



## **Ketanji Brown Jackson Explains to Lawmakers How Being a Lawyer Works**

**As expected, Tuesday's hearing was primarily made up of political theater.**

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The Senate Judiciary Committee on Tuesday continued its questioning of Supreme Court nominee Ketanji Brown Jackson. And, as these things tend to go, the hearing focused primarily on the sort of political theater more likely to generate clips for cable news than to extract productive tidbits about Jackson's approach to the bench.

But a series of exchanges took that to new heights as the nominee spent a considerable amount of time outlining for the committee how being an attorney works and how basic trial practices play out in reality.

Early on there was her exchange with Sen. Lindsey Graham (R–S.C.), who took issue with a few things: There was the fact that President Joe Biden declined to nominate District Judge Michelle Childs, who hails from his state; there was a bizarre line of questioning about Jackson's religious beliefs and if she could fairly judge a Catholic; and then there was his probing around an amicus brief Jackson filed on behalf of the libertarian Cato Institute in support of detainees on Guantanamo Bay who had been held without the government charging them with a crime. The nominee responded that the brief didn't necessarily reflect her views, to which Graham replied: "Why would you do that if it's not your position?"

"I would refer you to the same sorts of statements that Chief Justice Roberts made when he came before the committee," Jackson said, "which is that lawyers represent clients."

Graham, an attorney himself who spent years representing clients in the Air Force, likely knows this. But it gave him an opportunity to launch a monologue as if he did not, punctuated by him storming out of his seat in view of the camera.

When Sen. Ted Cruz (R–Texas) took his turn, he pivoted back to allegations—originally raised by Sen. Josh Hawley (R–Mo.)—that Jackson is soft on child predators. During his time, Cruz brandished a chart outlining a series of cases in which Jackson sentenced defendants to lower prison terms than the government requested.

Missing from his spiel was that in the *vast* majority of non-production cases—meaning a defendant was not charged with creating pornographic content but instead with viewing or possessing it—federal judges nominated by both Republican and Democratic administrations do exactly what Jackson did: sentence such offenders below the federal sentencing guidelines. This is because there is a wide, bipartisan consensus among judges that those guidelines (which are non-binding) are overly punitive and do not appropriately distinguish between various types of offenses—something Jackson reiterated over and over. These defendants aren't walking free. On the contrary, Jackson argued they should not. Instead, she expressed the mainstream judicial view that there should be nuance, which is easy to weaponize in an era where performance goes farther than substance.

Also missing from Cruz's time: the fact that judges are not obligated to accept a sentence just because a prosecutor demands it, and they often don't. That's not a partisan concept. Cruz, who is also an attorney, is surely familiar with it. He's just hoping you're not.