

**Nomination of Judge Brett Kavanaugh, of Maryland, to be an Associate Justice of the United States Supreme Court Questions for the Record**

**Questions for Judge Kavanaugh**

**Submitted September 10, 2018**

**QUESTIONS FROM SENATOR SHELDON WHITEHOUSE**

1. In an exchange with Senator Graham during your hearing before the Committee, you explained, “[t]he *Nixon* holding said that, in the context of the specific regulations there, that a criminal trial subpoena to the president for information -- in that case, the tapes -- could be enforced, notwithstanding the executive privilege that was recognized in that case, as rooted in Article II of the Constitution.”
  - a. What are the “specific regulations” to which you referred when discussing *United States v. Nixon*?
  - b. Is it your view that the “specific regulations” referenced in (a) were dispositive to the overall holding of the case?
2. On at least five occasions when referencing the *Nixon* precedent during the hearings, you made a point of noting that the subpoena at issue in that case was a criminal trial subpoena.
  - a. What role did the fact that the subpoena in *Nixon* originated from a district court, rather than a grand jury, play in the Court’s analysis?
  - b. Was the fact that the subpoena was a trial subpoena dispositive to the Court’s holding that the constitutionally protected executive privilege was not absolute and that the President had to respond thereto?
  - c. Does *Nixon* control with respect to questions relating to subpoenas of the president issued by a grand jury?
  - d. Does *Nixon* control with respect to cases involving congressional subpoenas to the president?
  - e. Does *Nixon* control with respect to cases involving administrative subpoenas to the president?
  - f. Does *Nixon* control with respect to cases involving subpoenas to the president issued in state trial proceedings?
  - g. Does *Nixon* control with respect to cases involving subpoenas to the president issued by state officials?

- h. Does *Nixon* control with respect to cases involving subpoenas to the president issued by state grand juries?
  - i. As you know, the *Nixon* case involved a subpoena for tape recordings. Does the precedent apply to cases involving subpoenas for presidential testimony as well as documentary evidence in the president's possession, custody, and control?
3. During your hearing and in our private meeting, you stated unequivocally that you had never taken a position on the constitutional question whether a sitting president can be indicted. But as a member of a panel at a 1998 Georgetown Law Review event you were asked "How many of you believe as a matter of law that a sitting president cannot be indicted during the term of office?" You promptly raised your hand. When I asked you to reconcile this seeming conflict, you said: "[t]here's been Department of Justice law," referring to the Office of Legal Counsel's (OLC) opinion, authored by now-judge Randy Moss, that a sitting president cannot be indicted. You also said the OLC opinion is encompassed "within the general concept of law."
- a. Are you aware of any court decisions that refer to OLC opinions or guidance as "law"?
  - b. What weight do courts afford OLC opinions and guidance?
  - c. Do OLC opinions serve as binding precedent for courts? Are they binding on the D.C. Circuit Court of Appeals? On the Supreme Court?
  - d. Is the executive branch bound to follow OLC opinions?
  - e. What are the legal repercussions for the executive branch contravening an OLC opinion?
  - f. Does a person adversely affected by an executive action in violation of an OLC opinion have a legal cause of action?
  - g. What authority does the Attorney General have to decree "law"?
  - h. Do OLC opinions go through the notice-and-comment rulemaking process prescribed by the Administrative Procedures Act?
  - i. Besides the Randy Moss OLC opinion that you repeatedly mentioned during your testimony, is there any statutory or regulatory authority governing whether a president can be indicted?
  - j. As a judge on the DC Circuit, have you ever cited an OLC opinion as binding law? Have you ever cited the Randy Moss OLC opinion as such?
  - k. You have been a prolific legal writer and speaker, including on the separation of powers and executive power. Can you point to any citations in your spoken or written works that describe OLC opinions as "law"?

