the argument that the Fourteenth Amendment was passed to address certain forms of racial inequality during Reconstruction, and thus was not intended to create a new protection against gender discrimination?
  - b. If you conclude that the Fourteenth Amendment has always required equal treatment of men and women, as some originalists contend, why was it not until 1996, in *United States v. Virginia*, 518 U.S. 515 (1996), that states were required to provide the same educational opportunities to men and women?
  - c. Does the Fourteenth Amendment require that states treat gay and lesbian couples the same as heterosexual couples? Why or why not?
  - d. Does the Fourteenth Amendment require that states treat transgender people the same as those who are not transgender? Why or why not?
3. Do you agree that there is a constitutional right to privacy that protects a woman's right to use contraceptives?
  - a. Do you agree that there is a constitutional right to privacy that protects a woman's right to obtain an abortion?
  - b. Do you agree that there is a constitutional right to privacy that protects intimate relations between two consenting adults, regardless of their sexes or genders?

- c. If you do not agree with any of the above, please explain whether these rights are protected or not and which constitutional rights or provisions encompass them.
4. In *United States v. Virginia*, 518 U.S. 515, 536 (1996), the Court explained that in 1839, when the Virginia Military Institute was established, “[h]igher education at the time was considered dangerous for women,” a view widely rejected today. In *Obergefell v. Hodges*, 135 S. Ct. 2584, 2600-01 (2015), the Court reasoned, “As all parties agree, many same-sex couples provide loving and nurturing homes to their children, whether biological or adopted. And hundreds of thousands of children are presently being raised by such couples. . . . Excluding same-sex couples from marriage thus conflicts with a central premise of the right to marry. Without the recognition, stability, and predictability marriage offers, their children suffer the stigma of knowing their families are somehow lesser.” This conclusion rejects arguments made by campaigns to prohibit same-sex marriage based on the purported negative impact of such marriages on children.
- When is it appropriate for judges to consider evidence that sheds light on our changing understanding of society?
  - What is the role of sociology, scientific evidence, and data in judicial analysis?
5. In his opinion for the unanimous Court in *Brown v. Board of Education*, 347 U.S. 483 (1954), Chief Justice Warren wrote that although the “circumstances surrounding the adoption of the Fourteenth Amendment in 1868 . . . cast some light” on the amendment’s original meaning, “it is not enough to resolve the problem with which we are faced. At best, they are inconclusive . . . . We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.” 347 U.S. at 489, 490-93.
- Do you consider *Brown* to be consistent with originalism even though the Court in *Brown* explicitly rejected the notion that the original meaning of the Fourteenth Amendment was dispositive or even conclusively supportive?
  - How do you respond to the criticism of originalism that terms like “‘the freedom of speech,’ ‘equal protection,’ and ‘due process of law’ are not precise or self-defining”? Robert Post & Reva Siegel, *Democratic Constitutionalism*, National Constitution Center, <https://constitutioncenter.org/interactive-constitution/white-papers/democratic-constitutionalism> (last visited September 9, 2018).
  - Should the public’s understanding of a constitutional provision’s meaning at the time of its adoption ever be dispositive when interpreting that constitutional provision today?
  - Does the public’s original understanding of the scope of a constitutional provision constrain its application decades later?
  - What sources would you employ to discern the contours of a constitutional provision?
6. You have been highly critical of *Morrison v. Olson*, 487 U.S. 654 (1988), on both policy and constitutional grounds.
- Which provisions of the independent counsel statute at issue in that case caused you to call the law a “constitutional travesty,” and why did you object to those provisions so strongly?
  - Why did you single out *Morrison* as a case you would overrule?

