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Breyer and Scalia Testify at Senate Judiciary Hearing

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WASHINGTON — Justices [Stephen G. Breyer](#) and [Antonin Scalia](#) of the [Supreme Court](#) crossed Constitution Avenue on Wednesday to testify before the Senate Judiciary Committee about the role of judges under the Constitution, offering unscripted responses on issues like conflicts of interest and cameras in the courtroom.

Justices rarely appear before the Senate panel after their confirmation hearings. The last such occasion was when Justice Anthony M. Kennedy testified about judicial security and independence in 2007.

Seizing on the unusual opportunity to question the justices, senators set the agenda question by question. Senator Richard J. Durbin, Democrat of Illinois, asked whether the Supreme Court should be required to follow the [Judicial Conference Code of Conduct](#), which is currently used as “guidance.”

“Every asset has to be listed in depth, and it’s all filed,” Justice Breyer said. “I don’t think that the life of the judge in terms of ethics is less restrictive than the life of any other member of the government.”

The ethical conduct of the Supreme Court has been under growing scrutiny. Questions have been raised over Justice Clarence Thomas’s appearances before Republican-backed groups and his acceptance of favors from a contributor in Texas, Harlan Crow, as well as over his wife, Virginia Thomas, and her job as a conservative advocate.

House Democrats [sent a letter to House Judiciary Committee leaders](#) last month, calling on the panel to review a bill introduced this year that would require justices to withdraw from cases in which they have a political or financial conflict. The letter also singled out Justices Scalia and Samuel Alito for appearing at political events.

Justice Breyer said he had not seen a decision influenced by politics in his 17 years on the court. But he drew a line between politics and judicial philosophy.

“By the time you have 40 or 50 years in any profession, you begin to formulate very, very general views,” he said. “What is America about? What are the people of America about? How in this country does law relate to the average human being? How should it? And it’s a good thing, not a bad thing that people’s outlook on that court is not always the same.”

Testifying before an audience largely composed of high school, college and law students, the justices often struck a professorial note in their responses, acknowledging that it is difficult for Americans to understand the court. Justice Breyer offered a suggested reading list, mentioning the Federalist Papers and Alexis de Tocqueville.

“In some ways, I feel like I’m back in my favorite seminars in law school,” said Senator Patrick J. Leahy, Democrat of Vermont, the committee chairman.

Senator Jeff Sessions, Republican of Alabama, said Americans needed to know that the judges would adhere strictly to the Constitution. “The American people do care,” Mr. Sessions said. “They have a high opinion of the court. They believe that you should follow the law, and the greatest threat to the court, in my opinion, is if the American people believe that judges are consistently redefining the meaning of the law to advance their agenda.”

The hearing coincided with the first week of the Supreme Court’s new term and the recent celebration of Constitution Day, which recognizes the anniversary of the signing of the Constitution in 1787.

Justice Scalia expounded on what sets the United States apart from other countries: not the Bill of Rights, which “every banana republic has,” but the separation of powers. Americans “should learn to love the gridlock,” he said. “It’s there for a reason, so that the legislation that gets out will be good legislation.”