1. At our private meeting, you agreed with my assessment that, as a general rule, OLC opinions, as the views of the executive branch, take positions advancing the broadest defensible view of executive power. Could you explain your understanding of why this is the case?
4. In your discussion of *Sea World of Florida, LLC v. Perez* with Senator Feinstein, you noted that state tort law provides protection for workers in workplaces in which the Department of Labor is unable to issue safety protections. Specifically, you said, “And I made clear that of course state tort law -- as the NFL has experienced with the concussion issue -- state tort law always exists as a way to ensure or help ensure safety in things like the SeaWorld show.”
  - a. How do state tort law and our civil justice system, in general, help promote workplace safety?
  - b. Do state tort law and our civil justice system play a role in promoting public health and safety in other areas, like consumer protection and environmental protections? If so, how?
  - c. Does the fact that state and federal court proceedings are public play a role in promoting public health and safety? If so, how? Does the prevalence of binding pre-dispute arbitration clauses in employment and consumer contracts limit the ability to seek redress in state and federal courts? If so, how?
  - d. Does the fact that many arbitration proceedings occur behind closed doors undermine courts’ roles in promoting public health and safety?
  - e. The Seventh Amendment ensures the right to a jury “in suits at common law.”
    - i. What role does the jury play in our constitutional system?
    - ii. Should the Seventh Amendment be a concern to judges when adjudicating issues related to the enforceability of arbitration clauses?
5. Do you agree with Justice Gorsuch that personal attacks on federal judges from officials in the other branches of government are “demoralizing”?
6. Under current law, what rights does Congress have to documents, materials, and testimony *vis-à-vis* claims of executive privilege?
7. In response to my questioning regarding your interactions with the media during the Starr investigation, you said, “I spoke to the reporters at the direction and authorization of Judge Starr.”
  - a. During the Starr investigation, did you ever speak with members of the press or other authors about the investigation without explicit direction from Judge Starr or your superiors?

- i. If so, do you release the reporters in these instances from any confidentiality obligations related to these conversations?
  - b. In your testimony, you said you would let me know whether you are willing to release the reporters from their confidentiality obligations if Judge Starr allows the reporters to disclose the conversations. Whether or not Judge Starr may have a role in releasing reporters from obligations of source-protection confidentiality related to his investigation of the Clintons, are you personally willing to release reporters of any such obligations, separate and apart from whatever obligations Judge Starr may claim?
  - c. Were you ever an off-the-record source to the press or other authors? If so, were all these conversations at the explicit direction of Judge Starr?
  - d. Did you ever provide non-public information regarding the investigation to reporters off the record?
  - e. Did you ever provide information on non-public matters relating to the grand jury, including but not limited to the identity of past or planned witnesses and/or the nature or content of their testimony, to reporters off the record?
  - f. During or since your nomination hearing, have you been in touch with Judge Starr regarding reporters or source-protection confidentiality obligations from that investigation? If so, please explain fully the content of and reason for those communications.
8. In your testimony, you stated you had ruled for environmental interests in “many cases.” Please list all of the cases in which you ruled for environmental interests on substantive rather than procedural grounds.
  - a. Did you rule for environmental interest(s) on substantive ground(s) in *Americans for Clean Energy v. Environmental Protection Agency*, 864 F.3d 691 (D.C. Cir. 2017)? If so, please identify the environmental interest(s) for which you ruled and the substantive ground(s) on which you ruled.
  - b. Did you rule for environmental interest(s) on substantive ground(s) in *Center for Biological Diversity v. EPA*, 722 F.3d 401, 2013 WL 3481511 (D.C. Cir. 2013)? If so, please identify the environmental interest(s) for which you ruled and the substantive ground(s) on which you ruled.
  - c. Did you rule for environmental interest(s) on substantive ground(s) in *Coal. for Responsible Regulation Inc. v. EPA*, 684 F.3d 102 (D.C. Cir. 2012)? If so, please identify the environmental interest(s) for which you ruled and the substantive ground(s) on which you ruled.
  - d. Did you rule for environmental interest(s) on substantive ground(s) in *Communities for a Better Environment v. EPA*, 748 F.3d 333 (D.C. Cir. 2014)? If so, please identify the environmental interest(s) for which you ruled and the substantive ground(s) on which you ruled.