- c. Please explain why you believe the independent counsel statute should have been struck down.
  - d. Do you think the for-cause removal provision of the independent counsel statute was unconstitutional?
  - e. Do you believe that the Constitution requires the President to be able to remove any Executive Branch official at will?
7. You repeatedly turned to *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), in response to my questions about *Morrison v. Olson*. You said that *Humphrey's Executor* was “an important precedent of the Supreme Court that [you] have applied many times and reaffirmed.” Do you believe that *Humphrey's Executor* was correctly decided?
8. In a 2017 speech at the American Enterprise Institute, you praised Chief Justice Rehnquist's approach to substantive due process cases, both in *Washington v. Glucksberg*, 521 U.S. 702 (1997), and more generally.
- a. Do you agree that Justice Rehnquist's approach in substantive due process cases focused on whether asserted constitutional rights were deeply rooted in history and tradition?
  - b. Do you believe that this is the sole test for determining whether a right should be protected under the Fourteenth Amendment's Due Process Clause?
  - c. Which substantive due process rights that are currently protected under Supreme Court precedent can be justified using Justice Rehnquist's approach in *Glucksberg*? Please put stare decisis aside in answering this question.
  - d. Which substantive due process rights that are currently protected under Supreme Court precedent cannot be justified using Justice Rehnquist's approach in *Glucksberg*? Please put stare decisis aside in answering this question.
9. During my last round of questions with you, I asked you about Chief Judge Rehnquist's approach to identifying liberty interests protected by the Fourteenth Amendment's Due Process clause in *Washington v. Glucksberg*, 521 U.S. 702 (1997), the so-called *Glucksberg* test. During that round of questioning, and in response to the questions of other Senators, you seemed to suggest that this test is the exclusive governing test according to Supreme Court precedent. You further seemed to suggest that this approach had been endorsed by Justice Kagan during her confirmation hearing and by Justice Kennedy, given that he joined the majority in *Glucksberg*. However, Justice Kennedy wrote in the majority opinion in *Obergefell v. Hodges*, 135 S. Ct. 2584, 2602 (2015), which Justice Kagan joined: “If rights were defined by who exercised them in the past, then received practices could serve as their own continued justification and new groups could not invoke rights once denied. This Court has rejected that approach, both with respect to the right to marry and the rights of gays and lesbians. See *Loving* 388 U. S., at 12; *Lawrence*, 539 U. S., at 566-567.”
- a. Do you agree that the Supreme Court declined to apply the *Glucksberg* test in critical substantive due process decisions subsequent to *Glucksberg* that were written by Justice Kennedy, including *Lawrence v. Texas*, 539 U.S. 558 (2003), and *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015)?

- b. Given the approach to substantive due process in these two recent cases, why did you repeatedly suggest that the *Glucksberg* test is the appropriate, or only, approach to deciding substantive due process?
  - c. *Obergefell* explicitly rejected that the *Glucksberg* test was the sole test for identifying liberty interests protected by the Due Process Clause. The Court stated that the *Glucksberg* “approach may have been appropriate for the asserted right there involved (physician-assisted suicide),” but “it is inconsistent with the approach this Court has used in discussing other fundamental rights, including marriage and intimacy.” In light of this statement, do you agree that it is inaccurate to characterize *Glucksberg* as the governing test for assessing liberty interests under substantive due process? Why or why not?
  - d. Why did you not refer to any of these more recent cases when discussing substantive due process?
  - e. Do you believe these more recent substantive due process cases (*Lawrence*, *Obergefell*) were correctly decided?
10. Recent Supreme Court cases addressing capital punishment under the Eighth Amendment and the privacy of same-sex intimacy under the Fourteenth Amendment have made reference to the opinions of foreign courts or foreign practices to affirm conclusions that were otherwise supported by the record, as well as relevant U.S. case law and practices. *See Roper v. Simmons*, 543 U.S. 551 (2005); *Lawrence v. Texas*, 539 U.S. 558 (2003); *Atkins v. Virginia*, 536 U.S. 304 (2002). Do you agree that foreign court decisions and foreign practices of democratic countries that follow the rule of law are appropriate to consider and cite in opinions interpreting the Constitution?
11. Chief Justice Warren wrote that the Eighth Amendment “must draw its meaning from the evolving standards of decency that mark the progress of a maturing society,” *Trop v. Dulles*, 356 U.S. 86, 101 (1958). This doctrinal standard explicitly calls on the Court not to limit its Eighth Amendment analysis to the meaning of “cruel and unusual punishments” when the Amendment was ratified in 1791, a time when firing squads and hanging were prevalent methods of execution. Applying *Trop*’s evolving standard, the Court has prohibited practices once thought to be constitutional, such as the execution of minors and the execution of individuals with intellectual disabilities.
- a. In your view, what is meant by the Eighth Amendment’s prohibition against “cruel and unusual punishments”?
  - b. Does the phrase “cruel and unusual punishments” have the same meaning from the Eighth Amendment’s ratification in 1791 until now, or has our understanding changed?
  - c. Do scientific advancements in our understanding of psychology, pain, and death alter what constitutes “cruel and unusual punishments”?
  - d. If it were permissible at the time of the Founding to execute eight-year-old children, would a commitment to originalism as the exclusive theory of constitutional interpretation mean that it would be similarly permissible to execute eight-year-old children today?
12. All federal judges – except Supreme Court justices – are required to comply with the Code of Conduct for United States Judges. This code ensures that judges avoid the appearance of impropriety, refrain from political activity, and make financial disclosures.

