

# Race and politics in the Judge Ketanji Brown Jackson hearings

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New York Times News Service

Ketanji Brown Jackson has the profile of a perfect nominee to be an associate justice on the U.S. Supreme Court.

Harvard College. Harvard Law School. Editor of the Harvard Law Review. A law clerk to two federal judges and Associate Justice Stephen Breyer. Criminal and civil experience. With over nine years as a federal judge, Judge Jackson has more judicial experience than Justices Elena Kagan, Brett Kavanaugh and Amy Coney Barrett had when confirmed. So why the cringeworthy treatment of Judge Jackson, who would be the first African-American woman on the high court, by Republican members of

the Senate Judiciary Committee? Sadly enough, race and partisan politics deeply influenced the treatment of Judge Jackson.

Over three days of confirmation hearings, Judge Jackson with poise, dignity and patience thanked each senator for every single question and thoughtfully attempted to answer each one. She explained her approach to deciding cases as a judge. With grace, Judge Jackson always maintained a calm and professional demeanor even when some of the senators did not.

In deciding cases, Judge Jackson described her approach as carefully adhering to the constitutional and statutory text and following the intent of the drafters of the text. As a federal district court judge, Judge Jackson decided the cases based on the facts and the law in a careful -- might I say *judicious* -- way. She appears to be a moderate pragmatist in her judicial approach, much like her mentor who she is set to replace, Justice Breyer.

Wary of being called out as racists, the Republican senators on the judiciary took a roundabout path to challenging Judge Jackson. They persistently sought to paint Judge Jackson as "soft on crime."

The endorsements of the Fraternal Order of Police and the International Association of Chiefs of Police did not stop the Republican senators' from pushing that attack. Nor did the fact that Judge Jackson's own brother is a law enforcement officer.

In 1967, senators in similar fashion claimed that the first African-American on the Supreme Court, Thurgood Marshall, was soft on crime. Like Jackson, Marshall also represented criminal defendants.

Crime historically has been one way of indirectly talking about race in the United States. In successfully running for president in 1968, Richard Nixon campaigned on a "law and order" platform that tapped into concerns of some whites about riots, as the nation reckoned with civil rights demands by African-Americans. At a time when the police killings of George Floyd, Breonna Taylor and other African-Americans had the nation confronting systemic racism in the criminal justice system, it is cruelly ironic that the Republican senators again relied on crime to assail a Black nominee with outstanding credentials.

Senator Josh Hawley, R-Mo., in particular, joined by others, including Sens. Lindsay Graham, R-S.C., Ted Cruz, R-Texas, and Tom Cotton, R-Ark., caustically challenged Judge Jackson on crime and her sentencing of defendants convicted of possession of child pornography. They interrupted and badgered her while exhibiting general disrespect, at times disdain, for Judge Jackson.

In a similar vein, several senators questioned Judge Jackson's representation of detainees labeled as enemy combatants on Guantánamo Bay. Other senators joined in the piling on about the representation of terrorists. Senator Graham, at one point, lashed out that he hoped that the detainees just would flat out "die in jail."

The conservative challenge to critical race theory, which challenges racial discrimination in U.S. society, came into play in the interrogation of Judge Jackson. Senator Cruz questioned her about books assigned to students at Georgetown Day School, a private school for which she serves on its board of trustees. Waving books around in a manner that likely will soon be parodied on Saturday Night Live, he brought blown-up pictures of pages from one book titled, "Antiracist Baby," which he alleged embodied the evils of CRT. One can only wonder why Judge Jackson would be questioned about CRT. As she succinctly put it, "I've never studied critical race theory and I've never used it. It doesn't come up in the work that I do as a judge." Because Judge Jackson is Black, she apparently in the eyes of some conservatives is a suspected underground CRT adherent.

Partisan politics, with the midterm election on the horizon, also came into play. Playing to her conservative base, including bringing up CRT, Sen. Marsha Blackburn, R-Tenn., questioned Judge Jackson about, among other things, the rights of transgender people. One of the incredible questions she posed to Judge Jackson was how she would define the word "woman." Judge Jackson's actual views on transgender rights seemed to be irrelevant to Blackburn's questioning.

Graham appeared angry about the past political skirmishes during previous confirmation hearings. He asked Judge Jackson to rate her commitment to religious faith on a scale of one to 10, even though he admitted that questions about religion were inappropriate; he asked them because questions on religion were asked of Justice Barrett at her confirmation hearings. In an angry tone, Graham claimed that the "radical left" supported her nomination and attacked the record of Graham's preferred candidate, Judge Michelle Childs of South Carolina.

The confirmation hearings revealed much about the strength of Judge Jackson's character. She mentioned that, when she began at Harvard, it was a "rough" period of adjustment. A Black woman saw her, apparently looking downtrodden, and gave her one word of advice. "Persevere," she told a younger Judge Jackson. That is precisely what Judge Jackson did throughout the Republican onslaught at the confirmation hearings.

In the end, the U.S. Senate -- as it should -- will almost certainly confirm Judge Jackson as a Supreme Court justice. Nonetheless, the gauntlet that she was subjected to was just another troubling episode in this nation's long history of mistreatment of Black women. "Race baiting" is one characterization of the Republican senators' hostile treatment of Judge Jackson. Or, to use Justice Clarence Thomas' phrase used to describe his 1991 confirmation hearings, was it a "high-tech lynching"?