- e. Did you rule for environmental interest(s) on substantive ground(s) in *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012)? If so, please identify the environmental interest(s) for which you ruled and the substantive ground(s) on which you ruled.
- f. Did you rule for environmental interest(s) on substantive ground(s) in *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118 (D.C. Cir. 2015)? If so, please identify the environmental interest(s) for which you ruled and the substantive ground(s) on which you ruled.
- g. Did you rule for environmental interest(s) on substantive ground(s) in *Energy Future Coalition v. EPA*, 793 F.3d 141 (D.C. Cir. 2015)? If so, please identify the environmental interest(s) for which you ruled and the substantive ground(s) on which you ruled.
- h. Did you rule for environmental interest(s) on substantive ground(s) in *Grocery Mfrs. Ass'n v. EPA*, 704 F.3d 1005 (D.C. Cir. 2013)? If so, please identify the environmental interest(s) for which you ruled and the substantive ground(s) on which you ruled.
- i. Did you rule for environmental interest(s) on substantive ground(s) in *Howmet Corp. v. EPA*, 614 F.3d 544 (D.C. Cir. 2010)? If so, please identify the environmental interest(s) for which you ruled and the substantive ground(s) on which you ruled.
- j. Did you rule for environmental interest(s) on substantive ground(s) in *Mexichem Fluor, Inc. v. EPA*, 866 F.3d 451 (D.C. Cir. 2017)? If so, please identify the environmental interest(s) for which you ruled and the substantive ground(s) on which you ruled.
- k. Did you rule for environmental interest(s) on substantive ground(s) in *Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544 (D.C. Cir. 2015)? If so, please identify the environmental interest(s) for which you ruled and the substantive ground(s) on which you ruled.
- l. Did you rule for environmental interest(s) on substantive ground(s) in *Mingo Logan Coal Co. v. EPA*, 829 F.3d 710 (D.C. Cir. 2016)? If so, please identify the environmental interest(s) for which you ruled and the substantive ground(s) on which you ruled.
- m. Did you rule for environmental interest(s) on substantive ground(s) in *Natural Resources Defense Council v. EPA*, 749 F.3d 1055 (D.C. Cir. 2014)? If so, please identify the environmental interest(s) for which you ruled and the substantive ground(s) on which you ruled.
- n. Did you rule for environmental interest(s) on substantive ground(s) in *Sierra Club v. EPA*, 536 F.3d 673 (D.C. Cir. 2008)? If so, please identify the environmental interest(s) for which you ruled and the substantive ground(s) on which you ruled.
- o. Did you rule for environmental interest(s) on substantive ground(s) in *Texas v. EPA*, 726 F.3d 180 (D.C. Cir. 2013)? If so, please identify the environmental interest(s) for which you ruled and the substantive ground(s) on which you ruled.

- p. Did you rule for environmental interest(s) on substantive ground(s) in *White Stallion Energy Ctr., LLC v. EPA*, 748 F.3d 1222 (D.C. Cir. 2014)? If so, please identify the environmental interest(s) for which you ruled and the substantive ground(s) on which you ruled?
9. Does a foreign national living in the United States have a First Amendment right to make expenditures on issue advertisements?
- a. Do foreign nationals living in the United States have a First Amendment right to make contributions to organizations that make expenditures on issue ads?
10. You referenced during your testimony that you had overlapped with former FBI Director Robert Mueller during your time in the George W. Bush investigation. What is your opinion of Robert Mueller's character and work ethic? Do you believe that the investigation he is currently overseeing as Special Counsel is a "witch hunt?"
11. Are there any debts, creditors, or related items that you did not disclose on your FBI disclosures?
12. On your 2015 Financial Disclosure Report dated May 13, 2016,<sup>1</sup> you reported between \$15,001 - \$80,000 in debt accrued over two credit cards (Chase, Bank of America), and one loan (Thrift Savings Plan). On your 2016 Financial Disclosure Report dated May 5, 2017, you reported having between \$60,004 and \$200,000 in debt accrued over three credit cards (Chase, Bank of America, USSA) and a loan (Thrift Savings Plan). White House Spokesman Raj Shah told the Washington Post that you "built up the debt by buying Washington Nationals season tickets for playoff games for [yourself] and a 'handful' of friends." Shah said some of the debts were also for home improvements.<sup>2</sup>
- a. What was the total dollar amount of your liabilities in 2015 and 2016, respectively?
- b. What explains the meaningful increase in your liabilities between 2015 and 2016?
- c. Was Mr. Shah's characterization of the sources of your debt wholly accurate? If not, please correct any inaccuracies or omissions.
- d. Did you tell the White House that you built up the debt by buying Washington Nationals season tickets for playoff games for yourself and a "handful" of friends?
- e. For how many seasons have you purchased Washington Nationals season tickets?