- a. If confirmed, will you support the establishment of a code of conduct for Supreme Court justices?
  - b. In the absence of a binding code of conduct for Supreme Court justices, will you commit to continue adhering to the Code of Conduct for United States Judges applicable to federal judges on district courts and circuit courts?
  - c. Will you commit to filing the same financial and travel disclosures that you currently file, should you be confirmed to the Supreme Court?
13. Pro bono representation of litigants plays a vital role in providing access to justice. The American Bar Association suggests that each lawyer render at least 50 hours of pro bono legal services per year. Please describe every pro bono matter you worked on over the course of your career.
14. The U.S. Court of Appeals for the Federal Circuit has exclusive jurisdiction over appeals from civil actions involving claims “arising under . . . any Act of Congress relating to patents.” 28 U.S.C. § 1295(a)(1). Decisions of the Federal Circuit are reviewable by the Supreme Court. As a judge on the U.S. Court of Appeals for the D.C. Circuit, your docket was unlikely to include cases relating to patent law issues, but if you are confirmed to the Supreme Court, such cases will now have the potential to come before you.
- a. Please describe any legal instruction (including at law school and afterwards) you have had in patent law.
  - b. Please describe any legal instruction (including at law school and afterwards) you have had in other areas of intellectual property law.
  - c. Please describe any experience you have had working on intellectual property issues since graduating law school.
  - d. Please list any speeches or public presentations in which you have discussed intellectual property law.
15. Are patents property rights?
16. Are federal copyrights property rights?
17. Please describe the sources and methods you believe a judge should use in order to determine whether a claimed invention in a patent is an abstract idea that is not patent eligible.
18. Do you believe it is unduly burdensome for an individual inventor in possession of an issued U.S. patent to prevent infringement by a large corporation? Why or why not? If yes, what steps should be taken to make enforcement easier?
19. The Federal Circuit was created by the Federal Courts Improvement Act of 1982, Pub. L. 97-164. “Congress conferred exclusive jurisdiction of all patent appeals on the Court of Appeals for the Federal Circuit, in order to ‘provide nationwide uniformity in patent law.’” *Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*, 489 U.S. 141 (1989) (quoting H.R. REP. NO. 97–312, p. 20 (1981)).

- a. In light of this intent behind creating an intermediate appellate court that has nationwide subject matter jurisdiction over patent law, what, if any, deference or consideration should the Federal Circuit receive for doctrinal developments in this area of law?
  - b. Does your answer change depending on whether the patent law issue in question is based on an interpretation of any part of Title 35 of the U.S. Code or if it is, instead, based upon a common law patent doctrine?
  - c. Resolving circuit splits is often viewed as one of the Supreme Court's core responsibilities in order to ensure uniform rules nationwide so that case outcomes are not simply the result of where a case is filed. Because the Federal Circuit is the only intermediate appellate court to hear patent cases, however, there is no possibility of a circuit split on these issues. What other factors would you look to in order to determine whether to grant a writ of certiorari in patent law cases?
20. During your nomination hearing, you referred to the "reliance interest" that must be considered (among other factors) when the Supreme Court decides whether it should overturn precedent. Do you agree that this same type of interest has particular relevance when considering whether to make substantial changes to patent law (even if no precedent is directly overturned), given that significant research and development investments are often predicted on the certainty of a federal patent grant?
21. How frequently do you communicate with Judge Kozinski? If the frequency of your communications has changed over time, please provide estimates for different time periods.
- a. At least 15 women have accused Judge Kozinski of sexual harassment. Do you believe that Judge Kozinski treated women inappropriately?
  - b. During the entire course of your relationship with Judge Kozinski, did you ever witness him engaging in inappropriate behavior? Please explain any such incident(s).
  - c. Did you ever see Judge Kozinski mistreat a law clerk or law clerk candidate? Please explain any such incident(s).
  - d. Did Judge Kozinski ever use demeaning language when discussing women?
  - e. Did anyone ever raise concerns with you about Judge Kozinski's behavior? Who? When?
  - f. Did your clerkship spot with Judge Kozinski become available when another student resigned or was fired from his clerkship with Judge Kozinski? If so, please explain your understanding of the circumstances around the former clerk's departure.
  - g. It has been reported that Judge Kozinski had a sexually explicit email list, called the Easy Rider Gag List. Did you ever receive an email from this list? If it is necessary to refresh your recollection, please review your email accounts before answering this question.
  - h. Have you conducted a search of your email accounts and/or correspondence with Judge Kozinski in an effort to provide an accurate response to the preceding question? If not, why not?
  - i. Judge Kozinski also had a personal website with explicit postings. When did you first become aware of Judge Kozinski's personal website?
  - j. At any time, did you provide information related to an inquiry regarding Judge Kozinski's behavior?