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<sup>1</sup> <https://fixthecourt.com/2018/07/bmk-fd-all>

<sup>2</sup> [https://www.washingtonpost.com/investigations/supreme-court-nominee-brett-kavanaugh-piled-up-credit-card-debt-by-purchasing-nationals-tickets-white-house-says/2018/07/11/8e3ad7d6-8460-11e8-9e80-403a221946a7\\_story.html?utm\\_term=.cc28ff7d0f05](https://www.washingtonpost.com/investigations/supreme-court-nominee-brett-kavanaugh-piled-up-credit-card-debt-by-purchasing-nationals-tickets-white-house-says/2018/07/11/8e3ad7d6-8460-11e8-9e80-403a221946a7_story.html?utm_term=.cc28ff7d0f05)

- f. How many tickets did you purchase each year? What was the overall cost and cost per ticket?
- g. Please identify the individuals for whom you purchased baseball tickets.
- h. For each individual listed in the previous question, what financial arrangement, if any, was agreed to with respect to your purchase and their reimbursement of the cost of the baseball tickets?
- i. Did you purchase any baseball tickets for friends in lieu of paying them back for personal debts? If yes, please specify the source and amount of each debt.
- j. For each of 2015 and 2016, what percentage of your credit card debt would you attribute to home improvements? Please also explain what home improvements were undertaken and when.
- k. For each of 2015 and 2016, what percentage of the credit card and TSP debt would you attribute to the purchase of baseball tickets?
- l. Besides baseball season tickets and home improvements, did you have any other sources of personal or household debt from 2015 through 2018? If so, please specify.
- m. Did you have any creditors, private or otherwise, not listed in your Financial Disclosure Reports?

13. On your Financial Disclosure Report dated July 15, 2018, you do not report any liabilities. As noted above, the prior year, on your 2016 Financial Disclosure Report dated May 5, 2017, you reported between \$60,004 and \$200,000 in debt accrued over three credit cards and a TSP loan. Your annual disclosures indicate that the TSP loan maintained a balance between \$15,001 and \$50,000 for at least 12 years. With respect to your debt for baseball tickets, White House spokesman Raj Shah told *The Washington Post* that your friends reimbursed you for their share of the baseball tickets and that you have since stopped purchasing the season tickets.

- a. For each debt listed in your 2015 and 2016 Financial Disclosure Reports, (i.e., each credit card and the TSP loan listed in your 2015 and 2016 Financial Disclosure Reports), please identify the date on which the debt was paid and the source of the funds for repayment.
- b. For the individuals for whom you purchased baseball tickets, please specify the name of each individual, when each repaid you for his/her tickets, the amount that each repaid, and whether any other individual or entity paid any part of the debt that you attribute to the purchase of baseball tickets.
- n. Beyond the money reimbursed by your friends for baseball tickets, how did you pay off your remaining debt? From what source did this money come?

14. On your Financial Disclosure Report dated July 15, 2018 in Section V. Gifts, you did not check the box for no reportable gifts, you simply wrote “Exempt.”
  - a. Does this response indicate that you received a gift(s) but considered that gift(s) exempt from the reporting requirements?
  - b. For each gift (if any) you believe is exempt from reporting, please provide a description of the gift, the approximate value, date received, the donor, and the reason you believe the gift was exempt from reporting requirements.
15. On your Financial Disclosure Report dated July 15, 2018, you did not list any reimbursements. Instead you simply wrote “Exempt.”
  - a. Does this response indicate that you received reimbursement(s) but considered that reimbursement(s) exempt from the reporting requirements?
  - b. For each reimbursement you believe is exempt from reporting, please provide a description of the costs incurred, reasons for the costs, the date and amount of any reimbursements that you received for these costs, and the reason you believe the reimbursement was exempt from reporting requirements.
16. In 2014, federal judges received a lump sum equal to the amount of their delayed cost of living adjustments. For you, this was estimated at \$150,000. This amount does not appear to be reported anywhere in your financial disclosures. Please explain this discrepancy.
17. Your Bank of America accounts appear to have greatly increased in value between 2008 and 2009. Your Financial Disclosure Report dated May 15, 2009 reflected a value in the range of \$15,001 - \$50,000. Your Financial Disclosure Report dated May 14, 2010 reflected a value in the range of \$100,001 - \$250,000. You did not report any increase in Non-Investment Income, nor did you report any gifts during this period. Please explain the source of the funds that accounts for the difference reflected in these accounts between your 2008 and 2009 Financial Disclosure Reports.
18. In 2006, you purchased your primary residence in Chevy Chase, MD for \$1,225,000, however, the value of assets reportedly maintained in your “Bank of America Accounts” in the years before, during, and after this purchase never decreased, indicating that funds used to pay the down payment and secure this home did not come from these accounts.
  - a. Did you receive financial assistance in order to purchase this home? And if so, was the assistance provided in the form of a gift or a personal loan?
  - b. If you received financial assistance, please provide details surrounding how this assistance was provided, including the amount(s) of the assistance, date(s) on which the assistance was provided, and the individual(s) who provided this assistance.



- c. Was this financial assistance disclosed on your income tax returns, financial disclosure forms, or any other reporting document?
19. You have disclosed in your responses to the Senate Judiciary Questionnaire that you are currently a member of the Chevy Chase Club. It has been reported that the initiation fee to join this club is \$92,000 and annual dues total more than \$9,000.
  - a. How much was the initiation fee required for you to join the Chevy Chase Club? What are the annual dues to maintain membership and is this the amount that you pay?
  - b. Did you receive any financial assistance or beneficial reduction in the rate to pay the initiation or annual fees? If so, please describe the circumstances.
  - c. If you received financial assistance, please disclose the amount of the assistance, the terms, the dates the assistance was provided, and the individual(s) or entity that provided the assistance.
  - d. To the extent such assistance or rate reduction could be deemed a “gift,” was it reflected on your income tax returns, financial disclosure forms, or any other reporting document?
20. To date, you have not disclosed that you or your wife own any listed or unlisted securities, including but not limited to stocks, bonds, mutual funds or other investment products outside of those included in your retirement accounts. Is that accurate?
21. Have you ever received a Form W-2G reporting gambling earnings? If so, please list dates and amounts.
22. Have you ever reported a gambling loss to the IRS? If so, please list the dates and amounts.
23. Bill Burck produced to the committee a document from your tenure in the White House Counsel’s Office that references a “game of dice.” After a reunion with friends in September 2001, you emailed: “Apologies to all for missing Friday (good excuse), and growing aggressive after blowing still another game of dice (don’t recall). Reminders to everyone to be very, very vigilant w/r/t confidentiality on all issues and all fronts, including with spouses.”
  - a. Since 2000, have you participated in any form of gambling or game of chance or skill with monetary stakes, including but not limited to poker, dice, golf, sports betting, blackjack, and craps? If yes, please list the dates, participants, location/venue, and amounts won/lost.
  - b. Do you play in a regular or periodic poker game? If yes, please list the dates, participants, location/venue, and amounts won/lost.
  - c. Have you ever gambled or accrued gambling debt in the State of New Jersey?

- d. Have you ever had debt discharged by a creditor for losses incurred in the State of New Jersey?
  - e. Have you ever sought treatment for a gambling addiction?
  - f. In the email quoted above, please explain what “issues” and “fronts” you wanted your friends to be “very, very vigilant” about “w/r/t/ confidentiality, including with spouses.”
24. Is lying under oath an impeachable offense for an Article III judge?
25. Your *PHH v. CFPB* opinion said, “In order to maintain control over the exercise of executive power and take care that the laws are faithfully executed, the President must be able to supervise and direct those subordinate executive officers.”
- a. Is it true that the Constitution says nothing explicit about presidential removal power?
  - b. If Article II contemplated complete presidential control over all administration, why does Article II explicitly allow Congress to appoint inferior officers of the United States?
  - c. Is it notable that Congress has long provided for the judicial appointment of prosecutors, including prosecutors to fill certain vacancies in the position of U.S. Attorney?
26. The justices of the U.S. Supreme Court are the only federal judges not bound by the Code of Conduct for U.S. Judges, which sets rules for when judges must recuse themselves from hearing cases.
- a. Do you think the Supreme Court should adopt the Code of Conduct?
  - b. What standard would you use as a justice to resolve your own recusal issues?
  - c. Supreme Court justices rarely divulge their reasons for deciding whether or not to recuse from a given case. Do you agree with that practice, or do you believe that the justices should make clear their rationales in this context?
27. In 1992, in his dissent in *Planned Parenthood v. Casey* (1992), Chief Justice Rehnquist wrote: “We believe that *Roe* was wrongly decided, and that it can and should be overruled consistently with our traditional approach to *stare decisis* in constitutional cases.”
- a. What do you understand Rehnquist to have meant by the “traditional approach to *stare decisis* in constitutional cases”?
  - b. Do you agree with Justice Rehnquist that it would have been within the traditional approach to *stare decisis* to overrule the opinion in *Roe*?
28. The Supreme Court upheld the essential holding of *Roe* two years ago in its most recent decision on abortion, *Whole Woman’s Health v. Hellerstedt*, 136 S. Ct. 2292 (2016). In *Whole Woman’s Health*, the Court demonstrated that the undue burden test is a robust check on legislatures that requires courts to examine whether abortion restrictions have