22. Which cases, theories, or legal issues were you asked about during the judicial selection process for the D.C. Circuit and for the Supreme Court (including conversations with the White House or outside advisors)? Please provide a comprehensive response.
23. President Trump published an initial list of names from which he would select future Supreme Court nominees in May 2016. You were not on that initial list. Between that time and November 2017, when you were added to the list, what actions, if any, did you take to have your name added?
  - a. Did you speak to anybody about being added to the list? If yes, please list with whom you spoke and what you discussed.
  - b. Did you agree to give any speeches in order to be added to the list?
  - c. Did you select the subject matter of your speeches in order to be added to the list?
  - d. Did the possibility of being added to the list impact your decisions in any cases before you?
24. In my office, you confirmed that the Third Circuit decided *Planned Parenthood v. Casey*, 947 F.2d 682 (1991), while you were clerking for Judge Stapleton. Did you work on this case? Please seek permission to answer this question if necessary.
25. In the speech you gave on the night your Supreme Court nomination was announced, you said that “[n]o president has ever consulted more widely, or talked with more people from more backgrounds, to seek input about a Supreme Court nomination.”
  - a. Who wrote that line of your speech?
  - b. How do you know that this is a true statement?
  - c. Did you do any research to verify those assertions?
  - d. When did you first meet Leonard Leo, and how frequently do you communicate with him?
26. On what legal or other basis did you advise Ken Starr that he should demand a public apology from President Clinton as one condition of giving him “breaks” in questioning him?
27. You told me that you drafted the “grounds” section of the Starr report, which contained perjury allegations. Has your interpretation of what constitutes perjury changed since you drafted the Starr report?
28. If a judge provides intentionally false testimony to Congress on an issue of significance, is impeachment the appropriate remedy?
29. In my office, we spoke about how important it is for the President of the United States to be truthful in everything he says.
  - a. Please explain why it is so important for the President to be truthful.
  - b. Does President Trump tell the truth?
  - c. Has President Trump made any statements that you would condemn?
  - d. You recounted an episode in the White House where President Bush was criticized for a statement that was, in your words, “literally true but misleading in context.” Please

review the transcript of your hearing and identify any statements that you made that were literally true but misleading in context.

30. In a March 27, 2001 email that you wrote while serving in the White House Counsel's Office, you referred to your "ideal of how a unitary executive should work." Please explain your ideal of how a unitary executive should work.
31. Why did you testify during your hearing that you have "never taken a position on the constitutionality of indicting or investigating a sitting President" when, in the *American Spectator* in 1999, you described as "constitutionally dubious" the "transfer of investigative responsibility" from Congress to a criminal prosecutor?
32. During your hearing, Sen. Whitehouse asked you if the President must comply with a grand jury subpoena.
  - a. Does the President have to comply with a grand jury subpoena?
  - b. If your answer is anything other than "yes," do you believe this question is not controlled by the holding in *United States v. Nixon*, 418 U.S. 683 (1974)?
  - c. Please identify any case law where a federal court has distinguished between a trial court subpoena and a grand jury subpoena.
33. At your hearing, you testified that your past criticism of *United States v. Nixon*, 418 U.S. 683 (1974), was taken out of context. Here is what you said at the roundtable where you discussed *United States v. Nixon*:
  - "Maybe *Nixon* was wrongly decided."
  - "*Nixon* took away the power of the president to control information in the executive branch by holding that the courts had power and jurisdiction to order the president to disclose information in response to a subpoena sought by a subordinate executive branch official. . . . And the Court said, 'We're going to take away that right.' Maybe the tension of the time led to an erroneous decision."
  - "There should be more focus on the merits of *Nixon* than there has been."
  - "Should *United States v. Nixon* be overruled[?] . . . . [M]aybe so."

You made many statements critical of *Nixon*, and you articulated a rationale in support of your criticisms – specifically, the theory of the unitary executive that Justice Scalia articulated in his dissent in *Morrison v. Olson*, 487 U.S. 654 (1988), which you have cited approvingly many times as a sitting judge. Given all of your statements, reproduced above, why did you assert that your criticism of *Nixon* was taken out of context?

34. During the hearing, I stated, "[At] Georgetown, [on] a panel in 1998 you wrote it makes no sense at all to have an independent counsel investigate the President, if the President were a sole subject of investigation, nobody should investigate that. Is that your view, if there is evidence that what President committed crime no one should investigate it?" You replied, "That's not what I said, Senator." In a recording of that panel, at approximately the one-hour-and-20-minute mark, you state, "If the president were the sole subject of a criminal investigation. I would say, no one should be investigating that. That should be turned over

immediately to the Congress. Most criminal investigations involve multiple subjects however, so the criminal investigation goes forward. But if it ever gets to a point where the president is the sole subject, the Congress needs to take the lead.” Independent Counsel Structure & Function, February 19, 1998, *available at* <https://www.c-span.org/video/?101055-1/independent-counsel-structure-function>.

- a. Please explain your testimony during the hearing and why you denied stating this.
  - b. Please answer the question whether it remains your view that if the President is the sole subject of an investigation, no prosecutor or law enforcement officials should investigate it.
35. Please explain how your testimony that you have not opined on the constitutionality of indicting a President is consistent with your prior writings that “the Constitution itself seems to dictate” that criminal prosecution occur only after the President has left office.
36. You characterized your approach in *Garza v. Hargan*, 874 F. 3d 735 (D.C. Cir. 2017), as simply trying in good faith to apply Supreme Court precedent. Yet your approach in that case appears to be inconsistent with Supreme Court precedent in at least two ways.
- a. How is your approach consistent with *Bellotti v. Baird*, 443 U.S. 622 (1977), given that J.D. had already obtained a judicial bypass in state court and had met all of the requirements under state law to have an abortion?
  - b. Why did you not apply the Court’s holding in *Whole Woman’s Health v. Hellerstedt*, 136 S. Ct. 2292 (2016), which requires a reviewing court to balance the burden imposed by an abortion restriction (such as an additional required delay) against the benefit of the restriction?
  - c. What does it say about your view about a woman’s right to make her own decisions about her health care when you required J.D. to wait at least another 11 days to have an abortion, when federal officials had already delayed her access to reproductive services almost seven weeks?
  - d. Given that federal officials had already made J.D. wait almost seven weeks to obtain an abortion, why did you characterize J.D.’s constitutional claim as seeking a right to “abortion on demand”?
  - e. Under what circumstances do you believe a women’s right to choose to have an abortion is not “abortion on demand”?
  - f. In your view, is there any point at which delaying a minor’s right to abortion services becomes an undue burden on that right?
37. Please respond to Judge Millett’s concern that the interpretation of the law in your dissent in *Garza v. Hargan* 874 F. 3d 735 (D.C. Cir. 2017), “would require a troubling and dramatic rewriting of Supreme Court precedent to make the sufficiency of someone’s ‘network’ an added factor in delaying the exercise of reproductive choice even after compliance with all state-mandated procedures.”
38. In your dissent in *Priests for Life v. Department of Health and Human Services*, 772 F.3d 229 (2014), you wrote that “when the Government forces someone to take an action contrary to his or her sincere religious belief . . . or else suffer a financial penalty . . . the Government

has substantially burdened” the exercise of religion. Did you intend to include any action, irrespective of how burdensome it is to take that action?