benefits that outweigh the burdens they impose and to strike them down if they do not.<sup>3</sup> The decision explicitly holds that the test is a form of heightened scrutiny. Proper application of the test requires courts evaluate whether an abortion restriction furthers a valid state interest based on the court's independent examination of credible evidence set forward in the case. When a law's burdens outweigh its benefits, it is unconstitutional.

- a. In your view, what is the standard for evaluating whether a restriction violates a woman's constitutional right to terminate a pregnancy?
29. In *Rattigan v. Holder*, 689 F.3d 764 (D.C. Cir. 2012), you wrote a dissent arguing that all agency actions related to security clearances should be immune from judicial review – even in cases when claims involve evidence of clear racial bias.
- a. Are there other categories of cases in the area of national security that you believe should be judicially unreviewable? If so, what are they?
30. In October 2017, the Department of Justice instructed its attorneys that Title VII's prohibition against sex-based discrimination in hiring or employment practices does not protect transgender workers. Several federal courts, however, have ruled that transgender employees are protected under Title VII.
- a. Do you believe that transgender individuals should be considered a protected class?
  - b. If not, how does being transgender differ from recognized protected classes like gender or race?
  - c. What criteria should be used to determine new suspect classifications in equal protection?
31. The National Labor Relations Act (NLRA) sets forth as the public policy of the United States the support of collective bargaining rights of employees in their unions with their employers.
- a. Do you believe the long-standing precedents protecting exclusive representation should survive?
  - b. Do you believe that the mission of the NLRA to protect the rights of employees and employers, to encourage collective bargaining, and to curtail certain private sector labor and management practices, which can harm the general welfare of workers, businesses and the U.S. economy, is constitutional?
32. Where in the Constitution's text does it state that corporations should be treated the same as people in terms of equal protection, due process, or first amendment legal protections? Does a strict constructionist view of the Constitution permit such treatment?
33. Many states, including Florida, have enacted laws concerning the possession or ownership of firearms by people with mental illness. Does the 2<sup>nd</sup> Amendment provide any basis for restriction of ownership or possession of firearms by people with a history of mental illness? If so, what is that basis?

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<sup>3</sup> *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292, 2309-10 (2016).