39. The Supreme Court has not recognized a constitutional right to health care protected under the liberty provision of the Due Process Clause. However, Congress passed the Affordable Care Act, which protects health care access regardless of preexisting conditions. Is it constitutional for Congress to prohibit insurers from denying individuals coverage based on preexisting conditions?
40. In your 2011 dissent in *Heller v. District of Columbia*, 670 F.3d 1244 (D.C. Cir. 2011), you explained that you would have struck down D.C.’s firearms registration requirements, concluding that “[r]egistration of all lawfully possessed guns . . . has not traditionally been required in the United States and even today remains highly unusual.” Please cite any other circuit court decisions that have interpreted the Supreme Court’s *Heller* decision in this way.
41. Does the government have a compelling interest in eradicating discrimination against racial minorities, women, or LGBT individuals sufficient to justify denial of federal funding to schools that discriminate against any such individuals based on sincerely held religious beliefs?
42. Why did you author a concurrence in *Klayman v. Obama*, 805 F.3d 1148 (D.C. Cir. 2015)?
43. In your concurrence to the denial of rehearing en banc in *Al-Bihani v. Obama*, 619 F.3d 1 (D.C. Cir. 2010), you opined that courts have no role in interpreting an ambiguous statute with reference to international law unless Congress makes a clear statement that they must do so. Has the Supreme Court ever agreed with this view?
44. In *Saleh v. Titan*, 580 F.3d 1 (D.C. Cir. 2009), you joined the majority’s opinion extending sovereign immunity to private military contractors sued in conjunction with abuses at Abu Ghraib. Chief Judge Garland’s dissent noted that the majority lacked any statutory or judicial authority for extending sovereign immunity to private military contractors. Please respond to this critique.
45. Why did you decline to join the analysis in the concurrence in *South Carolina v. United States*, 898 F. Supp. 2d 30 (D.D.C. 2012), which recognized the importance of the Voting Rights Act of 1965?
46. In *Bluman v. FEC*, 800 F. Supp. 2d 281 (D.D.C. 2011), when you explicitly stated that the Court’s decision did not apply to certain types of speech by foreign nationals related to U.S. elections, did you anticipate that foreign entities would cite these limitations in future litigation?
47. In *United States Telecom Association v. Federal Communications Commission*, 855 F.3d 381 (D.C. Cir. 2017), you dissented from the D.C. Circuit’s decision to deny rehearing en banc. In your dissent, you noted that the First Amendment offers broad editorial discretion to Internet Service Providers. However, the only party that raised a First Amendment argument

would never have been bound by the FCC's net neutrality rule because the provision did not apply to a broadband provider unless it held itself out as a neutral, indiscriminate conduit to any Internet content of a subscriber's own choosing. Why did you find it appropriate to address a point that was not necessary to resolve the case?

48. Did you ever meet with law enforcement, volunteer information, provide documents, or cooperate in any way with the investigation into Manuel Miranda's theft of documents from Senate Judiciary Committee Democrats in any way?
  - a. If not, why did you decline to come forward to offer to assist the investigation, given your frequent communications with Manuel Miranda regarding judicial nominations and the likelihood that he shared stolen information with you?
  - b. Were your documents searched for information relevant to the investigation? If not, why not?
49. Have you had any communications with William Burck since your nomination was announced?
  - a. Did you have any involvement in the document production being overseen by William Burck in relation to this hearing?
  - b. If you did have involvement in the document production being overseen by William Burck, please describe your role.
  - c. Were there others involved in the document review process being overseen by William Burck? If yes, who were they and what was their role?
50. Are you aware of who paid for the in the document production being overseen by William Burck? If yes, who paid for it? What was the approximate amount of the expense?
51. Did you see any of the documents from the document production being overseen by William Burck prior to their release by the Senate Judiciary Committee? If yes, what documents did you see? If yes, were any of the documents that you saw designated "Committee Confidential" when you viewed them?
52. As Staff Secretary, did you create documents?
  - a. Did you revise or add your views to other documents before they went to the President?
  - b. Please provide a list of the most substantive contributions that you made as White House Staff Secretary.
  - c. Are there documents that you created or contributed to during your time as White House Staff Secretary that bear on any of the issues that were discussed in the hearing?
  - d. Please provide a list of all of the signing statements you contributed to in any way while in the White House.
53. During our private meeting, you defended the refusal by Senate Republicans to request and release your Staff Secretary records from your time in the White House of President George W. Bush based on what you called "nominee precedent."
  - a. Please explain whether and why you stand by your defense of the current refusal by Senate Republicans to request and release your Staff Secretary records.