34. Judge Easterbrook wrote: “relying on how common a weapon is at the time of litigation would be circular to boot. Machine guns aren't commonly owned for lawful purposes today because they are illegal; semi-automatic weapons with large-capacity magazines are owned more commonly because, until recently (in some jurisdictions), they have been legal. Yet it would be absurd to say that the reason why a particular weapon can be banned is that there is a statute banning it, so that it isn't commonly owned. A law's existence can't be the source of its own constitutional validity.”
- a. What are your views of Judge Easterbrook's critique of the “common use test”?
  - b. Is there ever an instance where you would consider public safety justifications when evaluating a constitutional challenge to a gun safety law?
35. Which regulations did you work on during your time as Staff Secretary from 2003-2006?
36. Please answer the following questions regarding your work in the Bush White House, if you answer yes, please describe your role.
- a. Did you work on, provide advice on, or otherwise have involvement in legislation to limit abortion procedures?
  - b. Did you work on, provide advice on, or otherwise have involvement in hate crimes legislation or the administration's position on pending legislation to expand federal hate crimes laws?
  - c. Did you work on, provide advice on, or otherwise have involvement in litigation designed to undermine or limit the holding in *Roe v. Wade*?
  - d. Did you work on, provide advice on, or otherwise have involvement in the Bush administration's position on a proposed constitutional amendment defining marriage as between one man and one woman?
  - e. Did you have any involvement in the Bush administration's use of taxpayer dollars to fund columnists to promote a proposed constitutional amendment defining marriage as between one man and one woman?
  - f. Did you work on, provide advice on, or otherwise have involvement in the issue of so-called “enhanced interrogation measures”?
  - g. Did you participate in any discussions or edits to documents related to so-called “enhanced interrogation measures” or torture or the applicability of the Geneva Convention?
  - h. Did you work on, provide advice on, or otherwise have any involvement in the issue of the detention of enemy combatants, at Guantanamo Bay or elsewhere?
  - i. Did you have any awareness of the abuses at Abu Ghraib, or similar occurrences elsewhere, before they became public knowledge?
  - j. Did you work on, provide advice on, or otherwise have involvement in leaking the identity of then-CIA agent Valerie Plame, or the subsequent coverup? Did you have any awareness of these events before they became public knowledge?
  - k. Did you work on, provide advice on, or otherwise have involvement in the drafting and passage of the Patriot Act?

- l. Did you work on, provide advice on, or otherwise have involvement in the post-9/11 domestic surveillance programs, including the NSA warrantless wiretapping and bulk phone records that came to light in December 2005? Were you aware of these programs before they became public knowledge?
- m. Did you work on, provide advice on, or otherwise have involvement in proposals to block grant Medicaid?
- n. Did you work on, provide advice on, or otherwise have involvement in discussion about the privatization of social security?
- o. Did you work on, provide advice on, or otherwise have involvement in any international climate change or control policies, including the Kyoto Protocol?
- p. Did you work on, provide advice on, or otherwise have involvement in the enactment of Executive Order 13233, which limited public access to the records of former Presidents?
- q. Did you work on, provide advice on, or otherwise have involvement in the federal government's response to Hurricane Katrina?
- r. Were you aware of corrupt activities surrounding lobbyist Jack Abramoff before they became public knowledge? Did you ever take a meeting with him?
- s. Did you work on, provide advice on, or otherwise have involvement in the decision to allow the assault weapons ban to expire? What other matters did you work on related to firearms? Were you involved in any way in speeches or other documents or meetings related to the *Heller* case?
- t. Did you work on, provide advice on, or otherwise have involvement in efforts to limit race-based or gender-based affirmative action through legislative, executive, or judicial action?
- u. Did you work on or provide any advice the Bush administration's amicus briefs in the 2003 University of Michigan equal opportunity in higher education cases *Grutter* and *Gratz* in which the administration took the position that race-conscious considerations were unconstitutional?
- v. Did you work on or provide any advice on the Bush administration's amicus brief in the 2006 *Parents Involved in Community Schools* case in which the administration intervened on behalf of white parents to oppose the limited use of race to help diversify public schools in Seattle and Louisville?
- w. Did you work on any other cases, policies, or matters that aimed to restrict the use of race-conscious criteria in any federal, state, or local contracting, employment, or educational programs?
- x. Did you work on any cases, policies, or matters in which you advanced the argument that native Hawaiians or other indigenous people were not entitled to the same legal and constitutional protections as Native Americans?

- y. Did you work on any cases, policies, or matters in which you advanced arguments consistent with your statement in a 1999 press interview that within the next 10-20 years courts would declare “we are all one race in the eyes of government”?
- z. Did you work on, provide advice on, or otherwise have involvement in the U.S. Attorney firings that were the subject of a September 2008 Department of Justice OIG report?
  - aa. Did you work on, provide advice on, or otherwise have involvement in the systems of politicized hiring at the Department of Justice that were the subject of three DOJ OIG reports in June and July of 2008?
  - bb. Did you work on, provide advice on, receive any documents or communications about, or otherwise have involvement in issues pertaining to Purdue Pharmaceuticals, Giuliani Partners, or the Oxycontin investigation?