- b. Do you agree that your Staff Secretary records will eventually become public, at which time one will be able to determine whether you were truthful during your Supreme Court confirmation hearing?
54. Given that, pursuant to the Presidential Records Act, documents from your time in the Bush White House will be released in the coming years, please answer the following questions regarding your Staff Secretary documents:
- a. Are there going to be emails or other documents that pertain to torture?
  - b. Are there going to be emails or other documents that pertain to detainee treatment?
  - c. Are there going to be emails or other documents that pertain to rendition?
  - d. Are there going to be emails or other documents that pertain to ballot initiatives on marriage, the 2003 Proclamation of Marriage Protection Week, the May 17, 2004 Statement calling for a constitutional amendment barring marriage equality, or the July 12, 2004 Statement of Administrative Policy on S.J. Res. 40 also known as the “Federal Marriage Amendment”?
  - e. Are there going to be emails or other documents that pertain to Plan B contraception?
  - f. Are there going to be emails or other documents that pertain to CIA operative Valerie Plame?
55. When you worked in the White House Counsel’s Office on judicial nominations, did the Bush administration have a preference for nominees inclined to end busing orders designed to racially integrate schools?
56. During your time in the White House, several senior staff members were using Republican National Committee and campaign email addresses and servers that did not preserve their emails, as required by law.
- a. Did you have any email addresses during your time in the White House other than your official White House email address?
  - b. Did you use any other email addresses other than your official White House email address to conduct official business? If so, please provide it.
57. Did you prepare for these hearings?
58. Assuming you prepared for these hearings, how many preparation sessions did you have? Approximately how long did you spend preparing?
59. During any part of your preparation for these hearings, were there any individuals from the White House present? If yes, please provide their identities and describe their role in your preparations. Please also provide the source of their compensation for their work on your preparation for this hearing.
60. During any part of your preparation for these hearings, were there any individuals from the Department of Justice present? If yes, please provide their identities and describe their role in your preparations. Please also provide the source of their compensation for their work on your preparation for this hearing.

61. During any part of your preparation for these hearings, were there any individuals from any other part of the Executive Branch present? If yes, please provide their identities and describe their role in your preparations. Please also provide the source of their compensation for their work on your preparation for this hearing.
62. During any part of your preparation for these hearings, were there any individuals from Congress (including both Members and staffers) present? If yes, please provide their identities and describe their role in your preparations. Please also provide the source of their compensation for their work on your preparation for this hearing.
63. During any part of your preparation for these hearings, were there any individuals from the Judicial Branch present? If yes, please provide their identities and describe their role in your preparations. Please also provide the source of their compensation for their work on your preparation for this hearing.
64. During any part of your preparation for these hearings, were there any individuals from outside of the federal government present? If yes, please provide their identities and describe their role in your preparations. Please also provide the source of their compensation for their work on your preparation for this hearing.
65. During any part of your preparation for these hearings, were you given guidance on what questions you should not answer? If yes, what was the guidance?
66. During any part of your preparation for these hearings, were you shown documents?
  - a. How many documents were you shown?
  - b. Have all of these documents been produced to the Senate Judiciary Committee?
  - c. Are all of these documents publicly available?
  - d. Will you agree to produce any documents that haven't been given to the Senate Judiciary Committee and make them publicly available?
67. Has the testimony that you have provided during this hearing been 100 percent truthful?
68. Has the testimony that you have provided during this hearing been 100 percent accurate?
69. At any point during this hearing, did you answer a question a certain way to avoid disclosing relevant information?
70. Is anyone helping you to provide answers to these written questions?
71. If anyone is helping you to provide answers to these written questions, please provide their names, how they are helping you, and who is compensating them for their work on your answers.
72. Have you read and verified the answer to each one of these questions?
73. Is the answer to each one of these questions 100 percent accurate?